

ORDINANCE NO. 998

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DEL MAR, CALIFORNIA, AMENDING DEL MAR MUNICIPAL CODE CHAPTER 21.70 TO REVISE EMERGENCY WATER MANAGEMENT WATER SHORTAGE STAGES

WHEREAS, water supply conditions have been challenged statewide in California for several years; and

WHEREAS, Chapter 21.70 of the Del Mar Municipal Code (DMMC) establishes an emergency water management program in order to conserve water supplies, minimize the effects of water supply shortages, and allow the City to respond to water emergency conditions; and

WHEREAS, Sections 21.70.110 through 21.70.140 of the DMMC establish emergency water conservation requirements for Drought Response Stage 1 – Drought Watch Condition; Stage 2 – Drought Alert Condition; Stage 3 – Drought Critical condition; and Stage 4 –Drought Emergency Condition; and

WHEREAS, on July 11, 2022, the City Council adopted Resolution No. 2022-51, reaffirming Drought Response Stage 1 (previously declared on July 5, 2016) and encouraging continued voluntary adherence with water demand reduction measures; and adopted Ordinance No. 991 to amend DMMC Sections 21.70.110 and 21.70.120 to revise Drought Watch and Alert Conditions; and

WHEREAS, on March 24, 2023, Governor Newsom issued Executive Order N-5-23 rolling back major elements of prior drought-related emergency orders in light of improved drought conditions throughout California; however, all 58 counties retain a state of emergency to allow for continued drought response and recovery efforts as long-term water supply continues to remain a concern for California; and

WHEREAS, historically, the City of Del Mar, as a small water supplier with approximately 1,860 service connections, was not required to prepare its own Water Shortage Contingency Plan (WSCP) and, instead, relied on the San Diego County Water Authority's WSCP for guidance related to water conservation and demand reduction measures; and

WHEREAS, on September 23, 2021, Senate Bill (SB) 552 was passed to require small water suppliers serving 1,000 to 2,999 service connections to develop and maintain their own abridged WSCPs that would include specified water shortage planning elements by July 1, 2023; and

WHEREAS, pursuant to the requirements of SB 552, the City of Del Mar has prepared a WSCP, and the City Council has held a public hearing to receive public comments on the WSCP; and

WHEREAS, as a result of the City's WSCP adoption on June 5, 2023, DMMC Chapter 21.70 needs to be amended to align with State and County defined water shortage levels and with the City's WSCP.

NOW THEREFORE, the City Council of the City of Del Mar, California, hereby ordains as follows:

SECTION ONE:

That Chapter 21.70 of the Del Mar Municipal Code relating to Emergency Water Management of the City of Del Mar is amended to read as set forth in:

Exhibit A to this Ordinance.

SECTION TWO:

This Ordinance was introduced by the City Council on June 5, 2023.

SECTION THREE:

The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five days prior to the consideration of its adoption and again within 15 days following adoption indicating votes cast.

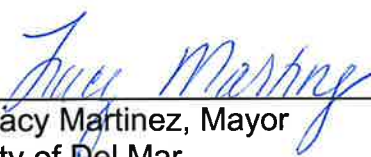
SECTION FOUR:

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION FIVE:

The Ordinance shall take effect and be in full force thirty (30) days after the date of adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Del Mar, California at the Regular Meeting held this 19th day of June, 2023.



Tracy Martinez, Mayor
City of Del Mar

APPROVED AS TO FORM:



Leslie E. Devaney, City Attorney
City of Del Mar

ATTEST AND CERTIFICATION:

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
CITY OF DEL MAR

I, NESTOR MACHADO, Acting City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY, that the foregoing is a true and correct copy of Ordinance No. 998 which has been published pursuant to law, and adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 19th day of June, 2023, by the following vote:

AYES:	Mayor Martinez, Deputy Mayor Quirk, Councilmembers Druker, Gaasterland, and Worden
NOES:	None
ABSENT:	None
ABSTAIN:	None



Nestor Machado, Acting City Clerk
City of Del Mar

Chapter 21.70 EMERGENCY WATER MANAGEMENT

21.70.010 Purpose.

This Chapter establishes an emergency water management program in order to conserve water supplies, minimize the effects of water supply shortages, and allow the City to respond to water emergency conditions. (Cal. Const. Art. X, §§ 2 and 7; and Water Code § 375.)

(Ord. No. 603; Ord. No. 816; Ord. No. 828; Ord. No. 903)

21.70.020 Scope of Chapter.

The provisions of this Chapter shall apply to all persons using water delivered by the City.

21.70.030 Water Conservation Policy.

- A. It is the policy of the City that all public and private users of water delivered by the City shall use such water for reasonable purposes and in a reasonable manner in a conscientious effort to conserve water.
- B. When the emergency water use regulations in this Chapter are not declared to be in effect, those regulations may still be considered as recommended methods for voluntarily conserving water.
- C. The City may initiate and maintain education programs to encourage the conservation of water.

Cross reference(s)—Water conservation program, Ch. 21.60.

21.70.040 Water Management Regulations.

- A. *Levels.* During water shortages, the City shall impose water use regulations in levels. Sections 21.70.100 et seq. of this Chapter contain a sequential, regulatory program of increasingly more stringent prohibitions on the use of water delivered within the City. When the City declares that a particular water shortage level is in effect, the regulations contained in a declared level shall be complied with by all persons using water delivered by the City.
- B. *Declaration of Level.*
 - 1. The City shall monitor the projected supply of water and the demand for water by persons within its jurisdiction and, in consultation with those agencies providing water to City, determine when water management regulations are required in order for the City to deal with water shortages.
 - 2. When it is determined that a particular level of water management regulation is required, either the City Council or the City Manager may issue a declaration which will announce the level of regulatory management that is to be imposed. Moving to Level 6 requires a properly noticed public hearing.

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3. The declaration shall be made by public announcement posted at City Hall. Also, the City Manager may publish a notice of the determination in a newspaper of general circulation and on the City website.
 4. If the declaration is made by the City Manager, the matter shall be placed on the agenda of the City Council at its next meeting. The City Council shall thereupon ratify the City Manager's declaration, rescind the declaration, or issue its own declaration.
 5. The regulatory level announced in the declaration shall become effective seven days following the date of posting; except, when a water emergency is declared; the regulatory level shall become effective immediately upon posting.

21.70.050 Modification of Regulation as Applied In Special Circumstance.

- A. *Appeals Board.* An Appeals Board for this Chapter shall consist of the City Council.
- B. *Appeal.*
 1. Any person subject to the regulations and decisions imposed in accordance with the provisions of this Chapter may submit an appeal, in writing, to the City Clerk.
 2. The City Manager may render a decision or set the matter to be heard by the Appeals Board which will render a written decision within 30 calendar days of the receipt of the appeal.
 3. If the appellant is dissatisfied with the City Manager's determination, the appellant may seek a review by the Appeals Board.
- C. *Modification Authorized.* In accordance with the procedures provided above, the City Manager and the Appeals Board are authorized to make minor and limited modifications to any regulation in this Chapter when it has been demonstrated that due to special circumstances as applied to a particular case, the application of the unmodified regulation constitutes a threat to health, safety or welfare or will result in an undue, unreasonable hardship. Provided, however, that such modification shall not cause water to be wasted or used in an unreasonable manner and the purposes of this Chapter can be accomplished.

21.70.060 Prohibition.

- A. It is unlawful for any person to knowingly use water or permit the use of water supplied by the City in a manner contrary to any provision of this Chapter declared to be in effect. (Misdemeanor in accordance with Water Code § 377.)
- B. The use of reclaimed or "grey" water in accordance with the regulations of the Department of Health Services and in accordance with any other applicable regulations, is not subject to the regulations of this Chapter.
- C. It is a misdemeanor for anyone to tamper with or otherwise interfere with the operation of a water meter without the express authority, in writing, of the City.
- D. It is unlawful for any person to knowingly present false information to the City when information is requested by the City in accordance with the provisions of this Chapter.
- E. Compliance with this Section is a condition imposed upon the continued uninterrupted delivery of water.

21.70.090 Enforcement—Restricting or Discontinuing Water Service.

- A. A continued, willful failure to comply with the conditions imposed upon the continued, uninterrupted delivery of water may result in a Notice of Violation being mailed to the metered customer, accompanied by a copy of relevant portions of these regulations.
- B. Failure to correct the violation by bringing water use into compliance with the conditions imposed upon the continued, uninterrupted delivery of water will result in a Notice of Hearing Re: Violation being mailed to the metered customer.
- C. The City Manager shall conduct the hearing. The noticed person shall have the opportunity to present information and arguments in response to the notice.
- D. Following the hearing, if an uncured violation is found to exist, the City Manager may order either:
 - 1. The installation of a flow restrictor in the meter for a minimum of 72 hours; or
 - 2. Discontinuance of water service for a specified period of time.
- E. When it is necessary to install a flow restrictor or to discontinue service, a metered customer shall pay a fee of \$250.00 to the City. When it is necessary to remove a flow restrictor or to re-establish water service, a metered customer shall pay a fee of \$250.00 to the City. The fees referenced in this subparagraph are payable by the metered customer when the service is rendered. Further, payment in full of all outstanding fees is a condition to the restoration of full service.

21.70.110 Water Shortage Level 1—Watch Condition.

- A. A Water Shortage Level 1 condition is also referred to as a " Water Storage Watch" condition. Level 1 shall be declared to encourage voluntary water conservation with an aim towards reducing water demand by up to 10%. This Level 1 condition applies when the Water Authority notifies its member agencies to activate the appropriate voluntary provisions of the water shortage contingency plan.
- B. When Level 1 is declared and in effect, all persons shall comply with the voluntary water usage reductions and other mandatory conditions as may be identified by the Governor, State of California, or San Diego County Water Authority.
- C. Irrigating "Non-Functional Turf" at commercial, industrial, and institutional sites is prohibited. "Non-Functional Turf," as defined in section 996 of title 23 of the California Code of Regulations, as may be amended from time to time, is defined as any turf (grass) that is solely ornamental and not regularly used for human recreational purposes or for civic or community events. "Non-Functional Turf" does not include sports fields and turf that is regularly used for human recreational purposes of for civic or community events.
 - a. Notwithstanding subsection (C)(1), the use of water is not prohibited by this section to the extent necessary to ensure the health of trees and other perennial non-turf plantings or to the extent necessary to address an immediate health and safety need.
 - b. Notwithstanding subsection (C)(1), the City may approve a request for continued irrigation of non-functional turf where the user certifies that the turf is a low water use plant with a plant factor of 0.3 or less, and demonstrates the actual use is less than 40% of reference evapotranspiration.

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- D. Wasteful and Unreasonable Water Uses are prohibited as listed in section 995 of title 23 of the California Code of Regulations to prevent unreasonable use of water and to promote water conservation. The following water usage activities are prohibited:
1. Washing down paved surfaces, including but not limited to sidewalks, driveways, parking lots, tennis courts, or patios, except when it is necessary to alleviate safety or sanitation hazards.
 2. Water waste resulting from inefficient landscape irrigation, such as runoff, low head drainage, or overspray, etc. Similarly, irrigation causing water flows onto non-targeted areas, such as adjacent property, non-irrigated areas, hardscapes, roadways, or structures are prohibited.
 3. Irrigation is prohibited during and within 48 hours after measurable rainfall of at least one-fourth of one inch of rain.
 4. Use of a handheld hose equipment without a positive shut-off nozzle to wash vehicles, except where the hose is fitted with a shut-off nozzle. It is encouraged to use a bucket to wash vehicles or at a commercial site with recirculated water.
 5. Use of potable water to operate ornamental fountains with exceptions for those fountains that use pumps to recirculate water and only require refilling to replace evaporative losses.
 6. Use of potable water for street cleaning or construction purposes, unless non-potable water is unavailable or as-needed to protect the health and safety of the public.
- E. In addition to the water usage reductions and other conditions referenced in subsections B, C, and D above, when Level 1 is declared and in effect all persons are requested to comply with the following water demand reduction measures;
1. Irrigate residential and commercial landscape before 10:00 a.m. or after 6:00 p.m.; limited to three applications per week.
 2. Serve and re-fill water in restaurants, bars, and other food service establishments only upon request.
 3. Offer guests in hotels, motels, and other commercial lodging establishments the option of not laundering towels and linens daily.
 4. Repair all water leaks within 72 hours of notification by the City.

Additional Conditions on Uninterrupted Delivery: None.

(Ord. No. 816; Ord. No. 828; Ord. No 948 , § 2, Exh. B, 6-3-2019; Ord. No. 984 , § 1, 12-13-2021; Ord. No. 991 , § 1, 7-11-2022)

21.70.120 Water Shortage Level 2—Warning Condition.

- A. Water Shortage Level 2 condition is also referred to as a " Water Shortage Warning" condition. Level 2 shall be declared when the City determines that water usage should be reduced up to 20 percent from the ordinary demand requirement, as determined by the City.
- B. When Level 2 is declared and in effect, metered customers of the City shall receive uninterrupted water delivery subject to the modified surcharge rate structure set as follows:

Meter Size	Bimonthly Fixed Surcharge During Water Shortage Level 2:					
	7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
5/8"	\$2.98	\$3.14	\$3.26	\$3.40	\$3.64	\$3.84
3/4"	4.48	4.70	4.90	5.10	5.46	5.76
1"	7.46	7.84	8.16	8.50	9.10	9.58
1 1/2"	14.90	15.68	16.30	17.00	18.20	19.14
2"	23.84	25.08	26.08	27.20	29.10	30.64
3"	47.68	50.14	52.16	54.40	58.20	61.26
4"	74.48	78.32	81.48	84.98	90.94	95.70
22nd DAA*	953.24	1,002.48	1,042.94	1,087.64	1,163.98	1,224.84
One 8" meter and two 10" meters						

Volumetric Surcharge applied to all units of usage by all customer classes.

Volumetric Surcharge During Water Shortage Level 2:					
7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
\$0.23	\$0.25	\$0.26	\$0.27	\$0.29	\$0.30

- C. When Level 2 is declared and in effect, the demand reduction measures listed in Level 1 shall become mandatory. Additional measures may be implemented based on City Council direction or Emergency Orders.

(Ord. No. 816; Ord. No. 828; Ord. No. 903; Ord. No 948 , § 2, Exh. B, 6-3-2019; Ord. No. 991 , § 1, 7-11-2022)

21.70.130 Water Shortage Level 3— Acute Condition.

- A. A Water Shortage Level 3 condition is also referred to as an "Acute Water Shortage" condition. Level 3 shall be declared when the City determines that water usage should be reduced up to 30 percent from the ordinary demand requirement, as determined by the City.
- B. When a Level 3 is declared and in effect, metered customers of the City shall receive uninterrupted water delivery subject to the modified surcharge rate structure set as follows:

Meter Size	Bimonthly Fixed Surcharge During Water Shortage Level 3:					
	7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
5/8"	\$4.84	\$5.04	\$5.26	\$5.44	\$5.86	\$6.20
3/4"	7.24	7.56	7.88	8.22	8.78	9.30
1"	12.08	12.60	13.12	13.70	14.62	15.48
1 1/2"	24.14	25.18	26.24	27.38	29.24	30.94
2"	38.62	40.28	41.98	43.82	46.80	49.52
3"	77.22	80.54	83.94	87.62	93.58	99.02
4"	120.64	125.84	131.16	136.90	146.20	154.70
22nd DAA*	1,544.08	1,610.52	1,678.80	1,752.30	1,871.32 1,980.06	
*One 8" meter and two 10" meters						

Volumetric Surcharge applied to all units of usage by all customer classes.

Volumetric Surcharge During Water Shortage Level 3:					
7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
\$0.42	\$0.44	\$0.46	\$0.48	\$0.52	\$0.55

C. In addition to the water usage reductions and other conditions referenced in Level 1 and Level 2, when Level 3 is declared and in effect all persons are requested to comply with the following water demand reduction measures:

1. Irrigate residential and commercial landscape before 10:00 a.m. or after 6:00 p.m.; limited to two applications per week. Irrigation is prohibited during and within 48 hours after measurable rainfall of at least one-fourth of one inch of rain.
2. Repair all water leaks within 48 hours of notification by the City.
3. Only wash vehicles or at a commercial site with recirculated water.

(Ord. No. 816; Ord. No. 828; Ord. No. 903; Ord. No 948 , § 2, Exh. B, 6-3-2019)

21.70.140 Water Shortage Level 4—Critical Condition.

A. A Water Shortage Level 4 condition is also referred to as a " Critical Water Shortage " condition. Level 4 shall be declared when the City requires a demand reduction of 40 percent in order for the City of Del Mar to have maximum supplies available to meet anticipated demands from the ordinary demand requirement, as determined by the City.

B. When Level 4 is declared and in effect, metered customers of the City shall receive uninterrupted water delivery subject to the modified surcharge rate structure set as follows:

Meter Size	Bimonthly Fixed Surcharge During Water Shortage Level 4:					
	7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24
5/8"	\$6.64	\$6.94	\$7.24	\$7.56	\$8.06	\$8.56
3/4"	9.96	10.40	10.86	11.34	12.10	12.84
1"	16.60	17.34	18.10	18.90	20.16	21.38
1 1/2"	33.20	34.68	36.18	37.78	40.30	42.74
2"	53.12	55.48	57.88	60.44	64.48	68.40
3"	106.22	110.94	115.74	120.86	128.94	136.78
4"	165.96	173.34	180.84	188.84	201.46	213.70
22nd DAA*	2,124.18	2,218.54	2,314.68	2,416.94	2,578.68	2,735.28
*One 8" meter and two 10" meters						

Volumetric Surcharge applied to all units of usage by all customer classes.

Volumetric Surcharge During Water Shortage Level 4:					
7/1/19	1/1/20	1/1/21	1/1/22	1/1/23	1/1/24

\$0.66	\$0.69	\$0.72	\$0.76	\$0.81	\$0.86
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C. The water usage reductions and other conditions established in Level 1, Level 2, and Level 3 will remain in place. Additional demand reduction measures will be established by the City Council and implemented.

(Ord. No. 816; Ord. No. 828; Ord. No. 903; Ord. No 948 , § 2, Exh. B, 6-3-2019)

21.70.150 Water Shortage Level 5—Emergency Condition.

- A. A Water Shortage Level 5 condition is also referred to as a "Water Shortage Emergency" condition. A Level 5 shall be declared when the City requires a demand reduction of 50 percent in order for the City of Del Mar to have maximum supplies available to meet anticipated demands from the ordinary demand requirement, as determined by the City.
- B. The water usage reductions and other conditions established in Level 1, Level 2, Level 3, and Level 4 will remain in place. Additional demand reduction measures will be established by the City Council and implemented.

21.70.160 Water Shortage Level 6—Catastrophic Condition.

- A. A Water Shortage Response Level 6 condition is also referred to as a "Catastrophic Water Shortage" condition. Level 6 shall be declared when the City declares a water shortage emergency pursuant to California Water Code Section 350 which requires a demand reduction of greater than 50 percent in order for the City of Del Mar to have maximum supplies available to meet anticipated demands from the ordinary demand requirement, as determined by the City.
- B. The water usage reductions and other conditions established in Level 1, Level 2, Level 3, Level 4 and Level 5 will remain in place. Additional demand reduction measures will be established by the City Council and implemented.

21.70.170 Wastewater Utility Rates During Water Shortage Conditions.

- A. Wastewater customers are billed for sewer service based on their water usage. During water shortage periods, water usage will decline and threaten the fiscal stability of the wastewater utility. Therefore, during water shortage periods, wastewater charges will be calculated based on the assumption that sewer usage is the same as the commensurate month from the last non-drought fiscal year. Drought sewer charges will be lifted after one full year of non-drought consumption records can be established.
 1. *Residential.* Sewer discharges will be estimated based on the assumed sewage usage during the last non-drought year.
 2. *Commercial.* Sewer discharges will be estimated based on 90 percent of the water usage during the last non-drought year. A user may petition to have their sewer discharge (water usage) assumption lowered if their annual water demand drops below their non-drought

water demands by a level below the drought reduction levels plus an additional 20 percent. As a user can meet the previously defined criteria, their sewage discharge assumptions will be lowered to the current water demands, adding back any water savings required under the drought requirements. As an example, if the drought reductions are 20 percent, and the user drops their water consumption by 45 percent, then the resulting sewer will be calculated based on 120 percent of the current water consumption.

3. *Fairgrounds*. Sewer commodity charges during drought conditions will be calculated based on the greater of (1) the rolling average of the past same bimonthly period during the last three fiscal years or (2) the actual metered sewage.

(Ord. No 948 , § 2, Exh. B, 6-3-2019)

21.70.180 Additional Conditions on Uninterrupted Delivery.

In accordance with California Government Code § 53756, the rates posted above will be adjusted accordingly to account for any increases in the purchase cost of wholesale water, or increases in inflationary measure.