

ORDINANCE NO. 2008-08

**AN ORDINANCE OF THE CITY OF AMERICAN CANYON
TO AMEND MUNICIPAL CODE CHAPTER 13 NEW WATER
AND SEWER CONNECTIONS AND SERVICES**

WHEREAS, the City of American Canyon ("City") and the County of Napa ("County") entered into City Agreement No. 2008-93; County Agreement No. 7070 (the "City-County Agreement") effective July 3, 2008 involving water services within the City's Water Service Area which includes the Airport Specific Plan area; and,

WHEREAS, in the City-County Agreement, the parties sought to provide a solid footing for future planning and decision-making by recognizing a mutually agreed upon City urban growth boundary that will remain in place without change until 2030; and,

WHEREAS, the City-County Agreement requires the amendment of the City Municipal Code sections 13.10.010, 13.10.020 and 13.10.040 and all other related Municipal Code provisions, implementing resolutions and policies, so that they will be consistent with City-County Agreement sections II.A.2.a, III.E., and Exhibit E; and,

NOW THEREFORE BE IT ORDAINED THAT the City Council declares as follows:

- Section I. Municipal Code section 3.10.010 (G), (H) and (I) are hereby repealed.
- Section II. Municipal Code section 3.10.020 (B) and (C) are hereby repealed.
- Section III. Municipal Code section 13.10.010 is hereby amended to provide as follows (amended sections are underlined):

13.10.010 Legislative findings.

- A. Under state law, the city may provide water connections and service to residences and businesses within its corporate boundaries before committing to provide water connections and services to developments outside city limits;
- B. The city has approved and may have applications in the future for new developments for residential, commercial and industrial uses that will require water connections and service;
- C. Applications for the annexation of various properties to the city and the American Canyon fire protection district, a

subsidiary district of the city (district) are currently pending before the Napa County local agency formation commission (LAFCO), and other applications may be submitted in the future from time to time.

- D. Applications for new developments that will require large amounts of water which will be located in unincorporated county territory are pending before the county of Napa (county) and to date, applications for the annexation of these developments into the city have not been filed with LAFCO;
- E. The city's primary obligation as a local government is to provide water connections and service within its boundaries or to those developments where applications for annexation to the city are pending before LAFCO, rather than to developments in unincorporated county territory;
- F. The city is committed to the prudent management of its resources and to its economic growth and development;
- G. Notwithstanding the foregoing, consistent with the City-County Agreement, the City will provide water service to all Outside Customers and Other Outside Customers upon request under all of the same terms and conditions under which the City provides water service to City Customers, and the City will not impose any term or condition on any water service to any Outside Customer and Other Outside Customers that is different from the terms and conditions that the City imposes on City Customers, except that the City may continue to impose higher water rates on Outside Customers and Other Outside Customers consistent with *Hansen v. City of San Buenaventura* (1986) 42 Cal.3d 1172.
- H. The City shall continue to provide water service to existing Outside Customers and Other Outside Customers and, upon request, the City shall provide new or increased water service to all Outside Customers and Other Outside Customers under the same terms and conditions under which the City provides water service to City Customers, as provided in subsection G above. The City shall provide all new City Customers, all new Outside Customers and Other Outside Customers with water service under the conditions set forth in subsection I.
- I. Water Conditions to be Imposed on all Parcels (City Customers, Outside Customers and Other Outside Customers) for which New Water Service is Requested.

The City may impose the conditions listed below on new water services for Outside Customers and Other Outside Customers by including these

conditions in the "will-serve" letters that the City provides to such Customers, but only if the City also imposes the same conditions on all new water services for parcels with similar uses within the City's limits. Napa County shall include these same conditions in all new land use development permits for parcels within the Airport Industrial Area Specific Plan area.

1. City Capacity Fees and Conditions of Approval for Water Service. Capacity Fees charged for parcels within the City's Water Service Area shall be established by the City and will be periodically reviewed and updated. Capacity Fees (also known as Connection Fees) will be uniform throughout the Water Service Area, regardless of whether the parcel to which the fee applies is inside or outside the City's Limits. The Capacity Fee and any conditions on new water service will be determined based on the Water Supply Report, which shall contain the analysis described in the City-County Agreement Part II.C. of Exhibit F, and which will be consistent with the City's Zero Water Footprint Policy, adopted by the City on October 23, 2007, or as may be subsequently amended.

2. Cost of Water Service. The cost of new water service shall be imposed through the Capacity Fees in the City's Ordinance 2007-09 or through new Capacity Fees approved by Napa County and enacted in a new City ordinance. However, if the Water Supply Report finds, consistent with the City's Zero Water Footprint Policy or as may be subsequently amended (see City-County Agreement Exhibit F), that the City will have to obtain additional water supplies to meet "dry year" shortfalls, then the cost of water to meet such "dry year" shortfalls will be the sole responsibility of the Applicant. In determining whether or not such "dry year" shortfalls will occur, the City shall include in the base supplies available to the City during "dry years" the new water supplies that have been or will be included in the calculations used to set the City's Capacity Fees and water rates. The City will conclude that "dry year" shortfalls will occur only if such base supplies will not be adequate to meet anticipated "dry year" demands. The City may not impose any costs on the Applicant under this section to reimburse the City for any capital or operating costs that have been or will be included in the calculations used to set the City's Capacity Fees or water rates. The City may impose the additional costs described in the preceding sentence on Outside Customers and Other Outside Customers only if the City also imposes such additional costs uniformly on City Customers.

3. Maximum Allowable Water Use. Water received from the City for use on parcels within the Airport Industrial Area Specific Plan area and on parcels with similar uses within the City's limits and Other Outside

Customers with similar uses shall be limited to an average of 650 gallons of water per day per acre (measured monthly), and Applicants for new or increased City water service for all such parcels shall be required to demonstrate to the City while the City is preparing the Water Supply Report for the Applicant the maximum extent to which the Applicant can further reduce its water consumption by applying the following best management practices:

a. No Flow or Low Flow Fixtures. These Applicants shall be required to install no flow or low flow water fixtures, and to implement other reasonable water conservation measures that are described in the City's Water Conservation Guidelines adopted in the City's Resolution No. 2008-08 or in new City water conservation guidelines approved by Napa County and adopted in a new City ordinance or resolution.

b. Drought Tolerant Landscape & Irrigation with Recycled Water. These Applicants shall be required to use only drought tolerant landscaping, and they may only irrigate landscaped areas with recycled water, when it is available.

c. Purple Pipe. These Applicants shall be required to dual plumb their buildings and install "purple pipe" in all landscape areas in anticipation of the availability of recycled water and shall use the recycled water when available.

d. These Applicants shall follow the water conservation methods that are described in the Water Conservation Guidelines adopted in the City's Resolution No. 2008-08 or in new City water conservation guidelines approved by Napa County and adopted in a new City ordinance or resolution.

The City may apply the provisions of this Paragraph 3 to Applicants for new or increased City water service for parcels within the Airport Industrial Area Specific Plan area only if the City also uniformly applies these provisions to all Applicants for new or increased City water service for parcels with similar uses within the City's limits and Other Outside Customers.

4. Water Offsets. Applicants for City water service for parcels within the Airport Industrial Area Specific Plan area and for parcels with similar uses within the City's limits and Other Outside Customers with parcels with similar uses that wish to use more than an average of 650 gallons of water per day per acre (measured monthly) shall offset the proposed water use

over 650 gallons per day per acre (measured monthly) through the use of one or more options that are made available by the City to the Applicants. These options include, but are not limited to, retrofitting of existing residences with low flow fixtures, purchase of otherwise developable land as permanent open space, or acquisition of other water supply resources as provided for by a water supply analysis that follows the Zero Water Footprint Methodology, or as may be subsequently amended, described in Exhibit F to the City-County Agreement. The City shall make all such options available uniformly to Applicant for City water service for parcels within the Airport Industrial Area Specific Plan area and for parcels with similar uses within the City's limits and Other Outside Customers with parcels with similar uses, and that seek such offsets.

5. Drought Restrictions. To the extent permitted by law, the City may curtail or ration the use of water provided by the City below the limit of 650 gallons per day per acre (measured monthly) in dry years through the imposition of drought restrictions that are uniformly applied throughout the City's Water Service Area.

- J. For purposes of this Chapter 13, "City Customers" shall mean all persons and entities presently receiving water service from the City, and all persons and entities that are requesting or in the future request new or increased water service from the City, for parcels that are located within City's incorporated limits.
- K. For purposes of this Chapter 13, "Outside Customers" shall mean all persons and entities presently receiving water service from the City, and all persons and entities that are requesting or in the future request new or increased water service from the City for parcels that are located outside the City's limits but within the Airport Industrial Area Specific Plan boundaries.
- L. For purposes of this Chapter 13, "Other Outside Customers" shall mean all persons and entities presently receiving water service from the City, and all persons and entities that are requesting or in the future request new or increased water service from the City for parcels that are located outside the City's limits but not within the Airport Industrial Area Specific Plan boundaries.

Section IV. Section 13.10.020 is hereby amended to provide as follows (amended sections are underlined):

13.10.020 Priority of service.

- A. The city shall give first priority for new water and sewer connections and services to residences and businesses located within the city corporate boundaries.
- B. Notwithstanding the foregoing, consistent with the City-County Agreement, the City will provide water service to all Outside Customers and Other Outside Customers upon request under all of the same terms and conditions under which the City provides water service to City Customers, and the City will not impose any term or condition on any water service to any Outside Customer and Other Outside Customers that is different from the terms and conditions that the City imposes on City Customers, except that the City may continue to impose higher water rates on Outside Customers and Other Outside Customers consistent with *Hansen v. City of San Buenaventura* (1986) 42 Cal.3d 1172.
- C. Applicants for water service from Other Outside Customer applicants must comply with all standards applicable to Outside Customers set forth in this Chapter and in the discretion of the City, applicant may be required to enter into a revenue sharing agreement.

Section V. Section 13.10.040 is hereby amended to provide as follows (amended sections are underlined):

13.10.040 General requirements and limitations on will-serve letters issued to developments outside City's corporate limits.

Unless otherwise agreed to in writing by the city council, any development outside the city's corporate boundaries must agree to the following conditions, in order to receive city water services:

- A. The applicant must clearly define the project being proposed, including the estimated water services required;
- B. The applicant must agree to abide by the rules and regulations of the city, including the payment of any and all fees and charges, unless otherwise specified in writing;
- C. The applicant must agree to waive any protest to the city's

forty percent surcharge on outside city water customers, established to offset the tax and other revenue loss to the city by not annexing into the city;

- D. The applicant must agree to grant any required utility or access easements that may be reasonably required by the city;
- E. The applicant must agree to pay a nonrefundable deposit of five percent of the engineer's estimated costs of all required on- and off site public water facilities, in order to cover plan check and inspection charges;
- F. In the event the applicant's estimated or actual water consumption exceeds the city's per acre water limit, currently at six hundred fifty gallons of water per day per acre, then the applicant must agree to any one or a combination of the following conditions:
 - 1. Reduce or redesign the project to reduce overall water consumption to a point at or below the city's limit, including but not limited to, a more aggressive water conservation program, or the use of recycled water whenever possible,
 - 2. Integrate additional land into the project, which is also within the city's water service area, in such a manner that the overall consumption for the entire area is at or below the city's limit, or
 - 3. Agree to advance the costs to enhance the city's water supply, treatment and/or delivery system in order to compensate for the extra water demand. Any costs in excess of the project's fair share will be credited against the project's connection fees or be reimbursed to the applicant, as future development occurs;
- G. The applicant shall connect to city's wastewater collection and treatment system, if the applicant's project is within the city's sewer service area, unless the city council finds it creates an undue hardship on applicant;
- H. To the extent practical, the applicant must agree to utilize recycled water in its business operations or for landscaping and irrigation purposes, if and when it becomes available to applicant;
- I. The city may impose any other requirements that are appropriate to the specific development being proposed,

such as but not limited to, participation in a benefit assessment district;

- J. No will-serve letter shall be valid for a period greater than two years, unless specified in the letter itself;
- K. Any changes to the project description may void the letter, at the sole discretion of the city council; and
- L. In granting a will-serve letter, city makes no determination as to land use entitlements required for the proposed project, and the issuance shall not be construed to be an expression of city's position regarding the use or intensity of use of the development property. (Ord. 2000-04 § 1 (part), 2000)
- M. Notwithstanding the foregoing, consistent with the City-County Agreement, the City will provide water service to all Outside Customers and Other Outside Customers upon request under all of the same terms and conditions under which the City provides water service to City Customers, and the City will not impose any term or condition on any water service to any Outside Customer and Other Outside Customers that is different from the terms and conditions that the City imposes on City Customers, except that the City may continue to impose higher water rates on Outside Customers and Other Outside Customers consistent with *Hansen v. City of San Buenaventura* (1986) 42 Cal.3d 1172.

Section VI. The provisions of this Ordinance do not affect existing contracts for water provided there is no increase in intensity of use or type of use for which the water is provided.

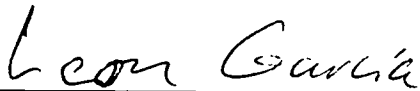
Section VII. An environmental determination is not required at this time because this is further implementation of the Urban Water Management Plan both within the City limits and the Water Service Area of the district. To the extent that development is proposed, the impacts of that specific development would be analyzed for environmental impact.

Section VIII. This Ordinance shall become effective on the 31st day from the date of its adoption pursuant to Government Code section 36937.

APPROVED AND ADOPTED at a regular meeting of the City Council on the 5th day of August, 2008.

The foregoing ordinance was introduced and read at a regular meeting of the City Council of the City of American Canyon, State of California, held on the 5th day of August, 2008 and was passed and adopted at a regular meeting of the City Council of the City of American Canyon, State of California held on the 19th day of August, 2008 by the following vote:

AYES: Garcia, Bennett, Callison, West
NOES: None
ABSENT: Coffey
ABSTAIN: None



LEON GARCIA
Mayor

ATTEST:



DOROTHY ROADMAN
City Clerk

APPROVED AS TO FORM:



WILLIAM D. ROSS
City Attorney