

ORDINANCE NO. 2022 - 4
AN ORDINANCE OF THE SCOTIA COMMUNITY SERVICES DISTRICT
BOARD OF DIRECTORS
ADOPTING TITLE X - PROHIBITION OF WATER THEFT

The Board of Directors of the Scotia Community Services District does ordain as follows:

Section 1: Title X (Prohibition of Water Theft) is hereby adopted as follows:

TITLE X - PROHIBITION OF WATER THEFT

CHAPTER 1 – PURPOSE AND AUTHORITY

Sec. 1.1 Purpose. This Ordinance is intended to serve as the Scotia Community Services District (District) regulatory authority describing the prohibition of ***all***: water theft, unauthorized use of, and/or tampering with, any District water infrastructure. The purpose of this Ordinance is to protect the beneficial use, prevent the waste or unauthorized use, and theft of the District’s drinking water resource as authorized by California Senate Bill 427; California Water Code Sections 71600-71601; California Government Code Section 61060(b), and Section 61064(a); and the California Penal Code Sections 19, 498, 624, and 625.

Sec. 1.2 Authority. The District General Manager (District Manager), as approved by the District Board of Directors (District Board), shall have the authority to administer, implement, and enforce all chapters of this Ordinance.

CHAPTER 2 - DEFINITIONS

The following phrases, terms or words used in this Ordinance shall be defined as provided below.

A. **Authorized District Personnel**

Any person employed by the District.

B. **Civil Penalty**

A penalty assessed through administrative or judicial procedures.

C. **Connection**

Any connection to the District’s infrastructure by, but not be limited to, conduits, distribution lines, pipes, and pump stations.

D. **Enforcement Officer**

The District Manager is the enforcement officer of this Ordinance and shall be empowered to take such action as authorized herein, or as may otherwise be authorized by the District Board or be reasonably necessary for enforcement of this Ordinance.

E. Tampering

Shall include, but not be limited to, opening valves at the curb or on meters that have been turned off by District personnel, breaking, damaging, or removing shut off locks placed on the meters, adjusting, disabling, or removing meter registers, bypassing the meter in any way, and moving the meter without District permission in writing.

F. Unauthorized Use

Shall include the use of water from a stationary water service connection where lawful water service has been discontinued or from any District fire hydrant, regardless of whether payment is provided to the District for the water drawn from the hydrant, or any use of the District hydrant meter in violation of the terms and conditions of the District.

G. Water Theft

Shall include, but not be limited to, the unauthorized diversion, receipt, taking, or use of District water by any means, including by Tampering, from any District fire hydrant, blow-off valve, water main, water service line or any other District infrastructure. Additionally water theft shall include the diversion, receipt, taking, or use of District water by any means, without full payment for the District charges of such water in accordance with the District's Master Fee Schedule.

CHAPTER 3 – CRIMINAL PENALTIES

The District may report any water theft to the appropriate prosecuting agency and press for prosecution of said activity pursuant to California Penal Code Sections 19, 498, 624 and 625. Any person violating any provision of this Ordinance, as determined by the District Manager, may be prosecuted as committing either a misdemeanor or an infraction, as defined by the California Penal Code.

CHAPTER 4 – AMINISTRATIVE PENALTIES

The District, in addition to pursuing criminal penalties for violating any provision of this Ordinance, shall require the immediate removal of any equipment, connections, materials or tools used in violation of this Ordinance and charge the responsible individual an administrative fine or penalty in accordance with the fine structure set forth in Section 53069.45 of the California Government Code, which shall be codified in the District's Master Fee Schedule and updated by District Resolution, as necessary, to reflect any statutory changes.

CHAPTER 5 – OTHER REMEDIES

The District, in addition to pursuing criminal and administrative penalties, may alternatively, or in addition to, bring a civil action for injunctive relief and/or damages in the California Superior Court against any person who commits Water Theft in violation of this Ordinance, as authorized pursuant to Section 1882, et seq. of the California Civil Code. All remedies set forth in this Ordinance are herein declared to be cumulative and non-exclusive and shall not preclude the District from seeking any/all other civil, equitable, and criminal rights or remedies available under law to discontinue water service and/or otherwise enforce this Ordinance or any other regulations and rules of the District.

CHAPTER 6 – ENFORCEMENT

The District Manager is the enforcement officer of this Ordinance, as authorized by the District Board, and is empowered to take such action as authorized or reasonably necessary to protect the District water resources from all water theft, unauthorized use of, or tampering with, any District water infrastructure.

Any person or customer who turns on a District water service without District permission, tampers with any locked water meter, tampers with a service connection or District infrastructure, bypasses a meter, or otherwise makes an unauthorized connection to any District infrastructure without District permission, or commits water theft, shall authorize the District to take one or more of the following enforcement action::

- A. Require the immediate removal of any equipment, connections, materials, or tools used in violation of this Ordinance.
- B. Immediately turn off the water service and install a District lock on the water meter.
- C. Estimate, if necessary, the water taken and charge the customer, or water recipient for the amount of water taken illegally from the District.
- D. Charge the customer, or water recipient for any damage to the District lock, meter, or other District infrastructure.
- E. Remove the meter and discontinue the water service.
- F. Prohibit any person who has committed three (3) violations of this Ordinance within a twelve (12) month period from obtaining authorization to use a District fire hydrant meter, for a period of three (3) years, from the date of the last violation.
- G. Refer the violation(s) to the appropriate prosecuting authority for criminal prosecution.
- H. Pursue all available civil, equitable, and/or administrative rights afforded under law and regulation, including but not limited to a civil action for damages and/or recovery of costs and judgement, and injunctive relief.

CHAPTER 7 – NOTICE OF VIOLATION

A Notice of Violation will be emailed or delivered to a District water customer for the following issues:

- A. A determination of customer tampering, unauthorized use, or water theft of the District's water resource, including irrigation water, and the potential violation does *not* create an immediate threat of safety or equipment integrity to the District's water infrastructure, the customer will be ordered to immediately cease any further violation(s) of this Ordinance.
- B. A determination of customer tampering, unauthorized use, or water theft of the District's water resource, including irrigation water, and or there *is* an immediate threat to public health or safety, the meter shall be locked off and the water service discontinued.
- C. The Notice of Violation shall include the following information:
 - a. Date of violation(s).
 - b. Location of the violation(s).
 - c. Summary of the violation(s).
 - d. Demand that the actions constituting the violation(s) cease immediately.
 - e. Information concerning the imposition of any fees, charges, or penalties for the violation(s).
 - f. Information concerning the right to appeal the determination of violation(s) and imposition of any fees, charges, fines or penalties related to the enforcement and remediation of the violation(s), including a description of the procedure to pay the fees, charges, fines or penalties.

CHAPTER 8 – PAYMENT AND APPEAL PROCEDURES

The District shall calculate the amount of damages and or costs and penalties to be imposed, and shall send a bill by first-class mail to the customer. If the water recipient is not a customer of record, a bill for payment of damages and or penalties will be sent to the water recipient by either first-class mail, personal delivery, or posting at the location of the violation if the water recipient's whereabouts or mailing address are unknown.

- A. Except as provided under subsection 8.C below, all costs relating to the District's processing and handling of the violation, investigation and enforcement of this Ordinance, and any charges for reestablishing water service, will be paid by the water customer or the water recipient within ten (10) days of the written demand. These charges include, but are not limited to, service on/off calls, water usage, damage to District infrastructure, shut off or discontinued service fees, enforcement, and administrative fees, and reasonable attorney fees.
- B. All costs relating to the District's processing and handling of the violation, investigation, and enforcement of this Ordinance, for water taken from a District fire hydrant, will be paid by the water user or recipient at the time of the violation. These charges include, but are not limited to, the cost of water taken, any damage to the District's infrastructure, or equipment, in violation of this Ordinance.

- C. In the event the responsible party asserts a hardship in paying the full amount of any administrative fine or penalty imposed for violation of this Ordinance, the responsible party may submit a hardship waiver request to the District Manager, which shall include a detailed summary and supporting documents in support of the claimed hardship, and shall be signed by the responsible party under penalty of perjury. The District Manager shall have sole authority to determine whether a hardship exists, and may grant or deny the hardship waiver request at his or her discretion. If the hardship waiver is granted, the District Manager shall be authorized to reduce the amount of the administrative penalty or fine based on the information submitted by the responsible party.
- D. Any person (Appellant) who wishes to appeal a notice of violation of this Ordinance and/or the imposition of Administrative fees, costs, fines or penalties imposed by the District pursuant to this Ordinance, or appeal the imposition of a three (3) year prohibition on the use of a District fire hydrant meter, shall comply with the following procedures.
1. The Appellant shall submit an appeal request to the District within fifteen (15) calendar days from the date of the District bill, sent to the customer or water recipient at the time of the violation.
 2. The District Manager will respond, to the appeal request, within thirty (30) calendar days of the receipt of the appeal request.
 3. The Appellant may resubmit an appeal request, if the District Manager denies the original appeal request, to the District Board within fifteen (15) days of the date of denial. The Request for an appeal hearing before the District Board shall be submitted in writing to the District Manager, and include a deposit in the amount of any administrative fines or penalties set forth in the Notice(s) of Violation.

The appeal hearing before the District Board need not be conducted in accordance with the technical rules of evidence. Any relevant evidence may be admitted if it is evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might consider such admission improper in a civil or criminal proceeding. Irrelevant or unduly repetitious evidence may be excluded at the discretion of the District Board.

The Notice of Violation(s), other reports and any presentation prepared or presented by the Enforcement Officer concerning the violation(s) shall be accepted by the District Board as prima facie evidence of the facts stated in such documents. The Appellant shall have an opportunity to cross examine the Enforcing Officer or other witnesses called on behalf of the District, to testify and present witnesses and evidence on his or her own behalf concerning the violation(s) specified in the Notice of Violation.

After considering all evidence submitted at the appeal hearing, the District Board may affirm, modify or dismiss the Notice(s) of Violation and imposition of any administrative fines or penalties. The decision of the District Board shall be final. If

the District Board determines that the Notice(s) of Violation and/or imposition of administrative fines or penalties(s) should be affirmed, the fines and/or penalty amount on deposit with the District, if any, shall be retained by the District; otherwise, the District will refund the Appellant's deposit in full.

4. The Appellant may be required to provide documentation in writing or in person to support their appeal.
 5. The decisions by either the District Manager or if appealed to the District Board, are final.
 6. The Appellant shall, within ten (10) days of the final decision, pay all disputed charges imposed by the District.
- E. The provisions of Section 1094.6 of the Civil Code of Civil Procedure of the State of California shall be applicable to judicial review of the District Board's decision.

Section 2: Severability. If any section, subsection, sentence, clause or phrase of this chapter is for any reason held to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the Chapter. The Board hereby declares that it would have passed this Chapter, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid under law.

Section 3: California Environmental Quality Act (CEQA) Determination. Under the Environmental Impact Report which was completed upon the formation of the Scotia Community Services District, a determination was made that the District would not result in a significant environmental impact. This ordinance is also exempt from the CEQA Guidelines pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Section 4: Limitation of Actions. Any action to challenge the validity or legality of any provision of this ordinance on any grounds shall be brought by court action commenced within ninety (90) days of the date of adoption of this ordinance.

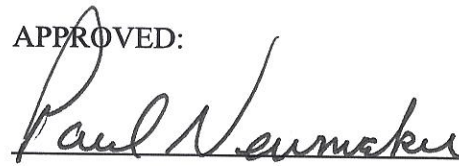
Section 5: This ordinance will take effect thirty (30) days after the date of its adoption.

DATE: 6/16, 2022

ATTEST:


Clerk, Scotia Community Services District
for Julie Hawkins

APPROVED:


President, Scotia Community Services District

Clerk's Certificate

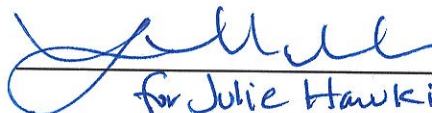
I hereby certify that the foregoing is a true and correct copy of Ordinance No. 2022-3, passed and adopted at a regular meeting of the Board of Directors of the Scotia Community Services District, Humboldt County, California on the 15th day of June, 2022 by the following vote:

AYES: Ansted, Black, Newmaker, Pryor, Sellen

NOES: None

ABSENT: None

ABSTENTIONS: None


for Julie Hawkins

Clerk, Scotia Community Services District