

AMENDED AGENDA



**Brawley City Council &
Successor Agency to
Brawley Community Redevelopment Agency Agenda
Special Meeting
Tuesday, August 12, 2014 @ 5:00 PM
City Council Chambers
383 Main Street
Brawley, California 92227**

Don C. Campbell, Mayor
George A. Nava, Mayor Pro-Tempore
Donald L. Wharton, Council Member
Sam Couchman, Council Member
Helen M. Noriega, Council Member

Alma Benavides, City Clerk
Jim Hamilton, City Treasurer
Dennis H. Morita, City Attorney
Rosanna Bayon Moore, City Manager/
Executive Director

CALL TO ORDER

ROLL CALL

INVOCATION

PLEDGE OF ALLEGIANCE

1. APPROVAL OF AGENDA

- 2. PUBLIC APPEARANCES/COMMENTS** (Not to exceed 4 minutes) *this is the time for the public to address the Council on any item not appearing on the agenda that is within the subject matter jurisdiction of the City Council. The Mayor will recognize you and when you come to the microphone, please state your name for the record. You are not allowed to make personal attacks on individuals or make comments which are slanderous or which may invade an individual's personal privacy. Please direct your questions and comments to the City Council.*

3. CLOSED SESSION

PERSONNEL MATTERS

- a. Public Employee Appointment: Discussion of Appointment of Personnel
Title: City Attorney (G.C. 54957)

4. REGULAR BUSINESS

- a. Update regarding City Attorney Legal Counsel Services.
- b. Discussion and Potential Action to Adopt Urgency Ordinance No. 2014- :
Ordinance of the City Council of the City of Brawley, California Prohibiting
Wasteful Use of Water and Establishing Restrictions on Water Use. ***Pp 3-13***

ADJOURNMENT Next Regular Meeting, ***Tuesday, September 9, 2014 @ 6:00 PM***,
City Council Chambers, 383 Main Street, Brawley, California. Supporting Documents are
available for public review in the Office of the City Clerk, 383 Main Street, Brawley,
California 92227 - Monday through Friday during Regular Business Hours; Individuals
who require special accommodations are requested to give 48 hours prior notice.
Contact: Office of the City Clerk @ 760-351-3080.

Alma Benavides, City Clerk

COUNCIL AGENDA REPORT
City of Brawley

Meeting Date: 8/12/2014

City Manager: 

PREPARED BY: Yazmin Arellano, P.E., Public Works Director

PRESENTED BY: Yazmin Arellano, P.E., Public Works Director

SUBJECT: Urgency Ordinance Prohibiting Wasteful Use of Water and Establishing Restrictions on Water Use

CITY MANAGER RECOMMENDATION: Approve Urgency Ordinance No. 2014-__ Prohibiting Wasteful Use of Water and Establishing Restrictions on Water Use.

DISCUSSION:

The State Water Resources Control Board (Board) adopted Resolution No. 2014-0038 which consists of emergency regulations for statewide urban water conservation. The resolution makes reference to the reasons for the emergency regulations, such as current drought conditions, the need for prompt action, and current limitations in the existing enforcement process. The Water Code does not impose a mandatory penalty for violations of the regulations adopted by this resolution. Rather, the Water Code allows local agencies to retain enforcement discretion with water conservation regulations, to the extent authorized. Local agencies may develop progressive enforcement practices to encourage water conservation.

The State of California Office of Administrative Law issued a Notice of Approval of Emergency Regulatory Action on July 28, 2014 stating that the Board took an emergency regulatory action to adopt three sections (863, 864, 865) and a new article (22.5) in Title 23 of the California Code of Regulations pertaining to drought emergency water conservation. The notice also states that the Board adopted emergency regulations, pursuant to Water Code section 1058.5, to ensure that urban water suppliers implement drought response plans to limit outdoor irrigation and other wasteful water practices. This emergency regulation will expire on April 25, 2015.

Section 863 lists the findings of Drought Emergency.

Section 864 lists the prohibited activities in promotion of water conservation, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency:

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.*

This section declares that the taking of any of the listed prohibited activities is an infraction, punishable by a fine of up to \$500 for each day in which the violation occurs.

Section 865 lists the mandatory actions by urban water suppliers that serve more than 3,000 customers, such as the City of Brawley:

(b)(1) To promote water conservation, each urban water supplier shall implement all requirements and actions of the stage of its water shortage contingency plan that imposes mandatory restrictions on outdoor irrigation of ornamental landscapes or turf with potable water.

The Brawley City Council adopted Resolution No. 2011-32 on June 21, 2011 and thereby approved the City's 2010 Urban Water Management Plan. Said resolution grants authority to the City to implement the Water Conservation Program as set forth in the 2010 Urban Water Management Plan. The activities include water shortage contingency analysis and recommendations to the City Council regarding necessary procedures, rules, and regulations to carry out effective and equitable water conservation programs.

The 2010 Urban Water Management Plan contains the City's Water Shortage Contingency Plan in Section 5. As part of the Water Shortage Contingency Plan, the City shall adopt an ordinance prohibiting wasteful use of water and establishing restrictions on water use during a declared water shortage emergency. The following restrictions are listed in the City's Water Shortage Contingency Plan:

1. No customer shall waste water. As used herein, the term "waste" means:
 - a. Use of potable water to irrigate turf, ground-cover, shrubbery, crops, vegetation, and trees between the hours of 10:00 AM and 6:00PM or in such a manner as to result in runoff for more than five (5) minutes;
 - b. Use of potable water in outdoor landscapes in a manner that causes runoff to non-irrigated areas, public walkways, roadways, parking lots, structures or an adjacent property;
 - c. Allowing potable water to escape from breaks within the customer's plumbing system for more than twenty-four hours after the customer is notified or discovers the break;
 - d. Washing vehicles by hose without a shutoff nozzle, except to wash such vehicles at commercial or fleet vehicle washing facilities using water recycling equipment.
2. The following restrictions are effective during a declared Water Shortage Emergency:

- a. No restaurant, hotel, café, cafeteria or other public place where food is sold, served or offered for sale, shall serve drinking water to any customer unless requested.
- b. Use of potable water for construction, compaction, dust control, street or parking lot sweeping, building wash down where non-potable water is sufficient.
- c. Use of potable water for sewer system maintenance or fire protection training without prior approval by the City Manager.
- d. Use of potable water for any purpose in excess of the amount allocated per the Water Shortage Rationing Allocation Method.
- e. Other restrictions may be necessary during a declared Water Shortage Emergency, to safeguard the adequacy of the water supply for domestic, sanitation, fire protection, and environmental requirements.

The proposed Urgency Ordinance sets policy for enforcement, penalties for violations, appeals, and remedies as follows:

Enforcement

1. First violation – written warning
2. Second violation – written warning
3. Subsequent violations – \$100 fine

The proposed Urgency Ordinance makes reference to water conservation measures contained in the City's 2010 Urban Water Management Plan. The metering of potable water consumption for all urban uses is a critical component to accomplishing water conservation. The City continues to pursue this objective method of measurement to accurately capture consumption and future water conservation opportunities.

FISCAL IMPACT: Water Conservation Public Education Materials
\$2,500 - Engineering, Other Operating Supplies, FY 14/15 Budget

ATTACHMENTS: Ordinance 2014-__ Urgency Ordinance of the City Council of the City of Brawley, California, Prohibiting Wasteful Use of Water and Establishing Restrictions on Water Use; State Water Resources Control Board Resolution No. 2014-0038

ORDINANCE NO. 2014-

URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRAWLEY,
CALIFORNIA, PROHIBITING WASTEFUL USE OF WATER AND ESTABLISHING
RESTRICTIONS ON WATER USE

THE CITY COUNCIL OF THE CITY OF BRAWLEY, CALIFORNIA, DOES HEREBY ORDAIN
AS FOLLOWS:

SECTION 1: The Brawley Municipal Code is hereby amended by adding
Section 19.24-2 to Chapter 19, to read as follows:

FINDINGS: On April 25, 2014, California State Governor Edmund G. Brown Jr. issued an executive order to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The executive order included findings that the continuous severe drought conditions present urgent challenges across the state including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater contamination and additional water scarcity if drought conditions continue into 2015. The National Integrated Drought Information System reported that nearly 80% of the state was reported to be under "extreme" drought conditions at the end of June 2014. In response thereto, the State Water Resources Control Board ("SWRCB") adopted Resolution No. 2014-0038 establishing emergency regulations for statewide urban water conservation.

The City Council of the City of Brawley finds that in order to best address the mandates of the SWRCB Resolution and thereby preserve the public peace, health and safety, it should enact an ordinance on an urgency basis to codify the restrictions contained in its Urban Water Management Plan. In order to further the goals of the water conservation measures contained in the City's 2010 Urban Water Management Plan, City will pursue such measures as may be necessary to accomplish metering of potable water consumption for all urban uses.

19.24-2. Regulations Prohibiting Wasteful Use of Water and Restrictions on Water Use

It is hereby resolved by the City Council that in order to conserve the City's water supply for the greatest public benefit and to reduce the quantity of water used by the City's customers, that wasteful use of water should be eliminated. Customers of the City shall observe the following regulations and restrictions on water use:

1. No customer shall waste water. As used herein, the term "waste" means:
 - a. Use of potable water to irrigate turf, ground-cover, shrubbery, crops, vegetation, and trees between the hours of 10:00AM and 6:00PM, or in such a manner as to result in runoff for more than five (5) minutes;
 - b. Use of potable water in outdoor landscapes in a manner that causes runoff to non-irrigated areas, public walkways, roadways, parking lots, structures or an adjacent property;

- c. Allowing potable water to escape from breaks within a Customer's plumbing system for more than twenty-four hours after the Customer is notified or discovers the break;
 - d. Washing vehicles by hose without a shutoff nozzle, except to wash such vehicles at commercial or fleet vehicle washing facilities using water recycling equipment.
2. The following restrictions are effective during a declared Water Shortage Emergency:
- a. No restaurant, hotel, café, cafeteria or other public place where food is sold, served or offered for sale, shall serve drinking water to any customer unless requested.
 - b. Use of potable water for construction, compaction, dust control, street or parking lot sweeping, building wash down where non-potable water is sufficient.
 - c. Use of potable water for sewer system maintenance or fire protection training without prior approval by the City Manager.
 - d. Use of potable water for any purpose in excess of the amount allocated per the Water Shortage Rationing Allocation Method.
 - e. Other restrictions may be necessary during a declared Water Shortage Emergency, to safeguard the adequacy of the water supply for domestic, sanitation, fire protection, and environmental requirements.

Enforcement

Any Customer violating the regulations and restrictions on water use set forth in this section shall receive a written warning for the first such violation. Upon a second violation, the customer shall receive a final written warning. Any violation occurring subsequent to the issuance for the second written warning shall constitute an infraction of \$100 issued by the City Manager or his/her designee.

Penalty for Violation

Except as provided in the enforcement section for the first and second violations, any person, firm, partnership, association, corporation or political entity violating or causing or permitting the violation of any of the provisions of this section or providing false information to the City in response to City's requests for information needed by the City to calculate consumer water allotments shall be guilty of a misdemeanor. Each separate day or portion thereof in which any violation occurs or continues without a good faith effort by the responsible party to correct the violation shall constitute a separate offense, and upon conviction thereof, shall be separately punishable.

Appeals

Variations from the requirements of this Section may be granted by the City Council only after denial of a variance request by the City Manager. Appeals of variance request denials shall be made in writing to the City Clerk at least 2 weeks prior to the meeting at which they will be heard. Upon granting any appeal, the City Council may impose any conditions it determines to be just and proper. Variations granted by the City Council shall be prepared in writing and furnished to the applicant.

Remedies/Cumulative

The remedies available to the City to enforce this ordinance are in addition to any other remedies available under the City's code or any state statutes or regulations, and do not replace or supplant any other remedy, but are cumulative.

SECTION 2: Effective Date. This ordinance is adopted on an urgency basis and shall be effective immediately upon adoption. Prior to the expiration of fifteen (15) days from the passage thereof, this ordinance shall be published at least once in a newspaper of general circulation printed and published in the County of Imperial, together with the names of the members of the City Council voting for and against the same.

PASSED, APPROVED AND ADOPTED at a special meeting of the Brawley City Council held on August 12, 2014.

CITY OF BRAWLEY, CALIFORNIA

Don C. Campbell, Mayor

ATTEST:

Alma Benavides, City Clerk

Adoption Urgency Ordinance

I, **Alma Benavides**, City Clerk of the City of Brawley, California, DO **HEREBY CERTIFY**, that the foregoing Urgency Ordinance No. 2014-03 was passed and adopted by the City Council of the City of Brawley, California, at a special meeting held on the 12th day of August, 2014 and that it was so adopted by the following roll call vote:

- AYES:**
- NAYES:**
- ABSTAIN:**
- ABSENT:**

DATED: August 12, 2014

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2014-0038**

**TO ADOPT AN EMERGENCY REGULATION
FOR STATEWIDE URBAN WATER CONSERVATION**

WHEREAS:

1. On April 25, 2014, Governor Edmund G. Brown Jr. issued an executive order to strengthen the state's ability to manage water and habitat effectively in drought conditions and called on all Californians to redouble their efforts to conserve water. The executive order finds that the continuous severe drought conditions present urgent challenges across the state including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity if drought conditions continue into 2015. The National Integrated Drought Information System reported that nearly 80% of the state was reported to be under "extreme" drought conditions at the end of June;
2. The executive order refers to the Governor's Proclamation No. 1-17-2014, issued on January 17, 2014, declaring a State of Emergency to exist in California due to severe drought conditions. The January Proclamation notes that the state is experiencing record dry conditions, with 2014 projected to become the driest year on record. Since January, state water officials indicate that reservoirs, rainfall totals and the snowpack remain critically low. This follows two other dry or below average years, leaving reservoir storage at alarmingly low levels. The January Proclamation highlights the State's dry conditions, lack of precipitation and the resulting effects on drinking water supplies, the cultivation of crops, and the survival of animals and plants that rely on California's rivers and streams. The January Proclamation also calls on all Californians to reduce their water usage by 20 percent;
3. There is no guarantee that winter precipitation will alleviate the drought conditions that the executive orders address, which will lead to even more severe impacts across the state if the drought wears on;
4. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: "prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports";
5. Over 400,000 acres of farmland are expected to be fallowed, thousands of people may be out of work, communities risk running out of drinking water, and fish and wildlife will suffer.

6. Many Californians have taken bold steps over the years and in this year to reduce water use; nevertheless, the dire nature of the current drought requires additional conservation actions from residents and businesses. Some severely affected communities have implemented water rationing, limiting water use in some cases to only 50 gallons per person per day, foregoing showers, laundry, toilet flushing, and all outdoor watering.
7. Water conservation is the easiest, most efficient and most cost effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved this summer is water available next year, giving water suppliers the flexibility to manage their systems efficiently. The more water that is conserved now, the less likely it is that a community will experience such dire circumstances that water rationing is required ;
8. Most Californians use more water outdoors than indoors. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes would not suffer greatly from receiving a decreased amount of water;
9. Public information and awareness is critical to achieving conservation goals and the Save Our Water campaign, run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response (<http://saveourwater.com>).
10. Enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated;
11. The emergency regulations set a minimum standard requiring only modest lifestyle changes across the state. Many communities are already doing more and have been for years. They should be commended, but can and should do more. Others are not yet doing so and should at least do this, but should do much more given the severity of the drought;
12. On July 8, 2014, the State Water Board issued public notice that the State Water Board would consider the adoption of the regulation at the Board's regularly-scheduled July 15, 2014 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations;
13. On April 25, 2014, the Governor suspended the California Environmental Quality Act's application to the State Water Board's adoption of emergency regulations pursuant to Water Code section 1058.5 to prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water, to promote water recycling or water conservation;
14. As discussed above, the State Water Board is adopting the emergency regulation because of emergency drought conditions, the need for prompt action, and current limitations in the existing enforcement process;

15. Disadvantaged communities may require assistance in increasing water conservation and state agencies should look for opportunities to provide assistance in promoting water conservation;
16. Nothing in the regulations or in the enforcement provisions of the regulations, preclude a local agency from exercising its authority to adopt more stringent conservation measures. Moreover, the Water Code does not impose a mandatory penalty for violations of the regulations adopted by this resolution and local agencies retain their enforcement discretion in enforcing the regulations, to the extent authorized, and may develop their own progressive enforcement practices to encourage conservation.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, sections 863, 864, and 865, as appended to this resolution as an emergency regulation;
2. The State Water Board staff will submit the regulation to the Office of Administrative Law (OAL) for final approval;
3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or designee may make such changes;
4. These regulations shall remain in effect for 270 days after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions, or unless the State Water Board renews the regulations due to continued drought conditions as described in Water Code section 1058.5;
5. The State Water Board directs staff to provide the Board with monthly updates on the implementation of the emergency regulations and their effect;
6. Directs State Water Board staff to condition funding upon compliance with the emergency regulations, to the extent feasible;
7. Directs State Water Board staff to work with the Department of Water Resources and the Save Our Water campaign to disseminate information regarding the emergency regulations; and
8. Directs State Water Board staff in developing an electronic reporting portal to include data fields so that local agencies may provide monthly reporting data on (i) conservation-related implementation measures or enforcement actions taken by the local agency and (ii) substitution during the drought of potable water with recycled water to extend water supplies.

THEREFORE BE IT FURTHER RESOLVED THAT:

9. The State Water Board commends water suppliers that have increased conservation messaging and adopted innovative strategies to enhance customer awareness of water use, such as applications that let customers compare their water use to water use by others; reduce system losses, such as fixing system leaks which can deplete supplies by 10 percent or more; and establish incentives to reduce demand, such as tiered or drought rate structures. The State Water Board also commends all Californians that have already been working to maximize their conservation efforts, both at home and at work;
10. The State Water Board calls upon water suppliers to take the following actions:

Educate customers and employees

- Retail water suppliers should provide notice of the regulations in English and Spanish in one or more of the following ways: newspaper advertisements, bill inserts, website homepage, social media, notices in public libraries;
- Wholesale suppliers should include reference to the regulations in their customer communications;
- All water suppliers should train personnel on the regulations;
- All water suppliers should provide signage where recycled or reclaimed water is being used for activities that the emergency regulations prohibit with the use of potable water, such as operation of fountains and other water features;
- All water suppliers should redouble their efforts to disseminate information regarding opportunities and incentives to upgrade indoor fixtures and appliances;
- All water suppliers should use education and the tools available through the Save Our Water website (<http://saveourwater.com>); and
- All water suppliers should educate and prepare their boards and councils on the drought response actions contained in the emergency regulations and in this resolution, and to make sure that drought response items are placed on agendas as early as possible;

Increasing local supplies

- All water suppliers should accelerate the completion of projects that will conserve potable water by making use of non-potable supplies, such as recycled water, "greywater," and stormwater collection projects;
- All water suppliers should improve their leak reporting and response programs and request that police and fire departments and other local government personnel report leaks and water waste that they encounter during their routine duties/patrols;
- Smaller water suppliers – those with fewer than 3,000 service connections – should take proactive steps to secure their communities' water supplies and educate their customers about water conservation and the status of their supply reserves;
- All water suppliers should conduct water loss audits and make leak detection and repair a top priority for the duration of the drought; and
- All urban water suppliers should evaluate their rate structures and begin to implement needed changes as part of planning for another dry year. Information and assistance on setting and implementing drought rates is available from the Alliance for Water Efficiency. (<http://www.allianceforwaterefficiency.org/>).

11. The State Water Board calls on all Californians to take the following additional actions:
 - Further reduce water demand, whether by using less water in daily routines indoors and out, retrofitting appliances and installing greywater and rainwater catchment systems; and
 - Check residential and business water bills to see if there are high charges that may indicate a leak and to fix the leak, if they are able, or contact their local water utility if they need assistance.
12. The State Water Board encourages its staff, the Department of Water Resources, the Public Utilities Commission, urban water suppliers, and other local agencies to look for opportunities to encourage and promote new technologies that reduce water usage, including through timely access to water usage information and behavioral response.
13. The State Water Board encourages all state and local agencies to look for additional opportunities to minimize potable water use in outdoor spaces.
14. The State Water Board encourages investor-owned utilities to expeditiously submit applications for implementation of the regulations to the California Public Utilities Commission.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on July 15, 2014.

AYE: Chair Felicia Marcus
 Vice Chair Frances Spivy-Weber
 Board Member Steven Moore
 Board Member Dorene D'Adamo

NAY: None

ABSENT: Board Member Tam M. Doduc

ABSTAIN: None



Jeanine Townsend
Clerk to the Board