

ORDINANCE NO. 101

**AN ORDINANCE OF THE BOARD OF DIRECTORS
OF LAGUNA BEACH COUNTY WATER DISTRICT PROHIBITING THE
UNAUTHORIZED USE OF WATER AND ESTABLISHING ADMINISTRATIVE
PENALTIES FOR THE UNAUTHORIZED USE 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 utility 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 Laguna Beach County Water District (the "District") to bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts any of the following acts:

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

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

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

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

Be it ordained by the Board of Directors of the Laguna Beach County Water District as follows:

Section I. Title

This ordinance shall be known as the Laguna Beach County Water District Unauthorized Water Use Ordinance (“Ordinance”).

Section II. Recitals

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

Section III. Prohibition of Unauthorized Water Use; Administrative Penalties

1. For the purposes of this Ordinance, “unauthorized water use” means and includes all of the following:
 - a. the use, diversion, receipt or taking of District water by any means from any public fire hydrant, blow-off valve, water main, water service lateral or other District facility or connection to a District facility, to which a District authorized metering device has not been installed or has been removed by the District; and
 - b. the use, diversion, receipt, or taking of District water by any means without paying the full and lawful District charges for such water, or by tampering with District property or facilities, such as by removing a lock or plug that has been placed on a customer’s service or meter or unauthorized use, or by tampering with a service connection or bypassing a meter, or by making an unauthorized connection to any District facilities or any public fire hydrant.
 - c. the use of water from a stationary service connection where lawful water service has been discontinued or from a public fire hydrant to supply water outside of the District service area, regardless of whether payment is provided to the District for the water drawn from the public fire hydrant, or any use of a hydrant meter in violation of the terms and conditions of a hydrant meter permit.
2. Unauthorized water use is prohibited. Each act of unauthorized water use constitutes a misdemeanor.

3. The District may report any unauthorized water use 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 also, upon discovering unauthorized water use or tampering with District property, pursue the following remedies or any other remedies available at law or in equity:
 - a. require the immediate removal of any equipment, connections or tools used to accomplish the unauthorized water use that is attached to District property;
 - b. charge the customer or perpetrator an administrative penalty of:
 - i. \$1,000 for the first violation;
 - ii. \$2,500 for a second violation within a two-year period; and
 - iii. \$5,000 for each violation thereafter within a two-year period.

Section IV. Other Remedies

In addition to any other remedies provided in this Ordinance 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. If a customer or any other person turns on water service without District authorization, tampers with any locked water meter, tampers with a service connection or District facilities, bypasses a meter, makes an unauthorized connection to District facilities without District permission, or otherwise commits unauthorized water use, the District may:

1. turn off the water service and install a lock;
2. charge the customer or offender an estimated amount based upon the historical water use, meter use, or other comparable means of estimation (non-customers shall be charged based upon the highest District water rate at the time of the occurrence);
3. charge the customer for the damage to the District lock, meter or other property;
4. remove the meter and plug the service;
5. terminate and remove the service from its connection to the water main;
6. charge a deposit of two times the amount of the average use to reestablish service; and
7. require the return of any temporary water meter.

Section V. 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 unauthorized water use, and investigation and enforcement thereof, shall be borne by the party having responsibility for the water account at the time of the unauthorized water use. Charges related to the handling of the unauthorized water use 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. Where a water account is not assigned, all charges relating to the District's processing and handling of the unauthorized water use, 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 (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 submit a written appeal request to the District's Customer Service Supervisor no later than twenty (20) calendar days from the date of the bill or invoice sent to the customer or offender.
 - b. A response to the appeal request shall be provided by the District within thirty (30) calendar days from receipt of the appeal request form.
 - c. If the appeal to the Customer Service Supervisor is denied, the appellant may resubmit the appeal request form for review by the District's General Manager. The request form shall be resubmitted no later than fifteen (15) calendar days from the date of the denial of the appeal by the District's Customer Service Supervisor. The appellant may request to provide evidence in writing or in person

in support of his or her appeal to the District's General Manager.

- d. If the appeal to the General Manager is denied, the appellant may resubmit the appeal request form for review by the District's Commission. The request form shall be resubmitted no later than fifteen (15) calendar days from the date of the denial of the appeal by the General Manager. The appellant may request to provide evidence in writing or in person in support of his or her appeal to the District's General Manager.
- e. The decision by the District's Commission shall be final.
- f. Within ten (10) days after the denial of the appeal is deemed final, the appellant shall pay any disputed penalty(ies) imposed by the District.
- g. 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.

Section VI. 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 VII. Severability

If any section, subsection, sentence, clause or phrase in this Ordinance is for any reason held invalid, the validity of the remainder of the Ordinance will not be affected. The District's Board of Directors hereby declares it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases thereof is declared invalid.

Section VIII. Effective Date.

This Ordinance shall take effect immediately upon adoption.

NOW, THEREFORE, BE IT RESOLVED, the Board of Directors of Laguna Beach County Water District, does hereby resolve and order as follows:

1. That Ordinance 101, the Laguna Beach County Water District Unauthorized Water Use Ordinance, as submitted, be and hereby is approved.

ADOPTED, SIGNED, AND APPROVED this 14th day of May, 2020.



President

ATTEST:



Secretary

CERTIFICATION

I, Christopher J. Regan, Secretary of the Laguna Beach County Water District, of Orange County, California, do hereby certify that the foregoing Ordinance No. 101 was duly adopted at a regular meeting of the Board of Directors of said District, held on the 14th day of May, 2020, by the following vote of Members of the Board:

AYES: Directors: - Whalen, Dicterow, Iseman, Kempf, Blake
NOES: Directors: - None
ABSENT: Directors: - None

And I further certify that Robert Whalen as President, and Christopher J. Regan, as Secretary, signed and approved said Ordinance on the 14th day of May, 2020.



Secretary, Laguna Beach County Water District

(District Seal)

STATE of CALIFORNIA)

) ss.

COUNTY OF ORANGE)