

ORDINANCE NO. SD 15-04

AN ORDINANCE OF THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, BOARD OF SUPERVISORS, ACTING IN ITS CAPACITY AS THE GOVERNING BODY OF NAMED COUNTY SERVICE AREAS AND ZONES THEREOF, ESTABLISHING A WATER CONSERVATION PROGRAM TO COMPLY WITH THE STATEWIDE DROUGHT REGULATIONS AND REPEALING ORDINANCE NO. SD 90-11.

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 are to be prevented, and that water is to be conserved for the public welfare; and

WHEREAS, regulation of the time of certain water use, manner of certain water use, method of application of water for certain uses, installation and use of water-saving devices, provide an effective and immediately available means of conserving water; and

WHEREAS, on January 17, 2014, Governor Edmund G. Brown issued a proclamation declaring a State of Emergency due to severe drought conditions; and

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

WHEREAS, California's water supplies continue to be severely depleted, severe drought conditions continue to present urgent challenges, and new expedited actions are needed to reduce the harmful impacts of the drought; and

WHEREAS, on July 15, 2014, the State Water Resources Control Board ("State Water Board") adopted Resolution No. 2014-0038 which adopted Emergency Regulations For Statewide Urban Water Conservation Regulations which became effective July 28, 2014; and

WHEREAS, on March 17, 2015, the State Water Board adopted Resolution No. 2015-0013 which expanded emergency conservation regulations to safeguard the state's remaining water supplies as California enters a fourth consecutive dry year,

which became effective on March 27, 2015, and which remains in place for up to 270 days (9 months), unless extended by the State Water Board; and

WHEREAS, on April 1, 2015, the Governor issued Executive Order B-29-15, which, in part, mandates a 25% statewide reduction in urban water use, and provides that the orders in the January 17, 2014, and April 25, 2014, proclamations and Executive Orders B-26-14 and B-28-14 remain in full force except as modified by Executive Order B-29-15. The Governor directed the State Water Board to impose restrictions to achieve the statewide 25% reduction; and

WHEREAS, on May 18, 2015, the State Water Board proposed regulations ("Regulations") became effective, mandating water use restrictions in order to comply with the Governor's 25% cutback mandate; and

WHEREAS, the Regulations impose certain requirements on water users throughout the state, such as prohibiting the use of water, for instance, to wash down driveways, and prohibiting irrigation that causes water runoff; and

WHEREAS, the Regulations also impose mandatory cutback requirements on "urban water suppliers," defined as suppliers providing water to over 3,000 customers or providing over 3,000 acre-feet per year to municipal customers. Two of the County Service Areas serve over 3,000 customers and, therefore, qualify as "urban water suppliers" subject to mandatory reductions of 28% and 32% from 2013 usage levels; and

WHEREAS, the Regulations also require public water distributors serving less than 3,000 customers to either cutback their water use by 25% from 2013 levels or limit outdoor irrigation to no more than twice per week; and

WHEREAS, California Water Code sections 375 et seq. empower any public entity which 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, Water Code section 375, subdivision (c) defines "public entity" to include a city, county, special district, water authority, or any other municipal public corporation or district; and

WHEREAS, the County desires to repeal Ordinance No. SD 90-11, which established water conservation measures, and to adopt a water conservation program that conforms to the mandatory restrictions set forth in the Regulations; and

WHEREAS, the adoption and enforcement of a comprehensive water conservation program will allow the County to delay or avoid declaring a water shortage emergency pursuant to Water Code section 350 *et seq*. as well as comply with the State Board Regulations; and

WHEREAS, the County has the authority to impose monetary fines and penalties and take other applicable actions pursuant to Water Code sections 375 through 377; and

WHEREAS, on June 23, 2015, the County held a public hearing and made appropriate findings of necessity for the adoption of a water conservation program; and

NOW THEREFORE, based upon the above, the Board of Supervisors of the County of San Bernardino, acting in its capacity as the governing body of the County Service Areas and Zones named in Section 4(b) of this ordinance, ordains as follows:

SECTION 1. Incorporation of Recitals. All of the foregoing recitals are true and correct and the Board of Supervisors so finds and determines. The recitals set forth above are incorporated herein and made an operative part of this ordinance.

SECTION 2. Public Hearing. The Board of Supervisors conducted a noticed public hearing on June 23, 2015, at 10:00 a.m., or as soon thereafter as practicable, at the Covington Chambers, 385 N. Arrowhead Avenue, San Bernardino, CA 92415, as part of the Regular Meeting of the Board of Supervisors.

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SECTION 3. Repeal. Ordinance SD 90-11 is hereby repealed.

SECTION 4. Water Conservation Program

- (a) Findings and Purpose.
- (b) Application.
 - (c) Mandatory Restrictions.
 - (d) Conservation Stages.
- (e) Determination and Declaration of Conservation Stages.
- (f) Duration of Conservation Stages.
- (g) Fines and Penalties.
- (h) Citation Appeal Process.

(a) Findings and Purpose

- (1) The Board of Supervisors finds and determines that because of the prevailing conditions in the state, and the declared policy of the state, it is necessary and appropriate for the Board of Supervisors to adopt, implement and enforce this water conservation program to reduce the quantity of water used within the County Service Areas and Zones identified in Section 4 (b) herein to ensure that there is sufficient water for human consumption, sanitation, and fire protection. The Board of Supervisors further finds and determines that during periods of drought, water shortages, and water shortage emergencies, the general welfare requires that the County maximize the beneficial use of its available water resources to the extent that it is capable, and that the unreasonable use, or unreasonable method of use of water shall be prevented and the conservation of water is to be extended with the view to the reasonable and beneficial use thereof in the interests of the people of the County and for the public health, safety, and welfare.
 - (2) This ordinance adopts a water conservation program which

establishes mandatory water use restrictions, regulations, and administrative fines and/or penalties to be implemented during declared Conservation Stages 1 through 4.

(3) Due to the fact that the County Service Areas and Zones are located in a semi-arid region, groundwater is of limited supply and in overdraft in some aquifers in the County. Current surface water supplies in the County Service Areas and Zones are limited. The purpose of the provisions of this ordinance and the water conservation program are to assure the highest beneficial use of County Service Area and Zone water supplies and to provide sufficient water supplies to meet the basic needs of human consumption, sanitation, and fire protection within the County Service Areas and Zones.

(b) Application

The provisions of this Ordinance shall apply to all water customers of the following County Service Areas and Zones (collectively referred to herein as "County Service Areas" or "CSAs"):

CSA 42 (Oro Grande)

CSA 53C (Fawnskin)

CSA 64 (Spring Valley Lake)

CSA 70 (Countywide)

Zone CG (Cedar Glen)

Zone F (Little Morongo)

Zone J (Oak Hills)

Zone W-3 (Hacienda Heights)

Zone W-4 (Pioneertown)

(c) Mandatory Restrictions

During Conservation Stages 2 through 4, all customers of the CSAs shall comply with the following mandates, 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. To the extent that the mandatory restrictions set forth below conflict

with a Conservation Stage measure, the more restrictive requirement shall apply. All references herein to "days" shall mean calendar days unless otherwise specified.

- (1) Watering, sprinkling, aerial watering or irrigating of any landscaped or vegetated areas, including lawns, trees, shrubs, grass, ground cover, plants, vine gardens, vegetables, flowers, or other landscaping shall only occur between the hours of 9:00 p.m. and 6:00 a.m. during the high use season (April 1 through October 31 of each year). In the low use season (November 1 through March 31), such watering shall only occur between the hours of 8:00 a.m. and 3:00 p.m. Commercial and Industrial use shall only occur between the hours of 9:00 p.m. and 6:00 a.m. year-round. These restrictions shall not apply to hand-held hose or drip irrigation systems.
- (2) Use of a hose that dispenses potable water to wash a motor vehicle, except where the hose is fitted with a shut-off nuzzle or device attached to it that causes it to cease dispensing water immediately when not in use, is prohibited.
- (3) The application of potable water to outdoor landscapes during and within 48 hours after measurable rainfall is prohibited.
- (4) There shall be no hose washing of sidewalks, walkways, driveways, parking areas, patios, porches, verandas, tennis courts, or other paved, concrete, or other hard surface areas.
- (5) Potable water shall not be used in fountains or other decorative water features, except where the water is a part of a recirculating system.
- (6) No person shall permit water to leak from any facility or plumbing fixture on his/her premises. Upon receiving notice of the existence of any such leak, the water Customer shall identify the source of the water, and within 48 hours, stop the source by turning off the valve that supplies the water, and within 7 days, evaluate the extent of, and repair or correct the problem. Broken sprinklers shall be repaired within 24 hours of notification.
- (7) Use of water for any purpose, which results in flooding or run-off, such that water flows onto adjacent property, non-irrigated areas, private and public

walkways, parking lots, structures, in gutters, driveways or streets, is prohibited. Sprinklers and irrigation systems shall be adjusted to avoid overspray. Customers shall avoid the use of sprinklers for any type of irrigation during high winds.

- (8) There shall be no irrigation with potable water of ornamental turf on public street medians.
- (9) Water for construction purposes, including but not limited to debrushing of vacant land, compaction of fills and pads, trench backfill and other construction uses, shall use recycled or non-potable water when available and water application must be attended at all times.
- (10) The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars or other public places where food and drink are served and/or purchased is prohibited.
- (11) Hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. Hotels and motels shall prominently display notice of this option in each guestroom using clear and easily understood language.
- (12) Water used for cooling systems must be recycled to the extent possible.
- (13) Evaporation resistant covers are encouraged for all swimming pools and hot tubs.
- (14) Customers are strongly encouraged to convert lawns to drought tolerant, low water use or native plants, incorporating the principals of Xeriscaping.
- (15) Winterizing pipes and valves to prevent leaks and breakage is strongly encouraged.
- (16) Home Owner Associations (HOAs) are strongly encouraged to adopt and enforce water use restrictions in their rules and regulations.
 - (d) Conservation Stages

(1)	Conservation	Stage 1	1 – "Drought	Watch"
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(A) The Director of Special Districts Department or designee (hereinafter Director) shall conduct public outreach and provide public information to educate customers on drought conditions and water conservation measures. Water customers shall be requested to reduce their consumption by no more than fifteen percent (15%) from a comparative year selected by the Director.

(B) Customer Restrictions:

(i) Customers shall be encouraged to install and use water saving devices such as rain sensors, low-flow showerheads, faucet aerators and sprinkler and irrigation watering valves; low-flow or waterless toilets; high-efficiency, low water use washing machines and dishwashers; and automated irrigation timers and/or controllers as well as other available water retrofit kits.

- (II) Outdoor irrigation is limited to 4-days per week.
- (2) Conservation Stage 2 "Drought Alert"

(A) The Director shall continue all public information actions specified for Conservation Stage 1 but shall request that customers reduce their usage by no more than forty percent (40%) from a comparative year designated by the Board of Supervisors or as otherwise mandated by the state.

(B) Customer Restrictions:

- (I) Comply with all Conservation Stage 1 measures.
- (II) Outdoor irrigation shall be limited to 3-days or 2-days per week, with specific days of the week to be designated by the Director.
 - (3) Conservation Stage 3 "Drought Critical Condition"
- (A) The Director shall continue all public sector actions specified for Conservation Stages 1 and 2 but shall request that customers reduce their usage by no more than fifty percent (50%) from a comparative year, as designated by the Board of Supervisors or as may otherwise be mandated by the state.
 - (B) Customer Restrictions:

irrigation is prohibited except as determined on a case by case basis by the Director.

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(III) Will-serve letters may no longer be issued, if the Board of Supervisors finds that there exists insufficient water supply to serve new connections.

(e) Determination and Declaration of Conservation Stages

The Director shall review and analyze all available water supply and conservation data and shall regularly report his/her findings to the Board of Supervisors during Conservation Stages 1 through 4.

The Director is authorized to declare and rescind Conservation Stage 1 but shall provide notice to the Board of Supervisors of such declaration or rescission and the factual circumstances under which such action was taken.

The Board of Supervisors shall declare the existence of a Conservation Stage 2 through 4 condition by resolution adopted at a regular or special public meeting held in accordance with state law.

The existence of a Conservation Stage 4 condition may be declared by the Board of Supervisors pursuant to California Water Code section 350 et seq., following a public hearing, noticed at least seven (7) days in advance, or as otherwise may be required by state law.

Within ten (10) days following the declaration of a conservation stage, the Clerk of the Board of Supervisors shall publish a copy of the resolution, or summary thereof, in accordance with applicable law, in a newspaper of general circulation of official notices. The conservation measures applicable to the conservation stage shall take effect on the day the resolution, or summary thereof, is published. The Board of Supervisors may declare an end to Conservation Stages 2 through 4 by the adoption of a resolution at any regular or special meeting held in accordance with state law.

(f) Duration of Conservation Stages

The declaration of any conservation stage shall remain in effect until such time as another stage is declared or the current stage is rescinded.

(g) Fines and Penalties

- (1) Violations. Pursuant to Section 377 of the Water Code, each violation of this ordinance may be prosecuted as a misdemeanor, publishable by imprisonment in the County jail for no more than thirty (30) days or by fine not exceeding \$1,000, or by both. In addition to the Water Code penalties, violations of this ordinance may result in the imposition of fines and restriction and/or termination of water service as set forth below:
- (A) First Violation Notice of Violation and Warning of Penalties
 a written warning accompanied by a copy of this ordinance, delivered by U.S. Mail and/or hung on customer's door.
- (B) Second Violation (within one year of the first violation) a fine of \$100.00 or attendance and successful completion of a "Water Conservation Education Course," within thirty (30) days of the violation notice. Course must be approved by the Director.
- (C) Third Violation (within one year of the first violation) a fine of \$200.00.
- (D) Fourth Violation (within one year of the first violation) a fine of \$300.00 and fee for installation of flow restricting device by Special Districts Department during the duration of the drought declaration.
- (E) Fifth Violation (within one year of the first violation) a fine of \$500.00, and termination of service for such period as determined to be appropriate under the circumstances.
- (2) Fines, Additional Charges. Any fine hereunder shall be in addition to the basic water rates and other charges for the account and shall appear on and be payable with the billing statement for the period during which the violation occurred; nonpayment shall be subject to the same remedies available for non-payment of basic water rates.

In addition to any fine, a customer violating this ordinance shall be responsible for payment of charges for installing and/or removing any flow restricting

device and for disconnecting and/or reconnecting service. Such charges shall be paid prior to the removal of the flow restrictor or reconnection of service, whichever the case may be.

Fines and penalties collected shall be used to offset any state-imposed fines and penalties and water conservation education and the drought response programs.

(3) Variances.

- (A) If, due to unique circumstances, a specific requirement of this ordinance would result in undue hardship to a customer that is disproportionate to the impacts to County Service Area or Zone customers generally, then the customer may apply for a variance pursuant to the requirements as provided in this section.
- (B) The variance may be granted or conditionally granted, only upon a written finding of the existence of facts demonstrating an undue hardship to the customer that is disproportionate to the impacts to County Service Area or Zone customers generally or due to specific and unique circumstances of the customer or the customer's property.
- (C) Application. Application for a variance shall be a form prescribed by the Director.
- (D) Supporting Documentation. The application shall be accompanied by photographs, maps, drawings, and other information, including a written statement of the applicant.
- (E) Required Findings for Variance. An application for a variance shall be denied unless the 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 County Service Area or Zone, all of the following:
- (I) That the variance does not constitute a grant of special privilege inconsistent with the limitations upon other customers.

(II) That because of special circumstances applicable to the property or its use, the strict application of this ordinance would have a disproportionate impact on the property or use that exceeds the impacts to customers generally.

- (III) That the authorizing of such variance will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the County Service Area or Zone to effectuate the purpose of this ordinance and will not be detrimental to the public interest.
- (IV) That the condition or situation of the subject property or the intended use of the property for which the variance is sought is not common, recurrent or general in nature. Inconvenience or the potential for damage to landscaping shall not be considered for a variance from any section of this ordinance.
- (F) Approval Authority. The Director shall exercise approval authority and act upon any completed application within a reasonable time after submittal and may approve, conditionally approve, or deny the variance. The applicant requesting the variance shall be promptly notified in writing of any action taken. Unless specified otherwise at the time a variance is approved, the variance applies to the subject property during the term of the conservation stage. The decision of the Director on a variance application is final.

(h) Citation Appeal Process

(1) Procedures. The Director shall determine when violations have occurred and shall issue to the customer a notice of violation by U.S. First Class mail to the address on file for the customer for the receipt of water bill. Said notice shall describe the action to be taken (notice of first violation shall be accompanied by a copy of this ordinance).

A customer may appeal the notice of violation by filing a written notice of appeal directed to the address specified in the notice of violation no later than thirty (30) days from the due date for the payment of any fine. The customer must pay

the contested fine notwithstanding a timely appeal. Any notice of violation not timely appealed shall be final. Upon receipt of a timely appeal, the Director shall set the matter for hearing by a designated hearing officer or hearing panel. The hearing shall be held within a reasonable time but not to exceed thirty (30) days following receipt of the appeal. The Director shall mail written notice of the hearing via U.S. first class mail to the customer at least ten (10) days before the date of said hearing. The decision of the hearing officer or panel shall be final.

(2) Interim Measures. Pending receipt of a written appeal or pending a hearing pursuant to an appeal, the Director may take appropriate steps to prevent the unauthorized use of water as appropriate to the nature and extent of the violation and the current declared conservation stage.

SECTION 5. Severability

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such provision shall not affect the validity of the remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be unconstitutional or invalid.

SECTION 6. California Environmental Quality Act

The Board of Supervisors finds that adopting and enforcing a water conservation program and mandatory restrictions on water use in order to comply with state emergency drought regulations is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15268 and Public Records Code section 21080(b)(1) as a ministerial action. The regulations mandate that each urban water supplier implement all requirements and actions of the stage of its water

conservation plan that imposes mandatory restrictions on outdoor irrigation. Therefore, an action to implement a particular phase of a water conservation plan is not a discretionary action and, as such, it is statutorily exempt from CEQA.

SECTION 7. Effective Date and Publication

This ordinance is adopted pursuant to Section 375 of the Water Code. This ordinance shall take effect immediately pursuant to the provisions of Section 376(a) of the Water Code. Pursuant to Water Code section 376 and Government Code section 6061, the Clerk of the Board shall publish in a newspaper of general circulation this ordinance, or summary thereof, adopting a water conservation program within 10 days after its adoption.

> JAMES RAMOS, Chairman **Board of Supervisors**

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

LAURA H. WELCH, Clerk of the

Board of Supervisors

1	STATE OF CALIFORNIA)
2	COUNTY OF SAN BERNARDINO) ss.
3	I, LAURA H. WELCH, Clerk of the Board of Supervisors of the County of San
4	Bernardino, State of California, hereby certify that at a regular meeting of the Board of Supervisors of said County and State, held on the <u>23rd</u> day of <u>June</u> , 2015,
5	at which meeting were present Supervisors:
6	Rutherford, Ramos, Hagman, Gonzales
7 8	and the Clerk, the foregoing ordinance was passed and adopted by the following vote, to wit:
9	AYES: SUPERVISORS: Rutherford, Ramos, Hagman, Gonzales
10	NOES: SUPERVISORS: None
11	ABSENT: SUPERVISORS: Lovingood
12 13	IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official
14	seal of the Board of Supervisors this 23rd day of, 2015.
15	LAURA H. WELCH, Clerk of the Board of Supervisors of the
16	County of San Bernardino,
17	BOARD State of California GOVERNED
18	1 amus
19	Deputy
20	Approved as to Form:
21	JEAN-RENE BASLE County Counsel
22	County Counsel
23	By: 1 C
24	KENNETH C. HARDY Deputy County Counsel
25	
26	Date:
77	