

## **ORDINANCE NO. 589**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRISBANE ADOPTING A WATER CONSERVATION PROGRAM AND ADDING CHAPTER 8.41 OF THE MUNICIPAL CODE**

**WHEREAS**, on January 17, 2014, the Governor of the State of California proclaimed a state of emergency in the State of California due to drought conditions that have persisted since 2012, called upon all Californians to reduce their water usage by 20 percent, and called upon local water suppliers and municipalities to implement water shortage contingency plans immediately to avoid or forestall outright restrictions that could become necessary later in the drought season; and

**WHEREAS**, on January 31, 2014, the San Francisco Public Utilities Commission, from which the City of Brisbane purchases all of its water for resale to customers in the City's water service area, has urged its customers to voluntarily curtail water consumption by 10 percent; and

**WHEREAS**, on April 25, 2014, the Governor of the State of California proclaimed a continued state of emergency under the California Emergency Services Act based on continued drought conditions in the State of California; and

**WHEREAS**, on July 15, 2014, the State Water Resources Control Board approved an emergency regulation to ensure that water agencies, their customers, and residents of the State of California increase water conservation in urban settings or face possible fines or other enforcement; and

**WHEREAS**, the State of California is currently in the third consecutive year of below normal, dry, or critically dry years, resulting in severe impacts to California's water supplies; and

**WHEREAS**, drought conditions will likely continue for the foreseeable future and there is no guarantee that winter precipitation will alleviate the present drought conditions; and

**WHEREAS**, article X, 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**, California Water Code sections 375 et seq. empower any public entity that supplies water at retail or wholesale to adopt and enforce a water conservation program to reduce the quantity of water used by those within its service area after holding a public hearing and making appropriate findings of necessity for the adoption of a water conservation program; 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 of the City of Brisbane and the Guadalupe Valley Municipal Improvement District; 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, and installation and use of water-saving devices provide an effective and immediately-available means of conserving water for the City of Brisbane and the Guadalupe Valley Municipal Improvement District; and

**WHEREAS**, the City of Brisbane and the Guadalupe Valley Municipal Improvement District do not meet the definition of an “urban water supplier” under Water Code section 10617, and therefore are not yet required to develop a Water Shortage Contingency Plan as required by Water Code section 10632; and

**WHEREAS**, the terms of the Water Shortage Contingency Plan developed under this Ordinance will provide a substantial framework for complying with Water Code section 10632 should the City of Brisbane and/or the Guadalupe Valley Municipal Improvement District eventually meet the definition of “urban water supplier” under Water Code section 10617; and

**WHEREAS**, the adoption and enforcement of a comprehensive water conservation program is intended to (1) ensure compliance with the voluntary and mandatory reductions requested by governing authorities, such as the San Francisco Public Utilities Commission, by the City of Brisbane and the Guadalupe Valley Municipal Improvement District; (2) conserve the water supply of the City of Brisbane and of the Guadalupe Valley Municipal Improvement District for the greatest public benefit, with particular regard to domestic use, human consumption, sanitation, and fire protection; and (3) allow the City of Brisbane to delay or avoid declaring a water shortage emergency pursuant to Water Code section 350; and

**WHEREAS**, on August 21, 2014, the City Council of the City of Brisbane held a properly noticed public hearing and made appropriate findings of necessity for the adoption of a water conservation program;

**THE CITY COUNCIL OF THE CITY OF BRISBANE HEREBY ORDAINS AS FOLLOWS:**

**SECTION 1:** The City determines that the above recitals are true and are incorporated herein.

**SECTION 2:** Pursuant to Water Code section 376 and Government Code section 6061, the City of Brisbane shall publish this ordinance in a newspaper of general circulation within 10 days after its adoption.

**SECTION 3:** Chapter 8.41 of the City of Brisbane Municipal Code is hereby enacted to read as follows:

**Chapter 8.41 – WATER CONSERVATION**

**8.41.010 – Purpose, scope, and notice.**

The purpose of this Chapter is to establish standards and procedures for water conservation; assure the maximum beneficial use of City water supplies; enable the implementation of the

City's drought response measures; facilitate compliance with requirements for voluntary or mandatory reductions during water shortages promulgated by a Governing Authority; ensure sufficient water supplies to meet the basic needs of human consumption, sanitation and fire protection; and protect the health, safety, welfare, and economic vitality of the City's customers.

This Chapter establishes four stages of increasingly restrictive drought response actions to be implemented in times of water shortage. The provisions of each drought response stage are triggered upon the Director's determination that a Governing Authority has required a voluntary or mandatory reduction in water use because of shortage conditions.

The provisions of each drought response stage will become effective five (5) days after the Director determines that a particular stage should be triggered and has published notice of this determination by mail. Once effective, the provisions of a drought response stage will stay in effect until the effective date of a different drought response stage that is triggered or until the Director determines that no drought response stages are required and has published notice of this determination by mail.

Nothing in this Chapter is intended to limit the ability of the City to respond to an emergency, including declaring or enforcing a water shortage emergency pursuant to Water Code section 350, or to comply with other requirements promulgated by a Governing Authority.

#### **8.41.020 – Definitions.**

The following definitions apply to this Chapter.

- A. "City" means the City of Brisbane and/or the Guadalupe Valley Municipal Improvement District.
- B. "Director" means the Director of the Department of Public Works/City Engineer of the City, or his or her designee.
- C. "Drought Response Measures" mean the measures in the Water Shortage Contingency Plan. A reference to a particular Stage of Drought Response Measures refers to the corresponding Stage described in the Water Shortage Contingency Plan.
- D. "Governing Authority" means any entity – including, but not limited to, the SFPUC – that has the legal authority to limit the ability of the City to purchase and/or use water.
- E. "Person" or "Persons" means any natural person or persons, corporation, public or private entity, or any other user of water provided by the City.
- F. "SFPUC" means the San Francisco Public Utilities Commission.
- G. "Water Shortage Contingency Plan" means a plan to address water shortages, including a detailed description of four stages of increasingly restrictive drought response actions, developed under the direction of the Director and as amended.

#### **8.41.030 – Water shortage contingency plan.**

The specific terms of the Drought Response Measures are contained in the Water Shortage Contingency Plan. The Water Shortage Contingency Plan shall be developed under the direction of the Director and may be amended as necessary, in the Director's discretion, to better achieve the overall goals in this Chapter or to comply with any terms of a water shortage contingency plan required of urban water suppliers, as defined by Water Code section 10617. The operative version of the Water Shortage Contingency Plan shall be posted as soon as possible on the City's website. The Water Shortage Contingency Plan is intended to comply substantially with the requirements of Water Code section 10632 and may be used as a framework through which to actually comply with the requirements of Water Code section 10632 if the City is legally required to do so.

#### **8.41.040 – Permanent water conservation measures.**

Nothing in this Chapter shall limit the requirements of Chapter 8.40 (Water Waste), Chapter 15.70 (Water Conservation in Landscaping), or Chapter 15.72 (Indoor Water Conservation Regulations) of the Brisbane Municipal Code. These water conservation requirements are in effect at all times.

#### **8.41.050 – Stage 1 drought response measures.**

Stage 1 Drought Response Measures apply when a Governing Authority declares a need for its purchasers to voluntarily reduce consumption by at least 10%, and the Director gives notice pursuant to Section 8.41.010 of his or her determination that the Stage 1 Drought Response Measures must be triggered.

The overall goal of the Stage 1 Drought Response Measures is to reduce water usage by the City and its water consumers by at least 10% of the average annual use by the City and its water consumers over the most recent 5 calendar years preceding the effective date of the Stage 1 Drought Response Measures, until such time as a Governing Authority determines that a voluntary reduction in consumption of at least 10% is no longer necessary. The City will endeavor to increase its public education and outreach efforts to increase public awareness of the need for all Persons to implement the Stage 1 Drought Response Measures.

#### **8.41.060 – Stage 2 drought response measures.**

Stage 2 Drought Response Measures apply when a Governing Authority imposes a mandatory requirement for its purchasers to reduce consumption system-wide by at least 10%, and the Director gives notice pursuant to Section 8.41.010 of his or her determination that the Stage 2 Drought Response Measures must be triggered.

The overall goal of the Stage 2 Drought Response Measures is to reduce water usage by the City and its water consumers by at least 10% of the average annual use by the City and its water consumers over the most recent 5 calendar years preceding the effective date of the Stage 2 Drought Response Measures, until such time as a Governing Authority determines that a mandatory reduction in consumption of at least 10% is no longer necessary. While the Stage 2 Drought Response Measures are effective, all Persons shall also comply with the Stage 1 Drought Response Measures, which will be mandatory.

#### **8.41.070 – Stage 3 drought response measures.**

Stage 3 Drought Response Measures apply when a Governing Authority declares a need for its purchasers to voluntarily reduce consumption by at least 20%, and the Director gives notice pursuant to Section 8.41.010 of his or her determination that the Stage 3 Drought Response Measures must be triggered.

The overall goal of the Stage 3 Drought Response Measures is to reduce water usage by the City and its water consumers by at least 20% of the average annual use by the City and its water consumers over the most recent 5 calendar years preceding the effective date of the Stage 3 Drought Response Measures, until such time as a Governing Authority, determines that a voluntary reduction in consumption of at least 20% is no longer necessary. While the Stage 3 Drought Response Measures are effective, all Persons shall also comply with the Stage 1 and Stage 2 Drought Response Measures, both of which will be mandatory.

#### **8.41.080 – Stage 4 drought response measures.**

Stage 4 Drought Response Measures apply when a Governing Authority imposes a mandatory requirement for its purchasers to reduce consumption by at least 20%, and the Director gives notice pursuant to Section 8.41.010 of his or her determination that the Stage 4 Drought Response Measures must be triggered.

The overall goal of the Stage 4 Drought Response Measures is to reduce water usage by the City and its water consumers by at least 20% of the average annual use by the City and its water consumers over the most recent 5 calendar years preceding the effective date of the Stage 4 Drought Response Measures, until such time as a Governing Authority determines that a mandatory reduction in consumption of at least 20% is no longer necessary. While the Stage 4 Drought Response Measures are effective, all Persons shall also comply with the Stage 1, Stage 2, and Stage 3 Drought Response Measures, all of which will be mandatory.

#### **8.41.090 – Enforcement.**

The Director shall enforce this Chapter. Violations of this Chapter may be subject to administrative penalties (as provided in Chapter 1.16 of the Brisbane Municipal Code and Water Code section 71590) and may be prosecuted as a misdemeanor punishable by imprisonment in the county jail for not more than thirty (30) days and/or by a fine not exceeding \$1,000 (as provided in Water Code section 377).

Prior to, or in addition to imposing administrative penalties as described above, the Director may, in his or her sole discretion, take any or all of the following actions:

- A. Written Warning: If the City determines that a Person is using water in violation of this Chapter, the City may send a written warning to the Person that lists the name and address of the Person on the account, identifies the wasteful use of water that violates the restrictions on water use currently in effect, requests that the Person stop such wasteful use, informs the Person about the process for applying for an

exception from the requirements of this Chapter, and informs the Person that failure to comply with this Chapter may result in the termination of service.

- B. On-site Warning: The City may conduct an on-site visit to ascertain whether wasteful use of water is occurring. In the event that waste of water that violates the restrictions on water use current in effect is observed, and no exception has been granted, the City will make reasonable efforts to notify an adult residing at the property if a residential account or an adult working on the property if a non-residential account, and will issue a written on-site warning of wasteful water use. This warning will include a written warning hand-delivered to the adult on the premises or posted on the premises.
- C. Termination of Water Service: In the event that City personnel observe continued waste of water that violates the restrictions on water use currently in effect occurring on the Person's premises more than 48 hours after the on-site warning, it shall be deemed to be a willful violation of the restrictions on water use currently in effect, and the Director may authorize termination of water service.
- D. Restoring Water Service: The reconnection charge established in the City's Rate and Fee Schedule shall be paid before the City restores service. In addition, the Person must have stopped the wasteful use of water and have paid all charges owed to the City under this Chapter, and all other rates and fees owed, before the City restores water service.
- E. Installation of Flow Restricting Device: The City may, in its sole discretion, install a water flow restricting device in the service line of a Person who violates this Chapter. Written notice will be provided to the Person by hand delivery at least 48 hours prior to installation of the flow restricting device. The flow restricting device will be at least one gallon per minute (1 GPM) capacity for services up to one and one-half (1.5) inch size and comparatively sized restrictors for larger services. The cost of installation of the flow restricting device shall be charged to the Person.

#### **8.41.100 – Relief from compliance.**

- A. Upon written application made to the Director for an exception or adjustment to the requirements of this Chapter, the Director may grant, in his or her sole discretion, variances to a Person who demonstrates that the Person has adopted all reductions in water consumption that could practically be achieved. Any exception or adjustment shall not grant a special privilege inconsistent with the limitations placed upon similarly-situated Persons. Exceptions or adjustments may also be granted if failure to do so would adversely affect the sanitation, fire protection, health, safety, or welfare of the public, or of the Person applying for an exception or adjustment.
- B. The denial of an application for an exception or adjustment may be appealed in writing to the City Manager within thirty (30) days of the date of the notice of the denial of the application. The City Manager shall grant or deny the appealed application within fifteen (15) days and shall mail notice thereof to the appellant as soon as practicable. The City Manager's decision shall be final and non-appealable.

---

W. Clarke Conway, Mayor

The above and foregoing Ordinance was regularly introduced after the waiting time required by law and was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the 2<sup>nd</sup> day of September 2014, by the following vote:

AYES: Councilmembers Lentz, Liu, Miller, O'Connell, and Mayor Conway

NOES: None

ABSENT: None

---

Sheri Marie Spediacci, City Clerk