

SECTION 72 PENALTIES AND DAMAGES

72.01 GENERAL

A. User and Owner Responsibility. Each person receiving service, or that owns a property that receives service, agrees to pay the District any applicable fees and charges. Such persons are also responsible for all costs and damages in connection with any violation of this Code relating to their service.

B. District Not Liable. The District shall bear no liability for any cost, damage, claim or expense incurred by District or any responsible party or third party on behalf of the District arising from or related to any violation, including, but not limited to, costs, damages, claims or expenses arising from any corrective action of the District. Such corrective actions include, but are not limited to, the removal, confiscation, disposition or use of any device, equipment, improvement or material encroaching on any District property or used in connection with any other violation.

C. District Obligation to Collect Damages. Pursuant to Government Code Section 53069.6, the District shall take all practical and reasonable steps, including appropriate legal action, if necessary, to recover civil damages for the negligent, willful, or unlawful damaging or taking of property of the District.

D. Assessment of Damages. Actual damages resulting from any violation, including late payment or failure or refusal to pay for service and any interest thereon, may be assessed and collected as part of a customer's monthly bill to the extent allowed by law. The District will separately invoice any actual damages not assessed on a monthly bill, including any damages assessed against any responsible person who is not a customer.

E. Unpaid or Partially Paid Bills. Bills issued by the District are due in full as provided in such bills. Failure to timely pay bills in full may lead to a reduction, suspension, or termination of service, as provided in Section 72.02(B), below, in Section 34 of this Code, or pursuant to other provisions of this Code or applicable law. In addition, if bills remain unpaid, in full or in part, the District may lien the delinquent real property and may assess damages and penalties established by District or otherwise authorized by law.

72.02 VIOLATIONS AND GENERAL PENALTIES FOR VIOLATIONS

A. Notice of Violation. Notice and a reasonable period of time to correct a violation will be given prior to the termination, reduction or suspension of service or the imposition of any administrative fine. However, the District may, without notice, correct any condition or violation that endangers the health or safety or impairs any District service, facility or property or is otherwise determined by the District to require immediate action.

1. Investigative Procedures. If a possible violation is identified, observed or reported, the District will contact the allegedly responsible party to investigate. If the violation is in fact occurring, District staff will issue a notice of violation or otherwise inform the responsible party that corrective actions must be taken within a period of time deemed reasonable by the District, taking into consideration the nature of the violation and the potential damage that can arise if the violation continues.

2. Content of Notice of Violation. The notice will describe the violation, indicate the actions that must be taken, and indicate the date by which those actions must be taken. Unless immediate action is required, the notice will provide a reasonable time for the violation to be corrected. The notice will also specify the amount of any delinquency, actual damages or other amounts due the District, if any, and the telephone number of a representative of the District who can provide additional information.

3. No Notice Required; District Action. If the District determines that immediate or prompt correction of the violation is necessary to prevent waste or to maintain the integrity of the water supply, systems or facilities of the District, or for the immediate protection of the health, safety or welfare of persons or property, or for any other compelling reason, the District will take any action deemed necessary (including suspension, reduction or termination of service; locking or removal of meters; or repairs of any improvements) and a notice will be left at the affected parcel specifying any further corrective actions required. Any costs incurred by District and any applicable fines will be the responsibility of the responsible party.

4. Notice; Failure to Comply. The responsible party will be given an opportunity to correct the violation and to provide verbal, written and pictorial exculpatory evidence. If such evidence does not exonerate the responsible parties and if the violation(s) are not corrected to the satisfaction of the District within the time provided, the District may assess cost and penalties, administrative fines and may take any other action or pursue any other remedy available. Furthermore, if the violation concerns any service requirement or facility, or to prevent waste or protect the integrity of the system or the health and safety of the public, the District may suspend, reduce or terminate service to the extent permitted by law.

B. Service Termination, Suspension or Reduction; Removing or Locking Meters. Service may be reduced, suspended or terminated for failure to pay for service or in connection with a violation of this Code or applicable law. Termination, suspension or reduction of service will proceed as follows:

1. Notice Prior to Termination, Suspension or Reduction of Service. Except as provided in Paragraph A, above, or in other provisions of this Code or applicable law, not less than ten (10) days notice will be given prior to the date service is reduced, suspended or terminated; provided that, where service is terminated due to failure to comply with the terms of an amortization agreement, under Section 34 of this Code, only forty-eight (48) hours prior notice is required. The notice will be delivered to

the affected parcel and, if the owner of record does not reside in the affected parcel, a copy of the notice will be forwarded to the owner's address on record with the assessor's office via any available means, such as personal delivery, certified mail return receipt requested, email, fax or fed-ex.

2. Termination for failure to pay for service. The District may discontinue any or all service due to failure to pay the whole or any part of a bill issued by the District. In connection with termination of water service, the provisions of Section 60373 of the Government Code, or any other appropriate provision of law, or as set forth in Section 34 of this Code of Ordinance, will be followed. In connection with sewer, Section 71672 of the California Water Code or other applicable requirements will be followed.

C. Reconnection or Reinstatement of Service, Unlocking or Reinstalling Meters. If service is reduced, suspended or terminated for any reason, each of the following conditions applicable to the situation must be satisfied or arrangements satisfactory to the General Manager or a designee must be made *before* service is reinstated:

1. Outstanding amounts for service bills, including any service charges for benefits derived from the violation, must be paid;

2. All required deposits (including any security deposits), actual damages, fines, costs, charges and penalties must be paid;

3. Any amounts due for the removal, locking, servicing, repair or replacement of meters or other facilities required for service must be paid at the rates in effect at the time of reinstatement, as set forth on **Appendix A** to this Code or other schedule of fees then in effect;

4. All violations and related damages or conditions must have been corrected and/or repaired and evidence satisfactory to the District to that effect and demonstrating that it is safe to reinstate service, must have been provided to and approved by the District; and

5. If the service was originally in the name of a tenant, the District may require the owner of the parcel to request the service account under his or her name and responsibility.

D. Owner Responsibility for Account. In addition to owners' obligations under subsection (A) of section 72.01 and subsection (C)(5) of Section 72.02, above, and any other remedies provided by this Code or by applicable law, Owners may be required to deliver to the District a form of acknowledgement or authorization for service to a tenant. In addition, if (i) a tenant engages in any violation, (ii) if the District has reduced, suspended or terminated any service to a tenant three (3) times within any twenty-four (24) month period or (iii) the tenant has failed or refuses to comply with the terms of payment arrangements with the District four (4) times, the District reserves the right to demand that the property owner take responsibility for services to the tenant-

occupied parcel. The General Manager or a designee shall develop procedures to implement these requirements.

E. Right of Access to Customer's Premises; Interference. If any person refuses to consent to an investigation of a possible violation, or prevents or refuses to allow access to District staff or authorized representatives to any premises or facility during an investigation or in connection with any termination, reduction or suspension of service, the District may seek an injunction or a warrant, as provided in Section 71601 of the Water Code.

F. Other Remedies. In addition to the actions contemplated in this Section, the District may seek other remedies authorized or required by any applicable law, including imposing an administrative fine, pursuant to Section 72.06, or pursuing other available civil or criminal remedies.

72.03 CERTAIN SPECIFIC OPERATIONAL VIOLATIONS

A. Unauthorized Connections. The District shall bear no cost or liability for any unauthorized connection. In addition to other remedies, any unauthorized connection is subject to a Type II fine, pursuant to Section 72.06 depending upon the severity, duration and reoccurrence of the violation and any other factors the District may reasonably take into consideration.., Further, the District may demand that the unauthorized connection be immediately disconnected. In the alternative, if the customer refuses to take immediate action, or if immediate actions is necessary as set forth in Section 72.02(A)(3), above, the District may immediately disconnect, remove, confiscate, destroy or dispose of any parts installed or used for the unauthorized connection, all at the expense of the customer and any other responsible party. To the extent allowed by law, the District may also, immediately or as otherwise deemed advisable by the District, terminate service to any parcel and any person that allows, uses or benefits from such unauthorized connection.

B. Water waste. No customer shall knowingly permit leaks or other wastes of water, including, but not limited to, allowing runoff on any portion of his or her property, engaging in non-permitted uses of water, or failing to take corrective action after notice of any leaks or water waste is given. If the District determines that water waste is occurring, the District will:

1. Notify the customer that they are in violation of the District's Code of Ordinances.

2. Notwithstanding the foregoing, the District may, without prior notice, repair or replace any District controlled facilities at the cost of the person identified as the responsible party, if any.

3. If the water waste is due to a condition within the customer's property or facilities, the District may (i) require the customer to repair or replace the affected facilities, immediately or within a reasonable time, depending on the situation; or (ii) if necessary to prevent further waste, adjust, lock or remove the meter. If any repair

or replacement required is not completed in a timely manner, the District may perform the repair or replacement at the cost of the customer or may terminate service without further notice.

C. Meter Tampering. In addition to other remedies, tampering is subject to a Type II fine pursuant to Section 72.06 depending upon the severity, duration and reoccurrence of the violation and any other factors the District may reasonably take into consideration. Additionally, tampering may be prosecuted as a crime under Section 498 of the California Penal Code, as set forth in Section 73.01 of this Code.

D. Fire Service Violation. Fire service is subject to compliance with all provisions of this Code and the law concerning water service, and failure to comply with such provisions may result in the reduction, suspension, termination or disconnection of water service for fire protection, without any liability to District. Furthermore, illegal connections or other violations relating to fire service are subject to either a Type I or Type II fine, at the option of the District, and may be prosecuted as crimes.

E. Backflow prevention, screens and other safety devices. If service requirements include the installation, testing and maintenance of backflow prevention devices (Section 23.04 of this Code), screens or other safety operational items, in addition to, or in lieu of, other remedies provided herein, the District may apply any of the remedies under Section VI and VII of the District's Ordinance No. 386, as amended or renumbered. Furthermore, violations relating to backflow testing may be prosecuted as set forth in Section 73.01 of this Code. Violations of backflow requirements or knowingly filing a false statement or report required by a local health officer are subject to either a Type I or Type II fine, at the option of the District, pursuant to Section 72.06, below.

F. Violation Concerning Recycled Water Service. In addition to any fine, revocation, suspension or penalty imposed under Section 26 in connection with any violation of said Section, including permit suspension or revocation under Section 26.07.C, the District may (i) suspend or terminate water and or sewer service to the property, the owner and/or the operator; (ii) require payment by the owner for any damage to the District facilities, reimbursement to District of costs and expenses, or fines imposed on the District in connection with such violation; or (iii) prosecute the responsible party under any applicable provision of this Code, the Water Code or the Penal Code. Additionally, any violation concerning recycled water service is subject to either a Type I or Type II fine, at the option of the District, pursuant to Section 72.06, below.

G. Violation Concerning Sewer Service. In addition to any other remedy, fine or penalty provided by this Code or applicable law, failure to comply with any requirements of sewer service, including requirements for the preservation of public health, safety and welfare and including, but not limited to, the requirements established under Article II, Chapter 2, Sections 50 to 56.04 of this Code, as hereafter amended or as supplemented by other District Rules and Regulations for Sewer Service, the California Health and Safety Code, the California Code of Regulations, Titles 17 and 22, and Water

Agency Standards. Furthermore, may be prosecuted as set forth in Section 73.01 of this Code. Additionally, any violation concerning sewer service is subject to a Type I or Type II fine, at the option of the District, pursuant to Section 72.06, below.

H. Theft, Fraud, or Misappropriation. In addition to any other remedy, fine or penalty provided by this Code or applicable law, any violation involving theft, fraud or misappropriation of District water, services, or property is subject to a Type I or Type II fine, at the option of the District, pursuant to Section 72.06, below.

72.04 VIOLATIONS OF CONSERVATION OR OTHER WATER USE RESTRICTION PROVISIONS

The District has established and published conservation measures set forth in Section 39 of the Code. Commencing with declared Level 2 conditions, the District may assess water shortage rates and charges previously adopted. In addition, after notice of the declared water shortage level is given as required by law, any person who uses, causes to be used, or permits the use of water in violation of such requirements (other than a person who qualifies for an applicable exemption, if any) may be assessed damages, penalties and fines.

A. Additional provisions concerning use restriction violations. In addition to payment of actual damages, the following may apply to a violation of any water conservation or water use restriction measure:

1. A change on the account holder shall not cause the account to revert to pre-violation status unless the new account holder provides evidence that it is not related to the violator and had no responsibility for the prior account.

2. The District may reduce, suspend or terminate service to any parcel immediately and without further notice if the violation involves or results in water waste, as set for in Section 72.03(B), above.

3. Willful violations of mandatory conservation measures described in Section 39 of this Code may be enforced by terminating service to the property at which the violation occurs, as provided by Section 356 of the California Water Code.

B. Prosecution for violations of conservation measures. Pursuant to Section 377 and 71644 of the California Water Code, each violation of the District's Conservation Ordinance, set fort in Section 39 of this Code, may be prosecuted as a misdemeanor, punishable by imprisonment in the County jail for no more than thirty (30) days or by a fine, as set forth in subsection (C), below.

C. Assessment of fines for violations of conservation or water use restriction provisions. Any responsible party who fails to comply with any conservation or use restriction measure is subject to the assessment of an administrative Type I fine, added to account, pursuant to Section 72.06, below.

72.05 VIOLATIONS INVOLVING DISTRICT REAL PROPERTY

A. Removal, Disposition and Costs. The District has absolute discretion to determine the corrective action required in connection with any violation involving District real property, including requiring the owner of any unauthorized encroachment or improvement to remove it or taking action to remove it immediately and without notice. Any improvements or uses placed within or on any District property or right of way are subject to the following:

1. Costs and Damages. All costs and damages shall be the responsibility of the customer and any other responsible party. Furthermore, the District shall not be liable for costs to repair or replace any unauthorized encroachment or improvement, or any property, improvement or thing used in connection with, supported by or attached thereto.

2. Burden of proof. The burden shall be on the user to prove to the District's satisfaction, the authority, scope and extent of any right to access, improve or use the District's property. Only written evidence in the form of an agreement, deed, statute, recorded or official map or plat, governmental regulation or other right may be used to establish such claim of right.

B. Notice. In connection with any improvement or use that does not constitute a health hazard and does not interfere with the District's use of its property, the District will give written notice of up to sixty (60) days, at the discretion of the General Manager, to cease, terminate, eliminate or remove the offending improvement, structure or use. Any written notice will be given to the responsible party or posted at the property where the trespass or encroachment occurs. If the responsible party is not the owner of any real property affected by the violation, the District will also give notice to the owner of record at the address on record with the assessor's office via personal delivery, certified mail return receipt requested or via Fed-Ex.

C. Immediate action. In connection with any improvement that constitutes a health hazard or interferes with the District's use of any District property, the District will take any immediate action deemed necessary by the General Manager.

D. Fines. In addition to all other remedies provided under this Article or under applicable law, the District may impose a fine as provided in Section 72.06. Additionally, the District may impose a fine up to either the amount specified on any sign, or a Type I or Type II fine, at the option of the District, in connection with any trespass on District property in violation of a sign prohibiting trespassing, pursuant to Section 72.06, below.

E. Separate violation. A separate violation will accrue for each day after the deadline to cease, terminate, eliminate or remove the trespass or encroachment, as set forth in the notice.

72.06 ADMINISTRATIVE FINES

Any administrative fines established herein shall be in the nature of civil penalties and shall be additional and cumulative to any other fines, damages or any other charges established by the District and are also separate from and cumulative to any other civil or criminal penalty, fine or remedy. In connection with each violation, the District may assess a fine up to the amount specified in the schedule of fines for the type of fine being imposed.

Each day during which a violation is in effect constitutes a separate violation and violations are cumulative while the account is in the name of the original violator or any person that participated in or benefited from the violation. Except where the violation creates an immediate danger to health or safety, the person responsible for the continuing violation will be provided a reasonable period of time to correct or otherwise remedy the violation(s) prior to the imposition of administrative fines.

A. Assessment of Fines for Technical Violations of Other Code Provisions. Any person who engages in a violation of any provision of this Code is subject to the assessment of a separate administrative Type I Fine, unless subject to a more severe fine as set forth in this Code.

B. Assessment of Separate Fines.

Nothing in this code or the limits specified per violation shall prevent the imposition of separate fines for each separate violation committed during a single act. For example, in connection with a violation concerning sewer service that involves a trespass on any portion of the District's real property, separate fines may be assessed for the trespass, the damage to District personal property, the damage to District real property; the damage to the sewer system and the activity resulting on all the damages.

C. Types of Fines. The amount for each type of fine specified below may increase automatically to reflect any higher amount authorized by law or regulation. The District has determined to establish two types of fines based on the nature of the violation, as follows:

1. Type I Fine. Any violation that does not have the potential to endanger the health or safety of the public. The fine will not exceed the amount specified in the Section 36900(b) of the California Government Code or Appendix A for a first, second, third or each additional violation of that same ordinance or requirement within a twelve-month period.

2. Type II Fine. Any violation that has the potential to endanger the health or safety, including, but not limited to, unauthorized or illegal connections, meter tampering, water theft, , or knowingly filing a false statement or report required by a local health officer . The fine will not exceed the amount specified on Appendix A per each day the violation is identified or continues.

D. Collection of Fines. Any fines assessed by the District are payable directly to the District, are due upon issuance or as otherwise indicated on the notice or bill, and are delinquent 30 calendar days from the due date.

E. Notice of Administrative Fine; Content. Notice of an administrative fine pursuant to this section will contain the following information: (i) a brief description of the violation(s); (ii) the date and location of the violation(s); (iii) a brief description of corrective action(s) required, as appropriate; (iv) a statement explaining that each day the violation continues constitutes a new violation; (v) in the case of violations creating an immediate danger to health or safety, the amount of civil penalty assessed or, in all other cases, the amount of civil penalty to be assessed if the violation(s) are not corrected within the time provided by the notice; (vi) a statement of the procedure for payment and the consequences of failure to pay; (vii) contact information for the District employee that should be contacted to discuss the notice and provide evidence of compliance; and (viii) a brief statement describing the responsible party's right to request further review, pursuant to subsection (F), below.

F. Option for Board Review. Persons receiving a Notice of Administrative Fine may request Board review. The request for Board consideration must be in writing, must be received by the District Secretary within ten (10) calendar days from the date of the notice and must include contact information, an explanation of the basis for the request, and any supporting documentation said person(s) wish to provide to the Board for review and consideration. District staff will review the petitioner's request and will make a recommendation to the Board in light of its investigation. The District will provide notice of the date, time and place for Board consideration by electronic means, facsimile or first class mail sent to the return addressee indicated on the written request.

G. *Any fines assessed pursuant to the Notice of Administrative Fines must be timely paid notwithstanding the filing of a request for Board review.*

At the time of Board review, the petitioner may, address the Board and respond to the charges to show good cause why the fine should not be imposed; however, the customer is not entitled to a full judicial-type hearing with cross examination, sworn testimony, etc. In accordance with the provisions of Government Code Section 53069.4, the Board's determination shall be final and conclusive, and shall be deemed confirmed, if not appealed within 20 calendar days to the Superior Court of the County of San Diego.