

**BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT**

ORDINANCE NO. 22-02

**A FIRST AMENDED AND RESTATED ORDINANCE OF
SANTA CLARA VALLEY WATER DISTRICT ADOPTING DROUGHT
OUTDOOR WATER CONSERVATION AND ENFORCEMENT MEASURES**

The Board of Directors of Santa Clara Valley Water District does ORDAIN as follows:

SECTION 1: PURPOSE

- 1.1 Due to water shortage conditions existing in the service area of the Santa Clara Valley Water District (Valley Water), as well as historically low imported water allocations of Valley Water's State Water Project (SWP) and Central Valley Project (CVP) supplies, the purpose of this ordinance is to establish mandatory outdoor water conservation measures with corresponding enforcement measures as part of a mandatory outdoor water conservation program. To ensure Valley Water continues providing a safe, reliable water supply when its supplies are limited due to current or future shortage conditions, the measures in this water conservation program are intended to preserve and extend Valley Water's available water supply in Santa Clara County and to reduce the hardship on the general public to the greatest extent possible. They are also aimed at ensuring the efficient use of Valley Water's water supply outdoors to maintain sufficient supplies to meet public health, safety and welfare needs during uncertain water supply conditions.
- 1.2 Valley Water adopts this ordinance consistent with Article X, Section 2 of the California Constitution pursuant to its authority under Water Code Section 350 et seq, Water Code Section 375 et seq, and the Santa Clara Valley Water District Act, (Stats. 1951, ch. 1405, p. 3336 et seq., West's Ann. Wat.—Appen. (1999 ed. & 2012 supp.) ch. 60, p. 354 et seq.).

SECTION 2: DEFINITIONS

- 2.1 "Turf" means a ground cover surface of non-native, ornamental grass, or a ground cover surface of mowed grass. Annual bluegrass, Kentucky bluegrass, Perennial ryegrass, Red fescue, and Tall fescue are cool-season grasses. Bermudagrass, Kikuyugrass, Seashore Paspalum, St. Augustinegrass, Zoysiagrass, and Buffalo grass are warm-season grasses.
- 2.2 "Non-Functional Turf" means Turf that is solely ornamental and does not serve a community or neighborhood function, including, use for recreational purposes, or civic or community events.
- 2.3 "Incidental Runoff" means unintended amounts (volume) of runoff, such as unintended, minimal overspray from sprinklers that escapes the area of intended use. Water leaving an intended use area is not considered incidental if it is part of the facility or system design, if it is due to excessive application, if it is due to intentional overflow or application, or if it is due to negligence.
- 2.4 "Property Owner" means the owner of the land where a possible violation of one or more of the water waste prohibitions described in Subsection 3.1 of this ordinance is occurring.
- 2.5 "Water Retailer" means municipalities or investor-owned water retailers that supply potable water made available by Valley Water to Property Owners.

SECTION 3: OUTDOOR DROUGHT WATER WASTE PROHIBITIONS

3.1 Violations of the prohibitions set forth below are subject to the enforcement measures described in Section 4. All Property Owners in Santa Clara County who receive potable water supplied or managed by Valley Water either directly or indirectly by a Water Retailer shall not do any of the following:

- (a) irrigate Non-Functional Turf more than 2 days a calendar week.
- (b) irrigate any outdoor landscape between the hours of 9:00 AM and 6:00 PM.
- (c) apply potable water to any outdoor landscape in a manner that causes more than Incidental Runoff. More than Incidental Runoff includes water that flows onto an adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures.
- (d) apply potable water to any outdoor landscape during and within 48 hours after measurable daily rainfall of at least one fourth of one inch (0.25 inches) of rain. In determining whether measurable daily rainfall of at least fourth of one inch (0.25 inches) of rain occurred on a property, enforcement will be based on records of the closest weather station to the property available from the National Weather Service (weather.gov) or the Valley Water ALERT website (valleywateralert.org/scvwd/pgi.php).
- (e) apply potable water to Non-Functional Turf at commercial, industrial and institutional sites, including homeowner's associations.

3.2 The use of potable water is not prohibited to the extent necessary to ensure the health of trees and other perennial non-Turf plantings or to the extent necessary to address immediate health and safety, sanitation, or fire protection needs as determined by the fire marshal. Unless otherwise permitted by the fire marshal, the watering permitted under this Subsection 3.2 must be completed in a manner that prevents runoff.

SECTION 4: ENFORCEMENT

4.1 For violations set forth in Subsection 3.1, the following enforcement procedures 4.1 (a) – (e) shall apply. Valley Water will emphasize an educational approach to addressing reported violations of water waste prohibitions to encourage water conservation and to prevent water waste.

Reports of water waste will be made through public complaints to Valley Water. For Property Owners who receive potable water supplied or managed by Valley Water either directly or indirectly by a Water Retailer, steps 4.1 (a) – (e) will be followed. If the property is supplied by a Water Retailer, Valley Water will notify the Water Retailer of each complaint. Valley Water will offer Water Retailers the opportunity to initiate their own enforcement process established for their respective service area at either steps 4.1 (a), (b), or (c). While the Water Retailer pursues its enforcement process, Valley Water will not conduct any of the steps in its enforcement process.

If the Water Retailer does not initiate its own enforcement process, or if the Water Retailer who previously initiated its enforcement process requests that Valley Water resume its enforcement process, then Valley Water will perform the remaining steps between 4.1 (a) – (e) that Valley Water has not yet completed.

- (a) Notice of Report of Violation

If a report of a violation of outdoor water waste prohibitions in Subsection 3.1 is submitted to Valley Water, a Notice of Report of Violation will be issued to the Property Owner. A Notice of Report of Violation will contain information on how to

correct violations and a warning that failure to correct a violation within fourteen (14) calendar days from the issuance date of that written notification may result in future enforcement action. No administrative fine is issued by Valley Water at this time.

(b) Notice of Second Report of Violation

If a second report of a violation of outdoor water waste prohibitions in Subsection 3.1 is submitted to Valley Water for the same property following fourteen (14) calendar days and within twelve (12) calendar months of the issuance of a Notice of Report of Violation, Valley Water or its contractors shall conduct a site visit of the property to document the violation, if possible, and provide a door hanger. The door hanger will state that failure to comply with water waste prohibitions may result in future enforcement action. Furthermore, Valley Water will send the Property Owner a Notice of Second Report of Violation.

(c) Notice of Third Report of Violation

If a third report of a violation of outdoor water waste prohibitions in Subsection 3.1 is submitted to Valley Water for the same property following fourteen (14) calendar days from the issuance of a Notice of Second Report of Violation and within twelve (12) calendar months of the issuance of a Notice of Report of Violation, Valley Water will send a Notice of Third Report of Violation to the Property Owner. This will state that the Property Owner may receive administrative fines for uncorrected violations.

(d) Notice of Violation

Valley Water or its contractors will conduct a site visit of the property following fourteen (14) calendar days following the issuance of a Notice of Third Report of Violation to document the violation. If the violation is continuing, then Valley Water will send a Notice of Violation to the Property Owner which will state that the Property Owner is now subject to administrative fines for uncorrected violations.

The Property Owner is subject to an administrative fine of up to one-hundred dollars (\$100) for each violation found. Notwithstanding the foregoing, Valley Water may impose an administrative fine of up to ten thousand dollars (\$10,000) in extraordinary circumstances where it finds that: the Property Owner had actual notice of the water waste prohibition found to be violated; the Property Owner's conduct was intentional; and the amount of water involved was substantial.

(e) Repeat Violations

Valley Water will conduct a site visit thirty-one (31) days following the issuance of a Notice of Violation, or when a subsequent report of violation of outdoor water waste prohibitions in Subsection 3.1 is submitted to Valley Water following thirty-one (31) calendar days from the issuance of a Notice of Violation and within twelve (12) calendar months of the issuance of a Notice of Report of Violation, to determine if the confirmed violation is continuing. If the violation is continuing, the Property Owner shall be subject to an additional administrative fine of up to ten thousand dollars (\$10,000). For each successive violation, the Property Owner is subject to an additional administrative fine of five hundred dollars (\$500) for each additional day that the violation continues.

SECTION 5: HEARING

5.1 A Property Owner subject to an administrative fine will be provided notice and may request a hearing to present evidence that the violation did not occur by following the procedure set forth below:

- (a) Within thirty (30) calendar days of receiving a Notice of Violation, the Property Owner mails a written request for a hearing to the Clerk of the Board, 5750 Almaden Expressway, Valley Water, San José, CA 95118-3686. For purposes of this Section 5, the request for hearing shall be deemed received by Valley Water on the day it arrives at Valley Water. The Clerk of the Board shall notify the Property Owner, in writing, of the place, date and time of the hearing, which shall take place no earlier than thirty (30) calendar days after a Notice of Violation was issued.
- (b) The Chief Executive Officer or designee shall conduct a hearing considering all applicable facts and issue a written decision. The Chief Executive Officer's or designee's decision shall be final.
- (c) Any administrative fine not timely contested in a hearing per this Section 5 shall be deemed final.

SECTION 6: EFFECTIVE DATE

NOW, THEREFORE BE IT ORDAINED by the Board of Directors of the Santa Clara Valley Water District that this ordinance shall be in effect starting on September 13, 2022.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on September 13, 2022:

AYES: Directors: T. Estremera, R. Santos, N. Hsueh, B. Keegan, G. Kremen, J. Varela

NOES: Directors: None

ABSENT: Directors: L. LeZotte

ABSTAIN: Directors: None