

Humboldt Bay Municipal Water District
Ordinance 23
Approved December 9, 2021

Ordinance 23 – Water Theft Penalties

WHEREAS, Humboldt Bay Municipal Water District (District) is a Special District duly organized and incorporated pursuant to the provisions of the Municipal Water District Act of 1911 by unanimous vote of the Board of Supervisors of Humboldt County on March 19, 1956.

WHEREAS, the District was created to reliably deliver high quality drinking water to the communities and customers served in the greater Humboldt Bay Area at a reasonable cost; reliably deliver untreated water to wholesale industrial customer(s) at a reasonable cost; and protect the environment of the Mad River watershed to preserve water rights, water supply and water quality interests of the District.

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 section 498, 624, or 625 is guilty of a misdemeanor; and

WHEREAS, California Civil Code section 1882 et seq. authorizes 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, water service (retail, wholesale, or industrial) by any means whatsoever.
- b. Makes, or causes to be made, any connection or reconnection with property owned or used by the District to provide water service without the authorization or consent of the District.
- c. Prevents any water meter, or other device used in determining the charge for water services, from accurately performing its measuring function by tampering or by any other means.
- d. Tampers with any property owned or used by the District to provide water services.
- e. Uses, or receives the direct benefit of all, or a portion, of the water 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 of receipt, was without the authorization or consent of the District; 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

Humboldt Bay Municipal Water District
Ordinance 23
Approved December 9, 2021

WHEREAS, SB 427, signed into law July 23, 2021, increased the maximum fines and penalties previously in place that an agency can levy for water theft infractions; and

WHEREAS; because water is a vital natural resource, the District has determined that it is appropriate to impose maximum fines, fees, and penalties for the theft of water; and

WHEREAS, the District Board of Directors finds that this Ordinance is in the best interest of the District to protect the health, safety, and welfare of the communities served by the District; and

WHEREAS, the Board of Directors finds that this Ordinance is consistent with state laws and the policies of the District.

NOW, THEREFORE, the Board of Directors of Humboldt Bay Municipal Water District does ordain 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. Approval of Ordinance. The Humboldt Bay Municipal Water District Ordinance 23 prohibiting the theft of water and tampering with district facilities, as described in Exhibit A, *PROHIBITION OF WATER THEFT AND TAMPERING WITH DISTRICT FACILITIES*, attached hereto and incorporated by reference, is hereby approved.

Section 3. California Environment Quality Act Compliance. The District Board of Directors find, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which had the potential for causing significant effect on the environment.

Section 4. Severability. If any provisions, section, subsection, sentence, clause, phrase, or sections of the 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, provisions, or regulations contained herein shall not be affected, it being the intent of the Board of Directors in adopting the 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 the Ordinance are declared to be severable for that purpose.

Section 5. Ordinance Effective Date. This Ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

Humboldt Bay Municipal Water District
Ordinance 23
Approved December 9, 2021

PASSED AND ADOPTED by the Humboldt Bay Municipal Water District Board of Directors on the 9th day of December by the following rollcall vote:

I HEREBY CERTIFY that the foregoing Ordinance was duly INTRODUCED at a regularly held meeting of the Board of Directors of the HUMBOLDT BAY MUNICIPAL WATER DISTRICT on the 12th day of November, 2021, and was PASSED and ADOPTED by the Board of Directors of the HUMBOLDT BAY MUNICIPAL WATER DISTRICT on the 9th day of December, by the following vote:

AYES:

NOES:

ABSENT:

DRAFT

EXHIBIT "A"

PROHIBITION OF WATER THEFT AND TAMPERING WITH DISTRICT FACILITIES

SECTION 1. WATER THEFT PROHIBITED

- A. Water Theft.** For the purposes of this Ordinance, "water theft" shall include but not be limited to:
- (1) The use, diversion, receipt, or taking of any District water by any means, including but not limited to: any public fire hydrant, blow-off valve, water main, water service lateral, reservoir, 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 any 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 removing a lock that has been placed on a customer's service or meter, or unauthorized use, or by tampering with a service connection to any District facilities, or any public fire hydrant.
- B. Unauthorized Use.** For the purposes of this Ordinance, "unauthorized use" shall include but not be limited to:
- (1) The use of water from a stationary service connection where lawful water service has been discontinued;
 - (2) The use of water from a District owned 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;
 - (3) Any use of a District owned hydrant meter in violation of the terms and conditions of a hydrant water permit;
 - (4) Any unauthorized drawing of water from Ruth Lake Reservoir.
- C. Tampering.** For the purposes of this Ordinance, "tampering" with District equipment or facilities is considered grounds for discontinuation of utility services and shall include, but not be limited to:
- (1) Opening valves at the curb or meters that have been turned off by District personnel;
 - (2) Breaking, cutting, picking, or damaging shut-off locks;
 - (3) Bypassing the meter in any way;
 - (4) Taking unmetered water from hydrants by anyone other than authorized officials of a recognized fire department, fire insurance company, or District employee for any purpose other than firefighting, testing, or flushing of hydrants;

Humboldt Bay Municipal Water District
Ordinance 23
EXHIBIT A
Approved XX day of XXXXXX, 2021

- (5) Use of sprinkler system water service (fire service) for any purpose other than fire protection;
- (6) Removing, disabling, or adjusting meter registers;
- (7) Connecting to or intentionally damaging water lines, valves or other appurtenances;
- (8) Moving the meter or extending service without written permission of the District;
- (9) Any intentional act of defacement, destruction, vandalism, or obstruction to District property or an act that affects District property;

D. Misdemeanor. Water theft and tampering are prohibited.

- (1) Each act of water theft or tampering constitutes a misdemeanor under state law;
- (2) The District may report any water theft to the appropriate prosecuting agency and request prosecution of said activity pursuant the California Penal Code.

SECTION 2. ADMINISTRATIVE PENALTIES. Administrative penalties are separate from any other penalties and fees that may be charged due to water theft or tampering.

A. Remedies. In addition to pursuing criminal penalties, the District, upon discovering water theft or tampering with District property, may also pursue the following remedies available at law or equity:

- (1) Immediately remove, or require the removal of any equipment, connection, or tools used to accomplish the water theft that is attached to District property;
- (2) Charge the customer or perpetrator an administration penalty based on the type of water theft:
 - (i) Water theft via meter tampering:
 1. \$150 for the first violation;
 2. \$250 for a second violation within a twelve-month period;
 3. \$350 for each violation thereafter within a twelve-month period.
 - (ii) All other forms of water theft:
 1. \$500 for the first violation;
 2. \$1,000 for a second violation within a twelve-month period;
 3. \$1,500 for each violation thereafter within a twelve-month period.

B. Other Remedies. In addition to any other remedies provided in the Ordinance or available under applicable law, the District may seek injunctive relief in the Superior Court to take enforcement action. All remedies provided herein shall be cumulative and not exclusive. If a District 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, otherwise makes an unauthorized connection to District facilities without District permission, or commits water theft, the District may do any, or a combination of any, of the following:

- (1) Turn off the water service and install a lock;
- (2) Estimate, if necessary, the water taken and charge the customer, offender, or recipient of the stolen water three times the normal rate of the water taken from the District facility;

Humboldt Bay Municipal Water District
Ordinance 23
EXHIBIT A
Approved XX day of XXXXXX, 2021

- (3) Charge the customer, offender, or water recipient for the damage to the District lock, meter, or other property;
- (4) Charge the customer, offender, or water recipient, a tampering fee, as established in Ordinance 13, Appendix B - Fee Schedule;
- (5) Remove the meter;
- (6) Terminate and remove the service from its connection to the water main;
- (7) Require payment of a full connection fee to reestablish service;
- (8) Require the return of any District hydrant meter; and
- (9) 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 third violation.

C. Notice.

- (1) A “Notice of Violation” will be mailed to the customer, offender, or water recipient and shall include: that a violation of this Ordinance has occurred; that the customer, offender, or water recipient shall immediately cease the unlawful the unlawful practice; that the failure to immediately cease the unlawful practice will result in the discontinuation of service; and the amount of the administrative fine imposed.
- (2) Notwithstanding sub-section “C”, “1”, above, a “Notice of Violation” may be mailed to the customer, offender, or water recipient, following the discontinuation of water service if:
 - (i) In the opinion of the District’s General Manager, Superintendent, or Business Manager, theft of service is clearly evident on the customer’s property or property where the offense occurred, and immediate action is necessary; or
 - (ii) In the opinion of the District’s General Manager, Superintendent, or Business Manager, there is an immediate danger to public health or safety; or
 - (iii) In the opinion District’s General Manager, Superintendent, or Business Manager immediate action is necessary to prevent an ongoing theft of water.

D. Billing of Charges.

- (1) The District shall calculate the amount of damages, fees, 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, fees, or penalty(ies) may be sent to the offender, water user, or recipient.
- (2) All costs related 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, water user, or recipient. These changes include, but are not limited to:
 - (i) Service call charges;
 - (ii) Water consumption charges;

Humboldt Bay Municipal Water District
Ordinance 23
EXHIBIT A
Approved XX day of XXXXXX, 2021

- (iii) Water shut-off charges;
 - (iv) Charges for damage to District facilities and equipment;
 - (v) Removal of meter and/or water service termination fees.
- (3) Before the meter will be replaced and services reestablished, the party requesting service, if in any way involved in, related to, or associated with, parties involved in the water theft, shall pay twice the average 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.
- (4) All charges related to the District's processing and handling of the water theft involving the taking of water from a fire hydrant shall be borne by the offender, water user, or recipient, including, but not limited to, water consumption charges, charges for any damage to District facilities and equipment, and costs of investigation and enforcement.

E. Payment of Fine and other Charges.

- (1) All charges imposed pursuant to section "D", "1" of this Ordinance shall be paid, in full, within thirty (30) days of the date of the bill or invoice, as applicable. Any delinquent amount shall bear interest at the rate of ten percent (10%) per annum or the maximum amount allowed by law, which ever is less, until paid. The accrual of interest on delinquent amounts shall be tolled during the pendency of a timely submitted appeal pursuant to Section "F", below.

F. Appeal Procedures.

- (1) Any person ("appellant") who wishes to contest the imposition of an administrative penalty imposed by the District pursuant to this Ordinance, or wishes to request a "Hardship Waiver" to reduce the amount of the penalties, fees, and/or charges, shall comply with the following procedures:
- (i) Appellant shall submit a written request for appeal or Hardship Waiver to the District General Manager no later than fifteen (15) calendar days from the date of the bill (invoice) sent to the customer or offender.
 - 1. If the appellant wishes to contest the imposition of the administrative fine, the appellant shall provide a detailed summary of facts supporting appellant's position, together with any supporting documentation or other evidence.
 - 2. If the appellant wishes to request a Hardship Waiver, the appellant shall submit evidence supporting the request. Evidence to support the request for Hardship Waiver shall include proof of current enrollment in and recipient of CALWORKS, CalFresh, General Assistance, Medi-Cal, Supplemental Security Income/State Supplementary Payment Program, or California Special Supplemental Nutrition Program for Women, Infants, and Children, or proof that the household's annual income is less than 200 percent of the federal poverty level.¹

¹ Same requirements of Ordinance 13, as provided for in SB 998, *Discontinuation of Residential Water Service*.

Humboldt Bay Municipal Water District
Ordinance 23
EXHIBIT A
Approved XX day of XXXXXX, 2021

3. Amount of Hardship Waiver granted (if any) is at the discretion of the General Manager.
- (ii) The appellant shall deposit with the District, at the time of submitting a written request for an appeal or Hardship Waiver, the amount imposed by the District pursuant to Section “D”, “1”, above; or, alternatively, shall submit a request for a waiver of the advance deposit, in which case the requirement to make the advance deposit shall be stayed pending the District’s consideration of the request to waive the advance deposit. The District may grant the advance deposit waiver only if the appellant submits a sworn declaration, together with any supporting documents or materials, which demonstrates appellant’s financial inability to deposit with the District the full amount of the fine in advance of the hearing. The District shall issue a written determination of its reasons for granting or denying an advance deposit waiver. This written determination shall be final. If the District denies the request for an advance deposit waiver, the appellant shall remit the deposit within ten (10) of the written determination or the appeal will be dismissed.
 - (iii) A response to the appeal request shall be provided by the District within thirty (30) calendar days from the receipt of the appeal request.
 - (iv) If an appeal request is denied, the appellant may submit a written appeal request to the District Board of Directors no later than fifteen (15) calendar days from the date of the first appeal denial.
 - (v) The appellant may request to provide evidence in writing or during a regularly scheduled Board Meeting in support of their appeal.
 - (vi) The decision by the District Manager or (if appealed), the Board of Directors, shall be final.
 - (vii) Within ten (10) days after the denial of the appeal is deemed final, the appellant shall be deemed to have forfeited any advance deposit and shall pay any amount remaining after forfeiture of the deposit.
 - (viii) The provision of Section 1094.6 for the Code of Civil Procedure of the State of California shall be applicable to judicial review of the decision.

G. Recovery of administrative citation fines and costs.

- (1) The District may collect any past due administrative citation fine or late payment charges by use of all available legal means, including, but not limited to, means available for the collection of judgments, liens and actions for recovery of money. The District also may recover its collection costs. Special assessment liens against property may only be applied when the administrative citation fine was issued for a violation directly connected to the property.