



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Water Conservation and Water
Shortage Ordinance

DATE: June 12, 2009

RECOMMENDATION

Approve an ordinance amending Chapter 15.10 of Title 15 of the San José Municipal Code to strengthen requirements related to water conservation and water shortage.

OUTCOME, BACKGROUND AND ANALYSIS

On May 19, 2009, the City Council directed the City Attorney's Office to draft the above ordinance. A copy of the staff recommendation concerning the proposed ordinance is attached.

PUBLIC OUTREACH/INTEREST

This memorandum and ordinance are posted on the City's website for the June 16, 2009 Council Agenda.

CEQA

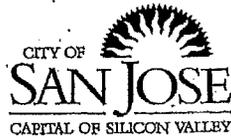
Exempt: File No. PP09-134

RICHARD DOYLE
City Attorney

By Mollie Dent
Mollie Dent
Sr. Deputy City Attorney

cc: Debra Figone

For legal questions regarding this matter, please contact Mollie Dent at 408-535-1905; for questions regarding the staff recommendation, please contact Mansour Nasser, Deputy Director, Environmental Services Department at (408)277-2558.



Memorandum

TO: TRANSPORTATION AND ENVIRONMENT COMMITTEE
FROM: John Stufflebean
SUBJECT: CITY OF SAN JOSÉ DROUGHT RESPONSE
DATE: 04-20-09

Approved

Date

4/22/09

RECOMMENDATION

Approve this report on a City drought response and recommend full Council consideration of the following actions:

- a. Adopt a resolution declaring a water shortage of 15% for the City of San José;
- b. Direct the City Attorney's Office to draft an ordinance amending Chapter 15.10 of the San José Municipal Code to strengthen the City's water waste prevention and water shortage measures;
- c. Adopt a resolution establishing a water budget program for Municipal Water System customers located in the System's Edenvale, Evergreen and Coyote service areas; and
- d. Direct staff to increase water conservation outreach and education.

OUTCOME

The City's drought response actions will contribute towards a reduction in water use within San José. This may also impact revenue to the City's Municipal Water System.

BACKGROUND

On February 27, 2009, the Governor declared a state of emergency due to the drought and issued a proclamation that directs various state agencies to implement a drought emergency plan and provide assistance to those impacted by the drought. The proclamation included a request that all urban water users immediately reduce their individual water use by 20 percent.

Local reservoirs are at roughly 65% of capacity, and state reservoirs are below 50% of capacity. In addition, severe regulatory restrictions on pumping from the Sacramento-San Joaquin River Delta to protect endangered fisheries have sharply reduced the quantity and reliability of imported water supply for the Santa Clara Valley Water District (District).

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Based on the local and state water supply conditions as well as the Governor's drought proclamation, the District Board on March 24, 2009 adopted a resolution declaring a water shortage and calling for 15% mandatory reduction in water use. The District Board also sent a letter to cities and water retailers asking them to enact ordinances or implement actions according to their Urban Water Management Plans.

ANALYSIS

As a wholesale water provider, the District does not have direct authority to require residents and businesses to cut water use; it can only recommend mandatory conservation levels. Santa Clara County and the cities have the authority to enact and enforce ordinances that restrict or limit certain water use practices in times of a drought or water shortage. In addition, water retailers can activate certain measures to reduce water use as part of their Urban Water Management Plans.

The City's Municipal Water System (Muni Water), which provides potable water to about 115,000 San José residents, receives about 85 percent of its potable water supply from the District (the remaining supply is from the San Francisco Public Utilities Commission). The City has the ability to act on a citywide basis through ordinances, and Muni Water has the ability to act for its service area, which includes the North San José, Evergreen, and Coyote/Edenvale communities.

Staff is recommending the following actions for the City's drought response program.

1. Council declaration of a water shortage of 15%

To support the District's declaration of a water shortage, staff recommends Council adopt a resolution declaring a water shortage of 15% in effect until the end of 2009. This would communicate a strong message of severe water supply conditions, and provide a mechanism for the City to enforce city ordinances in place with provisions that apply if Council declares a water shortage.

2. Amendment of the Municipal Code to strengthen the City's water waste prevention and water shortage measures.

Municipal Code Chapter 15.10 contains specific restrictions to prevent water waste, as well as additional restrictions if Council declares water shortages of 10%, 20%, 30%, and 40%. Staff is recommending the following changes to Chapter 15.10:

- a. Add the following new provisions to Part 2 Water Waste Prevention (permanent water conservation measures):
 - Prohibit the use of potable water to irrigate a lawn, landscape or other vegetated area more than fifteen minutes per day per station when using a landscape irrigation system or a watering device that is not continuously attended, except for landscape

irrigation systems that exclusively use very low-flow drip type irrigation systems when no emitter produces more than two gallons of water per hour and weather-based controllers or stream rotor sprinklers that meet a 70% efficiency standard.

- Require hotels, motels and other commercial lodging establishments to provide customers the option of not having towels and linen laundered daily and to prominently display notice of this option in each bathroom using clear and easily understood language.

- b. Revise Part 3 Water Shortage Measures (measures tiered to declared water shortage measures) as follows:
 - Replace the provisions that are in effect upon a City Council declaration of twenty percent shortage with the following provisions, which shall be in effect upon a City Council declaration of twenty five percent or greater water shortage:
 - Prohibit filling or re-filling ornamental lakes or ponds with potable water, except to the extent needed to sustain aquatic life that is of significant value and which has been actively managed within the water feature prior to declaration of a supply shortage level under this ordinance.
 - Prohibit using water to wash or clean a vehicle, except at a commercial car washing facility that utilizes a re-circulating water system to capture or reuse water.
 - Prohibit use of potable water, except by the use of a bucket, or with the prior written approval of the Director of Environmental Services, to clean exterior paved or hard-surfaced areas, or to clean the exterior of any building or structure, except as surface preparation for the application of any architectural coating, or in connection with waxing.
 - Prohibit food preparation establishments, such as restaurants or cafes, from using non-water conserving dish wash spray valves.

 - Add the following provisions to be in effect upon a City Council declaration of forty percent or greater water shortage
 - Prohibit use of potable water to water or irrigate any lawn, landscape or other vegetated area with potable water, except with a hand-held bucket or hose equipped with a self-closing nozzle, or for the following purposes:
 - fire protection;
 - soil erosion control;
 - maintenance of rare or protected species;
 - maintenance of public parks, playing fields, day care centers, golf course greens, school grounds, provided that such irrigation is done in an efficient manner;
 - irrigation of environmental mitigated projects.
 - Prohibit re-filling of more than one foot and initial filling of residential swimming pools or outdoor spas with potable water.

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- Require all leaks, breaks, or other malfunctions in the water user's plumbing or distribution system to be repaired within forty eight hours after knowledge of such leaks.

3. Water budget program for Muni Water customers

For Muni Water customers that receive District-supplied water, i.e. the Evergreen, Coyote Valley and Edenvale communities, staff is recommending a program that would allow Muni Water to set a water use budget for each customer consisting of monthly and average daily usage amounts for the next 12 months. The budgets would recognize prior water use reduction efforts already undertaken by customers. The letter notifying customers on their water budget would invite customers to provide any information concerning special circumstances or needs, including prior water conservation efforts, to request recalculation of their water budget. Staff considered the severity of the water supply situation and determined that this year, the program should not charge penalties for exceeding the water budget amounts. If the drought continues, staff may recommend a program next year that provides for a surcharge for excessive water use. Staff is developing a communication piece to be enclosed with the letter to customers that will contain tips for water conservation and how to read their water meter.

4. Increased Outreach/Education Citywide

City staff is recommending an increase in water conservation outreach and education efforts. The District is planning a large media campaign that will launch in mid-April, and City staff would support this campaign by helping to distribute information to the public through efforts such as bill inserts, information tables at community events, and presentations to targeted groups and communities. In addition, staff will increase efforts to educate citywide departments to ensure the efficient use of water at all city facilities. Staff at Muni Water would also identify the top water users for each water use type (irrigation, commercial, etc.) and conduct direct outreach to those users.

EVALUATION AND FOLLOW-UP

Staff will track water use in the Muni Water service area to gather data on whether the 15% water reduction is being achieved. Staff will also coordinate with the other water retailers that serve San José to collect data outside the Muni Water service area. Staff will provide a report to Council in spring 2010 to report on the progress of the drought response.

POLICY ALTERNATIVES

Alternative #1: No drought response, continue existing conservation programs. In this alternative, the City Council does not declare a 15% water shortage and does not authorize Muni Water to implement a water budget program.

Pros: Reduced impacts to residents and the City's revenue and budget.

Cons: Water conservation goals may not be met, worsening an already severe water shortage.
Reason for not recommending: In view of the current water shortage, San José water users need to conserve water to ensure that adequate supplies remain available for critical needs. Current water waste prevention and water shortage measures do not reflect up to date needs and feasible measures.

Alternative #2: Implement a water rationing program for Muni Water customers and charge a surcharge for water use above the allocated amount.

Pros: Reach conservation goals more quickly.

Cons: This would penalize those who are already conserving. It would require higher personnel resources to implement. Muni Water would be the only agency implementing a rationing program in Santa Clara County, San Mateo County, Alameda County, and San Francisco.

Reason for not recommending: The water supply situation is not at the level severe enough to warrant a rationing program.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

If Council adopts the recommendations, staff will immediately begin the following efforts for notification to the public:

1. Email and web-posting of Council's declaration of a water shortage.
2. Public review process for updating the City's water waste and water shortage ordinance.
3. For the water budget program, a notice letter will be sent out starting June 1 to customers in the program area. The city's website will also be updated to provide information on the water budget program.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office, City Manager's Budget Office, and Department of Planning, Building and Code Enforcement.

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COST SUMMARY/IMPLICATIONS

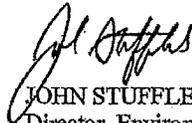
The cost of the regional water conservation outreach campaign will be funded by the District and will ultimately be passed through to the water retailers in the wholesale water cost.

The City's outreach will cost approximately \$50,000 and will be funded from the 2008-09 operating non-personnel budget using existing contracts.

Another major fiscal impact of implementing a water conservation program is the resulting decrease in operating revenues which are estimated to range from \$800,000 to \$1,500,000. The impact on water rates from such a decrease will be addressed in the 09-10 budget process.

CEQA

Exemption; File No PP09-082.


JOHN STUFFLEBEAN
Director, Environmental Services

For questions please contact Mansour Nasser, Deputy Director, Environmental Services Department at (408) 277-2558.