



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
Caitlin Sims, Senior Management Analyst

DATE: January 14, 2016

SUBJECT: DISCUSSION ON PENALTY SURCHARGE APPEALS PROCESS

ATTACHMENT: 1. Resolution 15-R-13046

At its June 30, 2015, meeting, the City Council adopted Resolution 15-R-13046 – a Resolution of the City 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. This Resolution provided that “Level 2” penalty surcharge reviews shall be completed by an appeals officer that is one member of the Public Works Commission, who may serve on a rotating basis, as determined by the Commission.

For the Commission’s consideration, staff recommends that the process be revised such that the Appeals Officer is not a Public Works Commissioner and that the Appeals Officer may be designated by the Public Works Commission. Due to the increasing volume of Level 2 appeals and its complexities, this will ensure the appeals are reviewed and processed in a timely manner. If the Commission approves the staff’s recommendation, this item will be agendaized at a future City Council meeting for consideration.

RESOLUTION NO. 15-R- 13046

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.

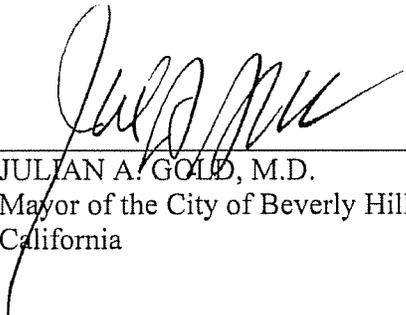
Section 3. Any provision(s) relating to the establishment of a water appeals board or the procedures whereby a water customer may appeal the imposition of penalties or surcharges

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 on August 1, 2015.

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: June 30, 2015



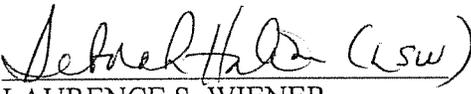
JULIAN A. GOLD, M.D.
Mayor of the City of Beverly Hills,
California

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