



# City of Palo Alto

## City Council Staff Report

(ID # 5051)

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**Report Type: Action Items**

**Meeting Date: 9/15/2014**

**Summary Title: Enforcement of Emergency Dry Year Water Use Restrictions**

**Title: Adoption of a Resolution Establishing the Enforcement Process for Violations of the Three Outdoor Water Use Restrictions Adopted by Council on August 4, 2014 (Resolution 9449)**

**From: City Manager**

**Lead Department: Utilities**

### **Recommendation**

Staff recommends that Council adopt a Resolution (Attachment A) establishing the enforcement process for violations of the outdoor water use restrictions adopted by Council on August 4, 2014 (Resolution 9449).

### **Executive Summary**

On August 4, 2014 Council adopted three new water use restrictions in response to the State Water Resource Control Board's (SWRCB) July 15<sup>th</sup> emergency regulations to ensure water agencies, their customers, and state residents increase conservation in urban settings, with particular emphasis on outdoor irrigation (ID # 4973, Resolution 9449). Following Council adoption of the new water use restrictions, staff across City departments have been coordinating and tracking reports of water use violations. Staff's primary response to reports of water waste is education-based, with notices left at reported properties and continued outreach about the City's water conservation rebates and services. However, City Council action is required to establish the enforcement process for the new outdoor irrigation restriction, especially for situations in which the education-based approach is ineffective. Staff therefore recommends making violations of the three recently adopted outdoor water use restrictions enforceable by penalties of up to \$100 per violation.

### **Background**

In response to the SWRCB's July 15 emergency regulations, staff submitted a report to City Council on August 4, 2014 that provided background, discussed how the specific measures fit with the City's existing water use prohibitions, and proposed an additional outdoor irrigation restriction on the use of potable water in the City. The SWRCB's emergency regulations prohibit all Californians from using potable water for activities such as driveway washing, irrigation that results in runoff, in hoses without automatic shut-off nozzles, or in decorative

fountains (with certain limited exceptions) and also require urban water suppliers, such as the City of Palo Alto, to activate the sections of their Water Shortage Contingency Plans that restrict outdoor irrigation.

The City already includes two of the new statewide prohibitions in Section 12.32.010 of the Palo Alto Municipal Code (PAMC) – irrigation runoff and use of hoses without automatic shut-off nozzles. Council’s action on August 4 adopted the two remaining statewide prohibitions on use of potable water – washing down sidewalks and driveways and the use of non-recirculating fountains or decorative water features – and a restriction on landscape irrigation between 10:00 a.m. and 6:00 p.m., except for drip systems, soaker hoses, and hand watering. Staff has quickly implemented an early stage drought response plan and begun the education and outreach process with customers. To date, staff has received and responded to more than 40 alleged violations and one second violation.

A variety of enforcement options are available for violations of the City’s municipal code and Utilities Rules and Regulations, including the issuance of administrative citations, fines, infractions punishable by penalties, misdemeanors, flow restrictions and termination of service. The SWRCB’s water use regulations are state law. Local law enforcement personnel are empowered to enforce state law and issue fines of up to \$500 per day per infraction, under the authority of California Code of Regulations Title 23, Section 864(b). However, Council action is required to establish a mechanism to enforce violations of the 10am to 6pm irrigation restriction, if staff’s initial education-based approach is ineffective.

### **Discussion**

Staff is currently focusing efforts on educating customers on the water use restrictions and is leveraging this opportunity to increase outreach to customers on conservation programs that will result in both short and long-term water efficiency gains. Staff is optimistic this approach will be effective and no fines or other punitive measures will be required to ensure compliance. If additional action is required, staff’s proposal will provide for the imposition of fines of \$100 per day per violation of the three outdoor water use restrictions Council approved on August 4, 2014. Table 1 describes the SWRCB water use regulations, the City’s current enforcement authority and the proposed changes.

**Table 1: Current and Proposed Enforcement Additions**

	<b>SWRCB Potable Water Use Prohibitions</b>	<b>Location</b>	<b>Current Enforcement Authority</b>	<b>Proposed Addition</b>
<b>Statewide Prohibitions</b>	Runoff from Outdoor Irrigation	Palo Alto Municipal Code 12.32.010(a)	<ul style="list-style-type: none"> <li>➤ Administrative Compliance Order (PAMC 1.16)</li> </ul>	None
	Use of a hose without a nozzle to wash vehicles	PAMC 12.32.010(b)	<ul style="list-style-type: none"> <li>➤ Administrative Penalty of \$100 - \$500 for violation of PAMC 12.32 or Utilities Rules and Regulations (PAMC 1.12)</li> <li>➤ Infraction penalty up to \$250 (PAMC 1.08.010(b))</li> <li>➤ Misdemeanor (PAMC 1.08.010(a))</li> <li>➤ Flow Restriction (PAMC 12.32.020)</li> <li>➤ Discontinuance of Service (Utilities Rule and Regulation 21H)</li> <li>➤ Fines up to \$500/day (CA Code of Regs, Title 23, Sec. 864(b)).</li> </ul>	
	Use of water to clean driveways and sidewalks	Resolution 9449	Fines up to \$500/day. (CA Code of Regs, Title 23, Sec. 864(b)).	
	Use of potable water in non-circulating fountains	Resolution 9449		
<b>Urban Water Supplier Requirement</b>	Landscape irrigation is prohibited between 10am and 6pm, except for drip irrigation, soaker hoses and hand watering.	Resolution 9449	None	Fine \$100 (PAMC 12.20.010)

Enforcement of the three outdoor water use restrictions adopted on August 4 (Reso. 9449) will be managed by City Utilities Staff. Although a variety of enforcement options remain available for violations of all of the City’s water use restrictions in the City’s Municipal Code and Utilities Rules and Regulations, staff is focusing efforts on educating customers, and initial results indicate this approach is working. Staff does not anticipate there will be many instances where a customer purposefully disregards warnings and a fine will be necessary. At this time, staff is taking the following steps when addressing violations of the City’s existing water use

restrictions and SWRCB regulations:

1<sup>st</sup> Violation: Doorhanger/Email/Phone call to customer

2<sup>nd</sup> Violation: Doorhanger/Email/Phone call to customer

3<sup>rd</sup> Violation: Certified letter from the Utility Director notifying customer of violation and potential future fines

4<sup>th</sup> Violation: Fines

The steps outlined above recognize that most violations are due to the fact customers are unaware of the prohibitions and the notification process accounts for normal occurrences (i.e. vacation) and provides reasonable notice and an opportunity for customers to address the problem. Staff may opt to use one or more of other available enforcement mechanisms outlined in Table 1 if the desired results are not achieved. The ultimate goal will remain reduced water waste.

### **Timeline**

If approved, the proposed enforcement changes will go into effect immediately and will remain in effect for the 270 day term set by the State Water Resources Control Board for the SWRCB emergency water regulations, or as extended by the SWRCB.

### **Resource Impact**

Staff is in the process of hiring an hourly Water Waste Coordinator. The Water Waste Coordinator will log incidents, coordinate field crews to respond to reports, track number of incidents per site and help with issuance of certified letters and enforcement. Funding for this position will be covered by the water fund at an estimated cost of \$29,000.

### **Policy Implications**

The recommended actions are consistent with the Council approved policy embodied in the August 4, 2014 staff report (ID# 4973) and the State's and City's efforts to reduce water waste during a severe drought.

### **Environmental Review**

Council's adoption of the proposed Resolution is categorically exempt from CEQA under CEQA Guidelines 15307 (Actions by Regulatory Agencies for Protection of Natural Resources).

### **Attachments:**

- Attachment A: Resolution Enforcing Process for Water Restrictions (PDF)

# ATTACHMENT A

Not Yet Approved

Resolution No. \_\_\_\_\_

Resolution of the Council of the City of Palo Alto Establishing the Enforcement Process For Violations of the Three Outdoor Water Use Restrictions Adopted by Council on August 4, 2014 (Resolution 9449)

## RECITALS

A. On January 17, 2014, Governor Edmund G. Brown Jr. issued Proclamation No. 1-17-2014 declaring a State of Emergency to exist in California due to severe drought conditions and calling on Californians to reduce their water usage by 20 percent.

B. On April 25, 2014, the Governor issued an Executive Order to strengthen the state's ability to manage water and directed the State Water Resources Control Board (SWRCB) under its authority in California Water Code Section 1058.5 to adopt emergency regulations as it deems necessary to address water shortage conditions.

C. On July 15, 2014, the State Water Resources Control Board adopted California Code of Regulations, Title 23, Sections 863, 864, and 865, emergency regulations finding a drought emergency in California and imposing water conservation measures on individuals and water suppliers.

D. On August 4, the City Council adopted Resolution 9449, implementing outdoor water use restrictions in compliance with the SWRCB emergency directive.

E. The City has implemented an education-based compliance plan and is working with customers to fully comply with the SWRCB water use restrictions.

F. Chapter 12 of City's Municipal Code, City Utilities Rule and Regulation 21, and the Council-approved Urban Water Management Plan include a variety of tools to encourage responsible management of the City's water resources.

G. Violations of the City's water use restrictions codified in Chapter 12.32 of the Palo Alto Municipal Code, are enforceable as misdemeanors, infractions, administrative penalties, or via the written warning and flow restrictor process outlined in Municipal Code Section 12.32.020(a) through (f).

H. Violations of the City's Utilities Rules and Regulations prohibiting water waste, codified in Rule and Regulation 21, are also enforceable via administrative citations of \$500 per day.

I. Violations of the State's emergency water use regulations are enforceable by fines of up to \$500 per day, under California Code of Regulations, Title 23, Section 864(b).

J. The City wishes to establish an enforcement procedure for violations of the three water use restrictions adopted by Resolution 9449 (Exhibit A), by directing staff to first attempt to achieve compliance via educational outreach, followed by the issuance of fines of \$100 per violation per day for willful or repeated violations.

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The Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. Findings:

A. Article 10, Section 2 of the California Constitution declares that waters of the State are to be put to beneficial use, that waste, unreasonable use, or unreasonable method of use of water be prevented, and that water be conserved for the public welfare.

B. Governor Brown issued emergency water shortage declarations on January 17 and April 25, 2014, and conservation of current water supplies and minimization of the effects of water supply shortages that are the result of drought are essential to the public health, safety and welfare.

C. City regulation of the time and manner of certain water use, design of rates, method of application of water for certain uses, and establishment of enforcement procedures for violations of water use restrictions are an effective and immediately available means of conserving water, and is authorized by Palo Alto Municipal Code Section 12.20.010.

SECTION 2. Violations of the following Council-adopted outdoor water use restrictions (Resolution 9449) are punishable by fines of \$100 per violation:

- a. No outdoor irrigation of ornamental landscapes or turf with potable water is permitted between the hours of 10am and 6pm, except for drip irrigation, soaker hoses and hand watering;
- b. The application of potable water to driveways and sidewalks is prohibited, except where necessary to address an immediate health and safety need or to comply with a term and condition in a permit issued by a state or federal agency; and
- c. The use of potable water in a fountain or other decorative water feature is prohibited, except where the water is part of a recirculating system.

SECTION 3. Each day that a violation of the outdoor water use restrictions described in Section 2 occurs is a separate offense.

SECTION 4. Utilities Department staff shall take primary responsibility for enforcement of the outdoor water use restrictions adopted by Resolution 9449 and described in Section 2, above.

SECTION 5. While nothing in this resolution is intended to limit or otherwise restrict the potential application of all available civil and criminal penalties for violations of the state and local water use restrictions described herein, Council recognizes the value of an education-based approach in encouraging water conservation. Therefore, Council directs staff to first attempt to achieve compliance by providing customers reasonable notice of the alleged violation and an opportunity to correct the problem, before issuing fines for willful and repeated violations.

SECTION 6. If fines are ultimately imposed, the person or persons to whom notice was provided shall have five business days from the date of service of the notice to request a hearing before the city manager or his/her designee in order to present any facts or arguments they may have as to why fines should not be imposed. If a hearing is requested, the city manager or his/her

Not Yet Approved

designee shall schedule a date and time for said hearing as soon as possible after the request is filed, but not later than five business days after the filing of such request for hearing. At the hearing, the person who received notice of the water use restriction violation may offer evidence as to why a fine should not be imposed. Utilities personnel shall be allowed to offer whatever evidence they may have as to why the fine should be imposed. The city manager or his/her designee shall make a final determination as to whether or not a fine shall be imposed.

SECTION 7. This resolution will go into effect immediately and will remain in effect for the 270 day term set by the State Water Resources Control Board for the SWRCB’s July 15, 2014 emergency water regulations, as extended by the SWRCB, or as directed by Council.

SECTION 8. Council’s adoption of the proposed Outdoor Water Use Restrictions is categorically exempt from CEQA under CEQA Guidelines 15307 (Actions by Regulatory Agencies for Protection of Natural Resources).

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

APPROVED:

\_\_\_\_\_  
Senior Deputy City Attorney

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Director of Utilities

\_\_\_\_\_  
Director of Administrative Services

Resolution No. 9449  
Resolution of the Council of the City of Palo Alto Implementing Outdoor  
Water Use Restrictions in Compliance with the State Water Resources  
Control Board's July 15, 2014 Emergency Drought Regulations

RECITALS

A. On January 17, 2014, Governor Edmund G. Brown Jr. issued Proclamation No. 1-17-2014 declaring a State of Emergency to exist in California due to severe drought conditions and calling on Californians to reduce their water usage by 20 percent.

B. On April 25, 2014, the Governor issued an Executive Order to strengthen the state's ability to manage water and directed the State Water Resources Control Board (SWRCB) under its authority in California Water Code Section 1058.5 to adopt emergency regulations as it deems necessary to address water shortage conditions.

C. On July 15, 2014, the State Water Resources Control Board adopted California Code of Regulations, Title 23, Sections 863, 864, and 865, emergency regulations finding a drought emergency in California and imposing water conservation measures on individuals and water suppliers.

D. Section 864 applies to all Californians and prohibits certain activities in promotion of water conservation, many of which are already required by Palo Alto Municipal Code 12.32.010.

E. Section 865 requires mandatory outdoor irrigation restrictions and reporting by water suppliers, including urban water suppliers like the City of Palo Alto.

F. The City of Palo Alto receives 100% of its potable supplies from the San Francisco Public Utilities Commission (SFPUC).

G. The SFPUC has requested a 10% voluntary water consumption reduction in response to the drought and their determination of available supplies in the regional water system.

H. The SFPUC has not declared a water shortage emergency nor imposed mandatory cutbacks upon Palo Alto or any of SFPUC's wholesale customers.

I. The City of Palo Alto has responded to SFPUC's voluntary water consumption reduction request and has achieved an approximate 17% reduction in water use relative to 2013.



J. The City's Municipal Code and Urban Water Management Plan (approved by the City Council on June 13, 2011) include a Water Shortage Contingency Plan and other tools to encourage responsible management of the City's water resources.

K. The City supports the SWRCB's efforts to encourage conservation, with an emphasis on outdoor water use, to the extent it may do so within the context of its Council-approved Urban Water Management Plan and the Palo Alto Municipal Code.

The Council of the City of Palo Alto RESOLVES as follows:

**SECTION 1.** The following outdoor water use restrictions are hereby adopted, in compliance with the State Water Resources Control Board's July 15, 2014 emergency drought regulations (collectively, the "Outdoor Water Use Restrictions"):

- a. No outdoor irrigation of ornamental landscapes or turf with potable water is permitted between the hours of 10am and 6pm, except for drip irrigation, soaker hoses and hand watering;
- b. The application of potable water to driveways and sidewalks is prohibited, except 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; and
- c. The use of potable water in a fountain or other decorative water feature is prohibited, except where the water is part of a recirculating system.

**SECTION 2.** The Council finds that the Outdoor Water Use Restrictions implemented as a result of this action were taken from Stage II of the City's Water Shortage Contingency Plan, which is itself a part of the City's Urban Water Management Plan, approved by the Department of Water Resources July 8th, 2014. The Outdoor Water Use Restrictions are intended to complement the City's existing and permanent water use restrictions, codified in Palo Alto Municipal Code Section 12.32.010.

**SECTION 3.** The Council finds that adoption of the Outdoor Water Use Restrictions meets the requirements of California Code of Regulations, Title 23, Section 865(b)(1).

**SECTION 4.** The Outdoor Water Use Restrictions will remain in effect for the 270 day period specified in SWRCB Resolution No. 2014-0038, or as extended by the SWRCB.

**SECTION 5.** Council directs staff to further promote water conservation by preparing and submitting to the SWRCB the monitoring reports described in California Code of Regulations, Title 23, Section 865(d). Council also directs staff to monitor compliance and to explore increased enforcement in the event the desired response is not being achieved.

SECTION 6. Council's adoption of the proposed Outdoor Water Use Restrictions is categorically exempt from CEQA under CEQA Guidelines 15307 (Actions by Regulatory Agencies for Protection of Natural Resources).

INTRODUCED AND PASSED: August 4, 2014

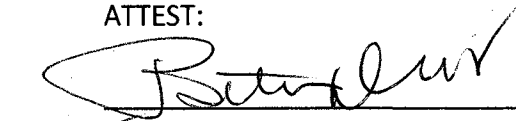
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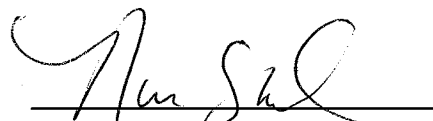
NOES:

ABSENT:

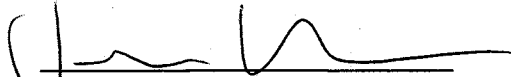
ABSTENTIONS:

ATTEST:


  
\_\_\_\_\_  
for City Clerk

  
\_\_\_\_\_  
Mayor


APPROVED AS TO FORM:

  
\_\_\_\_\_  
Senior Deputy City Attorney

APPROVED:

  
\_\_\_\_\_  
City Manager

  
\_\_\_\_\_  
Director of Utilities

  
\_\_\_\_\_  
Director of Administrative Services