

RESOLUTION NO. 15-056

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
ADOPTING REGULATIONS RESTRICTING WATER USE IN COMPLIANCE WITH THE
STATE WATER RESOURCES CONTROL BOARD'S MAY 5, 2015 EMERGENCY WATER
CONSERVATION REGULATIONS

WHEREAS, On January 17, 2014, Governor Edmund G. Brown Jr. issued Proclamation No. 1-17-2014 declaring a State of Emergency to exist in California due to severe drought conditions and calling on Californians to reduce their water usage by 20 percent; and

WHEREAS, On April 25, 2014, the Governor issued an Executive Order declaring a state of emergency to exist in California based upon the drought conditions and strengthening the state's ability to manage water and directed the State Water Resources Control Board (Water Board) under its authority in California Water Code Section 1058.5 to adopt emergency regulations as it deems necessary to address water shortage conditions; and

WHEREAS, On July 15, 2014, the Water Board adopted California Code of Regulations, Title 23, Sections 863, 864, and 865, emergency regulations finding a drought emergency in California and imposing water conservation measures on individuals and water suppliers; and

WHEREAS, On March 17, 2015, the Water Board readopted and expanded the emergency regulations in California Code of Regulations, Title 23, Sections 863, 864, and 865. Section 864 applies to all Californians and prohibits certain activities in promotion of water conservation, many of which are already required by the proposed amended Cupertino Municipal Code 15.32.030; and

WHEREAS, On May 5, 2015 the Water Board adopted 25% mandatory water conservation regulations; and

WHEREAS, The City receives potable water from two urban water suppliers who, in turn, receive the majority of their water from the Santa Clara Valley Water District (Water District). The Water District has requested a 30% voluntary water consumption reduction in response to the drought and their determination of available supplies in the regional water system. The Water Board has set 32% and 20% as water conservation requirements for Cupertino's two urban water suppliers. The City further demonstrates its commitment by responding to Water District's voluntary water consumption reduction request and achieved

an approximate 17% reduction in City operation water use in 2014 relative to 2013 and establishes a 30% City operation reduction requirement for 2015 relative to 2013; and

WHEREAS, The City supports the Water District's efforts to encourage conservation, with an emphasis on outdoor water use, to the extent it may do so within the context the Cupertino Municipal Code; and

WHEREAS, Article XI, Section 7 of the California Constitution declares that a city or county may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, the Council declares that the present year has been critically dry and has been preceded by prior dry years; and

WHEREAS, the Council determines that regulations are necessary to promote further conservation efforts during this critical time of drought; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA"), the City determines that the provisions of this Resolution are exempt as a project intended to protect the environment and natural resources (14 Cal.Regs. 15307, 15308);

The Council of the City of Cupertino RESOLVES as follows:

SECTION 1. Regulations

A. Attachment A, "2015/16 Regulations Restricting Water Use" is hereby adopted in compliance with the Water Board's May 5, 2015 emergency drought regulations (Attachment B) and incorporated.

SECTION 2. Council directs the City Manager to establish an implementation process for 2015/16 Water Use Regulations by August 1, 2015.

SECTION 3. The 2015/16 Regulation Restricting Water Use will remain in effect for the time period specified in Water Board Resolution No. 2015-0013, or as extended by the Water Board.

SECTION 4. Council directs staff to further promote water conservation by coordinating educational outreach with urban water suppliers and the Water District to ensure that Cupertino customers fully understand drought restrictions and receive a consistent conservation message within the City.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 16th day of June, 2015, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
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AYES:	Sinks, Chang, Paul, Vaidhyanathan, Wong
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NOES:	None
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ABSENT:	None
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ABSTAIN:	None
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ATTEST:



Grace Schmidt, City Clerk

APPROVED:



Rod Sinks, Mayor, City of Cupertino

ATTACHMENT A

2015/16 REGULATIONS RESTRICTING WATER USE

Moderate to exceptional drought conditions continue throughout California even though much of the State has received above average rainfall to date, including Santa Clara County. The March 2015 U.S. Drought Monitor reports that most of Santa Clara County is now “Extreme” drought severity, worsened from the previous “Severe” drought stage reported in February 2015. Water stored as snowpack in Sierras is also at a record low 15% of average for April 1st. This impacts the replenishment of groundwater in many areas throughout the State and is the source of about 55% of the water used by residents and businesses of Cupertino.

Implementation of individual regulations shall be carried out at the direction of the City Council, in response to its assessment of local water supply conditions, feasibility, and consumption trends. The Council may, in its discretion, opt to revise, delete or include different elements than those described below, so long as the restrictions implemented serve the overall purpose of reducing local consumption.

Article XI, Section 7 of the California Constitution declares that a city or county may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws. Pursuant to this power, the City Council of the City of Cupertino adopts the following Regulations in addition to any requirements set forth in Cupertino Municipal Code Chapter 15.32. These regulations are effective August 1, 2015 through March 1, 2016, or until repealed by Council, whichever comes first.

Section A:

To prevent the waste and unreasonable use of water and to promote water conservation, the following acts are prohibited, except where necessary to address an immediate health and safety need:

1. The application of potable water to driveways and sidewalks;
2. The use of potable water in a fountain or other decorative water feature, except where the water is part of a re-circulating system;
3. The application of potable water to outdoor landscapes during and within 48 hours after measurable rainfall;
4. The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased;
5. The irrigation with potable water of ornamental turf on public street medians;

6. The irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission and the Department of Housing and Community Development.
7. Operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.
8. Limit outdoor irrigation of ornamental landscapes or turf with potable water to no more than two days per week. Irrigation will be allowed on Monday and Thursday for odd numbered addresses; Monday and Thursday for numberless addresses; and Tuesday and Friday for even numbered addresses.
9. Other restrictions on use of potable water as prescribed from time to time by the Water Board or other governing body or agency.
10. None of the restrictions apply to the use of recycled or grey water. These restrictions also shall not apply to commercial nurseries, golf courses, or other water-dependent businesses, unless specifically included by the Water Board or other governing body or agency.

ATTACHMENT B

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2015-0032**

**TO ADOPT AN EMERGENCY REGULATION FOR STATEWIDE URBAN WATER CONSERVATION
WHEREAS:**

1. On April 25, 2014, Governor Edmund G. Brown Jr. issued an executive order (April 2014 Proclamation) to strengthen the State's ability to manage water and habitat effectively in drought conditions, and called on all Californians to redouble their efforts to conserve water. The April 2014 Proclamation finds that the continuous severe drought conditions present urgent challenges across the State, including water shortages in communities and for agricultural production, increased wildfires, degraded habitat for fish and wildlife, threat of saltwater contamination, and additional water scarcity, if drought conditions continue into 2015. The April 2014 Proclamation also suspends the environmental review required by the California Environmental Quality Act to allow the emergency regulation and other actions to take place as quickly as possible;
2. The April 2014 Proclamation refers to the Governor's Proclamation No. 1-17-2014, issued on January 17, 2014, declaring a drought State of Emergency to exist in California due to severe drought conditions (January 2014 Proclamation). The January 2014 Proclamation finds that dry conditions and lack of precipitation present urgent problems to drinking water supplies and cultivation of crops, which put farmers' long-term investments at risk. The conditions also threaten the survival of animals and plants that rely on California's rivers, including many species in danger of extinction. The January 2014 Proclamation also calls on all Californians to reduce their water usage by 20 percent;
3. On December 22, 2014, in light of the continued lack of rain, Governor Brown issued Executive Order B-28-14, which extends the California Environmental Quality Act suspension through May 31, 2016 for Water Code section 13247 and certain activities identified in the January 2014 and April 2014 proclamations;
4. On April 1, 2015, Governor Brown issued a new Executive Order that directs the State Water Board to impose restrictions on urban water suppliers to achieve a statewide 25 percent reduction in potable urban usage through February 2016; require commercial, industrial, and institutional users to implement water efficiency measures; prohibit irrigation with potable water of ornamental turf in public street medians; and prohibit irrigation with potable water outside newly constructed homes and buildings that is not delivered by drip or microspray systems; along with other directives;
5. Water Code section 1058.5 grants the State Water Board the authority to adopt emergency regulations in certain drought years in order to: "prevent the waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion, of water, to promote water recycling or water conservation, to require curtailment of diversions when water is not available under the diverter's priority of right, or in furtherance of any of the foregoing, to require reporting of diversion or use or the preparation of monitoring reports";
6. On July 15, 2014, the State Water Board adopted an emergency regulation to support water conservation (Resolution No. 2014-0038), and that regulation became effective July 28, 2014 upon approval by the Office of Administrative Law (OAL);

7. On March 17, 2015, the State Water Board amended and readopted the emergency regulation to support water conservation (Resolution No. 2015-0013), which became effective March 27, 2015 upon approval by OAL;

8. The current emergency regulation has supported Californians' water conservation efforts, with over 125 billion gallons saved from August 2014 through March 2015; however, statewide water use is only nine percent less than the same months in 2013. Achieving a 25 percent reduction in use will require even greater conservation efforts across the state. In particular, many communities must dramatically reduce their outdoor water use;

9. In many areas, 50 percent or more of daily water use is for lawns and outdoor landscaping. Outdoor water use is generally discretionary, and many irrigated landscapes will survive while receiving a decreased amount of water;

10. Although urban water suppliers have placed restrictions on outdoor watering, the State Water Board continues to receive reports of excessive outdoor water use;

11. Water conservation is the easiest, most efficient and most cost-effective way to quickly reduce water demand and extend supplies into the next year, providing flexibility for all California communities. Water saved this summer is water available later in the season or next year, reducing the likelihood of even more severe water shortages should the drought continue;

12. Education and enforcement against water waste is a key tool in conservation programs. When conservation becomes a social norm in a community, the need for enforcement is reduced or eliminated;

13. Public information and awareness is critical to achieving conservation goals, and the Save Our Water campaign, run jointly by the Department of Water Resources (DWR) and the Association of California Water Agencies, is an excellent resource for conservation information and messaging that is integral to effective drought response (<http://saveourwater.com>);

14. Many California communities are facing social and economic hardship due to this drought. The rest of us can make adjustments to our water use, including landscape choices that conserve even more water;

15. The California Constitution declares, at article X, section 2, that the water resources of the state must be put to beneficial use in a manner that is reasonable and not wasteful. Relevant to the current drought conditions, the California Supreme Court has clarified that "what may be a reasonable beneficial use, where water is present in excess of all needs, would not be a reasonable beneficial use in an area of great scarcity and great need. What is a beneficial use at one time may, because of changed conditions, become a waste of water at a later time." (*Tulare Dist. v. Lindsay Strathmore Dist.* (1935) 3 Cal.2d 489, 567.) In support of water conservation, the legislature has, through Water Code section 1011, deemed reductions in water use due to conservation as equivalent to reasonable beneficial use of that water. Accordingly, this regulation is in furtherance of article X, section 2 during this drought emergency. This temporary emergency regulation is not to be used in any future administrative or judicial proceedings as evidence or finding of waste and unreasonable use of any individual water user or water supplier subject to this regulation, and are not to affect or otherwise limit any rights to water conserved under applicable law, including without limitation, water conserved consistent with Water Code section 1011;

16. Directive two of the Governor's April 1, 2015 Executive Order directs the State Water Board to consider the relative per capita usage of each urban water supplier's service area and require that areas with high per capita use achieve proportionally greater reductions than areas with low per capita use;

17. On April 7, 2015, the State Water Board issued a draft framework proposing increasing levels of required water reduction based upon residential per capita per day use (R-GPCD) for the proposed regulation, and solicited public comments. The Board received over 300 comments on the framework, primarily relating to the levels of required water reduction;

18. On April 18, the State Water Board issued draft regulatory language for public comment based on the April 7 framework and the comments received. The draft regulatory language reflected careful consideration of all comments including those directed at the levels of required reduction. Again, the Board received close to 300 comments;

19. On April 28, 2015, the State Water Board issued a final version of draft regulatory language for comment, followed on April 29 by a formal public notice that it would consider the adoption of the emergency regulation at the Board's regularly-scheduled May 5 and 6, 2015 public meeting, in accordance with applicable State laws and regulations. The State Water Board also distributed for public review and comment a Finding of Emergency that complies with State laws and regulations;

20. As discussed above, the State Water Board is adopting the emergency regulation because of the continuing emergency drought conditions, the need for prompt action to prevent the waste and unreasonable use of water and to promote conservation, and the specific actions called for in the Governor's April 1, 2015 Executive Order; and

21. Nothing in the regulation or in the enforcement provisions of the regulation precludes a local agency from exercising its authority to adopt more stringent conservation measures. Moreover, the Water Code does not impose a mandatory penalty for violations of the regulation adopted by this resolution, and local agencies retain the enforcement discretion in enforcing the regulation to the extent authorized. Local agencies are encouraged to develop their own progressive enforcement practices to promote conservation.

THEREFORE BE IT RESOLVED THAT:

1. The State Water Board adopts California Code of Regulations, title 23, section 866 and re-adopts sections 863, 864, and 865, as appended to this resolution as an emergency regulation;

2. State Water Board staff will submit the regulation to OAL for final approval;

3. If, during the approval process, State Water Board staff, the State Water Board, or OAL determines that minor corrections to the language of the regulation or supporting documentation are needed for clarity or consistency, the State Water Board Executive Director or the Executive Director's designee may make such changes;

4. This regulation shall remain in effect for 270 days after filing with the Secretary of State unless the State Water Board determines that it is no longer necessary due to changed conditions, or unless the State Water Board renews the regulation due to continued drought conditions as described in Water Code section 1058.5;

5. The State Water Board directs staff to provide the Board with monthly updates on the implementation of the emergency regulation and its effect. These updates shall include information regarding the progress of the Building Standards Commission, Department of Housing and Community Development, and other state agencies in the adoption and implementation of emergency regulations or other requirements that implement increased outdoor irrigation efficiency for new construction. These regulations and other requirements will extend existing efficiency standards for new construction to the outdoor environment and ensure that California's new homes are constructed to meet the growing demand with the most efficient standards;
6. The State Water Board directs staff to condition funding upon compliance with the emergency regulation, to the extent feasible;
7. The State Water Board directs staff to work with DWR and the Save Our Water campaign to disseminate information regarding the emergency regulation; and
8. The State Water Board directs staff to update the electronic reporting portal to include data fields for the new reporting required by the emergency regulation.

THEREFORE BE IT FURTHER RESOLVED THAT:

9. The State Water Board shall work with DWR, the Public Utilities Commission, and other agencies to support urban water suppliers' actions to implement rates and pricing structures to incent additional conservation, as required by directive eight in the Governor's April 1, 2015 Executive Order. The Fourth District Court of Appeal's recent Decision in *Capistrano Taxpayer Association Inc. v. City of San Juan Capistrano* (G048969) does not foreclose the use of conservation-oriented rate structures;
10. The State Water Board calls upon water suppliers to:
 - a. ensure that adequate personnel and financial resources exist to implement conservation requirements not only for 2015, but also for another year of drought should it occur. Water suppliers that face budget shortfalls due to reduced sales should take immediate steps to raise necessary revenues in a way that actively promotes continued conservation;
 - b. expedite implementation of new conservation programs by minimizing internal review periods and utilizing emergency authorities, as appropriate;
 - c. consider the relative water use and conservation practices of their customers and target those with higher water use to achieve proportionally greater reductions than those with low use;
 - d. minimize financial impacts to low-income customers;
 - e. preserve safe indoor water supplies in areas with very low R-GPCD and where necessary to protect public health and safety;
 - f. promote low-water use methods of preserving appropriate defensible space in fire-prone areas, consistent with local fire district requirements;
 - g. educate customers on the preservation of trees;

h. promote on-site reuse of water; and

i. promptly notify staff of the supplier's need for an alternate method of compliance pursuant to resolved paragraph 16.

11. The State Water Board calls upon all businesses within California's travel and tourism sectors to inform visitors of California's dire drought situation and actions visitors should take to conserve water;

12. The State Water Board commends wholesale water agencies that have set aggressive conservation targets for their retail water suppliers;

13. The State Water Board commends water suppliers that have made investments to boost drought-resistant supplies, such as advanced treated recycled water and desalination. Those investments help to make communities more resilient in the face of drought;

14. The State Water Board commends the many water suppliers that have already surpassed their 20x2020 conservation targets. Long-term conservation efforts are critical to maintaining economic and social well-being, especially in light of the impacts of climate change on California's hydrology;

15. During this drought emergency, heightened conservation that extends urban resilience is necessary. The State Water Board's focus is primarily on immediate reductions in outdoor water use. Some short-term conservation efforts, such as landscape conversions and installation of efficient appliances, will also support long-term conservation objectives, and are encouraged wherever possible;

16. The State Water Board recognizes that some commercial and industrial customers, while accounting for a significant portion of total use in a service area, have already taken steps to significantly reduce their water consumption and cannot further reduce their use without substantial impacts. However, the Board also recognizes that in many areas there are significant opportunities for reductions in water use by industries and commercial enterprises that have yet to take action, especially those with large areas of non-functional turf. The Board directs staff to respond promptly upon receipt of any request for alternate enforceable methods of compliance. If the supplier believes the conservation standard is unachievable due to firm commercial and industrial water use and residential use reductions that would affect public health and safety, it should provide any supporting information or documentation for an alternate method of compliance; and

17. Some water suppliers have called for further refinement of the tiers to reflect a range of factors that contribute to water use, including but not limited to temperature, lot size, and income. Others have called for an approach that provides greater recognition for early investments in conservation, the development of local, drought resistant water supplies, and health and safety needs. These suggestions and many others are important considerations in the development of a more comprehensive, and long term, conservation framework. The State Water Board directs staff to work with stakeholders on a thoughtful process to devise options for extended and expanded emergency regulations should the drought continue into 2016.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 5, 2015.

AYE: Chair Felicia Marcus
Vice Chair Frances Spivy-Weber
Board Member Tam M. Doduc
Board Member Steven Moore
Board Member Dorene D'Adamo
NAY: None
ABSENT: None
ABSTAIN: None
Jeanine Townsend
Clerk to the Board 1

ADOPTED TEXT OF EMERGENCY REGULATION

Article 22.5. Drought Emergency Water Conservation.

Sec. 863. Findings of Drought Emergency.

(a) The State Water Resources Control Board finds as follows:

- (1) On January 17, 2014, the Governor issued a proclamation of a state of emergency under the California Emergency Services Act based on drought conditions;
- (2) On April 25, 2014, the Governor issued a proclamation of a continued state of emergency under the California Emergency Services Act based on continued drought conditions;
- (3) On April 1, 2015, the Governor issued an Executive Order that, in part, directs the State Board to impose restrictions on water suppliers to achieve a statewide 25 percent reduction in potable urban usage through February, 2016; require commercial, industrial, and institutional users to implement water efficiency measures; prohibit irrigation with potable water of ornamental turf in public street medians; and prohibit irrigation with potable water outside newly constructed homes and buildings that is not delivered by drip or microspray systems;
- (4) The drought conditions that formed the basis of the Governor's emergency proclamations continue to exist;
- (5) The present year is critically dry and has been immediately preceded by two or more consecutive below normal, dry, or critically dry years; and
- (6) The drought conditions will likely continue for the foreseeable future and additional action by both the State Water Resources Control Board and local water suppliers will likely be necessary to prevent waste and unreasonable use of water and to further promote conservation.

Authority: Section 1058.5, Water Code.

References: Cal. Const., Art., X § 2; Sections 102, 104, 105, and 275, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 864. End-User Requirements in Promotion of Water Conservation.

(a) To prevent the waste and unreasonable use of water and to promote water conservation, each of the following actions is prohibited, except where necessary to address an immediate health and safety need or to comply with a term or condition in a permit issued by a state or federal agency:

- (1) The application of potable water to outdoor landscapes in a manner that causes runoff such that water flows onto adjacent property, non-irrigated areas, private and public walkways, roadways, parking lots, or structures;
- (2) The use of a hose that dispenses potable water to wash a motor vehicle, except where the hose is fitted with a shut-off nozzle or device attached to it that causes it to cease dispensing water immediately when not in use;
- (3) The application of potable water to driveways and sidewalks; and
- (4) The use of potable water in a fountain or other decorative water feature, except where the water is part of a recirculating system;
- (5) The application of potable water to outdoor landscapes during and within 48 hours after measurable rainfall;
- (6) The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased;
- (7) The irrigation with potable water of ornamental turf on public street medians; and

(8) The irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission and the Department of Housing and Community Development.

(a) To promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.

(b) Immediately upon this subdivision taking effect, all commercial, industrial and institutional properties that use a water supply, any portion of which is from a source other than a water supplier subject to section 865, shall either:

(1) Limit outdoor irrigation of ornamental landscapes or turf with potable water to no more than two days per week; or

(2) Reduce potable water usage supplied by sources other than a water supplier by 25 percent for the months of June 2015 through February 2016 as compared to the amount used from those sources for the same months in 2013.

(c) The taking of any action prohibited in subdivision (a) or the failure to take any action required in subdivisions (b) or (c), is an infraction, punishable by a fine of up to five hundred dollars (\$500) for each day in which the violation occurs. The fine for the infraction is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

Authority: Section 1058.5, Water Code.

References: Cal. Const., Art., X § 2; Sections 102, 104, 105, 275, 350, and 10617, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 865. Mandatory Actions by Water Suppliers.

(a) As used in this section:

(1) "Distributor of a public water supply" has the same meaning as under section 350 of the Water Code, except it does not refer to such distributors when they are functioning solely in a wholesale capacity, but does apply to distributors when they are functioning in a retail capacity.

(2) "R-GPCD" means residential gallons per capita per day.

(3) "Total potable water production" means all potable water that enters into a water supplier's distribution system, excluding water placed into storage and not withdrawn for use during the reporting period, or water exported outside the supplier's service area.

(4) "Urban water supplier" means a supplier that meets the definition set forth in Water Code section 10617, except it does not refer to suppliers when they are functioning solely in a wholesale capacity, but does apply to suppliers when they are functioning in a retail capacity.

(b) In furtherance of the promotion of water conservation each urban water supplier shall:

(1) Provide prompt notice to a customer whenever the supplier obtains information that indicates that a leak may exist within the end-user's exclusive control.

(2) Prepare and submit to the State Water Resources Control Board by the 15th of each month a monitoring report on forms provided by the Board. The monitoring report shall include the amount of potable water the urban water supplier produced, including water provided by a wholesaler, in the preceding calendar month and shall compare that amount to the amount produced in the same calendar month in 2013. The monitoring report shall specify the population served by the urban water supplier, the percentage of water produced that is used for the residential sector, descriptive statistics on water conservation compliance and enforcement efforts, and the number of days that outdoor irrigation is allowed, and monthly commercial, industrial and institutional sector use. The monitoring report shall also estimate the gallons of water per person per day used by the residential customers it serves.

- (c) (1) To prevent the waste and unreasonable use of water and to meet the requirements of the Governor's April 1, 2015 Executive Order, each urban water supplier shall reduce its total potable water production by the percentage identified as its conservation standard in this subdivision. Each urban water supplier's conservation standard considers its service area's relative per capita water usage.
- (2) Each urban water supplier whose source of supply does not include groundwater or water imported from outside the hydrologic region in which the water supplier is located, and that has a minimum of four years' reserved supply available may, submit to the Executive Director for approval a request that, in lieu of the reduction that would otherwise be required under paragraphs (3) through (10), the urban water supplier shall reduce its total potable water production by 4 percent for each month as compared to the amount used in the same month in 2013. Any such request shall be accompanied by information showing that the supplier's sources of supply do not include groundwater or water imported from outside the hydrologic region and that the supplier has a minimum of four years' reserved supply available.
- (3) Each urban water supplier whose average July-September 2014 R-GPCD was less than 65 shall reduce its total potable water production by 8 percent for each month as compared to the amount used in the same month in 2013.
- (4) Each urban water supplier whose average July-September 2014 R-GPCD was 65 or more but less than 80 shall reduce its total potable water production by 12 percent for each month as compared to the amount used in the same month in 2013.
- (5) Each urban water supplier whose average July-September 2014 R-GPCD was 80 or more but less than 95 shall reduce its total potable water production by 16 percent for each month as compared to the amount used in the same month in 2013.
- (6) Each urban water supplier whose average July-September 2014 R-GPCD was 95 or more but less than 110 shall reduce its total potable water production by 20 percent for each month as compared to the amount used in the same month in 2013.
- (7) Each urban water supplier whose average July-September 2014 R-GPCD was 110 or more but less than 130 shall reduce its total potable water production by 24 percent for each month as compared to the amount used in the same month in 2013.
- (8) Each urban water supplier whose average July-September 2014 R-GPCD was 130 or more but less than 170 shall reduce its total potable water production by 28 percent for each month as compared to the amount used in the same month in 2013.
- (9) Each urban water supplier whose average July-September 2014 R-GPCD was 170 or more but less than 215 shall reduce its total potable water production by 32 percent for each month as compared to the amount used in the same month in 2013.
- (10) Each urban water supplier whose average July-September 2014 R-GPCD was 215 or more shall reduce its total potable water production by 36 percent for each month as compared to the amount used in the same month in 2013.
- (d) (1) Beginning June 1, 2015, each urban water supplier shall comply with the conservation standard specified in subdivision (c).
- (2) Compliance with the requirements of this subdivision shall be measured monthly and assessed on a cumulative basis.
- (e) (1) Each urban water supplier that provides potable water for commercial agricultural use meeting the definition of Government Code section 51201, subdivision (b), may subtract the amount of water provided for commercial agricultural use from its potable water production total, provided that any urban water supplier that subtracts any water provided for commercial agricultural use from its total potable water production shall:

(A) Impose reductions determined locally appropriate by the urban water supplier, after considering the applicable urban water supplier conservation standard specified in subdivision (c), for commercial agricultural users meeting the definition of Government Code section 51201, subdivision (b) served by the supplier;

(B) Report its total potable water production pursuant to subdivision (b)(2) of this section, the total amount of water supplied for commercial agricultural use, and shall identify the reduction imposed on its commercial agricultural users and each recipient of potable water for commercial agricultural use;

(C) Certify that the agricultural uses it serves meet the definition of Government Code section 51201, subdivision (b); and

(D) Comply with the Agricultural Water Management Plan requirement of paragraph 12 of the April 1, 2015 Executive Order for all commercial agricultural water served by the supplier that is subtracted from its total potable water production. (2) Submitting any information pursuant to subdivision (e)(1)(B) or (C) of this section that is found to be materially false by the board is a violation of this regulation, punishable by civil liability of up to five hundred dollars (\$500) for each day in which the violation occurs. Every day that the error goes uncorrected constitutes a separate violation. Civil liability for the violation is in addition to, and does not supersede or limit, any other remedies, civil or criminal.

(f) (1) To prevent waste and unreasonable use of water and to promote water conservation, each distributor of a public water supply that is not an urban water supplier shall take one or more of the following actions:

(A) Limit outdoor irrigation of ornamental landscapes or turf with potable water by the persons it serves to no more than two days per week; or

(B) Reduce by 25 percent reduction its total potable water production relative to the amount produced in 2013.

(2) Each distributor of a public water supply that is not an urban water supplier shall submit a report by December 15, 2015, on a form provided by the Board, that either confirms compliance with subdivision

(f)(1)(A) or identifies total potable water production, by month, from June through November, 2015, and total potable water production, by month, for June through November 2013.

Authority: Section 1058.5, Water Code.

References: Cal. Const., Art., X § 2; Sections 102, 104, 105, 275, 350, 1846, 10617 and 10632, Water Code; *Light v. State Water Resources Control Board* (2014) 226 Cal.App.4th 1463.

Sec. 866. Additional Conservation Tools.

(a) (1) To prevent the waste and unreasonable use of water and to promote conservation, when a water supplier does not meet its conservation standard required by section 865 the Executive Director, or the Executive Director's designee, may issue conservation orders requiring additional actions by the supplier to come into compliance with its conservation standard.

(2) A decision or order issued under this article by the board or an officer or employee of the board is subject to reconsideration under article 2 (commencing with section 1122) of chapter 4 of part 1 of division 2 of the California Water Code.

(b) The Executive Director, or his designee, may issue an informational order requiring water suppliers, or commercial, industrial or institutional properties that receive any portion of their supply from a source other than a water supplier subject to section 865, to submit additional information relating to water production, water use or water conservation. The failure to provide the information requested within 30 days or any additional time extension granted is a violation subject to civil liability of up to \$500 per day for each day the violation continues pursuant to Water Code section 1846.

Authority: Section 1058.5, Water Code.

References: Cal. Const., Art., X § 2; Sections 100, 102, 104, 105, 174, 186, 187, 275, 350, 1051, 1122, 1123, 1825, 1846, 10617 and 10632, Water Code; *Light v. State Water*

Resources Control Board (2014) 226 Cal.App.4th 1463.

RESOLUTION NO. 15-057

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND
ADMINISTER A MEMORANDUM OF UNDERSTANDING WITH THE SANTA CLARA
VALLEY WATER DISTRICT FOR A LANDSCAPE CONVERSION REBATE PROGRAM
AND APPROVE AN AMENDMENT TO FY15/16 ANNUAL OPERATING BUDGET TO
APPROPRIATE \$75,000

WHEREAS, the City of Cupertino, a municipal corporation and general law city duly organized and existing under and pursuant to the laws of the State of California (City) is authorized to enter contracts on its behalf and for the benefit of the City; and

WHEREAS, the reasons supporting the entrance of the City into the Memorandum of Understanding with the Santa Clara Valley Water District for Conservation Programs is set forth in detail in the staff reports and hearings for June 2, 2015 and June 16, 2015 Council meetings and are incorporated herein by reference; and

WHEREAS, the consideration by the City Council of the adoption of this Resolution has been duly noticed pursuant to applicable laws and Council provided members of the public an opportunity to comment and be heard and considered all testimony and evidence in connection with the adoption of this Resolution; and

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA"), the City determines that the provisions of this Resolution are exempt as a project intended to protect the environment and natural resources (14 Cal.Regs. 15307, 15308); and

WHEREAS, the City Council determines that the adoption of this Resolution is in the public interest.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES HEREBY FIND, DETERMINE, RESOLVE, AND ORDER AS FOLLOWS:

Section 1. Recitals. The City Council does hereby find, determine, and resolve that the foregoing recitals are true and correct.

Section 2. Approval and Authorization. The City Council does further resolve that:

- a. The Memorandum of Understanding with the Santa Clara Valley Water District (MOU) for water conservation programs in substantially in the form attached hereto as Exhibit "A" is approved;
- b. The City Manager is delegated the authority and is authorized to negotiate and execute the MOU in substantially in the form as attached Exhibit "A", provided that the funds do not exceed seventy five thousand dollars (\$75,000.00).

Section 3: Effective date: This Resolution is effective immediately upon adoption.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 16th day of June, 2015, by the following vote:

<u>Vote</u>	<u>Members of the City Council</u>
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AYES:	Sinks, Chang, Paul, Vaidhyanathan, Wong
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NOES:	None
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ABSENT:	None
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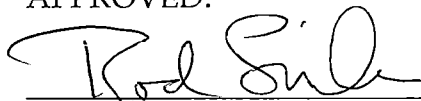
ABSTAIN:	None
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ATTEST:



Grace Schmidt, City Clerk

APPROVED:



Rod Sinks, Mayor, City of Cupertino

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE SANTA CLARA VALLEY WATER DISTRICT AND THE
CITY OF CUPERTINO FOR A LANDSCAPE CONVERSION REBATE
PROGRAM**

This MEMORANDUM OF UNDERSTANDING (MOU) between the Santa Clara Valley Water District, an Independent special district created by the California Legislature (hereinafter referred to as WATER DISTRICT) and the City of Cupertino (hereinafter referred to as CUPERTINO) sets forth the respective roles of the WATER DISTRICT and CUPERTINO in regard to the WATER DISTRICT'S WATER CONSERVATION LANDSCAPE CONVERSION REBATE PROGRAM (hereinafter referred to as PROGRAM) is made and entered into this June 16, 2015.

RECITALS

WHEREAS the PROGRAM involves providing Water Conservation Landscape Conversion Rebates for properties located within CUPERTINO's jurisdiction; and

WHEREAS the PROGRAM includes the Landscape Conversion Rebate Program for Water Efficient Landscape Conversions; and

WHEREAS the PROGRAM is an appropriate measure for the Best Management Practices addressed in the California Urban Water Conservation Council's MOU regarding Urban Water Conservation in California; and

WHEREAS the WATER DISTRICT has established the PROGRAM, in part, to provide financial incentive to remove existing turf lawns; and

WHEREAS CUPERTINO wishes to participate in the PROGRAM and provide additional incentives for Cupertino residents to remove existing lawns.

NOW, THEREFORE, in consideration of the recitals and mutual obligations of the parties expressed in this MOU, WATER DISTRICT and CUPERTINO agree as follows:

1. WATER DISTRICT'S RESPONSIBILITIES

- a) Administration of the PROGRAM, which administration shall include the creation of the PROGRAM brochures and applications.

- b) Collection and analysis of data to determine water savings.
- c) Administration of all PROGRAM funds including, but not limited to:
 - Processing the payment of the amounts set forth in 2.b. below, to eligible persons residing in CUPERTINO ("ELIGIBLE RESIDENTS). This supplemental rebate amount shall be in addition to the customary amounts paid by the WATER DISTRICT for the PROGRAM.
 - Payment of standard PROGRAM amounts to ELIGIBLE RESIDENTS within 8-12 weeks of receipt of CUPERTINO residential applicant's request.
- d) Invoicing CUPERTINO, on a quarterly basis.
- e) Work cooperatively with CUPERTINO in appropriately advertising the PROGRAM to targeted customers.

2. CUPERTINO'S RESPONSIBILITIES

- a) Work cooperatively with WATER DISTRICT in appropriately advertising the PROGRAM to the targeted customers.
- b) CUPERTINO must pay WATER DISTRICT as set forth below for each activity performed by the WATER DISTRICT in the CUPERTINO service area:
 - Up to \$1.00 per each square foot of turf removed per qualified residential and for commercial rebate, up to \$1,000 per residential and up to \$10,000 per commercial site, as per the District's Landscape Rebate Program requirements.
- c) CUPERTINO's obligation to pay for the PROGRAM activities is capped at a total maximum of \$75,000.
- d) Make payment to WATER DISTRICT within 60 days of receipt of Invoice from WATER DISTRICT.

3. HOLD HARMLESS AND LIABILITY

Each Party ("Indemnifying Party") agrees to indemnify, defend at its own expense, including attorneys' fees, and hold harmless the other Party ("Indemnified Party") from and against all claims, costs, penalties, causes of action, demands, losses and liability of any nature

whatsoever, including but not limited to liability for bodily injury, sickness, disease or death, property damage (including loss of use) or violation of law, caused by or arising out of or related to the negligence, or willful misconduct of that Indemnifying Party, its officers or employees, or any other agent acting pursuant to this MOU.

4. DOCUMENT REVIEW

WATER DISTRICT and CUPERTINO will, upon reasonable advance written notice, make available for inspection to the other party records, books and other documents relating to the PROGRAMS.

5. TERM

The term of the MOU is from July 1, 2015 to June 30, 2016, or until funds are depleted, whichever occurs first. The term of the MOU may be extended by mutual consent of the Parties. This MOU shall be contingent upon approval of program funding each fiscal year by both the WATER DISTRICT'S Chief Executive Officer and by CUPERTINO.

6. NOTICE

Any notice, payment, credit or instrument required or permitted to be given hereunder shall be deemed received upon personal delivery or five (5) days after deposit in any United States mail depository, first class postage prepaid and addressed to the party for whom intended; or on the same day as a facsimile transmission is sent as long as original is placed in the mail on the same day.

If to WATER DISTRICT:

Santa Clara Valley Water District
5760 Almaden Expressway
San Jose, CA 96118
Attn: Conservation Programs

If to CUPERTINO:

Public Works Department
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014
Attn: Environmental Programs

Either party may change such address by notice given to the other party as provided in this Section 6.

7. AMENDMENTS

The MOU may only be amended by written agreement executed by both parties.

8. ASSIGNMENT

Neither party is allowed to assign, sublet, or transfer this MOU or any of the rights or interests in this MOU without the written consent of the other party.

9. SEVERABILITY

The partial or total invalidity of one or more parts of this MOU will not affect the intent or validity or remaining parts of this MOU.

10. GOVERNING LAW

This MOU is a contract under the laws of the State of California and for all purposes must be interpreted in accordance with such laws.

11. TERMINATION OF AGREEMENT

This MOU may be terminated by either party hereto for any reason upon thirty (30) days written notice to the other Party.

12. SIGNATURES

The individuals executing this MOU represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

In WITNESS WHEREOF, the parties have executed this MOU as of the effective date.

APPROVED AS TO FORM:

Carol Karode
City Attorney
City of Cupertino

David Brandt
City Manager
City of Cupertino

SANTA CLARA VALLEY WATER DISTRICT

An independent special district created by the California Legislature

Anthony Fulcher
Sr. Assistant District Counsel
Santa Clara Valley Water District