

# **EL TORO WATER DISTRICT**

## **WATER SHORTAGE CONTINGENCY RESPONSE ORDINANCE 2022 – 1**

**(effective March 24, 2022)**

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# ORDINANCE NO. 2022-1

## AN ORDINANCE OF THE BOARD OF DIRECTORS OF EL TORO WATER DISTRICT ESTABLISHING A WATER CONSERVATION & WATER SUPPLY SHORTAGE PROGRAM FOR USERS OF POTABLE WATER PROVIDED BY THE DISTRICT

### Section I. Title

El Toro Water District Water Shortage Contingency Response Ordinance ("Ordinance No. 2022-1")

### Section II. Findings, Determinations and Authority

1. **Resolution No. 22-2-2** - The recitals, finding and determinations set forth in Resolution No. 22-2-2 are fully incorporated herein as though set forth in full.
2. **A reliable minimum supply of potable water is essential** to the public health, safety and welfare of the people and economy of Southern California.
3. **Southern California is a semi-arid region, largely dependent on imported water** supplies from Northern California and the Colorado River along with a limited amount of local water supplies. Population growth, drought, climate change, environmental concerns, government policy changes, restrictions on pumping and other factors in our region, in other parts of the State and in the western U.S. make Southern California highly susceptible to water supply reliability issues. Southern California experienced significant dry year conditions in 2013-2017, which lead local water agencies, including El Toro Water District (District) to declare water shortage conditions that triggered demand reduction actions.
4. **Careful water management requires active permanent water conservation requirements** not only in times of drought but at all times. It is essential to ensure a reliable minimum supply of water to meet current and future water supply needs.
5. **California Constitution Article X, Section 2 and California Water Code Section 100** provide that because of conditions prevailing in the state of California, it is the declared policy of the State that the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable and that the waste and unreasonable use or methods of water use be prevented, and that the conservation of such water is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.
6. **California Water Code Section 10632** had significant updates related to water shortage contingency planning following the modification of the Urban Water Management Planning Act in 2018 that mandate new elements to Urban Water Management Plans and Water Shortage Contingency Plans. These elements include an annual drought risk assessment, State Water Shortage Levels, and statewide water use prohibitions.

7. **The Municipal Water District of Orange County (MWDOC) has adopted a 2020 Urban Water Management Plan and Water Shortage Contingency Plan documents that include water conservation** and additional demand reduction actions in times of shortage as a necessary and effective component of MWDOC's programs to provide a reliable supply of water to meet the needs of MWDOC's 28 member agencies, including the District, with which this Ordinance is consistent.
8. **The imported water supplies in the District and MWDOC are subject to the Water Shortage Allocations** determined by the Metropolitan Water District of Southern California, and subsequently MWDOC will be required to curtail deliveries of imported water based on the Metropolitan Water District of Southern California's Water Shortage Allocation Plan, which will be triggered in a state of shortage.
9. **As of July 2021, both MWDOC and the District are required to 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 (DWR). Annually, by July 1<sup>st</sup> of each year, beginning the year following the adoption of the 2020 Urban Water Management Plan, MWDOC and the District are required to monitor, report, and if declared a drought emergency according to their adopted Water Shortage Contingency Plans, then notify the Department of Water Resources, in order to comply with the California Water Code 10632.1 reporting requirements.
10. **California Water Code Sections 350, et. seq.**, sets forth the determination and notification procedures for water suppliers seeking to declare a water shortage or a water emergency.
11. **California Water Code Section 353** specifies that a governing body must adopt regulations or restrictions on the delivery and consumption of water within its service area when it declares the existence of an emergency condition.
12. **California Water Code Section 356** allows for the adoption of regulations and restrictions that include discontinuance of service as an enforcement option where a water shortage emergency condition has been declared.
13. **California Water Code Section 370, et. seq.**, authorizes water suppliers to adopt water allocation programs for water users and allocation-based water conservation pricing.
14. **California Water Code Section 375** authorizes water suppliers to adopt and enforce a comprehensive water conservation program to reduce water consumption and conserve supplies.
15. **California Water Code Section 375 et seq.**, authorizes public water suppliers to establish by Ordinance, the maximum levels of water to be used by customers under emergency supply conditions (which give rise to the utilization of the Drought Factor), and declaring that the customer's excess usage, to be a violation of this Ordinance.
16. **California Water Code Sections 13550 and 13551** declare a statewide policy that the use of potable domestic water for irrigation purposes when reclaimed (recycled) water is available constitutes a waste or unreasonable use of water within the meaning of the State Constitution.

17. **The District's Rules and Regulations** require that future developments utilize reclaimed (recycled) water wherever economically and technically feasible within the boundaries of the District in order to conserve potable water for the purposes of human consumption and fire protection.
18. **The adoption and enforcement of a Water Shortage Contingency Response Ordinance is necessary to manage the District's potable water supply** short- and long-term and to minimize and/or avoid the effects of drought and water shortage within the District. Such a program is essential to ensure a reliable and sustainable minimum supply of water for public health, safety and welfare.
19. **California Government Code Section 53069.4** authorizes a local public agency to make a violation of an Ordinance, subject to an "administrative fine or penalty". "Penalty", as used throughout this Ordinance is an "Administrative Penalty", authorized pursuant to this section.

### **Section III. Declaration of Purpose and Intent**

1. To minimize or avoid the effect and hardship of potential shortages of **potable water** to the greatest extent possible, this Ordinance establishes means to implement the District's Water Shortage Contingency Plan designed to:
  - a. Reduce water consumption (demand) in the long-term through permanent conservation measures and short-term through demand reduction actions in times of drought.
  - b. Enable effective potable water supply planning.
  - c. Assure reasonable and beneficial use of potable water.
  - d. Prevent waste of potable water and maximize efficient use in the District.
2. This Ordinance, in conjunction with the District's Water Budget Based Tiered Conservation Rate Structure (which is subject to the provisions of Proposition 218 and is incorporated into the Cost of Service Rate Study), establishes:
  - a. **Permanent Water Conservation Requirements** are designed to alter behaviors related to potable water-use efficiency during non-shortage conditions
  - b. **Six levels of potential response to escalating water supply shortages** which the El Toro Water District Board (Board) may implement during times of declared water shortage or water emergency. The six levels of response consist of increasing water use restrictions, demand reduction actions, and the possible imposition of water supply shortage allocations through the use of a "drought factor" in conjunction with the District's Water Budget Based Tiered Conservation Rate Structure. This is a component of the water budget calculation that is an integral part of the District's Water Budget Based Tiered Conservation Rate Structure, which modifies (reduces) the indoor and/or outdoor budget to further encourage conservation in times of water supply shortage emergencies and Administrative Penalties imposed on designated customer categories who exceed their revised water budget.

## Section IV. Definitions

### 1. General

- a. **"The District"** means El Toro Water District.
- b. **"The Board"** means the El Toro Water District Board of Directors.
- c. **"Person"** means any person or persons, corporation, public or private entity, governmental agency or institution, or any other user of water provided by the District.
- d. **"Potable Water"** means water that is suitable for drinking.
- e. **"Recycled Water"** means the reclamation and reuse of non-potable water and/or wastewater for beneficial use, such as irrigation. Also known as "Reclaimed Water."
- f. **"Water Waste"** refers to uses of water that are limited or prohibited under the Ordinance because they exceed necessary or intended use and could reasonably be prevented, such as runoff from outdoor watering.
- g. **"Billing Unit"** is equal to 100 cubic feet (1 CCF) of water, which is 748 gallons. Water use is measured in units of 100-cubic-feet and multiplied by applicable water usage rates for billing. Also known as a "Unit of Water."
- h. **"Undue Hardship"** is a unique circumstance in which a requirement of the Ordinance would result in a disproportionate impact on a water user or property upon which water is used compared to the impact on water users generally or similar properties or classes of water use.
- i. **"Safety and Sanitary Hazard"** is one which presents an immediate and imminent threat to human health (injury).
- j. **"Water Budget Based Tiered Conservation Rate Structure"** ("Tiered Conservation Rate Structure") is a rate structure which provides "water budgets" to each customer based on efficient indoor and outdoor need. Water used in excess of the combined indoor and outdoor budget is billed at a progressively higher rate which is designed to recover the increased cost associated with providing such water and provides a clear indicator regarding inefficient use of potable water. The increased rates and potential Administrative Penalties for utilization of water in excess of budgeted amounts provide financial incentive to stay within assigned budgets and to comply with Permanent Mandatory Water Conservation Measures.
- k. **"Water Supply Shortage Emergency"** means a condition existing within the State, Region and/or the District in which the ordinary water demands and requirements of persons within the District cannot be satisfied without depleting the water supply of the District to the extent that there would be insufficient water for human consumption, sanitation, and fire protection. A water shortage emergency includes both an immediate emergency, in which the District is unable to meet current water needs of persons within the District, as well as a threatened water shortage, in which the District determines that its future supply of water may not meet an anticipated future demand.

- l. **"Administrative Penalty"** means a financial penalty as authorized by Government Code Section 53069.4 as a result of any person or entity violating the provisions of this Ordinance.
- m. **"MWDOC"** means the Municipal Water District of Orange County.
- n. **"DWR"** means the California Department of Water Resources.
- o. **"UWMP"** means Urban Water Management Plan as required by DWR to satisfy the UWMP Act and subsequent California Water Code Sections 10610 through 10656.
- p. **"WSCP"** means Water Shortage Contingency Plan as required by California Water Code Section 10632.
- q. **"Demand Reduction Actions"** refers to education, incentive or regulatory actions taken by the District to reduce water demand in its service area during times of shortage. Demand reduction actions are pre-planned to prepare for a water shortage were presented in Table 8-2 of the District's WSCP.
- r. **"Annual Water Supply and Demand Assessment"** refers to a determination of the near-term outlook for supplies and demands and how a perceived shortage may relate to the Shortage Level response actions as defined in the WSCP in the current calendar year.
- s. **"Drought Factor"** refers to a variable used in the calculation of both the indoor and outdoor District potable water budget allocations. Normally set at 100%, during emergencies/water supply shortage conditions, the District may use the Drought Factor to reduce water budgets and further encourage conservation.

## 2. Irrigation

- a. **"Irrigation Controller"** is the part of an automated irrigation system that instructs the valves to open and close to start or stop the flow of water.
  - 1. **"Sensor-based irrigation controller"** operates based on input from a combination of sensors (rain, solar, soil moisture) installed in or around the landscaped area.
  - 2. **"Weather-based irrigation controller"** operates automatically based on evapo-transpiration rates and historic or real-time weather data.
- b. **"Irrigation System"** refers to a manual or automated watering system consisting of pipes, hoses, spray heads and/or sprinkler devices or valves. Also known as a "Landscape Irrigation System."
- c. **"Positive Self-Closing Shut-Off Hose Nozzle"** refers to a water-efficient hose nozzle for residential or commercial hoses that users must press or release to start or stop the flow of water. Also known as an "Automatic Shut-Off Nozzle."
- d. **"Valves"** refer to the part of an irrigation system that opens and closes manually or electronically to start or stop the flow of water.

### 3. Other

- a. **"Pre-Rinse Kitchen Spray Valves"** refer to highly water-efficient sprayers that commercial kitchens use to rinse dishes in the sink before washing and for other preliminary cleaning purposes.
- b. **"Single-Pass Cooling System"** refers to an air conditioning, refrigeration or other cooling system that removes heat by transferring it to a supply of clean water and dumping the water down the drain after a single use. This type of cooling system is prohibited given it is extremely water-inefficient compared to systems that recirculate the water.

## Section V. Application of Ordinance

1. **The provisions of this Ordinance apply to any person or entity using potable water provided by the District.** This includes individuals, persons, corporations, public or private entities, governmental agencies or institutions, or any other users of District water.
2. **In addition, the provisions of this Ordinance do not apply to the following:**
  - a. **Water use which is immediately necessary to protect public health and safety** or for essential government services, such as police, fire and similar services.
  - b. **Recycled water use for irrigation.** Use of recycled water requires a permit that has specific use restrictions, many of which focus on water efficiency. Given such permits and the interest in promoting the use of recycled water as a means to preserve potable, recycled water is exempt from all requirements of this Ordinance.
  - c. **Water used by nurseries and growers** to sustain plants, trees, shrubs, crops, compost or other landscape vegetation material intended for distribution or commercial sale.
3. **This Ordinance is intended solely to further the beneficial use and conservation of potable water.** It is not intended to implement any provision of federal, state or local statutes, ordinances or regulations relating to protection of water quality or control of drainage or runoff. Refer to the local jurisdiction or Regional Water Quality Control Board for information on storm water ordinances or management plans.

## Section VI. Permanent Water Conservation Requirements

The District has adopted a Water Shortage Contingency Plan (WSCP) which details demand reduction actions that the District may take to restrict or shall prohibit its customers' consumption of water, including baseline conservation measures to be taken in times of normal water supply. The following Permanent Water Conservation Requirements for potable water, in support of demand reduction actions as called for in the Water Code and WSCP, are permanent and in effect at all times. Violations of this Section constitute waste and an unreasonable use of water.

## 1. General Restrictions — Residential, Irrigation, Commercial and Public Customers

### a. Limits on Outside Watering Hours

1. **Watering or irrigating is prohibited any day of the week between 9:00 a.m. and 6:00 p.m.**
2. The week includes weekdays and weekends, seven (7) days.
3. This applies to lawns, landscaping and all other vegetated areas.
4. The following are **exempt** from this restriction:
  - a. Watering with a hand-held bucket or similar container.
  - b. Watering with a hand-held hose equipped with a positive self-closing shut off hose nozzle.
  - c. Adjusting or repairing an irrigation system for very short periods of time.
  - d. Watering with a drip irrigation system.
  - e. Watering to establish new landscaping within 30 days of completion of installation.

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

**c. No Irrigation of Turf on Public Medians:** Watering or irrigating of any lawn or turf on street medians with potable water is prohibited.

**d. No Irrigation During or After Rainfall:** Watering or irrigating any outdoor landscapes with potable water during and within forty-eight (48) hours following at least one quarter inch (1/4") of rainfall within a twenty-four (24) hour period is prohibited.

### e. Obligation to Fix Leaks, Breaks or Malfunctions in lines, fixtures or facilities

1. Excessive use, loss or escape of water through breaks, leaks or malfunctions in the water user's plumbing or distribution system:
  - a. Is prohibited for any period of time after such water waste should have reasonably been discovered and corrected.
  - b. Must be corrected in **no more than five (5) days of District notification.**

#### **f. No Hosing or Washing Down Hard or Paved Surfaces**

1. Washing or hosing down hard or paved surfaces with potable water, including but not limited to sidewalks, walkways, driveways, parking areas, tennis courts, patios or alleys is prohibited.
2. When it is necessary to hose or wash down hard or paved surfaces to alleviate safety or sanitary hazards, the following may be used:
  - a. Hand-held bucket or similar container.
  - b. Hand-held hose equipped with a positive self-closing shut off hose nozzle.
  - c. Low-volume high-pressure cleaning machine equipped to recycle used water.

#### **g. No Hosing or Washing Down Vehicles**

1. Using potable water to hose or wash down a motorized or non- motorized vehicle, including but not limited to automobiles, trucks, vans, buses, motorcycles, boats or trailers is prohibited.
2. The following are exempt from this restriction:
  - a. Use of a hand-held bucket or similar container.
  - b. Use of a hand-held hose equipped with a positive self-closing shut off hose nozzle.
  - c. Commercial car washing at facilities using recycled or recirculating water.

**h. Re-Circulating Water Required for Decorative Water Fountains and Decorative Water Features** Operating a decorative water fountain or other decorative water feature that does not use re-circulated water is prohibited.

**i. Swimming Pools and Spa Covers:** Property owners who have a swimming pool or spa are encouraged to cover the facilities to minimize water loss due to evaporation.

### **2. Commercial Food-Serving & Lodging Requirements**

**a. Drinking Water Served Only Upon Request.** Eating or drinking establishments, including but not limited to restaurants, hotels, cafes, bars or other public places where food or drinks are sold, or served or offered for sale, are prohibited from providing drinking water to any person unless requested.

**b. Commercial Lodging Establishments Must Provide Option Not Launder Towels/Linens Daily.** Hotels, motels and other commercial lodging establishments must provide guests the option of not having their used towels and linens laundered. Lodging establishments must prominently display notice of this option in each room and/or bathroom, using clear and easily understood language.

### 3. Commercial Kitchen Requirements

- a. **Water-Efficient Pre-Rinse Kitchen Spray Valves.** Food preparation establishments, such as restaurants, cafes and hotels, are prohibited from using non-water efficient pre-rinse commercial dishwashing kitchen spray valves.

### 4. Commercial Water Recirculation Requirements

- a. **Car Wash System Requirements:** All **new** commercial car-wash systems must install re-circulating water systems.
- b. **No Single-Pass Cooling Systems:** Buildings requesting **new** water service or being **remodeled** are prohibited from installing single-pass systems.

### 5. Recycled Water Construction Site Requirements

- a. **Recycled or non-potable water** must be used, when available.
- b. **No potable water may be used for soil compaction or dust control** where there is a reasonably-available source of recycled or non-potable water approved by the Department of Public Health and appropriate for such use.
- c. **Water hoses shall be equipped with automatic shut-off nozzles**, given such devices are available for the size and type of hoses in use.

### 6. Automated Irrigation Control System Requirements for Commercial, Multi-Family and Community Development/Redevelopment Projects

**New Commercial, Multi-Family and Community development and/or redevelopment projects that include landscaped open space, park and recreation areas** will be required to install a sensor-based or weather-based irrigation controller.

- 7. **Water Waste and Unreasonable Water Use Prohibited.** The waste or unreasonable use or unreasonable method of use of water by any person shall be prohibited at all times.
- 8. **Public Health and Safety.** These regulations shall not be construed to limit water use which is immediately necessary to protect public health and safety for essential government services, such as police, fire and similar services.

## Section VII. Standard Water Shortage Levels

The District's Water Shortage Levels are aligned with the six standard State Water Shortage Levels and as defined in MWDOC's and the District's Water Shortage Contingency Plans to comply with California Water Code Section 10632 (a)(3). The shortage levels represent shortages from normal reliability as determined in the Annual Water Supply and Demand Assessment, corresponding to progressive ranges of up to 10, 20, 30, 40,50, and greater than 50 percent shortages. DWR Table 8-1 from the District's Water Shortage Contingency Plan defines the conditions that trigger each Shortage Level and the shortage response actions the District can take. WSCP has more specific demand reduction actions defined by Shortage Level.

**DWR Submittal Table 8-1  
Water Shortage Contingency Plan Levels**

Shortage Level	Percent Shortage Range	Shortage Response Actions
0	0% (Normal)	A Level 0 Water Supply Shortage – Condition exists when the no current supply reductions are anticipated. The District proceeds with planned water efficiency best practices to support consumer demand reduction in line with state mandated requirements and local District goals for water supply reliability. Permanent water conservation requirements are in place as stipulated in the District’s Water Shortage Contingency Response Ordinance.
1	Up to 10%	A Level 1 Water Supply Shortage – Condition exists when the Board, at its sole discretion, determines and declares that due to drought or other supply reductions, a consumer demand reduction of up to 10% is necessary to make more efficient use of water and respond to existing water conditions. Upon the declaration of a Water Aware condition, the District shall implement the mandatory Level 1 conservation measures identified in this ordinance. The type of event that may prompt the District to declare a Level 1 Water Supply Shortage may include, among other factors, a finding that its wholesale water provider calls for extraordinary water conservation.
2	11% to 20%	A Level 2 Water Supply Shortage – Condition exists when the Board, at its sole discretion, determines and declares that due to drought or other supply reductions, a consumer demand reduction of up to 20% is necessary to make more efficient use of water and respond to existing water conditions. Upon declaration of a Level 2 Water Supply Shortage condition, the District shall implement the mandatory Level 2 conservation measures identified in this Ordinance.
3	21% to 30%	A Level 3 Water Supply Shortage – Condition exists when the Board holds a Public Hearing, during which, at its sole discretion, determines and declares a water shortage emergency condition pursuant to California Water Code Section 350 and notifies its residents and businesses that up to 30% consumer demand reduction is required to ensure sufficient supplies for human consumption, sanitation and fire protection. The District must declare a Water Supply Shortage Emergency in the manner and on the grounds provided in California Water Code Section 350.

**DWR Submittal Table 8-1  
Water Shortage Contingency Plan Levels**

Shortage Level	Percent Shortage Range	Shortage Response Actions
4	31% to 40%	A Level 4 Water Supply Shortage - Condition exists when the Board holds a Public Hearing, during which, at its sole discretion, determines and declares a water shortage emergency condition pursuant to California Water Code Section 350 and notifies its residents and businesses that up to 40% consumer demand reduction is required to ensure sufficient supplies for human consumption, sanitation and fire protection. The District must declare a Water Supply Shortage Emergency in the manner and on the grounds provided in California Water Code Section 350.
5	41% to 50%	A Level 5 Water Supply Shortage – Condition exists when the Board holds a Public Hearing, during which, at its sole discretion, determines and declares a water shortage emergency condition pursuant to California Water Code Section 350 and notifies its residents and businesses that up to 50% or more consumer demand reduction is required to ensure sufficient supplies for human consumption, sanitation and fire protection. The District must declare a Water Supply Shortage Emergency in the manner and on the grounds provided in California Water Code Section 350.
6	>50%	A Level 6 Water Supply Shortage – Condition exists when the Board holds a Public Hearing, during which, at its sole discretion, determines and declares a water shortage emergency condition pursuant to California Water Code Section 350 and notifies its residents and businesses that greater than 50% or more consumer demand reduction is required to ensure sufficient supplies for human consumption, sanitation and fire protection. The District must declare a Water Supply Shortage Emergency in the manner and on the grounds provided in California Water Code Section 350.
<p>NOTES: The District's Water Shortage Contingency Plan and Table 8-1 only apply to the District's potable water supply.</p>		

The District’s Water Shortage Contingency Plan defines the shortage response actions that align with each Level of Water Supply Shortage, along with an estimate of the extent to which the gap between supplies and demand will be reduced.

- a. Locally appropriate supply augmentation actions.
- b. Locally appropriate demand reduction actions to respond to shortages.

- c. Locally appropriate operational changes.
- d. Additional mandatory prohibitions against specific water use practices, in addition to state-mandated prohibitions, as deemed necessary by the District.

Each elevated shortage level will include the elements of the previous shortage level(s) and permanent mandatory water conservation measures as defined in this Ordinance and the District's Water Shortage Contingency Plan. When conditions dictate necessary, an allocation of water supply under a water supply emergency condition that requires actions beyond those defined in the District's Water Shortage Contingency Plan may be required to be implemented.

## **Section VIII. Other Provisions**

### **1. Customer Water Conservation Plans:**

- a. **Customers with high annual water usage.** During Level 1 through Level 6 Water Shortages or Emergencies, the District Board of Directors, at its sole discretion and by written request, may require residential, irrigation, commercial and/or public customers using **ten thousand (10,000) or more billing units per year** to submit a Water Conservation Plan to the District and to submit quarterly progress reports on such plan. The conservation plan must make recommendations for increased water savings through on-site demand reduction actions, including increased use of recycled water or other sources of supply based on feasibility. Quarterly progress reports must include status on implementation of recommendations.

### **2. Recycled Water To Replace Potable Water**

- a. **Future Developments.** When available, the District requires the use of recycled water in future developments.
- b. **New Water Service:** Prior to the connection of any new water service, the District will determine whether recycled water is appropriate and available to meet the requirements of the new service request. Recycled water must be utilized to the extent feasible, as determined by the District.
- c. **Transition from Potable Water:** The District may prohibit the use of potable water in certain instances if the District determines that a specified use for potable water could be achieved with recycled water as a cost-effective alternative and the customer is given a reasonable time to make the conversion, as determined by the District's General Manager.

## **Section IX. Declaration & Notification of Water Supply Shortages or Emergencies**

- 1. **Declaration of a Level 1 through Level 6 Water Supply Shortage or Emergency:** The District Board of Directors may declare a Level 1 through Level 6 Water Supply Shortage Level or Emergency in accordance with the procedures specified in Water Code Sections 351 and 352 (Public Hearing, Notice and Publication). Thereafter, penalties and violations under Section XI apply.

## 2. Notification of Declared Water Supply Shortages Emergency

The District must publish a copy of the water shortage/emergency resolution in a newspaper used for the publication of official notices within the jurisdiction of the District within fifteen (15) days of the date that a Water Supply Shortage or Emergency is declared.

## 3. Authorization of Adjusting the Drought Factor

During a Level 3, 4, 5 or 6 Water Shortage Emergency, the Board may authorize the adjustment of an indoor and/or outdoor drought factor that will reduce the indoor and/or outdoor water budget. This adjustment may impact the customer where water use is above the water budget allocation, which leads to entering into higher tiers on an accelerated basis. The additional amount paid in higher tiers, as a result of a reduction in indoor and/or outdoor budgets, is deemed an Administrative Penalty, authorized pursuant to California Government Code Section 53069.4. Refer to the WSCP, Appendix E.

## 4. Authorization of a Water Shortage Rate Surcharge

During a Level 3, 4, 5 or 6 Water Shortage Emergency, any water customer subject to water budgets pursuant to the District's Tiered Conservation Rate Structure who willfully use water in excess of their combined Tier 1 and Tier II water budgets shall be in violation of this Ordinance and, upon Board authorization and approval will be subject to a Water Shortage Rate Surcharge in the range of \$2.00 to \$10.00 as determined by the Board by minute order (motion) or Resolution at an open and public meeting, for each ccf of water used in excess of their combined Tier I and Tier II budget.

## Section X. Hardship Waiver

1. **Undue and Disproportionate Hardship:** If, due to unique circumstances, a specific requirement of the Ordinance would result in undue hardship to a person using water or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property or classes of water users, then the person may apply for a waiver to the requirements as provided in this section.
2. **Written Finding:** The waiver may be granted or conditionally granted only upon a written finding of the existence of facts demonstrating an undue hardship.
  - a. **Application for a Waiver:** Application for a waiver must be on a form prescribed by the District.
  - b. **Supporting Documentation:** The application must be accompanied by photographs, maps, drawings, and other information, including a written statement of the applicant.
  - c. **Required Findings for Waiver:** Based on the information and supporting documents provided in the application, additional information provided as requested, and water use information for the property as shown by the records of the District, the District **General Manager** in making the waiver determination will take into consideration the following:

1. That the waiver does not constitute a grant of special privilege inconsistent with the limitations upon other residents and businesses;
2. That because of special circumstances applicable to the property or its use, the strict application of this Ordinance would have a disproportionate impact on the property or use that exceeds the impacts to residents and businesses generally;
3. That the authorizing of such waiver will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the District to effectuate the purpose of this Ordinance and will not be detrimental to the public interest; and
4. That the condition or situation of the subject property or the intended use of the property for which the waiver is sought is not common, recurrent or general in nature.

#### **d. Approval Authority**

1. The District General Manager or his designee(s) must act upon any completed **Application for a Waiver** no later than ten (10) days after receipt by the District.
2. The General **Manager or his designee(s) may approve, conditionally approve, or deny the waiver** and the decision will be final.
3. The applicant requesting the waiver must be promptly notified in writing of any action taken. Unless specified otherwise, at the time a waiver is approved, it will apply to the subject property for the duration of the water supply shortage or emergency.

### **Section XI. Non-Compliance**

In order to ensure compliance with State reporting requirements and customer compliance, the District will collect, track, and analyze relevant data per the procedures defined in the District's Water Shortage Contingency Plan.

1. **Non-Compliance with Level 0 Permanent Water Conservation Requirements and Level 1 Water Shortage Demand Reduction Actions:** The District will issue a written warning and provide information regarding the necessity to comply with all Permanent Water Conservation Requirements.
2. **Non-Compliance with Level 2, Level 3, Level 4, Level 5, and Level 6 Permanent Water Conservation Requirements and Demand Reduction Actions.**

**a. Non-Compliance Charges:** The following will apply to persons or entities failing to comply with any provision of the Ordinance for Level 2, Level 3, Level 4, Level 5, and Level 6 permanent water conservation requirements and demand reduction actions:

1. **First Instance of Non-Compliance:** The District will issue a **written warning** and send it along with an explanation of the violation.
2. **Second Instance of Non-Compliance:** A second instance of noncompliance with the Ordinance within the preceding twelve (12) calendar months is punishable by a non-compliance charge on the water bill not to exceed **two hundred and fifty dollars (\$250)**.

**3. Third Instance of Non-Compliance:** A third instance of non-compliance with the Ordinance within the preceding twelve (12) calendar months is punishable by a non-compliance charge on the water bill not to exceed **five hundred dollars (\$500)**.

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

**1. Water Flow Restrictor Device.** In addition to any non-compliance charges, the District may install a water flow restrictor device. If the District determines to install a water flow restrictor, installation of the flow restrictor would follow written notice of intent to the customer and would be in place for a minimum of forty-eight (48) hours.

**2. Termination of Service:** In addition to any non-compliance charges and the installation of a water flow restrictor, the District may disconnect and/or terminate a customer's water service, pursuant to Water Code Section 356.

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

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

b. The charge for installing and/or removing any flow restricting device must be paid to the District before the device is removed.

c. Nonpayment will be subject to the same remedies as nonpayment of basic water rate.

**c. Misdemeanor:** Pursuant to Water Code Section 377, any instance of noncompliance with the Ordinance may be prosecuted as a misdemeanor punishable by imprisonment in the county jail for not more than thirty (30) days or by a fine not exceeding one thousand dollars (\$1,000) or by both.

**3. Separate Offenses:** Each day that a person or entity is non-compliant with the Ordinance is a separate offense.

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

a. The District will issue a **Notice of Non-Compliance** by mail or personal delivery before taking enforcement action as defined in the WSCP. The notice will describe the violation and, if applicable, the date by which corrective action must be taken.

**b. A customer may appeal the Notice of Non-Compliance** by filing a written Notice of Appeal with the District no later than the close of business on the 10<sup>th</sup> day following receipt of the enforcement action. A customer appeal shall state the grounds for the appeal.

**1. Any Notice of Non-Compliance not timely appealed will be final.**

2. Upon receipt of a timely appeal, **the District will schedule a hearing on the appeal** and mail written notice of the hearing date to the customer at least ten (10) days before the hearing.
3. The District General Manager or his designee(s) will hear the appeal and issue a written **Notification of Decision** within ten (10) days of the hearing.
- c. Pending receipt of a written appeal or pending a hearing pursuant to an appeal, the District **may take appropriate steps to prevent the unauthorized use of water** given the nature and extent of the violations and the current declared water shortage level condition, including restricting the level of water use until the appeal is heard.
- d. Except for violations of this Ordinance subject to excessive water use penalties, if any person fails or refuses to comply with this Ordinance, the District shall provide that person with written notice of the Non-Compliance and opportunity to correct the noncompliance. The written notice shall:
  1. Be posted or presented at the site of the Non-Compliance;
  2. State the time, date, and place of the Non-Compliance;
  3. State a general description of the Non-Compliance;
  4. State the means to correct the Non-Compliance;
  5. State a date by which the correction is required; and
  6. State the possible consequences of failing to correct the Non-Compliance.

## **Section XII. Administrative Penalty Provisions**

1. **Administrative Penalty.** Pursuant to the authority provided for in Government Code Section 53069.4, the District finds, adopts and determines that all penalties provided for in this Ordinance No. 2022-1, as a result of any person or entity violating various provisions set forth herein shall constitute an Administrative Penalty.
2. **Notice and Due Process.** Upon the declaration of a Water Supply Shortage or Emergency and publication of the notice required herein, proper notice shall be deemed to have been given to each and every person and/or entity supplied water within the District, and the applicable water shortage.
3. **Collection of Penalties.** Any penalty imposed pursuant to this Ordinance may be collected on a customer's water bill. Any penalty shall be applicable to water used in violation of this Ordinance during the first complete billing cycle after the declaration of the applicable water shortage level.
4. **Notice of Violation.** The receipt of a water bill with any applicable penalties shall serve as notice of violation of this Ordinance.
5. **Appeal Procedures.** Any customer who wishes to appeal the imposition of an Administrative Penalty imposed by the District shall comply with the following procedures:
6. **Appeal Request.** An Appeal Request form shall be submitted to the District's Customer Service Department.

- (a) Appeal Request forms may be obtained at the District's Main Office or downloaded from the District's website at [www.etwd.com](http://www.etwd.com).
- (b) An Appeal Request form shall be received by the District no later than thirty (30) calendar days from the date that the Appellant's water bill for the four-week period in which the penalty or penalties were imposed is due.
- (c) Additional Documentation. Additional documentation may be requested at the discretion of the District. Such documentation may include, but is not limited to, school records, driver's licenses, business licenses, lease agreements.
- (d) Site Survey. After an Appeal Request form has been received, a site survey may be required by District staff to verify the irrigated square footage of the property where the water was delivered. The site survey will be at no charge to the person and will require the person who submitted the Appeal Request form to be present.
- (e) District Response. A response to an Appeal Request shall be provided by the District within thirty calendar days from receipt of the Appeal Request form.
- (f) Review of Denial of Appeal Request. If an Appeal Request is denied, the Appeal Request form may be resubmitted by the customer for review by the District's General Manager. The Decision by the District's General Manager shall be final.

**7. Use of Penalty Funds Collected.** The Board of Directors hereby declares its intent to use penalty funds collected to pay any penalties/charges that may be imposed by the State and/or wholesale water provider of the District for exceeding its baseline water budget allocation and in furtherance of conservation efforts and/or acquisition of supplemental water supplies.

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

**Section XIV. Effective Date of Ordinance:** This Ordinance shall be effective immediately upon adoption.

ADOPTED, SIGNED, AND APPROVED by the following vote this 24th day of March, 2022.

EL TORO WATER DISTRICT



Kathryn Freshley, President  
El Toro Water District and the  
Board of Directors thereof

ATTEST:



Dennis Cafferty, General Manager/Secretary  
El Toro Water District and the  
Board of Directors thereof