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Agenda Item: ID#15-761 (3-A)

Date: 8/27/15

CITY CLERK, FRESNO, CA

# FRESNO CITY COUNCIL



## Supplemental Information Packet

Agenda Related Item(s) – ID#15-761 (3-A)

### Contents of Supplement: Staff Report and Emergency Ordinance

#### Item(s)

BILL – (For introduction and adoption) – Adopt an Emergency Ordinance amending Section 6-520 of the Fresno Municipal Code to provide water conservation exemption for food gardens (Requires 5 affirmative votes) – Councilmember Soria

#### **Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

#### **Americans with Disabilities Act (ADA):**

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN EMERGENCY ORDINANCE OF THE CITY OF  
FRESNO, CALIFORNIA AMENDING SECTION 6-520 OF  
THE FRESNO MUNICIPAL CODE TO PROVIDE WATER  
CONSERVATION EXEMPTION FOR FOOD GARDENS

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;

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;

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;

WHEREAS, on May 21, 2015, the City adopted Ordinance No. 2015-13, amending Section 6-520 of the Municipal Code relating to regulations for urban water conservation to limit water waste in response to the Governor's Executive Orders and the regulations promulgated by the State Water Board;

1 of 12

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval:



Ordinance No.

WHEREAS, many people within the City rely on their vegetable gardens as an inexpensive source of food, and consistent watering is necessary to maintain that food source;

WHEREAS, community and home gardens in Fresno encourage residents across the city to grow, sell, and easily obtain a consistent, adequate supply of fresh local foods as well as increase food security and empower families and communities to be more healthy and self-sufficient;

WHEREAS, the growing need for healthy, sustainably produced, locally grown foods has strengthened interest in developing local food policies that promote community and home gardens;

WHEREAS, national and local surveys prove that community and home gardens serve as an important strategy for populations affected by food insecurity and preventable nutrition-related diseases, such as obesity, diabetes, and heart disease and encourage individuals to consume more fruits and vegetables, which can lead to much better health and wellness;

WHEREAS, the Council now wishes to further amend Section 6-520 to allow for watering of food-producing plants by drip irrigation on any day of the week;

WHEREAS, this Emergency Ordinance is necessary to allow watering of food-producing plants to preserve an inexpensive food source for the citizens of Fresno; and

WHEREAS, this Ordinance is necessary for the immediate preservation of the public health, peace, property, and safety.

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

SECTION 1. Section 6-520 of the Fresno Municipal Code is hereby amended to read:

SECTION 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 between the hours of 9:00 a.m. and 6:00 p.m.,

(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.

[(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 defend the citation by providing

proof of the amount of water used in compliance with this subsection and that water used in addition to the water used in compliance with this subsection was not otherwise in violation of city watering restrictions.]

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

~~(e)~~(d) The Council may implement any or all of the measures set forth in [this] subsection ~~(e)~~, 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.

~~(d)~~(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.

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

SECTION 2. Pursuant to Sections 603 and 610 of the Charter of the City of Fresno, this Ordinance shall take effect upon 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 \_\_\_\_\_, 2015.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2015  
Mayor Approval/No Return: \_\_\_\_\_, 2015  
Mayor Veto: \_\_\_\_\_, 2015  
Council Override Vote: \_\_\_\_\_, 2015

YVONNE SPENCE, CMC  
City Clerk

BY: \_\_\_\_\_  
Deputy

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

BY: \_\_\_\_\_  
Katie Doerr  
Assistant City Attorney