

**TO:** James L. App, City Manager  
**FROM:** Doug Monn, Public Works Director  
**SUBJECT:** Water Conservation and Shortage Contingency Plan Urgency Ordinance  
**DATE:** June 2, 2009

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**NEEDS:** For City Council to consider a Water Conservation and Shortage Contingency Plan.

**FACTS:**

1. Over the last three years, water supplies throughout California have been severely impacted by drought.
2. The City's existing sources of water are the Paso Robles Groundwater Basin and the permitted allocation from the Salinas River.
3. City water production capacity is highly dependent on factors such as precipitation and local and regional demands for groundwater
4. The California State Water Resources Control Board ("SWRCB") has declared that the Salinas River is fully allocated, and the City's permit limits the maximum annual pumping from the Salinas River underflow to 4,600 acre feet per year (AFY).
5. Due to current statewide drought conditions, the City's underflow wells are producing roughly 65% of historic levels, and SWRCB has indicated it may restrict underflow pumping. SWRCB has also stated that water agencies should adopt conservation efforts to reduce urban water use by a minimum of 20%.
6. The City's weekly demands for water increase drastically in the summer months, rising from 3.5 million gallons per day (GPD) during the winter to approximately 12.7 GPD in July.
7. Despite efforts to rehabilitate wells, install new wells and recommission standby wells, the amount of water produced in the summer months has been steadily declining. In 2004, City wells produced roughly 12.7 GPD, in the summer of 2008, production dropped to 11.7 MGD, and in 2009, water production is projected to decline to 10.4 MGD.
8. The City's water storage capacity is approximately 12 MGD, roughly 50% of which is allocated for emergency and fire-fighting. Such fire-fighting capacity would be depleted within three days of prolonged hot weather conditions, thereby creating a potential threat to public health and safety.

9. Adoption and enforcement of a water conservation and shortage contingency plan is necessary to minimize the effects of water shortages. It is in the City's best interest to enact prudent water demand management measures immediately to avoid water shortages and to ensure a reliable minimum supply of water for the public health, safety, and welfare.

The California Urban Water Management Planning Act requires that each water supplier develop a water shortage contingency plan.

**ANALYSIS &  
CONCLUSION:**

The purpose of a Water Conservation and Shortage Contingency Ordinance is to enact and enforce water conservation measures to mitigate water supply shortages. Elements of this ordinance are used throughout the state to lessen the impacts of a supply shortage and reflect Best Management Practices for water conservation.

The ordinance outlines several permanent water conservation requirements and use restrictions that will be in place at all times, with increasingly stringent measures implemented in stages with increasing levels of water supply shortage. The ordinance authorizes the City to impose various remedies and penalties for violations of the water conservation requirements, as specified in Chapter 1.02 Penalties, Section 1.02.010 of the Municipal Code.

Staff recommends that the council take action on two ordinances. The first is an urgency ordinance that requires only one reading and would take effect immediately. Urgency ordinances require approval by a two-thirds vote. The second ordinance adopts the same water conservation plan but is a regular ordinance that requires both a first and second reading, and would take effect 30 days after the second reading. By its terms, the second ordinance would only take effect if for any reason the urgency ordinance is deemed not to be valid.

**POLICY  
REFERENCE:**

California Water Code Section 10610 (Urban Water Management Planning Act)

**FISCAL  
IMPACT:**

None

**OPTIONS:**

- a. Adopt Urgency Ordinance xxxxxxxxx and introduce for first reading Ordinance No. XXXX
- b. Amend, modify, or reject the above option.

Attachments: Urgency Ordinance

ORDINANCE NO. \_\_\_\_\_

AN URGENCY ORDINANCE OF THE CITY OF EL PASO DE ROBLES  
TO ADD CHAPTER 14.02 TO THE MUNICIPAL CODE OF THE CITY OF EL PASO  
DE ROBLES ADOPTING A WATER CONSERVATION AND WATER SHORTAGE  
CONTINGENCY PLAN AND DECLARING THAT THIS IS AN URGENCY  
ORDINANCE NECESSARY FOR THE IMMEDIATE PRESERVATION OF THE  
PUBLIC HEALTH, SAFETY AND WELFARE

**WHEREAS**, a consistent and minimum reliable supply of potable water is essential to the public health, safety, and welfare of the people and community of the City of El Paso De Robles; and

**WHEREAS**, Article X, Section 2 of the California Constitution declares that the general welfare requires that water resources be put to beneficial use, that waste or unreasonable use or unreasonable method of use of water be prevented, and that conservation of water be fully exercised with a view to the reasonable and beneficial use thereof; and

**WHEREAS**, the City of El Paso De Robles water production capacity is highly dependent on factors such as precipitation and local and regional demands for groundwater as its two current existing sources of water are the Paso Robles Groundwater Basin and the City's permitted allocation from the Salinas River; and

**WHEREAS**, the California State Water Resources Control Board ("SWRCB") has declared that the Salinas River is fully allocated, and the City's permit limits the maximum annual pumping from the Salinas River underflow to 4,600 acre feet per year ("AFY"); and

**WHEREAS**, due to current statewide drought conditions, the City's underflow wells are only producing at 69% of historic levels, and SWCRB has indicated it may restrict underflow pumping due to current drought conditions and has stated that water agencies should adopt conservation efforts to reduce urban water use by 20%; and

**WHEREAS**, the City and the County of San Luis Obispo (the "County") recently commissioned an update of the 2005 Groundwater Basin Study (*Evaluation of Paso Robles Groundwater Basin Pumping*, Todd Engineers May 2009) that concludes total groundwater pumping has increased by 5,516 AFY between 2000 and 2006, an average annual increase of 919 AFY. Assuming no water management actions, (including delivery of Nacimiento Project Water), this rate of increase would result in overdraft by 2017; and

**WHEREAS**, the 2009 Updated Basin Study also finds that groundwater basin pumping exceeds 90% of the safe annual yield; and

**WHEREAS**, the City and County are both parties to an agreement with a group representing a number of agricultural groundwater basin pumpers, known as "PRIOR," the purpose of which is to avoid expensive and lengthy groundwater rights litigation by cooperating in groundwater basin monitoring and water management; and

**WHEREAS**, the City's weekly demands for water historically have increased drastically in the summer months, rising from approximately 3.5 million gallons per day ("GPD") to approximately 12.7 GPD in July, an increase of 330%; and

**WHEREAS**, despite City efforts to rehabilitate wells, install new wells and recommission standby wells, the amount of water produced by those wells during the summer months has declined significantly in the past few years; and

**WHEREAS**, in 2004, City wells produced roughly 12.7 GPD, in the summer of 2008, production dropped to 11.7 MGD, and in 2009, water production is expected to decline to 10.4 MGD; and

**WHEREAS**, the City's water storage capacity is approximately 12 MGD, roughly 50% of which is allocated for emergency and fire-fighting storage capacity; and

**WHEREAS**, such fire-fighting capacity would be depleted within three days of prolonged hot weather conditions, thereby creating a potential threat to public health and safety; and

**WHEREAS**, it is in the City's best interest to enact prudent water demand management measures immediately to avoid water shortages; and

**WHEREAS**, California Water Code section 375 authorizes water suppliers to adopt and enforce a comprehensive water conservation program to reduce water consumption and conserve supplies after holding a public hearing; and

**WHEREAS**, the adoption and enforcement of a water conservation and supply shortage program is necessary to manage the City of El Paso de Robles' water demand and supply to minimize the effects of water shortages within Paso Robles. Such program is essential to ensure a reliable minimum supply of water for the public health, safety, and welfare.

**WHEREAS**, based on all of the above, as one measure to help ensure that the City will have adequate water supplies during the coming summer months and into the future, the Council finds and determines that the adoption of a water conservation and water shortage contingency plan is necessary.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS::**

**SECTION 1.** The City Council of the City of El Paso De Robles, at its regular meeting of May 19, 2009, considered as one of its items of business this Ordinance to be introduced in accordance with Government Code Section 36937(b). The City Council hereby finds and determines that, based on all of the facts described above, the staff reports and the testimony received during a public hearing on this Ordinance, all of which are incorporated herein, the adoption of a water conservation and water shortage contingency plan is vitally

necessary to help preserve and protect the public health, safety and welfare of the City and its residents.

**SECTION 2.** Chapter 14.02 is hereby added to Title 14 of the Municipal Code of the City of El Paso de Robles as follows:

## **CHAPTER 14.02**

### **WATER CONSERVATION AND WATER SHORTAGE CONTINGENCY PLAN**

#### **14.02.010 Declaration of Necessity and Intent**

A. This Chapter establishes certain mandatory and permanent water management requirements necessary to conserve water, enable effective water supply planning, assure reasonable and beneficial use of water, prevent waste of water, prevent unreasonable use of water, prevent unreasonable methods of use of water within the City of El Paso de Robles service area in order to assure adequate supplies of water to meet the needs of the public, and further the public health, safety, and welfare, recognizing that water is a scarce natural resource that requires careful management not only in times of drought, but at all times.

B. This Chapter also establishes regulations to be implemented during times of declared water shortages, or declared water shortage emergencies. It establishes four levels of actions to be implemented in times of shortage, with increasing restrictions on water use in response decreasing water supply or production capabilities.

C. Level 1 Water Supply Shortage measures are voluntary and will be reinforced through local and regional public education and awareness measures. Levels 2 through 4 Water Supply Shortage conditions mandate increasingly restrictive measures in order to attain escalating conservation goals. Those City water customers who violate the measures imposed under a Condition of Level 2 through Level 4 are subject to criminal, civil, and administrative penalties and remedies as provided in Chapter 1 of this Code.

#### **14.02.020 Application**

A. This Chapter applies to any *customer* in the use of any water provided by the City of El Paso de Robles, including customers located outside the City.

B. This Chapter is intended solely to further the conservation of water. It is not intended to implement or replace any provision of federal, state, or local statutes, ordinances, or regulations relating to protection of water quality or control of drainage or runoff.

C. The provisions of this Chapter do not apply to uses of water necessary to protect public health and safety or for essential government services, such as police, fire and other similar emergency services.

D. Nothing in this Chapter 14.02 is intended to affect or limit the ability of the City Manager or his designee to declare and respond to an unforeseeable disaster or water emergency such as an earthquake, or other major disruption in the water supply, pursuant to the general laws of the City or other provisions of this Code.

#### **14.02.030 Definitions**

The following words and phrases whenever used in this Chapter 14.02 will have the meaning defined in this section:

*A. Customer* means any person, corporation, public or private entity, public or private association, public or private agency, government agency or institution, school district, college, university, or any other user of water provided by the City of El Paso de Robles.

*B. Days* are defined as calendar days, unless otherwise indicated.

*C. Water Conservation* means the efficient management of water resources for beneficial uses, preventing waste, or accomplishing additional benefits with the same amount of water.

*D. Condition* means a declared water supply shortage condition, which may be at Level 1, Level 2, Level 3 or Level 4, as described in this Chapter 14.02.

#### **14.02.040 Mandatory Minimum Water Conservation Requirements – Prohibition Against Waste**

The following water conservation requirements shall be in effect at all times and are permanent. Violations will be considered waste and an unreasonable use of water and are subject to penalties.

**A. No Excessive Water Flow or Runoff:** Watering or irrigating of any lawn, landscape or other vegetated area in a manner that causes or allows excessive water flow or runoff onto an adjoining sidewalk, driveway, street, alley, gutter or ditch is prohibited.

**B. No Overfilling of Swimming Pools and Spas:** Overfilling of a swimming pools and spas such that overflow water is discharged onto an adjoining sidewalk, driveway, street, alley, gutter or ditch is prohibited.

**C. No Washing Down Hard or Paved Surfaces:** Washing down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking areas, tennis courts, patios or alleys, is prohibited except under the following conditions:

1. To alleviate safety or sanitary hazards, and then only by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off device.

2. When a low-volume, high-pressure cleaning machine or a low-volume high-pressure water broom is used.

3. All wash-down activities must comply with all state and local regulations pertaining to discharges to the City's storm drain system.

**D. Obligation to Fix Leaks, Breaks or Malfunctions:** Excessive use, loss or escape of water through breaks, leaks or other malfunctions in the customers' plumbing or distribution system for any period of time after such escape of water should have reasonably been discovered and corrected and in no event more than seven days after written notification by the City of El Paso de Robles, is prohibited.

**E. Re-circulating Water Required for Water Fountains and Decorative Water Features:** Operating a water fountain or other decorative water feature that does not use re-circulated water is prohibited.

**F. Limits on Washing Vehicles:** Using water to wash or clean a vehicle, including but not limited to any automobile, truck, van, bus, motorcycle, boat or trailer, whether motorized or not is prohibited, except by use of a hand-held bucket or similar container or a hand-held hose equipped with a positive self-closing water shut-off nozzle or device. This subsection does not apply to any commercial car washing facility.

**G. Commercial Lodging Establishments Must Provide Guests Option to Decline Daily Linen Services:** Hotels, motels and other commercial lodging establishments must provide customers the option of not having towels and linen laundered daily. Commercial lodging establishments must prominently display notice of this option in each bathroom using clear and easily understood language.

**H. No Installation of Single Pass Cooling Systems:** Installation of single pass cooling systems is prohibited in buildings requesting new water service.

**I. No Installation of Non-Recirculating Systems in Commercial Car Wash and Laundry Systems:** Installation of non-recirculating water systems is prohibited in new commercial conveyor car wash and new commercial laundry systems.

**J. New or Remodeled Restaurants Required to Use Water Conserving Dish Wash Spray Valves:** All new or remodeled food preparation establishments, such as restaurants or cafes, are prohibited from using non-water conserving dish wash spray valves.

**K. Water Served Only Upon Request:** Restaurants and other food establishments will only serve water upon request.

#### **14.02.050 Level 1 Water Supply Shortage – Voluntary Reductions**

A. The City Council or, in the event prompt action is necessary, the City Manager, may declare a Level 1 Water Supply Shortage condition (a "Level 1 Condition") when there is a reasonable probability, due to a projected imbalance in available water supply and projected peak demand, that there will be a supply shortage and that a consumer demand reduction of up to 10 percent is needed in order to ensure that sufficient supplies will be available to meet anticipated demands. Upon such declaration, the City Manager or his designee shall take the necessary actions to implement the voluntary

Level 1 Condition conservation practices identified in this Chapter. In the event a Level 1 Condition has been declared by the City Manager, the City Council shall consider the ratification of such declaration at its next regularly scheduled meeting or at a special meeting called for such purpose.

B. During the period of a declared Level 1 Condition, the City of El Paso de Robles will increase its public education and outreach efforts to increase public awareness of the need to implement the following water conservation practices.

1. Irrigation of residential and commercial landscapes, including golf courses, parks, school grounds and recreation fields, before 9 a.m. and after 7 p.m. except for renovation or repair of the irrigation system with an operator present.

2. Repair or prevention of all water leaks upon discovery or within five days of notification by the City of El Paso de Robles.

3. Use of recycled, non-potable, or water imported from outside City limits for construction purposes.

#### **14.02.060 Level 2 Water Supply Shortage – Mandatory Reductions**

A. The City Council, or in the event prompt action is necessary, the City Manager, may recommend and declare a Level 2 Water Supply Shortage condition (a "Level 2 Condition") when there is a reasonable probability, due to a projected imbalance in available water supply and projected peak demand, that there will be a supply shortage and that a consumer demand reduction of up to 20 percent is required in order to ensure that sufficient supplies will be available to meet anticipated demands. Upon the declaration of a Level 2 Condition, the City Manager or his designee shall take the necessary actions to notify the public and implement the mandatory Level 2 Condition conservation practices identified in this Chapter. In the event a Level 2 Condition has been declared by the City Manager, the City Council shall consider the ratification of such declaration at its next regularly scheduled meeting or at a special meeting called for such purpose.

B. During the period of a declared Level 2 Condition, all water customers shall be required to comply with all Level 1 Condition measures, set forth in Section 14.020.050, and also shall comply with the following conservation measure:

1. All landscape irrigation shall be limited to no more than three assigned days per week and on an every other day schedule established and posted by the City.

C. At its discretion, the City may suspend the issuance of new hydrant meters and/or recall all outstanding meters in accordance with the City's existing Hydrant Meter Rental Agreement.

D. The City Manager may recommend and, upon resolution of the City Council, implement a water allocation per customer account served by the City of El Paso de Robles, and a schedule of per unit penalty surcharges for use exceeding the water allocation. If the City Council adopts or modifies water allocations, the City Manager



will post notice of the water allocation prior to the effective date(s). Following the effective date(s) of the water allocation as established by the City Council, any customer that uses water in excess of the allocation will be subject to a penalty surcharge for each billing unit of water in excess of the allocation. The per unit penalty surcharge for excess water usage will be in addition to any other remedy, penalty, or fine that may be imposed for violation of this Chapter. At the City's discretion, the water conservation measures required under Level 1 and Level 2 conditions may be suspended during the period a water allocation is in effect.

#### **14.02.070 Level 3 Water Supply Shortage - Critical Condition**

A. The City Council or, in the event prompt action is necessary, the City Manager, may recommend and declare a Level 3 Water Supply Shortage condition (a "Level 3 Condition") when there is a reasonable probability, due to a projected imbalance in available water supply and projected peak demand, that there will be a supply shortage and that a consumer demand reduction of up to 30 percent is required in order to ensure that sufficient supplies will be available to meet anticipated demands. Upon declaration of Level 3 Water Supply Shortfall, the City Manager or his designee shall take the necessary actions to implement the mandatory Level 3 Condition conservation practices identified in this Chapter. In the event a Level 3 Condition has been declared by the City Manager, the City Council shall consider the ratification of such declaration at its next regularly scheduled meeting or at a special meeting called for such purpose.

B. During a the period of a declared Level 3 Condition, all water customers shall comply with all Level 1 Condition and Level 2 Condition water conservation measures and shall also comply with the following additional mandatory conservation measures:

1. All landscape irrigation shall be limited to no more than two assigned days per week on a schedule established and posted by the City Manager or his designee.

2. Filling or re-filling of ornamental lakes or ponds is prohibited except to the extent needed to sustain plants or animals that have been actively managed within the water feature prior to the declaration of a Level 3 Condition.

3. All water leaks, breaks or other plumbing malfunctions shall be repaired upon discovery or within forty-eight hours of notification by the City of El Paso de Robles, with the exception of rental properties, which shall have up to seventy-two hours to repair interior unit leaks, in order to comply with state laws regarding the provision of notice to tenants.

4. Using water to wash vehicles, whether motorized or not, is prohibited except at commercial car washing facilities.

5. Washing down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking areas, tennis courts, patios or alleys, is prohibited except under the following conditions:

a. To alleviate safety or sanitary hazards, and then only by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off device, a low-volume, high-pressure cleaning machine or a low-volume high-pressure water broom.

b. All wash-down activities must comply with all state and local regulations pertaining to discharges to the City's storm drain system.

C. Upon the declaration of a Level 3 Condition, new potable water services, temporary or permanent water meters, and statements of immediate ability to serve or provide potable water service (including, but not limited to, will serve letters, certificates, or letters of availability) will be allowed only under the circumstances listed below. This provision does not preclude the resetting or turn-on of meters to provide continuation of water service or to restore service that has been interrupted.

1. A valid building permit has been issued for the project; or

2. The project is necessary to protect the public's health, safety, and welfare; or

3. The applicant provides substantial evidence satisfactory to the City Manager or his designee of an enforceable commitment that the new water demands for the project will be offset prior to the provision of new water meter(s). The applicant's offset program must be approved by the City's Water Manager. Such offsets may be in the form of additional water conservation measures, the provision of recycled water use in place of existing potable water demands (if available), or other such offsets developed and approved by the City Manager or his designee. To obtain approval, the applicant's plan must demonstrate that the development will not increase the demand on the City's water system.

During the period of a Level 3 Condition, the expiration dates of approved tentative maps and related entitlements for such development projects shall be tolled until such time as the Level III Condition has improved to a Level II Condition or better. Notwithstanding the foregoing, an applicant with an approved tentative map and related entitlements may choose to proceed with development under the conditions set forth in subsection c.3., above.

D. Upon the declaration of a Level 3 Condition, the City will suspend consideration of any annexations to its service area. This subsection does not apply to boundary corrections and annexations that will not result in any increased use of water.

E. At its discretion, the City may suspend the issuance of new hydrant meters and/or recall all outstanding meters in accordance with the City's existing Hydrant Meter Rental Agreement.

F. The City Manager may recommend and, upon resolution of the City Council, implement a water allocation per customer account served by the City of El Paso de Robles, and a schedule of penalty surcharges for exceeding the water allocation. If the

City Council adopts or modifies water allocations, the City Manager will post notice of the water allocation prior to the effective date(s). Following the effective date(s) of the water allocation as established by the City Council, any customer that uses water in excess of the allocation will be subject to a penalty surcharge for each billing unit of water in excess of the allocation. The penalty surcharge for excess water usage will be in addition to any other remedy, penalty, or fine that may be imposed for violation of this Chapter. At the City's discretion, the water conservation measures required under Level 1, Level 2, and Level 3 conditions may be suspended during the period a water allocation is in effect.

#### **14.02.080 Level 4 Water Supply Shortage – Emergency Condition**

A. The City Manager may declare a water shortage emergency pursuant to California Water Code section 350 and declare a Level 4 Water Supply Shortage condition (a "Level 4 Condition") when there is a reasonable probability, due to a projected imbalance in available water supply and projected peak demand, that there will be a supply shortage and that a consumer demand reduction of up to 50 percent is required in order to ensure that sufficient supplies will be available to meet anticipated demands. Upon declaration of Level 4 Condition, the City Manager or his designee shall take all necessary actions to implement the mandatory Level 4 conservation practices identified in this Chapter and on the grounds provided in California Water Code section 350. In the event a Level 4 Condition has been declared by the City Manager, the City Council shall consider the ratification of such declaration at its next regularly scheduled meeting or at a special meeting called for such purpose.

B. During the period of a declared Level 4 Condition, all water customers shall be required to comply with all Level 1 Condition, Level 2 Condition and Level 3 Condition water conservation measures and shall also comply with the following additional mandatory conservation measures:

1. All landscape irrigation, except crops and landscape products of commercial growers and nurseries, shall be prohibited. This restriction does not apply to:

a. Watering of livestock; and

b. Public works projects and actively irrigated environmental mitigation projects.

2. All water leaks, breaks of other plumbing malfunctions shall be repaired upon discovery or within twenty-four hours of notification by the City of El Paso de Robles, with the exception of rental properties, which shall have up to seventy-two hours to repair interior unit leaks, in order to comply with state laws regarding the provision of notice to tenants.

3. Filling or refilling of residential pools and spas is prohibited.

C. The City shall not enter into any new commitments or agreements to provide water to customers or agencies either inside or outside of the City of El Paso de Robles.

#### **14.02.090 Procedures for Determination and Notification of Water Supply Shortage Level**

A. The existence of a Level 1 Condition may be declared upon recommendation by the City Manager along with a written determination of the existence of the facts and circumstances supporting the determination. A copy of the written determination will be filed with the City Clerk. The City Manager or his designee will publish a notice of the determination of existence of a Level 1 Condition in the City's official newspaper. The City may also post notice of the Condition on its website or include it in its regular billing statement..

The Water Department will monitor the projected supply and demand for water during periods of emergency or *drought* and will recommend to the City Manager the extent of the conservation required. The City Manager will recommend to the City Council the implementation or termination of the appropriate level of *water conservation* in accordance with this Chapter.

B. The existence of a Level 2 or Level 3 Condition may be declared upon recommendation by the City Manager and notification of the City Council. The mandatory conservation measures applicable to Level 2 or Level 3 Condition, as applicable, will take effect on the tenth day after the date the shortage level is declared. Within five days following the declaration of the applicable Condition, the City Manager or his designee will publish a notice providing the extent, terms and conditions respecting the use and consumption of water. The notice shall be published, at a minimum, for three consecutive days in the newspaper used for official City notices. The City may also post notice of the Condition on its website or include it in its regular billing statement.

C. The existence of Level 4 Condition may be declared upon recommendation by the City Manager. The mandatory conservation measures applicable to Level 2, Level 3, or Level 4 Conditions will take effect on the fourth day after the date the shortage level is declared. Within 24 hours following the declaration of the shortage level, the City Manager or his designee will publish a notice giving the extent, terms and conditions respecting the use and consumption of water. The notice shall be published, at a minimum, for three consecutive days in the newspaper used for official City notices. The City may also post notice of the Condition on its website or include it in its regular billing statement.

D. The City Council may declare an end to a particular Condition upon the recommendation of the City Manager by the adoption of a resolution at any regular or special meeting of the City Council.

#### **14.02.100 Hardship Variance**

A. If, due to unique circumstances, a specific requirement of this Chapter would result in undue hardship to a customer using City of El Paso de Robles water or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property or classes of water uses, then the customer may apply

for a variance to the requirements as provided in this Section 14.02.100.

B. The variance may be granted or conditionally granted only upon a written finding of the existence of facts demonstrating an undue hardship to a customer or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property or classes of water user due to specific and unique circumstances of the user or the user's property.

1. Application. Application for a variance will be in written form prescribed by the City Manager or his designee and will be accompanied by a non-refundable processing fee in an amount set by resolution of the City Council.

2. Supporting Documentation. The written application will be accompanied by photographs, maps, drawings, or other pertinent information as applicable, including a written statement of the applicant.

3. Approval Authority. The City Manager or his designee will exercise approval authority and act upon any completed application after submittal and may approve, conditionally approve, or deny the variance. The applicant requesting the variance will be promptly notified in writing of any action taken. The decision of the City Manager or his designee is final. Unless specified otherwise at the time a variance is approved, the variance applies to the subject property during the term of the applicable Condition.

4. Required Findings for Variance. An application for a variance will be denied unless the approving authority finds, based on the information provided in the application, supporting documents, or such additional information as may be requested, and on water use information for the property as shown by the records of the City of El Paso de Robles, all of the following:

a. That the variance does not constitute a grant of special privilege inconsistent with the limitations upon other City of El Paso de Robles *customers*.

b. That because of special circumstances applicable to the property or its use, the strict application of this Chapter would have a disproportionate impact on the property or use that exceeds the impacts upon customers generally.

c. That the authorizing of such variance will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the City of El Paso de Robles to effectuate the purpose of this Chapter 14.02 and will not be detrimental to the public interest.

d. That the condition or situation of the subject property or the intended use of the property for which the variance is sought is not common, recurrent or general in nature.

5. No relief will be granted to any customer for any reason in the absence of a showing by the customer that the customer has achieved the maximum practical reduction in water consumption in the customer's residential, commercial, industrial,

institutional, agricultural or governmental water consumption.

**14.02.110 Violations and Penalties**

It is unlawful for any *customer* to violate the mandatory provisions of this Chapter. Violations are subject to criminal, civil, and administrative penalties and remedies as provided in Chapter 1 of this Code. In addition, service of water may be discontinued or appropriately limited through the installation of flow-restricting devices to any *customer* who willfully uses water in violation of this Chapter. {Editors Note: As specified in Chapter 1.02 Penalties, Section 1.02.010, following the issuance of two warnings, a fine not exceeding one hundred dollars shall be assessed for a first violation, a fine not exceeding two hundred dollars shall be assessed for a second violation of this ordinance within one year, and a fine not exceeding five hundred dollars shall be assessed for a third violation of this ordinance within one year.}

**SECTION 3.** Section 14.04.180 of the Municipal Code of the City of El Paso de Robles is hereby repealed.

**SECTION 4.** Severability

If any action, subsection, sentence, clause or phrase of this ordinance is, for any reason, held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 5.** Publication

The City Clerk will certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California, and cause the same to be published once in a newspaper of general circulation, published and circulated in the City of El Paso de Robles.

**SECTION 6.** Effective Date.

Based on the preceding, and having received no less than four affirmative votes of the City Council, this Ordinance is declared to be an urgency measure necessary for the immediate protection of the public health, safety and general welfare of the community, and shall be effective immediately upon its adoption, pursuant to Government code Section 36937, subdivision b.

**INTRODUCED, ADOPTED AND APPROVED** at a regular meeting of the City Council of the City of El Paso de Robles held on May 19, 2009 by the following vote:

AYES:

NOES:  
ABSTAIN:  
ABSENT:

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Duane Picanco, Mayor

ATTEST:

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Cathy David, Deputy City Clerk

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF EL PASO DE ROBLES  
TO ADD CHAPTER 14.02 TO THE MUNICIPAL CODE OF THE CITY OF EL PASO  
DE ROBLES ADOPTING A WATER CONSERVATION AND WATER SHORTAGE  
CONTINGENCY PLAN AND DECLARING THAT THIS IS AN ORDINANCE  
NECESSARY FOR THE PRESERVATION OF THE PUBLIC HEALTH, SAFETY AND  
WELFARE

**WHEREAS**, a consistent and minimum reliable supply of potable water is essential to the public health, safety, and welfare of the people and community of the City of El Paso De Robles; and

**WHEREAS**, Article X, Section 2 of the California Constitution declares that the general welfare requires that water resources be put to beneficial use, that waste or unreasonable use or unreasonable method of use of water be prevented, and that conservation of water be fully exercised with a view to the reasonable and beneficial use thereof; and

**WHEREAS**, the City of El Paso De Robles water production capacity is highly dependent on factors such as precipitation and local and regional demands for groundwater as its two current existing sources of water are the Paso Robles Groundwater Basin and the City's permitted allocation from the Salinas River; and

**WHEREAS**, the California State Water Resources Control Board ("SWRCB") has declared that the Salinas River is fully allocated, and the City's permit limits the maximum annual pumping from the Salinas River underflow to 4,600 acre feet per year ("AFY"); and

**WHEREAS**, due to current statewide drought conditions, the City's underflow wells are only producing at 69% of historic levels, and SWCRB has indicated it may restrict underflow pumping due to current drought conditions and has stated that water agencies should adopt conservation efforts to reduce urban water use by 20%; and

**WHEREAS**, the City and the County of San Luis Obispo (the "County") recently commissioned an update of the 2005 Groundwater Basin Study (*Evaluation of Paso Robles Groundwater Basin Pumping*, Todd Engineers May 2009) that concludes total groundwater pumping has increased by 5,516 AFY between 2000 and 2006, an average annual increase of 919 AFY. Assuming no water management actions, (including delivery of Nacimiento Project Water), this rate of increase would result in overdraft by 2017; and

**WHEREAS**, the 2009 Updated Basin Study also finds that groundwater basin pumping exceeds 90% of the safe annual yield; and

**WHEREAS**, the City and County are both parties to an agreement with a group representing a number of agricultural groundwater basin pumpers, known as "PRIOR," the purpose of which is to avoid expensive and lengthy groundwater rights litigation by cooperating in groundwater basin monitoring and water management; and



**WHEREAS**, the City's weekly demands for water historically have increased drastically in the summer months, rising from approximately 3.5 million gallons per day ("GPD") to approximately 12.7 GPD in July, an increase of 330%; and

**WHEREAS**, despite City efforts to rehabilitate wells, install new wells and recommission standby wells, the amount of water produced by those wells during the summer months has declined significantly in the past few years; and

**WHEREAS**, in 2004, City wells produced roughly 12.7 GPD, in the summer of 2008, production dropped to 11.7 MGD, and in 2009, water production is expected to decline to 10.4 MGD; and

**WHEREAS**, the City's water storage capacity is approximately 12 MGD, roughly 50% of which is allocated for emergency and fire-fighting storage capacity; and

**WHEREAS**, such fire-fighting capacity would be depleted within three days of prolonged hot weather conditions, thereby creating a potential threat to public health and safety; and

**WHEREAS**, it is in the City's best interest to enact prudent water demand management measures immediately to avoid water shortages; and

**WHEREAS**, California Water Code section 375 authorizes water suppliers to adopt and enforce a comprehensive water conservation program to reduce water consumption and conserve supplies after holding a public hearing; and

**WHEREAS**, the adoption and enforcement of a water conservation and supply shortage program is necessary to manage the City of El Paso de Robles' water demand and supply to minimize the effects of water shortages within Paso Robles. Such program is essential to ensure a reliable minimum supply of water for the public health, safety, and welfare.

**WHEREAS**, based on all of the above, as one measure to help ensure that the City will have adequate water supplies during the coming summer months and into the future, the Council finds and determines that the adoption of a water conservation and water shortage contingency plan is necessary.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL PASO DE ROBLES DOES HEREBY ORDAIN AS FOLLOWS::**

**SECTION 1.** The City Council hereby finds and determines that, based on all of the facts described above, the staff reports and the testimony received during a public hearing on this Ordinance, all of which are incorporated herein, the adoption of a water conservation and water shortage contingency plan is vitally necessary to help preserve and protect the public health, safety and welfare of the City and its residents.

**SECTION 2.** Chapter 14.02 is hereby added to Title 14 of the Municipal Code of the City

of El Paso de Robles as follows:

## CHAPTER 14.02

### WATER CONSERVATION AND WATER SHORTAGE CONTINGENCY PLAN

#### 14.02.010 Declaration of Necessity and Intent

A. This Chapter establishes certain mandatory and permanent water management requirements necessary to conserve water, enable effective water supply planning, assure reasonable and beneficial use of water, prevent waste of water, prevent unreasonable use of water, prevent unreasonable methods of use of water within the City of El Paso de Robles service area in order to assure adequate supplies of water to meet the needs of the public, and further the public health, safety, and welfare, recognizing that water is a scarce natural resource that requires careful management not only in times of drought, but at all times.

B. This Chapter also establishes regulations to be implemented during times of declared water shortages, or declared water shortage emergencies. It establishes four levels of actions to be implemented in times of shortage, with increasing restrictions on water use in response decreasing water supply or production capabilities.

C. Level 1 Water Supply Shortage measures are voluntary and will be reinforced through local and regional public education and awareness measures. Levels 2 through 4 Water Supply Shortage conditions mandate increasingly restrictive measures in order to attain escalating conservation goals. Those City water customers who violate the measures imposed under a Condition of Level 2 through Level 4 are subject to criminal, civil, and administrative penalties and remedies as provided in Chapter 1 of this Code.

#### 14.02.020 Application

A. This Chapter applies to any *customer* in the use of any water provided by the City of El Paso de Robles, including customers located outside the City.

B. This Chapter is intended solely to further the conservation of water. It is not intended to implement or replace any provision of federal, state, or local statutes, ordinances, or regulations relating to protection of water quality or control of drainage or runoff.

C. The provisions of this Chapter do not apply to uses of water necessary to protect public health and safety or for essential government services, such as police, fire and other similar emergency services.

D. Nothing in this Chapter 14.02 is intended to affect or limit the ability of the City Manager or his designee to declare and respond to an unforeseeable disaster or water

emergency such as an earthquake, or other major disruption in the water supply, pursuant to the general laws of the City or other provisions of this Code.

#### **14.02.030 Definitions**

The following words and phrases whenever used in this Chapter 14.02 will have the meaning defined in this section:

*A. Customer* means any person, corporation, public or private entity, public or private association, public or private agency, government agency or institution, school district, college, university, or any other user of water provided by the City of El Paso de Robles.

*B. Days* are defined as calendar days, unless otherwise indicated.

*C. Water Conservation* means the efficient management of water resources for beneficial uses, preventing waste, or accomplishing additional benefits with the same amount of water.

*D. Condition* means a declared water supply shortage condition, which may be at Level 1, Level 2, Level 3 or Level 4, as described in this Chapter 14.02.

#### **14.02.040 Mandatory Minimum Water Conservation Requirements – Prohibition Against Waste**

The following water conservation requirements shall be in effect at all times and are permanent. Violations will be considered waste and an unreasonable use of water and are subject to penalties.

**A. No Excessive Water Flow or Runoff:** Watering or irrigating of any lawn, landscape or other vegetated area in a manner that causes or allows excessive water flow or runoff onto an adjoining sidewalk, driveway, street, alley, gutter or ditch is prohibited.

**B. No Overfilling of Swimming Pools and Spas:** Overfilling of a swimming pools and spas such that overflow water is discharged onto an adjoining sidewalk, driveway, street, alley, gutter or ditch is prohibited.

**C. No Washing Down Hard or Paved Surfaces:** Washing down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking areas, tennis courts, patios or alleys, is prohibited except under the following conditions:

1. To alleviate safety or sanitary hazards, and then only by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off device.

2. When a low-volume, high-pressure cleaning machine or a low-volume high-pressure water broom is used.

3. All wash-down activities must comply with all state and local regulations pertaining to discharges to the City's storm drain system.

**D. Obligation to Fix Leaks, Breaks or Malfunctions:** Excessive use, loss or escape of water through breaks, leaks or other malfunctions in the customers' plumbing or distribution system for any period of time after such escape of water should have reasonably been discovered and corrected and in no event more than seven days after written notification by the City of El Paso de Robles, is prohibited.

**E. Re-circulating Water Required for Water Fountains and Decorative Water Features:** Operating a water fountain or other decorative water feature that does not use re-circulated water is prohibited.

**F. Limits on Washing Vehicles:** Using water to wash or clean a vehicle, including but not limited to any automobile, truck, van, bus, motorcycle, boat or trailer, whether motorized or not is prohibited, except by use of a hand-held bucket or similar container or a hand-held hose equipped with a positive self-closing water shut-off nozzle or device. This subsection does not apply to any commercial car washing facility.

**G. Commercial Lodging Establishments Must Provide Guests Option to Decline Daily Linen Services:** Hotels, motels and other commercial lodging establishments must provide customers the option of not having towels and linen laundered daily. Commercial lodging establishments must prominently display notice of this option in each bathroom using clear and easily understood language.

**H. No Installation of Single Pass Cooling Systems:** Installation of single pass cooling systems is prohibited in buildings requesting new water service.

**I. No Installation of Non-Recirculating Systems in Commercial Car Wash and Laundry Systems:** Installation of non-recirculating water systems is prohibited in new commercial conveyor car wash and new commercial laundry systems.

**J. New or Remodeled Restaurants Required to Use Water Conserving Dish Wash Spray Valves:** All new or remodeled food preparation establishments, such as restaurants or cafes, are prohibited from using non-water conserving dish wash spray valves.

**K. Water Served Only Upon Request:** Restaurants and other food establishments will only serve water upon request.

#### **14.02.050 Level 1 Water Supply Shortage – Voluntary Reductions**

A. The City Council or, in the event prompt action is necessary, the City Manager, may declare a Level 1 Water Supply Shortage condition (a "Level 1 Condition") when there is a reasonable probability, due to a projected imbalance in available water supply and projected peak demand, that there will be a supply shortage and that a consumer demand reduction of up to 10 percent is needed in order to ensure that sufficient supplies will be available to meet anticipated demands. Upon such declaration, the City Manager or his designee shall take the necessary actions to implement the voluntary Level 1 Condition conservation practices identified in this Chapter. In the event a Level 1 Condition has been declared by the City Manager, the City Council shall consider the ratification of such declaration at its next regularly scheduled meeting or

at a special meeting called for such purpose.

B. During the period of a declared Level 1 Condition, the City of El Paso de Robles will increase its public education and outreach efforts to increase public awareness of the need to implement the following water conservation practices.

1. Irrigation of residential and commercial landscapes, including golf courses, parks, school grounds and recreation fields, before 9 a.m. and after 7 p.m. except for renovation or repair of the irrigation system with an operator present.

2. Repair or prevention of all water leaks upon discovery or within five days of notification by the City of El Paso de Robles.

3. Use of recycled, non-potable, or water imported from outside City limits for construction purposes.

#### **14.02.060 Level 2 Water Supply Shortage – Mandatory Reductions**

A. The City Council, or in the event prompt action is necessary, the City Manager, may recommend and declare a Level 2 Water Supply Shortage condition (a "Level 2 Condition") when there is a reasonable probability, due to a projected imbalance in available water supply and projected peak demand, that there will be a supply shortage and that a consumer demand reduction of up to 20 percent is required in order to ensure that sufficient supplies will be available to meet anticipated demands. Upon the declaration of a Level 2 Condition, the City Manager or his designee shall take the necessary actions to notify the public and implement the mandatory Level 2 Condition conservation practices identified in this Chapter. In the event a Level 2 Condition has been declared by the City Manager, the City Council shall consider the ratification of such declaration at its next regularly scheduled meeting or at a special meeting called for such purpose.

B. During the period of a declared Level 2 Condition, all water customers shall be required to comply with all Level 1 Condition measures, set forth in Section 14.020.050, and also shall comply with the following conservation measure:

1. All landscape irrigation shall be limited to no more than three assigned days per week and on an every other day schedule established and posted by the City.

C. At its discretion, the City may suspend the issuance of new hydrant meters and/or recall all outstanding meters in accordance with the City's existing Hydrant Meter Rental Agreement.

D. The City Manager may recommend and, upon resolution of the City Council, implement a water allocation per customer account served by the City of El Paso de Robles, and a schedule of per unit penalty surcharges for use exceeding the water allocation. If the City Council adopts or modifies water allocations, the City Manager will post notice of the water allocation prior to the effective date(s). Following the effective date(s) of the water allocation as established by the City Council, any customer that uses water in excess of the allocation will be subject to a penalty

surcharge for each billing unit of water in excess of the allocation. The per unit penalty surcharge for excess water usage will be in addition to any other remedy, penalty, or fine that may be imposed for violation of this Chapter. At the City's discretion, the water conservation measures required under Level 1 and Level 2 conditions may be suspended during the period a water allocation is in effect.

#### **14.02.070 Level 3 Water Supply Shortage - Critical Condition**

A. The City Council or, in the event prompt action is necessary, the City Manager, may recommend and declare a Level 3 Water Supply Shortage condition (a "Level 3 Condition") when there is a reasonable probability, due to a projected imbalance in available water supply and projected peak demand, that there will be a supply shortage and that a consumer demand reduction of up to 30 percent is required in order to ensure that sufficient supplies will be available to meet anticipated demands. Upon declaration of Level 3 Water Supply Shortfall, the City Manager or his designee shall take the necessary actions to implement the mandatory Level 3 Condition conservation practices identified in this Chapter. In the event a Level 3 Condition has been declared by the City Manager, the City Council shall consider the ratification of such declaration at its next regularly scheduled meeting or at a special meeting called for such purpose.

B. During a the period of a declared Level 3 Condition, all water customers shall comply with all Level 1 Condition and Level 2 Condition water conservation measures and shall also comply with the following additional mandatory conservation measures:

1. All landscape irrigation shall be limited to no more than two assigned days per week on a schedule established and posted by the City Manager or his designee.

2. Filling or re-filling of ornamental lakes or ponds is prohibited except to the extent needed to sustain plants or animals that have been actively managed within the water feature prior to the declaration of a Level 3 Condition.

3. All water leaks, breaks or other plumbing malfunctions shall be repaired upon discovery or within forty-eight hours of notification by the City of El Paso de Robles, with the exception of rental properties, which shall have up to seventy-two hours to repair interior unit leaks, in order to comply with state laws regarding the provision of notice to tenants.

4. Using water to wash vehicles, whether motorized or not, is prohibited except at commercial car washing facilities.

5. Washing down hard or paved surfaces, including but not limited to sidewalks, walkways, driveways, parking areas, tennis courts, patios or alleys, is prohibited except under the following conditions:

a. To alleviate safety or sanitary hazards, and then only by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing

water shut-off device, a low-volume, high-pressure cleaning machine or a low-volume high-pressure water broom.

b. All wash-down activities must comply with all state and local regulations pertaining to discharges to the City's storm drain system.

C. Upon the declaration of a Level 3 Condition, new potable water services, temporary or permanent water meters, and statements of immediate ability to serve or provide potable water service (including, but not limited to, will serve letters, certificates, or letters of availability) will be allowed only under the circumstances listed below. This provision does not preclude the resetting or turn-on of meters to provide continuation of water service or to restore service that has been interrupted.

1. A valid building permit has been issued for the project; or

2. The project is necessary to protect the public's health, safety, and welfare; or

3. The applicant provides substantial evidence satisfactory to the City Manager or his designee of an enforceable commitment that the new water demands for the project will be offset prior to the provision of new water meter(s). The applicant's offset program must be approved by the City's Water Manager. Such offsets may be in the form of additional water conservation measures, the provision of recycled water use in place of existing potable water demands (if available), or other such offsets developed and approved by the City Manager or his designee. To obtain approval, the applicant's plan must demonstrate that the development will not increase the demand on the City's water system.

During the period of a Level 3 Condition, the expiration dates of approved tentative maps and related entitlements for such development projects shall be tolled until such time as the Level III Condition has improved to a Level II Condition or better. Notwithstanding the foregoing, an applicant with an approved tentative map and related entitlements may choose to proceed with development under the conditions set forth in subsection c.3., above.

D. Upon the declaration of a Level 3 Condition, the City will suspend consideration of any annexations to its service area. This subsection does not apply to boundary corrections and annexations that will not result in any increased use of water.

E. At its discretion, the City may suspend the issuance of new hydrant meters and/or recall all outstanding meters in accordance with the City's existing Hydrant Meter Rental Agreement.

F. The City Manager may recommend and, upon resolution of the City Council, implement a water allocation per customer account served by the City of El Paso de Robles, and a schedule of penalty surcharges for exceeding the water allocation. If the City Council adopts or modifies water allocations, the City Manager will post notice of the water allocation prior to the effective date(s). Following the effective date(s) of the

water allocation as established by the City Council, any customer that uses water in excess of the allocation will be subject to a penalty surcharge for each billing unit of water in excess of the allocation. The penalty surcharge for excess water usage will be in addition to any other remedy, penalty, or fine that may be imposed for violation of this Chapter. At the City's discretion, the water conservation measures required under Level 1, Level 2, and Level 3 conditions may be suspended during the period a water allocation is in effect.

**14.02.080 Level 4 Water Supply Shortage – Emergency Condition**

A. The City Manager may declare a water shortage emergency pursuant to California Water Code section 350 and declare a Level 4 Water Supply Shortage condition (a :Level 4 Condition") when there is a reasonable probability, due to a projected imbalance in available water supply and projected peak demand, that there will be a supply shortage and that a consumer demand reduction of up to 50 percent is required in order to ensure that sufficient supplies will be available to meet anticipated demands. Upon declaration of Level 4 Condition, the City Manager or his designee shall take all necessary actions to implement the mandatory Level 4 conservation practices identified in this Chapter and on the grounds provided in California Water Code section 350. In the event a Level 4 Condition has been declared by the City Manager, the City Council shall consider the ratification of such declaration at its next regularly scheduled meeting or at a special meeting called for such purpose.

B. During the period of a declared Level 4 Condition, all water customers shall be required to comply with all Level 1 Condition, Level 2 Condition and Level 3 Condition water conservation measures and shall also comply with the following additional mandatory conservation measures:

1. All landscape irrigation, except crops and landscape products of commercial growers and nurseries, shall be prohibited. This restriction does not apply to:

a. Watering of livestock; and

b. Public works projects and actively irrigated environmental mitigation projects.

2. All water leaks, breaks of other plumbing malfunctions shall be repaired upon discovery or within twenty-four hours of notification by the City of El Paso de Robles, with the exception of rental properties, which shall be have up to seventy-two hours to repair interior unit leaks, in order to comply with state laws regarding the provision of notice to tenants.

3. Filling or refilling of residential pools and spas is prohibited.

C. The City shall not enter into any new commitments or agreements to provide water to customers or agencies either inside or outside of the City of El Paso de Robles.

**14.02.090 Procedures for Determination and Notification of Water Supply Shortage Level**



A. The existence of a Level 1 Condition may be declared upon recommendation by the City Manager along with a written determination of the existence of the facts and circumstances supporting the determination. A copy of the written determination will be filed with the City Clerk. The City Manager or his designee will publish a notice of the determination of existence of a Level 1 Condition in the City's official newspaper. The City may also post notice of the Condition on its website or include it in its regular billing statement..

The Water Department will monitor the projected supply and demand for water during periods of emergency or *drought* and will recommend to the City Manager the extent of the conservation required. The City Manager will recommend to the City Council the implementation or termination of the appropriate level of *water conservation* in accordance with this Chapter.

B. The existence of a Level 2 or Level 3 Condition may be declared upon recommendation by the City Manager and notification of the City Council. The mandatory conservation measures applicable to Level 2 or Level 3 Condition, as applicable, will take effect on the tenth day after the date the shortage level is declared. Within five days following the declaration of the applicable Condition, the City Manager or his designee will publish a notice providing the extent, terms and conditions respecting the use and consumption of water. The notice shall be published, at a minimum, for three consecutive days in the newspaper used for official City notices. The City may also post notice of the Condition on its website or include it in its regular billing statement.

C. The existence of Level 4 Condition may be declared upon recommendation by the City Manager. The mandatory conservation measures applicable to Level 2, Level 3, or Level 4 Conditions will take effect on the fourth day after the date the shortage level is declared. Within 24 hours following the declaration of the shortage level, the City Manager or his designee will publish a notice giving the extent, terms and conditions respecting the use and consumption of water. The notice shall be published, at a minimum, for three consecutive days in the newspaper used for official City notices. The City may also post notice of the Condition on its website or include it in its regular billing statement.

D. The City Council may declare an end to a particular Condition upon the recommendation of the City Manager by the adoption of a resolution at any regular or special meeting of the City Council.

#### **14.02.100 Hardship Variance**

A. If, due to unique circumstances, a specific requirement of this Chapter would result in undue hardship to a customer using City of El Paso de Robles water or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property or classes of water uses, then the customer may apply for a variance to the requirements as provided in this Section 14.02.100.

B. The variance may be granted or conditionally granted only upon a written finding

of the existence of facts demonstrating an undue hardship to a customer or to property upon which water is used, that is disproportionate to the impacts to water users generally or to similar property or classes of water user due to specific and unique circumstances of the user or the user's property.

1. Application. Application for a variance will be in written form prescribed by the City Manager or his designee and will be accompanied by a non-refundable processing fee in an amount set by resolution of the City Council.

2. Supporting Documentation. The written application will be accompanied by photographs, maps, drawings, or other pertinent information as applicable, including a written statement of the applicant.

3. Approval Authority. The City Manager or his designee will exercise approval authority and act upon any completed application after submittal and may approve, conditionally approve, or deny the variance. The applicant requesting the variance will be promptly notified in writing of any action taken. The decision of the City Manager or his designee is final. Unless specified otherwise at the time a variance is approved, the variance applies to the subject property during the term of the applicable Condition.

4. Required Findings for Variance. An application for a variance will be denied unless the approving authority finds, based on the information provided in the application, supporting documents, or such additional information as may be requested, and on water use information for the property as shown by the records of the City of El Paso de Robles, all of the following:

a. That the variance does not constitute a grant of special privilege inconsistent with the limitations upon other City of El Paso de Robles *customers*.

b. That because of special circumstances applicable to the property or its use, the strict application of this Chapter would have a disproportionate impact on the property or use that exceeds the impacts upon customers generally.

c. That the authorizing of such variance will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the City of El Paso de Robles to effectuate the purpose of this Chapter 14.02 and will not be detrimental to the public interest.

d. That the condition or situation of the subject property or the intended use of the property for which the variance is sought is not common, recurrent or general in nature.

5. No relief will be granted to any customer for any reason in the absence of a showing by the customer that the customer has achieved the maximum practical reduction in water consumption in the customer's residential, commercial, industrial, institutional, agricultural or governmental water consumption.

**14.02.110 Violations and Penalties**

It is unlawful for any *customer* to violate the mandatory provisions of this Chapter. Violations are subject to criminal, civil, and administrative penalties and remedies as provided in Chapter 1 of this Code. In addition, service of water may be discontinued or appropriately limited through the installation of flow-restricting devices to any *customer* who willfully uses water in violation of this Chapter. {Editors Note: As specified in Chapter 1.02 Penalties, Section 1.02.010, following the issuance of two warnings, a fine not exceeding one hundred dollars shall be assessed for a first violation, a fine not exceeding two hundred dollars shall be assessed for a second violation of this ordinance within one year, and a fine not exceeding five hundred dollars shall be assessed for a third violation of this ordinance within one year.}

**SECTION 3.** Section 14.04.180 of the Municipal Code of the City of El Paso de Robles is hereby repealed.

**SECTION 4.** Severability

If any action, subsection, sentence, clause or phrase of this ordinance is, for any reason, held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance which can be given effect without the invalid provisions or application, and to this end the provisions of this Ordinance are declared to be severable.

**SECTION 5.** Publication

The City Clerk will certify to the passage of this Ordinance by the City Council of the City of El Paso de Robles, California, and cause the same to be published once in a newspaper of general circulation, published and circulated in the City of El Paso de Robles.

**SECTION 6.** Effective Date.

This Ordinance will take effect thirty (30) days after its final passage and only if Ordinance No. XXX is determined to be invalid.

Introduced at a regular meeting of the City Council held on June 2, 2009 for first reading by the City Council of the City of El Paso de Robles, and adopted on the \_\_\_ day of June, 2009 by the following vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

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Duane Picanco, Mayor

ATTEST:

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Cathy David, Deputy City Clerk