

ORDINANCE NO. 06.15.21.02

AN ORDINANCE OF THE FLORIN RESOURCE CONSERVATION DISTRICT BOARD OF DIRECTORS REPEALING AND REPLACING AN ENFORCEMENT PROCEDURE FOR VIOLATIONS OF THE WATER SHORTAGE CONTINGENCY PLAN ORDINANCE NO. 06.24.15.01

WHEREAS the Florin Resource Conservation District (District) Board of Directors believes that enforcement of the mandatory measures established by the District's Water Shortage Contingency Plan (Plan) is necessary to achieve the District's water conservation goals; and

WHEREAS this Ordinance establishes a procedure for enforcing the mandatory measures established by the Plan, including an appeal process; and

WHEREAS Government Code Section 53069.4 authorizes the District to issue administrative citations for violations of the District's ordinances; and

NOW, THEREFORE, THE FLORIN RESOURCE CONSERVATION DISTRICT BOARD OF DIRECTORS DOES HEREBY ORDAIN AS FOLLOWS:

1. The following enforcement procedure:

ENFORCEMENT OF WATER SHORTAGE CONTINGENCY PLAN

Section 1 Definitions

- (a) "Administrative Citation" shall mean an administrative citation issued pursuant to this section to remedy a violation.
- (b) "Day" shall mean a calendar day.
- (c) "Enforcement Officer" shall mean any employee or agent of the District designated by the General Manager to enforce any Mandatory Measure.
- (d) "General Manager" shall mean the General Manager or his designee. "Mandatory
- (e) Measure" shall mean any mandatory measure established by the Plan.
- (f) "Plan" shall mean the Water Shortage Contingency Plan.
- (g) "Responsible Person" shall mean a person who causes a Plan violation to occur, or allows a violation to exist or continue, by his or her action or failure to act, or whose agent, employee, or independent contractor causes a violation to occur, or allows a violation to exist or continue. For the purposes of this Ordinance, there may be more than one Responsible Person for a violation.

Section 2 Penalties and Fines for Violation

- (a) Any Responsible Person violating any provision of the Water Shortage Contingency Plan may be issued an Administrative Citation by an Enforcement Officer as provided herein.
- (b) Each day a violation of the Plan occurs constitutes a separate and distinct offense.

A civil fine shall be assessed by means of an Administrative Citation issued by an Enforcement Officer and shall be payable directly to the Florin Resource Conservation District.
- (c) Civil fines shall be assessed in the amounts specified by the Water Shortage Contingency Plan.
- (d) Each Administrative Citation shall contain the following information:
 - (1) The name of the person charged with any violation of the Plan.
 - (2) The date or dates on which the person violated the Plan.
 - (3) The Mandatory Measure(s) of the Plan so violated.
 - (4) The location where the violation occurred.
 - (5) The amount of the fine imposed or to be imposed for each violation of the Plan.
 - (6) A notice of the procedure to request an administrative hearing to contest the citation.
 - (7) The name and signature of the person who issued the citation.
 - (8) The date the citation is issued.
 - (9) Any other information deemed necessary by the General Manager or Enforcement Officer for enforcement or collection purposes.

Section 3 Payment and Collection of Fines

- (a) Payment of a civil fine assessed for a violation of the Plan shall be due within 21 days from the date of issuance of the citation and shall be in the form of check or money order made payable to the Florin Resource Conservation District. The citation number shall be designated on the check or money order. Payment shall be delivered or mailed to: Florin Resource Conservation District, 9257 Elk Grove Blvd., Elk Grove, California, 95624.

- (b) Payment of any fine or fines shall not excuse the Responsible Person from complying with the Mandatory Measures so violated. The issuance of a citation or payment of any fine, or both, shall not bar the District from instituting any other enforcement action or remedy to obtain compliance with the provisions of the Plan so violated, including the issuance of additional citations.

Section 4 Failure to Pay Administrative Fines

- (a) The District may collect any past due administrative citation fine or late payment penalty and interest by use of all available legal means. Without limiting the generality of the foregoing, all such fines or late payments shall constitute civil debts and may be recovered in an action at law, or a lien may be filed by the District against the real property where the violation(s) occurred.
- (b) Any person who fails to pay to the District any fine imposed pursuant to this Ordinance on or before the date that fine is due also shall be liable for the payment of a late payment charge in the amount of ten percent of the fine. Thereafter, the amount of the fine, and the penalty, shall accrue interest at ten percent per annum until paid.

Section 5 Appeal of Administrative Citation

- (a) The recipient of a citation issued pursuant to this section may contest the citation. A notice of appeal and request for hearing contesting an Administrative Citation issued for a violation of this Ordinance shall be accompanied by an advance deposit of the total amount of the fine, which shall be refunded if it is determined, after a hearing, that the person charged in the Administrative Citation was not responsible for the violation(s) or that there was no violation(s) as charged in the citation.
- (b) The Chair of the Board shall designate the hearing officer for the Administrative Citation hearing. The hearing officer may be a District employee, but in that event the hearing officer shall not have had any responsibility for the investigation, prosecution or enforcement of this Ordinance and shall not have had any personal involvement in the proceeding to be heard or possess any disqualifying interest in the outcome of the proceeding.
- (c) The hearing before the hearing officer shall be set for a date that is not less than 15 and not more than 60 calendar days from the date that the notice of appeal is filed in accordance with the provisions of this Ordinance. The person requesting the hearing shall be notified of the time and place set for the hearing at least 10 calendar days prior to the date of the hearing.

- (d) At least ten (10) days prior to the date of the hearing, the recipient of an Administrative Citation shall be provided with copies of the citations, reports and other documents submitted or relied upon by the Enforcement Officer. No other discovery is permitted. Formal rules of evidence shall not apply.
- (e) The hearing officer shall only consider evidence that is relevant to whether the violation(s) occurred and whether the party contesting the Administrative Citation has caused, maintained, or allowed the violation(s) of the Plan on the date(s) specified in the Administrative Citation.
- (f) The Administrative Citation and any additional documents submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents.
- (g) The person contesting the Administrative Citation shall be given the opportunity to testify and present witnesses and evidence concerning the Administrative Citation.
- (h) The unexcused failure of any recipient of an Administrative Citation to appear at the Administrative Citation hearing shall constitute a forfeiture of the fine and a failure to exhaust his/her administrative remedies.
- (i) The hearing officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the Administrative Citation prior to issuing a written decision.
- (j) After considering all the evidence and testimony submitted at the hearing, the hearing officer shall issue his or her written decision on the contested Administrative Citation within ten business days. The written decision shall be filed with the District Secretary and a copy thereof shall be mailed to the recipient of the citation. The decision of the hearing officer shall either uphold or deny the Administrative Citation or any portion thereof, and state the facts and reasons supporting the decision. The decision of the hearing officer shall be final.
- (k) If the hearing officer determines that the Administrative Citation should be upheld, the fine amount on deposit with the District shall be retained by the District.
- (l) If the hearing officer determines that the Administrative Citation should be canceled or reduced and the fine was deposited with the District, the District shall promptly refund the amount of the deposited fine or excess together with interest at the average rate earned on the District's investment portfolio for the period the fine amount was held by the District.

Section 6 Right to Further Appeal by Judicial Review

Any person aggrieved by an administrative decision of a hearing officer on an Administrative Citation may obtain review of the administrative decision by filing an appeal with the Sacramento County Superior Court in accordance with the timelines and provisions as set forth in California Government Code section 53069.4."

2. The District finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Section 15378(c)(3) of the State CEQA Guidelines, California Code of Regulations, Title 14, Ordinance 3. The Ordinance is not a project as defined in State CEQA Guidelines Section 15378 because pursuant to Section 15378(b), the creation of government funding mechanisms or other government fiscal activities which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment is not a project.

3. Further, this Ordinance preserves the status quo and therefore has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

4. The provisions of this Ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance, or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance or the application of those provisions.

5. This Ordinance shall become effective immediately upon its adoption by the Board of Directors.

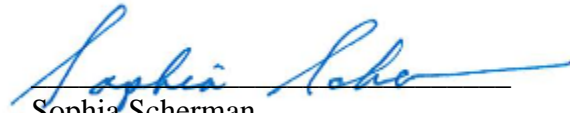
PASSED, APPROVED AND ADOPTED by the Florin Resource Conservation District Board of Directors on this 15th day of June 2021 by the following vote:

AYES: Gray, Medina, Nelson, and Scherman

NOES: Mulberg


ABSENT:

ABSTAIN:



Sophia Scherman
Chair

ATTEST:



Stefani Phillips
Board Secretary

APPROVED AS TO FORM:



Ren Nosky
General Counsel