

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

ORDINANCE NO. 22-

**AN 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, 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).
- 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 shall apply. Reports on water waste will be made through public complaints to Valley Water.
- (a) Educational Letter – Notice of First Report of Violation

Valley Water will emphasize an educational approach to addressing reported violations of water waste prohibitions to encourage water conservation and prevent water waste. Valley Water shall provide information at each step of the enforcement process to help the Property Owner correct the water waste before moving to the next step in the enforcement process. Any Property Owner reported to have violated the water waste prohibitions set forth in Subsection 3.1 shall receive a written notification from Valley Water's water waste program. The written notification will contain information on how to correct violations and a warning that failure to correct a violation within fourteen (14) calendar days from when the report was made may result in future enforcement action. No administrative fine is issued at this time.

Based on the magnitude of the reported violation and Valley Water's enforcement priorities, the Water Retailer serving the property may be notified of the reported violation.
 - (b) Notice of Second Report of Violation

Valley Water staff or contractors shall visit the property if a second violation of outdoor water waste prohibitions in Subsection 3.1 is reported at the same

property following fourteen (14) calendar days and within twelve (12) calendar months of the first report of violation. The property visited shall be provided a door hanger to document the violation if possible. 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 written notification of the second report of violation. Valley Water will notify the Water Retailer serving the property of the reported violation and provide the opportunity for the Water Retailer to initiate its enforcement process. Staff will address reported violations based on enforcement priorities related to the severity of the alleged violation.

(c) Notice of Third Report of Violation

Following a third report of a violation of outdoor water waste prohibitions in Subsection 3.1 at the same property following fourteen (14) calendar days and within twelve (12) calendar months of the second report of violation described in Subsection 4.1(b), Valley Water will send a warning letter to the Property Owner. The warning letter will state that the Property Owner may receive administrative fines for uncorrected violations. Valley Water will notify the violating property's Water Retailer of the third report of violation and request the Water Retailer to initiate its enforcement process. If Valley Water is the sole supplier of water to the property or if the Water Retailer has not commenced enforcement action within thirty (30) calendar days of being notified of the third report of violation, then Valley Water will pursue its own enforcement as described in Subsections 4.1(d) and 4.1(e).

(d) Notice of Violation

If an enforcement action was not commenced by the Water Retailer with jurisdiction over the violating property within thirty (30) calendar days after Valley Water notified the Water Retailer of the third report of violation, and the violation is reported to be continuing, Valley Water will conduct a site visit of the property and investigate the reported violation. If an enforcement action commenced by the Water Retailer does not result in the violation being corrected or fines issued within thirty (30) calendar days, Valley Water may conduct a second site visit of the Property and investigate the reported violation based on Valley Water's enforcement priorities. The Property Owner is subject to an administrative fine of up to \$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 situations 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

For a Property Owner found by Valley Water to incur a further violation of water waste prohibition for which the Property Owner already received a Notice of Violation within the past thirty-one (31) calendar days, the Property Owner shall be subject to an administrative fine of \$250. For each successive violation following thirty-one (31) calendar days, the Property Owner shall be subject to an administrative fine of \$500 per violation. Notwithstanding the foregoing, in extraordinary circumstances, Valley Water may impose an additional administrative fine not to exceed ten thousand dollars (\$10,000) for a second violation, plus five hundred dollars (\$500) for each additional day on which 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 the 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 the 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

This ordinance shall be in effect starting on June 1, 2022.

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 June 1, 2022.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on May 24, 2022:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

By: _____
JOHN L. VARELA
Chair Pro Tem, Board of Directors

ATTEST: MICHELE L. KING, CMC

Clerk, Board of Directors