

## **ORDINANCE NO. 682**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE AMENDING CHAPTER 13.07 OF THE ARROYO GRANDE MUNICIPAL CODE RELATING TO STAGES OF WATER SHORTAGE EMERGENCIES TO IMPLEMENT EMERGENCY WATER SHORTAGE RESTRICTIONS AND REGULATIONS**

**WHEREAS**, on February 24, 2015 the City Council of the City of Arroyo Grande adopted Ordinance 669, amending City of Arroyo Grande Municipal Code Section 13.05.030 and adding Chapter 13.07 to the Arroyo Grande Municipal Code relating to Emergency Water Shortage Restrictions and Regulations; and

**WHEREAS**, Chapter 13.07 provides procedures to establish Stage 1 or Stage 2 water shortage emergencies, and pursuant to that authority and Sections 350 et seq. of the California Water Code, after holding a public hearing, on May 26, 2015 the City of Arroyo Grande adopted Resolution 4659 declaring that a Stage 1 Water Shortage Emergency exists throughout the area served by the City of Arroyo and pursuant to the Arroyo Grande Municipal Code and the authority in Water Code Section 353, the City Council implemented reductions in water usage; and

**WHEREAS**, given the continuing concerns regarding the ongoing severe drought's impact on the City's limited water supply, on November 22, 2016 after holding a public hearing, the City Council adopted Resolution 4766 which provides that if certain specified water conditions are determined to exist ("Triggering Conditions"), that additional restrictions for the declared Stage 1 Water Shortage Emergency will be implemented in order to protect the health, safety and welfare of the citizens of the City of Arroyo Grande, which additional restrictions were designated to be known, for purposes of convenience, as "Stage 1B"; and

**WHEREAS**, the City has also prepared an Urban Water Management Plan (UWMP) in accordance with the requirements of California Water Code Sections 10620 et seq., and has received input from the State Department of Water Resources that additional stages of action are necessary in the Water Shortage Contingency Plan of the UWMP; and

**WHEREAS**, an Amended UWMP has been prepared which incorporates the provisions of Resolution 4766 and Stage 1B, and the City Council has determined that it would be appropriate and desirable to amend Chapter 13.07 to codify Stage 1B in order to be consistent with the Amended UWMP and the State's requirements relating to stages of action and to otherwise provide for Triggering Conditions for Stage 1 and Stage 2 Water Shortage Emergencies.

**NOW, THEREFORE BE IT ORDAINED** by the City Council of the City of Arroyo Grande as follows:

**SECTION 1.** Chapter 13.07 of the Arroyo Grande Municipal Code is hereby amended to read as follows:

**Chapter 13.07 Emergency Water Shortage Restrictions and Regulations**

**13.07.010. Definitions.**

- A. "Director" refers to the City of Arroyo Grande Public Works Director or his or her designee.
- B. "Water" refers to water produced and served by the City of Arroyo Grande water department.
- C. "City" refers to the City of Arroyo Grande.
- D. "Water Department" refers to the City of Arroyo Grande Public Works Department Utilities Division.
- E. "Customer" shall refer to any account customer of the City of Arroyo Grande water department as well as to any consumer of City water who may not be a City of Arroyo Grande water department account customer.
- F. "Household Allocation" refers to the establishment of a water allocation amount, to be established by Resolution of the City Council, and which allocation amount, if exceeded, is subject to mandatory financial penalties that escalate based upon the level of water use and as further set forth in the Resolution.
- G. "Historical Use" refers to the establishment of a baseline amount of water that is equal to the amount of water used in the same billing period for a specifically identified previous year, and which will subject the customer to mandatory financial penalties if specified percentages of water savings are not met, as further set forth in a Resolution adopted by the City Council.
- H. "Triggering Conditions" refers to specified water supply conditions that may result in declaring a Water Shortage Emergency Stage of Action.

**13.07.020 Water Shortage Emergency Stages of Action.**

- A. The provisions of this Chapter provide for Stages of Action that will be undertaken in response to water supply shortages and related Triggering Conditions, consistent with the City of Arroyo Grande's Urban Water Management Plan. It provides for the imposition of regulations and restrictions, including but not limited to requirements to reduce consumption of water, that are necessary in order to protect the health, safety and welfare of the community.

The Stages of Action have been created in recognition of the fact that the City's water supply consists of a combination of water from the Lopez Reservoir and groundwater

sources, and that a variety of specific factors can result in the need to implement a Stage of Action, as well as the potential for unanticipated interruptions of local water deliveries, the water delivery system or the imposition of additional State mandated reductions in water use.

B. The provisions of this Chapter relating to Emergency Water Shortage Restrictions and Regulations are in addition to the Water Conservation Requirements contained in Section 13.05.030. Those Water Conservation Requirements are permanent and this Stage of Action shall apply at all times and shall be known as Stage 0.

C. The other provisions of this Chapter relating to additional Stages of Action shall be implemented and take effect upon adoption of a Resolution by the City Council as further provided in Section 13.07.030, based upon the recommendations of City staff and its analysis of the City's water supply conditions and the existence of Triggering Conditions, as further provided in this Chapter. In addition to the permanent Water Conservation Requirements that constitute Stage 0, the additional Stages of Action shall be referred to as a Stage 1 Water Shortage Emergency, a Stage 1B Water Shortage Emergency, or a Stage 2 Water Shortage Emergency.

D. Upon adoption, Resolutions providing for a Stage of Action shall remain in effect for the duration of the water shortage emergency conditions, but may be modified by the City Council to impose additional measures to a Stage of Action as necessary to address the need to preserve the City's water supply to the maximum extent possible in order to protect the health, safety and welfare of the community.

E. During a declared Stage of Action, if it is deemed in the City's interest in order to better monitor water usage, the billing period may be adjusted by City staff to provide for monthly billing, instead of bi-monthly billing.

F. Upon adoption of a Resolution declaring a Stage of Action, the provisions of this Chapter and any restrictions set forth in the Resolution, shall apply to all persons using or consuming water provided by the City inside and outside of the city, regardless of whether any person using such water has a contract for water service with the City.

G. If any other provision of the Arroyo Grande Municipal Code, whether enacted prior to or subsequent to the enactment of this Chapter, is inconsistent with the provisions of this Chapter, the provisions of this Chapter shall supersede and control for the duration of the declared Water Shortage Emergency set forth in the Resolution of the City Council.

**13.07.030 Implementation of Stages of Action.**

The Stages of Action may be implemented by the City Council as follows:

**A. Stage 1 Water Shortage Emergency and Historical Use Water Restrictions**

1. After holding a noticed public hearing in accordance with the requirements of Water Code Section 350 et seq., the City Council may, by Resolution, declare a Stage 1 Water Shortage Emergency based upon a determination that Triggering Conditions exist or there have been impacts to the City's water supply, and/or it has been determined that it is imminent that the City's water supply has or will become so limited that an emergency water shortage condition exists as far as the available water supply being less than projected demand necessitating the institution of reductions in water usage based upon Historical Use, as further set forth in subsection 2, below.

Triggering Conditions may include, but not be limited to: a determination that the water level at the Lopez Reservoir is at or below 15,000 acre feet; there have been six (6) quarterly continuous events of sentry well level readings below the deep well index trigger level of 7.5 feet; and/or the imposition of mandatory reductions in water use by the City by the State Water Resources Control Board.

2. Upon adoption of a Stage 1 Water Shortage Emergency Resolution, all residential customers will be assigned a baseline amount of water, based upon the amount of water used during the same billing period of the previous year prior to the adoption of the Resolution. All residential customers shall reduce water usage by a percentage amount set forth in the Resolution, which percentages may be modified or amended by the City Council as deemed necessary and appropriate. The percentage of required conservation shall increase depending on the billing Tier of the residential customer's water use as provided in the City's tiered water rate structure. The Resolution shall include provisions for the imposition of mandatory financial penalties if the amount of water in each Tier is exceeded, which penalties may also be modified or amended by the City Council as deemed necessary and appropriate based upon a determination of the severity of the Water Shortage Emergency.

The following shall be used as a general framework for the Resolution establishing the baseline units for billing Tiers and penalties, subject to such revisions deemed necessary in order to achieve the desired water savings:

Residential customers in Tier 1 shall be required to reduce consumption by the lowest percentage. Residential customers in Tier 2 shall be required to reduce consumption by a larger percentage than those in Tier 1. Residential Customers in Tier 3 shall be required to reduce consumption by an even larger percentage than those in Tier 1 and Tier 2. For example, Tier 1 customers may initially be required to conserve 10%, Tier 2 customers 20% and Tier 3 customers 30%. As the emergency worsens, the City Council may, by Resolution, increase the percentage reduction deemed necessary in order to achieve the projected amount of water savings established as necessary.

**B. Stage 1B Water Shortage Emergency—Implementation of Additional Restrictions based upon the existence of Triggering Conditions**

1. After holding a noticed public hearing in accordance with the requirements of Water Code Section 350 et seq., the City Council may, by Resolution, find and determine that failure to adopt and impose additional restrictions on water use and deny new or additional water service connections for projects that do not participate in a water demand offset program, would place the community in a condition that is dangerous to the health, safety and welfare of its citizens due to the severe impact on the City's water supply, if it is determined that any specified Triggering Conditions exist.

Based upon such a determination, the City Council may declare a Stage 1B Water Shortage Emergency that will provide that when Triggering Conditions exist additional restrictions on water use, including but not limited to denial of new or additional water service connections for projects that do not participate in a water demand offset program, will be imposed in order to protect the public health, safety and welfare of the community.

The Resolution may provide that the certification by the City Manager and Public Works Director that the Triggering Conditions set forth in subsection 2 below exist, which shall result in the immediate imposition of additional regulations and restrictions on the use of water in order to provide for the protection of the public's health, safety and welfare, as set forth in the Resolution.

2. If any one of the following water supply Triggering Conditions are determined to exist, the additional water use restrictions contained in subsection 4 below shall immediately be imposed.

- a. The interruption of local water deliveries, the water delivery system or additional mandated reductions in water use by the State Water Resources Control Board.

b. The water level at the Lopez Reservoir is at or below 10,000 acre feet.

c. There have been six quarterly continuous events of sentry well level readings in the Santa Maria Ground Water Basin below the deep well index trigger level of 7.5 feet, or indications of sea water intrusion are detected.

3. In the event that any of the foregoing Triggering Conditions are determined to exist, the Public Works Director and City Manager shall Certify to its existence, immediately notify the City Council of such determination, post the Certification of the existence of the condition on the City website, and make additional notifications to alert the public that the additional Stage 1B restrictions are being implemented.

4. The following additional regulations and restrictions shall apply in addition to the restriction imposed in the Stage 1 Water Shortage Emergency:

a. Irrigation of City-owned non-sports field turf areas shall be reduced to 25% of the water used for such irrigation in a year as specified in the adopting Resolution.

b. The required residential customer water reductions established in Stage 1 pursuant to Section A 2, above, shall be increased by five (5) percent for each of the three water rate tiers.

c. There shall be no new or additional water connections for any project that does not have all required planning project approvals and entitlements at the time of the Certification that a Triggering Condition exists. Smaller projects of less than four residential units or less than 5,000 sq. feet of commercial space shall be exempt from this restriction. Notwithstanding this restriction, development projects may continue to be processed.

d. The City Council may provide that the restriction contained in subsection c. above, will not apply to any project that participates in the City's approved water demand offset program by providing water savings that offset their project's water demand by a ratio of 1:1.5.

5. The foregoing Stage 1B additional regulations and restrictions contained in this Section shall no longer apply upon Certification by the Public Works Director and the City Manager that the water level at the Lopez Reservoir is at or above 15,000 acre feet and increasing, and none of the other Triggering

Conditions exist, or upon a determination by the City Council that these additional water use regulations and restrictions are no longer necessary to protect the City's water supply.

**C. Stage 2 Water Shortage Emergency and Household Allocation Water Restrictions.**

1. After holding a noticed public hearing in accordance with the requirements of Water Code Section 350 et seq., the City Council may declare, by Resolution, a Stage 2 Water Shortage Emergency based upon a determination that Triggering Conditions exist or that the projected City's water supply condition is or will become equal to or less than amounts that have been determined necessary to meet basic minimum household health and safety requirements, and restrictions and limits through the implementation of water allocations are necessary for continued water use that is reliable and sustainable by providing a minimum supply for the most essential purposes for human consumption, sanitation, and fire protection during the emergency situation, in order to protect the public health, safety and welfare.

Triggering Conditions may include, but not be limited to: a determination that the water level at the Lopez Reservoir is at or below 5,000 acre feet; and/or seawater intrusion is occurring in the Santa Maria Groundwater Basin; and/or there has been a catastrophic or emergency interruption in the City's water supply.

2. Upon adoption of a Stage 2 Water Shortage Emergency, restrictions and limits shall be imposed through the implementation of Household Allocations of water units for residential customers. All residential customers will be allocated units of water deemed necessary for an average household size (1 unit of water is equal to 100 cubic feet or 748 gallons). Any residential customer using over the assigned baseline unit amount may be subject to citation and shall be subject to the imposition of mandatory financial penalties, which shall be set forth in the Resolution adopted by the City Council and be based upon the severity of the Water Shortage Emergency. Each household shall be allowed 12 units of water per two month billing period (which is equivalent to 150 gallons per household per day). Households with over 5 people will be allowed 20 units of water per two-month billing period (250 gallons per day). Households with over 7 people will be allowed 28 units of water per two-month billing period (350 gallons per day). The allocations contained herein may be adjusted by the City Council by Resolution.

**13.07.050 Commercial Properties and Customers with Irrigation Meters.**

During a Stage 1 Water Shortage Emergency commercial water customers shall not be subject to mandatory penalties for use except for those with irrigation meters as provided below.

Any customer with an irrigation meter account shall reduce water use by such percentages specified in the Resolution declaring the Water Shortage Emergency, which percentage reductions may be increased by the City Council by Resolution upon a determination that additional reductions are necessary. The Resolution shall also establish mandatory financial penalties for failing to meet required water use reductions.

During a Stage 2 Water Shortage Emergency commercial water customers shall not use potable water for irrigation of outdoor landscaping. All irrigation meters shall be shut off and billing will be suspended.

**13.07.060 Additional Requirements and Restrictions during Stage 1, Stage 1B or Stage 2 Water Shortage Emergency.**

Upon adoption of a Resolution declaring a Stage 1, Stage 1B or Stage 2 Water Shortage Emergency the following shall apply:

1. Commercial, industrial or irrigation meter customers shall immediately follow any directive issued or declared by the City's Water Department to conduct water use audits, prepare water conservation plans and immediately repair any identified water system leaks, including leaks attributable to faulty pipes or fixtures. Commercial customers shall not violate any other water use restrictions intended to preclude excessive water usage, as adopted by the City.
2. Residential customers shall not violate any water use/allocation or other water rationing regulation implemented by Resolution of the City Council, including such regulations intended to preclude excessive water usage and specifying maximum water usage limitations, as otherwise provided by this Chapter.

**13.07.070 Adjustments in Water Consumption Reduction Amounts, and Other Exceptions.**

A. During a declared Water Shortage Emergency the Director, upon application made in writing by a customer on a form promulgated by the water department and accompanied by supporting documentation, shall be authorized to modify the



percentage of water consumption reduction that is required by the customer, upon the customer's production of substantial evidence demonstrating the existence of unusual circumstances, including but not limited to the household having been vacant during a portion of the comparison year billing period, resulting in the baseline water amount assigned to the household being lower than what would normally have been experienced.

B. The percentage of reduction in water consumption may also be adjusted if the existence of one or more of the following circumstances are shown and that are particular to that customer and which are not generally shared by other water department customers:

1. Failure to approve the requested exception would cause a condition having an adverse effect on the health, sanitation, fire protection, or safety of the customer.
2. Alternative restrictions to which the customer is willing to adhere are available that would achieve the same level of demand reduction as the restriction for which an exception is being sought and such alternative restrictions are enforceable by the water department.
3. Circumstances concerning the customer's property have changed since the implementation of the subject restriction warranting a change in the customer's water usage allocation or required percentage of reduction in consumption.

C. In order to qualify for an exception, a customer may be required at the Director's determination, to first complete a self-water audit pursuant to standards and procedures promulgated by the water department. This audit shall be made part of the customer's exception application and water conservation measures indicated by the audit may be incorporated as conditions of approval to an exception in addition to any other conditions of approval imposed by the Director in connection with the Director's approval of the customer's exception application.

**13.07.080 Water Shortage Appeals Board (WSAB).**

A. Upon adoption of a Resolution declaring a Water Shortage Emergency, the Utility Billing Adjustment Committee shall be empowered to act as the Water Shortage Appeal Board (WSAB). Thereafter, the Water Shortage Appeal Board will remain available to convene for as long as the Water Shortage Emergency remains in effect.

B. Any customer who considers an action taken by the Director or an enforcement official under the provisions of this Chapter, including action on adjustments to water consumption reduction amounts, and on exception application, or the assessment of administrative penalties which have been erroneously taken or issued, may appeal that action or penalty to the Water Shortage Appeals Board in the following manner:

1. The appeal shall be made in writing, shall state the nature of the appeal specifying the action or penalty that is being appealed and the basis upon which the action or penalty is alleged to be in error. Penalty appeals shall include a copy of the bill or any applicable notice of violation;
2. An appeal, to be effective, must be received by the Director not later than ten business days following the date of the notice of violation or the date that the Director took the action which is the subject of the appeal;
3. The Director shall schedule the appeal for consideration by the WSAB. The WSAB shall hear the appeal within ninety days of the date of the appeal and issue its decision within thirty days of the date of the hearing;
4. In ruling on appeals, the WSAB shall strictly apply the provisions of this Chapter, and shall not impose or grant terms and conditions not authorized by this Chapter.
5. Decisions of the WSAB shall be subject to appeal to the City Council in accordance with the procedures in Chapter 1.12 of this Code, including the requirement that decisions be first taken up with the City Manager.

**13.07.090 Penalties and Enforcement.**

A. Penalties. The purpose of the mandatory penalties assessed pursuant to this Chapter and set forth in a Resolution of the City Council declaring a Water Shortage Emergency is to assure compliance by the customer through the imposition of increasingly significant penalties so as to create a meaningful incentive to reduce water use. In acknowledgment of the fact that the City's water is scarce and irreplaceable commodity and that this Chapter is intended to equitably distribute that commodity among water department customers and to assure that, to the extent feasible, City water is conserved and used only for purposes deemed necessary for public health and safety, such mandatory penalties are not to be construed as creating a "water pricing" structure pursuant to which customers may elect to pay for additional water at significantly higher rates.

B. A customer's repeated use of excessive water during a Water Shortage Emergency may result in criminal prosecution as a misdemeanor, and may result in the installation of a flow restriction device or disconnection of the customer's property from the City's water service system at the customer's cost, as further set forth herein. Flow restriction devices shall not be installed on residences that have fire sprinkler systems.

C. Misdemeanor. In addition to, and completely separate from, the civil penalties for excessive water use, any person who knowingly and willfully violates the provisions of this Chapter during a Water Shortage Emergency shall be guilty of a criminal misdemeanor as provided in the general penalty provisions of this Code. In accordance with Section 1.16.010, such misdemeanor violations may, at the discretion of the City Attorney, be initially charged or subsequently prosecuted as an infraction. All previous attempts by the City to obtain compliance by the defendant may be introduced as evidence of the offender's knowledge and willfulness.

D. Discontinuing Service. In addition to any penalties, misdemeanor criminal prosecution and the installation of a water flow restrictor, during a Water Shortage Emergency the Director may disconnect a customer's water service for willful violations of mandatory restrictions and regulations in this Chapter and Chapter 13.05. Upon disconnection of water service, a written notice shall be served upon the customer which shall state the time, place, and general description of the prohibited or restricted activity and the method by which reconnection can be made.

E. Cost of Flow Restrictor and Disconnecting Service. A person or entity that as a result of violations of this Chapter has a flow restrictor installed or water service disconnected is responsible for payment of charges for installing and/or removing the flow-restricting device and for disconnecting and/or reconnecting service in accordance with the City's fee schedule then in effect. The charge for installing and/or removing any flow restricting device must be paid before the device is removed. Nonpayment will be subject to the same remedies as nonpayment of basic water rates.

**SECTION 2.** If any section, subsection, subdivision, paragraph, sentence, or clause of this Ordinance or any part thereof is for any reason held to be unlawful, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, or clause thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, or clause be declared unconstitutional.

**SECTION 3.** A summary of this Ordinance shall be published in a newspaper published and circulated in the City of Arroyo Grande at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. A certified copy of the full text of the proposed Ordinance shall be posted in the office of the City

Clerk. Within fifteen (15) days after adoption of the Ordinance, the summary with the names of those City Council Members voting for and against the Ordinance shall be published again, and the City Clerk shall post a certified copy of the full text of such adopted Ordinance.

**SECTION 4.** This Ordinance shall take effect thirty (30) days after its adoption.

On motion by Council Member Brown, seconded by Council Member Ray, and by the following roll call vote to wit:

**AYES:** Council Members Brown, Ray, Harmon, Barneich, Hill

**NOES:** None

**ABSENT:** None

the foregoing Ordinance was adopted this 14<sup>th</sup> day of February, 2017.

**/s/JIM HILL, MAYOR**

**ATTEST:**

**/s/KELLY WETMORE, CITY CLERK**