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CITY ATTORNEY

REPORT NO. R 16 - 0 1 0 2
APR 0 1 2016

REPORT RE:

**DRAFT ORDINANCE AMENDING ARTICLE I OF CHAPTER XII OF THE
LOS ANGELES MUNICIPAL CODE TO CLARIFY PROHIBITED USES AND
MODIFY CERTAIN WATER CONSERVATION REQUIREMENTS OF THE
WATER CONSERVATION PLAN OF THE CITY OF LOS ANGELES**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. The draft ordinance seeks to increase the penalties for Ordinance violations, establishes penalties for the waste and unreasonable use of water and incorporates the use of technology to improve ordinance enforcement.

Background

Along with the entire State of California, the City of Los Angeles (City) is experiencing a multi-year drought and working to comply with a variety of new water efficiency mandates. The first requires meeting Mayor Eric Garcetti's Executive Directive No. 5, which targets a 20 percent reduction in water use, or approximately 104 gallons per capita per day (GPCD) by 2017. Additionally, the City must also meet aggressive water use reduction targets established by the State Water Resources Control Board's (SWRCB) Emergency Conservation Regulations.

The Los Angeles Department of Water and Power (LADWP) has implemented multiple water conservation programs to reduce water demands within the City and to meet Mayor Garcetti's and the SWRCB's directives. LADWP's strategies to reduce water use include public outreach, conservation rebates and incentives, and mandatory water use restrictions pursuant to the ordinance. LADWP reports that through its water conservation efforts, Los Angeles residents have reduced their overall water use to 106 GPCD, and the City expects to meet Mayor Garcetti's target of 104 GPCD by January 1, 2017. The City also reduced total water use by 16.4 percent since June 2015, and is currently meeting the SWRCB's 16 percent water use reduction target.

Although LADWP is currently achieving compliance with both State and local conservation mandates, LADWP indicates that certain provisions in the ordinance make it difficult to monitor and address the behavior of the highest water users. LADWP's highest water users typically have large lots that are walled, gated and include large turf areas. Consequently, inspection and enforcement of these properties, pursuant to the ordinance, is virtually impossible without the water user's cooperation.

In response, LADWP has undertaken significant internal efforts to engage high water users and encourage them to voluntarily reduce their water demands. These efforts include:

- Mailings to high water users reminding them to conserve water during this drought and providing information on resources available to reduce indoor and outdoor water use.
- Enrolling 2,000 high water user accounts in LADWP's Home Water Report Pilot Program.
- Increasing focused neighborhood patrols where the highest water users are located.
- Offering residential water audits for high water users.

LADWP reports that its internal efforts resulted in significant water savings from a small number of high water users, but LADWP is concerned that certain high water users will continue to use an unreasonable amount of water despite LADWP's best internal efforts. Therefore, LADWP seeks to modify the existing ordinance to increase monetary penalties for ordinance violations, create a system to identify customers that are potentially engaging in the unreasonable use of water, mandate that high water users reduce their water demands, and expand LADWP's authority to use technology enforcement of the ordinance.

CEQA Findings

In accordance with the California Environmental Quality Act (CEQA), it has been determined that amending the Emergency Water Conservation Plan Ordinance is exempt pursuant to the General Exemption described in CEQA Guidelines Section 15061(b)(3). General Exemptions apply in situations where it can be seen with reasonable certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Summary of Ordinance Provisions

Recognizing LADWP's need to enhance ordinance enforcement, and thereby reduce water use among the City's highest water users, LADWP recommends that the City adopt amendments to the existing ordinance. The amendments would:

1. Increase penalties for ordinance violations to reflect the severity of water supply conditions, as shown in the following tables. The shaded areas represent current Phase II ordinance penalties, as amended:

Ordinance Violation Penalty (water meter < 2 inches)						
	Phase 1	Phase 2	Phase 3	Phase 4	Phase 5	Phase 6
1st Written Warning	\$0	\$0	\$0	\$0	\$0	Board Authority
2nd Written Violation	\$50	\$100	\$200	\$300	\$400	Board Authority
3rd Written Violation	\$100	\$200	\$400	\$600	\$800	Board Authority
4th Written Violation	\$150	\$300	\$600	\$900	\$1200	Board Authority
5th Written Violation	Flow Restrictor	Flow Restrictor	Flow Restrictor	Flow Restrictor	Flow Restrictor	Board Authority

Ordinance Violation Surcharge (water meter ≥ 2 inches)						
	Phase 1	Phase 2	Phase 3	Phase 4	Phase 5	Phase 6
1st Written Warning	\$0	\$0	\$0	\$0	\$0	Board Authority
2nd Written Violation	\$100	\$200	\$400	\$600	\$800	Board Authority
3rd Written Violation	\$200	\$400	\$800	\$1200	\$1600	Board Authority
4th Written Violation	\$300	\$600	\$1200	\$1800	\$2400	Board Authority
5th Written Violation	Flow Restrictor	Flow Restrictor	Flow Restrictor	Flow Restrictor	Flow Restrictor	Board Authority

2. water and create a Customer Conservation Plan to assist those users in reducing their water demands as follows:

If any Single-Family Customer enters LADWP's highest rate tier, that customer may be subject to a Water Use Analysis performed by LADWP. Within 30 days following written notification by LADWP, the customer shall provide LADWP reasonable access to their property for purposes of performing a Water Use Analysis and/or for verifying compliance with any existing Customer Conservation Plan. The customer or representative shall be present and fully cooperate with LADWP during any onsite activities necessary for the Water Use Analysis.

Upon completion of the Water Use Analysis, LADWP staff will prepare a Customer Conservation Plan that includes an evaluation of all water uses on the property, directions to reduce waste and unreasonable use of water, and a water budget based on the reasonable use of water on the property. Reasonable use of water on the property will be determined by standard industry methodologies used to calculate indoor and outdoor watering use. LADWP staff will discuss with the customer the findings of the Water Use Analysis and explain the Customer Conservation Plan. LADWP will adopt criteria and procedures to implement the Water Use Analysis.

Failure by the customer to provide access to the subject property, cooperate with LADWP staff, or comply with terms of the Customer Conservation Plan (including any water budget) shall subject the customer to an Unreasonable Water Use Penalty and be deemed a nuisance pursuant to Government Code § 38771. The Unreasonable Water Use Penalty would be issued per billing cycle, according to the following table:

Unreasonable Water Use Monthly Penalties						
Number of Consecutive Months with Violation*	Phase 1	Phase 2	Phase 3	Phase 4	Phase 5	Phase 6
Violations during months 1-5	N/A	\$1,000	\$2,000	\$5,000	\$10,000	Board Authority
Violations during months 6-11	N/A	\$2,000	\$4,000	\$10,000	\$20,000	Board Authority
Violations during months 12-17	N/A	\$3,000	\$6,000	\$15,000	\$30,000	Board Authority
Violations during months 18-23	N/A	\$4,000	\$8,000	\$20,000	\$40,000	Board Authority

* Customers continuing to violate beyond 24 months will be referred to the Board for consideration of flow restrictors or other actions.

3. Clarify that LADWP may use technology such as smart metering or flow sensors, etc., to assist staff in observing customer water use and enforcing the ordinance.

LADWP recommends adoption of the proposed ordinance amendments to provide LADWP with necessary tools to identify the City's highest water users and provide those users with a Customer Conservation Plan, which will aid in the reduction of water use. Ordinance amendments will also encourage high water users to cooperate with LADWP to reduce their water demands and deter those customers from continuing to engage in the waste or unreasonable use of water.

Council Rule 38 Referral

Pursuant to Council Rule 38, this draft ordinance has been presented to the Board of Water and Power Commissioners.

If you have any questions regarding this matter, please contact Deputy City Attorney David J. Edwards at (213) 367-4496. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By



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Chief Assistant City Attorney

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Transmittal