

ID: 17-1417

BILL NO. B-57

ORDINANCE NO. 2017-56

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA
AMENDING SECTIONS 6-501, 6-502, AND 6-520 OF THE
FRESNO MUNICIPAL CODE RELATING TO
REGULATIONS FOR URBAN WATER CONSERVATION
AND EXCESSIVE WATER USE

WHEREAS, on January 17, 2014, Edmund G. Brown, Governor of California, proclaimed a State of Emergency in the State of California due to severe drought conditions; and

WHEREAS, on April 25, 2014, and April 1, 2015, the Governor signed Executive Orders directing the State Water Resources Control Board ("State Water Board") to adopt emergency regulations to ensure 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 State Water Board the authority to adopt emergency regulations during a period when the Governor has issued a proclamation of emergency based upon drought conditions or in response to drought conditions that exist, or are threatened, in a critically dry year immediately preceded by two or more consecutive below normal, dry, or critically dry years; and

WHEREAS, on July 15, 2014, the State Water Board adopted an emergency regulation for urban water conservation requiring each urban water supplier to implement the stage of its water shortage contingency plan that imposes restrictions on outdoor irrigation, which resulted in the City implementing Stage 2 of its Water Shortage Contingency Plan; and

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: AF

Ordinance No.

WHEREAS, on May 5, 2015, the State Water Board adopted additional emergency regulations for urban water conservation, requiring the City of Fresno to reduce its water usage by 28% compared to 2013 and impose additional prohibitions on water use beginning June 1, 2015, through February 28, 2016; and

WHEREAS, in 2015, the City implemented additional water conservation measures resulting in 23% reduction in the City's water usage in 2015 and 2016, and such water conservation measures are still effective; and

WHEREAS, on August 29, 2016, the Governor signed into law SB 814, which requires the City to define "excessive use" regarding water usage, and to establish a method to identify and discourage excessive water use; and

WHEREAS, California received record precipitation in the winter of 2017, resulting in mountain snowpack at 164% of the season average; and

WHEREAS, on April 7, 2017, the Governor declared an end to California's drought emergency for all but Fresno, Kings, Tulare, and Tuolumne Counties in the state of California by Executive Order B-40-17; and

WHEREAS, Executive Order B-40-17 directed the State Water Board to make permanent prohibitions on certain practices which do not conserve water; and

WHEREAS, on April 26, 2017, the State Water Board adopted by Resolution 2017-0024 rescinding mandatory water conservation standards statewide, but continuing prohibitions on certain wasteful practices; and

WHEREAS, requiring certain water conservation activities at all times in the City of Fresno comports with the Governor's Executive Order and the State Water Board's regulations; and

WHEREAS, defining Excessive Use as related to water usage and establishing a method to identify and discourage excessive water use meets the requirements of SB 814, as codified in Chapter 3.3 (beginning with Section 365) of Division 1 of the Water Code.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Subsection 6-501(tt) shall be added to the Code as follows:

[(tt) "Excessive Water Use" means, for customers in single-family residences or multi-unit housing in which each unit is individually metered or sub-metered, using potable water in excess of 300 gallons per hour during days or hours when outdoor irrigation is prohibited, as recorded by the City during the monthly billing period; as well as, for all water service customers, performing or permitting any action prohibited by Section 6-520 of this Code.]

SECTION 2. Section 6-502 of the Code shall be amended as follows:

SEC. 6-502. - FINANCIAL PROCEDURES.

All billing for and collection of water service charges shall be handled as provided in this article and Article 11 of Chapter 2 [6] of this Code.

SECTION 3. Section 6-520 of the Code shall be amended as follows:

SEC. 6-520. - WATER CONSERVATION.

(a) In the use of potable water supplied by the City, no customer shall do or permit any of the following:

(1) Water any lawn, landscape, or grounds except by use of a hose held in the person's hand or a sprinkling device,

(2) Use potable water to irrigate or water outdoor landscaping in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots or structures,

(3) Keep, maintain, operate, or use any water connection, hose, faucet, hydrant, pipe, outlet, or plumbing fixture which is not tight and free from leakage,

(4) Willfully or negligently waste water,

(5) Flood any part of the premises of another,

(6) Sprinkle the premises of another so as to prevent the normal use thereof or unreasonably wet objects thereon which should not be subjected to a spray of water except as naturally caused by the elements or by action of the owner of the object,

(7) Sprinkle or irrigate any yard, ground, premise, or vegetation [except as set forth in the City's adopted Water Shortage Contingency Plan] between the hours of 9:00 a.m. and 6:00 p.m.,

[(i) The following properties may submit an application for an exemption to the outdoor watering restrictions in effect at the time of the application:

a. Properties with multiple addresses, and

b. Properties with turfed or landscaped areas of three acres or larger, and

c. Properties without street addresses.

The owners of such properties shall submit a proposed watering schedule in writing to the Director for approval or modification. The Director may approve a modified outdoor watering schedule that may provide for more frequent watering or different watering days than allowed by the outdoor watering restrictions in effect at the time the application for an exemption is submitted for consideration. If the Director determines the proposed exemption will adversely impact system water pressures in the service area, the proposed exemption will be denied. All exemptions approved by the Director shall automatically expire on May 1 of each year, and the property owners must re-apply for an exemption to the outdoor watering restrictions for the upcoming summer outdoor watering season. Upon application, the Director may grant an exemption for new lawns not yet established.]

(8) Sprinkle or irrigate any yard, ground, premise, or vegetation unless the watering device used is controlled by an

automatic shut-off device, or a person is in immediate attendance of the hose or watering device,

(9) Wash any privately owned motor vehicle, trailer, or boat except from a bucket or in a commercial car wash, provided a hose equipped with a shut-off nozzle may be used for a quick rinse without causing water to flow onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures,

(10) Wash or rinse with a hose or watering device any sidewalk, driveway, parking area, tennis court, patio, or any other exterior paved area, or

(11) Use potable water in a fountain or other decorative water feature, except where the water is part of a recirculating system.

[(12) Irrigate ornamental turf on public street medians with potable water. This does not include trees.]

(13) Irrigate outdoor landscapes with potable water during and within 48 hours after measurable rainfall.

(14) Serve 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 or purchased.

(15) Irrigate 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.

(16) Automatically change towels and linens in hotels and motels daily. Operators of hotels and motels shall provide guests 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.

(17) Drain swimming pools more than once every three years, except as necessary to complete structural repairs or to comply with public health standards, as determined by the County Health Officer. Residents with private swimming pools shall file a written application for a permit with the Water Division Manager at least 48 hours prior to draining the pool. Any customer whose swimming pool is drained by order of the Department of Health for failure to maintain it properly will also be issued a notice of violation of the City of Fresno Municipal Code. The draining of pools for reasons of health and safety hazards as determined by the City of Fresno Water Division and/or the Department of Health is permitted. The application shall include the results of a pool water

test conducted by an independent testing organization which shows a cyanuric acid level above 100 parts per million, total dissolved solids over 2,500 parts per million, or calcium over 450 parts per million, or stating the nature and duration of repairs to be made and the date on which the pool will be drained.

(i) Swimming pools shall only be filled between the hours of 9:00 a.m. and 6:00 p.m. on permitted watering days. Newly constructed or refurbished swimming pools may be filled by a standard hose up to ¾" during other hours to avoid damage to tile and plaster.

(ii) The Director shall propose fines and promulgate guidelines for the implementation of this subsection which shall include criterion and a procedure for approval of applications or for exemption by the Director.]

(b) Notwithstanding the foregoing, drip irrigation of community and residential fruit and vegetable gardens and fruit trees is permitted any day of the week; for this subsection, "drip irrigation system" means a non-spray, low-pressure, and low volume irrigation system in good working order utilizing emission devices with a flow rate of less than four gallons per hour, designed to slowly apply small volumes of water at or near the root zone of plants, when used primarily for irrigation of fruit and vegetable gardens and fruit trees; should any city water customer be cited for excessive water use, the customer may contact the Water Division and

request an exemption from the outdoor irrigation restrictions in place at the time for a home or community garden that is irrigated with a drip irrigation system. Upon being contacted, the Water Division will schedule a visit to the subject property to inspect the garden and the drip irrigation system used to irrigate the garden. The Water Division shall grant an exemption for home or community garden with the following conditions:

(1) The property must limit water use to an amount equal to, or less than, the average monthly water use for the single-family residential customer class. The monthly average water use for the single-family residential customer class is printed on monthly utility bills issued by the City.

(2) The drip irrigation system must be in good working order with no leaks, line breaks, or other deficiencies that will contribute to water waste. Exemptions shall be withheld until corrective action is taken to address system deficiencies.

(3) The drip irrigation system must be used primarily for the home or community garden, and not for other landscape on the property. Exemptions shall be withheld until the drip irrigation system for the home or community garden can be isolated from other landscape on the property.

(4) No flood irrigation will be allowed with the drip irrigation system, and water must remain on the subject property

with no runoff to sidewalks, driveways, pavements, or adjacent properties.

(5) The home and community garden exemption is provided exclusively for drip irrigation systems only, and will not be allowed for other types of irrigation systems.

(6) This exemption shall only apply to properties $\frac{1}{4}$ acre or smaller. For properties greater than $\frac{1}{4}$ acre, the property owner may apply to the City Manager for an exemption.

(c) Outdoor sprinkling and irrigation systems shall be properly designed, installed, maintained, and operated to prevent waste of water.

(d) ~~[Repealed.] The Council may implement any or all of the measures set forth in this subsection, either city-wide or by specific zone, when any of the following conditions exist: The Governor of California, the California Department of Water Resources, or the State Water Resources Control Board has declared a critically dry or drought year; Groundwater level declines exceed three feet in a 12-month period, or six feet in a 24-month period, for the City's key groundwater monitoring wells; Water pressures drop below thirty-five pounds per square inch during peak demand periods more than three days in any calendar week or ten days in any calendar month; or degradation of water quality condition (i.e., exceeding the established maximum contaminant levels according to applicable state or federal law) decreases the quantity of water available for delivery to all or part of the geographic area, or the customers and~~

~~other persons, for whom Water Division service was designed or intended to the extent extraordinary measures to reduce water use are necessary, as determined by the Council. Measures the Council of the City of Fresno may implement include, but are not limited to, the following:~~

~~(1) Outdoor watering restrictions limiting permissible watering days based upon odd/even addresses, effective for all or a specific zone of the city (in addition to the time of day restrictions set forth in Section 6-520(a)(7)).~~

~~(i) When odd/even outdoor water restrictions are in effect, the City shall observe a summer outdoor watering season and a winter outdoor watering season. The summer season shall extend from May 1 to November 30 of each year, and the winter shall extend from December 1 to April 30.~~

~~(ii) The following properties may submit an application for an exemption to the odd/even outdoor watering restrictions in effect at the time of the application:~~

~~a. Properties with multiple addresses, and~~

~~b. Properties with turfed or landscaped areas of three acres or larger, and~~

~~c. Properties without street addresses.~~

~~The owners of such properties shall submit a proposed watering schedule in writing to the Water~~

~~Division for approval or modification. The Water Division may approve a modified outdoor watering schedule that may provide for more frequent watering or different watering days than allowed by the outdoor watering restrictions in effect at the time the application for an exemption is submitted for consideration. If the Water Division determines that the proposed exemption will adversely impact system water pressures in the service area, then the proposed exemption will be denied. All exemptions approved by the Water Division shall automatically expire on May 1 of each year, and the property owners must re-apply for an exemption to the outdoor watering restrictions for the upcoming summer outdoor watering season. Upon application, the Council may grant an exemption for new lawns not yet established.~~

~~(iii) When odd/even address outdoor watering restrictions are in effect, outdoor watering shall not occur between the hours of 9:00 a.m. and 6:00 p.m. on the days approved for watering.~~

~~(2) Regulate the filling of fountains in city facilities, as the Council determines appropriate.~~

~~(3) Prohibition of draining swimming pools more than once every three years, except as necessary to complete structural repairs or to comply with public health standards, as determined by the County Health Officer. Residents with private swimming pools shall file a written application for a permit with the Water Division Manager at least 48 hours prior to draining the pool. Any customer whose swimming pool is drained by order of the department of health for failure to maintain it properly will also be issued a notice of violation of the city of Fresno municipal code. The draining of pools for reasons of health and safety hazards as determined by the city of Fresno water division and/or the department of health is permitted. The application shall include the results of a pool water test conducted by an independent testing organization which shows a cyanuric acid level above 100 parts per million, total dissolved solids over 2,500 parts per million, or calcium over 450 parts per million, or stating the nature and duration of repairs to be made and the date on which the pool will be drained.~~

~~(i) Swimming pools shall only be filled between the hours of 9:00 a.m. and 6:00 p.m. Newly constructed or refurbished swimming pools may be filled by a standard hose up to $\frac{3}{4}$ " during other hours to avoid damage to tile and plaster.~~

~~(ii) The Director shall propose fees and promulgate guidelines for the implementation of this subsection which shall include criterion and a procedure for approval of applications or for exemption by the Director.~~

~~(4) Prohibition on irrigating ornamental turf on public street medians with potable water.~~

~~(5) Prohibition on irrigating 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.~~

~~(6) Prohibition of irrigating outdoor landscapes with potable water during and within 48 hours after measurable rainfall.~~

~~(7) Prohibition of serving 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 or purchased.~~

~~(8) Require the operators of hotels and motels to provide guests 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.~~

(e) The provisions of this section are conditions of service. Each use of water by a customer that is inconsistent with the provisions of this section is an incident of water waste. If a customer has an incident of water waste as observed directly by City staff or as recorded directly by the City's water meter reading system, the customer shall be charged the fee as described herein.

(1) Such charge shall be levied as follows:

(i) For the first incident of water waste, the fee designated in the Master Fee Resolution shall be deferred for a period of two years conditioned upon the customer not having a fourth incident of water waste within a two year period. If the customer does not have such fourth incident of water waste within two years such deferral shall become permanent. However, such fee shall be due and owing by the customer if a fourth incident of water waste occurs within two years.

(ii) The fee for the second incident of water waste shall be deferred for customers who attend a course in water conservation. The deferral shall be conditioned upon the customer's successful completion of a water conservation course provided by the Department of Public Utilities and the customer not having a third incident of water waste within a

~~two year period. The deferred fee shall be collected if a third incident of water waste occurs within a two year period.~~

~~(iii) — The fee for the third incident of water waste within a two year period shall be the fee designated in the Master Fee Resolution plus any fee deferred from the second incident of water waste. A customer shall have the option of submitting proof of implementation of retrofit measures of no less value than the fee imposed for such third incident of water waste in lieu of that fee. Retrofit measures of a value less than that fee shall be credited toward payment of the fee.~~

~~(iv) — The fee for the fourth incident of water waste within a two year period shall include the amount as designated in the Master Fee Schedule together with all applicable amounts previously deferred as described above.~~

~~(2) — If a customer has more than four incidents of water waste within a two year period, the city may implement any or all of the following measures:~~

~~(i) — Require the customer to get a landscape evaluation, lawn water audit, and water budget, as appropriate, in order to learn efficient water use. This work shall be completed at the customer's expense by landscape irrigation auditors certified by the Irrigation Association.~~

~~(ii) — Require a customer to repair any defects in the watering system of such customers within fourteen days of notice by the city to repair.~~

~~(iii) — Installation by the city of flow restrictors or termination of water service for exterior use.~~

~~(iv) — Termination of all water service to a customer unless in the opinion of the Director such termination would result in an unreasonable risk to the health and safety of persons.~~

~~(v) — Require restoration of water service after termination be contingent on an agreement by the customer to adhere to the provisions of this section.~~

~~(f) — The Director shall prepare and present a rationing plan to Council for approval. Such plan shall be adopted by resolution passed by Council.~~

[(1) Each incident of Excessive Use as defined in section 6-501, or other use of water by a customer inconsistent with the provisions of this section, is an incident of water waste.

(2) If a customer has one or more incidents of water waste during a month, as observed directly by City staff or as recorded directly by the City's water meter reading system, then the customer shall be issued a Notice of Water Waste and be charged fines and penalties as set forth in the Master Fee Schedule.

(3) Incident counts for water waste shall be monitored, recorded, documented and enforced on a monthly basis during the calendar year for individual customers, and the incident counts shall be reset January 1 of each year.

(4) If a customer performs or permits incidents of water waste more than six consecutive months, the water service to the customer may be terminated unless in the opinion of the Director such termination would result in an unreasonable risk to the health and safety of persons. If water service is terminated for successive incident of water waste, the water service may only be restored upon execution of an agreement with the customer to adhere to the conditions of service described in this section.

(5) The appeal process set forth in subsection 6-522(g)(5) of this Code shall apply to the enforcement measures set forth in this section.]

SECTION 4. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage, except the enforcement program for incidents of water waste set forth in Section 6-520(e) above shall become effective January 1, 2018.

CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO.) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2017.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2017
Mayor Approval/No Return: _____, 2017
Mayor Veto: _____, 2017
Council Override Vote: _____, 2017

APPROVED AS TO FORM:
DOUGLAS T. SLOAN,
City Attorney

BY: _____
AMANDA B. FREEMAN Date
Deputy City Attorney

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

ABF:cm [75143cm/abf]