

ORDINANCE NO. 1487

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SAN CLEMENTE, CALIFORNIA
AMENDING CHAPTER 13.12 OF THE
SAN CLEMENTE MUNICIPAL CODE RELATING TO
WATER CONSERVATION**

WHEREAS, this ordinance is enacted pursuant to Section 375 of the California Water Code and Sections 37100 and 38742 of the California Government Code; and

WHEREAS, as required by Water Code Section 375(a), a public hearing was held and this ordinance was considered for action by the City Council at a regularly scheduled and noticed meeting. The agenda was posted in accordance with Section 54950 et seq. of the California Government Code with opportunity for public review in advance of the meeting and public comment during consideration of the ordinance by the Council; and

WHEREAS, the protection, conservation, and management of local and imported water supplies is one of the main functions of the City as a domestic water purveyor. The City has the power to perform all acts necessary to carry out fully the provisions of California Water Code Section 375 to establish rules and regulations for the distribution and use of water and undertake a water conservation program to promote efficient water use and reduce water waste; and

WHEREAS, wasteful water use practices constitute a potential threat to, and an unacceptable diminution of, the City's water supplies. The prevention of water waste is an economically and environmentally feasible way to protect, conserve, and prevent unacceptable diminution of the City's water supplies; and

WHEREAS, outdoor water use is a primary source of urban runoff, which flows onto the streets, then through storm drains to the beaches and contaminates seawater. It is therefore in the public interest to promote practices that increase water use efficiency, reduce or eliminate runoff, and further support the City's Stormwater Runoff Control Ordinance (SCMC Chapter 13.40); and

WHEREAS, contamination, drought, regional water supply allocations, or failure of the water system infrastructure may lead to a potable water shortage emergency in the City's water supplies; and

WHEREAS, based upon the above findings, the Council finds that actions taken pursuant to this ordinance are categorically exempt from CEQA according to 14 California Code of Regulations Sections 15301 and 15307; and

WHEREAS, the purpose of this ordinance is to amend and restate the San Clemente Municipal Code, Chapter 13.12, to replace the previously existing provisions of Chapter 13.12 and revise the water conservation and water shortage contingency measures.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE HEREBY ORDAINS AS FOLLOWS:

SECTION 1. The foregoing findings are true and correct and incorporated herein.

SECTION 2. Chapter 13.12 of the San Clemente Municipal Code is hereby amended and restated to read in its entirety as follows:

Chapter 13.12 WATER CONSERVATION

- 13.12.010 Short Title**
- 13.12.020 Purpose.**
- 13.12.030 Definitions.**
- 13.12.040 Application.**
- 13.12.050 Mandatory restrictions on water waste.**
- 13.12.060 Water shortage contingency measures.**
- 13.12.070 Enforcement and administration.**
- 13.12.080 Violations and notices.**
- 13.12.090 Nuisances, abatement, injunctive relief.**
- 13.12.100 Relief from compliance.**
- 13.12.110 Voluntary water conservation plan.**

13.12.010 Short Title.

This chapter may be cited as the Water Conservation Ordinance.

13.12.020 Purpose.

The purpose of this chapter is to establish standards and procedures for water conservation, to promote the efficient use of water, to reduce or eliminate the waste of

water in the City, to complement the City’s Stormwater Runoff Control Ordinance (SCMC Chapter 13.40), and enable implementation of the City’s water shortage contingency measures.

13.12.030 Definitions.

As used in this chapter, the following terms are defined in this section:

“City” shall mean the City of San Clemente, California

“Effective Date” shall mean the date of adoption of this ordinance as provided by Water Code Section 376.

“Enforcing Attorney” shall mean the City Attorney, acting as counsel to the City of San Clemente and his/her designee, or the District Attorney, which counsel is authorized to take enforcement action as described herein. For purposes of criminal prosecution, only the District Attorney and/or the City Attorney, or his/her designee, shall act as the Enforcing Attorney.

“Evapotranspiration (ET)” shall mean the sum of water losses through evaporation from the soil and transpiration from the plant. Irrigation water replaces the water lost by plants through evapotranspiration.

“Hearing Officer” shall mean the City Manager or his/her designee.

“Impervious surface” shall mean a constructed or modified surface that cannot effectively infiltrate rainfall. The term includes, but is not limited to, sidewalks, driveways, v-ditches, gutters and roadways.

“Landscape Coefficient” shall mean the ratio of Evapotranspiration (ET) demand a landscape has in comparison to reference turf-grass and is used to estimate the water needs of landscape plantings. Landscape coefficient near a value of one indicates greater water needs than lower landscape coefficient values. Consult the following guide for water use estimates of common landscaping plants at www.owue.water.ca.gov/docs/wucols00.pdf. Typical landscape coefficients for common landscapes include:

- Low water use plants (California natives) = 0.0 to 0.3 landscape coefficient
- Medium water use plants (California Friendly) = 0.4 to 0.6 landscape coefficient
- High water use plants (annuals and turf) = 0.7 to 1.0 landscape coefficient

- Warm season turf (Zoysia, St. Augustine) = 0.6 to 0.7 landscape coefficient
- Cool season turf (Fescue, Rye)= 0.8 to 0.9 landscape coefficient

“Major Water Users” shall mean those customers within any specific customer classification which use or consume more than the mathematical average use for that classification during a given time period. At the discretion of the City Manager, and based on the severity of shortage, this definition may be expanded to include all residential customers using more than 9 CCF of water per month.

“Person” shall mean any natural person, corporation, partnership, government entity or subdivision, trust, estate, cooperative association, joint venture, business entity, or other similar entity, or the agent, employee or representative of any of the above.

“Plant Factor” shall mean the ratio of Evapotranspiration (ET) demand a particular plant species has in comparison to reference turf-grass. Consult www.cimis.ca.gov for more information regarding ET. Also see “Landscape Coefficient.”

“Properly programmed” shall refer to a weather-based or sensor-based irrigation controller that has been programmed according to the manufacturer’s instructions and site-specific conditions.

“Quasi-Public Entity” shall mean an entity, other than a governmental agency, whether characterized by statute as a public corporation, public instrumentality, or otherwise, that is expressly created by statute for the purpose of administration of a state or local function.

“Sensor-based irrigation controller” shall mean an irrigation controller that operates based on input received from any combination of sensors, such as rain, solar radiation, and soil moisture sensor, installed within and/or around the irrigated landscape area.

“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 or cycle. This type of cooling system is extremely inefficient compared to systems that re-circulate the water.

“Stormwater drainage system” shall mean street gutter, channel, storm drain, constructed drain, lined diversion structure, wash area, inlet, outlet, or other

facility which is a part of or tributary to the county-wide stormwater runoff system and owned, operated, maintained, or controlled by County of Orange, the Orange County Flood Control District, or any co-permittee city, and used for the purpose of collecting, storing, transporting, or disposing of stormwater.

“Urban runoff” shall mean all flows in the stormwater drainage system and consists of stormwater and non-stormwater flows.

“Weather-based irrigation controller” shall mean an irrigation controller that operates based on evapotranspiration rates and historic or real-time weather data.

13.12.040 Application.

A. This chapter shall apply within the City, and compliance with the provisions of this chapter shall be a condition of water service within the City.

B. The City shall work cooperatively with the Municipal Water District of Orange County and other federal, state, regional, and local agencies to facilitate the adoption of ordinances and regulations to conserve water.

13.12.050 Mandatory restrictions on water waste.

The following activities or measures are in effect year-round, regardless of whether or not a water supply shortage level has been declared. During water supply shortage levels, additional and more restrictive measures may be put in place, which are described in section 13.12.060.

A. Repair of Plumbing, Sprinkler and Irrigation System. Any owner, manager, or person responsible for the day-to-day operation of any premises shall, within seventy-two (72) hours after such person first learns of leaks, breaks, or defects, initiate steps to repair any leaking, broken, or defective water pipes, faucets, plumbing fixtures, other water service appliances, sprinklers, watering or irrigation systems, or distribution systems which cause or may cause water waste shall thereafter diligently and promptly pursue such repair work to completion, unless a variance is obtained from the City.

B. Watering/Irrigation.

1. No person shall water his or her lawn or landscaping to be watered between the hours of nine (9:00) AM and six (6:00) PM, except as provided below:

- a. Persons may operate the irrigation system between the hours of 9:00 AM and 6:00 PM for the purpose of installing, repairing, or routine maintenance of the same, provided the system is being operated by an irrigation systems maintenance person.
 - b. Persons may water between the hours of 9:00 AM and 6:00 PM using any of the following methods:
 - i. properly programmed weather-based and/or sensor-based irrigation controllers;
 - ii. drip, bubbler, or soaker irrigation;
 - iii. by hand, using a bucket; and/or
 - iv. by hand, using a hose with an automatic shutoff nozzle; and/or
 - v. if using recycled water.
2. No person shall allow grass, lawns, groundcover, shrubbery, and open ground to be watered at any time while it is raining. Effective July 1, 2010, all irrigation controllers associated with dedicated irrigation meters shall have a rain shutoff device incorporated into the irrigation system which overrides the program in the event of rainfall. Rain sensors east of I-5 shall set the sensor sensitivity to 1/8 of an inch while sensors west of I-5 can set the sensor sensitivity to 1/4 of an inch to avoid having fog interrupt irrigation schedules.
 3. Every person shall operate his or her landscape irrigation system(s) to minimize overspray and/or excess runoff onto impervious surfaces (such as sidewalks, driveways, v-ditches, gutters and roadways).

C. City Medians and Parkways. The City shall no longer install turf on medians, parkways, island dividers, or on other non-recreational areas for any new, rehabilitated, or re-landscaped City project.

D. Washing of Vehicles. No person shall use a water hose to wash any car, truck, boat, trailer, bus, recreational vehicle, camper, aircraft, tractor, or any other vehicle, or any portion thereof, unless the hose is equipped with an automatic shutoff nozzle. Except for individual residential vehicle washing, all wash water from vehicle washing/cleaning activity must be prevented from discharging to the stormwater drainage system.

E. Commercial Car Washes.

1. Commercial car wash facilities shall not permit the washing of any boat or vehicle in such facility or on its premises, other than by the following methods:
 - a. use of mechanical automatic car wash facilities utilizing water recycling equipment;
 - b. use of a hose that operates on a timer for limited time periods and shuts off automatically at the expiration of the time period;
 - c. use of a hose equipped with an automatic shutoff nozzle; and/or
 - d. use of bucket and hand washing.
2. All wash/rinse water must be captured and recycled or discharged into the sanitary sewer system.
3. All new commercial car wash facilities shall be equipped with a water recycling system.

F. Washing of Equipment and Machinery. No person shall use a water hose to wash any type of equipment or machinery, or any portion thereof, unless the hose is equipped with an automatic shutoff nozzle. All wash water from such washing/cleaning activity must be prevented from discharging to the stormwater drainage system.

G. Cleaning of Structures. No person shall use water through a hose to clean the exterior of any building or structure unless such hose is equipped with a shutoff nozzle. All wash water from such activity must be prevented from discharging to the stormwater drainage system.

H. Cleaning of Surfaces. Washing down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking areas, tennis courts, patio, and 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 an automatic shutoff nozzle, or a low-volume, high-pressure cleaning machine.

Such water-using cleaning must comply with the City's Stormwater Runoff Control Ordinance and must be prevented from discharging into the stormwater drainage system. General maintenance cleaning shall be performed by other means such as by using a broom.

I. Swimming Pools and Spas. No person shall empty and refill a swimming pool or spa except to prevent or repair structural damage or to comply with public health regulations. Discharge of pool water, other than directly to the sanitary sewer system, shall be consistent with San Clemente Municipal Code Chapter 13.40 Stormwater Runoff Control. Discharge of pool filter backwash water to the stormwater drainage system is prohibited. All pools and spas shall be equipped with a water recirculation device. The use of a pool/spa cover is encouraged to prevent evaporative water loss.

J. Fountains, Decorative Basins, Ponds, Waterways. No person shall use water to operate or maintain levels in decorative fountains, basins, ponds, and waterways unless a recirculation device is in use. Discharge of water, other than directly to the sanitary sewer system, shall be consistent with San Clemente Municipal Code Chapter 13.40 Stormwater Runoff Control. Discharge of filter backwash water to the stormwater drainage system is prohibited.

K. Cooling Systems. Buildings requesting new water service or being remodeled are prohibited from installing single-pass cooling systems.

L. Commercial Laundry Facilities, Laundromats, and Common Area Laundry Rooms. New commercial laundry facilities shall be equipped with a water reclamation system for reuse of rinse water. Laundromats and common area laundry rooms shall install high efficiency clothes washing machines as older machines are replaced.

M. Commercial Lodging Establishments. 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(s). The City may make available such notices to commercial lodging establishments.

N. Visitor-Serving Facilities. The owner and manager of each hotel, motel, restaurant, and other visitor-serving facility shall ensure that such facility displays, in places visible to all customers, placards or decals approved by the City promoting public awareness of the need for water conservation and/or advising the public that waste of water is prohibited.

O. Food & Beverage Service Facilities.

1. Food and beverage service facilities in the City shall not serve water to customers or patrons, except upon request of the customer or patron.
2. All commercial kitchens with existing pre-rinse spray nozzles shall be retrofitted to models using 1.6 gallons per minute or less, by July 1, 2010. New kitchen pre-rinse spray nozzles must use 1.6 gallons per minute or less.
3. Defrosting food with running water shall be avoided and discouraged.
4. If using a hose for wash-down of kitchens, garbage areas, or any other area required by the health department or for sanitation reasons, it shall have a positive shut off nozzle attached.
5. Scoop sinks shall be set at minimum flow at all times, and during hours of operation carefully monitored to avoid using water unnecessarily when the scoop sink is not in active use.
6. New or Remodeled kitchens. All other water using equipment in new or remodeled kitchens shall use the best available water conserving technology.

P. Public and Quasi-Public Entities. All public and quasi-public entities shall display, in visible locations in all restrooms, kitchens, and dining areas, placards or decals approved by the City promoting public awareness of the need for water conservation and/or advising the public that waste of water is prohibited. Placement of placards or decals by a quasi-public entity of a type not specifically mentioned in this chapter shall not be required unless the City Utilities Manager gives written notice to the entity that this chapter is applicable to the entity so notified and that placement of placards or decals is required.

Q. Construction.

1. No potable water may be used for compacting or dust control purposes in construction activities where there is a reasonably available source of

recycled or other non-potable water approved by the California State Department of Health Services and appropriate for such use. This condition must be identified and specified on construction drawings submitted to the City for review.

2. All water hoses used in connection with any construction activities shall be equipped with an automatic shutoff nozzle when an automatic shutoff nozzle can be purchased or otherwise obtained for the size or type of hose in use.

R. Use of Hydrants. No person may tap into any fire hydrant for any purpose other than fire suppression or emergency aid, without first obtaining written approval from the City Utilities Manager or his/her designee.

S. Water Spillage. Every person shall minimize water spillage into streets, curbs, or gutters and minimize runoff beyond the immediate area of use. Every person is deemed to have under his/her control at all times his/her water distribution lines and facilities, and to know the manner and extent of his/her water use and excess runoff.

T. Indiscriminate Use. No person shall cause or permit the indiscriminate running of water not otherwise prohibited above which is wasteful and without reasonable purpose.

U. Water Conservation Plans. The Utilities Manager, at his/her sole discretion and by written request, will require residential, commercial, dedicated irrigation, and/or public customers using ten thousand (10,000) or more billing units per year to submit a Water Conservation Plan to the City 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.

V. Public Health and Safety. These regulations shall not be construed to limit water use which is immediately necessary to protect public health or safety.

13.12.060 Water supply shortage levels and contingency measures.

The City Council by resolution is authorized to require or impose reductions in the use of water if such reductions are necessary in order for the City to comply with water use restrictions imposed by federal, state, or regional water agencies or to respond to emergency water supply shortage conditions and emergencies. Depending on the

expected duration and severity of the shortage or emergency, these measures may include, but are not limited to, some or all of the actions listed in the following four (4) levels of water shortage, which shall take effect upon declaration by the City Council. In an emergency, the City Manager or his/her designee may make the declaration, which will be ratified by the City Council at a subsequent meeting. Each elevated shortage level will include the elements of the previous shortage level(s), including the mandatory restrictions on water waste detailed in Section 13.13.050, and each elevated shortage level is intended to be more restrictive than the previous level(s).

A. Level 1 – Water Watch. This level will be declared when a water shortage of less than 10% occurs. Level 1 applies during periods when the possibility exists that the City will not be able to meet all of the demands of its customers. Level 1 may also be declared when the state or a regional supplier has recommended a reduction in water use or when normal production and supply are curtailed. During a Level 1 Water Watch, the following water shortage contingency measures take effect:

- a. Leaks. All leaks shall be fixed within 48 hours once an owner/operator is made aware of a leak.
- b. Staff. All City staff shall be alerted to the Level 1 conditions, supplied with educational material, and directed to actively intervene and educate the public, when excessive use and/or waste is observed.
- c. Lawn Watering and Landscape Irrigation. The City shall encourage reduction in the consumption or use of City water by residential, recreational, commercial, industrial, and institutional water users for landscape irrigation purposes.
- d. Residential car washing. Residents are encouraged to use a commercial facility utilizing water recycling equipment.
- e. Other Actions Possible. The City may initiate or implement additional or innovative actions to increase the supply of water available to the City and to conserve the City's existing water supply.
- f. Media. The declaration of this and subsequent water shortage levels shall be communicated to the media.

B. Level 2 – Water Alert. This level will be declared when a water shortage of 10-20% exists. A Level 2 Water Alert may be declared when the state or a regional water supplier has required a reduction in water use or when normal production and supply are curtailed, rationed, or allocated. Noncompliance with mandatory restrictions on water waste shall be subject to an administrative citation. During a Level 2 Water Alert, the Level 1 water shortage contingency measures shall become mandatory and the following additional water shortage contingency measures shall apply:

- a. Leaks. All leaks shall be fixed within 24 hours once an owner/operator is made aware of a leak.
- b. Rates and Charges. The City reserves the right to adjust and/or implement tier allocations for all water connections and accounts commensurate to the water supply shortage level. The City may also charge an additional water surcharge above and beyond the existing City water rates to be imposed on those customers who fail or refuse to abide by the requirements, restrictions, and priorities adopted by the City in response to the water shortage condition. Water shortage rate schedules will be incorporated into Article III, Rates and Charges, of Municipal Code 13.04.
- c. Staff. At the discretion of the City Manager, the City may hire, divert, or employ additional City staff and volunteers to monitor water usage, provide assistance to water users to reduce their water consumption, and monitor the enforcement of the requirements, restrictions, and priorities adopted by the City in response to the water shortage condition.
- d. Landscaping. New and rehabilitated landscaping for commercial and dedicated irrigation accounts of over 1,000 square feet shall be limited to a plant palette such that the average plant factor and/or the landscape coefficient shall be less than or equal to 0.5 for all new landscaping. A landscape coefficient or plant factor of 0.5 comes from a mix of approximately $\frac{1}{3}$ high, $\frac{1}{3}$ medium, and $\frac{1}{3}$ low water using plants. Exempt from this restriction are the following:
 - i. environmental mitigation projects;
 - ii. landscaping necessary for fire protection and/or soil erosion control;
 - iii. plant materials identified as rare or essential to the well being of endangered/rare species; and
 - iv. active recreation areas and sports fields.
- e. Construction Restrictions. Water for construction will be limited to essential construction activities only. Essential construction activities include:
 - i. testing fire suppression systems;
 - ii. maintaining hygiene and dust control at construction sites;
 - iii. interior dry wall tape texturing;
 - iv. exterior masonry stucco finishing;
 - v. pressure testing domestic water and sanitary waste lines; and
 - vi. potable water can not be used for grading unless the Public Works Director or his/her designee determine there is adequate supply.
- f. Other Prohibited Uses: The City may implement other prohibited water uses as deemed necessary, following notification of customers.

C. Level 3 – Water Warning. This level will be declared when a water shortage of 21-40% occurs. A Level 3 Water Warning may be declared when there is a critical differential between supply and demand and it is determined that demand cannot be reduced sufficiently through Level 1 and 2 measures to remain within the available supply. During a Level 3 Water Warning, administrative fines will double. The following additional water shortage contingency measures shall apply during a Level 3 Water Warning:

- a. Rates and Charges. The City may further reduce tier allocations, raise rates, and increase penalty charges based on the severity of the shortage and anticipated demand at the time of declaring a Level 3 Water Warning. Water shortage rate schedules will be incorporated into Article III, Rates and Charges, of City Code 13.04.
- b. Prohibition on Landscaping Requirements. No person or entity, other than the City, shall implement landscaping requirements onto another person. For example, a homeowner's association cannot require a homeowner to install turf during a Level 3 Water Shortage.
- c. Dedicated Irrigation Account Landscaping Restrictions. Dedicated irrigation accounts are restricted from installing new plant material between the months of May through October on account of the amount of water required during plant establishment periods. This restriction applies to any new, rehabilitated, or re-landscaped project.
- d. Turf Landscaping Restrictions. All customers are prohibited from planting and/or establishing turf. This restriction applies to any new, rehabilitated, or re-landscaped project.
- e. Charity Car Wash Restrictions. Non-Profit and Charity car washes are prohibited.
- f. No Hosing or Washing Down of Structures and Surfaces. It is prohibited to use a hose or wash down clean the exterior of any building or structure as well as impervious hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking areas, tennis courts, patios, and alleys.
- g. No Filling or Refilling Residential Pools and Spas. Filling residential pools and spas is prohibited. An exemption to this prohibition is that pools and spas can be topped off if less than one inch of water is added.
- h. No Filling or Refilling Fountains, Decorative Basins, Ponds, Waterways. Filling and refilling fountains, decorative basins, ponds, and waterways is prohibited. Exempt are ponds that sustain aquatic life – provided such life is of significant value and was actively managed in the water feature prior to declaration of any water shortage stage.

- i. Construction Restrictions. Will-Serve letters shall not be issued. The City will only issue will-serve letters for the following cases:
 - i. projects necessary to protect public health, safety, and welfare;
 - ii. projects that have a valid, unexpired City building permit; and
 - iii. projects in which the City Council deems the proposed project or development as having an overwhelming public benefit.

D. Level 4 – Water Emergency. This level will be declared when a water shortage of greater than 40% occurs. A Level 4 Water Emergency may be declared when the state or a regional supplier has required a significant reduction in water use, or when normal production and supply are curtailed or interrupted. All measures necessary to meet basic health and safety needs shall be undertaken, while all other water uses shall be reduced or prohibited. During a Level 4 Water Emergency, administrative fines will triple. The following additional water shortage contingency measures shall apply during a Level 4 Water Emergency:

- a. Water Rates & Tier Allocations. Water use allocations at the Tier 1 rate will be reduced to a level deemed appropriate for the level of emergency. The City may also further adjust tier allocations, water rates, and water surcharges in response to the Level 4 Water Emergency. Water shortage rate schedules will be incorporated into Article III, Rates and Charges, of Municipal Code 13.04.
- b. Lawn Watering and Irrigation. All outdoor irrigation is prohibited or curtailed as determined by the City Council. Dedicated irrigation accounts may be turned off. At the discretion of the Utilities Manager, exemptions may be provided for sports fields and golf courses.
- c. No Hosing or Washing Down of Vehicles: Washing of autos, trucks, trailers, boats, airplanes and other types of mobile equipment is prohibited, other than at a commercial car wash. Exempt from this provision is the washing down of boats and RVs.
- d. Construction Restrictions. Potable water use for construction-related activities is prohibited or curtailed as determined by the City Council, including in-fill construction.
- e. Discontinue Service. Per Water Code Section 356, the City, in its sole discretion, may discontinue service to customers who willfully violate the restrictions set forth during a Level 4 Water Emergency.

E. Exemptions. Unless otherwise noted, the following activities or water uses are exempt from the water shortage contingency measures addressed in Section 13.12.060:

- a. water use necessary to protect public health and safety or for essential government services; and

- b. recycled water use for irrigation, car washing, or indoor industrial use.

F. Hardship Waiver. If, due to unique circumstances, a specific requirement of this 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 detailed in Section 13.12.060.

- a. Written Finding: 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 the City.
- b. Supporting Documentation. The application must be accompanied by photographs, maps, drawings, and other pertinent information, including a written statement of the applicant.
- c. Required Findings for Waivers. Based on the information and supporting documents provided in the application and the water use history for the property as shown by the records of the Utilities Division, the Public Works Director, or his/her designee, in making the waiver determination shall take into consideration 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 Ordinance 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 Ordinance 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.
- d. Approval Authority. The Public Works Director, or his/her designee, may approve, conditionally approve, or deny the waiver and the decision shall be final. Unless specified otherwise, at the time a waiver is approved, it shall apply to the subject property for the duration of the water supply shortage or emergency.

13.12.070 Enforcement and administration.

The City Manager and all officers and employees of the City shall enforce all the provisions of this chapter. The City Manager shall implement and administer this chapter. The Director of Public Works shall report to the City Council all factors which affect the implementation of this chapter and shall maintain a separate file of violations of this chapter and a file of any requests for variances from this chapter.

13.12.80 Violations, notices and remedies.

A. Notice of Noncompliance. If any person fails or refuses to comply with this Chapter, the City Utilities Manager or his/her agent shall provide that person with written notice of the violation and an opportunity to correct the noncompliance. The written notice shall:

1. be posted or presented at the site of the noncompliance;
2. state the time, date, and place of violation;
3. state a general description of the violation;
4. state the means to correct the violation;
5. state a date by which correction is required; and,
6. state the possible consequences of failing to correct the violation.

A written notice shall be mailed to the address of the violation, to the party who is billed for the water, or to the Owner of the property, as appropriate.

B. Recovery of Administrative Costs. Each person who receives a written notice of violation shall pay to the City an administrative fee of twenty-five dollars (\$25.00) for the first notice and fifty dollars (\$50.00) for each subsequent notice. To encourage cooperative water conservation, the City Manager or his/her designee may waive payment of the fee for the first or second notice. These fees herein constitute the reasonable cost incurred by the City in implementing the notice of violation provisions.

C. Compliance Remedies. If a person fails to correct the violation within the time specified in the written notice, the City Manager or his/her designee shall take one or more of the following actions:

1. issue a second written notice of violation;
2. refuse to initiate water service to the site of the violation, if water service has not yet begun or has been discontinued;

3. terminate water service to the site of the violation, in accordance with the City's ordinances and procedures for terminating water service;
4. abate the violation as a nuisance in accordance with Section 13.12.090 of this Chapter;
5. for residential accounts, impose a fine of not more than one hundred dollars (\$100) for a first violation, two hundred dollars (\$200) for a second violation, and five hundred dollars (\$500) for each additional violation occurring within the calendar year; and/or
6. for commercial, industrial, and irrigation accounts, impose a fine of not more than two hundred dollars (\$200) for a first violation, four hundred dollars (\$400) for a second violation, and one thousand dollars (\$1,000) for each additional violation occurring within the calendar year and a water waste use fee of four (4) times the regular water rate for each billing unit of water that the City estimates is wasted. The estimated water waste determination will be based on the previous year's water use during the same billing cycle.

D. **Regulatory Fine Recovery.** In the event that a private party action causes a regulatory agency to levy a fine against the City of San Clemente, the responsible account holder shall be required to reimburse the City for the fine and associated administrative costs.

E. **Administrative Hearing for Notices of Noncompliance, Invoices for Costs and Adverse Determinations.** Any person receiving a notice of noncompliance, an invoice for costs, or any person who is subject to any adverse determination made pursuant to this chapter, may appeal the matter by requesting an administrative hearing.

F. **Request for Administrative Hearing.** Any person appealing a notice of noncompliance, an invoice for costs or an adverse determination shall, within thirty (30) days from the date listed on the face of such notice, invoice or determination, file a written request for an administrative hearing, accompanied by an administrative hearing fee as established by separate resolution, with the Office of the City Clerk, with a copy of the request for administrative hearing mailed or personally delivered on the date of filing to the City Manager. Thereafter, a hearing on the matter shall be held before the Hearing Officer within forty-five (45) business days of the date of filing of the written request

unless, in the reasonable discretion of the Hearing Officer and pursuant to a written request by the appealing party, a continuance of the hearing is granted.

G. Hearing Proceedings. The authorized water utility staff shall appear in support of the notice, invoice for costs, or determination, and the appealing party shall be permitted to appear in support of withdrawal of the notice, determination, and invoice for costs. Each party shall have the right to present testimony and other documentary evidence as necessary for explanation of the case; however, the rules of evidence shall not apply.

H. Final Decision and Appeal. The decision of the Hearing Officer shall be issued within thirty (30) days of the conclusion of the hearing and shall be delivered by first-class mail, postage prepaid, to the appealing party. The decision of the Hearing Officer shall be final. The final decision shall include notice that any legal challenge to the final decision shall be made pursuant to the provisions of Code of Civil Procedure §§ 1094.5 and 1094.6 and shall be commenced within ninety (90) days following issuance of the final decision. The administrative hearing fee paid by a prevailing party in an appeal shall be refunded.

13.12.090 Nuisances, abatement, injunctive relief.

A. Any condition in violation of the prohibitions of this chapter shall constitute a threat to the public health, safety, and welfare, and is declared and deemed a public nuisance pursuant to Government Code § 38771.

1. Court Order to Enjoin or Abatement. At the request of the City Manager, or the person designated by the City Manager, the Enforcing Attorney may seek a court order to enjoin and/or abate the nuisance.
2. Notice to Owner and Occupant. Prior to seeking any court order to enjoin or abate a nuisance or threatened nuisance, the City Manager or the person designated by the City Manager shall provide notice of the proposed injunction or abatement to the owner and occupant, if any, of the property where the nuisance or threatened nuisance is occurring.
3. Reimbursement of Costs. All costs incurred by the City in responding to any nuisance, all administrative expenses, and all other expenses recoverable under state law, including reasonable consulting fees and attorneys fees, shall be recoverable from the

person(s) creating, causing, committing, permitting, or maintaining the nuisance.

4. Nuisance Lien. All costs shall become a lien against the property from which the nuisance emanated and a personal obligation against the owner thereof in accordance with Government Code § 38773.1 and § 38773.5. The owner of record of the property subject to any lien shall be given notice of the lien prior to recording as required by Government Code § 38773.1.
5. At the direction of the City Manager or the person designated by the City Manager the Enforcing Attorney is authorized to collect nuisance abatement costs or enforce a nuisance lien in an action brought for a money judgment or by delivery to the Orange County Assessor of a special assessment against the property in accordance with the conditions and requirements of Government Code § 38773.5. (Ord. 1277 § 1, 2003)

13.12.100 Relief from compliance.

The City Manager or his/her designee may, in writing, grant variances to persons who apply on forms supplied by the City for usages of water prohibited by Section 13.12.040 if it is found that a variance is necessary to prevent an emergency condition relating to health and safety, and if the person seeking a variance has demonstrated that he or she has implemented water conservation measures in some other manner that achieves the objectives of this Chapter. No variance may be granted for the filling of any decorative fountain, basin, pond, hot tub, spa, or permanent swimming or wading pool, unless the filling occurs as the result of performing necessary leak repairs and unless the other provisions of this Section are met. In addition, no variance shall be granted to any person unless that person has demonstrated that he or she has already achieved the maximum practical reduction in water consumption as can be achieved by the affected property or business. Any variance granted shall be based upon the water consumption rates of similar water users, properties, or businesses.

13.12.110 Voluntary water conservation plan.

A. In addition to the water conservation requirements established by this Chapter, the City Manager or his or her designee is authorized to develop and promulgate a voluntary water conservation plan which shall be directed to achieve target goals for reductions in water consumption as determined by the City Council from time to time.

B. The City may, to the extent authorized by law, elect to contract for the services of any public agency or private enterprise to carry out the planning approvals, inspections, and enforcement authorized by this chapter. (Ord. 1277 § 1, 2003)

SECTION 3. Pursuant to the authority contained in Water Code Section 376, this Ordinance shall take effect upon its adoption.

SECTION 4. Within 10 days after adoption, the City shall publish this ordinance with the names of those council members voting for and against adoption in a newspaper of general circulation that is printed, published, and circulated in the City pursuant to Government Code Section 6061.

SECTION 5. The City Clerk is authorized and directed to prepare and file a notice of exemption of this ordinance from the provisions of CEQA pursuant to Title 14, California Code of Regulations, Section 15062.

SECTION 6. Existing fees and charges in effect when this ordinance is adopted shall remain in effect unless specifically changed by this ordinance.

SECTION 7. The City of San Clemente hereby declares that should any section, paragraph, sentence, phrase, term, or word of this chapter be declared for any reason to be invalid, it is the intent of the City Council that it would have adopted all other provisions of this chapter independent of the elimination herefrom of any such portion as may be declared invalid. (Ord. 1277 § 1, 2003)

SECTION 8. Words and Phrases used in this ordinance shall be read conjunctively with and shall have the same meanings as in prior City ordinances and the City Municipal Code, unless specifically changed by this ordinance or unless the context requires some other construction. If there is any inconsistency between this ordinance and prior provisions, this ordinance shall control.