

ORDINANCE NO. 2014-01

Introduced by Administration Committee

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AN ORDINANCE OF THE GOLETA WATER DISTRICT BOARD OF DIRECTORS AMENDING THE GOLETA WATER DISTRICT CODE BY ADDING A NEW CHAPTER 6.21 AND A SECTION 6.04.090 AND AMENDING SECTION 6.08.050 AND SECTION 1.04.010 ESTABLISHING RULES AND REGULATIONS FOR IMPLEMENTING STAGE TWO WATER SHORTAGE WASTE RESTRICTIONS, CLARIFYING EXISTING WATER USE RESTRICTIONS AND ESTABLISHING PENALTIES AND APPEAL PROCEDURES FOR VIOLATIONS THEREOF

WHEREAS, the Goleta Water District (“District”) is a County water district organized and existing under the laws of the State of California; and

WHEREAS, California Water Code section 350 provides that the District Board of Directors (“Board”) has the authority to declare a water shortage emergency condition and Section 353 enables the Board to adopt regulations and restrictions to conserve the water supply for the greatest public benefit; and

WHEREAS, the District’s Drought Preparedness and Water Shortage Contingency Plan adopted on July 8, 2014 (“Contingency Plan”), provides that upon the declaration of a Stage Two Water Shortage emergency, the Board will adopt demand reduction targets focused heavily on water use limits and prohibitions that will reduce non-essential use, including an enforcement component to achieve compliance; and

WHEREAS, the District is required to implement its Contingency Plan, especially as it relates to the imposition of mandatory restrictions on outdoor irrigation pursuant to emergency regulations, Cal. Code Regs. title 23, sections 863, 846 and 865, adopted by the State Water Board on July 15, 2014; and

WHEREAS, California Water Code Section 31026 also authorizes the District to restrict use of water during any emergency caused by drought, and to prohibit the wastage of water during such periods; and

WHEREAS, this Board has conducted a duly noticed public hearing on September 9th 2014 to determine what regulations should now be adopted in response to a Stage Two Water Shortage Emergency Declaration; and

WHEREAS, it is in the best interests of the customers of the District for the District to have regulations in place for the timely implementation of any future Stage Two Water Shortage emergency; and

WHEREAS, this Board adopts the following ordinance, and finds that the restrictions set forth herein are necessary and proper to protect the water supply for human consumption, sanitation, and fire protection during Stage Two Water Shortage emergencies. The Board also finds that the uses of water that are prohibited below are nonessential.

NOW THEREFORE, THE BOARD OF DIRECTORS OF THE GOLETA WATER DISTRICT DOES ORDAIN AS FOLLOWS:

Section 1: Purpose.

The Board finds that a declaration of a Stage Two Water Shortage emergency requires the implementation of restrictions in order to conserve the District's water supply for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection.

Section 2: The Goleta District Water Code is hereby amended by the addition of a new Chapter 6.21, entitled "Stage Two Water Shortage Restrictions" as set forth below:

"6.21.010 Definitions.

The following definitions shall apply to the terms set forth below in this Chapter unless the context requires a different meaning:

- A. "Agricultural" means the category of properties for which the water service is provided under the Agricultural Irrigation water service classification, and plant nurseries.
- B. "Commercial and institutional" means the category of properties being used to make, provide or distribute a product or service, such as hotels, restaurants, office buildings, commercial businesses, or other places of commerce and schools, churches and hospitals. Commercial and institutional does not include residential, and agricultural properties.
- C. "Customer's plumbing system" means all of the pipes, water valves and appliances that carry potable water on a customer's property excluding the District water meter and District pipes and equipment.
- D. "Day" means calendar day for the purpose of this Chapter.
- E. "Decorative Water features" means ponds, lakes, waterfalls, and fountains that are artificially supplied with water.
- F. "District Water" means all water provided to customers by the District except reclaimed water as set forth in Chapter 7.04 and water that is being reused after initial use (commonly referred to as gray water) and including water delivered through the District Goleta West Conduit.
- G. "Fixed irrigation system" means a non-movable, installed irrigation system.
- H. "Manual irrigation" means irrigation through the use of a hose or other movable equipment including the use of sprinklers attached to a movable hose.

- I. "Residential" means the category of properties being used for single family or multifamily residential use. Properties that include both residential and commercial are considered residential for the purpose of this Chapter.
- J. "Stage One Water Shortage" means the time period during which the District Board of Directors has declared a Stage One Water Shortage to be in effect based upon factors set forth in the District's Contingency Plan or a directive from the State.
- K. "Stage Two Water Shortage" means the time period during which the District Board of Directors has declared a Stage Two Water Shortage to be in effect based upon factors set forth in the District's Contingency Plan or a directive from the State.
- L. "Wasteful Consumption" means any method of water use in violation of Chapter 6.21.

6.21.020 District Water Use Restrictions During Stage Two Water Shortage.

- A. During a Stage Two Water Shortage, it shall be unlawful for a person to:
 - 1. Use District water at any time to irrigate outdoor landscapes, including but not limited to grass, lawns, ground-cover, shrubbery, crops, vegetation, and trees in such a manner as to result in water runoff into adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or parking structures.
 - 2. Manually irrigate outdoor landscapes with District water with the use of a hose that is not equipped with a shutoff nozzle or device attached to it that causes it to cease dispensing water immediately when not in use.
 - 3. Use District water to wash sidewalks, walkways, driveways, parking lots, open ground, or other hard surfaced areas by direct application, except:
 - a. Where necessary to alleviate immediate safety or sanitary hazards or prepare paved surfaces for sealing,
 - b. Where used no more than once every two months for maintenance when applied through a pressure washer or water broom.
 - 4. Allow District water to escape from breaks, leaks or other system failures within a customer's plumbing system for more than 48 hours after the customer receives notice of, discovers, or would have had knowledge with the exercise of reasonable care of the break, leak or other system failure.
 - 5. Use District water to maintain outdoor fountains, reflection ponds, and decorative water features for aesthetic or scenic purposes except:
 - a. Where necessary to support aquatic life that was in existence as of the date of the District declaration of the applicable Stage Two Water Shortage, or
 - b. Where located on residential property.

6. Use District water to wash down buildings, dwellings, or other structures, except for window washing, rinsing of solar panels and preparation of surfaces for painting or when the property is listed for sale with a realtor or has been advertised for sale in a public medium.
7. Use District water to wash vehicles and boats except:
 - a. At commercial car washing facilities, or
 - b. Through use of a hose equipped with a shutoff nozzle or device attached to it that causes it to cease dispensing water immediately when not in use.
8. Restaurants in the District shall maintain table signage indicating that water is provided only upon request and shall not serve water to customers or patrons except upon request.

6.21.030 Scheduling Restrictions on Outdoor Landscape Watering.

- A. During a Stage Two Water Shortage, outdoor landscape irrigation with District water may only occur for a maximum of two hours per area and only pursuant to the following schedule:
 1. Manual irrigation of outdoor landscape may only take place before 10:00 a.m. or after 4:00 p.m. no more than two days a week.
 2. Outdoor landscape irrigation through the use of a fixed irrigation system at residential properties may only take place on Wednesdays and Saturdays before 7:00 a.m. and after 7:00 p.m.
 3. Outdoor landscape irrigation through the use of a fixed irrigation system at commercial and institutional properties may only take place on Tuesdays and Fridays before 7:00 a.m. and after 7:00 p.m.
 4. Necessary irrigation of public recreation and athletic fields may occur on no more than 4 days a week between the hours of 7:00 p.m. and 7:00 a.m.
 5. Irrigation of golf courses may occur between the hours of 7:00 p.m. and 7:00 a.m.
- B. The restrictions in 6.21.030(A) do not apply to the following:
 1. Agricultural customers use of District water to irrigate commercial agricultural crops.
 2. Irrigation with water delivered by a water truck and injected below the surface of soil or mulch via an injection probe.
 3. Irrigation of vegetable gardens and edible plantings with a hose equipped with a shut off nozzle or drip irrigation system.

4. Establishment of new landscaping if approved in advance in writing by the District.
 5. Customers that receive written authorization to water on an alternate schedule that shall not increase the maximum days or times allowed for outdoor landscape irrigation.
- C. The scheduling restrictions in Section 6.12.030 apply to all outdoor water irrigation uses except those specifically exempted in Section B above.

6.21.035 Mandatory State Restrictions.

In the event that the State adopts mandatory water conservation measures requiring implementation by the District during a water shortage emergency, and such State-mandated measures require additional water conservation actions beyond the District's currently enforceable conservation measures, such State-mandated measures shall automatically be deemed to be fully incorporated and part of this Chapter and enforceable by the District under this Chapter.

6.21.050 Enforcement Process.

- A. The purpose of the administrative penalties assessed pursuant to this Section is to assure Stage Two Water Shortage compliance by the cited person through the imposition of increasingly significant penalties so as to create a disincentive to commit future violations.
- B. The prohibitions and enforcement provisions in this Chapter apply to both persons who directly use District water in violation of this Chapter and property owners on whose property the violations occur.
- C. In addition to any other penalty permitted by law, the following administrative actions shall be taken in the order listed:
 1. First Violation: In the case of a first violation of this Chapter the District shall issue a warning describing the violation and the possible penalties if such violation shall continue. Notice of such violation shall be given by any method authorized by this Chapter or by affixing a notice to the premises where such violation occurred.
 2. Second Violation: In the case of a second violation of this Chapter, the District shall issue a Notice of Violation setting forth the specific violation(s), the date and approximate time of occurrence, and a statement that subsequent violations may result in financial or criminal penalties and attachment of a flow restrictor.
 3. Third Violation: In the case of a third violation of this Chapter, a fine of \$100.00 shall be imposed.
 4. Fourth Violation: In the case of a fourth violation of this Chapter, a fine of \$250.00 shall be imposed.

5. Subsequent Violations: In the case of all subsequent violations of this Chapter, a fine of \$500.00 shall be imposed. The General Manager may, in addition to any fine imposed, require the attachment of a meter flow restrictor to the customer's water system.
 6. Failure, refusal or nonpayment of fines and penalties: The District may install a flow restrictor or discontinue water service to any customer who fails to pay fines. Discontinued service will be restored upon full payment of all outstanding balances and reconnection charges.
 7. Flow Restrictors: Flow restrictors will not be used where fire suppression sprinklers are on the same line as water provided for domestic purposes.
 8. Willful Violations: Any willful violation occurring subsequent to the issuance of a fourth violation constitutes a misdemeanor and may, at the General Manager's discretion, be referred to the Santa Barbara County District Attorney. In addition, the District may seek a permanent or temporary injunction pursuant to Water Code Section 31016.
 9. Charging of Multiple Violations: Where a violation shall have occurred for the same act multiple times on the same day, such violation shall be deemed to be a single violation of this Chapter. Multiple violations on the same day of different provisions of this Chapter shall be considered separate violations.
 10. Notice. The District shall give notice of each violation, fine or penalty by affixing a notice on the property, by U.S. Mail addressed to the customer of record of the property or to the property owner as such property owner's name appears in the official records of the County of Santa Barbara; or by service of notice upon the owner or occupant of the property where such violations occurred by service in the same manner as the service of a summons in a civil complaint pursuant to the Code of Civil Procedure. The District shall retain proof of service of notices of violation with each file.
 11. Payment due date. A person who has been given notice of fines imposed for violation of this Chapter, shall pay such fines and penalties within 20 days from the date notice is given. The charge to the customer for installation and removal of a flow restrictor shall be assessed as a miscellaneous Service Request Charge set forth in Appendix A. Reconnection charges are set forth in Section 9 of Appendix A. 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.
- D. The penalties collected for violation of this Chapter will fund the purchase, if available, of additional water supplies to offset wasteful consumption, enforcement and/or conservation outreach toward those who fail to conserve water. Because these costs are necessary to provide water service under Stage Two Drought conditions, the Board finds that the penalties established in this Chapter:
1. Are not expected to exceed the funds required to provide water service,
 2. Will not be used for any purpose other than those listed above,

3. Will not exceed the proportional cost of water service attributable to any parcel, and
4. Are imposed only where water service is actually used by, or immediately available to a parcel.

Section 6.21.060 Appeals

- A. Appeals Officer. The District does hereby establish an Appeals Officer who shall be appointed by the Board of Directors. The Appeals Officer shall be a resident of the District but shall be neither an employee nor a member of the Board of Directors of the District.
- B. Who may appeal. Any person subject to enforcement pursuant to Section 6.21.050 of this Chapter may appeal the imposition of a fine, penalty or a final adverse decision made by the District. The imposition of charges for water service and usage, other than fines or penalties that are deemed water charges resulting from non-payment, shall not be deemed a determination by the District and shall not be appealable under this Chapter. The person filing an appeal shall be designated the appellant.
- C. Method of appeal. An appeal is commenced by filing a written Notice of Appeal on a form provided by the District within 30 days following the date upon which the appellant was sent or delivered notice of the fine, penalty or adverse decision. All unpaid fines and penalties under this Chapter must be paid prior to or at the time of filing the appeal. If the Appeals Officer reduces or eliminates the fee or penalty appealed, the District shall refund the amount of the reduction or the eliminated fine or penalty to the appellant within five business days.
- D. Procedure. Each party shall have the right to present testimony, present witnesses, and produce documentary evidence as necessary. The hearing need not be conducted according to technical rules related to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper admission of such evidence over an objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding by the Appeals Officer, unless it would be admissible over an objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.
- E. Representation by counsel. The parties may be represented by counsel. The appellant shall notify the District 48 hours in advance of the hearing date if appellant will be represented by counsel.
- F. Authority of Appeals Officer. The Appeals Officer shall have the power to conduct hearings on the appeal and make a determination that affirms, reverses or modifies the fine, penalty or determination appealed on any one or more of the following grounds: (1) the restrictions of this Chapter as applied would create an undue hardship; (2) due to peculiar facts and circumstances, none of the provisions of this

Chapter are applicable to the situation under consideration; or (3) there was an error in the application of this Chapter or other applicable rule or law.

- G. Final Determination. The decision of the Appeals Officer shall be issued within thirty (30) days of the conclusion of the hearing and shall be delivered by first-class mail, postage prepaid, to the parties. The decision shall include notice that it is final and any legal challenge to the final decision shall be made pursuant to the provisions of the Code of Civil Procedure §§109.5 and 1094.6 and shall be commenced within ninety (90) days following its issuance.
- H. Notwithstanding anything to the contrary, any right of appeal under any other provision of this Code is preserved. The provisions of this Chapter are not subject to appeal under any other provision of this Code.”

Section 3: The Goleta Water District Code is hereby amended by the addition of a new section 6.04.090 to Chapter 6.04, Installation of Service Connections and Water Meter Devices as follows:

“Section 6.04.090 Unlawful Use of Water and Meter Removal.

It shall be unlawful:

- A. For a person that is not the account holder to use water through a meter, unless such person is authorized by agreement with the account holder to use such water through a meter, except as otherwise prohibited by the Code;
- B. For a person to use water from a connection that does not have a meter, except as expressly authorized by the District; or
- C. For a person to remove a meter, except as authorized by the District.”

Section 4: The Goleta Water District Code, Section 6.08.050, is hereby amended as follows

“Section 6.08.05 Prohibition of Use.

It shall be unlawful for any person to use water from a fire protection system, a private fire line, or a fire hydrant for other than fire protection purposes without regular application having been made to the District and the District having approved said application. Said application for use other than fire use, if granted by the District, shall be upon such terms and conditions as to the use of water and the charge therefore as the District may deem proper.”

Section 5: The Goleta Water District Code, Section 1.04.010 General Definitions is hereby amended by the addition of subsection F to read as follows:

“F. “Person” means any person, firm, corporation, trust, partnership, association, corporation or political entity.”

Section 6: Severability.

If any subdivision, paragraph, sentence, clause, or phrase of this Ordinance is, for any reason, held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforcement of the remaining portions of this Ordinance. It is the District's express intent that each remaining portion would have been adopted despite the fact that one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

Section 7: Urgency.

This ordinance is an urgency ordinance. It is necessary that the restrictions set forth in this ordinance be adopted as forth herein in order to protect the supply of water for human consumption, sanitation and fire protection.

This Ordinance shall become effective upon adoption.

PASSED AND ADOPTED by the Board of Directors of the Goleta Water District this 9th day of September 2014 by the following roll call vote:

AYE: Directors **Bertrando, Cunningham, Hanson, Merrifield, Rosen**

NAY: None


ABSENT: None

ABSTAIN: None

ATTEST:



JOHN D. MCINNES
DISTRICT SECRETARY



WILLIAM C. ROSEN, PRESIDENT
BOARD OF DIRECTORS