



**CITY OF BEVERLY HILLS**  
**PUBLIC WORKS SERVICES DEPARTMENT**  
**MEMORANDUM**

**TO:** PUBLIC WORKS COMMISSION

**FROM:** Trish Rhay, Assistant Director of Public Works Services – Infrastructure & Field Operations  
Michelle Tse, Senior Management Analyst *msi*

**DATE:** July 9, 2015

**SUBJECT:** PENALTY SURCHARGE FRAMEWORK AND APPEALS PROCESS OVERVIEW

**ATTACHMENT:** 1. June 30, 2015, City Council Agenda Report on Penalty Surcharges  
2. June 30, 2015, City Council Agenda Report on Penalty Surcharge Appeals Process

---

Staff presented a proposal for implementation of a penalty surcharge framework at the June 30, 2015, City Council meeting. The current stage (Stage D) of the Beverly Hills water conservation program allows for penalty surcharge assessments on water use in excess of the 70% baseline. An appeals process was presented to the City Council as a way for customers to appeal such a penalty under pre-identified qualifying conditions.

Attached are reports related to both the penalty surcharge framework and appeals process. Staff will provide an update at the Commission meeting on July 9, 2015.



## AGENDA REPORT

**Meeting Date:** June 30, 2015  
**Item Number:** G-3B  
**To:** Honorable Mayor & City Council  
**From:** Trish Rhay, Assistant Director of Public Works Services, Infrastructure & Field Operations  
Michelle Tse, Senior Management Analyst  
**Subject:** B. RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS ESTABLISHING A PENALTY SURCHARGE FOR WATER USAGE CONTRARY TO THE PROVISIONS OF THE STAGE D WATER CONSERVATION MEASURES  
**Attachments:**

1. Resolution
2. Resolution 15-R-13037 Declaring Stage D Conservation Measures
3. Examples of Penalty Surcharge Assessment Impacts for Different Beverly Hills Customer Types

---

### **RECOMMENDATION**

Staff recommends that the City Council adopt RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS ESTABLISHING A PENALTY SURCHARGE FOR WATER USAGE CONTRARY TO THE PROVISIONS OF THE STAGE D WATER CONSERVATION MEASURES.

### **INTRODUCTION**

On April 1, 2015, the Governor declared the first ever state-wide mandatory water use reduction of 25% through February 2016. Under this directive, the State Water Resources Control Board instituted mandatory conservation water use reduction targets for each water provider, including a 32% water use reduction target for the City of Beverly Hills.

During the April 21, 2015 Study Session, the City Council agreed to move forward with elevating the City's conservation program from Stage B (10% water use reduction) to Stage D (30% water use reduction). The City Council subsequently approved Resolution 15-R-13037 declaring Stage D. Attachment 2 is a copy of the Resolution. Stage D allows for penalty surcharge assessments on water use in excess of the 70% baseline. The City Council directed staff to hold off on implementing the penalty surcharges as outlined in Stage D of the City's Municipal Code until legal issues related to the water rate structure could be better understood and addressed in

light of the recent court of appeals decision in *Capistrano Taxpayers Inc, v. City of San Juan Capistrano*.

The proposed penalty rate was determined through a comprehensive analysis prepared by HF&F Consultants LLC ("HF&H") and staff. The proposed penalty rate has also been reviewed by the City Attorney's office.

## **DISCUSSION**

This report focuses only on the penalty surcharge framework. The water rate analysis is agendized separately for the June 30, 2015 City Council Formal meeting.

### ***Penalty Surcharge Framework Analysis***

HF&H and staff have developed a penalty framework that relates penalties to the costs that will likely be imposed on the City if water users fail to meet the conservation goals established by Stage D. HF&H and staff first identified potential costs that would likely be borne by the City if the City did not comply with the State's water use reduction target. Staff identified three potential costs that the City is at risk of paying should consumption reduction targets not be met and they are listed below along with related assumptions:

1. *City Costs:* \$1,763,708  
Initially, if the City fails to meet the State ordered conservation goals, State regulators may require the City to accelerate the current 10-year conservation strategy that is outlined in the Water Enterprise Plan and require such programs be implemented over the year. Thus, the conservation program costs for not meeting the 30% conservation requirement were calculated to include the costs of implementing conservation measures that would otherwise not have needed to be made until Years 2-10 as outlined in the Water Enterprise Plan.
  
2. *State Water Resources Control Board ("State Board") Fines:* \$1,000,000  
The State Board can fine water providers a penalty of \$10,000/day for not meeting the conservation target. The potential \$1,000,000 fine amount does not assume that the State will immediately impose the maximum potential fine on the City. Rather, it is based on the assumption that the State Board will begin to impose fines if the City fails to achieve compliance with the conservation target within a reasonable period of time.
  
3. *Metropolitan Water District ("MWD") Costs:* \$3,821,897  
MWD is requiring each of the member agencies to reduce water consumption by 15% starting July 1, 2015. Water purchases in excess of the reduction target will be assessed at the MWD Tier 2 rate of \$2,960 per acre ft. Based on 2014 water use data, if the City fails to reduce consumption, then it is projected that 1,291 acre ft. of water purchased from MWD will be assessed at the Tier 2 rate, which equates to \$3,821,897. In order for the City to avoid paying the higher MWD Tier 2 rate, the City would need to reduce MWD water use by 12%.

**Total Projected Risk Costs (FY15-16): \$6,585,605**

The next step in the analysis was to determine the most equitable approach for distributing these potential risk costs through the imposition of penalties on those who fail to meet the conservation targets and thus trigger these costs. The following outlines the recommended approach.

**Level 1 Assessment: Water use reduction less than 30% of baseline**

The penalties for failing to achieve the 30% conservation mandated by Stage D are set to recover Costs 1 and 2 as outlined above. The notion is that those who fall short of the 30% reduction requirement are causing the City to incur these costs and therefore should pay the City and State Board risk costs which would otherwise be a burden upon all rate payers.

**Level 2 Assessment: Water use reduction less than 12% of baseline**

The penalties would include Costs 1, 2, and 3 as outlined above. The notion is that the customers who fall in this category did not achieve significant water savings and as a result, those customers cause the City to purchase water at the higher MWD Tier 2 rate in addition to the Tier 1 costs. As such, the customers that reduce less than 12% should be subject to the penalties calculated by all three risk factors rather than have the additional MWD costs become a burden on all rate payers.

**Penalty Surcharge Application**

Staff is recommending that the 70% baseline be calculated using 2013 customer water usage data. For example, a customer's July-August 2015 baseline of 70% would be calculated based on July-August 2013 usage. The 2013 base year approach is consistent with the State Water Board's approach of establishing each water provider's reduction target by comparing usage to Year 2013. Furthermore, Tier 1 water customers would be exempt from the penalty surcharge assessments because if all customers reduced to the minimal water usage represented by Tier 1, no further conservation would be required.

The penalty surcharge is a multiplier approach. Table 1 below shows the applicable multiplier depending on how much the water customer has conserved.

**Table 1: Penalty Surcharge Multiplier Approach**

<b>Base Rate</b>	<b>Less than 30% conservation</b>	<b>Less than 12% conservation</b>
	For excess usage above 70% baseline, the multiplier is:	For excess usage above 88% baseline, the multiplier is:
Current Base Rate	1.59 times the base rate	An additional 3.08 times the base rate (Cumulative 4.67%)

Both the Public Works Conservation Subcommittee and the Public Works Liaison Committee have reviewed this penalty surcharge structure and are recommending the City Council's approval of this penalty surcharge framework. A Resolution establishing the penalty surcharge is included as Attachment 1.

**Penalty Surcharge Framework Implementation**

Please note that the penalty surcharges would be implemented only during a City declared drought. When the City is no longer experiencing drought conditions, staff will return to the City Council with a request to terminate the penalty surcharge. If the City Council approves this framework, the following represents the timeline for implementing the penalty surcharges:

- June 30, 2015: Resolution for City Council approval
- July 2015: Public education and outreach before penalty surcharges are assessed
- August – September 2015: Billing cycle grace period / Notify customers
- October 2015: Penalty surcharge effective date

**FISCAL IMPACT**

For forecasting purposes, staff used the following assumptions regarding customer usage reductions:

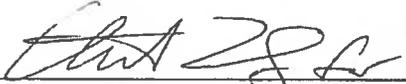
- 50% of customers reduce water use by 30%
- 25% of customers reduce water use by 15%
- 25% of customers do not reduce water use

The assumptions outlined above equates to a City-wide average water use reduction of 18.8%. If the City collectively reduces water use by 18.8%, then the City will recover the full amount of risk costs (i.e. City costs, State Water Board fines, and the MWD Tier 2 rates) of \$6,585,605 over 12 months. If these conservation assumptions prove dramatically incorrect, then an adjustment of the penalty surcharge may be appropriate in order to ensure that those who are not meeting conservation goals are bearing the costs imposed on the Water Enterprise for the failure of the City to meet its water conservation goals.

Attachment 3 includes summary tables showing how Beverly Hills water customers from different customer classes may be impacted based on the penalty surcharge assessments if the customer reduced water usage by 0%, 18.8% or 30%. Please note each customer's bill can vary widely based on specific account characteristics. The penalty surcharge assessments were calculated based on the assumption that the City moves forward with a 5% rate increase in October 2015 and subsequent 5% rate increase in December 2015.

Collected funds will be used to cover costs such as the need to accelerate programs to achieve the conservation target, the purchase of MWD water at the higher Tier 2 rate, and/or any fines and penalties that may be imposed by the State Water Resources Control Board for non-compliance.

  
\_\_\_\_\_  
Approved By  
Don Rhoads

  
\_\_\_\_\_  
Approved By  
George Chavez

# Attachment 1

RESOLUTION NO. 15-R-\_\_\_\_\_

RESOLUTION OF THE COUNCIL OF THE CITY OF  
BEVERLY HILLS ESTABLISHING A PENALTY  
SURCHARGE FOR WATER USAGE CONTRARY TO THE  
PROVISIONS OF THE STAGE D WATER CONSERVATION  
MEASURES

RECITALS

WHEREAS, during calendar year 2014, the Governor declared a drought in the State of California and the State Water Resources Control Board enacted emergency water conservation measures. As a result, the City of Beverly Hills declared the Stage B shortage, which is currently in effect, mandating a 10% reduction in potable water use.

WHEREAS, in April 2015, the Governor issued an Executive Order directing the State Water Board to impose restrictions to achieve an aggregate statewide 25% reduction in potable urban water use through February 2016. As a result, the State Water Board released a preliminary framework, outlining reduction targets from 8% to 36% for each water supplier, with Beverly Hills having a reduction target of 36%. Upon additional review of information submitted by the City of Beverly Hills, the State Water Board reduced the reduction target to 32%.

WHEREAS, on May 5, 2015, the City Council adopted its resolution No. 15-R-13037 declaring and implementing Stage D water conservation measures pursuant to Beverly Hills Municipal Code Section 9-4-304 and authorizing a penalty surcharge for water usage contrary to the provisions of the Stage D water conservation measures.

WHEREAS, pursuant to Beverly Hills Municipal Code Section 9-4-302, the City Council desires to establish a penalty surcharge for water usage contrary to the provisions of the Stage D water conservation measures.

NOW THEREFORE, the City Council of the City of Beverly Hills does hereby resolve as follows:

Section 1. The City Council hereby establishes a penalty surcharge for water usage contrary to the provisions of Stage D as follows:

a. For a customer who reduces water use by less than thirty percent (30%) of the amount in the baseline period, the penalty surcharge is 1.59 times the basic water rate for water usage in excess of seventy percent (70%) of the amount in the baseline period.

b. For a customer who reduces water use by less than twelve percent (12%) of the amount in the baseline period, the penalty surcharge is an additional 3.08 times the basic water rate for water usage in excess of eighty-eight percent (88%) of the amount in

the baseline period (for a cumulative 4.67 times the basic water rate for water usage in excess of eighty-eight percent (88%) of the amount in the baseline period).

c. The baseline period shall be the days in the 2013 calendar year against which water use is compared for those same days in the current year (for example, the baseline period is July 1, 2013 through August 31, 2013 for determining the amount water use reduction for July 1, 2015 through August 31, 2015).

d. The penalty surcharge established by this section shall be effective October 15, 2015.

Section 2. In accordance with Beverly Hills Municipal Code Section 9-4-303, the City Council hereby directs the City Clerk to publish this Resolution within 10 days of its adoption at least once in a newspaper of general circulation within the city and to post this Resolution in at least three (3) public places and continue to post this Resolution until such time as the restrictions set forth herein are repealed by resolution of the City Council.

Section 3. The City Clerk shall certify to the adoption of this resolution and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Council of the City.

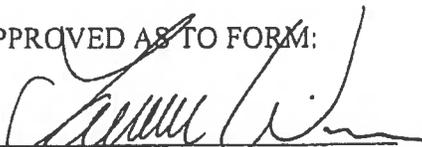
Adopted:

\_\_\_\_\_  
JULIAN A. GOLD, M.D.  
Mayor of the City of Beverly Hills,  
California

ATTEST:

\_\_\_\_\_  
BYRON POPE  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
GEORGE CHAVEZ  
Director of Public Works Services

# **Attachment 2**

RESOLUTION NO. 15-R- 13037

RESOLUTION OF THE COUNCIL OF THE CITY OF  
BEVERLY HILLS DECLARING AND IMPLEMENTING  
STAGE D WATER CONSERVATION MEASURES

RECITALS

WHEREAS, during calendar year 2014, the Governor declared a drought in the State of California and the State Water Resources Control Board enacted emergency water conservation measures. As a result, the City of Beverly Hills declared the Stage B shortage, which is currently in effect, mandating a 10% reduction in potable water use.

WHEREAS, in April 2015, the Governor issued an Executive Order directing the State Water Board to impose restrictions to achieve an aggregate statewide 25% reduction in potable urban water use through February 2016. As a result, the State Water Board released a preliminary framework, outlining reduction targets from 8% to 36% for each water supplier, with Beverly Hills having a reduction target of 36%.

WHEREAS, given the Governor's Executive Order and the State Water Board's reduction target for Beverly Hills of 36%, the City Manager is recommending the further declaration of a water shortage emergency and the implementation of water conservation Stage D pursuant to Beverly Hills Municipal Code Section 9-4-301.

NOW THEREFORE, the City Council of the City of Beverly Hills does hereby resolve as follows:

Section 1. Water Conservation Stage D is hereby declared throughout the City's service area mandating a minimum 30% reduction in potable water use.

Section 2. The City Council hereby directs that the Assistant Director of Public Works Services implement Water Conservation Stage D as follows:

Stage D Requirements:

- a. Restaurants shall serve water upon request only;
- b. All public restrooms in the city and private bathrooms in hotels shall notify patrons and employees of water conservation goals;
- c. Plumbing and irrigation leaks shall be repaired as soon as practicable. The city may issue notices to repair visible leaks;
- d. Landscape irrigation shall be restricted to selected days and times as determined by the city manager, unless such irrigation uses reclaimed wastewater;

e. Refilling of swimming pools, spas or ponds shall be prohibited unless required for health or safety reasons. Topping off pools with water in order to maintain filter effectiveness and prevent standing water and breeding of insects shall be considered a refilling of a pool for health reasons;

f. Operation of water fountains shall be prohibited unless the water is recirculated;

g. Exterior washdown of buildings and washdown of vehicles shall be prohibited, unless: (1) the washing is done on the immediate premises of a commercial car wash or commercial service station or with reclaimed wastewater; or (2) the health, safety and welfare of the public is contingent upon frequent vehicle cleaning, such as the cleaning of garbage trucks and vehicles to transport food and perishables;

h. Water usage from fire hydrants shall be limited to firefighting, related activities or other activities necessary to maintain the public health, safety and welfare;

i. Except for single-family and multi-family residential users in tier 1 who will remain in tier 1 for the next billing cycle, users shall reduce water usage to 70% of the amount in the baseline period as determined by the city council.

Section 3. A penalty surcharge may be assessed for water usage contrary to the provisions of Stage D or any water conservation measure adopted by the City Council in an amount to be determined by the city council, and which shall be consistent with State law.

Section 4. Violation by any person of the stage D mandatory requirements shall constitute a misdemeanor and, upon conviction, shall be punished by a fine not to exceed \$1,000.00. Continued excessive use may result in termination of water supply through irrigation water services and/or restriction of water supply through domestic meters. The violation of each element, and each separate violation thereof, shall be deemed a separate offense, and shall be punished accordingly.

Section 5. The drought emergency water conservation regulations as promulgated by the State Water Resources Control Board shall be implemented.

Section 6. The procedure for a water customer to appeal the imposition of the water penalty surcharge will be as outlined in Resolution 09-R-12672 adopted by the City Council on May 13, 2009.

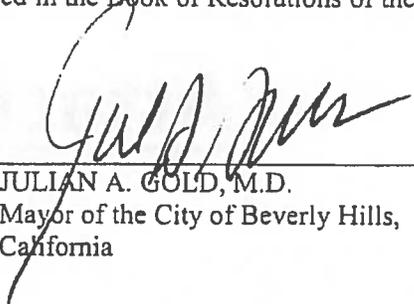
Section 7. The City Council hereby finds, in the exercise of its independent judgment and analysis, that this Resolution is exempt from the California Environmental Quality Act ("CEQA") because the requirements for water conservation contained in this Resolution will not have a significant effect on the environment, and the adoption of this Resolution and the timing thereof is mandated by the current drought conditions and the State Water Board's water reduction target for the City. In this case, the City is acting at the direction of the State Water Board to protect, maintain, restore and enhance natural resources and the environment. To comply with the requirements of the State Water Board, the City Council finds that the adoption of this Resolution is categorically exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308. Furthermore, this Resolution will have no possible

significant effect on the environment, given that the provisions of this Resolution provide similar regulations as currently exist and will not in and of themselves cause any change in the environment. Staff is hereby directed to prepare and post a notice of exemption pursuant to CEQA Guidelines Section 15062.

Section 8. In accordance with Beverly Hills Municipal Code Section 9-4-303, the City Council hereby directs the City Clerk to publish this Resolution within 10 days of its adoption at least once in a newspaper of general circulation within the city and to post this Resolution in at least three (3) public places and continue to post this Resolution until such time as the restrictions set forth herein are repealed by resolution of the City Council.

Section 9. The City Clerk shall certify to the adoption of this resolution and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Council of the City.

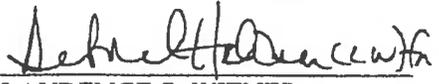
Adopted: May 5, 2015

  
\_\_\_\_\_  
JULIAN A. GOLD, M.D.  
Mayor of the City of Beverly Hills,  
California

ATTEST:

  
\_\_\_\_\_  
BYRON POPE (SEAL)  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
GEORGE CHAVEZ  
Director of Public Works Services

# **Attachment 3**

ATTACHMENT 3: Examples of Penalty Surcharge Assessment Impacts for Different Beverly Hills Customer Types

Penalty Surcharge Assessments for Different Beverly Hills Customer Classes

(a) Assumes customers do not reduce water use:

Assuming Customers Curbback 0%	a		b		c = a + b		d = c - a		e = d / a		f = a * 1.05		g		h = f + g		i = h - c		j = i / c		k = f * 1.05		l		m = k + l		n = m - h		o = n / h		
	Current BI-Monthly Use (hcf)	Adjusted BI-Monthly Use (hcf)	Current BI-Monthly Quantity Charge	Proposed Penalty Surcharge	Proposed Total Charge	(Current w/ Penalty vs. Current w/o Penalty) \$ Change	% Change	Proposed Penalty Surcharge	Proposed Total Charge	Proposed Penalty Surcharge	Proposed Total Charge	Oct 2015		Dec 2015		Proposed Penalty Surcharge	Proposed Total Charge	(Oct vs Current w/ Penalty) \$ Change	% Change	BI-Monthly Quantity Charge	Proposed Penalty Surcharge	Proposed Total Charge	(Dec vs Oct) \$ Change	% Change	Proposed Penalty Surcharge	Proposed Total Charge	(Dec vs Oct) \$ Change	% Change			
												5% Incr	5% Incr	5% Incr	5% Incr																
Single-Family																															
Low Use (50% of avg.)	33	33	\$142.71	\$68.20	\$210.91	\$68.20	47.8%	\$71.61	\$221.46	\$71.61	\$221.46	\$149.85	\$71.61	\$157.34	\$75.19	\$232.53	\$10.55	5.0%	\$157.34	\$75.19	\$232.53	\$11.07	5.0%	\$157.34	\$75.19	\$232.53	\$11.07	5.0%	\$157.34	\$75.19	\$232.53
Average Use	67	67	\$333.77	\$256.32	\$590.09	\$256.32	76.5%	\$269.14	\$619.59	\$269.14	\$619.59	\$350.46	\$269.14	\$29.50	\$282.59	\$650.57	\$29.50	5.0%	\$350.46	\$282.59	\$650.57	\$30.98	5.0%	\$350.46	\$282.59	\$650.57	\$30.98	5.0%	\$350.46	\$282.59	\$650.57
High Use (2x avg.)	134	134	\$922.93	\$933.84	\$1,856.77	\$933.84	101.2%	\$969.08	\$1,949.61	\$969.08	\$1,949.61	\$969.08	\$969.08	\$92.84	\$1,029.56	\$2,047.09	\$92.84	5.0%	\$1,017.53	\$1,029.56	\$2,047.09	\$97.48	5.0%	\$1,017.53	\$1,029.56	\$2,047.09	\$97.48	5.0%	\$1,017.53	\$1,029.56	\$2,047.09
Multi-Family (20 Units) per unit	540	540	\$4,908.20	\$3,984.21	\$8,892.41	\$3,984.21	81.2%	\$4,183.42	\$9,337.03	\$4,183.42	\$9,337.03	\$5,153.61	\$4,183.42	\$444.62	\$4,392.59	\$9,803.88	\$444.62	5.0%	\$5,411.29	\$4,392.59	\$9,803.88	\$466.85	5.0%	\$5,411.29	\$4,392.59	\$9,803.88	\$466.85	5.0%	\$5,411.29	\$4,392.59	\$9,803.88
Commercial (Hotel)	8,000	8,000	\$48,320.00	\$26,502.21	\$74,822.21	\$26,502.21	54.8%	\$27,827.32	\$78,563.32	\$27,827.32	\$78,563.32	\$50,736.00	\$27,827.32	\$3,741.11	\$29,218.68	\$82,491.48	\$3,741.11	5.0%	\$53,272.80	\$29,218.68	\$82,491.48	\$23.34	5.0%	\$53,272.80	\$29,218.68	\$82,491.48	\$23.34	5.0%	\$53,272.80	\$29,218.68	\$82,491.48

(b) Assumes customers reduce water use by 18.8%:

Assuming Customers Curbback 18.8%	a		b		c = a + b		d = c - a		e = d / a		f = a * 1.05		g		h = f + g		i = h - c		j = i / c		k = f * 1.05		l		m = k + l		n = m - h		o = n / h		
	Current BI-Monthly Use (hcf)	Adjusted BI-Monthly Use (hcf)	Current BI-Monthly Quantity Charge	Proposed Penalty Surcharge	Proposed Total Charge	(Current w/ Penalty vs. Current w/o Penalty) \$ Change	% Change	Proposed Penalty Surcharge	Proposed Total Charge	Proposed Penalty Surcharge	Proposed Total Charge	Oct 2015		Dec 2015		Proposed Penalty Surcharge	Proposed Total Charge	(Oct vs Current w/ Penalty) \$ Change	% Change	BI-Monthly Quantity Charge	Proposed Penalty Surcharge	Proposed Total Charge	(Dec vs Oct) \$ Change	% Change	Proposed Penalty Surcharge	Proposed Total Charge	(Dec vs Oct) \$ Change	% Change			
												5% Incr	5% Incr	5% Incr	5% Incr																
Single-Family																															
Low Use (50% of avg.)	33	27	\$142.71	\$8.33	\$151.04	\$8.33	5.8%	\$8.75	\$129.17	\$8.75	\$129.17	\$120.42	\$8.75	(\$13.54)	(\$13.54)	\$126.43	(\$9.19)	-9.5%	\$120.42	\$9.19	\$135.63	\$6.46	5.0%	\$126.43	\$9.19	\$135.63	\$6.46	5.0%	\$126.43	\$9.19	\$135.63
Average Use	67	54	\$333.77	\$19.44	\$353.21	\$19.44	5.8%	\$20.41	\$273.23	\$20.41	\$273.23	\$252.82	\$20.41	(\$60.54)	(\$60.54)	\$263.46	(\$21.43)	-18.1%	\$252.82	\$21.43	\$286.89	\$13.66	5.0%	\$263.46	\$21.43	\$286.89	\$13.66	5.0%	\$263.46	\$21.43	\$286.89
High Use (2x avg.)	134	109	\$922.93	\$65.65	\$988.58	\$65.65	7.1%	\$68.94	\$743.97	\$68.94	\$743.97	\$675.03	\$68.94	(\$178.96)	(\$178.96)	\$708.79	(\$72.38)	-19.4%	\$675.03	\$72.38	\$781.17	\$37.20	5.0%	\$708.79	\$72.38	\$781.17	\$37.20	5.0%	\$708.79	\$72.38	\$781.17
Multi-Family (20 Units) per unit	540	440	\$4,908.20	\$507.38	\$5,415.58	\$507.38	10.3%	\$532.75	\$4,193.26	\$532.75	\$4,193.26	\$3,660.51	\$532.75	(\$714.94)	(\$714.94)	\$3,843.54	(\$559.39)	-14.6%	\$3,660.51	\$559.39	\$4,402.92	\$209.66	5.0%	\$3,843.54	\$559.39	\$4,402.92	\$209.66	5.0%	\$3,843.54	\$559.39	\$4,402.92
Commercial (Hotel)	8,000	6,496	\$48,320.00	\$3,218.31	\$51,538.31	\$3,218.31	6.7%	\$3,379.23	\$44,576.86	\$3,379.23	\$44,576.86	\$41,197.63	\$3,379.23	(\$3,743.14)	(\$3,743.14)	\$43,257.51	(\$3,548.19)	-7.7%	\$41,197.63	\$3,548.19	\$46,806.70	\$1,228.84	5.0%	\$43,257.51	\$3,548.19	\$46,806.70	\$1,228.84	5.0%	\$43,257.51	\$3,548.19	\$46,806.70





## AGENDA REPORT

**Meeting Date:** June 30, 2015  
**Item Number:** G-3C  
**To:** Honorable Mayor & City Council  
**From:** Trish Rhay, Assistant Director of Public Works Services, Infrastructure & Field Operations  
Michelle Tse, Senior Management Analyst

**Subject:** C. RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS ESTABLISHING AN APPEAL PROCEDURE FOR PENALTY SURCHARGES FOR WATER USAGE CONTRARY TO THE PROVISIONS OF THE STAGE D WATER CONSERVATION MEASURES

**Attachments:**

1. Resolution
2. 2009 Appeals Process – Resolution 09-R-12672
3. Penalty Surcharge Appeals Process Flowchart

---

### **RECOMMENDATION**

Staff recommends the City Council adopt RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS ESTABLISHING AN APPEAL PROCEDURE FOR PENALTY SURCHARGES FOR WATER USAGE CONTRARY TO THE PROVISIONS OF THE STAGE D WATER CONSERVATION MEASURES.

### **INTRODUCTION**

During the May 5, 2015 meeting, the City Council approved elevation of the City's water conservation measures from Stage B (10% water use reduction) to Stage D (30% water use reduction) due to continued drought conditions. In addition to several water use restrictions, Stage D includes penalty surcharge assessments on water use in excess of the 70% baseline. As such, an appeals process needs to be in place with the current Stage D declaration in order to enable customers to appeal such penalty.

## **DISCUSSION**

By way of background, a penalty surcharge appeals process was implemented when a Stage B (10% reduction) conservation program was declared in 2009. Resolution 09-R-12672 outlines the 2009 appeals process and is included as Attachment 2. Staff evaluated the 2009 appeals process to re-establish objectives, develop a more streamlined process, and also identify conditions relevant in 2015 that should be taken into consideration. A new penalty surcharge appeals process may be adopted by the City Council by Resolution.

For the current Stage D (30%) water use reduction, the 70% baseline will be established based on water usage from the same billing cycle in Year 2013. For example, the 70% baseline for billing period May-June 2015 will be based on usage during May-June 2013. The 2013 water consumption information is used as the base year to coincide with the same baseline that the State Water Resources Control Board is using to track reductions for each water provider.

### ***Objectives for the Penalty Surcharge Appeals Process***

The primary objectives identified for the penalty surcharge appeals process are the following:

- Promote conservation
- Not penalize customers who are conserving water to the best of their ability
- Penalize customers for excess water use

### ***Penalty Surcharge Process Overview***

Pursuant to the procedures set forth in the Resolution, any water customer may appeal the imposition of a water penalty surcharge and/or request a reduction of such surcharge. The customer initiates the process by completing the Water Penalty Surcharge Appeal Form, which will be made available to all Beverly Hills water customers on the City's website and mailed upon request. Attachment 3 is a flow chart of the penalty surcharge appeals process. The following sections will further elaborate on the process.

If a customer wishes to file an appeal, the customer shall submit the form along with their bill by the due date (30 days), along with payment of all standard usage charges (excluding the penalty surcharges). Payment of the penalty surcharge portion of the bill is not a requirement to request an initial appeals review.

There are two levels of review in the appeals process. The first level of review is completed by City staff. Under this first level review, City staff reviews the submitted Appeal Form to determine if the customer is eligible for an adjusted conservation target based on information submitted. The Appeal Form lists various conditions which may trigger reduced conservation targets. The Public Works Commission Conservation Subcommittee comprised of Vice Chair Aronberg and Commissioner Wolfe has reviewed the various conditions identified which may trigger reduced conservation targets. The purpose for establishing these conditions with pre-determined conservation targets is to address the majority of customers requesting an appeal and streamline the administrative review process.

The following section describes the rationale for the pre-identified conditions during the first level of review and the adjusted conservation rates for qualifying customers:

- a) ***A customer's residence is occupied by more residents than in the base year(s), which makes it infeasible to reduce water consumption by 30% from the baseline.***

Consideration is given for new additions to the family, family members returning home from college/work, and the like. Eligible customers may receive an adjusted conservation target of 20% instead of 30%.

- b) A user or customer has a medical condition which makes it infeasible to reduce water consumption by 30% from the baseline. Valid medical conditions may include (but are not limited to) the following: desquamation (flaky skin disease), weeping skin disease (eczema, psoriasis or varicose ulceration), incontinence, abdominal stomas, renal failure requiring dialysis at home, Crohn's disease, and ulcerative colitis.**

An accompanying doctor's note will be needed in this instance. If valid, the adjusted conservation target will be 20%.

- c) New water customer**

This category covers instances in which there is a change in property ownership and/or new tenants to a building. While historical water consumption data may not be available for the customer(s), historical water use is available for the property. Qualifying customer(s) will receive an adjusted conservation target of 20% based on the property's 2013 usage data.

- d) Unique property qualities requiring an adjustment to conservation target, such as recent replacement of garden**

Consideration will be given for properties with unique qualities such as the recent replacement of a garden or the removal of turf for installation of drought tolerant landscaping throughout the property. The proposed reduction target will be determined upon review of the appeal.

- e) Fire hazard zone or slope stability**

Consideration will be given for properties that have difficulty reducing water use due to circumstances such as soil erosion control or the property is situated in a fire hazard zone. The proposed adjusted conservation target of 25% is based on the rationale that there are alternatives such as drip irrigation, smart controller system, drought tolerant landscaping including artificial turf (for backyards), and efficient household devices available to reduce water use while still being able to maintain a property located within a fire hazard zone or for slope stability.

- f) Significant water savings from Year 2011 to Year 2013**

Consideration will be given to customers who can demonstrate they have been reducing water use prior to base year 2013. Customer water usage will be compared from Year 2011 to Year 2013 and reductions will be made to customers' baselines if they achieved the following overall reductions during this timeframe.

Demonstrated conservation efforts from Year 2011 to Year 2013	Adjusted Conservation Target
Less than 15%	No change
15-19%	25%
20-24%	20%
25-29%	15%
+30%	10%

The following is a summary of the conditions and the proposed adjusted conservation targets for qualifying water customers:

Condition	Adjusted Conservation Target
a) A customer's residence is occupied by more residents than in the base year(s), which makes it infeasible to reduce water consumption from the base.	20%
b) A user or customer has a medical condition which makes it infeasible to reduce water consumption from the base	20%
c) New water customer	20% of previous customer's usage.
d) Unique property qualities requiring an adjustment to conservation target	% to be determined upon appeal.
e) Fire hazard zone, slope stability, or recent replacement of garden	25%
f) Significant water savings from Year 2011 and Year 2013	Minimum savings of 15% to qualify. Adjusted conservation target between 10%-25%.

Based on the initial first level review by City staff, the customer shall be notified of the initial appeals decision in writing within 30 days of the City's receipt of appeal. The "Date of Determination" will be the postmarked date of the written appeal notification. If qualifying conditions are met and the appeal is approved, the customer's account and conservation target shall be adjusted for the disputed billing cycle and future billing cycles. An updated bill (if applicable) will be mailed to the customer no later than 15 days following appeal approval.

If the City is unable to make a decision within thirty (30) days of receipt of the appeal, the customer shall be allocated the qualified adjusted reduction target beginning with the disputed bill cycle and for future billing cycles.

For customers who wish to appeal their bill due to a water leak on the property, there is a separate process in place to address this. Customers may contact the City's Utility Billing division for such issues.

The appellant has fifteen (15) calendar days from the Date of Determination to accept the decision or request a second level of review by the Appeals Officer ("Appeals Officer"). The Appeals Officer shall be one member from the Public Works Commission. The appellant may request this second level of review by re-submitting the Water Penalty Surcharge Appeals Form, with or without additional information. Additionally, submittal of the penalty surcharge in full is necessary prior to the review being scheduled.

In the event the appellant requests a review by the Appeals Officer, the City has thirty (30) calendar days from the receipt of the request to schedule the hearing, and prepare the appeal to be reviewed by the Appeals Officer. The Appeals Officer will review appeals that are submitted in writing or in person. If the appellant has requested a hearing, written notice of the date and time of the hearing will be mailed to the appellant at least five (5) days prior

Meeting Date: June 30, 2015

to the hearing. The Appeals Officer will hear the appeal and shall issue a written decision within thirty (30) calendar days from the Hearing Date. If the appellant has requested a review of a written appeal, the City will forward the written appeal to the Hearing Officer for a determination.

The Appeals Officer has the authority to make any reductions to the conservation target (down to 0%) and can waive all or a portion of the applicable penalties for the billing period(s) under review (which could result in a credit due to the customer). Any changes applied would impact all future billing periods. All Appeals Officer decisions are final. The City shall update the appellant's account based on the Appeals Officer's decision within forty-five (45) calendar days from the Hearing Date or within 15 days from the Board Decision Date. The Resolution included as Attachment 1 sets forth the proposed penalty surcharge appeals process. If approved by the City Council, the appeals process would become effective on July 1, 2015 and allow staff to begin working with customers requesting adjustments to their target rates before penalties are imposed.

The Conservation Subcommittee has reviewed the process outlined above and is recommending this process. The Subcommittee acknowledges there are instances in which the customers will want to adjust their conservation targets based on various circumstances, prior to the implementation of any penalty surcharge. As such, the Subcommittee is recommending that the appeals process be made available prior to the penalty surcharge implementation to address customer concerns.

The penalty surcharge appeals process was developed to meet three objectives: promote conservation, not penalize customers who are conserving water to the best of their ability, and penalize customers for excess water use. The aforementioned guidelines have been established with consideration given for various circumstances. It is important to note that reductions in the conservation target may increase the City's risk of not complying with the State's reduction target.

#### **FISCAL IMPACT**

Resources will be needed to effectively administer this program. Staff is currently evaluating options and will return to the City Council with additional information regarding resource needs to effectively and efficiently administer the water penalty surcharge appeals process, conservation-related programs, and enforcement activities.



George Chavez

---

Approved By

# **Attachment 1**

RESOLUTION NO. 15-R-\_\_\_\_\_

RESOLUTION OF THE COUNCIL OF THE CITY OF  
BEVERLY HILLS ESTABLISHING AN APPEAL  
PROCEDURE FOR PENALTY SURCHARGES FOR WATER  
USAGE CONTRARY TO THE PROVISIONS OF THE STAGE  
D WATER CONSERVATION MEASURES

RECITALS

WHEREAS, during calendar year 2014, the Governor declared a drought in the State of California and the State Water Resources Control Board enacted emergency water conservation measures. As a result, the City of Beverly Hills declared the Stage B shortage, which is currently in effect, mandating a 10% reduction in potable water use.

WHEREAS, on May 13, 2009, the City Council adopted its Resolution No. 09-R-12672 to adopt an appeals procedure in connection with the Stage B water conservation measures.

WHEREAS, in April 2015, the Governor issued an Executive Order directing the State Water Board to impose restrictions to achieve an aggregate statewide 25% reduction in potable urban water use through February 2016. As a result, the State Water Board released a preliminary framework, outlining reduction targets from 8% to 36% for each water supplier, with Beverly Hills having a reduction target of 36%. Upon additional review of information submitted by the City of Beverly Hills, the State Water Board reduced the reduction target to 32%.

WHEREAS, on May 5, 2015, the City Council adopted its resolution No. 15-R-13037 declaring and implementing Stage D water conservation measures pursuant to Beverly Hills Municipal Code Section 9-4-304 and authorizing a penalty surcharge for water usage contrary to the provisions of the Stage D water conservation measures.

WHEREAS, the City Council desires to establish a revised procedure for a water customer to appeal the imposition of the penalty surcharge for water usage contrary to the provisions of the Stage D water conservation measures.

NOW THEREFORE, the City Council of the City of Beverly Hills does hereby resolve as follows:

Section 1. Appeals and Establishment of an Appeals Procedure and Appeals Officer

A. An appeals officer (the "Appeals Officer") is hereby established to review requests for appeals from water utility users and customers as set forth herein. The Appeals Officer shall be one member of the Public Works Commission who may serve on a rotating basis, as determined by the Commission.

B. Any water utility user or customer may appeal the imposition of a water penalty surcharge by filing an appeal with the Utility Billing Department ("Department") on the form provided by the City. The user or customer shall have 30 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.

C. Within 30 calendar days of receipt of the appeal, the City shall make a determination regarding the appeal and provide written notice to the customer. The postmark date of such notice to the customer shall be the "Date of Determination." In the event that the Date of Determination does not occur within 30 calendar days of receipt of the appeal, the customer shall receive an adjusted water use reduction of twenty percent (20%) of the amount in the baseline period, instead of thirty percent (30%) for the duration of the disputed billing period. The City shall update the account within 15 calendar days after the Date of Determination.

D. The City Manager, or the City Manager's designee, may grant an appeal under one of the following conditions:

1. The water customer's residence is occupied by more residents than in the base period and such additional occupancy makes it infeasible to reduce water consumption from the base period amount. Eligible customers may receive an adjusted water use reduction of twenty percent (20%) of the amount in the baseline period, instead of thirty percent (30%).
2. The water customer did not receive water service at the property in the baseline period year because of a change in ownership or tenancy. Eligible customers may receive an adjusted water use reduction of twenty percent (20%) of the amount in the baseline period, instead of thirty percent (30%).
3. The water customer's property has qualities that require an adjustment to the water use reduction target. Such qualities may include recent replacement of a garden or recent installation of drought tolerant landscaping. Eligible customers may receive an adjusted water use reduction in an amount determined by the City Manager or the City Manager's designee.
4. The water customer's property has qualities that make it difficult to reduce water consumption from the base period amount. Such qualities may include the need for soil erosion control or being located in a fire hazard zone. Eligible customers may receive an adjusted water use reduction of twenty-five percent (25%) of the amount in the baseline period, instead of thirty percent (30%).

5. The water customer has a medical condition which makes it infeasible to reduce water consumption from the base period amount. Such conditions may include desquamation (flaky skin disease), weeping skin disease (eczema, psoriasis or varicose ulceration), incontinence, abdominal stomas, renal failure requiring dialysis at home, Crohn's disease, and ulcerative colitis. Such conditions require written verification from the customer's doctor. Eligible customers may receive an adjusted water use reduction of twenty percent (20%) of the amount in the baseline period, instead of thirty percent (30%).
6. From calendar year 2011 to calendar year 2013, the water customer reduced water consumption by an amount that is fifteen percent (15%) or more, such reduction being the "Prior Conservation Percentage". Eligible customers may receive an adjusted water use reduction as follows:

Prior Conservation Percentage	Adjusted Water Use Reduction
Less than 15%	No change
15-19%	25%
20-24%	20%
25-29%	15%
+30%	10%

E. The appellant shall have 15 calendar days from the Date of Determination to request a review by the Appeals Officer. An appellant may request a review by the Appeals Officer on a form provided by the City. Any such request for any review by the Appeals Officer shall include payment in full of the penalty surcharge to be considered. The appellant may request that the review is conducted in person or in writing.

F. If the appeal is to be heard by the Appeals Officer, the Appeals Officer shall set the matter for a hearing (the "Hearing Date") within 30 calendar days from the Date of Determination. At least 5 calendar days prior to the hearing, the City shall mail the appellant written notice of the date and time of the hearing.

G. The Appeals Officer shall issue a written decision within 30 calendar days after the date the hearing is concluded (the "Appeals Officer Determination Date"). The Appeals Officer may reduce the water use reduction in an amount deemed appropriate by the Appeals Officer. The decision of the Appeals Officer shall be final.

H. The City shall update the account within 45 calendar days after the Hearing Date or 15 calendar days after the Appeals Officer Determination Date.

I. The City Manager or the City Manager's designee is authorized to establish policies, rules and procedures to implement the appeal process established by this Resolution.

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 superseded by the provisions set forth in this Resolution.

Section 4. This resolution shall take effect immediately upon its adoption by the City Council.

Section 5. The City Clerk shall certify to the adoption of this resolution and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Council of the City.

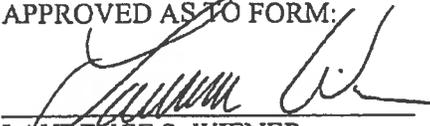
Adopted:

\_\_\_\_\_  
JULIAN A. GOLD, M.D.  
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:

  
\_\_\_\_\_  
GEORGE CHAVEZ  
Director of Public Works Services

# **Attachment 2**

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.

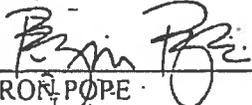
(h) The Director of Public Works is authorized to establish rules relating to the appeal process as set forth herein.

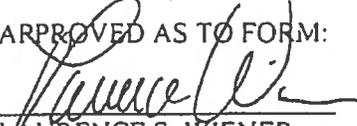
Section 3. Any provision(s) relating to the establishment of a water appeals board or the procedures whereby a water customer may appeal the imposition of penalties or surcharges on water usage previously adopted by the City Council is hereby superceded by the provisions set forth in this Resolution.

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:  
  
\_\_\_\_\_  
BYRON POPE (SEAL)  
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 3

# PENALTY SURCHARGE APPEALS PROCESS

