

URGENCY ORDINANCE NO. 690

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF INDIAN WELLS, CALIFORNIA, AMENDING INDIAN WELLS MUNICIPAL CODE SECTION 21.60.080 CONCERNING LANDSCAPING DESIGN PLANS DURING THE CURRENT DROUGHT STATE OF EMERGENCY

WHEREAS, on January 17, 2014, State of California Governor Brown (the "Governor") proclaimed a drought state of emergency ("Emergency Drought Proclamation"); and

WHEREAS, on April 25, 2014, the Governor signed an Executive Order ("April 2014 Proclamation") calling on the State of California to re-double state drought actions. Among other things, the Executive Order directed the State Water Resources Control Board ("SWRCB") to adopt emergency regulations as it deems necessary to ensure that "Urban Water Suppliers" implement drought response plans to limit outdoor irrigation and other wasteful water practices; and

WHEREAS, California Water Code section 1058.5 grants the SWRCB the authority to adopt emergency regulations in certain drought years when the Governor has issued a proclamation of emergency based on drought conditions in order to: "prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports."; and

WHEREAS, on July 15, 2014, the SWRCB adopted Resolution 2014-0038, which adopted an emergency regulation for water conservation that added new sections to title 23 of the California Code of Regulations. That emergency regulation became effective on July 28, 2014 upon approval by the State's Office of Administrative Law; and

WHEREAS, on March 17, 2015, the SWRCB considered and readopted the existing emergency regulation originally adopted on July 15, 2014, with some updates, for an additional 270 days beyond the original April 25, 2015 expiration date. The updated emergency regulation consists of four main types of requirements: a prohibition on certain irrigation practices, restrictions on certain commercial activities, an order for all urban water suppliers to implement mandatory restrictions on outdoor irrigation, and an order for water suppliers with 3,000 or more service connections to provide monthly data on water production, compliance actions, and outdoor water conservation measures being implemented. Concurrently, the SWRCB made a finding that an emergency exists due to severe drought conditions and that adoption of the updated emergency regulation was necessary to address the emergency and that non-emergency regulations cannot timely address the current severe drought emergency; and

WHEREAS, on April 1, 2015, the Governor issued Executive Order B-29-15 that, in part, directed the SWRCB to impose restrictions on water suppliers to achieve a statewide 25 percent (25%) reduction in potable urban usage through February 2016. The Executive Order includes, but is not limited to, the following: (1) requiring implementation of water efficiency measures for commercial, industrial, and institutional water users; (2) prohibiting irrigation with potable water of ornamental turf in public street medians; and (3) prohibiting irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission and the Department of Housing and Community Development; and

WHEREAS, on May 5, 2015, the SWRCB adopted emergency regulations that for the first time impose mandatory water restrictions throughout California. On May 18, 2015, the regulations went into effect when the Office of Administrative Law approved them. The new regulations implement an executive order issued by Governor Jerry Brown on April 1, 2015, to address the severe drought gripping the state; and

WHEREAS, on May 12, 2015, the Coachella Valley Water District ("CVWD") adopted Ordinance No. 1419 to address the State Water Board's Emergency Regulations. The ordinance was effective immediately and outlines eleven (11) mandatory water restrictions and twelve (12) recommended activities to help reduce water use in the District; and

WHEREAS, the drought conditions that formed the basis of the Governor's Emergency Drought Proclamation continue to exist. The present year is critically dry and has been immediately preceded by multiple consecutive below normal, dry, or critically dry years. The drought conditions will likely continue for the foreseeable future; and

WHEREAS, the concerns over the existing drought conditions are a legitimate health concern of the City of Indian Wells ("City") which demands reasonable regulation of the review of plans for the design of landscaping for new development in the City to protect the health and well-being of its citizens; and

WHEREAS, the City Council desires to minimize and control these adverse drought conditions and thereby immediately protect and preserve the public peace, health and safety of the City and its citizens, preserve the quality of life and stability of the water supply for its citizens, preserve property values and the character of surrounding neighborhoods, and deter the spread of urban blight; and

WHEREAS, procedures in furtherance of police power regulations are legitimate and reasonable means of accountability to ensure that landscape designs for new development maximize the implementation of irrigation and other water efficient measures, maximize the efficacy of existing rebate programs for water efficient devices provided by the City's water suppliers and others, minimize the cost to the applicant, and have reasonable conditions of approval to control for factors such as the blocking of the growth of weeds and other undesirable landscape; and

WHEREAS, Chapter 21.60 of the City's Municipal Code ("Chapter 21.60") requires certain proposed architectural, landscape, site development plans and other similar matters (collectively, "Plans") to be consistent with the regulations contained in Chapter 21.60. Chapter 21.60 requires that applications be made to the City to have the Plans reviewed by the City's Architecture and Landscape Committee ("ALC"), which shall determine whether the Plans and all other matters subject to review by the ALC under Chapter 21.60 are consistent with Chapter 21.60 and with the objectives of the design guidelines established by the City, and shall give or withhold approval accordingly. Specifically, subsection (A) of section 21.60.080 of Chapter 21.60 provides that, upon the submission of a complete application for a review of Plans by the ALC for areas without an active Homeowner's Association, the application must be submitted to the City's Planning Department for scheduling and consideration before the ALC. Subsection (C) of section 21.60.080 of Chapter 21.60 provides that, in the event a complete application for a review of Plans for areas with an active Homeowner's Association is submitted to such Homeowner's Association and said Association does not approve, approve with conditions, or deny the application within sixty days,

the application and its Plans shall be submitted to the City's Planning Department for scheduling and consideration before the ALC; and

WHEREAS, the City Council desires to amend, for the entire duration of the Emergency Drought Proclamation, section 21.60.080 of Chapter 21.60 to the extent that it requires Plans to be reviewed by the ALC and to instead to have such Plans reviewed by City staff at no cost to the applicant in a manner that is consistent with the provisions of this Urgency Ordinance; and

WHEREAS, it is the intent of the City Council of the City to enact this Urgency Ordinance to amend the procedure requiring review of Plans by the ALC for the duration of the Emergency Drought Proclamation and to instead have a procedure that requires that such Plans be reviewed by City staff at no cost to the applicant to streamline the approval process for Plans, maximize the implementation of irrigation and other water efficient measures, maximize the efficacy of existing rebate programs for water efficient devices provided by the City's water suppliers and others, minimize the costs of the applicant, and have reasonable conditions of approval to control for factors such as the blocking of the growth of weeds and other undesirable landscape; and

WHEREAS, California Government Code Section 36937(b) provides for the adoption of an urgency ordinance for the immediate preservation of the public safety, health, and welfare without following the procedures otherwise required for the adoption of an ordinance amending the procedures found in section 21.60.080 of Chapter 21.60; and

WHEREAS, in accordance with Government Code Section 36937, such an urgency ordinance requires a four-fifths vote of the entire City Council; and

WHEREAS, the City Council after considering public testimony given at the public hearing for this Urgency Ordinance does hereby determine that this Urgency Ordinance is in the best interest of the City.

NOW, THEREFORE, the Council of the City of Indian Wells does ordain as follows:

SECTION 1. URGENCY FINDINGS. The City Council of the City of Indian Wells hereby **FINDS** that:

A. California Government Code, Section 36937(b) provides that an urgency measure for the immediate preservation of the public peace, health or safety shall take effect immediately upon adoption. The City Council finds that this Urgency Ordinance, and the regulations set forth herein, are necessary for the immediate preservation of public peace, health and safety in order to protect residents and local businesses from the adverse secondary effects of the existing drought conditions that gave rise to the Governor's Emergency Drought Proclamation and that continue to exist today.

B. The City Council hereby **ADOPTS** the foregoing recitals as its findings that the adoption of this Urgency Ordinance is necessary.

SECTION 2. AMENDMENT OF INDIAN WELLS MUNICIPAL CODE SECTION 21.60.080 TO APPLY ONLY DURING THE CURRENT EMERGENCY DROUGHT PROCLAMATION. From the effective date of this Urgency Ordinance until the expiration of the current Emergency Drought Proclamation, section 21.60.080 of the Indian Wells Municipal Code shall read as follows:

"21.60.080 Review process.

Upon the submission of a complete application, the review process for applications that would otherwise be required by this Chapter to go before the ALC shall be accomplished according to the following methods:

(a) No Homeowners Association. If an application is located in an area without an active Homeowner's Association, a complete design package as specified in Section 21.60.100 must be submitted to the Planning Department for review by City staff at no cost to the applicant. As part of staff's review, staff shall: consider the proposed and all possible irrigation measures to the area covered by the application and place reasonable conditions of approval on the application, including but not limited to requiring the use of reasonable irrigation measures and water efficient designs and the use of weed blocks. In lieu of completing the City's standard application, applicants may instead use either: plans that have previously been approved by the Coachella Valley Water District as part of a formal Coachella Valley Water District rebate program for water efficient plans, the plant palette and irrigation systems as described in CVWD's Cooperative Landscape Water Management Program handouts available on CVWD's website, or other plans designated by City staff as fulfilling the purpose and intent of this Chapter.

(b) Homeowners' Association. If an application is located in an area with an active Homeowner's Association, a complete design package, having been reviewed and approved by an active Homeowner's Association shall be reviewed by the Planning Department for compliance with the basic zoning and design parameters specified in the Zoning Code and design guidelines established by the City. Upon the completion of this staff review the applicant will be permitted to submit working drawings to the Building Department. However, if conditions warrant, the design package may be referred to the ALC for design approval at the direction of the Community Development Director, based upon the Zoning Code and Architecture and Landscape Design Standards established by the City.

(c) Failure of Homeowners' Association to Act on Application after Submission. In the event a design package (application) is submitted to an active Property Owners' or Homeowners' Association and said Association does not approve, approve with conditions or deny a design package within sixty (60) days, said design package shall be submitted to the Planning Department for review and approval subject to the procedures outlined in subsection (a) of this section 21.60.080."

SECTION 3. INDIAN WELLS MUNICIPAL CODE SECTION 21.60.080 UPON EXPIRATION OF THE CURRENT EMERGENCY DROUGHT PROCLAMATION. Upon expiration of the current Emergency Drought Proclamation, section 21.60.080 of the Indian Wells Municipal Code shall read as follows:

"21.60.080 Review process.

Upon the submission of a complete application, the ALC review process shall be accomplished by either one (1) of the two (2) following methods:

(a) No Homeowners Association. If an application is located in an area without an active Homeowner's Association, a complete design package as specified in Section 21.60.100, must be submitted to the Planning Department for scheduling before the ALC.

(b) Homeowners' Association. If an application is located in an area with an active Homeowner's Association, a complete design package, having been reviewed and approved by an active Homeowner's Association shall be reviewed by the Planning Department for compliance with the basic zoning and design parameters specified in the Zoning Code and design guidelines established by the City. Upon the completion of this staff review the applicant will be permitted to submit working drawings to the Building Department. However, if conditions warrant, the design package may be referred to the ALC for design approval at the direction of the Community Development Director, based upon the Zoning Code and Architecture and Landscape Design Standards established by the City.

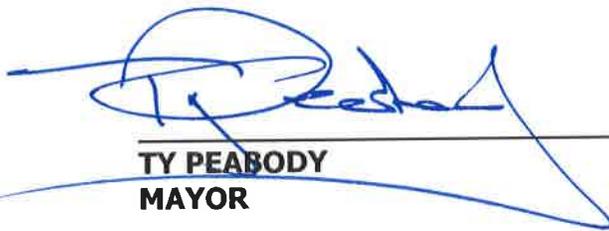
(c) Failure of Homeowners' Association to Act on Application after Submission. In the event a design package (application) is submitted to an active Property Owners' or Homeowners' Association and said Association does not approve, approve with conditions or deny a design package within sixty (60) days, said design package shall be submitted to the Planning Department for scheduling before the Architecture and Landscape Committee for design approval."

SECTION 4. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one (1) or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

SECTION 5. EFFECTIVE DATE. This Ordinance is adopted as an urgency ordinance pursuant to the provisions of Government code Sections 36934 and 36937, to protect the public peace, health and safety, shall take effect immediately upon its adoption in accordance with California Government Code Section 36937(b). The facts which support this finding or urgency are set forth in SECTION 1 herein above.

SECTION 6. CERTIFICATION AND PUBLICATION. The Mayor shall sign this Ordinance and the City Clerk shall attest and certify to the passage and adoption of it by at least four-fifths vote of the City Council, where upon this Ordinance shall take effect and enforced. Within fifteen days after passage of this Ordinance, a summary of the Ordinance shall be published, in accordance with Government Code Section 36933, in a newspaper of general circulation, printed, published, and circulated in the City of Indian Wells.

PASSED, APPROVED and ADOPTED by the City Council of the City of Indian Wells, California, at a regular meeting held on this 16th day of July, 2015.



TY PEABODY
MAYOR

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)ss.
CITY OF INDIAN WELLS)

CERTIFICATION FOR URGENCY ORDINANCE NO. 690

I, Wade G. McKinney, City Clerk of the City Council of the City of Indian Wells, California, **DO HEREBY CERTIFY** that Urgency Ordinance No. 690, the reading in full thereof unanimously waived, was duly passed and adopted at a regular meeting of the City Council held on the 16th day of July, 2015, and said Ordinance was passed and adopted by the following stated vote, to wit:

AYES: Balocco, Hanson, Mertens, Peabody, Reed
NOES: None

and was thereafter on said day signed by the Mayor of the City of Indian Wells.

ATTEST:

APPROVED AS TO FORM:



WADE G. MCKINNEY
CITY MANAGER/CITY CLERK



STEPHEN P. DEITSCH
CITY ATTORNEY