

Bolinas Community Public Utility District

Ordinance No. 38

**ORDINANCE OF THE BOLINAS COMMUNITY PUBLIC UTILITY DISTRICT
BOARD OF DIRECTORS TO RESCIND RESOLUTION NO. 152 AND ADOPT NEW
RULES AND REGULATIONS REGARDING TRANSFERS OF WATER METERS**

THE BOARD OF DIRECTORS OF THE BOLINAS COMMUNITY PUBLIC UTILITY DISTRICT ("BCPUD") HEREBY FINDS AND DECLARES AS FOLLOWS:

WHEREAS, the BCPUD is a public utility district empowered to provide water service within its boundaries; and

WHEREAS, the BCPUD declared a water shortage emergency in 1971 and has reaffirmed that water emergency declaration on numerous subsequent occasions; and

WHEREAS, in response to the water shortage emergency BCPUD adopted Resolution No. 152 for the regulation of transfers of water meters from one property to another; and

WHEREAS, the BCPUD now desires to amend its regulations regarding transfers of water meters to allow more flexibility of meter location, but not increased water use.

BE IT ENACTED by the board of directors of BCPUD:

Section 1. Authority. This ordinance is enacted pursuant to BCPUD's statutory powers and the water shortage emergency provisions of Water Code sections 350 et seq., including, but not limited to, the power to implement regulations addressing the delivery and consumption of water as provided in Water Code section 353. This ordinance is issued in the sound discretion of the BCPUD Board of Directors and shall conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation and fire protection.

Section 2. Rescission of Resolution No. 152. BCPUD hereby rescinds Resolution No. 152.

Section 3. New Regulations For Water Meter Transfers. BCPUD finds that the following regulations governing water meter transfers are reasonable and necessary to conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation and fire protection. BCPUD finds that these regulations will allow certain transfers of water meters while not increasing the overall water demands placed on BCPUD's water supply. BCPUD finds that the following regulations will limit future water use in a manner beneficial to maintaining BCPUD's water supply. As such, BCPUD enacts the following regulations for water meter transfers:

a. Application. Any property owner seeking to transfer a water meter from one property to another shall complete the application form available at the BCPUD office. The Board of Directors shall consider the application at the next regularly scheduled meeting of the Board following the BCPUD's receipt of a complete application.

b. Application Fee. BCPUD shall charge an application fee to cover all costs associated with processing an application including, if necessary, costs associated with performing studies or environmental review. The application fee schedule will be kept at the BCPUD office and updated from time to time and at the discretion of the General Manager or the Board of Directors.

c. Reimbursement Agreement. BCPUD shall require an applicant to enter a reimbursement agreement with BCPUD. The reimbursement agreement shall contractually bind the applicant to pay for all fees/costs associated with the water meter relocation; *provided, however, that* this obligation to pay for water meter relocation fees/costs shall not apply to transfers requested (and approved by the BCPUD Board of Directors at a duly noticed public meeting) for properties that are verified to be affordable units per the following criteria: the property is 1) managed as affordable housing by the Bolinas local nonprofit affordable-housing agency, the Bolinas Community Land Trust ("BCLT"), whether owned by BCLT or managed under contract between BCLT and the private owner; or 2) under a recorded deed restriction guaranteeing its ongoing use as affordable housing. The definition of "affordable" shall be that used by the BCLT. The waiver of time and materials costs for relocating a water meter will be for that portion of the remaining installation cost once there is a water main running under the street abutting the property. This reimbursement agreement also shall contractually bind the applicant to pay for all fees/costs associated with defending BCPUD in any litigation that challenges BCPUD's approval or denial of the application on the grounds that the application violates any local, state or federal laws. Fees/costs will include paying: all attorneys fees incurred by BCPUD to defend itself, its board members, staff and consultants, and/or the BCPUD decision at issue; and any award of damages or other monetary relief against BCPUD, including any award of fees/costs made against BCPUD. The applicant shall not, however, be responsible for reimbursing BCPUD's fees/costs associated with defending against a lawsuit that is primarily challenging BCPUD's water service moratorium or this Ordinance – not the water meter transfer application. BCPUD staff will meet with the meter transfer applicant within 10 days of receiving service of the complaint, and BCPUD and the applicant will reach a written agreement characterizing whether the lawsuit is only against the water meter transfer application or only against the BCPUD water service moratorium, or a combination of the two – in which case the agreement will also contain a description of the sharing of fees/costs associated with defending the lawsuit. If there is no written agreement reached before the 25th day after service of the complaint, then BCPUD shall determine, at its sole

discretion, whether or not to defend the lawsuit. In any event, BCPUD shall always retain 100% discretion regarding litigation strategy decisions including, but not limited to: whether to defend against the action at all; whether to settle the action; and on what terms to settle.

d. Policy. This ordinance is intended to clarify the standards and processes governing requests to transfer water meters. BCPUD seeks to revise the water meter transfer regulations in a manner that focuses BCPUD's consideration of requests to transfer a water meters on the issue of maintaining or limiting historic water use associated with the meter – without considering other municipal subject matters, except to confirm with applicable agencies that the applicant is complying with all relevant local, state and federal laws, including but not limited to the Bolinas Community Plan. These regulations are not intended to allow increased water use associated either with a specific meter transfer or in the aggregate.

e. Standards for Approving a Water Meter Transfer. Water meter transfers must meet the following standards in order to be considered for approval by the BCPUD Board of Directors:

i. Permit Requirement. Any and all development at the site to which the water meter is proposed to transfer shall be subject to the coastal, building and/or use permit requirements imposed by the County of Marin, Coastal Commission and the BCPUD.

ii. Former Site Remediation. Applicant must remove all plumbing relating to water service at the former site from which the meter is transferred, as well as all structures; in addition, if applicable, the septic system at the former site must be decommissioned by a licensed septic professional.

iii. Recorded Covenant Limiting Water Use. Prior to final approval of a water meter transfer, the applicant will prepare, execute and record with the Marin County Recorder's Office, a covenant running with the land that limits water use on the property to quantity and on the terms set forth in the expanded water use permit. BCPUD shall be provided the opportunity to review and approve the form and content of the covenant.

iv. Water-Efficient Appliances; Low-Flow Fixtures; No Automatic Irrigation Systems. Applicant shall install only water efficient appliances and low-flow plumbing fixtures at the new site and shall provide documented evidence of compliance with this provision to the BCPUD. Automated outdoor irrigation systems are not permitted at the new site unless the applicant demonstrates to the satisfaction of the BCPUD that the system is not connected to

the BCPUD water system and is instead connected to a rainwater catchment tank or other non-BCPUD water source.

Section 4. Effective Date and Sunset. This ordinance shall take effect at 12:01 a.m. on the 30th day after it has been enacted on second reading. This ordinance shall not have a sunset date.

Section 5. Severability Clause. If any provision of this resolution is found to be illegal, unconstitutional or unenforceable for any reason whatsoever, that provision shall be severed from the remaining provisions of this resolution, which shall remain in full force and effect.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the BCPUD on the 16th day of December, 2009 and amended at a regular meeting of the Board of Directors of the BCPUD on this 17th day of January 2018 by the following vote:

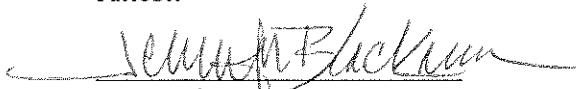
AYES: AMOROSO, COMSTOCK, GODINO, SIEDMAN, SMITH


NOES: NONE

ABSTAIN: NONE

ABSENT: NONE

Attest:


Secretary



President, Board of Directors

As amended January 17, 2018.

EXHIBIT A

Paragraph 6 of BCPUD Resolution 173 is hereby amended to read, in its entirety, as follows:

“Water will not be provided to any expansion or modification of an existing service which would require a County building and/or use permit and which, in the judgment of the Board of Directors, could result in an increase in demand for District water by more than 50% of the service's average consumption over the prior 12 Quarters (3-month periods), or by 1500 cubic feet per Quarter, whichever is less.

An Expanded Water Use Permit must be applied for from the District for continued water delivery to an existing service in which there is expansion or modification of the service which would require a County building or use permit. Application must be made on a form provided by the District, and applicant must supply such information as the District may request to assist the District in evaluating the application, Permits will be granted upon a determination that the expansion or modification will not exceed the above limits. Permits are conditionally granted and subject to revocation if average water use in any two successive Quarters exceeds the permit limit granted, which shall be the highest of:

- a. 50% more than the annually averaged District-wide Quarterly water consumption of 1,800 cubic feet per service, as determined by the General Manager as of January 1st of 2017; or
- b. the service's average Quarterly water consumption over the prior 12 Quarters; or
- c. an amount determined by the Board of Directors to be appropriate, but not exceeding an additional 50% or 1500 cubic feet per Quarter, whichever is less, over the service's average consumption over the prior 12 Quarters, when the customer has documented, to the Board's satisfaction, that the allocation available to the customer under provisions (a) or (b) above, whichever is higher, would indeed result in a hardship to the customer or a reduction of services provided to the Bolinas community.

If the subject service's average Quarterly consumption over the prior 12-Quarter period exceeds 3,600 cubic feet, a permit will be granted only after District staff surveys such usage with the customer at the service site and makes written recommendations to the customer for water-saving measures. This limitation does not apply to permits granted under provision (c) above.

Written notice of permit revocation must be mailed or delivered to the permittee at the billing address at least 60 days before such revocation is effected.”