

ORDINANCE NO. 2015-07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ  
AMENDING SECTIONS 16.01.050, 16.01.090, 16.01.120, 16.01.130 AND 16.01.140 OF,  
AND ADDING SECTION 16.01.055 TO, THE SANTA CRUZ MUNICIPAL CODE  
PERTAINING TO WATER SHORTAGE REGULATIONS AND RESTRICTIONS

BE IT ORDAINED By the City of Santa Cruz as follows:

Section 1. Section 16.01.050 of the Santa Cruz Municipal Code is hereby amended to read as follows:

**“Section 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 1st and October 31st 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 a 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 1st and ends September 30th, in which the total

annual discharge of the San Lorenzo River at Felton measures between twenty-nine thousand and forty-nine thousand acre-feet.

- (i) “Critically dry year” refers to the type of water year under the city’s water year classification system, which begins October 1st and ends September 30th, in which the total annual discharge of the San Lorenzo River at Felton measures less than twenty-nine thousand acre-feet.
- (j) “Independent hearing officer” refers to a person appointed by the City to preside at administrative hearings pursuant to Title 4 of this code.”

Section 2: Section 16.01.055 is hereby added to the Santa Cruz Municipal Code to read as follows:

**“Section 16.01.055 Water Department Customer Classifications/Allocations.** For determining a Water Department customer’s water allocation during a declared water shortage under this chapter and for all other purposes under this title, the following customer classification definitions shall apply based on the customer’s ownership or occupation of the following types of property served by the Water Department.

- (a) 1. Single Family Residential: Individually metered residential dwelling units (regardless of housing type). This classification shall apply whether or not the residential dwelling unit is being put to a use other than, or in addition to, residential use, and whether or not the residential use is permanent or transient in nature including use as a vacation rental unit. A residential dwelling unit is considered an occupant’s permanent residence when, on average, the occupant resides in the unit for at least twenty-one days within each monthly water service period.
- 2. Multiple Family Residential: Any residential account with more than one residential dwelling unit served by one water meter. This classification shall apply whether or not the residential dwelling units are being put to a use other than, or in addition to, residential use and whether or not the residential use is permanent or transient in nature including use a vacation rental unit. A residential dwelling unit is considered an occupant’s permanent residence when, on average, the occupant resides in the unit for at least twenty-one days within each monthly water service period.
- 3. Business: Commercial establishments including restaurants, hotel/motel, retail, medical, schools, offices, churches and mixed-used buildings. This category also includes county and state government accounts.

4. Industry/UCSC: This category is comprised of one primary customer, the University of California, Santa Cruz, and a small number of manufacturing businesses.
  5. Municipal: This category is comprised of City-owned and operated facilities such as city offices, parks, police and fire stations, water and wastewater treatment plants, street medians, and parking lots.
  6. Irrigation: Dedicated water services for landscape irrigation associated with large multiple residential complexes and homeowners associations, or with commercial, industrial, and institutional sites, including schools, churches, and parks.
  7. Golf Irrigation: Accounts serving the two golf courses in the water service area.
  8. Coast Irrigation: Agricultural accounts receiving untreated water on the north coast.
  9. Miscellaneous: Other uses such as temporary construction accounts, hydrant meters, and bulk water sales.
- (b) Residency. For the purpose of determining residential water rationing allotments under water shortage stages 3, 4 or 5 of this chapter, the number of persons in each household shall be determined by calculating the number of that household's permanent residents. A permanent resident is an occupant who resides in the subject residential dwelling unit, on average, for at least twenty-one days within each monthly water service period."

Section 3. Section 16.01.090 of the Santa Cruz Municipal Code is hereby amended to read as follows:

**"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 and twenty-five percent 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 six hundred twenty-five million gallons and an average daily water demand reduction of up to three 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, nonspray 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 shutoff 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 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 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, nonspray 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 (b)(1) 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 shutoff 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 apply potable water to outdoor landscapes during and within 48 hours after measureable rainfall;

10. To wash the exterior of dwellings, buildings or structures (with the exception of window washing and preparation of property for painting or for sale);
11. 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;
12. To disobey Water Department direction to large commercial, industrial or irrigation customers using one thousand three hundred thirty-seven 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;
13. 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
14. 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."

Section 4. Section 16.01.120 of the Santa Cruz Municipal Code is hereby amended to read as follows:

**"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. Exceptions applicable to all Water Department customers:
    - A. 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;

- B. 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;
  - C. 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;
2. Exceptions applicable only to Water Department non-residential customers. For purposes of this subsection a residential dwelling unit which is used as a vacation rental shall not be classified as a business.
- A. 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;
  - B. 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; or
  - C. 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, nonspray 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."

Section 5. Section 16.01.130 of the Santa Cruz Municipal Code is hereby amended to read as follows:

**"16.01.130 Water Shortage Appeals.**

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- (a) A water shortage appeal procedure is hereby established which shall apply upon the director's issuance of any water shortage declaration and the implementation of water shortage restrictions pursuant to Sections 16.01.070 through 16.01.110. Thereafter during the declared water shortage, independent hearing officers shall be appointed to hear and rule upon water shortage appeals filed in accordance with this section.
- (b) 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 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 business days following the date of the notice of violation or the date that the Director took the action which is the subject of the appeal;
    - (A) A water service area 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 business days following the penalty;
    - (B) If the Water Department has been given a notice of intention to file a petition per subsection (b)(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 business days after the account customer has been petitioned by the resident;
  3. The Director shall schedule the appeal for consideration by an independent hearing officer. The independent hearing officer shall hear the appeal within ninety days of the date of the appeal and issue a decision within thirty days of the date of the hearing;
  4. The decision of the independent hearing officer shall be final. In ruling on appeals, the independent hearing officer shall strictly apply the provisions of this chapter, and shall not impose or grant terms and conditions not authorized by this chapter.

Section 6. Section 16.01.140 of the Santa Cruz Municipal Code is hereby amended to read as follows:

**“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 this 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 16.01.070 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 calendar months is punishable by a fine not to exceed one hundred dollars.
  - 3. Third Offense. A third violation within the preceding twelve calendar months is punishable by a fine not to exceed two hundred fifty dollars.
  - 4. Fourth Offense. A fourth violation within the preceding twelve calendar months is punishable by a fine not to exceed five hundred dollars. 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 one thousand three hundred thirty-seven 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. One percent to ten percent over customer rationing allotment: not to exceed twenty-five dollars/CCF.
  2. More than ten percent over customer rationing allotment: not to exceed fifty dollars/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 of the prohibited or restricted activity and the method by which reconnection can be made.
  4. The Director is authorized to develop administrative policies and procedures for the waiver of excessive water use penalties.
- (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 business days before taking any enforcement action described in subsection (d). 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 the business day before the date scheduled for enforcement action, accompanied by a twenty-five dollar 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 days before the date of the hearing. Pending receipt of a written appeal or pending a

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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.”

Section 7. This ordinance shall take effect and be in force thirty (30) days after final adoption.

PASSED FOR PUBLICATION this 14<sup>th</sup> day of April, 2015, by the following vote:

AYES: Councilmembers Chase, Terrazas, Comstock, Posner, Noroyan; Vice Mayor Mathews; Mayor Lane.

NOES: None.

ABSENT: None.

DISQUALIFIED: None.

APPROVED: ss/Don Lane, Mayor

ATTEST: ss/Bren Lehr, City Clerk Administrator

PASSED FOR FINAL ADOPTION this \_\_\_\_\_ day of \_\_\_\_\_, 2015,  
by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: \_\_\_\_\_

Mayor

ATTEST: \_\_\_\_\_

City Clerk Administrator

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This is to certify that the above and foregoing document is the original of Ordinance No. 2015-07 and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

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City Clerk Administrator