



MONTARA WATER AND SANITARY DISTRICT AGENDA

For Meeting Of: **April 18, 2024**

TO: BOARD OF DIRECTORS

FROM: Clemens Heldmaier, District General Manager

**SUBJECT: Review and Consideration of Ordinance Prohibiting Water Theft
And Establishing Administrative Penalties for Water Theft**

Last year, Governor Newsom signed into law SB 427 that gives California water agencies the authority to adopt enhanced penalties for water theft, providing a stronger deterrent to help protect the public's valuable and vital resource. The bill allows fines for the first violation to be 10 times larger than what previously existed. In addition to posing health risks, water theft makes it more difficult for water agencies to accurately account for the water being used by their ratepayers. The revenue lost from water theft can be passed on to paying customers, having a negative impact on water affordability.

SB 427, which added Section 53069.45 to the Government Code, authorizes this Board to adopt an ordinance prohibiting water theft and making a violation of said ordinance punishable by an administrative fine or penalty. Water theft is defined as an action to divert, tamper, or reconnect water utility services. Allowable fines vary based on the form of water theft used, distinguishing between theft committed via meter tampering or by any other method. Maximum fines range from \$130 to \$1,300 for thefts via meter tampering, or from \$1,000 to \$3,000 for all other methods. The bill further requires that the agency adopt administrative procedures governing the imposition, enforcement, collection, and review of the administrative fines or penalties for water theft and to establish a process for granting a hardship waiver to reduce the amount of the fine.

Attached is the proposed Ordinance, along with Exhibit A setting forth the proposed administrative procedures and penalties that staff recommends the Board adopt and be made part of the District's Code. Note the proposed fines for violations are listed on page 7 and represent the maximum permissible amounts under Government Code Section 53069.45.

RECOMMENDATION

Move adoption of ORDINANCE OF THE MONTARA WATER AND SANITARY DISTRICT ADDING ARTICLE 8 TO CHAPTER V OF THE DISTRICT'S CODE OF REGULATIONS PROHIBITING WATER THEFT AND ESTABLISHING ADMINISTRATIVE PENALTIES FOR THE THEFT OF WATER

Attachments.

ORDINANCE NO. ____

AN ORDINANCE OF THE MONTARA WATER AND SANITARY DISTRICT ADDING ARTICLE 8 TO CHAPTER V OF THE DISTRICT'S CODE OF REGULATIONS PROHIBITING WATER THEFT AND ESTABLISHING ADMINISTRATIVE PENALTIES FOR THE THEFT OF WATER

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 District connection after having been notified that the same has been closed or shut for specific cause, by order of competent authority; and

WHEREAS, California Civil Code Section 1882 et seq. authorizes the Montara Water and Sanitary District ("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 services 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 District 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 or receipt, was without the authorization or consent of the District.

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, pursuant to California Government Code Section 53069.45, 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, pursuant to SB 427, which added Section 53069.45 to the California Government Code, the District may adopt an ordinance that prohibits water theft, subject to an administrative fine or penalty for violation of that ordinance; 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 ORDAINED by the Board of Directors of the Montara Water and Sanitary 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. Adoption of Water Theft Regulations and Administrative Penalties. The Board of Directors hereby amends the Montara Water and Sanitary District Code ("Code") to add Article 8 to Chapter 5 to read as set forth in Exhibit A, attached hereto and incorporated herein.

Section 3. Conflicting Provisions. If provisions of this Ordinance are in conflict with each other, other provisions of the District's Code, regulations or policies, any other resolution or ordinance of the District, or any state law or regulation, the more restrictive provisions shall apply.

Section 4. 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 invalidity 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 5. Notice was published twice in the San Mateo County Daily Journal and the San Mateo County Times/Mercury News, newspapers of general circulation within the District, giving notice of a public hearing to take place on April 18, 2024 to consider adoption of this Ordinance making certain amendments to the District's Code.

Section 6. All ordinances or Code provisions or portions thereof in conflict herewith shall be, and hereby are repealed to the extent of such conflict.

Section 7. Effective Date. Upon adoption, this Ordinance shall be entered in the minutes of the Board and posted for one week in three (3) public places in the District and shall become effective immediately upon expiration of one week following said posting.

President, Montara Water and Sanitary District

COUNTERSIGNED:

Secretary, Montara Water and Sanitary District

* * *

I HEREBY CERTIFY that the foregoing Ordinance No.____ was duly and regularly adopted and passed by the Board of the Montara Water and Sanitary District, San Mateo County, California, at a Regular meeting thereof held on the 18th day of April, 2024 by the following vote:

AYES, Directors

NOES, Directors:

ABSENT, Directors:

Secretary, Montara Water and Sanitary District

EXHIBIT A

ARTICLE 8 to Chapter V of the District's Code of Regulations is hereby added as follows:

Article 8. Theft and Unauthorized Use of Water

Division 1. Authority, Purpose

5-8.100. Authority, Purpose. Water shall be distributed only to those parties with authorization for its use. No unauthorized use of water shall be allowed. Because water is a vital resource, the District has determined that it is appropriate to adopt a District prohibition on water theft and impose civil administrative penalties for the theft of water. This Article 8 shall only be amended by an Ordinance of the District.

Division 2. Definitions

5-8.200 Definitions: General. The following definitions shall be used to interpret the provisions of this Article in addition to the definitions set forth in Article 2 of Chapter V, to the extent applicable.

5-8.201. "Divert" is to change the intended course or path of water without the authorization or consent of the district.

5-8.202. "Meter Tampering" is the act of tampering with a District meter.

5-8.203. "Reconnect" is the reconnection of water service by a customer or other person after service has been lawfully disconnected by the District.

5-8.204. "Tamper" is to rearrange, injure, alter, interfere with, or otherwise prevent any District property or infrastructure from performing a normal or customary function.

5-8.205. "Unauthorized Use" is the taking of water without authorization from the District. This includes usage through locked meters, connections to nonapproved meters and usage through fire hydrants and other District facilities.

5-8.206. "Water Theft" is any act to divert, tamper or reconnect water service.

Division 3. Procedures

5-8.300. Related Procedures. See Division 1 of Article 3. *Commencement of Service*; Division 2 of Article 3. *Fees and Deposits*; Division 1 of Article 5 *Rates: Time and Manner of Payment*; and Division 2 of Article 5 *Usage*.

5-8.301. Procedures.

(a) Unauthorized Usage Through Locked Meters

(1) Unlocking the meter without authorization or tampering with a District lock is a violation of state law and shall be considered stealing water. If a meter is locked for nonpayment, a tag advising the customer of this information shall be placed in the meter box (California Penal Code Sections 498 and 625).

If there is no response from the customer after the initial lock placement, an investigation shall be made within seven calendar days to verify that the meter remains locked. Meters which indicate water usage upon investigation, will receive a flow blocker or be removed and the curb stop locked. The party requesting service may be required to pay the following charges: meter reinstatement fee, past due charges, unpaid water charges for usage which has registered since the meter was locked, charges for damages to District property including but not limited to broken locks, a deposit fee, other fees in accordance with this Chapter and any applicable penalties.

(2) Any meters which are inactive accounts noted as locked on District records and which show water usage shall be relocked. If this prompts a call from a customer to establish service, they may be required to pay the following charges: unpaid water charges for usage which has registered since the meter was locked, charges for damages to District property including broken locks, a deposit fee, other fees in accordance with this Chapter and any applicable penalties.

If items 1 or 2 above apply, payment must be made by cash, money order or cashier's check only.

(b) Unauthorized Usage Through Laterals Without Meters

Upon discovery of unauthorized use through a direct connection from a lateral, service shall be discontinued immediately. Within five business days, District investigators will verify that unauthorized use has not been continued.

(c) Unauthorized Usage Through Fire Hydrants and Other District Facilities

No water is to be taken from a District fire hydrant, blow off or other such facility unless it is for fire protection, metered by the District or preauthorized by the District.

(d) Charges for Unauthorized Water Usage

(1) Unauthorized usage shall be billed to the responsible party. Water use charges shall be based on meter readings, estimation or a fee charged.

(2) Drawing water from a fire hydrant, dedicated fire line, direct hook upon a meter lateral, backflow prevention assembly or any source not authorized by the District, is a violation of the District's rules and constitutes a misdemeanor. If water is drawn from a fire hydrant, dedicated fire line, direct hookup on a meter lateral, backflow prevention assembly or any source not authorized by the District, an administrative penalty of \$1,000 shall apply. If such action constitutes water theft, the District may alternatively use the administrative

penalties set forth in (i) Prohibition of Water Theft; Administrative Penalties; Enforcement, infra.

(3) All other charges that would have accrued if authorization for such use had been secured will be applied, including bimonthly or monthly service, installation, removal and any other applicable charges.

(4) Additional charges shall be made as necessary to recover the costs of any damage to District property.

(e) Resale of Water. No person or business inside or outside the boundaries of the District may resell any portion of the water delivered to them by the District.

(f) Unauthorized Use or Waste of Water. No consumer shall use water upon any land other than that covered by their application for service, nor shall knowingly permit leaks or waste of water.

(g) Unauthorized Regulation of Water. No person, except duly authorized employees of the District, shall be permitted to operate any District facility.

(h) State Laws. Offenses related to drinking water may result in criminal prosecution. These include, but are not limited to the following:

Section 498, Penal Code

Section 625, Penal Code

Section 592, Penal Code

Stealing water, taking water without authority or making unauthorized connections.

Taking water after works have been closed or meter sealed.

Taking water without authorization.

Section 607, Penal Code Damaging tanks, flumes, reservoirs. etc.

Section 624, Penal Code Breaking, cutting or obstructing pipes. etc.

Section 4455, Health and Safety Code Bathing(swimming) in reservoirs, etc.

(i) Prohibition of Water Theft; Administrative Penalties; Enforcement

(1) Water theft is prohibited. Each act of water theft constitutes a misdemeanor. 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 may, upon discovering water theft, also pursue the following remedies or other remedies available at law or equity:

If water theft is committed by meter tampering, the customer or perpetrator will be charged an administrative penalty of:

\$130 for the first violation.

\$700 for the second violation within a one-year period of the first violation.

\$1,300 for each violation thereafter within a one-year period of the first violation.

If water theft is committed by any means other than meter tampering, the customer or perpetrator will be charged an administrative penalty of:

\$1,000 for the first violation.

\$2,000 for the second violation within a one-year period of the first violation.

\$3,000 for each violation thereafter within a one-year period of the first violation.

The above penalties are the maximum amounts allowed under Government Code Section 53069.45, as may be amended, and shall be revised to correspond thereunder without further adoption by ordinance. Further, the above penalties constitute the amounts referenced in Section 5-3.210, subd. (d) and (e) of this Code.

(2) In addition to any other remedies provided in this Section or available under applicable law, the District may also seek injunctive relief in the Superior Court or take enforcement action. All remedies provided herein shall be cumulative and not exclusive.

(j) Payment and Appeal Procedures

(1) The District shall calculate the amount of damages and penalty(ies) to be imposed, and shall send a bill to the customer, water user or recipient, or if the offender is not a customer of record, an invoice, for payment of the damages and/or penalty(ies).

(2) All costs relating to the District's processing and handling of the water theft, and investigation and enforcement thereof, shall be borne by the party having responsibility for the water account at the time of the water theft. Charges related to the handling of the water theft and/or reestablishment of the service shall be borne by the party requesting service in amounts adopted by the District or based on actual costs incurred by the

District on a time and materials basis. These charges include, but are not limited to, service call charges, water charges, turnoff of service, plug and/or termination fees. Before the meter will be replaced and service reestablished, the party requesting service shall deposit twice the average monthly water bill, the cost of a new water meter and installation (if required), any increase in capacity fees between the date of

removal of the meter and the date service was resumed, in addition to all service call charges, all charges that were delinquent at the time of removal, and an amount representing any damage to District property. The District may enforce payment of any unpaid amounts through any available legal means, which may include, but not be limited to, placement with an authorized collection agency, transfer of delinquent balances to other active accounts, requiring full payment before establishing future accounts with the district, termination of water service to the account, and/or filing a lien for unpaid amounts.

(3) When water theft has occurred, and the party committing the theft is not a District customer, all charges relating to the District's processing and handling of the water theft, and investigation and enforcement thereof, shall be borne by the party taking the water, including, but not limited to, the cost of any water used outside the District's service area, charges for any damage to District facilities and equipment and costs of investigation and enforcement. Such charges shall be in amounts established by the District or based on actual costs incurred by the district on a time and materials basis. The District may enforce payment of any unpaid amounts through any available legal means, which may include, but not be limited to, placement with an authorized collection agency, transfer of delinquent balances to active accounts, requiring full payment before establishing any account with the District, and/or filing a lien for unpaid amounts.

(4) Any person (appellant) who wishes to appeal the imposition of an administrative penalty imposed by the District pursuant to this Section shall comply with the following procedures:

The appellant shall submit a written appeal request to the District's General Manager no later than 20 calendar days from the date of the bill or in voice sent to the customer or offender.

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

If the appeal to the District's General Manager is denied, the appellant may resubmit the appeal request form for reconsideration by the District's General Manager. The request form shall be resubmitted no later than 15 calendar days from the date of the denial of the appeal. The appellant may request to provide evidence in writing or in person in support of the appellant's appeal to the District's General Manager.

If the appeal is denied, the appellant may resubmit the appeal request form for review by the District's Board of Directors. The request form shall be resubmitted no later than 15 calendar days from the date of the denial of the appeal by the General Manager or the

date of denial of reconsideration of the appeal. The appellant may request to provide evidence in writing or in person in support of the appellant's appeal to the District's Board of Directors. The decision by the District's Board of Directors shall be final.

If an appeal is denied in whole or in part, then within 20 days after the denial of the appeal is deemed final, the appellant shall pay any disputed penalty(ies) imposed by the District. If an appeal is granted, the District shall refund any penalties paid and cease to impose the outstanding penalties relating to the appeal.

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 District's decision.

(k) Hardship Waiver

(1) When a customer or perpetrator has been charged with an administrative penalty for water theft under this Article and all appeals procedures have concluded or the time for submission of an appeals request has expired, the customer or perpetrator may request a hardship waiver to reduce the amount of the final administrative penalty for water theft and/or establish a payment plan for the administrative penalty amount. The customer or perpetrator shall submit a written request for a hardship waiver to the District's General Manager, indicating the amount of the administrative penalty for water theft requested to be waived or reduced or subject to a payment plan, within 20 days from the date that all appeals procedures have concluded and a final decision is rendered (if appeals' requests are timely submitted) or from the date on which submission of an appeals' request has expired. The timing requirement for payment of the administrative penalty shall be stayed until the General Manager makes a determination on the hardship waiver request.

The General Manager may grant the hardship waiver and waive, reduce or allow a payment plan to tender the administrative penalties, in whole or in part, only if the requesting party submits to the General Manager a sworn declaration, together with any supporting documents or materials, demonstrating to the satisfaction of the General Manager that the amount of the penalty imposed for water theft would impose an undue financial burden on the requesting party. The General Manager shall consider the requesting party's ability to pay in coming to a decision. The requesting party shall include their mailing address in the hardship waiver request.

The General Manager shall issue and mail a written decision to the person who applied for the hardship waiver. The written decision shall list the reasons for the General Manager's decision. The written decision of the General Manager shall be final.

Upon issuance of the General Manager's decision, the timing requirement for payment of any outstanding administrative penalty amount (if any) shall resume, and the customer or perpetrator shall pay any outstanding administrative penalties (if any) imposed by the District within the required time period.