

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING CHAPTER 15.42, “WATER
SHORTAGE REGULATIONS,” OF THE MERCED
MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN
AS FOLLOWS:**

SECTION 1. AMENDMENT TO CODE. Chapter 15.42, “Water Shortage Regulations,” of the Merced Municipal Code is hereby amended to read as follows:

**“CHAPTER 15.42
WATER CONSERVATION REGULATION**

Section:

- 15.42.010 General Provisions.**
- 15.42.020 Definitions.**
- 15.42.030 Application of Regulations.**
- 15.42.040 Provisions Superseded.**
- 15.42.050 Water Conservation Levels and Prohibitions.**
- 15.42.060 Variances.**
- 15.42.070 Disconnection for Violation.**
- 15.42.080 Reconnection Conditions.**
- 15.42.090 Equipment Tampering Illegal.**
- 15.42.100 Prohibited Uses—Mandatory.**
- 15.42.110 Implementation.**

15.42.010 General Provisions.

A. Purpose. The purpose of this Chapter is to ensure compliance with all federal, state and local requirements relating to water conservation and drought mitigation for the protection of public health, safety and welfare by:

1. Reducing the per capita water consumption throughout the City of Merced (City) during years of normal precipitation and during years of drought;
2. Protecting and conserving the City's supply of water during specified times of emergency and/or crisis;
3. Minimizing and/or eliminating the water waste through voluntary compliance or punitive action, if necessary.

15.42.020 Definitions.

For the purposes of this Chapter, certain words and phrases are defined and certain provisions are to be construed as set forth in this Section:

- A. 'Condition of Groundwater Basin' shall mean the condition of the Merced Groundwater Subbasin as determined by the California State Department of Water Resources (DWR).
- B. 'Director' shall mean the Director of Public Works or designated authorized representative.
- C. 'Over Draft' shall mean the condition in which more groundwater is being pumped out than is replenished into the aquifer.
- D. 'Water Waste' shall mean water running off down gutters, streets, or sidewalks leading to significant puddling and unreasonable elimination without a reasonable purpose, and as further defined in Section 15.42.050,

15.42.030 Application of Regulations.

The provisions of this Chapter shall apply to all persons using water both in and outside the City served by the City water system, and regardless of whether any person using water shall have a contract for water service with the City.

15.42.040 Provisions Superseded.

Notwithstanding other code provisions inconsistent with this Chapter, the provisions of this Chapter shall supersede and prevail until repeal of this Chapter.

15.42.050 Water Conservation Levels and Prohibitions.

Notwithstanding any other provision of this Chapter, at least one of the following four (4) levels of water conservation restrictions shall apply at all times. The applicable level(s) of water conservation restrictions shall be based upon the Condition of Groundwater Basin determination of the California State Department of Water Resources then in effect, or by resolution of the City Council based upon a recommendation by the Director.

The current level of water conservation restrictions, and any change in said the level of water conservation restrictions, shall be communicated to the public by reasonable means to ensure compliance, including but not limited to, posting on the City's website, publishing in the local newspaper, and written notice to be included with the City's water bills.

All persons using water supplied by the City shall comply with the following mandatory water conservation restrictions:

A. Level 1: This level is in effect at all times and establishes the baseline conservation measures for the City.

1. Water Waste Prohibition: The following uses of water are defined as 'water waste' and are hereby prohibited except as otherwise authorized:

(a) The washing of sidewalks, driveways, filling station aprons, porches or other outdoor surfaces except when necessary to protect the public health and safety.

(b) The washing of the exterior of dwellings, buildings, and structures, with the following exceptions:

(1) Window washing,

(2) Washing in conjunction with the painting of the exterior of a dwelling, building or structure,

(3) Washing of a dwelling, building or structure may be allowed once every twelve (12) months.

All exceptions listed above must comply with Sections 15.42.100(A) and (B) and the hose(s) must be fitted with an automatic shutoff device(s).

(c) The operation of any ornamental fountain or other such structure making use of water from the City domestic water system, unless such fountain or structure uses a recirculating water system.

(d) The use of water, except for domestic use, where an adequate source of water is available whether such alternate source is reclaimed water, well water, spring water, or other source.

(e) The external washing of trailers, trailer houses, mobile homes, and home exteriors unless in conjunction with painting the exterior of such trailers, or homes with an automatic shut-off device.

(f) The washing of boats or motor vehicles with a hose that is not fitted with an automatic shut-off device.

(g) The indiscriminate running of water or washing with water not otherwise prohibited above which is wasteful and without reasonable purpose.

(h) The application of potable water to outdoor landscapes during and within forty-eight (48) hours after measurable rainfall.

(i) All car wash fundraisers must be held at an established car washing facility that collects and recycles the run-off water before it enters the City's sewer system. When held in a parking lot, car washes can cause pollutants such as soap, dirt, oil grease, and other automotive fluids to enter the storm drain system.

(j) 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 or drink are served and/or purchased.

(k) To promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.

B. Level 2: This level shall be in effect when the Department of Water Resources determines the condition of Groundwater Basin is in a state of critical Over Draft. During any time in which Level 2 restrictions are imposed the following mandatory conservation restrictions shall apply in addition to all Level 1 restrictions on water waste.

1. Three Day Watering Schedule:

(a) Any sprinkling, watering, or irrigation between the mid-day hours of nine a.m. and nine p.m. is prohibited.

(b) Watering by persons with even numbered addresses or on properties without an assigned address is only allowed on Tuesdays, Thursdays, and Saturdays.

(c) Watering by persons with odd numbered addresses is only allowed on Wednesdays, Fridays, and Sundays.

(d) Any watering by persons on Mondays with the exception of parks is prohibited.

C. Level 3: This level shall be in effect when the Governor of the State of California has declared a state of emergency due to drought. During any time in which level 3 restrictions are imposed the following mandatory

conservation restrictions shall apply in addition to all non-conflicting Level 1 and Level 2 restrictions.

1. Two Day Watering Schedule:

(a) Any sprinkling, watering, or irrigation between the mid-day hours of nine a.m. and nine p.m.

(b) Watering by persons with even numbered addresses or on properties without an assigned address is only allowed on Tuesdays and Saturdays.

(c) Watering by persons with odd numbered addresses is only allowed on Wednesdays and Sundays.

(d) Parks, commercial nurseries, cemeteries, and schools are exempt from subsections C.1 of this section but will be requested to curtail all nonessential water use.

D. Level 4: This level shall be in effect during times of catastrophe, i.e., system failure, natural disaster and/or when City Council deems it necessary. During any time in which Level 4 restrictions are imposed the following mandatory conservation restrictions shall apply in addition to all non-conflicting Level 1, Level 2, and Level 3 restrictions.

1. Restricted Watering:

(a) All landscape irrigation shall be prohibited.

(b) Minimal essential watering of trees and shrubs with a bucket, handheld hose with a positive shutoff nozzle, or low

volume non-spray irrigation shall be allowed.

(c) Maintenance of landscaping within active public parks and playing fields, schools, and cemeteries, provided that such irrigation does not exceed two (2) days per week according to the schedule established in Level 3.

(d) All leaks detected in landscape irrigation systems or water systems shall be repaired within twenty four (24) hours of notification by the City of Merced unless other arrangements are made with the Director.

15.42.060 Variances.

The Director may grant variances for uses of water otherwise prohibited if found and determined that to fail to do so would cause an emergency condition affecting health, sanitation, or fire protection to the applicant or the public. The Director's determination concerning variances shall be final.

15.42.070 Disconnection for Violation.

Any person within the water service area who is in violation of the water prohibition provisions of this Chapter shall be subject to immediate disconnection of water service at the violator's expense. Upon disconnection of water service, a written notice shall be served upon the violator which shall state the time, place, and general description of the violation or penalty, and the method by which reconnection can be made.

15.42.080 Reconnection Conditions.

Where water service has been disconnected as authorized in Section 15.42.070, the water service shall be immediately reconnected on condition that reconnection charge is paid in an amount fixed pursuant to the Merced Municipal Code Section 15.28.040.

15.42.090 Equipment Tampering Illegal.

It is unlawful for any person to remove, replace, alter or damage any water meter or components thereof including, but not limited to, the meter face, its dials or other water usage indicators.

15.42.100 Prohibited Uses—Mandatory.

The following uses, methods, types, or techniques of use of water are hereby determined and declared nonessential and are prohibited:

A. All Users.

1. Allowing broken or defective plumbing, or sprinklers, watering or irrigation systems which permit the escape or leakage of water.
2. The use of water in any manner which causes, allows, or permits the flooding of any premises, or any portion thereof.
3. All uses of non-potable water without the permission of the Department of Public Works, except for the use of rainwater collected for irrigation purposes.

B. New Planting. Notwithstanding the prohibitions contained in Section 15.42.050 of this

Chapter, new lawns, ground cover, or bedding plants, may be watered every day between nine p.m. and nine a.m. provided the following conditions are met:

1. New lawns, ground cover, or bedding plants shall not include the reseeding of existing lawns or replacement of existing ground cover, or bedding plants, and shall be newly rototilled earth;
2. A permit must be obtained from the Department of Public Works;
3. The permit shall be limited to thirty (30) days duration;
4. No permit shall be issued if the City is in Level 4 Water Conservation Level; and,
5. The Director may impose such other restrictions as are deemed necessary to prevent the water waste.

15.42.110 Implementation.

A. The Director is hereby authorized and empowered to delegate authority hereunder to such deputies, officers, employees, or agents of the City as they shall designate, and to establish such rules, regulations, and procedures, and to prepare or furnish such forms, warnings, et cetera as deemed necessary or appropriate to carry out the provisions of this Chapter.

B. Upon a determination by the Director or that a person has consumed or used water in violation of any of the mandatory provisions of this Chapter, or of any exception granted pursuant to the provisions of Section 15.42.050, the Director may

issue an order to cease and desist from such violation, and further order such person to comply forthwith with such provisions or exceptions, or otherwise to take appropriate remedial or preventive action. Any cease and desist order may be served personally, by mail, or by leaving a copy at or posted upon the person's residence or place of business.

C. If, after the issuance of such cease and desist order, such person continues to consume or use, or again consumes or uses, water in violation of any such provision or exception, the Director may issue a notice of intention to impose a penalty. Said notice shall:

1. Identify the date, time, and circumstances of violation;
2. State the amount of penalty to be imposed; and,
3. Advise the person of the appeal rights as provided herein. The notice of intention to impose a penalty shall be served in the same manner as the cease and desist order.

D. After a notice of intention to impose a penalty is served, a penalty shall be assessed to the utility account of the person in the amount of fifty dollars (\$50.00) for the first violation, seventy-five dollars (\$75.00) for the second violation, and one hundred fifty dollars (\$150.00) for the third and each of any subsequent violations. The penalty shall be subject to collection in the same manner as any unpaid water service charges.

E. A person shall have the right to appeal the imposition of the penalty assessed to the utility account. The person must request an appeal

hearing in writing within fifteen (15) days from the date of service of the notice of intention to impose a penalty. The request for hearing must be addressed to the City Clerk and shall be deemed served only when received by the City. Failure to properly serve the request for hearing within the fifteen day period shall be deemed a waiver of the right to appeal the matter, and the penalty will be assessed against the person's account.

F. The appeal hearing shall be held before a hearing officer appointed by the City Council by resolution to preside at and render judgment from administrative hearings transacted under the authority of this Chapter who shall make a factual finding on the existence of a violation. The person to be assessed shall be allowed to present such witnesses and evidence as he or she may desire and may be represented by an attorney or other representative of his or her choosing. The hearing officer shall give written notice by first class mail of the date and time of the appeal hearing at least ten (10) days prior thereto. Said hearing shall be held not later than thirty (30) days from receipt of the request for hearing unless continued by mutual consent of the person to be assessed and the hearing officer. The decision of the hearing officer shall be final. If a violation is found, the penalty shall be assessed to the utility account.”

SECTION 2. EFFECTIVE DATE. This Ordinance shall be in full force and effect on May 1, 2018.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections,

subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2017, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2017, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

Mayor

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Kelly Fincher 10/10/17
City Attorney Date