

October 14, 2011 Aquatic Invasive Species Ordinance

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1.0 Purpose

The purpose of this ordinance is for the continuance of navigation, commerce, fishery, recreation, and wherever possible and appropriate, preservation of the land and waters in their current natural state and to ensure the protection of all native and desired aquatic species and aquatic habitat in the (Location) by preventing the introduction and spread of Aquatic Invasive Species.

2.0 Findings

The aquatic invasive species of Dreissenid mussels such as Quagga and Zebra mussels pose a significant and imminent threat to the water bodies within the (Location) . Dreissenid mussels have already created serious and irreparable harm to bodies of water located in other locations in the United States and California. Once introduced into a water body, these mussels proliferate at an alarming rate, drastically altering the ecosystem of that water body, harming and/or consuming native species and food resources within the ecosystems they infest. Dreissenid mussels additionally potentially pose a significant and imminent threat to the water distribution systems of (Location) .

Presently, it does not appear that any water body in (Location) has been infested with Dreissenid mussels. However, water vessels entering (Location) from other areas of the state and country may have recently been launched in infested counties or waters, making those vessels at high risk to carry mussels (adults and larvae) into (Location) waters.

A screening and inspection program is integral to the preservation of the water bodies and water distribution systems with the (Location) , and to the drainages from (Location) .

3.0 Aquatic Invasive Species

Aquatic Invasive Species shall include but not be limited to invertebrates, plants, and warm water fishes. Aquatic Invasive Species pose a serious threat to the waters of the region. They can have a disastrous and potentially irreversible impact to the ecology, recreation, water supply

and water quality, and the economy of the region. The following provisions shall be adhered to in order to prevent the introduction and spread of Aquatic Invasive Species.

4.0 Prohibition

The transport or introduction of Aquatic Invasive Species into the _____ (Location) _____ region is prohibited. Further, the knowingly launching of any watercraft contaminated with Aquatic Invasive Species into the waters of the _____ (Location) _____ region is prohibited.

5.0 Watercraft Inspections and Decontamination

(1) All motorized and/or trailered watercraft shall be inspected by (Governmental Body) or its designee prior to launching into the waters of the _____ (Location) _____ region to detect the presence and prevent the introduction of Aquatic Invasive Species. Non-motorized watercraft may be subject to an inspection prior to entering the waters of the _____ (Location) _____ region if determined necessary by _____ (Government Body) _____ or its designee.

(2) All watercraft inspected in subsection (1) shall be subject to decontamination or quarantine for a period if determined necessary by an inspection. A watercraft shall launch only if: (a) the required decontamination is performed and completed by a certified individual pursuant to _____ (Government Body) _____ or its designee standards and requirements for Aquatic Invasive Species, and (b) following the decontamination, the launch is authorized by a certified inspector pursuant to _____ (Government Body) _____ or its designee standards and requirements for Aquatic Invasive Species Inspections.

(3) An owner operator of a Boat Ramp or other Boat Launch Facility (inclusive of single family residences) shall close the ramp or facility to launching of watercraft of non-compliant vessels at all times when the provisions of subsection (2) have not been or cannot otherwise be provided or met.

(4) Affidavit of Compliance: At the time of the inspection, the watercraft owner/operator shall be required to execute an affidavit which attests to the responsibility of that owner/operator to ensure that his/her watercraft is clean, drained and dry and properly screened, re-screened, inspected, and, if necessary, decontaminated prior to launching in a water body in the _____ (Location) _____ region. The Affidavit shall be signed under penalty of perjury.

(5) If the watercraft owner/operator falsely provides information this shall be a violation of this Ordinance.

(6) A watercraft owner or operator may refuse to consent to said screening. If the watercraft owner or operator refuses to consent to screening, that watercraft shall not be allowed to launch in any water body within the _____ (Location) _____ region and shall be in violation of this Ordinance if he/she should nonetheless attempt to do so.

5.0. Fees

All watercraft inspected are subject to a fee to pay for the inspection and/or decontamination. The (Government Body) or its designee will review and approve the fee structure annually.

6.0 Enforcement

The enforcement of this ordinance shall reside with (Governmental Body) or its designee.

NOTE: The section below can be included in the AIS ordinance OR if an Administrative Citation ordinance exists already, this section can simply reference the existing ordinance.

7.0 Fines / Criminal Penalties

(1) Applicability

(a) This ordinance provides for Administrative Citations, which are in addition to all other legal remedies, criminal or civil, which may be pursued by the (Governmental Body) or its designee.

(b) This chapter is adopted pursuant to the authority granted by the (Governmental Body) or its designee.

(2) Definitions

(a) Responsible Person shall mean any individual who is the owner or occupant of real property or water vessel, owner or authorized agent for any business, company, or entity, or any person who has caused or maintains a violation of this ordinance.

(b) Enforcement Officer shall mean any (Governmental body) or its designee's employee with the authority to enforce any provision of this Ordinance.

(3) Administrative Citation Authority & Service Procedures

(a) Whenever an Enforcement Officer charged with the enforcement of any provision of this Ordinance determines that a violation of that provision has occurred, the Enforcement Officer shall have the authority to issue an Administrative Citation to any Responsible Person for the violation.

(b) An Administrative Citation on a form approved by the (Governmental body) or its designee may be issued to the Responsible Person by the Enforcement Officer for violations of this ordinance in the following manner:

(1) Personal Service. In any case where an Administrative Citation is issued, the Enforcement Officer shall attempt to locate and personally serve the Responsible Person and obtain the signature of the Responsible Person on the Administrative Citation.

(a) Any person being issued an Administrative Citation shall be required to produce adequate identification and sign the Administrative Citation. Any person who refuses to produce adequate identification or who refuses to sign such citation is guilty of a misdemeanor and may be taken into custody by any peace officer of the State of California.

(b) Failure or refusal to sign the Administrative Citation by the Responsible Person shall not affect the validity of the Administrative Citation or of subsequent proceedings.

(2) Service of Administrative Citation by Mail. If the Enforcement Officer is unable to locate the Responsible Person, the Administrative Citation may be mailed to the Responsible Person by certified mail, postage prepaid with a requested return receipt. Simultaneously, the citation may be sent by first class mail. If the citation is sent by certified mail and returned unsigned, then service shall be deemed effective by first class mail, provided that the citation sent by first class mail is not returned.

(3) Service of Administrative Citation by Posting. The Enforcement Officer may post an Administrative Citation on any real property, watercraft or place on any vehicle, and such posting shall be deemed effective service. The Enforcement Officer shall first attempt Personal Service to the Responsible Party before posting the Administrative Citation on real property. Posting an Administrative Citation may also be used in the event Service by Mail has failed.

(4) Administrative Citation Contents

To the extent practicable, each Administrative Citation shall contain the following information:

- (a) The date and time of the violation.
- (b) Name, address and phone number of the Responsible Person.
- (c) The address or a definite description of the location where the violation occurred.
- (d) The Section of the Ordinance violated and a description of the violation.
- (e) The amount of the fine for the code violation.
- (f) A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid.
- (g) An order prohibiting the continuation or repeated occurrence of the Ordinance violation described in the Administrative Citation.
- (h) A description of the Administrative Citation review process, including the time within which the Administrative Citation may be contested and the place from which a Request for Hearing Form to contest the Administrative Citation may be obtained.
- (i) The name and signature of the citing Enforcement Officer.

(5) Amount of Fines

(a) The amount of the fines for Ordinance violations imposed pursuant to this Chapter shall be set forth in the Schedule of Fees established by resolution of the (Governmental body) or its designee.

(b) The Schedule of Fees shall specify any increased fines for repeat violations of the same Ordinance provision by the same person within twelve months from the date of the Administrative Citation.

(c) The Schedule of Fees shall specify the amount of any late payment charges imposed for the payment of a fine after its due date.

(6) Payment of the Fine

(a) The fine shall be paid to the (Governmental body) or its designee within twenty-one (21) days from the date of the Administrative Citation.

(b) Payment of a fine under this Chapter shall not excuse or discharge any continuation or repeated occurrence of the Ordinance violation that is the subject of the Administrative Citation

(7) Hearing Request

(a) Any recipient of an Administrative Citation may contest that there was a violation of the Ordinance or that he or she is the responsible party by completing a Request For Hearing Form and returning it to the (Governmental body) or its designee within twenty-one (21) days from the date of the Administrative Citation.

(b) A Request For Hearing Form may be obtained from the department specified on the Administrative Citation.

(c) The person requesting the hearing shall indicate if they choose to appear in person for the hearing or have the written appeal be submitted for review by the Hearing Officer.

(d) If the Enforcement Officer submits an additional written report concerning the Administrative Citation to the Hearing Officer for consideration at the hearing, then a copy of this report also shall be served, mailed, or provided to the person requesting the hearing at least five (5) days prior to the date of the hearing.

(8) Hearing Officer

The (Governmental body) or its designee shall designate the Hearing Officer for the Administrative Citation Hearing.

(9) Hearing Procedure

(a) A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) days and not more than sixty (60) days from the date that the Request For Hearing is filed in accordance with the provisions of this Chapter.

(b) At the hearing, the party contesting the Administrative Citation shall be given the opportunity to testify and to present evidence concerning the Administrative Citation.

(c) The failure of any recipient of an Administrative Citation to appear at the Administrative Citation Hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.

(d) The Administrative Citation and any additional report submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents. No other proof concerning the violation shall be required to sustain a finding of conviction, provided, however, that the Hearing Officer may consider such other relevant evidence at the hearing in his or her discretion.

(e) The Hearing Officer may continue the hearing and request additional information from the Enforcement Officer or the recipient of the Administrative Citation prior to issuing a written decision.

(10) Hearing Officer's Decision

(a) After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision to uphold or cancel the Administrative Citation and shall list in the decision the reason for that decision.

(b) If the Hearing Officer determines that the Administrative Citation should be upheld the Hearing Officer shall set forth in the decision a payment schedule for the fine.

(c) The recipient of the Administrative Citation shall be served with a copy of the Hearing Officer's written decision. The Hearing Officer's decision shall also include appeal rights pursuant to California Government Code Section 53069.4 (b) (1).

(d) The employment, performance evaluation, compensation and benefits of the Hearing Officer shall not be directly or indirectly conditioned upon the amount of Administrative Citation fines upheld by the Hearing Officer.

(11) Late Payment Charges

Any person who fails to pay to the (Governmental body) or its designee any fine imposed pursuant to the provisions of this Chapter on or before the date that fine is due also shall be liable for the payment of any applicable late payment charges set forth in the Schedule of Fees.

(12) Recovery of Administrative Citation Fines and Costs

The (Governmental body) or its designee may collect any past due Administrative Citation fine or late payment charge by use of all available legal means.

(13) Notices

(a) The Administrative Citation and all notices required to be given by this Chapter shall be served on the responsible party in accordance with the provisions of Section (3), (b) -Service.

(b) Failure to receive any notice specified in this Chapter does not affect the validity of proceedings conducted hereunder.

~~(1) Any person violating any provision of this Ordinance shall be guilty of a misdemeanor. Such individual shall be deemed guilty of a separate offense for each launch in a water body in the (Governmental body) or its designee.~~

~~(2) Any individual convicted of a violation of this chapter shall be punishable by a fine of not less than one thousand dollars (\$1,000.00) and/or up to six months in the county jail or both.~~

~~(3) A watercraft unlawfully launched in a water body in the (Location) shall be subject to impound for a period for quarantine and decontamination if, pursuant to a misdemeanor arrest for violation of this Ordinance, a law enforcement officer determines that circumstances necessitate law enforcement custody of the watercraft.~~

~~(4) Payment of any penalty herein shall not relieve any individual from the responsibility of correcting the violations as found by the Enforcement Officer.~~

~~(5) Any person found not in compliance with this ordinance is subject to citation, shall be escorted off the water body, and shall be subject to any other legal action as deemed necessary by the Enforcement Officer including but not limited to detaining said person and watercraft until inspected as required under this chapter.~~

~~(6) Fines collected as a result of violating this Ordinance, that are not otherwise encumbered, shall be used to fund the Aquatic Species Management and Prevention Program.~~

9.0 Public Nuisance Declaration

Any violation of this chapter is hereby declared to be unlawful and a public health

nuisance and may be abated by authorized (Governmental Body) or its designee, personnel, irrespective of any other remedy provided in this Ordinance.

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