

TOWN OF EAST WINDSOR

Wetland Violation Citations & Procedures, Ordinance # 2012-_____

The following ordinance was adopted at a Special Town Meeting duly warned and held on _____.

BE IT ORDAINED:

ORDINANCE ENTITLED "WETLAND VIOLATION CITATIONS & PROCEDURES"

A. Purpose:

The purpose of this ordinance is to establish a means by which the Town of East Windsor can effectively enforce the Town of East Windsor Inland Wetland and Watercourses Regulations (the Regulations), with the implementation of citations and fines for violations and continued noncompliance of the Regulations.

B. Statutory Authority:

Pursuant to Connecticut General Statutes (C.G.S.) Section 22a-42g, as may be amended, and in addition to the remedies provided in C.G.S. Section 22a-44, the Wetland Enforcement Official is authorized to issue citations for violations of the Town of East Windsor Inland Wetland and Watercourses Regulations to the extent and manner provided for by this section. A citation may be issued for those types of Inland Wetland and Watercourses violations specified in Section C. of this ordinance. No citations may be issued against the State or any State Official or employee acting within the scope of his employment.

C. Schedule of Fines:

The schedule of fines will be a separate document maintained and updated by the Inland Wetland and Watercourses Agency and kept in the East Windsor Planning and Development Office. Schedule of fines shall be adopted by the Inland Wetland Watercourses Agency.

Nature of Violation (for activities with no active permit):

1. Conduct, without a permit, activities in the upland review area which do not pose an immediate danger to a wetland or watercourse:
2. Conduct, without a permit, activities in the upland review area which may pose an immediate danger to a wetland or watercourse:
3. Conduct, without a permit, activities in a wetland or watercourse which cause limited and/or correctable damage to a wetland or watercourse:
4. Excavating, filling and/or draining of any portion of a wetland or watercourse, without a permit:
5. Diverting, damming or otherwise changing the course of a watercourse, without a permit:
6. Conduct, without a permit, any activity which causes sediment to flow into any wetland or watercourse or otherwise causes the pollution of a wetland or watercourse:
7. Conduct, without a permit, in an inland/wetland or watercourse or regulated area, or any other regulated activity in a regulated area not listed above:

Nature of Violation (for activities with an active permit):

1. Failure to install and maintain silt control measures, silt fence, haybales, riprap and other similar sediment controls measures in accordance with an approved plan:
2. Non-compliance with permit conditions:
3. Conduct, with a permit, which exceeds the scope of the wetlands permit and encroaches upon or impacts upland review areas:
4. Conduct, with a permit, which exceeds the scope of the wetlands permit and encroaches upon or impacts a wetland or watercourse:

Each day that the violation remains uncorrected shall be considered a separate offense. The Wetland Enforcement Official may issue additional citations daily if the violation continues or remains uncorrected to his/her satisfaction.

D. Service of Notice; citation:

Any citation issued under this ordinance shall be and is sufficient if provided in one of the following forms, unless otherwise stated:

1. In hand service, by the Wetland Enforcement Official;
2. Certified mail, return receipt requested and regular mail, to the last known address of the person cited or to the address listed in records at the Assessor's Office.
3. Service by a State Marshal who shall serve the person named in the citation in hand or by leaving a true copy of the citation at the usual place of abode of such person or by any other service authorized for the service of civil process in the State of Connecticut. Marshal's service shall be effective at the time personal, abode or other service is made by the serving marshal.
4. A citation sent by regular mail shall be deemed and considered received on the fourth business day following mailing.

The Wetland Enforcement Official shall file and retain a true and accurate copy of the original citation so served, the date, place and manner of service and the date of mailing if service is by mail. If service is executed by a State Marshal, the Marshal's return of service shall be filed and retained by the Wetland Enforcement Officer.

E. Citations and Procedures:

1. Any person receiving such citation shall be allowed a period of 30 (thirty) calendar days from receipt of said citation to make an uncontested payment of the fine specified in the citation. If a person cited makes an uncontested payment within the prescribed 30 (thirty) calendar days and the cited violation has been remedied, the fine shall be equivalent to the fee in accordance with Section C of this ordinance.

2. If a person who has been issued a citation does not make an uncontested payment of the fine specified in the citation within the time allowed under Section E.1 of this ordinance, the Wetland Enforcement Official shall send a notice to the person cited, within 3 (three) months of the end of said uncontested payment period, informing such person:

- a. Of the allegations against him or her and the amount of the accumulated fines;
- b. That the person cited may contest liability before a Hearing Officer appointed by the First Selectman as provided in Section E.4 of this ordinance, by delivering, in person or by mail, within 10 days of the date of the notice, a written demand for a hearing;
- c. That if the person cited does not demand such a hearing, an assessment and judgment shall be entered against him or her;
- d. That such judgment may issue without further notice.

3. If the person who is sent the notice pursuant to Section E.2 chooses to admit liability for any alleged violation, he or she may, without requesting a hearing, pay the full amount of the fine either in person or by mail, to the Planning Office of the Town of East Windsor. All fines shall be made payable to the Treasurer, Town of East Windsor. Such payment shall be made inadmissible in any proceeding, civil or criminal, to establish the conduct of such person or other person making the payment. Any person who does not deliver or mail written demand for a hearing within 10 (ten) days of the date of the notice described in Section E.2. shall be deemed to have admitted liability, and the Wetlands Enforcement Official shall certify to the Hearing Officer that such person has failed to respond. The Hearing Officer shall thereupon enter and assess the fines provided for by this section and shall follow the procedures set forth in Section E.4 of this Ordinance.

4. Any person who requests a hearing shall be given written notice of the date, time and place for the hearing. Such hearing shall be held not less than 15 days nor more than 30 days from the date of the mailing of notice, provided that the Hearing Officer shall grant upon good cause shown any reasonable request by any interested party for postponement or continuance. An original certified copy of the initial notice of violation issued by the issuing official shall be filed and retained by the municipality, and shall be deemed to be a business record within the scope of CGS §52-180 and evidence of the facts contained therein. The presence of the Wetland Enforcement Official shall be required at the hearing. A person wishing to contest liability shall appear at the hearing and may present evidence on his or her behalf. The Wetland Enforcement Official may present evidence on behalf of the Town of East Windsor. If the person who received the citation fails to appear, the Hearing Officer may enter an assessment by default against him or her upon a finding of proper notice and liability under the applicable provisions of the Town of East Windsor Inland Wetland Regulations

and Wetland Violation Citation and Procedure Ordinance. The Hearing Officer may accept written information by mail from the person who received the citation and may determine thereby that the appearance of such a person is unnecessary. The Hearing Officer shall conduct the hearing in the order and form and with such methods of proof as he or she deems fair and appropriate. The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation. The Hearing Officer shall announce his or her decision at the end of the meeting. If the Hearing Officer determines that the person who received is not liable, the Hearing Officer shall dismiss the matter and enter that determination in writing accordingly. If the Hearing Officer determines that the person who received the citation is liable for the violation, the Hearing Officer shall forthwith enter and assess the fines against such person as provided by this Section.

5. If such assessment is not paid on the date of its entry, the Hearing Officer shall send, by first class mail, a notice of the assessment to the person liable and shall file, not less than 30 days nor more than 12 months after such mailing, a certified copy of the notice of assessment with the Clerk of the Superior Court, together with the appropriate entry fee. Further proceedings may then be held pursuant to the applicable provisions of the Connecticut General Statutes pursuant to C.G.S. 7-152c.

6. The First Selectman shall appoint one citation Hearing Officer to conduct hearings provided by this section. Hearing Officers shall serve for terms of two years, unless removed for cause. Neither the Wetland Enforcement Official nor any employee, agent or member of the Town of East Windsor Planning and Development Department or Inland Wetland Commission who exercises Wetland Commission Authority may be appointed as a Hearing Officer.

Said Ordinance shall become effective fifteen (15) days from publication thereof.



TOWN OF EAST WINDSOR

PLANNING AND DEVELOPMENT

Planning, Zoning, Zoning Board of Appeals, Conservation/Inland Wetlands, Economic Development

11 Rye Street, Broad Brook, CT 06016

PHONE: (860) 623-6030 FAX: (860) 623-4798

PLANNING & DEVELOPMENT WEB SITE ⇨ <http://www.eastwindsor-ct.gov>

SCHEDULE OF FINES FOR WETLAND VIOLATIONS

ADOPTED : , 2012 BY EAST WINDSOR INLAND WETLAND AND WATERCOURSES AGENCY

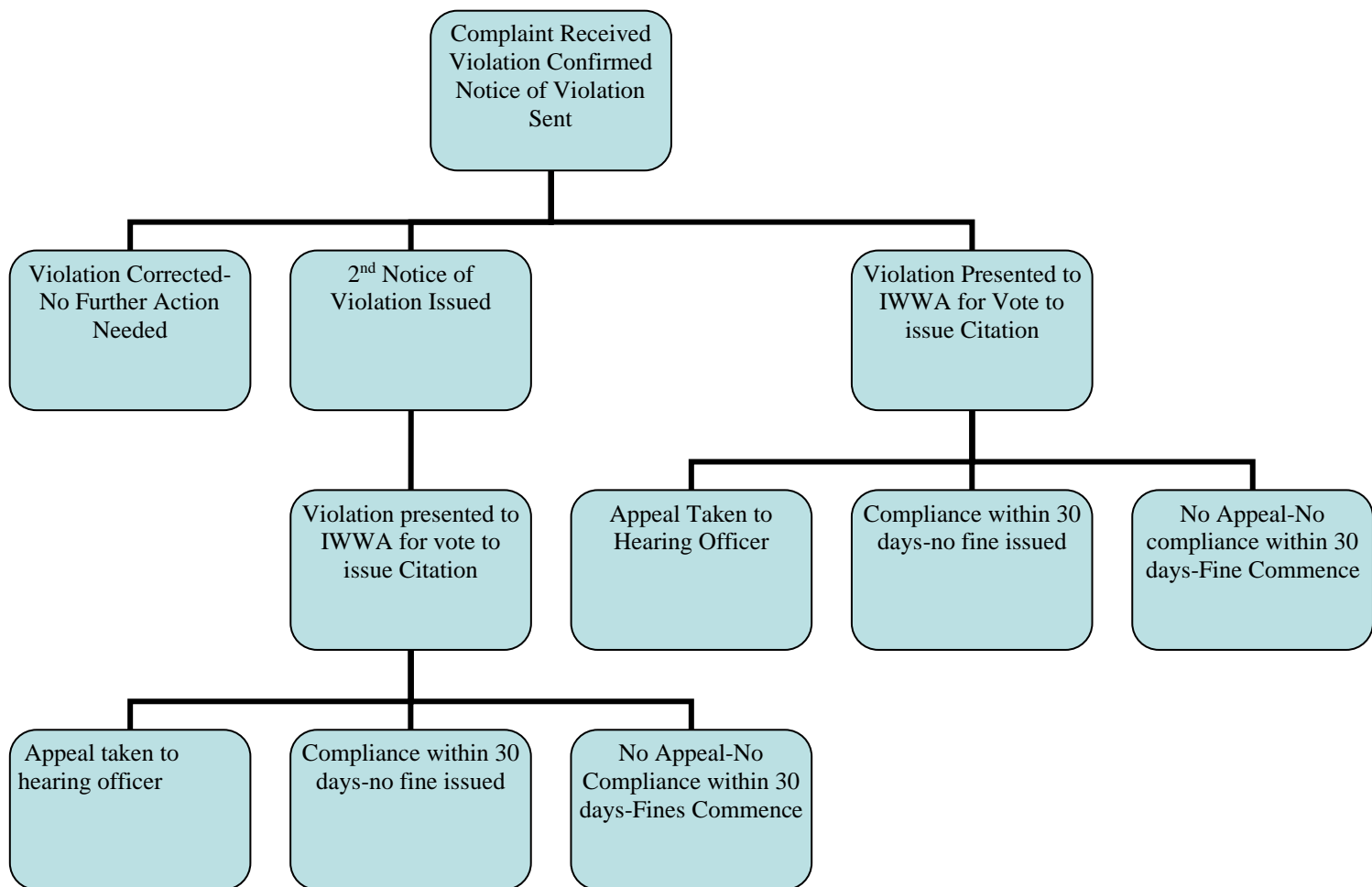
Nature of Violation (for activities with no active permit):

1. Conduct, without a permit, activities in the upland review area which do not pose an immediate danger to a wetland or watercourse: **\$50.00**
2. Conduct, without a permit, activities in the upland review area which may pose an immediate danger to a wetland or watercourse: **\$150.00**
3. Conduct, without a permit, activities in a wetland or watercourse which cause limited and/or correctable damage to a wetland or watercourse: **\$350.00**
4. Excavating, filling and/or draining of any portion of a wetland or watercourse, without a permit: **\$500.00**
5. Diverting, damming or otherwise changing the course of a watercourse, without a permit: **\$750.00**
6. Conduct, without a permit, any activity which causes sediment to flow into any wetland or watercourse or otherwise causes the pollution of a wetland or watercourse: **\$1000.00**
7. Conduct, without a permit, in an inland/wetland or watercourse or regulated area, or any other regulated activity in a regulated area not listed above: **\$100.00**

Nature of Violation (for activities with an active permit):

1. Failure to install and maintain silt control measures, silt fence, haybales, riprap and other similar sediment controls measures in accordance with an approved plan: **\$50.00**
2. Non-compliance with permit conditions: **\$50.00**
3. Conduct, with a permit, which exceeds the scope of the wetlands permit and encroaches upon or impacts upland review areas: **\$150.00**
4. Conduct, with a permit, which exceeds the scope of the wetlands permit and encroaches upon or impacts a wetland or watercourse: **\$250.00**

****Each day a violation exists shall constitute a new violation****





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POLICY FOR WETLAND VIOLATION ENFORCEMENT AND CITATIONS

1. The violation shall be verified and documented by the Wetland Enforcement Official.
2. A Notice of Violation (hereinafter NOV) will be sent to the violator and/or property owner, if the violator is not the property owner. This NOV will document the details of the violation, reference to non-conformance with ordinance number and/or Wetland Regulation Section. The NOV will include details for how to bring the property into compliance.
3. A written response will be required by the violator within 15 (fifteen) days of the NOV explaining how the violation occurred and what steps they have taken to comply with the NOV. A total of 30 (thirty) days from the date of the NOV will be provided for compliance.
4. If the conditions of the NOV are not met within 30 days from the date of issuance, the wetland agent will ask the Commission to vote on whether a citation inclusive of fines may be issued. Once approval is issued from the Commission granting the issuance of a citation, fines may commence after the issuance of a citation (not the NOV). For every day that a violation continues a new citation can be issued.
5. Any person who has received a NOV need not to receive a second notice of violation before a citation is issued. For those violations in which time is of the essence, i.e. filling of a stream embankment, diversion of a watercourse, large amounts of sediment flowing into a wetland or watercourse, a second NOV would NOT be issued. For those violations in which a longer time can be provided to achieve compliance, i.e. work in the upland review area which does not pose an immediate threat to the wetland or watercourse, failure to install or maintain silt control measures in accordance to an approved plan, or non-compliance with permit conditions, a second notice may be issued.
6. A reminder notice shall be sent every 15 days with accumulated fines and requirements for compliance.
7. Violations that are not brought into compliance within 35 days of issuance of a citation may be subject to a Notice of Non-Compliance.
8. Payments of fines and appeals of citations shall follow the procedure outlined in the adopted ordinance.