

ORDINANCE NO. 2022-13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING CHAPTER 14.16 OF THE NEWPORT BEACH MUNICIPAL CODE PERTAINING TO WATER CONSERVATION AND SUPPLY LEVEL REGULATIONS

WHEREAS, Section 200 of the City of Newport Beach (“City”) Charter vests the City Council with the authority to make and enforce all laws, rules and regulations with respect to municipal affairs subject only to the restrictions and limitations contained in the Charter and the State Constitution, and the power to exercise, or act pursuant to any and all rights, powers, and privileges, or procedures granted or prescribed by any law of the State of California;

WHEREAS, Chapter 14.16 of the Newport Beach Municipal Code establishes a water conservation and water supply shortage program to reduce water consumption within the City;

WHEREAS, in 2018, the California Legislature imposed additional water shortage planning requirements upon water suppliers and amended California Water Code section 10632 to mandate new elements to water suppliers’ Urban Water Management Plans and Water Shortage Contingency Plans, including statewide water use prohibitions;

WHEREAS, the City’s adopted 2020 Urban Water Management Plan (“UWMP”) includes water conservation as a necessary and effective component of providing a reliable supply of water to meet the needs of its water customers;

WHEREAS, the City’s adopted 2020 Water Shortage Contingency Plan (“WSCP”) establishes standards and procedures regarding the implementation and enforcement of local water shortage contingency measures;

WHEREAS, the WSCP defines six water supply shortage levels corresponding to progressive ranges of up to 10, 20, 30, 40 and 50 percent shortages and a greater than 50 percent shortage, in alignment with the State Water Shortage Levels, where each level is intended to be more restrictive than the previous or lower level and imposes water conservation measures that are inclusive of those measures in the previous or lower level(s); and

WHEREAS, the City desires to update Chapter 14.16 to make it consistent with the new requirements of California Water Code section 10632 and its UWMP and WSCP.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: Chapter 14.16 of the Newport Beach Municipal Code is hereby amended to read as follows:

**Chapter 14.16
WATER CONSERVATION AND WATER SUPPLY SHORTAGE PROGRAM**

Sections:

- 14.16.010 Findings and Purpose.**
- 14.16.020 Definitions.**
- 14.16.030 Applicability.**
- 14.16.040 Permanent Mandatory Water Conservation Requirements.**
- 14.16.050 Procedure for Declaration and Notification of Water Supply Shortage.**
- 14.16.060 Level One Water Supply Shortage.**
- 14.16.070 Level Two Water Supply Shortage.**
- 14.16.080 Level Three Water Supply Shortage.**
- 14.16.090 Level Four Water Supply Shortage.**
- 14.16.100 Level Five Severe Water Supply Shortage.**
- 14.16.110 Level Six Catastrophic Water Supply Shortage.**
- 14.16.120 Exemptions.**
- 14.16.130 Relief from Compliance.**
- 14.16.140 Enforcement.**
- 14.16.150 State of Emergency.**

Section 14.16.010 Findings and Purpose.

A. The purpose of this chapter is to establish a water conservation and water supply shortage program that, to the greatest extent possible, will reduce water consumption within the City of Newport Beach, enable effective water supply planning, ensure reasonable and beneficial use of water, prevent waste of water, complement the City's water quality regulations and urban runoff reduction efforts, maximize the efficient use of water, minimize the effect and hardship of water shortages, and implement the City's Water Shortage Contingency Plan.

B. The water conservation and water supply shortage program created by this chapter establishes permanent water conservation requirements intended to alter

behavior related to water use efficiency for nonshortage conditions and further establishes six levels of water supply shortage response actions to be implemented during times of a declared water shortage with increasing restrictions on water use in response to worsening drought or emergency conditions and decreasing supplies.

C. The City Council finds as follows:

1. A reliable minimum supply of water is essential to the public health, safety and welfare of the people and economy of the City and the Southern California region.
2. Wasteful water use practices constitute a potential threat to and an unacceptable diminution of the City's water supplies. The prevention of water waste is an economically and environmentally feasible way to protect, conserve, and prevent unacceptable diminution of the City's water supplies.
3. Careful water management that includes active water conservation measures, not only in times of drought but at all times, is essential to ensure a reliable minimum supply of water to meet current and future supply needs.
4. Article X, Section 2, of the California Constitution declares that the general welfare requires that water resources be put to beneficial use, that waste or unreasonable use or unreasonable method of use of water is to be prevented and that conservation of water be fully exercised with a view to the reasonable and beneficial use thereof.
5. Article XI, Section 7, of the California Constitution declares that a city or county may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.
6. California Water Code Section 375 authorizes a water supplier to adopt and enforce a comprehensive water conservation program to reduce water consumption and conserve supplies.
7. The adoption and enforcement of the water conservation and water supply shortage program is necessary to manage the City's water supply in the short and long term and to avoid or minimize the effects of a supply shortage within the City's service area. Such a program is essential to ensure a reliable and sustainable minimum supply of water for public health, safety and welfare.
8. Recycled water is supplied in various areas throughout the City to conserve potable water. Recycled water, like potable water, must be used efficiently and is therefore included in this program.

9. Outdoor water use is a primary source of urban runoff, which flows onto the streets, through storm drains, to the creeks, the harbor and beaches. It is therefore in the public interest to promote practices that increase water use efficiency, reduce or eliminate runoff, and further support the regulations as set forth in Chapter 14.36 (Water Quality) and related best management practices.

10. Contamination, drought, or failure of the water system infrastructure may lead to a potable water shortage emergency in the City's water supplies.

11. Normal water supply conditions, known as Level Zero, exist during periods when the City anticipates no supply reductions. The City will proceed with planned water efficiency best practices to support consumer demand reduction in line with state mandated requirements and local goals for water supply reliability. The permanent mandatory water conservation requirements in Section 14.16.040 shall be in effect to prevent waste and unreasonable use of water at all times.

Section 14.16.020 Definitions.

In this chapter, the following words and phrases shall have the following meanings:

"Base amount" means a base amount of water usage per billing period to be determined for each customer. For any particular billing period, the base amount shall be as indicated on the customer's municipal services statement for the prior billing period. For customers occupying premises for which the City's water billing history includes the year specified in the resolution declaring a water shortage, the base amount shall be the amount of water used during the same billing period in the year specified in the resolution. For customers occupying premises for which the City's water billing history does not include the same billing period in the year specified in the resolution declaring a water shortage, the base amount shall be the estimate of the water usage per billing period of similar premises and users.

"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 seven hundred forty-eight (748) gallons.

"Commercial kitchen" means a facility containing a kitchen in which food is prepared for sale, such as a restaurant, cafe, hotel, catering establishment, or other food preparation establishment.

"Customer" shall mean any person or premises using or receiving water service from the City. The term "customer" shall not include a person or premises receiving water service within the City from the Irvine Ranch Water District or from the Mesa Water District.

“Department” shall mean the City of Newport Beach Utilities Department.

“Director” shall mean the Director of the City of Newport Beach’s Utilities Department or his or her designee.

“Irrigate” means the watering of any lawn, landscape, or other vegetated area.

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

“MET” shall mean the Metropolitan Water District of Southern California.

“Premises” means a parcel of land, or portion of a parcel, including any improvements located thereon, that are served by a City water meter.

“Recycled water” means the reclamation and reuse of non-potable water and/or wastewater for beneficial use, such as irrigation.

“Water” shall mean potable water and recycled water.

“Water conservation plan” means a plan submitted by a customer for the approval of the Director, in conjunction with a request for an exemption or partial exemption that proposes the maximum feasible reduction in consumption.

“Water consumption restrictions” shall mean those provisions in this chapter that require customers to reduce the amount of water consumed during a water supply shortage in relation to the base amount.

Section 14.16.030 Applicability.

A. The provisions of this chapter shall apply to all persons, customers, and premises using water in the City, as set forth herein.

B. For the purposes of this chapter, the use of water by a tenant, employee, agent, contractor, representative or person acting on behalf of a customer shall be imputed to the customer.

Section 14.16.040 Permanent Mandatory Water Conservation Requirements.

The following prohibitions and mandatory water conservation requirements are effective at all times, including during a water supply shortage. Violations of this section will be considered waste and an unreasonable use of water.

A. Limit on Watering Duration. No customer shall use potable water to irrigate any lawn and/or ornamental landscape area using a landscape irrigation system or a watering device that is not continuously attended unless such irrigation is limited to no more than ten (10) minutes watering per station. This restriction does not apply to the following:

1. Landscape irrigation systems that exclusively use very low-flow drip type or bubbler type irrigation systems in which no emitter produces more than two gallons of water per hour.

2. Weather based controllers or stream rotor sprinklers that meet a seventy (70) percent efficiency standard.

B. Limits on Watering Hours. No customer shall use potable water to irrigate any lawn, landscape or other vegetated area between the hours of 9:00 a.m. and 5:00 p.m. Pacific Time on any day, except by use of hand-held bucket or similar container, or a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or for short periods for the exclusive purpose of adjusting or repairing an irrigation system.

C. No Excessive Runoff. No person shall use water to irrigate any lawn and/or ornamental landscape area in a manner that causes or allows more than incidental flow or runoff onto an adjoining sidewalk, driveway, street, alley, gutter or ditch. "Incidental flow or runoff" means a minimal amount of water that escapes the area of intended use, such as windblown overspray onto adjacent hard surfaces.

D. No Washing Down. No person shall use water to wash down hard or paved surfaces, including, but not limited to, sidewalks, walkways, driveways, parking areas, tennis courts, patios or alleys, 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 (e.g., "water broom") equipped to recycle any water used and efforts are made to vacuum the runoff or direct the runoff away from paved surfaces.

E. Obligation to Fix. No person shall permit loss or escape of water through breaks, leaks or other malfunctions in the person's plumbing or distribution system for any period of time after such escape of water should have reasonably been discovered and corrected and in no event more than three (3) days after receiving notice of the condition from the City unless other arrangements are made with the City.

F. Watering During and After Rainfall. No customer shall use potable water to irrigate lawns, groundcover, shrubbery or other ornamental landscape material during and within forty-eight (48) hours after a measurable rainfall event of at least one-fourth of one inch of rain as recorded by the National Weather Service, the closest California Irrigation

Management Information System station, or any other reliable source of rainfall data available to the City.

G. Landscaping Connected to Dedicated Landscape Meters. All landscape irrigation systems connected to dedicated landscape meters shall include rain sensors that automatically shut off such systems during periods of rain or include evapotranspiration systems that schedule irrigation based on climatic conditions.

H. Water Fountain Recirculating Water. No customer shall operate a water fountain or other decorative water feature that does not use a recirculating water system.

I. Washing Vehicles and Equipment. No customer shall use water to clean a vehicle, including but not limited to any automobile, truck, van, bus, motorcycle, boat or trailer, whether motorized or not, except by use of a hand-held bucket or similar container or a hand-held hose equipped with a positive self-closing water shut-off nozzle or device.

1. This subsection does not apply to any commercial car washing facility.

J. Commercial Car Washes. All commercial conveyor car wash systems in commercial car washing facilities shall use operational recirculating water systems.

K. Drinking Water Served Upon Request Only. Customers operating eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drinks are sold, served, or offered for sale, shall not provide drinking water to any person unless expressly requested by the person.

L. Commercial Lodging Linens. Customers operating hotel, motel, and other commercial lodging establishments shall provide persons the option of not having towels and linen laundered daily. Commercial lodging establishments must prominently display notice of this option.

M. No Single Pass Cooling Systems. No customer shall install a new single pass cooling system in a building or premises.

N. Use of Hydrants. No person shall use water from any fire hydrant for any purpose other than fire suppression or emergency aid without first obtaining a City hydrant meter account or written approval from the Director or his or her designee. Absent a meter account or Director approval, water theft and meter tampering fees shall be applied as appropriate.

O. Newly Constructed Homes and Buildings. No person shall water with potable water the landscapes outside of newly constructed homes and buildings in a manner

inconsistent with regulations or other requirements established by the California Building Standards Commission.

P. Construction Site Requirements. The requirements of this subsection apply to persons engaged in construction activities. A permittee's refusal or failure to comply with these requirements shall constitute grounds for revocation of a construction or grading permit. In addition, the City may withhold occupancy and inspections until such time as the permit holder has complied.

1. No person shall use potable water for soil compaction or dust control in a construction site where there is an available and feasible source of recycled water or non-potable water approved by the Department of Public Health and appropriate for such use.

2. No person shall operate a hose within a construction site that is not equipped with an automatic shut-off nozzle, provided that such devices are available for the size and type of hose in use.

Q. Commercial Kitchen Requirements. No customer may operate a commercial kitchen that does not comply with the following requirements:

1. Water-Conserving Pre-Rinse Kitchen Spray Valves. Commercial kitchens shall be equipped with water-conserving kitchen spray valves.

2. Best-Available Water-Conserving Technology. Commercial kitchens shall ensure that all water-using equipment uses the best-available water-conserving technology.

3. When hosing or washing kitchen or garbage areas or other areas for sanitary reasons as required by the Department of Health, hoses shall be equipped with positive self-closing nozzles.

R. Public Health and Safety. The provisions in this section shall not be construed to limit water use that is immediately necessary to protect public health or safety.

Section 14.16.050 Procedure for Declaration and Notification of Water Supply Shortage.

A. Upon the Director's determination of the existence of a water supply shortage based on the criteria and stages defined in the City's Water Shortage Contingency Plan, the City Council may declare a Water Supply Shortage from Level One up to Level Six. In accordance with California Water Code Sections 350-352, the City Council may also declare a Level Six Catastrophic Water Supply Shortage in response to a disaster or

sudden event that has or threatens to significantly diminish the reliability or quality of the City's water supply.

B. The mandatory water conservation measures applicable to the level of water supply shortage shall take effect on the date specified in the resolution declaring the water supply shortage. The declaration of a water supply shortage level shall be effective for no more than six (6) months unless extended by the City Council.

C. The City Manager shall notify and inform the public, local, regional, and state governments, and other stakeholders of the declaration of water supply shortage, the mandatory conservation requirements, and other water shortage response actions, according to the communication procedures in the City's Water Shortage Contingency Plan.

D. During the existence of a water supply shortage, the Director shall provide periodic reports to the City Council regarding compliance with the mandatory conservation requirements of the level of water supply shortage, current and anticipated allocations of water from MET, and any change in circumstances that could warrant a position of more stringent measures or relaxation of measures then in effect.

Section 14.16.060 Level One Water Supply Shortage.

A Level One Water Supply Shortage exists when the City determines a water supply shortage exists or there is no surplus water supply and an overall water use reduction of up to ten (10) percent is necessary to make more efficient use of water and appropriately respond to existing water conditions.

A. No customer shall use potable water to irrigate any lawn, landscape or other vegetated area except on the scheduled irrigation days established for each customer by the Director. The Director shall specify for each customer four irrigation days per week during the months of April through October and two irrigation days per week during the months of November through March. This restriction does not apply to the following:

1. Maintenance of vegetation including trees and shrubs that is watered using a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or a very low-flow drip type irrigation system when no emitter produces more than two gallons of water per hour.
2. Irrigation of food crops (including fruit trees and vegetable gardens).
3. Short periods of irrigation for the exclusive purpose of adjusting or repairing an irrigation system.

B. No customer shall use more water during any billing period than the percentage of the base amount per customer category established in the resolution declaring the Level One Water Supply Shortage, which percentage shall be in the range from one hundred (100) percent to eighty (80) percent of the base amount.

Section 14.16.070 Level Two Water Supply Shortage.

A Level Two Water Supply Shortage exists when the City determines a water supply shortage exists and an overall water use reduction of between ten (10) percent and twenty (20) percent is necessary to make more efficient use of water and appropriately respond to existing water conditions.

A. No customer shall use potable water to irrigate any lawn, landscape or other vegetated area except on the scheduled irrigation days established by the Director. The Director shall specify for each customer three irrigation days per week during the months of April through October and one irrigation day per week during the months of November through March. This restriction does not apply to the following:

1. Maintenance of vegetation, including trees and shrubs, that is watered using a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or a very low-flow drip type irrigation system when no emitter produces more than two gallons of water per hour.
2. Irrigation of food crops (including fruit trees and vegetable gardens).
3. Short periods of irrigation for the exclusive purpose of adjusting or repairing an irrigation system.

B. No customer shall use more water during any billing period than the percentage of the base amount per customer category established in the resolution declaring the Level Two Water Supply Shortage, which percentage shall be in the range from one hundred (100) percent to seventy (70) percent of the base amount.

Section 14.16.080 Level Three Water Supply Shortage.

A Level Three Water Supply Shortage exists when the City determines a water supply shortage exists and an overall water use reduction of between twenty (20) percent and thirty (30) percent is necessary to make more efficient use of water and appropriately respond to existing water conditions.

A. No customer shall use potable water to irrigate any lawn, landscape or other vegetated area except on the scheduled irrigation days established by the Director. The

Director shall specify for each customer two irrigation days per week during the months of April through October and one irrigation day per week during the months of November through March. This restriction does not apply to the following:

1. Maintenance of vegetation, including trees and shrubs, that is watered using a hand-held bucket or similar container or hand-held hose equipped with positive self-closing water shut-off nozzle or device, or a very low-flow drip type irrigation system when no emitter produces more than two gallons of water per hour.
2. Irrigation of food crops (including fruit trees and vegetable gardens), provided that such irrigation does not exceed four days per week on a schedule established by the Director.
3. Short periods of irrigation for the exclusive purpose of adjusting or repairing an irrigation system.

B. No customer shall use more water during any billing period than the percentage of the base amount per customer category established in the resolution declaring the Level Three Water Supply Shortage, which percentage shall be in the range from ninety (90) percent to fifty (50) percent of the base amount.

C. No person shall permit loss or escape of water through breaks, leaks or other malfunctions in the user's plumbing or distribution system for more than twenty-four (24) hours after receiving notice from the City.

Section 14.16.090 Level Four Water Supply Shortage.

A Level Four Water Supply Shortage exists when the City determines a water supply shortage exists and an overall water use reduction of between thirty (30) percent and forty (40) percent is necessary to make more efficient use of water and appropriately respond to existing water conditions.

A. No customer shall use potable water to irrigate any lawn, landscape or other vegetated area except on the scheduled irrigation days established by the Director. The Director shall specify for each customer one irrigation day per week. This restriction does not apply to the following:

1. Maintenance of vegetation, including trees and shrubs, that is watered using a hand-held bucket or similar container or hand-held hose equipped with positive self-closing water shut-off nozzle or device, or a very low-flow drip type irrigation system when no emitter produces more than two gallons of water per hour.

2. Irrigation of food crops (including fruit trees and vegetable gardens), provided that such irrigation does not exceed three days per week on a schedule established by the Department.

3. Short periods of irrigation for the exclusive purpose of adjusting or repairing an irrigation system.

B. No customer shall use more water during any billing period than the percentage of the base amount per customer category established in the resolution declaring the Level Four Water Supply Shortage, which percentage shall be in the range from eighty (80) percent to twenty-five (25) percent of the base amount.

C. No person shall permit loss or escape of water through breaks, leaks or other malfunctions in the user's plumbing or distribution system for more than twenty-four (24) hours after receiving notice from the City.

Section 14.16.100 Level Five Severe Water Supply Shortage.

A Level Five Severe Water Supply Shortage exists when the City determines a water supply shortage exists and an overall water use reduction of between forty (40) percent and fifty (50) percent is necessary to make more efficient use of water and appropriately respond to existing water conditions.

A. No customer shall use potable water to irrigate any lawn, landscape or other vegetated area. This restriction does not apply to the following:

1. Maintenance of vegetation, including trees and shrubs, that are watered using a hand-held bucket or similar container or a hand-held hose equipped with a positive self-closing water shut-off nozzle or device.

2. Maintenance of existing landscape to the extent necessary for fire protection.

3. Maintenance of existing landscape to the extent necessary for soil erosion control.

4. Maintenance of plant materials identified to be rare or essential to the well-being of rare animals.

5. Maintenance of landscape within active public parks and playing fields, day care centers, school grounds, cemeteries, and golf course greens, provided that such irrigation does not exceed two times per week on a schedule established by the Director.

6. Public works projects and actively irrigated environmental mitigation projects.

7. Food crops (including fruit trees and vegetable gardens); provided, that such irrigation does not exceed two times per week on a schedule established by the Director.

B. The City will not provide new potable water service, new temporary meters, or new permanent meters or issue statements of immediate ability to serve or to provide potable water service, except under the following circumstances:

1. A valid, unexpired building permit has been issued for the project;
2. The project is necessary to protect public health, safety, and welfare; or
3. The applicant provides substantial evidence of an enforceable commitment that ensures to the satisfaction of the Director the water demands for the project will be offset prior to the provision of a new water meter(s).

This restriction does not preclude the resetting or turn-on of meters to provide continuation of water service or the restoration of service that has been interrupted for a period of one year or less.

C. No customer shall use more water during any billing period than the percentage of the base amount per customer category established in the resolution declaring the Level Five Severe Water Supply Shortage, which percentage shall be between seventy-five (75) percent to zero (0) percent of the base amount.

D. No person shall permit loss or escape of water through breaks, leaks or other malfunctions in the user's plumbing or distribution system for more than twenty-four (24) hours after receiving notice from the City.

E. No customer may use potable water to fill or refill an ornamental lake, pond, or fountain, except to the extent needed to sustain aquatic life, provided that such animals were being actively managed within the water feature at the time of the City's declaration of the water supply shortage under this chapter.

F. No customer may use potable water to fill or refill a residential swimming pool or outdoor spa.

G. No permits for new pool construction or reconstruction shall be issued.

H. Washing of autos, trucks, trailers, boats, motorhomes and other types of vehicles and mobile equipment is prohibited, other than at a commercial car wash.

Section 14.16.110 Level Six Catastrophic Water Supply Shortage.

A Level Six Catastrophic Water Supply Shortage exists when the City determines a water supply shortage exists and an overall water use reduction of over fifty (50) percent is necessary to make more efficient use of water and appropriately respond to existing water conditions. A Level Six condition includes a disaster or sudden event such as earthquake, wildfire, power outage, or failure of any water supply or water distribution facility that has or threatens to significantly diminish the reliability or quality of the City's water supply.

All water uses except those necessary for basic health and safety are prohibited or shall be significantly reduced and all restrictions under a Level Five Severe Water Supply Shortage shall also be in effect, unless otherwise specified in the resolution declaring the water supply shortage.

Section 14.16.120 Exemptions.

A. The provisions of this chapter do not apply to uses of water necessary to protect public health and safety or for essential government services, such as public works, public utilities, police, fire and other similar emergency services.

B. Water consumption restrictions shall not be applicable to any of the following:

1. Customers who have participated in a fuel load modification program and have received an exemption from the Director and Fire Marshal. The Director and Fire Marshal shall only grant exemptions necessary to mitigate the impacts of participation in the fuel modification zone program, such as the need to irrigate replacement vegetation.

2. Customers that operate hospitals, medical care facilities, nurseries or other businesses whose main stock and trade consists of the sale or cultivation of plants and vegetation, and businesses in which water consumption is an integral part of production or manufacturing, provided that such customers shall first submit a water conservation plan to, and obtain the approval of, the Director. This exemption does not extend to the use of potable water for the irrigation of landscape areas.

C. The Director shall approve a water conservation plan only if the plan proposes the maximum feasible reduction in consumption. As a condition of approving the water

conservation plan, the Director may require the use of water conservation devices or practices as he or she deems appropriate to result in the maximum feasible reduction in consumption.

Section 14.16.130 Relief from Compliance.

A. Intent and Purpose. The City Council recognizes that water consumption can increase or decrease because of factors unrelated to wasteful water use practices. Many customers have installed water-saving devices and adopted water conservation practices that make it difficult to satisfy the water consumption restrictions required by this chapter. This section recognizes that adjustments to the base amount may be necessary to ensure that application of this chapter to any particular customer does not produce unjust or inequitable results, especially during water supply shortage Levels One, Two, and Three. In addition, this section recognizes unique circumstances may result in undue or disproportionate hardship as to a customer using water which is different from the impacts to water users generally. As a general rule, the Director should not grant relief to any customer for any reason in the absence of showing that the customer has achieved the maximum feasible reduction in water consumption, such as through the use of water saving devices (e.g., efficient fixtures, controllers and drought-resistant or artificial landscaping).

B. Procedures. A customer may seek relief from the provisions of this chapter by submitting an application in a form prescribed by the Department. The Director may require the submission of additional supporting documentation that he or she deems necessary to grant the application for relief. The Director shall approve or disapprove the application for relief, in whole or in part, within thirty (30) days after it is filed and deemed complete.

C. Factors to Be Considered.

1. Relief from Water Consumption Restrictions. In determining whether relief should be granted from water consumption restrictions, the Director shall consider all relevant factors including, but not limited to, the following:

a. Whether compliance with the water conservation requirements then in effect would result in unemployment or layoff of workers;

b. Whether additional persons are now living or working in the customer's premises that were not living or working in the premises during all or a portion of the billing periods used to calculate the base amount;

c. For residential customers, whether the usage in the prior billing period was equivalent to or less than ten (10) billing units in a Level One condition, nine (9) billing units in a Level Two condition, eight (8) billing units in a Level Three condition, seven (7) billing units in a Level Four condition, and six (6) billing units in a Level Five Severe condition, with the thresholds doubled for customers billed on a bi-monthly basis (e.g., eighteen (18) billing units in a Level Two condition);

d. Whether the customer had, during all or a portion of the billing periods used to calculate the base amount, begun using water conservation practices that remain in use and that reduced the customer's water usage by an amount equivalent to the reduction required by the water supply shortage;

e. Whether any current or anticipated increase in production or manufacturing will require the use of additional water;

f. The extent to which irrigation or watering of landscaping has been made necessary by compliance with fuel load modification programs; and

g. The extent to which the customer needs to use water to mitigate any emergency health or safety hazards.

2. Relief from Requirements Other than Water Consumption Restrictions. In determining whether relief should be granted from requirements other than water consumption restrictions, the Director must find, based on the application and supporting documentation, that:

a. The relief does not constitute a grant of special privilege inconsistent with the limitations imposed by this chapter on other customers;

b. Because of special circumstances applicable to the customer's property or its use, the strict application of this chapter would have an impact on the customer that is disproportionate to the impact on other similarly situated customers;

c. The condition or situation of the customer's premises for which the relief is sought is not common or general in nature;

d. The customer has achieved or will achieve the maximum feasible reduction in water consumption, such as through the use of water saving devices (e.g., efficient fixtures, controllers and drought-resistant or artificial landscaping); and

e. Authorizing such relief 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.

D. Agreement. Any grant of relief under this section shall be memorialized in a written agreement detailing the specific areas of relief granted, the conditions thereunder, and any other pertinent provisions, and shall be signed by the customer and the Director. During the effectiveness of the agreement, the customer shall have no further right to seek relief pursuant to the provisions of this section.

E. Final Decision. The Director shall notify the customer of the decision on the application for relief by mailing a notice of the decision to the customer by means of first class, postage prepaid, to the address specified on the application. Service shall be deemed to have been completed at the time of deposit in the mail.

F. Appeal of Final Decision. A customer may appeal the decision of the Director by submitting a written request within fifteen (15) days of the date of the Director's written decision. A written appeal request shall be submitted to the City Manager and include the reasons for the request and signature of the customer submitting the request. The City Manager may approve or disapprove the appeal within thirty (30) days from receipt of a request. The decision of the City Manager shall be final.

G. Willful Misrepresentation. Notwithstanding any other provision of law, no person shall make any willful misrepresentation of a material fact with respect to any application for relief submitted pursuant to this section.

Section 14.16.140 Enforcement.

A. Responsibility—Implementation Plan. The Director shall develop an implementation plan to be used as a guideline for enforcing the provisions of this chapter. The implementation plan shall provide the resources (staffing and equipment) required to ensure the fair and timely execution of these requirements, as well as a detailed execution strategy. In addition, the implementation plan shall ensure, so far as is reasonable under the circumstances, that persons are notified of violations and are provided an opportunity to cure the violation prior to being cited.

B. Violations. Violations of this chapter are subject to criminal, civil, and administrative fines and penalties and are enforceable under the procedures provided in Section 1.04.010 and Chapter 1.05.

C. Additional Enforcement Options. The City may impose the following requirements on a customer in the event of a continuing or willful violation:

1. **Water Flow Restrictors.** The City may install a water flow restrictor of approximately one gallon per minute for services up to one and one-half inches in size and comparatively sized restrictors for larger services. Prior to doing so, the City shall first provide a minimum of forty-eight (48) hours' notice of its intent to install a water flow restrictor. In the event that a customer refuses to permit the installation of a water flow restrictor following the City's election to do so, the City may terminate the customer's water service.
2. **Termination of Service.** The City may disconnect a customer's water service for willful violations of mandatory restrictions in this chapter.

Section 14.16.150 State of Emergency.

If the Governor of the State of California proclaims a state of emergency and thereby issues orders or other general laws that mandate adoption of regulations by the State Water Resources Control Board and/or water conservation efforts by persons, it is a violation of this section for any person to violate any such emergency order or general law lawfully adopted by the State of California.

Section 2: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 3: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality 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 or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 5: Except as expressly modified in this ordinance, all other Sections, Subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 6: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 24th day of May, 2022, and adopted on the 14th day of June, 2022, by the following vote, to-wit:

AYES: _____

NAYS: _____

ABSENT: _____

Proposed

KEVIN MULDOON, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

AARON C. HARP, CITY ATTORNEY