

# DRAFT

## Ordinance establishing a municipal fine for violation of wetland regulations

Per Connecticut General Statutes, Section 22a-42g

Includes revisions based on a Public Hearing on 11/28/05

Approved by the Greenwich Inland Wetlands and Watercourses  
Agency at a public meeting on December 19, 2005

# DRAFT

## **§ 6-238 Purpose**

This article establishes a means by which the Town of Greenwich may more effectively enforce the Inland Wetlands and Watercourses Regulations of the Town of Greenwich, with the implementation of fines for violations of the regulations. This article shall not be construed to limit or alter the authority, duty and responsibility of the Greenwich Inland Wetlands and Watercourses Agency as granted and established under Connecticut's Inland Wetlands and Watercourses Act, Sections 22a-36 through 22a-45 of the Connecticut General Statutes, Greenwich's Inland Wetlands and Watercourses Regulations and other legislation that may apply.

### **§ 6-238.1 Authority**

This article is adopted pursuant to Connecticut General Statute, Section 22a-42g and may be amended by the Greenwich Representative Town Meeting.

### **§ 6-238.2 Definitions**

The following words, terms and phrases used in this article shall have the following meanings:

“Agency” – The Town of Greenwich Inland Wetlands and Watercourses Agency, acting as the inland wetlands agency under Section 22a-42 of the Connecticut General Statutes.

“Director” – The employee of the Town of Greenwich responsible for the supervision of the Agency. The term “Director” shall also include any employee executing any duties expressly delegated by the Director.

“Continuing Violation” – Ongoing work, which has not ceased to the satisfaction of the Director within two calendar days of receipt of a Stop Work Order.

“Person” – Any person, firm, partnership, association, corporation, limited liability company, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.

“Regulations” – The Inland Wetlands and Watercourses Regulations of the Town of Greenwich as may be amended from time to time.

“Violation” – Any activity conducted without prior permit or approval of the Agency which adversely impacts or potentially adversely impacts an inland wetland or watercourse.

### **§ 6-238.3 Issuance of Citations**

A. The Director, with the prior advice and consent of the Chair of the Agency, may issue a citation to any person who commits a violation or a continuing violation of the town's Inland Wetlands and Watercourses Regulations. Any such citation may be issued either by hand delivery or by certified mail to the person named in such citation. In such instances, each citation will apply jointly and severally to the owner of the property in question and his/her agents, contractors and subcontractors. An original or certified copy of the initial citation issued by the issuing official shall be filed and retained by the Town of Greenwich and shall be deemed to be a business record within the scope of Section 52-180 of the Connecticut General Statutes and evidence of the facts contained therein. In addition, a copy of the initial citation shall be reported to The Connecticut Department of Environmental Protection, pursuant to Sections 22a-31-14 of the Connecticut General Statutes.

B. The citation shall inform such person:

- (1) Of the allegations against him or her for which the citation is issued pursuant to this Article and the amount of the fines, penalties and costs, as fees due;
- (2) That the person has a period of 30 days from the date of the citation (i.e., the date of hand delivery or the date the citation was mailed) to make an uncontested payment of the fines;
- (3) That payments shall be submitted to the Agency by check made payable to the Town of Greenwich.
- (4) The citation notice shall also inform the person cited that he/she may contest his liability before a citation hearing officer by delivering in person or by mail written notice within 10 days of the date thereof. The notice shall also inform the person cited that if he/she does not demand such a hearing, an assessment and judgment shall be entered against him/her and that such judgment may issue without further notice.

C. Each violation of the Inland Wetlands and Watercourses Regulations shall be a separate and distinct offense. In the case of a continuing violation, at the discretion of the Director and with the prior consent of the Chair of the Agency, daily citations may be issued commencing two calendar days from receipt of the Stop Work Order.

D. Preexisting violations. This article shall only apply to violations which occur after this article's effective date.

**§ 6-238.3.1 Establishment of Fine**

A. The fine shall not exceed the maximum permitted under state law, and the amount shall be determined in accordance with Subsection B of this section.

B. Fine schedule.

- (1) The fine for violations involving more than one activity shall be equal to the sum of the fines for each applicable activity class.

| <u>Activity Class</u>  | <u>Fine</u> |
|--|-------------|
| For activities that do not occur within inland wetlands, watercourses or their related established buffer areas.   | \$500       |
| For activities that occur within the established buffer area of an inland wetland or watercourse but not within its related inland wetland or watercourse. | \$750       |
| For activities that occur within an inland wetland or watercourse.   | \$1,000     |

C. No such fine may be levied against the State of Connecticut or any employee of the state acting within the scope of her/his employment.

D. Any fine collected by the Town of Greenwich pursuant to this article shall be deposited into the Town of Greenwich’s general fund account.

**§ 6-238.4 Hearing procedure for citations**

A. In accordance with Section 7-152c of the Connecticut General Statutes, as the same may be amended from time to time, there is hereby established a wetland citation hearing procedure.

B. The First Selectman shall appoint one or more citation hearing officers, other than police officers or employees or persons who issue citations, to conduct the hearings authorized by this article.

C. Admission of liability by payment of fine.

- (1) If any person who is sent notice pursuant to Subsections A and B of Section 6-238.3 wishes to admit liability for any alleged violation, he/she may, without requesting a hearing, pay the full amount of the fines, penalties, costs or fees admitted to in person or by mail to the Greenwich Inland Wetlands and Watercourses Agency. Checks should be made payable to the Town of Greenwich.
- (2) Such payment shall be inadmissible in any proceeding, civil or criminal, to establish the conduct of such person or other person making the payment.

D. Any person may demand a hearing by delivering a written request for the same to the Director within 10 days of the date of the first notice provided for in Subsections A and B of Section 6-238.3. Any person who does not deliver such written request shall be deemed to have admitted liability, and the Director shall certify such person's failure to respond to the hearing officer. The hearing officer shall thereupon enter and assess the fines, penalties, costs or fees provided for by this article and shall follow the procedures set forth in section 6-238.4.1.

E. Any person who requests a hearing shall be given written notice by certified mail 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 a postponement or continuance for any reasonable request by any interested party. Once a hearing has been requested, no additional citations shall be issued.

F. The presence of the issuing official shall be required at the hearing if such person so requests. A person wishing to contest his/her liability shall appear at the hearing and may present evidence in his/her behalf.

G. If the person that demanded a hearing fails to appear, the hearing officer may enter an assessment by default against him/her upon finding of proper notice and liability under this article.

H. A designated municipal official, other than the hearing officer, may present evidence on behalf of the municipality.

I. The hearing officer may accept from the designated municipal official copies of police reports, investigatory and citation reports and other official documents by mail and may determine thereby that the appearance of such person is not necessary.

J. The hearing officer shall conduct the hearing in the order and form and with such methods of proof as he/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.

- K. The hearing officer shall announce his/her decision at the end of the hearing.
- (1) If the hearing officer determines that the person is not liable, he/she shall dismiss the matter and enter his/her determination, in writing, accordingly.
  - (2) If the hearing officer determines that the person is liable for the violation, he/she shall then enter and assess the fines, penalties, costs or fees against such person as provided by this article.

**§ 6-238.4.1 Failure to Pay Fine**

If such assessment is not paid on the date of entry, the hearing officer shall send 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 facility designated by the Chief Court Administrator together with an entry fee of eight dollars. The certified copy of the notice of assessment shall constitute a record of assessment. Within such twelve-month period, assessments against the same person may be accrued and filed as one record of assessment. The Clerk of the Court shall enter a judgment, in the amount of the assessment plus court costs of \$8 against such person in favor of the Town of Greenwich. Notwithstanding any other provisions of the Connecticut General Statutes, the hearing officer's assessment, when so entered as a judgment, shall have the effect of a civil money judgment, and a levy of execution on such judgment may be issued without further notice to such person.

**§ 6-238.4.2 Appeals**

A person against whom an assessment has been entered pursuant to this article is entitled to judicial review by way of appeal. An appeal shall be instituted within 30 days of the mailing of notice of such assessment by filing a petition to reopen assessment, together with an entry fee in an amount equal to the entry fee for a small claims case pursuant to Section 52-259 of the Connecticut General Statutes, in the Superior Court, which shall entitle such person to a hearing in accordance with the rules of the judges of the Superior Court.

**§ 6-238.4.3 Public Notification**

Notice of (i) issuance of an initial citation, (ii) payment of a fine, and (iii) an appeal pursuant to this article shall be published by the Director at least once in a newspaper having a general circulation in the Town of Greenwich.

**§ 6-238.5 Effective date**

This article shall become effective on \_\_\_\_\_, 2006.