

RESOLUTION NO. 2025-006

RESOLUTION OF THE BOARD OF DIRECTORS OF EASTERN MUNICIPAL WATER DISTRICT AMENDING RESOLUTION NO. 5111 (ADMINISTRATIVE CODE) TO ADOPT AN ADMINISTRATIVE REMEDIES PROCEDURE FOR CHALLENGES TO RATES, FEES, AND CHARGES

WHEREAS, Section 5471 of the Health and Safety Code requires that rates, fees, and charges for service in connection with water and sewer systems of Eastern Municipal Water District be adopted by action of the Board of Directors; and

WHEREAS, clean water and reliable sanitation are essential to public health and safety and improve the quality of life of residents within Eastern Municipal Water District's service area; and

WHEREAS, on May 15, 2013, the Board of Directors of Eastern Municipal Water District adopted Resolution No. 5111 which established the Administrative Code of the Eastern Municipal Water District; and

WHEREAS, Section 3.301 of the Administrative Code of Eastern Municipal Water District establishes the authority for the Board of Directors to a) establish fees and charges sufficient to recover the cost of operating and maintaining service, including reasonable reserve for repair and replacement, and those fees shall not exceed the reasonable cost of the service, and b) establish fees and charges sufficient to recover the cost of constructing capital improvements; and

WHEREAS, on June 19, 2013, the Board of Directors of Eastern Municipal Water District adopted Resolution No. 5166 which added Section 3.304 Consolidated Schedule of Rates, Fees, and Charges to the District's Administrative Code; and

WHEREAS, the Section 3.304 Consolidated Schedule of Rates Fees, and Charges is occasionally updated with updates and revisions to rates, fees, and charges collected by Eastern Municipal Water District; and

WHEREAS, Article XIII D, Section 6 of the California Constitution (Section 6 added November 5, 1996 by Proposition 218) requires that prior to imposing any new or increased water or sewer rates, the District shall provide written notice by mail to the record owner of each parcel upon which the rates are proposed for imposition and/or any tenant directly liable for payment, of the new or increased rates, the basis upon which the rates are calculated, and the date, time, and location of a public hearing on the proposed changes; and

WHEREAS, pursuant to Article XIII D, such Notice is required to be provided to the affected property owners and/or any tenant directly liable for the payment of the water and sewer rates not less than forty-five days prior to the public hearing on the proposed changes; and

WHEREAS, California Assembly Bill 2257 (AB 2257), sponsored by the Association of California Water Agencies, further refined Proposition 218 and creates an opt-in exhaustion of administrative remedies procedure for water and sewer rates which was signed into law by the Governor on September 25, 2024 and effective January 1, 2025; and

WHEREAS, this resolution is intended to provide a procedure for ratepayers to bring an objection regarding a new or amended water or sewer rate to the District's attention early in the rate consideration process, and to provide an opportunity for the District to address or resolve any objections before the District's Board of Directors makes a final decision on whether to adopt a proposed rate; and

WHEREAS, the purpose of this resolution is to provide a meaningful opportunity for a ratepayer to present an objection to a proposed new or amended water or sewer rate before resorting to litigation after the new or amended rate is approved.; and

WHEREAS, pursuant to AB 2257, the District must post data supporting water and sewer rates at least 45 days prior to the public hearing on the proposed changes to provide a ratepayer or property owner the opportunity to review the proposed rates; and

WHEREAS, pursuant to AB 2257, the public must submit written objections to rates by a deadline established by the District which is no less than 45 days after the data is published; and

WHEREAS, pursuant to AB 2257, the District must respond, in writing, to each written objection prior to adopting rates; and

WHEREAS, the Board of Directors of Eastern Municipal Water District hereby intends to adopt the exhaustion of administrative remedies procedure as outlined in Government Code section 53759.1, and the administrative record principles contained in Government Code section 53759.2 as detailed by this resolution; and

NOW, THEREFORE, THE BOARD OF DIRECTORS OF EASTERN MUNICIPAL WATER DISTRICT ORDAINS AS FOLLOWS:

1. The above recitals are all true and correct and are incorporated herein by this reference.
2. This resolution is authorized by Eastern Municipal Water District's constitutional and statutory authority to adopt fees and charges for its services and to establish rules and regulations governing such fees and charges.
3. Section 3.302 of the Administrative Code is hereby amended to read as follows

3.302 PROCEDURE

(a) The Board is authorized to adopt or increase rates, fees, and charges, as required by law.

(b) Exhaustion of Administrative Remedies.

(1) The duty to exhaust administrative remedies imposed by this resolution applies, without limitation, to any rate, fee, or charge subject to Article XIII D of the California Constitution, and the methodology used to develop and levy such a rate, fee, or charge.

(2) For purposes of any proposed water or sewer rate adopted by the District pursuant to Section 6 of Article XIII D of the California Constitution, a person or entity shall be prohibited from bringing a judicial action or proceeding alleging noncompliance with Article XIII D of the California Constitution for any new, increased, or extended water or sewer rate, fee, or charge, unless that person or entity has timely submitted to the District a written objection to that rate, fee, or charge that specifies the grounds for alleging noncompliance, in compliance with Government Code section 53759.1. The issues raised in any such action or proceeding shall be limited to those so raised unless a court finds the issue could not have been raised in such an objection by those exercising reasonable diligence.

(3) The District shall make available to the public any proposed rate, fee, or charge to which this section is to apply no less than 45 days before the deadline for a ratepayer or property owner to submit a timely objection.

(4) The District shall post on its internet website a written basis for the rate, fee, or charge, such as a cost of service analysis or an engineer's report, and include a link to the internet website in the written notice of the hearing ("Hearing") at which the rate, fee, or charge will be considered, including, but not limited to, a notice pursuant to subdivision (a) of Section 6 of Article XIII D of the California Constitution.

(5) The District shall mail the written basis for the new or increased rate, fee, or charge as required by Government Code section 53759.1 to a ratepayer or property owner on request.

(6) The District shall provide at least 45 days for a ratepayer or property owner to review the proposed rate, fee, or charge and to timely submit to the Board Secretary a written objection to that rate,

fee, or charge that specifies the grounds for alleging noncompliance. Any objection shall be submitted before the end of the public comment portion of a Hearing on the rate, fee, or charge.

(7) The District shall include in a written notice of the Hearing, a statement in bold-faced type of 12 points or larger that:

- a. All written objections must be submitted to the Board Secretary by the end of public comment period at the Hearing and that a failure to timely object in writing bars any right to challenge that rate, fee, or charge in court and that any such action will be limited to issues identified in such objections.
- b. All substantive and procedural requirements for submitting an objection to the proposed rate, fee, or charge such as those specified for a property-related fee under California Constitution, article XIII D, section 6(a).

(8) Before or during the Hearing, the Board of Directors of Eastern Municipal Water District shall consider and the District shall respond in writing to, any timely written objections. The Board may adjourn the Hearing to another date if necessary to respond to comments received after the agenda is posted for the meeting at which the Hearing occurs. The District's responses shall explain the substantive basis for retaining or altering the proposed rate, fee, or charge in response to written objections, including any reasons to reject requested amendments.

(9) The Board of Directors, in exercising its legislative discretion, shall determine whether:

- a. The written objections and the District's response warrant clarifications to the proposed rate, fee, or charge.
- b. To reduce the proposed rate, fee, or charge.
- c. To further review the proposed rate, fee, or charge before determining whether clarification or reduction is needed.

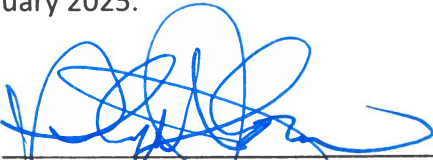
- d. To proceed with the Hearing, to continue it, or to abandon the proposal.

4. Board of Directors finds that adoption of this resolution is exempt from CEQA because: (i) it is not a project within the meaning of Public Resources Code, section 21065 because it has no potential to alter the physical environment; and (ii) pursuant to CEQA Guidelines section 15061(b)(3), the so-called "common sense" exemption, for this same reason.

5. If any section, subsection, sentence, clause, phrase or portion of this resolution or its application to any person or circumstance is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution or its application to other persons and circumstances. The Board of Directors declares that it would have adopted this resolution and each section, subsection, sentence, clause, phrase or portion thereof despite the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

6. The Board directs staff to update the Administrative Code to reflect these amendments as they were presented to the Board, provided that future amendments to the Administrative Code may be made by motion.

INTRODUCED AND ADOPTED ON the 15th day of January 2025.



Stephen J. Corona, President

I hereby certify that the foregoing is a full, true and correct copy of the resolution adopted by the Board of Directors of Eastern Municipal Water District at its meeting held on January 15, 2025.

ATTEST:



Sheila Zelaya, Board Secretary

(SEAL)

