

ORDINANCE NO. 365-15

WATER THEFT PENALTY ORDINANCE

Introduced by Director Coleman ; Seconded by Director Patterson

WHEREAS, California Penal Code section 498 prohibits the theft of utility services, including water; and

WHEREAS, California Penal Code section 624 prohibits every person from willfully damaging, tampering with, or digging up water pipes or waterworks; and

WHEREAS, California Penal Code section 625 prohibits every person who, with intent to defraud or injure, opens or causes to be opened, or draws water from any disconnected utility connection after having been notified that the same has been closed or shut for specific cause, by order of competent authority; and

WHEREAS, any person who violates Penal Code sections 498, 624, or 625 is guilty of a misdemeanor; and

WHEREAS, California Civil Code section 1882 *et seq.* authorizes the East Bay Municipal Utility District (the "District") to bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts any of the following acts:

- a. Diverts, or causes to be diverted, utility services by any means whatsoever.
- b. Makes, or causes to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility.
- c. Prevents any utility meter, or other device used in determining the charge for utility services, from accurately performing its measuring function by tampering or by any other means.
- d. Tampers with any property owned or used by the utility to provide utility services.
- e. Uses or receives the direct benefit of all, or a portion, of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use, or that the use or receipt, was without the authorization or consent of the utility; and

WHEREAS, pursuant to California Civil Code section 1882 *et seq.*, the District may bring a civil action for the unauthorized use of District water; and

WHEREAS, the District's "Regulations Governing Water Service to Customers of the East Bay Municipal Utility District" (the "Regulations"), including Sections 7, 15, 19, and 23, establish

rules and regulations that govern the use of water and prohibit water theft from District facilities; and

WHEREAS, pursuant to California Government Code section 53069.4, the District may, by ordinance, make the violation of any ordinance enacted by its Board of Directors subject to a civil administrative fine or penalty; and

WHEREAS, because water is a vital resource, the District has determined that it is appropriate to impose civil administrative fines for the theft of water to protect this vital resource;

BE IT ENACTED by the Board of Directors of the East Bay Municipal Utility District as follows:

Section 1. Recitals. The District hereby finds and determines that the above recitals are true and correct and are incorporated herein.

Section 2. Administrative Penalties.

a. For the purposes of this Ordinance, “water theft” means and includes all of the following:

1. the use, diversion, receipt or taking of District water by any means from any public fire hydrant, blow-off valve, water main, water service lateral or other District facility or connection to a District facility, to which a District authorized metering device has not been installed or has been removed by the District; and

2. the use, diversion, receipt, or taking of District water by any means without paying the full and lawful District charges for such water, or by tampering with District property or facilities, such as by removing a lock or plug that has been placed on a customer’s service or meter, or unauthorized use, or by tampering with a service connection or bypassing a meter, or by making an unauthorized connection to any District facilities and any public fire hydrant.

3. For the purposes of this ordinance, “unauthorized use” includes the use of water from a stationary service connection where lawful water service has been discontinued or from a public fire hydrant to supply water outside of the District service area, regardless of whether payment is provided to the District for the water drawn from the public fire hydrant, or any use of a hydrant meter in violation of the terms and conditions of a hydrant meter permit.

b. Water theft is prohibited. Each act of water theft constitutes a misdemeanor.

c. The District may report any water theft to the appropriate prosecuting agency and press for prosecution of said activity pursuant to the Penal Code. In addition to pursuing criminal penalties, the District, upon discovering water theft or tampering with District property, may also pursue the following remedies or other remedies available at law or equity:

1. require the immediate removal of any equipment, connections or tools used to accomplish the water theft that is attached to District property;
2. charge the customer or perpetrator an administrative penalty of:
 - A. \$1,000 for the first violation;
 - B. \$2,000 for a second violation within a twelve-month period; and
 - C. \$3,000 for each violation thereafter within a twelve-month period.

Section 3. Other Remedies. In addition to any other remedies provided in this Ordinance or available under applicable law, the District may alternatively seek injunctive relief in the Superior Court or take enforcement action. All remedies provided herein shall be cumulative and not exclusive. If a customer or any other person turns on water service without District authorization, tampers with any locked water meter, tampers with a service connection or District facilities, bypasses a meter, or otherwise makes an unauthorized connection to District facilities without District permission, commits water theft, the District may:

- a. turn off the water service and install a lock;
- b. estimate, if necessary, the water taken and charge the customer, offender or water recipient three times the normal rate of the water taken from the District facility;
- c. charge the customer, offender or water recipient for the damage to the District lock, meter or other property;
- d. remove the meter and plug the service;
- e. terminate and remove the service from its connection to the water main;
- f. charge a deposit of two times the amount of the average use to reestablish service;
- g. require the return of any District hydrant meter; and
- h. prohibit any person who has committed three violations of this Ordinance within a twelve-month period from obtaining a District hydrant meter permit for a period of three (3) years from the date of the third violation.

Section 4. Payment and Appeal Procedures. The District shall calculate the amount of damages and penalty(ies) to be imposed, and shall send a bill to the customer, or if the offender is not a customer of record, an invoice for payment of the damages or penalty(ies) may be sent to the offender or water user or recipient.

a. All costs relating to the District's processing and handling of the water theft, investigation and enforcement thereof, and potential charges for reestablishment of service, shall be borne by the party having responsibility for the water account at the time of the water theft, or if there is no customer of record, by the offender or water user or recipient. These charges include, but are not limited to, service call charges, water charges, turnoff of service, charges for damage to District facilities and equipment, and plug and/or termination fees. Before the meter will be replaced and service reestablished, the party requesting service, if in any way involved in or related to, or associated with, parties involved in the water theft, shall deposit twice the average bi-monthly water bill, plus the standard meter reinstallation fee, in addition to all service call charges, and an amount representing any damage to District property.

b. All charges relating to the District's processing and handling of the water theft involving the taking of water from a public fire hydrant shall be borne by the offender or water user or recipient, including, but not limited to, the cost of any water, charges for any damage to District facilities and equipment, and costs of investigation and enforcement.

c. Any person (an "appellant") who wishes to appeal the imposition of an administrative penalty imposed by the District pursuant to this Ordinance, or who wishes to appeal the imposition of a three-year prohibition on a hydrant meter permit pursuant to Section 3(h), shall comply with the following procedures:

1. The appellant shall submit an appeal request form to the District's Customer Service Division no later than fifteen (15) calendar days from the date of the bill or invoice sent to the customer or offender.

2. A response to the appeal request shall be provided by the District within thirty (30) calendar days from receipt of the appeal request form.

3. If an appeal request is denied, the appellant may resubmit the appeal request form no later than fifteen (15) calendar days from the date of the denial for review by the District's Customer Service Manager.

4. If an appeal request is denied, the appellant may resubmit the appeal request form for review by the District's Manager of Customer and Community Services Department, or his or her authorized designee. The request form shall be resubmitted no later than fifteen (15) calendar days from the date of the denial of the appeal by the District's Customer Service Manager. The appellant may request to provide evidence in writing or in person in support of his or her appeal to the District's Manager of Customer and Community Services Department, or his or her authorized designee.

5. The decision by the District's Manager of Customer and Community Service, or authorized designee, shall be final.


6. Within ten (10) days after the denial of the appeal is deemed final, the appellant shall pay any disputed penalty(ies) imposed by the District.

7. The provisions of Section 1094.6 of the Code of Civil Procedure of the State of California shall be applicable to judicial review of the decision.

Section 5. Conflicting Provisions. If provisions of this Ordinance are in conflict with each other, other provisions of the District's regulations or policies, any other resolution or ordinance of the District, or any State law or regulation, the more restrictive provisions shall apply.

Section 6. Severability. If any provision, section, subsection, sentence, clause or phrase or sections of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance shall not be affected, it being the intent of the Board of Directors in adopting this Ordinance that no portions, provisions, or regulations contained herein shall become inoperative, or fail by reason of the unconstitutionality of any other provision hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 7. Effective Date. This Ordinance shall become effective and in full force at 12:01 a.m. on the thirty-first day after its passage.



President

I HEREBY CERTIFY that the foregoing Ordinance was duly and regularly introduced at a regular meeting of EAST BAY MUNICIPAL UTILITY DISTRICT held on April 14, 2015, at the offices of said District, 375 - 11th Street, Oakland, California, and thereupon, after being read, further action was scheduled for the regular meeting of said Board of Directors held at the same place on April 28, 2015, at which time the same was finally adopted by the following vote:

AYES: Directors Coleman, Katz, Linney, McIntosh,
Patterson, Young, and President Mellon.

NOES: None.

ABSENT: None.

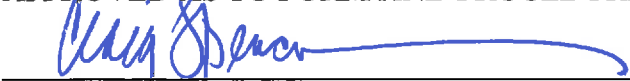
ABSTAIN: None.

ATTEST:



Secretary

APPROVED AS TO FORM AND PROCEDURE:



General Counsel