

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Randy Breault, Director of Public Works/City Engineer via City Manager

SUBJECT: Water Conservation - Ordinance 589 - 2nd reading

DATE: September 2, 2014

City Council Goals:

The recommended action is consistent with the community's value of being environmentally progressive.

Purpose:

The proposed ordinance is intended to ensure the city can respond promptly to voluntary and mandatory water consumption requests, while at the same time ensuring that water is conserved for the greatest public benefit within the water districts we operate.

Recommendation:

Consider adoption of Ordinance No. 589, waiving second reading, adding Chapter 8.41 of the Municipal Code Chapter concerning "Water Conservation".

Background:

Please refer to attached staff report for August 21, 2014 City Council meeting.

Discussion:

This ordinance was introduced at the regularly scheduled City Council meeting held on August 21, 2014. A Public Hearing was held; no comments were received. The City Council requested certain changes, which can be seen in the attached copy of the Ordinance marked "Red Line". With those changes, the introduction of the ordinance was unanimously approved.

Fiscal Impact:

Please refer to attached staff report for August 21, 2014 City Council meeting.

Measure of Success

Please refer to attached staff report for August 21, 2014 City Council meeting.

Attachments:

- Staff Report (minus Attachments) for August 21, 2014 City Council meeting
- FINAL version Ordinance No. 589
- RED LINE version Ordinance No. 589
- FINAL version Water Shortage Contingency Plan

RJ Beaulieu

Director of Public Works/City Engineer

RJB For Clayton Holstine

City Manager

City of Brisbane

Agenda Report

TO: Honorable Mayor and City Council

FROM: Randy Breault, Director of Public Works/City Engineer via City Manager

SUBJECT: Water Conservation - Ordinance 589 - 1st reading

DATE: August 21, 2014

City Council Goals:

The recommended action is consistent with the community's value of being environmentally progressive.

Purpose:

The proposed ordinance is intended to ensure the city can respond promptly to voluntary and mandatory water consumption requests, while at the same time ensuring that water is conserved for the greatest public benefit within the water districts we operate.

Recommendation:

Open the Public Hearing, take comments, and close the Public Hearing.

Introduce Ordinance No. 589, waiving first reading, adding Chapter 8.41 of the Municipal Code Chapter concerning "Water Conservation".

Background:

There has been action taken at many different levels and agencies within California during this period of drought; actions taken by the state (Governor's Office, State Water Resources Control Board), actions taken by our water supplier (San Francisco Public Utilities Commission), and the city's responses to these actions.

With 2014 looking like it would be the driest of three dry years in a row, the Governor issued his first proclamation of a state of emergency on 1/17/14. This proclamation called on agencies to implement their water shortage contingency plans, and directed state agencies to perform specific actions. The Governor issued a second proclamation of a continued state of emergency on 4/25/14. This proclamation listed specific actions that residents were encouraged to implement, and ordered additional items for state agencies to implement.

On 1/31/14, the SFPUC issued a request for all of its customers to voluntarily reduce their consumption by 10%. The purpose of this request was to save approximately 8 billion gallons of water in storage in the event of continued drought years. Based on demonstrated solid efforts to achieve this goal, the SFPUC determined that a continued voluntary reduction request was appropriate, and mandatory reductions were not required. Additionally, SFPUC is constructing two new expedited CIP projects that will allow them to take water from Cherry Reservoir (one of two upcountry Sierra reservoirs in addition to Hetch Hetchy) to supplement water supplies from Hetch Hetchy and local (i.e., Crystal Springs) reservoirs.

Notwithstanding the success we have had within the SFPUC Regional Water System at meeting reductions and storage for future water, the SWRCB, in response to the Governor's second proclamation, issued a notice of emergency rulemaking on 7/8/14. We were given until 7/14/14 to comment, and did submit two letters. The Board heard and approved Resolution No. 2014-0038 on 7/15/14. The emergency regulations were sent to the Office of Administrative Law (OAL) for their review/certification. OAL approved the emergency regulatory action on 7/28/14, with an immediate effective date.

The city undertook multiple actions to respond to these items. As early as January, we were providing the Mayor with drought messages to be published in the Luminary. We requested a line item in the 14/15 budget for development of a drought contingency plan, and also initiated conversations with the City Attorney to develop a water conservation ordinance that would give the city the ability to respond quickly to any additional mandated reductions. One of the most practical items we began was to reach out to our large landscaping accounts, and to our city irrigation accounts, with detailed tracking information on their consumption, and encouraged them to reduce use. This has been very successful, and has resulted in us getting very close to the requested reduction. In truth, the regional water system where we get our water is in generally good shape, as long as people continue to conserve during the summer months, which is when the biggest opportunity for savings occurs (based on reducing landscape irrigation and car washing).

Based on approval of the SWRCB's order, the following four activities are now illegal throughout the state:

- (1) The application of potable water to outdoor landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;
- (2) The use of a hose that dispenses potable water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;
- (3) The application of potable water to driveways and sidewalks; and
- (4) The use of potable water in a fountain or other decorative water feature, except where the water is part of a recirculating system.

Additionally, unless we have a Water Shortage Contingency Plan (WSCP), Brisbane/GVMID will be required to take one of the following actions:

- (1) Limit outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week; or
- (2) Implement another mandatory conservation measure or measures intended to achieve a comparable reduction in water consumption by the persons it serves relative to the amount consumed in 2013.

The SWRCB order gives them authority to fine agencies that do not comply up to \$10k/day, and gives us authority to fine users up to \$500.

In parallel to all of the above from SWRCB, we have engaged a drought contingency planning consultant, and have integrated the efforts of the water conservation ordinance with that work. The greatest advantage of adopting this ordinance and developing a Water Shortage Contingency Plan is that we will be in compliance with both the SFPUC's voluntary reduction request and the SWRCB order by implementing Stage 1 drought response measures:

Drought Stage	Implementation Procedures	City / Customer Actions
<p>Stage 1 – Voluntary Restrictions</p> <p>Goal: Voluntary 10% Reduction</p>	<ul style="list-style-type: none"> • Inform customers that there is a water shortage emergency and the list of actions they can take to reduce water use (e.g., via direct mail, bill inserts, etc.) • Expand outreach for existing water conservation programs. • Enforce the water waste ordinance to the maximum extent. • Coordinate with BAWSCA and the SFPUC. 	<ul style="list-style-type: none"> • Stop washing down paved surfaces, including but not limited to, sidewalks, driveways, parking lots, tennis courts or patios, except when necessary to address an immediate health, safety or sanitation need. • Stop the application of potable water to outdoor landscapes in a manner that causes excessive runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or other hardscapes and structures. • Do not irrigate residential and commercial landscapes between the hours of 9:00 a.m. and 6:00 p.m. or during rain events. • Use a hand-held hose equipped with an automatic shut-off nozzle or bucket to water landscaped areas that are not irrigated by a landscape irrigation system. • Irrigate nursery and commercial grower's products before 10:00 a.m. and after 6:00 p.m. Watering is permitted at any time with a hand-held hose equipped with an automatic shut-off nozzle, a bucket, or a drip/micro-irrigation system. Irrigation of nursery propagation beds is permitted at any time. Watering of livestock is permitted at any time. • Use only recirculated or recycled water to operate ornamental fountains. • Wash vehicles using a bucket, a hand-held hose with an automatic shut-off nozzle, a mobile high pressure/low volume wash system, or at a commercial site that recirculates (i.e., reclaims) water on-site. • Serve and refill water in restaurants and other food service establishments only upon request. • Offer guests in hotels, motels, and other commercial lodging establishments the option of not laundering towels and linens daily. • Use recycled water for construction purposes, if available. • No new, non-residential water meters may be issued unless the Director determines that such issuance will not impede the City's compliance with the required water use reductions.

Residential consumers in Brisbane are some of the lowest per capita water users in the state of California, consuming a mere 50 gallons per person per day. The draft ordinance and WSCP allows us to customize a contingency plan that reflects our already award-worthy low use, rather than complying with statewide "one size fits all" mandates.

Discussion:

Adopting the proposed ordinance allows us to comply with requests and mandates from various agencies using a plan that is customized to our unique water consumption patterns. Failing to adopt the ordinance will require us to immediately implement SWRCB restrictions, or be subject to noncompliance penalties of up to \$10,000 per day.

It is important to note that the proposed ordinance allows city staff to act promptly upon receiving requests or directives from external agencies regarding water conservation, but it does not provide staff the authority to act without receipt of such requests/directives from external governing authorities.

Also, while enforcement is specifically addressed in both the SWRCB order and the proposed ordinance, the first steps staff will pursue to obtain compliance are; communicating with our customers, educating them about the regulations and seriousness of the drought, and encouraging their voluntary cooperation. Except in the case of flagrant, non-cooperative parties, all of these actions will be taken prior to issuing administrative citations or taking more drastic steps to enforce conservation.

Fiscal Impact:

The immediate costs of notifying customers during different drought stages, establishing hot lines, and encouragement/light enforcement is expected to be absorbed within current operating budgets.


A long-term drought with required cutbacks of 20% or greater could have significant impacts to the water systems' revenues under our current pricing protocol. If we do not eventually adjust water rates so that fixed costs to operate the system are fully captured under the fixed component of water rates, then a future 20% or higher cutback of water consumption might require an increase in water rates to continue to operate the water systems without taking on debt.

Measure of Success

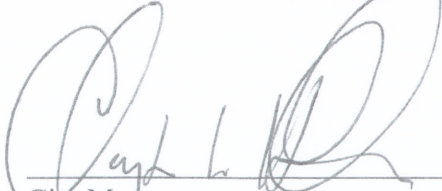
The development of a plan that recognizes the unique water consumption patterns of our city, and that conserves a sufficient water supply to meet our basic needs for human consumption, sanitation, fire protection, and that protects the health, safety, welfare, and economic necessity of the City's customers.

Attachments: ← Not provided

- Ordinance No. 589
- Water Shortage Contingency Plan (State Water Resources Control Board Resolution No. 2014-0038 included herein as Attachment A)



Director of Public Works/City Engineer



City Manager

RED LINE

ORDINANCE NO. 589

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRISBANE ADOPTING A WATER CONSERVATION PROGRAM AND ADDING CHAPTER 8.41 OF THE MUNICIPAL CODE

WHEREAS, on January 17, 2014, the Governor of the State of California proclaimed a state of emergency in the State of California due to drought conditions that have persisted since 2012, called upon all Californians to reduce their water usage by 20 percent, and called upon local water suppliers and municipalities to implement water shortage contingency plans immediately to avoid or forestall outright restrictions that could become necessary later in the drought season; and

WHEREAS, on January 31, 2014, the San Francisco Public Utilities Commission, from which the City of Brisbane purchases all of its water for resale to customers in the City's water service area, has urged its customers to voluntarily curtail water consumption by 10 percent; and

WHEREAS, on April 25, 2014, the Governor of the State of California proclaimed a continued state of emergency under the California Emergency Services Act based on continued drought conditions in the State of California; and

WHEREAS, on July 15, 2014, the State Water Resources Control Board approved an emergency regulation to ensure that water agencies, their customers, and residents of the State of California increase water conservation in urban settings or face possible fines or other enforcement; and

WHEREAS, the State of California is currently in the third consecutive year of below normal, dry, or critically dry years, resulting in severe impacts to California's water supplies; and

WHEREAS, drought conditions will likely continue for the foreseeable future and there is no guarantee that winter precipitation will alleviate the present drought conditions; and

WHEREAS, article X, section 2 of the California Constitution declares that waters of the State are to be put to beneficial use; that waste, unreasonable use, or unreasonable method of use of water be prevented; and that water be conserved for the public welfare; and

WHEREAS, California Water Code sections 375 et seq. empower any public entity that supplies water at retail or wholesale to adopt and enforce a water conservation program to reduce the quantity of water used by those within its service area after holding a public hearing and making appropriate findings of necessity for the adoption of a water conservation program; and

WHEREAS, conservation of current water supplies and minimization of the effects of water supply shortages that are the result of drought are essential to the public health, safety and welfare of the City of Brisbane and the Guadalupe Valley Municipal Improvement District; and

WHEREAS, regulation of the time of certain water use, manner of certain water use, design of rates, method of application of water for certain uses, and installation and use of water-saving devices provide an effective and immediately-available means of conserving water for the City of Brisbane and the Guadalupe Valley Municipal Improvement District; and

WHEREAS, the City of Brisbane and the Guadalupe Valley Municipal Improvement District do not meet the definition of an “urban water supplier” under Water Code section 10617, and therefore are not yet required to develop a Water Shortage Contingency Plan as required by Water Code section 10632; and

WHEREAS, the terms of the Water Shortage Contingency Plan developed under this Ordinance will provide a substantial framework for complying with Water Code section 10632 should the City of Brisbane and/or the Guadalupe Valley Municipal Improvement District eventually meet the definition of “urban water supplier” under Water Code section 10617; and

WHEREAS, the adoption and enforcement of a comprehensive water conservation program is intended to (1) ensure compliance with the voluntary and mandatory reductions requested by governing authorities, such as the San Francisco Public Utilities Commission, by the City of Brisbane and the Guadalupe Valley Municipal Improvement District; (2) conserve the water supply of the City of Brisbane and of the Guadalupe Valley Municipal Improvement District for the greatest public benefit, with particular regard to domestic use, human consumption, sanitation, and fire protection; and (3) allow the City of Brisbane to delay or avoid declaring a water shortage emergency pursuant to Water Code section 350; and

WHEREAS, on August 21, 2014, the City Council of the City of Brisbane held a properly noticed public hearing and made appropriate findings of necessity for the adoption of a water conservation program;

THE CITY COUNCIL OF THE CITY OF BRISBANE HEREBY ORDAINS AS FOLLOWS:

SECTION 1: The City determines that the above recitals are true and are incorporated herein.

SECTION 2: Pursuant to Water Code section 376 and Government Code section 6061, the City of Brisbane shall publish this ordinance in a newspaper of general circulation within 10 days after its adoption.

SECTION 3: Chapter 8.41 of the City of Brisbane Municipal Code is hereby enacted to read as follows:

Chapter 8.41 – WATER CONSERVATION

8.41.010 – Purpose, scope, and notice.

The purpose of this Chapter is to establish standards and procedures for water conservation; assure the maximum beneficial use of City water supplies; enable the implementation of the

City's drought response measures; facilitate compliance with requirements for voluntary or mandatory reductions during water shortages promulgated by a Governing Authority; ensure sufficient water supplies to meet the basic needs of human consumption, sanitation and fire protection; and protect the health, safety, welfare, and economic vitality of the City's customers.

This Chapter establishes four stages of increasingly restrictive drought response actions to be implemented in times of water shortage. The provisions of each drought response stage are triggered upon the Director's determination that a Governing Authority has required a voluntary or mandatory reduction in water use because of shortage conditions.

The provisions of each drought response stage will become effective five (5) days after the Director determines that a particular stage should be triggered and has published notice of this determination by mail. Once effective, the provisions of a drought response stage will stay in effect until the effective date of a different drought response stage that is triggered or until the Director determines that no drought response stages are required and has published notice of this determination by mail.

Nothing in this Chapter is intended to limit the ability of the City to respond to an emergency, including declaring or enforcing a water shortage emergency pursuant to Water Code section 350, or to comply with other requirements promulgated by a Governing Authority.

8.41.020 – Definitions.

The following definitions apply to this Chapter.

- A. "City" means the City of Brisbane and/or the Guadalupe Valley Municipal Improvement District.
- B. "Director" means the Director of the Department of Public Works/City Engineer of the City, or his or her designee.
- C. "Drought Response Measures" mean the measures in the Water Shortage Contingency Plan. A reference to a particular Stage of Drought Response Measures refers to the corresponding Stage described in the Water Shortage Contingency Plan.
- D. "Governing Authority" means any entity – including, but not limited to, the SFPUC – that has the legal authority to limit the ability of the City to purchase and/or use water.
- E. "Person" or "Persons" means any natural person or persons, corporation, public or private entity, or any other user of water provided by the City.
- F. "SFPUC" means the San Francisco Public Utilities Commission.
- G. "Water Shortage Contingency Plan" means a plan to address water shortages, including a detailed description of four stages of increasingly restrictive drought response actions, developed under the direction of the Director and as amended.

8.41.030 – Water shortage contingency plan.

The specific terms of the Drought Response Measures are contained in the Water Shortage Contingency Plan. The Water Shortage Contingency Plan shall be developed under the direction of the Director and may be amended as necessary, in the Director's discretion, to better achieve the overall goals in this Chapter or to comply with any terms of a water shortage contingency plan required of urban water suppliers, as defined by Water Code section 10617. The operative version of the Water Shortage Contingency Plan shall be posted as soon as possible on the City's website. The Water Shortage Contingency Plan is intended to comply substantially with the requirements of Water Code section 10632 and may be used as a framework through which to actually comply with the requirements of Water Code section 10632 if the City is legally required to do so.

8.41.040 – Permanent water conservation measures.

Nothing in this Chapter shall limit the requirements of Chapter 8.40 (Water Waste), Chapter 15.70 (Water Conservation in Landscaping), or Chapter 15.72 (Indoor Water Conservation Regulations) of the Brisbane Municipal Code. These water conservation requirements are in effect at all times.

8.41.050 – Stage 1 drought response measures.

Stage 1 Drought Response Measures apply when a Governing Authority declares a need for its purchasers to voluntarily reduce consumption by at least 10%, and the Director gives notice pursuant to Section 8.41.010 of his or her determination that the Stage 1 Drought Response Measures must be triggered.

The overall goal of the Stage 1 Drought Response Measures is to reduce ~~the City's~~ water usage by the City and its water consumers by at least 10% of the ~~City's~~ average annual use by the City and its water consumers over the most recent 5 calendar years preceding the effective date of the Stage 1 Drought Response Measures, until such time as a Governing Authority determines that a voluntary reduction in consumption of at least 10% is no longer necessary. The City will endeavor to increase its public education and outreach efforts to increase public awareness of the need for all Persons to implement the Stage 1 Drought Response Measures.

8.41.060 – Stage 2 drought response measures.

Stage 2 Drought Response Measures apply when a Governing Authority imposes a mandatory requirement for its purchasers to reduce consumption system-wide by at least 10%, and the Director gives notice pursuant to Section 8.41.010 of his or her determination that the Stage 2 Drought Response Measures must be triggered.

The overall goal of the Stage 2 Drought Response Measures is to reduce ~~the City's~~ water usage by the City and its water consumers by at least 10% of the ~~City's~~ average annual use by the City and its water consumers over the most recent 5 calendar years preceding the effective date of the Stage 2 Drought Response Measures, until such time as a Governing Authority determines that a mandatory reduction in consumption of at least 10% is no longer necessary. While the Stage 2 Drought Response Measures are effective, all Persons shall also comply with the Stage 1 Drought Response Measures, which will be mandatory.

8.41.070 – Stage 3 drought response measures.

Stage 3 Drought Response Measures apply when a Governing Authority declares a need for its purchasers to voluntarily reduce consumption by at least 20%, and the Director gives notice pursuant to Section 8.41.010 of his or her determination that the Stage 3 Drought Response Measures must be triggered.

The overall goal of the Stage 3 Drought Response Measures is to reduce ~~the City's~~ water usage by the City and its water consumers by at least 20% of the ~~City's~~ average annual use by the City and its water consumers over the most recent 5 calendar years preceding the effective date of the Stage 3 Drought Response Measures, until such time as a Governing Authority, determines that a voluntary reduction in consumption of at least 20% is no longer necessary. While the Stage 3 Drought Response Measures are effective, all Persons shall also comply with the Stage 1 and Stage 2 Drought Response Measures, both of which will be mandatory.

8.41.080 – Stage 4 drought response measures.

Stage 4 Drought Response Measures apply when a Governing Authority imposes a mandatory requirement for its purchasers to reduce consumption by at least 20%, and the Director gives notice pursuant to Section 8.41.010 of his or her determination that the Stage 4 Drought Response Measures must be triggered.

The overall goal of the Stage 4 Drought Response Measures is to reduce ~~the City's~~ water usage by the City and its water consumers by at least 20% of the ~~City's~~ average annual use by the City and its water consumers over the most recent 5 calendar years preceding the effective date of the Stage 4 Drought Response Measures, until such time as a Governing Authority determines that a mandatory reduction in consumption of at least 20% is no longer necessary. While the Stage 4 Drought Response Measures are effective, all Persons shall also comply with the Stage 1, Stage 2, and Stage 3 Drought Response Measures, all of which will be mandatory.

8.41.090 – Enforcement.

The Director shall enforce this Chapter. Violations of this Chapter may be subject to administrative penalties (as provided in Chapter 1.16 of the Brisbane Municipal Code and Water Code section 71590) and may be prosecuted as a misdemeanor punishable by imprisonment in the county jail for not more than thirty (30) days and/or by a fine not exceeding \$1,000 (as provided in Water Code section 377).

Prior to, or in addition to imposing administrative penalties as described above, the Director may, in his or her sole discretion, take any or all of the following actions:

- A. Written Warning: If the City determines that a Person is using water in violation of this Chapter, the City may send a written warning to the Person that lists the name and address of the Person on the account, identifies the wasteful use of water that violates the restrictions on water use currently in effect, requests that the Person stop such wasteful use, informs the Person about the process for applying for an

exception from the requirements of this Chapter, and informs the Person that failure to comply with this Chapter may result in the termination of service.

- B. On-site Warning: The City may conduct an on-site visit to ascertain whether wasteful use of water is occurring. In the event that waste of water that violates the restrictions on water use current in effect is observed, and no exception has been granted, the City will make reasonable efforts to notify an adult residing at the property if a residential account or an adult working on the property if a non-residential account, and will issue a written on-site warning of wasteful water use. This warning will include a written warning hand-delivered to the adult on the premises or posted on the premises.
- C. Termination of Water Service: In the event that City personnel observe continued waste of water that violates the restrictions on water use currently in effect occurring on the Person's premises more than 48 hours after the on-site warning, it shall be deemed to be a willful violation of the restrictions on water use currently in effect, and the Director may authorize termination of water service.
- D. Restoring Water Service: The reconnection charge established in the City's Rate and Fee Schedule shall be paid before the City restores service. In addition, the Person must have stopped the wasteful use of water and have paid all charges owed to the City under this Chapter, and all other rates and fees owed, before the City restores water service.
- E. Installation of Flow Restricting Device: The City may, in its sole discretion, install a water flow restricting device in the service line of a Person who violates this Chapter. Written notice will be provided to the Person by hand delivery at least 48 hours prior to installation of the flow restricting device. The flow restricting device will be at least one gallon per minute (1 GPM) capacity for services up to one and one-half (1.5) inch size and comparatively sized restrictors for larger services. The cost of installation of the flow restricting device shall be charged to the Person.

8.41.100 – Relief from compliance.

- A. Upon written application made to the Director for an exception or adjustment to the requirements of this Chapter, the Director may grant, in his or her sole discretion, variances to a Person who demonstrates that the Person has adopted all reductions in water consumption that could practically be achieved. Any exception or adjustment shall not grant a special privilege inconsistent with the limitations placed upon similarly-situated Persons. Exceptions or adjustments may also be granted if failure to do so would adversely affect the sanitation, fire protection, health, safety, or welfare of the public, or of the Person applying for an exception or adjustment.
- B. The denial of an application for an exception or adjustment may be appealed in writing to the City Manager within thirty (30) days of the date of the notice of the denial of the application. The City Manager shall grant or deny the appealed application within fifteen (15) days and shall mail notice thereof to the appellant as soon as practicable. The City Manager's decision shall be final and non-appealable.

The above and foregoing Ordinance was regularly introduced after the waiting time required by law and was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____ 2014, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

W. Clarke Conway, Mayor

ATTEST:

Sheri Marie Spediacci, City Clerk

APPROVED AS TO FORM:

David Kahn, City Attorney