



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, Planning and Research Analyst
Caitlin Sims, Senior Management Analyst

DATE: February 11, 2016

SUBJECT: MODIFICATIONS TO THE PENALTY SURCHARGE MULTIPLIER & APPEALS PROCESS

ATTACHMENT: 1. Resolution 15-R-13046

This report transmits information about the proposed modifications to the penalty surcharge multiplier and to the penalty surcharge appeals process.

MODIFICATION TO THE PENALTY SURCHARGE MULTIPLIER

At its June 30, 2015, meeting, the City Council adopted Resolution 15-R-13046, which established a penalty surcharge framework for single-family and multi-family customers not in Tier 1 and all commercial customers, as allowed by the City's Stage D Water Conservation Measures. This framework and the resulting rate was determined by a comprehensive analysis prepared by HF&H Consultants, LLC ("HF&H") and staff that identified the potential risk costs if the City did not meet its conservation target and developed a multiplier that was allocated to customers based on which customers triggered the costs.

Staff identified three potential risk costs:

1. *City Costs – Accelerated Conservation Measures:*
If the City fails to meet the State-ordered conservation goal of 32%, 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 to be implemented over Year 1, rather than Years 2-10 as outlined in the Water Enterprise Plan.
2. *State Water Resources Control Board ("State Water Board") Fines:*
The State Board can fine water providers a penalty of \$10,000 per day for not meeting the 32% conservation target. The potential \$1,000,000 fine assumes 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. *MWD Costs:*
MWD is requiring each of its 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 foot. Based on 2014 water use data, if the City fails to reduce consumption, it is projected that 1,291 acre feet of water

purchased from MWD will be assessed at the Tier 2 rate. 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%.

Staff then made assumptions about the City's overall average water conservation. Staff assumed that approximately 50% of customers would reduce water use by 30% compared to 2013 usage, approximately 25% of customers would reduce water use by 15% compared to 2013 usage and approximately 25% of customers would not reduce water use compared to 2013 usage. This would equate to a City-wide average water use reduction of 18.8%. If the City collectively reduced water use by 18.8%, the City would recover the full amount of risk costs over 12 months.

Staff now has several months of data that can be used to re-evaluate the penalty surcharge. Based on this data, staff has adjusted the assumptions about how many customers will comply with the conservation targets. Staff has also adjusted the overall risk costs, based on a better understanding of the risk costs from the State Water Board and the State Water Board's extension of the Emergency Water Conservation Regulation.

1. City Costs – Accelerated Conservation Measures: \$1,763,708
2. State Water Resources Control Board ("State Water Board") Fines: \$600,000
3. MWD Costs: \$1,928,628

Given these adjustments, the new proposed multipliers can be found below:

Less than 30% Conservation		Less than 12% Conservation	
For excess usage above 70% baseline, the multiplier is:		For excess usage above the 88% baseline, the multiplier is:	
Current	Proposed	Current	Proposed
0.59 (1.59 times the Base Rate)	0.27 (1.27 times the Base Rate)	Additional 3.08 (Cumulative 4.67 times the Base Rate)	Additional 1.68 (Cumulative 1.95 times the Base Rate)

A resolution to adopt the new penalty surcharge multipliers found above will be agendized for the February 16, 2016, City Council meeting.

MODIFICATION TO THE PENALTY SURCHARGE APPEALS PROCESS

The City is currently in Stage D of its emergency conservation plan due to the Governor's statewide drought declaration. Stage D requires customers to reduce usage by at least 30% and outlines several water use restrictions. Penalty surcharges are also assessed on any excess water use beyond a customer's 70% baseline. Staff worked closely with the Conservation Subcommittee (Chair Aronberg and Vice Chair Wolfe) to develop the appeals process, recognizing that there are instances in which customers will want to adjust their conservation targets based on various circumstances. The penalty surcharge appeals process was approved by the City Council at its June 30, 2015, meeting. For reference, a copy of the Resolution outlining the appeals process is included as Attachment 1.

The appeals process consists of two levels of review. The first level is completed by City staff and a determination is made based on pre-identified conditions and conservation targets are adjusted for qualifying customers. The pre-identified conditions for the first level appeals review are as follows:

- 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.
- b) A user or customer has a medical condition which makes it infeasible to reduce water consumption (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.
- c) New water customer.
- d) Unique property qualities requiring an adjustment to conservation target, such as recent replacement of garden.
- e) Fire hazard zone or slope stability.
- f) Significant water savings from Year 2011 to Year 2013

If a customer wishes to appeal the Level 1 decision, the customer may request a Level 2 review which is conducted by an Appeals Officer. The Appeals Officer is currently a member of the Public Works Commission.

Based on a review of the existing penalty surcharge appeals process, it was recognized that the pre-identified conditions originally outlined did not adequately address the conservation challenges unique to certain multi-family and commercial water customers. It is being proposed that certain multi-family and commercial water customers would get a reduced conservation target from 30% to 20% (i.e. 20% Level 1 penalty and 5% Level 2 penalty). The multi-family and commercial water customers eligible for this reduced conservation target would have to satisfy a set of requirements related to the following factors, with the specific parameters to be recommended after discussion by the Public Works Commission:

- Previous installation of water efficient fixtures
- Percentage of landscape and pool on property
- Property or lot size

Furthermore, an assessment was completed to determine the most effective approach for addressing the multi-family and commercial customers. The following approaches were considered along with the pros and cons for each:

Methodology	Pros	Cons
1. Staff identifies qualifying multi-family and commercial customers by vetting through data sets	<ul style="list-style-type: none"> • Most equitable of the three approaches 	<ul style="list-style-type: none"> • Feasibility issue i.e. staff resources needed to vet through various data sets to identify customers • May cast a "broader" net than intended
2. Pre-condition would be included as part of Level 1 review	<ul style="list-style-type: none"> • More feasible than Option #1 • Can be easily integrated with existing appeals process 	<ul style="list-style-type: none"> • Customer initiates review by completing Level 1 appeal form
3. Proactively identify customers that have already incorporated conservation policies/programs	<ul style="list-style-type: none"> • Customer does not need to initiate request 	<ul style="list-style-type: none"> • Staff would pre-identify qualifying customers • May cast "too narrow" of a net than intended

Based on further evaluation, it was determined that Methodology #2 would be the most feasible approach and can be easily integrated with the existing appeals process.

Staff is seeking a Commission discussion on the proposed factors and methodology for addressing the unique qualities of multi-family and commercial water customers. If the Commission approves of the overall parameters, staff will plan next steps to incorporate these factors into the penalty surcharge appeals process.

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.

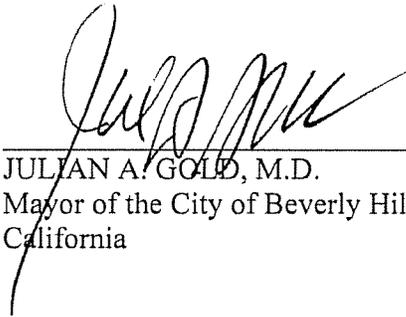
Section 3. Any provision(s) relating to the establishment of a water appeals board or the procedures whereby a water customer may appeal the imposition of penalties or surcharges

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.

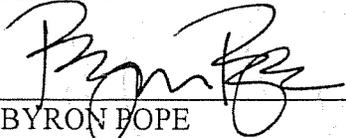
Section 5. The City Clerk shall certify to the adoption of this resolution and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Council of the City.

Adopted: June 30, 2015



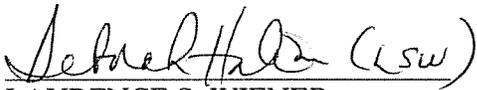
JULIAN A. GOLD, M.D.
Mayor of the City of Beverly Hills,
California

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