

ORDINANCE No. 1038
AN ORDINANCE AMENDING THE TOWN OF SILVER CITY
CODE OF ORDINANCES CHAPTER 30 UTILITIES,
ARTICLE VI, WATER CONSERVATION

WHEREAS, the State of New Mexico has experienced drought conditions for the past two years, and long-term predictions are for unusually dry conditions to continue for as many as 20 years; and

WHEREAS, a June 6, 2000 letter from the Office of the Governor to the Town of Silver City encourages communities to prepare for long-term drought by adopting water conservation ordinances; and

WHEREAS, the Town of Silver City has a Water Conservation Plan, dated February, 1996, but does not currently have specific regulations on water conservation;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF SILVER CITY, GRANT COUNTY, NEW MEXICO THAT Chapter 30 Utilities be amended as follows:

ARTICLE VI. WATER CONSERVATION

Sec. 30-200. Title.

This article shall be known as the “Water Conservation Ordinance” of the Town of Silver City, New Mexico.

Sec. 30-201. Water conservation compliance.

No person, firm, corporation, water association, or government facility or operation using water from the Town of Silver City water system shall make, cause, use or permit the use of water in a manner contrary to provisions of this Article. All users of domestic wells within the jurisdiction of the Town shall be exempt from the requirements of this Article to the extent of such well use provided as authorized by NMSA 1978, Sections 3-53-1 and 3-53-2, and with the exception of Section 30-202 on prohibition of water waste.

Sec. 30-202. Water waste prohibited.

- (a) No person, firm, corporation, or government facility or operation shall waste, cause or permit to be wasted any water from the Town of Silver City water system. Water waste is defined as the non-beneficial use of water. Non-beneficial use includes but is not restricted to the excessive application of water such that it overflows the landscaped area being watered or other area of water use and runs onto adjacent property or public right-of-way.

- (b) Restrictions in this Article do not apply to water flows resulting from fire fighting, hydrant flushing or fire training activities; water applied to prevent or abate health, safety or accident hazards, or water flows from routine maintenance of the municipal water system or from temporary water system failures or malfunctions. Restrictions on landscape irrigation do not apply to re-use of grey water, effluent (treated wastewater) or nonpotable water from the “Rock House” on Little Walnut road or other sources, unless otherwise regulated.

Sec. 30-203. Declaration of Water Conservation Levels.

- (a) The Town Manager, upon the recommendation of the Utilities Director, is hereby authorized to declare Water Conservation Levels through public notice. The Conservation Levels shall be initiated based upon the relationship between water demand and municipal safe production and delivery capability.
 - 1. “Safe production capability” is 80% of the total water resources available, based upon well production capacities, booster station capacities, distribution components, storage reserves, aquifer levels, water rights, weather conditions, and historic data.
 - 2. “Total production capability” is 100% of the total water resources available. The Utilities Director shall determine total production capability and update it as water resource conditions change.
- (b) Declarations by public notice shall be made by public service announcements through electronic media, and shall be published a minimum of one time in daily local newspaper(s) of general circulation. The Water Conservation Level declared shall become effective immediately upon the first announcement.
- (c) The following Water Conservation Levels shall govern the use of water by customers using water from the Town of Silver City water system, as prescribed below:
 - 1. Water Conservation Level I: Voluntary Water Conservation.
 - a. Level I shall be initiated when annual precipitation for each of the previous two years is equal to or less than 80% of the long-term annual average. This determination will be based on annual precipitation figures for the period May 1st through April 30th, as measured at the long-term Fort Bayard gage.
 - b. Water users are encouraged to minimize use of water for landscape irrigation, vehicle and pavement washing, construction, and other water-consuming activities. Voluntary compliance with Level II restrictions is encouraged.
 - 2. Water Conservation Level II: Water Restrictions. Level II shall be initiated when demand is greater than safe production capability for two (2) consecutive weeks. No person or entity using water from the Town’s water system shall:

- a. Use water outdoors for landscape watering or refilling of ponds or pools except as provided:
 - i. Water use is restricted to the following days of the week:
 - a. Properties with even-numbered addresses are restricted to said uses on Monday, Wednesday, Friday, and Sunday, and
 - b. Properties with odd-numbered addresses are restricted to said uses on Tuesday, Thursday, Saturday, and Sunday.
 - ii. Landscape irrigation is restricted to the time period before 10 AM and after 6 PM on the applicable day; however, outdoor irrigation under manual control (e.g. watering from a hose with a shutoff nozzle or from a bucket or watering can) is permissible at any time on the applicable day.
 - b. Wash vehicles unless a bucket and hose with a positive cut-off nozzle is used; however these restrictions do not apply to vehicles that must be washed for public health, safety, or welfare, or to commercial car washes.
 - c. Wash paved areas such as driveways, sidewalks, parking lots, and tennis courts, except for health or safety.
3. Water Conservation Level III: Water Crisis. Level III shall be initiated when water demand equals or exceeds total production or delivery capability at any time. This level constitutes an emergency situation, and can be declared immediately by the Town Manager. At this level, no person or entity using water from the Town's water system shall use any water outdoors for any purpose unless required for public health, safety, and welfare.
- (d) In addition to the restrictions listed above, the Town Manager may impose specific restrictions on large water users if deemed necessary to protect the Town's water resources and health and safety of its citizens. The Town Manager may also consider alternatives to the specified outdoor watering schedules for water users with large turf areas (e.g. half one day, half the next day).
 - (e) The Utilities Director may make recommendations at any time with regard to moratoriums on the extension of water mains, consistent with Town policy.

Sec. 30-204. Penalties and Enforcement.

- (a) Assessment of fees for violations of the provisions of Article VI, Sections 30-200 through 30-203 will be through the city utilities billing department for the responsible party's billing account. Fees and service cutoff may be suspended pending the outcome of an appeal. The schedule for assessment of fees and cutoff of service shall be as follows:
 - 1. Water Conservation Level I: Compliance is voluntary. Warnings will be issued for water waste.

2. Water Conservation Level II:

- a. First observed violation: Issuance of notice of violation.
- b. Second observed violation: \$20 fee.
- c. Third observed violation: \$50 fee.
- d. Fourth observed violation: \$100 fee.
- e. Fifth observed violation: \$100 fee plus cutoff of service.

3. Water Conservation Level III:

- a. First observed violation: Issuance of notice of violation.
- b. Second observed violation: A fee equal to 25% of the previous month's water bill, but no less than \$50 or greater than \$500.
- c. Third observed violation: A fee equal to 50% of the previous month's water bill, but no less than \$100 or greater than \$1000.
- d. Fourth observed violation: A fee equal to 50% of the previous month's water bill, but no less than \$100 or greater than \$1000, and cutoff of service.

(b) Procedure for assessment of fees: All assessments of fees for violations of the provisions of Article VI, Sections 30-200 through 30-203 shall be upon the issuance of a notice of violation. Within five (5) business days of the issuance of a notice of violation, the responsible party shall be sent by certified mail a copy of the notice of violation, along with a statement of the fee to be assessed. The notice to the responsible party also shall include a notice of the party's right to appeal the assessment pursuant to the provisions of subsection (c) hereof. Fees shall be assessed to the responsible party's billing account, listed as a separate line item on the utility bill, and cutoff of service shall be effected on the sixteenth (16th) day following the expiration of the appeal period, the date of issuance of the determination of any appeal, or the date of the town council's action upon a review hearing, whichever applicable date is later. The fees must be paid within the normal payment period allowed by the town utility billing system.

(c) Appeal of assessment of fees: A responsible party may appeal an assessment of fees or notice of cutoff of service for violations of the provisions of Article VI, Sections 30-200 through 30-203 by delivering to the Town Manager, within ten (10) days after the date the notice of violation was mailed, a written notice of appeal of the imposition of the fee or cutoff of service. The notice of appeal shall identify the property and state the grounds of appeal together with all material facts in support thereof. Upon receipt of the notice of appeal, the Town Manager shall be provided with copies of the notice of violation appealed from and any documents and photographs supporting the notice of violation. Within seven (7) working days of the date he receives copies of the notice of violation and supporting documents, the Town Manager shall issue a written decision on the appeal either upholding the assessment of fees or cutoff of service, modifying the assessment or cutoff, or overruling the assessment or cutoff. Copies of the Town Manager's written decision

shall be mailed by certified mail to the appealing responsible party, and sent to the town utility billing department, along with a notice of the responsible party's right to request a review hearing before the Town Council pursuant to the provisions of subsection (d) hereof.

- (d) Review of appeal decision: If a responsible party does not agree with the Town Manager's written appeal decision, the party shall, within ten (10) days after the date of mailing of the decision, file with the Town Clerk a written request for a hearing before the Town Council. The request for hearing shall identify the property, attach a copy of the Town Manager's decision, and state the grounds of appeal to the Town Council together with all material facts in support thereof. The Town Clerk shall schedule the hearing for the next regular meeting according to the adopted schedule of the Town Council, providing adequate time to ensure that the public notice requirements can be satisfied, or such later time as is mutually agreed upon by the responsible party and the Town Manager. The Town Clerk shall send written notice by certified mail to the responsible party of the time and place of the hearing before the Town Council. At the hearing testimony and evidence shall be taken under oath or affirmation, and the responsible party shall have the right to present evidence and ask questions of persons who testify as to the alleged facts upon which the assessment of fee or cutoff of service was based and any other relevant and material facts which may aid the Town Council in determining whether the violation of the provisions of Article VI, Sections 30-200 through 30-203 occurred. If, upon such hearing, a majority of those present and voting of the Town Council are of the opinion the Town Manager's decision was correct, then said decision shall be affirmed; otherwise the Council shall have the power to revise the Town Manager's decision.
- (e) Any person who violates the provisions of Article VI, Sections 30-200 through 30-203, for which no other penalty is set forth, shall be subject to the general penalty provision of this Code as set forth in Section 1-9.
- (f) Authority to enforce the provisions of this Article shall be assigned to, but not limited to, all police officers, code enforcement officers and meter readers of the Town of Silver City. Other Town employees may be assigned enforcement authority as deemed necessary by the Town Manager.

PASSED, ADOPTED AND APPROVED this 12th day of September, 2000.

**BY: (s) Terry Fortenberry
Mayor**

ATTEST:

**(s) Dennis L. Hunter
Town Clerk**