

ORDINANCE NO. 2016-15

**AN EMERGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF GILROY AMENDING CHAPTER 27,
ARTICLE VI, ENTITLED "WATER SUPPLY SHORTAGE
REGULATIONS."**

WHEREAS, the Governor of the State of California proclaimed a drought emergency on January 17, 2014 based on the State's water supply storage and outlook; and

WHEREAS, on April 25, 2014 the Governor of the State of California proclaimed a Continued State of Emergency to exist throughout the State of California due to the ongoing drought; and

WHEREAS, on April 1, 2015 the Governor of the State of California issued executive order B-29-15 that imposed mandatory water saving measures with a goal to reduce water usage by 25% statewide; and

WHEREAS, on May 9, 2016 the Governor of the State of California issued executive order B-37-16 that imposed permanent mandatory water saving measures; and

WHEREAS, to promote water conservation and to impose permanent mandatory water conservation measures and make more efficient use of water; and

WHEREAS, the underground water aquifers that the City relies on for 100% of its water supply are recharged by the District using water supplies imported into the District; and

WHEREAS, historical evidence indicates that the State of California has experienced prolonged periods of drought in the past; and

WHEREAS, wasteful use of water is detrimental to the long-term water supplies of the City of Gilroy; and

WHEREAS, the long-term health, safety, and prosperity of the community depends upon having a reliable long-term supply of potable water; and

WHEREAS, the California Water Resources Control Board adopted Article X. Prohibition of Activities and Mandatory Actions During Drought Emergency at its July 15, 2014 meeting, which became effective August 1, 2014, whose section X.1 prohibits certain activities in promotion of water conservation as follows:

(a) To promote water conservation, each of the following actions is prohibited, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency;

(1) The application of water to outdoor landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;

(2) The use of a hose to wash an automobile, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;

(3) The application of water to any hard surface, including but not limited to driveways, sidewalks, and asphalt; and

(4) The use of potable water in a fountain or other decorative water feature, except where the water is part of a recirculating system.

(b) The taking of any action prohibited in subdivision (a) of this section is an infraction, punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs; and

WHEREAS, urban water suppliers that violate mandatory actions approved by the California Water Resources Control Board could be subject to cease and desist orders for violating emergency regulations with fines up to \$10,000 per day per violation. Or, the matter could be referred to the Attorney General's office for further action; and

WHEREAS, The California Water Code, §10632 requires that stages of action to be undertaken by the urban water supplier in response to water supply shortages, including up to a

50 percent reduction in water supply.; and

WHEREAS, the City finds that this Ordinance and actions taken hereafter pursuant to it are exempt from the California Environmental Quality Act as specific actions necessary to prevent or mitigate an emergency pursuant to Public Resources Code Section 21080(b)(4) and the California Environmental Quality Act Guidelines Section 15269(c).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GILROY DOES HEREBY ORDAIN:

SECTION I

Gilroy City Code Chapter 27, Article VI, Section 27.95 h. is hereby amended to read as follows:

“(h) The adoption and enforcement of permanent water conservation measures and a temporary water supply shortage program is necessary to manage the city’s potable water supply and to avoid or minimize the effects of drought and shortage within the city. The adoption of voluntary and mandatory water conservation measures is necessary to manage the city’s potable water supply in the long term. Such programs are essential to ensure a reliable and sustainable minimum supply of water for the public health, safety and welfare. (Ord. No. 2014-11, § 1, 8-4-14; Ord. No. 2015-04, § 1, 5-18-15).”

Gilroy City Code Chapter 27, Article VI, Section 27.95 i. is hereby deleted in its entirety.

SECTION II

Gilroy City Code Chapter 27, Article VI, Section 27.96, section c. is added, which reads as follows:

“(c) This article also establishes permanent mandatory water conservation measures intended to safeguard a reliable and sustainable minimum supply of water for the public health, safety, and welfare.”

SECTION III

Gilroy City Code Chapter 27, Article VI, Section 27.98 is hereby repealed in its entirety and replaced by a new Section 27.98 to read as follows:

“Section 27.98 **Wasting of water and drought emergencies.**

A. Applicability

1. The provisions of this Article apply to any person in the use of any potable water provided by the city.

2. The provisions of this Article 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.

3. The provisions of this Article 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.

4. The provisions of this Article do not apply to the use of water by city facilities to sustain plants, trees, shrubs, or recreational turf.

5. This Article is intended solely to further the conservation of water. It is not intended to implement any provision of federal, state, or local statutes, resolutions, or regulations relating to protection of water quality or control of drainage or runoff.

B. Saving Water – Level 0 (0% - 10% reduction). Level 0 is in effect at all times, and does not need to be declared by Council. Level 0 is divided into **Voluntary** and **Mandatory** measures to comply with the State of California Governor’s executive order B-37-16.

Voluntary

The following voluntary (as indicated with a “V”) water conservation measures are encouraged at all times. Following these measures will help save water, and water users are encouraged to save water year around.

V-0.1 Recommended Watering Hours: Watering or irrigating of lawn, landscape or other vegetated area with potable water is discouraged between the hours of 9:00 a.m. and 5:00 p.m. Pacific Standard/Daylight Savings Time.

V-0.2 Recommended Limit on Watering Duration: Watering or irrigating of lawn, landscape or other vegetated area with potable water using a landscape irrigation system or a watering device that is not continuously attended is recommended to be limited to no more than three days a week with a duration of fifteen (15) minutes watering per water day per station. This subsection does not apply to landscape irrigation systems that exclusively use very low-flow drip type irrigation systems when no emitter produces more than two (2) gallons of water per hour and weather based controllers or stream rotor sprinklers that meet a 70% efficiency standard.

V-0.3 Fix Leaks, Breaks or Malfunctions: Excessive use, loss or escape of water through breaks, leaks or other malfunctions in the water user’s plumbing or distribution system for any period of time after such escape of water should have reasonably been discovered should be corrected as soon as practical.

V-0.4 Washing vehicles at commercial conveyor car wash systems with recirculating water systems is recommended.

V-0.5 Filling Ornamental Lakes or Ponds: Filling or re-filling ornamental lakes or ponds with potable water is encouraged only to the extent needed to sustain aquatic life.

V-0.6 – 0.19 Reserved

Mandatory

The following mandatory (as indicated with a “M”) water conservation measures are in effect at all times. Following these measures will help save water, and water users are encouraged to save water year around.

M-0.20 Washing Vehicles: Using water to wash or clean a vehicle, including but not limited to any automobile, truck, van, bus, motorcycle, boat or trailer, whether motorized or not is prohibited, except by use of a hand-held bucket or similar container or a hand-held hose equipped with a positive self-closing water shut-off nozzle or device.

M-0.21 Washing Down Hard or Paved Surfaces: Washing down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking areas, tennis courts, patios or alleys, is prohibited except for health and safety reasons by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off device, a low-volume, high-pressure cleaning machine equipped to recycle any water used, or a low-volume high-pressure water broom. This prohibition does not apply to pressure washing a wall when necessary for preparation prior to painting or repainting.

M-0.22 Recirculating Water for Water Fountains and Decorative Water Features: Operating a water fountain or other decorative water features that uses non-recirculated water is prohibited.

M-0.23 Eliminate Excessive Water Flow or Runoff: Using water in any manner or irrigating of any lawn, landscape or other vegetated area in a manner that causes or allows excessive water flow or runoff onto an adjoining sidewalk, driveway, street, alley, gutter or ditch is prohibited.

M-0.24 Irrigating Within 48 Hours of Rainfall: The applications of potable water to outdoor landscapes during or within 48 hours following measurable rainfall is prohibited.

M-0.25 Prohibition Against Watering Turf in Medians: The irrigation with potable water of ornamental turf on public street medians, including roundabouts, is prohibited.

M-0.26 Irrigation Outside Newly Constructed Homes: The irrigation with potable water outside of homes and buildings constructed after May 18, 2015 in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission is prohibited.

M-0.27 Drinking Water Served Upon Request Only: Eating or drinking establishments, including but not limited to a restaurant, hotel, cafe, cafeteria, bar, or other public place where food or drinks are sold, served, or offered for sale, are prohibited from providing drinking water to any person unless expressly requested.

M-0.28 Commercial Lodging Establishments Must Provide Guests Option to Decline Daily Linen Services: Hotels, motels and other commercial lodging establishments must provide customers the option of not having towels and linen laundered daily. Commercial lodging establishments must prominently display notice of this option in each bathroom using clear and easily understood language.

M-0.29 Installation of Single Pass Cooling Systems: Installation of single pass cooling systems is prohibited in buildings requesting new water service.

M-0.30 Installation of Non-recirculating Water System in Commercial Car Wash and Laundry Systems: Installation of non-recirculating water systems is prohibited in commercial conveyor car wash and new commercial laundry systems.

M-0.31 Pool Covers: It is required that all new and existing pools use a pool cover or solar blanket to reduce water loss due to evaporation.

M-0.32 Use of Recycled Water for Construction: When directed by the Public Works Director, recycled water fill stations shall be made available for construction water for purposes, including dust control. Recycled water fill stations may be removed upon completion of construction activities in the area.

M-0.33 Restaurants Required to Use Water Conserving Dish Wash Spray Valves: Food preparation establishments, such as restaurants or cafes, are prohibited from using non-water conserving dish wash spray valves.

C. Level 1 Water Supply Shortage (11% - 20% reduction): A Level 1 Water Supply Shortage exists when the City Council determines, in its sole discretion, that due to drought or other water supply conditions, a water supply shortage or threatened shortage exists and an 11% - 20% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by of the City Council of a Level 1 Water Supply Shortage condition, the following mandatory water conservation requirements shall apply during such time that the Level 1 Water Supply Shortage is in effect.

1.1 Limits on Watering Hours: Watering or irrigating of lawn, landscape or other vegetated area with potable water is prohibited between the hours of 9:00 a.m. and 5:00 p.m. Pacific Standard/Daylight Savings Time on any day, except by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system. The use of recycled water is exempt from this prohibition.

1.2 Limit on Watering Duration: Watering or irrigating of lawn, landscape or other vegetated area with potable water using a landscape irrigation system or a watering device that is not continuously attended is limited to no more than fifteen (15) minutes watering per designated water day per station. This subsection does not apply to landscape irrigation systems that exclusively use very low-flow drip type irrigation systems when no emitter produces more than two (2) gallons of water per hour and weather based controllers or stream rotor sprinklers that meet a 70% efficiency standard. The use of recycled water is exempt from this prohibition.

1.3 Limits on Watering Days: Watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to three days per week from April through October. The watering days are designated depending upon house address (odd house and no house address – Monday, Thursday, and Saturday, even house address – Tuesday, Friday, and Sunday). During the months of November through March, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to no more than one day per week (odd house and no house address – Monday, even house address – Tuesday).

1.4 Obligation to Fix Leaks, Breaks or Malfunctions: All leaks, breaks, or other malfunctions in the water user's plumbing or distribution system must be repaired within seventy-two (72) hours of notification by the city unless other arrangements are made with the city.

D. Level 2 Water Supply Shortage (21% - 35% reduction): A Level 2 Water Supply Shortage exists when the city council declares, in its sole discretion, that due to drought or other water supply conditions, a water supply shortage or threatened shortage exists and a 21% - 35% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration of a Level 2 Water Supply Shortage condition, the more restrictive of the prohibited or limited uses of water set forth in subsections C, and the following mandatory water conservation requirements shall apply during such time that the Level 2 Water Supply Shortage is in effect.

2.1 Limits on Watering Days: Watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to two days per week from April through October. The watering days are designated depending upon house address (odd house and no house address – Monday and Thursday, even house address – Tuesday, and Friday). During the months of November through March, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to no more than one day per week (odd house and no house address – Monday, even house address – Tuesday).

2.2 Obligation to Fix Leaks, Breaks or Malfunctions: All leaks, breaks, or other malfunctions in the water user's plumbing or distribution system must be repaired within forty-eight (48) hours of notification by the city unless other arrangements are made with the city.

2.3 Limits on Filling Ornamental Lakes or Ponds: Filling or re-filling ornamental lakes or ponds with potable water is prohibited, except to the extent needed to sustain aquatic life, provided that such animals are of significant value and have been actively managed within the water feature prior to declaration of a supply shortage level under this section.

2.4 Drought Water Rates: City Council may consider adopting rate structures and other pricing mechanisms to maximize water conservation.

E. Level 3 Water Supply Shortage – Emergency Condition (36% - 50% reduction): A Level 3 Water Supply Shortage shall be referred to as a Water Shortage Emergency. A Level 3 condition exists when the city council declares, in its sole discretion, a water shortage emergency and notifies its residents and businesses that a greater than 35% reduction in consumer demand is

necessary to maintain sufficient water supplies for public health and safety, pursuant to Water Code Section 350 et seq. Upon the declaration of a Level 3 Water Supply Shortage condition, the more restrictive of the prohibited or limited uses of water set forth in subsections C, D, and the following mandatory water conservation requirements shall apply during such time that the Level 3 Water Supply Shortage is in effect.

3.1 No Watering or Irrigating. Watering or irrigating of lawn, landscape or other vegetated area with potable water is prohibited. This restriction does not apply to the following categories of use, unless the city has determined that recycled water is available and may be applied to the use:

3.1a Maintenance of vegetation, including trees and shrubs, that are watered using a hand-held bucket or similar container, hand-held hose equipped with a positive self-closing water shut-off nozzle or device;

3.1b Maintenance of existing landscape necessary for fire protection;

3.1c Maintenance of existing landscape for soil erosion control;

3.1d Maintenance of plant materials identified to be rare or essential to the well-being of protected species;

3.1e Maintenance of landscape within active public parks and playing fields, day care centers, golf course greens, and school grounds, provided that such irrigation does not exceed two (2) days per week for no more than fifteen (15) minutes watering per designated water day per station and is prohibited between the hours of 9:00 a.m. and 5:00 p.m. Pacific Standard/Daylight Savings Time, according to the schedule established in subsection D(2.1) or this section.

3.1f Actively irrigated environmental mitigation projects.

3.2 Obligation to Fix Leaks, Breaks or Malfunctions. All leaks, breaks, or other malfunctions in the water user's plumbing or distribution system must be repaired within twenty four (24) hours of notification by the city unless other arrangements are made with the city.

3.3 Limits on New Potable Water Service: Upon declaration of a Level 3 Water Shortage Emergency condition, the city may limit the issuance of new potable water services, temporary meters and/or statements of immediate ability to serve or provide potable water service (such as, can and will-serve letters, certificates, or letters of availability), except under the following circumstances:

3.3a A valid, unexpired building permit has been issued for the project; or

3.3b The project is necessary to protect the public health, safety, and welfare; or

3.3c The applicant provides substantial evidence of an enforceable commitment that water demands for the project will be offset prior to the provision of a new water meter(s) to the satisfaction of the city.

3.3d This provision does not preclude the resetting or turn-on of meters to provide continuation of water service or the restoration of service that has been interrupted for a period of one year or less.

3.4 Limits on Building Permits. Upon declaration of a Level 3 Water Supply Shortage Emergency condition, the City Administrator is authorized to implement a program in his or her discretion to 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.

3.5 No New Annexations. Upon the declaration of a Level 3 Water Supply Shortage condition, the city may suspend consideration of annexations to its service area. This subsection does not apply to boundary corrections and annexations that will not result in any immediate increased use of water.

F. Procedures for Determination/Notification of Water Supply Shortage. The existence of Level 1, 2, or 3 Water Supply Shortage conditions may be declared by Resolution of the City Council adopted at a regular or special public meeting held in accordance with state law. The mandatory conservation requirements applicable to the level of Water Supply Shortage conditions declared by the City Council will take effect immediately after the shortage level is declared. Within ten (10) days following the declaration of the shortage level, the Resolution shall be published pursuant to Water Code section 376.

G. Hardship Waiver. If, due to unique circumstances, such as a fire, a specific requirement of this Article 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 or classes of water users, then the person may apply for a waiver to the requirement as provided in this Section.

1. Request: A written request for a Hardship Waiver must be submitted to the Public Works Director.

2. Supporting Documentation: The request for waiver must be accompanied by photographs, maps, drawings, and any other information as appropriate the applicant wishes to be used in reviewing the request.

3. Required Findings for Waiver: The 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. An application for a waiver will be denied unless the Public Works Director finds, based on the information provided in the application, supporting documents, or such additional information as may be requested, and on water use information for the property as shown by the records of the city or its agent, all of the following:

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

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

c. That the authorizing of such 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 Article and will not be detrimental to the public interest; and

d. That the condition or situation of the subject property or the intended use of the property for which the waiver is sought is not common, recurrent or general in nature.

4. Approval Authority: The Public Works Director must act upon any completed application no later than ten (10) days after submittal and may approve, conditionally approve, or deny the waiver. The applicant requesting the waiver must be promptly notified in writing of any action taken. Unless specified otherwise at the time a waiver is approved, the waiver will apply to the subject property during the period of the mandatory water supply shortage condition.

H. Mandatory metering of water use at all City hydrants. For uses other than fire suppression, all water delivered through city hydrants will require the use of meters in order to more accurately track the use of City water.”

SECTION IV

Gilroy City Code Chapter 27, Article VI, Section 27.100(B) is hereby repealed in its entirety and replaced with a new Section 27.100(B) to read as follows:

“Section 27.100 Violation Penalty.

B. Notwithstanding any other provision of this Article, whenever a violation of any section contained in this Article is punishable as a misdemeanor, the city attorney may specify that the offense is an infraction, and proceed with prosecution as an infraction, unless the defendant objects to the offense being made an infraction, in which event the court may elect to have the complaint amended to charge as a misdemeanor, and the case shall proceed on a misdemeanor charge.

1. First Violation: The City will issue a written warning and deliver a copy of this Ordinance by mail.

2. Second Violation: A second violation within any consecutive twelve (12) months period is punishable by a fine not to exceed one hundred dollars (\$100).

3. Third Violation: A third violation within any consecutive twelve (12) months period is punishable by a fine not to exceed two hundred dollars (\$200).

4. Subsequent Violations: Any subsequent violations within any consecutive twelve (12) months period are punishable by a fine not to exceed five hundred (\$500).

5. Separate Offenses: Each day that a person violated provisions of this Article shall constitute a separate violation or offense.

6. Willful violations: In addition to fines, the City, after written notice, may install a flow restrictor device or discontinue service to consumers who willfully violate provisions of this section.”

SECTION V

Effective Date. Pursuant to Gilroy City Charter Section 601 this Ordinance is deemed to be necessary as an emergency measure to ensure the public peace, health and safety and shall be effective immediately. Pursuant to Water Code Section 375 this Ordinance shall also constitute

a water conservation program. The findings supporting this emergency ordinance and the water conservation program as set forth in Section 27.95.

SECTION VI

Publication. Within ten (10) days of its adoption, this Ordinance shall be published pursuant to Water Code section 376.

SECTION VII

Severability. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. The people hereby declare that they would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

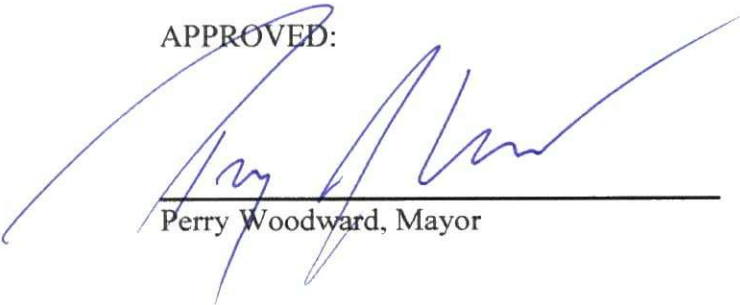
PASSED AND ADOPTED this 1st day of August, 2016 by the following roll call vote:

AYES: COUNCILMEMBERS: BRACCO; TUCKER; VELASCO and
WOODWARD

NOES: COUNCILMEMBERS: HARNEY; LEROE- MUÑOZ

ABSENT: COUNCILMEMBERS: AULMAN

APPROVED:



Perry Woodward, Mayor

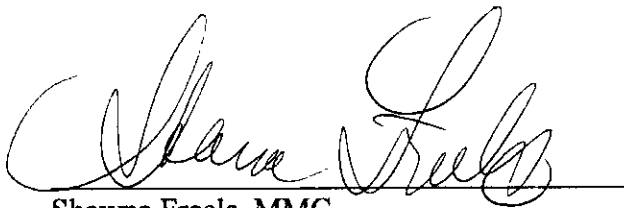
ATTEST:



Shawna Freels, City Clerk

I, SHAWNA FREELS, City Clerk of the City of Gilroy, do hereby certify that the attached Emergency Ordinance No. 2016-15 is an original ordinance, or true and correct copy of a City ordinance, duly adopted by the Council of the City of Gilroy at a regular meeting of said Council held on the 1st day of August, 2016, at which meeting a quorum was present.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of the City of Gilroy this 4th day of August, 2016.

A handwritten signature in cursive script, reading "Shawna Freels", written over a horizontal line.

Shawna Freels, MMC
City Clerk of the City of Gilroy

(Seal)