

ORDINANCE NO. 3299

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON,  
CALIFORNIA, AMENDING FULLERTON MUNICIPAL CODE CHAPTER 12.06  
PERTAINING TO WATER CONSERVATION PLANNING

WHEREAS, California, including Orange County, experienced significant dry year conditions in 2012-2017 which led local water agencies to declare water shortage conditions that triggered drought actions.

WHEREAS, as a result, the City experienced a direct impact on the reliability of available water supplies. The agency's reliability increased through customer curtailment due to the implementation of demand management measures. The adopted 2015 Urban Water Management Plan, Water Shortage Contingency Plan Chapter 8 specifies these actions based on levels of drought severity and provided the legal authority for implementation and enforcement through the Water Shortage Contingency Response Ordinance.

WHEREAS, the California Legislature modified the Urban Water Management Planning Act following the end of the drought in 2018 to include additional water shortage planning requirements. California Water Code Section 10632 now mandates new elements to Urban Water Management and Water Shortage Contingency Plans including an annual drought risk assessment, State Water Shortage Levels and statewide water use prohibitions.

WHEREAS, the Water Shortage Allocations determined by the Metropolitan Water District of Southern California (Metropolitan) apply to the imported water supplies in the City. When triggered, Metropolitan, as a wholesaler, will curtail deliveries of imported water based on Metropolitan's Water Shortage Allocation Plan which Metropolitan may activate when in a state of shortage.

WHEREAS, both Metropolitan and the City must prepare an Annual Water Supply and Demand Assessment and Drought Risk Assessment as part of their Urban Water Management Plan for submission to the California Department of Water Resources. By July 1<sup>st</sup> of each year, beginning the year following the adoption of the 2020 UWMP, Metropolitan and the City must monitor, report and, if declared a drought emergency, notify the Department of Water Resources, in order to comply with the State's Water Code Section 10632.1 reporting requirements.

WHEREAS, the City has adopted a Water Shortage Contingency Plan to establish standards and procedures to enable implementation and enforcement of local water shortage contingency measures. These measures align with the State of California Water Code Section 353 which specifies that "when the governing body has so determined and declared the existence of an emergency condition of water shortage within its service area, it shall thereupon adopt such regulations and restrictions on the delivery of water and the consumption within said area of water supplied for public use as will in the sound discretion of such governing body conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection." The State of California also directs the City to adopt a water conservation program to mitigate demands in Water Code Section 375.

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



SECTION 1. That the City has deleted Fullerton Municipal Code Chapter 12.06 and replaced with the following:

## WATER SUPPLY SHORTAGE CONSERVATION PLAN

### 12.06.010 Declaration of Purpose and Intent

This chapter establishes water management requirements necessary to conserve water, enable effective water supply planning, assure reasonable and beneficial use of water, prevent waste of water, prevent unreasonable use of water, prevent unreasonable method of use of water within the City in order to assure adequate supplies of water to meet the needs of the public and further the public health, safety and welfare, recognizing that water is a scarce natural resource that requires careful management not only in times of drought but at all times.

This chapter establishes six levels of Water Shortage Levels most often triggered due to drought conditions to provide defined response actions to implement during times of declared water shortage or declared water shortage emergency with increasing restrictions on water use in response to worsening drought or emergency conditions and decreasing supplies.

### 12.06.020 Definitions

1. "Applicant" means the person, association, developer, corporation or governmental agency applying for water service.
2. "Applied water" means the portion of water supplied by the irrigation system to the landscape.
3. "Billing Cycle" means the billing period in which the agency measures customer's water use for purposes of calculating the amount of the water service fees it shall collect for the water service provided.
4. "Billing Unit" means the unit of water used to apply water rates for purposes of calculating water charges for a person's water usage and equals 1,000 gallons of water.
5. "Citizens Appeals Board" means a board consisting of not more than five members appointed by City Council to hear appeals concerning applications for relief or violations that a customer or water user cannot resolve with the Hearing Officer.
6. "Cost" means the actual cost to the Utility, including all labor, material, supplies, equipment and miscellaneous items, together with any applicable indirect and general charges, plus the general administrative overhead in accordance with the accounting practices of the Utility.
7. "Customer" means water user.

8. "Excessive water use penalty" means the administrative penalty the City may impose during Level 3, 4 or 5 as set forth in this chapter.
9. "Gray Water" shall have the same meaning as in California Health and Safety Code 17922.12, as amended. In general, gray water may include untreated wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines and laundry tubs but does not include wastewater from kitchen sinks or dishwashers.
10. "Hardscapes" means any durable material or feature (pervious and non-pervious) installed in or around a landscaped area such as pavements or walls. This ordinance considers pools and other water features part of the landscaped area and not considered hardscapes for purposes of this Water Efficient Landscape Ordinance.
11. "Hearing Officer" means the person appointed by the City Manager at the utility level to resolve applications for relief.
12. "Landscaped area" means all the planting areas, turf areas and water features in a landscape design plan subject to the Maximum Applied Water Allowance and Estimated Applied Water Use calculations. The landscaped area does not include footprints of buildings or structures, sidewalks, driveways, parking lots, decks, patios, gravel or stone walks, other pervious or non-pervious hardscapes and other non-irrigated areas designated for non-development (e.g., open spaces and existing native vegetation).
13. "Metropolitan" means the Metropolitan Water District of Southern California.
14. "Non-pervious" means any surface or natural material that does not allow for the passage of water through the material and into the underlying soil.
15. "Permit" means an authorizing document issued by local agencies for new construction or rehabilitated landscape.
16. "Person" means any individual, group, developer or organization operating as a single entity.
17. "Pervious" means any surface or material that allows the passage of water through the material and into the underlying soil.
18. "Potable Water" means water that is suitable for drinking.
19. "Residential Customer" means a single family or multi-family residential water user.
20. "Single Pass Cooling Systems" means equipment where water circulates only once to cool equipment before disposal.



21. "Summer" means the water season that includes the months of April, May, June, July, August and September.
22. "Turf" means a ground cover surface of mowed grass. Annual bluegrass, Kentucky bluegrass, Perennial ryegrass, Red fescue and Tall fescue are cool-season grasses. Bermudagrass, Kikuyugrass, Seashore Paspalum, St. Augustinegrass, Zoysiagrass, and Buffalo grass are warm-season grasses.
23. "Utility" means the municipal water organization, its staff and the system serving the City.
24. "Utility rates, rules and regulations" means the rate structure of the Utility and any rules and regulations adopted by the City.
25. "Water customer" means the person in whose name service is rendered as evidenced by the signature on the application, contract or agreement for that service, or in the absence of a signed instrument, by the receipt and payment of bills regularly issued in their name, regardless of the identity of the actual user of the service.
26. "Water feature" means a design element where open water performs an aesthetic or recreational function. Water features include ponds, lakes, waterfalls, fountains, artificial streams, spas and swimming pools (where water is artificially supplied). The high water use hydrozone of the landscaped area includes the surface area of water features. Constructed wetlands used for on-site wastewater treatment, habitat protection or storm water best management practices not irrigated and used solely for water treatment or storm water retention are not water features and not subject to the water budget calculation.
27. "Water Shortage Emergency" means a condition existing within the City in which the City cannot satisfy the ordinary water demands and requirements of persons within the City without depleting the water supply of the City to the extent that insufficient water for human consumption, sanitation and fire protection would exist. A water shortage emergency includes both an immediate emergency, in which the City cannot meet current water needs within the City, as well as a threatened water shortage, in which the City determines that its supply cannot meet an increased future demand.
28. "Water user" means any user of water, including a water customer.
29. "Winter" means the water season that includes the months of October, November, December, January, February and March.
30. "WSCP" means the Water Shortage Contingency Plan adopted by City Council.



- A. The provisions of this chapter apply to all customers, water users and premises served by the Utility wherever situated.
- B. The provisions of this chapter do not apply to uses of water necessary to protect public health and safety or for essential government services such as police, fire and other similar emergency services.
- C. The provisions of this chapter do not apply to the use of Gray Water.
- D. The provisions of this chapter do not apply to the use of water by commercial nurseries and commercial growers to sustain plants, trees, shrubs, crops or other vegetation intended for commercial sale.
- E. The provisions of this chapter do not apply to use of water from private wells.
- F. This chapter solely intends to further the conservation of water. This chapter does not intend 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.

12.06.040      Procedures for Determination of Water Supply Shortage and Level Implementation

- A. Pursuant to Water Code Section 10632.1, the City must submit a water shortage assessment report to the California Department of Water Resources by July 1 of each year.
- B. The City will follow the written decision-making process defined in the WSCP to assess water supply reliability on an annual basis.
- C. City staff will determine if a water shortage exists based on the water shortage criteria and stages defined in the WSCP.
- D. In the event a water shortage exists pursuant to the WSCP, the City Manager will recommend to City Council to declare a shortage according to the defined water shortage levels.
- E. The City will inform the public of the shortage according to the Procedures and Protocols for Communication identified in 12.06.050 of this Chapter.
- F. When the City Manager determines that a sudden event has, or threatens to, significantly diminish the reliability or quality of the City's water supply, the City Manager may declare a catastrophic water supply shortage and impose whatever emergency water allocation or conservation actions deemed necessary, in the City Manager's professional judgment, to protect the reliability and quality of the City's water supply, until the emergency passes or the City takes other action.

12.06.050      Procedures and Protocols for Communication

Upon declaration of a Water Shortage Emergency, the City will inform all relevant stakeholders, such as customers, the public, interested parties and local, regional and state governments of the effective date of the water shortage response actions associated with the relevant stage according to the communication procedures identified in the City WSCP, including:

- A. Any current or predicted shortages as determined by the annual water supply and demand assessment.
- B. Any shortage response actions triggered or anticipated to be triggered by the annual water supply and demand assessment.
- C. Any other relevant communications.

#### 12.06.060 Permanent Water Conservation Requirements – Prohibition Against Waste

The following water conservation requirements are permanent and remain in effect at all times. The City considers violations of this section as waste and an unreasonable use of water:

- A. Washing down sidewalks, walkways, driveways, parking areas or other paved surfaces is prohibited, except as when required to alleviate safety or sanitary hazards and then only by use of a hand-held bucket or a pressure washer or hand-held hose equipped with a positive self-closing water shut-off device.
- B. Using water to wash or clean a vehicle, including but not limited to any automobile, truck, van, bus, motorcycle, boat or trailer is prohibited, except by use of a hand-held bucket or hand-held hose equipped with a positive self-closing device or water shut-off nozzle. This subsection does not apply to any commercial car washing facility.
- C. The use of water to clean, fill or maintain levels in decorative fountains, ponds, lakes or other similar aesthetic structures is prohibited unless such water is part of a re-circulating system. The only exception is a water feature listed in the National Register of Historic Places where water use is deemed necessary for integrity of the feature.
- D. It is prohibited to irrigate outdoor landscapes during or within forty-eight hours after measurable rainfall of one-fourth of one inch or more of rain.
- E. The irrigation with potable water of ornamental turf on public street medians is prohibited.
- F. The irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission and the Department of Housing and Community Development is prohibited.
- G. All leaks, breaks or other malfunctions in the water user's plumbing, irrigation or distribution system must be repaired within seventy-two hours of notification by the City, unless other arrangements are made with the City.



- H. Watering or irrigating of any lawn, landscape or other vegetated area in a manner that causes or allows excessive water flow or runoff from the property onto an adjoining sidewalk, driveway, street, alley gutter or ditch is prohibited.
- I. Food preparation establishments such as restaurants or cafes are prohibited from using non-water conserving dish wash pre-rinse spray valves.
- J. No installation of non-recirculating water systems in commercial car wash and laundry systems.
- K. No installation or operation of single pass cooling system.
- L. Commercial car wash system. Effective January 1, 2012, all commercial conveyor car wash systems must have installed operational re-circulating water systems or must have secured a waiver of this requirement from the City.

#### 12.06.070 Levels of Declared Water Supply Shortage

The City Manager has authorization to require or impose reductions in the use of water if such reductions are necessary to comply with Water Supply Shortage conditions as defined in the City WSCP.

The WSCP defines the shortage response actions that align with each Level of Water Supply Shortage and include, at a minimum, all of the following:

- A. Locally appropriate supply augmentation actions.
- B. Locally appropriate demand reduction actions to adequately respond to shortages.
- C. Locally appropriate operational changes.
- D. Additional, mandatory prohibitions against specific water use practices in addition to state-mandated prohibitions and appropriate to the local conditions.
- E. For each action, an estimate of the extent to which implementation of the action will reduce the gap between supplies and demand.
- F. Each elevated shortage level will include the elements of the previous shortage level(s), including the mandatory restrictions on water waste detailed in the WSCP. Each elevated shortage level is intended to be more restrictive than the previous level(s).
- G. As deemed necessary, the City may implement an allocation of water supply under a water supply emergency condition beyond WSCP defined actions when water supply conditions dictate necessity.

12.06.080 Hardship Waiver

- A. Undue and Disproportionate Hardship: If, due to unique circumstances, a specific requirement of this chapter would result in undue hardship to a person using water or to property upon which water is used disproportionate to the impacts to water users generally or to similar property of classes of water users, then the person may apply for a waiver to the requirements as provided in this section.
- B. Written Finding: The City may grant or conditionally grant the waiver only upon a written finding of the existence of facts demonstrating an undue hardship to a person using water or to property upon which water is used disproportionate to the impacts to water users generally or to similar property or classes of water use due to specific and unique circumstances of the user or the user's property.
- C. Application: Applicants must request a waiver on a form prescribed by the City.
- D. Supporting Documentation: Photographs, maps, drawings and other information, including a written statement of the applicant as required by the City, must accompany the application.
- E. Required Findings for Waiver: The City Manager, or their designee, may grant a waiver if the City Manager, or their designee, finds, based on the information provided in the application and supporting documents, or such additional information as requested, and on water use information for the property as shown by the records of the City or its Agent, all of 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 chapter would have a disproportionate impact on the property of use that exceeds the impacts to residents and businesses generally.
  - 3. That the authorizing of such waiver will not impose substantial detriment to adjacent properties, will not materially affect the ability of the City to effectuate the purpose of this chapter and will not be detrimental to the public interest.
  - 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.
- F. Approval Authority: The City Manager or their designee must act upon any completed application no later than ten business days after submittal and may approve, conditionally approve or deny the waiver. The City must promptly notify the applicant requesting the waiver in writing of any action taken. Unless specified otherwise at the time of waiver



approval, the waiver will apply to the subject property during the period of the mandatory water supply shortage condition. The decision of the City Manager will be final.

#### 12.06.090 Penalties, Violations, and Enforcement

**Penalties.** It shall be unlawful for any water user to fail to comply with any of the provisions of this chapter. The penalties set forth in this section shall be additional to those penalties provided in any other section of this code. The penalties for failure to comply with any of the prohibited use provisions of this chapter shall be as follows:

- A. **First Violation:** The City will issue a written warning by mail or posting (i.e., door hanger).
- B. **Second Violation:** A second violation within twelve months of a First Violation is punishable by a fine not to exceed one hundred dollars.
- C. **Third Violation:** A third violation within twelve) months of a Second Violation is punishable by a fine not to exceed two hundred and fifty dollars.
- D. **Fourth and Subsequent Violations:** A fourth and any subsequent violations within twelve months of a Third Violation is punishable by a fine not to exceed five hundred dollars for each violation.
  1. **Termination of Service:** In addition to any fines, the City may disconnect and/or terminate a customer's water service for repeated violation of mandatory restrictions in this Conservation Program.
  2. **Cost of Disconnecting Service:** A person or entity that violates this chapter is responsible for payment of the City's charges for disconnecting and/or reconnecting service. The person or entity must pay all fees in full prior to service restoration. Nonpayment of the penalties will be subject to the same remedies as nonpayment of basic water rates pursuant to the City's Water Rates, Rules and Regulations.
  3. **Separate Offenses:** Each day that a violation of this chapter occurs is a separate offense.
  4. **Notice and Hearing:**
    - a. The City will issue a Notice of Violation by mail or personal delivery at least ten business days before taking enforcement action. Such notice must describe the violation and the date by which the customer must take corrective action. A customer may appeal the Notice of Violation by submitting a written letter of appeal to the Hearing Officer no later than the close of business on the day before the date scheduled for enforcement action. If not satisfied with the Hearing Officer's decision, the customer may appeal the Hearing Officer's decision by filing a written notice of appeal with the Citizens Appeal Board within ten business days of the Hearing Officer's determination. Any Notice of Violation not timely appealed will be

final. Upon receipt of a timely appeal, the City will schedule a hearing on the appeal and mail written notice of the hearing date to the customer at least ten business days before the hearing date.

- b. Pending receipt of a written appeal or pending a hearing pursuant to an appeal, the City may take appropriate steps to prevent the unauthorized use of water as appropriate to the nature and extent of the violations and the current declared water Phase condition.

If any person fails or refuses to comply with this Chapter, the City Manager, or their designee, shall provide that person with written notice of the violation and an opportunity to correct the noncompliance. The City shall include the following in the written notice:

- A. Mail or post to the address of the violation, to the party billed for the water or to the Owner of the property, as appropriate.
- B. State the time, date and place of violation.
- C. State a general description of the violation.
- D. State the means to correct the violation.
- E. State a date by which correction is required.
- F. State the possible consequences of failing to correct the violation.

#### 12.06.100 Other Provisions

- A. Customer Water Conservation Reports: The City may, by written request, require a commercial, residential or industrial customer using twenty million or more gallons per year to submit a water conservation plan and to submit quarterly progress reports on such plan. The conservation plan must include recommendations for increased water savings, separation of uses including increased water recycling based on feasibility and the reports must include progress to date on implementation of such recommendations.
- B. Model Water Efficient Landscape Ordinance: This ordinance adopts the California Department of Water Resources Model Water Efficient Landscape Ordinance by reference and incorporates it as part of this chapter. The City provides the full text of the Model Water Efficient Landscape Ordinance on the City's website at [www.cityoffullerton.com](http://www.cityoffullerton.com) and as well as in the Office of the City Clerk..
- C. As deemed necessary, the City may implement an allocation of water supply under a water supply emergency condition, beyond WSCP defined actions, when water supply conditions dictate necessity. The City Manager is authorized to require or impose allocation of water in the use of water if such reductions are necessary to comply with Water Supply Shortage conditions as defined in the City WSCP.



- D. The City may provide water efficiency devices either directly or through supported programs.

SECTION 2. Exemption from California Environmental Quality Act. The City Council finds that Chapter 12.06 and actions taken hereafter pursuant to the Chapter are exempt from the provisions of the California Environmental Quality Act (CEQA) of 1970 as specific actions necessary to prevent or mitigate an emergency pursuant to Section 15307 of the CEQA Guidelines.

SECTION 3. Severability. If a court of competent jurisdiction finds any section, subsection, sentence, clause or phrase in Chapter 12.06 or the application thereof to any person or circumstances invalid, the validity of the remainder of the Ordinance or the application of such provision to other persons or circumstances shall not be affected. The City Council hereby declares that 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 is declared invalid.

SECTION 4. The City Clerk shall certify to the passage and adoption of this Ordinance and shall published the same in the manner required by law. This Ordinance shall become effective thirty days from and after its passage.

ADOPTED BY THE FULLERTON CITY COUNCIL ON JUNE 1, 2021.



Bruce Whitaker  
Mayor

ATTEST:



\_\_\_\_\_  
Lucinda Williams, MMC  
City Clerk



\_\_\_\_\_  
Date

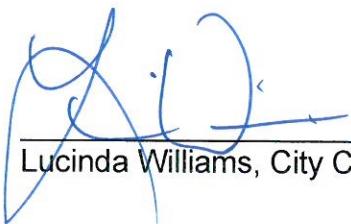
City of Fullerton  
ORDINANCE CERTIFICATION

STATE OF CALIFORNIA   )  
COUNTY OF ORANGE    ) SS  
CITY OF FULLERTON     )

ORDINANCE NO. 3299

I, Lucinda Williams, City Clerk and ex-officio Clerk of the City Council of the City of Fullerton, California, hereby certifies that the whole number of the members of the City Council of the City of Fullerton is five; and that the above and foregoing Ordinance No. 3299 had first reading by title only, introduction and further reading waived at the May 18, 2021 City Council regular meeting and was adopted at the June 1, 2021 City Council regular meeting by the following vote:

COUNCIL MEMBER AYES:	Whitaker, Jung, Silva, Zahra
COUNCIL MEMBER NOES:	None
COUNCIL MEMBER ABSTAINED:	None
COUNCIL MEMBER ABSENT:	Dunlap

  
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Lucinda Williams, City Clerk