ORDINANCE NO. 2177, NEW SERIES

AN ORDINANCE OF THE CITY OF MORGAN HILL AMENDING SECTIONS, 13.04.330 (WASTING OF WATER) AND 13.04.390 (ENFORCEMENT) OF CHAPTER 13.04 (WATER SYSTEM) OF TITLE 13 (PUBLIC SERVICES), AMENDING REGULATIONS PROHIBITING NONESSENTIAL USE OF POTABLE WATER

THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Findings.

a. A reliable minimum supply of potable water is essential to the public health, safety and welfare of the people and economy of City of Morgan Hill.

b. The City of Morgan Hill is located in a semi-arid region and is dependent upon local groundwater, and imported water supplies. A growing population, climate change, environmental concerns, and other factors in other parts of the State and western United States, make the region highly susceptible to water supply reliability issues.

c. There is a need for water conservation program and regulations because there is a limited supply of water available to serve the residents and businesses of Morgan Hill and demand for water has, at times, exceeded supply, threatening a water shortage.

d. Careful water management that includes active water conservation measures not only in times of drought, but at all times, is essential to ensure a reliable minimum supply of water to meet current and future water supply needs.

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

f. Article XI, Section 7 of the California Constitution declares that a city or county may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.

g. California Water Code Section 375 authorizes water suppliers to adopt and enforce a comprehensive water conservation program to reduce water consumption and conserve supplies.

h. The Governor of California has proclaimed a statewide drought and issued an Executive Order, which takes immediate action to address a dire situation where numerous California communities are being forced to mandate water conservation or rationing. The lack of water has created other problems, such as extreme fire danger due to dry conditions, economic harm to urban and rural communities, loss of crops and the potential to degrade water quality in some regions. As well, the Santa Clara Valley

Water District Board of Directors has called for an immediate 30 percent reduction in water use to assure we have enough water to endure the current drought.

g. The City of Morgan Hill's water conservation and supply shortage program has functioned adequately since its adoption in 2009. Minor changes to the program are necessary in order to best manage the City of Morgan Hill's potable water supply in the short and long-term and to avoid or minimize the effects of drought and shortage within the City of Morgan Hill.

Section 2. Declaration of Purpose and Intent.

a. The purpose of this Ordinance is to amend the City of Morgan Hill's water conservation and supply shortage program. The program's purposes are to reduce water consumption within the City of Morgan Hill through conservation, enable effective water supply planning, assure reasonable and beneficial use of water, prevent waste of water, and maximize the efficient use of water within the City of Morgan Hill to avoid and minimize the effect and hardship of water shortage to the greatest extent possible.

b. This Ordinance amends permanent water conservation standards intended to alter behavior related to water use efficiency at all times and further establishes three levels of water supply shortage response actions to be implemented during times of declared water shortage or declared water shortage emergency, with increasing restrictions on water use in response to worsening drought or emergency conditions and decreasing supplies.

Section 3. CEQA Exemption

The city finds that this Ordinance and actions taken hereafter pursuant to this Ordinance are exempt from the California Environmental Quality Act per the California Environmental Quality Act Guidelines Section 15307 (protection and preservation of natural resources). The City Clerk is hereby authorized and directed to file a Notice of Exemption as soon as possible following adoption of this Ordinance.

Section 4. Section 13.04.330 (Wasting of Water) of Chapter 13.04 (Water System) of Title 13 (Public Services) is hereby amended in its entirety to read as follows:

"13.04.330 Wasting of water and drought emergencies

A. Applicability

1. The provisions of this chapter apply to any person in the use of any potable water in the city.

2. 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.

3. The provisions of this chapter do not apply to the use of recycled water, with the exception of subsection B (1) of this section.

4. The provisions of this chapter do not apply to the use of water by commercial nurseries and commercial growers to sustain plants, trees, shrubs, crops or other vegetation intended for commercial sale.

5. This chapter is intended solely to further the conservation of water. It is not intended to implement nor supersede any provision of federal, State, or local statutes, ordinances, or regulations relating to protection of water quality or control of drainage or runoff.

B. Prohibition Against Waste: The following water conservation requirements are effective at all times and are permanent. Violations of this section will be considered waste and an unreasonable use of water.

1. Limits on Watering Hours: Watering or irrigating of lawn, landscape or other vegetated area with potable water is prohibited between the hours of 9:00 a.m. and 7:00 p.m. Pacific Standard/Daylight Savings Time on any day, except by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system.

2. Limit on Watering Duration: Watering or irrigating of lawn, landscape or other vegetated area with potable water using a landscape irrigation system or a watering device that is not continuously attended is limited to no more than fifteen (15) minutes watering per day per station/valve/zone. This subsection does not apply to landscape irrigation stations/valves/zones that exclusively use drip type irrigation systems or high efficiency sprinkler nozzles that have a precipitation rate of less than one (1) inch per hour. However, at no time can any irrigation system be operated long enough to cause runoff. .

3. 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.

4. 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 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 equipped to recycle any water used, or a low-volume high-pressure water broom.

5. Obligation to Fix Leaks, Breaks or Malfunctions: Excessive use, loss or escape of water through breaks, leaks or other malfunctions in the water user's 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 ten (10) days of receiving written notice from the city, is prohibited.

6. Recirculating Water Required for Water Fountains and Decorative Water Features: Operating a water fountain or other decorative water feature that does not use recirculated water is prohibited.

7. 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 that incorporates a recycled water system in its operation.

8. Drinking Water Served Upon Request Only: Eating or drinking establishments, including but not limited to a restaurant, hotel, cafe, cafeteria, bar, or other public place where food or drinks are sold, served, or offered for sale, are prohibited from providing drinking water to any person unless expressly requested.

9. 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.

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

11. No Installation of Non recirculating 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.

12. Restaurants Required to Use Water Conserving Dish Wash Spray Valves: Food preparation establishments, such as restaurants or cafes, are prohibited from using non-water conserving dish wash spray valves.

13. Commercial Car Wash Systems: Within one year of passage of this ordinance, all commercial conveyor car wash systems must have installed operational re-circulating water systems, or must have secured a waiver of this requirement from the city.

14. Construction Activities: Use of potable water for construction site dust control, compaction, and other site activities suitable for nonpotable water is prohibited if recycled water is available within five miles of the construction site.

15. Plumbing System Testing: Use of potable water for plumbing system testing is prohibited unless required by law or alternative testing procedures are determined to be unsuitable by City inspection staff.

16. Pool Covers: Constructing a pool without the inclusion of a pool cover is prohibited. All contracts for the construction of a new pool entered into after September 2, 2015 shall include the provision of a pool cover.

C. Level 1 Water Supply Shortage (11% - 20% reduction): A Level 1 Water Supply Shortage exists when the city council determines, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 11% - 20% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration by the city of a Level 1 Water Supply Shortage condition, the following mandatory water conservation requirements, in addition to the prohibited uses of water set forth in subsection B of this section, shall apply during such time that the Level 1 Water Supply Shortage is in effect.

1. Limits on Watering Days. Watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to three to five days per week (as necessary to achieve reductions as determined in the discretion of the City Manager) on a schedule established and posted by the city. During the months of November through March, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to no more than one day per week on a schedule established and posted by the

city. This provision does not apply to landscape irrigation zones that exclusively use very low flow drip type irrigation systems when no emitter produces more than two (2) gallons of water per hour. This provision also does not apply to watering or irrigating by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system.

2. Obligation to Fix Leaks, Breaks or Malfunctions. All leaks, breaks, or other malfunctions in the water user's plumbing or distribution system must be repaired within seventy-two (72) hours of notification by the city unless other arrangements are made with the city.

3. 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 when necessary 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 equipped to recycle any water used, or a low-volume high-pressure water broom. Washing down structures, fences, and hard surfaces expressly for the purposes of preparing a surface for the application of a surface coating is not prohibited provided it does not occur more than one time in any twelve (12) month period.

D. Level 2 Water Supply Shortage (21% - 35% reduction).

A Level 2 Water Supply Shortage exists when the city council declares, in its sole discretion, that due to drought, other water supply conditions, or as mandated by the State of California, a water supply shortage or threatened shortage exists and a 21% - 35% consumer demand reduction is necessary to make more efficient use of water and appropriately respond to existing water conditions. Upon the declaration of a Level 2 Water Supply Shortage condition, the following mandatory water conservation requirements, in addition to the prohibited uses of water set forth in subsections B and C of this section, shall apply during such time that the Level 1 Water Supply Shortage is in effect.

1. Watering Days. Watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to two days per week (as necessary to achieve reductions as determined in the discretion of the City Manager) on a schedule established and posted by the city. During the months of November through March, watering or irrigating of lawn, landscape or other vegetated area with potable water is limited to no more than one day per week on a schedule established and posted by the city. This provision does not apply to landscape irrigation zones that exclusively use very low flow drip type irrigation systems when no emitter produces more than two (2) gallons of water per hour. This provision also does not apply to watering or irrigating by use of a hand-held bucket or similar container, a hand-held hose equipped with a positive self-closing water shut-off nozzle or device, or for very short periods of time for the express purpose of adjusting or repairing an irrigation system.

2. Obligation to Fix Leaks, Breaks or Malfunctions. All leaks, breaks, or other malfunctions in the water user's plumbing or distribution system must be repaired within forty-eight (48) hours of notification by the city unless other arrangements are made with the city.

3. Limits on Filling Ornamental Lakes or Ponds. Filling or refilling ornamental lakes or ponds with potable water is prohibited, except to the extent needed to sustain aquatic life, provided that such animals are of significant value and have been actively managed within the water feature prior to declaration of a supply shortage level under this section.
4. Limits on Washing Vehicles. Using potable water to wash or clean a vehicle, including but not limited to, any automobile, truck, van, bus, , boat or trailer, whether motorized or not, is prohibited except at a commercial car washing facility that utilizes a recirculating water system to capture or reuse water. This provision does not apply to bicycles and motorcycles. The use of potable water to clean the windshield, windows, or mirrors of a vehicle by use of a hand-held bucket or similar container is not prohibited.
5. Recirculating Water Required for Water Slides and Water Play Features: Operating a water slide or other water play feature that does not use recirculated water is prohibited.
6. Pool covering. Pools constructed after September 2, 2015 shall be covered at all times except when being actively used for recreational purposes or serviced.

E. Level 3 Water Supply Shortage – Emergency Condition (Greater than 35% reduction). A Level 3 Water Supply Shortage shall be referred to as a Water Shortage Emergency. A Level 3 condition exists when the city council declares, in its sole discretion or as mandated by the State of California, a water shortage emergency and notifies its residents and businesses that a greater than 35% reduction in consumer demand is necessary to maintain sufficient water supplies for public health and safety, pursuant to Water Code Section 350 et seq. Upon the declaration of a Level 3 Water Supply Shortage condition, the following mandatory water conservation requirements, in addition to the prohibited uses of water set forth in subsections B, C and D of this section, shall apply during such time that the Level 3 Water Supply Shortage is in effect
1. No Watering or Irrigating. Watering or irrigating of lawn, landscape or other vegetated area with potable water is prohibited. This restriction does not apply to the following categories of use, unless the city has determined that recycled water is available and may be applied to the use:
a. Maintenance of vegetation, excluding lawns, that is watered using a hand-held bucket or similar container, hand-held hose equipped with a positive self–closing water shut-off nozzle or device;
b. Maintenance of existing landscape necessary for fire protection;
c. Maintenance of existing landscape for soil erosion control;
d. Maintenance of plant materials identified to be rare or essential to the well-being of protected species;
e. Maintenance of landscape within active public parks and playing fields, day care centers, golf course greens, and school grounds, provided that such irrigation does not exceed two (2) days per week for no more than fifteen (15) minutes watering per day per station and is prohibited between the hours of 9:00 a.m. and 7:00 p.m. Pacific Standard/Daylight Savings Time, according to the schedule established in subsection D(1) or this section.
f. Actively irrigated environmental mitigation projects.
2. Obligation to Fix Leaks, Breaks or Malfunctions. All leaks, breaks, or other malfunctions in the water user's plumbing or distribution system must be repaired within twenty four (24) hours of notification by the city unless other arrangements are made with the city.

3. Limits on New Potable Water Service: Upon declaration of a Level 3 Water Shortage Emergency condition, the city may limit the issuance of building permits, new potable water services, temporary meters and/or statements of immediate ability to serve or provide potable water service (such as, will-serve letters, certificates, or letters of availability). The City may consider exemptions to the limitation that include, but are not limited to the following circumstances:

a. A valid, unexpired building permit has been issued for the project; or

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

c. The applicant provides substantial evidence of an enforceable commitment that water demands for the project will be offset prior to the provision of a new water meter(s) to the satisfaction of the city.

d. This provision does not preclude the resetting or turn-on of meters to provide continuation of water service or the restoration of service that has been interrupted for a period of one year or less.

4. Limits on Building Permits. Upon declaration of a Level 3 Water Supply Shortage Emergency condition, the city manager is authorized to implement a program in his or her discretion to limit or withhold the issuance of building permits which require new or expanded water service, except to protect the public health, safety and welfare, or in cases which meet the city's adopted conservation offset requirements.

5. Discontinue Service. The city, in its sole discretion, may discontinue service to consumers who willfully violate provisions of this section.

6. No New Annexations. Upon the declaration of a Level 3 Water Supply Shortage condition, the city may suspend consideration of annexations to its service area. This subsection does not apply to boundary corrections and annexations that will not result in any immediate increased use of water.

7. Suspension of Swimming Pool Permit Issuance. The issuance of all permits for the initial construction of all swimming pools shall be suspended. Valid unexpired swimming pool construction permits issued prior to the declaration of Level 3 Water Supply Shortage shall remain valid if pool construction has begun prior to the declaration of the Level 3 Water Supply Shortage.

8. Construction Activities: Use of potable water for construction site dust control, compaction, and other site activities suitable for nonpotable water is prohibited if recycled water is available within forty miles of the construction site.

F. Procedures for Determination/Notification of Water Supply Shortage

The existence of Level 1, Level 2 or Level 3 Water Supply Shortage conditions may be declared by resolution of the city council adopted at a regular or special public meeting held in accordance with state law. The mandatory conservation requirements applicable to Level 1, Level 2 or Level 3 conditions will take effect on the tenth day after the date the shortage level is declared. Within five (5) days following the declaration of the shortage level, the city must publish a copy of the resolution in a newspaper used for publication of official notices.

G. Hardship Waiver. If, due to unique circumstances, a specific requirement of this chapter would result in undue hardship to a person using 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 users, then the person may apply for a waiver to the requirement as provided in this Section.

1. Application: Application for a waiver must be on a form prescribed by the City Manager and accompanied by a nonrefundable processing fee in an amount set by city council resolution.

2. Supporting Documentation: The application must be accompanied by photographs, maps, drawings, and other information, including a written statement of the applicant.

3. Required Findings for Waiver: The waiver may be granted or conditionally granted only upon a written finding of the existence of facts demonstrating an undue hardship to a person using 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 use due to specific and unique circumstances of the user or the user's property. An application for a waiver will be denied unless the City Manager 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 or its agent, all of the following:

a. That the waiver does not constitute a grant of special privilege inconsistent with the limitations upon other residents and businesses;

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 to residents and businesses generally;

c. That the authorizing of such waiver will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the city to effectuate the purpose of this chapter and will not be detrimental to the public interest; and

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

4. Approval Authority: The City Manager must act upon any completed application no later than ten (10) days after submittal and may approve, conditionally approve, or deny the waiver. The applicant requesting the waiver must be promptly notified in writing of any action taken. Unless specified otherwise at the time a waiver is approved, the waiver will apply to the subject property during the period of the mandatory water supply shortage condition. The decision of the City Manager shall be final."

Section 6. Severability

If any section, subsection, sentence, clause or phrase in this Ordinance is for any reason held invalid, the validity of the remainder of the Ordinance will not be affected. The city council hereby declares it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases or is declared invalid.

Section 7. Effective Date; Posting.

Pursuant to California Water Code Section 376, this Ordinance shall constitute a water conservation program and shall be effective upon adoption. Within ten (10) days of its adoption, this ordinance shall be published in full once in a newspaper of general circulation which is printed, published, and circulated in the City of Morgan Hill.

THE FOREGOING ORDINANCE WAS INTRODUCED AT A MEETING OF THE CITY COUNCIL HELD ON THE 4TH DAY OF NOVEMBER 2015, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 18TH DAY OF NOVEMBER 2015, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES:	**COUNCIL MEMBERS:**	**Larry Carr, Rich Constantine, Marilyn Librers, Steve Tate**
NOES:	**COUNCIL MEMBERS:**	**Gordon Siebert**
ABSTAIN:	**COUNCIL MEMBERS:**	**None**
ABSENT:	**COUNCIL MEMBERS:**	**None**

APPROVED:

STEVE TATE, Mayor

ATTEST:

IRMA TORREZ, City Clerk

DATE: January 4, 2016

Effective December 18, 2015

CERTIFICATION

I, IRMA TORREZ, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2177, New Series, adopted by the City Council of the City of Morgan Hill, California at its regular meeting held on the 18th day of November 2015.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: January 4, 2016

IRMA TORREZ, City Clerk