

Handouts

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**BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT**

ORDINANCE NO. 22-

**ANA FIRST AMENDED AND RESTATED ORDINANCE OF
SANTA CLARA VALLEY WATER DISTRICT
ADOPTING DROUGHT
OUTDOOR WATER CONSERVATION
AND ENFORCEMENT MEASURES**

The Board of Directors of Santa Clara Valley Water District does ORDAIN as follows:

SECTION 1: PURPOSE

- 1.1 Due to water shortage conditions existing in the service area of the Santa Clara Valley Water District (Valley Water), as well as historically low imported water allocations of Valley Water's State Water Project (SWP) and Central Valley Project (CVP) supplies, the purpose of this ordinance is to establish mandatory outdoor water conservation measures with corresponding enforcement measures as part of a mandatory outdoor water conversation program. To ensure Valley Water continues providing a safe, reliable water supply when its supplies are limited due to current or future shortage conditions, the measures in this water conservation program are intended to preserve and extend Valley Water's available water supply in Santa Clara County and to reduce the hardship on the general public to the greatest extent possible. They are also aimed at ensuring the efficient use of Valley Water's water supply outdoors to maintain sufficient supplies to meet public health, safety and welfare needs during uncertain water supply conditions.
- 1.2 Valley Water adopts this ordinance consistent with Article X, Section 2 of the California Constitution pursuant to its authority under Water Code Section 350 et seq, Water Code Section 375 et seq, and the Santa Clara Valley Water District Act, (Stats. 1951, ch. 1405, p. 3336 et seq., West's Ann. Wat.—Appen. (1999 ed. & 2012 supp.) ch. 60, p. 354 et seq.).

SECTION 2: DEFINITIONS

- 2.1 "Turf" means a ground cover surface of non-native, ornamental grass, or a ground cover surface of mowed grass. Annual bluegrass, Kentucky bluegrass, Perennial ryegrass, Red fescue, and Tall fescue are cool-season grasses. Bermudagrass, Kikuyugrass, Seashore Paspalum, St. Augustinegrass, Zoysiagrass, and Buffalo grass are warm-season grasses.
- 2.2 "Non-Functional Turf" means Turf that is solely ornamental and does not serve a community or neighborhood function, including, use for recreational purposes, or civic or community events.
- 2.3 "Incidental Runoff" means unintended amounts (volume) of runoff, such as unintended, minimal overspray from sprinklers that escapes the area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility or system design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.
- 2.4 "Property Owner" means the owner of the land where a possible violation of one or more of the water waste prohibitions described in Subsection 3.1 of this ordinance is occurring.
- 2.5 "Water Retailer" means municipalities or investor-owned water retailers that supply potable water made available by Valley Water to Property Owners.

HANDOUT 1: AGENDA ITEM 4.1

SECTION 3: OUTDOOR DROUGHT WATER WASTE PROHIBITIONS

- 3.1 Violations of the prohibitions set forth below are subject to the enforcement measures described in Section 4. All Property Owners in Santa Clara County who receive potable water supplied or managed by Valley Water either directly or indirectly by a Water Retailer shall not do any of the following:
- (a) irrigate Non-Functional Turf more than 2 days a calendar week.
 - (b) irrigate any outdoor landscape between the hours of 9:00 AM and 6:00 PM.
 - (c) apply potable water to any outdoor landscape in a manner that causes more than Incidental Runoff. More than Incidental Runoff includes water that flows onto an adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures.
 - (d) apply potable water to any outdoor landscape during and within 48 hours after measurable daily rainfall of at least one fourth of one inch (0.25 inches) of rain. In determining whether measurable daily rainfall of at least fourth of one inch (0.25 inches) of rain occurred on a property, enforcement will be based on records of the closest weather station to the property available from the National Weather Service (weather.gov) or the Valley Water ALERT website (valleywateralert.org/scvwd/pgi.php).
 - (e) apply potable water to Non-Functional Turf at commercial, industrial and institutional sites, including homeowner's associations.
- 3.2 The use of potable water is not prohibited to the extent necessary to ensure the health of trees and other perennial non-Turf plantings or to the extent necessary to address immediate health and safety, sanitation, or fire protection needs as determined by the fire marshal. Unless otherwise permitted by the fire marshal, the watering permitted under this Subsection 3.2 must be completed in a manner that prevents runoff.

SECTION 4: ENFORCEMENT

- 4.1 For violations set forth in Subsection 3.1, the following enforcement procedures 4.1 (a) – (e) shall apply. ~~Reports on water waste will be made through public complaints to Valley Water.~~

~~(a) Educational Letter – Notice of First Report of Violation~~

Valley Water will emphasize an educational approach to addressing reported violations of water waste prohibitions to encourage water conservation and to prevent water waste.

Reports of water waste will be made through public complaints to Valley Water shall provide information at. For Property Owners who receive potable water supplied or managed by Valley Water either directly or indirectly by a Water Retailer, steps 4.1 (a) – (e) will be followed. If the property is supplied by a Water Retailer, Valley Water will notify the Water Retailer of each step of the complaint. Valley Water will offer Water Retailers the opportunity to initiate their own enforcement process to help the Property Owner correct the water waste before moving to established for their respective service area at either steps 4.1 (a), (b), or (c). While the next step in the Water Retailer pursues its enforcement process. Any Property Owner reported to have violated, Valley Water will not conduct any of the steps in its enforcement process.

If the Water Retailer does not initiate its own enforcement process, or if the Water Retailer who previously initiated its enforcement process requests that Valley Water

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resume its enforcement process, then Valley Water will perform the remaining steps between 4.1 (a) – (e) that Valley Water has not yet completed.

(a) Notice of Report of Violation

If a report of a violation of outdoor water waste prohibitions set forth in Subsection 3.1 shall receive a written notification from is submitted to Valley Water's water waste program. The written notification Water, a Notice of Report of Violation will be issued to the Property Owner. A Notice of Report of Violation will contain information on how to correct violations and a warning that failure to correct a violation within fourteen (14) calendar days from when the report was made issuance date of that written notification may result in future enforcement action. No administrative fine is issued by Valley Water at this time.

Based on the magnitude of the reported violation and Valley Water's enforcement priorities, the Water Retailer serving the property may be notified of the reported violation.

(b) Notice of Second Report of Violation

Valley Water staff or contractors shall visit the property if a second report of a violation of outdoor water waste prohibitions in Subsection 3.1 is reported at submitted to Valley Water for the same property following fourteen (14) calendar days and within twelve (12) calendar months of the first report issuance of violation. The a Notice of Report of Violation, Valley Water or its contractors shall conduct a site visit of the property visited shall be provided a door hanger to document the violation, if possible, and provide a door hanger. The door hanger will state that failure to comply with water waste prohibitions may result in future enforcement action. Furthermore, Valley Water will send the Property Owner written notification of the second report of violation. Valley Water will notify the Water Retailer serving the property of the reported violation and provide the opportunity for the Water Retailer to initiate its enforcement process. Staff will address reported violations based on enforcement priorities related to the severity of the alleged violation. a Notice of Second Report of Violation.

(c) Notice of Third Report of Violation

Following if a third report of a violation of outdoor water waste prohibitions in Subsection 3.1 at is submitted to Valley Water for the same property following fourteen (14) calendar days from the issuance of a Notice of Second Report of Violation and within twelve (12) calendar months of the second report of violation described in Subsection 4.1(b), issuance of a Notice of Report of Violation, Valley Water will send a warning letter Notice of Third Report of Violation to the Property Owner. The warning letter This will state that the Property Owner may receive administrative fines for uncorrected violations. Valley Water will notify the violating property's Water Retailer of the third report of violation and request the Water Retailer to initiate its enforcement process. If

(d) Notice of Violation

Valley Water is the sole supplier of water to the property or if the Water Retailer has not commenced enforcement action within thirty (30) calendar days of being notified of the third report of violation, then Valley Water will pursue its own enforcement as described in Subsections 4.1(d) and 4.1(e).

(d) Notice of Violation

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~~If an enforcement action was not commenced by the Water Retailer with jurisdiction over the violating property within thirty (30) calendar days after Valley Water notified the Water Retailer of the third report of violation, and the violation is reported to be continuing, Valley Water's contractors will conduct a site visit of the property and investigate the reported violation. If an enforcement action commenced by the Water Retailer does not result in the violation being corrected or fines issued within 30 days, Valley Water may conduct a second site visit following fourteen (14) calendar days following the issuance of a Notice of Third Report of Violation to document the violation. If the violation is continuing, then Valley Water will send a Notice of Violation to the Property and investigate the reported violation based on Valley Water's enforcement priorities. Owner which will state that the Property Owner is now subject to administrative fines for uncorrected violations.~~

The Property Owner is subject to an administrative fine of up to \$one-hundred dollars (\$100) for each violation found. Notwithstanding the foregoing, Valley Water may impose an administrative fine of up to ten thousand dollars (\$10,000) in extraordinary situations/circumstances where it finds that: the Property Owner had actual notice of the water waste prohibition found to be violated; the Property Owner's conduct was intentional; and the amount of water involved was substantial.

(e) Repeat Violations

~~For a Property Owner found by Valley Water to incur a further will conduct a site visit thirty-one (31) days following the issuance of a Notice of Violation, or when a subsequent report of violation of outdoor water waste prohibition for which prohibitions in Subsection 3.1 is submitted to Valley Water following thirty-one (31) calendar days from the Property Owner already received issuance of a Notice of Violation and within the past thirty-one (31) twelve (12) calendar days, months of the Property Owner shall be subject issuance of a Notice of Report of Violation, to an administrative fine of \$250. determine if the confirmed violation is continuing. If the violation is continuing, the Property Owner shall be subject to an additional administrative fine of up to ten thousand dollars (\$10,000). For each successive violation following thirty-one (31) calendar days, the Property Owner shall be subject to an additional administrative fine of \$500 per violation. Notwithstanding the foregoing, in extraordinary circumstances, Valley Water may impose an additional administrative fine not to exceed ten thousand dollars (\$10,000) for a second violation, plus five hundred dollars (\$500) for each additional day on which that the violation continues.~~

SECTION 5: HEARING

5.1 A Property Owner subject to an administrative fine will be provided notice and may request a hearing to present evidence that the violation did not occur by following the procedure set forth below:

- (a) Within thirty (30) calendar days of receiving ~~the~~ Notice of Violation, the Property Owner mails a written request for a hearing to the Clerk of the Board, 5750 Almaden Expressway, Valley Water, San José, CA 95118-3686. For purposes of this Section 5, the request for hearing shall be deemed received by Valley Water on the day it arrives at Valley Water. The Clerk of the Board shall notify the Property Owner, in writing, of the place, date and time of the hearing, which shall take place no earlier than thirty (30) calendar days after ~~the~~ Notice of Violation was issued.

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- (b) The Chief Executive Officer or designee shall conduct a hearing considering all applicable facts and issue a written decision. The Chief Executive Officer's or designee's decision shall be final.
- (c) Any administrative fine not timely contested in a hearing per this Section 5 shall be deemed final.

SECTION 6: EFFECTIVE DATE

~~This ordinance shall be in effect starting on June 1, 2022.~~

NOW, THEREFORE BE IT ORDAINED by the Board of Directors of the Santa Clara Valley Water District that this ordinance shall be in effect starting on ~~June 1~~ September 13, 2022.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on ~~May 24~~ September 13, 2022:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

By: _____

JOHN L. VARELA
Chair Pro Tem, Board of Directors

ATTEST: MICHELE L. KING, CMC

Clerk, Board of Directors

Amendments made to the Ordinance 22-02 of Santa Clara Valley Water District Adopting Drought Outdoor Water Conservation and Enforcement Measures

Section 3.1 (e)

- The State's ban on watering commercial, industrial, and institutional (CII) turf was added to the list of enforceable restrictions.

Section 4.1

- Clarified how Valley Water will address cases in areas where non-Valley Water supplies are supplied by the Water Retailer. For these cases, Valley Water will notify the retailer of each complaint received.
- Clarified that Valley Water will offer Water Retailers the opportunity to initiate their own enforcement process at either the 1st, 2nd or 3rd complaint (steps 4.1 a, b, or c). The Access Valley Water system notifies the retailer of all complaints logged automatically.
- Clarified the conditions under which Valley Water would resume a case that the retailer has begun enforcing. The conditions are (1) if Water Retailer does not initiate its own enforcement process, or (2) if the Water Retailer who previously initiated its enforcement process requests that Valley Water resume its enforcement process.
- Clarified that Valley Water will perform all enforcement steps prior to moving to fines, in order to ensure everyone receives the same due process.

Section 4.1 (a)

- Shortened name of first letter to property owner from "Educational Letter – Notice of First Report of Violation" to "Notice of Report of Violation" to be more succinct. Subsequent letters are also educational so the more succinct term is preferred.
- Stated that violations must be corrected within 14 days of the issuance of the written notification, so that the property owner has enough time to correct the violation.

Section 4.1 (b)

- Stated that contractors may conduct site visit.
- Retailers may initiate their enforcement process at any complaint as stated in Section 4.1, so text regarding notifying retailers of second complaint was redundant and therefore removed.

Section 4.2 (c)

- Clarified that the third complaint needs to come in within 12 months of the Notice of Report of Violation, which is issued following the first complaint. This gives the case a fixed timeline.
- Retailers may initiate their enforcement process at any complaint as stated in Section 4.1, so text regarding notifying retailers of third complaint was redundant and therefore removed.

Section 4.2 (d)

- Removed text giving retailers 30 days to begin the case after being notified of the third complaint. The 30-day period is too long and each retailer has specified with Valley Water at which step they will begin enforcing.

- Removed text stating that Valley Water would resume a case if retailer does not correct violation or issue a fine within 30 days. Valley Water wants to ensure cases are addressed quickly and without duplicative actions by the retailer. Thus, Valley Water will check in with retailer on a case after 30 days, or if additional complaints are received. However, if the retailer is taking slightly longer than 30 days to address a case, Valley Water will not resume our process to allow the retailer slightly more time to wrap up. Valley Water's goal is to avoid performing duplicative efforts that could confuse the customer or provide duplicative fines. Close coordination with the retailers will occur to ensure water waste complaints are addressed in a timely manner.
- Stated providing at least 14 days after issuing a Third Report of Violation to allow time for the property owner to correct the violation. If the violation is continuing, the property owner would receive a Notice of Violation which would state that the property owner is now subject to a fine.

Section 4.2 (e)

- The fee schedule was aligned to meet the Water Code requirement. Following the first fine (which is \$100, or up to \$10,000 for extraordinary circumstances), it was clarified that Valley Water would check for a repeat violation after 31 days or if another complaint is received. Another fine can be issued at that time (up to \$10,000 for extraordinary circumstances). For each day the violation continues, another \$500 can be issued.

Section 6

- The effective date was updated to the date the Board is expected to adopt the amended ordinance (September 13, 2022).