



STAFF REPORT

Meeting Date: November 4, 2014

To: Honorable Mayor & City Council

From: Trish Rhay, Assistant Director of Public Works Services – Utilities
and Infrastructure
Noel Marquis, Assistant Director of Administrative Services
Michelle Tse, Senior Management Analyst

Subject: Water Penalty Surcharge and Implementation

Attachments: Water Penalty Appeals Process

INTRODUCTION

At the September 23, 2014 meeting, staff was directed to evaluate and recommend, for the City Council's consideration, an appropriate methodology to assess the penalty surcharges as it relates to the City's Stage B water conservation program, and to develop an implementation schedule based on the City's utility-billing capabilities. This report transmits the analysis on several options for assessing the penalty surcharge and an implementation schedule.

DISCUSSION

Given the severe drought conditions, the State enacted emergency regulations to reduce outdoor water use and to promote water conservation. Part of the State's directive requires water suppliers to take action within thirty (30) days from the State's emergency declaration which was effective on July 28, 2014. As such, the City Council approved the implementation of Stage B of the City's water conservation program, requiring water customers to reduce their overall water usage by 10%. As required in the City's Municipal Code, water use in excess of the 90% baseline amount would be assessed a penalty surcharge. The penalty surcharge would be calculated at twice the tiered rate for any water overage.

At the September 23 formal meeting, the City Council adopted a Resolution declaring the City's Stage B Water Conservation program, imposing the State's outdoor watering restrictions and the citywide outdoor watering schedule. In addition, on October 7, 2014, the City Council adopted an ordinance approving modifications to the Stage B program which is to exempt Tier 1 single- and multi-family water customers from the penalty surcharge assessments.

However, the City Council did not approve activating the penalty surcharge portion for the water use overage as outlined in the Municipal Code. The City Council requested that staff take time to re-evaluate the methodology used to calculate the penalty

surcharge. Of main concern was the baseline calculation used to set each customer's 90% water usage target. In addition, there were comments expressed by Councilmembers to consider a "smoothing" approach while developing the penalty surcharge so that customers who have water use below the baseline for most of the year, but yielding unusual high water use during part of the year would not be penalized

By way of background, the City Council previously declared a Stage B water conservation program in 2009 and a three-year average baseline was used to calculate the 90% baseline amount. At that time, the Pentamation utility billing system was modified (programmed) to allow implementation of the penalty surcharge framework. In 2014, the City transitioned to a new utility billing system called Munis. This system is not yet customized with the penalty surcharge framework as outlined in the City's Municipal Code.

Staff evaluated various options for implementing the penalty surcharge assessments. The options are outlined as follows:

Option 1: Program the Munis utility billing system to assess the penalty surcharges as outlined in the current Municipal Code.

To customize Munis so that it assesses the penalties as currently outlined in the Municipal Code and to modify the utility bill format costs \$15,100. The expected programming completion date is late January 2015; implementation of the penalty surcharges would begin the following billing cycle. Since the programming cost and timeline is reasonable, staff is recommending this option to customize the Munis utility billing system to assess the penalty surcharge.

Option 2: Use the Munis penalty surcharge framework that is currently available.

The Munis system currently has a penalty structure framework built in that allows for a flat-fee assessment per unit of water use overage. However, this approach may result in charging higher penalties for lower tier water customers. Going with the flat-fee Munis penalty structure would also require amending the Municipal Code, which could take up to 60 days before it becomes effective.

Option 3: Use an annual usage target methodology.

The intent of this approach is to allow customers to benefit from months of under usage and not be penalized for over usage in a single billing cycle. The annual usage target would be calculated based on past historical use. The customer would be responsible for monitoring their own use throughout the year. Overages during the year would trigger warnings and the penalty surcharges would be assessed at the end of the year. This option may cause customers to receive high penalties at the end of the year which may result in an accumulated financial burden. This option would also require further Munis customization and significant staff resources to collect and administer the program.

Option 4: Implement a new conservation rate tier structure/eliminate penalty surcharge assessments.

Options 1-3 are short term solutions for promoting water conservation. The Public Works Conservation Subcommittee and staff have discussed a new water rate tier structure that is designed to promote ongoing, sustainable water conservation. The rationale is that higher volume water users impose a higher cost on the water system, and thus should pay higher rates. If the City Council directs staff to proceed with this option, then no penalties would be assessed in the interim while staff conducts the analysis and bring the item back to the City Council for discussion at a future meeting, most likely in early

2015. The process with the new conservation tiered rate process would be similar to the water rate increase approval process, which requires 45-day public noticing period and a public hearing be held. Based on this timeline, the earliest effective date for a new conservation tier structure would be June 2015.

In response to Council request to better address unusual usage spikes, staff recommends that a water customer's baseline usage be the average water use in the last three fiscal years (i.e. Fiscal Years 2011-2014). The 3-year average approach is similar to the approach previously used in 2009. Additionally, a three-year average will level out periods of high and low use in any given year and serve as a better indicator of overall water use.

Regardless of the selected option, the penalty surcharge component includes an appeals process. As such, staff reviewed the appeals process previously used in 2009, and has made improvements such as standardizing forms and developed an initial pre-screening process to better streamline the appeals process. Water conservation education and outreach will continue to occur. Water customers will be notified prior to the implementation of any penalty surcharge assessments.

FISCAL IMPACT

Costs to implement Option 1 is \$15,100 for the utility bill formatting and for the customization of the City's utility billing system to assess the penalty surcharges as outlined in the City's Municipal Code.

RECOMMENDATION

Staff seeks direction on the penalty surcharge options provided for the City Council's consideration. In the interim, staff recommends proceeding with Option 1, the customization of the Munis utility billing system, and the three (3) fiscal year water baseline period to assess the water penalty surcharges as a short-term solution. For a long term solution, staff recommends conducting the analysis on a new conservation tier structure.



George Chavez

Approved By

Attachment 1

RESOLUTION NO. 09-R- 12672

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.

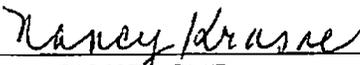
(g) If it is determined the user or customer is not liable, in whole or in part, for the penalties or surcharge on water usage, that amount will be refunded to the user or customer; however the user or customer will still remain responsible for paying the current rates on such water usage.

(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.

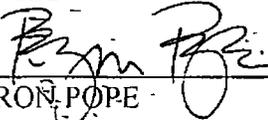
Section 4. The City Clerk shall certify to the adoption of this resolution and shall cause this resolution and his certificate to be entered in the Book of Resolution of the Council of the City.

Adopted: May 13, 2009



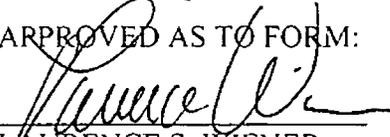
NANCY KRASNE
Mayor of the City of
Beverly Hills, California

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