

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN JUAN
CAPISTRANO, CALIFORNIA, ESTABLISHING CHAPTER 12 OF TITLE
6 OF THE SAN JUAN CAPISTRANO MUNICIPAL CODE PERTAINING
TO WATER CONSERVATION.**

The City Council of the City of San Juan Capistrano does ordain as follows:

SECTION 1: Authority. This ordinance is enacted pursuant to Section 375 of the California Water Code, and Sections 37100 and 38742 of the California Government Code.

SECTION 2: Findings.

- A. The protection, conservation, and management of local and imported water supplies are 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 provision 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.
- B. 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.
- C. Outdoor water use is a primary source of urban runoff, which flows onto the streets, through storm drains, to the creeks and beaches. It is therefore in the public interest to promote practices that increase water use efficiency, reduce or eliminate runoff, and further support the regulations of Title 8, Chapter 14, of the Municipal Code, Water Quality Regulations, and related Best Management Practices. If there are conflicts between this ordinance and said Water Quality Regulations, the more restrictive shall apply.
- D. Contamination, drought, or failure of the water system infrastructure may lead to a potable water shortage emergency in the City's water supplies.
- E. In 1994, The City Council acting as the Board of Directors of the Capistrano Valley Water District voluntarily signed a Memorandum of Understanding with the California Urban Water Conservation Council, agreeing to undertake cost-effective Water Use Efficiency Best Management Practices (BMPs). One such Water Use Efficiency BMP is the adoption of a year-round water waste prohibition in the form of an ordinance, in addition to existing water shortage contingency planning. This ordinance is consistent with the Water Use Efficiency BMP.

SECTION 3: Purpose of Ordinance. The purpose of this ordinance is to establish the water conservation regulations for the City of San Juan Capistrano; and, as the successor agency to the Capistrano Valley Water District (CVWD), to revise, update, and replace the water conservation and water shortage contingency measures contained in CVWD Ordinances 8, 9, and 10.

SECTION 4: General Provisions. Chapter 12 of Title 6 of the San Juan Capistrano Municipal Code is hereby established to read as follows:

Chapter 12
WATER CONSERVATION

Sections:

6-12.01	Short Title
6-12.02	Purpose.
6-12.03	Definitions.
6-12.04	Application.
6-12.05	Mandatory restrictions on water waste.
6-12.06	Water shortage contingency measures.
6-12.07	Enforcement and administration.
6-12.08	Violations and notices.
6-12.09	Nuisances, abatement, injunctive relief.
6-12.10	Relief from compliance.
6-12.11	Voluntary water conservation plan.

6-12.01 Short Title.

This chapter may be cited as the Water Conservation Ordinance of the City of San Juan Capistrano.

6-12.02 Purpose.

The purpose of this chapter is to establish standards and procedures for year-round 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 Water Quality Regulations and urban runoff reduction efforts, and enable implementation of the City's water shortage contingency measures.

6-12.03 Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

"City" shall mean the City of San Juan Capistrano, Orange County, California.

“City Water Service Area” shall mean the City of San Juan Capistrano, Orange County, California, and adjoining sections of other cities and unincorporated areas with water service provided by the City of San Juan Capistrano.

“Effective Date” shall mean the date the ordinance adopting this chapter becomes effective.

“Enforcing attorney” shall mean the City Attorney, acting as counsel to the City of Juan Capistrano and his/her designee, or the District Attorney or City Prosecutor, which counsel is authorized to take enforcement action as described herein.

“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.

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

“Non-essential water use” shall mean the application or usage of water for functions or additional activities which do not have any health or safety impacts, are not required by regulation, and are not part of the core function or business process at a site. This would include but not be limited to uses such as the watering of planters and landscape at a car wash, the washing of cars on display at a car dealer, and other activities that a reasonable person would concur will reduce extra use of water, while not affecting a given enterprise in a fundamental way.

“Person” shall mean any natural person, property owner, renter, or lessee, as well as any corporation, partnership, government entity or subdivision, trust, estate, cooperative association, homeowners’ association, joint venture, business entity, or other similar entity, or the property management company, property manager, agent, employee or representative of any of the above.

“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.

“Stormwater drainage system” shall mean street, street gutter, sidewalk, alleyway, 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 NPDES permit 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 consist of stormwater and non-stormwater flows.

“Water Waste” shall mean uses of water which are prohibited or limited, going beyond the purpose of necessary or intended use, including area runoff, and which could reasonably be prevented.

“Water Conservation Coordinator” is the City Manager or his/her designee.

“Water Quality Regulations” are the storm water regulations in Chapter 14 of Title 8 of the San Juan Capistrano Municipal Code.

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

6-12.04 Application.

This chapter shall apply within the City’s Water Service Area, which includes the corporate boundaries of the City and those areas and properties outside the City’s boundaries connected to the City’s water distribution system, and that receive water service from the City. Compliance with the provisions of this chapter shall be a condition of water service within this Water Service Area.

6-12.05 Mandatory restrictions on water waste at all times.

The following activities or measures are in effect year-round, regardless of whether or not a water shortage stage has been declared. During water shortage stages, additional and more restrictive measures may be put in place. These are described in section 6-12.06.

(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 twenty four (24) hours after such person has been notified 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 or runoff from such, and shall thereafter diligently and promptly pursue such repair work to completion within a reasonable time, as determined by the City Manager or his/her designee, unless a variance is obtained from the City.

(b) Watering/Irrigation.

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

i. 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.

ii. Persons may water their lawn or landscaping between the hours of 9:00 AM and 6:00 PM using any of the following methods:

1. Drip, bubbler, or soaker irrigation hardware or emitters;
2. By hand, using a bucket; and/or
3. By hand, using a hose with an automatic shutoff nozzle or a hose-end sprinkler with a radius of not more than 10 (ten) feet, if such sprinkler causes no overspray or runoff.

(2) No person shall allow lawns, groundcover, shrubbery, other landscape material, or open ground to be watered at any time while it is raining. Automatic irrigation controllers may be turned off manually, or connected to a rain shutoff device. Effective July 1, 2010, all irrigation controllers associated with dedicated landscape meters shall have a rain shutoff device which overrides the program in the event of rainfall.

(3) Every person shall operate their landscape irrigation system(s) to minimize overspray and/or excess runoff onto impervious surfaces (such as sidewalks, driveways, v-ditches, gutters and roadways).

(c) Washing of Vehicles. No person shall use a water hose to wash any car, truck, boat, trailer, bus, recreational vehicle, camper, tractor, or any other vehicle, or any portion thereof, unless the hose is equipped with an automatic shutoff nozzle. To the maximum extent possible, all wash water from vehicle washing/cleaning activity must be prevented from discharging to the stormwater drainage system.

(d) 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:
 - i. Use of mechanical automatic car wash facilities utilizing water recycling equipment;
 - ii. Use of a hose that operates on a timer for limited time periods and shuts off automatically at the expiration of the time period;
 - iii. Use of a hose equipped with an automatic shutoff nozzle; and/or
 - iv. Use of bucket and hand washing.
 - (2) All wash/rinse water must be captured and recycled or discharged into the sanitary sewer system through an appropriate treatment system, after obtaining a special discharge permit from the South Orange County Wastewater Authority.
 - (3) All new commercial conveyor car wash facilities shall be equipped with a water recycling system.
 - (4) Mobile car detailing enterprises using water shall have a City business license and carry a statement of approval by the City Manager or his/her designee as to knowledge of and compliance with the City's Water Quality Regulations, and the required Best Management Practices and techniques to prevent runoff to storm drains.
- (e) 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. All wash water from such washing/cleaning containing chemicals shall be discharged into the sanitary sewer system through an appropriate treatment system. Any person discharging water containing chemicals is required to first obtain a special discharge permit from the South Orange County Wastewater Authority before such water can be discharged to the sanitary sewer.
- (f) Cleaning of Structures. No person shall use water through a hose, including pressure-washing, 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, and shall comply with the City's Water Quality Regulations and Best Management Practices.

- (g) Cleaning of Surfaces. No person shall use water through a hose, including pressure-washing, to clean any sidewalk, driveway, roadway, parking lot, sports court, or any other outdoor paved or hard surfaced area, unless all wash water from such activity is prevented from discharging to the stormwater drainage system. Such water-using cleaning may only occur for health and safety reasons and comply with the City's Water Quality Regulations and Best Management Practices. General maintenance cleaning shall be performed by other means such as by using a broom.
- (h) Swimming Pools and Spas. No person shall empty and refill a swimming pool except to prevent or repair structural damage or to comply with public health regulations, or upon written recommendation of a pool maintenance professional. Discharge of pool or spa water, other than directly to the sanitary sewer system, shall be consistent with the City's Water Quality Regulations and Best Management Practices. Discharge of pool or spa 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 strongly encouraged to prevent evaporative water loss, and for the additional energy and chemical saving benefits.
- (i) Fountains, Decorative Basins, Ponds, Lakes, Waterways. No person shall use water to operate or maintain levels in decorative fountains, basins, ponds, lakes, and waterways unless a recirculation device is in use. Discharge of water, other than directly to the sanitary sewer system, shall be consistent with City's Water Quality Regulations and related Best Management Practices. Discharge of filter backwash water to the stormwater drainage system is prohibited.
- (j) Cooling Systems. No single pass cooling systems shall be permitted in new connections to the potable water system.
- (k) 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.
- (l) 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. Hotels and motels shall give guests the option to reuse towels and linens.
- (m) 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, and available through the City's Web site, promoting public

awareness of the need for water conservation and/or advising the public that waste of water is prohibited.

(n) Food Service Facilities.

1. Drinking Water. Food service facilities in the City shall not serve water to customers or patrons, except upon request of the customer or patron.
2. Dishwashing and Garbage Disposals. All commercial kitchens with dishwashing facilities shall encourage the activity of scraping food waste into a garbage can rather than using a garbage disposal. Garbage disposals are prohibited in all new food facilities. All existing pre-rinse spray nozzles shall be retrofitted to models using 1.6 gallons per minute or less, by July 1, 2010.
3. Other Water Using Activities. Defrosting food with running water shall be avoided and discouraged. If using a hose for washdown 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. 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.
4. New or Remodeled kitchens. All other water using equipment in new or remodeled kitchens shall use the best available water conserving technology.

(o) 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 Department of Public Health 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.
3. All water used on a construction site shall be prevented from entering any part of the stormwater drainage system.

(p) Use of Hydrants. No person may use water from any fire hydrant for any purpose other than fire suppression or emergency aid, without first obtaining a City hydrant meter account or written approval from the City Manager or his/her designee. Absent a meter or written permission, current water theft and meter tampering fees will be applied as appropriate.

- (q) Water Spillage and Runoff. Every person shall 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. Gutter flooding is specifically prohibited.
- (r) Indiscriminate Use. No person shall cause or permit the indiscriminate running of water not otherwise prohibited above which is wasteful and without reasonable purpose.
- (s) Public Health and Safety. These regulations shall not be construed to limit water use which is immediately necessary to protect public health and/or safety.

6-12.06 Water shortage contingency measures.

The City Council by resolution shall 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 local or regional water shortage conditions and emergencies. Depending on the expected duration and severity of the shortage, these measures may include, but are not limited to, some or all of the actions listed in the following four (4) stages of water conservation, 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 stage will include the elements of the previous stage(s), and are intended to be more restrictive than the previous stage(s).

(a) Stage 1 - Voluntary Compliance - Water Watch

Stage 1 applies during periods when the possibility exists that the City will not be able to meet all of the demands of its customers. Stage 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. This circumstance can occur when either the regional supplier or the local production and distribution staff demonstrate that daily water demand is greater than what can be replenished from available production or supply. This may occur during peak-use periods, or be due to other circumstances. During Stage 1, the following water conservation measures are requested to be undertaken on a voluntary basis:

1. Staff. All City staff to be alerted to the Stage 1 conditions, supplied with educational material, and directed to actively intervene and educate the public, when excessive use is observed.
2. Lawn watering and landscape irrigation. Encourage reduction in consumption or use of City water by residential, recreational, commercial, industrial and institutional water users for landscape irrigation purposes.
3. Agriculture / Nurseries. All non-essential water use shall cease.

4. Residential car washing. All non-essential water use for vehicle washing shall cease.
5. Car Washes. Washing on the immediate premises of a commercial car wash shall not be subject to these measures. However, all non-essential water use shall cease.
6. Pavement/surface washing. Water shall not be used to wash down sidewalks, driveways, parking areas, tennis courts, patios or other paved areas except to alleviate immediate fire or sanitation hazards.
7. Leaks. All water leaks shall be repaired immediately.
8. Restaurants and Hotel/motel. All non-essential water use shall cease.
9. Public Entities. All non-essential water use shall cease.
10. Pools, spas. Discourage the filling or emptying and refilling of swimming pools, excluding normal maintenance of water levels due to evaporation.
11. Lakes, ponds, fountains, and other water features. Discourage the filling or emptying and refilling of water features, excluding normal maintenance of water levels due to evaporation.
12. Commercial / Industrial use. All non-essential water use shall cease.
13. Other Actions Possible. 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.
14. Media. The declaration of this and subsequent stages shall be communicated to the media.

(b) Stage 2 - Mandatory Compliance - Water Alert

Stage 2 applies during periods when the probability exists that the City will not be able to meet all of the water demands of its customers. Stage 2 can occur, but is not limited to, periods when either the regional supplier or the local production and distribution staff demonstrate that daily water demand is greater than what can be replenished from available production or supply. Stage 2 may also be declared when the state or a regional supplier has required a reduction in water use, or when normal production and supply are curtailed. Noncompliance with mandatory restrictions on water waste shall be subject to an administrative citation. During Stage 2, the Stage 1 conservation measures shall become mandatory and the following additional conservation measures shall apply:

1. All major users. Require all major water users to reduce their usage by the percentage determined by staff to be necessary to sustain adequate water supply for the City. Such percentage shall be based both on the rate of supply to the City and the rate of current water demand.
2. Rates & charges. Lower allocations for all water connections and accounts by a percentage relative to the shortage. Establish allocations for commercial accounts, set at the lowest consumption for a billing period in the last five years. Impose an additional water surcharge or penalty above and beyond the existing City water rates on all City residents, water users and water consumers who fail or refuse to abide by the requirements, restrictions and priorities adopted by the

City in response to the emergency water shortage condition. For example, if Metropolitan Water District calls for a mandatory reduction of 30%, allocations may be reduced by 30%, with a surcharge added which reflects the penalty the City will be charged by Metropolitan Water District or other agencies for exceeding the mandated reduction.

3. Staff. At the discretion of the City Manager, hire, divert, or employ additional City staff and volunteers to monitor water usage, provide assistance to water users to reduce their water consumption, and to monitor the enforcement of the requirements, restrictions and priorities adopted by the City in response to the emergency water shortage condition.
4. Lawn watering and landscape irrigation. Reduce or prohibit consumption or use of City water by residential, recreational, commercial, industrial and institutional water users for landscape irrigation purposes.
5. Agriculture / Nurseries. Agricultural users and commercial nurseries as defined in the Metropolitan Water District of Southern California Code are subject to an interruptible supply, and curtailments and restrictions are put in place when necessary by Metropolitan Water District. The City shall enforce these restrictions as appropriate.
6. Runoff to street. Administrative citation fines may be increased for water permitted to escape from any hose, pipe, valve, faucet, sprinkler, or irrigation device into any stormwater drainage system, drain, gutter or street.
7. Residential car washing. Washing of autos, trucks, trailers, boats, airplanes and other types of mobile equipment is prohibited, other than at a car wash.
8. Hydrant water use. Prohibit the use of a temporary fire hydrant meter from the City, or otherwise using water through a temporary City water service including jumpers. The use of water from fire hydrants shall be limited to fire fighting and related activities, or other activities necessary to maintain the health, safety and welfare of the public.
9. Construction water. Suspend all sales and deliveries of City water, and use of City water, for construction or grading purposes. New construction meters or services will not be issued. Construction water shall not be used for earth work or road construction purposes.
10. Cleaning of structures. Cleaning of structures, using water from a hose, shall be prohibited.
11. Pavement/surface washing. Pavement and other surface washing shall be prohibited.
12. Spillage. Spillage shall be prohibited.
13. Pools, spas. Prohibit the filling or emptying and refilling of swimming pools, excluding normal maintenance of water levels due to evaporation. New construction permits for pools and spas will not be issued.
14. Lakes, ponds, fountains, and other water features. The operation of any ornamental fountain or similar structure is prohibited.
15. Exceptions. The prohibited uses of water are not applicable to that use of water necessary for public health and safety or for essential governmental services such as police, fire and, other similar emergency services.

(c) Stage 3 - Mandatory Compliance - Water Warning

Stage 3 applies during periods when the City will not be able to meet all of the water demands of its customers. Stage 3 may be declared when the state or a regional supplier has required a reduction in water use, or when normal production and supply are curtailed. Stage 3 may be declared when there is a critical differential between supply and demand, and it is determined that demand cannot be reduced sufficiently through Stage 1 and 2 measures to remain within the available supply. During Stage 3, administrative fines will double, and the following additional water conservation measures shall apply:

1. Lawn watering and landscape irrigation. Further reduce or prohibit consumption or use of City water by residential, recreational, commercial, industrial and institutional water users for landscape irrigation purposes.
2. Rates and charges. Further reduce allocations, raise rates and increase penalty charges, for water use over a baseline defined by the severity of the shortage and anticipated demand at the time of the emergency.
3. Agriculture / Nurseries. Agricultural users and commercial nurseries may be subject to additional restrictions if the regional or local agency or jurisdiction deems necessary. Monetary penalties will be passed through to agricultural customers, if assessed by Metropolitan Water District or other agency.
4. Hydrant water use. Unauthorized use will be subject to additional fines for water theft and meter tampering, pursuant to City of San Juan Capistrano Resolution 06-02-07-05.
5. Construction water. Unauthorized use will be subject to additional fines for water theft and meter tampering, pursuant to City of San Juan Capistrano Resolution 06-02-07-05. No new building permits or will-serve letters will be issued.
6. Air Conditioning. No water shall be used for air conditioning purposes.

(d) Stage 4 - Mandatory Compliance - Water Emergency

Stage 4 applies when a failure of any supply or distribution facility, whether temporary or permanent, occurs in the water distribution system of the State Water Project, Metropolitan Water District of Southern California, Municipal Water District of Orange County, or the City's facilities, and the supply of water necessary to meet the City's demands is likely to be reduced or interrupted. Any and all measures necessary to meet basic health and safety needs shall be undertaken, while all other water uses shall be reduced or prohibited. During Stage 4, administrative fines will triple, offenses may be subject to prosecution and publication, and the following water conservation measures shall apply:

1. Allocations. Water use allocations at the Tier 1 rate will be reduced to a level deemed appropriate for the level of emergency.
2. Lawn watering and landscape irrigation. All outdoor irrigation is prohibited.

3. Agriculture / Nurseries. Use of water for agricultural or commercial nursery purposes, except for livestock water, is prohibited.
4. Car Washes. The use of water by all types of commercial car washes shall be prohibited. Further, such washings are exempted from these regulations where the health, safety and welfare of the public is contingent upon frequent vehicle cleaning such as garbage trucks and vehicles used to transport food and perishables.
5. Pools, spas, water features. Filling, refilling or adding of water to swimming pools, spas, ponds, lakes, and other water features is prohibited.
6. Commercial / Industrial use. The use of water for commercial, manufacturing or processing purposes shall be reduced in volume by 50%.

6-12.07 Enforcement and administration.

The City Manager and all officers and employees of the City, including all *ex officio* officers and employees, shall enforce all the provisions of this chapter. The City Manager or his/her designee shall implement and administer this chapter.

6-12.08 Violations, notices and remedies.

(a) Notice of Noncompliance. If any person fails or refuses to comply with this Chapter, the City Manager or his/her designee 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 [period for compliance will be shortened depending on any applicable water conservation contingency stage];
6. State the possible consequences of failing to correct the violation; and,
7. Include appeal and hearing rights and procedures.
8. A copy of the 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.
9. Each and every day that the violation occurs or continues shall be considered a new and separate offense.

(b) 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. Any penalties, surcharges or increased charges incurred by the City for excessive use by customers shall be passed on to the customers causing the excessive use of water.
2. For residential accounts, impose an administrative citation 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.
3. For commercial, industrial, construction, 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 Tier 3 water rate in effect at the time for each billing unit (CCF) of water that the City estimates is wasted. The estimated water waste determination will be based on the previous five years of water use for similar accounts during the same billing cycle.
4. Terminate water service to the site of the violation, or place a flow restricting device on the meter;
5. Abate the violation as a nuisance in accordance with Section 6-12.09 of this Chapter.

(c) Regulatory Fine Recovery. In the event that a person causes a regulatory agency to levy a fine against the City of San Juan Capistrano resulting from the person's violations of the provisions of this Chapter, such person shall be required to reimburse the City for the fine and associated administrative costs.

(d) 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.

(e) Request for Administrative Hearing. Any person appealing a notice of noncompliance, an invoice for costs or an adverse determination shall, within fifteen (15) days of receipt thereof; 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. Thereafter, a hearing on the matter shall be held before a hearing officer appointed by the City Manager 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.

(f) Hearing Proceedings. The City officer and/or employee issuing the notice of noncompliance, invoice for costs or adverse determination shall appear in support of the notice, invoice for costs, or determination, and the appealing party shall appear in support of dismissal of the notice, determination, and invoice for costs. Each

party shall have the right to present testimony, present their own witnesses and other documentary evidence as necessary for explanation of their case. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper admission of such evidence over an objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding by the hearing officer, unless it would be admissible over an objection in civil actions. The rules of privilege shall be effective to the same extent they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded. The appealing party shall notify the City 48 hours in advance of the hearing, if legal counsel will be present on their behalf. The provisions of Chapter 6 of Title 1 of this Code shall not apply.

- (g) Final Decision and Appeal. The final 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 parties. The decision shall include notice that it is final and 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 its issuance. The administrative hearing fee paid by a prevailing party in an appeal shall be refunded.

6-12.09 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 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 County Assessor of a special assessment against the property in accord with the conditions and requirements of Government Code § 38773.5.

6-12.10 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:

- (a) Usages of water prohibited by Section 6-12.05 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.
- (b) No variance shall be granted to any customer unless the customer 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.

6-12.11 Additional water conservation measures.

- (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 additional water conservation plans and measures which shall be directed to achieve target goals for reductions in water consumption as determined by the City Council by resolution 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 building services approvals, inspections, and enforcement authorized by this chapter.

SECTION 5. SEVERABILITY. If any section, subsection, clause or phrase of this Ordinance or any part thereof is for any reason held to be invalid, unconstitutional or

enforceable by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of the Ordinance. The City Council declares that it would have passed each section, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase would be declared invalid, unconstitutional or unenforceable.

SECTION 6. CERTIFICATION. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen (15) days after passage and adoption as required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five (5) days prior to the date of adoption of this Ordinance; and, within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2008.

MAYOR

ATTEST:

CITY CLERK