

ORDINANCE NO. 3910

AN ORDINANCE OF THE MONTEREY COUNTY WATER RESOURCES AGENCY  
PRESCRIBING RULES AND PROCEDURES FOR THE CONDUCT OF APPEALS OF  
ASSESSMENTS, CHARGES, FEES AND ADMINISTRATIVE DETERMINATIONS

PASSED: APRIL 1, 1997

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**County Counsel Summary**

*This Ordinance provides a uniform administrative remedy for challenging the imposition of property-related assessments, charges and fees, and for challenging determinations of Agency staff relating to the granting or denial of variances and the enforcement of ordinances. The rules and procedures of this Ordinance supersede the appeals provisions contained in other ordinances of the Agency, except as specifically provided in this Ordinance.*

The Board of Supervisors of the Monterey County Water Resources Agency ordains as follows:

SECTION 1. The following provisions are adopted:

**1.0 Purpose and Scope.**

1.01. Except as otherwise provided herein, the provisions of this Ordinance shall govern all appeals of assessments, charges or fees imposed upon real property by the Monterey County Water Resources Agency.

1.02. Except as otherwise provided herein, the provisions of this Ordinance shall govern all appeals of final determinations by Agency staff including, without limitation, the granting or denial of variances, orders for corrective action, and the imposition of penalties.

1.03. Except as otherwise provided herein, the provisions of this Ordinance supersede the appeals provisions of previously enacted ordinances of the Water Resources Agency, and any reference to appeals procedures in such ordinances shall be deemed a reference to this Ordinance.

1.04. The provisions of this Ordinance are procedural only, and do not create rights of appeal independent of those existing under other Water Resources Agency ordinances. This Ordinance does not add to or reduce the Water Resources Agency's duties or authority relating to the enforcement of ordinances. Nothing in this Ordinance shall be construed to extend or otherwise affect the time period for challenging the validity of any Water Resources Agency ordinance.

1.05. Judicial review of matters governed by this Ordinance shall not be available until the appeals ~~procedures of this or any other applicable ordinance have been exhausted.~~

## **2.0. Matters Subject to Appeal.**

2.01. On appeal of an assessment, charge or fee imposed by the Water Resources Agency upon real property, an affected property owner may challenge the following determinations as they relate to his or her property:

2.01.01. The size or acreage of the property subject to the assessment, charge or fee;

2.01.02. The location of the property subject to the assessment, charge or fee;

2.01.03. The character or land use classification of the property subject to the assessment, charge or fee;

2.01.04. The basis for inclusion of the property within a zone, district or area subject to the assessment, charge or fee.

2.01.05. The type and degree of benefit conferred on the appellant's property by a flood control or other project of the Agency funded in whole or in part by the subject assessment, charge or fee.

2.02. On appeal of an administrative determination made pursuant to a Water Resources Agency ordinance, other than an ordinance imposing an assessment, charge or fee on real property, the subject ordinance shall govern:

2.02.01. What determinations may be appealed;

2.02.02. Who may bring an appeal;

2.02.03. The time for bringing an appeal, except that where no time is specified, the provisions of this Ordinance shall apply;

2.02.04. Any applicable fees for bringing an appeal.

**3.0. Hearing Board.**

3.01. All appeals governed by this Ordinance shall be heard by the Water Resources Agency Board of Directors.

3.02. Appeal hearings shall be open to the public, and may be conducted at any duly noticed regular or special meeting of the Board of Directors. Appeal hearings may be continued to future meetings until concluded.

3.03. At the hearing, the Board of Directors will consider de novo the issues on appeal. In deciding an appeal, the Board of Directors is not bound by the factual determinations of Agency staff which are the subject of the appeal.

3.04. The decision of the Board of Directors on any appeal shall be final, and there shall be no appeal to the Board of Supervisors of the Water Resources Agency, unless such further appeal is permitted by ordinance or by other law.

**4.0. Procedure for Appeal of an Assessment, Charge or Fee Imposed on Real Property.**

4.01. Time for bringing appeal; retroactivity. An appeal relating to any of the bases set forth in Section 2.01 may be brought at any time. Any inaccurate assessment, charge or fee discovered as a result of an appeal will be adjusted for the tax year in which the appeal was brought and for the immediately preceding tax years in which the inaccurate assessment, charge or fee was paid by the appellant, up to a maximum of the four consecutive tax years immediately preceding the appeal. Assessments, charges and fees older than four years shall not be subject to appeal or adjustment.

4.02. Informal resolution of issues. The Agency General Manager is hereby authorized to resolve factual issues with appellants or potential appellants and to make administrative adjustments to the Agency's tax roll without requiring formal evidentiary submittals or a hearing before the Board of Directors. Nothing in this section shall limit or preclude an appellant from submitting any relevant evidence to the Agency or from receiving a hearing before the Board of Directors as provided in this Ordinance. The General Manager shall report any administrative adjustments made pursuant to this section to the Board of Directors.

**4.03. Formal appeals.**

**4.03.01. Form and Content.** Appeals shall be in writing, signed, and shall set forth, at a minimum, the appellant's name, mailing address, daytime telephone number, the Assessor's Parcel Number of any parcel affected by the appeal, an identification of the assessment, charge or fee being appealed, and the factual basis for the appeal.

**4.03.02. Agency response and requests for additional information.** Within 30 days of receipt of an appeal pursuant to this section, the Agency shall acknowledge receipt of the appeal, and shall either confirm in writing that all necessary information has been submitted or inform the appellant in writing of any additional information necessary to process the appeal. In the event that additional information is requested by the Agency, the appellant shall submit all such information within 30 days of the Agency's request, or within any longer time period mutually agreed to by the Agency and the appellant.

**4.03.03. General Manager's recommendation.** Within 30 days of receipt of an appeal or all supplemental information submitted by the appellant, whichever is later, the Agency General Manager shall provide a written recommendation as to the appropriate disposition of the appeal. The General Manager's recommendation shall be based on findings which are supported by substantial evidence. The General Manager's recommendation shall be provided to the appellant, together with notice of the Board of Directors meeting at which the appeal will be heard pursuant to this Ordinance. A hearing before the Board of Directors shall be scheduled to commence within 60 days of the General Manager's written recommendation, unless that time is extended by mutual agreement.

**5.0. Procedure for Appeal of an Administrative Determination Pursuant to Ordinance.**

**5.01. Time for bringing appeal.** Unless otherwise provided in the ordinance giving rise to the subject of the appeal, an appeal of an administrative determination shall be brought within 15 days of the issuance of a citation or other written notification of the determination being appealed.

**5.02. Formal appeals.**

**5.02.01. Form and content.** Appeals shall be in writing and shall set forth, at a minimum, the appellant's name, mailing address, daytime telephone number, the determination being appealed, the factual basis for the appeal, and the appellant's signature.

**5.02.02.** Agency requests for additional information. Within 15 days of receipt of an appeal pursuant to this section, the Agency shall acknowledge receipt of the appeal, and shall either confirm in writing that all necessary information has been submitted or inform the appellant in writing of any additional information necessary to process the appeal. In the event that additional information is requested by the Agency, the appellant shall submit all such information within 15 days of the Agency's request, or within any longer time period mutually agreed to by the Agency and the appellant.

**5.02.03.** General Manager's recommendation. Within 15 days of receipt of an appeal or all supplemental information submitted by the appellant, whichever is later, the Agency General Manager shall provide a written recommendation as to the appropriate disposition of the appeal. The General Manager's recommendation shall be based on findings which are supported by substantial evidence. The General Manager's recommendation shall be provided to the appellant, together with notice of the Board of Directors meeting at which the appeal will be heard pursuant to this Ordinance. A hearing before the Board of Directors shall be scheduled to commence within 30 days of the General Manager's written recommendation, unless that time is extended by mutual agreement.

## **6.0. Appeal hearings.**

**6.01.** Presumptions; burden and standard of proof. There shall be a rebuttable presumption that an Agency ordinance which imposes an assessment, charge or fee or which prescribes or proscribes any activity or conduct is a valid legislative act. Except as otherwise provided in Article XIID of the California Constitution, the appellant shall bear the burden to prove, by a preponderance of the evidence, facts which support all elements of the appeal.

**6.02.** Presentations. All appeal hearings shall be conducted by the Board of Directors as provided by law and as may be specified in any bylaws duly adopted by the Board of Directors. At a minimum, the General Manager or Agency staff shall present a recommended disposition of the appeal for the Board's consideration, and the appellant shall have an opportunity to present testimony or other evidence supporting or opposing the staff recommendation.

**6.03.** Public participation. All appeal hearings shall be open to the public and shall be duly noticed in accordance with open meeting laws. Members of the public shall be afforded an opportunity to comment on any appeal being considered by the Board of Directors.

**6.04.** Findings and decision. The Board of Directors' disposition of any appeal shall be set forth in a resolution, which shall be based on and contain findings supported by substantial evidence in the record.

## **7.0. Effect of Appeal on Related Proceedings.**

**7.01.** Civil proceedings. The bringing of an appeal will not stay any civil proceeding pending against the appellant, or one in privity with the appellant, relating to a violation or alleged violation of a Water Resources Agency ordinance. The decision of a court in such civil proceeding shall prevail over any contrary result reached in an administrative appeal conducted pursuant to this or any other Agency ordinance.

## **7.02. Criminal proceedings.**

**7.02.01.** If the issuance of a citation is appealed pursuant to this or any other ordinance authorizing the appeal, then any criminal prosecution based on that citation shall be suspended until the appeal is completed. The foregoing shall not apply to prosecutions in which a time waiver is required and the defendant refuses to waive time. If the appeal is not pursued to completion, the criminal prosecution may be resumed, stayed or dismissed, at the Agency's discretion.

**7.02.02.** If the issuance of the subject citation is affirmed on appeal, the final decision shall state the amount of any fine to be paid to the Agency, and such fine shall be civilly enforceable against the defendant-appellant. If the issuance of the subject citation is overturned on appeal, any criminal prosecution based on that citation shall be dismissed, and no further criminal action taken with regard to the particular violation alleged therein.

## **8.0. Severability.**

If any provision of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase hereof irrespective of any other part being unconstitutional or invalid.

SECTION 2. This ordinance shall become effective on the thirty-first day following its adoption.