

**EAST CONTRA COSTA FIRE PROTECTION DISTRICT
BOARD OF DIRECTORS
STATE OF CALIFORNIA**

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**ORDINANCE NO. 2021-02
AMENDING ORDINANCE ESTABLISHING ADMINISTRATIVE PENALTIES FOR
VIOLATIONS OF FIRE CODE**

The Board of Directors of the East Contra Costa Fire Protection District ordains as follows:

Section I. Summary. This ordinance repeals and replaces Ordinance 2019-01, which established administrative fines, enforcement, and collection remedies that the East Contra Costa Fire Protection District (District) may pursue to address violations of the Fire Code of the District. This ordinance reduces inefficiencies and increases transparency related to the handling of notices and appeals of administrative penalties.

Section II. Repeal and Replace; Applicability and Authorization.

- (a) The District hereby repeals and replaces Ordinance 2019-01 in its entirety.
- (b) This ordinance provides for administrative fines, enforcement, and collection remedies that the District may pursue to address any violation of the Fire Code of the District.
- (c) Remedies under this ordinance are in addition to any other remedy allowed by the Code or applicable law, including without limitation, abatement provisions of the Code, which the District may pursue to address a violation of the Code. The use of this ordinance is at the sole discretion of the District Enforcement Officers.
- (d) This ordinance is authorized by California Government Code Sections 53069.4 and 25132, and Health and Safety Code Sections 13861(h), 13870-13872.5.

Section III. Definitions. For purposes of this ordinance, the following words and phrases have the following meanings:

- (a) "Code" means the Fire Code of the East Contra Costa Fire Protection District, as it may be amended from time to time.
- (b) "District" means the East Contra Costa Fire Protection District.
- (c) "Effective Date" means the date by which a violation must be corrected, as specified in a Notice of Violation.
- (d) "Enforcement Officer" means the District Fire Marshal and designees.
- (e) "Hearing Officer" means the District Fire Chief or a designee appointed by either the District Fire Chief or the District's Processing Agency.
- (f) "Processing Agency" means any third party under contract with the District to process and collect administrative fines, costs, and interest, or responsible for conducting one or more appeals of administrative fines, or both.

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- (g) “Notice of Fine” means a notice of violation of the Code as described in Section IV(e) of this ordinance.
- (h) “Notice of Violation” means a notice of violation of the Code as described in Section IV(b) of this ordinance.
- (i) “Owner” means the owner of property upon which a violation of the Code exists, the occupant of that property, or any other party responsible for the violation.
- (j) “Service Date” means the date a notice or decision is served in accordance with Section IX below.

Section IV. Administrative Fines.

- (a) Authority. An Enforcement Officer is authorized to determine whether a violation of the Code exists with respect to any property.
- (b) Notice of Violation. If a violation exists on a property, an Enforcement Officer may serve a Notice of Violation on the Owner as specified in Section IX below. The Notice of Violation will include all of the following information:
 - (1) The date of the violation.
 - (2) The address or other description of the location where the violation occurred.
 - (3) The section or sections of the Code violated and a description of the violation.
 - (4) A description of how the violation can be corrected.
 - (5) An Enforcement Officer may issue a written order to immediately correct or eliminate a violation that creates an immediate danger to health or safety. For all other violations, the Notice of Violation must specify a time period of at least 10 days, beginning on the Service Date, within which the violation must be corrected.
 - (6) An advisement that the Owner may be subject to an administrative fine under this ordinance if the violation is not corrected by the Effective Date, and the amount of the fine.
 - (7) The name and signature of the citing Enforcement Officer.
- (c) Imposition of Fine. An Enforcement Officer may impose an administrative fine on an Owner if the violation has not been corrected as specified in the Notice of Violation.
- (d) Amount of Fine. The amount of the fine will be as set forth in Government Code section 25132, as may be amended from time to time: \$130 for a first violation, \$700 for a second violation of the Fire Code within one year, \$1,300 for each additional violation of the Fire Code within one year of the first violation, and \$2,500 for each additional violation of the Fire Code within two years of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit

unauthorized use of the property. When not otherwise specified, each 10 days that prohibited conditions are maintained shall constitute a separate offense.

- (e) Notice of Fine. An administrative fine will be assessed by means of a Notice of Fine. The Owner will be served with the Notice of Fine as specified in Section IX below. The Notice of Fine will include all of the following information:
 - (1) The date of the violation.
 - (2) The address or other description of the location where the violation occurred.
 - (3) The section or sections of the Code violated and a description of the violation.
 - (4) The amount of the fine.
 - (5) An advisement of the right to request a hearing before a Hearing Officer contesting the imposition of the fine and the time within which a hearing must be requested.
 - (6) A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid.
 - (7) The name and signature of the citing Enforcement Officer.
- (f) Dismissal of Citation. At any time before the expiration of the time to appeal a Notice of Fine or before the appeal hearing if an appeal of a Notice of Fine was filed, the District Fire Marshal may dismiss the Notice of Fine and cancel any scheduled hearing if the District Fire Marshal determines that there was no violation as charged in the Notice of Fine or that the Notice of Fine should be dismissed. A dismissal of a Notice of Fine under this subsection does not prohibit the later issuance of a Notice of Fine.

Section V. Appeals.

- (a) Appeal of Notice to Immediately Correct or Eliminate Violation. Appeals of notices to immediately correct or eliminate violations will be handled in accordance with Cal. Health and Safety Code section 13870, as it may be amended from time to time.
- (b) Appeal of Citation. Any person upon whom an administrative fine is imposed by an Enforcement Officer may appeal the fine pursuant to the procedures set forth in this section. The appellant must file a written appeal with the Enforcement Officer issuing the Notice of Fine within 10 days of the Service Date of the Notice of Fine.

The written appeal must contain:

- (1) A brief statement setting forth the interest the appealing party has in the matter relating to the imposition of the fine; and
- (2) A brief statement of the material facts that the appellant claims supports his or her contention that no administrative fine should be imposed or that an administrative fine of a different amount is warranted.

- (c) Notice of Hearing. A notice of the appeal hearing for an administrative fine will be served on the appellant as specified in Section IX below. The notice will set the appeal hearing no sooner than 15 days and no later than 60 days following the Service Date of the notice of appeal hearing.
- (d) Hearing Officer. An appeal of an administrative fine imposed for violations of the Code will be heard by a Hearing Officer. Any Hearing Officer shall demonstrate those qualifications, training, and objectivity prescribed by the District Fire Chief as are necessary and which are consistent with the duties and responsibilities set forth in this Ordinance and the administrative procedures approved by the District Fire Chief pursuant to subsection (f) of Section V below.
- (e) Processing Agency. The District may contract with third parties, including public agencies or private vendors, for the hearing and processing of any or all appeals.
- (f) Administrative Procedures. The appeal shall be conducted in accordance with the written procedure approved by the District Fire Chief which shall ensure fair and impartial review of contested fines and which may be changed from time to time.
- (g) Evidence. At the hearing, the appellant will be given the opportunity to testify and to present evidence. The Enforcement Officer shall not be required to participate in any appeal. The District shall not be required to produce any evidence other than the Notice of Fine or copy thereof, information received from the Enforcement Officer identifying the Owner, and a statement under penalty of perjury signed by the Enforcement Officer providing the grounds for imposing the fine. This documentation in proper form shall be considered prima facie evidence of the violation.
- (h) Additional Materials. If the Enforcement Officer submits additional materials concerning the administrative citation to the Hearing Officer for consideration at the hearing, then a copy of any such materials shall also be provided to the person requesting the hearing at least 5 days before the date of the hearing.
- (i) Continuances. Before or during the hearing, the Hearing Officer may continue the hearing and may request additional information from the Enforcement Officer or the person upon whom the administrative citation was imposed.
- (j) Written Decision. After considering the testimony and evidence submitted at the hearing, or after the appellant has failed to appear at the hearing, the Hearing Officer will issue a written decision to uphold, modify, or cancel the administrative fine and will list in the decision the reason or reasons for that decision. The decision will be served as specified in Section IX below.

Section VI. Final Order. The imposition of an administrative fine becomes a final administrative order on the date that one of the following first occurs:

- (a) No Appeal. If the Owner fails to file a written appeal to the Enforcement Officer within the time specified in the Notice of Fine, 10 days of the Service Date of the Notice of Fine
- (b) Appeal. If the Owner files a written appeal to the Enforcement Officer within the time specified in the Notice of Fine, on the date the Hearing Officer issues a written decision.

Section VII. Payment of the Fine.

- (a) Due Date. An administrative fine imposed under this ordinance must be paid to the District within 30 days after the imposition of the administrative fine becomes a final administrative order (as specified in Section VI above). Payment of a fine under this ordinance does not excuse or discharge any continuation or repeated occurrence of the violation that is the subject of the Notice of Fine.
- (b) Further Violations Not Excused. The payment of a fine under this ordinance does not bar the District from taking any other enforcement action regarding a violation that is not corrected.

Section VIII. Collection. If an administrative fine is not paid within 30 days after the imposition of the fine becomes a final administrative order, the District may collect the fine, the District's collection costs, and interest. An administrative fine accrues interest at the same annual rate as any civil judgment, beginning on the 20th day after the fine becomes a final administrative order. The District may collect by using any available legal means, including but not limited to the following:

- (a) Civil Action. The District may file a civil action. If a civil action is commenced, the District is entitled to recover all reasonable attorney fees and costs associated with the collection of the fine, including those costs set forth in Code of Civil Procedure section 1033.5.
- (b) Permits. The District may withhold issuance of licenses, permits and other entitlements to an Owner on any project, property, or application of any kind whenever an administrative fine remains unpaid.
- (c) Enforcement of Judgment. The District may take such other actions as are allowed for enforcement of a civil judgment as provided for pursuant to the Enforcement of Judgment Law, California Code of Civil Procedure section 680.010 *et seq.*
- (d) Collections. The District may contract with a Processing Agency including a public agency or private vendor, to collect unpaid administrative fines, costs, and interest.

Section IX. Service. All notices or decisions required to be served by this ordinance will be served by any method specified below. The failure of a person to receive a properly addressed notice or decision shall not affect the validity of the proceedings.

- (a) Certified and Regular Mail. Certified mail will be addressed to the Owner at the address shown on the last equalized assessment roll or as otherwise known. Service is deemed completed upon the deposit of the notice or decision, postage pre-paid, in the United States mail. Simultaneously, the same notice or decision will be sent by regular mail. If a notice or decision sent by certified mail is returned unsigned, then service is deemed effective pursuant to regular mail.
- (b) Posting. Posting of the notice or decision will be conspicuously on or in front of the property that is the subject of the citation. If the property has no frontage, posting will be on the portion of the property nearest to a street, highway, or road, or most likely to give actual notice to the Owner. Service is deemed complete on the date the notice or decision is posted at the property that is the subject of the citation.

- (c) Personal Service. Personal service is deemed complete on the date the notice or decision is personally served.

Section X. Right to a judicial review.

A final administrative order may be appealed to the Superior Court of Contra Costa County in accordance with the provisions set forth in Government Code section 53069.4.

Section XI. Severability.

If any provision of this of ordinance is held invalid or unenforceable by a court of competent jurisdiction, that holding shall not affect the validity or enforceability of the remaining provisions of this ordinance.

Section XII. Effective Date.

This ordinance becomes effective 30 days after passage, and within 15 days of passage shall be published once in the Brentwood Press, a newspaper published in this District. This ordinance shall be published in a manner satisfying the requirements of Government Code section 25124, with the names of Directors voting for and against it.

INTRODUCED at a regular meeting of the East Contra Costa Fire Protection District Board of Directors held on the 9th day of June, 2021.

PASSED AND ADOPTED at a regular meeting of the East Contra Costa Fire Protection District Board of Directors held on the 14th day of July, 2021 by the following roll call vote.

AYES:
NOES:
ABSENT:
ABSTAIN:

Brian Oftedal
President, Board of Directors

ATTEST:

Regina Rubier, Clerk of the Board