

## TITLE V

### Chapter 5.01 Enforcement

#### 5.01.005 Posting of Notices.

The General Manager/Engineer, and/or his or her designee, may post notices on automatic lift containers, bins and roll off bins that are used for solid waste, recyclable material, or organic material collection within the SWA region if the owner of the automatic lift containers, bins and roll off bins is in violation of this Code, including, but not limited to, any regulation, franchise requirement, permit, information request, order, variance, or other requirement that the General Manager/Engineer, and/or his or her designee, is authorized to enforce or implement pursuant to this Code.

A notice shall remain on automatic lift containers, bins and roll off bins that are used for solid waste, recyclable material, or organic material collection within the SWA region so long as the owner of the automatic lift containers, bins and roll off bins is in violation of this Code.

The notice shall be posted on the automatic lift container, bin, and/or roll off bin so as to be clearly visible to the general public and include all of the following:

- A. The date of the notice was placed on the container.
- B. The address or location of the property including the identification of any dwelling unit, room number, apartment number, business, or non-residential property.
- C. The name and contact telephone number of the agency posting the notice on the property.
- D. The SWA Code Section that has been violated.
- E. A statement that it is unlawful for any person to engage in the business of collecting, transporting or disposing of commercial solid waste kept, accumulated or generated in the SWA region, or to engage in the business of soliciting accounts or invoicing customers for commercial solid waste service in the SWA regions unless a franchise has first been granted pursuant to the provisions of this code and such a franchise is in full force and effect.
- F. A statement that a person violating the posted notice is subject to criminal penalties pursuant to SWA Code Section 5.01.120 and administrative civil penalties in an amount of up to one thousand dollars (\$1,000) for each day of each violation.
- G. A statement that a person disturbing or destroying the posted notice is subject to administrative civil penalties in an amount of up to one thousand dollars (\$1,000) in addition to any other remedies provided by this Code.

#### 5.01.010 Notice of Violation

The General Manager/Engineer, and/or his or her designee, may issue a Notice of Violation to any person found to be in violation of a provision of this Code, including, but not limited to, any regulation, franchise requirement, permit, information request, order, variance, or other requirement that the General Manager/Engineer, and/or his or her designee, is authorized to enforce or implement pursuant to this Code. Issuance of a Notice of Violation may also result in issuance of a Notice of Administrative Enforcement Order pursuant to Section 5.01.030 of this Code.

### **5.01.020 Notice of Violation—Content**

A. In addition to any other content, a Notice of Violation shall contain the following elements:

1. A statement of the General Manager/Engineer, and/or his or her designee's, findings that indicates a violation has occurred.
2. A citation of the provision of this Code including any regulation, franchise requirement, permit, information request, order, variance, or other requirement that has been violated.
3. A date by which any person must be in compliance with this Code including any regulation, franchise requirement, permit, information request, order, variance, or other requirement, or a date by which an action plan must be submitted by the person to propose a means and time frame by which to correct violations. The General Manager/Engineer, and/or his or her designee, may extend the compliance date when good cause exists for such an extension.
4. Notification that continued non-compliance may result in additional enforcement action being taken against the business, facility, or any responsible persons.
5. Notification that the SWA may recover any costs incurred by the SWA as a result of the violation.
6. Notification that a violation of this Code may result in an administrative civil penalty in accordance with section 5.01.110, or in criminal penalties.
7. Notification that the correction of any alleged violation(s) within the specified deadline date(s) will not necessarily prevent the General Manager/Engineer, and/or his or her designee, from issuing an Administrative Enforcement Order and imposing administrative civil penalties relating to the alleged violation(s).

B. In addition to any other content, a Notice of Violation may establish required corrective actions, including the following:

1. Terms, conditions, and requirements reasonably related to the provisions of this Code, including the following:
  - (a) Cessation of prohibited actions.
  - (b) Correction of prohibited conditions.
  - (c) A requirement for submittal of a written action plan for achieving and maintaining compliance with this Code.
  - (d) Reporting requirements to demonstrate ongoing compliance.
2. A requirement that the person receiving same shall submit written certification to the General Manager/Engineer, and/or his or her designee, that the necessary corrective actions have been completed. As appropriate for the type of correction action taken, the Notice of Violation may require documentation that substantiates the certification, including but not limited to receipts, contracts, or photographs.
3. Any other terms or conditions reasonably calculated to prevent additional or on-going violations of this Code.

C. An Administrative Enforcement Order may be issued separately, but only after issuance of a Notice of Violation, or in combination with a Notice and Order, for the same violations or set of related violations.

**5.01.030 Administrative Enforcement Order**

A. If the General Manager/Engineer, and/or his or her designee, determines that a person has committed, or is committing, a violation of any provision, franchise requirement, permit, information request, order, variance, or other requirement of this Code that the General Manager/Engineer, and/or his or her designee, is authorized to enforce or implement, the General Manager/Engineer, and/or his or her designee, may issue an Administrative Enforcement Order, after issuing a Notice Violation or in combination with a Notice of Violation, requiring that the violation be corrected and imposing an administrative penalty.

B. Pursuant to section 5.01.110 of this chapter, the violator shall be liable for a penalty of not more than one thousand dollars (\$1,000) for each day on which each violation occurs and/or continues.

**5.01.040 Administrative Enforcement Order—Content**

A. In addition to any other content, an Administrative Enforcement Order shall contain the following elements:

1. A statement of the General Manager/Engineer, and/or his or her designee's, findings that indicates a violation has occurred.

2. A citation of the provision of this Code including any regulation, franchise requirement, permit, information request, order, variance, or other requirement that has been violated.

3. A date by which any person must be in compliance with this Code, or a date by which an action plan must be submitted by the person to propose a means and time frame by which to correct violations. The General Manager/Engineer, and/or his or designee, may extend the compliance date when good cause exists for such an extension.

4. Notification that continued non-compliance may result in additional enforcement action being taken against the business, non-residential property, multi-family residential property, facility, or any responsible persons.

5. Notification that the SWA may recover any costs incurred by the SWA as a result of the violation.

6. Notification as to whether an administrative civil penalty is imposed and the terms and conditions of payment if any.

In establishing the penalty amount, the General Manager/Engineer, and/or his or her designee, shall take into consideration:

a. The nature, circumstances, extent, and gravity of the violation;

b. The violator's past and present efforts towards compliant behavior;

c. The violator's ability to pay the penalty;

d. The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

7. Notification that the correction of any alleged violation(s) within the specified deadline date(s) will not necessarily prevent the General Manager/Engineer, and/or his or her designee, from issuing an Administrative Enforcement Order and imposing administrative civil penalties relating to the alleged violation(s).

8. Notification that the recipient has a right to a hearing on the matter as set forth in section 5.01.060 of this Code to appeal any findings or required corrective actions established by the General Manager/Engineer, and/or his or her designee, .

9. Notification of procedures for requesting a hearing established according to section 5.01.060 of this chapter.

B. In addition to any other content, an Administrative Enforcement Order may establish required corrective actions, including the following:

1. Terms, conditions, and requirements reasonably related to the provisions of this code, including the following:

a. Cessation of prohibited actions.

b. Correction of prohibited conditions.

c. A requirement for submittal of a written action plan for achieving and maintaining compliance with this Code.

d. Reporting requirements to demonstrate ongoing compliance.

2. A requirement that the person receiving same shall submit written certification to the General Manager/Engineer, and/or his or her designee, that the necessary corrective actions have been completed. As appropriate for the type of correction action taken, the Notice of Violation may require documentation that substantiates the certification, including but not limited to receipts, contracts, or photographs.

3. Any other terms or conditions reasonably calculated to prevent additional or on-going violations of this Code.

C. A Notice of Violation or an Administrative Enforcement Order may be issued separately or in combination with another notice or order for the same violations or set of related violations.

#### **5.01.050 Delivery of Notice or Order**

Any Notice of Violation, permit revocation, Administrative Enforcement Order or other enforcement action pursuant to the requirements of this Chapter shall be subject to the following requirements:

1. Delivery shall be deemed complete upon either personal delivery to the recipient or by certified mail.

2. Where the recipient of the notice or order is the owner of the premises, the address for notice or order shall be the address from the most recently issued equalized assessment roll for the premises.

3. Where the owner or occupant of any premises cannot be located after reasonable efforts of the General Manager/Engineer, and/or his or her designee, the notice or order shall be deemed delivered after posting on the premises for a period of ten (10) business days.

#### **5.01.060 Administrative Appeals**

A. Any person, owner or operator served with an Administrative Enforcement Order issued pursuant to this chapter who has been unable to resolve any violation with the General Manager/Engineer, and/or his or her designee, may within 15 days after service of the order, request a hearing pursuant to this section by filing with the General

Manager/Engineer, and/or his or her designee, a Notice of Defense, which form shall be provided with the Administrative Enforcement Order.

1. A filing fee, established and amended from time to time by the General Manager/Engineer, and/or his or her designee, based on actual expense to conduct the hearing by the Hearing Officer, will be required of all filings of a Notice of Defense.

2. A Notice of Defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked and accompanied by payment of the filing fee. If the person filing a request for hearing prevails on appeal, then the filing fee will be refunded by the General Manager/Engineer, and/or his or her designee.

3. If no Notice of Defense is filed within the time limits provided by this subdivision, the Administrative Enforcement Order shall become final.

B. A person, owner or operator requesting a hearing on an order issued by the General Manager/Engineer, and/or his or her designee, under this chapter may select the Hearing Officer specified in either subparagraph 1 or 2 in this section by indicating so on the Notice of Defense filed with the General Manager/Engineer, and/or his or her designee. If a Notice of Defense is filed but no Hearing Officer is selected, the General Manager/Engineer, and/or his or her designee, may select the Hearing Officer pursuant to either subparagraph 1 or 2 of this section. Within 60 days of receipt of the notice of defense by the General Manager/Engineer, and/or his or her designee, the hearing shall be scheduled using one of the following:

1. An administrative law judge of the Office of Administrative Hearings of the Department of General Services, shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the General Manager/Engineer, and/or his or her designee, shall have all the authority granted to the agency by those provisions.

2. A McGeorge School of Law Hearing Officer appointed pursuant to Government Code section 27720 et seq. Each Hearing Officer shall also meet the requirements of Government Code section 11425.30 and any applicable restriction.

C. When a hearing is conducted by a Hearing Officer designated by the General Manager/Engineer, and/or his or her designee, the Hearing Officer shall issue a decision within 30 days after the hearing is conducted. Each Hearing Officer designated by the General Manager/Engineer, and/or his or her designee, shall meet the requirements of Section 11425.30 of the Government Code and any other applicable restriction.

Alternative dates for the hearing may be established by mutual consent of the person, owner or operator, and the General Manager/Engineer, and/or his or her designee, or as ordered by the Hearing Officer.

D. The hearing decision issued pursuant to subparagraph C. of this section shall be effective and final upon issuance by the General Manager/Engineer, and/or his or her designee. A copy of the decision shall be served by personal service or by certified mail upon the party served with the order, or their representative, if any.

E. The hearing decision issued pursuant to subparagraph C. of this section may be reviewed by a court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this section, the court shall uphold the decision of the General Manager/Engineer, and/or his or her designee, if the decision is based upon substantial evidence in the record as a whole. The filing of a petition for writ of mandate shall not

stay any action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

F. All administrative penalties and filing fees collected from actions brought by the General Manager/Engineer, and/or his or her designee, pursuant to this section paid to the General Manager/Engineer, and/or his or her designee, shall be deposited into a special account that shall be expended to fund the activities of the SWA in enforcing this chapter.

#### **5.01.070 Conduct of Administrative Hearings—Generally**

A. General. At the time set for hearing, the Hearing Officer shall state what the prima facie case is, what the burden of proof is, and what the range of penalties is. The Hearing Officer shall proceed to hear the testimony of the General Manager/Engineer, and/or his or her designee, the person, and other competent persons respecting the circumstances of the violation, and other relevant facts concerning the matter. The Hearing Officer shall follow the rules of procedure for conducting hearings established by this Code.

B. Record of Oral Evidence at Hearing. A record of the entire hearing proceedings shall be made by either a certified court reporter or any other means of permanent recording determined to be appropriate by the Hearing Officer. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee prescribed therefore. Such fees may be established and revised from time-to-time by the General Manager/Engineer, and/or his or her designee.

C. Continuances. The Hearing Officer may, upon request of the person, a party in interest, or the General Manager/Engineer, and/or his or her designee, grant continuances from time to time for good cause shown, or upon his/her own motion. Any continuance granted shall in no way diminish the responsibility of the person and/or parties in interest for maintaining the premises, nor affect other requirements of this Chapter regarding time for challenging any decisions made or actions taken.

D. Oaths—Certification. The Hearing Officer or certified court reporter shall administer the oath or affirmation.

E. Evidence Rules. Government Code of the State of California, Section 11513, as presently written, or hereinafter amended, shall apply to hearings conducted under this Chapter.

F. Rights of Parties. Each party may represent themselves, or be represented by anyone of their choice. Each party may appear at the hearing and offer evidence in this matter and cross examine witnesses.

G. Official Notice. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state.

H. Burden of Proof. The burden of proof in hearings held pursuant to this chapter shall be as follows:

1. In the case of any notice or order, the General Manager/Engineer, and/or his or her designee, shall bear the burden of proof, by a preponderance of evidence, to show that a violation of this Code has occurred.

2. In the case of a notice of administrative civil penalty, the General Manager/Engineer, and/or his or her designee, shall bear the burden of proof, by a preponderance of evidence, to show that a penalty should be assessed.

3. In the case of an appeal regarding the occurrence of a violation, or of required corrective actions, the appellant shall bear the burden of proof, by clear and convincing evidence, to show cause for amending or rejecting all or part of the corrective actions or requirements imposed by the General Manager/Engineer, and/or his or her designee, by a Notice or Order.

#### **5.01.080 Form and Contents of Decision—Finality of Decision**

A. Following the hearing, the Hearing Officer shall issue an order in writing no later than thirty (30) days from the date of the hearing, unless the time is waived by the parties. The order shall contain findings of fact and rationale appropriate to the violation and result, and a resolution of the essential issues raised, including the following:

1. Confirmation or denial of the occurrence of violations of this Code that are alleged by the General Manager/Engineer, and/or his or her designee;

2. Confirmation or rejection of any administrative civil penalty sought by the General Manager/Engineer, and/or his or her designee, and establishment of the monetary amount of any administrative civil penalty to be enforced; and

3. Confirmation, amendment, or rejection of required corrective actions related to compliance with this Code that are imposed by the General Manager/Engineer, and/or his or her designee, but only if those requirements are appealed by the person.

B. The Hearing Officer's order shall uphold required corrective actions if the person fails to show clear and convincing evidence that the required corrective actions are unreasonable or unnecessary for achieving or demonstrating ongoing compliance with this Code. The Hearing Officer's order may amend, or reject required corrective actions, provided that compliance with this Code will be achieved.

C. The Hearing Officer's order shall inform the person that failure to comply with the Hearing Officer's order shall constitute a misdemeanor and is subject to additional enforcement action, including criminal penalties and additional civil and administrative penalties.

D. The Hearing Officer's order shall inform the person that the time and manner by which a person may file a challenge to the Hearing Officer's order is governed by Government Code Section 53069.4, or any successor provision thereto.

E. The order issued by the Hearing Officer pursuant to this chapter shall be effective upon issuance. A copy of the order shall be delivered by the Hearing Officer in accordance with section 5.01.050 of this chapter.

F. Preparation of a record of the administrative proceeding shall be governed by the provisions of Code of Civil Procedure Section 1096.4

G. Any challenge to the order of the Hearing Officer concerning any appeal or administrative civil penalty shall be governed by Government Code Section 53069.4, or any successor provision thereto. Service of the notice of appeal authorized by Government Code Section 53069.4 on the SWA shall be served upon the Clerk of the Board.

H. After any notice or order made pursuant to this chapter shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey such order. The General Manager/Engineer, and/or his or her designee, may pursue, through County Counsel or the District Attorney, appropriate judicial action against any person who fails to comply with any such notice or order, including charging that person with a misdemeanor offense

**5.01.090 Procedures for Collection of Administrative Civil Penalty**

A. The administrative penalty shall be due and payable within thirty (30) days after the Hearing Officer's decision is issued. If the penalty is not timely paid, the General Manager/Engineer, and/or his or her designee, may pursue all reasonable and legal means in collecting those sums authorized and due.

B. All administrative civil penalties collected from actions brought pursuant to this chapter shall be paid to the General Manager/Engineer, and/or his or her designee, enforcing this Code, and shall be deposited into a special account that shall be expended to fund the activities of the department to implement the applicable provisions of this Code.

**5.01.100 Actions Not Prohibited**

This chapter does not do any of the following:

A. Otherwise affect the authority of the General Manager/Engineer, and/or his or her designee, to take any other action authorized by any other provision of law.

B. Restrict the power of a city attorney, district attorney, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

C. Prevent the General Manager/Engineer, and/or his or her designee, from cooperating with, or participating in, proceeding specified in subsection 5.01.100(B).

**5.01.110 Administrative Civil Penalties**

In addition to any other remedies provided by this Code, any person who violates any provision of this Code, shall be liable for an administrative civil penalty to be imposed by the General Manager/Engineer, and/or his or her designee. The amount of the penalty shall not be more than one thousand dollars (\$1,000) for each day of each violation.

**5.01.120 Criminal Penalties**

A. The following criminal penalties apply to violations of this Code.

1. Violation as Misdemeanor. Unless otherwise specified by this Code, violations of the provisions of this Code or failure to comply with any of its requirements, including violations of terms and conditions established in connection with franchisees issued pursuant to this Code, shall constitute a misdemeanor.

2. The Sacramento County Sheriff's Department and/or any other law enforcement agencies located within the SWA region may issue a Notice to Appear Citation for any misdemeanor pursuant to Penal Code Section 853.6 for any violation of this Code.



3. Penalty for Misdemeanor. Unless otherwise specified in this Code, any person found to be in violation of any provision of this Code or fails to comply with any of its requirements shall upon conviction thereof be punished by imprisonment in the county jail for not more than six months, or be fined not more than one thousand dollars (\$1,000.00), or by both. Each day such violation continues shall be considered a separate offense. Such penalties shall be in addition to any late fees, civil penalties, or other charges payable to the SWA by any person, including a Franchisee, for the same period of time or for the same violations

4. Each civil, criminal, or administrative civil penalty imposed pursuant to this Code for any separate violation shall be separate, and in addition to, any other provision of law and does not supersede or limit any and all other legal remedies and penalties, civil, administrative or criminal which may be applicable under other laws.