ARTICLE V. COUNTY SERVICE AREA NO. 31 WATER CONSERVATION ORDINANCE

§ 15.05.245 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOARD or BOARD OF SUPERVISORS. The San Benito County Board of Supervisors.

COUNTY. The County of San Benito.

CSA 31. County Service Area No. 31, a County Service Area within San Benito County.

CUMULATIVE MONTHLY AGRICULTURAL ALLOTMENT. The sum of the monthly agricultural water allotments, as may be established by the County Board of Supervisors by resolution or ordinance, for a given parcel within CSA 31 from the beginning of the water year, to the month for which the ***CUMULATIVE MONTHLY AGRICULTURAL ALLOTMENT*** is calculated.

CUSTOMER. The person responsible for paying for or receiving water service on any parcel in the area served by CSA 31.

DIRECTOR or DIRECTOR OF PUBLIC WORKS. The Director of Public Works of the County of San Benito, or the Director's designee.

MONTHLY AGRICULTURAL WATER ALLOTMENT. The amount of non-potable water supplied by CSA 31 to a given parcel within CSA 31 for a month, as may be established by the Board of Supervisors by resolution or ordinance.

PERSON. Any individual, firm, partnership, association, corporation, company, organization or governmental agency.

RESIDENT. Owners within CSA 31, or in the event that the property is occupied by other the parcel's owners, the adult occupants living on a parcel who are responsible for water usage on the parcel.

WATER. Any water that is supplied by CSA No. 31 's water distribution system.

WATER FLOW RESTRICTOR. A device that restricts the flow of water of approximately one gallon per minute capacity for meter services up to one and one-half inch size and comparatively sized restrictors for larger services.

WATER WASTE. Any use of water in violation of the water use restrictions set forth herein.

WILLFUL VIOLATION. Any violation of this article which is intentional, deliberate or occurs with the responsible party's knowledge of the violation. It shall also include any violation which occurs after the water customer has been informed that a water violation exists.

(Ord. 927, § 2 (part), 2014)

§ 15.05.246 APPLICATION.

(A) The provisions of this Article apply to any person that uses potable or agricultural ("blue-valve") water provided by County Service Area No. 31.

(B) The provisions of this article do not apply to uses of water necessary to protect public health and safety or for essential governmental services, such as parks, police, fire, or other similar emergency service.

(C) This article is intended solely to further the conservation of water. It is not intended to implement any provision of federal, state, or local statutes, ordinances or regulations related to protection of water quality or control of drainage or runoff.

(D) The Board of Supervisors by resolution or ordinance may require or impose additional reductions beyond those stated in this ordinance in the use of water if such reductions are necessary in order for the county to comply with water use restrictions imposed by federal, state, or regional water agencies, or to respond to local water

shortage conditions and emergencies. Depending on the expected duration and severity of the shortage, these measures may include, but are not limited to, some of or all of the actions listed in this article or otherwise declared by the Board, which shall take effect upon declaration by the Board of Supervisors. In an emergency, the County Administrative Officer, or his/her designee, may make the declaration, which will be ratified by the Board of Supervisors at a subsequent meeting.
(Ord. 927, § 2 (part), 2014)

§ 15.05.247 ADMINISTRATIVE REQUIREMENTS.

(A) All residents and homeowners within CSA 31 shall maintain on file at the Office of Public Works, a phone number or email address at which notice can be provided in the event of an emergency or a water condition that needs immediate attention.

(B) Any official notice provided as a result of this article, except notices of emergency nature (such as water breakage) which shall be provided as set forth in division (A) of this section, shall be mailed to the owner of the parcel, at the address on file with the San Benito County Treasurer-Tax Collector.

(C) All residents and homeowners within CSA 31 may choose to receive additional courtesy notice of any notice or correspondence sent by the County related to this article, by providing in writing, an additional mailing address or email address to the Department of Public Works.

(D) All residents who are not homeowners shall be required to provide, in writing, to the Public Works department, an address to where mailed notice shall be provided in the event of any notice or correspondence relating to this article.

(E) Notices to the Public Works Director shall be made to: Director of Public Works, San Benito County, 2301 Technology Pkwy, Hollister, CA 95023.
(Ord. 927, § 2 (part), 2014)

§ 15.05.248 PERMANENT WATER CONSERVATION REQUIREMENTS - WATER CONSERVATION MEASURES.

(A) No person shall tamper with, bypass, or take any action to disable or destroy a water meter.

(B) All property owners shall be responsible for ensuring that the water meter on their property is accessibly for maintenance, repair and readings.

(C) In the event of a meter failure for either agricultural or domestic water supply, a water customer's usage will be calculated based on historical usage for any period of time the meter is out of service. Historical usage shall be determined based on the average usage per day for the last full month prior to breakage, or at the option of the county, the last full month prior to the breakage averaged with the next full month after the breakage.

(D) Any such costs incurred by CSA 31 or the County to repair, service, replace or remedy any situation described in divisions (A) or (B) of this section, shall be reimbursed by the owner to CSA 31 or to the county respectively.

(E) *Obligations 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 three days after receiving notice from the county is prohibited.
(Ord. 927, § 2 (part), 2014)

§ 15.05.249 PERMANENT WATER CONSERVATION MEASURES-WATER ALLOTMENT GENERAL PROVISIONS FOR DOMESTIC AND AGRICULTURAL WATER ALLOTMENTS.

(A) CSA 31 may reserve and not make an allocation of a reasonable amount, as determined in the county's sole discretion, of agricultural water received from the San Benito County Water District for the purposes of fire suppression, for an unexpected water loss, and as an emergency reserve. The remainder of the allocation from the San Benito County Water District shall be allocated to the various parcels within CSA 31.

(B) CSA 31 allocation of domestic water shall be determined in the county's sole discretion, based on factors such as the time of year, changes in the local water table, estimates regarding the amount of water that the CSA 31 well can produce over a sustained period, and the domestic water needs of residents within CSA 31. The county shall consult with the Board of Directors of the Stonegate Homeowners Association prior to determining any allocations or making any change in allocation.

(C) A month shall be defined as the first day of the calendar month to the last day of a calendar month.

(D) If a water reading is taken after the last day of a calendar month, the water usage for the month shall be determined by actual usage, divided by the number of days since the last reading, multiplied by the number of days in the calendar month for which the usage is being determined.

(E) Any owner or resident may use additional water received from other sources, such as water that is delivered to an on-site water storage tank.

(F) The water allocation for July 2014 shall be prorated so that it reflects the allocation that each parcel may use from July 8, 2014 through July 31, 2014.

(G) No person shall install, maintain, or allow to be installed or maintained, any connection, pipe, or hose between the domestic and agricultural water supply pipelines on any residential parcel within CSA 31.

(H) It is unlawful for any person, firm, association or corporation, to violate, to cause, or to maintain a violation of this article.

(Ord. 927, § 2 (part), 2014)

§ 15.05.250 CONSERVATION MEASURES - AGRICULTURAL WATER SUPPLY: ALLOTMENTS.

(A) *Annual allotment.*

(1) The Board of Supervisors may establish, by resolution or ordinance, in its discretion, an annual agricultural water allotment for each parcel within CSA 31 based on the amount of water received from the San Benito County Water District. The County shall consult with the Board of Directors of the Stonegate Homeowners Association prior to determining any allocations or making any change in allocation.

(2) A water year shall be determined to run from March 1st through February 28th or February 29th as applicable, of the following year, unless the Board of Supervisors shall determine, by resolution or ordinance, different beginning and ending dates of a water year.

(3) An annual water allotment can be increased or decreased, upon mailed notice to owners within CSA 31, in the reasonable discretion of the County for reasons which may include, but are not limited to the following: if the water allocated by San Benito County Water District is increased or decreased during the water year through changes in allocation from the San Benito County Water District, or in the event of an emergency, including but not limited to a fire or line breakage which consumes a portion of the annual agricultural water supply, or in the event that one or more CSA 31 homeowners have used water in excess of the previous allocations, which is likely to cause, as may be determined in the Board of Supervisors' reasonable discretion, CSA 31 to exceed its allotment without further reductions in allotments.

(4) If a yearly agricultural allotment is established by the San Benito County Board of Supervisors, when the yearly allotment for a parcel is reached, the agricultural water supply to the parcel will be turned off and locked until the beginning of the next water year. In the alternative, a water restricting device may be installed by the county.

(5) To the extent allowed by law, the cost of any water used beyond the yearly allotment will be determined by using the current over limit rate set by the San Benito County Water District, if established as part of the water fees set for CSA 31 in the discretion of the Board of Supervisors. This cost will be due and payable from the owner to CSA 31.

(6) The annual allotment shall not be a guarantee or right to any person to use the entire annual allotment value. The annual allotment merely establishes the maximum amount of water that a property may use before its agricultural water supply is terminated for the remainder of the water year.

(B) *Monthly allotments.*

(1) The Board of Supervisors may establish, by resolution or ordinance, in its discretion from time to time, a monthly agricultural water allotment and a month-by-month "cumulative agricultural water allocation" for each parcel within CSA 31. The county shall consult with the Board of Directors of the Stonegate Homeowners Association prior to determining any allotments or making any change in allotments.

(2) Each parcel owner, as on record at the Treasurer-Tax Collector's office, and all others who have requested notice and provided a mailing address for notice as set forth in § 15.05.247, shall receive mailed notice of the monthly water allotment, and the "cumulative water agricultural allotment", and upon each subsequent change in the allotments by the San Benito County Board of Supervisors.

(3) There may be "banking" of any portion of a parcel's monthly allotments of agricultural water which is unused. In the case of a portion of the monthly allotment being unused at the end of the month, the unused portion of a monthly agricultural allotment for a parcel is then added to the next month's allotment, for the amount of water

available for that parcel to use.

(4) When the monthly allotments described in this section is mandatory, as established by resolution or ordinance of the Board of Supervisors, due to the failure of a well, pipeline, or water delivery system, or the amount of the annual allocation of water from the San Benito County Water District, no person shall use or allow to be used on a parcel agricultural water/non-potable supplied by CSA 31 in excess of the parcel's cumulative monthly water agricultural allotment.

(Ord. 927, § 2 (part), 2014)

§ 15.05.251 PERMANENT WATER CONSERVATION MEASURES - DOMESTIC SUPPLY: ALLOTMENTS.

(A) The Board of Supervisors may establish, by resolution or ordinance, in its discretion, a monthly domestic water allotment of the potable water supplied by the CSA 31 well. The county shall consult with the Board of Directors of the Stonegate Homeowners Association regarding establishing any allotments or making a change in allotments.

(B) No person shall use or allow to be used on a parcel domestic/potable supplied by CSA 31 in excess of the monthly domestic water allotment.

(Ord. 927, § 2 (part), 2014)

§ 15.05.252 ENFORCEMENT.

(A) *Discontinue service/water flow device.* After providing due process, the county, in its sole discretion, may discontinue service or place a flow restricting device on the meters or water supply lines of consumers who violate provisions of this article.

(B) In the application and enforcement of the conservation measures required by this article, every water customer is deemed to have under his or her control at all times his or her water distribution lines and facilities, and to know the manner and extent of his or her water use.

(C) Each breach of this article shall constitute a separate violation punishable as set forth below. Each day a violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such.

(D) All the remedies stated in this article, and/or otherwise available under state law, shall be cumulative to any other remedy or penalty that may be imposed for violation of this article.

(E) The Director of Public Works has primary responsible for enforcement of this article. The Director, along with the county's Code Enforcement Officer, and/or any peace officer, shall be empowered to enforce the provisions of this article and shall be authorized to issue citations to violators.

(F) Whenever any act or omission is made unlawful by this article, it shall also be unlawful to cause, permit, aid, abet, allow, or conceal the fact of such act or omission.

(G) In the event of verified line breakage which causes excess usage of water which could not have been reasonably anticipated and prevented, there shall be no violation of this article if the owner is able to bring his/her water usage to within the "cumulative water allocation" for the parcel within 60 days of the line breakage. This period of time may be extended upon written application to the Director, not to exceed an additional 30 days. The owner shall be obligated to provide reasonable proof of the existence of the water line breakage/malfunction in any appeal of any enforcement action taken.

(Ord. 927, § 2 (part), 2014)

§ 15.05.253 HARDSHIP WAIVER.

(A) *Undue and disproportionate hardship.* If due to unique circumstances, a specific requirement of this article 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 requirements as provided in this section.

(B) *Written finding.* The waiver may be granted or conditionally granted only upon written finding of the existence of facts demonstrating an undue hardship.

(C) *Application for a waiver.* Application for a waiver must be on a form prescribed by the Public Works Director or designee, and accompanied by a nonrefundable processing fee, if established, in an amount set by resolution or ordinance by the Board of Supervisors.

(D) *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.

(E) *Approval authority.* The County Administrative Officer, or designee, will exercise approval and act upon any completed application after submittal and may approve, conditionally approve, or deny the variance. The Board of Directors of the Stonegate Homeowners Association shall review this application and make a recommendation to the County Administrative Officer regarding the requested variance. The applicant requesting the variance will be promptly notified in writing of the action taken. The decision of the County Administrative Officer, or designee, is final, and not subject to appeal. At the time a waiver is approved, it shall state the duration that it will apply to the subject property. If not stated, the length of the waiver shall be to the conclusion of the water year. The hardship waiver is nontransferable.

(F) *Required findings for waiver*. Based on information and supporting documents provided in the application, additional information provided as requested, and water use information for the property as shown by the records of the county, the County Administrative Officer, or designee, in making the waiver determination, will take into consideration the following:

(1) That the waiver does not constitute a grant of special privilege inconsistent with the limitations upon other County Service Area 31 water service customers;

(2) That because of special circumstances applicable to the property or its use, the strict application of this article would have a disproportionate impact on the property or use that exceeds the impacts to water service customers generally;

(3) That the authorizing of such waiver will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the county to effectuate the purpose of this article and will not be detrimental to the public interest;

(4) 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; and

(5) Any person granted relief on appeal for hardship may be required as a condition of that relief, to install water saving devices, as determined by the county and made every reasonable effort to reduce water use.

(Ord. 927, § 2 (part), 2014)

§ 15.05.254 VIOLATIONS AND REMEDIES.

(A) *Notice of noncompliance.* If any person fails or refuses to comply with this article, the Public Works Director, or his/her designee shall provide that person with written notice of the violation and an opportunity to correct the noncompliance when the notice specifies a time in which the violation can be corrected. The written notice shall:

(1) Be posted or presented at the site of the noncompliance;

(2) State the time, date, and place of violation;

(3) State a general description of the violation;

(4) State the means to correct the violation;

(5) State a date by which correction is required;

(6) State the possible consequences of failing to correct the violation; and

(7) Include appeal and hearing rights and procedures; and

(8) A copy of the written notice shall be mailed to the owner of the property.

(B) *Compliance remedies.* Failure to correct the notice of noncompliance violation within the time specified in the written notice will result in one or more of the following actions after providing appropriate due process, in addition to the other remedies set forth in this article.

(1) Any penalties, surcharges or increased charges incurred by the county for excessive use by customers shall be passed on to the customers causing the excessive use of water to the extent allowed by law.

(2) Impose an administrative citation per existing county ordinances.

(3) Place a flow restricting device on the meter. Payment of the county’s charges for installing and/or removing any flow restricting device and for disconnecting and/or reconnecting service per the county’s schedule of charges then in effect is the responsibility of the property’s owner.

(4) Abate the violation as a nuisance in accordance with this article, and/or any other provision of the San Benito County Code or state law.

(C) *Appeals.* All nuisance abatement proceedings related to this article, including any notice of non-compliance, invoice for costs, and disconnection decisions, may be appealed as set forth herein; except, notwithstanding the above, actions already proceeding in civil court are not appealable and appeals of administrative citations shall be

exclusively handled through the administrative citation appeals process. Any person receiving a notice of noncompliance, an invoice for costs, or any person who is subject to any adverse determination made pursuant to this article (except those already proceeding in civil court and/or appeals of administrative citations), may appeal the matter by requesting an administrative hearing.

(D) *Request for administrative hearing.* Any person appealing nuisance abatement proceedings, a notice of noncompliance, or an invoice for costs), shall, within fifteen days of receipt thereof, file a written request for an administrative hearing, accompanied by an administrative hearing fee as established by separate resolution or ordinance, with the office of the Clerk of the Board, located at 481 Fourth St., 1st Floor, Hollister, CA 95023, except that appeals of Administrative Citations shall be pursuant to the procedures set forth in Chapter 1.04 of the San Benito County Code. Appeals of termination of water service and placement of flow restricting devices shall be made within three business days of receipt thereof. Even pending appeal, the county reserves its right to summarily abate any public nuisance. The failure to timely appeal a decision, in writing, shall bar and waive all further appeals and result in the decision or action in question becoming final and non-appealable.

(E) The appeal shall be on a form provided by the Clerk of the Board and shall set forth with particularity the specific grounds upon which the appeal is made. At minimum, the appeal shall include a description of the issues, evidence supporting the claim, and the resolution sought. Any grounds not set forth in the written appeal shall be deemed waived and the appellant shall thereafter be precluded from raising them. The Clerk of the Board has authority to reject any appeal which is incomplete. Thereafter, a hearing on the matter shall be held before the Board of Supervisors within fifteen business days of the date of filing of the written request, or at the next regularly scheduled Board of Supervisors meeting following that fifteen day period, unless, in the reasonable discretion of the Chair of the Board of Supervisors, and pursuant to a written request by the appealing party or the county, a continuance of the hearing is granted. However, appeals of termination of water service and placement of flow restricting devices shall be made within ten business days of receipt thereof, or at the next regularly scheduled Board of Supervisors meeting following that ten day period, and no continuances shall be granted unless mutually agreed to by the county and the appellant.

(F) *Hearing proceedings.* The Public Works Director or his/her designee, and/or employee issuing the notice of noncompliance, invoice for costs or adverse determination shall appear in support of the notice, invoice for costs, or determination, and the appealing party shall appear in support of dismissal of the notice, determination, and invoice for costs. Each party shall have the right to present testimony, present their own witnesses and other documentary evidence as necessary for explanation of their case. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper admission of such evidence over an objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding by the hearing officer, unless it would be admissible over an objection in civil actions. The rules of privilege shall be effective to the same extent they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded. The appealing party shall notify the county 48 hours in advance of the hearing, if legal counsel will be present on their behalf.

(G) The County Administrative Officer has the authority to settle or resolve any appeal prior to the scheduled hearing.

(H) *Final decision and appeal.* The final decision of the hearing officer shall be issued within 30 days of the conclusion of the hearing and shall be delivered by first-class mail, postage prepaid, to the parties. The decision shall include notice that it is final and any legal challenge to the final decision shall be made pursuant to the provisions of Cal. Code of Civil Procedure §§ 1094.5 and 1094.6 and shall be commenced within 90 days following its issuance. The administrative hearing fee paid by a prevailing party in an appeal shall be refunded. (Ord. 927, § 2 (part), 2014)

§ 15.05.255 CRIMINAL PENALTIES.

(A) *Infractions.* A violation of this article shall constitute an infraction, or a misdemeanor (see below.) An infraction is punishable by a fine not to exceed $100 for the first conviction, $200 for the second conviction, and/or $500 for the third and subsequent convictions within a year. The maximum fine does not include court imposed penalty fees and assessments.

(B) *Misdemeanors.* Each violation of this article may be prosecuted as a misdemeanor punishable by imprisonment in the county jail for not more than 30 days or by a fine not exceeding $1,000, or by both as provided in Cal. Water Code § 377. The maximum fine does not include court imposed penalty fees and assessments.
(Ord. 927, § 2 (part), 2014)

§ 15.05.256 CIVIL ADMINISTRATIVE FINES.

(A) Any violation of this article may be punished by the imposition of a civil fine of $100 for a first offense, $200 for a second offense, and $500 for each third or subsequent offense within a year. The Public Works Department and/or the county's Treasurer-Tax Collector are authorized to collect all unpaid civil fines.

(B) Every customer/owner who has received water service from CSA 31 is responsible for all civil fines resulting from any violation of this article relating to that customer's water whether or not violations are committed by that person or third parties. Civil fines may be reduced or discharged if the violation was beyond the control of the owner and if all reasonable means had been previously taken to prevent the violation. "All reasonable means" includes, but is not limited to, written warnings to tenants or other water users and amendments to rental agreements where permitted by the lease.
(Ord. 927, § 2 (part), 2014)

§ 15.05.257 DISCONNECTION FROM WATER SERVICE.

Upon the third or subsequent violation(s) of this article by an owner, or in the event of water use in excess of the annual agricultural allotment, the Director may order disconnection of water service on either a temporary or permanent basis. Prior to any disconnection, the customer shall be provided a "water usage violation notice/notice of disconnection" at least three business days prior to service being disconnected.
(Ord. 927, § 2 (part), 2014)

§ 15.05.258 NUISANCES, ABATEMENT, INJUNCTIVE RELIEF.

(A) Any condition in violation of the prohibitions of this article shall constitute a threat to the public health, safety and welfare, and is declared and deemed a nuisance pursuant to state law. The County Administrative Officer or the Board of Supervisors shall have the authority to summarily abate a public nuisance, when allowed by law, without notice to the owner or persons known to be in possession of the parcel. The expenses of such abatement shall be assessed against the property as set forth in Chapter 1.03 of the San Benito County Code.

(B) Additionally, the county may, upon order of the Board of Supervisors, bring civil suit or administrative action to enjoin or abate the nuisance. In a civil proceeding brought to abate a nuisance or to obtain injunctive relief under this article, or in a civil action to recover costs resulting from a summary abatement, any person who creates, causes, commits, permits, or maintains a public nuisance in violation of this article shall be liable for the costs of abatement, including but not limited to the following: (1) costs of investigation; (2) costs of labor and parts to repair any affected water system or premises, to bring such water system or premises into compliance with this article, or to install facilities necessary to assure compliance with this article; (3) court costs; (4) costs of monitoring compliance; and (5) attorneys' fees and costs, including the fees and costs of experts employed by the county's attorney if, at the initiation of the action or proceeding, the county elects to seek to recover its attorneys' fees pursuant to Cal. Gov't Code § 25845(c). Recovery of costs shall be in addition to and shall not limit any prevailing party's right to recover costs pursuant to Cal. Code of Civil Procedure §§ 1032 and 1033.5 or any other provision of law. In no abatement matter shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the county. Alternatively, the county may, at its option, institute nuisance abatement proceedings by following the code enforcement procedures set forth in the San Benito Code.

(C) *Nuisance lien.* All costs shall become a lien against the property from which the nuisance emanated and a personal obligation against the owner thereof in accordance with all applicable local and state laws. The owner of record of the property subject to any lien shall be given notice of the lien prior to recording as required by the Government Code.

(D) At the direction of the Board of Supervisors, County Counsel is authorized to collect nuisance abatement costs or enforce a nuisance lien in an action brought for a money judgment or by delivery to the County Assessor of a special assessment against the property in accordance with the conditions and requirements of state law.
(Ord. 927, § 2 (part), 2014)

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