



AGENDA REPORT

Meeting Date: May 13, 2009

Item Number: E-1

To: Honorable Mayor & City Council

From: Shana Epstein, Environmental Utilities Manager
Christian Di Renzo, Sr. Management Analyst

Subject:

- A. RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS ADOPTING AN APPEALS PROCEDURE FOR WATER CONSUMPTION SURCHARGES.
- B. AN ORDINANCE OF THE CITY OF BEVERLY HILLS RELATING TO EMERGENCY WATER CONSERVATION PROCEDURES AND AMENDING THE BEVERLY HILLS MUNICIPAL CODE.

Attachments:

- 1. Resolution
- 2. Ordinance

RECOMMENDATION

Staff recommends that the City Council adopt the proposed appeals procedure (to be in effect throughout the implementation of Stage B) for the appeal of water consumption surcharges and that the City Council waive full reading of the ordinance and that the ordinance entitled: "AN ORDINANCE OF THE CITY OF BEVERLY HILLS RELATING TO EMERGENCY WATER CONSERVATION PROCEDURES AND AMENDING THE BEVERLY HILLS MUNICIPAL CODE" be introduced and read by title only.

INTRODUCTION

The adoption of the City's Water Conservation Ordinance "Stage B" requires a reduction in citywide water consumption of ten (10%) and imposes a penalty surcharge if water is consumed in excess of 90% of the baseline allocation. To enable users or customers the ability to appeal such surcharges, appeals procedures are recommended. These procedures shall be administered by a board composed of two active members of the Public Works Commission, who may serve on a rotating basis, and one staff member of the Department of Public Works & Transportation. It is anticipated that the board would meet once per month (commencing sometime in September 2009 following the first bi-

monthly utility bill of FY 09/10) or on an as-needed basis. The last time there was a water emergency, appeals of the surcharge were conducted in this manner.

In order to implement this procedure, the City's Municipal Code needs to be amended.

DISCUSSION

Currently, the municipal code provides that appeals are to be heard by the City Council, although the code provides that the City Council may delegate those duties to the City Manager. Because staff is not sure how many appeals hearings will be requested, staff wants to have flexibility in the process so the City can be responsive to the needs of the community. Accordingly, staff is recommending that an appeals board comprised of two members of the Public Works Commission and a staff member be formed. In order to accomplish this, the municipal code needs to be amended. The proposed ordinance will still provide a right to an appeal hearing; however, the procedures will be adopted by the City Council by resolution. This will give the City more flexibility yet still provide the customer with procedures that comply with principles of due process. The ordinance also deletes the provisions in the code for which a reduction or waiver of the surcharge may be granted. Those provisions are now set forth in the resolution.

Pursuant to the procedures set forth in the resolution, any water utility user or customer may appeal the imposition of a water penalty surcharge and/or request either the reduction or waiver of such surcharge by filing an appeal with the Department of Public Works & Transportation along with the payment of the full amount of the water penalty or surcharge on or prior to its due date. A user or customer shall have fifteen (15) calendar days from the date of the notice setting forth the surcharge within which to file an appeal. The notice will be provided to the user or customer as part of their regular water utility bill. Within ten (10) calendar days of receipt of the appeal, the Department will determine whether the appeal should be heard by the Director of Public Works (or his designee) or the Board. Upon making this determination, the Department shall forward the appeal to either the Director or Board ("Date of Determination").

In the event the Director is scheduled to consider an appeal, the Director would be required to issue a tentative decision regarding the appeal within fifteen (15) calendar days of the Date of Determination. An appellant would have ten (10) calendar days from the date of decision to accept the tentative decision or request a hearing with the Director. In the event a hearing is requested, the Director shall hold a hearing within thirty (30) calendar days. At least five (5) days prior to the hearing, written notice of the date and time of the hearing will be mailed to the appellant. At the conclusion of the hearing, the Director shall have fifteen (15) calendar days to issue a written decision and subsequently mail said item to the appellant. The appellant shall have ten (10) calendar days from the date of the decision to file an appeal to the Board.

The Director may grant an appeal only if the Director finds that one of the following exists:

- A user's or customer's residence was occupied by more residents than in the base years which makes it infeasible to reduce water consumption from the base;
- A user or customer has a medical condition which makes it infeasible to reduce water consumption from the base;
- A user's or customer's residence is located in the Hillside District and due to the need to use water for fire abatement on the hillside it is infeasible to reduce water consumption from the base;

- During the relevant period, there was a leak at the water user's or customer's residence which could not have been reasonably discovered by the water user or customer and which was corrected immediately upon its discovery.

In the event the Board hears an appeal, the Board shall set the matter for a hearing within thirty (30) days from the Date of Determination. At least five (5) days prior to the hearing, written notice of the date and time of the hearing shall be mailed to the appellant. The Board shall issue a written decision within forty-five (45) calendar days from the date the hearing is concluded. All Board decisions are final.

The Board may grant the appeal only if one of the following conditions exist:

- Unique characteristics concerning the user's or customer's property make it physically infeasible to reduce water consumption from the base;
- A tenant of a multi-family rental dwelling unit has been improperly charged with any portion of the surcharge passed through to the tenant by the landlord;
- The user or customer has special needs related to a physical disability making it infeasible to reduce water consumption from the base;
- Extraordinary circumstances render the base year comparison unjust;
- The determination by the city establishing the base year for a particular property was erroneous or unreasonable under the circumstances.

The decision of the Board will be final.

FISCAL IMPACT

This action is being taken to encourage a level of conservation commensurate with the allocation reduction imposed by the Metropolitan Water District. Staff assigned to promote and manage this effort is already employed by the City, whose positions are partly funded by the Water Enterprise Fund.



Scott Miller
Finance Approval



David Gustavson
Approved By

Attachment 1

Resolution

RESOLUTION NO. 09-R- _____

RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY
HILLS ADOPTING AN APPEALS PROCEDURE FOR WATER
CONSUMPTION SURCHARGES

The City Council of the City of Beverly Hills hereby resolves as follows:

Section 1. Recently, the Governor has declared a drought in the State of California and the Metropolitan Water District's announcement of a regional shortage level 2 (equal to ten percent) will compel the water wholesaler to allocate shortages in supplies to its member agencies. In light of this water emergency, the City Council has declared a water shortage emergency and has implemented a stage "B" water shortage, which provides for the reduction of water usage and imposes a water penalty surcharge if water is consumed in excess of a specified percentage of the base year. In order to provide a procedure for a water customer to appeal the imposition of the water penalty surcharge, it is necessary for the City Council to establish the procedures for such appeals.

Section 2. Appeals and Establishment of an Appeals Procedure and Appeals Board

(a) An appeals board ("Board") is hereby established to review requests for appeals from water utility users and customers as set forth herein. The Board shall consist of two members of the Public Works Commission who may serve on a rotating basis, as determined by the Commission, and one Public Works Department staff member.

(b) Any water utility user or customer may appeal the imposition of a water penalty surcharge and/or request a reduction or waiver of such surcharge by filing an appeal with the Department of Public Works ("Department") on the form provided by the City along with payment of the full amount of the water penalty or surcharge on or prior to the date it is due. The user or customer shall have 15 calendar days from the date of the notice setting forth the surcharge within which to file an appeal. Said notice may be provided to the user or customer as part of their regular water utility bill. Within 10 calendar days of receipt of the appeal, the Department will determine whether the appeal should be heard by the Director of Public Works or his designee ("Director") or the Board. Upon making the determination, the Department shall forward the appeal to either the Director or Board ("Date of Determination").

(c) If the appeal is to be heard by the Director, the Director shall review the material submitted and shall issue a tentative decision regarding the appeal within 15 calendar days of the Date of Determination. The Director shall mail the tentative decision to the appellant. The appellant has 10 calendar days from the date of decision to accept the tentative decision or request a hearing with the Director. If a hearing is requested, the Director shall schedule and hold a hearing within 30 calendar days. At least five (5) days prior to the hearing, written notice of the date and time of the hearing shall be mailed to the appellant. At the conclusion of the hearing, the Director shall have 15 calendar days to issue a written decision. Such decision shall be mailed to the appellant. The appellant shall have 10 calendar days from the date of the decision to file an appeal to the Board pursuant to the process set forth herein.

(d) If the appeal is to be heard by the Board, the Board shall set the matter for a hearing within 30 days from the Date of Determination. At least five (5) days prior to the hearing, written notice of the date and time of the hearing shall be mailed to the appellant. The Board shall issue a written decision within 45 calendar days of the date the hearing is concluded. The decision of the Board shall be final.

(e) The Board may grant the appeal only if the Board finds one of the following exists:

(i) Unique characteristics concerning the user's or customer's property make it physically infeasible to reduce water consumption from the base year.

(ii) A tenant of a multi-family rental dwelling unit has been improperly charged with any portion of the surcharge passed through to the tenant by the landlord pursuant to Section 4-5.308 of the Beverly Hills Municipal Code.

(iii) The user or customer has special needs related to a physical disability making it infeasible to reduce water consumption from the base year;

(iv) Extraordinary circumstances render the base year comparison unjust.

(v) The determination by the City establishing the base year for a particular property was erroneous or unreasonable under the circumstances.

(f) The Director may grant the appeal only if the Director finds that one of the following exists:

(i) During the relevant billing period, the user's or customer's residence was occupied by more residents than in the base year, which makes it infeasible to reduce water consumption from the base year.

(ii) The user or customer has a medical condition which makes it infeasible to reduce water consumption from the base year.

(iii) The user's or customer's residence is located in the Hillside District and due to the need to use water for fire abatement on the hillside it is infeasible to reduce water consumption from the base year.

(iv) During the relevant billing period, there was a leak of water at the water user's or customer's residence which could not have been reasonably discovered by the water user or customer and which was corrected immediately upon its discovery.

(g) If it is determined the user or customer is not liable, in whole or in part, for the penalties or surcharge on water usage, that amount will be refunded to the user or customer; however the user or customer will still remain responsible for paying the current rates on such water usage.

(h) The Director of Public Works is authorized to establish rules relating to the appeal process as set forth herein.

Section 3. Any provision(s) relating to the establishment of a water appeals board or the procedures whereby a water customer may appeal the imposition of penalties or surcharges on water usage previously adopted by the City Council is hereby superceded by the provisions set forth in this Resolution.

Section 4. The City Clerk shall certify to the adoption of this resolution and shall cause this resolution and his certificate to be entered in the Book of Resolution of the Council of the City.

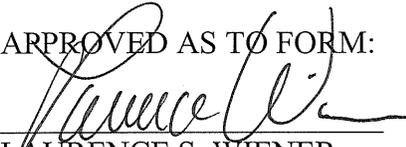
Adopted:

NANCY KRASNE
Mayor of the City of
Beverly Hills, California

ATTEST:

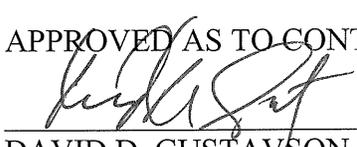
(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:



DAVID D. GUSTAVSON
Director of Public Works and
Transportation

Attachment 2

Ordinance

ORDINANCE NO. 09-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS RELATING TO
EMERGENCY WATER CONSERVATION PROCEDURES AND AMENDING
THE BEVERLY HILLS MUNICIPAL CODE

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

Section 1. Section 9-4-306 of Article 3 of Chapter 4 of Title 9 is hereby amended to
read as follows:

“9-4-306. Hearings. Any person receiving notice of a violation of any water usage
percentage reduction provision set forth in Section 9-4-304 shall have the right to request a
hearing to appeal the imposition of the water penalty surcharge. The City Council shall establish
the appeal procedures by resolution.”

Section 2. Section 9-4-308 of Article 3 of Chapter 4 of Title 9 is hereby amended to
read as follows:

“9-4-308. Exceptions. Nothing in this article shall be construed to require the city to
curtail the supply of water to any customer when such water is required by that customer to
maintain an adequate level of public health and safety.”

Section 3. 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.

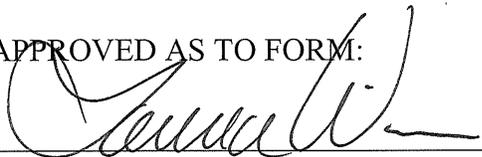
Adopted:

NANCY KRASNE
Mayor of the City of Beverly Hills

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager



DAVID GUSTAVSON
Director of Public Works & Transportation