

ORDINANCE NO.364

AN ORDINANCE OF OLIVENHAIN MUNICIPAL WATER  
DISTRICT ADOPTING A DROUGHT RESPONSE  
CONSERVATION PROGRAM

WHEREAS, Article 10, Section 2 of the California Constitution declares that waters of the State are to be put to beneficial use, that waste, unreasonable use, or unreasonable method of use of water be prevented, and that water be conserved for the public welfare; and

WHEREAS, conservation of current water supplies and minimization of the effects of water supply shortages that are the result of drought are essential to the public health, safety and welfare; and

WHEREAS, regulation of the time of certain water use, manner of certain water use, design of rates, method of application of water for certain uses, installation and use of water-saving devices, provide an effective and immediately available means of conserving water; and

WHEREAS, the Governor of the State of California has declared a drought for the State of California; and

WHEREAS, California Water Code sections 375 et seq. authorize water suppliers to adopt and enforce a comprehensive water conservation program; and

WHEREAS, Water Code Section 71610.5 also authorizes the Olivenhain Municipal Water District ("Olivenhain") to undertake a water conservation program to reduce water use; and

WHEREAS, adoption and enforcement of a comprehensive water conservation program will allow the Olivenhain Municipal Water District to delay or avoid implementing measures such as water rationing or more restrictive water use regulations pursuant to a declared water shortage emergency as authorized by California Water Code sections 350 et seq. and Water Code Sections 71640 et seq.; and

WHEREAS, San Diego County is a semi-arid region and local water resources are scarce. The region is dependent upon imported water supplies provided by the San Diego County Water Authority, which obtains a substantial portion of its supplies from the Metropolitan Water District of Southern California. Because the region is dependent upon imported water supplies, weather and other conditions in other portions of this State and of the Southwestern United States affect the availability of water for use in San Diego County; and

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WHEREAS, the San Diego County Water Authority has adopted an Urban Water Management Plan that includes water conservation as a necessary and effective component of the Water Authority's programs to provide a reliable supply of water to meet the needs of the Water Authority's 24 member public agencies, including the Olivenhain Municipal Water District. The Water Authority's Urban Water Management Plan also includes a contingency analysis of actions to be taken in response to water supply shortages. This ordinance is consistent with the Water Authority's Urban Water Management Plan; and

WHEREAS, as anticipated by its Urban Water Management Plan, the San Diego County Water Authority, in cooperation and consultation with its member public agencies, has adopted a Drought Management Plan, which establishes a progressive program for responding to water supply limitations resulting from drought conditions. This ordinance is intended to be consistent with and to implement the Water Authority's Drought Management Plan; and

WHEREAS, the Water Authority's Drought Management Plan contains three stages containing regional actions to be taken to lessen or avoid supply shortages. This ordinance contains drought response levels that correspond with the Drought Management Plan stages; and

WHEREAS, the Olivenhain Municipal Water District, due to the geographic and climatic conditions within its territory and its dependence upon water imported and provided by the San Diego County Water Authority, may experience shortages due to drought conditions, regulatory restrictions enacted upon imported supplies and other factors. The Olivenhain Municipal Water District has adopted an Urban Water Management Plan that includes water conservation as a necessary and effective component of its programs to provide a reliable supply of water to meet the needs of the public within its service territory. The Olivenhain Municipal Water District's Urban Water Management Plan also includes a contingency analysis of actions to be taken in response to water supply shortages. This ordinance is consistent with the Urban Water Management Plan adopted by the Olivenhain Municipal Water District; and

WHEREAS, on August 10, 2007 Governor Schwarzenegger issued a press release noting that California is currently in a water crises and the State's reservoirs are dangerously low on storage resulting in cities throughout California facing water rationing; and

WHEREAS, the shortage of water throughout California has resulted in a mandatory cutback of agricultural water use by 30% to conserve scarce water resources; and

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WHEREAS, the sole source of water available to serve Olivenhain's customers is imported water derived from the State Water Project and the Colorado River system; and

WHEREAS, the Colorado River system reservoir levels are now at approximately 50% of capacity and the runoff forecast is at 55% of normal; and

WHEREAS, deliveries from the State Water Project have been reduced by 30% as a result of a court order cutting deliveries from the State Water Project by approximately 800,000 acre-feet per year; and

WHEREAS, the Metropolitan Water District has determined that a water supply shortage is possible as early as 2009; and

WHEREAS, continuing drought conditions within Olivenhain's service area coupled with the shortage of available water from the State Water Project and the Colorado River system require the prompt conservation of Olivenhain's available water supply to ensure that this supply remains adequate for the long term health, safety, and welfare of Olivenhain's customers; and

WHEREAS the water conservation measures and progressive restrictions on water use and method of use identified by this ordinance provide certainty to water users and enable Olivenhain Municipal Water District to control water use, provide water supplies, and plan and implement water management measures in a fair and orderly manner for the benefit of the public that are consistent with those restrictions consistently being enforced across the state and in the San Diego County region; and

NOW, THEREFORE, the Board of Directors of Olivenhain Municipal Water District does ordain and declare as follows:

SECTION 1.0 DECLARATION OF NECESSITY AND INTENT

- (a) This ordinance establishes water management requirements necessary to conserve water, enable effective water supply planning, assure reasonable and beneficial use of water, prevent waste of water, prevent unreasonable use of water, prevent unreasonable method of use of water within the Olivenhain Municipal Water District in order to assure adequate supplies of water to meet the needs of the public, and further the public health, safety, and welfare, recognizing that water is a scarce natural resource that requires careful management not only in times of drought, but at all times.

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- (b) This ordinance establishes regulations to be implemented during times of declared water shortages, or declared water shortage emergencies. It establishes four levels of drought response actions to be implemented in times of shortage, with increasing restrictions on water use in response to worsening drought conditions and decreasing available supplies.
- (c) Level 1 condition drought response measures are voluntary and will be reinforced through local and regional public education and awareness measures that may be funded in part by Olivenhain Municipal Water District. During drought response condition Levels 2 through 4, all conservation measures and water-use restrictions are mandatory and become increasingly restrictive in order to attain escalating conservation goals.
- (d) During a Drought Response Level 2 condition or higher, the water conservation measures and water use restrictions established by this ordinance are mandatory and violations are subject to criminal, civil, and administrative penalties and remedies specified in this ordinance and as provided in Olivenhain Municipal Water District Administrative and Ethics Code.

The Board of Directors of the Olivenhain Municipal Water District hereby find and determine that extreme drought conditions throughout the State of California and Olivenhain's service area coupled with the loss of 30 percent of water available through the State Water Project and a critical shortage of water supply from the Colorado River system requires the implementation of immediate conservation measures to conserve scarce water available within Olivenhain's service area and to protect the health, safety, and welfare of the public. The Board of Directors of the Olivenhain Municipal Water District further finds and determines that the conservation measures enacted pursuant to this ordinance are necessary to protect and conserve Olivenhain's scarce water resources and to ensure that adequate water remains available to Olivenhain customers for their health, safety, and welfare.

### SECTION 2.0 DEFINITIONS

- (a) The following words and phrases whenever used in this chapter shall have the meaning defined in this section:
  - 1. "Grower" refers to those engaged in the growing or raising, in conformity with recognized practices of husbandry, for the purpose of commerce, trade, or industry, or for use by public educational or correctional institutions, of agricultural, horticultural or floricultural products, and produced: (1) for human consumption or for the market, or (2) for the feeding of fowl or livestock produced for human consumption or for the market, or (3) for the feeding of

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fowl or livestock for the purpose of obtaining their products for human consumption or for the market. "Grower" does not refer to customers who purchase water subject to the Metropolitan Interim Agricultural Water Program or the Water Authority Special Agricultural Rate programs.

2. "Water Authority" means the San Diego County Water Authority.
3. "DMP" means the Water Authority's Drought Management Plan in existence on the effective date of this ordinance and as readopted or amended from time to time, or an equivalent plan of the Water Authority to manage or allocate supplies during shortages.
4. "Metropolitan" means the Metropolitan Water District of Southern California.
5. "Person" means any natural person, corporation, limited liability company, partnership, sole proprietorship, public or private entity however formed, public or private association, public or private agency, government agency or institution, school district, college, university, or any other user of water provided by the Olivenhain Municipal Water District.

### SECTION 3.0 APPLICATION

- (a) The provisions of this ordinance apply to any Person in the use of any water provided by the Olivenhain Municipal Water District.
- (b) This ordinance is intended solely to further the conservation of water. It is not intended to implement any provision of federal, State, or local statutes, ordinances, or regulations relating to protection of water quality or control of drainage or runoff. Refer to the local jurisdiction or Regional Water Quality Control Board for information on any stormwater ordinances and stormwater management plans.
- (c) Nothing in this ordinance is intended to affect or limit the ability of the Olivenhain Municipal Water District to declare and respond to an emergency, including an emergency that affects the ability of the Olivenhain Municipal Water District to supply water.
- (d) The provisions of this ordinance do not apply to use of water from private wells or to recycled water.
- (e) Nothing in this ordinance shall apply to use of water that is subject to a special supply program, such as the Metropolitan Interim Agricultural Water Program or the Water Authority Special Agricultural Rate programs. Violations of the conditions of

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special supply programs are subject to the penalties established under the applicable program. A person using water subject to any special supply program provided by the Olivenhain Municipal Water District is subject to this ordinance in the use of the other water.

### SECTION 4.0 DROUGHT RESPONSE LEVEL 1 – DROUGHT WATCH CONDITION

- (a) A Drought Response Level 1 condition is also referred to as a “Drought Watch” condition. A Level 1 condition applies when the Water Authority notifies its member agencies or the Olivenhain Municipal Water District’s General Manager determines that due to drought or other supply reductions, there is a reasonable probability that there will be supply shortages and that a consumer demand reduction of up to 10 percent is required in order to ensure that sufficient supplies will be available to meet anticipated demands. The General Manager shall declare the existence of a Drought Response Level 1 and take action to implement the Level 1 conservation practices identified in this ordinance.
- (b) During a Level 1 Drought Watch condition, Olivenhain Municipal Water District will increase its public education and outreach efforts to emphasize increased public awareness of the need to implement the following water conservation practices. These water conservation practices become mandatory if Olivenhain Municipal Water District declares a Level 2 or higher Drought Response Level:
1. Stop 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. Stop water waste resulting from inefficient landscape irrigation, such as runoff, low head drainage, or overspray, etc. Similarly, stop water flows onto non-targeted areas, such as adjacent property, non-irrigated areas, hardscapes, roadways, or structures.
  3. Irrigate residential and commercial landscape before 8 a.m. and after 6 p.m. only.
  4. Use a hand-held hose equipped with a positive shut-off nozzle or bucket to water landscaped areas, including trees and shrubs located on residential and commercial properties that are not irrigated by a landscape irrigation system.
  5. Irrigate nursery and commercial grower’s products before 10 a.m. and after 6 p.m. only. Watering is permitted at any time with a hand-held hose equipped

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with a positive shut-off nozzle, a bucket, or when a drip/micro-irrigation system/equipment is used. Irrigation of nursery propagation beds is permitted at any time. Watering of livestock is permitted at any time.

6. Repair all water leaks within five (5) days of notification by the Olivenhain Municipal Water District unless other arrangements are made with the General Manager.
- (c) During a Drought Response Level 2 condition or higher, all persons shall be required to implement the conservation practices established in a Drought Response Level 1 condition.

### SECTION 5.0 DROUGHT RESPONSE LEVEL 2 – DROUGHT ALERT CONDITION

- (a) A Drought Response Level 2 condition is also referred to as a “Drought Alert” condition. A Level 2 condition applies when the Water Authority notifies its member agencies or the Olivenhain Municipal Water District’s Board of Directors determines that due to cutbacks caused by drought or other reduction in supplies, a consumer demand reduction of up to 20 percent is required in order to have sufficient supplies available to meet anticipated demands. The Olivenhain Municipal Water District Board of Directors shall declare the existence of a Drought Response Level 2 condition and implement the mandatory Level 2 conservation measures identified in this ordinance.
- (b) All Persons using Olivenhain Municipal Water District water shall comply with Drought Response Level 1 “Drought Watch” water conservation practices during a Level 2 Drought Alert, and shall also comply with the following additional conservation measures:
1. Limit residential and commercial landscape irrigation to no more than three (3) assigned days per week on a schedule established by the General Manager and posted by the Olivenhain Municipal Water District. During the months of November through May, landscape irrigation is limited to no more than once per week on a schedule established by the General Manager and posted by the Olivenhain Municipal Water District. This section shall not apply to commercial growers or nurseries.
  2. Limit lawn watering and landscape irrigation using sprinklers to no more than ten (10) minutes per watering station per assigned day. This provision does not apply to landscape irrigation systems using water efficient devices, including but not limited to: weather-based controllers, drip/micro-irrigation systems and stream rotor sprinklers.

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3. Water landscaped areas, including trees and shrubs located on residential and commercial properties, and not irrigated by a landscape irrigation system governed by section 5 (b) (1), on the same schedule set forth in section 5 (b) (1) by using a bucket, hand-held hose with positive shut-off nozzle, or low-volume non-spray irrigation.
  4. Repair all leaks within seventy-two (72) hours of notification by the Olivenhain Municipal Water District unless other arrangements are made with the General Manager.
- (c) Upon the declaration of a Drought Response Level 2 condition, Olivenhain Municipal Water District will suspend consideration of annexations to its service area.
- (d) Upon the declaration of a Drought Response Level 2 condition, no new potable water service shall be provided, no new temporary meters or permanent meters shall be provided, and no statements of immediate ability to serve or provide potable water service (such as, will serve letters, certificates, or letters of availability) shall be issued, except under the following circumstances:
1. A valid, unexpired building permit has been issued for the project; or
  2. The project is necessary to protect the public's health, safety, and welfare; or
  3. The applicant provides substantial evidence of an enforceable commitment that water demands for the project will be offset prior to the provision of a new water meter(s) to the satisfaction of Olivenhain Municipal Water District.

This provision shall not be construed to preclude the resetting or turn-on of meters to provide continuation of water service or to restore service that has been interrupted for a period of one year or less.

SECTION 6.0 DROUGHT RESPONSE LEVEL 3 – DROUGHT CRITICAL CONDITION

- (a) A Drought Response Level 3 condition is also referred to as a “Drought Critical” condition. A Level 3 condition applies when the Water Authority notifies its member agencies or the Olivenhain Municipal Water District’s Board of Directors determines that due to increasing cutbacks caused by drought or other reduction of supplies, a consumer demand reduction of up to 40 percent is required in order to have sufficient supplies available to meet anticipated demands. The Olivenhain Municipal Water District Board of Directors shall declare the existence of a Drought Response

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Level 3 condition and implement the Level 3 conservation measures identified in this ordinance.

(b) All persons using Olivenhain Municipal Water District water shall comply with Level 1 Drought Watch and Level 2 Drought Alert water conservation practices during a Level 3 Drought Critical condition and shall also comply with the following additional mandatory conservation measures:

1. Limit residential and commercial landscape irrigation to no more than two (2) assigned days per week on a schedule established by the General Manager and posted by the Olivenhain Municipal Water District. During the months of November through May, landscape irrigation is limited to no more than once per week on a schedule established by the General Manager and posted by the Olivenhain Municipal Water District. This section shall not apply to commercial growers or nurseries.
2. Water landscaped areas, including trees and shrubs located on residential and commercial properties, and not irrigated by a landscape irrigation system governed by section 6 (b) (1), on the same schedule set forth in section 6 (b) (1) by using a bucket, hand-held hose with a positive shut-off nozzle, or low-volume non-spray irrigation.
3. Stop filling or re-filling ornamental lakes or ponds, except to the extent needed to sustain aquatic life, provided that such animals are of significant value and have been actively managed within the water feature prior to declaration of a drought response level under this ordinance.
4. Stop washing vehicles except at commercial carwashes that re-circulate water, or by high pressure/low volume wash systems.
5. Repair all leaks within forty-eight (48) hours of notification by the Olivenhain Municipal Water District unless other arrangements are made with the General Manager.

(c) Olivenhain Municipal Water District may establish a water allocation for property served by the Olivenhain Municipal Water District using a method that does not penalize persons for the previous implementation of conservation methods or the installation of water-saving devices. If the Olivenhain Municipal Water District establishes a water allocation it shall provide notice of the allocation by including it in the regular billing statement for the fee or charge or by any other mailing to the address to which the Olivenhain Municipal Water District customarily mails the billing statement for fees or charges for on-going water service. The District is not required

to comply with Proposition 218 to impose fines on persons using water in violation of District restrictions on water use or in passing through penalties levied upon the District by Metropolitan as a result of excessive use by some District customers. Following the effective date of the water allocation as established by the Olivenhain Municipal Water District, any person that uses water in excess of the allocation shall be subject to a penalty in the amount of twice the Metropolitan Tier 2 rate if under 115% of the allocation and four times the Metropolitan Tier 2 rate if over 115% in excess of the allocation. The penalty for excess water usage shall be cumulative to any other remedy or penalty that may be imposed for violation of this ordinance.

SECTION 7.0 DROUGHT RESPONSE LEVEL 4 – DROUGHT EMERGENCY CONDITION

- (a) A Drought Response Level 4 condition is also referred to as a “Drought Emergency” condition. A Level 4 condition may apply when the Water Authority Board of Directors declares a water shortage emergency pursuant to California Water Code section 350 and notifies its member agencies that Level 4 requires a demand reduction of more than 40 percent in order for the Olivenhain Municipal Water District to have maximum supplies available to meet anticipated demands. The Olivenhain Municipal Water District shall declare a Drought Emergency in the manner and on the grounds provided in California Water Code section 350 and Water Code Section 71640 and may do so whether or not the SDCWA declares a California Water Code section 350 emergency.
- (b) All persons using Olivenhain Municipal Water District water shall comply with conservation measures required during Level 1 Drought Watch, Level 2 Drought Alert, and Level 3 Drought Critical conditions and shall also comply with the following additional mandatory conservation measures:
  - 1. Stop all landscape irrigation, except crops and landscape products of commercial growers and nurseries. This restriction shall not apply to the following categories of use unless the Olivenhain Municipal Water District has determined that recycled water is available and may be lawfully applied to the use.
    - A. Maintenance of trees and shrubs that are watered on the same schedule set forth in section 6 (b) (1) by using a bucket, hand-held hose with a positive shut-off nozzle, or low-volume non-spray irrigation;
    - B. Maintenance of existing landscaping necessary for fire protection as specified by the Fire Marshal of the local fire protection agency having jurisdiction over the property to be irrigated;

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- C. Maintenance of existing landscaping for erosion control;
  - D. Maintenance of plant materials identified to be rare or essential to the well being of rare animals;
  - E. Maintenance of landscaping within active public parks and playing fields, day care centers, school grounds, cemeteries, and golf course greens, provided that such irrigation does not exceed two (2) days per week according to the schedule established under section 6 (b) (1);
  - F. Watering of livestock; and
  - G. Public works projects and actively irrigated environmental mitigation projects.
2. Repair all water leaks within twenty-four (24) hours of notification by the Olivenhain Municipal Water District unless other arrangements are made with the General Manager.
- (c) The Olivenhain Municipal Water District may establish a water allocation for property served by the Olivenhain Municipal Water District. If the Olivenhain Municipal Water District establishes a water allocation it shall provide notice of the allocation by including it in the regular billing statement or by any other mailing to the address to which the Olivenhain Municipal Water District customarily mails the billing statement for fees or charges for on-going water service. The District is not required to comply with Proposition 218 to impose fines on persons using water in violation of District restrictions on water use or in passing through penalties levied upon the District by Metropolitan as a result of excessive use by some District customers. Following the effective date of the water allocation as established by the Olivenhain Municipal Water District, any person that uses water in excess of the allocation shall be subject to a penalty in the amount of twice the Metropolitan Tier 2 rate if under 115% of the allocation and four times the Metropolitan Tier 2 rate if over 115% in excess of the allocation. The penalty for excess water usage shall be cumulative to any other remedy or penalty that may be imposed for violation of this ordinance.

SECTION 8.0 CORRELATION BETWEEN DROUGHT MANAGEMENT PLAN AND DROUGHT RESPONSE LEVELS

- (a) The correlation between the San Diego County Water Authority's (SDCWA) Drought Management Plan (DMP) stages and the Olivenhain Municipal Water District drought response levels identified in this ordinance is described herein. Under DMP Stage 1, the Olivenhain Municipal Water District (District) may implement Drought Response Level 1 actions. Under DMP Stage 2, the Olivenhain Municipal Water

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District may implement Drought Response Level 1 or Level 2 actions. Under DMP Stage 3, the Olivenhain Municipal Water District may implement Drought Response Level 2, Level 3, or Level 4 actions. While the District may move to these levels with the SDCWA DMP, the District may implement any level of this ordinance at any time upon the appropriate findings and notice required herein.

- (b) The drought response levels identified in this ordinance correspond with the Water Authority DMP as identified in the following table:

Drought Response Levels	Use Restrictions	Conservation Target	DMP Stage
Drought Watch	Voluntary	Up to 10%	Stage 1 or 2
Drought Alert	Mandatory	Up to 20%	Stage 2 or 3
Drought Critical	Mandatory	Up to 40%	Stage 3
Drought Emergency	Mandatory	Above 40%	Stage 3

SECTION 9.0 PROCEDURES FOR DETERMINATION AND NOTIFICATION OF DROUGHT RESPONSE LEVEL

- (a) The existence of a Drought Response Level 1 condition may be declared by the General Manager upon a written determination of the existence of the facts and circumstances supporting the determination. A copy of the written determination shall be filed with the Clerk or Secretary of the Olivenhain Municipal Water District and provided to the Olivenhain Municipal Water District Board of Directors. The General Manager may publish a notice of the determination of existence of Drought Response Level 1 condition in one or more newspapers, including a newspaper of general circulation within the Olivenhain Municipal Water District. The Olivenhain Municipal Water District may also post notice of the condition on their website. To end a Level I condition, the General Manager may declare by a written declaration of facts that state a voluntary reduction of 10% is no longer needed to meet supply projections for the applicable fiscal year.
- (b) The existence of Drought Response Level 2 or Level 3 conditions may be declared by resolution of the Olivenhain Municipal Water District Board of Directors adopted at a regular or special public meeting held in accordance with State law. The mandatory conservation measures applicable to Drought Response Level 2 or Level 3 conditions shall take effect on the tenth (10) day after the date the response level is declared. Within five (5) days following the declaration of the response level, the Olivenhain Municipal Water District shall publish a copy of the resolution in a newspaper used for publication of official notices. To end a Level 2 or 3 condition, the Board may adopt by resolution the end of the condition due to the required

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conservation for each level no longer being needed to meet supply projections for the fiscal year.

- (c) The existence of a Drought Response Level 4 condition may be declared in accordance with the procedures specified in California Water Code sections 351 and 352. The mandatory conservation measures applicable to Drought Response Level 4 conditions shall take effect on the tenth (10) day after the date the response level is declared. Within five (5) days following the declaration of the response level, the Olivenhain Municipal Water District shall publish a copy of the resolution in a newspaper used for publication of official notices. If the Olivenhain Municipal Water District establishes a water allocation, it shall provide notice of the allocation by including it in the regular billing statement for the fee or charge or by any other mailing to the address to which the Olivenhain Municipal Water District customarily mails the billing statement for fees or charges for on-going water service. Water allocation shall be effective on the fifth (5) day following the date of mailing or at such later date as specified in the notice. To end a Level 4 condition, the Board may adopt by resolution the end of the condition due to the required conservation for Level 4 no longer being needed to meet supply projections for the fiscal year.
- (d) The Olivenhain Municipal Water District Board of Directors may declare an end to a Drought Response Level by the adoption of a resolution at any regular or special meeting held in accordance with State law.

## SECTION 10.0 HARDSHIP VARIANCE

- (a) If, due to unique circumstances, a specific requirement of this ordinance would result in undue hardship to a person using Olivenhain water or to property upon which Olivenhain water is used, that is disproportionate to the impacts to Olivenhain Municipal Water District water users generally or to similar property or classes of water uses, then the person may apply for a variance to the requirements as provided in this section.
- (b) The variance may be denied, granted, or conditionally granted in the sole discretion of Olivenhain. A variance will be granted or conditionally granted by Olivenhain only upon a written finding by Olivenhain of the existence of facts demonstrating an undue hardship to a person using Olivenhain water or to property within Olivenhain's service area, that is disproportionate to the impacts to Olivenhain Municipal Water District water users generally or to similar property or classes of water use due to specific and unique circumstances of the user or the user's property.
  - 1. Application. Application for a variance shall be a form prescribed by the Olivenhain Municipal Water District.

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2. Supporting Documentation. The application shall be accompanied by photographs, maps, drawings, and other information, including a written statement of the applicant. All evidence and documents in support of the variance request and any hardship shall be provided with the application.
3. Required Findings for Variance. An application for a variance shall be denied unless Olivenhain finds, based on the information provided in the application, supporting documents, or such additional information as may be requested, and on water use information for the property as shown by the records of the Olivenhain Municipal Water District, all of the following:
  - A. That the variance does not constitute a grant of special privilege inconsistent with the limitations upon other Olivenhain Municipal Water District customers; and
  - B. That because of special circumstances applicable to the property or its use, such as an Olivenhain customer on life support, the strict application of this ordinance would have a disproportionate impact on the property or use that exceeds the impacts to Olivenhain customers generally; and
  - C. That the authorizing of such variance will cause substantial detriment to adjacent properties, will not materially affect the ability of the Olivenhain Municipal Water District to effectuate the purpose of this water conservation ordinance and will not be detrimental to the public interest; and
  - D. That the condition or situation of the subject property or the intended use of the property for which the variance is sought is not common, recurrent or general in nature.
4. Approval Authority. The General Manager shall exercise initial approval authority and act upon any completed variance application with all supporting evidence no later than 10 days after submittal and may approve, conditionally approve, or deny the variance. Any variance may be denied, conditionally approved or approved as determined by the General Manager in his or her sole discretion. This approval by the General Manager may be determined upon a recommendation from a Citizens Advisory Task Force, if the District forms one for hardship hearings. The applicant requesting the variance shall be promptly notified in writing of any action taken. Unless specified otherwise at the time a

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variance is approved, the variance applies to the subject property during the term of the mandatory drought response.

5. Appeals to Olivenhain Municipal Water District Board of Directors. An applicant may appeal a decision or condition of the General Manager on a variance application to the Olivenhain Municipal Water District Board of Directors within 10 consecutive days of the decision by the General Manager upon written request for a hearing. The request shall state all grounds for the appeal and shall include all evidence or documents provided to the General Manager to support the variance request. The failure to appeal the decision, in writing, to the Board of Directors within ten (10) consecutive days of the decision by the General Manager shall bar and waive all further appeals to the Board and result in the decision of the General Manager becoming final and non-appealable. At a public meeting, the Olivenhain Municipal Water District Board of Directors shall act as the approval authority and review the appeal de novo by following the regular variance procedure. The Board of Directors of Olivenhain retains broad discretion in denying, approving or conditionally approving any variance request. Nothing contained in this ordinance shall be construed as requiring the Board of Directors to grant any variance request. The Board of Directors of Olivenhain shall have the right to deny any variance request in the sole discretion of the Board of Directors of Olivenhain. The decision of the Olivenhain Municipal Water District Board of Directors shall be final. The record of proceedings shall consist solely of those documents and records submitted by the applicant to the General Manager to support the variance request, any studies, reports, evaluations, or determinations made by the General Manager and any final determination by the Board of Directors of Olivenhain. No new evidence or information shall be submitted by any variance applicant to the Board of Directors of Olivenhain not previously presented to the General Manager prior to the General Manager's decision on the variance request.

## SECTION 11.0 VIOLATIONS AND PENALTIES

- (a) Any person, who uses, causes to be used, or permits the use of water in violation of this ordinance is guilty of an offense punishable as provided herein.
- (b) Each day that a violation of this ordinance occurs is a separate offense.
- (c) Administrative fines may be levied for each violation of a provision of this ordinance as follows:
  1. A warning will be issued at the sole discretion of the General Manager for the first violation.

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2. The customer will be fined one hundred dollars for a second violation.
  3. The customer will be fined two hundred dollars for a third violation of any provision of this ordinance within one year.
  4. The customer will be fined five hundred dollars for each additional violation of this ordinance within one year.
- (d) Any violation of a provision of this ordinance is subject to enforcement through installation of a flow-restricting device in the meter.
- (e) Each violation of this ordinance may be prosecuted as a misdemeanor punishable by imprisonment in the county jail for not more than thirty (30) days or by a fine not exceeding \$1,000, or by both as provided in Water Code section 377.
- (f) Willful violations of the mandatory conservation measures and water use restrictions as set forth in Section 7.0 and applicable during a Stage 4 Drought Emergency condition may be enforced by discontinuing service to the property at which the violation occurs as provided by Water Code section 356.
- (g) All remedies provided for herein shall be cumulative and not exclusive.

SECTION 12.0 EFFECTIVE DATE

This ordinance is effective immediately upon adoption as provided in Water Code Section 376. This ordinance shall be published one time in a newspaper of general circulation within the Olivenhain Municipal Water District within ten (10) days of adoption as provided in Water Code Section 376.

PASSED, ADOPTED, AND APPROVED at a regular Board meeting of the Board of Directors of the Olivenhain Municipal Water District held on the 23<sup>rd</sup> day of July 2008.