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Agenda Item: ID#15-420 (2-G)

Date: 5/21/15

CITY CLERK

## FRESNO CITY COUNCIL



### Supplemental Information Packet

Agenda Related Item(s) – ID#15-420

### Contents of Supplement: Corrected Ordinance

#### Item(s)

An Emergency Ordinance of the City of Fresno, California amending Section 6-520 of the Fresno Municipal Code relating to regulations for urban Water Conservation to limit water waste

#### **Supplemental Information:**

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

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

AN EMERGENCY ORDINANCE OF THE CITY OF  
FRESNO, CALIFORNIA AMENDING SECTION 6-520 OF  
THE FRESNO MUNICIPAL CODE RELATING TO  
REGULATIONS FOR URBAN WATER CONSERVATION  
TO LIMIT WATER WASTE

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 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;

1 of 13

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval:



Ordinance No.

WHEREAS, on March 17, 2015, the State Water Board found an emergency still exists in the State of California due to severe drought conditions, and adoption of additional emergency regulations with specific prohibitions on water uses was necessary to promote water conservation to maintain an adequate supply during the drought emergency;

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;

WHEREAS, the State Water Board's emergency regulations require the City of Fresno to prohibit irrigating ornamental turf on public medians and limit irrigation system design in new development, neither of which are currently included in the municipal code;

WHEREAS, as of May 12, 2015, Central and Southern Sierra snowpack levels are at two percent of average, and the Sierra snow water content may be the lowest in recorded history;

WHEREAS, due to drought conditions for the past several years, California's reservoir levels are below historic average;

WHEREAS, the Governor's April 2014 Executive Order suspended the requirement for review under the California Environmental Quality Act (CEQA) for certain activities, including adoption of emergency regulations, and on December 22, 2014, Executive Order B-28-14, extended the suspension of CEQA through May 31, 2016;

WHEREAS, this Emergency Ordinance is necessary to implement mandatory prohibitions required to be effective no later than June 1, 2015; and

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

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

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

**SEC. 6-520. ~~WASTAGE OF 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, ~~or~~

~~[(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.]~~

~~(2)~~~~[(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, ~~or~~

~~(3)~~~~[(4)]~~ Willfully or negligently waste water, ~~or~~

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

~~(5)~~~~[(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, or

~~(6)~~[(7)] Sprinkle or irrigate any yard, ground, premise, or vegetation between the hours of twelve o'clock [9:00 a.m. and 6:00 p.m.,] and five o'clock p.m. ~~during the months of April through October, inclusive, or~~

~~(7)~~[(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, or

~~(8)~~[(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], or

~~(9)~~[(10)] Wash or rinse with a hose or watering device any sidewalk, driveway, parking area, tennis court, patio, or any other exterior paved area, ~~except in a manner which prevents the bulk of the runoff water from entering the street and instead diverts such water to other productive purposes such as landscape irrigation. [or]~~

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

(b) Lawn sprinkling systems shall be properly designed, installed, maintained, and operated to prevent wast[e]age of water.

(c) The Council may implement any or all of the measures ~~listed below~~[set forth in subsection (c)], either city-wide or by specific zone, when any of the following conditions exist: ~~(i) [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; or (ii) water levels decline below the pump intake; [Groundwater level declines exceed three feet in a 12-month period, ]or (iii) [six feet in a 24-month period, for the City's key groundwater monitoring wells; Water]~~ 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 ~~(iv) 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 quantity 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 to be implemented include, but are not limited to, the following:~~ [Measures the Council of the City of Fresno may implement include, but are not limited to, the following:]

(1) ~~Odd/even address alternate day outdoor~~ [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)(6)~~[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 shall ~~water by using each irrigation valve no more frequently than every other day~~[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 may apply for an exemption from the established watering restrictions. The owners of such properties shall be required to 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 than every other day. [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 it is determined [the Water Division determines] that the property can be watered within the city's regular watering rules without significantly impacting [proposed exemption will adversely impact system] water pressures in the service area, the proposed watering schedule will be denied. The [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) Prohibition of all irrigation of turf for all or a specific zone of the city except during off peak hours (twelve midnight to six a.m., eight a.m. to eleven a.m. and seven p.m. to twelve midnight). The Council may grant an exemption for new lawns not yet established.~~

~~(3)[(2)] Implementation of regulations on the~~ [Regulate the] filling of fountains in city facilities, as the Council determines appropriate.

~~(4)[(3)] Prohibition of installation of~~ [on installing or operating] outdoor evaporative "mist coolers."

~~(5)[(4)] Prohibition of draining of swimming pools more than once every three years, except for~~ [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. ~~Residents with private swimming pools shall file a written application for a permit prior to draining their pools with the Water Division Manager.~~ 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.

~~(6)[i] Prohibition of the filling or refilling of swimming [Swimming] pools during peak [shall only be filled between the] hours of 5:00 a.m. to 8:00 a.m. [9:00 a.m. and 6:00 p.m.] and 5:00 p.m. to 8:00 p.m., except that a standard hose up to ¾" may be used to fill the pool and keep the tile and plaster wet during these [other] hours.~~

~~[(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.~~

~~[(5) Prohibition on irrigating ornamental turf on public street medians with potable water.]~~

~~(6) 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.~~

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

(8) 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.

(9) Prohibition of the use of fire hydrants for bulk water supply for non-potable uses as described in Fresno Municipal Code section 6-534, and instead requires the use of the City's recycled water system for bulk water supply.

(10) 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) 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 wast[e]age. If a customer has an incident of water wast[e]age [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. ~~The fee that customers shall be charged for each incident of water wast[e]age described in this section shall not exceed the reasonable cost of service related to water wast[e]age enforcement and the cost of the estimated additional water used and/or wasted. Such amount shall be a proprietary charge to cover the estimated costs of staff enforcement of the water conservation~~

~~rules. Such charge shall be as determined by the Council and designated in the Master Fee Schedule.~~

(1) Such charge shall be levied as follows:

(i) For the first incident of water wast[e]age, 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 wast[e]age within a two year period. If the customer does not have such fourth incident of water wast[e]age 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 wast[e]age occurs within two years.

(ii) The fee for the second incident of water wast[e]age 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 wast[e]age within a two year period. The deferred fee shall be collected if a third incident of water wast[e]age occurs within a two year period.

(iii) The fee for the third incident of water wast[e]age 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 wast[e]age. 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 wast[e]age 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 wast[e]age 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 wast[e]age 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 ~~would~~ 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 ~~that~~ restoration of water service after termination be contingent on an agreement by the customer to adhere to the provisions of this section.

(e) 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. The Council of the City of Fresno hereby implements all measures set forth in subsection (c) as amended by this Emergency Ordinance.

SECTION 3. Pursuant to Sections 603 and 610 of the Charter of the City of Fresno, this Ordinance shall take effect upon passage.

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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: \_\_\_\_\_  
AMANDA B. FREEMAN  
Deputy City Attorney

ABF:elb [67874elb/abf] Ordinance