

ORDINANCE NO. 3093-16

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SUNNYVALE TO ADD NEW SECTIONS 12.24.115
(WATER THEFT PROHIBITED) AND 12.24.285
(CONSTRUCTION HYDRANT METERS) TO CHAPTER
12.24 (WATER SYSTEM REGULATIONS) OF TITLE 12
(WATER AND SEWERS) OF THE SUNNYVALE
MUNICIPAL CODE**

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, California Civil Code Section 1882 et seq. authorizes the City of Sunnyvale 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.
- 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 Civil Code Section 1882 et seq., the City may bring a civil action for the unauthorized use of City water; and

WHEREAS, Sunnyvale Municipal Code Chapter 12.24 establishes rules and regulations that govern the use of water and prohibit water theft from City facilities; and

WHEREAS, the City may, by ordinance, make the violation of any ordinance enacted by the City Council subject to a civil administrative fine or penalty; and

WHEREAS, because water is a vital resource, the City Council has determined that it is appropriate to impose a civil penalty for the theft of water to protect this vital resource.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. SECTION 12.24.115 ADDED. Section 12.24.115 (Water Theft Prohibited) of Chapter 12.24 (Water System Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby added to read as follows:

12.24.115. Water Theft Prohibited.

(a) It is unlawful for any person to use, divert, receive or take water from the city water system from any public fire hydrant, blow-off valve, water main, water service lateral or other city facility or connection to a city facility, to which an authorized city metering device has not been installed or has been removed.

(b) It is unlawful for any person to use, divert, receive, or take water from the city water system without paying the full city charges for such water, such as by tampering with city property or facilities, removing a lock or plug that has been placed on consumer's service or meter, or by making an unauthorized connection to any city facilities or public fire hydrant.

(c) In addition to any other civil or criminal remedies authorized by law, any person who takes water in violation of this section shall be subject to a penalty that shall be set forth in a schedule of penalties established by resolution of the city council. If the person is a consumer of city water, the penalty may be added to his or her bill for water service and collected under the same rules and regulations.

(d) Any penalty imposed under this section may be appealed by filing a written notice of appeal with the city manager no later than ten days after receipt of the notice imposing the penalty. The city manager shall designate the hearing officer for the appeal hearing. The hearing shall be scheduled not less than fifteen calendar days and not more than sixty calendar days from the date that the appeal is filed. At the hearing, the party contesting the penalty shall be given the opportunity to testify and to present witnesses and evidence. After considering all of the testimony and evidence submitted at the hearing, the hearing officer shall issue a written decision to uphold or cancel the penalty and shall state in the

decision the reasons for that decision. The decision of the hearing officer shall be final.

SECTION 2. SECTION 12.24.285 ADDED. Section 12.24.285 (Construction Hydrant Meters) of Chapter 12.24 (Water System Regulations) of Title 12 (Water and Sewers) of the Sunnyvale Municipal Code is hereby added to read as follows:

12.24.285. Construction Hydrant Meters.

(a) Permit required. It is unlawful for any person to take water from a public fire hydrant without having first obtained a permit issued by the department of environmental services.

(b) Fee. At the time the application is filed with the director of environmental services, the applicant shall pay a fee sufficient to cover the cost of processing the application. The amount of the fee shall be set by resolution of the city council.

(c) Hydrant meter. Any person taking water from a public hydrant shall utilize a hydrant meter rented from the department of environmental services. It is unlawful to tamper with or damage any portion of the construction hydrant meter device, the backflow unit, or any portion of the fire hydrant. Tampering with any portion of the hydrant meter backflow device is a violation of section 12.28.290 of this code. If the hydrant meter or other city facilities are damaged, the applicant shall pay the full cost of repairs and/or replacement. If the hydrant meter is lost or stolen, the applicant shall pay the replacement cost of the hydrant meter as determined by the city. Service of water from the hydrant shall be immediately discontinued by the city if the backflow prevention device is removed or tampered with in any manner, if unprotected cross-connections exist on the premises, or if the customer fails to timely pay any fees or charges due hereunder. Service will not be restored until such conditions are corrected.

(d) Hydrant meter unreported consumption. The city council may establish a monthly late fee or penalty that will be imposed on any person taking water through a hydrant meter who fails to report their water consumption by the tenth day of the month in accordance with the terms and conditions of the permit.

(d) Collection of fees and charges. If the customer is a consumer of city water, any fees or charges imposed under this section may be added to his or her bill for water service and collected under the same rules and regulations. Any person owing unpaid fees or charges under this section shall not be entitled to rent a hydrant meter until all such fees and charges are paid in full.

SECTION 3. CEQA - EXEMPTION. The City Council finds, 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. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City

Council hereby declares that it would have passed this ordinance, 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.

SECTION 5. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 6. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on August 23, 2016, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on _____, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

RECUSAL:

ATTEST:

APPROVED:

City Clerk
Date of Attestation: _____

Mayor

(SEAL)

APPROVED AS TO FORM:

City Attorney