

TOWN OF EAST WINDSOR

Wetlands Violation Citations & Procedures, Ordinance # 2021-01

The following ordinance was adopted at a Special Town Meeting duly warned and held on August 19, 2021.

BE IT ORDAINED:

ORDINANCE ENTITLED “WETLANDS VIOLATION CITATIONS & PROCEDURES”

A. Purpose:

The purpose of this Ordinance is to establish penalties for violations of the Town of East Windsor Inland Wetlands and Watercourses Regulations (the “Regulations”), establish a procedure for issuance of citations to violators, for collections of fines and to have the Town of East Windsor’s citation hearing procedure apply to citations hereunder issued.

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 Wetlands Enforcement Official is authorized to issue citations for violations of the Town of East Windsor Inland Wetlands and Watercourses Regulations to the extent and manner provided for herein. A citation may be issued for those types of Inland Wetlands and Watercourses violations specified in Section C of this ordinance. In such instances, each citation will apply jointly and severally to the person who owns the property and such person’s employees, agents, contractors, and subcontractors, as the case may be. Each day that any violation continues shall be deemed a separate offense, for which a separate citation may be issued. No citations may be issued against the State or any State Official or employee acting within the scope of his employment.

C. Issuance of Citation(s); Schedule of Fines:

Any person who commits, takes part in, or assists in, any violation of the Town of East Windsor Inland Wetlands and Watercourses Regulations shall be issued a citation in accordance with the Town of East Windsor Inland Wetlands and Watercourses Schedule of Fines (“Fines Schedule”). The Fines Schedule shall be maintained and updated by the Inland Wetlands and Watercourses Agency and kept in the East Windsor Planning and Development Office.

All fines assessed and due hereunder shall be made payable to the Treasurer, Town of East Windsor. Such payment(s) shall be made inadmissible in any proceeding, civil or criminal, to establish the conduct of such person or other person making the payment(s).

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

1. Conduct, activities in the upland review area which do not pose an immediate danger to a wetland or watercourse.
2. Conduct activities in the upland review area which may pose an immediate danger to a wetland or watercourse.
3. Conduct 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.
5. Diverting, damming, or otherwise changing the course of a watercourse.
6. Conduct any activity which causes sediment to flow into any wetland or watercourse or otherwise causes the pollution of a wetland or watercourse.
7. Conduct activity, in an inland/wetland or watercourse or regulated area, or any other regulated activity 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 which exceeds the scope of the wetlands permit and encroaches upon or impacts upland review areas.
4. Conduct 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. **Fines may accrue for each day that a violation continues.**

D. Service of Notice; Citation:

Any citation issued under this Ordinance shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if provided in one of the following forms, unless otherwise stated:

1. In-hand service, by the Wetlands Enforcement Official or designated agent and/or employee.
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 the 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 (4th) business day following mailing.

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

E. Citations and Procedures:

1. Any person that is issued a citation pursuant to this Ordinance shall be afforded 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 the person cited makes an uncontested payment, in full of the fine within the prescribed 30 (thirty)-day period, the IWWA agent shall make a record of such payment and issue a confirmation to owner that the violation has been remedied and no further action is needed. The amount of such fine shall be equivalent to the amount provided in the Fines Schedule, in accordance with Section C of this Ordinance.
2. If a person who has been issued a citation does not make an uncontested payment, in full of the fine specified in the citation and within the time allowed under Section E.1 of this Ordinance, the Wetlands Enforcement Official shall, within three (3) months of the expiration of said uncontested payment period, send a notice to the person cited, informing such person:
 - a. Of the allegations against him or her and the amount of the accumulated fines, as established by the Fines Schedule.
 - b. That the person cited may contest liability before a Hearing Officer appointed by the Board of Selectman, as provided in Section E.5 of this Ordinance, by delivering, in person or by mail, within ten (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 within, an assessment and judgment shall be entered against him or her.
 - d. That such judgment may issue against him or her without further notice.
3. If the person who is sent the notice pursuant to Section E.2 above chooses to admit liability for any alleged violation, he or she may, without requesting a hearing, pay the full amount of the fine(s) so assessed, either in person or by mail, to the Planning Office of the Town of East Windsor. Any person who does not deliver or mail written demand for a hearing within ten (10) 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. The Board of Selectman shall appoint one citation Hearing Officer to conduct hearings provided by this section. Hearing Officers shall serve for terms of two (2) years, unless earlier removed for cause. Neither the Wetlands Enforcement Official nor any employee, agent or member of the Town of East Windsor Planning and Development Department or Inland Wetlands Commission who exercises Wetlands Commission Authority may be appointed as a Hearing Officer.
5. 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 fifteen (15) days nor more than thirty (30) days from the date of the mailing of hearing 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 Wetlands 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 Wetlands 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 Wetlands Regulations and this 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 the citation 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 Ordinance.

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 thirty (30) days nor more than twelve (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.

Said Ordinance shall become effective fifteen (15) days from publication thereof. (09/10/2021)

Attest:
Amy R. Lam, CCTC
East Windsor Town Clerk

Ordinance 21-01
Journal Inquirer
August 26, 2021