



DATE: June 28, 2023

TO: Waste Management Authority (WMA) Board

FROM: Elese Lebsack, Program Manager/Enforcement Lead
Rachel Balsley, Senior Program Manager

SUBJECT: Enforcement Ordinance Proposed Changes

SUMMARY

On June 8, 2023, the Programs and Administration (P&A) Committee recommended the WMA Board adopt Ordinance 2023-01, which makes minor revisions to the WMA’s 2013 enforcement ordinance to facilitate enforcement of violations of Authority legislation together with various typographical revisions.

DISCUSSION

By a vote of 11-0, the P&A Committee reviewed and recommended forwarding for adoption the attached ordinance amending Ordinance 2013-01, An Ordinance Regarding Enforcement of Ordinances and Resolutions. The changes include:

- Increasing operational flexibility in the administration of enforcement:
 - Allowing Notices of Violation (Warning) letters and Administrative Citations to be mailed first class rather than certified mail with return receipt.
 - Removing requirements for enforcement letters to contain name and signature of the issuing Enforcement Officer, and deadline for correction from the Notice of Violation.
 - Removing requirement for citation dismissals to be sent by mail.
 - Allowing a designee of the Enforcement Officer to attend a citation hearing.
- Minor typographical revisions.

The report submitted to the P&A Committee is available at the following link: [Enforcement Ordinance 2013-01 Proposed Amendments 6-2023](#)

Copies of the SB 1383/Organics Reduction and Recycling Ordinance (ORRO) enforcement letters can be found on the StopWaste website at www.StopWaste.org/Rules-Comply.

RECOMMENDATION

Staff recommends that following the public hearing the WMA Board introduce and waive the first reading of the attached ordinance and direct staff to place it on the consent calendar for adoption at the next regular meeting of the Board. The ordinance makes minor revisions to the WMA's 2013 enforcement ordinance to facilitate enforcement of violations of Authority legislation together with various typographical revisions.

Attachments

Attachment A: Draft Amended Ordinance

**ORDINANCE 2023-01
AMENDING ORDINANCE 2013-01**

**ORDINANCE REGARDING ENFORCEMENT OF ORDINANCES AND
RESOLUTIONS**

The Board of the Alameda County Waste Management Authority (“WMA”) finds that:

1. In 2013 the WMA adopted Ordinance 2013-01, the Ordinance Regarding Enforcement of Ordinances and Resolutions. Based on experience implementing the ordinance over the prior decade, the Authority wishes to make minor revisions to facilitate enforcement of violations of Authority legislation together with various typographical revisions.
2. The Board of the Alameda County Waste Management Authority held a public meeting on June 28, 2023 to consider this ordinance, and after considering all testimony and written materials provided in connection with that meeting introduced this ordinance and waived the reading thereof.

Therefore, the Board of the Authority hereby ordains as follows:

Section 1. Amendment.

Ordinance 2013-01 is hereby amended as shown in Exhibit A. Text to be added is indicated in bold underlined font (e.g., **underlined**) and text to be deleted is indicated in strikeout font (e.g., ~~strikeout~~).

Section 2. Severability.

If any provision of this Ordinance or its application to any situation is held to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance, which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are declared to be severable.

Section 3. Publication.

Within 15 days after adoption, a summary of the ordinance with the names of those voting for and against, the ordinance shall be published and a certified copy of the full text with the names of those voting for and against the ordinance shall be posted in the office of the Clerk of the Board and shall become effective thirty (30) days after adoption.

- Continued on following page -

Following introduction on June 28, 2023, passed and adopted July 26, 2023 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of ORDINANCE NO. 2023-01.

ARLISS DUNN
CLERK OF THE BOARD

Exhibit A

**ORDINANCE 2013-01
as amended by Ordinance 2023-01**

**AN ORDINANCE REGARDING ENFORCEMENT
OF ORDINANCES AND RESOLUTIONS**

The Board of the Alameda County Waste Management Authority ordains as follows:

SECTION 1 (Enactment)

The Board of the Authority does hereby enact this Ordinance in full consisting of Sections 1 through 9.

SECTION 2 (Findings)

The Authority finds that:

- (a) The Authority has adopted various ordinances and resolutions requiring and proscribing various forms of conduct.
- (b) This Ordinance authorizes enforcement of those ordinances and certain resolutions that do not specifically provide for enforcement and specifies the forms of enforcement that may be used in connection with violations of Authority ordinances and certain resolutions.

SECTION 3 (Definitions)

The following definitions govern the use of terms in this Ordinance:

- (a) “Alameda County” or “County” means all of the territory located within the incorporated and unincorporated areas of Alameda County.
- (b) “Arrest” has the meaning stated in California Penal Code section 834 or the initiation of an accusatory process (for example, issuing a notice of violation).
- (c) “Authority” means the Alameda County Waste Management Authority created by the Joint Exercise of Powers Agreement for Waste Management.
- (d) “Board” means the governing body of the Authority made up of elected representatives of the member agencies pursuant to the Joint Exercise of Powers Agreement for Waste Management.

- (e) “Citation” means an administrative citation that is issued to a Responsible Person pursuant to this Ordinance. “Citee” means a Responsible Person to whom a citation is issued.
- (f) “Administrative fine” is the monetary sanction that is imposed by a citation.
- (g) “Enforcement Officer” means the Executive Director or any officer, agent or employee of the Authority designated by the Executive Director to have the authority and responsibility to enforce Legislation.
- (h) “Executive Director” means the individual appointed by the Board to act as head of staff or a person designated by the Executive Director in writing to act on his or her behalf in administering this Ordinance.
- (i) “Hearing Administrator” means the individual appointed by the Executive Director to administer requests for hearings.
- (j) “Hearing Officer” means a person, agency or body designated by the Hearing Administrator to consider all timely requests for an administrative hearing upon issuance of a citation.
- (k) “Notice of violation” means a written notice to a Responsible Person that a violation of Legislation has occurred. This notice may include a warning that a citation assessing fines may be issued unless the violation is terminated or abated.
- (l) “Legislation” means any resolution requiring submittal of information or payment to the Authority and any ordinance adopted by the Authority.
- (m) “Person” means an individual, firm, Limited Liability Company, association, partnership, industry, Private Corporation, or any other non-public entity whatsoever.
- (n) “Property” or “premises” means any real property, or improvements thereon, or portions thereof, as the case may be. "Property" includes any parkway or unimproved public easement abutting such real property. "Property" shall also include all forms of personal property or animals, where applicable.
- (o) “Responsible Person” means any person, whether as an owner, lessee, licensee, or otherwise, that allows, causes, creates, maintains, or permits a violation of Legislation to exist or continue, by any act or the omission of any act or duty.
- (p) “Violation” means an act or omission of any act, or use or condition that constitutes an offense of Legislation, as well as a breach or violation of any condition of a permit, approval or license issued pursuant to Legislation. A "transient" violation is one that is brief or spontaneous in its commission, or that is not typically confined to a fixed location. A "non-transient" violation is continuing in nature and generally present at one location and is also described as a "continuing" violation.

SECTION 4 In General

(a) This Ordinance shall apply to enforcement of all Legislation, provided, however, that this Ordinance supplements and does not supersede the provisions of Legislation. To the extent this Ordinance and Legislation provide for enforcement, the provisions of both the Legislation and this Ordinance shall be applied. If there is a difference between the provisions of this Ordinance and the Legislation being enforced such that the provisions cannot both be applied, the provisions of the Legislation shall be applied and the conflicting provisions of this Ordinance shall not be applied. The Executive Director is authorized to promulgate procedural rules and regulations governing the enforcement process consistent with this Ordinance and applicable law.

(b) It is unlawful for any person to violate any provision or to fail to comply with any of the requirements of any Legislation or any rule, regulation or order promulgated or issued pursuant to such Legislation. Whenever in Legislation any act or omission is made unlawful, it shall include causing, permitting, aiding, abetting, suffering or concealing such act or omission. Any person violating any of such provisions or failing to comply with any of such requirements shall be guilty of a misdemeanor or an infraction and subject to administrative fines and civil enforcement actions. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation is committed, continued, or permitted by such person, and shall be punishable accordingly. In the discretion of the Executive Director violations may be enforced through administrative penalties, civil enforcement, or criminal action as set forth below.

(c) A violation shall be deemed an infraction if a citation or notice to appear in court is issued specifying that the violation is an infraction, the prosecuting attorney files a complaint in the Superior Court specifying that the offense is an infraction, or the prosecuting attorney makes a motion to reduce a misdemeanor to an infraction prior to trial on the matter.

SECTION 5 Administrative Fines

(a) Any violation of any Legislation or any rule, regulation or order promulgated or issued pursuant to such Legislation is subject to administrative fines. Use of this Section 5 shall be at the sole discretion of the Authority and is one remedy that the Authority has to address violations of Legislation. This section establishes the administrative procedures for the imposition, enforcement, collection and administrative review of administrative fines pursuant to California Government Code Section 53069.4. Failure of a Citee to comply with a corrective action stated in any uncontested citation, or with regard to a correction order in any Hearing Officer's decision that is deemed confirmed, shall constitute a misdemeanor.

(b) An administrative fine shall be imposed by means of a citation issued by an Enforcement Officer and shall be paid directly to the Authority. Payment of a fine shall not excuse a failure to correct a violation nor shall it bar further enforcement action by the Authority.

(c) When an Enforcement Officer determines that a Responsible Person has committed a violation of Legislation, the Enforcement Officer may issue a notice of violation to the Responsible Person. Such notice shall serve as a written warning of responsibility and require immediate action by the Responsible Person to abate the violation. The notice of violation shall specify a date by which the violation can reasonably be abated. Such date shall be not less than six (6) calendar days after the notice of violation unless the violation creates an immediate danger to health or safety. If, after the date for correction specified in the notice of violation, the violation is not abated, or subsequent violations of the same type occur or re-occur, the Enforcement Officer may issue a citation assessing fines in accordance with this Ordinance.

(d) A notice of violation shall include:

- (1) Name and mailing address of the Responsible Person;
- (2) The address or description of the location of the violation;
- (3) The date of commission of the violation(s) or detection thereof by an Enforcement Officer;
- (4) Legislation provision(s) violated;
- (5) A description of the violation(s);
- (6) The action(s) required to correct the violation(s) and any deadlines or time limitations for commencing and completing such action(s);
- (7) Possible amount of the fine for each violation, and the procedure and place to pay the fine(s), and any late charge(s), if not timely paid;
- ~~(8) The name and signature of the Enforcement Officer issuing the notice of violation; and~~
- (89)** Any other information deemed necessary by the Enforcement Officer.

(e) On such form as may be provided for by the Executive Director, any Responsible Person receiving a notice of violation for a violation that does not cause immediate danger to health or safety may petition the Enforcement Officer for an extension of time or amendment of the prescribed corrective action to correct the violation so long as the petition is received before the end of the period allowed for correction, as stated in the notice of violation. The Enforcement Officer may, in the Enforcement Officer's sole discretion, grant an extension of time to correct the violation or amendment of the prescribed corrective action if the Enforcement Officer determines that the Responsible Person has supplied sufficient evidence showing that the correction cannot reasonably be made within the stated period or that the amended corrective action will comply with the requirements of the Legislation. The Enforcement Officer's decision shall be final and, notwithstanding any other provision of Legislation, not subject to appeal except in an appeal challenging the issuance of a citation.

(f) Whenever an Enforcement Officer determines that a violation of Legislation has

occurred, the Enforcement Officer may issue a citation on a form approved by the Executive Director imposing an administrative fine or fines to the Responsible Person(s) in accordance with the provisions of this Ordinance. The citation shall be issued following the correction period specified in the notice of violation or, if the violation creates an immediate danger to health or safety, concurrently with the notice of violation. An Enforcement Officer may issue a notice of violation and/or a citation for a violation not committed in the Enforcement Officer's presence if the Enforcement Officer has determined, through investigation, that the Citee did commit, or is otherwise responsible for, the violation. The Enforcement Officer may dismiss a citation at any time if a determination is made that it was issued in error, in which event any deposit of a fine shall be refunded. ~~Notice of such action shall be given to the Citee in writing.~~

(g) Each day on which a transient violation occurs and each day upon which a non-transient violation continues, shall be a separate violation for which a citation may be issued. A citation may charge several violations of Legislation.

(h) Each citation shall contain the information listed in section 5(d), subsections 1-6 and:

(1) The date the notice of violation was issued ~~and the date that notice set for correction of the violation;~~

(2) Amount of the fine for each violation, and the procedure and place to pay the fine(s), and any late charge(s), if not timely paid;

(3) When appropriate, the action(s) required to correct the violation(s), and, if applicable, any deadlines or time limitations for commencing and completing such action(s);

(4) A description of the citation review process and the manner by which a hearing on a citation may be obtained (including ~~the form to be used and~~ the period in which a request must be made in order to be timely); **and**

~~(5) The name and signature of the Enforcement Officer issuing the notice of violation; and~~

~~(56)~~ Any other information deemed necessary by the Enforcement Officer.

(i) The Enforcement Officer may issue a notice of violation, citation, or any other notice, order, or other document required to be given by this Ordinance by personal service, mail, or posting as specified below.

(1) For personal service the Enforcement Officer shall attempt to locate and personally serve the Responsible Person and obtain the signature of the Responsible Person on the citation. If the Responsible Person served refuses or fails to sign the document(s) served, the failure or refusal to sign shall not affect the validity of the citation or of subsequent proceedings. If an agent, manager or representative of a Responsible Person is personally served, a copy of the document(s) served shall also be served by first class mail to the Responsible Person at his/her last-known business or residence address as

the same appears in the records of the Authority, or, if the Authority lacks such records, the County. In such instances, the date a copy of the document(s) served is deposited with the U.S. Postal Service shall constitute the issuance date.

(2) For service by mail the Enforcement Officer shall mail the document(s) being served by ~~certified~~ **first class** mail, ~~postage prepaid with a requested return receipt~~ at the recipient's last-known business or residence address as the same appears in ~~public~~ records of the Authority, or, if the Authority lacks such records, the records of Alameda County. ~~Simultaneously, the citation may be sent by first class mail. If the document(s) is sent by certified mail and the certification is returned unsigned, then s~~Service shall be deemed effective ~~pursuant to first class mail~~, provided the document(s) sent by first class mail is not returned.

(3) For violations involving real property, if the Enforcement Officer is not able to serve the responsible party in person or by mail, the Enforcement Officer shall post the document(s) to be served on any real property within ~~the Authority~~ **Alameda County** in which the Authority has knowledge that the Responsible Person has a legal interest or possession, dominion and control of, such property, or a portion thereof. Such posting shall be deemed effective service, and the date of posting shall constitute the date of service.

(j) Where no fine amount is specified by Legislation, the following fines shall apply:

(1) For misdemeanors a fine not exceeding five hundred dollars (\$500) per day for a first violation, a fine not exceeding seven hundred fifty dollars (\$750) per day for a second violation of the same ordinance or permit within one year from the date of the first violation; and a fine not exceeding one thousand dollars (\$1000) per day for each additional violation of the same ordinance or permit within one year from the date of the first violation; and

(2) For infractions a fine not exceeding one hundred dollars (\$100) per day for a first violation, a fine not exceeding two hundred dollars (\$200) per day for a second violation of the same ordinance or permit within one year from the date of the first violation; and a fine not exceeding five hundred dollars (\$500) per day for each additional violation of the same ordinance or permit within one year from the date of the first violation.

Separate fines shall apply for each separate violation, however, in the event that multiple violations are found to occur as a result of an investigation, each such violation listed in the first citation following the investigation shall be considered a "first violation".

(k) Administrative fines and any late charges due shall be paid to the Authority at such location or address as stated in the citation, or as may otherwise be designated by the Executive Director. The due date for the Authority's receipt of an administrative fine shall be thirty calendar days from the issuance date of a citation. Thereafter, a late charge shall be due and owing.

(l) Payment of an administrative fine shall not excuse or discharge a Citee from the duty to immediately abate a violation of Legislation, nor from any other responsibility or legal

consequences for a continuation or repeated occurrence(s) of a violation of Legislation. Abatement of a violation shall not excuse the obligation of a Citee to pay an administrative fine, or any late charge.

(m) Unpaid administrative fines and/or late charges shall constitute a debt that may be collected in any manner allowed by law.

(n) Any Citee may contest the issuance of a citation by filing a request for an administrative hearing with the Hearing Administrator of the Authority. The request for an administrative hearing shall be made on an Authority-approved form and filed within fifteen calendar days from the issuance date of a citation. If the Hearing Administrator does not receive the request in the required period, the Citee shall have waived the right to a hearing and the citation and fine shall be deemed final. No fee shall be charged for the filing of a request for a hearing.

(o) Requests for a hearing shall be accompanied by the entire amount of the fine stated in the citation. Failure to deposit a fine, or the tender of a nonnegotiable check in the required period, shall render a request for an administrative hearing incomplete and untimely. Fines that are deposited with the Authority shall not accrue interest. Fines deposited shall be returned to the person tendering the fines within thirty days in the event a citation is overturned.

(p) The Hearing Administrator shall designate or appoint, in accordance with applicable law, a Hearing Officer. The employment, performance evaluation, compensation, and benefits of the Hearing Administrator and Hearing Officer, if any, shall not be directly or indirectly conditioned upon the amount of citation fines upheld by the Hearing Officer.

(q) Hearings shall be attended by the Enforcement Officer or designee and the Citee (or authorized representative of Citee) and conducted pursuant to reasonable procedures to be established by the Hearing Officer. After considering all of the testimony and evidence submitted at a hearing, the Hearing Officer shall issue an administrative order at the conclusion of the hearing or within fifteen days to uphold or overturn the citation and shall state the reasons thereof. If the citation is upheld and the violation has not been fully corrected as of the date of the hearing, the Hearing Officer shall order correction thereof in the decision and state deadline(s) to complete such action(s). The decision of the Hearing Officer shall be final. All fines shall become immediately due and owing to the Authority in the full amount and if not paid may be collected in accordance with law.

(r) The Superior Court is the sole reviewing authority and an appeal from a Hearing Officer's decision is not appealable to the Authority Board. If a Responsible Person prevails on appeal, the Authority shall reimburse that person's fine deposit in accordance with the court judgment. These monies shall be mailed to the Responsible Person within thirty calendar days of the Authority's receipt of a notice of judgment or ruling from the Superior Court Clerk.

(s) The Authority may use all available legal means to collect past due fines and other related costs. Any person who fails to pay any fine shall be liable in any action or collection procedure brought by the Authority for all costs incurred to obtain payment of the delinquent amount, including, but not limited to, administrative costs, collection costs, and attorneys' fees. Collection costs shall be in addition to any penalties, interest and late charges imposed upon the

delinquent obligation. Commencement of an action to collect a delinquent fine shall not preclude issuance of one or more additional citations to the legally Responsible Person if the violation or violations persist after the date for correcting them as stated in the administrative order.

SECTION 6 Civil Enforcement

(a) The amount of any fee or charge of any nature whatsoever imposed by any Legislation or any rule, regulation or order promulgated or issued pursuant to such Legislation, shall be deemed a civil debt owing to the Authority. An action may be commenced in the name of the Authority in any court of competent jurisdiction for the collection of the amount of any such delinquent or unpaid fee or charge together with any penalties applicable thereto in addition to injunctive relief. The remedy prescribed by this Section shall be cumulative and the use of a civil action to collect such amount as a debt shall not bar the use of any other remedy available to the Authority for the collection thereof.

(b) Wherever the Authority Counsel is authorized or directed to commence or sustain any civil action or proceeding, either at law or in equity, to enforce any Legislation, or any rule, regulation or order promulgated or issued pursuant to such Legislation, or to enjoin or restrain any violation thereof, or otherwise to abate any public nuisance, or to collect any sums of money on behalf of the Authority, then the Authority shall be entitled to collect all the costs and expenses of the same. The prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided that attorneys' fees shall only be available in an action or proceeding in which the Authority has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the Authority in the action or proceeding.

SECTION 7 Criminal Enforcement

(a) It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of Legislation, or any rule, regulation or order promulgated or issued pursuant to such Legislation. Any person violating any of such provisions or failing to comply with any of such requirements shall be guilty of a misdemeanor or if specified as such in the Legislation, an infraction. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation is committed, continued, or permitted by such person, and shall be punishable accordingly.

(b) Notwithstanding subsection (a) of this Section or any other provision of Legislation, any violation constituting a misdemeanor may, in the discretion of the Enforcement Officer or the prosecuting attorney be charged and prosecuted as an infraction.

(c) Where no specific penalty is provided therefore, any person convicted of a misdemeanor under the provisions of Legislation shall be punishable by a fine of not more than five hundred dollars (\$500) for the first violation, of not more than seven hundred and fifty dollars (\$750) for the second violation within one year, and of not more than one thousand dollars(\$1000) for each additional violation within one year or by imprisonment in the County Jail for a period not

exceeding six months, or by both such fine and imprisonment.

(d) Any person convicted of an infraction shall be punishable for a first conviction by a fine of not more than one hundred dollars (\$100), for a second conviction of the same ordinance within a period of one year by a fine of not more than two hundred dollars (\$200), and for a third or any subsequent conviction of the same ordinance within a period of one year by a fine of not more than five hundred dollars (\$500).

(e) Enforcement Officers are hereby authorized, pursuant to Section 836.5 of the Penal Code, to arrest a person without a warrant whenever any such Enforcement officer has reasonable cause to believe that the person to be arrested has committed a misdemeanor or infraction in the presence of the Enforcement Officer which is a violation of Legislation or any rule, regulation or order promulgated or issued pursuant to such Legislation which the Enforcement Officer is authorized to enforce.

(f) Each Enforcement Officer is authorized to enforce the provisions of this Ordinance, other Legislation, and any rule, regulation or order promulgated or issued pursuant to such Legislation. The Executive Director, may, from time to time, add to, change or modify the duties of Enforcement Officers, and may create priorities of enforcement to protect the public health, safety, and welfare.

(g) If any person is arrested for a violation of any provision of Legislation, or any rule, regulation or order promulgated or issued pursuant to such Legislation, and such person is not immediately taken before a magistrate as prescribed by the Penal Code, the arresting Enforcement Officer shall prepare in duplicate a written notice to appear in court, containing the name and address of such person arrested, and the offense charged. If the violation is designated as a misdemeanor, the notice shall also specify the time and place where the arrested person shall appear in court, which shall be a date at least ten days after the date of arrest. The arresting Enforcement Officer shall deliver one copy of the notice to the arrested person, and the arrested person, in order to secure release, must give ~~his~~their written promise to appear in court by signing the duplicate notice which shall be retained by the arresting Enforcement Officer. Thereupon the arresting Enforcement Officer shall release the person arrested from custody. The arresting Enforcement Officer shall, as soon as practicable, file the duplicate notice with the magistrate specified in such notice.

(h) Upon any guilty plea or judgment of conviction in any criminal proceeding brought for the violation of any provision of Legislation, or any rule, regulation or order promulgated or issued pursuant to such Legislation, wherein the Authority has or will incur costs and expenses in removing or abating a nuisance caused, committed or maintained by the defendant as a result of such violation for which the defendant is prosecuted, if the defendant is otherwise entitled by law to probation, then the court may require the payment to the Authority of such costs and expenses as one of the conditions of such probation.

SECTION 8 Severability

If any provision of this Ordinance or its application to any situation is held to be invalid,

the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 9 Effective Date

This Ordinance shall be posted at the Authority Office after its second reading by the Board for at least thirty (30) days and shall become effective thirty (30) days after the second reading.