

Title 2

ADMINISTRATION¹

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¹Editor's note(s)—Employer-Employee Relations are covered in the Personnel Policy Manual that was adopted February 26, 1997.

Chapter 2.04 WATER AND SEWER PERMITS

2.04.010 Purpose.

The purposes of this chapter are to establish indemnity and insurance requirements for work authorized by water and sewer permit, to protect the district from risks of such work and to establish additional requirements for work authorized by water and sewer permit.

(Ord. 7 Art. 1, 1989)

2.04.020 Indemnity and insurance agreement required.

An applicant's execution of an indemnity and insurance agreement shall be a condition precedent to the district's issuance of a water or sewer permit. The agreement shall contain the following terms:

A. Indemnity.

1. The district, its directors, officers, employees, independent contractors and agents ("agents") shall not be answerable or accountable in any manner for any loss or damage that may occur to the work authorized by the permit, for any loss, damage or injury to persons or property arising from or related to the work authorized by the permit. The applicant shall properly guard against all such loss, injury or damage to persons and property.
2. The applicant shall be responsible for any damage to any person or property resulting from defects or obstructions or from any cause whatsoever during the progress of work, or at any time before its completion and final acceptance, in the case of public facilities, and during the period of the project guarantee as defined in Section 2.04.040D. The applicant shall assume the defense and indemnify and save harmless the district and its agents from every expense, liability or payment by reason of loss, injury (including death) or damage to person or property suffered through any applicant or applicant's contractors or sub-contractors, or anyone directly or indirectly employed by any of them, or arising in any way from the work authorized by this permit, on any part of the premises on which the work is performed. This provision shall not be deemed to require the applicant to indemnify the district and its agents against liability for damages arising from the sole negligence or willful misconduct of the district or its agents who are directly responsible to the district.

B. Insurance.

1. Applicant shall, at its sole cost and expense, obtain and maintain during the performance of the work authorized by this permit policies of insurance of the following types, with limits acceptable to the general manager based on the scope of the permitted work and the risk to the district:
 - a. Comprehensive general liability and auto liability insurance covering all operations and use of vehicles, including coverage for completed operations and for contractual liability. The property damage portion shall be written as "broad form" and shall include coverage for "x," "c" and "u" hazards.
 - b. Worker's compensation and employer's liability insurance.
2. Applicant shall not commence the work authorized by the permit until all insurance required by this section has been obtained and the insurance and carrier have been approved by the district. Approval of insurance by the district shall neither relieve nor decrease the liability of the applicant.

3. The district and its agents shall be named additional insureds on the policies of insurance. If the standard Insurance Services Office (ISO) form wording for "other insurance" is not contained in the applicant's liability insurance policy, an endorsement must be provided that said insurance will be primary insurance and no insurance of the additional insured will be called upon to contribute to a loss.
4. Applicant shall furnish to the district certificates of the insurance required by this section. The certificate of liability insurance shall indicate that broad form property damage "x", "c" and "u" coverage and contractual liability are provided, and shall have attached thereto an executed copy of the additional insured endorsement. Certificates shall also provide that not less than thirty days' advance written notice shall be given to the district in the event of cancellation or material change in the policy. Upon request and within ten days of request, applicant shall also furnish to the district a certified copy of any or all policies of insurance covering the work authorized by the permit. (Amended during 3-02 supplement: Ord. 7 Art. 3, 1989)

2.04.030 Work authorized by permit.

- A. Expiration of permits. If work under a permit is not commenced within six months from the date of issuance thereof, or if after partial completion the work is discontinued for a period of one year, the permit shall thereupon expire and become void, and no further work shall be done until a new permit is secured. A new fee shall be paid upon the issuance of the new permit.
- B. Commencing work. Applicant shall give written notice to the district at least five days before initially starting the work authorized by permit, and the district shall be notified when work is stopped and again started. (Amended during 3-02 supplement: Ord. 7 Art. 4, 1989)

2.04.040 Works within public rights-of-way.

- A. District property. Upon completion of construction and installation of any public mains, services, appurtenances and facilities to the general manager's satisfaction, all of said mains, services, appurtenances and facilities shall automatically and immediately become the property of the district, and the district may make extensions therefrom and connect laterals thereto at any points thereon.
- B. Areas of installation. No portion of the installation of any public mains, services, appurtenances or facilities shall be made unless the areas of installation are within dedicated streets, rights-of-way, or easements within pumping plant sites which have been furnished to and accepted by the district.
- C. Fire hydrants. Applicant's installation of or payment for one or more fire hydrants located in public rights-of-way, and the acceptance thereof by the district, shall give the applicant no new individual right or interest as to any such hydrant, and the applicant's rights or interests as to any such hydrant are the same as though a public fire protection agency or other responsible public or governmental agency had contracted and paid for, or made, the installation. On transfer to, and acceptance by, the district, the hydrants shall be district property and shall be used for public fire protection.
- D. Repair and replacement. If, within a period of one year after completion of any public work authorized by a permit, any structure or part of any structure furnished or installed or constructed by applicant, or any work done pursuant to the permit, fails to fulfill any of the district's requirements or the specifications approved by the district, applicant shall, without delay and without any cost to the district, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. If applicant fails to act promptly or if the exigencies of the case require repairs or replacements to be made before applicant can be notified, the district may, at its option, make the necessary repairs or replacements or perform the necessary work, and the applicant shall pay to the district the actual cost of those repairs, plus fifteen percent.

- E. Bonds. Applicant shall furnish the district with a labor and materials bond and a bond for faithful performance executed by a surety company admitted to do business in California. These bonds shall be for one hundred percent of the construction costs for the public water mains, sanitary sewers and appurtenances that are called for in the project plans approved by the general manager of the district. These bonds shall remain in force throughout the period required to complete the work and thereafter for a period of one year after final acceptance of the work to cover any defects in workmanship, materials or equipment which develop in that time. (Amended during 3-02 supplement: Ord. 7 Art. 5, 1989)

Chapter 2.06 BILLING PROCEDURES

2.06.010 Bills and payment.

- A. Rendering of bills.
1. Meter readings.
 - a. Meters will be read at monthly intervals for the preparation of regular bills, and as required for the preparation of opening bills, closing bills and special bills.
 - b. It may not always be possible to read meters on the same day of each period.
 - c. Where a meter cannot be read without undue difficulty because of an obstruction, the customer will be notified and requested to correct the condition. The district has the right to discontinue the service if the condition is not corrected. Where service is turned off for such cause, the district may require payment of a turn-on charge of one hundred dollars before restoring service.
 2. Bills for water service will be rendered monthly.
 3. Opening and closing bills.
 - a. Opening bills rendered for periods smaller or greater than one month will be prorated. For opening bills rendered for periods smaller or greater than one month, the minimum will be prorated with the usage charged per HCF.
 - b. Both opening and closing bills will be for not less than the monthly minimum charge, prorated for the number of days the account was active.
- B. Payment of bills.
1. Periodic bills are due and payable upon delivery to the customer. Payment may be made at the district's office or to an authorized collector.
 2. When bills are delinquent, the district may demand that the full amount of both delinquent and current bills be paid in full.
 3. If service is to be discontinued, closing bills are due and payable by the date on the bill.
 4. A fee of one hundred dollars may be charged if customer insists on field collection or if it is necessary to visit the customer's premises in order to collect his delinquent account. Exception to this provision may be made in cases of hardship.
- C. Billing of separate meters not combined. Each meter on customer's premises will be considered separately and the readings of two or more meters will not be combined, unless the district's operating convenience requires the use of more than one meter, or of a battery of meters. The minimum monthly charge for such combined meters will be based on the diameter of the total combined discharge areas of the meters. (Amended during 3-02 supplement: Ord. 34 § 8A, 1998; Ord. 3A § 3, 1987; Ord. 1 Art. II, § 12, 1967)

2.06.020 Disputed bills.

To dispute a bill, a customer must contact the district and provide all available evidence.

Should the customer not pay the disputed bill within fifteen days after presentation, the district will notify the customer in writing:

- A. That in lieu of paying the disputed bill he may deposit with the general manager the amount claimed due by the district.
- B. That checks or other forms of remittance so deposited should be made payable to the Marina Coast Water District.
- C. That upon receipt of a deposit, the general manager will investigate the matter, advise both parties of his findings, and dispose of the deposit in accordance therewith.
- D. That service will not be discontinued pending the outcome of the general manager's investigation provided that subsequent bills are paid or deposited with the district.
- E. That failure of the customer to make such deposits within ten days after the date of notification will warrant discontinuance of his service without further notice in accordance with Chapter 3.20. (Amended during 3-02 supplement: Ord. 34 § 8B, 1998; Ord. 3A § 4, 1987; Ord. 1 Art. II, § 13, 1967)

Chapter 2.08 VARIANCES AND APPEALS—REVENUES FROM ENFORCEMENT

2.08.010 Purpose.

The purpose of this chapter is to establish a procedure for variances and appeals, when variances and appeals are allowed by other provisions of this code.

2.08.020 Variances.

- A. Any person affected by this code may, at any time, apply in writing for a variance from the strict application of this code. The general manager shall prepare and maintain a form of application for variance as an element of the district's Procedures Guidelines and Design Requirements. A written application for the variance shall be filed with the district in substantially the form in the district's Procedures Guidelines and Design Requirements.
- B. Within five business days after a written request for a variance is filed with the district, the general manager or the general manager's designee shall make a written determination of the interpretation and application of this code and recommendation for action to the district board of directors on the variance request, and mail the written determination and recommendation to the address supplied by the applicant with the meeting date of the next regularly scheduled board meeting clearly stated in the letter, schedule permitting.
- C. The board will take action at that meeting or defer action until a later meeting when more information can be provided if required.
- D. The board shall have the power, by resolution, to approve or disapprove requests for variances, after considering recommendations received from the general manager. The board may approve variances from the requirements of this code only if the board makes the following findings:
 - 1. The strict application of the code would result in unfair or unequal treatment, undue hardship, or an emergency condition exists which requires that the variance be granted; and

2. Granting the variance will not cause a significant adverse effect on the water supply or on service to other persons served by the district; and
3. The variance is in the best interests of the district.

If each of these findings cannot be made, the variance shall be disapproved.

- E. In granting a variance, the board may impose any conditions in order to ensure that the variance is consistent with the purpose of the requirement from which the variance is granted. The granting of a variance and any conditions imposed upon such variance shall be set forth in writing by board action.
- F. Decisions under this section shall be final. A written notice of the decision shall be mailed to the address supplied by the applicant. Any civil proceedings relating to the underlying violation or alleged violation, and the decision of the court in such civil proceeding shall prevail over any contrary result in the administrative appeal.

(Ord. 45 § 4, 2007: amended during 3-02 supplement)

2.08.030 Appeals.

- A. Any person who has been cited for violation of this code, and any person aggrieved by any action taken by the general manager pursuant to this code, may appeal such citation, action, or decision to the board, by filing a written appeal with the district within ten days after the date of the citation, action, or decision. There will be a filing fee of fifteen dollars for all appeals.
- B. Rules and regulations for giving public notice of and for the conduct of the meetings and hearings of appeals shall be the same as for meetings and hearings of the board.
- C. Decisions on appeals under this section shall be final. A written notice of the decision shall be mailed to the appellant.
- D. In rendering its decision on appeals, the board shall determine which party is the prevailing party. If the appellant is the prevailing party, then the filing fee paid by the appellant shall be refunded to the appellant.
- E. The filing of an appeal hereunder will not stay any civil proceedings relating to the underlying violation or alleged violation, and the decision of the court in such civil proceeding shall prevail over any contrary result in the administrative appeal. (Amended during 3-02 supplement)

2.08.040 Rules and procedures.

The board may adopt rules and procedures by resolution to assist in implementing this chapter, but this chapter is self-executing and does not depend on rules and procedures to be effective. (Amended during 3-02 supplement)

2.08.050 Revenues received from enforcement.

All revenues generated from enforcement of this code shall be used exclusively for district purposes, including but not limited to administrative, monitoring, appeals, and enforcement costs. (Amended during 3-02 supplement)

Chapter 2.09 LOCAL EMERGENCY

2.09.010 Purpose.

The purpose of this chapter is to establish procedures for issuance of an emergency proclamation to provide the basis for a duly proclaimed existence of conditions of emergency, that is, conditions of disaster or of extreme peril to the safety of person and property within the district, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the governor's warning of an earthquake or volcanic prediction, or an earthquake, terrorism, or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of the district and require the combined forces of others to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage, which declaration will help mobilizing necessary services and personnel, and in requesting disaster assistance and funding from local, state and federal agencies.

(Ord. 44 § 4 (part), 2007)

2.09.020 Emergency proclamation.

- A. The district general manager may proclaim the existence or threatened existence of a local emergency when the district is affected or likely to be affected by a public calamity and the district board of directors is not in session. The general manager must find that conditions described in Section 2.09.010 exist and that these conditions are or are likely to be beyond the control of the services, personnel, equipment, and facilities of said district.
- B. Based on the findings in subsection A of this section, the general manager may proclaim that a local emergency exists in the district, and order that during the existence of the emergency, the powers, functions, and duties of the emergency organization of the district shall be those prescribed by state law, by ordinances, and resolutions of the district; and that this emergency proclamation shall expire in seven days after issuance unless confirmed and ratified by the governing body of the district or as soon as possible thereafter. The general manager may extend the length of the emergency proclamation until the board can meet and take action on the proclamation. The proclamation will be substantially in the form set forth in Exhibit A, Sample Emergency Proclamation, Appendix G.

(Ord. 44 § 4 (part), 2007)

2.09.030 Emergency procedures.

During an emergency proclaimed pursuant to Section 2.09.020, the following shall apply:

- A. The general manager shall have authority to obligate the funds of the district in accordance with resolutions adopted from time to time by the board of directors will apply.
- B. The board of directors will meet within seven days after issuance of the emergency proclamation, or as soon thereafter as possible, to confirm and ratify the general manager's emergency proclamation.
- C. The district shall take the following specific actions:
 - 1. The district shall provide to the county of Monterey, office of emergency services and California Department of Health Services, confirmation that a proclamation of emergency has been issued by the district as soon as possible after issuance. The district shall notify other local land use jurisdiction

representatives, such as city managers, of the proclamation in a time reflecting the immediacy of the impact to their jurisdiction.

2. The district shall document costs associated with the emergency and shall apply for available federal and state financial assistance to pay for costs occasioned by the emergency.
- D. The general manager shall terminate the emergency when (1) the conditions that caused the proclamation to be issued no longer exist or are believed by the general manager to no longer exist; and (2) recovery from these conditions has reached a stage that will permit a return to normal operations.

(Ord. 44 § 4 (part), 2007)

Chapter 2.10 LOCAL HIRING FOR PUBLIC WORKS

2.10.010 Local hiring for public works.

All district contracts for public works or other new construction not performed by district personnel shall contain provisions which require the contractor to make a good faith effort, to include but not limited to requesting the assistance of community resources designated by the district, to hire qualified individuals who are residents of the Monterey Bay area. All such contractors shall strive to hire no less than eighty percent of their employees performing the work from the pool of qualified workers who reside in Monterey, Santa Cruz or San Benito Counties. Only persons who are domiciled in one of these counties at the time of the bid shall be considered "local" for the purpose of this resolution. This requirement also applies to subcontractor employees under such contracts.

(Ord. No. 53, § 4, 5-27-2010)

2.10.020 Binding on subcontractors.

The good faith local hiring provisions of this chapter shall bind the contractor both with regard to persons hired directly and to all persons hired by the contractor's subcontractors. The contractor shall include the following in all contracts with subcontractors:

"This contract is for labor for a MCWD public works project. As subcontractor on a district project you are required to comply with all of the provisions of Ordinance 53 Local Hiring. Failure to comply with the local hiring ordinance may subject the subcontractor herein with disqualification from any future MCWD public works contracts."

(Ord. No. 53, § 4, 5-27-2010)

2.10.030 Required documentation.

The contractor shall keep an accurate record on a standardized form showing the name, place of residence, classification, hours employed, per diem wages and benefits of each person employed by the contractor on specific public works projects.

(Ord. No. 53, § 4, 5-27-2010)

2.10.040 Noncompliance.

If the MCWD manager with responsibility for the contract believes that any contractor or subcontractor has not made a good faith effort to comply with this provision, the manager shall conduct an investigation. If the

investigation reveals non-compliance, the manager shall make a report to the general manager or his designee. The report shall be provided to the contractor who shall have an opportunity to appeal any negative finding to the general manager. Appeals must be made within ten days of receipt of the negative finding. The general manager, after due consideration of any appeal, may disqualify any contractor or subcontractor declared to be non-compliant with this ordinance disqualified from eligibility for providing services to the district for a period of one year.

(Ord. No. 53, § 4, 5-27-2010)

2.10.050 Definitions.

The following definitions shall apply to this ordinance:

"Contractor" means any person or entity which, pursuant to a written agreement, provides labor services on a public works project to MCWD.

"Hire" means hire or employ on the specified project.

"Monterey Bay Area" means Monterey County, San Benito County and Santa Cruz County.

"Resident of the Monterey Bay area" means an individual who is domiciled within the boundaries of the three counties and who can provide reliable evidence that verifies resident status. A worker who is a building trade journeyman or apprentice whose local hiring hall has jurisdiction over the Monterey Bay area is also deemed a resident of the Monterey Bay area.

"Subcontractor" means any person or entity who provides labor services under an agreement with a contractor who is contracted to provide such services on a public works project for the district.

(Ord. No. 53, § 4, 5-27-2010)

2.10.060 Exceptions.

The provisions of the ordinance codified in this chapter shall not apply under the following circumstances:

Whenever a state, federal or local law or regulation applicable to a particular grant or contract for public works prohibits a local hire requirement;

Whenever the district in accordance with the requirements of its rules, determines that the contract is necessary to respond to an emergency which endangers the public health, safety or welfare;

Whenever the district determines that a suitable pool of persons providing specialized skills does not exist locally for a specific public works project;

When such an exception is invoked, the basis of the exception shall be included in a staff report to the board.

(Ord. No. 53, § 4, 5-27-2010)