

● **Board of Directors**
Water Planning and Stewardship Committee

December 9, 2008 Board Meeting

9-3

Subject

Report on efforts to assist in adoption of Local Water Conservation Ordinances

Description

Staff has taken steps to assist local agencies in their adoption of local water conservation ordinances since the Board adopted a Water Supply Alert in June 2008. These efforts include: collecting copies of current ordinances and developing a library of them for member agency use, drafting a model water conservation ordinance, and holding outreach workshops. A model conservation ordinance (**Attachment 1**) was developed as a tool to help local jurisdictions meet the current challenges to our regional water supply.

Background

Following Governor Arnold Schwarzenegger’s proclamation of a statewide drought in June, Metropolitan adopted a Water Supply Alert that encourages cities, counties, local public water agencies, and retailers to adopt and enforce local water conservation ordinances. Staff estimates that adoption and enforcement of local water conservation ordinances could save up to 200,000 acre-feet a year in 2009, with potential additional savings in the future. Although ordinances have already been adopted by some jurisdictions in Metropolitan’s service area, many have not been actively enforced and may need to be amended to be relevant to current regional water supply conditions. Ordinances are frequently implemented in stages depending on the severity of the water shortage, and typically include water waste prohibitions, landscape irrigation restrictions, and enforcement conditions.

Conservation ordinances can be powerful tools in motivating the public to eliminate waste and practice greater efficiency. The following table helps place in perspective the established “Water Supply Alert” condition and conservation ordinances in contending with worsening supply conditions.

Baseline Water Use Efficiency	Ongoing implementation of conservation, recycling, and outreach programs to achieve permanent increases in water use efficiency and build storage reserves.
Condition 1: Water Supply Watch	Local agency voluntary dry-year conservation measures and use of regional storage reserves.
Condition 2: Water Supply Alert	Regional call for cities, counties, member agencies, and retail water agencies to implement extraordinary conservation through drought ordinances and other measures to mitigate use of storage reserves.
Condition 3: Water Supply Allocation	Implement Metropolitan Supply Allocation Plan.

Ordinance Requests and Water Ordinance Library

In April, in collaboration with the member agencies, staff collected local agency water-related ordinances, corresponding population data, and contact information to answer questions. Staff followed up with outreach during several member agency conservation coordinator meetings and phone calls to further solicit input.

In response, staff received over 65 local water conservation ordinances from member agencies and their constituents. Staff identified and collected approximately 25 ordinances from other areas including Northern California, Arizona, Nevada, and Texas. Staff also coordinated with the California Urban Water Conservation Council (Council) for additional information. A library of the local water conservation ordinances was developed and made available to the member agencies. Collected ordinances covered approximately 75 percent of the population within Metropolitan's service area. These ordinances include various topics such as, drought, water waste prohibitions, water recycling, and water conservation, and are varied in their approaches and levels of detail. The ordinances were summarized by staff for review and coordination on member agency Web sites.

Model Water Conservation Ordinance

Using outside legal services, staff directed the development of a model water conservation ordinance ([Attachment 1](#)). The model water conservation ordinance incorporates many of the features and language already used by local agencies and features recommended in the Council's Best Management Practices, and DWR's Urban Drought Guidebook and is only one example of a potential local ordinance. The model ordinance is drafted from the perspective of a city or county with a municipally owned water service. Two additional ordinances are being drafted to cover the situations of a city or county not served by a municipally owned water service and the situation of an ordinance being adopted by a water district statutorily authorized to adopt water waste prohibition ordinances.

The model water conservation ordinance includes permanent water waste prohibitions, escalating water restrictions to be implemented over three water supply shortage conditions, administrative penalties and violations, and other potential provisions. The permanent water waste restrictions include primarily behavioral measures such as limiting irrigation times, washing of paved surfaces, and restaurant water service or hotel laundering of linens only on customer request. The escalating water restriction levels mirror the Water Supply Alert resolution and progress from permanent baseline restrictions to mandatory reductions during a water supply allocation. The actual triggers for determining the water supply conditions would be up to the local agency. Penalties and violations can be administrative, civil, or criminal infractions depending on the local agencies' regulations and typically escalate from monetary fines to water flow restrictions and termination of service. The model ordinance also contains other provisions for local agency consideration such as recycled water provisions, conservation plan submittal, establishment of waste hotlines, and withholding of building permits. The model ordinance also incorporates by reference the statewide model landscape ordinance under development pursuant to Assembly Bill 1881.

Water Conservation Ordinance Workshops

To encourage and facilitate adoption of local water conservation ordinances throughout the region, Metropolitan provided the model water conservation ordinance as a tool for local agency use. Metropolitan held two workshops with member agencies, retail water agencies, and municipalities to solicit comments on the model water conservation ordinance and quantify local ordinance implementation. The October and November workshops at Metropolitan's Headquarters and San Juan Capistrano were attended by approximately 120 stakeholders.

Next Steps

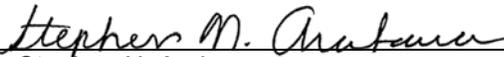
Based on an action taken by the Board in November, staff will begin requiring local agency adoption and enforcement of water conservation ordinances as a pre-condition to receiving new water conservation and other local resources incentives or assistance with local agency implementation of mandatory water conservation measures.

Policy

By Minute Item 47526, June 10, 2008, the Board adopted the Water Supply Alert Resolution (Resolution 9075).

Fiscal Impact

None


Stephen N. Arakawa
Manager, Water Resource Management

11/17/2008

Date


Jeffrey Knightlinger
General Manager

11/24/2008

Date

Attachment 1 – Draft Model Water Conservation Ordinance

BLA #6320

Metropolitan Water District
of Southern California

DRAFT

Model Water Conservation Ordinance
Including Comments

October 29, 2008

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Introduction

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ORDINANCE NO. ____**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF _____
ESTABLISHING A WATER CONSERVATION AND WATER SUPPLY SHORTAGE
PROGRAM AND REGULATIONS****Section I: Title.**

This chapter will be known as the City of _____ Water Conservation and Water Supply Shortage Program.

Section II. Findings.

- a. 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.
- b. Southern California is a semi-arid region and is largely dependent upon imported water supplies. A growing population, climate change, environmental concerns, and other factors in other parts of the State and western United States, make the region highly susceptible to water supply reliability issues.
- c. 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 water supply needs.
- d. 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.
- e. Article X, Section 2 of the California Constitution declares that the general welfare requires that water resources be put to beneficial use, waste or unreasonable use or unreasonable method of use of water be prevented, and conservation of water be fully exercised with a view to the reasonable and beneficial use thereof.
- f. California Water Code section 375 authorizes water suppliers to adopt and enforce a comprehensive water conservation program to reduce water consumption and conserve supplies.
- g. The adoption and enforcement of a water conservation and supply shortage program is necessary to manage the City's potable water supply in the short and long-term and 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.

Comment:

The purpose of the Findings is to establish that pursuant to the Constitution and Water Code, conservation is a required component of all water management plans and should be implemented at all times. Findings should be included in any ordinance, however it is within a city's discretion to include them or not in the municipal code when the ordinance is codified. It is recommended they be included to clarify legislative intent.

Section III. Declaration of Purpose and Intent.

- a. The purpose of this chapter is to establish a water conservation and supply shortage program that will reduce water consumption within the City through conservation, enable effective water supply planning, assure 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 establishes permanent water conservation standards intended to alter behavior related to water use efficiency for non-shortage conditions and further establishes three levels of water supply shortage response actions to be implemented during times of declared water shortage or declared water shortage emergency, with increasing restrictions on water use in response to worsening drought or emergency conditions and decreasing supplies.

Comment:

Findings and purposes are important to publicly explain the goals and objectives of the City Council in enacting the ordinance.

Section IV. Definitions.

- a. The following words and phrases whenever used in this chapter have the meaning defined in this section:
 1. **“City”** means the City of _____.
 2. **“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.
 3. **“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.
 4. **“Large Landscape Areas”** means a lawn, landscape, or other vegetated area, or combination thereof, equal to more than one (1) acre of irrigable land.
 5. **“Single Pass Cooling Systems”** means equipment where water is circulated only once to cool equipment before being disposed.
 6. **“Potable Water”** means water which is suitable for drinking.
 7. **“Recycled Water”** means the reclamation and reuse of non-potable water for beneficial use.
 8. **“Billing Unit”** means the unit of water used to apply water rates for purposes of calculating water charges for a persons water usage and equals one hundred (100) cubic feet or seven hundred forty-eight (748) gallons of water.

Section V. Application

- a. The provisions of this chapter apply to any person in the use of any potable water provided by the City.
- b. 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 police, fire and other similar emergency services.
- c. The provisions of this chapter do not apply to the use of recycled water, with the exception of Section VI(a).
- d. The provisions of this chapter do 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.
- e. 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 stormwater ordinances and stormwater management plans.

Comment:

Application to City: Subsection (a) applies to all persons, which includes the city enacting the ordinance. An exception should be inserted or definition of “person” changed if cities do not want these water restrictions to apply to themselves. We recommend that the ordinance apply to cities as well as it is equitable and demonstrates leadership.

Retail Provider: This section is written for a city that provides retail water service. There will be slight variations in the applicability for cities that do not provide water service. In such case, it would apply to “persons within the City” and would not be linked to water “provided by the City.” There will also be slight variations for water districts, namely in the Penalty provisions.

Recycled Water: The use of recycled water requires a use permit with specific use restrictions, many of which focus on water efficiency. Given such permits and the interest in promoting the use of recycled water as a water efficiency, recycled water is exempt from all of the restrictions in this chapter, with the exception of the “watering hours” restrictions in Section VI(a). Each jurisdiction should decide this issue based upon its own circumstances.

Section VI: Permanent Water Conservation Requirements – Prohibition Against Waste

The following water conservation requirements are effective at all times and are permanent. Violations of this section will be considered waste and an unreasonable use of water.

- a. **Limits on Watering Hours:** Watering or irrigating of lawn, landscape or other vegetated area with potable water is prohibited between the hours of ____ a.m. and ____ p.m. Pacific Standard 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.

Comment:

Cities should insert the restricted times into the blank portion above that each feels are appropriate for its own jurisdiction, such as 8:00 a.m. to 6:00 p.m. or 9:00 a.m. to 5:00 p.m. At a minimum, cities should restrict watering between the hours of 10:00 a.m. to 4:00 p.m. due to higher evaporation rates during this time period.

- 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 of water per hour and weather based controllers or stream rotor sprinklers that meet a 70% 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. **Obligation to Fix Leaks, Breaks or Malfunctions:** Excessive use, loss or escape of water through breaks, leaks or other malfunctions in the water user'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 __ days of receiving notice from the City, is prohibited.
- f. **Re-circulating Water Required for Water Fountains and Decorative Water Features:** Operating a water fountain or other decorative water feature that does not use re-circulated water is prohibited.

Comment:

Jurisdictions may want to provide a date certain by which this will go into effect to provide a reasonable phase in period.

- g. **Limits on Washing Vehicles:** Using water to wash or clean a vehicle, including but not limited to any automobile, truck, van, bus, motorcycle, boat or trailer, whether motorized or not is prohibited, 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. This subsection does not apply to any commercial car washing facility.
- h. **Drinking Water Served Upon Request Only:** Eating or drinking establishments, including but not limited to a restaurant, hotel, cafe, cafeteria, bar, club or other public place where food or drinks are sold, served, or offered for sale, are prohibited from providing drinking water to any person unless expressly requested.
- i. **Commercial Lodging Establishments Must Provide Option to Not Launder Linen Daily:** Hotels, motels and other commercial lodging establishments must provide customers the option

of not having towels and linen laundered daily. Commercial lodging establishments must prominently display notice of this option in each bathroom using clear and easily understood language.

Comment:

Cities may want to consider whether to explicitly state in this subsection that they will make suitable displays available to such establishments. A number of jurisdictions do this to enhance the program.

- j. **No Installation of Single Pass Cooling Systems:** Installation of single pass cooling systems is prohibited in buildings requesting new water service.
- k. **No Installation of Non-re-circulating in Commercial Car Wash and Laundry Systems:** Installation of non-re-circulating water systems is prohibited in new commercial conveyor car wash and new commercial laundry systems.
- l. **Restaurants Required to Use Water Conserving Dish Wash Spray Valves:** Food preparation establishments, such as restaurants or cafes, are prohibited from using non-water conserving dish wash spray valves.

General Comment:

Conservation Rate Structure: Cities should consider the appropriate use of a conservation rate structure consistent with the Best Management Practices in the California Urban Water Conservation Council's Memorandum of Understanding Regarding Urban Water Conservation.

Levels of Water Supply Shortage:

The following three sections are consistent in form with a number of existing and model water conservation ordinances and are intended to serve as an example for the benefit of each jurisdiction utilizing this model ordinance. The sections establish three levels of water supply shortage response actions and provide a number of options for each jurisdiction to consider.

Section VII: Level 1 Water Supply Shortage

- a. A Level 1 Water Supply Shortage exists when the City determines, in its sole discretion, that due to drought or other water supply reductions, a water supply shortage exists and a consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the City of a Level 1 Water Supply Shortage condition, the City will implement the mandatory Level 1 conservation measures identified in this section. The type of event that may prompt the City to declare a Level 1 Water Supply Shortage may include, among other factors, a finding that its wholesale water provider calls for extraordinary water conservation.

Comment:

Cities and water districts commonly use and the DWR Drought Management Handbook recommends using a specific percentage of required consumer demand reduction to trigger the implementation of a Level or Stage, often times starting at 10% and escalating with each Level or Stage. Using a percentage reduction as the trigger provides certainty and predictability, as it mandates certain actions take place and does not defer a determination of severity to a later time. It also provides clear justification for the actions that are taken, which in some cases may be significant. However, it does reduce discretion. The following is sample language for consideration that utilizes a percentage trigger:

“A Level 1 Water Supply Shortage condition exists when the City notifies its water users that due to drought or other supply reductions, a consumer demand reduction of up to ___% is necessary to make more efficient use of water and respond to existing water conditions. Upon the declaration of a Level 1 Water Supply Shortage condition, the City shall implement the mandatory Level 1 conservation measures identified in this ordinance. The type of event that may prompt the City to declare a Level 1 Water Supply Shortage may include, among other factors, a finding that its wholesale water provider calls for extraordinary water conservation.”

- b. **Additional Water Conservation Measures:** In addition to the prohibited uses of water identified in Section VI, the following water conservation requirements apply during a declared Level 1 Water Supply Shortage:
1. **Limits on Watering Days:** Watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to three days per week on a schedule established and posted by the City. During the months of November through March, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to no more than one day per week on a schedule established and posted by the City. This provision does not apply to landscape irrigation zones that exclusively use very low flow drip type irrigation systems when no emitter produces more than two (2) gallons of water per hour. This provision also does not apply to watering or irrigating 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.

Comment:
Regarding days of restricted watering, a city may want to consider selecting three days of the week, such as Monday, Thursday and Saturday, or restricting watering for properties with odd and even numbered addresses to certain days, which may be a factor because of system load. Both approaches are utilized and each city should set restrictions based upon their local circumstances
 2. **Obligation to Fix Leaks, Breaks or Malfunctions:** All leaks, breaks, or other malfunctions in the water user’s plumbing or distribution system must be repaired within seventy-two (72) hours of notification by the City unless other arrangements are made with the City.
 3. **Other Prohibited Uses:** The City may implement other prohibited water uses as determined by the City, after notice to customers.

Section VIII. Level 2 Water Supply Shortage

- a. A Level 2 Water Supply Shortage exists when the City determines, in its sole discretion, that due to drought or other supply reductions, a water supply shortage exists and a consumer demand reduction is necessary to make more efficient use of water and respond to existing water conditions. Upon the declaration by the City of a Level 2 Water Supply Shortage condition, the City will implement the mandatory Level 2 conservation measures identified in this section.

Comment:

As indicated in the comments to Section VII(a) above, it is common practice to utilize a percentage consumer demand reduction amount to trigger the implementation of a Level or Stage, often times starting at 10% and escalating with each Level or Stage. The following is sample language for this Level:

“A Level 2 Water Supply Shortage condition exists when the City notifies its water users that due to drought or other supply reductions, a consumer demand reduction of up to ___% is necessary to make more efficient use of water and respond to existing water conditions. Upon the declaration of a Level 2 Water Supply Shortage condition, the City shall implement the mandatory Level 2 conservation measures identified in this ordinance.

- b. **Additional Conservation Measures:** In addition to the prohibited uses of water identified in Section VI and VII, the following additional water conservation requirements apply during a declared Level 2 Water Supply Shortage:
1. **Watering Days:** Watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to two days per week on a schedule established and posted by the City. During the months of November through March, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to no more than one day per week on a schedule established and posted by the City. This provision does not apply to landscape irrigation zones that exclusively use very low flow drip type irrigation systems when no emitter produces more than two (2) gallons of water per hour. This provision also does not apply to watering or irrigating 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.
 2. **Obligation to Fix Leaks, Breaks or Malfunctions:** All leaks, breaks, or other malfunctions in the water user’s plumbing or distribution system must be repaired within forty-eight (48) hours of notification by the City unless other arrangements are made with the City.
 3. **Limits on Filling Ornamental Lakes or Ponds:** Filling or re-filling ornamental lakes or ponds is prohibited, except to the extent needed to sustain aquatic life, provided that such animals are of significant value and have been actively managed within the water feature prior to declaration of a supply shortage level under this ordinance.
 4. **Limits on Washing Vehicles:** Using water to wash or clean a vehicle, including but not limited to, any automobile, truck, van, bus motorcycle, boat or trailer, whether motorized or not, is prohibited 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, by high pressure/low volume wash systems, or at a commercial car washing facility that utilizes a re-circulating water system to capture or reuse water.
 5. **Limits on Filling Residential Swimming Pools & Spas:** Re-filling of more than one foot and initial filling of residential swimming pools or outdoor spas with potable water is prohibited.

Comment:

To preclude initial fillings cities may want to consider a ban on the issuance of pool construction permits.

6. **Other Prohibited Uses:** The City may implement other prohibitions on water uses as determined by the City, after notice to customers.

Other Options at this Level:

1. **Water Allocations / Water Budget:** The City will establish a water allocation for property served by the City using a method that does not penalize persons for the implementation of conservation methods or the installation of water saving devices. The City must provide notice of the allocation by including it in the regular billing statement for the fee or charge or by any other mailing to the address to which the City customarily mails the billing statement for fees or charges for on-going water service.

Following the effective date of the water allocation as established by the City, any person that uses water in excess of the allocation will be subject to a penalty in the amount of \$__ for each billing unit of water in excess of the allocation. The penalty for excess water usage will be cumulative to any other remedy or penalty that may be imposed for violation of this ordinance.

Comment:

A water allocation or water budget is an option to consider that allows a retail provider to impose penalties for excessive use. This can be an effective option, provided it is done in an equitable fashion as it relates to those who have already implemented water conservation measures. The size of the penalty and whether it is a percentage or number times a conservation or other rate is up to each entity to determine, however, it should be sufficient to encourage conservation. Jurisdictions may want to consider water allocations based on an average of similar properties in a meter reading route as established by the City. As a result, customers that have already implemented conservation measures when reductions are required pursuant to this section will not be unfairly penalized.

2. **Water Supply Shortage Rates:** During a Level 2 Water Supply Shortage condition, the City may increase water rates, other than Tier 1 Lifeline rates, by an amount necessary, as determined by the City. The increase in water rates, which could average approximately __% above the pre-water shortage rates, may vary from categories of customers.

Comment:

The above language appears in a few existing ordinances and is an option to consider. However, an issue with increasing water rates is that it requires compliance with the provisions of Proposition 218, which would likely make it a more difficult and lengthy path to pursue. Given there may be time sensitivity during a water supply shortage at this Level and beyond, a penalty-based system may be a preferred option.

3. **Mandatory % Use Reductions:** During a Level 2 Water Supply Shortage condition, all customers will be required to reduce water consumption by a percentage determined by the City.

Comment:

Mandatory percentage use reductions at each Level can achieve substantial water savings. However, the approach can also raise some issues of fairness, as an across the board reduction requirement based on historical use may not take into consideration whether certain customers had previously implemented water conservation measures. As a result, cities should attempt to craft something that is equitable and does not penalize people for previous water efficiency efforts.

Section IX. Level 3 Water Supply Shortage – Emergency Condition

- a. A Level 3 Water Supply Shortage condition is also referred to as an “Emergency” condition. A Level 3 condition exists when the City declares a water shortage emergency and notifies its residents and businesses that a significant reduction in consumer demand is necessary to make more efficient use of water and respond to existing water conditions. Upon the declaration of a Level 3 Water Supply Shortage Emergency condition, the City will implement the mandatory Level 3 conservation measures identified in this section.

Comment:

As indicated in the comments to Section VII and VIII (a), it is common practice to utilize a percentage consumer demand reduction amount to trigger the declaration of a Level or Stage, often times between 30-50% at the emergency level. Having this kind of specificity in the ordinance has the advantage of making the policy very clear to the public and the City as to what will happen and when.

Section 350 Option

A city may declare a Level 3 Emergency pursuant to Water Code section 350 . Section 350 et. seq. provides clear statutory authority to declare a water emergency and take necessary steps to reduce consumption, including prioritizing use, denying applications for new water service, and discontinuing service. The following is sample language:

“A Level 3 Water Supply Shortage Emergency exists when the City declares a water shortage emergency condition pursuant to California Water Code section 350 and notifies its residents and businesses that more than a ___% consumer demand reduction is required to ensure sufficient supplies for human consumption, sanitation and fire protection. The City must declare a Water Supply Shortage Emergency in the manner and on the grounds provided in California Water Code Section 350.”

Non-Retailers: Section 350 only applies to water distributors. As a result, cities that are not water distributors would not use this section.

- b. **Additional Conservation Measures:** In addition to the prohibited uses of water identified in Section VI, VII, and VIII, the following water conservation requirements apply during a declared Level 3 Water Supply Shortage Emergency:
1. **No Watering or Irrigating:** Watering or irrigating of lawn, landscape or other vegetated area with potable water is prohibited. This restriction does not apply to the following categories of use unless the City has determined that recycled water is available and may be lawfully applied to the use:
 - i. Maintenance of vegetation, including trees and shrubs, that are watered using a hand-held bucket or similar container, 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 (2) gallons of water per hour subject to the hour restrictions in Section VI(a);

- ii. Maintenance of existing landscape necessary for fire protection;
 - iii. Maintenance of existing landscape for soil erosion control;
 - iv. Maintenance of plant materials identified to be rare or essential to the well being of rare animals;
 - v. 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 (2) days per week according to the schedule established in Section VIII(b)(1) and time restrictions in Section VI(a) and (b)(1);
 - vi. Public works projects and actively irrigated environmental mitigation projects.
2. **Obligation to Fix Leaks, Breaks or Malfunctions:** All leaks, breaks, or other malfunctions in the water user's plumbing or distribution system must be repaired within twenty four (24) hours of notification by the City unless other arrangements are made with the City.
3. **No New Potable Water Service:** Upon declaration of a Level 3 Water Supply Shortage Emergency condition, no new potable water service will be provided, no new temporary meters or permanent meters will be provided, and no statements of immediate ability to serve or provide potable water service (such as, will serve letters, certificates, or letters of availability) will be issued, except under the following circumstances:
1. A valid, unexpired building permit has been issued for the project; or
 2. The project is necessary to protect the public's health, safety, and welfare; or
 3. The applicant provides substantial evidence of an enforceable commitment that water demands for the project will be offset prior to the provision of a new water meter(s) to the satisfaction of the City.

This provision 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.

4. **Discontinue Service:** The City, in its sole discretion, may discontinue service to consumers who willfully violate provisions of this section.

Comment:

Section 356 of the Water Code authorizes the actions in (b)(3) and (4) when an emergency is declared. However, a city may decide to make this language permissive and not mandatory, as it is above, to provide greater flexibility.

5. **Other Prohibited Uses:** The City may implement other prohibited water uses as determined by the City, after notice to customers.

General Comment:

During a Level 3 Water Supply Shortage Emergency, as discussed in Level 2 above, 1) Water Allocations, 2) Water Shortage Rates, and 3) Mandatory % Use Reductions are options to consider to maximize water conservation.

Section X. Procedures for Determination / Notification of Water Supply Shortage

- a. **Declaration and Notification of Level 1 & 2 Water Supply Shortage:** The existence of Level 1 and Level 2 Water Supply Shortage conditions may be declared by resolution of the City adopted at a regular or special public meeting held in accordance with State law. The mandatory conservation requirements applicable to Level 1 or Level 2 conditions will take effect on the tenth day after the date the shortage level is declared. Within five days following the declaration of the shortage level, the City must publish a copy of the resolution in a newspaper used for publication of official notices. If the City establishes a water allocation, it must provide notice of the allocation by including it in the regular billing statement or by any other mailing to the address to which the City customarily mails the billing statement for fees or charges for on-going water service. A water allocation will be effective on the fifth day following the date of mailing or at such later date as specified in the notice.
- b. **Declaration and Notification of Level 3 Water Supply Shortage:** The existence of a Level 3 Water Supply Shortage Emergency condition may be declared in accordance with the procedures specified in Water Code Sections 351 and 352. The mandatory conservation requirements applicable to the Level 3 conditions will take effect on the tenth (10) day after the date the shortage level is declared. Within five (5) days following the declaration of the shortage level, the City must publish a copy of the resolution in a newspaper used for the publication of official notices. If the City establishes a water allocation, it will provide notice of the allocation by including it in the regular billing statement or by any other mailing to the address to which the City customarily mails the billing statement for fees or charges for on-going water service. A water allocation will be effective on the fifth day following the date of mailing or at such later date as specified in the notice.

Comment:

The above language is an example of determination and notification procedures and is meant to provide a general understanding of what they may include. There are a variety of different ways this can be written. For example, the declaration at an earlier stage can be made by the General Manager rather than by resolution of a city.

Section XI. Other Provisions

The following subsections are taken from a variety of existing and model water conservation and recycling ordinances. They are presented simply as options cities may want to consider. They could be included in an ordinance under the heading of general or other provisions or, depending on the restriction, as a specific requirement in a certain Level of Shortage.

- a. **Commercial Car Wash Systems:** Effective on January 1, 2011, all commercial conveyor car wash systems must have installed and operational re-circulating water systems, or must have secured a waiver of this requirement from the City.

Comment:

This creates an affirmative obligation on the part of the commercial car wash owners. Each jurisdiction should determine the appropriate amount of time to allow for conversion.

- b. **Large Landscape Areas – Rain Sensors:** Large landscape areas, such as parks, cemeteries, golf courses, school grounds, and playing fields, that use landscape irrigation systems to water or irrigate, must use landscape irrigation systems with rain sensors that automatically shut off such systems during periods of rain or irrigation timers which automatically use information such as evapotranspiration sensors to set an efficient water use schedule.
- c. **Construction Purposes:** Recycled or non-potable water must be used for construction purposes when available.

Comment:

This provision is very general and if cities choose to adopt it, they should consider inserting a notice requirement and language to clarify what “when available” means. Cities may also want to consider a reasonable standard related to cost-effectiveness. This requirement would typically appear in Level 1 or Level 2, depending on the amount of shortage required to trigger or declared in each.

- d. **No New Annexations:** Upon the declaration of a Level __ Water Supply Shortage condition, the City will suspend consideration of annexations to its service area. This subsection does not apply to boundary corrections and annexations that will not result in any increased use of water.

Comment:

This provision is common and appears at the equivalent of Level 2 in some existing and model ordinances.

- e. **Limits on Building Permits:** The City will 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 which meet the City’s adopted conservation offset requirements.

Comment:

This provision appears at the equivalent of Level 2 in some existing and model ordinances. Cities also may want to consider a provision to require the use of recycled water in order to receive certain building permits (see provision (f) below).

- f. **Water Recycling Required if Alternative Available:** The use of potable water, other than recycled water, is prohibited for specified uses after the City has provided to the customer an analysis showing that recycled water is a cost-effective alternative to potable water for such uses and the customer has had a reasonable time, as determined by the City Manager, to make the conversion to recycled water.
- g. **Water Recycling – New Service:** Prior to the connection of any new water service, an evaluation must be done by the City to determine whether recycled water exists to supply all or some of the water needed and recycled water must be utilize to the extent feasible.
- h. **City Water Recycling Plan:** The City Manager must prepare a water recycling master plan that contains recommendations to increase the amount of recycled water used and must report to the City Council annually on the progress towards implementing such recommendations.
- i. **City Conservation Reports:** Upon request of the City Manager, City Departments must prepare and submit quarterly reports on their water conservation efforts. The reports will be consolidated by the City Manager and reported to the City Council at a minimum of once a year.

- j. **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.

Comment:

Billing units may vary between jurisdictions and each one should define it accordingly in the "Definitions" section.

k. **Water Conserving Plumbing Standards**

1. **Retrofits Upon Sale or Transfer:** On or after January 1, 2010, no structure may be sold or transferred unless all existing plumbing fixtures in the structure are retrofitted exclusively with water-conserving plumbing fixtures.
2. **Change in Service:** On or after January 1, 2010, upon the establishment of new water service or a change in water service from one person to another non-family member, all existing plumbing fixtures must be retrofitted exclusively with water-conserving plumbing fixtures.

Comment:

Many jurisdictions adopt separate ordinances to specifically address water efficiency and recycling, especially as it relates to the Plumbing Code. It is up to each individual jurisdiction.

1. **Reporting Mechanism - Hotline:** The City will establish a water waste hotline for residents to report violations of this chapter.

Comment:

This or some other reporting mechanism is strongly recommended.

- m. **State Model Landscape Ordinance:** The Department of Water Resources State Model Landscaping Ordinance is adopted by reference and incorporated as part of this Chapter. The full text of the Model Landscaping Ordinance is available on the City's website at _____ and a copy is maintained with the City Clerk.

Comment:

There are specific procedures that must be followed when adopting existing code sections by reference. While it can be included within this Chapter, it probably merits its own Chapter as the subject matter is sufficiently different.

Section XII. 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 users, then the person may apply for a waiver to the requirements as provided in this section.

- b. **Written Finding:** The 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 user's property.
1. **Application:** Application for a waiver must be on a form prescribed by the City and accompanied by a non-refundable processing fee in an amount set by City Council resolution.
 2. **Supporting Documentation:** The application must be accompanied by photographs, maps, drawings, and other information, including a written statement of the applicant.
 3. **Required Findings for Waiver:** An application for a waiver will be denied unless the [title of approving authority] finds, based on the information provided in the application, supporting documents, or such additional information as may be requested, and on water use information for the property as shown by the records of the City or its Agent, all of the following:
 - i. That the waiver does not constitute a grant of special privilege inconsistent with the limitations upon other residents and businesses;
 - ii. 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 or use that exceeds the impacts to residents and businesses generally;
 - iii. That the authorizing of such 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; and
 - iv. That the condition or situation of the subject property or the intended use of the property for which the waiver is sought is not common, recurrent or general in nature.
 4. **Approval Authority:** The City Manager or Water Commission must act upon any completed application no later than ten (10) days after submittal and may approve, conditionally approve, or deny the waiver. The applicant requesting the waiver must be promptly notified in writing of any action taken. Unless specified otherwise at the time a waiver is approved, the waiver will apply too the subject property during the period of the mandatory water supply shortage condition. The decision of the City Manager or Water Commission will be final.

Comment:

The above is sample language for a Hardship Waiver provision taken from some existing ordinances. A number of ordinances provide for appeals to the City Council and that is an option to consider. However, normally these types of minor appeals would be handled by the City Manager. There are a variety of different ways to draft this section and each city should decide upon what makes the most sense for them given their policies and

other relevant considerations. For another sample, see Eastern Municipal Water District's Water Shortage Contingency Plan at Page 11.

Section XIII. Penalties and Violations

- a. **Misdemeanor:** Any violation of this chapter may be prosecuted as a misdemeanor punishable by imprisonment in the county jail for not more than thirty (30) days, or by a fine not exceeding one thousand dollars (\$1,000), or by both.

Comment:

This is consistent with Water Code section 377, which indicates that all violations are misdemeanors. Depending on a city's general penalty provisions, a misdemeanor violation could be reduced to an infraction. Note that all ordinances specifically adopted pursuant to Water Code Section 375 require publication in a newspaper of general circulation pursuant to Section 376.

- b. **Civil Penalties:** Civil penalties for failure to comply with any provisions of the ordinance are as follows:
1. **First Violation:** The City will issue a written warning and deliver a copy of this ordinance by mail.
 2. **Second Violation:** A second violation within the preceding twelve (12) calendar months is punishable by a fine not to exceed one hundred dollars (\$100).
 3. **Third Violation:** A third violation within the preceding 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 is punishable by a fine not to exceed five hundred (\$500).
 - i. **Water Flow Restrictor:** In addition to any fines, the City may install a water flow restrictor device of approximately one gallon per minute capacity for services up to one and one-half inch size and comparatively sized restrictors for larger services after written notice of intent to install a flow restrictor for a minimum of forty eight (48) hours.
 - ii. **Termination of Service:** In addition to any fines and the installation of a water flow restrictor, the City may disconnect and/or terminate a customer's water service.

Comment:

Fines: The amounts listed above represent a sampling of a number of existing and proposed water conservation ordinances. Cities should use lower or higher amounts at their discretion. However, it is suggested that amounts be significant enough to discourage violations. Also, a surcharge equal to a percentage of the monthly water bill is another penalty option.

Administrative Remedies: *In addition to the civil penalties outlined above, many cities have administrative citation procedures that can be utilized in their Municipal Code. As a result, cities would have the discretion to choose to initiate a criminal, civil or administrative action in response to violations of this chapter.*

- c. **Cost of Flow Restrictor and Disconnecting Service:** A person or entity that violates this ordinance is responsible for payment of the City's charges for installing and/or removing any flow restricting device and for disconnecting and/or reconnecting service per the City's schedule of charges then in effect. The charge for installing and/or removing any flow restricting device must be paid to the City before the device is removed. Nonpayment will be subject to the same remedies as nonpayment of basic water rates.
- d. **Separate Offenses:** Each day that a violation of this ordinance occurs is a separate offense.
- e. **Notice and Hearing:**
1. The City will issue a Notice of Violation by mail or personal delivery at least ten (10) days before taking enforcement action. Such notice must describe the violation and the date by which corrective action must be taken. 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.
 2. 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 Level condition.

Comment:

The above Notice and Hearing provisions are a basic example. Most cities and water districts have standard appeals procedures that can be utilized or referenced.

Section XIV. Severability

If any section, subsection, sentence, clause or phrase in this chapter is for any reason held invalid, the validity of the remainder of the chapter will not be affected. The City Council hereby declares it would have passed this chapter and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases or is declared invalid.

APPENDIX:

WATER CONSERVATION ORDINANCE TABLE

Permanent	Level 1	Level 2	Level 3 – Emergency	Other Provisions for Consideration
<p style="text-align: center;"><i>Permanent</i></p> <p>Restrictions</p> <ul style="list-style-type: none"> ○ No Watering: __am-__pm, except by hand ○ Irrigation system limit of 15 minutes ○ No excessive water flow or runoff ○ No washing down hard or paved surfaces ○ Fix leaks within reasonable time (within __ days of notice) ○ Fountains only with re-circulating water ○ Restaurants only serve water on request ○ Wash vehicles only with bucket or shut-off nozzle 	<p style="text-align: center;"><i>Up to __% Anticipated Shortage</i></p> <p>Same as Permanent +</p> <ul style="list-style-type: none"> ○ Watering limited to 3 days a week ○ Fix leaks within 72 hours 	<p style="text-align: center;"><i>Up to __%</i></p> <p>Same as Permanent & Level 1 +</p> <ul style="list-style-type: none"> ○ Watering limited to 2 days a week ○ Fix leaks within 48 hours ○ No filling or re-filling ornamental lakes or ponds ○ Wash vehicles only at car wash with re-circulating system ○ No filling residential pools or outdoor spas 	<p style="text-align: center;"><i>More than __%</i></p> <p>Same as Permanent, Level 1 & Level 2 +</p> <ul style="list-style-type: none"> ○ No watering or irrigating with certain exceptions ○ Fix leaks within 24 hours ○ No new potable water service 	<ul style="list-style-type: none"> ○ Commercial Car Washes must have re-circulating systems by Jan. 1, 2011 ○ One acre or more must have rain sensors ○ Recycled or non-potable water must be used for construction ○ No new annexations to service areas ○ City may limit or withhold building permits ○ Must use recycled water if City shows cost effective alternative ○ Recycled water must be used for new water connection if feasible ○ City Manager prepares water recycling plan and reports on progress

<ul style="list-style-type: none"> ○ Hotels must provide guests option to not launder linen daily ○ No installation of single-pass cooling systems ○ No installation of non recirculating car wash systems ○ Restaurants must use conserving nozzles <p style="text-align: center;"><u>Administration & Penalties</u></p> <ul style="list-style-type: none"> ○ Administrative penalties ○ Civil fines, flow restrictor or disconnect service after 4th violation ○ Misdemeanor ○ Reporting mechanism 	<p style="text-align: center;">Same as Permanent</p>	<p style="text-align: center;">Same as Permanent +</p> <p>Options:</p> <ul style="list-style-type: none"> ○ Water allocation requirements and penalties for exceeding allotment ○ Potential increase in water supply shortage rates ○ Mandatory % reduction and penalties for overage 	<p style="text-align: center;">Same as Permanent and Level 2 +</p> <p>Options:</p> <ul style="list-style-type: none"> ○ Water allocation requirements and penalties for exceeding allotment ○ Potential increase in water supply shortage rates ○ Mandatory % reduction and penalties for overage 	<ul style="list-style-type: none"> ○ City Departments prepare annual conservation reports ○ Customers that use more than 25,000 billing units may need to do water conservation report ○ Plumbing retrofits upon sale, transfer or change in service ○ City establishes water waste Hotline ○ Adopt State Model Landscape Ordinance by reference
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