

ORDINANCE NO. 01.18.22.01

**AN ORDINANCE OF THE FLORIN RESOURCE
CONSERVATION DISTRICT BOARD OF DIRECTORS REPEALING
AND REPLACING ORDINANCE NO. 05.15.19.01, PROHIBITING THE
THEFT OF WATER AND TAMPERING WITH DISTRICT FACILITIES**

WHEREAS, the Florin Resource Conservation District (District) is a resource conservation district duly organized and existing under and pursuant to Division 9 of the Public Resources Code of California; and

WHEREAS, the District is authorized and empowered to acquire, own, operate, maintain, construct, finance, improve and extend a public water system; and

WHEREAS, the District owns and operates the Elk Grove Water District as a public water utility system; and

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

WHEREAS, in the event that a suspected water theft is discovered, the District may contact law enforcement personnel, which can result in the District pressing criminal charges; 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, 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; or

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 Government Code section 53069.45, the District may, by ordinance, make the violation of any ordinance regarding water theft enacted by its Board of Directors (Board) subject to an administrative fine or penalty; and

WHEREAS, the Board finds that this Ordinance is in the best interests of the District to protect the health, safety and welfare of its customers and the community; and

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

NOW, THEREFORE, THE FLORIN RESOURCE CONSERVATION DISTRICT BOARD OF DIRECTORS HEREBY DETERMINES AND ORDAINS AS FOLLOWS:

Section 1. Recitals. The Board hereby finds and determines that the above recitals are true and correct and are incorporated herein.

Section 2. Repealing and Replacing of Ordinance. The Board hereby repeals and replaces Ordinance No. 05.15.19.0, Prohibiting the Theft of Water and Tampering with District Facilities, with Ordinance No. 01.18.22.01.

Section 3. Approval of Ordinance. The Florin Resource Conservation District/Elk Grove Water District Ordinance Prohibiting the Theft of Water and Tampering with District Facilities, as described in Exhibit A, attached hereto and incorporated by reference, is hereby approved.

Section 3. California Environmental Quality Act Compliance. The Board 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 has the potential for causing a significant effect on the environment.

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 validity of the remaining portions, provisions or regulations contained herein shall become inoperative, or fail by reason of unconstitutionality of any other provision hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 5. Ordinance Effective Date. This Ordinance shall be in full force and effect within thirty (30) days from its adoption by the Board.

PASSED AND ADOPTED by the Florin Resource Conservation District Board of Directors on this 18th day of January, 2022 by the following vote:

AYES: Nelson, Medina, Mulberg, and Scherman

NOES:

ABSENT:

ABSTAIN:

A handwritten signature in blue ink, appearing to read "Sophia Scho", written over a horizontal line.

Chair

ATTEST:

A handwritten signature in blue ink, appearing to read "Stefani Phillips", written over a horizontal line.

Stefani Phillips
Board Secretary

APPROVED AS TO FORM:

A handwritten signature in blue ink, appearing to read "Ren Nosky", written over a horizontal line.

Ren Nosky
General Counsel

EXHIBIT “A”

FLORIN RESOURCE CONSERVATION DISTRICT/ELK GROVE WATER DISTRICT

**“PROHIBITION OF THEFT OF WATER AND TAMPERING WITH DISTRICT
FACILITIES”**

[Attached behind this cover page]

PROHIBITION OF THEFT OF WATER AND TAMPERING WITH DISTRICT FACILITIES

SECTION 1. WATER THEFT PROHIBITED

1.1 Water Theft. For purposes of this Ordinance, “water theft” means and includes all of the following:

1. 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
2. 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 to any District facilities and any public fire hydrant.

1.2 Unauthorized Use. For the purposes of this Ordinance, “unauthorized use” includes 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 the hydrant meter in violation of the terms and conditions of the hydrant meter permit.

1.3 Tampering. Tampering with District equipment or facilities is considered grounds for discontinuance of utility service. “Tampering” 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, picking or damaging cut-off locks;
3. Bypassing meters in any manner;
4. Taking unmetered water from hydrants by anyone other than authorized officials of a fire department, fire insurance company or District employee for any purpose other than firefighting, testing or flushing of water mains and fire hydrants;
5. Use of sprinkler system water 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 meters or extending service without written permission of the District;
9. Any intentional act of defacement, destruction or vandalism to District property;

10. Any intentional blockage or obstruction of District property.

1.4 Misdemeanor. Water theft and tampering are prohibited. Each act of water theft or tampering constitutes a misdemeanor under state law.

1.5 Reportable Offense. If any person takes water from a fire hydrant without authorization or otherwise tampers with District property, the District shall submit a record of the vehicle license plate number, available photographs and any other applicable information to the County of Sacramento Sheriff's Department or City of Elk Grove Police Department for investigation, where applicable.

1.6 Prosecution. The District may report any water theft to the appropriate prosecuting criminal agency and request prosecution of said activity pursuant to the Penal Code.

SECTION 2. ADMINISTRATIVE PENALTIES

2.1 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. Require the immediate removal of any equipment, connections or tools used to accomplish the water theft of District property;
2. Charge the customer or perpetrator an administrative penalty of:
 - I. Water theft committed via meter tampering:
 - i. \$130 for the first violation;
 - ii. \$700 for the second violation occurring within one year of the first violation; and
 - iii. \$1,300 for each violation thereafter occurring within one year of the first violation.
 - II. All other forms of water theft:
 - i. \$1,000 for the first violation;
 - ii. \$2,000 for the second violation occurring within one year of the first violation; and
 - iii. \$3,000 for each violation thereafter occurring within one year of the first violation.
3. The customer or perpetrator shall be charged all costs incurred by the District associated with reporting the violation including, but not limited to, labor, materials and equipment used to report the incident and all costs incurred by the District to replace or repair any District facilities or other items that were tampered with, damaged or removed for the

purpose of receiving water without paying the full lawful charge. These costs are subject to an overhead and administrative charge of fifteen percent (15%). No further water service shall be allowed at the address until all fees and charges are paid in full.

SECTION 3. OTHER REMEDIES

3.1 Enforcement Action. In addition to any other remedies provided in this Ordinance or available under applicable law, the District may alternatively seek injunctive relief in the County of Sacramento 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 commits water theft, the District may:

1. Turn off the water service and install a lock;
2. Estimate, if necessary, the water taken and charge the customer, offender or water recipient for the water taken from the District facility, plus any other amount reflective of the District's costs for such estimate and related activities;
3. Charge the customer, offender, or water recipient for the damage to the District lock, meter or other property;
4. Remove the meter and plug service;
5. Terminate and remove the service from its connection to the water main;
6. Charge a deposit reflective of the District's cost to reestablish service;
7. Require the return of any District hydrant meter;
8. 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 the third violation.

3.2 Other Costs. Any violation that causes the District to repair, restore, replace, or relocate a District-owned facility will be billed on a time and material basis plus an overhead and administrative charge of fifteen percent (15%). Nonpayment of such amounts may result in termination of service.

SECTION 4. NOTICE

4.1 Notice of Violation. A "Notice of Violation" shall be mailed or delivered to the customer, offender or water recipient when evidence suggests the possibility of theft of water.

4.2 Order to Cease. If the violation does not constitute an immediate threat to public safety or the integrity of the District's water system, the customer, offender or water recipient shall be ordered to immediately cease the unlawful practice.

4.3 Delivery of Notice of Violation. A “Notice of Violation” shall be mailed or delivered to the customer, offender or water recipient after water service is cut off for the following:

1. In the opinion of the District’s General Manager, theft of water is clearly evident on the customer’s property or property where the offense occurred and immediate action is necessary;
2. In the opinion of the District’s General Manager, there is an immediate threat to public health or safety.

SECTION 5. PAYMENT AND APPEAL PROCEDURES

5.1 Invoicing. The District shall calculate the amount of damages 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 and penalty(ies) may be sent to the offender or water user or recipient.

5.2 Fees and Charges. All costs relating to the District’s processing and handling of the water theft, investigation and enforcement thereof and potential charges for reestablishment of water 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 charges include, but are not limited to, investigation and enforcement costs, service call charges, water charges, turnoff of service, charges for damage to District facilities and equipment, and plug and/or termination fees. Before the meter will be replaced and service reestablished, the party requesting service, if in any way involved or related to, or associated with parties involved in the water theft, shall deposit an amount reflective of the District’s costs, plus the standard meter reinstallation fee, in addition to all service call charges, and an amount representing any damage to District property.

5.3 Other Costs. All charges relating to the District’s processing and handling of the water theft involving the taking of water from a public fire hydrant shall be borne by the offender or water user recipient, including, but not limited to, the cost of any water, charges for any damage to District facilities and equipment, and costs of investigation and enforcement.

5.4 Hardship Waiver. Any person who wishes to apply for a hardship waiver to reduce the amount of the fine, shall comply with the following procedures:

1. A hardship waiver request shall be submitted to the District General Manager no later than fifteen (15) calendar days from the date of the bill or invoice sent to the customer or offender describing how paying the full amount of the fine would impose an undue financial burden.
2. A response to the hardship waiver request shall be provided by the District General Manager, or his or her designee, within thirty (30) calendar days from the receipt of the hardship waiver request.
3. The decision by the District General Manager, or his or her designee, shall be final. The customer or offender shall pay any fines as outlined in the District General Manager’s or designee’s response.

5.5 Appeals Process. Any person (an “appellant”) who wishes to appeal the imposition of an administrative penalty imposed by the District pursuant to this Ordinance, or who wishes to appeal the imposition of a three-year prohibition on a hydrant meter permit pursuant to Section 3.1(8) herein, shall comply with the following procedures:

1. The appellant shall submit an appeal request to the District General Manager no later than fifteen (15) calendar days from the date of the bill or invoice sent to the customer or offender.
2. A response to the appeal request shall be provided by the District General Manager, or his or her designee, within thirty (30) calendar days from the receipt of the appeal request form.
3. If an appeal request is denied, the appellant may resubmit the appeal request to the District Board of Directors no later than fifteen (15) calendar days from the date of the denial. The appellant may provide evidence in writing or in person in support of his or her appeal.
4. The decision by the District General Manager, or his or her designee, shall be final unless appealed to the Board of Directors. In such event, the decision of the Board of Directors shall be final.
5. Within ten (10) business days after the denial of the appeal is deemed final, the appellant shall pay any disputed penalties imposed by the District.
6. 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.