ORDINANCE NO. 2018-74 WWD

AN ORDINANCE OF THE WINDSOR WATER DISTRICT AMENDING PARTS OF ARTICLES 3 AND 4 OF CHAPTER 4, TITLE XII OF THE WINDSOR WATER DISTRICT CODE

RELATING TO ENFORCEMENT PROVISIONS

WHEREAS, the Windsor Water District's ("District") Sewer Use Ordinance is set forth in Chapter 4 of Title XII of the Windsor Water District Code; and

WHEREAS, in the process of developing the District's Enforcement Response Plan required by the Federal Pretreatment Regulations and the National Pollutant Discharge Elimination System ("NPDES") permit for the Town of Windsor Wastewater Treatment, Reclamation and Disposal Facility, District staff determined that the District did not have adequate authority to issue administrative orders in response to violations of the District's Sewer Use Ordinance; and

WHEREAS, the Board of Directors of the District desires to amend the Sewer Use Ordinance to provide the District with adequate authority to issue administrative orders and take other enforcement actions necessary to respond to violations of the Sewer Use Ordinance.

THE BOARD OF DIRECTORS OF THE WINDSOR WATER DISTRICT DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Section 12-4-351 of the Windsor Water District Code is hereby amended and restated in its entirety as follows:

12-4-351 - Wastewater Discharge Permit-Revocation/Termination of Service.

Wastewater Discharge Permits may be revoked or user's service may be terminated when any provision of this chapter is violated.

Such users will be notified of the proposed termination of its discharge and be offered an opportunity to show cause pursuant to Section 12-4-463 why the proposed action should not be taken. Exercise of this option by the General Manager shall not be a bar to, or a prerequisite for, taking any other action against the user.

SECTION 2. Sections 12-4-457 to 12-4-459 are hereby added to the Windsor Water District Code to read as follows:

12-4-457 - Notice of Violation.

When the District Engineer finds that a user has violated, or continues to violate, any provision of this chapter, a Wastewater Discharge Permit, or an order issued pursuant to this chapter, the District Engineer may serve upon that user a written notice of violation. Within fifteen (15) calendar days of the receipt of such notice, the user shall submit an explanation of the violation and a plan for the satisfactory correction and prevention thereof, including specific required actions, to the District Engineer. Submission of such a plan in no way relieves the user of

liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the District Engineer to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.

12-4-458 - Consent Orders.

The District Engineer may enter into consent orders, assurances of compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents shall include specific action to be taken by the user to correct the noncompliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to this chapter and shall be judicially enforceable.

12-4-459 -Compliance Order.

When the District Engineer finds that a user has violated, or continues to violate, any provision of this chapter, a Wastewater Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, the District Engineer may issue an order directing the user to come into compliance within a specified time. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order shall not relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.

SECTION 3. Section 12-4-460 of the Windsor Water District Code is hereby amended to read as follows:

12-4-460 - Administrative Penalties.

When the District Engineer finds that a user has violated, or continues to violate, any provision of this chapter, a Wastewater Discharge Permit or order issued hereunder, or any other pretreatment standard or requirement, the District Engineer may, pursuant to the authority of California Government Code Sections 54739 to 54740.6, issue administrative complaints, conduct administrative hearings, and/or impose administrative civil penalties in accordance with the penalty amounts and procedures set forth in those sections. Unless appealed in accordance with California Government Code Section 54740.5, orders setting administrative civil penalties shall become effective and final upon issuance thereof, and payment shall be made within thirty (30) days. The amount of any administrative civil penalties imposed under this section which have remained delinquent for a period of sixty (60) days shall constitute a lien against the real property of the discharger from which the discharge originated resulting in the imposition of the civil penalty. [California Government Code 54740, 54740.5 and 53069.4] Issuance of an administrative complaint shall not be a bar against, or a prerequisite for, taking any other enforcement action against the user.

b. In addition, pursuant to Government Code Section 53069.4, the District Engineer may issue an administrative citation imposing administrative penalties in response to a violation of any portion of this chapter, a Wastewater Discharge Permit or any order issued hereunder in the following amounts: (1) up to one hundred dollars ($100) for a first violation; (2) up to two hundred dollars ($200) for a second violation of the same ordinance within one year; (3) up to five hundred ($500) for each additional violation of the same ordinance within one year. Each day that a violation under the code is committed or continued shall be a separate violation for which an administrative penalty may be issued. Separate instances of violations occurring on the same day may also be deemed as separate and distinct violations, resulting in an administrative penalty assessed for each violation. The imposition, enforcement, collection, and administrative review by the District of administrative penalties imposed pursuant to this section shall be in accordance with the following procedures:

1. Scope: This remedy may be utilized in place of, or in addition to, any other remedy allowed by the code or state law. The District Engineer, or designee, shall have the sole discretion to utilize any remedy or remedies as authorized by law.

2. Issuance and Service of Citations: Whenever the District Engineer, or designee, determines that a violation of the code has occurred, the District Engineer or designee may issue a citation to any person or business responsible for the violation. Each citation shall contain the following information:

a. Name and mailing address of the business or individual to whom the citation is issued;

b. Identification of the provision or provisions of the code violated. The District Engineer or designee may issue a single citation for multiple violations of the code;

c. A description of the condition or circumstances constituting the violation(s), including the address or location and date of the violation;

d. The amount of administrative penalty imposed for each violation, the procedure and place to pay the penalty amount, the date by which payment is required, and the consequence of failure to pay;

e. If the violation is continuing and does not create an immediate danger to health or safety, the action(s) required to correct the violation(s), and notice that if the violation is corrected or otherwise remedied within thirty (30) days from the date of the citation, the penalties will not be imposed;

f. The right to seek administrative review of the citation by filing an appeal with the General Manager within thirty (30) days of the date that the citation is served and notice that the failure to appeal will make the issuance of the citation a final action by the District for which there is no further administrative review and no judicial review. The administrative review process will follow the Administrative Hearing procedures in Section 12-4-468;

g. The date the citation is issued and the name and signature of the charging official.

SECTION 4. Section 12-4-461 of the Windsor Water District Code is hereby amended to read as follows:

12-4-461 - Civil Action.

The District Board may direct District Counsel or other special counsel to bring such civil actions as may be available at law or in equity in any court of competent jurisdiction to enforce the provisions of this chapter and to recover such charges, fees, penalties, and/or damages as may be assessed or may be incurred under the provisions of this chapter.

a. Injunctive Relief. When the District Engineer finds that a user has violated, or continues to violate, any provision of this chapter, a Wastewater Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement, the District Engineer may seek the issuance of a temporary or permanent injunction, as appropriate, to restrain or compel the specific performance of the Wastewater Discharge Permit, order, or other requirement imposed by this chapter on activities of the user. The District Engineer may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user. [California Government Code 54740]

b. Civil Penalties. Any user who violates any provision of this chapter, a Wastewater Discharge Permit, or order issued hereunder, or any other pretreatment standard or requirement shall be liable civilly for a penalty not to exceed twenty-five thousand dollars ($25,000) for each day in which such violation occurs pursuant to California Government Code Section 54740. Pursuant to the authority of the Clean Water Act, 33 U.S.C.A. Section 1251, et seq. any user committing a violation of any provision of this chapter, which is also a violation of a pretreatment standard, effluent standard, or limitation or other applicable provision of the Clean Water Act shall be liable civilly for a sum not to exceed twenty-five thousand dollars ($25,000) per violation for each day in which such violation occurs. District Counsel, or other special counsel designated by the Board, upon order of the District Board, shall institute such actions as may be appropriate in the appropriate court to impose, assess, and recover such sums.

SECTION 5. Sections 12-4-463 through 12-4-468 are hereby added to the Windsor Water District Code to read as follows:

12-4-463-Show Cause Hearing.

The District Engineer may order a user which has violated, or continues to violate, any provision of this chapter, a Wastewater Discharge Permit, or an order issued pursuant to this chapter, to appear before the District Engineer and show cause why the proposed enforcement action should not be taken. The user has the burden of proof to demonstrate that the proposed action should not be taken or that the decision, action, or determination previously made should be rescinded or modified. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) calendar days prior to the hearing. Such notice may be served on an agent of the user or officer

of the user's business entity. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.

12-4-464-Cease and Desist Order.

When the District Engineer finds that a user has violated, or continues to violate, any provision of this chapter, a Wastewater Discharge Permit, or an order issued pursuant to this chapter, or that the user's past violations are likely to recur, the District Engineer may issue an order to the user directing it to cease and desist all such violations and directing the user to:

A. Immediately comply with all requirements; and

B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the User.

12-4-465- Criminal action.

A. General Criminal Penalties. Any person who violates any provision of this chapter, a Wastewater Discharge Permit, or an order issued pursuant to this chapter, is guilty of a misdemeanor, and upon conviction is punishable by a fine not to exceed one thousand dollars ($1,000) or imprisonment for not more than thirty days in the county jail, or both. Each day a violation occurs may constitute a new and separate offense and may subject the violator to an additional full measure of penalties as set forth herein.

B. Falsifying Information. Any person who knowingly makes any false statements, representations, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter, a Wastewater Discharge Permit or an order issued pursuant to this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this chapter, shall upon conviction be punished by a fine of not more than one thousand dollars ($1,000) or imprisonment for not more than thirty days, or both. Each separate act of falsification, tampering, or knowingly rendering inaccurate any device or method, shall constitute a new and separate offense and shall be subject to the penalties contained herein.

Nothing in this section is intended to exclude the potential for prosecution under the applicable perjury statutes of the state of California to the extent such falsification was incorporated in a document signed under the penalty of perjury.

12-4-466 - Remedies Nonexclusive.

The remedies provided for in this chapter are not exclusive. The District Engineer may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the District's enforcement response plan. However, the District Engineer may take other action against any user when the

circumstances warrant. Further, the District Engineer is empowered to take more than one enforcement action against any noncompliant user.

12-4-468-Availability of administrative appeal.

Any user, permit applicant or permit holder affected by any decision, enforcement action, or determination made by the District, interpreting or implementing the provisions of this chapter or in any Wastewater Discharge Permit issued hereunder, may file with the General Manager a written request for reconsideration of a staff decision, action, or determination within fifteen (15) calendar days of notification of said staff decision, action, or determination. The written request for reconsideration shall detail facts supporting the user's request and such facts shall include a statement listing all relevant facts which shall be considered including such facts as may not have been know or available to the District at the date of such action. The General Manager shall render a decision on the request for reconsideration within fifteen (15) business days of receipt of the request, unless the General Manager requests additional information from District staff or the user. The General Manager shall concur, modify, or rescind the action, decision, or determination previously made or may grant a show cause hearing regarding such decision, action, or determination. If the user disputes the General Manager's decision on the request for reconsideration, the user may, within ten (10) calendar days after the date of notification of the General Manager's determination, file with the District Secretary a request for appeal to the District Board.

A user shall not have a right to an appeal to the District Board unless the user has complied with the procedures concerning the request for reconsideration by the General Manager as set forth above.

When a written request for appeal to the District Board has been properly filed with the District secretary, the District secretary shall schedule the matter to be heard by the District Board within forty-five (45) calendar days from the date of the filing of the written request. The District Board shall make a ruling on the appeal within fifteen (15) calendar days from the date of the hearing unless the Board requests additional information from District staff or the user.

Notwithstanding the foregoing, the statutory appeal procedures set forth in California Government Code Section 54739, et seq., applicable to administrative civil penalties imposed or sought pursuant to Section 12-4-460 of this chapter, shall exclusively apply to such penalties.

SECTION 6. California Environmental Quality Act.

The Windsor Water District Board finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Sections 15307 (the activity is a regulatory action taken by the District pursuant to its police power for the maintenance and protection of a natural resource) and 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines) (Title 14, Chapter 3 of the California Code of Regulations).

SECTION 7. Severability.

The provisions of this Ordinance are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of this Ordinance or their applicability to other persons or circumstances.

SECTION 8. Effective Date.

This Ordinance shall take effect and be in force immediately upon adoption.

SECTION 9. Publication or Posting.

This Ordinance shall be published and posted in accordance with the California County Water District Act.

PASSED, APPROVED AND ADOPTED this 7th day of March 2018, by the following vote:

AYES:	**BOARD MEMBERS FUDGE, MILLAN, SALMON, VICE PRESIDENT FOPPOLI AND PRESIDENT OKREPKIE**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**NONE**

BRUCE OKREPKIE, PRESIDENT

ATTEST:

MARIA DE LA O, SECRETARY