

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

ORDINANCE NO. 23-

ENFORCEMENT MEASURES FOR WATER CONSERVATION IN SANTA CLARA COUNTY

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

SECTION 1: PURPOSE

- 1.1 The purpose of this ordinance is to establish mandatory enforcement measures as part of a water conservation program. To ensure the Santa Clara Valley Water District (Valley Water) continues providing a safe, reliable water supply, the measures in this water conservation enforcement program are intended to promote the efficient use of water and prevent its waste to ensure sufficient and reasonable availability for any present or future beneficial use or uses in Santa Clara County.
- 1.2 This ordinance replaces and rescinds Amended Ordinance 22-20, which contains water use prohibitions previously adopted by Valley Water's Board of Directors (Board).
- 1.3 Valley Water adopts this ordinance pursuant to the authorities granted to it by the California Water Code Section 375 et seq. and the Santa Clara Valley Water District Act (California Water Code Appendix, Chapter 60).

SECTION 2: DEFINITIONS

- 2.1 "Turf" means a ground cover surface of non-native, ornamental grass, or a ground cover surface of mowable grass.
- 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.
- 2.6 Commercial, industrial and institutional (CII) refers to commercial water users, industrial water users, and institutional water users as respectively defined in Water Code, section 10608.12, subdivisions (e), (i), and (j), and includes homeowners' associations, common interest developments, community service organizations, and other similar entities but does not include the residences of these entities' members or separate interests.

- 2.7 “Mandatory Water Use Reduction” refers to a call made by Valley Water’s Board for required water use reduction in Santa Clara County. These calls are typically made during times of drought and/or water shortage.

SECTION 3: WATER WASTE PROHIBITIONS

- 3.1 All Property Owners in Santa Clara County who receive some or all of their potable water supplied or managed by Valley Water either directly or indirectly by a Water Retailer shall not do any of the following:
- (a) Apply potable water to any outdoor landscape between the hours of 9:00 AM and 6:00 PM through overhead irrigation.
 - (b) 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.
 - (c) Apply potable water to any outdoor landscape during and within 48 hours after measurable daily rainfall of at least one-fourth of 1 inch (0.25 inches) of rain. In determining whether measurable daily rainfall of at least one-fourth of 1 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 (<https://valleywateralert.org/scvwd/pgi.php>).
 - (d) Apply potable water to Non-Functional Turf at CII sites.
 - (e) Use potable water for washing vehicles except by hand-washing without a hose, using a hand-held hose equipped with an automatic shut off nozzle, or using a commercial car washing facility that utilizes recycled water or a re-circulating water system to capture or reuse water.
 - (f) Use potable water for washing building exteriors and mobile homes except by using a hose equipped with an automatic shutoff nozzle.
 - (g) Use potable water for washing sidewalks, walkways, driveways, patios, parking lots, or other hard-surfaced, non-porous ground areas except in cases where health and safety are at risk. Power washing of sidewalks or other outdoor surfaces for health and safety reasons is not considered a violation of this provision.
 - (h) Use potable water through any broken or defective plumbing fixture, sprinkler, watering, or irrigation system on the Property Owner’s premises when Valley Water or the retailer has notified the customer in writing to repair the broken or defective plumbing fixture, sprinkler, watering, or irrigation system.
- 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 DURING PERIODS WHEN VALLEY WATER'S BOARD OF DIRECTORS HAS NOT CALLED FOR MANDATORY WATER USE REDUCTION

- 4.1 During periods when Valley Water's Board has not called for mandatory water use reduction in Santa Clara County, Valley Water will use an educational-based enforcement approach to discourage water waste.
- 4.2 If Valley Water receives a complaint that a Property Owner has violated any of the restrictions set forth in Subsection 3.1, Valley Water will provide that Property Owner with notice of the complaint along with educational information about program offerings that could help resolve the alleged violation(s). In addition, Valley Water will notify the Property Owner's Water Retailer of each complaint.

Repeat complaints of a violation of water waste prohibitions in Subsection 3.1 are considered those submitted to Valley Water for the same property following fourteen (14) calendar days and within twelve (12) calendar months of the initial complaint. After the second repeat complaint, Valley Water will forward any subsequent repeat complaint to the Property Owner's Water Retailer for enforcement action.

SECTION 5: ENFORCEMENT DURING PERIODS WHEN VALLEY WATER'S BOARD OF DIRECTORS HAS CALLED FOR MANDATORY WATER USE REDUCTION

- 5.1 The enforcement procedures described in Subsections 5.2 and 5.3 of this ordinance shall apply only during periods when Valley Water's Board has called for a mandatory water use reduction in Santa Clara County.
- 5.2 Reports of water waste will be made through complaints by the public to Valley Water. For Property Owners who receive all or some of their potable water supplied or managed by Valley Water either directly or indirectly by a Water Retailer, steps in Subsection 5.2 and 5.3 of this ordinance 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 of the steps described in Subsection 5.2 (a), (b), or (c). While the Water Retailer pursues its enforcement process, Valley Water will not conduct any of the steps in Valley Water's enforcement process.

(a) Notice of Report of Violation

If a report of a violation of 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 and the property's Water Retailer will be notified. A Notice of Report of Violation will contain information on how to correct the violation(s) and a warning that Valley Water or the Water Retailer may conduct enforcement action for uncorrected violations.

(b) Notice of Second Report of Violation

If a second report of a violation of 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 will send the Property Owner a Notice of Second Report of Violation and the property's Water Retailer will be notified. The

Notice of Second Report of Violation will contain information on how to correct the violation(s), and a warning that Valley Water or the Water Retailer may conduct enforcement action for uncorrected violations.

(c) Notice of Third Report of Violation

If a third report of a violation of 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 and refer the report to the Water Retailer to initiate its own enforcement process. The Notice of Third Report of Violation will contain information on how to correct the violation(s) and a warning that Valley Water or the Water Retailer may conduct enforcement action for uncorrected violations.

- 5.3 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 of enforcement described in Subsection 5.2 (a) – (c) above and the steps of enforcement described in Subsection 5.3 (a) – (b) below:

(a) 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 fine(s) for uncorrected violation(s).

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.

(b) 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 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 shall be subject to an additional administrative fine of up to five hundred dollars (\$500) for each additional day that the violation continues.

SECTION 6: HEARING

- 6.1 A Property Owner subject to an administrative fine under Subsection 5.3 above 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, Santa Clara Valley Water District, San José, CA 95118-3686. For purposes of this Section 6, 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) Valley Water's 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 6 shall be deemed final.

SECTION 7: 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 June 13, 2023.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on June 13, 2023:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

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

ATTEST: MICHELE L. KING, CMC

Clerk, Board of Directors

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