



CITY COUNCIL AGENDA REPORT

Meeting Date: June 29, 2023
From: Director of Public Works/City Engineer
Subject: Municipal Code Change to Chapter 8.41 – Water Conservation

Community Goal/Result:

Ecological Sustainability

Purpose

To modify a section of the city’s municipal code that is inconsistent with the revised Water Shortage Contingency Plan.

Recommendation

Introduce an Ordinance, waiving first reading, amending Chapter 8.41 of Title 8 of the Brisbane Municipal Code pertaining to “Water Conservation.”

Introduction and adoption of this Ordinance is not subject to further environmental review because it is not a project under the California Environmental Quality Act (CEQA). CEQA Guidelines, section 15378 (b) (2).

Background

Assuming that Council acting in its capacity as City Council for the City of Brisbane’s water system and as Board of Directors for the Guadalupe Valley Municipal Improvement District’s water system has approved the 2023 Water Shortage Contingency Plan (WSCP) in earlier action on this agenda, the item now under consideration is necessary to align the city’s municipal code with the revised WSCP.

Discussion

The primary changes to Chapter 8.41 include revising terms to align them with current State Water Resources Control Board (SWRCB) language, and to delete language referring to four water shortage stages as there are now six stages required for evaluation by SWRCB.

Also, in order to allow future changes to a WSCP to be completed more quickly than the two-step ordinance process, all references to drought stages in the WSCP are removed from the BMC, and the adoption of future WSCPs is only required by Council action (i.e., by resolution).

Environmental Review

Introduction and adoption of this Ordinance is not a project under CEQA because it is a continuing administrative activity, such as general policy and procedure making, and not applied to any specific instance. CEQA Guidelines, Section 15378 (b)(5). Accordingly, no further environmental review is necessary.

Fiscal Impact

None as a result of the recommended action.

Measure of Success

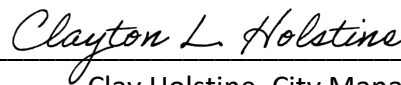
Consistency throughout the city’s municipal code and with the Water Shortage Contingency Plan.

Attachments

- 1. Proposed Ordinance
- 2. Redline of Chapter 8.41



Randy Breault, Public Works Director



Clay Holstine, City Manager

ORDINANCE NO. - - -

**AN ORDINANCE OF THE CITY OF BRISBANE
REVISING CHAPTER 8.41 OF THE BRISBANE MUNICIPAL CODE
CONCERNING WATER CONSERVATION**

The City Council of the City of Brisbane hereby ordains as follows:

Section 1: Chapter 8.41 of the Brisbane Municipal Code is revised to read as follows:

“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 responsive actions to drought conditions and/or water supply shortages (“shortage response actions”); 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.

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 the director’s designee.

C. "Shortage response actions" include the restrictions on water use in an adopted water shortage contingency plan. A reference to a particular stage of shortage response actions refers to the corresponding shortage level 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, as may be amended, to address water shortages, including a detailed description of increasingly restrictive shortage response actions, developed under the direction of the director and as amended.

8.41.030 - Water shortage contingency plan.

The specifics of the water use restrictions are listed as shortage response actions contained in the water shortage contingency plan. The water shortage contingency plan shall be developed under the direction of the director and approved by the City Council . The water shortage contingency plan 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 the water shortage contingency plan. 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 California Water Code Section 10609.60.

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 –Enforcement.

The director shall enforce this chapter. When the director has declared a drought shortage level, failure to comply with the shortage response actions shall be a violation of this chapter and 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 one thousand dollars (\$1,000.00) (as provided in Water Code Section 377).

Prior to, or in addition to imposing penalties as described above, the director may, in the director's sole discretion, take any or all of the following actions:

A. Written Warning: If the director 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 director 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 director 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 forty-eight (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 director may, in the director's 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 forty-eight (48) hours prior to installation of the flow restricting device. The flow restricting device will be up to 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.

These enforcement actions are in addition to any enforcement actions specified in the water shortage contingency plan.

8.41.060 –Relief from compliance.

Upon written application made to the director for an exception or adjustment to the requirements of this chapter, the director may grant, in the director's 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. The information required with the variance application will be specified in the water shortage contingency plan.

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.”

Section 2: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 3: This Ordinance shall be in full force and effect thirty days after its passage and adoption.

* * * *

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the _____ day of _____, 2023, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Madison Davis, Mayor

ATTEST:

Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

Thomas R. McMorrow, City Attorney

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 [responsive actions to drought conditions and/or water supply shortages \("shortage response actions"\)](#); ~~stage response measures~~ [actions](#); 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.

(Ord. No. 589, § 1, 9-2-14)

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 the ~~director's~~ his or her designee.
- C. "Drought Shortage response measuresactions" ~~include~~ mean the measures-restrictions on water use in an adopted ~~the~~ water shortage contingency plan. A reference to a particular stage of drought-shortage response measures-actions refers to the corresponding stage-shortage level 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.

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- G. "Water shortage contingency plan" means a plan, ~~as may be amended~~, to address water shortages, including a detailed description of ~~four (4) stages of increasingly restrictive drought-shortage response actions~~, developed under the direction of the director and as amended.

(Ord. No. 589, § 1, 9-2-14)

8.41.030 Water shortage contingency plan.

The specifics of ~~the terms-water use restrictions of the~~ ~~are listed as drought-shortage response measures actions~~ are contained in the water shortage contingency plan. The water shortage contingency plan shall be developed under the direction of the director and ~~approved by the City Council Resolution. The water shortage contingency plan~~ ~~During a declared drought the plan~~ 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 the~~ 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 ~~California~~ Water Code Section ~~10632-10609.60 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.~~

(Ord. No. 589, § 1, 9-2-14)

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.

(Ord. No. 589, § 1, 9-2-14)

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 ten percent (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 water usage by the city and its water consumers by at least ten percent (10%) of the average annual use by the city and its water consumers over the most recent five (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 ten percent ten percent (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.~~

~~(Ord. No. 589, § 1, 9-2-14)~~

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 ten percent (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.~~

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The overall goal of the stage 2 drought response measures is to reduce water usage by the city and its water consumers by at least ten percent (10%) of the average annual use by the city and its water consumers over the most recent five (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 ten percent (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.

(Ord. No. 589, § 1, 9-2-14)

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 twenty percent (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 water usage by the city and its water consumers by at least twenty percent (20%) of the average annual use by the city and its water consumers over the most recent five (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 twenty percent (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.

(Ord. No. 589, § 1, 9-2-14)

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 twenty percent (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 water usage by the city and its water consumers by at least twenty percent (20%) of the average annual use by the city and its water consumers over the most recent five 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 twenty percent (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.

(Ord. No. 589, § 1, 9-2-14)

8.41.090 Enforcement.

The director shall enforce this chapter. When the director has declared a drought shortage level, failure to comply with the shortage response actions shall be a violation of this chapter and 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 one thousand dollars (\$1,000.00) (as provided in Water Code Section 377).

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

- A. Written Warning: If the **directoreity** 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 **directoreity** 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 **directoreity** 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 forty-eight (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 **pPerson** 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 **directoreity** may, in **the director'sits** 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 forty-eight (48) hours prior to installation of the flow restricting device. The flow restricting device will be **at-leastup to** 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.

[These enforcement actions are in addition to any enforcement actions specified in the water shortage contingency plan.](#)

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(Ord. No. 589, § 1, 9-2-14)

8.41.060100 Relief from compliance.

Upon written application made to the director for an exception or adjustment to the requirements of this chapter, the director may grant, in **the director'shis 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. [The information required with the variance application will be specified in the water shortage contingency plan.](#)

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.

(Ord. No. 589, § 1, 9-2-14)

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