THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED: October 9, 2008 REPORT NO: 08-149

ATTENTION: Natural Resources and Culture Committee
Agenda of October 15, 2008

SUBJECT: Emergency Water Regulations

REFERENCE: Update on Revisions to the City's Emergency Water Regulations
Report No. 08-127
Municipal Code Section 67.3801- 67.3811

REQUESTED ACTION: Amend Municipal Code Sections 67.3801 – 67.3811.

STAFF RECOMMENDATION: Accept the Proposed Amendments and Revisions.

SUMMARY:

Attached please find the proposed amendments to the City's Municipal Code, Sections 67.3801 – 67.3811, Emergency Water Regulations (Attachment 1). These changes are being recommended in order to improve the City's demand response program in the event of a water supply shortage, and to provide greater consistency with the Model Drought Response Conservation Program Ordinance recently approved by the San Diego County Water Authority.

Background - Water Supply Shortage

The City of San Diego is located in a semi-arid climate with an average annual rainfall of 10 inches. This rainfall provides only 10 – 15% of the water needed to meet local demands. As a result, the City purchases 85-90% of its drinking water from the San Diego County Water Authority, which in turn imports water from the Metropolitan Water District of Southern California. Water provided via this supply chain originates from both the Colorado River and from the San Francisco Bay-Delta region of Northern California. A 242 mile-long aqueduct brings Colorado River water from Lake Havasu to the Southland while the 444 mile-long California Aqueduct carries water south as part of the State Water Project. Recent environmental changes and judicial actions have placed strains on these water supply sources.

The region's water supplies remain impacted by extremely dry conditions around California. Over the last year, these conditions have significantly reduced storage in key reservoirs, as well as exacerbated an eight-year drought in the Colorado River basin. The Northern California winter 2007-2008 snow pack was 67% of normal, while runoff was forecasted to be 55% of normal, making this past spring the driest on record for Northern California. The Colorado River Basin system is also at 50% of capacity.

In addition to environmental stresses, court-ordered pumping restrictions on the State Water Project, designed to protect threatened fish species, went into effect in December 2007, cutting water supplies from the Bay-Delta to 25 million Californians who live from the Bay Area to San Diego. Already this year, pumping restrictions have resulted in the loss of nearly 800,000 acre-feet of water statewide. Of that figure, the Metropolitan Water District of Southern California, from which the County Water Authority purchases the majority of its imported water supplies, has lost approximately 250,000 acre-feet due to pumping restrictions. At this point it is not clear how long these restrictions will be in place, but it is expected that the timing and amount of pumping will continue to restrict southern California water supplies for the next several years.

In light of these actions, the City, in close cooperation with its wholesalers, has continued to evaluate current-year water demand and supply requirements and has taken a leadership role in proactively calling for increased conservation by all its water customers. As a member of the County Water Authority, the City has supported the enhanced $1.8 million public education campaign to increase public awareness regarding the current supply situation. The City has led the call for all customers to cut back usage by 20 gallons per day (10% reduction) as part of the County-wide "20 Gallon Challenge." The Mayor continues to promote and emphasize the critical and ongoing need for increased water conservation in the City. The Mayor has, and will continue, to communicate the need for water conservation and opportunities to reduce water consumption for commercial, industrial and residential water customers throughout the City.

Through September 2008, consumption data indicates that City of San Diego customers have saved 6.3% over prior year's consumption, well short of the 10% goal. While both the Metropolitan Water District and the County Water Authority have reaffirmed their ability to meet projected demands through the end of Calendar Year 2008, it is clear that without additional significant conservation through the remainder of this year, the region's water supply will be increasingly strained.

In response to the supply situation, on July 27, 2008, the Mayor recommended and Council approved the Declaration of Water Emergency under the City's current Emergency Water Regulations. In addition, a Stage 1 – Water Watch – Voluntary Conservation was also enacted to formally request customers voluntarily modify their behaviors to conserve water. The City Water Department has continued to monitor and report on the status of conservation levels being attained. However, should more severe demand restrictions be necessary, the department has reviewed and is recommending amendments to the existing Emergency Water Regulations originally developed in 1991 in order to reflect improved analysis of water demand sensitivities, clarify demand target levels based upon supply availability, improve communication and improve the City's overall demand response program going forward.

<u>County Water Authority Model Drought Ordinance</u>

In March of this year, the County Water Authority (CWA) approved a Model Drought Ordinance designed to improve consistency between its member agencies when responding to regional water supply shortages. This model ordinance specified and clarified behavioral restrictions on the use of water in the event consumer demand reductions are necessary in order to meet expected supplies. The model ordinance included four different and specific demand reduction targets at the 10%, 20%, 40%, and greater than 40% levels which provide a basis for action by the CWA, and provide a framework for county retail water agencies to respond in kind. In

addition, the model ordinance provides language enabling agencies, should they choose, to implement water allocations for properties served by the agency. (See Attachment 2.)

The CWA intended that the model ordinance be considered for adoption by all its member agencies throughout this fall. While agencies currently have existing drought response ordinances in place, the language in these existing ordinances typically do not have specific demand reduction targets and there are inconsistencies between agencies in the behavioral restrictions and "drought stage" responses required of their customers. The CWA is coordinating a more systematic region-wide response in the event supply shortages develop. As of September 30, 11 of 24 regional water agencies had updated their existing drought ordinance, while the remaining agencies were still in the review process.

The Water Department has reviewed the elements incompassed within the Model Ordinance and has considered the impact on customers of the various proposed behavioral restricitions, enforcement mechanisms, and appeal process contained therein. As a result, and in light of the supply situation described above, the following amendments to the existing Water Emergency Regulations are being proposed.

Proposed Amendments to Municipal Code 67.3801 – 67.3811 Emergency Water Regulations

It is recommended that Sections 67.3801 – 67.3811 be replaced in its entirety with the new ordinance language proposed in Attachment 1. While initial desires were to modify and expand on the existing sections, as the review process developed it became clear that an entirely new section would be the best format by which changes in the City's demand response program could be communicated to reviewers, stakeholders, and the public. In addition, given the effort under way to develop more consistent demand response programs County-wide utilizing the Model Ordinance as a framework, staff endeavored to adopt Model Ordinance language where practicable and where such language was consistent with the goals and objectives of the City of San Diego.

The following discussion indentifies the key processes, behavioral restrictions, and/or implementation and enforcement efforts encompassed in the new language which differ from the current Municipal Code. The section numbers indicated refer to the sections found in Attachment 1.

Section 1.0 Declaration of Necessity and Intent

This new section provides general clarification regarding the purpose and general structure of the proposed new ordinance.

Section 2.0 Definitions

This new section provides definition for common terms used within the ordinance and avoids ambiguity present in the existing Municipal Code. "Customer" is more clearly defined, as well as the definition of "drought" expanded to include any shortage in supply based upon expected demands, whether from hydrological, environmental, legislative, or judicial actions.

Section 3.0 Water Waste Prohibitions

This new section provides for year-round water waste prohibitions. Many of the prohibited behaviors identified in this section were previously identified in Muncipal Code Secton 67.3806 – Water Conservation Stages. However, there has been some ambiguity regarding whether or not these behaviors could be enforced under the existing code without a formal declaration of water emergency under Section 67.3804. In order to eliminate this ambiguity, and, more importantly, to minimize wasteful use of water, this new section specifies behaviors that will be prohibited year-round, regardless of formal drought declaration.

Section 4.0 Application

This section provides more detailed language regarding the applicability of the proposed ordinance to water customers. The section specifically clarifies the ordinance's intent as the "furtherance of conservation" and not as a replacement of any federal, state or local statute relating to the protection of water quality or the control of drainage or runoff. In addition, the ability of the Mayor to declare a water emergency in the event of unforeseeable disaster such as earthquake, aqueduct break, or other major disruption is preserved.

Under Section (e), customers of the the MWD's Interim Agricultural Water Program, or other special supply programs, are exempted for the use of water within that program. Also exempted from the proposed ordinance is greywater, recycled water, and water from private wells. This is consistent with the existing Municipal Code.

Section 5.0 Drought Response Level 1 – Drought Watch Condition

This section is the first response level within the proposed new ordinance. Similar in nature to the current "Stage 1 – Water Watch," behavioral restrictions specified at this level are voluntary. However, a key distinction at this, and all drought response levels, is the triggering language for the declaration of this level.

As proposed, a Drought Response Level 1 would occur when there is a reasonable probability that, due to drought, there will be a supply shortage and that a consumer demand of up to 10% reduction is required to ensure that sufficient supplies will be available to meet anticipated demands. This language provides a much clear nexus between a Drought Response Level 1 and the percentage demand reduction necessary, something which is absent in the current municipal code.

It should be noted that the triggering language being proposed differs from the language encompassed in the CWA Model Ordinance. Where the proposed ordinance provides that the Mayor may recommend and, upon Resolution of the City Council, declare a Drougt Response Level 1, the Model Ordinance specifically triggers a Level 1 response upon "Notificaton by CWA to its member agencies" that a demand reduction of 10% is necessary. It was felt that adoption of the Model Ordinance language would unduly limit the discretion of both the Mayor and Council regarding a given demand response level required. As such, the triggering language was re-cast to retain the criteria that needed to be met (i.e. a 10% demand reduction) while placing the authority for such determinaton with the Mayor and Council, not the County Water

Authority. This language modification was carried through to Drought Response Levels 2 – 4 as well.

Changes in previous behavioral restrictions imposed at this level include those associated with the timing of landscape watering and the hand washing of motive equpiment (before 10 a.m. and after 6 p.m.). Also clarified is the requirement to repair all leaks upon discovery or within 5 days of notification by the City of San Diego.

Section 6.0 Drought Response Level 2 – Drought Alert Condition

A Level 2 drought response is triggered when a consumer demand reduction of up to 20% is required. Under a Level 2 response, all Level 1 behaviors are now mandatory. The language triggering a Level 2 response parallels that of Level 1 and the same modifications and distinctions vis-à-vis the Model Ordinance, discussed previously, apply.

Additional restrictions at Level 2 include the limiting of landscape irrigaton to no more than three assigned days per week, June through October, and no more than one assigned day per week November through May. This seasonal deviation represents an attempt to modify watering restrictions based upon the lower water needs of plants and landscape during cooler months. Also, lawn watering is limited to no more than 10 minutes per irrigation system station per assigned day. The watering of trees and shrubs by hand or with the use of a soaker hose shall be limited to no more than 3 days per week. All leaks must be repaired within 72 hours. The operation of ornamental fountains will be prohibited, except to the extent needed for maintenance. Level 2 use restricitions will not apply to commercial growers or nurseries, nor to the watering of golf course tees and greens.

A significant addition in the proposed ordinance at Drought Response Levels 2 – 4 is language enabling the City to establish water allocations per customer account and to provide for penalties for over-consumption. While the details regarding how these potential allocations are established, monitored and enforced are not specified in either the CWA Model Ordinance or proposed amendments, these procedures will be brought before the Council for consideration and adoption as a separate action item.

This new water allocation enabling language was provided in the CWA Model Ordinance as an additional vehicle by which an agency could achieve the demand reduction targets required. It should be noted that the language does not require the establishment of water use allocations but merely provides for the possibility of establishing them should they be necessary and practicable. Also, while the Model Ordinance provides this enabling language at Levels 3 and 4, it is staff's recommendation to include this language in Level 2 as well in order to provide early opportunity to increase the likelihood of meeting demand reduction targets, thereby possibly avoiding the need to move to a higher and more restrictive demand response levels.

Section 7.0 Drought Response Level 3 – Drought Critical Condition

A Level 3 drought response is triggered when a consumer demand reduction of up to 40% is required. This language triggering a Level 3 response parallels that of Levels 1 and 2. The same modifications and distinctions vis-à-vis the Model Ordinance triggering language, discussed previously, apply.

At Level 3, landscape irrigation is reduced to two assigned days per week June through October and one assigned day November through May. The filling of ornamental lakes and ponds is prohibited, except to sustain aquatic life of significant value. Repairs of leaks shall be done within 48 hours. Carwashing is prohibited except at carwashes using re-circulated water. Level 3 use restricitions will not apply to commercial nurseries or growers, or to golf course greens.

Significantly, at Level 3, no new potable water service will be provided, nor temporary or permanent meters issued, except under the following circumstances:

1. a valid building permit has been issued;
2. the project is necessary to protect the public's health, safety or welfare;
3. for fire hydrant meters, only upon the return of an old fire hydrant meter; or
4. the applicant for a new meter provides an enforceable commitment that the new water demands for the project will be offset prior to the provision of new water meter(s).

The water allocation enabling language previously discussed as part of Level 2 response is duplicated in Level 3.

Section 8.0 Drought Response Level 4 Drought Emergency

A drought response Level 4 is triggered upon declaration by the Mayor, and resolution of the Council, that a water shortage emergency exists pursuant to California Water Code Section 350, and upon a declaration that a demand reduction of greater than 40% is required in order to have maximum supplies available to meet demands.

At a Level 4 response, all landscape irrigation is stopped except for hand held watering of trees and shrubs two days a week; the maintenance of landscaping necessary for fire protection and erosion control; the watering of livestock; water for public works projects and actively irrigated environmental mitigation projects; and irrigation necessary for the maintenance of plant materials that are rare or essential to the well being of rare animals. The maintenance of parks and playing fields and golf course greens is also allowed under a two day a week schedule, as previously provided in Level 3.

California Water Code Section 350 provides for the declaration of water shortage emergency whenever the ordinary demands and requirement of water consumers cannot be satisfied without depleting the water supply to the extent that there would be insufficient water for human consumption, sanitation, and fire protection. (See Attachment 3 California Water Code Section 350-359.) This Code provides that, upon declaration of water emergency, the City shall establish such regulations and restrictions on the delivery and consumption of water "as will in the sound discretion of the [City] conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection." It is the intent of the proposed amendments that these Level 4 regulations and restrictions be generally outlined as part of the overall demand response program for the City. However, the proposed language will not prohibit the City from modifying or supplementing water use restrictions proposed in Level 4 should these be appropriate at the time of a Level 4 declaration.

Section 9.0 Procedures for Determination and Notification of Drought Response Level

This section provides the framework for officially notifying the public of the existence of various drought response levels, as well as the effective date of the prohibitions outlined at each level. Generally, the mandatory restrictions provided in Level 2, 3, or 4 will take effect 10 days after the declaration of such a level, with publication of a notice of the resolution declaring such drought response level 5 days after such declaration. Any water allocations established by the City will be effective on the 5th day following the date of such notice, or at such later date as specified in the notice of such allocations.

Section 9.0 also provides that the City may declare an end to a Drought Response Level upon the recommendation of the Mayor and adoption by the Council at any regular or special meeting of the City Council.

Section 10.0 Hardship Variance

The existing Water Emergency Regulations do not specifically provide the ability for a customer to seek a variance from the restricitions outlined. This new Section 10 provides for such a process. The language being proposed outlines the specific provisions under which a customer can receive such a variance. Key provisions require: a finding of "undue hardship" that is disproportionate to the impacts of other similar water customers due to specific and unique circumstances; that the variance does not constitute a special privilege; a finding that no substantial detriment occurs to adjacent properties and will not materially affect the ability of the City to effectuate the purpose of the ordinance nor be detrimental to the public interest.

As proposed, applications for variance must be submitted in writing with all supporting documentation. The Mayor or his/her designee will act on the application within 30 days of submittal, with a written notification to the customer of any action taken.

Section 11.0 Violations and Penalties

The penalties called out in this final section remain substantively unchanged from the existing Municipal Code provisions, which provide for administrative and civil penalties pursuant to the general provisions governing violations of the Municipal Code. As discussed briefly above, penalties associated with water allocation over-consumption will be identified and approved separately as part of Council consideration of any proposed water allocation regulations.

General Considerations Regarding the Proposed Amendments

The water demand response plan encompassed in the proposed amendments represents a clearer and more aggressive approach towards achieving reductions in water consumption in times of supply shortage. While efforts were made to evaluate and mitigate as much as possible the impacts to all City of San Diego water customers, residents, business, and public institutions alike, it is clear that the proposed revisions do not, and in reality, cannot address all the varied end-uses of water which will be impacted. It is the case that most of the anticipated savings in water will come from a reduction in outdoor irrigation and as a result, most of the behavioral restrictions address such use. However, as proposed, there are restrictions that will effect commercial uses as well and the proposed amendments seek to balance the potential reductions

likely to be achieved with the need to ensure all customer classes were contributing towards water reduction targets.

Finally, the proposed ordinance speaks only to behavioral restrictions, with only "enabling language" regarding water use allocations. As a result, these behavioral restrictions proposed do not necessarily ensure that reduction targets can be met. Indeed, while it is likely that water usage will be reduced, one could forsee a customer complying with the provisions of this proposed ordinance and still not achieve the specific level of demand reduction necessary. It is on this basis that the Water Department will provide, under separate report, its recommendation for the establishment of end user water consumption allocations, which can be monitored through the metering and billing processes. These allocations, in conjunction with the behavioral restrictions being proposed, provide the greatest likelihood that demand reduction targets can be achieved and thereby avoid further, more stringent, water use restrictions.

FISCAL CONSIDERATIONS:

None with this action. Implementation of drought response levels will require additional Water Department resources in order to achieve a given level of compliance. The extent of this resource requirement is not known at this time but will be identified as part on any mandatory water restriction or water allocations recommended by the Mayor and approved by Council.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: The Mayor's Office has held community meetings in each Council District to discuss water supply issues impacting the City of San Diego and to discuss general provision of the proposed new water restrictions. Similar meetings have been held with members of the business community and the largest water consumers. Additional public education will occur upon approval of any changes in the existing Municipal Code.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The implementation of the proposed revisions to the City's Emergency Water Regulations will affect all City of San Diego water customers.

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10/9/08

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Attachments:
1. Proposed Ordinance Amending Chapter 6, Article 7 of the San Diego Municipal Code Relating to Water Use Restrictions and Drought Response Program
2. San Diego County Water Authority Model Drought Ordinance
3. California Water Code Section 350 – 359
4. Municipal Code Section 67.3801 – 67.3811