ORDINANCE NO. 373-21

EXCESSIVE WATER USE PENALTY ORDINANCE

Introduced by Director McIntosh ; Seconded by Director Young

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, Chapter 3.3 of Division 1 of the California Water Code ("the Excessive Water Use Law") prohibits excessive water use by a residential customer in a single-family residence or by a customer in a multiunit housing complex in which each unit is individually metered or submetered by the urban retail water supplier during time periods specified in that statute; and

WHEREAS, the Excessive Water Use Law requires the East Bay Municipal Utility District ("District") to establish a method to identify and discourage excessive water use, which method may include establishing or amending an excessive water use ordinance, and further requires that any such ordinance (i) identify excessive water use by those subject to the Excessive Water Use Law's prohibition on excessive water use based on volumetric thresholds to be established by the District in the exercise of its discretion based upon consideration of factors which may include average daily use and rate of evapotranspiration, among others, (ii) penalize persons who use water excessively in violation of such ordinance, and (iii) conform to the requirements of the Excessive Water Use Law in other respects; and

WHEREAS, in compliance with the requirements of the Excessive Water Use Law and 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 this Ordinance defining, prohibiting, and penalizing excessive water use to reduce the quantity of discretionary water use within the District to ensure that there is sufficient water for non-discretionary needs; 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; 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, the current Statewide statutory standard for indoor residential water use is 55 gallons per person per day, equivalent to approximately nine hundred cubic feet per month for a four-person household and said standard is expected to become more stringent over time; and

WHEREAS, outdoor water use accounts for approximately one-third of total single-family residential water use within the District's service area based upon 2010-2019 metered consumption data as described in the District's 2020 Urban Water Management Plan; and

WHEREAS, based on historical average daily use within the District's service area, each volumetric threshold of excessive water use defined in this Ordinance is many times higher than the average volume of water used by single-family customers in the District's service area, only a small percentage of whom would be at risk of violation of this Ordinance; and

WHEREAS, based on the typical rate of evapotranspiration within the warmer inland portions of the service area where single-family customers' irrigation needs tend to be more intensive, each volumetric threshold of excessive water use defined in this Ordinance will provide an adequate supply of water for any single-family customer to meet its reasonable indoor needs and irrigate, at minimum, several thousand square feet of landscaping with minimal plant stress and without risk of violation of this Ordinance; and

WHEREAS, the District's water shortage contingency plan ("Contingency Plan") provides for a staged system of planned water shortage response actions and includes guidelines which recommend mandatory water use reductions during a Stage 2, Stage 3, or Stage 4 drought; and

WHEREAS, the Governor of the State of California may from time to time issue a proclamation of a state of emergency under the California Emergency Services Act based on local drought conditions; and

WHEREAS, because the Excessive Water Use Law applies when either (i) the District has moved to a stage of action under its Contingency Plan that requires mandatory water use reductions, or (ii) the District is affected during a period for which the Governor has issued a proclamation of a state of emergency based on local drought conditions, it is necessary and appropriate that this Ordinance's prohibitions, requirements, and penalties be enforceable when the Board of Directors finds either condition to exist; and

WHEREAS, it is appropriate for this Ordinance to quantify excessive water use thresholds for each drought stage because the District, informed by the Contingency Plan, ordinarily selects a drought stage to implement based on the severity of water supply conditions and therefore it is feasible to predict the conditions likely to prevail during each drought stage and, consequently, the maximum reasonable amount of use for each drought stage in such conditions; and

WHEREAS, it is infeasible to predict the water supply conditions likely to prevail during a State-proclaimed local drought emergency, as such proclamations are not within the District's control and may be made based on factors other than the District's water supply conditions, and accordingly it is appropriate to defer quantification of excessive water use thresholds applicable during such a proclamation until the Board has an opportunity to assess the District's water supply conditions and other relevant information; and

WHEREAS, because it is the District's experience that a customer's first exceedance of an excessive water use threshold sometimes results from a previously undetected leak rather than willfully excessive water use, and because the purposes of this Ordinance are better served by allowing a reasonable opportunity to address leaks rather than penalizing non-willful water use, and to avoid incurring unnecessarily transactional costs to handle potentially meritorious penalty appeals, it is appropriate to deem a single-family residential customer to be in violation of this Ordinance and subject to penalties only upon the second or subsequent exceedance during a drought cycle; and

WHEREAS, for the reasons stated above, the District has not established in this Ordinance any mandatory water use restrictions or associated penalties on any commercial or industrial customers, or multi-family customers without individual meters; and

WHEREAS, to achieve District compliance with the Excessive Water Use Law, and to secure the public's compliance with the excessive water use prohibition imposed by that statute and by this Ordinance, and to assure important public policy objectives are achieved for the reduction of water usage during significant water shortages, the District shall establish and impose thresholds and penalties for excessive water usage by single-family residential customers as provided by this Ordinance when the above-described circumstances exist;

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

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 mandatory water use restrictions under certain conditions specified herein. The Board further finds and determines that this Ordinance furthers important State and District policies of encouraging water conservation and protecting water resources in the interest of the people and for the public welfare. The Board 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.** 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.

"Board" or "Board of Directors" means the Board of Directors of the District.

"CCF" means one hundred cubic feet. The District 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.

"Drought cycle" means any continuous and uninterrupted time period during which this Ordinance authorizes mandatory water use restrictions to be imposed, whether based on Stage 2, Stage 3, Stage 4, State-mandated local drought, or any combination or sequence thereof.

"Excessive Water Use Law" means Chapter 3.3 of Division 1 of the California Water Code, including any amendments thereto.

"General Manager" means the General Manager of the District or the General Manager's authorized designee.

"Ordinance" means this Excessive Water Use Penalty Ordinance, including any amendments hereto.

"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 or submetered by the District.

"Stage 2" means the stage at which the District has determined that a significant 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 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.

"State-proclaimed local drought" means a condition that commences upon occurrence of both of the following events: (i) the Governor of the State has issued a proclamation of a state of emergency under the California Emergency Services Act based on local drought conditions, and (ii) the District's Board has determined the District is affected by the proclaimed emergency. A State-proclaimed local drought may exist regardless of whether a Stage 2, Stage 3, or Stage 4 drought exists. A State-proclaimed local drought will cease to exist upon the first occurring of the following events; (i) the Governor terminates the relevant state of emergency, or (ii) the District's Board determines the District is no longer affected by the proclaimed emergency.

"Water shortage stage" or "stage" means Stage 2, 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 may be imposed on any single-family residential customer as authorized by Section 3.F.1 or other applicable legal authority.

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 civil and administrative penalties and remedies as provided for in this Ordinance.

3. **Stage 2 Mandatory Water Use Restrictions.** After a Stage 2 has been declared, 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 thirty-two (132) CCF of potable water per billing cycle for indoor and outdoor water purposes for the customer's 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-six (66) CCF of potable water per billing cycle for indoor and outdoor water purposes for the customer's property.

4. **Stage 3 Mandatory Water Use Restrictions.** After a Stage 3 has been declared, 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 eighteen (118) CCF of potable water per billing cycle for indoor and outdoor water purposes for the customer's property.

b. If the customer's billing cycle is twenty-five (25) to thirty-eight (38) days, the customer shall be limited to using fifty-nine (59) CCF of potable water per billing cycle for indoor and outdoor water purposes for the customer's property.

5. **Stage 4 Mandatory Water Use Restrictions.** After a Stage 4 has been declared, 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 the customer's 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 the customer's property.

6. **State-Proclaimed Local Drought Mandatory Water Use Restrictions.** If the Governor issues a proclamation of a state of emergency under the California Emergency Services Act based on local drought conditions, the District's Board may, in the reasonable exercise of its discretion, adopt a resolution determining that the District is affected by the proclaimed emergency. If the Board adopts such a resolution, it shall in that resolution establish a definition of excessive water use. The Board may revise the definition from time to time by subsequent resolution. The definition of excessive water use shall be expressed in CCF and may distinguish between longer and shorter billing cycles. The Board may consider any or all relevant facts and circumstances when defining excessive water use, including but not limited to: (i) average daily use, rate of evapotranspiration, and other factors set forth in the Excessive Water Use Law, and (ii) water supply conditions which do or may apply to the District during the State-proclaimed local drought emergency. Each single-family residential customer who has had a potable water account with the District shall be limited to using potable water in the applicable amount set forth in the adopted resolution while the State-proclaimed local drought emergency is in effect.

7. **Exception—Implementation of Alternative Actions.** Notwithstanding any other provision of this Ordinance, the mandatory water use restrictions of Section 3.E.3, 3.E.4, and 3.E.5 shall not apply if the Board of Directors, in connection with a drought stage declaration, implements an alternative action in lieu of requiring mandatory reductions in water use as may be authorized by law.

F. VIOLATIONS, PENALTIES, AND OTHER REMEDIES

1. **Administrative Penalties for Exceeding Mandatory Water Use Restrictions.** Except as provided in Section 3.F.2, any potable water used by a single-family residential customer in excess of the mandatory rules and regulations then in effect during a billing cycle and described in Section 3.E.3, 3.E.4, 3.E.5, or 3.E.6 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. **Exception—No Violation for First Exceedance During Drought Cycle.**

a. Notwithstanding any other provision of this Ordinance, a customer neither violates this Ordinance nor is subject to penalties hereunder upon the customer's first instance during a drought cycle of exceeding an applicable mandatory water use restriction during a billing cycle. In such event the District shall notify the customer in writing of the exceedance and disclose that further exceedances will violate this Ordinance and subject the customer to penalties.

b. The Board hereby finds and determines that a customer's first exceedance of an applicable mandatory water use restriction during a drought cycle does not constitute a use of water in a manner inconsistent with District water usage policies for the purposes of California Government Code section 6254.16(d).

3. **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.

4. **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 and shall afford the customer the same due process rights.

5. **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.

6. **Other Remedies.** In addition to any other remedies provided in this Ordinance or available under applicable law, the District may, to the extent allowed by law, 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.

8. **Suspension.** To the extent allowed by law, the Board may suspend or resume enforcement of this Ordinance, and/or the imposition of penalties hereunder, whenever it determines doing so is in the best interests of the District and its customers.

G. APPEAL PROCEDURES

1. **Filing an Appeal.** Any person who wishes to contest 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 the appellant's 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 designated representative of the District's Customer and Community Services Department 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.** As part of the appeal process, the appellant shall be provided with an opportunity to provide evidence that a basis exists to grant the appeal, and the District shall provide documentation demonstrating the excessive water use. 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 a medical reason.

c. The appellant demonstrates a water leak occurred at the appellant's 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.

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 Manager of Customer and Community Services or the Manager's designee.

a. 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 an appeal.

b. The decision by the District's Manager of Customer and Community Services, or the Manager's 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. **Repeal of Prior Ordinance.** Ordinance No. 364-15, entitled "Excessive Water Use Penalty Ordinance for Drought Stages 3 and 4," is repealed effective 12:01 a.m. on the thirty-first day after the passage of this Ordinance, and at that time and thereafter it shall be of no further force or effect.

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 September 14, 2021, held by webinar and teleconference due to the COVID-19 pandemic and in accordance with Governor's Executive Order N-08-21, and thereupon, after being read, further action was scheduled for the regular meeting of said Board of Directors held at the same place on September 28, 2021, at which time the same was finally adopted by the following vote:

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

NOES: Director Coleman.

ABSENT: None.

ABSTAIN: None.

ATTEST:

Secretary

APPROVED AS TO FORM AND PROCEDURE:

General Counsel