



Legislation Details (With Text)

**File #:** ID19-1568    **Version:** 1    **Name:**

**Type:** Ordinance    **Status:** Mayor's Office

**File created:** 4/11/2019    **In control:** City Council

**On agenda:** 4/25/2019    **Final action:** 4/25/2019

**Title:** Actions related to updating water conservation measures and the City's Water Shortage Contingency Plan:  
 1. \*\*\*BILL NO. B-10 (Intro. 4/11/2019) (For adoption) - Amending Fresno Municipal Code Sections 6-501 and 6-520 relating to regulations for Urban Water Conservation and Excessive Water Use (Subject to Mayor's veto)

**Sponsors:** Department of Public Utilities

**Indexes:**

**Code sections:**

**Attachments:** 1. Attachment 2 - Ordinance FMC 6-501 and 6-520.pdf, 2. (Version 2) ORD 6-501 and 6-520.pdf

Date	Ver.	Action By	Action	Result
4/25/2019	1	City Council	adopted	

**REPORT TO THE CITY COUNCIL**

**April 25, 2019**

**FROM:** MICHAEL CARBAJAL, Director  
Department of Public Utilities

**BY:** CHERYL BURNS, Management Analyst II  
Department of Public Utilities - Administration

**SUBJECT**

Actions related to updating water conservation measures and the City's Water Shortage Contingency Plan:  
 1. \*\*\*BILL NO. B-10 (Intro. 4/11/2019) (For adoption) - Amending Fresno Municipal Code Sections 6-501 and 6-520 relating to regulations for Urban Water Conservation and Excessive Water Use (Subject to Mayor's veto)

**RECOMMENDATION**

Staff recommends the City Council adopt the Addendum to the Negative Declaration prepared for Environmental Assessment No. EA-17-014, dated March 7, 2019; approve a bill for introduction amending Sections 6-501 and 6-520 of the Fresno Municipal Code (FMC) related to water conservation regulations; approve a resolution amending the City's Water Shortage Contingency Plan and repealing Resolution 2018-253; and adopt the 549<sup>th</sup> Amendment to the Master Fee

Schedule (MFS) Resolution adopting an updated schedule of fines for incidents of water waste.

If approved by the City Council, the revisions to the FMC will become effective 31 days after final passage, and changes to the Water Shortage Contingency Plan and the revised fine schedule will become effective upon final passage.

## **EXECUTIVE SUMMARY**

In October 2017, the City Council approved updated water conservation measures in response to state water conservation mandates. The approved measures, which were effective January 1, 2018, updated specific prohibitions against wasteful water use practices to comport with state regulations, established a new definition for excessive water use, updated outdoor watering restrictions based on drought stage declarations, and changed the enforcement fine schedule for violations of prohibited water use practices. Before implementing a fully automated system of enforcement of water conservation regulations, the Department of Public Utilities (DPU) partnered with the University of Chicago Urban Labs (UChicago) to implement a water conservation pilot program from July through September 2018. The pilot program tested different variants of enforcement in order to determine which implementation best balances increased compliance, decreased water use, and customer feedback.

Upon conclusion of the pilot program, all City of Fresno water customers were subject to automated enforcement of water conservation regulations. Based on feedback from customers, on November 1, 2018, the Fresno City Council issued a moratorium on fines based on automated meter read data, and directed DPU to evaluate water conservation regulations and program operations. After extensive review of the Water Conservation Program, DPU proposes to amend Sections 6-501 and 6-520 of the Fresno Municipal Code, the City's Water Shortage Contingency Plan, and the City's enforcement schedule of fines for incidents of water waste and excessive water use to update the definition of excessive water use, allow one incident of water waste monthly without consequence of enforcement before notices or fines begin, reduce fines for incidents of water waste and excessive use by 50%, and amend outdoor water use hours and seasonal schedules to increase customer flexibility and compliance.

## **BACKGROUND**

The October 2017 water conservation revisions adopted by the Council updated specific prohibitions against wasteful water use practices to comport with state regulations, established a new definition for excessive water use, updated outdoor watering restrictions based on drought stage declarations, and changed the enforcement fine schedule for violations of prohibited water use practices. One of the changes specified that an incident of water waste triggering a notice or a fine could be recorded either by water meter data or by City staff observation. Recognizing that moving to automated enforcement might result in significantly increased fines which could burden customers, DPU partnered with the UChicago to implement a pilot program testing different variants of enforcement in order to determine which implementation best balances increased compliance, decreased water use, and customer feedback.

The pilot program was implemented from July through September 2018. During the pilot, 55% of customers were subject to the status quo visual enforcement of water conservation regulations, while 45% were subject to automated enforcement utilizing meter read data. Upon conclusion of the pilot, in October 2018, all City water customers were subject to automated enforcement of water

conservation regulations. As a result of this transition for 55% of customers to the automated enforcement method, the Water Conservation Program (Program) received an increased number of incoming customer phone calls and inquiries. A backlog of phone calls resulted in the shifting of field staff into the office to help field calls, thereby causing the Program to temporarily suspend all field services offered by the Program. Customers grew increasingly frustrated with the inability to get through the phone lines to speak with Program staff.

Based on feedback from customers, on November 1, 2018, the City Council approved Resolution No. 2018-253, which implemented a moratorium of fines for excessive water use based on water meter data until further Council direction. Issuance of notices and fines based on visual enforcement was permitted to continue. Council also asked the DPU to review the City's enforcement methods for water conservation, water use regulations, and the Water Conservation Program operations as a whole, and return to Council with proposed actions.

DPU performed a comprehensive review of the City's water regulations, enforcement methods, and the Water Conservation Program policies and procedures. Key takeaways from the pilot program were used to inform the review. Staff now recommends a number of changes the City's water use regulations.

The substantive changes recommended by staff are described below:

### **Excessive Water Use**

Under the proposed revisions, the definition of "Excessive Water Use" allows for an adjustable water usage threshold based on the Water Shortage Contingency Plan stages. The revised thresholds were selected to ensure customers performing normal household tasks would not be tracked in Stage 2, the City's current stage. Notably, the definition builds in one incident each month without consequence of enforcement prior to triggering excessive water use notices and fines.

The proposed update of FMC Subsection 6-501(vv) reads 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.

### **Outdoor Water Use Schedule**

The proposed revisions to the Outdoor Water Use Schedule revert to a 3 days/Summer and 1 day/Winter schedule in Stage 2, includes the spring planting season in the Summer months by adding April to the "summer" schedule, and updates the watering hours on permitted days to allow more time to water before the heat of the day (prohibiting watering from 10am-6pm, rather than 9am-6pm).

The proposed Outdoor Water Use Schedule is as follows (the City is currently at Stage 2):

- Stage 1: April through October - 3 days/week (recommended)  
November through March - 1 day/week (recommended)
- Stage 2: April through October - 3 days/week  
November through March - 1 day/week**
- Stage 3: April through October - 2 days/week  
November through March - 1 day/week
- Stage 4: April through October - 1 day/week  
November through March - no landscape irrigation

The “Outdoor Water Use Schedule” has not previously been defined in the Fresno Municipal Code or the Water Shortage Contingency Plan. The proposed addition of subsection 6-501(ww) to the Fresno Municipal Code defines “Outdoor Water Use Schedule” 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.

### Penalties for Incidents of Water Waste

One of the most notable findings from the pilot program was the size of a penalty had little impact on water conservation compliance. Therefore, staff is recommending a 50% reduction in the penalties for incidents of water waste.

The proposed fine schedule as outlined in the Master Fee Schedule reduces the penalties by half, as follows:

First month with two or more incidents:	Notice Only
Second month with two or more incidents:	\$25.00
Third month with two or more incidents:	\$50.00
Fourth month with two or more incidents:	\$100.00
Each month after four with two or more incidents:	\$100.00

### Exemptions to the Outdoor Water Use Schedule

Proposed revisions to Section 6-520(a) of the FMC include updates to distinguish annual exemptions from short-term exemptions to the Outdoor Water Use Schedule.

Proposed revisions to FMC Section 6-520 are as follows:

- (a) In the use of potable water supplied by the City, no customer shall do or permit any of the following:
  - 1. Sprinkle or irrigate any yard, ground, premise, or vegetation except as set forth in the City’s Outdoor Water Use Schedule,
    - (i) Annual Exemptions. The following properties may submit an application for a one-year exemption to the 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 two acres or larger, and

- c. Properties without street addresses.  
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. The Director may approve a modified Outdoor Water Use Schedule with more frequent watering or different watering 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 Annual Exemptions approved by the Director shall automatically expire on December 31 of each year, and the property owners must re-apply for an exemption to the Outdoor Water Use Schedule for the upcoming summer.
- (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.

## Appeal Process

The proposed revised appeal process for fines for incidents of water waste would provide a more clear appeal process and comply with state regulations.

The proposed additions to FMC Section 6-520(e) revises the appeal process to read as follows:

- (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.

## Implementation

If approved by the City Council, the revisions to the FMC will become effective 31 days after final passage; and changes to the Water Shortage Contingency Plan and the Master Fee Schedule will become effective upon final passage.

DPU plans to test the automated enforcement system for approximately one year before implementing fines for excessive water use, allowing time to implement a comprehensive education and outreach effort to water customers, including general water conservation messaging, information about water conservation regulations, notification of the availability of water use permits, and increased outreach about the EyeOnWater customer tool. During this transition time, notices will continue to be issued to customers to inform them of incidents of water waste, but no fines will be attached.

Automated enforcement of incidents will begin on May 1, 2020, and fines will be assessed as outlined in the FMC and MFS. This will allow DPU sufficient time to ensure that customers have had every opportunity to understand their water use and comply with water use regulations. It will also allow DPU to address any problems identified in the year before fines based on automated enforcement are imposed on customers.

Visual enforcement of water use regulations will continue throughout the transition period, and fines will be issued for visually-observed incidents of water waste.

## ENVIRONMENTAL FINDINGS

EA No. EA-17-014, a Negative Declaration, prepared for an amendment to the Fresno Municipal Code (FMC) to prohibit water wasteful practices year round (rather than during certain drought periods as invoked by Council) in the FMC and the Water Shortage Contingency Plan and to amend the Water Shortage Contingency Plan to update permissible watering days in Stages 2 and 4. EA-17-014 was adopted by Council on October 12, 2017. EA-17-014 assessed updates to permissible watering days in Stages 2 and 4 as well as updates to the FMC with respect to the definition of

Excessive Water Use and incidents of water waste. This approval proposes minor modifications, clarifications, and refinements to the FMC and Water Shortage Contingency Plan to allow for greater flexibility in the timing of water usage as well as greater flexibility of enforcement. An analysis has been performed pursuant to CEQA Guidelines §§ 15162 and 15164 to determine whether an addendum to the adopted Negative Declaration (EA-17-014) may be prepared, given that this approval only proposes minor technical changes or additions to the original project and none of the conditions described in §15162 have occurred. Based upon this analysis the following findings are made to support the determination that no subsequent Negative Declaration is required and an addendum to EA-17-014 is appropriate:

1. No substantial changes are proposed in the project which will require major revisions to EA-17-014 due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The revisions are proposed to allow for more customer flexibility, resulting in fewer punitive measures for customers who are inadvertently out of compliance with regulations. The amendments do not create a significant increase in water usage.
2. No substantial changes have occurred with respect to the circumstances under which the original FMC and Water Shortage Contingency Plan amendments were undertaken which will require major revisions to the EA-17-014 due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.
3. There is no new information, which was not known and could not have been known with the exercise of reasonable diligence at the time EA-17-014 was adopted that shows any of the following:
  - a. The project will have one or more significant effects not discussed in EA-17-014;
  - b. Significant effects previously examined will be substantially more severe than shown in EA-17-014;
  - c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - d. Mitigation measures or alternatives which are considerably different from those analyzed in EA-17-014 would substantially reduce one or more significant effects on the environment but the project proponents decline to adopt the mitigation measure or alternative.

Therefore, the City of Fresno has determined that an addendum to Environmental Assessment No. EA-17-014 is appropriate given that none of the conditions described in Section 15162 of the CEQA Guidelines calling for preparation of a subsequent negative declaration have occurred; and, new information added is only for the purposes of providing minor changes or additions, in accordance with §15164 of the CEQA Guidelines.

## **LOCAL PREFERENCE**

Local preference was not considered because the Ordinance and Resolutions do not include a bid or award of a construction or services contract.

## **FISCAL IMPACT**

There is no financial obligation for the General Fund for these amendments to the FMC or revisions

to the Water Shortage Contingency Plan.

Attachments:

1. Addendum to a Negative Declaration prepared for Environmental Assessment No. EA-17-014, dated March 7, 2019 (Attachment 1)
2. Ordinance amending Fresno Municipal Code Sections 6-501 and 6-520 relating to regulations for Urban Water Conservation and Excessive Water Use (Attachment 2)
3. Resolution - Amending the City of Fresno Water Shortage Contingency Plan (Attachment 3)
4. Resolution - 549<sup>th</sup> Amendment to the Master Fee Schedule Resolution No. 80-420 to update water rate penalties relating to conditions of service work in the Public Utilities Department Section. (Attachment 4)
5. PowerPoint Presentation (Attachment 5)