APPENDIX B

CITY OF FULLERTON'S EMERGENCY WATER CONSERVATION PLAN

Chapter 12.06 EMERGENCY WATER CONSERVATION PLAN

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12.06.010. Statement of policy and declaration of purpose.

A. Water supplies in the city and at the source of Fullerton's water are now and from time to time in the future expected to be in a state of shortage. The general welfare requires that water resources available to the city must be put to their maximum

beneficial use, and waste or unreasonable uses must be prevented. The conservation of water must be practiced so that the limited supply of water will be available to serve the interests of the people of the city and for the public welfare.

B. The purpose of this chapter is to provide procedures, rules and regulations for mandatory water conservation to minimize the effect of a water shortage emergency on the City's water customers. (Ord. 2752 (part), 1991).

12.06.020. Water shortage emergency findings.

The City Council finds and determines that a water shortage emergency could exist based upon the occurrence of one or more of the following conditions:

- A. A general water supply shortage takes place due to increased demand or limited supplies.
 - B. Distribution or storage facilities of the City become inadequate.
- C. A major failure or contamination of the supply, storage and/or distribution facilities of the Metropolitan Water District of Southern California, the Orange County Water District and/or the City occurs. (Ord. 2752 (part), 1991).

12.06.030. CEQA exemption.

The City Council finds that this chapter and actions taken hereafter pursuant to this chapter are exempt from the provisions of the California Environmental Quality Act of 1970 as specific actions necessary to prevent or mitigate an emergency pursuant to Section 15307 of the CEQA Guidelines. (Ord. 2752 (part), 1991).

12.06.040. Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section, unless from the context a different meaning is intended, or unless a different meaning is specifically defined within the individual sections of this chapter:

- A. "Applicant" means the person, association, developer, corporation or governmental agency applying for water service.
- B. "Base billing period consumption" means the amount of water used on a customer's premises during a billing period in the base year.
- C. "Base year" means that period of time designated by the City Council over which the base billing period consumption is computed.
 - D. "Billing period" means the time interval between two consecutive billings.

- E. "Billing unit" equals one thousand gallons of water; this is the unit amount of water used to calculate commodity charges for customer usage.
- F. "Citizens Appeals Board" means a board, consisting of at least three but not more than five members, appointed by the City Council to hear appeals concerning applications for relief or violations that a customer or water user cannot resolve with the Hearing Officer.
 - G. "City" means the City of Fullerton, California, a municipal corporation.
 - H. "City Council" means the City Council of the City of Fullerton, California.
- I. "City Manager" means the chief administrative officer of the City appointed by the City Council.
- J. "Cost" means the actual cost to the Utility, including all labor, material, supplies, equipment and miscellaneous items, together with any applicable indirect and general charges, plus the general administrative overhead, in accordance with the accounting practices of the Utility.
 - K. "Customer" means water customer or water user.
- L. "City Engineer" means the chief administrative officer of the Department of Engineering and Community Development of the City.
- M. "Director of Finance" means the chief administrative officer of the Department of Finance of the City of Fullerton, California.
- N. "Flow restricting device" or "flow restrictor" means a fitting inserted into the service connection to reduce flow capacity.
- O. "Hearing Officer" means the person appointed by the City Manager at the utility level to resolve applications for relief.
- P. "Person" means any individual, group, developer or organization operating as a single entity.
- Q. "Premises" means the integral property or area, including improvements thereon, to which water service is provided, or for which an application for service is filed.
- R. "Process water" means water used to manufacture, alter, convert, clean, heat or cool a product, or the equipment used for such purpose; water used for plant and equipment washing and for transporting the raw materials and products; and water used to grow trees or plants for sale or installation.

- S. "Reclaimed water" means the process of recapturing or treating water, degraded or contaminated groundwater, or other nonpotable water.
- T. "Recycled water" means the process of recirculating or reusing water with a minimum of waste occurring.
- U. "Service connection" means the pipe or tubing, fittings, and valves necessary to conduct water from the distribution main to and through the meter.
- V. "Utility" means the municipal water organization, its staff and the system serving the city.
- W. "Utility rates, rules and regulations" means the rate structure of the Utility and any rules and regulations as approved by the City Council.
- X. "Water customer" means the person in whose name service is rendered as evidenced by the signature on the application, contract or agreement for that service, or in the absence of a signed instrument, by the receipt and payment of bills regularly issued in his/her name, regardless of the identity of the actual user of the service.
- Y. "Water user" means any user of water including a water customer. (Ord. 2752 (part), 1991).

12.06.050. Application.

The provisions of this chapter shall apply to all customers, water users and premises served by the Utility wherever situated and shall also apply to all premises and facilities owned, maintained, operated or under the jurisdiction of the various officers, boards, departments or agencies of the City. (Ord. 2752 (part), 1991).

12.06.060. Water shortage emergency notice and implementation.

A. The Utility staff shall monitor any water shortage and evaluate the supply and demand for water by its customers and shall recommend to the City Manager the extent of water conservation required for the Utility to plan for and supply water to its customers. When a water shortage appears imminent, the City Manager shall notify the City Council and recommend holding a public hearing for the purpose of determining whether a water shortage emergency exists and determining the appropriate phase of the water shortage emergency and base year implemented to protect the public welfare and safety. The public hearing shall be noticed by publishing said notice one time only in a newspaper of general circulation. Upon completion of the hearing, the City Council shall make its decision on said phase implementation by Council resolution. Said resolution shall be published one time only in a newspaper of general circulation, and the prohibited use provisions shall become effective immediately upon such publication.

- B. The customer percentage curtailment provisions shall begin on the date of the next billing after the effective date of the resolution of the Council. Said billing shall include a notice to the water customer that a water shortage emergency has been implemented.
- C. The implemented phase of the water shortage emergency shall be in effect until the City Council declares the water shortage emergency has ended or until another phase has been implemented pursuant to this chapter. (Ord. 2752 (part), 1991).

12.06.065. Emergency water conservation fund established.

The Director of Finance shall hereby establish an emergency water conservation plan fund within the Utility's account system to be used for the Utility's costs and expenses of administering and enforcing this chapter and for any revenue shortfall due to water shortages and conservation measures. Moneys collected from penalty surcharges and the water conservation surcharge shall be placed in the fund. The fund may also be used to offset the cost of, and provide a Council-approved citywide incentive for, customer conservation efforts and retrofits. (Ord. 2752 (part), 1991).

12.06.070. Water shortage emergency phases.

No water user or water customer of the City shall use, cause the use, or permit the use of water from the Utility in a manner contrary to any provision of this chapter or in an amount in excess of that permitted by the particular conservation phase which has been mandated by the City Council in accordance with the provisions of this chapter.

- A. Phase I Water Shortage Emergency.
 - 1. Prohibited uses applicable to all Utility users:
- a. There shall be no hose washing of sidewalks, walkways, driveways, parking areas or other paved surfaces, except as required for health and safety purposes.
- b. Washing of motor vehicles, trailers, boats and other types of mobile equipment shall be done only with a hand-held water container or a hose equipped with a positive shutoff nozzle for quick rinses, except that washing may be done at the immediate premises of a commercial car wash or with reclaimed water.
- c. No water shall be used to clean, fill or maintain levels in decorative fountains, or other similar aesthetic structures unless such water is part of a recycling system.
- d. No restaurant, hotel, cafe, cafeteria or other public place where food is sold, served or offered for sale, shall serve drinking water to any customer unless expressly requested.

- e. All leaks from indoor and outdoor plumbing fixtures shall be promptly repaired.
- f. Watering of landscape or other turf area shall not be allowed between ten a.m. and four p.m., except that this provision shall not apply to commercial nurseries, golf courses and other water-dependent industries; except that there shall be no restriction on watering using reclaimed water, provided that signs are posted that identify reclaimed water is being used.
- g. No water runoff from landscaped areas into adjoining streets, sidewalks or other paved areas due to incorrectly-directed or incor- rectly-maintained sprinklers or excessive watering shall be allowed.

B. Phase II Water Shortage Emergency.

- 1. Prohibited uses applicable to all Utility users: All the provisions of phase I are applicable.
- 2. Curtailment of water used by water customers: No water customer shall use, cause the use, or permit the use of water from the City water system for any purpose in an amount in excess of ninety percent of their corresponding base billing period consumption that occurred during the base year. The base year is determined by the City Council in their implementation resolution. When comparing the corresponding current billing period consumption with the base billing period consumption, the base billing period consumption will be adjusted to reflect the same number of days as the current billing period.

C. Phase III Water Shortage Emergency.

- 1. Prohibited uses applicable to all Utility users: All the provisions of phase I shall apply except that the restrictions on watering of lawns, landscape or other turf areas shall be modified to prohibit watering more often than every other day and to prohibit watering between the hours of eight a.m. and six p.m. Also, commercial nurseries, golf courses and other water-dependent industries shall be prohibited from watering their stock more often than every other day and prohibited from watering between the hours of ten a.m. and four p.m.; except that there shall be no restriction on watering using reclaimed water, provided that signs are posted that identify reclaimed water is being used.
- 2. Curtailment of water used by water customers: No water customer shall use, cause the use, or permit the use of water from the City water system for any purpose in an amount in excess of eighty-five percent of their corresponding base billing period consumption that occurred during the base year. The base year is determined by the City Council in their implementation resolution. When comparing the corresponding current billing period consumption with the base billing period consumption, the base billing period consumption will be adjusted to reflect the same number of days as the current billing period.

- D. Phase IV Water Shortage Emergency.
- 1. Prohibited uses applicable to all Utility users: All the provisions of phase III are applicable.
- 2. Curtailment of water used by water customers: No water customer shall use, cause the use, or permit the use of water from the City water system for any purpose in an amount in excess of eighty percent of their corresponding base billing period consumption that occurred during the base year. The base year is determined by the City Council in their implementation resolution. When comparing the corresponding current billing period consumption with the base billing period consumption, the base billing period consumption will be adjusted to reflect the same number of days as the current billing period.

E. Phase V Water Shortage Emergency.

- 1. Prohibited uses applicable to all Utility users: All the provisions of phase IV shall apply except there shall be no residential watering of lawn, landscaping and other turf areas at any time except by hand-held watering containers. Also, commercial nurseries, golf courses and other water-dependent industries shall be prohibited from watering lawn, landscaping and other turf areas more often than every third day and prohibited from watering between the hours of eight a.m. and six p.m., except that there shall be no restriction on watering using reclaimed water, provided that signs are posted that identify reclaimed water is being used.
- 2. Curtailment of water used by water customers: No water customer shall use, cause the use, or permit the use of water from the City water system for any purpose in an amount in excess of seventy- five percent of their corresponding base billing period consumption that occurred during the base year. The base year is determined by the City Council in their implementation resolution. When comparing the corresponding current billing period consumption with the base billing period consumption, the base billing period consumption will be adjusted to reflect the same number of days as the current billing period.
- F. General Exception. The prohibitions described in this chapter are waived when such use of water is necessary as determined by the Utility to maintain an adequate level of public health and safety and is necessary to provide an essential government service such as police, fire and emergency repairs.
- G. Lifeline Exemptions. Nothing contained in Subsections B 2, C 2, D 2 or E 2 of this section shall be deemed to require any residential customer of the Utility to reduce his/her consumption of water provided by the Utility to an amount less than:

Phase of Water	Single-family Use Gallons	Multi-family Use
Shortage	per Month per Meter	Gallons per Month
Emergency in Effect		per Meter

Phase II	7,000	5,000
Phase III	6,500	4,500
Phase IV	6,000	4,000
Phase V	5,500	3,500

(Ord. 2752 (part), 1991).

12.06.080. Failure to comply.

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

1. Prohibited use penalties:

- a. For the first violation by any person of any of the provisions of Subsections A 1, B 1, C 1, D 1 or E 1 of Section 12.06.070, the Utility shall issue a written notice, pursuant to Section 12.06.100, of the fact of such violation to the customer whose water has been used.
- b. For a second violation by any person of any of the provisions of Subsections A 1, B 1, C 1, D 1 or E 1 of Section 12.06.070 within the preceding twelve calendar months, the Utility shall issue a written notice, pursuant to Section 12.06.100 of the fact of such second violation to the customer whose water has been used.
- c. For a third violation by any person of any of the provisions of Subsections A 1, B 1, C 1, D 1 or E 1 of Section 12.06.070. within the preceding twelve calendar months, the Utility shall issue a third written notice, pursuant to Section 12.06.100., of its intent to install a flow restrictor no earlier than ten working days after the notice. Thereafter the Utility may install a flow restricting device of one gallon-per-minute capacity for services up to one and one-half inch size, and comparatively sized restrictors for larger services, on the service of the customer at the premises at which the violation occurred for a period of not less than forty-eight hours. The charge for installing and removing flow-restricting devices shall be the actual cost based upon the size of the meter and the reasonable cost of installation but shall not be less than twenty-five dollars each during regular hours and forty dollars each during any other time. The Utility may use a schedule of charges based on meter size and average installation cost. The charge shall be paid along with the regular bill.
- d. For any subsequent violation by any customer of the Utility of any of the provisions of Subsections A 1, B 1, C 1, D 1 or E 1 of Section <u>12.06.070</u>. within the preceding twelve calendar months, the Utility shall issue a written notice, pursuant to

Section 12.06.100. of its intent to install a flow restrictor no earlier than ten working days after the notice and thereafter the Utility may either install a flow restricting device for a period of time of not less than one hundred sixty-eight hours or discontinue water service to that customer at the premises at which the violation occurred. The charges shall be the same as detailed in Subsection A 1 c of this section.

2. Curtailment use penalties:

- a. If water is used during any billing period in excess of the water use curtailment amount as set forth in Subsections B 2, C 2, D 2 or E 2 of Section 12.06.070. for that period, a surcharge shall be imposed on said excess at double the basic rate established by the Utility in the applicable rate schedule for each one thousand gallons of water in excess of the allotted amount thereof. The Utility shall also issue a written notice to the customer, pursuant to Section 12.06.100., of the fact of the excess water usage. Said surcharge shall appear on the first billing statement for that account immediately following the period in which the excess has occurred. The surcharge shall be paid to the Utility at the same time as the payment for the basic rate, and the penalty for failure to pay the entire amount due (basic plus surcharge) shall be the same as the penalty imposed by the Utility for failure to pay the basic rate.
- b. Notwithstanding the provisions of subsection A 2 a, if water is used in excess of the water use curtailment amount as set forth in Subsections B 2, C 2, D 2 or E 2 of Section 12.06.070. for each billing period in two or more successive and consecutive periods, a surcharge shall be imposed on all water used in excess of the amount allocated for the second consecutive period and all other successive consecutive periods in which the excess use occurred. The surcharge imposed by this subsection shall be quadruple the basic water rate established by the Utility in the applicable rate bracket for each one thousand gallons of water used in excess of the allotted amount. The Utility shall also issue a written notice to the customer, pursuant to Section 12.06.100., of the fact of the excess water usage. The surcharge shall be billed in the same manner as detailed in subsection A 2 a of this section.
- c. If water is used in excess of the water use curtailment amount as set forth in Subsections B 2, C 2, D 2 or E 2 of Section 12.06.070. for each billing period for four or more successive and consecutive billing periods then, in addition to said surcharge, the Utility may either install a device on the meter to restrict the flow of water or discontinue service to the account, as detailed in Subsections A 1 c and A 1 d of this section.
- B. Hearing. Any customer against whom (1) a penalty has been levied pursuant to this section or (2) a notice on flow restrictor installation has been served, shall have a right to a hearing by the Utility upon the written request of that customer to the Utility. Said request must be received within ten days of notification of the violation or the receipt of the surcharged billing. If the issue is not resolved to the customer's satisfaction then the customer shall have the right to appeal to the citizens appeals board, as provided in Section 12.06.110.

- C. Reservation of Rights. The rights of the Utility hereunder shall be in addition to any other right of the Utility including those to discontinue service.
- D. Use of Penalty Funds. All monies collected by the Utility pursuant to any of the penalty provisions of this chapter shall be deposited in the emergency water conservation plan fund. (Ord. 2752 (part), 1991).

12.06.090. Application of surplus reduction.

Notwithstanding any other provision of this chapter, any reduction in the use of water by any customer during any current billing period in excess of the water use curtailment amount as set forth in Subsections B 2, C 2, D 2 or E 2 of Section 12.06.070 shall be applied to offset any excessive use of water by that customer during future billing periods. Such carry forward of the surplus reduction shall operate only as an offset to excessive usage and shall not be applied to any use of water at or below the customer's allowable maximum consumption thereof. (Ord. 2752 (part), 1991).

12.06.100. Notice of violation.

Except as otherwise provided in this section, any written notice required by the emergency water conservation plan to be given to a customer for failure to comply with the provisions hereof shall set forth the fact of the customer's failure to comply with the applicable provision or provisions of the plan and any proposed action taken by the Utility for such failure to comply. The notice shall inform the customer of his right to a hearing and the procedure to be followed to obtain such hearing. The Utility shall give notice of each violation to the customer committing such violation as follows:

- A. For any violation of the provisions of Subsections B 2 through E 2 of Section 12.06.070 or for a first or second violation of the provisions of subsections A 1 through E 1 of Section 12.06.070, the Utility shall give written notice of the fact of such violation to the customer either personally or by regular mail to the customer's billing address.
- B. If the penalty assessed is or includes the installation of a flow restrictor or the discontinuance of water service to the customer for any period of time whatsoever, notice of the violation shall be given in the following manner:
 - 1. By delivering a written notice to the customer personally; or
- 2. If the customer is absent from or unavailable at the premises at which the violation occurred, by leaving a copy with some responsible person at the premises and sending a copy through the regular mail to the address at which the customer is normally billed; or

3. If a responsible person cannot be found, then by affixing a copy in a conspicuous place at the premises at which the violation occurred and also sending a copy through the mail addressed to the address at which the customer is normally billed.

(Ord. 2752 (part), 1991).

12.06.110. Relief from compliance.

A. Administrative Relief. A customer may file an application for relief from any provisions of this chapter. The Utility shall appoint a Hearing Officer for all such cases and shall develop such procedures as it considers necessary to resolve such applications at the department level. Upon the filing by a customer of an application for relief, the Hearing Officer shall take such steps as he/she deems reasonable to resolve the application. The application may include requests for relief from penalties and prohibited uses, and requests for relief, in whole or in part, from the water use curtailment provisions of Section 12.06.070.

A written decision of the Hearing Officer, including notice to the customer of his right to appeal to the Citizens Appeals Board, shall be given to the customer personally or by mail within fifteen days. A customer shall exhaust all administrative remedies provided by this section prior to filing an appeal with the Citizens Appeals Board.

B. Citizens Appeals Board(s) Established. The City Council shall establish one or more Citizens Appeals Boards, consisting of at least three but not more than five members, to hear appeals concerning applications for relief of violations that a customer or water user cannot resolve with the Hearing Officer. The City Council shall adopt such rules and regulations as they, in their sound discretion, deem reasonable and necessary to the formation, procedure and operation of the Citizens Appeals Board.

In all cases where a customer has filed an application for relief from the provisions of this chapter or has appealed a violation, and has failed to resolve said application or violation appeal with the Hearing Officer, the customer shall have the right to appeal the decision of the Hearing Officer to the Citizens Appeals Board by filing a written request for appeal within ten days after receipt of the decision of the Hearing Officer. This shall automatically stay the implementation of the proposed course of action by the Utility pending the decision of the Citizens Appeals Board. The Citizens Appeals Board shall hear the appeal, within fifteen days after receipt of such a request and shall issue a written decision within fifteen days, which decision shall be final.

- C. Factors Determining Relief From Water Curtailment Requirements. In determining whether relief shall be granted, the Utility and the Citizens Appeals Board shall take into consideration all relevant factors, including but not limited to:
- 1. Whether any additional reduction in water consumption will result in unemployment;

- 2. Whether additional members have been added to the household;
- 3. Whether any additional landscaped property has been added to the property since the base year determination;
 - 4. Changes in vacancy and occupancy factors in multifamily housing;
- 5. Increased number of employees in commercial, industrial and governmental offices:
 - 6. Increased production requiring increased process water;
 - 7. Water uses during new construction, essential maintenance or remodeling;
 - 8. Adjustments to water use by emergency health or safety hazards;
 - 9. First filling of a permit-constructed swimming pool;
 - 10. Water use necessary for reasons related to family illness or health; and
- 11. The customer can verify significant reduction in water usage through prior installation of water conserving landscaping, processes or plumbing fixtures.

No relief from the curtailment provisions shall be granted unless the customer shows that he/she has achieved the maximum practical reduction in water consumption other than in the specific areas in which relief is being sought. The Utility may request, and customer shall provide, reasonable and necessary information for resolution of the customer's application for relief.

D. Base Adjustment. The Utility, in its discretion may adjust the base billing period consumption assigned to any customer if that customer establishes, to the satisfaction of the Utility, that the base billing period consumption, as herein provided, would cause him great hardship for reasons listed in subsection C of this section.

Any customer who was not a customer on the premises for which service was billed by the Utility during the base year shall be assigned the same base billing period consumption for such or similar premises, and the Utility shall have the further discretion to adjust such base billing period consumption in the event such customer's use of the premises is substantially different from the previous use thereof during the base year. (Ord. 2752 (part), 1991).

12.06.120. General provisions.

A. Reports. The Utility may, by written request, require all commercial and industrial customers of the Utility using twenty thousand or more billing units per year to submit a

water conservation plan to the City Engineer and shall submit quarterly to said Director a report on the progress of their conservation plans.

- B. City Conservation Reports. All City departments shall submit to the City Manager monthly reports on their water conservation efforts. Their reports shall be consolidated by the City Manager and reported from time to time to the City Council.
- C. Additional Water Conservation Measures. The City Council may order implementation of water conservation measures in addition to those set forth in Section 12.06.070. Such additional water conservation measures shall be implemented in the manner provided in Section 12.06.060.
 - D. Enforcement. The Utility shall enforce the provisions of this chapter.
- E. Water Conservation Surcharge. The City Council may adopt a system-wide water conservation surcharge to make up for revenue shortages resulting from the implementation of the water conservation measures contained in this chapter. Any funds collected shall be deposited in the emergency water conservation plan fund. Implementation of the water conservation surcharge may be determined at the time of the water shortage emergency phase implementation or at another time and shall be pursuant to the notice of hearing requirements contained in Section 12.06.060. Unit adjustments required by such surcharge shall apply only to each one thousand gallons of sales subject to commodity charges as provided under the Utility's water rates, rules and regulations rate schedules, except that the first seven billing units per month are exempted from such surcharge for all single-family residential customers of the Utility. Should the Utility be in water shortage emergency phases II, III, IV or V, the lifeline exemption as stated in subsection G of Section 12.06.070 shall not be subject to the water conservation surcharge. (Ord. 2752 (part), 1991).

12.06.130. Public nuisance.

In addition to the penalties provided in this chapter, any condition caused or permitted to exist in violation of any of the provisions of this chapter shall be deemed a public nuisance and may be, by the City, summarily abated as such, and each day such condition continues shall be regarded as a new and separate offense. (Ord. 2752 (part), 1991).

12.06.140. Severability.

If any part of this chapter, or the application thereof to any person or circumstances, is for any reason held invalid by a court of competent jurisdiction, the validity of the remainder of the chapter or the application of such provision to other persons or circumstances shall not be affected. (Ord. 2752 (part), 1991).