

ORDINANCE NO. 1221

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BREA
REGARDING WATER SHORTAGE CONTINGENCY RESPONSE AND
AMENDING THE BREA CITY CODE**

THE CITY COUNCIL OF THE CITY OF BREA DOES ORDAIN AS FOLLOWS:

A. RECITALS:

(i) California, including Orange County, experienced significant dry year conditions in 2012-2017, which led local water agencies to declare water shortage conditions that triggered drought actions.

(ii) The City of Brea experienced a direct impact on the reliability of available water supplies. In response, the City initiated Phase 1 demand management measures in accordance with the City of Brea Water Conservation Water Supply Shortage Program (WCWSS Program) (Brea City Code Chapter 13.20) and further expanded into Phase 2 upon the State of California's emergency drought declaration. The actions taken are specified in the adopted 2015 Urban Water Management Plan and the WCWSS Program. The legal authority for implementation and enforcement of the demand management measures was made through the WCWSS Program.

(iii) Following the end of the drought, the Legislature amended the Urban Water Management Planning Act (Water Code Section 10610 et seq.) in 2018 to include new water shortage planning requirements. In addition, the Legislature mandated new elements for Urban Water Management Plans and Water Shortage Contingency Plans, including an annual drought risk assessment, standard water shortage levels, and statewide water use prohibitions.

(iv) Substantially concurrently with the City Council's adoption of this

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Ordinance, the Municipal Water District of Orange County (“MWDOC”) is adopting a 2020 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 its 28 member agencies, including the City of Brea. MWDOC’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 MWDOC’s Urban Water Management Plan and Water Shortage Contingency Plan.

(v) The imported water supplies in the City of Brea and at MWDOC are subject to water shortage allocations determined by the Metropolitan Water District of Southern California (“MWD”). Subsequently, when triggered, MWDOC as a wholesaler of MWD’s supplies will be required to curtail deliveries of imported water based on MWDOC’s Water Shortage Allocation Plan, which from time to time in the future is expected to be activated when in a condition of shortage.

(vi) As of July 1, 2021 MWDOC and the City of Brea are required to prepare an Annual Water Supply and Demand Assessment and a Drought Risk Assessment as part of their Urban Water Management Plan for submission to the California Department of Water Resources.

(vii) The City of Brea has adopted a Water Shortage Contingency Plan to establish standards and procedures to enable implementation and enforcement of local water shortage contingency measures. These measures align with Water Code Section 353, which declares: “When the governing body has so determined and declared the existence of an emergency condition of water shortage within its service area, it shall thereupon adopt such regulations and restrictions on the delivery of water and the

consumption within said area of water supplied for public use as will in the sound discretion of such governing body conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection.”

(viii) The City Council adopts this Ordinance pursuant to its police power under California Constitution Article XI, Section 7 and pursuant to state law including California Constitution Article X, Section 2 and Water Code Section 375 et seq.

B. ORDINANCE:

SECTION 1. Code Amendment. Chapter 13.20 (Water Management Program) of Title 13 (Utilities) of Part I (Municipal Code) of the Brea City Code is amended to read as follows:

“CHAPTER 13.20: WATER SHORTAGE CONTINGENCY RESPONSE

Section

13.20.010	Title
13.20.020	Purpose
13.20.030	Definitions
13.20.040	Applicability
13.20.050	Water Shortage Determinations
13.20.060	Communications
13.20.070	Permanent Water Conservation Requirements
13.20.080	Correlation Between City and State Water Shortage Levels
13.20.090	Water Shortage Response Actions
13.20.100	Hardship Waiver
13.20.110	Penalty
13.20.120	Compliance Monitoring and Reporting
13.20.130	Water Shortage Contingency Plan Update
13.20.140	Miscellaneous

§ 13.20.010 TITLE.

This chapter shall be known and may be cited as the “Water Shortage Contingency Response Ordinance.”

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§ 13.20.020 PURPOSE.

A. This chapter 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, and prevent unreasonable method of use of water within the city 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.

B. This chapter establishes restrictions to be implemented during times of declared water shortages or declared water shortage emergencies.

C. This chapter defines six levels of water shortage, most often triggered due to drought conditions, to provide defined response actions to be implemented during times of declared water shortage or declared water shortage emergency, with increasing restrictions on water use in response to worsening drought or emergency conditions and decreasing supplies.

D. Priority shall be given to response protocols in an adopted Hazard Mitigation Plan in the event of natural and human-caused disasters.

E. This chapter is intended solely to further the conservation of water. It is not intended to implement any provision of federal, state, or local law relating to protection of water quality or control of drainage or runoff.

§ 13.20.030 DEFINITIONS.

The following words and phrases whenever used in this chapter have the meaning defined in this section:

BILLING UNIT. The unit of water used to apply water rates for purposes of calculating water charges for a person's water usage and equals seven hundred forty-eight (748) gallons of water.

CITY MANAGER. The city manager or such official's designee.

COST. The actual cost to the city, including all labor, material, supplies, equipment, and miscellaneous items, together with any applicable indirect and general charges plus general administrative overhead, in accordance with the accounting practices of the city.

CUSTOMER. Water customer or water user.

EFFECTIVE DATE. June 1, 2021.

EXCESSIVE WATER USE PENALTY. The administrative penalty that may be imposed by the city during a Level 3, 4, 5, or 6 water shortage as set forth in this chapter.

FLOW RESTRICTING DEVICE OR FLOW RESTRICTOR. A fitting inserted into the service connection to reduce flow capacity.

GROWER. A person engaged in growing plant material or raising animals.

GRAY WATER. Untreated wastewater that meets the then-current requirements of Cal. Health and Safety Code § 17922.12. In general, gray water includes wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines, and laundry tubs, but does not include wastewater from kitchen sinks or dishwashers.

GUIDELINES. The Guidelines for Implementation of the Water Efficient Landscape Ordinance (Chapter 14.00 of this code), which describes procedures, calculations, and requirements for landscape projects subject to such ordinance.

INCIDENTAL RUNOFF. A minimal amount of irrigation water that escapes the area of intended use. Incidental runoff includes minor windblown overspray, mist extending onto sidewalks within a park, and minimal runoff from watering trees.

IRRIGATION CUSTOMER. A person who, according to city records, receives water service and has a dedicated irrigation meter for outdoor irrigation of landscaping.

LANDSCAPE IRRIGATION SYSTEM. An irrigation system with pipes, hoses, spray heads, or sprinkling devices that are operated by hand or through an automated system.

LANDSCAPE PROJECT. Total area of landscape in a project, as provided in the definition of "landscaped area," in Section 14.00.070 of this code.

LARGE LANDSCAPE AREAS. A lawn, landscape, or other vegetated area, or combination thereof, equal to more than one (1) acre of irrigable land.

MWD. The Metropolitan Water District of Southern California, which is the wholesale urban water supplier of imported water to MWDOC.

MWDOC. The Municipal Water District of Orange County, which is the regional wholesale urban water supplier of imported water to Orange County.

NEW CONSTRUCTION. A new building with a landscape or a new landscape such as a park, playground, or greenbelt without an associated building.

POTABLE WATER. Water which is suitable for drinking.

PREMISES. The integral property or area, including improvements thereon, to which water service is provided or for which an application for service is filed.

RECYCLED WATER. The reclamation and reuse of nonpotable water for beneficial use.

REHABILITATED LANDSCAPE. Any relandscaping project that meets the applicability criteria of Section 14.00.030(A) of this code, where the modified landscape area is greater than two thousand five hundred (2,500) square feet.

SERVICE CONNECTION. The pipe or tubing, fittings, and valves necessary to conduct water from the distribution main to and through the meter.

SINGLE PASS COOLING SYSTEM. Equipment where water is circulated only once to cool equipment before being disposed.

TURF. A ground cover surface of mowed grass. Annual bluegrass, Kentucky bluegrass, Perennial ryegrass, Red fescue, and Tall fescue are cool-season grasses. Bermudagrass, Kikuyugrass, Seashore Paspalum, St. Augustinegrass, Zoysiagrass, and Buffalo grass are warm-season grasses.

VALVE. A device used to control the flow of water in an irrigation system.

WATER ALLOCATION. The amount of water a residential or irrigation customer may use in a billing cycle.

WATER CUSTOMER. The person in whose name service is rendered as evidenced by the signature on the application or agreement for that service, or, in the absence of a signed instrument, by the receipt and payment of bills regularly issued in the person's name, regardless of the identity of the actual user of the service.

WATER FEATURE. A design element where open water performs an aesthetic or recreational function. Water features include ponds, lakes, waterfalls, fountains, artificial streams, spas, and swimming pools (where water is artificially supplied). The surface area of water features is included in the high water use hydrozone of the landscaped area. Constructed wetlands used for on-site wastewater treatment, habitat protection, or storm

water best management practices that are not irrigated and used solely for water treatment or storm water retention are not water features and, therefore, are not subject to the water budget calculation.

WATER SHORTAGE EMERGENCY. A condition existing within the city in which the ordinary water demands and requirements of persons within the city cannot be satisfied without depleting the water supply of the city to the extent that there would be insufficient water for human consumption, sanitation, and fire protection. A water shortage emergency includes both an immediate emergency, in which the city is unable to meet current water needs of persons within the city, as well as a threatened water shortage, in which the city determines that its supply cannot meet an increased future demand.

WATER USER. Any user of water including a water customer.

WSCP. Water shortage contingency plan.

§ 13.20.040 Applicability.

A. The provisions of this chapter apply to any customer, person, and property using potable water provided by the city.

B. The provisions of this chapter do not apply to uses of water necessary to protect public health and safety or for essential government services such as police, fire, and other similar emergency services.

C. The provisions of this chapter do not apply to the use of gray water, except where expressly provided.

D. The provisions of this chapter do not apply to the use of water by commercial nurseries and commercial growers to sustain plants, trees, shrubs, crops, or other vegetation intended for commercial sale.

E. The provisions of this chapter do not apply to the use of water from private wells.

§ 13.20.050 WATER SHORTAGE DETERMINATIONS.

A. Under Cal. Water Code § 10632.1, the city is required to submit a water shortage assessment report to the California Department of Water Resources by July 1 of each year.

B. The city will follow the written decisionmaking process defined in its WSCP to assess water supply reliability on an annual basis.

C. The City Council may declare the existence of Level 1 or Level 2 water shortage conditions by resolution adopted at a regular or special meeting.

D. The City Council may declare the existence of Level, 3, 4, 5, or 6 water shortage emergency conditions by resolution adopted at a regular or special meeting after a public hearing held in accordance with Cal. Water Code § 350 et seq.

E. Upon determining that water shortage conditions continue to exist but have improved to the point that it is appropriate to move to a less restrictive level, the City Council shall adopt a resolution declaring the existence of the new water shortage level. Upon determining that water shortage conditions no longer exist, the City Council shall adopt a resolution declaring an end to the water shortage.

F. The public will be informed of water shortage determinations in accordance with § 13.20.060 of this chapter.

G. When the City Council has declared the existence of a water shortage and the City Manager determines that a sudden event has, or threatens to, significantly diminish the reliability or quality of the city's water supply, the City Manager may declare

a catastrophic water shortage and impose whatever emergency water allocation or conservation actions deemed necessary, in the City Manager's professional judgment, to protect the reliability and quality of the city's water supply, until the emergency passes or the city takes other action.

§ 13.20.060 COMMUNICATIONS.

Upon declaration of a water shortage, the city will inform all relevant stakeholders, such as customers, the public, interested parties, and local, regional, and state governments, of the effective date of the water shortage response actions associated with the relevant stage. Communications shall be made in accordance with the WSCP including:

- A. Any current or predicted shortages as determined by the annual water supply and demand assessment.
- B. Any shortage response actions triggered or anticipated to be triggered by the annual water supply and demand assessment.
- C. Any other relevant communications.

§ 13.20.070 PERMANENT WATER CONSERVATION REQUIREMENTS.

The following water conservation requirements are effective at all times and are permanent. Violations of this section will be considered waste and an unreasonable use of water:

- A. Washing down sidewalks, walkways, driveways, parking areas, or other paved surfaces is prohibited. This prohibition does not apply to washing that is both (i) required to dispose of dangerous liquids or alleviate safety or sanitary hazards; and (ii)

performed by use of a hand-held bucket, pressure washer, or hand-held hose equipped with a positive self-closing water shut-off device.

B. Using water to wash a vehicle (including any automobile, truck, van, bus, motorcycle, boat, or trailer) is prohibited. This prohibition does not apply to washing that is performed by use of a hand-held bucket or hand-held hose equipped with a positive self-closing device or water shut-off nozzle. Additionally, this prohibition does not apply to any commercial car washing facility.

C. The use of water to clean, fill, or maintain levels in decorative fountains, ponds, lakes, or other similar aesthetic structures is prohibited. This prohibition does not apply if such water is part of a recirculating system. Additionally, this prohibition does not apply to a water feature listed in the National Register of Historic Places, where water use is deemed necessary for the integrity of the feature.

D. The use of water to irrigate outdoor landscapes during or within forty-eight (48) hours after measurable rainfall is prohibited.

E. The irrigation with potable water of ornamental turf on public street medians is prohibited.

F. The irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission and the Department of Housing and Community Development is prohibited.

G. All leaks, breaks, or other malfunctions in the water user's plumbing, irrigation, or distribution system must be repaired within seventy-two (72) hours of notification by the city unless other arrangements are made with the city.

H. Watering or irrigating of any lawn, landscape, or other vegetated area in a manner that causes or allows more than incidental runoff or water flows or runoff from the property onto an adjoining sidewalk, driveway, street, alley, gutter, or ditch is prohibited.

I. Watering of lawn, landscape, or other turf areas between the hours of 10:00 a.m. and 4:00 p.m. Pacific Standard Time on any day is prohibited. Hand-held water cans, buckets, or similar containers reasonably used to convey water for irrigation purposes are not subject to these time restrictions. Additionally, a hand-held hose equipped with a fully functioning, positive self-closing water shut-off nozzle, pressure washer or similar device may be used during the otherwise restricted period. If necessary, and for very short periods of time for the purpose of adjusting or repairing a landscape irrigation system, a person may operate a landscape irrigation system during the otherwise restricted period.

J. Hotels, motels, and other commercial lodging establishments shall provide customers the option of not having towels and linen laundered daily. Commercial lodging establishments shall prominently display notice of this option in each bathroom using plain language.

K. Food preparation establishments such as restaurants or cafes are prohibited from using non-water conserving dish wash pre-rinse spray valves.

L. 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.

M. Non-recirculating water systems shall not be installed or operated in commercial car wash and laundry systems.

N. Single pass cooling systems shall not be installed or operated in buildings requesting new water service.

§ 13.20.080 CORRELATION BETWEEN CITY AND STATE WATER SHORTAGE LEVELS.

The city water shortage levels are aligned with the six standard water shortage levels specified in Cal. Water Code § 10632 as follows.

CA Water Code Defined Water Shortage Levels	Percent Shortage
Shortage Level 1	Up to 10%
Shortage Level 2	Up to 20%
Shortage Level 3	Up to 30%
Shortage Level 4	Up to 40%
Shortage Level 5	Up to 50%
Shortage Level 6	Above 50%

§ 13.20.090 WATER SHORTAGE RESPONSE ACTIONS.

A. The response actions that align with each water shortage level are defined in the city's WSCP and include all of the following:

1. Locally appropriate supply augmentation actions.
2. Locally appropriate demand reduction actions to adequately respond to shortages.
3. Locally appropriate operational changes.
4. Mandatory prohibitions against specific water use practices that are in addition to state-mandated prohibitions and are appropriate to the local conditions.
5. For each action, an estimate of the extent to which the gap between supplies and demand will be reduced by implementation of the action.

B. Each elevated shortage level will include the elements of the previous shortage level(s), including the mandatory restrictions on water waste detailed in the WSCP, and each elevated shortage level is intended to be more restrictive than the previous level(s).

C. As deemed necessary, an allocation of water supply under a water supply emergency condition beyond WSCP defined actions may be implemented when water supply conditions dictate necessity.

D. No person shall violate any provisions of the City's WSCP applicable to a particular water shortage level during a period in which conditions of such water shortage level have been declared to exist.

§ 13.20.100 HARDSHIP WAIVER.

A. If, due to unique circumstances, a specific requirement of this chapter would result in undue hardship to a person using water or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property of classes of water users, then the person may apply for a hardship waiver.

B. A hardship waiver may be granted or conditionally granted only upon a written finding of the existence of facts demonstrating an undue hardship to a person using water or to property upon which water is used, that is disproportionate to the impacts to 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.

C. Application for a hardship waiver shall be on a form prescribed by the city and accompanied by a non-refundable processing fee in an amount set by City Council

resolution. The application shall be accompanied by photographs, maps, drawings, and other information, including a written statement of the applicant.

D. An application for a hardship waiver shall be denied unless the City Manager finds, based on the information provided in the application or such additional information as may be requested, and based on water use information for the property as shown by city records, all of the following:

1. That the hardship waiver does not constitute a grant of special privilege inconsistent with the limitations upon other residents and businesses.

2. That because of special circumstances applicable to the property or its use, the strict application of this chapter would have a disproportionate impact on the property of use that exceeds the impacts to residents and businesses generally.

3. That the authorizing of the hardship waiver will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the city to effectuate the purpose of this chapter and will not be detrimental to the public interest.

4. That the subject property's condition, situation, or intended use for which the hardship waiver is sought is not common, recurrent, or general in nature.

E. The City Manager shall act upon a complete application no later than ten (10) days after submittal and may approve, conditionally approve, or deny the hardship waiver. The applicant shall be promptly notified in writing of any action taken. Unless otherwise specified, a hardship waiver will apply to the subject property during the period of the mandatory water shortage condition. The decision of the City Manager will be final.

§ 13.20.110 PENALTY.

A. It shall be unlawful for any customer of the city 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 or in state law.

B. The penalties for failure to comply with this chapter shall be as set forth below. The penalty for a second, third, fourth, or subsequent violation within the preceding twelve (12) calendar months shall be applicable regardless of whether prior violations within such period involved the same provision of this chapter.

1. First Violation. The city will issue a written warning and deliver a copy of this chapter by mail or posting (i.e., door hanger).

2. Second Violation. A second violation within the preceding twelve (12) calendar months is punishable by a fine not to exceed one hundred dollars (\$100).

3. Third Violation. A third violation within the preceding twelve (12) calendar months is punishable by a fine not to exceed two hundred and fifty (\$250).

4. Fourth and Subsequent Violations. A fourth and any subsequent violation is punishable by a fine not to exceed five hundred (\$500).

C. In addition to any fines, the city may install a water flow restrictor device of approximately one (1) gallon per minute.

D. In addition to any fines, the city may disconnect and/or terminate a customer's water service for a willful violation.

E. A person or entity that violates this chapter is responsible for payment of the city's charges for installing a flow restrictor or disconnecting and/or reconnecting service. A conservation fee equal to the termination and restoration of service charges per the city's Schedule of Fees and Charges as then in effect will be assessed to the

customer's water account. All associated fees must be paid in full prior to service restoration. Nonpayment will be subject to the same remedies as nonpayment of basic water rates.

F. Except for violations of this chapter subject to excessive water use penalties, if any person fails or refuses to comply with this chapter, the City Manager shall provide that person with written notice of the violation and an opportunity to correct the noncompliance. The written notice shall:

1. Be posted or presented at the site of the noncompliance.
2. State the time, date, and place of violation.
3. State a general description of the violation.
4. State the means to correct the violation.
5. State a date by which correction is required.
6. State the possible consequences of failing to correct the violation.

A written notice shall be mailed to the address of the violation, to the party who is billed for the water, or to the owner of the property, as appropriate.

G. A customer may appeal the Notice of Violation by filing a written notice of appeal with the city no later than the close of business on the day before the date scheduled for enforcement action. Any Notice of Violation not timely appealed will be final. Upon receipt of a timely appeal, a hearing on the appeal will be scheduled, and the city will mail written notice of the hearing date to the customer at least ten (10) days before the date of the hearing.

H. Pending receipt of a written appeal or pending a hearing pursuant to an appeal, the city may take steps to prevent the unauthorized use of water as appropriate to the nature and extent of the violations and the current declared water shortage level.

§ 13.20.120 COMPLIANCE MONITORING AND REPORTING.

To ensure compliance with state reporting requirements, the city will collect, track, and analyze relevant data per the procedures defined in the WSCP.

§ 13.20.130 WATER SHORTAGE COMPLIANCE PLAN UPDATE.

To ensure water shortage risk tolerance is adequate and appropriate water shortage mitigation strategies are implemented as needed, the city's WSCP will be reviewed and evaluated as defined by the procedures identified in the WSCP.

§ 13.20.140 MISCELLANEOUS.

A. The city may limit or withhold the issuance of building permits which require new or expanded water service, except to protect the public health, safety and welfare, or in cases which meet the city's adopted conservation offset requirements.

B. The city may, by written request, require all commercial, residential and industrial customers using twenty-five thousand (25,000) or more billing units per year to submit a water conservation plan and to submit quarterly progress reports on such plan. The conservation plan must include recommendations for increased water savings and separation of uses including increased water recycling based on feasibility, and the reports must include progress to date on implementation of such recommendations.

C. The city may establish a water waste hotline for residents to report violations of this chapter.

D. An allocation of water supply under a water supply emergency condition, beyond WSCP defined actions, may be implemented when water supply conditions dictate necessity.

E. The city may provide water efficiency devices either directly or through supported programs. Such devices shall remain within the city's service area at all times. Devices provided by the city shall be used to conserve water, and shall not be modified in any way or sold.

SECTION 2. CEQA. The City Council determines that the adoption of this Ordinance is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Title 14, Section 15307 of the California Code of Regulations.

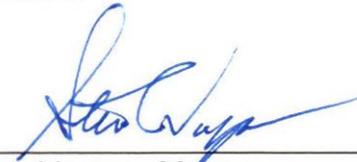
SECTION 3. Severability. If any section, subsection, sentence, clause, or phrase in this of this Ordinance, or the application thereof to any person or circumstances, is for any reason held invalid by a court of competent jurisdiction, the validity of the remainder of the Ordinance or the application of such provision to other persons or circumstances shall not be affected. The City Council hereby declares that it would have passed this this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases is declared invalid.

SECTION 4. Effective Date. This Ordinance shall become effective upon adoption in accordance with Water Code Section 376.

SECTION 5. Certification. The City Clerk shall certify to the passage of this Ordinance and cause the same or a summary thereof to be published within fifteen (15) days after adoption in a newspaper of general circulation, printed and published in the City of Brea.

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APPROVED AND ADOPTED this 1st day of June, 2021.



Steve Vargas, Mayor

ATTEST:  

Lillian Harris-Neal, City Clerk

I, Lillian Harris-Neal, City Clerk of the City of Brea, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Brea held on the 18th day of May, 2021, and was finally passed at a regular meeting of the City Council of the City of Brea held on the 1st day of June, 2021, by the following vote:

AYES: COUNCIL MEMBERS: Vargas, Hupp, Marick, Parker
NOES: COUNCIL MEMBERS: None.
ABSENT: COUNCIL MEMBERS: Simonoff
ABSTAIN: COUNCIL MEMBERS: None.

DATED: 6/14, 2021



Lillian Harris-Neal, City Clerk