

URGENCY ORDINANCE NO 899B

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LINCOLN
ENACTING CHAPTER 13 04, ARTICLE IX RELATING TO
WATER CONSERVATION AND PENALTIES TO THE LINCOLN MUNICIPAL CODE

WHEREAS, the State of California is currently experiencing one of its most prolonged and extreme droughts in recent history, and

WHEREAS, in 2010, the City adopted an Urban Water Management Plan containing a Water Shortage Contingency Plan identifying four water rationing stages, and

WHEREAS, on April 1, 2015, the Governor of the State of California issued Executive Order B-29-15 finding that California's water supplies continue to be severely depleted and that new expedited actions are needed to reduce the harmful impacts of the drought and requiring additional water use restrictions to achieve a 25 percent reduction in potable urban water usage through February 28, 2016, and

WHEREAS, on May 5, 2015, the State Water Resources Control Board adopted Emergency Regulations to implement Executive Order B-29-15 and the Emergency Regulations require the City of Lincoln to reduce its total potable water production by 36 percent over 2013 beginning on June 15, 2015, and

WHEREAS, the Emergency Regulations require the City to report its water consumption and delivery on a monthly basis, and

WHEREAS, the City is currently operating at stage two of the Water Shortage Contingency Plan and other required measures mandated by the State Water Resources Control Board

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LINCOLN DOES HEREBY ORDAIN AS FOLLOWS

Section 1 Authority Sections 13 04 610 and 13 04 620 are enacted pursuant to the authority granted to cities by state law including, without limitation, California Constitution, Article 11, section 7, Government Code section 36901 and Water Code section 353

Section 2 Purpose and Findings The City has imposed regulations and restrictions on the delivery and consumption of water within the City's service area in order to achieve the state-mandated 36 percent reduction, and the City seeks to encourage compliance with all City of Lincoln restrictions on the delivery and consumption of water, including those imposed by City resolutions and by the Urban Water Management Plan It is the intent of the City Council that these regulations be brought back to the City Council for reconsideration and possible modification or repeal upon repeal or expiration of the State Water Resources Control Board Emergency Regulation for Statewide Urban Water Conservation

Based upon the findings below, and for the immediate preservation of the public peace, health, welfare, and safety, the City Council finds there is an urgent need that this ordinance be effective immediately upon its enactment and adoption

a The City of Lincoln has a substantial interest in achieving the state-mandated 36 percent reduction in water delivery and consumption by June 15, 2015 in order to protect the state's water resources and avoid conservation orders from the State Water Resources Control Board

b The City of Lincoln requires flexibility in modifying its water consumption restrictions in order to respond to monthly changes in water demand and conservation

c Extending the effective date of this ordinance for a period of at least thirty (30) days would unnecessarily interfere with the City's ability to meet its 36 percent reduction by June 15, 2015 by delaying the City's ability to enforce water use restrictions until after the first compliance deadline

d This ordinance will promote the public peace, health, welfare, and safety by allowing the City to enforce water conservation requirements and modify them as necessary to respond to drought conditions and water conservation

Section 3 Enactment Chapter 13 04, Article IX of the City of Lincoln Municipal Code is hereby enacted to read as follows

Article IX – Water Conservation, Penalties

13 04 610 Penalties for Violation of Water Conservation Restrictions

Notwithstanding any other provision of law, any person who violates any ordinance, resolution, standard, or other restriction relating to water conservation shall be subject to the following penalties

(a) The first and second violations within a one-year period shall be subject to an oral or written warning

(b) The third violation within a one-year period shall be punishable by a fine not to exceed \$50 per occurrence. The City Manager or his appointee may waive these fines if the violating party participates in a water conservation education course provided or approved by the City

(c) The fourth and following violations within a one-year period shall be punishable by a fine not to exceed \$500 per occurrence

(d) For purposes of this ordinance each day that a violation occurs shall be considered a separate occurrence

(e) The City Manager or his/her designee(s) shall be authorized to enforce the provisions of this Article

13 04 620 Appeals Penalties imposed pursuant to Section 13 04 610 may be appealed to a Hearing Officer or Hearing Body appointed by the City Manager. Any such appeal shall be submitted in writing to the City Clerk within ten days of the notice of the violation. The decision of the Hearing Officer or Hearing Body shall be final and subject to no further administrative appeals. To the extent that is not inconsistent with the provisions of this Article, the provisions of Chapter 1 20 shall govern the administrative citation and appeal process for fines imposed hereunder

Section 4 No Mandatory Duty of Care This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law

Section 5 Severability If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or

application, and to this end the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of this ordinance be enforced.

Section 6 Savings Clause The provisions of this ordinance shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect, but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force and effect to all intents and purposes as if such ordinance or part thereof so repealed had remained in force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said code shall be discharged or affected by such repeal or alteration, but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded within all respects as if such prior ordinance or part thereof had not been repealed or altered.

Section 7 CEQA The City Council hereby determines that this ordinance is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code § 21000 et seq.) Pursuant to CEQA Guidelines section 15307 (14 Cal Code Regs., § 15307), this ordinance is covered by the CEQA Categorical Exemption for actions taken to assure the maintenance, restoration, enhancement, or protection of a natural resource where the regulatory process involves procedures for protection of the environment. The adoption of this ordinance will result in the enhancement and protection of water resources, and will not result in cumulative adverse environment impacts or any other potentially significant impact described in CEQA Guidelines section 15300.2. It is therefore exempt from the provisions of CEQA.

Section 8 Effective Date and Publication This ordinance shall take effect immediately. Within fifteen (15) days of its passage, this ordinance shall be published once in the *Lincoln News Messenger*, a newspaper of general circulation within the City. In lieu of publication of the full text of this ordinance within fifteen (15) days after its passage, a summary of this ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to Government Code Section 36933(c)(1).

PASSED AND ADOPTED this 26th day of May 2015, by at least a four-fifths vote by the following roll call vote:

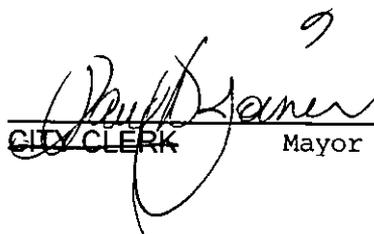
AYES COUNCILMEMBERS Short, Gilbert, Hydrick, Nader, Joiner

NOES COUNCILMEMBERS

ABSENT COUNCILMEMBERS



MAYOR City Clerk



CITY CLERK Mayor