



2009
RETAIL ZONE WATER
CONSERVATION PROGRAM
ORDINANCE

June 2009

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ORDINANCE NO. 2009-01

**AN ORDINANCE OF THE BOARD OF DIRECTORS
OF THE EAST ORANGE COUNTY WATER DISTRICT ESTABLISHING A
RETAIL ZONE WATER CONSERVATION PROGRAM**

Section I. Title

**East Orange County Water District Water Retail Zone Conservation Ordinance
("Ordinance")**

Section II. Findings

1. **A reliable minimum supply of water is essential** to the public health, safety and welfare of the people and economy of Southern California.
2. **Southern California is a semi-arid region, largely dependent on imported water** supplies from Northern California and the Colorado River. Population growth, drought, climate change, environmental concerns, government policy changes, restrictions on pumping and other factors in our region, in other parts of the State and in the western U.S. make Southern California highly-susceptible to water supply reliability issues.
3. **Careful water management requires active conservation measures** not only in times of drought but at all times. It is essential to ensure a reliable minimum supply of water to meet current and future water supply needs.
4. **California Constitution Article X, Section 2** declares for the general welfare:
 - a. Water resources be put to beneficial use
 - b. Prevention of water waste and unreasonable water use or methods of water use
 - c. Full exercise of water conservation with a view to reasonable and beneficial water use

5. **California Water Code Section 375** authorizes water suppliers to adopt and enforce a comprehensive water conservation program to reduce water consumption and conserve supplies.
6. **California Water Code Section 31027** sets forth the public notification, public meeting and public hearing requirements for water providers proposing the establishment of a water conservation program, ordinance or resolution.
7. **California Water Code Sections 350, et. seq.**, sets forth the determination and notification procedures for water suppliers seeking to declare a water shortage or a water emergency.
8. **California Water Code Section 356** allows for the adoption of regulations and restrictions that include discontinuance of service as an enforcement option where a water shortage emergency condition has been declared.
9. **California Water Code Section 377** authorizes water suppliers to enforce a comprehensive water conservation program to reduce water consumption through establishment of non-compliance charges and other penalties, subject to advance notification to water users.
10. **Health and Safety Code Section 5471** authorizes the District to apply charges or fees to persons or entities that fail to comply with any provision of this Water Conservation Ordinance in order to recover administrative and enforcement costs due to non-compliance (including but not limited to notices, postings, hearings, shut offs, account management, data collection).
11. **California Water Code Section 370, et. seq.**, authorizes water suppliers to adopt water allocation programs for water users and allocation-based conservation water conservation pricing.
12. **California Water Code Sections 13550 and 13551** declare a statewide policy that the use of domestic water for irrigation purposes when reclaimed (recycled) water is available constitutes a waste or unreasonable use of water within the meaning of the State Constitution.
13. **The adoption and enforcement of a Water Conservation Ordinance is necessary to manage the District's water supply** short- and long-term and to minimize and/or avoid the effects of drought and water shortage within the District. Such a program is essential to ensure a reliable and sustainable minimum supply of water for public health, safety and welfare.
14. **The proposed Ordinance shall replace the District's Ordinance No 1991-1, adopted March 21, 1991.**

Section III. Declaration of Purpose and Intent

1. To minimize or avoid the effect and hardship of potential shortages of **water** to the greatest extent possible, this Ordinance establishes a Water Conservation Program for the Retail Zone designed to:
 - a. Reduce water consumption (demand) through conservation
 - b. Enable effective water supply planning
 - c. Assure reasonable and beneficial use of water
 - d. Prevent waste of water and maximize efficient use in the District
2. **The Ordinance establishes:**
 - a. **Permanent water conservation standards** designed to alter behaviors related to water-use efficiency during non-shortage conditions
 - b. **Three levels of potential response to escalating water supply shortages** which the East Orange County Water District Board may choose to implement during times of declared water shortage or water emergency. The three levels of response consist of increasing water use restrictions as a result of worsening drought conditions, emergencies, and/or decreasing supplies.

Section IV. Definitions

1. **General**
 - a. **"The District"** means East Orange County Water District.
 - b. **"The Board"** means the East Orange County Water District Board of Directors.
 - c. **"Retail Zone"** means that sub-portion of the District to which the District directly provides local and imported water supplies to residential and commercial customers.
 - d. **"Wholesale Zone"** means that sub-portion of the District to which the District provides imported water supplies to five retail entities: the City of Orange, the City of Tustin, the Irvine Ranch Water District, the Golden State Water Company and the Retail Zone of the East Orange County Water District.

- e. **"Person"** means any person or persons, corporation, public or private entity, governmental agency or institution, or any other user of water provided by the District.
- f. **"Water"** means water that is suitable for drinking.
- g. **"Water Waste"** refers to uses of water that are limited or prohibited under the Ordinance because they exceed necessary or intended use and could reasonably be prevented, such as runoff from outdoor watering.
- h. **"Billing Unit"** is equal to 100 cubic feet (1 CCF) of water, which is 748 gallons. Water use is measured in units of 100-cubic-feet and multiplied by applicable water usage rates for billing. Also known as a "Unit of Water."
- i. **"Undue Hardship"** is a unique circumstance in which a requirement of the Ordinance would result in a disproportionate impact on a water user or property upon which water is used compared to the impact on water users generally or similar properties or classes of water use.
- j. "Imported Water Supply" refers to the District's total imported water supply over a given period, e.g. calendar year 2004, 2005 and 2006 or as defined by the Metropolitan Water District of Southern California (Met).
- k. "User's Base Consumption" refers to the average amount of water used by an Person during the calendar year 2004, 2005 and 2006 or as defined by the District.
- l. "Covered Pool or Covered Spa" refers to pools and/or spas that have a cover that minimizes evaporation.

2. Irrigation

- a. **"Automatic Shut-Off Nozzle"** refers to a water-efficient nozzle for use with residential or commercial hoses that has a feature that must be pressed to start the flow or releasing the feature stops the flow of water. -
- b. **"Irrigation Controller"** is the part of an automated irrigation system that instructs the valves to open and close to start or stop the flow of water.
 - 1. **"Sensor-based irrigation controller"** operates based on input from a combination of sensors (rain, solar, soil moisture) installed in or around the landscaped area.
 - 2. **"Weather-based irrigation controller"** operates automatically based on evapo-transpiration rates and historic or real-time weather data.

- c. **"Irrigation System"** refers to a manual or automated watering system consisting of pipes, hoses, spray heads and/or sprinkler devices or valves. Also known as a "Landscape Irrigation System."
 - d. **"Positive Shut-Off Valve"** refers to a water-efficient valve for residential or commercial hoses that users can quickly and positively start or stop the flow of water. A ball valve would satisfy this requirement.
 - e. **"Valves"** refer to the part of an irrigation system that opens and closes manually or electronically to start or stop the flow of water.
3. **Other**
- a. **"Pre-Rinse Kitchen Spray Valves"** refer to highly water-efficient sprayers that commercial kitchens use to rinse dishes in the sink before washing and for other preliminary cleaning purposes.
 - b. **"Single-Pass Cooling System"** refers to an air conditioning, refrigeration or other cooling system that removes heat by transferring it to a supply of clean water and dumping the water down the drain – after a single use. This type of cooling system is extremely water-inefficient compared to systems that re-circulate the water.

Section V. Application of Ordinance

1. **Ordinance provisions apply to any person or entity using water provided by the District.** This includes individuals, persons, corporations, public or private entities, governmental agencies or institutions, or any other users of District water.
2. **The provisions of the Ordinance may not apply to the following:**
 - a. **Water use necessary to protect public health and safety** or for essential government services, such as police, fire and similar services.
 - b. **Recycled water use for irrigation.** Use of recycled water requires a permit that has 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 means to preserve, recycled water is exempt from all requirements of this Ordinance.
 - c. **Water used by commercial nurseries and growers** to sustain plants, trees, shrubs, crops or other vegetation intended for commercial sale.
3. **This Ordinance 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 storm water ordinances or management plans.

Section VI: Permanent Mandatory Water Conservation Measures

The following Permanent Mandatory Water Conservation Measures are in effect at all times, whether or not there is a water supply shortage or emergency.

1. General Restrictions – Residential, Commercial and Public Customers

a. Limits on Watering Duration

1. **Watering or irrigating with a device or system that is not continuously attended is limited to no more than 10 minutes per valve, per day.**
2. This applies to lawns, landscaping and all other vegetated areas.
3. The following irrigation systems are **exempt**:
 - a. Low-flow drip-type systems that will achieve the conservation goals of this Ordinance.
 - b. Systems equipped with weather-based controllers or stream-rotor sprinklers that meet a 70% efficiency standard

- b. **No Excessive Water Flow or Runoff:** It is prohibited to water lawns, landscaping and vegetated areas in a manner that causes or allows excessive water flow or runoff onto an adjoining sidewalk, driveway, street, alley, gutter or ditch.

c. Automatic Rain Shut-Off for Automated Irrigation Systems

1. **New residential** automated irrigation systems must be equipped with:
 - a. Rain sensors that shut off the system when it rains, **or**
 - b. Smart controllers or evapo-transpiration sensors that use weather-based data to set efficient watering schedules
2. *As of July 1, 2010, **new and existing*** automated irrigation systems connected to dedicated irrigation meters must be equipped with:
 - a. Rain sensors that shut off the system when it rains, **or**
 - b. Smart controllers or evapo-transpiration sensors that use weather-based data to set efficient watering schedules

d. **Obligation to Fix Leaks, Breaks or Malfunctions in lines, fixtures or facilities**

1. Excessive use, loss or escape of water through breaks, leaks or malfunctions in the water user's plumbing or distribution system:
 - a. Is prohibited for any period of time after such water waste should have reasonably been discovered and corrected
 - b. Must be immediately shut-off upon District notification, unless Undue Hardship occurs
 - c. Must be corrected within **no more than three (3) days of District notification**

e. **No Hosing or Washing Down Hard or Paved Surfaces**

1. It is prohibited to hose or wash down hard or paved surfaces, such as sidewalks, walkways, driveways, parking areas, tennis courts, patios or alleys.
2. When it is necessary hose or wash down hard or paved surfaces to alleviate safety or sanitary hazards, the following may be used:
 - a. Hand-held bucket or similar container
 - b. Hand-held hose equipped with a positive shut-off valve.
 - c. Low-volume high-pressure cleaning machine or "water broom"

f. **No Hosing or Washing Down Vehicles**

1. It is prohibited to use water to hose or wash down a motorized or non-motorized vehicle, including but not limited to automobiles, trucks, vans, buses, motorcycles, boats or trailers.
2. The following are **exempt** from this restriction:
 - a. Use of a hand-held bucket or similar container
 - b. Use of a hand-held hose equipped with a positive shut-off valve
 - c. Commercial car washing facility

g. **Re-Circulating Decorative Water Fountains and Features:** *Effective January 1, 2011*, all decorative water fountains and water features must re-circulate water -- or users must secure a waiver from the District.

h. **Unauthorized Use of Fire Hydrants Prohibited**

1. No person may use water from any fire hydrant for any purpose other than fire suppression or emergency aid without first:

- a. Requesting and posting the appropriate fees at the District.
- b. Obtaining a hydrant meter to record all water consumption for a specified project. Absent a meter, water theft and meter tampering fees will be applied as appropriate.

2. Commercial Food-Serving & Lodging Requirements

- a. **Water Served Only Upon Request.** Eating or drinking establishments, including but not limited to restaurants, hotels, cafes, bars or other public places where food or drinks are sold, or served or offered for sale, are prohibited from providing drinking water to any person unless requested.
- b. **Option Not To Have Towels/Linens Laundered.** Hotels, motels and other commercial lodging establishments must provide guests the option of not having their used towels and linens laundered. Lodging establishments must prominently display notice of this option in each room and/or bathroom, using clear and easily understood language.

3. Commercial Kitchen Requirements

- a. **Water-Efficient Pre-Rinse Kitchen Spray Valves.** Food preparation establishments, such as restaurants, cafes and hotels, are prohibited from using non-water efficient kitchen spray valves, as follows:
 1. **New** kitchen spray valves must use 1.6 gallons or less per minute.
 2. *Effective January 1, 2010, **existing*** kitchen spray valves must be retrofitted to models using 1.6 gallons of water or less per minute.
- b. **Best-Available Water-Conserving Technology.** All water-using equipment in new or remodeled commercial kitchens must use the best-available, water-conserving technology, for example, technologies cited on the California Urban Water Conservation Council (CUWCC) website.
- c. **No Defrosting With Water.** Defrosting food with running water is prohibited.
- d. **Scoop Sinks.** Scoop sinks shall be set at minimum water flow at all times of use and shut off during non-working hours.
- e. **Automatic Shut-Off Nozzles.** When hosing or washing kitchen or garbage areas or other areas for sanitary reasons as required by the Health Dept., hoses shall be equipped with positive shut-off valve.

4. **Commercial Water Recirculation Requirements**

- a. **Car Wash and Laundry System Requirements:** All **new** commercial car-wash and laundry facilities and systems must re-circulate the wash water -- or secure a waiver of this requirement from the District.
- b. **No Single-Pass Cooling Systems:** Buildings requesting **new** water service or being **remodeled** are prohibited from installing single-pass systems.

5. **Construction Site Requirements**

- a. **Recycled or non-potable water** must be used, when available.
 - b. **No water may be used for soil compaction or dust control** where there is a reasonably-available source of recycled or non-potable water approved by the Dept. of Public Health and appropriate for such use.
 - c. **Water hoses shall be equipped with automatic shut-off valves**, given such devices are available for the size and type of hoses in use.
6. **Indiscriminate Water Use.** Upon notice by the District, persons shall cease to cause or permit the indiscriminate use of water not otherwise prohibited above which is wasteful and without reasonable purpose.
7. **Public Health and Safety.** These regulations shall not be construed to limit water use which is immediately necessary to protect public health and/or safety.

Section VII: Level 1 Water Supply Shortage (Water Alert) *11% to 20% shortage in imported water supplied to the District and/or 11% to 20% reduction needed in consumer demand*

1. **Level 1 Water Supply Shortage**

- a. A Level 1 Water Supply Shortage exists when the District Board of Directors, at its sole discretion, determines that **a reduction in consumer demand is necessary** due to drought or water supply cutbacks in order to make more efficient use of water and appropriately respond to existing water conditions.
- b. The type of event that may prompt the Board to declare a Level 1 Water Supply Shortage could include, among other factors, a finding that its **wholesale water provider has reduced allocations to the District from 11% to 20% of the District's Imported Water Supply.** At this water allocation level, the District could experience a **shortage in supplies between 11% to 20%.**

2. **Mandatory Permanent Water Conservation Measures** identified in Section VI **remain in effect.**
3. **Level 1 Water Conservation Measures take effect** upon declaring a Level 1 Water Supply Shortage and apply for the duration of the shortage:
 - a. **Limits on Watering Days**
 1. No more than **three (3) days per week from April – October** and no more than **two (2) days per week from November – March.** This applies to lawns, landscaping and all other vegetated areas. The District will establish and post the new watering schedules.
 2. The following are **exempt** from these restrictions:
 - a. Watering with a hand-held bucket or similar container.
 - b. Watering with a hand-held hose equipped with a positive shut-off valve.
 - c. Irrigation systems that exclusively use low-flow drip type systems that will achieve the conservation goals of this Section.
 - d. Fruit trees and vegetable gardens, providing steps are taken to meet the conservation goals of this Section.
 4. **Other Prohibited Uses:** The District may implement other prohibited water uses as deemed necessary, after notice to customers.

Section VIII: Level 2 Water Supply Shortage (Water Supply Warning) 21% to 30% shortage in imported water supplied to the District and/or 21%- 30% reduction needed in consumer demand

1. Level 2 Water Supply Shortage

- a. A Level 2 Water Supply Shortage exists when the District Board of Directors, at its sole discretion, determines that **an additional reduction in consumer demand is necessary** due to drought or water supply cutbacks in order to make more efficient use of water and appropriately respond to water conditions.
 - b. The type of event that may prompt the Board to declare a Level 1 Water Supply Shortage could include, among other factors, a finding that its **wholesale water provider has reduced allocations to the District by up to 30% of the District's Imported Water Supply.** At this water allocation level, the District could experience a **shortage in supplies of 21% to 30%.**
2. The following **mandatory water conservation measures remain in effect** during a Level 2 Water Supply Shortage:

- a. **Permanent Water Conservation Measures** identified in Section VI
 - b. **Level 1 Water Conservation Measures** identified in Section VII
3. The following **water conservation measures take effect** upon declaration of a Level 2 Water Supply Shortage and apply for the duration of the Shortage:
- a. **Additional Limits on Watering Days**
 1. Watering lawns, landscaping and other vegetated areas is limited to **no more than two (2) days per week from April – October**. This is one (1) day less than required during a Level 1 Water Shortage. The number of watering days permitted from November – March will be no more than one (1) day per week.
 2. The District will establish and post the new watering schedule.
 - b. **Shorter Timeframe to Fix Leaks, Breaks or Malfunctions** in water users' pipelines, fixtures or facilities.
 1. Excessive use, loss or escape of water through breaks, leaks or other malfunctions in the water user's plumbing or distribution system must be **fixed in no more than two (2) days following notification from the District** – unless other arrangements are made with the District.
 2. This shorter timeframe is one (1) day less than required under Permanent Water Conservation Measures, Section VI.
 - c. **No Filling or Refilling Ornamental Lakes and Ponds**
 1. Filling or refilling ornamental lakes and ponds is prohibited.
 2. **Exempt** are ornamental lakes and ponds that sustain aquatic life -- provided such life is of significant value and was actively managed in the water feature prior to declaring the shortage.
 - d. **No Filling or Refilling Residential Pools or Spas**
 1. Filling or refilling uncovered residential swimming pools or uncovered outdoor spas is prohibited. Refilling of covered pools and/or outdoor spas of up to one (1) foot of water per week is allowed.
 2. **Exempt** are individuals who, due to health reasons or medical conditions, find it necessary to fill or refill their pools or spas. Persons desiring to claim such exemption shall apply for a Hardship Waiver under the provisions contained in Section XII.

- e. **No Hosing or Washing Down Vehicles:** It is prohibited to use water to hose or wash down a motorized or non-motorized vehicle, including but not limited to automobiles, trucks, vans, buses, motorcycles, boats or trailers. The only exemption from this restriction is washing vehicles at a commercial car washing facility that recycles its wash water.
4. **Other Prohibited Uses:** The District may implement other prohibited water uses as deemed necessary, following notification of customers.
5. **Optional Water Conservation Programs**
- a. The District Board of Directors, at its sole discretion, may establish Optional Water Conservation Programs, during a **Level 2** Water Supply Shortage and/or during a **Level 3** Water Shortage Emergency.
 - b. If any of the following Optional Water Conservation Programs is established, **public notification** will precede program implementation.
 - c. **Water Allocation or Water Budget Program**
 - 1. The District Board of Directors, at its sole discretion, may establish water allocations or water budgets for properties served by the District -- using a method that does not penalize persons for either the implementation of the conservation method or installation of water-saving devices and includes the User's Base Consumption.
 - 2. Following the effective date of a water allocation or budget program, any person using water in excess of the allocation or budget will be subject to a penalty as determined by the District rate schedule.
 - 3. The penalty for excess water use will be cumulative to any other remedy or penalty imposed for violation of this Ordinance.
 - d. **Increased Water Usage Rates:** The District Board of Directors, at its sole discretion, may increase water usage rates, by an amount deemed necessary, as determined by the District's rate schedule.
 - e. **Percentage-Use Reduction for Commercial Customer:** The District Board of Directors, at its sole discretion, may require commercial customers to reduce water use by a certain percentage, as determined by the District.

Section IX. Level 3 Water Shortage (Water Emergency) **31% to 40% shortage in imported water supplied to the District and/or 31% to 40% reduction needed in consumer demand**

1. **Level 3 Water Supply Shortage Emergency**

- a. A Level 3 Water Supply Shortage exists when the District Board of Directors, at its sole discretion, determines that **a further additional reduction in consumer demand is necessary** due to drought or water supply cutbacks in order to make more efficient use of water and appropriately respond to existing water conditions.
- b. The type of event that may prompt the Board to declare a Level 3 Water Supply Shortage could include, among other factors, a finding that its **wholesale water provider has reduced allocations to the District by up to 40% of the District's Imported Water Supply**. At this water allocation level, the District could experience a **shortage in supplies of up to 40%**.

2. The following **mandatory water conservation measures remain in effect**:

- a. **Permanent Water Conservation Measures** identified in Section VI
- b. **Level 1 Water Conservation Measures** identified in Section VII
- c. **Level 2 Water Conservation Measures** identified in Section VIII

3. The following **mandatory water conservation measures take effect** upon declaring a Level 3 Water Emergency and apply for the duration of the Emergency:

a. **Additional Limits on Watering Days**

1. Watering lawns, landscaping and other vegetated areas is limited to **no more than two (2) days per week from April – October**. This is one (1) day less than required during a Level 1 Water Shortage. The number of watering days permitted from November – March remains the same at no more than one (1) day per week.
2. The District will establish and post the new watering schedule.
3. **Exempt** from this restriction are the following:
 - a. Public works projects and actively-irrigated environmental mitigation projects
 - b. Maintenance of vegetation, trees and shrubs using (subject to hour restrictions in Section VII.4.a):
 1. A hand-held bucket or similar container
 2. A hand-held hose equipped with a positive shut-off valve.

3. Irrigation systems that exclusively use low-flow drip type systems that will achieve the conservation goals of this Section.
- c. Maintenance of (subject to hour restrictions, Section VIII.4.a):
 1. Existing landscaping necessary for fire protection and/or soil erosion control
 2. Plant materials identified as rare or essential to the well being of endangered/rare species
 3. Fruit trees and vegetable gardens provided steps are taken to meet the conservation goals of this Section.
- b. **Shorter Timeframe to Fix Leaks, Breaks or Malfunctions** in pipelines, fixtures or facilities.
 1. Excessive use, loss or escape of water through breaks, leaks or malfunctions in the water user's plumbing or distribution system must be fixed in **no more than one (1) day** following District notification – unless other arrangements are made with the District. The timeframe is one (1) day less than for Level 2.
- c. **No New Water Service**
 1. During a Level 3 Water Emergency, the **District will not provide:**
 - a. New water service
 - b. New water meters (temporary or permanent)
 - c. Will-serve letters
 2. The District will **only issue** will-serve letters in the following cases:
 - a. Projects necessary to protect public health, safety & welfare
 - b. Projects that have a valid, unexpired city or county building permit
 - c. Projects in which applicants can provide -- to the satisfaction of the District -- substantial evidence of an enforceable commitment that water demands will be offset prior to the provision of a new water meter(s)
 3. This prohibition **does not preclude** resetting or turning-on meters to restore or continue water service interrupted for one year or less.
4. **Discontinue Service:** Per Water Code Section 356,¹ the District, in its sole discretion, may discontinue service to customers who willfully violate Section IX provisions.

¹ Water Code Section 356 allows for the adoption of regulations and restrictions that include discontinuance of service as an enforcement option where a water shortage emergency condition has been declared.

5. **Other Prohibited Uses:** The District may implement other prohibited water uses as deemed necessary, following notification of customers

Section X. Other Provisions

1. Customer Water Conservation Plans:

- a. **Customers with high annual water usage.** During Level 1, Level 2 or Level 3 Water Shortages or Emergencies, the District Board of Directors, at its sole discretion and by written request, may require residential, commercial and/or public customers using **five thousand (5,000) or more billing units per year** to submit a Water Conservation Plan to the District and to submit quarterly progress reports on such plan. The conservation plan must make recommendations for increased water savings, including increased use of recycled water based on feasibility. Quarterly progress reports must include status on implementation of recommendations.

Section XI. Declaration & Notification of Water Shortages/Emergencies

1. **Declaration of Level 1 & Level 2 Water Shortages:** The District Board of Directors may declare a Level 1 or Level 2 Water Shortage and adopt a water shortage resolution at a regular or special public meeting in accordance with State law. Thereafter, penalties and violations under Section XIII.1 shall apply.
2. **Declaration of Level 3 Water Shortage Emergency:** The District Board of Directors may declare a Level 3 Water Shortage Emergency in accordance with the procedures specified in Water Code Sections 351 and 352. Thereafter, penalties and violations under Section XIII.2 shall apply.
3. **Notification of Declared Water Shortages and Emergencies**
 - a. The District must publish a copy of the water shortage/emergency resolution in a newspaper used for the publication of official notices within the jurisdiction of the District within **ten (10) business days** of the date that the shortage level is declared.
 - b. Additional mandatory conservation requirements will take effect on the **fifteenth (15) business day** after the date that the shortage level is declared
4. **Notification of Declared Water Allocation or Water Budget Program**
 - a. If the District Board of Directors, at its sole discretion, establishes a water allocation or water budget program **during a Level 2 Water Shortage or Level 3 Water Emergency:**

1. The District will provide **notice of the program** to customers via U.S. mail, other mailings in which the District customarily sends billing statements, and/or e-mail outreach and/or automated calling.
2. The program will take effect on the date of the notification mailing or at such later date as specified in the notice.

Section XII. Hardship Waiver

1. **Undue and Disproportionate Hardship:** If, due to unique circumstances, a specific requirement of the Ordinance 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.
2. **Written Finding:** The waiver may be granted or conditionally granted only upon a written finding of the existence of facts demonstrating an undue hardship.
 - a. **Application for a Waiver:** Application for a waiver must be on a form prescribed by the District and accompanied by a non-refundable processing fee in an amount set by the District.
 - b. **Supporting Documentation:** The application must be accompanied by photographs, maps, drawings, and other information, including a written statement of the applicant.
 - c. **Required Findings for Waiver:** Based on the information and supporting documents provided in the application, additional information provided as requested, and water use information for the property as shown by the records of the District, the District **General Manager** in making the waiver determination will take into consideration the following:
 1. That the waiver does not constitute a grant of special privilege inconsistent with the limitations upon other residents and businesses;
 2. That because of special circumstances applicable to the property or its use, the strict application of this Ordinance would have a disproportionate impact on the property or use that exceeds the impacts to residents and businesses generally;
 3. That the authorizing of such waiver will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the District to effectuate the purpose of this Ordinance and will not be detrimental to the public interest; and

4. 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.

d. **Approval Authority**

1. The District General Manager or his designee(s) must act upon any completed **Application for a Waiver** no later than ten (10) business days after receipt by the District.
2. The **General Manager or his designee(s) may approve, conditionally approve, or deny the waiver** and the decision will be final.
3. 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, it will apply to the subject property for the duration of the water supply shortage or emergency.

Section XIII: Non-Compliance Charges and Penalties

1. **Non-Compliance with Permanent, Level 1 & Level 2 Mandatory Conservation**

- a. The following will apply to persons or entities that fail to comply with any provision of the Ordinance for Permanent, Level 1 and Level 2 mandatory water conservation measures.
 1. **First Instance of Non-Compliance:** The District will issue a **written warning** and send it and a copy of the Ordinance by mail
 2. **Second Instance of Non-Compliance:** A second instance of non-compliance with the Ordinance within the preceding twelve (12) calendar months is punishable by a non-compliance charge not to exceed **fifty dollars (\$50)**.
 3. **Third Instance of Non-Compliance:** A third instance of non-compliance with the Ordinance within the preceding twelve (12) calendar months is punishable by a non-compliance charge not to exceed **one hundred dollars(\$100)**
 4. **Fourth and Subsequent Instances of Non-Compliance:** A fourth or any subsequent instance of non-compliance with this Ordinance is punishable by a non-compliance charge not to exceed **two hundred fifty dollars (\$250)**.

- b. **Misdemeanor:** Pursuant to water Code Section 377, any instance of non-compliance with the Ordinance 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.
- c. **Separate Offenses:** Each day that a person or entity is non-compliant with the Ordinance is a separate offense after the initial citation is issued.

2. **Non-Compliance with Level 3 Mandatory Conservation Measures**

- a. **Non-Compliance Charges:** The following will apply to persons or entities failing to comply with any provision of the Ordinance for Level 3 mandatory water conservation measures:

- 1. **First Instance of Non-Compliance:** The District will issue a **written warning** and send it and a copy of the Ordinance by mail.
- 2. **Second Instance of Non-Compliance:** A second instance of non-compliance with the Ordinance within the preceding twelve (12) calendar months is punishable by a non-compliance charge not to exceed **two hundred and fifty dollars (\$250)**.
- 3. **Third Instance of Non-Compliance:** A third instance of non-compliance with the Ordinance within the preceding twelve (12) calendar months is punishable by a non-compliance charge not to exceed **five hundred dollars (\$500)**.

- b. **Water Flow Restrictor and/or Termination of Service**

- 1. **Water Flow Restrictor Device.** In addition to any non-compliance charges, the District may install a water flow restrictor device. If the District determines to install a water flow restrictor, installation of the flow restrictor would follow written notice of intent to the customer and would be in place for a minimum of forty eight (48) hours.
- 2. **Termination of Service:** In addition to any non-compliance charges and the installation of a water flow restrictor, the District may disconnect and/or terminate a customer's water service, pursuant to Water Code Section 356.

- 3. **Costs for Water Flow Restrictors and Service Disconnection**

- a. A person or entity in non-compliance with this Ordinance is responsible for payment of the District's charges for installing and/or removing any flow restricting device and for disconnecting and/or reconnecting service per the District's schedule of charges then in effect.

- b. The charge for installing and/or removing any flow restricting device must be paid to the District before the device is removed.
 - c. Nonpayment will be subject to the same remedies as nonpayment of basic water rate
 - c. **Misdemeanor:** Pursuant to Water Code Section 377, any instance of non-compliance with the Ordinance 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.
3. **Separate Offenses:** Each day that a person or entity is non-compliant with the Ordinance is a separate offense.

4. **Notice of Non-Compliance/ Appeal and Hearing Process**

- a. The District will issue a **Notice of Non-Compliance** by mail or personal delivery at least ten (10) business days before taking enforcement action. The notice will describe the violation and the date by which corrective action must be taken.
- b. **A customer may appeal the Notice of Non-Compliance** by filing a written Notice of Appeal with the District no later than the close of business on the day before the date scheduled for enforcement action. A customer appeal shall state the grounds for the appeal.
 - 1. **Any Notice of Non-Compliance not timely appealed will be final.**
 - 2. Upon receipt of a timely appeal, **the District will schedule a hearing on the appeal** and mail written notice of the hearing date to the customer at least ten (10) business days before the hearing.
 - 3. The District General Manager or his designee(s) will hear the appeal and issue a written **Notification of Decision** within ten (10) days of the hearing.
- c. **A customer may appeal a Hearing Determination** to the District Board of Directors by written request for a hearing within ten business (10) days after the certified date of delivery or date of first class mailing of the Notification of Decision. The request shall state the grounds for appeal. At a public meeting, the Board **shall review the appeal** and, at its sole discretion, may affirm, reverse or modify the Hearing Determination. **The decision of the Board is final.**

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- d. Pending receipt of a written appeal or pending a hearing pursuant to an appeal, the District **may take appropriate steps to prevent the unauthorized use of water** given the nature and extent of the violations and the current declared water shortage level condition, including restricting the level of water use until the appeal is heard.

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

Section XV: Repeal of Ordinance No. 1991-1: Ordinance No. 1991-1 is hereby repealed in its entirety.

Section XVI: Effective Date: This Ordinance shall take effect 30 days after its passage. The Secretary shall certify to the passage and adoption of this Ordinance and shall cause the same to be published according to law.

THE FOREGOING ORDINANCE was introduced at a meeting of the board of Directors of EOCWD held on April 16, 2009, following a public hearing, notice of which was published on April 3 and April 10, 2009.

PASSED AND ADOPTED by the Board of Directors of the East Orange County Water District at a regular meeting held on the 18th day of June, 2009.

William VanderWerff
President
EAST ORANGE COUNTY WATER DISTRICT
and the Board of Directors
thereof

Joan C. Arneson
Secretary
EAST ORANGE COUNTY WATER DISTRICT
and the Board of Directors
thereof