

CITY OF ST. HELENA, CA

ORDINANCE NO. 2011-7

**AMENDING ARTICLE 2 OF CHAPTER 13 OF THE
CITY CODE RELATING TO WATER SHORTAGE EMERGENCIES**

13.04.010 Definitions

For the purposes of this chapter and Chapters 13.08 (Cross-Connection Control Program) and 13.12 (Water Efficiency and Use Guidelines), the following words and phrases shall have the meanings respectively ascribed to them by this section:

“Agricultural purpose” means the growing, raising or maintaining of trees, vines, shrubs, flowers, berries, vegetables, nursery stock, hay, grain, food crops, fiber crops and animal husbandry. Agricultural purpose does not include sustaining products for the purpose of resale.

“Animal husbandry” means the breeding and raising of cattle, sheep, horses and similar species, llamas, goats, pigs and rabbits, and poultry and egg production.

“Customer” means the person responsible for paying each water service account on the water distribution system, both inside and outside city limits, of the Water Enterprise owned by the City of St. Helena.

“Department” means the municipal water department of the city.

“Director of Public Works” means the individual filling the position of Director of Public Works/city engineer for the city, or his or her designee.

“New development” means any of the following construction projects that have not received a certificate of occupancy from the city or county building department prior to May 24, 2011, or that was issued a building permit and did not construct a foundation prior to May 24, 2011:

1. Any freestanding building that contains water-using fixtures;
2. Any floor area additions to existing nonresidential structures;
3. Any residential additions or remodeling that increases overall water usage at the water meter.

“New water connection” means a water connection for the benefit of any user or use of water, whether industrial, commercial, residential, institutional, who or which was not currently receiving water from the department at the time a water shortage phase was formally established. All new construction shall be deemed a new water connection, notwithstanding the fact that such new construction may have received all permits and consents required of it by any governmental agency, including the city, and notwithstanding the fact that the applicable fees for water connection may have been prepaid by the applicant.

“Premises” is a lot or parcel under one ownership, except that portions thereof having well defined boundaries such as fences or hedges, which prevent the common use of the property by all occupants shall be deemed separate premises.

“Safe Annual Yield” of the St. Helena water supply system is that quantity of water which can be reliably delivered on an annual basis through most rainfall years, including a Dry Year (rainfall at 22” to 25.9”) without undue hardship on water customers through water shortage restrictions. It is recognized that the safe annual yield, as so defined could place significant hardship on water customers in a Critically Dry Year (rainfall at 21.9” or less) or in periods of two or more consecutive Dry Years. “Undue hardship” is defined to mean Phase II or Phase III restrictions at any time, as these phases are set forth in this amended code. The “Safe Annual Yield” shall be determined pursuant to the analytical methodology used by the Safe Yield Committee, as identified in its report dated March 17, 2011. The Safe Annual Yield shall be re-determined any time there is a material change in the city’s water supply.

“Supply/Usage Balance” is the difference between the Safe Annual Yield and total current usage. Total current usage is average usage as determined by taking total metered potable water supply entering the water system’s distribution system over the last five fiscal years, divided by five. The city shall calculate that the Supply/Usage Balance as soon after the end of each fiscal year as is practicable, as well as at any time that there is a material change in potable water supply. The Balance is positive when the Safe Annual Yield exceeds total current usage. The Balance is negative, or in Deficit, when the Safe Annual Yield is less than total current usage.

“Water Advisory Board” is the board as may be constituted in Section 13.04.230(C)(8)

Article 2 Water Shortage Emergencies

13.04.220 Procedure for Establishing Water Emergency Phases

At any time that the city council finds and determines that a water shortage emergency condition exists within the criteria of Sections 13.04.230 through 13.04.250 of this article, and that it is necessary to limit usage by the customers of the municipal water department, the city council shall adopt a resolution setting forth the applicable phase. As soon as is practicable after adoption of such resolution, the city clerk shall cause to be published at least once, in a newspaper of general circulation published and circulated in

the city, a notice declaring the establishment of such regulatory phase. Such notice shall set forth the limitations of water use applicable to the particular phase being established and shall further declare that violations of such limitations are punishable in accordance with the provisions of Sections 13.04.290 and 13.04.310 of this article. The establishment of a particular phase shall be completed and effective at midnight of the day on which the newspaper containing such notice is distributed.

Whenever the cumulative rainfall for the current water year (beginning November 1) is less than the median amount for the same time period, the Director of Public Works shall report at least monthly to the city council and recommend whether the city should enter into a water shortage phase, and if so, which phase is recommended.

13.04.230 Phase I Water Regulations

A. The criteria for establishing Phase I shall be that:

1. The Supply/Usage Balance, as calculated at the beginning of the fiscal year, is in Deficit.
2. The volume of water to be delivered by the City of Napa in any fiscal year will not exceed 400 AF.
3. The volume of water anticipated to be available prior to the next November 1, as determined by the Director of Public Works, is not sufficient to meet projected demand through November 1 without demand reduction measures being implemented; or
4. Conditions requiring the establishment of a Phase II water emergency, as determined by the Director of Public Works, appear to be imminent.

B. During the Phase I water emergency, the following mandatory conservation measures by customers of the department shall be enforced by the department and publicized by the city:

1. All customers must be in compliance with all water use efficiency requirements of Section 13.12 (“Water Use Efficiency and Use Guidelines”) of this municipal code. If a customer is found to be out of compliance with any part of Section 13.12 or provisions of these water shortage emergency requirements, the customer must immediately install the appropriate water-saving devices in their plumbing, appliances, or improvements, or take other such actions to bring about full compliance.
2. All customers are prohibited from expanding or installing new water-using appliances, plumbing or improvements, such as lawns, gardens, landscaping, pools, sprinkler irrigation systems, wash-down equipment, larger washing machines or garbage disposal units where the installation may result in an increase in water use. Replacement of existing appliances, plumbing, or improvements shall be allowed only if the change

can be documented to the satisfaction of the Director of Public Works to result in more efficient water using fixtures or systems.

3. Any new water connection for new development must offset new demand by an amount of water equal to the new demand on the city water system using the methodology defined in Section 13.12.050 of this municipal code. The offset must be clearly demonstrated, to the satisfaction of the Director of Public Works.

4. Customers are encouraged to wash cars and other vehicles only at a commercial wash facility which recycles wash water on site.

5. Customers may not wash hard surfaces such as sidewalks and patios unless conditions of public health hazard are documented.

6. Customers may install new landscaping in existing or new development that is water efficient within the meaning of the Water Efficient Landscape Ordinance.

7. Customers are encouraged to cease the operation of air-cooling outdoor misting systems using treated water supplied by the city.

C. During the Phase I water emergency, the following actions shall be carried out by the city:

1. The city shall notify customers that one or more of the criteria for Phase I has been met, and shall identify and explain in sufficient detail each criterion that forms a basis for establishing a Phase I water emergency.

2. The city shall notify customers of the water usage allocation for each account that would be allowed under a Phase II water emergency if a Phase II water emergency appears to be imminent.

3. The city shall advise customers of the Phase I water shortage and of restrictions and opportunities for exception permits that are available under Section 13.04.280 of this chapter if a Phase II water emergency appears to be imminent.

4. Any applicant for, or holder of, a building permit for construction that may be affected by the existence of this or future water emergency phases shall be informed of the impact of such phases, but lack of such notice shall not permit a new water connection that is otherwise prohibited.

5. The city shall not issue permits for construction of any new swimming pool unless the pool is to be supplied with water other than treated water supplied by the city. Customers are encouraged to fill existing pools from water other than treated water.

6. The city shall make plans for implementation of a water shortage disaster plan, which shall include provisions for:

- a. Emergency water stations;
- b. Acquisition of private property under the right of eminent domain, with immediate possession to alleviate the emergency; and
- c. Application for relief assistance from county, state, and federal sources.

7. The city council shall give notice to any customer that has a terminable contract with the department (whereby the department is the supplier) that such contract will be terminated upon implementation of Phase III by the city council.

8. If the declaration of a Phase II emergency appears reasonably imminent, the city council shall cause a Water Advisory Board to be formed consisting of one city council member, one planning commissioner, one winery customer, and two public members, one of whom shall be solely a residential customer. The Director of Public Works shall be an ex officio member of this board. Unless the city council otherwise directs, the board will disband when the water emergency is no longer in effect. The Water Advisory Board shall have access to all records in the possession of the Water Enterprise necessary in its judgment to perform its duties, including customer records. The Board shall maintain the confidentiality of individual customer records unless the Board determines by resolution that release of such information is necessary in the pursuit of its duties.

D. In addition to the mandatory measures defined in B and C of this Section, customers of the department and members of the community are encouraged to do the following:

- 1. Reduce all indoor water use to not more than an average of seventy-five (75) gallons per person per day within the residence, including single-family residences, apartments, condominiums, townhomes, and mobile homes.
- 2. Reduce indoor water use in the work places and commercial establishments by a minimum of ten percent (10%) from customary consumption.
- 3. Eliminate or defer all non-essential water use such as topping-off swimming pools.
- 4. All schools, social and professional groups, churches, etc., are encouraged to discuss water conservation as a regular agenda item and to forward worthwhile suggestions to the department for consideration.
- 5. All sites with irrigated landscapes or gardens are encouraged to establish the following irrigation practices:
 - a. Turn off irrigation systems during the non-irrigation season.
 - b. Encourage customers to invest in SMART controllers or equivalent water-saving devices to control the operation of outdoor sprinkler systems.

13.04.240 Phase II Water Regulations

A. The criteria for establishing Phase II shall be:

1. The volume of water anticipated to be available prior to the next November 1 from all potable water sources is not sufficient to meet the projected demands through November 1 without demand reduction measures beyond the Phase I reductions being implemented; or,
2. Conditions requiring the establishment of a Phase III water emergency appear imminent.
3. In assessing the need to impose Phase II restrictions due weight shall be accorded to the trigger system developed by the Safe Yield Committee for use by the Director of Public Works. The trigger system is based on water levels in Bell Canyon Reservoir, with the level necessary to trigger a water emergency being adjusted each month to reflect the supply capacity of groundwater and water to be delivered by the City of Napa at that time. Details of the system can be obtained from the Director of Public Works.

B. All mandatory and voluntary measures established by Phase I, Section 13.04.230 (B, C and D) shall be included in Phase II and publicized by the city except insofar as they are inconsistent with Section 13.04.240 (C and D).

C. The following mandatory conservation measures by customers of the department shall be enforced by the department:

1. The mandatory conservation measures in Section 13.04.230(B) shall be enforced by the city, except insofar as they are inconsistent with this subsection (C).
2. Commercial, industrial, and institutional users other than dedicated irrigation accounts will receive an allocation per billing period which will be ten percent (10%) less than the average use during the four winter months of the preceding non-shortage year, provided that no commercial, industrial, or institutional user will be required to reduce usage to less than sixty (60) gallons per day. Users with no prior record of use shall be governed by comparable facilities' usage records as determined by the department. Commercial, industrial, and institutional customers with irrigation and domestic use provided by the same water meter may receive an additional landscape allocation of up to seventy (70) gallons day per thousand (1,000) square feet of landscaped area during April through October by documenting the landscaped square footage served by city water to the satisfaction of the Director of Public Works. For purposes of landscape allocation, the April allocation period will begin on the date the water meter is read in April; and the October allocation period will end on the date the water meter is read in November.

3. Residential users in the single-family residential, multi-family residential, and mobile home customer classes will receive an allocation per billing period which will be limited to sixty-five (65) gallons per person per day. Single family residences will receive an additional twenty-five hundred (2,500) gallons per month from April through October for landscape irrigation. Multi-family residential and mobile home customers may receive a landscape allocation of up to seventy (70) gallons per day per thousand (1,000) square feet of landscaped area during April through October by documenting the landscaped square footage served by city water to the satisfaction of the Director of Public Works. For purposes of landscape allocation, the April allocation period will begin on the date the water meter is read in April; and the October allocation period will end on the date the water meter is read in November.

4. For a lawn, landscaping, vineyard or field watered or irrigated through a meter dedicated to that use, usage shall be limited to sixty percent (60%) of current reference evapotranspiration as measured at California Irrigation Management Information Systems (CIMIS) Station #77 (in Oakville).

5. No new water connections shall be permitted during a Phase II water emergency.

D. During the Phase II water emergency, the following actions shall be carried out by the city:

1. The city shall notify customers of the water usage allocation for each account that would be allowed under a Phase III water emergency.

2. The department of public works shall make available, or arrange to have delivered, non-potable water from either Lower Reservoir or, if permitted and available, tertiary treated wastewater to city-owned properties for irrigation purposes.

3. Nothing herein shall restrict the authority of the Director of Public Works from imposing more severe usage restrictions on each class of water customer if circumstances so warrant.

13.04.250 Phase III Water Regulations

A. The criteria for establishing Phase III shall be:

1. The volume of water anticipated to be available prior to the next November 1 from all potable water sources is not sufficient to meet the projected demands through November 1 without demand reduction measures beyond the Phase II reductions being implemented.

2. In assessing the need to impose Phase III restrictions due weight shall be accorded the trigger system developed by the Safe Yield Committee for use by the Director of Public Works. The trigger system is based on water levels in Bell Canyon Reservoir, with the level necessary to trigger a water emergency being adjusted each month to

reflect the supply capacity of groundwater and water to be delivered by the City of Napa at that time. Details of the system can be obtained from the Director of Public Works.

B. All mandatory and voluntary measures established by Phases I and II, Sections 13.04.230 (B, C and D) and 13.04.240 (B, C and D), shall be included in Phase III and publicized by the city, except insofar as they are inconsistent with Section 13.04.250 (C and D).

C. The following mandatory conservation measures by customers of the department shall be enforced by the department:

1. The mandatory conservation measures in Sections 13.04.230 and 13.04.240 of this article shall be enforced by the city, except insofar as they are inconsistent with this subsection (C).

2. Commercial, industrial, and institutional users other than dedicated irrigation accounts will receive an allocation per billing period which will be twenty percent (20%) less than the average use during the four winter months of the preceding non-shortage year, provided that no commercial, industrial, or institutional user will be required to reduce usage to less than fifty (50) gallons per day. Users with no prior record of use shall be governed by comparable facilities' usage records as determined by the department. The allocation for landscape irrigation will be fifty percent (50%) of the allocation in Phase II and will be based on the same meter reading period as for Phase II. Landscape allocations are provided for established non-turf plants only.

3. Residential users in single-family residential, multi-family residential, and mobile home customer classes will receive an allocation per billing period which will be limited to sixty (60) gallons per person per day. The allocation for landscape irrigation will be fifty percent (50%) of the allocation in Phase II and will be based on the same meter reading period as for Phase II. Landscape allocations are provided for established non-turf plants only.

4. For a vineyard or approved field (as approved by the Water Advisory Board) watered or irrigated through a meter dedicated to that use, the allocation shall be limited to thirty percent (30%) of current reference evapotranspiration as measured at California Irrigation Management Information Systems (CIMIS) station #77 - Oakville, and irrigation will be allowed for established non-turf plants only.

5. All nonessential uses of water shall be prohibited. Nonessential uses shall include, but not be limited to, the following:

a. The use of water for irrigation of turf, lawns, or landscaping;

b. The refilling of swimming pools, hot tubs and spas, except as required by the fire chief for use as standby neighborhood fire protection. The fire chief shall cause a list of such pools to be on file at the fire department.

6. No new water connections for new development shall be permitted.

D. During the Phase III water emergency, the following actions shall be carried out by the city:

1. The department shall terminate all nonessential contracts which are terminable.

13.04.270 Termination of Water Emergency Phases

Water emergency phases shall be terminated or changed to a less critical phase in the same manner as they are established in accordance with criteria set forth in the preceding sections and at the discretion of the city council.

13.04.280 Exception Permits

A. Under a Phase II or Phase III water emergency, the Director of Public Works shall, with such conditions as seem to him or her to be reasonable, grant exception permits in addition to any basic allocation, on application of a water customer submitted under penalty of perjury, based on the conditions defined in this section. The City may provide a process for certification of efficiency, lot size, medical condition, or efficient and essential use prior to declaration of a water shortage emergency condition which could result in a customer being prequalified for exception.

1. For any customer with an allocation based on previous water use, if it can be demonstrated to the satisfaction of the Director of Public Works, that water conservation measures beyond those required in section 13.12 of this municipal code were in place prior to the preceding non-shortage year, an additional quantity of water may be allocated to recognize the higher efficiency in place prior to the water emergency condition.

2. For single-family residential parcels exceeding seven thousand (7,000) square feet in area, the quantity of up to twenty (20) gallons per day for each one thousand (1,000) square feet that the property area exceeds seven thousand (7,000) square feet for the purpose of maintaining mature landscape or orchard plants. For purposes of this subsection, multiple parcels maintained and fully landscaped as one property may be computed as being one parcel. An exception granted based on this subsection shall allow the use of no more than an additional two hundred fifty (250) gallons per day for this purpose.

3. For medical conditions of a resident, a quantity as required to maintain health standards.

4. For any customer with an allocation based on previous winter water use, if it can be demonstrated to the satisfaction of the Director of Public Works that efficient and essential water uses are not represented in average winter water use, an additional quantity of water may be allocated to provide for these efficient and essential needs.

B. The Water Advisory Board shall meet at least monthly and may grant permits for uses of water or for exceptions to water conservation measures or for water connections otherwise prohibited by Sections 13.04.230, 13.04.240, and 13.04.250 of this article if it finds and determines that such regulations would:

1. Cause an unnecessary and undue hardship to the applicant or to the public;
2. Cause an emergency condition affecting the health, sanitation, fire protection, or safety of the applicant or public; or
3. Promote water conservation by providing for the establishment of water efficient landscaping meeting the standards of Chapter 17.112.140 of this code and such policies and regulations as have been adopted to implement the provisions of that chapter, replacing more water-intensive landscaping.

C. The Water Advisory Board of the city shall prescribe necessary procedures for application for and use of exception permits.

D. Any decision of the Director of Public Works in granting or denying exceptions may be appealed by the applicant or any other person to the Water Advisory Board by filing a written appeal with the city clerk within ten calendar days after the date of mailing of written notice to the applicant of the decision rendered. The Water Advisory Board use its best efforts to hear and determine such appeal within twenty (20) days, and shall affirm, reverse, or modify the decision.

E. Any decision of the Water Advisory Board may be appealed by the applicant to the city council according to the provisions of Chapter 1.16 of this code.

13.04.290 Non-Compliance with Mandatory Water Conservation Measures

In addition to the provisions of Section 13.04.310 of this chapter, any person who fails to comply with any of the mandatory water conservation measures imposed by the implementation of this article, including the allocations assigned in Phases II and III, shall be subject to an improper water user's fee or charge as hereinafter set forth. Absence of a customer from the city, existence of an undetected leak, or other circumstance does not relieve the customer of the responsibility for ensuring that mandatory water conservation measures are observed and complied with and shall not serve as a basis for reversal of any action or the imposition of any fee or charge.

A. The following charges are not imposed as a penalty but as a charge for excessive or improper use of water. The charges are necessary in order to recover the reasonable cost

of enforcement of the mandatory water provisions and in order to obtain the goals of the water conservation measures contained in this section:

1. First Violation. The city shall issue a written warning to the customer for the first violation.

2. Second Violation. The city shall issue a written notice and assess an improper water use fee of fifty cents (\$0.50) for each gallon by which the customer's usage exceeded the amount allowed per billing period. If the fee is not paid in full within fifteen (15) days of issuance of the notice, the amount will be added to the customer's water bill.

3. Third Violation. The city shall issue a written notice, charge an improper water use fee of one dollar (\$1.00) for each gallon by which the customer's usage exceeded the amount allowed per billing period and install a flow restricting device on the customer's water service, or otherwise restrict the flow of water through a meter, for a period of not less than seventy two (72) hours. Such flow restricting device or other means shall reduce water flow to one gallon per minute for metered services one and one-half inches or under. Similar devices or restrictions will be placed on larger meters. The fee shall be paid prior to the resumption of normal water service.

4. Fourth Violation. The city shall issue a written notice, charge an improper water use fee of one dollar and twenty-five cents (\$1.25) for each gallon by which the customer's usage exceeded the amount allowed per billing period, and install a flow restricting device on the customer's water service, or otherwise restrict the flow of water through a meter, for a period of not less than five (5) days. Such flow restriction device or other means shall reduce water flow to one gallon per minute for the metered services one and one-half inches or under. Similar devices or restrictions will be placed on larger meters. The fee shall be paid prior to resumption of normal water service.

5. Fifth or Subsequent Violation. The city shall issue a written notice, charge an improper water use fee of one dollar and fifty cents (\$1.50) for each gallon by which the customer's usage exceeded the amount allowed per billing period, and may either install a water flow restricting device on the customer's water service, or otherwise restrict the flow of water through a meter, for an indefinite period or discontinue water service under the provisions of Section 13.04.130. Such flow restricting device or other means shall reduce water flow to one gallon per minute for metered services one and one-half inches or under. The fee shall be paid prior to restoration of unrestricted water service.

B. Notification of Violation. Notification shall include a description of the facts in regard to the violation, a statement of the possible penalties for each violation and the statement of the customer's rights to hearing on the merits of the violation as stated in Section 13.04.300 of this article.

1. Notice of violation shall be given in writing by personal delivery of the notice to the customer at the service address and by first-class mail to the billing address, excepting that notice of a first violation may be by first-class mail to the billing address only.

2. If the customer is absent from or unavailable at the service address, the notice can be left with a responsible person at the premises.
3. If a responsible person is not available at the service address, then the notice can left in a conspicuous place on the premises.
4. Failure of any notice to so state shall not constitute a defense to the validity of any written notice. A copy of all written notices of violation shall be delivered to the Water Advisory Board. All written notices of violation shall state that a copy is being provided to the Water Advisory Board.

13.04.300 Violation Hearings

Any customer receiving a second or subsequent violation notice shall be entitled to file an appeal with the city council according to the provisions of Chapter 1.16 of this code. The following shall apply in the case of such appeal:

- A. All such appeals shall be automatically referred by the city council to the Water Advisory Board (if in existence) for review and disposition. Any person dissatisfied with the disposition as determined by the Water Advisory Board may seek review of the Board's disposition by the city council by filing a petition for review with the city clerk no later than ten calendar days following disposition by the Board. The city council shall not entertain evidence not first presented to the Water Advisory Board, and shall give due deference to the disposition of the Board in resolving any petition seeking review of the Board's disposition.
- B. An appeal shall automatically stay installation of a flow restricting device or shutoff on the customer's water service until the decision is final. The appeal must be filed prior to installation of the restricting device or before shutoff has occurred.
- C. The customer's appeal shall not stay the imposition of a fee. If it is determined that a fee is wrongly assessed, the city will refund any fee paid by the customer.

13.04.310 Violation—Misdemeanor

Notwithstanding any provision of this code to the contrary, the provisions of Section 377 of the California Water Code shall be applicable to any violation of this article. Any person violating any of the provisions of this article shall be guilty of a misdemeanor. Upon conviction thereof, such person shall be punished by imprisonment in the county jail and/or fined in accordance with the penalties as set forth in the provisions of Section 377 of the California Water Code.

The forgoing ordinance was passed and adopted at a Regular Meeting of the City Council of the City of St. Helena, State of California, held on the 25th day of October 2011 by the following vote:

AYES: Mayor Britton, Councilmembers White, Sanchez, Crull, Nevero

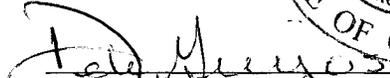
NOES: None

APPROVED:



Delford Britton, Mayor

ATTEST:



Delia Guijosa, City Clerk



Introduced: 10/11/11
Adopted: 10/25/11
Published: 11/03/11