



MEMORANDUM

TO: CITY COUNCIL

FROM: DIANNE THOMPSON, CITY MANAGER

BY: TERESA MCCLISH, COMMUNITY DEVELOPMENT DIRECTOR
GEOFF ENGLISH, PUBLIC WORKS DIRECTOR
DEBBIE MALICOAT, ADMINISTRATIVE SERVICES DIRECTOR
DAVID HIRSCH, ASSISTANT CITY ATTORNEY
SHANE TAYLOR, UTILITIES SUPERVISOR
KELLY HEFFERON, ASSOCIATE PLANNER
RYAN CORNELL, ACCOUNTING MANAGER

SUBJECT: CONSIDERATION OF A RESOLUTION AMENDING EXHIBIT A OF RESOLUTION 4659 RELATING TO THE MANDATORY PENALTIES FOR FAILING TO MEET DECLARED STAGE 1 WATER SHORTAGE EMERGENCY WATER USE REQUIREMENTS FOR CUSTOMERS WHOSE BI-MONTHLY WATER USE IS 10 UNITS OR LESS

DATE: NOVEMBER 10, 2015

RECOMMENDATION:

It is recommended the City Council adopt a Resolution amending Exhibit A of Resolution 4659 relating to mandatory penalties for the declared Stage 1 Water Shortage Emergency for customers whose bi-monthly Baseline Water Amount is 10 units or less.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

There is a significant amount of staff time needed to process a baseline adjustment request. To date the City has completed approximately 260 baseline adjustment requests with 90 additional requests to be processed. Of the completed request approximately 25% are customers who consume less than 10 units of water.

Since the implementation of the Stage 1 Water Shortage Emergency, approximately 1,600 accounts have exceeded their maximum allotment. Of the 1,600 accounts, approximately 12% of the accounts have usage of 10 units or less. Should Council approve staffs recommendation, the City will forgo the collection of up to \$40,000 (depending on the number of violations) in penalties from these low water users. However, it is the goal of the City to reduce consumption and not penalize its water customers.

CITY COUNCIL

CONSIDERATION OF ADOPTION OF A RESOLUTION AMENDING EXHIBIT A OF RESOLUTION 4659 RELATING TO THE MANDATORY PENALTIES FOR FAILING TO MEET WATER USE REQUIREMENTS FOR THE DECLARED STAGE 1 WATER SHORTAGE EMERGENCY FOR CUSTOMERS WHOSE BI-MONTHLY BASELINE WATER AMOUNT IS 10 UNITS OR LESS

NOVEMBER 10, 2015

PAGE 2 of 3

BACKGROUND:

On May 26, 2015 the City Council adopted Resolution 4659 declaring a Stage 1 Water Shortage Emergency and implemented reductions in water usage. As set forth in Exhibit A of Resolution 4659, residential and irrigation water customers are assigned a baseline amount of water which is based on the amount of water used during the same billing period of the 2014 calendar year.

Residential and irrigation customers have been required to reduce water usage by the percentage amount set forth in Exhibit A of Resolution 4659, which varies depending on their bi-monthly usage tier. The formula is set in a way that customers whose consumption is 9 units or less are not required to reduce consumption, however, they cannot increase their usage from the 2014 baseline. Residential and irrigation customers are subject to mandatory penalties for failing to reduce use as required by the Resolution, and in the case of customers whose bi-monthly use are 9 units or less, increase their usage from 2014.

Now that the Stage 1 Water Shortage Emergency and required reductions and restrictions in water usage have been in place for several months, staff has had an opportunity to evaluate the impacts of implementation and has identified concerns relating to how they effect customers whose bi-monthly usage is 10 units or less. First of all, customers who use under 10 units of water or less are using a very small amount of water, many less than 50 gallons per person per day. In those instances, the customer's current allotment is less than the allotment given if City Council were to declare a Stage 2 Water Shortage Emergency. Moreover, since these customers use such little water, they have limited flexibility when it comes to taking additional measures to assure that their water use does not increase above their assigned baseline amount. What is also problematic is that the City's billing program only reads water usage in whole units, and therefore fractional changes in use can result in rounding that can make a customer subject to penalties, even though any actual increase is nominal. Finally, staff believes that imposing penalties on customers whose bi-monthly usage is 10 units or less in effect penalizes the City's best conserving customers.

ANALYSIS OF ISSUES:

Based upon the foregoing, staff is recommending that the City Council adopt the attached Resolution. The Resolution will adopt a new Exhibit A, which will delete the provision that subjects customers whose bi-monthly use is 10 units or less to penalties if their use increases from their assigned baseline amount.

ALTERNATIVES:

The following alternatives are presented for consideration:

CITY COUNCIL

CONSIDERATION OF ADOPTION OF A RESOLUTION AMENDING EXHIBIT A OF RESOLUTION 4659 RELATING TO THE MANDATORY PENALTIES FOR FAILING TO MEET WATER USE REQUIREMENTS FOR THE DECLARED STAGE 1 WATER SHORTAGE EMERGENCY FOR CUSTOMERS WHOSE BI-MONTHLY BASELINE WATER AMOUNT IS 10 UNITS OR LESS

NOVEMBER 10, 2015

PAGE 3 of 3

- Adopt the Resolution.
- Do not adopt the Resolution and continue to have mandatory penalties for customers whose bi-monthly baseline water amount is 10 units or less and whose use increases above their assigned baseline water amount.
- Provide staff other direction.

ADVANTAGES:

The advantage of the proposed Resolution is to remove the potential of imposition of mandatory penalties on those customers who already are using very little water and who have limited flexibility in assuring that their water use doesn't increase to avoid such penalties.

DISADVANTAGES:

There are no identified disadvantages, however deleting the penalties for failing to meet allotted baseline water usage for customers whose two-month water use is 10 units or less will reduce the total amount of penalties collected by the City.

ENVIRONMENTAL REVIEW:

The proposed Resolution is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to 15307 of the State CEQA Guidelines (Actions by Regulatory Agencies for Protection of Natural Resources.)

PUBLIC NOTIFICATION AND COMMENTS:

The agenda was posted in front of City Hall on Thursday, November 5, 2015 and on the City's website on Friday, November 6, 2015. No comments were received.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE AMENDING EXHIBIT A OF RESOLUTION 4659 RELATING TO THE MANDATORY PENALTIES FOR FAILING TO MEET WATER USE REQUIREMENTS FOR THE DECLARED STAGE 1 WATER SHORTAGE EMERGENCY FOR CUSTOMERS WHOSE BI-MONTHLEY BASELINE WATER AMOUNT IS 10 UNITS OR LESS

WHEREAS, on February 24, 2015 the City Council of the City of Arroyo Grande adopted Ordinance 669 , adding Chapter 13.07 to the Arroyo Grande Municipal Code (AGMC) relating to Emergency Water Shortage Restrictions and Regulations; and

WHEREAS, in accordance with the provisions in AGMC Section 13.07.030 and after holding a noticed public hearing in accordance with the requirements of Water Code Section 350, et seq., on May 26, 2015 the City Council adopted Resolution 4659 declaring a Stage 1 Water Shortage and implemented reductions in water usage based upon Historical Use, and mandatory penalties for failing to meet water use requirements as set forth in Exhibit A of that Resolution; and

WHEREAS, based upon an analysis by City staff of the impacts of the implementation of the water use requirements and the mandatory penalties as they relate to customers whose bi-monthly Baseline Water Amount is 10 units or less, staff has recommended changes to the penalty provisions since such users use little water, the City's billing program only reads use in whole units, many of those users use very small quantities of water per day and have limited flexibility in further reducing their use, and imposing penalties on them in effect penalizes the City's best conserving customers: and

WHEREAS, AGMC Section 13.07.030(B) expressly provides that the mandatory penalty provisions in a Stage 1 Water Shortage Emergency resolution may be modified by the City Council as it deems necessary and appropriate.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Arroyo Grande does resolve, declare, determine, and order as follows;

SECTION 1. The foregoing Recitals are true and correct and are incorporated herein.

SECTION 2. The City Council hereby adopts the attached amended Exhibit A, which amends Exhibit A of Resolution 4659, and is attached hereto and incorporated herein by reference. Exhibit A sets forth baseline water amounts, required residential water reductions and requirements, and amended mandatory penalties. As provided therein, all residential customers shall reduce water usage by the percentage amount set forth in Exhibit A. Commercial customers with irrigation meter accounts shall reduce water use

as set forth in Exhibit A. Residential and Commercial customers shall be subject to mandatory penalties for failing to meet required water use reductions, as provided in Exhibit A, and no penalties shall be imposed on customers whose bi-monthly use is 10 units or less.

SECTION 3. All other water conservation rules, regulations, restrictions, definitions, enforcement procedures, violation provisions and appeal procedures, including but not limited to those contained in Arroyo Grande Municipal Code Section 13.05.030, shall remain in full force and effect.

SECTION 4. The adoption of this Resolution amending Exhibit A to Resolution 4659 is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to 15307 of the State CEQA Guidelines (Actions by Regulatory Agencies for Protection of Natural Resources.)

SECTION 5. If any section, subsection, sentence, clause, or phrase of this Resolution is for any reason held to be invalid, such determination shall not affect the validity of the remaining portions of this Resolution. The City Council hereby declares that it would have passed this Resolution and each and every section, subsection, sentence, clause, or phrase not declared invalid without regard to whether any portion of the Resolution would be subsequently declared invalid or unconstitutional.

SECTION 6. The restrictions and regulations adopted by Resolution 4659, and as amended herein, shall remain in effect for the duration of the Stage 1 Water Shortage Emergency, and until rescinded or modified by the City Council. This Resolution shall be effective immediately upon its adoption.

On motion of Council Member _____, seconded by Council Member _____,
and by the following roll call vote, to wit:

AYES:
NOES:
ABSENT:

the foregoing Resolution was passed and adopted this _____ day of _____ 2015.

JIM HILL, MAYOR

ATTEST:

KELLY WETMORE, CITY CLERK

APPROVED AS TO CONTENT:

DIANNE THOMPSON, CITY MANAGER

APPROVED AS TO FORM:

HEATHER K. WHITHAM, CITY ATTORNEY

EXHIBIT "A"

CITY OF ARROYO GRANDE RESOLUTION _____

**RESOLUTION _____ AMENDING EXHIBIT A OF RESOLUTION 4659, WHICH
DECLARED A STAGE 1 WATER SHORTAGE EMERGENCY**

**A. ASSIGNMENT OF BASELINE WATER AMOUNT BASED UPON HISTORICAL
USE**

All residential customers and commercial customers with irrigation meters will be assigned a Baseline Water Amount based upon their Historical Use, as further set forth herein. Except when adjusted in accordance with the provisions contained in Arroyo Grande Municipal Code Section 13.07.070 A or B, the Baseline Water Amount shall be based upon the amount of water used during the same billing period of the previous year prior to the adoption of this Resolution.

B. COMMERCIAL CUSTOMERS

All commercial customers with irrigation meter accounts shall reduce water use by 25% from the amount of usage of the assigned Baseline Water Amount. Failure to reduce water use by this required percentage shall result in the imposition of the mandatory financial penalties contained in Subsection D, herein.

C. REQUIRED RESIDENTIAL CUSTOMER WATER REDUCTIONS

1. Except for customers whose bi-monthly Baseline Water Amount is 10 units or less, residential customers in Tier 1 (bi-monthly usage of 0 to 18 units) shall be required to reduce consumption by 10% from the amount of usage of the assigned Baseline Water Amount. Customers whose bi-monthly use is 10 units or less shall not increase their usage above the amount of their assigned Baseline Water Amount.

2. All residential customers in Tier 2 (bi-monthly usage of 19 to 36 units) shall be required to reduce consumption by 20% from the amount of usage of the assigned Baseline Water Amount.

3. All residential Customers in Tier 3 (bi-monthly usage of 37 units or more) shall be required to reduce consumption 30% from the amount of usage of the assigned Baseline Water Amount.

Failure to reduce water use by the required percentage shall result in the imposition of the mandatory financial penalties contained in Subsection D, herein. No penalties shall be imposed on customers whose bi-monthly Baseline Water Amount is 10 units or less.

In accordance with Arroyo Grande Municipal Code Section 13.07.030, the City Council, may by resolution, increase the required percentage of reduction if it deems it necessary in order to achieve the projected amount of water savings established as necessary.

D. MANDATORY FINANCIAL PENALTIES

The purpose of the mandatory penalties assessed pursuant to this resolution is to assure compliance by the customer through the imposition of increasingly significant penalties so as to create a meaningful incentive to reduce water use. In acknowledgment of the fact that the City's water is scarce and irreplaceable commodity, the intent is 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. Accordingly, the mandatory penalties contained herein are 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.

The following mandatory financial penalties will be levied on all water users who fail to reduce consumption in the percentages required in Subsections B and C herein, provided that no penalties shall be levied on customers whose bi-monthly Baseline Water Amount is 10 units or less:

- First Violation:** Written notice of violation and opportunity to correct violation.
- Second Violation:** The City shall impose a penalty of \$50. Written notice shall be given to the owner by certified mail. The penalty will be billed to the customer on the regular water bill.
- Third Violation:** A penalty of \$100. Written notice shall be given to the owner by certified mail. The fine will be billed to the customer on the regular water bill.
- Subsequent Violations:** In addition to a penalty of \$200, continued violations may be subject to referral to the City Attorney for appropriate action, including but not limited to prosecution under the Arroyo Grande Municipal Code, as well as possible discontinuance of service.
- Failure to pay:** The City may discontinue water service to any customer who fails to pay penalties billed on the regular water bill. Service will be restored upon full payment of all outstanding balances and reconnection charges. A delinquent bill shall also be increased by penalty of ten (10) percent of the amount of delinquency.

Customers who incur penalties may have them waived by attending a minimum two hour session of Water Conservation School, which will be conducted by the City of Arroyo Grande. The option to have penalties waived by attending Water School shall be available only one time for any customer who has incurred penalties.

The foregoing penalties may also be modified or amended by the City Council as deemed necessary and appropriate based upon a determination of the severity of the Water Shortage Emergency.

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