

ORDINANCE NO. 3027

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CHAPTER 8A, OF TITLE 6 OF THE ONTARIO MUNICIPAL CODE RELATING TO THE CITY'S WATER CONSERVATION PLAN.

WHEREAS, California Constitution Article X, Section 2 and California Water Code Section 100 provide that because of conditions prevailing in the state of California (the "State"), it is the declared policy of the State that the general welfare requires that the water resources of the State shall be put to beneficial use to the fullest extent of which they are capable, the waste or unreasonable use or unreasonable method of use of water shall be prevented, and the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and the public welfare; and

WHEREAS, pursuant to California Water Code Section 106, it is the declared policy of the State that the use of water for domestic use is the highest use of water and that the next highest use is for irrigation; and

WHEREAS, pursuant to California Water Code Section 375, the City of Ontario (the "City") is authorized to adopt and enforce a water conservation program to reduce the quantity of water used by persons within its jurisdiction for the purpose of conserving the water supplies of the City; and

WHEREAS, because of the declared policy of the State, the City hereby finds and determines that it is necessary and appropriate for the City to adopt, implement, and enforce a water conservation program to reduce the quantity of water used by consumers within the City to ensure that there is sufficient water for human consumption, sanitation, and fire protection; and

WHEREAS, pursuant to California Water Code Section 350 the Board of Directors is authorized to declare a water shortage emergency to prevail within its jurisdiction when it finds and determines that the City will not be able to or cannot satisfy the ordinary demands and requirements of water consumers without depleting the water supply of the City to the extent that there would be insufficient water for human consumption, sanitation, and fire protection, and as more fully set forth in this Ordinance; and

WHEREAS, in the event the City determines that it is necessary to declare that a water shortage exists, the City will be authorized pursuant to this Ordinance to implement certain water shortage response measures and a water conservation and regulatory program to regulate water consumption activities within the City and ensure that the water delivered in the City is put to beneficial use for the greatest public benefit, with particular regard to domestic use, including human consumption, sanitation, and fire protection, and that the waste or unreasonable use of water is prevented; and

WHEREAS, the City is authorized to prescribe and define by ordinance restrictions, prohibitions, and exclusions for the use of water during a threatened or existing water shortage and adopt and enforce a water conservation and regulatory program to: (i) prohibit the waste of City water or the use of City water during such period; (ii) prohibit use of water during such periods for specific uses which the City may from time to time find to be nonessential, an unreasonable use, and unreasonable method of use, or a waste of water; and (iii) reduce and restrict the quantity of water used by those persons within the City for the purpose of conserving the water supplies of the City; and

WHEREAS, it has been estimated that more than half of residential water use in many parts of California is used to irrigate lawns and outdoor landscaping; and

WHEREAS, the City has determined that during water shortages and water shortage emergencies, the use of outdoor water for irrigating lawns and outdoor landscaping is not essential to public health and safety, and may be an unreasonable use, an unreasonable method of use, or a waste of water; and

WHEREAS, during a water shortage and water shortage emergencies the greatest reductions in water usage may best be achieved by reducing the amount of discretionary, nonessential use of potable water to irrigate lawns and landscaping; and

WHEREAS, to secure compliance with the rules and regulations established during water shortage stages and emergencies, and assure important public policy objectives are achieved for the reduction of water usage during severe and critical water shortages and emergencies, the City is proposing to authorize the imposition of volumetric penalties for excessive water usage by customers when the City Council deems it appropriate under the circumstances or as a result of executive action, emergency legislation or other actions of the State; and

WHEREAS, pursuant to Water Code Section 377, the City may, by resolution or ordinance, make the violation of a water conservation program enacted by its City Council subject to an administrative civil penalty and impose volumetric penalties; and

WHEREAS, the City Council hereby finds and determines that it is desirable to codify the rules and regulations governing its actions, and the actions of persons using and consuming water within the City to protect the general welfare and the City's water supplies, and to reduce water consumption in accordance with the declared policies and laws of the State.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby finds and determines that the recitals discussed above are true and correct and are hereby incorporated and adopted as findings and determinations by the City Council as if fully set forth herein.

SECTION 2. Chapter 8A, of Title 6 the Municipal Code is hereby amended to read as follows:

Sec. 6-8.20. Scope and title.

This Chapter shall be known as "The Water Conservation Plan of the City of Ontario."

Sec. 6-8.21. Statement of policy and declaration of purpose.

- (a) Because of the water supply conditions prevailing in the City and/or the area from which the City obtains a portion of its supply, the general welfare requires that the water resources available to the City of Ontario be put to the maximum beneficial use to the extent to which they are capable, and that the waste or unreasonable use, or unreasonable method of use of water be prevented and that the conservation of such water be practiced with a view to that reasonable and beneficial use thereof in the interest of the people of the City.
- (b) The purpose of this chapter is to minimize the potential for a water shortage through the practice of water conservation, and to minimize the effect of a shortage of water supplies on the water customers of the City. It is furthermore the intent of this chapter to adopt provisions that will significantly reduce the inefficient consumption of water, thereby extending the available water resources necessary for domestic, sanitation, and fire protection of the community to the greatest extent possible.
- (c) This chapter shall be applicable to all persons within the City. For the purposes of this chapter, "person" means any natural person, property owner, renter, or lessee, as well as any corporation, partnership, government entity or subdivision, trust, estate, cooperative association, homeowners' association, joint venture, business entity, or other similar entity, or the property management company, property manager, agent, employee or representative of any of the above.

Sec. 6-8.22. Authorization.

- (a) The City Council may declare a water shortage based on a determination by the Metropolitan Water District of Southern California, the Inland Empire Utilities Agency of a water shortage, the declaration of an executive order of the Governor or the adoption of voluntary or mandatory water use restrictions by any State agency governing the use of water, or based upon any interruption in water supply or delivery that the City Council determines in its sole discretion necessitates water conservation pursuant to this chapter.
- (b) In the event of an immediate emergency that causes an unplanned interruption of water supply, the City Manager or his/her designee is authorized to restrict water use and apportion the available supply of water among its customers in the most equitable manner possible to continue service fairly and without discrimination, except that preference shall be given to such service as is essential to the public interest and to the preservation of life and health.

- (c) A water shortage, including a water shortage emergency but excluding an immediate emergency, shall be declared by the adoption of a resolution of the City Council.
 - (1) A notice of a water shortage, other than a water shortage emergency, shall be published in a daily newspaper of general circulation within the City. Any restrictions on the use of water during a declared water shortage shall become effective immediately upon such publication.
 - (2) Notice of hearing to declare a water shortage emergency, other than an immediate emergency, shall be made in accordance with Water Code Section 351. Any restrictions on the use of water during a declared water shortage shall become effective immediately upon adoption unless otherwise be determined by the City Council.

Sec. 6-8.23. General prohibitions.

- (a) The following are prohibited in any new water connections:
 - (1) Non-recycling decorative fountains;
 - (2) Single-pass cooling systems; and
 - (3) Conveyor and in-bay vehicle wash and commercial laundry systems that do not reuse water.
- (b) No water customer of the City shall make, cause, use, or permit the use of water from the City in a manner contrary to any provision of this chapter or in an amount in excess of the use permitted by any restriction provisions then in effect pursuant to the provisions of this chapter.

Sec. 6-8.24. Exceptions.

- (a) The prohibited uses of water and water use restrictions provided within this chapter are not applicable for the use of recycled water or the use of potable water necessary for public health and safety or for essential government services such as police, fire and other similar services.
- (b) Nothing contained within this chapter shall be construed to require the City to curtail the supply of water necessary for the health, safety, and welfare of any person.

Sec. 6-8.25. Voluntary conservation.

All persons are encouraged to voluntarily limit the amount of water used to the amount absolutely necessary for health and safety, business operations, and irrigation. Except as otherwise provided in this chapter where a declared water shortage stage or water shortage emergency requires mandatory or other more stringent requirements, the following elements of conservation apply at all times on a voluntary basis by all persons within the City:

- (a) Avoid hose washing of sidewalks, walkways, driveways, parking areas or other paved surfaces, except as required for sanitary purposes. If a person uses a hand-held hose to wash any sidewalk, walkway, driveway, parking area or other paved surface, the hose shall be equipped with a positive shutoff nozzle.
- (b) Wash motor vehicles, trailers, boats and other types of mobile equipment using a hand held bucket or a hose equipped with a positive shutoff nozzle for quick rinses, or at the immediate premises of a commercial car wash or with recycled wastewater for approved uses.
- (c) Avoid using water to clean, fill or maintain levels in decorative fountains, ponds, lakes or other similar aesthetic structures unless such water is part of a recycling system.
- (d) Encourage restaurants, hotels, cafés, cafeterias or other public places where food is sold, served or offered for sale, to serve drinking water only to those customers expressly requesting water.
- (e) Promptly repair all leaks from indoor and outdoor plumbing fixtures.
- (f) Avoid watering lawn, landscape or other turf areas more often than every other day and during the hours between 6:00 a.m. and 6:00 p.m.
- (g) Avoid causing or allowing the water to run off landscape areas into adjoining streets, sidewalks or other paved areas due to incorrectly directed or maintained sprinklers or excessive watering.

Sec. 6-8.26. Stage 1 water shortage-water supply reduced by up to ten percent (10%).

- (a) During a Stage 1, the following mandatory restrictions on the use of potable water shall be applicable when the City Council determines that the City's water conservation goals are not being met by voluntary water conservation measures, or that the City's water supplies are likely to be reduced by up to ten percent (10%) or it has otherwise been requested or directed by executive order or regulation of a State agency to reduce its potable water consumption or production by a specified amount.
 - (1) Except as required for health and sanitary purposes, washing of sidewalks, walkways, driveways, parking areas or other paved surfaces is prohibited. Any held-hose used for such purposes shall be equipped with a positive shutoff nozzle.
 - (2) Washing of motor vehicles, trailers, boats and other types of mobile equipment shall be done only with a hand-held bucket or a hose equipped with a positive shutoff nozzle for quick rinses, except that

washing may be done at the immediate premises of a commercial car wash or with reclaimed wastewater.

- (3) No water shall be used to clean, fill or maintain levels in decorative fountains, ponds, lakes or other similar aesthetic structures unless such water is part of a recycling system.
 - (4) No restaurant, hotel, café, cafeteria or other public place where food is sold, served or offered for sale, shall serve drinking water to any customer unless expressly requested.
 - (5) All water customers of the City shall promptly repair all leaks from indoor and outdoor plumbing fixtures. Such leak shall be repaired in a timely manner after notification by the city, but in no case after notification in excess of seventy-two (72) hours for the first violation and then every seventy-two (72) hours thereafter for the second and third violations.
 - (6) No person shall sprinkle, water, or irrigate any shrubbery, trees, lawns, grass, groundcovers, plants, vines, gardens, vegetables, flowers, or any other landscaped or vegetated areas between the hours of 9:00 a.m. and 4:00 p.m. In any event, such watering shall not be in excess of needs nor be of a manner that allows water to flow onto streets or other paved areas. The above mentioned plants may be watered by a hand-held hose equipped with a positive shutoff nozzle at any time of the day. This provision shall not apply to commercial nurseries, golf courses and other water-dependent industries.
 - (7) No water customer of the City shall cause or allow the water to run off landscape areas into adjoining streets, sidewalks or other paved areas due to incorrectly directed or maintained sprinkler or excessive watering.
 - (8) The use of water from fire hydrants shall be limited to fire fighting and related activities necessary to maintain the public health, safety, and welfare. An exception may be made for construction use through a proper city-designated meter. The use of potable water for construction activities shall be restricted in areas where recycled water is available for such use.
- (b) At any time during a Stage 1, if the City Council determines that additional reductions in the amount the potable water being used by water customers are necessary, it may adopt a resolution establishing water use limitations and enforce those water use limitations by the adoption and imposition of a volumetric penalty established therein.

Sec. 6-8.27. Stage 2 water shortage-water supply reduced by ten percent (10%) to twenty percent (20%).

- (a) During a Stage 2, the following mandatory restrictions on the use of potable water shall be applicable when the City Council determines that it is likely that the City will suffer a reduction of more than ten percent (10%) but less than twenty percent (20%) in its water supplies or it has otherwise been requested or directed by an executive order or regulation of a State agency to reduce its potable water consumption or production by a specified amount.
 - (1) All prohibitions and restrictions in § 6-8.26 shall be in effect provided that more restrictive measures noted in this section shall take precedence.
 - (2) Filling or refilling of empty swimming pools shall not occur without the written permission of the City Manager or his/her designee.
 - (3) All customers are prohibited from irrigating turf or ornamental landscapes during and within 48 hours following measurable rainfall.
 - (4) Operators of hotels and motels must provide guests with the option of choosing not to have towels and linens laundered daily and prominently display notice of this option.
 - (5) All persons, including the City, are prohibited from irrigating with potable water any ornamental turf on public street medians.
 - (6) The use of potable water for irrigation outside of newly constructed homes and buildings shall be consistent with California Building Standards Commission and Department of Housing & Community Development.
- (b) At any time during a Stage 2, if the City Council determines that additional reductions in the amount the potable water being used by water customers are necessary, it may adopt a resolution establishing water use limitations and enforce those water use limitations by the adoption and imposition of a volumetric penalty established therein.

Sec. 6-8.28. Stage 3 water shortage-water supply reduced by more than twenty percent (20%).

- (a) During a Stage 3, the following mandatory restrictions on the use of potable water shall be applicable when the City Council determines that it is likely that the City will suffer a reduction of more than twenty percent (20%) in its water supplies or it has otherwise been requested or directed by executive order or regulation of a State agency to reduce its potable water consumption or production by a specified amount.
- (b) All the prohibitions and restrictions in § 6-8.27 shall be in effect provided that the more restrictive measures noted in this section shall take precedence.

- (c) The use of water from fire hydrants shall be limited to fire fighting and related activities and other uses of water for municipal purposes shall be limited to activities necessary to maintain the public health, safety and welfare. Unless written permission has been granted by the City Manager or his/her designee, the use of potable water for construction activities and grading shall be prohibited.
- (d) At any time during a Stage 3, if the City Council determines that additional reductions in the amount the potable water being used by water customers are necessary, it may adopt a resolution establishing water use limitations and enforce those water use limitations by the adoption and imposition of a volumetric penalty established therein.

Sec. 6-8.29. Stage 4 water shortage-emergency.

- (a) The following restrictions on the use of potable water shall be applicable during a Stage 4 water shortage emergency. A water shortage emergency may be declared whenever the City Council finds and determines that the ordinary demands and requirements of water consumers cannot be satisfied without depleting the water supply of the City to the extent that there would be insufficient water for human consumption, sanitation, and fire protection. A water shortage emergency may include an immediate emergency. An immediate emergency may occur as a result of a breakage or failure of a dam, pump, pipe line or conduit, a major earthquake, large-scale fire, or other so called "Act of God" which may have serious impacts on the City's available water supply.
 - (1) All the prohibitions and restrictions in § 6-8.28 shall be in effect provided that the more restrictive measures noted in this section shall take precedence.
 - (2) Unless otherwise permitted by a resolution of the City Council, there shall be no use of potable water for irrigation of outdoor landscape or turf.
 - (3) Commercial nurseries shall be prohibited from the use of potable water for irrigation of outdoor, landscape and turf except by use of a hand-held hose equipped with a positive shutoff nozzle.
 - (4) The following nonessential uses of water shall be prohibited: the filling, cycling, filtering, or refilling swimming pools, spas, Jacuzzis, fountains or other like devices.
- (b) At any time during a Stage 4, if the City Council determines that additional reductions in the amount the potable water being used by water customers are necessary, it may adopt a resolution establishing water use limitations and enforce those water use limitations by the imposition of a volumetric penalty established therein.

Sec. 6-8.30. Relief from compliance.

- (a) A water customer of the City may file a written application for relief in whole or in part, from the water use restriction provisions of this chapter. The City Manager or his/her designee shall review the request for a variance and take such steps as he or she deems reasonable to resolve the application for relief. The decision of the City Manager shall be final.
- (b) A relief may be granted if the water customer shows that he or she has achieved the maximum practical reduction in water consumption other than in the specific areas in which relief is being sought. No relief shall be granted to any water customer who, when requested by the City Manager, fails to provide any information necessary for resolution of the customer's application for relief.

Sec. 6-8.31. Failure to comply.

- (a) Each and every day that a violation of this chapter occurs or continues to occur shall be considered a new and separate offense. Except for any violation of water use limitations for which a volumetric penalty may be imposed, for each violation of this chapter the following civil penalties may be imposed by issuance of a citation and complaint:
 - (1) First violation. For a first violation, the City shall issue a written warning to the water customer.
 - (2) Second violation. For a second violation, the City shall impose a civil penalty in the amount of One Hundred Dollars (\$100.00).
 - (3) Third violation. For a third violation, the City shall impose a civil penalty in the amount of Two Hundred Dollars (\$200.00).
 - (4) Subsequent Violations. For the fourth and any subsequent violation within one year, the City shall impose a penalty in the amount of Five Hundred Dollars (\$500.00). In addition to the civil penalty, the City may also install a flow restricting device on the service of at the premises at which the violation occurred for a period of not less than forty-eight (48) hours. The City shall charge the responsible party the reasonable costs incurred for installing and removing the flow-restricting devices and for restoration of normal service. The charge shall be paid before normal service may be restored.
- (b) Except for any violation of water use limitations for which a volumetric penalty may be imposed, the City shall give notice of a violation to the person committing the violation as follows:
 - (1) For a first violation, if the person committing the violation is a water customer of the City, then notice shall be given in writing by regular mail or personal delivery to the address at which the water customer is normally billed or at the address where the violation occurred. If the

person committing the violation is not a water customer of the City, or if the event is not related to a specific property, the notice may be sent to the last known address of the responsible party or personally delivered.

- (2) Notice of second or subsequent violations shall be given by the issuance of a citation and complaint in accordance with §§ 6-8.31(c) and (d).
 - (3) Unless an appeal and/or hearing is requested pursuant to the provisions of § 6-8.32, any civil penalty(ies) imposed by the City shall be due and payable within thirty (30) days of the issuance of the citation and complaint.
- (c) Except for any violation of water use limitations for which a volumetric penalty may be imposed, any notice of violation of this chapter shall be issued as a citation and complaint and shall:
- (1) Identify the provision(s) of this chapter and any State law, if applicable, alleged to have been violated; and
 - (2) State that continued noncompliance may result in civil, criminal, or administrative enforcement actions against the person who committed the violation, or the customer or the property owner and/or occupant of the property where the violation occurred; and
 - (3) State a compliance date that must be met by the person who committed the violation, or the customer, or the property owner and/or occupant of the property where the violation occurred; and
 - (4) Order remediation work, where applicable, that must be taken; and
 - (5) State that the recipient has a right to request a hearing and appeal the matter as set forth in § 6-8.32; and
 - (6) Include the address of the affected property and be addressed to the water customer or the property owner as shown on the most recently issued equalized assessment roll or as may otherwise appear in the current records of the City. If the notice of violation applies to a responsible party who is not the property owner or a water customer, or if the event is not related to a specific property, the notice may be sent to the last known address of the responsible party or personally delivered; and
 - (7) Be deemed served within ten (10) business days after posting on the property, if the property owner or occupant of the affected property cannot be located after the reasonable efforts of the City Manager or his/her authorized designee.

- (d) Any citation and complaint may be sent by regular mail or personal delivery. Service by regular mail is effective on the date of mailing. Service by personal delivery is effective on the date delivered. The citation and complaint, may include, where deemed applicable by the City Manager or his/her authorized designee, the following terms and conditions.
 - (1) Specific steps or actions and time schedules for compliance as reasonably necessary to prevent future violations of this chapter; and
 - (2) Any other terms, conditions, or requirements reasonably calculated to prevent continued or threatened future violations of this chapter, including, but not limited to, discontinuing or limiting water service with the installation of a flow restricting device.
- (e) Any volumetric penalty imposed shall be:
 - (1) Applicable to all potable water used in excess of the water use limitations as established by separate resolution of the City Council;
 - (2) Collected on the customer's water bill;
 - (3) Due and payable as part of the customer's water bill;
 - (4) The responsibility of the customer of record for the property where the violation occurred; and
 - (5) Paid in addition to the water service fees the City imposes for the potable water delivered to the property where the violation occurred.
- (f) The receipt of a water bill with any applicable volumetric penalty shall serve as notice of violation of the adopted water use limitations as established by resolution of the City Council.
- (g) Any person who wishes to appeal the imposition of a volumetric penalty may do so pursuant to § 6-8.32. Notice of the right to a hearing and to appeal the imposition of a volumetric penalty shall be included in the customer's water bill.

Sec. 6-8.32. Appeal and Hearing regarding violations.

- (a) Any person receiving notice of a violation of this chapter and the imposition of a civil penalty or volumetric penalty, shall have a right to a hearing by the City Manager or his/her authorized designee to appeal the imposition of any civil penalty. Any request for a hearing must be submitted to the City within fifteen (15) days of mailing or other delivery of the citation and complaint or water bill, as applicable. Additional documentation may be requested at the discretion of the City Manager or his/her authorized designee.

- (b) The timely written request for a hearing shall automatically stay installation of flow-restricting device on the premises where the violation occurred and imposition of the civil penalty or volumetric penalty until after the City Manager or his/her designee renders his or her decision.

The hearing shall be held no sooner than thirty (30) days after the issuance of the citation and complaint or water bill, as applicable.

- (c) The decision of the City Manager or his/her designee shall be final and shall be memorialized in a final order. If the appeal is denied, then within ten (10) days after issuance of the final order, the person shall pay any civil penalty(ies) imposed by the City.
- (d) The provisions of Section 1094.5 of the Code of Civil Procedure of the State of California shall be applicable to judicial review of the final order.
- (e) Non-payment of any civil penalty or volumetric imposed pursuant to this chapter shall be subject to the same remedies available to the City as for non-payment of basic water service fees.

Sec. 6-8.33 Remedies are not exclusive.

In addition to any other remedies provided in this chapter or available under applicable law, the City may alternatively seek injunctive relief in the Superior Court or take enforcement action, including discontinuing or appropriately limiting water service to any customer, or installing a flow restricting device. All remedies provided herein shall be cumulative and not exclusive.

SECTION 3. If any section, subsection, subdivision, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid, ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

SECTION 4. This Ordinance shall become effective thirty (30) days after its adoption by the City Council.

SECTION 5. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

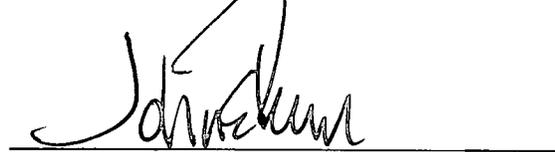
PASSED, APPROVED, AND ADOPTED this 1st day of September 2015.


PAUL S. LEON, MAYOR

ATTEST:


MARY E. WIRTES, MMC, CITY CLERK

APPROVED AS TO FORM:


BEST BEST & KRIEGER LLP
CITY ATTORNEY

