

Chapter 401

Inland Wetland and Watercourses Violation Citations & Procedures

TOWN OF MIDDLEFIELD

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

§ 401-1 Authority to Issue Citations; Issuance of Notice; Method of Service; Retention of Copy

A. Authority to Issue Citations

In accordance with Connecticut General Statute Section 22a-42g, if the wetlands duly authorized Agent (Enforcement Officer) finds that any person is conducting or maintaining any activity, facility or condition which is in violation of the Town of Middlefield's Inland Wetlands and Watercourse Agencies regulations, or any permit issued hereunder, the duly authorized Agent, or a designee appointed by the First Selectman, will begin the citation process.

B. Issue an initial notice/Method of Service.

The duly authorized Agent must issue a written notice informing the recipient of the nature of the violation. Any such initial notice may be served either by hand delivery or by certificate of mailing to the person. The Agency or its duly authorized Agent shall file and retain an original or certified copy of the initial notice, as well as any proof of certificate of mailing. The date of delivery of the initial notice shall be deemed to be the earlier of (1) the actual date of delivery, or (2) four business days after the date of the original mailing regardless of whether such mailing was accepted.

§ 401-2 Fines Established.

A. Violator: any person cited as a party to a violation.

B. First Violation. A violator will remedy a violation by: (1) filing a corrective application in the form of an abatement agreement with the Town, (2) appearing before the Inland Wetland and Watercourses Agency (IWWA), and (3) complying with the recommendations of the IWWA in said abatement order or cease and correct order. The violation will be lifted from the property record subject to verification of compliance by the Inland Wetland Agent (IWA).

C. Second Violation. A second violation (repeat of original violation) on the same property will be issued a citation for a one-time amount of \$250. A violator will remedy a violation by: (1) filing a corrective application in the form of an abatement agreement with the Town, (2) appearing before the Inland Wetland and Watercourses Agency (IWWA), and (3) complying with the recommendations of the IWWA, in said abatement order or cease and correct order. The violation will be lifted from the property record subject to verification of compliance by the Inland Wetland Agent (IWA).

D. Failure To Respond To Second Notice Of Violation

In the event a violator does not respond to a second notice of violation (second letter notifying property owner of a violation on a property) or a cease and desist, the violator will be issued a citation for \$100 (residential) \$200 (commercial or industrial) per day until a request for an abatement agreement is submitted to the Inland Wetlands Agent.

§ 401-3 Period for Uncontested Payment of Fine

Any person receiving such a citation shall be allowed a period of 30 calendar days from receipt of said citation to make an uncontested payment of the fine specified in the citation. If the citation has been sent by

regular mail pursuant to the provisions of Section 401-1, the day of receipt of the citation shall be deemed to be four calendar days after the day of mailing of the citation. Payment of fine does not relieve the person from resolving the violation of the IWWA Regulations.

§ 401-4 Failure to Pay Fine

If a person who has been issued a citation does not make uncontested payment of the fine specified in the citation within the time allowed under Section 401-3, the Wetland Enforcement Officer shall send a notice to the person cited, within twelve (12) months of the end of said uncontested payment period, informing such person:

1. Of the allegations against him or her and the amount of the accumulated fines;
2. That the person cited may contest liability before a Hearing Officer appointed by the First Selectman as provided in Section 401-8 of this Section, by delivering, in person or by mail, within 10 days of the date of the notice, a written demand for a hearing;
3. That if the person cited does not demand such a hearing, an assessment and judgment shall be entered against him or her;
4. That such judgment may issue without further notice.

§ 401-5 Admission of Liability

If the person who is sent notice pursuant to Section 401-1 of this Section wishes 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 Land Use Office of the Town of Middlefield. All fines shall be made payable to Treasurer, Town of Middlefield.

Such payment shall be 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 ten (10) days of the date of the notice described in Section 401-1 shall be deemed to have admitted liability, and the Wetland Enforcement Officer 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 401-6 of this section.

§ 401-6 Hearings; Determination by Hearing Officer

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 Officer shall be required at the hearing if requested by the person who was issued the citation.

A person wishing to contest liability shall appear at the hearing and may present evidence on his or her behalf.

The Wetland Enforcement Officer may present evidence on behalf of the Town of Middlefield.

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 Middlefield Wetland Regulations.

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 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 hearing.

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.

§ 401-7 Failure to Pay Assessment

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 found 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 applicable entry fee.

Further proceedings may then be held pursuant to the applicable provisions of the Connecticut General Statutes.

§ 401-8 Appointment of Hearing Officers

The First Selectman shall appoint one citation Hearing Officer to conduct the hearings provided by this section.

Hearing Officers shall serve for terms of two years, unless removed for cause.

Neither the Wetlands Enforcement Officer nor any employee nor volunteer of the Town of Middlefield exercising wetland authority may be appointed to be a Hearing Officer pursuant to this Section.

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

Ord.

Attest: _____