

ORDINANCE NUMBER O- 17712 (NEW SERIES)

ADOPTED ON NOV 25 1991

AN ORDINANCE AMENDING CHAPTER IX, ARTICLE 3, DIVISION 2, OF THE SAN DIEGO MUNICIPAL CODE BY ADDING SECTION 93.0208 ESTABLISHING WATER CONSERVATION PLUMBING STANDARDS UPON CHANGE OF PROPERTY OWNERSHIP OR UPON BATHROOM ALTERATION.

WHEREAS, a United States District Judge for the Southern District of California in concluding the lawsuit filed by the United States and the State of California against the City of San Diego (Civil Case No. 88-1101-B) over violations of the Clean Water Act issued a Memorandum Decision on March 28, 1991. The Partial Judgment on the Bifurcated Penalty Phase was entered June 21, 1991. The decision established a conservation project to promote permanent water conservation savings. According to the Memorandum Decision, the City can avail itself of the conservation project by enacting an ordinance, with an effective date of on or before January 1, 1992, requiring the Retrofit with Water-Conserving Plumbing Fixtures upon Change of Ownership or upon Bathroom Alteration; and

WHEREAS, it is the desire of the City Council to avail itself of this option by enacting such an ordinance.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter IX, Article 3, Division 2, of the San Diego Municipal Code be and the same is hereby amended by

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adding Section 93.0208, to read as follows:

**SEC. 93.0208 WATER-CONSERVING PLUMBING STANDARDS UPON
CHANGE OF PROPERTY OWNERSHIP OR UPON
BATHROOM ALTERATION.**

a. Purpose.

It is the purpose of this section to reduce sewer flows and decrease the use of imported, potable water in the City of San Diego by establishing water conservation plumbing standards for plumbing fixtures Retrofitted upon Change of Ownership or upon Bathroom Alteration and to implement the optional credit project as outlined by the court.

b. Scope.

The provisions of this section apply to the installation of Water-Conserving Plumbing Fixtures upon Change of Ownership or upon Bathroom Alteration.

c. Application.

The provisions of this section apply to all persons, customers and property served by the City of San Diego Water Utilities Department.

d. Definitions.

The following definitions are applicable to this section:

1. "Water-Conserving Plumbing Fixtures" means any toilet using a maximum of 1.6 gallons of water per flush, urinals that use a maximum of 1.0 gallon of water per flush, showerheads with a maximum flow capacity of 2.5 gallons of water per minute, faucets

that emit a maximum of 2.2 gallons of water per minute, and shutoff valves for residential reverse osmosis systems.

2. "Existing Plumbing Fixtures" means any toilet using more than 3.5 gallons of water per flush, urinals using more than 1.0 gallons of water per flush, showerheads with a flow capacity of more than 2.5 gallons of water per minute, faucets that emit more than 2.2 gallons of water per minute, and residential reverse osmosis systems not equipped with shutoff valves.

3. "Retrofit" means replacing "Existing Plumbing Fixtures" with "Water-Conserving Plumbing Fixtures."

4. "Change of Ownership" means a transfer of present interest in real property, or a transfer of the right to beneficial use thereof, the value of which is substantially equal to the proportion of the ownership interest transferred.

5. "Existing Structure" means either of the following:

(a) Any structure built and available for use or occupancy on or before January 1, 1983, which is equipped with a toilet using more than 3.5 gallons of water per flush or a urinal using more than 1.0 gallons of water per flush; or

(b) Any structure built and available for use or occupancy on or before December 1, 1991, which is equipped with a showerhead with a flow capacity of more than 2.5 gallons of water per minute, a faucet that emits more than 2.2 gallons of water per minute or a residential reverse osmosis system not equipped with shutoff valves.

6. "Bathroom Alteration" means any alteration or addition of a bathroom that would necessitate obtaining a plumbing permit for replacement of any toilet(s) as mandated in San Diego Municipal Code section 93.0301.

7. "Administrative Authority" means the Director or his or her designee of The City of San Diego Building Inspection Department.

8. "Ultra-Low Flush Toilet Rebate Program" means a City of San Diego sponsored water conservation program which offers a financial incentive to water customers who replace an existing toilet with an ultra-low flush toilet.

9. "Water Conservation Certificate" means a certificate acknowledging that installation of Water-Conserving Plumbing Fixtures has been completed and has been submitted to the Administrative Authority by a transferor upon Change of Ownership, or by a property owner or manager upon Bathroom Alteration, by a water customer who participates in the City's Ultra-Low Flush

Toilet Rebate Program, or by a water customer who has Retrofitted without participating in the City's Ultra-Low Flush Toilet Rebate Program.

e. Retrofit Upon Change of Ownership.

1. Effective January 1, 1992, all Existing Plumbing Fixtures in Existing Structures, including residential, commercial, and industrial structures, shall, at the time of Change of Ownership, be Retrofitted, if not already done, exclusively with Water-Conserving Plumbing Fixtures. At the discretion of the transferor, compliance with this section may be included as a condition of the escrow, and the costs of compliance may be paid from the proceeds of sale for completion of the work required.

f. Retrofit Upon Bathroom Alteration.

Effective January 1, 1992, all structures, including residential, commercial, and industrial structures, shall, upon Bathroom Alteration, be Retrofitted exclusively with Water-Conserving Plumbing Fixtures.

g. Retrofit Exemption.

The Administrative Authority may grant an exemption in the following instance:

1. Unavailability of Water-Conserving Plumbing Fixtures to match a well-defined historic architectural style (i.e. Victorian, Mission), fitted with authentic plumbing fixtures, in a local, state or federally

designated building of historic significance.

h. Compliance.

1. It shall be the transferor's responsibility, upon Change of Ownership, to obtain the necessary plumbing permit for replacement of toilets mandated in San Diego Municipal Code section 93.0301, except that a permit shall not be required for single family residences, or multi-family units or apartment buildings with eight or fewer units when installing a replacement toilet using 1.6 gallons of water per flush. A plumbing permit shall be required for the replacement of drainage, waste, vent or supply plumbing pipes.

2. It shall be the title holder's responsibility, upon Bathroom Alteration, to obtain the necessary plumbing permit for replacement of toilets mandated in San Diego Municipal Code section 93.0301, except that a plumbing permit for the replacement of toilets shall not be required for single family residences, or multi-family units or apartment buildings with eight or fewer units when installing a replacement toilet using 1.6 gallons of water per flush. A plumbing permit shall be required for the replacement of drainage, waste, vent or supply plumbing pipes.

i. Self-Verification.

1. Upon Retrofitting with Water-Conserving Plumbing Fixtures, the transferor, upon Change of

Ownership, or the title holder, upon Bathroom Alteration, shall submit to the Administrative Authority a "Water Conservation Certificate," the form of which is available from the Administrative Authority, verifying that Water-Conserving Plumbing Fixtures have been installed.

2. "Water Conservation Certificates" shall be maintained by the Administrative Authority in order to provide future verification that Water-Conserving Plumbing Fixtures have been installed.

3. "Water Conservation Certificates" shall also be available to those who voluntarily install Water-Conserving Plumbing Fixtures or have installed Water-Conserving Plumbing Fixtures prior to January 1, 1992.

j. Ultra-Low Flush Toilet Rebate Program.

Nothing in this section shall preclude a transferor, transferee, or title holder from participating in the Ultra-Low Flush Toilet Rebate Program.

k. Penalty.

1. It is unlawful for any person, firm, partnership, association or corporation, to violate, to cause, or to maintain a violation of this section.

2. It is unlawful for any person, firm, partnership, association or corporation to remove, or to cause the removal of Water-Conserving Plumbing Fixtures contrary to the provisions of this section.

3. In addition to any other remedy provided by this Code, any provision of this section may be enforced by injunction issued by the Superior Court upon a suit brought by The City of San Diego.

4. In addition to any other remedy provided by this Code, any provision of this section may be enforced by an administrative order issued pursuant to any one of the administrative processes set forth in San Diego Municipal Code chapter I, article 3.

5. No liability shall arise, nor any action be brought or maintained against, any agent of any party to a transfer of title, including any person or entity acting in the capacity of an escrow, for any error, inaccuracy, or omission relating to compliance with this section. However, this section does not apply to a licensee, as defined in Section 10011 of the State Business and Professions Code, where the licensee participates in the making of the certification required to be made pursuant to this section with actual knowledge of the falsity of the certification. Except as otherwise provided in this section, this section shall not be deemed to create or imply a duty upon a licensee, as defined in Section 10011 of the State Business and Professions Code, or upon any agent of any party to a transfer of title, including any person or entity acting in the capacity of an escrow, to monitor or ensure compliance with this section, or

to notify any person of requirements to comply with this section.

k. Enforcement.

1. The Administrative Authority is authorized and empowered to enforce the provisions of this section.

2. Every person, firm, partnership, association or corporation that violates, causes or maintains a violation of any provision in this section is guilty of an infraction and is subject to the penalties imposed by San Diego Municipal Code section 13.0201.

Section 2. This ordinance takes effect and is in force on January 1, 1992 and applies to any escrow opened on or after January 1, 1992. Plumbing permits issued prior to January 1, 1992 and property transfers in which an escrow has been opened prior to January 1, 1992, provided that such escrows close on or before June 1, 1992, shall not be effected by this ordinance.

APPROVED: JOHN W. WITT, City Attorney

By


Marguerite S. Strand
Deputy City Attorney

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Passed and adopted by the Council of The City of San Diego on NOV 25 1991,
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Hartley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
H. Wes Pratt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tom Behr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
J. Bruce Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California.

(Seal)

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

By Mary Cepeda Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

NOV 12 1991

NOV 25 1991

....., and on

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By Mary Cepeda Deputy.

Office of the City Clerk, San Diego, California	
Ordinance Number <u>0-17712</u>	Adopted <u>NOV 25 1991</u>