WYNOLA WATER DISTRICT

WATER THEFT POLICY

Adopted By Resolution July 9, 2022

UNAUTHORIZED USE OF WATER SERVICES OR FIRE HYDRANTS

Tampering with any water service or fire hydrant for the unauthorized use of water, or any other reason, is a misdemeanor as provided by California Penal Code Sections 148.4 and 498. Such actions are punishable by imprisonment in the County Jail, or a fine, or both. The District will prosecute any such actions to the fullest extent of the law.

POLICY

1. Upon complaint or discovery of possible water theft, the staff of WWD shall investigate and file a report of findings to management. Any devices used to illegally remove water from the distribution system shall be confiscated.

2. Based upon the report, WWD management shall begin a formal assessment to determine if damages have resulted based on the water theft and the tampering of the water service or fire hydrant.

3. Penalties for tampering with and or damaging a water service or fire hydrant will be assessed as follows:

    a. First Violation $1000.00
    b. Second Violation $2000.00
    c. Third and Subsequent $3000.00

4. In addition to the fines for tampering, the offender will be billed for all water estimated by District staff to have been withdrawn from the distribution system to be billed at the published rate. Staff time and equipment utilized in investigating and performing repairs will also be included in the billing.

5. In the event of a failure to pay by the offender the District will use any means necessary to collect, including but not limited to; filing a lien against real property, and/or contact local authorities to file a criminal complaint.

6. The District reserves the right to pursue criminal charges where warranted in addition to fines and actual costs associated with the theft. The fines must be paid within 15 days of invoice.

Basis for Policy Using Updated Law Effective 2021

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 53069.45 is added to the Government Code, immediately following Section 53069.4, to read:

53069.45.

(a) (1) Notwithstanding any other law, the legislative body of a "local agency," as defined in Section 54951, that provides water services, may adopt an ordinance that prohibits water theft and makes a violation of an ordinance enacted by the local agency regarding water theft subject to an administrative fine or penalty, as provided in this section.
(2) The local agency shall adopt an ordinance that sets forth the administrative procedure that shall govern the imposition, enforcement, collection, and administrative review by the local agency of the administrative fines or penalties for water theft.
(3) The local agency shall establish a process for granting a hardship waiver to reduce the amount of the fine imposed for water theft upon a showing by the responsible party that payment of the full amount of the fine would impose an undue financial burden on the responsible party.
(b) If the water theft is committed via meter tampering in violation of an ordinance adopted under this section, it is punishable as follows:
(1) A fine not exceeding one hundred thirty dollars ($130) for a first violation.
(2) A fine not exceeding seven hundred dollars ($700) for a second violation of the same ordinance within one year of the first violation.
(3) A fine not exceeding one thousand three hundred dollars ($1,300) for the third violation and each additional violation of the same ordinance within one year of the first violation.
(c) All other forms of water theft in violation of an ordinance adopted under this section are punishable as follows:
(1) A fine not exceeding one thousand dollars ($1,000) for a first violation.
(2) A fine not exceeding two thousand dollars ($2,000) for a second violation of the same ordinance within one year.
(3) A fine not exceeding three thousand dollars ($3,000) for each additional violation of the same ordinance within one year.
(d) "Water theft" means an action to divert, tamper, or reconnect water utility services, as defined in Section 498 of the Penal Code.

Prior Fine Level California Penal Code 148.4
(a) Any person who does any of the following is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail, not exceeding one year, or by a fine, not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment:

(1) Willfully and maliciously tampers with, molests, injures, or breaks any fire protection equipment, fire protection installation, fire alarm apparatus, wire, or signal.

(2) Willfully and maliciously sends, gives, transmits, or sounds any false alarm of fire, by means of any fire alarm system or signal· or by any other means or methods.

(b) Any person who willfully and maliciously sends, gives, transmits, or sounds any false alarm of fire, by means of any fire alarm system or signal, or by any other means or methods, is guilty of a felony and upon conviction is punishable by imprisonment pursuant to subdivision (h) of Section 1170 or by a fine of not less than five hundred dollars ($500) nor more than ten thousand dollars ($10,000), or by both that fine and imprisonment, if any person sustains as a result thereof, any of the following:

(1) Great bodily injury.

(2) Death.

California Penal Code 498

(a) The following definitions govern the construction of this section:

(1) "Person" means any individual, or any partnership, firm, association, corporation, limited liability company, or other legal entity.

(2) "Utility" means any electrical, gas, or water corporation as those terms are defined in the Public Utilities Code, and electrical, gas, or water systems operated by any political subdivision.

(3) "Customer" means the person in whose name utility service is provided.

(4) "Utility service" means the provision of electricity, gas, water, or any other service provided by the utility for compensation.

(5) "Divert" means to change the intended course or path of electricity, gas, or water without the authorization or consent of the utility.

(6) "Tamper" means to rearrange, injure, alter, interfere with, or otherwise prevent from performing a normal or customary function.

(7) "Reconnection" means the reconnection of utility service by a customer or other person after service has been lawfully disconnected by the utility.

(b) Any person who, with intent to obtain for himself or herself

utility services without paying the full lawful charge therefor, or with intent to enable another person to do so, or with intent to deprive any utility of any part of the full lawful charge for utility services it provides, commits, authorizes, solicits, aids, or abets any of the following shall be guilty of a misdemeanor:

(1) Diverts or causes to be diverted utility services, by any means.

(2) 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.

(3) Tampers with any property owned by or used by the utility to provide utility services.

(4) Makes or causes to be made any connection with or reconnection with property owned or used by the utility to provide utility services without the authorization or consent of the utility.

(5) Uses or receives the direct benefit of all or a portion of utility services with knowledge or reason to believe that the diversion, tampering, or unauthorized connection existed at the time of that use, or that the use or receipt was otherwise without the authorization or consent of the utility.

(c) In any prosecution under this section, the presence of any of the following objects, circumstances, or conditions on premises controlled by the customer or by the person using or receiving the direct benefit of all or a portion of utility services obtained in violation of this section shall permit an inference that the customer or person intended to and did violate this section:

(1) Any instrument, apparatus, or device primarily designed to be used to obtain utility services without paying the full lawful charge therefor.

(2) Any meter that has been altered, tampered with, or bypassed so as to cause no measurement or inaccurate measurement of utility services.

(d) If the value of all utility services obtained in violation of this section totals more than nine hundred fifty dollars ($950) or if the defendant has previously been convicted of an offense under this section or any former section which would be an offense under this section, or of an offense under the laws of another state or of the United States which would have been an offense under this section if committed in this state, then the violation is punishable by imprisonment in a county jail for not more than one year, or in the state prison.

(e) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state.