

ORDINANCE NO. 16-21

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ORANGE DELETING CHAPTER 7.02 OF THE ORANGE MUNICIPAL CODE (THE WATER CONSERVATION AND WATER SUPPLY SHORTAGE PROGRAM) AND ADOPTING NEW CHAPTER 7.02 (THE WATER SHORTAGE CONTINGENCY RESPONSE ORDINANCE)

WHEREAS, a reliable minimum supply of potable water is essential to the public health, safety and welfare of the people and economy of the southern California region; and

WHEREAS, California, including Orange County, experienced significant dry year conditions in 2012-2017, which led local water agencies to declare water shortage conditions that triggered drought actions; and

WHEREAS, following the end of the drought, the California Legislature modified the Urban Water Management Planning Act in 2018 to include additional water shortage planning requirements. The California Water Code has significant updates, specifically to Water Code Section 10632, that now mandate new elements to Urban Water Management and Water Shortage Contingency Plans, including an annual drought risk assessment, State Water Shortage Levels and statewide water use prohibitions; and

WHEREAS, the Municipal Water District of Orange County (“MWDOC”) has adopted a 2020 Urban Water Management Plan that includes water conservation as a necessary and effective component of the MWDOC programs to provide a reliable supply of water to meet the needs of MWDOC’s 28 member agencies, including the City of Orange (“City”). The MWDOC Urban Water Management Plan also includes a chapter contingency analysis of actions to be taken in response to water supply shortages. This Ordinance is consistent with the MWDOC Urban Water Management Plan and Water Shortage Contingency Plan; and

WHEREAS, the imported water supplies in the City and at MWDOC are subject to the Water Shortage Allocations determined by the Metropolitan Water District of Southern California (“Metropolitan”). Subsequently, when triggered, MWDOC as a wholesaler of Metropolitan’s supplies will be required to curtail deliveries of imported water based on the MWDOC Water Shortage Allocation Plan, which from time to time in the future is expected to be activated when in a state of shortage; and

WHEREAS, beginning July 1 2021, both MWDOC and the City are required to prepare an Annual Water Supply and Demand Assessment and Drought Risk Assessment as part of their Urban Water Management Plan for submission to the California Department of Water Resources. Annually, by July 1st of each year, beginning the year following the adoption of the 2020 UWMP, MWDOC and the City are required to monitor, report and if declared a drought emergency, then notify the

Department of Water Resources, in order to comply with Water Code Section 10632.1 reporting requirements; and

WHEREAS, the City has adopted a Water Shortage Contingency Plan to establish standards and procedures to enable implementation and enforcement of local water shortage contingency measures. These measures align with the Water Code Section 353, which specifies that “when the governing body has so determined and declared the existence of an emergency condition of water shortage within its service area, it shall thereupon adopt such regulations and restrictions on the delivery of water and the consumption within said area of water supplied for public use as will in the sound discretion of such governing body conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection;” and

WHEREAS, Water Code Section 375 also requires the City to adopt a water conservation program to reduce the quantity of water used by those persons within the City’s jurisdiction for the purpose of conserving the water supplies of the City; and

WHEREAS, the adoption and enforcement of a Water Shortage Contingency Plan is necessary to manage the City’s potable water supply in the short and long-term to avoid or minimize the effects of drought and shortage within the City. Such program is essential to ensure a reliable and sustainable minimum supply of water for the public health, safety and welfare.

NOW, THEREFORE, the City Council of the City of Orange does ordain as follows:

SECTION I:

The recitals stated above are true and correct, incorporated herein, and form the basis for the adoption of this Ordinance.

SECTION II:

The City Council determines that the adoption of this Ordinance is categorically exempt from environmental review under the California Environmental Quality Act (“CEQA”) pursuant to Title 14, Section 15307 of the California Code of Regulations, because it is an action taken by the City as authorized by state law, to assure the maintenance, restoration or enhancement of a natural resource, namely water, where the regulatory process involves procedures for protection of the environment.

SECTION III:

Chapter 7.02 of the Orange Municipal Code, “Environment – Water Conservation and Water Supply Shortage,” is hereby repealed.

SECTION IV:

New Chapter 7.02 of the Orange Municipal Code, “Environment – Water Shortage Contingency Response,” is hereby added to read as follows:

7.02.010 Title.

This chapter will be known as the City of Orange Water Shortage Contingency Response Ordinance and is enacted under the authority of California Water Code Sections 10630 et seq.

7.02.020 Declaration of Intent and Purpose.

A. The general welfare of the residents of Orange requires that the water available to the city be utilized in a manner which maximizes beneficial use and that the waste and unreasonable use of water be prevented. The intent of this chapter is to reduce water consumption within the city through conservation and effective water supply planning, assure the reasonable and beneficial use of water, prevent waste of water, and maximize the efficient use of water within the city to avoid and minimize the effect and hardship of water shortage to the greatest extent possible.

B. This chapter:

- (1) Establishes permanent water conservation requirements;
- (2) Establishes six levels of water supply shortage response actions to be implemented during times of declared water shortage or declared water shortage emergency; and
- (3) Establishes regulations to be implemented during times of declared water shortages or declared water shortage emergencies, with increasing restrictions on water use in response to worsening drought or emergency conditions and decreasing supplies; and
- (4) Gives priority to the response protocols in an adopted Hazard Mitigation Plan in the event of natural and human-caused disasters.

7.02.030 Definitions.

The following words and phrases whenever used in this chapter have the meaning defined in this section:

“Billing Unit” means the unit of water used to apply water rates for purposes of calculating water charges for a person’s water usage and equals one hundred (100) cubic feet or seven hundred forty-eight (748) gallons of water.

“City” means the City of Orange.

“DWR” means the California Department of Water Resources.

“Landscape Irrigation System” means an irrigation system with pipes, hoses, spray heads, or sprinkling devices that are operated by hand or through an automated system.

“Large Landscape Areas” means a lawn, landscape, or other vegetated area, or combination thereof, equal to more than one (1) acre of irrigable land.

“Person” means any natural person or persons, corporation, public or private entity, governmental agency or institution, or any other user of water provided by the city.

“Potable Water” means water which is suitable for drinking.

“Recycled Water” means the reclamation and reuse of non-potable water for beneficial use.

“Single Pass Cooling Systems” means equipment where water is circulated only once to cool equipment before being disposed.

“WSCP” means the city’s adopted Water Shortage Contingency Plan.

7.02.040 Application.

A. This chapter applies to any person in the use of any potable water provided by the city.

B. This chapter does not apply to uses of water necessary to protect public health and safety or for essential government services, such as police, fire and other similar emergency services.

C. This chapter does not apply to the use of water by commercial nurseries and commercial growers to sustain plants, trees, shrubs, crops or other vegetation intended for commercial sale.

D. This chapter is intended solely to further the conservation of water. It is not intended to implement any provision of federal, state, or local statutes, ordinances, or regulations relating to protection of water quality or control of drainage or runoff. Refer to the local jurisdiction or Regional Water Quality Control Board for information on any storm water ordinances and storm water management plans.

7.02.050 General Prohibition.

Water customers of the city shall not use, or permit the use of water in a manner contrary to any provision of this chapter or in an amount in excess of that amount permitted by any curtailment provisions then in effect pursuant to action taken by the adoption of a resolution of the City Council in accordance with the provisions of this chapter.

7.02.060 Permanent Water Conservation Requirements – Prohibition Against Waste.

The following water conservation requirements are permanently effective upon adoption of this chapter. Violations of this chapter will be subject to those penalties contained herein.

A. Limits of Watering Hours: Watering or irrigating of lawn, landscape or other vegetated area with potable water is prohibited between the hours of 9:00 a.m. and 5:00 p.m. Pacific

Time on any day, except by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system.

B. Limit on Watering Duration: Watering or irrigating of lawn, landscape or other vegetated area with potable water using a landscape irrigation system or a watering device that is not continuously attended is limited to no more than fifteen (15) minutes watering per day per station. This subsection does not apply to landscape irrigation systems that exclusively use very low-flow drip type irrigation systems when no emitter produces more than two (2) gallons water per hour, and weather based controllers or stream rotor sprinklers that meet a 70 percent efficiency standard.

C. No Excessive Water Flow or Runoff: Watering or irrigating of any lawn, landscape or other vegetated area in a manner that causes or allows excessive water flow or runoff onto an adjoining sidewalk, driveway, street, alley, gutter or ditch is prohibited

D. No Washing Down Hard or Paved Surfaces: Washing down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking areas, tennis courts, patios or alleys, is prohibited except when necessary to alleviate safety or sanitary hazards, and then only by use of a hand held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off device or a low-volume, high-pressure cleaning machine equipped to recycle any water used.

E. Restrictions on Vehicle Washing: Using water to wash a vehicle (including any automobile, truck, van, bus, motorcycle, boat, or trailer) is prohibited. This prohibition does not apply to washing that is performed by use of a hand-held bucket or hand-held hose equipped with a positive self-closing device or water shut-off nozzle. Additionally, this prohibition does not apply to any commercial car washing facility.

F. Recirculating Water Required in Decorative Water Features: The use of water to clean, fill, or maintain levels in decorative fountains, ponds, lakes, or other similar aesthetic structures is prohibited. This prohibition does not apply if such water is part of a recirculating system. Additionally, this prohibition does not apply to a water feature listed in the National Register of Historic Places, where water use is deemed necessary for the integrity of the feature.

G. Restrictions on Irrigation After Rainfall: The use of water to irrigate outdoor landscapes during or within forty-eight (48) hours after measurable rainfall is prohibited.

H. Restrictions on Irrigation of Turf on Medians: The irrigation with potable water of ornamental turf on public street medians is prohibited.

I. Restrictions on Irrigation of Newly Construction Building Sites: The irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission and the Department of Housing and Community Development is prohibited.

J. No Installation of Single Pass Cooling Systems: Installation of single pass cooling systems is prohibited in buildings requesting new water service.

K. Restrictions on Hotels, Motels and Lodging Laundry: Hotels, motels, and other commercial lodging establishments shall provide customers the option of not having towels and linen laundered daily. Commercial lodging establishments shall prominently display notice of this option in each bathroom using plain language.

L. Water Conserving Dish Wash Valves Required: Food preparation establishments such as restaurants or cafes are prohibited from using non-water conserving dish wash pre-rinse spray valves.

M. Restaurant Drinking Water upon Request Only: No restaurant, hotel, cafe, cafeteria, or other public place where food is sold, served, or offered for sale shall serve drinking water to any customer unless expressly requested.

N. No Non-recirculating Water Systems in Commercial Car Wash and Laundry Systems: Installation of non-recirculating water systems is prohibited in new commercial conveyor car wash and new commercial laundry systems. Existing commercial conveyor car wash systems must have installed and operational recirculating water systems, or must have secured a waiver of this requirement from the city.

O. Obligation to Fix Leaks, Breaks or Malfunctions: All leaks, breaks, or other malfunctions in the water user's plumbing, irrigation, or distribution system shall be repaired immediately after such escape of water should have been discovered and corrected, and in no event more than seventy-two (72) hours after receiving a notice from the city, unless other arrangements are made with the city.

7.02.070 Procedures for Determination of Water Supply Shortage and Level Implementation.

A. Under California Water Code Section 10632.1, the city is required to submit a water shortage assessment report to the California Department of Water Resources by July 1 of each year.

B. The city will follow the written decision-making process defined in its WSCP to assess water supply reliability on an annual basis.

C. City staff will determine if a water shortage exists based on the water shortage criteria and stages defined in the WSCP.

D. In the event a water shortage is triggered according to the procedures and conditions defined in the WSCP, the City Council will declare a shortage according to the defined water shortage levels.

E. The public will be informed of the shortage according to the procedures and protocols for communication identified in section 7.02.080 of this chapter.

F. Sudden Catastrophic Water Supply Shortage. When the City Manager determines that a sudden event has, or threatens to, significantly diminish the reliability or quality of the city's water supply, the City Manager may declare a catastrophic water shortage and impose whatever emergency water allocation or conservation actions deemed necessary, in the City Manager's professional judgment, to protect the reliability and quality of the city's water supply, until the emergency passes or the city takes other action. Such emergency action shall be ratified by the City Council at the next scheduled City Council meeting and shall be taken in accordance with Water Code Section 350 et seq.

G. The declaration of any particular stage of water shortage level shall remain in effect until such time as the City Council declares the water shortage level over according to the procedures and conditions defined in the WSCP.

H. The city shall coordinate with surrounding water suppliers and/or the County of Orange for the possible proclamation of a local emergency, as defined in Government Code Section 8558.

7.02.080 Procedures and Protocols for Communication.

Upon declaration of a water shortage, the city will inform all relevant stakeholders such as customers, the public, interested parties, and local, regional and state governments, of the effective date of the water shortage response actions associated with the relevant stage according to the communication procedures identified in the WSCP, including:

A. Any current or predicted shortages as determined by the annual water supply and demand assessment.

B. Any shortage response actions triggered or anticipated to be triggered by the annual water supply and demand assessment.

C. Any other relevant communications.

7.02.090 Correlation Between City Water Supply Shortage Levels and DWR Water Supply Shortage Levels.

A. Metropolitan Water District and MWDOC Water Shortage Contingency Plans follow the six standard water shortage levels corresponding to progressive ranges of up to 10, 20, 30, 40 and 50 percent shortages, and a greater-than-50-percent shortage level, as set forth in Water Code Section 10632(a)(3)(A).

B. The city's water shortage levels are aligned with the state Water Shortage Levels, as also defined in the MWDOC WSCP, and therefore comply with Water Code Section identified above.

7.02.100 Levels of Declared Water Supply Shortage.

A. The City Manager is authorized to require or impose reductions in the use of water if such reductions are necessary to comply with Water Supply Shortage conditions as defined in the WSCP.

B. The shortage response actions that align with each level of Water Supply Shortage are defined in the WSCP and include, at a minimum, all of the following:

- (1) Locally appropriate supply augmentation actions.
- (2) Locally appropriate demand reduction actions to adequately respond to shortages.
- (3) Locally appropriate operational changes.
- (4) Additional, mandatory prohibitions against specific water use practices that are in addition to state- and local-mandated prohibitions and are appropriate to the local conditions.
- (5) For each action, an estimate of the extent to which the gap between supplies and demand will be reduced by implementation of the action.
- (6) Each elevated shortage level will include the elements of the previous shortage level(s), including the mandatory restrictions on water waste detailed in the WSCP, and each elevated shortage level is intended to be more restrictive than the previous level(s).
- (7) As deemed necessary, an allocation of water supply under a water supply emergency condition beyond WSCP-defined actions may be implemented when water supply conditions dictate necessity.

7.02.110 Hardship Waiver.

A. Undue and Disproportionate Hardship. If, due to unique circumstances, a specific requirement of this chapter would result in undue hardship to a person using water or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property or classes of water use, then the person may apply for a hardship waiver of the requirements, as provided in this section.

B. A hardship waiver is automatically granted for the following uses: watering of livestock at any time; commercial agriculture; orchards and vegetable gardens on residential zoned properties; and other special landscape areas (SLA).

C. Application. Application for a hardship waiver shall be on a form prescribed by the city and accompanied by a non-refundable processing fee in an amount set by City Council resolution. The application shall be accompanied by photographs, maps, drawings, and any additional information requested by the city, including a written statement of the applicant.

D. Written Findings. The hardship waiver may be granted or conditionally granted only upon a written finding of the existence of facts demonstrating an undue hardship to a person using water or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property or classes of water use due to specific and unique circumstances of the user or the property. The hardship waiver will be denied unless the City Manager finds, based on the information provided by the applicant, and on water use information for the property as shows by the records of the city, all of the following:

(1) That the hardship waiver does not constitute a grant of special privilege inconsistent with the limitations upon other residents and businesses.

(2) That because of special circumstances applicable to the property or its use, the strict application of this chapter would have a disproportionate impact on the property of use that exceeds the impacts to residents and businesses generally.

(3) That authorizing the hardship waiver will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the city to effectuate the purpose of this chapter and will not be detrimental to the public interest.

(4) That the subject property's condition, situation, or intended use for which the hardship waiver is sought is not common, recurrent, or general in nature.

E. The City Manager shall act upon a completed application no later than ten (10) days after submittal and may approve, conditionally approve, or deny the hardship waiver. The applicant shall be promptly notified in writing of any action taken. Unless specified otherwise at the time it is approved, a hardship waiver will apply to the subject property during the period of the mandatory water shortage condition. The decision of the City Manager will be final.

7.02.120 Violations, Enforcement and Penalties

A. It shall be unlawful for any customer of the city to fail to comply with any of the provisions of this chapter. The penalties set forth in this section shall be in addition to those penalties provided in any other section of this code or in state law.

B. The penalties for failure to comply with this chapter shall be as set forth below. The penalty for a second, third, fourth, or subsequent violation within the preceding twelve (12) calendar months shall be applicable regardless of whether prior violations within such period involved the same provision of this chapter.

(1) First Violation. The city will issue a written warning and deliver a copy of this chapter by mail or posting (i.e., door hanger).

(2) Second Violation. A second violation within twelve (12) calendar months is punishable by a fine not to exceed one hundred dollars (\$100).

(3) Third Violation. A third violation within twelve (12) calendar months is punishable by a fine not to exceed two hundred and fifty (\$250).

(4) Fourth and Subsequent Violations. A fourth and any subsequent violation within twelve (12) calendar months is punishable by a fine not to exceed five hundred (\$500).

C. In addition to any fines, the city may take any of the following actions:

(1) Install a water flow restrictor device of approximately one gallon per minute.

(2) Disconnect and/or terminate a customer's water service for a willful violation of mandatory restrictions under this chapter and the WSCP.

D. If either action set forth in section 7.02.120.C is taken, the person or entity in violation of this chapter will be responsible for payment of the city's charges for installation of the flow restrictor and/or disconnection/reconnection service, as applicable. For disconnection/termination of service, a Conservation Fee equal to the Reconnection Fee as set forth in the city's Master Schedule of Fees will be assessed to the customer's water account. All associated fees must be paid in full prior to service restoration. Nonpayment will be subject to the same remedies as nonpayment of basic water rates.

E. Separate Offenses. Each day that a violation of this chapter occurs is a separate offense.

F. Notice of Violation and Hearing.

(1) Except for violations of this chapter subject to excessive water use penalties, if any person fails or refuses to comply with this chapter, the City Manager or designee shall provide that person with written notice of the violation and an opportunity to correct the noncompliance.

(2) The written Notice of Violation shall be mailed or personally delivered to the address of the violation, to the party who is billed for the water, or to the property owner, as appropriate, and shall:

- i. Be posted or presented at the site of the noncompliance;
- ii. State the time, date, and place of violation;
- iii. State a general description of the violation;
- iv. State the means to correct the violation;
- v. State a date by which correction is required; and,
- vi. State the possible consequences of failing to correct the violation.

(3) The Notice of Violation shall be mailed or personal delivered at least ten (10) days before any enforcement action.

(4) A customer may appeal the Notice of Violation by filing a written notice of appeal with the city no later than the close of business on the day before the date scheduled for enforcement action. Any Notice of Violation not timely appealed will be final. Upon receipt of a timely appeal, a hearing on the appeal will be scheduled and the city will mail written notice of the hearing date to the customer at least ten (10) days before the date of the hearing.

(5) Pending receipt of a written appeal or pending a hearing pursuant to an appeal, the city may take appropriate steps to prevent the unauthorized use of water as appropriate to the nature and extent of the violations and the current declared water shortage level.

(6) If timely requested, a hearing on the appeal shall be held before the City Manager or designee who shall issue a final determination.

7.02.130 Procedures for Monitoring Compliance and Reporting to the State

In order to ensure compliance with state reporting requirements the city will collect, track and analyze relevant data according to the procedures defined in the WSCP.

7.02.140 Reevaluation and Adjustment of Water Shortage Procedures

To ensure water shortage risk tolerance is adequate and appropriate and water shortage mitigation strategies are implemented as needed, the WSCP will be regularly reviewed and evaluated as defined by the procedures identified in the WSCP.

7.02.150 Other Provisions.

In furtherance of the objectives of this chapter, the City may, at its discretion, elect to include any or all of the following provisions at any or all of the water conservation stages.

A. Limits on Building Permits. The City may limit or withhold the issuance of building permits which require new or expanded water service, except to protect the public health, safety and welfare, or in cases that meet the city's adopted conservation offset requirements.

B. Customer Water Conservation Reports. The City may, by written request, require all commercial, residential and industrial customers using twenty-five thousand (25,000) or more billing units per year to submit a water conservation plan and to submit quarterly progress reports on such plan. The conservation plan must include recommendations for increased water savings, including increased water recycling based on feasibility, and the reports must include progress to date on implementation of such recommendations.

C. Reporting Hotline. The city may establish a water waste hotline for residents to report violations of this chapter.

D. As deemed necessary, an allocation of water supply under a water supply emergency condition, beyond WSCP defined actions, may be implemented when water supply shortage conditions merit that action.

E. The city may provide water efficiency devices either directly or through supported programs. Such devices shall remain within the city's service area at all times. Devices provided by the city should be used with the intent to conserve water and are not to be modified in any way or sold.

SECTION V:

If any section, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision 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, subdivision, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one (or more) section, subdivision, paragraph, sentence, clause or phrase had been declared invalid or unconstitutional.

SECTION VI:

The City Clerk is hereby directed to certify the adoption of this Ordinance and cause the same to be published as required by law. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

ADOPTED this ____ day of _____, 2021.

Mark A. Murphy, Mayor, City of Orange

ATTEST:

Pamela Coleman, City Clerk, City of Orange

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF ORANGE)

I, PAMELA COLEMAN, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the ____ day of _____, 2021, and thereafter at the regular meeting of said City Council duly held on the ____ day of _____, 2021 was duly passed and adopted by the following vote, to wit:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:

Pamela Coleman, City Clerk, City of Orange