



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED:

REPORT NO: #13-061

ATTENTION:

Natural Resources and Culture Committee
Agenda of

SUBJECT:

Amendment to SDMC 147.04 General Regulations, Plumbing and Mechanical Regulations, Other Water-Conserving Plumbing Standards to require 1.6 gallons per flush toilets per California Senate Bill 407

REFERENCE:

SDMC 147.04
Ordinance No. O-17626, dated March 26, 1991
Ordinance No. O-17712, dated November 25, 1991
Ordinance No. O-18451, effective January 1, 2000
Ordinance No. O-19946, effective June 1, 2010

REQUESTED ACTION: Introduce an Ordinance to amend San Diego Municipal Code Section 147.04 to no longer allow 3.5 gallons per flush (gpf) toilets and instead require toilets that use 1.6 gpf or less.

STAFF RECOMMENDATION: Adopt the proposed Municipal Code amendments.

BACKGROUND:

A Memorandum Decision was issued on March 28, 1991, by U.S. District Court Judge Rudi Brewster in concluding a lawsuit filed by the United States Government, the State of California and the Sierra Club against the City of San Diego (Civil Case # 88-1101-B) over violations of the Clean Water Act. Judge Brewster imposed a \$3 million penalty against the City, \$500,000 of which was to be payable to the U.S. Treasury upon entry of the judgment. The remainder to be paid to the U.S. Treasury on January 1, 1992, unless the City chose to act on an “optional credit project” as an offset of \$2.5 million of the \$3 million fine. The credit project consisted of adopting *permanent* water conservation provisions to the Municipal Code including the installation of water conserving plumbing fixtures in new construction, a plumbing retrofit upon re-sale and bathroom alteration code, and a rebate program that offered financial incentives to residential and commercial customers for installing ultra-low-flush toilets (ULFTs), low-flush urinals, low-flow showerheads and faucet aerators for five years.

The San Diego City Council approved resolutions and ordinances for the “credit project” option, rather than paying \$2.5 million to the U.S. Treasury. By March 1991, the City implemented a Municipal Code which required the installation of ULFTs and other low-flow fixtures in all new construction. Later that same year, the San Diego City Council approved an ULFT Rebate Program that was funded by water and sewer enterprise funds with supplemental funding from

the San Diego County Water Authority (CWA) and the Metropolitan Water District of Southern California (MWD). By January of 1992, the City implemented SDMC 93.0208. This “Retrofit Upon Re-Sale Ordinance,” as it came to be known, was initially administered by the City’s Building Inspection Department. The code was revised in February of 1995, and administration of the code was subsequently transferred to the Water Utilities Department (now Public Utilities Department) to satisfy Judge Brewster’s desire for improved code compliance.

SDMC 93.0208 was further modified during a renumbering effort managed by the City Clerk’s Office in conjunction with the City Attorney’s Office. The Retrofit Ordinance was re-sequenced and renumbered to 147.04 Article 7: Plumbing and Mechanical Regulations, Division 4: Other Water-Conserving Plumbing Standards *[Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000]* Further, an additional Section 147.0410 Water Submeters, was added 4-23-2010 by O-19946 N.S; effective 6-1-2010.

The primary purpose of SDMC 147.03 and 147.04 is to reduce sewer flows and decrease the use of imported, potable water in the City of San Diego by establishing water conservation standards for plumbing fixtures. SDMC 147.04 requires that all buildings (residential and commercial) be certified as having the following Water-Conserving Plumbing Fixtures in place prior to a change in ownership:

- Urinals manufactured to use no more than 1 gpf
- Showerheads manufactured to emit no more than 2.5 gallons per minute (gpm)
- Sink Faucets that emit no more than 2.2 gpm
- Residential Reverse Osmosis Systems equipped with a shut-off valve.
- Ultra-Low-Flush Toilets (ULFTs) – manufactured to use no more than 1.6 gallons per flush (gpf)

However, under the current Code, buildings with existing toilets manufactured to use no more than 3.5 gpf need not be retrofitted. However existing toilets manufactured to use more than 3.5 gpf must be retrofitted with an ULFT that uses 1.6 gpf or less. Modifications intended to reduce the flow of an existing toilet, such as the use of toilet bags, bricks, dams, or alternative flushing devices do not comply with the Code provisions. These code provisions were required by Judge Brewster in his order.

DISCUSSION:

A property seller/transferor (seller) is primarily responsible for ensuring the property is in compliance and for filing a Water Conservation Certificate with the City prior to close of escrow. Since being implemented in 1991, over 128,000 Water Conservation Certificates have been processed as part of SDMC 147.04. The seller provides a \$10 filing fee along with a completed Water Conservation Certificate. If the property already has an existing valid Water Conservation Certificate on file, an additional certificate is not required.

2010 California Plumbing Code

In 2010, the State of California Plumbing Code was modified to more stringent standards for plumbing fixtures. Under Section 402.2 of the California Plumbing Code (CPC) any “water

closet” installed on or after July 1, 2011, must not exceed 1.28 gpf. A 1.28 gpf toilet is called a high-efficiency toilet or HET. This requirement assures that for new construction or replacement, only toilets using 1.28 gpf will be allowed. The City’s Development Services Department (DSD) is aware of the State’s plumbing code changes and recently updated the City’s Municipal Codes to meet these requirements and also implement California Green Building Standards Codes. DSD requested that the Public Utilities Department make a recommendation to either include SDMC 147.04 in their list of codes to be amended or to have the code section deleted. Based on the fact that SDMC 147.04 is out-of-date when compared to State requirements, the Public Utilities Department recommends amending SDMC 147.04 to be consistent with the CPC and Senate Bill 407.

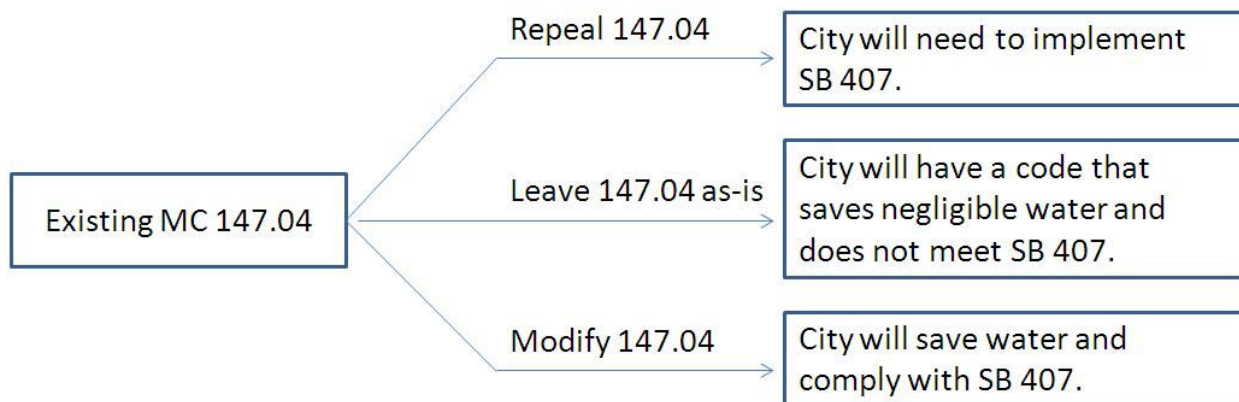
Senate Bill 407

Senate Bill (SB) 407 was chaptered into law on October 11, 2009. The bill specifies that:

- starting on January 1, 2014, for all building alterations or improvements to single-family properties, that water-conserving fixtures replace noncompliant fixtures;
- by January 1, 2017, that all noncompliant plumbing fixtures in single-family properties be replaced by water-conserving plumbing fixtures;
- by January 1, 2019, that all noncompliant plumbing fixtures in multi-family and commercial properties be replaced with water-conserving fixtures.

This bill specifies that any “water closet” using more than 1.6 gpf or urinal using more than 1 gpf, is noncompliant. Thus, this State Bill goes beyond the City’s existing Municipal Code in requiring that all noncompliant plumbing fixtures be retrofitted both in residential and commercial real properties that were available for use or occupancy on or before January 1, 1994. It covers all properties and requires the more efficient 1.6 gpf or less toilets. This means the City of San Diego would need to develop a mechanism to insure that all non-compliant fixtures be replaced with water-conserving fixtures by the above referenced dates.

In spite of that requirement, SB 407 also states that “Any city, county, or city and county that has adopted an ordinance requiring retrofit of noncompliant plumbing fixtures prior to July 1, 2009, shall be exempt from the requirements of this article, so long as the ordinance remains in effect.” This option exists for the City of San Diego. In comparison, SB 407 goes beyond the retrofit requirement as part of change of property ownership. The City’s Municipal Code allows 3.5 gpf toilets to remain, which is in conflict with State requirements, as 3.5 gpf toilets would be considered “noncompliant” under SB 407. Therefore, it is sensible to modify and maintain the City’s existing Municipal Code, rather than repeal the code and then implement the more stringent requirements of SB 407.



The Water Conservation Act of 2009 (Senate Bill x7-7)

The Water Conservation Act of 2009 (also known as SB x7-7) enacted in November 2009, and effective as of January 1, 2010, establishes the State’s intent to achieve a 20% reduction in statewide urban per capita water use in gallons per capita per day (gpcd) by 2020. The City of San Diego’s target gpcd for 2020 is 142 gpcd.

Since 2007, the City’s per capita water use has been declining. The City’s per capita water use in Fiscal Year 2011 (127 gpcd) was already below the 2020 target. However, those reductions appear temporary due to the water use impacts of the recent economic conditions and the Level 2 Drought Alert with mandatory irrigation restrictions of three days per week that were in effect from June 2009 through May 2011. Fiscal Year 2012 figures show a slight rebound to 131 gpcd. One of the best ways to achieve the SBx7-7 target is to require toilets that use 1.28 gpf or 1.6 gpf or less rather than the current allowable standard within the City of San Diego of 3.5 gpf.

RECOMMENDATIONS:

It is recommended that the City modify Section 147.0403, as State CPC standards are more restrictive and assure greater water savings. Data collected via Water Conservation Certificates indicates there may be as many as 42,435 toilets with flush volumes of 3.5 gpf within the City of San Diego. The State of California assumes a natural turnover rate of residential toilets of 4% annually. The City can therefore expect approximately 1,700 3.5 gpf toilets to be replaced each year. When all these toilets are replaced with 1.28 gpf models, the City should realize additional water savings of more than 182 million gallons annually. This water savings will provide significant water usage reductions and will assist the City and the State of California in achieving the SBx7-7 goal of 20% reduction in gallons gpcd by 2020.

It is also recommended that Section 147.0402 be modified to only require Water Conservation Certificates for properties built prior to 1994 per SB 407. SB 407 acknowledges that after 1994, the only fixtures available for purchase flushed using 1.6 gallons or less. The Public Utilities Department would certify as compliant en masse all properties built after January 1, 1994. Data from the County of San Diego’s records indicate there are 263,251 properties within the City of San Diego that were built prior to 1994.

FISCAL CONSIDERATIONS:

The annual operating expenses of administering SDMC 147.04 were: \$131,466 in Fiscal Year 2009, the last year program specific cost information was available (pre SAP era). Estimated costs for FY2011 were \$154,643. In updating the Municipal Code, there would be additional expected expenses, for outreach and education about the Code changes to the real estate community, plumbers, property managers and home owners, as well as retail operators that sell toilets.

ALTERNATIVES:

Apart from modifying the City's Municipal Code to meet SB 407 requirements the City has two other options:

- 1) Take no action and leave SDMC 147.04 as is. SB 407 specifically states "Any city, county, or city and county that has adopted an ordinance requiring retrofit of noncompliant plumbing fixtures prior to July 1, 2009, shall be exempt from the requirements of this article so long as the ordinance remains in effect." However, this is not recommended as the existing SDMC continues to allow 3.5 gpf toilets, which do not meet State standards. Administration of the existing SDMC would be inefficient use of staff and resources administering a code that is out-of-date, and produces negligible water savings.
- 2) Repeal SDMC 147.04 and have the City's Development Services Department implement SB 407 requirements sometime prior to January 2014. This is not recommended as it shifts administration from the Public Utilities Department to the Development Services Department. Further, the City will have difficulty developing a new municipal code that implements and enforces SB 407 and its entrenched dates for complete City-wide plumbing fixture replacement.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Any changes and updates to the Municipal Code will require an ordinance which will be heard before City Council for both a first and second reading. Information about the change will also be published in various local newspapers, City web sites, and through meetings with real estate, escrow community professionals, plumbers, retail stores that sell toilets and environmental organizations.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include:

- Home buyers and sellers
- Commercial property buyers and sellers
- Public Utilities Department customers
- Real Estate Firms, Agents and Escrow Companies

- Environmental Organizations, such as San Diego Coastkeeper, Surfrider San Diego and the Sierra Club

If implemented as recommended, the projected impact on water savings should be an eventual decrease of more than 182 million gallons annually. The projected impact on customers should be a decrease in required water conservation certificate submittals, as the Department would certify as compliant all properties built after January 1, 1994.

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CDR/cdr