

ORDINANCE NO. 2021-03
**AN ORDINANCE OF THE PHELAN PIÑON HILLS COMMUNITY SERVICES DISTRICT,
COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA,
PROHIBITING WATER THEFT, UNAUTHORIZED USE, AND TAMPERING**

WHEREAS, the Phelan Piñon Hills Community Services District (“District”) is a Community Services District located within the County of San Bernardino and is organized and operates pursuant to the California Government Code Section 61000, *et seq.*;

WHEREAS, the District was formed pursuant to Resolution No. 2994 of the Local Agency Formation Commission of the County of San Bernardino (“LAFCO”) adopted on March 18, 2008;

WHEREAS, pursuant to Condition No. 6 of LAFCO Resolution No. 2994 and Section 61100(a) of the California Government Code, the District is authorized to supply water for any beneficial uses in the same manner as a municipal water district formed pursuant to California Water Code Section 71000 *et seq.*;

WHEREAS, under California Water Code Sections 71600-71601, a municipal water district is authorized to adopt and enforce ordinances establishing rules and regulations for the water it delivers;

WHEREAS, Section 71600 of the California Water Code provides that every person convicted of an infraction for a violation of an ordinance shall be punished upon a first conviction by a fine not exceeding \$50, and for a second conviction within a period of one year by a fine of not exceeding \$100, and for a third of any subsequent conviction within a period of one year by a fine of not exceeding \$250;

WHEREAS, under California Government Code Section 61060(b), the District is authorized to adopt and enforce by ordinance rules and regulations related to its water service powers;

WHEREAS, the District is further authorized by California Government Code Section 61064(a) to declare violations of its ordinances to be misdemeanors pursuant to Section 19 of the California Penal Code;

WHEREAS, California Penal Code Section 19 provides that every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding \$1000, or by both;

WHEREAS, California Penal Code Section 498 prohibits the theft of utility services, including water;

WHEREAS, California Penal Code Section 624 prohibits every person from willfully

damaging, tampering with, or digging up water pipes or waterworks;

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;

WHEREAS, any person who violates California Penal Code Sections 498, 624, or 625 is guilty of a misdemeanor;

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 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 services 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;

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;

WHEREAS, pursuant to California Government Code Section 53069.45, the District may adopt an ordinance that prohibits water theft and makes a violation of any such ordinance enacted by its Board of Directors regarding water theft subject to an administrative fine or penalty not exceeding the amounts set forth therein;

WHEREAS, Article X, Section 2, of the California Constitution declares that the general welfare requires that water resources be put to beneficial use; waste or unreasonable use, or unreasonable method of use, of water be prevented; and conservation of water be fully exercised with a view to the reasonable and beneficial use thereof;

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;

WHEREAS, the District's Board of Directors finds that this Ordinance is in the best interest of the District to protect the health, safety and welfare of the community; and

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

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the Phelan Piñon Hills Community Services 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: DEFINITIONS

A. For the purposes of this Ordinance, "water theft" means an action to divert, tamper, or reconnect water utility services, as defined in Section 498 of the Penal Code, 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; 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.

B. 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, regardless of whether payment is provided to the District for the water drawn from the public fire hydrant, or any use of hydrant meter in violation of the term and conditions of a hydrant meter permit.

C. For the purposes of this Ordinance, "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 meter in any way.
4. Taking unmetered water from hydrants by anyone other than authorized officials of a recognized fire department, fire insurance company or District employee for any purpose other than firefighting, testing or flushing of hydrants.
5. Use of sprinkler system water service 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 the meter or extending service without permission of the District.
9. Any intentional act of defacement, destruction or vandalism to District property or an act that affects District property.
10. Unauthorized use of a pump or device for removal of water from the ditch system.
11. Any intentional blockage or obstruction of District property.

SECTION 3: VIOLATIONS

Water theft, unauthorized use, and tampering are prohibited.

SECTION 4: CRIMINAL PENALTIES

A. The District may report any water theft to the appropriate prosecuting agency and press for prosecution of said activity pursuant to the Penal Code.

B. Any person violating any provision of this Ordinance, as determined by the District's General Manager, may be prosecuted as committing either a misdemeanor or an infraction by the District's General Manager in the name of the people of the State of California.

1. Every violation of the provisions of this Ordinance that is determined to be a misdemeanor shall be punishable by imprisonment in the San Bernardino County jail not exceeding six (6) months, or by a fine not exceeding \$1,000, or by both.

2. Every violation of the provisions of this Ordinance that is determined to be an infraction shall be punishable by (a) a fine not exceeding fifty dollars (\$50) for a first violation of this Ordinance; (b) a fine not exceeding one hundred dollars (\$100) for a second violation of this Ordinance within a period of one year; and (c) a fine not

exceeding two hundred fifty dollars (\$250) for each additional violation of this Ordinance within a period of one year.

SECTION 5: ADMINISTRATIVE PENALTIES

In addition to pursuing criminal penalties, the District, upon discovering water theft or tampering with District property, may also pursue the following remedies or other remedies available at law or equity:

A. Require the immediate removal of any equipment, connections or tools used to accomplish the water theft that is attached to District property; and/or

B. If the water theft is committed via meter tampering in violation of this Ordinance, charge the customer or perpetrator an administrative penalty 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 within twelve-months of the first violation; and
3. A fine not exceeding one thousand three hundred dollars (\$1,300) for the third and each additional violation within twelve-months of the first violation.

C. For all forms of water theft other than as set forth in Section 5.B. above that are committed in violation of this Ordinance, charge the customer or perpetrator an administrative penalty 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 within a twelve-month period; and
3. A fine not exceeding three thousand dollars (\$3,000) for each additional violation within a twelve-month period.

SECTION 6: OTHER REMEDIES

In addition to any other remedies provided in this Ordinance or available under applicable law, the District may alternatively seek injunctive relief in the Superior Court or take enforcement action. All remedies set forth in this Ordinance are herein declared to be cumulative and non-exclusive, and shall not preclude the District from enforcing any other rights or remedies to discontinue service and/or otherwise enforce this Ordinance or any other rules and regulations of the District. 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, or

otherwise makes an unauthorized connection to District facilities without District permission, or commits water theft, the District may:

- A. Require the immediate removal of any equipment, connections or tools used to accomplish the water theft that is attached to District property;
- B. Turn off the water service and install a lock;
- C. Estimate, if necessary, the water taken and charge the customer, offender or water recipient three times the normal rate of the water taken from the District facility;
- D. Charge the customer, offender or water recipient for the damage to the District lock, meter or other property;
- E. Remove the meter and plug the service;
- F. Terminate and remove the service from its connection to the water main;
- G. Charge a deposit of two times the amount of the average use to reestablish service;
- H. Require the return of any District hydrant meter; and
- I. 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.

SECTION 7: ENFORCEMENT OFFICER

The District's General Manager is hereby declared and appointed as the enforcement officer of this Ordinance, and shall be empowered to take such other actions as authorized herein, or as may otherwise be authorized by the District's Board of Directors or be reasonably necessary, for enforcement of the Ordinance.

SECTION 8: NOTICE

- A. A "Notice of Violation" will be mailed or delivered to the customer for the following:
 - 1. Evidence suggests the possibility of theft of service, including irrigation water, at the customer's property.
 - 2. If the violation does not constitute an immediate threat of safety or equipment integrity to the system, the customer will be ordered to immediately cease any unlawful practice.

B. A "Notice of Violation" will be mailed or delivered to the customer after service is cut-off for the following:

1. In the opinion of the District's General Manager, theft of service is clearly evident on the customer's property and immediate action is necessary.

2. In the opinion of the District's General Manager, there is an immediate danger to public health or safety.

SECTION 9: HARDSHIP WAIVER

The District's General Manager may grant hardship waivers to reduce the amount of the fine imposed for water theft upon a showing by the responsible party the payment of the full amount of the fine would impose an undue financial burden on the responsible party. Such waivers may be granted only upon written application therefor. Upon granting such a waiver, the District's General Manager may impose any conditions he or she determines to be just and proper.

SECTION 10: PAYMENT AND APPEAL PROCEDURES

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 damages or penalty(ies) may be sent to the offender, water user or recipient.

A. All costs relating to the District's processing and handling of the water theft, investigation and enforcement thereof, and potential charges for reestablishment of 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, service call charges, water charges, turnoff of service, charges for damage to District facilities and equipment, and plug or termination fees. Before the meter will be replaced and service reestablished, the party requesting service, if in any way involved in or related to, or associated with, parties involved in the water theft, shall deposit twice the average bi-monthly water bill, plus the standard meter reinstallation fee, in addition to all service call charges, and an amount representing any damage to District property.

B. 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, water user or 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.

C. 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 6(h), shall comply with the following procedures:

1. The Appellant shall submit an appeal request to the District 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 within thirty (30) calendar days from receipt of the appeal request.

3. If an appeal request is denied, the Appellant may resubmit the appeal request to the District's Board of Directors no later than fifteen (15) days from the date of the denial.

4. The Appellant may request to provide evidence in writing or in person in support of his or her appeal.

5. The decision by the District's General Manager, or if appealed to the Board of Directors, the decision of the District's Board of Directors, shall be final.

6. 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.

7. The provisions of Section 1094.6 of the California Code of Civil Procedure shall be applicable to judicial review of the decision.

SECTION 11: CONFLICTING PROVISIONS

If any provision of this Ordinance is in conflict with any applicable federal or state law or regulation, the federal or state law or regulation shall govern. If provisions of this Ordinance are in conflict with each other, other provisions of the District's regulations or policies, or any other resolution of ordinance of the District, the more restrictive provisions shall control.

SECTION 12: SEVERABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decisions shall not affect the validity of the remaining portions of this Ordinance.

SECTION 13: PUBLICATION AND POSTING


The Secretary of the Board is hereby directed to cause a summary of this Ordinance to be published at least five (5) days prior to the date of adoption hereof in a newspaper of general circulation printed and a copy of the full text must be posted at the District office at least five (5) days prior to the meeting. The full text of this Ordinance

must be published within ten (10) days after adoption with the names of the directors voting for and against the adoption, and must likewise be posted at the District office.

SECTION 14: EFFECTIVE DATE

This Ordinance shall become effective and in full force thirty (30) days after its adoption, at which time it will supersede Ordinance No. 2020-02 adopted by the District's Board of Directors on September 16, 2020.

APPROVED AND ADOPTED this 6th day of October, 2021.



President of the Phelan Piñon Hills
Community Services District and
of the Board of Directors thereof.

