

**MARIN MUNICIPAL WATER DISTRICT**

**ORDINANCE NO. 449**

**AN ORDINANCE ADDING CHAPTER 13.04 ENTITLED “ COMPREHENSIVE DROUGHT WATER CONSERVATION AND ENFORCEMENT MEASURES” TO TITLE 13 OF THE MARIN MUNICIPAL WATER DISTRICT CODE ENTITLED “WATER SERVICE CONDITIONS AND WATER CONSERVATION MEASURES” ADOPTING ADDITIONAL WATER CONSERVATION AND ENFORCEMENT MEASURES PURSUANT TO WATER CODE SECTION 375**

**BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE MARIN MUNICIPAL WATER DISTRICT AS FOLLOWS:**

**SECTION 1. Purpose:** Due to the current drought conditions, existing in the service area of the Marin Municipal Water District (District), the purpose of this ordinance is to adopt a comprehensive list of mandatory water conservation measures to enhance the District’s water conservation program pursuant to Water Code section 375. The adoption of these conservation measures is aimed at reducing the quantity of water used both indoors and outdoors by all District customers to preserve the District’s limited water supply due to the current drought. This action is necessary to preserve remaining water supply given the uncertainty of future supply conditions.

**SECTION 2. Chapter 13.04 entitled “Comprehensive Drought Water Conservation and Enforcement Measures” is hereby added to the Marin Municipal Water District Code.**

**SECTION 3. Section 13.04.010 entitled “Declaration of purpose and application” is added to read as follows:**

**13.04.010 Declaration of purpose and application.**

The purpose of this chapter is to provide a comprehensive mandatory list of water conservation and enforcement measures to preserve the District’s remaining water supply during the current drought conditions by adopting provisions that will significantly reduce the consumption of water, thereby preserving and extending the available water supply for the District’s customers while reducing the hardship on the general public to the greatest extent possible. The water conservation and enforcement measures set forth in this chapter are adopted in accordance with Chapter 13.02 of the District’s Code and District Board of Directors Resolutions declaring a water shortage emergency and calling for voluntary and mandatory water conservation measures. This chapter is intended to provide a comprehensive list of mandatory water conservation measures, water waste prohibitions and water use restrictions as well as an enforcement program, to address the current drought and water supply shortage. Notwithstanding any other existing provision in the District Code this chapter shall, unless otherwise expressly stated, take precedent over any other inconsistent section of the District Code and shall apply uniformly across the District to all existing and future customers until such time as the District Board of Directors shall act to curtail the current water use conservation measures.

**SECTION 4. Section 13.04.020 entitled “Drought water waste prohibitions” is added to read as follows:**

13.04.020 Drought water waste prohibitions.

The following prohibitions shall be in addition to all existing normal year water conservation measures under section 13.02.021 of the District Code. No customer of the District shall make, cause, use or permit the use of potable water from the District for residential, commercial, industrial, agricultural, governmental or any other purpose in a manner contrary to any provision of this section.

(1) Prohibited Nonessential Uses Applicable to Customers. It is unlawful for any person, firm, partnership, association, corporation, or political entity to use potable water from the District for the following nonessential uses:

(A) The washing of sidewalks, walkways, driveways, parking lots and all other hard surfaced areas by direct hosing, except as may be permitted by current regulations pertaining to urban water runoff pollution prevention as defined by the Marin County Stormwater Pollution Prevention Program and other controlling agencies, or as determined necessary by any public agency for the health and safety of the public.

(B) The escape of water through breaks or leaks within the customer’s plumbing or private distribution system for any substantial period of time within which such break or leak should reasonably have been discovered and corrected. A period of forty-eight hours after the customer discovers such a leak or break, or receives notice from the District of such leak or break, whichever occurs first, shall constitute a “reasonable time” within which to correct such leak or break for the purposes of this section. Failure of the customer to correct the break or leak within the time period stated above shall constitute a violation of District Code and may result in enforcement actions being taken by the District pursuant to section 6.02.030 of the District Code.

(C) Decorative water fountains or pools, including the refilling or make-up of any decorative fountain or pool.

(D) Irrigation shall not be conducted in a manner or to an extent that allows water to run off or overspray the areas being watered. Every customer is required to have his or her water distribution lines and facilities under control at all times to avoid water waste.

(E) Any excess water runoff flowing onto the public right-of-way at a rate of one gallon per minute or greater not caused by storm water or naturally occurring groundwater, is prohibited.

(F) Using a garden hose without a shut-off nozzle.

(G) Any landscape irrigation between the hours of 9:00 a.m. and 7:00 p.m.

(H) The application of potable water to outdoor landscapes during and within 48 hours after measurable rainfall.

(I) Irrigating ornamental turf on public street medians.

(J) Powerwashing of any structure, or using potable water to wash vehicles except at commercial carwash facilities.

(K) Use of private fire lines or private fire taps for any purposes other than fire suppression and necessary testing.

- (L) As of May 20, 2021, Golf course irrigation, with potable or raw water, of any areas beyond the greens and tee areas.
- (M) Dust control, compaction, sewer flushing, street cleaning, or any other use, as determined by the District, which can be met with disinfected tertiary recycled water.
- (2) Restrictions on Reverse Osmosis Units. The installation of reverse osmosis water purifying systems not equipped with an automatic shutoff unit is prohibited.
- (3) The following are prohibited for all new connections:
  - (A) Single pass cooling systems for air conditioning or other cooling system applications unless required for health or safety reasons.
  - (B) Non-recirculating systems for conveyer carwash applications.
- (4) Exemption From Daytime Water Prohibition. Notwithstanding anything contained in this chapter, necessary testing and repair of irrigation systems for the purpose of eliminating water waste is permitted during the hours of 9:00 a.m. and 7:00 p.m. Customers shall maintain appropriate documentation of any necessary testing and repairs for these purposes. For example, this documentation may include, but not be limited to, any applicable reports, invoices, photos, videos, and/or receipts for materials and labor related to the testing and repairs. Customers who fail to do so may be assessed the penalties set forth in section 13.04.040.

**SECTION 5. Section 13.04.030 entitled “Variances” is added to read as follows:**

13.04.030 Variances.

The District may grant variances for use of water otherwise prohibited by this chapter if it is found and determined that:

- (1) Failure to do so would cause an unnecessary and undue hardship on applicant or the public, including but not limited to, adverse economic impacts;
- (2) Failure to do so would cause an emergency condition affecting the health, sanitation, fire protection or safety of the applicant or the public; or
- (3) Customer is able and agrees to provide an alternative means of providing comparable water conservation.

Any request for a variance shall be submitted to the District in a writing providing sufficient detail regarding the request and the reasons therefore. After consideration of the variance request, a written decision shall be provided to the customer rejecting, partially approving or approving the variance request. If the customer disagrees with the initial determination, the customer may avail themselves of the appeal process set forth in section 13.04.060.

**SECTION 6. Section 13.04.040 entitled “Enforcement” is added to read as follows:**

13.04.040 Enforcement.

(1) As of May 1, 2021, for violations of the provisions set forth in section 13.04.020, other than subsection (1)(B), the following enforcement procedures shall apply:

(A) First Notice- Warning Letter

(i) Any customer violating the regulations and restrictions on water use set forth in section 13.04.020, other than subsection (1)(B), of this chapter shall receive a written warning informing them of the violation for the first such violation and warning that a second such violation will result in a penalty.

(B) Notice of Violation

(i) If, after receiving a written warning of violation for the same category of violation within a two week period, the District shall issue a Notice of Violation imposing a \$25 fine on the customer's next water bill.

(2) Repeat Violations

For customers found by the District to incur a further violation within the same category for which customer has already received a Notice of Violation within the past sixty (60) calendar days, customer shall be charged a fine of \$250 for each successive violation noticed by the District.

(3) Additional Enforcement Procedures

(A) Failure by the customer to correct the violation and pay the applicable fine, after following the procedures set forth above in this section, may cause the District to install a flow restrictor to be installed in the service. If a flow restrictor is placed, a charge of \$150 for cost of installation and an additional \$150 cost for removal shall be paid by the violator.

(B) Any willful violation occurring subsequent to the issuance of the third written notice of violation may constitute a misdemeanor and may be referred to the Marin County district attorney's office for prosecution. An individual convicted shall be punished by imprisonment in the county jail for not more than 30 days, or by a fine not exceeding one thousand dollars (\$1,000) or both.

(C) The District may also disconnect the water service pursuant to section 11.28.020 of this code. If water service is disconnected, it shall be restored only upon payment of the turn-on charge fixed by the board of directors under the provisions of section 11.08.150 of this code.

**SECTION 7. Section 13.04.050 entitled "Further prohibitions" is added to read as follows:**

13.04.050 Further prohibitions.

It is unlawful for any person, firm, partnership, association, corporation or political entity to remove, replace, alter or damage any water meter or components thereof, including but not limited to the meter face, its dials or other water usage indicators and any flow restricting device installed pursuant to Section 13.04.040.

**SECTION 8. Section 13.04.060 entitled "Appeals" is added to read as follows:**

Section 13.04.060 Appeals.

(1) Customers may appeal a decision regarding a variance or an enforcement action by following the procedures set forth below:

- (A) Within thirty (30) calendar days of the variance denial or partial denial or a notice of violation, customer shall mail a written appeal containing all applicable evidence supporting their position to the Water Efficiency Department at 220 Nellen Avenue, Corte Madera, CA 94925. For purposes of this section an appeal shall be deemed received by the District on the day of post-mark by the U.S. Postal Service.
- (B) The District shall respond to the appeal in writing either denying, granting or partially granting the appeal. If customer disputes the initial written determination of his/her appeal, then customer may request a further appeal by submitting a further writing to the District within fifteen (15) calendar days from the date of the initial written response to the appeal.
- (C) Upon receipt of a timely further appeal, a hearing on the appeal will be scheduled and the District will mail notice of this date to the customer at least ten (10) calendar days before the hearing.
- (D) The General Manager or designee shall conduct a hearing on the appeal considering all applicable facts and issue a written decision containing his or her decision on the appeal. The General Manager's or designee's decision shall be final.
- (E) Any action not timely appealed shall be deemed final.
- (F) Pending receipt of a written appeal or pending hearing pursuant to an appeal, the District may take appropriate steps to prevent unauthorized use of water as appropriate to prevent waste.
- (G) This notice and hearing procedure shall not apply to those water waste situations charged as misdemeanors.

**SECTION 9. Section 13.04.070 entitled "Remedies/cumulative" is added to read as follows:**

The remedies available to the District to enforce this chapter are in addition to any other remedies available under the District's code, or any state statutes or regulations, and do not replace or supplant any other remedy, but are cumulative.

**SECTION 10. Section 13.04.080 entitled "Chapter controlling" is added to read as follows:**

The provisions of this chapter shall prevail and control in the event of any inconsistency between this chapter and any other rule, regulation, ordinance or code of this District.

**SECTION 11. Findings of Necessity:** The Board of Directors, after considering all of the information and testimony presented at its April 20, 2021 meeting regarding this ordinance, finds as follows:

- I. Historic and Current Water Supply Overview
  - A. Water is a finite and precious resource.
  - B. The District's water supply currently remains limited to water captured in its seven reservoirs; water transported from the Russian River via the North Marin aqueduct;

and recycled water produced at the Las Gallinas Valley Sanitary District Plant (for a variety of non-potable purposes). About 73% of the District's water supply comes from its reservoirs, 25% from the Russian River through the North Marin aqueduct and 2% from recycled water. Although options to increase the District's water supply are being evaluated, the implementation of any preferred alternative will not be immediate.

- C. Based upon rainfall patterns for the District, very little rainfall occurs from May to October each year. In recent years, the overall summer peak-period has found water use averages about twice winter use. Outdoor water use is more discretionary than interior water use. Some reductions in water use can be achieved by reduction in the demand for water for exterior uses.
- D. Typically 15%-30% of water used for irrigating (water use outside the home) is wasted and the most typical cause of the waste is excess irrigation.
- E. The water conservation program required by this ordinance is necessary to conserve additional water for beneficial use and to preserve the District's water supply.

## II. Conservation Measures.

- A. The Board of Directors determines that this conservation program is a fundamental and necessary step in its on-going efforts to reduce overall water use District wide, especially discretionary summer water use for irrigation.
- B. Mindful of the fact that water use doubles during the normally warm summer months and that in any given year the District's reservoirs store a two year supply of water, the Board determines that it reasonable and necessary to expand its conservation effort along the lines described in this ordinance to further preserve and conserve the District's water supply.
- C. Article X Section 2 of the California Constitution declares that the general welfare requires that water resources be put to beneficial use to the fullest extent of which they are capable and that the waste, unreasonable use or unreasonable method of use of water be prevented, and that conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and the public welfare.
- D. California Water Code section 375 authorizes water suppliers to adopt and enforce a comprehensive water conservation program to reduce water consumption and conserve supplies.
- E. The adoption and enforcement of the water conservation program contained in this ordinance is necessary to manage and conserve the District's water supply and ensure the sustainability and reliability of the same by preventing water waste.
- F. The Board finds this ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) in accordance with Section 21080(b)(4) of the Public Resources Code.

**SECTION 12. Environmental Determination:** This project has been reviewed for compliance with the California Environmental Quality Act (CEQA) and based upon the above findings and purposes of this ordinance, qualifies for an exemption pursuant to section 21080(b)(4) in that the Board of Directors find that these measure are necessary to preserve water supply to avoid a more severe water supply emergency.

**SECTION 13. Severability:** If any section, subsection, sentence, clause, phrase, portion or part of this ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such section shall not affect the validity of the remaining portions of this code. The Board of Directors hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections subsections, clauses, phrases, parts or portions be declared invalid or unconstitutional.

**SECTION 14. Effective Date:** Pursuant to Water Code section 376, this ordinance shall be effective on the day of its adoption. Within 10 days of adoption, this ordinance, or a summary hereof, shall be published in the Marin Independent Journal pursuant to Section 6061 of the Government Code.

**PASSED AND ADOPTED** this 20th day of April, 2021, by the following vote of the Board of Directors:

**AYES:** Directors Larry Bragman, John Gibson, Larry Russell, Monty Schmitt, and Cynthia Koehler

**NOES:** None

**ABSENT:** None

  
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President, Board of Directors

**ATTEST:**

  
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Secretary, Board of Directors