

ORDINANCE NO. 364-15

EXCESSIVE WATER USE PENALTY ORDINANCE FOR DROUGHT STAGES 3 AND 4

Introduced by Director Linney ; Seconded by Director McIntosh

WHEREAS, California Constitution article X, section 2 and California Water Code section 100 provide that because of conditions prevailing in the state of California (the "State"), it is the declared policy of the State that the general welfare requires that the water resources of the State shall be put to beneficial use to the fullest extent of which they are capable, the waste or unreasonable use or unreasonable method of use of water shall be prevented, and the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and the public welfare; and

WHEREAS, pursuant to California Water Code section 106, it is the declared policy of the State that the use of water for domestic use is the highest use of water and that the next highest use is for irrigation; and

WHEREAS, pursuant to California Water Code section 375, the East Bay Municipal Utility District (the "District") is authorized to adopt and enforce a water conservation program to reduce the quantity of water used by persons within its jurisdiction for the purpose of conserving the water supplies of the District; and

WHEREAS, because of the declared policy of the State, the District hereby finds and determines that it is necessary and appropriate for the District to adopt, implement, and enforce a water conservation program to reduce the quantity of water used by consumers within the District to ensure that there is sufficient water for human consumption, sanitation, and fire protection; and

WHEREAS, pursuant to California Water Code section 350, the Board of Directors is authorized to declare a water shortage emergency to prevail within its jurisdiction when it finds and determines that the District will not be able to or cannot satisfy the ordinary demands and requirements of water consumers without depleting the water supply of the District to the extent that there would be insufficient water for human consumption, sanitation, and fire protection; and

WHEREAS, in the event the District determines that it is necessary to declare that a water shortage exists, the District will be authorized pursuant to this Ordinance to implement certain water shortage response measures and a water conservation and regulatory program to regulate water consumption activities within the District and ensure that the water delivered in the District is put to beneficial use for the greatest public benefit, with particular regard to domestic use, including human consumption, sanitation, and fire protection, and that the waste or unreasonable use of water is prevented; and

WHEREAS, the District is authorized to prescribe and define by ordinance restrictions, prohibitions, and exclusions for the use of water during a threatened or existing water shortage and adopt and enforce a water conservation and regulatory program to: (i) prohibit the waste or

the unreasonable use of District water during such periods; (ii) prohibit the use of water during such periods for specific uses which the District may from time to time find to be nonessential, an unreasonable use, an unreasonable method of use, or a waste of water; and (iii) reduce and restrict the quantity of water used by those persons within the District for the purpose of conserving the water supplies of the District; and

WHEREAS, it has been estimated that more than half of residential water use in many parts of California is used to irrigate lawns and outdoor landscaping; and

WHEREAS, the District has determined that during water shortages, the use of outdoor water for irrigating lawns and outdoor landscaping is not essential to public health and safety, and may be an unreasonable use, an unreasonable method of use, or a waste of water; and

WHEREAS, during a water shortage the greatest reductions in water usage may best be achieved by single-family residential customers by reducing the amount of discretionary, nonessential use of potable water to irrigate lawns and landscaping; and

WHEREAS, water use by commercial and industrial customers is generally non-discretionary in that water is almost exclusively used for purposes such as product development, production processes and other market conditions, and as such, penalties are not likely to result in increased conservation for non-essential uses; and

WHEREAS, commercial and industrial customers are not as homogenous in their water use as single-family residential customers; rather their water use varies across all business types and industries; and

WHEREAS, water use by commercial customers and multi-family customers without individual meters is not homogeneous or discretionary, and

WHEREAS, irrigation and mixed use customers participate in other programs that have resulted, and continue to result, in reductions in their use of potable water, including, but not limited to the option of using lower-cost recycled water; and

WHEREAS, to secure compliance with the rules and regulations established during Stages 3 and 4, as such terms are defined herein, and assure important public policy objectives are achieved for the reduction of water usage during severe and critical water shortages, the District is proposing to establish and impose penalties for excessive water usage by single-family residential customers when the District has declared a Stage 3 or a Stage 4 water shortage; and

WHEREAS, for the reasons stated above, the District is not proposing to establish in this Ordinance any mandatory water use restrictions or associated penalties on any commercial or industrial customers, or multi-family customers without individual meters when the District has declared a Stage 3 or a Stage 4 water shortage; 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, the Board of Directors hereby finds and determines that it is desirable to codify the rules and regulations governing its actions, and the actions of persons using and consuming water within the District, particularly during declared Stage 3 or Stage 4 water shortages to protect the general welfare and the District's water supplies, and to reduce water consumption in accordance with the declared policies and laws of the State; and

WHEREAS, the Board of Directors hereby finds and determines that when the District implements Stage 3 and Stage 4 rules and regulations to conserve and protect the District's water supplies, reduce the quantity of water consumed, and deter and prevent the waste or unreasonable use or unreasonable method of use of valuable water resources, administrative penalties may be imposed upon any person who willfully uses water in excess of the water use restrictions set forth herein;

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. Findings. The Board of Directors finds and determines that because of the prevailing conditions in the State, and the declared policy of the State, it is necessary and appropriate for the District to adopt, implement, and enforce a water conservation program to reduce the quantity of water used by single-family residential customers within the District to ensure that there is sufficient water for human consumption, sanitation, and fire protection. The District further finds and determines that during periods of drought, water shortages, and water shortage emergencies, the general welfare requires that the District maximize the beneficial use of its available water resources to the extent that it is capable, and that the waste or unreasonable use, or unreasonable method of use of water shall be prevented and the conservation of water is to be extended with the view to the reasonable and beneficial use thereof in the interests of the people of the District and for the public health, safety, and welfare.

Section 3. Water Use Restrictions and Regulations During Stage 3 and Stage 4. The Board of Directors hereby adopts and authorizes the following water conservation and water shortage rules and regulations governing the use of water by single-family residential customers:

A. DEFINITIONS

For the purposes of this Ordinance, the following words, terms, and phrases shall have the following meanings:

“Appellant” means the person appealing the imposition of a penalty imposed by the District for a violation of this Ordinance.

“Billing cycle” means the billing period in which a single-family residential customer’s water use is measured for purposes of calculating the amount of the water service fees that shall be collected for the water service provided.

“CCF” means one hundred cubic feet. EBMUD bills for water use are based on units, with each unit equaling one (1) CCF. Each unit equals 748 gallons.

“Contingency Plan” means the District’s water shortage contingency plan, including any supplement or amendment thereto.

“District” means the East Bay Municipal Utility District.

“General Manager” means the General Manager of the District or his or her authorized designee.

“Disaster” means a catastrophic, naturally occurring or man-made event, including, but not limited to, an earthquake, flood, fire, riot, or storm, for which a state of emergency has been declared by the President of the United States, the Governor of California, or the executive officer or legislative body of a local agency that is within the District’s service area.

“Person” means any natural person, firm, joint venture, joint stock company, partnership, public or private association, club, company, corporation, business trust, organization, public or private agency, government agency or institution, school district, college, university, any other user of water provided by the District, or the manager, lessee, agent, servant, officer or employee of any of them or any other entity which is recognized by law as the subject of rights or duties.

“Potable water” means that water furnished to the single-family residential customer that complies with federal and State drinking water regulations and standards, or any other applicable standards, for human consumption.

“Rules and regulations” means the rules and regulations governing the amount of water that may be used by a single-family residential customer during an applicable water shortage stage, and any terms and conditions respecting restrictions on the use, method of use, and consumption of water in effect during an applicable water shortage stage as set forth in this Ordinance.

“Single-family residential customer” means a person who, according to the District’s records, has a single-family residential account or a multi-family residential account with a business classification code 8800, and receives water service or recycled water service to a single-family residence or a multi-family residence that is individually metered.

“Stage 3” means the stage at which the District has determined that a severe water supply shortage exists and mandatory reductions in water use are required to achieve a reduction in water usage by amounts as set forth herein and declared by the Board of Directors, or as may be established from time-to-time in accordance with the Contingency Plan.

“Stage 4” means the stage at which the District has determined that a critical water supply shortage exists and mandatory reductions in water use are required to achieve a reduction in water usage by amounts as set forth herein and declared by the Board of Directors, or as may be established from time-to-time in accordance with the Contingency Plan.

“State” means the state of California, including any department or regulatory agency thereof.

“Water shortage stage” or “stage” means a Stage 3 or Stage 4.

B. REDUCTIONS IN WATER SUPPLY

1. **Reductions in Water Supply.** If the rules and regulations set forth in this Ordinance are inadequate to protect the District’s potable water supply, the Board of Directors reserves the right to implement further mandatory rules and regulations to reduce the amount of water used within the District. The rules and regulations are necessary to respond to any significant reductions to the District’s water supply as a result of drought, natural disasters, regulatory action, and planned or unplanned potable water shortages.

2. **Application.** The provisions of this Ordinance shall apply to all single-family residential customers using potable water within the District.

C. DECLARATION AND NOTICE OF WATER SHORTAGE STAGES

1. **District Water Supply.** The General Manager shall monitor the projected supply and demand for water by the District’s customers during periods of a water shortage or drought and shall recommend to the Board of Directors the extent of the conservation measures, including rules and regulations, required through the implementation and/or termination of particular water shortage stages to prudently plan for supplying water to its customers. The General Manager will recommend the appropriate water shortage stage of response to a water shortage based on the best information available at the time.

2. **Declaration of Water Shortage Stages.** The declaration of any water shortage stage and applicable rules and regulations shall be made by the Board of Directors.

a. The declaration shall become effective immediately upon adoption by the Board of Directors.

b. Any penalties authorized to be imposed during the declared water shortage stage, however, shall not be imposed on any single-family residential customer until a declaration of a Stage 3 or Stage 4 water shortage has been made by the Board.

3. **Due and Proper Notice.** Upon the adoption of this Ordinance, due and proper notice shall be deemed to have been given each and every single-family residential customer supplied water within the District of the rules and regulations governing the water shortage stages as described herein, the applicable rules and regulations that will be in effect during the

specified stages, and any penalties that may be imposed for violations of such rules and regulations.

D. IMPLEMENTATION OF WATER SHORTAGE STAGES

1. **Recommendations by the General Manager.** As water supply conditions change, the General Manager may return to the Board of Directors to recommend, as appropriate, revising or terminating the appropriate water shortage stage, and any applicable rules and regulations.

2. **Order of Stages.** It shall not be necessary to implement any water shortage stage prior to another; the water shortage stages may be implemented in any reasonable order and shall continue to be in effect until the Board makes a determination to terminate the applicable water shortage stage.

3. **Water Supply Conditions.** The District will implement an appropriate water shortage stage and rules and regulations based on current and projected water conditions. Higher stages and/or additional rules and regulations may be implemented as water shortages continue and/or if single-family residential customers' responses to the rules and regulations then in effect do not bring about desired water savings.

4. **Cumulative Impacts.** Rules and regulations, penalties and enforcement will build on each other as water shortage stages advance.

5. **Actions or Restrictions by the State.** If the State, through executive action, emergency legislation or other actions, imposes conditions, requirements, or procedures that are not included in this Ordinance, the General Manager is authorized to implement such rules and regulations as are reasonably required to bring the District's actions in each stage into functional conformity with such conditions, requirements, or procedures.

6. **Public Outreach.** When the Board of Directors declares a water shortage stage, any or all of the following public outreach measures may be implemented:

a. The District may notify the general public, stakeholders, elected officials, and other key decision-makers regarding the water shortage stage, actions to be taken, and customer demand reduction goals.

b. The public at large will be informed of the water shortage stage, customer demand reduction rules and regulations, and other actions the District will be taking to reduce the demand for water within the District. Communications may occur through, but are not limited to, any of the following: billing inserts; special mailings; telephone contact; e-mail; roadway signage; billboards; home water reports; telephone on hold messages; water conservation booths and other communication venues in the community; workshops; community association meetings; newsletters; and education programs, etc. Literature appropriate to the water shortage condition and stage, conservation methods, and water-savings devices may be made available to the public.

c. The use of all forms of media may be employed by the District. This includes public service announcements on radio and cable television, social media and earned media, and advertisements in local newspapers.

d. The District's web site, www.ebmud.com, will be the central location for messaging and communications with single-family residential customers regarding the applicable water shortage stage and the rules and regulations governing the use of water then in effect.

E. RULES AND REGULATIONS

1. **Rules and Regulations are Mandatory.** Any rules and regulations adopted during a water shortage stage are mandatory.

2. **Violations of Rules and Regulations.** Violations of any rules and regulations are subject to criminal, civil, and administrative penalties and remedies as provided for in this Ordinance.

3. **Stage 3 Mandatory Water Use Restrictions.** After a Stage 3 has been declared and the District has completed the notice requirements set forth in Section 3.C. of this Ordinance, each single-family residential customer who has had a potable water account with the District shall be limited to using potable water as follows:

a. If the customer's billing cycle is fifty-five (55) to sixty-eight (68) days, the customer shall be limited to using one hundred twenty (120) CCF of potable water per billing cycle for indoor and outdoor water purposes for his or her property.

b. If the customer's billing cycle is twenty-five (25) to thirty-eight (38) days, the customer shall be limited to using sixty (60) CCF of potable water per billing cycle for indoor and outdoor water purposes for his or her property.

4. **Stage 4 Mandatory Water Use Restrictions.** After a Stage 4 has been declared and the District has completed the notice requirements set forth in Section 3.C. of this Ordinance, each single-family residential customer who has had a potable water account with the District shall be limited to using potable water as follows:

a. If the customer's billing cycle is fifty-five (55) to sixty-eight (68) days, the customer shall be limited to using eighty (80) CCF of potable water per billing cycle for indoor and outdoor water purposes for his or her property.

b. If the customer's billing cycle is twenty-five (25) to thirty-eight (38) days, the customer shall be limited to using forty (40) CCF of potable water per billing cycle for indoor and outdoor water purposes for his or her property.

F. VIOLATIONS, PENALTIES, AND OTHER REMEDIES

1. **Administrative Penalties for Exceeding Mandatory Water Use Restrictions During Stage 3.** After a Stage 3 or a Stage 4 has been declared, and the District has completed the notice requirements set forth in Section 3.C. of this Ordinance, any potable water used by a single-family residential customer in excess of the mandatory rules and regulations then effect during a billing cycle as provided in Section 3.E.3 or 3.E.4 shall be:

- a. deemed a waste of water;
- b. a violation of the District's rules and regulations; and
- c. subject to a civil administrative penalty of two dollars (\$2.00) per CCF, or portion thereof, of water delivered to the property in excess of the mandatory rules and regulations.

2. **Payment of Penalties.** Any penalty imposed pursuant to Section 3.F.1 shall be:

- a. applicable to all potable water used in excess of the water use restrictions imposed by the mandatory rules and regulations after the declaration of the applicable water shortage stage;
- b. collected on the single-family residential customer's water bill;
- c. due and payable as part of the water bill charges;
- d. the responsibility of the single-family residential customer of record for the property where the violation occurred; and
- e. paid in addition to the water service fees the District imposes for the potable water delivered to the property where the violation occurred.

3. **Non-payment of Penalty.** Non-payment of any penalty imposed pursuant to this Ordinance shall be subject to the same remedies available to the District as for non-payment of basic water rates.

4. **Notice of Violation.** The receipt of a water bill with any applicable penalty shall serve as notice of violation of the District's rules and regulations herein.

5. **Misdemeanor Violations.** It shall be unlawful for any person to willfully violate any provisions of this Ordinance. A violation of any of these provisions is a misdemeanor in accordance with California Water Code section 377.

6. **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, including discontinuing or appropriately limiting

water service to any single-family residential customer, locking a service, or installing a flow restricting device, for violations of this Ordinance and applicable charges. All remedies provided herein shall be cumulative and not exclusive.

7. **Non-liability for Damage.** A single-family residential customer who violates this Ordinance assumes responsibility for injury to the single-family residential customer and/or other residents/occupants receiving service, including emotional distress and/or damage to the single-family residential customer's private water system and/or to other real or personal property owned by the single-family residential customer or by a third party resulting from the installation and operation of a flow restricting device or from termination of service. The single-family residential customer shall thereby be deemed to have:

a. waived any claim for injury or for damage to the single-family residential customer's property which the single-family residential customer may have otherwise have against the District; and

b. agreed to indemnify, defend, and hold the District harmless from claims by third parties for injury or property damage arising or claimed to arise out of the District's installation and/or operation of a flow restricting device or termination of water service.

G. APPEAL PROCEDURES

1. **Filing an Appeal.** Any person (an "appellant") who wishes to appeal the imposition of an administrative penalty imposed by the District pursuant to this Ordinance shall comply with the following procedures:

a. The appellant shall pay all amounts due and owing on his or her water bill, except for any disputed penalty(ies) imposed by the District pursuant to this Ordinance.

b. 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 appellant's water bill for the billing cycle in which any penalty(ies) are imposed.

2. **Basis for Granting an Appeal.** An appeal may be granted under the following limited circumstances:

a. The amount of water delivered to the appellant's property did not violate the rules and regulations, as evidenced by a demonstrable malfunction in the meter serving the appellant's property or a billing error by the District.

b. The appellant demonstrates the water use is needed for health and/or safety reasons.

c. The appellant demonstrates a water leak occurred at his or her property during the billing cycle in which the penalty was imposed, resulting in water loss that did not benefit the appellant.

3. **Additional Documentation.** Additional documentation may be requested at the discretion of the District's Customer Service Division.

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

5. **Review or Denial of Appeal Request.** If an appeal request is denied, the appellant may resubmit the appeal request form for review by the District's designated Customer and Community Service representative.

a. Any denial of an appeal may be submitted for further review by the Customer Services Manager, or his or her authorized designee. Any request for further review shall be submitted no later than fifteen (15) calendar days from the denial of the appeal. The appellant may request to provide evidence in writing or in person in support of his or her appeal to the Manager of Customer and Community Services Department, or his or her authorized designee.

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

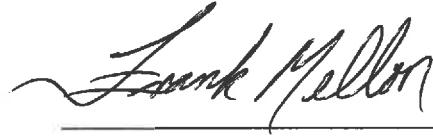
c. Within ten (10) days after the denial of an appeal is deemed final, the appellant shall pay any disputed penalty(ies) imposed by the District.

d. 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 4. 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 5. 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 6. Effective Date. This Ordinance shall become effective and in full force at 12:01 a.m. on the thirty-first day after its passage. However, to allow sufficient time for customer education and outreach, any applicable penalty charges will be reflected on customer bills beginning September 1, 2015 and will apply to water use in July and August of 2015.



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 Katz, Linney, McIntosh,
Patterson, Young, and President Mellon.

NOES: Director Coleman

ABSENT: None.

ABSTAIN: None.

ATTEST:



Secretary

APPROVED AS TO FORM AND PROCEDURE:



General Counsel