

ORDINANCE NO. 4494

AN URGENCY ORDINANCE OF THE MENDOCINO COUNTY BOARD OF SUPERVISORS ALLOWING AND ESTABLISHING REQUIREMENTS FOR TEMPORARY INSTALLATION AND USE OF WATER TANKS DURING THE 2021 DROUGHT EMERGENCY

WHEREAS, on March 5, 2021, United States Department of Agriculture (“USDA”) Secretary Tom Vilsack designated 50 of California’s counties, including Mendocino County, as primary natural disaster areas due to a recent drought, which allows for farm operations to be eligible for certain assistance available through the USDA Farm Service Agency; and

WHEREAS, on April 20, 2021, by Resolution No. 21-051, the Mendocino County Board of Supervisors declared a local emergency due to drought conditions, which declaration of emergency was subsequently renewed on June 8, 2021, by Resolution No. 21-079; and

WHEREAS, pursuant to Mendocino County Code section 7.10.060, the provisions of Chapter 7.10 – Emergency Water Conservation were reinstated upon the declaration of the drought emergency, which include urging all water uses in the County to reduce water use by twenty percent (20%) and requesting all water supplies to immediately implement their water shortage contingency plans; and

WHEREAS, on April 21, 2021, Governor Gavin Newsom proclaimed a state of emergency in Mendocino and Sonoma Counties due to drought conditions in the Russian River Watershed; and

WHEREAS, on May 3, 2021, the Mendocino City Community Services District declared a Stage 4 Water Shortage Emergency due to below normal rainfall recorded in the District, as rainfall was just 45% of normal rainfall at that time; and

WHEREAS, on May 4, 2021, the Redwood Valley County Water District adopted Resolution No. 2021-01, declaring a water shortage emergency; and

WHEREAS, on May 10, 2021, Governor Gavin Newsom proclaimed a state of emergency in forty-one (41) total California counties due to drought conditions, and ordered that the provisions of the April 21, 2021, declaration remained in full force and effect, except as modified; and

WHEREAS, on May 26, 2021, due to drought conditions in the Russian River Watershed, the State Water Resources Control Board notified over 900 junior water rights holders that there is not enough water in the watershed and that diversions must be reduced immediately to safeguard the community’s drinking water availability for the remainder of 2021; and

WHEREAS, due to the severity of the drought conditions facing the County, for the purpose of preserving the public peace, health and safety, the Board of Supervisors desires to immediately implement provisions allowing the temporary installation of water tanks so that County residents and businesses can provide for additional water storage in the face of uncertain water supplies; and

WHEREAS, the immediate implementation of this ordinance is necessary because drought conditions threaten both groundwater levels and water supplies of water districts, which threatens the ability of County residents and businesses to have dependable supplies of water, necessary for proper health and sanitation; and

WHEREAS, Government Code section 25131 expressly authorizes the Board of Supervisors to adopt an urgency ordinance immediately upon its introduction.

NOW, THEREFORE, the Board of Supervisors of the County of Mendocino, State of California, ordains as follows:

SECTION 1. Findings and Purpose.

The Board of Supervisors of the County of Mendocino finds and declares all of the following:

- A. The above recitals are true and correct, and are incorporated herein by this reference.
- B. The purpose of this ordinance is to allow for temporary installation of additional small, onsite water storage during the present drought in order to provide additional security to County residents and businesses for available water.

SECTION 2. Definitions.

- A. "Department" means the County of Mendocino Planning and Building Services Department.
- B. "MCC" means the Mendocino County Code.
- C. "Temporary water tank" means a water tank supported directly on grade with a capacity not greater than 5,000 gallons and the ratio of height to diameter or width is not greater than 2:1, consistent with the exemptions from building permits requirements provided in the 2019 California Building Code section 105.2 #5.

SECTION 3. Applicability of Ordinance.

The Ordinance only applies to temporary water tanks installed after the effective date of this Ordinance in compliance with its requirements.

SECTION 4. Administration and Administrative Policies.

- A. This Ordinance will be administered under the direction of the Board of Supervisors, by the Department.
- B. The Department may establish administrative policies for use in implementing the Ordinance. The administrative policies must be consistent with the Ordinance and made available to the public on the Department website and upon request at the Department.
- C. Where this Ordinance directly conflicts with the Mendocino County Code, land use permit, or a legal non-conforming use allowance, the provisions of this Ordinance shall prevail.

SECTION 5. Temporary Water Tank.

- A. A temporary water tank may be installed on a parcel to provide additional water storage for existing uses, subject to the requirements of this Ordinance. Installation of a temporary water tank shall not involve removal of healthy, mature trees.
- B. A temporary water tank must comply with zoning standards and height standards for the base zoning designation in terms of setbacks from parcel boundaries, except for the following exemptions:

1. Temporary water tanks do not count towards lot coverage.
 2. A temporary water tank located in any zoning district shall observe a 10 foot front yard setback, setbacks from all other parcel boundaries shall be observed.
- C. A temporary water tank is exempt from Corridor Preservation Setbacks (MCC Sections 20.152.020, 20.444.020, and 20.692.015) but shall not be located within a public right-of-way unless an encroachment permit has been granted by the applicable department of transportation.
- D. Discretionary Review Exemption. A temporary water tank is exempt from discretionary review under the MCC, including Mendocino Historical Review Board Permits and Coastal Development Permits, unless the resident or business wishes to retain the tank after the end of the effective period of this ordinance as provided for in Section 5(G) of this ordinance.
- E. Compliance with Other Laws. All temporary water tanks must comply with other state and local laws, including encroachment, building, grading, fire, and health code requirements, the California Disabled Persons Act, and requirements of any water district or water company with jurisdiction over the property.
- F. No Property Rights Conferred. Use or development of a temporary water tank must immediately cease at the end of the effective period of this Ordinance.
- G. Cessation and Legalization of Temporary Water Tanks.
1. Cessation upon Expiration of the Ordinance. The use of temporary water tanks must immediately cease at the end of the effective period of this Ordinance.
 2. Restoration or Retention of Temporary Water Tank. Within 30 days after the end of the effective period of this Ordinance, temporary water tanks must either be removed and the site restored to its prior condition or the resident or business must apply for and diligently pursue retention of these modifications on a permanent basis, subject to all required discretionary review and zoning requirements, including setbacks.
 3. Early Application for Maintenance of Temporary Water Tank. Any individual seeking to use a temporary water tank after the end the effective period of this Ordinance is encouraged to submit an application to the Department as early as possible, including any required discretionary permits.

SECTION 6. Enforcement.

- A. Enforcement. A violation of this Ordinance is subject to enforcement by any legal means available, including but not limited to the enforcement provisions in MCC Chapter 1.08, and Chapters 20.216, 20.552 and 20.736 as applied to the zoning district where the violation occurs.
- B. Suspension, Termination and Modification. If the Department determines that temporary water tanks have been installed in a manner that does not comply with this Ordinance, the Department may require changes to the temporary water tank, suspend use of the temporary water tank, or require that the use of the temporary

water tank cease. A decision by the Director of the Department under this section is final, subject only to judicial review.

SECTION 7. Environmental Determination.

Adoption of this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to the following: Public Resources Code Section 21080(b)(4) and CEQA Guidelines Section 15269(c) as an action immediately necessary to mitigate or prevent an emergency because the Ordinance establishes temporary measures to enable additional water storage and because the anticipated time to conduct environmental review would pose a grave risk to public health, safety, and welfare, and because the action is immediately necessary to allow access to water to prevent an emergency that similarly poses a grave risk to public health and safety; CEQA Guidelines Section 15303 (Class 3) as an action authorizing the installation of limited numbers of temporary small accessory facilities, structures or equipment to accommodate additional water storage for existing uses; CEQA Guidelines Section 15304 (Class 4) as an action authorizing minor alterations in the condition of land, water and/or vegetation which do not involve the removal of healthy, mature trees; and CEQA Guidelines Section 15061(b)(3) (Common Sense) because it can be seen with certainty that there is no possibility that the action will have a significant effect because allowed reduced zoning requirements for installation of water tanks are temporary and minor in scale.

SECTION 8. Severability.

The provisions of this ordinance are separate and severable. If any provision of this ordinance is for any reason held by a court to be unconstitutional or invalid, the Board declares that it would have passed this ordinance irrespective of the invalidity of the provision held to be unconstitutional or invalid. Such unconstitutionality or invalidity shall therefore not affect the remaining provisions of this Ordinance, or the validity of its application to other persons or circumstances.

SECTION 9. Effective Date; Term of Ordinance.

This Ordinance shall take effect immediately as an urgency ordinance, and will remain in effect until expiration or termination of the County's declared local emergency, or until this Ordinance is modified or revoked by the Board of Supervisors, whichever is sooner.

PASSED AND ADOPTED by the Board of Supervisors of the County of Mendocino, State of California, on this 13th day of July, 2021, by the following roll call vote:

AYES: Supervisors McGourty, Mulheren, Haschak, Gjerde, and Williams
NOES: None
ABSENT: None

WHEREUPON, the Chair declared the Ordinance passed and adopted and **SO ORDERED**.

ATTEST: CARMEL J. ANGELO
Clerk of the Board

DAN GJERDE, Chair
Mendocino County Board of Supervisors

Deputy

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

APPROVED AS TO FORM:
CHRISTIAN M. CURTIS
County Counsel

BY: CARMEL J. ANGELO
Clerk of the Board

Deputy