

ATTACHMENT A

ORDINANCE NO. 2020-2

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING CHAPTER 14.12 OF TITLE 14 OF THE NEWPORT BEACH MUNICIPAL CODE RELATING TO WATER SERVICE DISCONTINUATION FOR NONPAYMENT

WHEREAS, on September 28, 2018, Governor Jerry Brown signed Senate Bill 998, the Water Shutoff Protection Act, codified at sections 116900 *et seq.* of the California Health and Safety Code ("SB 998"), which provides procedural protections for delinquent residential water customers before the discontinuation of water services;

WHEREAS, the City of Newport Beach ("City") is an urban water supplier as defined in Section 10617 of the California Water Code, and therefore, pursuant to California Health and Safety Code Section 116904(a) must comply with the provisions of SB 998; and

WHEREAS, sections of Chapter 14.12 of Title 14 of the Newport Beach Municipal Code must be amended to conform with the provisions of SB 998.

NOW THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: Section 14.12.085(D) of the Newport Beach Municipal Code is hereby repealed.

Section 2: Section 14.12.090 of the Newport Beach Municipal Code is hereby amended to read as follows:

14.12.090 Delinquent Water Service Discontinuance and Fees.

A. A customer's service may be discontinued for any of the following:

1. A violation of any of the provisions of this chapter.
2. If ordered turned off by the owner or tenant.
3. For failure to establish a water service agreement with the City.
4. In situations other than as set forth in subsection (A)(5), for nonpayment of a bill for services previously rendered to the customer at any location served by the City provided such bill has been delinquent for at least sixty (60) calendar days and is not paid within seven (7) business days after mailing of a delinquent notice.

5. For failure to abide by the terms of an alternative payment arrangement entered into between the City and the customer, as provided in subsections (C) (3) or (C) (4), by failing to do any of the following for sixty (60) calendar days or more:

- a. Pay his or her unpaid charges by the extended payment date;
- b. Pay any amortized amount due under the amortization schedule;
- c. Pay any amount due under an alternative payment schedule; or
- d. Pay his or her current charges for water service.

B. The City is not responsible or liable for damage done to the customer's premises that may result from the discontinuance or restoration of water service pursuant to this chapter.

C. Service may not be discontinued for nonpayment on any Saturday, Sunday, legal holiday or at any time during which the business offices of the City are not open to the public or in any of the following situations:

1. During the pendency of an investigation by the City of a customer formal dispute of a bill or the appeal thereof.

2. When such discontinuance would be especially dangerous to the health of the customer or a full-time resident of the customer's household. Certification from a licensed physician, public health nurse or social worker may be required by the City.

3. For residential customers, when the:

a. Customer, or a tenant of the customer, submits to the City the certification of a licensed primary care provider that discontinuation of water service will be life threatening to, or pose a serious threat to the health and safety of, a resident of the premises where residential service is provided;

b. The customer is financially unable to pay for residential service within the City's normal billing cycle; and

c. The customer is willing to enter into an alternative payment arrangement, including an extension, amortization, alternative payment schedule, or payment reduction with respect to the delinquent charges.

The customer is deemed financially unable to pay during the normal billing cycle if: any member of the customer's household is a current recipient of CalWORKs, CalFresh, general assistance, Medi-Cal, Supplemental Security Income/State Supplementary Payment Program, or California Special Supplemental Nutrition Program for Women, Infants, and Children; or the customer declares that the household's annual income is less than 200 percent of the federal poverty level.

A customer who meets all of the above conditions set forth in this subsection shall be permitted to amortize any unpaid balance of the delinquent account over a reasonable period of time, not to exceed twelve (12) months.

4. When the customer or full-time resident of the customer's household is temporarily unable to pay for such service and is willing to enter into an alternative payment arrangement with the City, including but not limited to, paying the amount due by a specified date or entering into an installment payment plan satisfactory to the City.

D. The fee for discontinuance shall be the City's costs including all labor and materials and is identified by Council resolution. In addition to the past due charges, a penalty fee equal to ten percent of the delinquent amount past due will be added.

E. In addition to discontinuation of water service, the City may pursue any other remedies available in law or equity for nonpayment of water service charges, including, but not limited to: securing delinquent amounts by filing liens on real property, filing a claim or legal action, or referring the unpaid amount to collections. In the event a legal action is decided in favor of the City, the City shall be entitled to the payment of all costs and expenses, including attorneys' fees and accumulated interest.

F. The City Manager shall create and promulgate a written policy, to be available on the City's website, regarding the discontinuation of residential water services for nonpayment. Such policies shall be in conformance with the requirements of California Health and Safety Code sections 116900 et seq., or any successor statutes.

Section 3: Section 14.12.095 of the Newport Beach Municipal Code is hereby amended to read as follows:

14.12.095 Customer Requests

Except for the discontinuation of water service for failure to abide by the terms of an alternative payment arrangement, as provided in Section 14.12.090 (A) (5), any residential customer who has initiated a complaint or requested an investigation up to the calendar day prior to scheduled date of service discontinuation, as stated in the delinquent notice required by Section 14.12.110, or who has, before discontinuance of service, made a request for extension of the payment period of a bill asserted to be beyond the means of the customer to pay in full within the normal period for payment, shall be given an opportunity for review of the complaint, investigation, or request by the City. The review shall include consideration of whether the customer shall be permitted to defer payment on the bill for thirty (30) calendar days or participate in an alternative payment arrangement where the unpaid balance of the delinquent account is paid back monthly, over a period not to exceed twelve (12) months.

Any customer whose complaint or request for an investigation has resulted in an adverse determination by the City's Revenue Division may appeal the determination to the Finance Director or his or her designee.

Section 4: Section 14.12.100 of the Newport Beach Municipal Code is hereby amended to read as follows:

14.12.100 Due Date.

All customers whose premises are connected to the municipal water system shall be billed on a regularly scheduled basis and all charges shall be received by the due date indicated on the municipal services statement, of which said due date shall be no less than nineteen (19) calendar days after the date of mailing.

Section 5: Section 14.12.110 of the Newport Beach Municipal Code is hereby amended to read as follows:

14.12.110 Delinquent Notice.

A. Except for the discontinuation of water service for failure to abide by the terms of an alternative payment arrangement, as provided in Section 14.12.090 (A) (5), when a municipal services statement has become past due, City shall, no less than seven (7) business days prior to the discontinuance of water service, mail a delinquent notice to the customer address and attempt to contact the customer by telephone.

B. A delinquent notice under this section shall state that the present service will be discontinued for nonpayment of such bill for prior service and include the following information:

1. The name and address of the customer whose account is delinquent.
2. The amount of the delinquency.
3. The date by which payment or arrangements for payment is required to avoid service discontinuance.
4. The procedure to apply for an extension of time to pay the delinquent charges.
5. The procedure to petition for bill review and appeal.
6. The procedure to request a deferment of the payment for thirty (30) calendar days, or a payment plan.

C. If a residential customer is contacted by telephone, the City shall offer to provide the City's policy on discontinuation of residential water service. The City shall also offer to discuss options to avert discontinuation for nonpayment, including, but not limited to, alternative payment schedules, deferred payments, minimum payments, procedures for requesting amortization of the unpaid balance, and payment plans and petitions for bill review and appeal.

D. Should the City be unable to contact a residential customer or an adult occupying the residence by telephone, and written notice is returned through the mail as undeliverable, prior to discontinuation of water service, the City shall make a good faith effort to visit the residence and leave, or make other arrangements for placement in a conspicuous place, a notice of imminent discontinuation of water service for nonpayment and the City's policy for discontinuation of residential service for nonpayment.

Section 6: Section 14.12.120 of the Newport Beach Municipal Code is hereby amended to read as follows:

14.12.120 Discontinuance Notice.

A. Except as provided in subsection (B), at least forty-eight (48) hours prior to the discontinuance of residential water service, the City shall make a good faith effort to visit the residence and leave, or make other arrangements for placement in a conspicuous place of, a notice of imminent discontinuation of residential service for nonpayment, and the City's policy for discontinuation of residential service for nonpayment. Every notice of intent to discontinue water service shall include the following information:

1. The name and address of the customer whose account is delinquent.
2. The amount of the delinquency.
3. The date by which payment or arrangements for payment is required in order to avoid service discontinuance.
4. The procedure by which the customer may initiate a complaint or request an investigation concerning services or charges.
5. The procedure by which the customer may request amortization of the unpaid charges.
6. The procedure for the customer to obtain information on the availability of financial assistance, including private, local, State, or Federal sources, if applicable.
7. The telephone number of the representative of the City's Revenue Division who can provide additional information or institute arrangements for payment.

B. Prior to discontinuation of service for failure to abide by an alternative payment arrangement that was entered pursuant to Section 14.12.090 (C) (3), the City shall leave a final notice of intent to disconnect service in a prominent and conspicuous location at the service address at least five (5) business days before discontinuation of service. The final notice will not entitle the customer to any investigation or review by the City.

Section 7: Section 14.12.125(A) of the Newport Beach Municipal Code is hereby amended to read as follows:

14.12.125 Delinquent Water Service Restoration.

A. Service that has been discontinued may not be restored until payment of all delinquent water service charges, including the restoration charge and a fine of One Hundred Dollars (\$100.00), have been received by the Finance Department.

1. Upon payment, service shall be restored during regular or non-regular working hours.
2. The restoration charge for meter turn on during regular and non-regular work hours is identified by Council resolution.

3. For a residential customer who demonstrates that their household income is below two hundred percent (200%) of the federal poverty line, such restoration charge shall not exceed the lesser of Fifty Dollars (\$50.00) or the cost of services during regular work hours; or exceed the lesser of One Hundred Fifty Dollars (\$150.00) or the cost of services during non-regular work hours. Beginning January 1, 2021, such charges shall adjust annually for changes in the Consumer Price Index for All Urban Consumers in the selected local area of Los Angeles-Long Beach-Anaheim, California.

4. Regular work hours are Monday through Thursday, 7:00 a.m. to 4:30 p.m., and Friday, 7:00 a.m. to 3:30 p.m.

Section 8: The section heading for Section 14.12.160 in the table of contents for Chapter 14.12 is hereby amended, with all other section headings remaining unchanged, to read:

14.12.160 Landlord and Tenant.

Section 9: Section 14.12.160 of the Newport Beach Municipal Code is hereby amended to read as follows:

14.12.160 Landlord and Tenant.

Whenever the City furnishes either individual metered or master metered water service to residential occupants in a single-family dwelling, multi-unit residential structure or mobile home park, where the owner, manager or operator is listed as the customer of record, the City shall make a good faith effort to inform the residential occupants, by means of a written notice, when the account is in arrears, that service will be terminated at least fifteen (15) calendar days prior to such discontinuance. Such notice shall further inform the residential occupants that they have the right to become customers to whom service will then be billed, without being required to pay any amount which may be due on the delinquent account.

The City shall not be required to make water service available to the residential occupants unless each residential occupant agrees to the terms and conditions of service. However, if one or more of the residential occupants are willing and able to assume responsibility for the entire account to the satisfaction of the City, or if there is a physical means legally available to the City of selectively discontinuing service to those residential occupants who have not met the requirements of the City, the City shall make water service available to those residential occupants who have met those requirements.

Notices required under this section shall be mailed to and left in a prominent and conspicuous location at the service address.

Section 10: The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

Section 11: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 12: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 13: Except as expressly modified in this ordinance, all other Sections, Subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 14: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 28th day of January, 2020, and adopted on the 11th day of February, 2020, by the following vote, to-wit:

AYES, COUNCILMEMBERS _____

NAYES, COUNCILMEMBERS _____

ABSENT COUNCILMEMBERS _____

WILL O'NEILL, MAYOR

ATTEST:

LEILANI I. BROWN, CITY CLERK

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY