

ORDINANCE NO. 2010-12

AN ORDINANCE OF THE CITY OF SANTA CRUZ REPEALING ORDINANCE 2009-14 AND ADDING A NEW CHAPTER 16.01 OF THE MUNICIPAL CODE PROHIBITING AND REGULATING CERTAIN USES OF WATER FROM THE CITY WATER SUPPLY SYSTEM NOT ESSENTIAL TO THE PUBLIC HEALTH AND SAFETY FOR WATER CONSERVATION PURPOSES, PRESCRIBING PENALTIES FOR VIOLATIONS, AND ESTABLISHING A WATER SHORTAGE APPEAL BOARD

BE IT ORDAINED by the City Council of the City of Santa Cruz as follows:

SECTION 1: Ordinance 2009-14 is hereby repealed.

SECTION 2: Chapter 16.01 of the Santa Cruz Municipal Code is hereby enacted to read as follows:

“Chapter 16.01

Water Shortage Regulations and Restrictions

Sections:

- 16.01.010 Findings.
 - 16.01.020 Declaration of Water Shortage.
 - 16.01.030 Application of Regulations.
 - 16.01.040 Precedence of Regulations.
 - 16.01.050 Definitions.
 - 16.01.060 Water Waste Prohibitions.
 - 16.01.070 Stage 1: Water Shortage Alert.
 - 16.01.080 Stage 2: Water Shortage Warning.
 - 16.01.090 Stage 3: Water Shortage Emergency.
 - 16.01.100 Stage 4: Severe Water Shortage Emergency.
 - 16.01.110 Stage 5: Critical Water Shortage Emergency.
 - 16.01.120 Exceptions.
 - 16.01.130 Water Shortage Appeal Board.
 - 16.01.140 Administrative Enforcement.
 - 16.01.150 Additional Enforcement Authority.
 - 16.01.160 Severability.
- 16.01.010 FINDINGS.

WHEREAS, the City of Santa Cruz water system draws almost exclusively on local surface water sources, whose yield varies from year to year depending on the amount of rainfall received and runoff generated during the winter season; and

WHEREAS, the City water system is susceptible to water shortages in dry and critically dry years or in periods of prolonged regional drought when water conditions characterized by low surface flows in the north coast streams and San Lorenzo River sources, depleted storage in Newell Creek Reservoir, or both, reduce the available supply to a level that cannot support seasonal water demand; and

WHEREAS, on March 10, 2009, the City Council of the City of Santa Cruz adopted an updated Water Shortage Contingency Plan that describes how the City will respond to future water shortages and lists the various actions the City would take to reduce water demand under different water shortage scenarios ranging from 5 percent or less up to and including a 50 percent seasonal water supply deficiency; and

WHEREAS California Water Code sections 350 et seq. authorize water suppliers, after holding a properly noticed public hearing and after making certain findings, to declare a water shortage (emergency) and to adopt such regulations and restrictions to conserve the water supply for the greatest public benefit with particular regard for domestic use, sanitation, and fire protection; and

WHEREAS, the voluntary and mandatory water conservation measures and progressive restrictions on water use and method of use set forth herein provide an effective and immediately available means of conserving water which is essential during periods of water shortage to ensure a reliable and sustainable minimum supply of water for the public health, safety, and welfare and to preserve valuable limited reservoir storage, avoid depleting water storage to an unacceptably low level, and thereby lessen the possibility of experiencing more critical shortages if dry conditions continue or worsen; and

WHEREAS, the usage allotments hereinafter established will equitably spread the burden of restricted and prohibited usage in a manner prescribed by the City's Water Shortage Contingency Plan over all City Water Department customers and other consumers of City water; and

WHEREAS, the purposes of this chapter are to conserve the water supply of the City of Santa Cruz for the greatest public benefit, to mitigate the effects of a water supply shortage on public health and safety and economic activity, and to budget water use so that a reliable and sustainable minimum supply of water will be available for the most essential purposes for the entire duration of the water shortage.

16.01.020 DECLARATION OF WATER SHORTAGE.

The provisions of this chapter shall take effect whenever the Director, upon engineering analysis of City water supplies, finds and determines that a water shortage exists or is imminent within the City of Santa Cruz water service area and a declaration of a water shortage is made by a resolution of the City Council, and they shall remain in effect for the duration of the water shortage set forth in the resolution.

16.01.030 APPLICATION OF REGULATIONS.

The provisions of this chapter shall apply to all persons using or consuming water both inside and outside the City and within the City water service area, and regardless of whether any person using water shall have a contract for water service with the City.

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16.01.040 PRECEDENCE OF REGULATIONS.

Where other provisions of the Municipal Code, whether enacted prior or subsequent to this chapter, are inconsistent with this the provisions of this chapter, the provisions of this chapter shall supersede and control for the duration of the water shortage set forth in the resolution of the City Council.

16.01.050 DEFINITIONS.

- (a) "Director" refers to the Director of the City of Santa Cruz Water Department.
- (b) "Water" refers to water produced and served by the City of Santa Cruz Water Department.
- (c) "City" refers to the City of Santa Cruz.
- (d) "Water Department" refers to the City of Santa Cruz Water Department.
- (e) "Seasonal water demand" refers to the demand, measured in gallons, placed by customers on the City water supply between April 1 and October 31 each calendar year.
- (f) "Issue"/"Declare". Whenever this chapter references the Director's issuance or declaration of an alert, warning, emergency, or regulation, said alert, warning, emergency or regulation shall be put into effect by the placement of a legal advertisement in a newspaper of general circulation, by a posting on the City's internet website and by a posting in the following public places: Santa Cruz City Hall, 809 Center Street, Santa Cruz; Santa Cruz Water Department Office, 212 Locust Street, Santa Cruz; Capitola City Hall, 420 Capitola Avenue, Capitola, and the Santa Cruz County Governmental Center, 701 Ocean Street, Santa Cruz. Any such alert, warning, emergency or regulation shall take effect upon the date of its publication in the Santa Cruz Sentinel.
- (g) "Customer" shall refer to any account customer of the City of Santa Cruz Water Department as well as to any consumer of City water who may not be City of Santa Cruz Water Department account customer.
- (h) "Dry Year" refers to the type of water year under the City's water year classification system, which begins October 1 and ends September 30, in which the total annual discharge of the San Lorenzo River at Felton measures between 29,000 and 49,000 acre-feet.
- (i) "Critically Dry Year" refers to the type of water year under the City's water year classification system, which begins October 1 and ends September 30, in which the total annual discharge of the San Lorenzo River at Felton measures less than 29,000 acre-feet.

16.01.060 WATER WASTE PROHIBITIONS.

It shall be unlawful during any water shortage stage for any person, firm, partnership, association, corporation, political entity (including the City) or any other Water Department customer to use water for any of the following:

- (a) Fire Hydrants. Use of water from any fire hydrant unless specifically authorized by permit from the City, except by regularly constituted fire protection agencies for fire suppression purposes, or for other authorized uses, including distribution system flushing, fire flow testing, and filling of approved vehicles for sewer system flushing, storm drain maintenance, and street sweeping purposes.
- (b) Watering/Irrigation. The watering of grass, lawn, groundcover, shrubbery, open ground, crops and trees, including agricultural irrigation, in a manner or to an extent that causes

or allows excessive water flow or runoff onto an adjoining sidewalk, driveway, street, gutter or ditch.

(c) Plumbing Leaks. The escape of water through leaks, breaks, or other malfunctions within the water user's plumbing or distribution system for any period of time after such break or leak should have reasonably been discovered and corrected. It shall be presumed that a period of twenty-four hours after the water user discovers such break, leak or malfunction, or receives notice from the City of such condition, whichever occurs first, is a reasonable time within which to correct such condition or to make arrangements for correction.

(d) Washing of Exterior Surfaces. The washing of sidewalks, walkways, driveways, parking lots, patios, or other exterior surfaces unless the hose is equipped with an automatic shutoff nozzle.

(e) Cleaning of Structures and Vehicles. The cleaning of building exteriors, mobile homes, cars, boats, and recreational vehicles unless the hose is equipped with an automatic shutoff nozzle.

(f) Fountains and Decorative Water Features. The operation of a water fountain or other decorative water feature that does not use re-circulated water.

(g) Commercial Car Washes. The washing of vehicles at a commercial car wash unless the facility utilizes water recycling equipment, or operates on a timer for a limited time period and shuts off automatically at the expiration of the time period.

(h) Construction. The use of potable water for dust control or soil compaction purposes in construction activities where there is a reasonably available source of reclaimed water appropriate for such use.

(i) The indiscriminate running of water or washing with water not otherwise prohibited in this section, which is wasteful, and without reasonable purpose.

16.01.070 STAGE 1: WATER SHORTAGE ALERT.

(a) The Director is empowered to issue a Water Shortage Alert and to enforce the water shortage restrictions in this Section upon finding that the magnitude of an anticipated water shortage, per the criteria delineated in the City's adopted Water Shortage Contingency Plan, will be five percent (5%) and a minimal consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water supply conditions. In a Stage 1 water shortage, the City will enforce the following water shortage restrictions with the objective of realizing a seasonal water demand reduction of 125 million gallons or an average daily water demand reduction of 600,000 gallons.

(b) During Stage 1, it shall be unlawful for any person, firm, partnership, association, corporation, political entity (including the City) or any other Water Department customer:

1. to water or irrigate lawn, landscape, or other vegetated area between the hours of 10:00 a.m. and 5:00 p.m., except when performed with a bucket or watering can, or by use of a drip irrigation system or similar low-volume, non-spray irrigation equipment, or for very short periods of time for the express purpose of allowing landscape contractors to adjust or repair an irrigation system;

2. to use a hose that is not equipped with a shut off nozzle;

3. to use potable water to wash down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking lots, tennis courts, patios, or other paved surfaces, except when it is necessary to alleviate safety or sanitation hazards or to prepare paved surfaces for sealing;

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4. to initially fill or to drain and refill residential swimming pools;
5. to serve water in a restaurant or other commercial food service establishment except upon the request of a patron; and/or
6. to operate a hotel, motel or other commercial lodging establishment without offering patrons the option to forego the daily laundering of towels, sheets and linens.

16.01.080 STAGE 2: WATER SHORTAGE WARNING.

(a) The Director is empowered to issue a Water Shortage Warning and to enforce the water shortage restrictions in this Section upon finding that the magnitude of an anticipated water shortage, per the criteria delineated in the City's adopted Water Shortage Contingency Plan, will be between five percent (5%) and fifteen percent (15%) and a moderate consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water supply conditions. In a Stage 2 water shortage, the City will enforce the following water shortage restrictions with the objective of realizing a seasonal water demand reduction of up to 375 million gallons and an average daily water demand reduction of up to 1.8 million gallons.

(b) During Stage 2, it shall be unlawful for any person, firm, partnership, association, corporation, political body (including the City) or other Water Department customer:

1. to water or irrigate lawn, landscape, or other vegetated area between the hours of 10:00 a.m. and 5:00 p.m., except when performed with a bucket or watering can, or by use of a drip irrigation system or similar low-volume, non-spray irrigation equipment, or for very short periods of time for the express purpose of allowing landscape contractors to adjust or repair an irrigation system;
2. to use a hose that is not equipped with a shut off nozzle;
3. to use potable water to wash down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking lots, tennis courts, patios, or other paved surfaces, except when it is necessary to alleviate safety or sanitation hazards or to prepare paved surfaces for sealing;
4. to initially fill or to drain and refill residential swimming pools;
5. to serve water in a restaurant or other commercial food service establishment except upon the request of a patron;
6. to operate a hotel, motel or other commercial lodging establishment without offering patrons the option to forego the daily laundering of towels, sheets and linens;
7. to water or irrigate lawn, landscape, or other vegetated area on days of the week other than the two days of the week authorized and publicized by the Director, except when performed with a bucket or watering can, or by use of a drip irrigation system or similar low-volume, non-spray irrigation equipment, or for very short periods of time for the express purpose of allowing landscape contractors to adjust or repair an irrigation system. Hourly restrictions set forth in subsection (1) above continue to apply on authorized watering days. This provision shall not apply to commercial growers/nurseries or to residential vegetable gardens/edible plantings watered with a hose equipped with a shut off nozzle;
8. to water or irrigate lawn, landscape, or other vegetated area using an automatic irrigation system for more than fifteen minutes per watering station per assigned day. This provision shall not apply to automatic irrigation systems exclusively using low output sprinkler equipment, including rotors, stream rotors, or micro-spray systems;
9. to wash the exterior of dwellings, buildings or structures (with the exception of window washing and preparation of property for painting or for sale);

10. to irrigate or water landscapes in a manner that conflicts with a customer's landscape irrigation water budget when such a budget is required by the Director per the criteria delineated in the City's adopted Water Shortage Contingency Plan; and/or

11. to disobey Water Department direction to large commercial, industrial or irrigation customers using 1,337 or more billing units (one million gallons) per year to conduct water use audits, to prepare water conservation plans and to submit progress reports, or to immediately repair water system leaks, including leaks attributable to faulty pipes or fixtures.

16.01.090 STAGE 3: WATER SHORTAGE EMERGENCY.

(a) The Director is empowered to declare a Water Shortage Emergency and to enforce the water shortage restrictions in this Section upon finding that the magnitude of an anticipated water shortage, per the criteria delineated in the City's adopted Water Shortage Contingency Plan, will be between fifteen percent (15%) and twenty five percent (25%) and a significant consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water supply conditions. In a Stage 3 water shortage, the City will enforce the following water shortage restrictions with the objective of realizing a seasonal water demand reduction of up to 625 million gallons and an average daily water demand reduction of up to 3.0 million gallons.

(b) During Stage 3, it shall be unlawful for any person, firm, partnership, association, corporation, political body (including the City) or other Water Department customer:

1. to water or irrigate lawn, landscape, or other vegetated area between the hours of 10:00 a.m. and 5:00 p.m., except when performed with a bucket or watering can, or by use of a drip irrigation system or similar low-volume, non-spray irrigation equipment, or for very short periods of time for the express purpose of allowing landscape contractors to adjust or repair an irrigation system;

2. to use a hose that is not equipped with a shut off nozzle;

3. to use potable water to wash down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking lots, tennis courts, patios, or other paved surfaces, except when it is necessary to alleviate safety or sanitation hazards or to prepare paved surfaces for sealing;

4. to initially fill or to drain and refill any swimming pools, outdoor spas, wading pools, and ornamental water features;

5. to serve water in a restaurant or other commercial food service establishment except upon the request of a patron;

6. to operate a hotel, motel or other commercial lodging establishment without offering patrons the option to forego the daily laundering of towels, sheets and linens;

7. to water or irrigate lawn, landscape, or other vegetated area on days of the week other than the specified day(s) of the week authorized and publicized by the Director, except when performed with a bucket or watering can, or by use of a drip irrigation system or similar low-volume, non-spray irrigation equipment, or for very short periods of time for the express purpose of allowing landscape contractors to adjust or repair an irrigation system. Hourly restrictions set forth in subsection (1) above continue to apply on authorized watering days. This provision shall not apply to commercial growers/nurseries or to residential vegetable gardens/edible plantings watered with a hose equipped with a shut off nozzle;

8. to water or irrigate lawn, landscape, or other vegetated area using an automatic irrigation system for more than ten minutes per watering station per assigned day. This

provision shall not apply to automatic irrigation systems exclusively using low output sprinkler equipment, including rotors, stream rotors, or micro-spray systems;

9. to wash the exterior of dwellings, buildings or structures (with the exception of window washing and preparation of property for painting or for sale);

10. to irrigate or water landscapes in a manner that conflicts with a customer's landscape irrigation water budget when such a budget is required by the Director per the criteria delineated in the City's adopted Water Shortage Contingency Plan; and/or

11. to disobey Water Department direction to large commercial, industrial or irrigation customers using 1,337 or more billing units (one million gallons) per year to conduct water use audits, to prepare water conservation plans and to submit progress reports, or to immediately repair water system leaks, including leaks attributable to faulty pipes or fixtures;

12. to violate residential customer water rationing regulations, including regulations intended to preclude excessive water usage and specifying maximum water usage limitations, issued by the Director in accordance with guidelines set forth in the City's adopted Water Shortage Contingency Plan; and/or

13. to disobey Water Department directives issued to commercial customers requiring the prominent placement of "Save Water" signage at specified locations at the customer's premises.

16.01.100 STAGE 4: SEVERE WATER SHORTAGE EMERGENCY.

(a) The Director is empowered to declare a Severe Water Shortage Emergency and to enforce the water shortage restrictions in this Section upon finding that the magnitude of an anticipated water shortage, per the criteria delineated in the City's adopted Water Shortage Contingency Plan, will be between twenty five percent (25%) and thirty five percent (35%) and an extraordinary consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water supply conditions. In a Stage 4 water shortage, the City will enforce the following water shortage restrictions with the objective of realizing a seasonal water demand reduction of up to 875 million gallons and an average daily water demand reduction of up to 4.2 million gallons.

(b) During Stage 4, it shall be unlawful for any person, firm, partnership, association, corporation, political body (including the City) or other Water Department customer:

1. to water or irrigate landscape or other vegetated area between the hours of 10:00 a.m. and 5:00 p.m., except when performed with a bucket or watering can, or by use of a drip irrigation system or similar low-volume, non-spray irrigation equipment, or for very short periods of time for the express purpose of allowing landscape contractors to adjust or repair an irrigation system;

2. to use a hose that is not equipped with a shut off nozzle;

3. to use potable water to wash down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking lots, tennis courts, patios, or other paved surfaces, except when it is necessary to alleviate safety or sanitation hazards or to prepare paved surfaces for sealing;

4. to fill or to top off any swimming pools, outdoor spas, wading pools, and ornamental water features;

5. to serve water in a restaurant or other commercial food service establishment except upon the request of a patron;

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6. to operate a hotel, motel or other commercial lodging establishment without offering patrons the option to forego the daily laundering of towels, sheets and linens;

7. to water or irrigate landscape or other vegetated area on days of the week other than the specified day(s) of the week authorized and publicized by the Director, except when performed with a bucket or watering can, or by use of a drip irrigation system or similar low-volume, non-spray irrigation equipment, or for very short periods of time for the express purpose of allowing landscape contractors to adjust or repair an irrigation system. Hourly restrictions set forth in subsection (1) above continue to apply on authorized watering days. This provision shall not apply to commercial growers/nurseries or to residential vegetable gardens/edible plantings watered with a hose equipped with a shut off nozzle;

8. to water landscapes using automatic irrigation systems for more than ten minutes per watering station per assigned day. This provision does not apply to automatic irrigation systems using water efficient devices, including but not limited to weather-based controllers, drip/micro-irrigation systems and stream rotor sprinklers.

9. to wash the exterior of dwellings, buildings or structures (with the exception of window washing and preparation of property for painting or for sale);

10. to irrigate or water landscapes in a manner that conflicts with a customer's landscape irrigation water budget when such a budget is required by the Director per the criteria delineated in the City's adopted Water Shortage Contingency Plan; and/or

11. to disobey Water Department direction to large commercial, industrial or irrigation customers using 1,337 or more billing units (one million gallons) per year to conduct water use audits, to prepare water conservation plans and to submit progress reports, or to immediately repair water system leaks, including leaks attributable to faulty pipes or fixtures;

12. to violate residential customer water rationing regulations, including regulations intended to preclude excessive water usage and specifying maximum water usage limitations, issued by the Director in accordance with guidelines set forth in the City's adopted Water Shortage Contingency Plan;

13. to disobey Water Department directives issued to commercial customers requiring the prominent placement of "Save Water" signage at specified locations at the customer's premises;

14. to violate commercial customer water rationing regulations, including regulations intended to preclude excessive water usage and specifying maximum water usage limitations, issued by the Director in accordance with guidelines set forth in the City's adopted Water Shortage Contingency Plan;

15. to disobey a Water Department order to customers identified as "dedicated irrigation accounts" directing those customers to further limit their landscape irrigation and watering activity so as to preserve only the customers' most valuable trees and plants;

16. to water lawns or turf, unless such watering is authorized by the Director in accordance with a landscape irrigation water budget and is consistent with the guidelines set forth in the City's adopted Water Shortage Contingency Plan;

17. to install new landscaping which requires any irrigation or watering;

18. to wash or clean vehicles, including but not limited to automobile, truck, van, bus, motorcycle, boat, or trailer including the washing of fleet vehicles and the washing of vehicles on dealer lots. This restriction will not apply to commercial car wash businesses which use recycled water; and/or

19. to exercise any rights conferred by hydrant and bulk water permits that were issued prior to the Severe Water Shortage Emergency declaration absent special permission

granted by the Director. Said special permission may be granted only for projects necessary to protect the public health, safety and welfare where no alternative to potable water exists and for emergency response purposes.

16.01.110 STAGE 5: CRITICAL WATER SHORTAGE EMERGENCY.

(a) The Director is empowered to declare a Critical Water Shortage Emergency and to enforce the water shortage restrictions in this Section upon finding that the magnitude of an anticipated water shortage, per the criteria delineated in the City's adopted Water Shortage Contingency Plan, shall be between thirty five percent (35%) and fifty percent (50%) and an extreme consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water supply conditions. In a Stage 5 water shortage, the City will enforce the following water shortage restrictions with the objective of realizing a seasonal water demand reduction of up to 1,250 million gallons and an average daily water demand reduction of up to 6.0 million gallons.

(b) During Stage 5, it is unlawful for any person, firm, partnership, association, corporation, political body (including the City) or other Water Department customer:

1. to water or irrigate any outdoor landscaping, unless such watering is authorized by the Director and is consistent with the guidelines set forth in the City's adopted Water Shortage Contingency Plan;
2. to use a hose that is not equipped with a shut off nozzle;
3. to use water for any outdoor washing purpose including commercial car washing, window washing, and paint preparation;
4. to fill or to top off any swimming pools, outdoor spas, wading pools, and ornamental water features;
5. to serve water in a restaurant or other commercial food service establishment except upon the request of a patron;
6. to operate a hotel, motel or other commercial lodging establishment without offering patrons the option to forego the daily laundering of towels, sheets and linens;
7. to use water for recreational purposes;
8. to operate public swimming pools;
9. to operate public showers;
10. to disobey Water Department direction to large commercial, industrial or irrigation customers using 1,337 or more billing units (one million gallons) per year to conduct water use audits, to prepare water conservation plans and to submit progress reports, or to immediately repair water system leaks, including leaks attributable to faulty pipes or fixtures;
11. to violate residential customer water rationing regulations, including regulations intended to preclude excessive water usage and specifying maximum water usage limitations, issued by the Director in accordance with guidelines set forth in the City's adopted Water Shortage Contingency Plan;
12. to violate commercial customer water rationing regulations, including regulations intended to preclude excessive water usage and specifying maximum water usage limitations, issued by the Director in accordance with guidelines set forth in the City's December 2008 Water Shortage Contingency Plan;
13. to disobey Water Department directives issued to commercial customers requiring the prominent placement of "Save Water" signage at specified locations at the customer's premises;

14. to install new landscaping which requires any irrigation or watering;
and/or

15. to exercise any rights conferred by hydrant and bulk water permits that were issued prior to the Critical Water Shortage Emergency declaration absent special permission granted by the Director. Said special permission may be granted only for projects necessary to protect the public health, safety and welfare where no alternative to potable water exists and for emergency response purposes.

16.01.120 EXCEPTIONS.

(a) The Director, upon application made in writing by a customer on a form promulgated by the Water Department and accompanied by supporting documentation, shall be authorized to issue an exception from the strict application of any restriction, regulation or prohibition enforced pursuant to this chapter, upon the customer's production of substantial evidence demonstrating the existence of one or more of the following circumstances that are particular to that customer and which are not generally shared by other Water Department customers:

1. Failure to approve the requested exception would cause a condition having an adverse effect on the health, sanitation, fire protection, or safety of the customer or members of the public served by the customer;
2. Strict application of the subject restriction, regulation or prohibition would impose a severe or undue hardship on a particular business customer or render it infeasible for a particular business customer or class of business customers to remain in operation;
3. Alternative restrictions to which the customer is willing to adhere are available that would achieve the same level of demand reduction as the restriction for which an exception is being sought and such alternative restrictions are enforceable by the Water Department;
4. Circumstances concerning the customer's property or business have changed since the implementation of the subject restriction warranting a change in the customer's water usage allocation; or
5. A hospital or health care facility customer using industry best management practices is eligible for an exception upon demonstrating that the subject restriction, regulation or prohibition is interfering with or preventing it from providing health care service to its customers in accordance with industry hygiene, sanitation and health care standards.
6. A business customer has already implemented environmental sustainability measures that have reduced water consumption to the maximum extent feasible. As used in this subsection the term "environmental sustainability measures" refers to installation of high efficiency plumbing fixtures, devices, equipment, and appliances, recycled water systems, and landscaping consisting exclusively of low water using plant materials using drip or similar high efficiency, non-spray irrigation systems, or to buildings that are designed, built, and continuously operated according to Leadership in Energy and Environmental Design (LEED) certification standards.

(b) In order to qualify for an exception, a customer must first complete a self water audit pursuant to standards and procedures promulgated by the Water Department. This audit shall be made part of the customer's exception application and water conservation measures indicated by the audit may be incorporated as conditions of approval to an exception in addition

to any other conditions of approval imposed by the Director in connection with the Director's approval of the customer's exception application.

16.01.130 WATER SHORTAGE APPEAL BOARD.

(a) A Water Shortage Appeal Board is hereby established and shall be eligible to convene upon the Director's issuance of any water shortage declaration and the implementation of water shortage restrictions pursuant to Sections 16.010.070 through 16.01.110. Thereafter the Water Shortage Appeal Board will remain available to convene for as long as the water shortage remains in effect.

(b) Under water shortage Stages 1 and 2, the Water Shortage Appeal Board will be comprised of members of the City Water Commission. Under water shortage Stages 3, 4, and 5, the Water Shortage Appeal Board will be appointed by City Council and will be comprised of one member of the Water Commission, one business customer, one landscape industry customer, one residential customer, and two at-large members who reside within the City's water service area.

(c) Any customer who considers an action taken by the Director or an enforcement official under the provisions of this chapter, including actions on exception applications and the assessment of administrative penalties, to have been erroneously taken or issued, may appeal that action or penalty to the Water Shortage Appeal Board in the following manner:

1. The appeal shall be made in writing, shall state the nature of the appeal specifying the action or penalty that is being appealed and the basis upon which the action or penalty is alleged to be in error. Penalty appeals shall include a copy of the Notice of Violation;

2. An appeal, to be effective, must be received by the Director not later than ten (10) business days following the date of the Notice of Violation or the date that the Director took the action which is the subject to the appeal;

(A) A water service resident who is not an account customer may notify the Water Department of his or her intention to file a petition to force the resident's account customer to appeal an excess water use penalty within ten (10) business days following the penalty;

(B) If the Water Department has been given a notice of intention to file a petition per subsection 2(A) by a water service area resident who is not an account customer, the appeal from the account customer must be received within fifteen (15) business days after the account customer has been petitioned by the resident.

3. The Director shall schedule the appeal for consideration by the Water Shortage Appeal Board at a Water Shortage Appeal Board meeting. The Water Shortage Appeal Board shall hear the appeal within 90 days of the date of the appeal and issue its decision within 30 days of the date of the hearing.

4. The decision of the Water Shortage Appeal Board shall be final. In ruling on appeals, the Water Shortage Appeal Board shall strictly apply the provisions of this chapter, and shall not impose or grant terms and conditions not authorized by this chapter.

(d) The Chair of the Water Shortage Appeal Board shall have the discretion to divide the Board into two-three member hearing panels. Each hearing panel shall have the same authority to hear and rule upon appeals as the entire Water Shortage Appeal Board. A hearing panel shall have no more than one at-large appointee as a member. The decision of any hearing panel shall be final.

16.01.140 ADMINISTRATIVE ENFORCEMENT.

(a) Any person firm, partnership, association, corporation, political entity or other Water Department customer violating any provision of this chapter may be assessed an administrative penalty.

(b) Each and every day a violation of this chapter exists constitutes a separate and distinct offense for which an administrative penalty may be assessed.

(c) Penalties. The purpose of the administrative penalties assessed pursuant to this Section is to assure future chapter compliance by the cited customer through the imposition of increasingly significant penalties so as to create a meaningful disincentive to commit future chapter violations. In acknowledgment of the fact that the City's water is a scarce and irreplaceable commodity and that this chapter is intended to equitably distribute that commodity among Water Department customers and to assure that, to the extent feasible, City water is conserved and used only for purposes deemed necessary for public health and safety, the penalty schedule herein prescribed is not to be construed as creating a "water pricing" structure pursuant to which customers may elect to pay for additional water at significantly higher rates. To this end, a customer's repeated violation of the chapter shall result in either the installation of a flow restriction device or disconnection of the customer's property from the City's water service system at the customer's cost.

(d) Administrative penalties for failure to comply with water waste prohibitions requirements in Section 16.01.060 or mandatory water use restrictions and regulations commencing with Stage 1 in Section 6 are as follows:

1. First Offense: Written notice of violation and opportunity to correct violation.
2. Second Offense: A second violation within the preceding twelve (12) calendar months is punishable by a fine not to exceed one hundred dollars (\$100).
3. Third Offense: A third violation within the preceding twelve (12) calendar months is punishable by a fine not to exceed two hundred fifty dollars (\$250).
4. Fourth Offense: A fourth violation within the preceding twelve (12) calendar months is punishable by a fine not to exceed five hundred dollars (\$500). In addition to any fines, the Director may order a water flow restrictor device be installed.
5. Large customers. Administrative penalties for customers that use an average of 1,337 billing units (one million gallons) or more per calendar year shall be triple the amounts listed above.
6. Discontinuing Service. In addition to any fines and the installation of a water flow restrictor, the Director may disconnect a customer's water service for willful violations of mandatory restrictions and regulations in this chapter. Upon disconnection of water service, a written notice shall be served upon the customer which shall state the time, place, and general description of the prohibited or restricted activity and the method by which reconnection can be made.

(e) Excessive Water Use Penalties. An excessive use penalty shall be assessed where the customer, during any given billing cycle, uses more than the customer's water allotment per the Director's water rationing regulations issued pursuant to this chapter commencing with Stage 3 in Section 16.01.090. Excess use penalties shall be in addition to ordinary water consumption charges, as follows:

1. 1% to 10% over customer rationing allotment: \$25.00/CCF
2. More than 10% over customer rationing allotment: \$50.00/CCF

3. In addition to any excess use penalties, the Director may order a water flow restrictor device be installed and/or may disconnect a customer's water service for willful violations of the water rationing regulations in this chapter. Upon disconnection of water service, a written notice shall be served upon the customer which shall state the time, place, and general description the prohibited or restricted activity and the method by which reconnection can be made.

(f) Cost of Flow Restrictor and Disconnecting Service: A person or entity that violates this chapter is responsible for payment of charges for installing and/or removing any flow restricting device and for disconnecting and/or reconnecting service in accordance with the City's Miscellaneous Water Service Fee Resolution then in effect. 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.

(g) Notice and Hearing. The Director will issue a Notice of Violation by mail or personal delivery at least ten (10) business days before taking any enforcement action described in subsection 13D. Such notice must describe the violation and the date by which corrective action must be taken. A customer may appeal the Notice of Violation by filing a written notice of appeal with the City no later than the close of business day before the date scheduled for enforcement action accompanied by a \$25 appeal fee. Any Notice of Violation not timely appealed will be final. Upon receipt of a timely appeal, a hearing on the appeal will be scheduled, and the City will mail written notice of the hearing date to the customer at least ten (10) days before the date of the hearing. 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 water shortage condition.

16.01.150 ADDITIONAL ENFORCEMENT AUTHORITY.

In addition to the remedies referenced above, the Director is empowered to pursue any additional remedies necessary, including criminal, civil and administrative remedies listed in Title 4 of the Santa Cruz Municipal Code, to correct a violation of this chapter.

16.01.160 SEVERABILITY.

If any portion of this chapter is held to be unconstitutional, it is the intent of the City Council that such portion of the chapter be severable from the remainder and that the remainder be given full force and effect.”

SECTION 3: This ordinance shall take effect 30 days after final adoption.

ORDINANCE NO. 2010-12

PASSED FOR PUBLICATION on this 25th day of May, 2010, by the following vote: AYES: Councilmembers Lane, Beiers, Madrigal, Robinson; Mayor Rotkin. NOES: None. ABSENT: Councilmember Mathews, Vice Mayor Coonerty. DISQUALIFIED: None. APPROVED: Mike Rotkin, Mayor. ATTEST: Lorrie Brewer, City Clerk. This Ordinance is scheduled for further consideration at the Council meeting of June 8, 2010.