PLEASE NOTE:

This copy of Ordinance No. 240.6 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.
REGULAR

NUMBER: 240.6

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 6 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO THE TERMINATED WATER SHORTAGE EMERGENCY AND EASED SUPPLEMENTAL WATER USE RESTRICTIONS

HISTORY: This Ordinance was adopted by the City Council at its meeting of _______________, upon motion by ______________________. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: APPROVED:

________________________________  __________________________
Mary Lavelle, City Clerk           Rich Tran, Mayor

APPROVED AS TO FORM:

________________________________
Christopher J. Diaz, City Attorney
RECITALS AND FINDINGS:

WHEREAS, on January 17, 2014, Governor Brown issued a Proclamation declaring a State of Emergency due to severe drought conditions in the State of California; and

WHEREAS, on August 19, 2014, the Milpitas City Council adopted Urgency Ordinance No. 240.2, declaring a water shortage, adding supplemental water use restrictions to the Water Shortage Contingency Plan (“WSCP”) as required by State law, and requested the community to implement water conservation measures with a goal of reducing consumption by twenty percent (20%); and

WHEREAS, on June 16, 2015, the Milpitas City Council adopted Urgency Ordinance 240.3, declaring the continuation of a water shortage, implemented Stage 2 of the Milpitas WSCP, and added additional conservation measures as required by State law, and requiring the community to implement water conservation measures with a goal of reducing consumption by thirty percent (30%); and

WHEREAS, as a result of increasing water supplies in many parts of the State, on May 9, 2016, Governor Brown issued Executive Order B-37-16, directing the State Water Resources Control Board to adjust and extend the emergency regulations for urban water conservation through the end of January 2017; and

WHEREAS, in response to the Governor’s directive, the State Water Resources Control Board adopted new emergency regulations, which continued a statewide conservation approach while replacing the prior percentage reduction-based water conservation standard with a localized approach that requires urban water suppliers to adopt a locally-developed conservation standard based on each supplier’s specific circumstances; and

WHEREAS, in order to develop a localized conservation standard, each urban water supplier was required to self-certify the level of available water supplies it has by assuming three additional dry years, and then adopting a conservation standard necessary to assure adequate supply over that time; and

WHEREAS, on June 7, 2016, the Milpitas City Council adopted Resolution No. 8549, “A Resolution Adopting The 2015 Urban Water Management Plan (‘UWMP’),” which includes a WSCP that sets forth five water conservation stages designed to reduce overall water usage during a declared water shortage; and

WHEREAS, on June 14, 2016, the Santa Clara Valley Water District adopted a Resolution calling for a 20% water use reduction through January 31, 2017, and restrictions on outdoor watering of ornamental landscapes or lawns with potable water to a maximum of three days per week.

WHEREAS, pursuant to California Water Code section 375, the City of Milpitas is authorized to adopt and enforce a water conservation program to reduce the quantity of water used by persons within its jurisdiction for the purpose of conserving the water supplies of the City; and

WHEREAS, pursuant to Water Code section 376, a water conservation program adopted pursuant to Water Code section 375 may be adopted by a resolution or an ordinance, and such resolution or ordinance is effective upon its adoption; and

WHEREAS, on August 16, 2016, the Milpitas City Council adopted Ordinance No. 240.5, declaring the continuation of a water shortage for the year 2016, implemented Stage One of the WSCP, modified the supplemental water use restrictions, and requested the community to implement water conservation measures with a goal of reducing consumption by twenty percent (20%); and

WHEREAS, on April 7, 2017, Governor Brown issued Executive Order B-40-17, terminating the January 17, 2014 drought State of Emergency for most counties in California, including Santa Clara County; and

WHEREAS, Executive Order B-40-17 directs the State Water Board to rescind the water supply stress test for urban water suppliers as well as any remaining mandatory conservation standards, but to maintain urban water use reporting requirements and prohibitions on wasteful practices such as watering during or after rainfall, hosing off sidewalks, and irrigating ornamental turf on public street medians, until these requirements expire toward the end of 2017; and
WHEREAS, in accordance with Water Code section 375 et seq., and the laws and regulations cited above, a certified copy of the full text of this Ordinance was posted in the City Clerk’s Office at least five (5) days prior to the public hearing and a summary will be published in a newspaper of general circulation within fifteen (15) days of adoption of this Ordinance.

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

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE

Section 2 of Chapter 6 of Title VIII of the Milpitas Municipal Code is hereby amended to read as follows:

VIII-6-2.00 - Definitions

The words used in this chapter have the meaning set forth below:

2.01 “Recycled water,” “Reclaimed Water,” or “Treated Sewage Effluent Water” means treated or recycled wastewater of a quality suitable for non-potable uses such as landscape irrigation, and not intended for human consumption.

2.02 "Runoff" means water that is not absorbed by the surface to which it is applied and flows from the area.

2.03 "Potable Water" means water sold by the City of Milpitas intended for human consumption.

2.04 “Recirculated Water” means water that is circulated in a system that recirculates water through an internal circulation device.

2.05 “Water Shortage Contingency Plan” or “WSCP” means a rationing plan including voluntary and mandatory rationing, depending on the causes, severity, and anticipated duration of a water supply shortage.

Section 3 of Chapter 6 of Title VIII of the Milpitas Municipal Code is hereby amended to read as follows:

VIII-6-3.00 -- Water Use Restrictions

The following uses of potable water are prohibited:

3.01 Use that results in flooding or runoff in gutters, waterways, patios, sidewalks, driveways, or streets except as permitted in Section 3.02 A(a) and B(b).

3.02 Use of a hose without a positive shutoff nozzle on the outlet end of the hose for:

(a) Washing cars, buses, boats, aircraft, trailers or other vehicles or mobile equipment;

(b) Washing buildings, structures, sidewalks, walkways, driveways, patios, parking lots, tennis courts, or other hard-surfaced areas; and

(eb) Watering outside plants, lawn, landscape, and turf areas.

3.03 Except upon the request of a customer, service of water by any establishment except upon the request of a customer, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased.

3.04 Use through broken or defective plumbing, sprinkler, watering, or irrigation systems.

3.05 Use in new, added, or altered commercial car wash equipment unless a recycled, recirculated water system is incorporated.
3.06 Use in new, added, or altered cooling system equipment unless at least fifty percent (50%) of the water is recycled. A waiver to allow less than fifty percent (50%) recycling may be granted by the Chief Building Official due to water quality concerns only. Cost is not an acceptable reason to request or receive a waiver.

3.07 Appropriate use for irrigation if recycled water, reclaimed water, or treated sewage effluent water is available, except in the following situations as deemed necessary by City Engineer/Public Works Director:

(a) Implementation of the streetscape along Abel and Main Streets;
(ba) Irrigation of City Cultural Resources;
(ec) An establishment period for native plantings, when irrigation will be eliminated at a later period;
(d) Where recycled water, reclaimed water, and treated sewage effluent water use is prohibited under Title 22 of the State Water Code;
(e) Other situations where recycled water, reclaimed water, or treated sewage effluent water use is deemed inappropriate by the City Engineer/Public Works Director.

3.08 Use in new, added, or altered decorative fountains unless a recycled water system is incorporated.

3.08 Use of Potable Water for cleaning of any hard surfaces, such as sidewalks, streets, buildings, and parking lots, hosing of sidewalks, driveways, and other hardscapes.

3.09 Use of Potable Water for construction purposes, including dust control and compaction.

3.10 Use of Potable Water for cleaning, filling, or operating water features, such as decorative fountains, except where the water is part of a recirculating system.

3.11 Exceptions to the prohibitions enumerated in 3.09 and 3.10 may be granted where necessary to address an immediate health and safety need, or to comply with a term or condition in a permit issued by a state or federal agency, or where otherwise allowed by law.

3.12 The application of Potable Water to irrigate outdoor plants, lawn, grass, landscaping, or turf areas during and within 48 hours after measurable rainfall.

3.123 Use of Potable Water for outdoor irrigation in newly constructed homes and buildings shall be designed except with drip or microspray irrigation systems.

3.13 The application of Potable Water to street medians containing ornamental turf.

3.14 Pools and spas shall be covered when not in use to prevent evaporation.

3.15 The prohibitions enumerated in 3.12, 3.123, and 3.13 do not apply to any water treatment features, such as landscaping and green roofs, to meet the requirements of Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit No. CAS612008, C3 Provision.

3.17 Exceptions to the prohibitions enumerated in 3.09, 3.10, 3.12, 3.123, 3.13, and 3.14 and 3.15 may be granted where necessary to address an immediate health and safety need, or to comply with a term or condition in a permit issued by a state or federal agency, or where otherwise allowed by law.

Section 5 and Section 6 of Chapter 6 of Title VIII of the Milpitas Municipal Code are hereby deleted and repealed in their entirety.

VIII-6.5.00 Supplemental Water Use Restrictions

Notwithstanding Section VIII-6.3.00 or any other provision of the Municipal Code, the following uses of Potable Water are prohibited:

5.01 Use of Potable Water for cleaning of any hard surfaces, such as sidewalks, streets, buildings, and parking lots.

5.02 Use of a hose that dispenses potable water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use.

5.03 Use of Potable Water for construction purposes including dust control and compaction.
5.04 Use of Potable Water for cleaning, filling, or operating water features, such as decorative fountains, except where the water is part of a recirculating system.

5.05 Use of Potable Water for watering or irrigation of any plants, lawn, grass, landscaping or turf areas except between the hours of 6:00 p.m. through 9:00 a.m. and for no more than three days during any seven-day period. The days of watering shall be:

Address Ending in Odd Number: Monday, Thursday, and Saturday;

Address Ending in Even Number: Tuesday, Friday, and Sunday;

No address: Monday, Thursday, and Sunday.

The following activities are exempt from the day and time restrictions on watering or irrigation:

(a) Use of Potable Water for short periods during timer adjustment and repair of irrigation system are exempt from the time and day restriction set forth above.

(b) Watering by hand.

(c) Watering plants slated for sale in nursery/garden centers.

(d) Watering using drip irrigation systems.

The Public Works Director and/or the Director of Engineering is also authorized to approve a variation of the time and day schedule restriction, provided the variation meets the required reduction above of only three days in any seven-day period.

5.06 The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased.

5.07 Exceptions to the prohibitions enumerated in 5.01 through 5.07 may be granted where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency, or where otherwise allowed by law.

VIII-6-6.00—Additional Supplemental Water Use Restrictions

Notwithstanding Section VIII-6-3.00, Section VIII-6-5.00 or any other provision of the Municipal Code, the following uses of Potable Water are prohibited:

6.01 The application of Potable Water to outdoor any plants, lawn, grass, landscaping or turf areas during and within 48 hours after measurable rainfall.

6.02 To promote water conservation, owners and operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.

6.03 Newly constructed homes and buildings shall be designed with drip or microspray irrigation systems, provided any new landscaping shall continue to be restricted from installation during the declared drought as set forth in Section VIII-5-5.07.

6.04 The application of Potable Water to street medians containing ornamental turf.

6.05 Hydrant flushing, except for health and safety purposes.

6.06 Pools and spas shall be covered when not in use to prevent evaporation.

6.07 The prohibitions enumerated in 6.01, 6.03, and 6.04 do not apply to any water treatment features, such as landscaping and green roofs, to meet the requirements of Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit No. CAS612008, C3 Provision.

6.08 Exceptions to the prohibitions enumerated in 6.01 through 6.06 may be granted where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency, or where otherwise allowed by law.

Section 7 and Section 8 of Chapter 6 of Title VIII of the Milpitas Municipal Code are hereby amended to read as follows:
VIII-6-52.00 - Non-Compliance

Any violation of this Chapter shall be subject to the penalties provision set forth in Section I-1-4.09 (Penalty Provision), Sections I-21-1.01 through I-21-1.14 (Administrative Citation), or any other penalty provisions in the Municipal Code or State law.

VIII-6-68.00 - Applicability

The prohibitions and rationing requirements identified in this Chapter are not applicable to fountains, irrigation systems, cooling towers, and dual-plumb sites that use non-potable water such as recycled water.

SECTION 3. TERMINATION OF WATER SHORTAGE STAGE 2

The City Council declares that the water shortage stage 2 of the City’s WSCP is hereby terminated.

SECTION 4. WATER SHORTAGES AND EMERGENCIES

The City Council by resolution may require or impose restrictions on or reductions in the use of water if such restrictions or reductions are necessary for the City to comply with water use restrictions imposed by federal, state, or regional water agencies, or to respond to a local or regional water shortage or emergency. Depending on the expected duration and severity of the water shortage or emergency, these measures may include, but are not limited to, some or all of the actions and water conservation and water use restrictions or reduction measures listed in the WSCP or Chapter 6 of Title VIII of the Milpitas Municipal Code, and may include additional water conservation and water use restriction and reduction measures not otherwise set forth in the WSCP or Chapter 6 of Title VIII of the Milpitas Municipal Code. The resolution of the City Council may also include the declaration of a specific water shortage stage in accordance with the stages set forth in the WSCP. Upon the adoption of any such resolution, the restrictions on or reductions in water use set forth therein or for the identified water shortage stage shall be in effect immediately unless otherwise determined by the City Council in such resolution. The restrictions on or reductions in water use or the declaration of a water shortage stage may be subsequently terminated by the adoption of a resolution of the City Council.

SECTION 5. SEVERABILITY

If any section, subsection, subdivision, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional, 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 adopted each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

SECTION 6. SUPERSEDE

All ordinances, resolutions, or administrative actions by the City Council, or parts thereof, which are inconsistent with any provision of this Ordinance are hereby superseded by this Ordinance to the extent of such inconsistency.

SECTION 7. EFFECTIVE DATE AND POSTING

In accordance with Section 376 of the Water Code of the State of California, this Ordinance shall take effect upon its adoption. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 376 of the Water Code of the State of California.