AGENDA REPORT

Meeting Date: December 16, 2008
Item Number: F-4
To: Honorable Mayor & City Council
From: David Gustavson, Director of Public Works and Transportation
Shana Epstein, Environmental Utilities Manager
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING TITLE 9 OF THE MUNICIPAL CODE REGARDING WATER CONSERVATION PLUMBING FIXTURE STANDARDS AND WATER EFFICIENT LANDSCAPING
Attachments: 1. Ordinance

RECOMMENDATION

It is recommended that full reading of the ordinance be waived and the ordinance entitled "AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING TITLE 9 OF THE MUNICIPAL CODE REGARDING WATER CONSERVATION PLUMBING FIXTURE STANDARDS AND WATER EFFICIENT LANDSCAPING" be reintroduced for first reading and read by title only.

INTRODUCTION

At the December 2, 2008 City Council meeting this ordinance was introduced for first reading. During the staff presentation a question was asked whether the property owner or the new buyer would have a period of time to comply with the retrofit requirement. At that time City Staff indicated that there would be a period of time for the retrofit to occur upon a change of ownership. This, however, was not reflected in the ordinance. Upon discussion with the City Attorney's office, the City Attorney recommended that the ordinance be revised to reflect staff's intent and that the ordinance be re-introduced for first reading.

The proposed ordinance now provides that the retrofit of plumbing fixtures be made prior to the change of ownership or within 180 days following the change of ownership. If the retrofit occurs within that 180 day period, the property owner is required to submit an affidavit certifying that the retrofit occurred.

For David Gustavson, Director of Public Works and Transportation

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING TITLE 9 OF THE MUNICIPAL CODE REGARDING WATER CONSERVATION PLUMBING FIXTURE STANDARDS AND WATER EFFICIENT LANDSCAPING.

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1: Findings and Purpose. Water is a precious commodity of limited supply. The City Council is the trustee of the City's domestic water supply. The general welfare of the citizens of the City of Beverly Hills and its environs requires that the water resources available to the City be utilized with maximum efficiency and that landscape design, installation, and maintenance should be water efficient.

Section 2: Section 9-4-103 of Article 1 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

"9-4-103: DEFINITIONS:

A. Unless the context otherwise requires, the following definitions shall govern the construction of this article:

1. ADMINISTRATIVE AUTHORITY: The Building and Safety Division of the City of Beverly Hills.
2. CHANGE OF OWNERSHIP: The transfer, sale or exchange of a fee interest in any residential or commercial real property located in the City of Beverly Hills or served by the Environmental Utilities Division of the City of Beverly Hills. Change of Ownership shall not mean:
   a. The transfer, sale, or exchange of real property between spouses, including, but not limited to, transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor; transfers to a spouse which take effect upon the death of a spouse; transfers to a spouse or former spouse in connection with a property settlement agreement or

decree of dissolution of a marriage or legal separation; the creation, transfer, or termination, solely between spouses, of any co-owner's interest; and the distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.

b. The transfer, sale, or exchange of real property between parents and their children, including, but not limited to, voluntary transfers or transfers resulting from a court order or judicial decree.

c. The transfer, sale, or exchange of real property pursuant to state foreclosure proceedings.

d. The transfer, sale, or exchange of real property to a revocable or irrevocable living trust.

3. EXISTING PLUMBING FIXTURE: Any toilet using more than 1.6 gallons of water per flush, urinals using more than 1.0 gallons of water per flush, showerheads with a flow capacity of more than 2.5 gallons of water per minute, faucets that emits more than 2.2 gallons of water per minute, or a residential reverse osmosis system not equipped with shutoff valves.

4. FLUSHOMETER TANK: A tank integrated within an air accumulator vessel which is designed to discharge a predetermined quantity of water to fixtures for flushing purposes.

5. FLUSHOMETER VALVE: A device which discharges a predetermined quantity of water to fixtures for flushing purposes and is actuated by direct water pressure.

6. LOW FLOW FAUCET: A faucet that allows a maximum flow rate of 2.2 gallons per minute.

7. LOW FLOW SHOWERHEAD: A showerhead that allows a maximum flow rate of 2.5 gallons per minute.

8. RETROFIT or RETROFITTING: The replacement of Existing Plumbing Fixtures with Water Conserving Plumbing Fixtures.

9. TRANSFEREE: Any person, persons, or entity to whom a transfer, sale or exchange of any real property is made.

10. TRANSFEROR: Any person, persons, or entity transferring, selling or exchanging a fee interest in any real property.

11. ULTRA LOW FLOW URINAL: A urinal that discharges no more than 1.0 gallons of water per flush for flushing purposes.

12. ULTRA LOW FLOW WATER CLOSET: A Water Closet that discharges no more than 1.6 gallons of water per flush for flushing purposes.

13. WATER CLOSET: A flush toilet, a Flushometer Tank, or a Flushometer Valve operated toilet.

14. WATER CONSERVATION AFFIDAVIT: shall mean a signed, written statement and declaration by the Transferor which declares that Water Conserving Plumbing Fixtures

have been installed prior to Change of Ownership or will be installed within one hundred and eighty days following the Change of Ownership.

15. WATER CONSERVING PLUMBING FIXTURES: Any Ultra Low Flow Water Closet, Ultra Low Flow Urinal or Waterless Urinal, Low Flow Showerhead, Low Flow Faucet, or residential reverse osmosis systems equipped with shutoff valves.
16. WATERLESS URINAL: A Waterless Urinal, approved for use by the Administrative Authority pursuant to the requirements of the California Plumbing Code as an alternative and equivalent (or superior) urinal system, with a vertical-trap design that incorporates a cylinder or trap filled with a thin layer of liquid sealant sitting atop the drain area of the urinal."

Section 3: Section 9-4-104 of Article 1 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

"9-4-104: NEW CONSTRUCTION:

A. No building permit shall be issued for any new building unless all showerheads, Water Closets and urinals meet the following requirements:
   1. Faucets: All faucets shall be equipped with Low Flow Faucets.
   2. Showerheads: All showers shall be equipped with Low Flow Showerheads.
   3. Water Closets: All Water Closets shall be Ultra Low Flow Water Closets.
   4. Urinals: All urinals shall be Ultra Low Flow Urinals or a Waterless Urinals"

Section 4: Section 9-4-105 of Article 1 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

"9-4-105: REPLACEMENT FIXTURES:

If any person replaces a showerhead, faucet, toilet, or urinal in any building served by the Environmental Utilities Division of the City of Beverly Hills, then that showerhead, faucet, toilet, or urinal shall be replaced with a Low Flow Showerhead, Low Flow Faucet, Ultra Low Flow Water Closet or, in the instance of a urinal, an Ultra Low Flow Urinal or a Waterless Urinal."

Section 5: Section 9-4-106 of Article 1 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

"9-4-106: REQUIREMENTS PRIOR TO CHANGE OF OWNERSHIP:

A. Purpose. It is the purpose of this section to reduce sewer flows and decrease the use of imported, potable water in the City of Beverly Hills by establishing water conservation plumbing standards for plumbing fixtures Retrofitted prior to Change of Ownership.

B. Notification and Retrofit Requirements prior to Change of Ownership.

1. Prior to a Change of Ownership, the Transferor shall give written notice of the requirements of this section to the Transferee. Where an escrow agreement has been executed in connection with a Change of Ownership, the Transferor shall give written notice of the requirements of this section to the Transferee prior to the close of escrow

2. Prior to a Change of Ownership or within one hundred and eighty days following a Change of Ownership, the Transferor shall Retrofit all Existing Plumbing Fixtures in the building and shall sign a Water Conservation Affidavit. If an escrow agreement has been executed in connection with a Change of Ownership, the Transferor shall submit the signed Water Conservation Affidavit to escrow prior to the close of escrow. The cost of compliance with this section may be borne by the Transferor, Transferee, or both. The Transferor of property subject to this section shall provide the Transferee with confirmation of compliance with the requirements of this section in the transfer, sale, or exchange agreement.

C. Retrofit Exemption. Notwithstanding section 9-4-108 of this article, the Administrative Authority may grant an exemption from this section if it is determined that a Water Conserving Plumbing Fixture is unavailable to match a well-defined historic architectural style (e.g., Victorian or Mission) fitted with authentic plumbing fixtures in a local, state or federally designated building of historic significance.

D. Verification of Compliance.

1. The Transferor shall sign the Water Conservation Affidavit, and, where an escrow agreement has been executed in connection with the Change of Ownership, shall submit the Water Conservation Affidavit to escrow prior to the close of escrow.

2. If Retrofitting occurs within one hundred and eighty days following a Change of Ownership, the Transferee shall submit a Water Conservation Affidavit confirming that the Retrofitting has been completed.

3. The Administrative Authority shall maintain copies of all executed Water Conservation Affidavits so as to provide future verification of previously installed Water Conserving Plumbing Fixtures.

4. Water Conservation Affidavits shall be provided to those who voluntarily install Water Conserving Plumbing Fixtures.

E. Notwithstanding any other provision of this section, all Transferors shall obtain a plumbing permit and comply with all plumbing permit requirements when installing Water Conserving Plumbing Fixtures pursuant to this section."

Section 6: Section 9-4-108 of Article 1 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

"9-4-108: EXEMPTION:

The Director of the Administrative Authority may exempt any person from the requirements of sections 9-4-105 and 9-4-106 of this article if the Director determines that compliance with the requirements of those sections will cause existing wastewater systems to malfunction or will cause a danger to any person's health or safety.

Section 7: A new Section 9-4-109 is hereby added to Article 1 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code to read as follows:

"9-4-109: PENALTIES; ENFORCEMENT:

A. It is unlawful for any person, firm, partnership, association or corporation to violate, cause the violation of, or maintain a violation of any section of this article.

B. It is unlawful for any person, firm, partnership, association or corporation to remove or cause the removal of Water Conserving Plumbing Fixtures contrary to the provisions of this article.

C. In addition to any other remedy provided by the Beverly Hills Municipal Code, any provision of this article may be enforced by an injunction issued by the Superior Court upon a suit brought by the City of Beverly Hills.

D. Any provision of this article may be enforced pursuant to the administrative penalty process set forth in Chapter 3 of Title 1 of the Beverly Hills Municipal Code.

E. No liability shall arise, nor shall any action be brought or maintained against, any agent of any party to a transfer of title, including any person or entity acting in the capacity of an escrow officer, for any error, inaccuracy, or omission relating to compliance with this article. Except as otherwise provided in this article, this section shall not be deemed to create or imply a duty upon a licensee, as defined in Section 10011 of the State Business and Professions Code, or upon any agent of any party to a transfer of title, including any person or entity acting in the capacity of an escrow officer, to monitor or ensure compliance with this article, or to notify any person of requirements to comply with this article.

F. Every person, firm, partnership, association or corporation that violates, causes the violation of, or maintains a violation of any provision in this article is guilty of an misdemeanor and is subject to the penalties imposed by the Beverly Hills Municipal Code.

G. The Administrative Authority is authorized and empowered to enforce the provisions of this article."

Section 8: Section 9-4-402 of Article 4 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

"9-4-402: APPLICABILITY:

Except as set forth in section 9-4-404 of this article, this article shall apply to all Landscaped Areas of new residential or commercial development projects, all new installations of Landscaped Area irrigation systems, and all Altered Landscaped Areas, whether proposed as part of projects subject to irrigation plan reviews by any design review body, or as part of projects not subject to review."

Section 9: Section 9-4-403 of Article 4 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

"9-4-403: DEFINITIONS:

Unless the context otherwise requires, the following definitions shall govern the construction of this article:

ALTERED LANDSCAPED AREA: A Landscaped Area that has been altered by more than fifty percent (50%) in total area.

LANDSCAPED AREA: The entire lot, including, water features such as pools, spas, ponds, and fountains. "Landscaped Area" shall not include the building footprint, driveways, non-irrigated portions of parking lots, hardscapes such as decks and patios, and other nonporous areas.

SMART IRRIGATION CONTROLLER: A weather-based device that automatically controls an outdoor irrigation system by using weather, site or soil moisture data as a basis for determining an appropriate watering schedule, and utilizing prevailing weather conditions, current and historic evapotranspiration, soil moisture levels, and other relevant factors to adapt water applications to meet the actual needs of the plants."

Section 10: Section 9-4-404 of Article 4 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

"9-4-404: EXCEPTIONS:

This article shall not apply to:

A. Projects which involve alterations or additions to, or retrofits of, existing residential or commercial structures, unless the Landscape Area is altered as defined in Section 9-4-403.

B. Projects with a Landscaped Area of less than two thousand five hundred (2,500) square feet.

C. Projects which have received a hillside development permit, a development review permit, or have submitted a complete application for a building permit prior to December 2, 2008.

D. Projects which involve the construction of accessory structures only.

E. Landscaping that is part of a property listed on the National Register of Historic Places."

Section 11: A new Section 9-4-405 is hereby added to Article 4 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

"9-4-405: WATER EFFICIENT LANDSCAPING IRRIGATION REQUIREMENTS:

Irrigation systems of new or Altered Landscaped Areas subject to this article shall be equipped with Smart Irrigation Controllers."

Section 12: A new Section 9-4-406 is hereby added to Article 4 of Chapter 4 of Title 9 (Building and Property Health and Safety Regulations) of the City of Beverly Hills Municipal Code is hereby amended to read as follows:

"9-4-406: WATER EFFICIENT LANDSCAPE PERMIT:

A. Prior to the final building inspection or issuance of a certificate of occupancy, projects subject to this chapter must apply for and obtain, from the department of building and safety, a water efficient landscape permit. The director of building and safety shall issue a water efficient landscape permit to an applicant if the director finds that the following requirements have been met:

The applicant submits a landscape plan, irrigation plan and drainage plan which contains the certification of a landscape architect or state certified landscape irrigation auditor that the plans include the following:

1. Plant materials are grouped according to similar water needs, where feasible.
2. Erosion and runoff controls are addressed in the landscape design.
3. Irrigation systems are equipped with Smart Irrigation Controllers, unless the project is otherwise exempt from this requirement as set forth in this Article.

B. Upon completion of all work in the Landscaped Area, the applicant shall submit to the department of building and safety an affidavit of the landscape architect or the state certified landscape irrigation auditor who certified the plans under subsection A of this section, that the work in the Landscaped Area was completed in compliance with the certified plans approved by the city pursuant to subsection A of this section.

C. A fee as set by resolution of the city council, shall be payable upon filing an application for a water efficient landscape permit."

Section 13: Severability. The City Council declares that, should any provision, section, paragraph, sentence or word of this Ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction, or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences and words of this Ordinance shall remain in full force and effect.

Section 14. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation publishes and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code; shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 15. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

PASSED AND ADOPTED this _____ day of _____, 2008.

CITY OF BEVERLY HILLS
A Municipal Corporation

_____
BARRY BRUCKER
Mayor of the City of Beverly Hills,
California

ATTEST:

_____(SEAL)
BYRON POPE,
City Clerk

APPROVED AS TO FORM:

for LW

_____
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT

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RODERICK J. WOOD, CCM
City Manager

_____
FOR DAVID GUSTAVSON
Director of Public Works & Transportation