

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA
AMENDING SECTIONS 6-501 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: AST

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 rescinded mandatory water conservation standards statewide, but left in effect prohibitions on certain water uses; and

WHEREAS, requiring certain water conservation activities at all times in the City of Fresno comports with the Governor's Executive Order; 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 (vv) shall be amended as follows:

(vv) "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 [the maximum gallons per hour, depending on the City's current Water Shortage Contingency Plan stage, during days or hours when outdoor irrigation is prohibited, more than one day during the monthly billing period, as recorded by the City. The maximum gallons per hour are: Stage 1- 400 gallons per hour recommended. Stage 2 – 400 gallons per hour. Stage 3 – 350 gallons per hour. Stage 4 – 300 gallons per hour.]~~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. Subsection 6-501 (ww) shall be added to the Code as follows:

[(ww) "Outdoor Water Use Schedule" means the schedule setting forth what times and days irrigation or sprinkling of any yard, ground, premise, or vegetation or otherwise applying water outdoors on a property

is permissible, as set forth in the City's adopted Water Shortage Contingency Plan.]

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)~~[(1)] 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)~~[(2)] 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)~~[(3)] Willfully or negligently waste water,

~~(5)~~[(4)] Flood any part of the premises of another,

~~(6)~~[(5)] 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)~~[(6)] Sprinkle or irrigate any yard, ground, premise, or vegetation except as set forth in the City's [Outdoor Water Use Schedule,] ~~adopted Water Shortage Contingency Plan between the hours of 9:00 a.m. and 6:00 p.m.,~~

(i) [Annual Exemptions.] The following properties may submit an application for an [one-year] exemption to the ~~outdoor watering restrictions~~ [Outdoor Water Use Schedule] in effect at the time of the application:

- a. Properties with multiple addresses, and
- b. Properties with turfed or landscaped areas of ~~three~~ [two] acres or larger, and
- c. Properties without street addresses.

The owners of such properties shall submit a proposed [modified Outdoor Water Use Schedule] ~~watering schedule~~ in writing to the Director [or designee] for approval or modification. The Director may approve a modified [Outdoor Water Use Schedule] ~~outdoor watering schedule that may provide for~~ [with] more frequent watering or different watering days than allowed by the [Outdoor Water Use Schedule] ~~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 [Annual E]exemptions approved by the Director shall automatically expire on ~~May~~ [December 3]¹ of each year, and the property owners must re-apply for an exemption to the [Outdoor Water Use Schedule]~~outdoor watering restrictions~~ for the upcoming summer ~~outdoor watering~~ season. ~~Upon application, the Director may grant an exemption for new lawns not yet established.]~~

[(ii) Short-term Exemptions. The following properties may submit an application for an exemption from the Outdoor Water Use Schedule for a specific time period not to exceed one month.

a. Properties with new lawns not yet established.

b. Properties seeking to use water for a bona fide use, such as solar panel cleaning or other use necessary for health or preservation of property.

The owners of such properties shall submit a proposed modified Outdoor Water Use Schedule in writing to

the Director or designee for approval or modification no less than 48 hours before the proposed non-compliant water usage. The Director may approve a modified Outdoor Water Use Schedule that may provide for more frequent outdoor water use or different outdoor water use days than allowed by the Outdoor Water Use Schedule 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 Short-term Exemptions approved by the Director shall automatically expire on the date set forth on the Short-Term Exemption permit.]

{8}{(7)} 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}{(8)} 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)~~(9) Wash or rinse with a hose or watering device any sidewalk, driveway, parking area, tennis court, patio, or any other exterior paved area, [except for public health and safety reasons at public gathering places,] or

~~(11)~~(10) Use potable water in a fountain or other decorative water feature, except where the water is part of a recirculating system.

~~(12)~~(11) Irrigate ornamental turf on public street medians with potable water, except where:

- (i) the turf serves a community or neighborhood function, including not limited to, recreational uses and civic or community events;
- (ii) the turf is irrigated incidentally by an irrigation system primarily intended to irrigate trees;
- (iii) the turf is irrigated with recycled water.

This prohibition does not include trees and shrubs on public medians, which may be irrigated.

~~(13)~~(12) Irrigate outdoor landscapes with potable water during and within 48 hours after measurable rainfall.

~~(14)~~(13) 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)[(14)] 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)[(15)] 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)[(16)] 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[City of Fresno Water Division] 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 3/4" during 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.~~

[(17) Fill newly constructed or refurbished swimming pools without a pool fill permit from the City of Fresno Water Division.]

[(18) Refill (top off) established swimming pools except during times when outdoor water use is allowed at the property address pursuant to the Outdoor Water Use Schedule.]

(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 Water Use Schedule] ~~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~~ [Director or designee] for an exemption.

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

(d) Repealed.

(e) The provisions of this section are conditions of service.

(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 [, if applicable,] be charged ~~fines and penalties~~ [a fine] as set forth in the Master Fee Schedule. [Such fines shall be added to the customer's monthly utility bill and shall be due and payable with that utility bill and subject to the FMC 6-106, Late Payment of Municipal Service Bills.]

(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[s] 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.~~

[(5) If a customer objects to a fine imposed for an incident of water waste pursuant this section, the following appeal process may be used.

Step 1.

(a) Within thirty days of issuance of the utility bill including the fine, the customer may contact the Water Conservation Program to appeal an incident of water waste resulting in a fine with the staff person who initiated the enforcement measure. The staff person shall gather the facts about the incident.

(b) The customer may provide staff with evidence there was no incident of water waste, or of a bona fide reason for the incident of water waste, including evidence of a water leak, or another reasonable justification for the water use, within ten business days of the customer's first communication with the Water Conservation Program regarding the alleged incident of water waste.

(c) Within ten business days of the initiation of an appeal, staff shall provide the customer with documentation demonstrating the incident of water waste, if applicable.

(d) The staff will provide the facts and evidence related to the appeal to the Water Conservation Program Supervisor, who will determine whether to rescind the enforcement measure. The Water Conservation Program Supervisor will provide a written decision to the customer within fifteen business days of the customer's appeal, or receiving any applicable evidence from the customer, whichever comes later.

Step 2. If the customer is not satisfied with the decision of the Water Conservation Program Supervisor, they may appeal to the Director or designee within ten business days of the date of the Water Conservation Program Supervisor's decision. The Director or designee shall review the appeal and any evidence the customer previously submitted, and provide a written decision within thirty days of receiving the appeal.

Step 3. If the customer is not satisfied with the decision of the Director of Public Utilities, the customer may appeal to the City's Administrative Hearing Officer in the manner provided in Chapter 1, Article 4 of this code. Such decision shall be final.]

SECTION 4. No customer will be issued a fine for an incident of water waste recorded by the City's water meter reading system, as set forth in Section 6-520(e)(2) of the Code, prior to Council direction to implement such fines. Direction shall be sought by

staff no later than May 1, 2020. This does not impact issuing notices of incidents of water waste recorded by the City's water meter reading system, or issuing notices and fines for incidents of water waste observed by City staff.

SECTION 5. 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.

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 _____, 2019.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2019
Mayor Approval/No Return: _____, 2019
Mayor Veto: _____, 2019
Council Override Vote: _____, 2019

YVONNE SPENCE, MMC CRM
City Clerk

BY: _____
Deputy

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

BY: _____ Date
AMANDA B. FREEMAN
Senior Deputy City Attorney