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Council Action and Executive Summary

Item # 18 Ordinance/Resolution# 2722

For Meeting of July 21, 2014 (Ordinance First Reading Date)

For Meeting of August 18, 2014 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☒ LEGISLATIVE ☐ ADMINISTRATIVE

TITLE: AN ORDINANCE REPEALING LCMC 1997, CHAPTER 28, ARTICLE VII, KNOWN AS THE WATER CONSERVATION ORDINANCE, IN ITS ENTIRETY AND ENACTING A NEW LCMC 1997, CHAPTER 28, TO ALSO BE KNOWN AS THE WATER CONSERVATION ORDINANCE.

PURPOSE(S) OF ACTION:

To repeal and replace an ordinance.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Marcia B. Driggers	**Department/Section:** Legal/City Attorney	**Phone:** 541-2128
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In 1999, the City enacted the Water Conservation Ordinance ("existing Ordinance") which was codified as LCMC 1997, Sections 28-301 through 28-307 and, thereafter, amended the existing Ordinance to provide for a drought and water emergency response plan and plan restrictions or prohibitions, which amendments were codified as LCMC 1997, Sections 28-308 and 28-309. Rather than further amending the existing Ordinance, the Utilities Department with the support of the Utilities Board and the City Attorney's office proposes to replace the existing Ordinance with a revised and simplified version.

The primary purposes of the new ordinance are twofold:

First, the revisions will enable the Utilities Board to develop regulations to implement and enforce the new ordinance. At its request, the Utilities Board was provided with a copy of proposed regulations for a non-action review at its June 10th Board meeting. A copy of those draft regulations are attached as support information to give the Council an idea of what regulations may be approved by the Utilities Board at a subsequent Board meeting if the new ordinance is approved. The proposed regulations will closely track the existing restrictions and exceptions to enforcement currently set forth in LCMC 1997, Sections 28-303, 28-304 and 28-306. Enabling the Utilities Board to develop implementing and enforcing regulations will provide

(Continue on additional sheets as required)

the flexibility to adapt without having to formally amend an ordinance as is now required. The Utilities Department anticipates that the New Mexico Office of the State Engineer may be requiring more stringent water conservation requirements in response to pending litigation and the on-going regional drought.

Secondly, the revisions will enable the Utilities Board to implement an alternative approach to citations currently issued by Codes Enforcement officers and Municipal Court enforcement in order to reduce water wasting. Repeated violations of water wasting prohibitions continue to occur in part because the existing Ordinance has not been consistently or effectively enforced. The proposed regulations will provide an alternative compliance approach for reporting and observing violations, and with compliance staff contacting and educating violators by suggesting compliance options. If a compliance option is not implemented and violations continue to occur, administrative fees may be assessed on the responsible party's water bill. The assessment may be appealed to the Utilities Board.

The following list compares and contrasts the existing Ordinance sections with the new ordinance sections:

1. Current LCMC 1997, Section 28-301 entitled "Title; purpose": No changes are proposed.

2. Current LCMC 1997, Section 28-302 entitled "Applicability": This section has been substantially rewritten.

3. Current LCMC 1997, Section 28-303 entitled "Outdoor vegetation watering restrictions": This section has been deleted and those restrictions will become regulations to be approved and possibly modified by the Utilities Board.

4. Current LCMC 1997, Section 28-304 entitled "Water wasting restrictions": This section has been deleted and those restrictions will become regulations to be approved and possibly modified by the Utilities Board. A new LCMC 1997, Section 28-304 entitled "Regulations" directs the Utilities Board to develop regulations to implement and enforce the new Ordinance.

5. Current LCMC 1997, Section 28-305 entitled "Penalty; injunctive relief authorized": This section will be entitled "Municipal Court Enforcement" to differentiate it from the administrative fee assessments that are likely to be approved by the Utilities Board. Some provisions of current LCMC 1997, Section 28-305 have been transferred to new LCMC 1997, Section 28-302.

6. Current LCMC 1997, Section 28-306 entitled "Exceptions to enforcement": This section has been deleted and those exceptions will become regulations to be approved and possibly modified by the Utilities Board.

7. Current LCMC 1997, Section 28-307 entitled "Water Conservation Plan": This section has been reworded and will become new LCMC 1997, Section 28-303 also entitled "Water Conservation Plan".

(Continue on additional sheets as required)

8. Current LCMC 1997, Section 28-308 entitled "Drought and water emergency response plan": This section has been re-worded and will become new LCMC 1997, Section 28-306 also entitled "Drought and water emergency response plan".

9. Current LCMC 1997, Section 28-309 entitled "Plan restrictions or prohibitions": This section has been deleted. Some of its provisions have been transferred to new LCMC 1997, Section 28-306.

The Utilities Board recommended that the City Council repeal and replace the existing Water Conservation Ordinance in Board Resolution No. 13-14-032.

SUPPORT INFORMATION:

1. Ordinance.
2. Exhibit "A", Proposed new ordinance: LCMC 1997, Chapter 28, Article VII, Sections 28-301 through 28-306 to be known as the Water Conservation Ordinance.
3. Attachment "A", Existing Ordinance: LCMC 1997, Sections 28-301 through 28-309 known as the Water Conservation Ordinance.
4. Attachment "B", proposed Water Conservation Regulations that may be approved and possibly amended by the Utilities Board.

SOURCE OF FUNDING:

Is this action already budgeted?			
N/A	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
N/A	Yes	☐	Funds will be deposited into this fund: _____ in the amount of $_____ for FY__.
	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

(Continue on additional sheets as required)

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this action will approve the ordinance repealing and replacing LCMC 1997 Chapter 28, Article VII, and enact a new Water Conservation Ordinance.
2. Vote "No"; this action will retain existing LCMC 1997, Chapter 28, Article VII.
3. Vote to "Amend"; this action would allow the City Council to modify the provisions of the new LCMC 1997 Chapter 28, Article VII.
4. Vote to "Table"; this action would allow the City Council to table or postpone consideration of the new ordinance and to direct staff accordingly.

REFERENCE INFORMATION:

The resolution and/or ordinance listed below are only for reference and are not included as attachments or exhibits.

N/A

(Continue on additional sheets as required)

COUNCIL BILL NO. 15-003
ORDINANCE NO. 2722

AN ORDINANCE REPEALING LCMC 1997, CHAPTER 28, ARTICLE VII, KNOWN AS THE WATER CONSERVATION ORDINANCE, IN ITS ENTIRETY AND ENACTING A NEW LCMC 1997, CHAPTER 28, TO ALSO BE KNOWN AS THE WATER CONSERVATION ORDINANCE.

The City Council is informed that:

WHEREAS, in 1999 the City enacted the Water Conservation Ordinance ("existing Ordinance") which was codified as LCMC 1997, Sections 28-301 through 28-307 and, thereafter, amended the existing Ordinance to provide for a drought and water emergency response plan and plan restrictions or prohibitions, which amendments were codified as LCMC 1997, Sections 28-308 and 28-309. Rather than further amending the existing Ordinance, the Utilities Department with the support of the Utilities Board and the City Attorney's office proposes to replace the existing Ordinance with a revised and simplified version; and

WHEREAS, the primary purposes of the new ordinance are twofold. First, the revisions will enable the Utilities Board to develop regulations to implement and enforce the new ordinance. Secondly, the revisions will enable the Utilities Board to implement an alternative approach to citations currently issued by Codes Enforcement officers and Municipal Court enforcement in order to reduce water wasting; and

WHEREAS, the Utilities Board recommended that the City Council repeal and replace the existing Water Conservation Ordinance in Board Resolution No. 13-14-032.

NOW, THEREFORE, Be it ordained by the governing body of the City of Las Cruces:

(I)

THAT LCMC 1997, Chapter 28, Article VII, known as the Water Conservation Ordinance, is hereby repealed in its entirety.

(II)

THAT LCMC 1997, Chapter 28, Article VII also to be known as the Water Conservation Ordinance, as shown in Exhibit "A" attached hereto and made part of this Ordinance, is hereby enacted.

(III)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED on this _____ day of _____, 2014.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

VOTE:
Mayor Miyagishima: ____
Councillor Silva: ____
Councillor Smith: ____
Councillor Pedroza: ____
Councillor Small: ____
Councillor Sorg: ____
Councillor Levatino: ____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

Asst. City Attorney

Sec. 28-301. Title; purpose.

This article shall be known as the Water Conservation Ordinance. This article shall both require and encourage all users of water within the City limits and all users of City-provided water outside of the City limits to reduce water consumption and waste.

Sec. 28-302. Applicability.

(a) The Water Conservation Ordinance and regulations developed to implement and enforce the Water Conservation Ordinance, and the Drought and Water Emergency Response Plan and regulations developed to implement and enforce the Drought and Water Emergency Response Plan as referenced and authorized in this article shall apply to all users of City-provided water and to all users within the City limits of water provided by water utility companies franchised by the City; however, any regulations that may be developed by the Utilities Board as provided in Section 28-304 that pertain to public safety, such as prohibiting water flowing onto public rights of way, shall apply to all water users within the City limits.

(b) Outdoor vegetation watering regulations that may be developed by the Utilities Board shall not apply to users of irrigation water provided by Elephant Butte Irrigation District; and shall not apply to users of water provided by mutual domestic water companies except when the City declares a Level II or Level III water emergency as provided in Section 28-306.

(c) A "person" who can be cited for violating the Water Conservation Ordinance, regulations developed to implement and enforce the Water Conservation Ordinance, the Drought and Water Emergency Response Plan or regulations developed to implement and enforce the Drought and Water Emergency Response Plan may be a property owner; the water utility customer of record for the property; a tenant or any person over the age of 18 years residing at or occupying the property; or an officer, manager or general agent of the property owner or of the business located on the property.

(d) A person cited for violating the Water Conservation Ordinance, regulations developed to implement and enforce the Water Conservation Ordinance, the Drought and Water Emergency Response Plan or regulations developed to implement and enforce the Drought and Water Emergency Response Plan may still be held liable regardless of the conduct or lack of conduct of an individual or business performing or responsible for performing landscaping or yard maintenance services on the property, or regardless of the effect of an automated water sprinkler or delivery system on the property.

Sec. 28-303. Water conservation plan.

The Utilities Board shall submit a Water Conservation Plan by separate Utilities Board resolution for acceptance and review by the New Mexico Office of the State Engineer. The Utilities Board shall update the Water Conservation Plan as often as required to maintain compliance with the City's water right permits.

Sec. 28-304. Regulations.

(a) The Utilities Board shall develop and approve regulations to implement and enforce the Water Conservation Ordinance by separate Utilities Board Resolution at a duly noticed public meeting. The regulations shall be posted on the City's Utilities Department website.

(b) A violation of these regulations shall be deemed to be a violation of the Las Cruces Municipal Code as authorized in Section 1-10(a).

Sec. 28-305. Municipal Court enforcement.

(a) Any person who is convicted in Municipal Court of violating any section of this article or any regulation developed by the Utilities Board as authorized in Section 23-304 shall be fined as follows based on the type of property and on the number of prior convictions.

Type of property:	1st conviction:	2nd conviction:	3rd and subsequent convictions:
Residential property:	$50.00	$100.00	$250.00
Non-residential property	$100.00	$250.00	$500.00

(b) With respect to violations that are continuous in time, each day that the violation continues is a separate offense.

(c) Violations that are continuous in time may be abated by injunctive relief. The imposition of a criminal penalty does not prevent equitable relief.

Sec. 28-306. Drought and water emergency response plan.

(a) The City has enacted a Drought and Water Emergency Response Plan by separate City Council resolution to protect the public health, safety or welfare or to preserve the municipal water supply. The Utilities Board shall update the response plan as recommended by Utilities Staff to further protect the public health, safety or welfare or to further preserve the municipal water supply.

(b) The response plan shall minimally provide for the following:

(1) Definitions of technical words used in the plan;

(2) Measurable criteria for determining the severity of the water emergency;

(3) Implementation authority for each level of water emergency;

(4) Response measures for each level of water emergency;

(5) Termination of response measures; and

(6) Variances.

(c) The purpose of the Response Plan and subsequent updates will be to reduce water use within the City limits and within the City's water utility service area in the event of a declared water emergency caused by a drought or a temporary water emergency.

(d) After the City Manager publicly declares a Level 1 (mild), Level II (severe) or Level III (critical) water emergency, the Utilities Board may implement additional regulations as authorized under its Bylaws.

(e) A violation of the Response Plan or additional regulations to implement and enforce the Response Plan shall be deemed to be a violation of the Las Cruces Municipal Code as authorized in Section 1-10(a).

(Current Existing)
ARTICLE VII. WATER CONSERVATION

Sec. 28-301. Title; purpose.

This article shall be known as the Water Conservation Ordinance. This article shall both require and encourage all users of water within the city limits and all users of city-provided water outside of the city limits to reduce water consumption and waste.

(Ord. No. 2179, § I, 4-4-05)

Sec. 28-302. Applicability.

(a) The restrictions contained in this article shall apply to all users of city-provided water and to all users of water provided by water utility companies franchised by the city; however, the water wasting restrictions contained in subsection 28-304(b)(1) shall apply to all water users within the city limits.

(b) The outdoor vegetation watering restrictions in section 28-303 and section 28-309 shall not apply to users of irrigation water provided by Elephant Butte Irrigation District. The outdoor vegetation watering restrictions in section 28-303 and section 28-309 shall not apply to users of water provided by mutual domestic water companies or from domestic wells except when the city declares a level II or level III water emergency as provided in section 28-309.

(Ord. No. 2179, § I, 4-4-05)

Sec. 28-303. Outdoor vegetation watering restrictions.

(a) All outdoor vegetation on residential and commercial properties located (i) on the even numbered side of the street shall be watered only on Tuesdays, Thursdays and Saturdays, and (ii) on the odd numbered side of the street shall be watered only on Wednesdays, Fridays and Sundays. For corner buildings or properties having both odd and even numbers, the number shown on the city's or the franchised water companies' utility records shall control.

(b) Outdoor vegetation shall not be watered on Mondays without a written variance.

(c) From April 1 to September 30, all outdoor watering of vegetation is prohibited between the hours of 10:00 a.m. and 6:00 p.m.

(Ord. No. 2179, § I, 4-4-05)

Sec. 28-304. Water wasting restrictions.

(a) The washing of vehicles and other types of mobile equipment shall be done only with a handheld bucket or a handheld hose equipped with a functioning shutoff nozzle for quick rinses. This restriction does not apply to the washing of vehicles or mobile equipment at a commercial carwash or commercial service station. When used in this subsection, the term "bucket" means a container holding five gallons of water or less.

(b) The following uses of water are defined as wasting water and are prohibited:

(1) Allowing water to flow onto adjacent property or onto any street, alley or other public right-of-way.

(2) Watering outdoor vegetation excessively so that water ponds on site.

(3) Failing to repair a water leak within five working days of the discovery of the leak.

(4) Washing sidewalks, driveways, parking areas, tennis courts, patios and other impervious surfaces with a hose, except in emergencies to remove spills of hazardous materials or to eliminate

dangerous conditions which threaten the public health, safety or welfare. When used in this subsection, the term "impervious surface" means any surface covered with nonporous material.

(Ord. No. 2179, § I, 4-4-05)

Sec. 28-305. Penalty; injunctive relief authorized.

(a) Any person who is convicted of a violation of any section of this article shall be guilty of a petty misdemeanor and shall be punished as follows based on the type of property and on the number of prior convictions:

Type of property	1st conviction	2nd conviction	3rd and subsequent convictions
Residential property	$ 50.00	$100.00	$250.00
Nonresidential property	100.00	250.00	500.00

(b) For purposes of this article a "person" who can be cited may be one of the property owners; the water utility customer of record for the property; a tenant or any person over the age of 18 years residing at or occupying the property; or an officer, manager or general agent of the property owner or of the business located on the property.

(c) Persons cited pursuant to this article may still be held liable regardless of the conduct or lack of conduct of an individual or business performing or responsible for performing landscaping or yard maintenance services on the property, or regardless of the effect of an automated water sprinkler or delivery system on the property.

(d) With respect to violations that are continuous in time, each day the violation continues is a separate offense.

(e) Violations that are continuous in time may be abated by injunctive or other equitable relief. The imposition of a criminal penalty does not prevent equitable relief.

(Ord. No. 2179, § I, 4-4-05)

Sec. 28-306. Exceptions to enforcement.

The following shall constitute exceptions from compliance with this article concerning outdoor vegetation watering restrictions and water wasting restrictions:

(1) The water flow is a result of natural events such as rain or snow, unless the user is watering at the same time.

(2) The water flow is a result of temporary malfunctions of or vandalism to the municipal water supply system.

(3) The water flow is a result of water used for firefighting purposes, including the inspection and pressure testing of fire hydrants, or the use of water for firefighting training activities.

(4) The use of water is required for the control of dust or the compaction of soil as may be required by municipal codes.

(5) The water is used to wash down areas where flammable or otherwise hazardous material has spilled, creating a dangerous condition.

(6) The water is used to prevent or abate public health, safety or accident hazards when alternate methods are not available.

(7) The water is used for routine inspection or maintenance of the municipal water supply system.

(8) The water is used to facilitate construction within a public right-of-way in accordance with city requirements and good construction practices.

(9) The use of the water is permitted under a written variance granted by the city's utilities department in consultation with the legal department. The variance may be revoked in a declared water emergency.

(10) The water is used for street sweeping, sewer maintenance or other established utility practices.

(11) Watering contrary to the odd/even or time of day requirements is permitted for one day only where application of chemicals requires immediate watering to preserve an existing lawn.

(12) Watering contrary to the odd/even or time of day requirements is permitted for up to two weeks for newly planted outdoor vegetation.

(Ord. No. 2179, § I, 4-4-05)

Sec. 28-307. Water conservation plan.

The city shall enact a water conservation plan by separate city council resolution.

(Ord. No. 2179, § I, 4-4-05)

Sec. 28-308. Drought and water emergency response plan.

(a) The city shall enact a drought and water emergency response plan ("plan") by separate city council resolution in order to protect the public health, safety or welfare or to preserve the water supply.

(b) The purpose of the plan will be to reduce water use within the city limits and within the city's water utility service area in the event of a declared water emergency caused by a drought or a temporary water emergency.

(c) The plan shall minimally provide for the following:

(1) Definitions of technical words used in the plan;

(2) Measurable criteria for determining the severity of the water emergency;

(3) Implementation authority for each level of water emergency;

(4) Response measures for each level of water emergency;

(5) Termination of response measures; and

(6) Variances.

(Ord. No. 2179, § I, 4-4-05)

Sec. 28-309. Plan restrictions or prohibitions.

(a) After the city manager publicly declares a level I (mild), level II (severe) or level III (critical) water emergency, the following activities or water uses may be restricted or prohibited by the city manager in compliance with the drought and water emergency response plan:

(1) Prohibit planting new lawns from seed or sod;

(2) Further restrict or prohibit vehicle washing;

(3) Prohibit all fire hydrant uses except those required for public health and safety;

(4) Require all hotels, motels and bed and breakfast establishments to have only showerheads meeting maximum flow rates of 2.0 gallons per minute and faucet aerators meeting maximum flow rates of 2.2 gallons per minute;

(5) Prohibit filling private swimming pools;

(6) Reduce the use of or close private or public swimming pools;

(7) Require that ornamental fountains be turned off;

(8) Impose further restrictions in landscape water use in proportion to the severity of the drought;

(9) Restrict nursery and plant nursery water use;

(10) Restrict water use for fertilization, pesticide and herbicide application by commercial enterprises or by individuals;

(11) Prohibit all new landscaping including planting of trees and shrubs except for extremely drought resistant varieties such as cacti or mesquite.

(b) After the city manager publicly declares a level I (mild), level II (severe) or level III (critical) water emergency, the city council may do the following in compliance with the drought and water emergency response plan:

(1) Introduce, refine or adjust drought pricing mechanisms for water;

(2) Revoke variances;

(3) Prohibit all outdoor water use except for subsistence irrigation of trees and shrubs;

(4) Terminate water utility service if a violation is not immediately corrected after written notice is given to the customer or posted on the customer's premises;

(5) Impose a moratorium on new water connections.

(Ord. No. 2179, § I, 4-4-05)

Secs. 28-310—28-350. Reserved.

PROPOSED

WATER CONSERVATION REGULATIONS

A. Outdoor vegetation watering restrictions.

1. All outdoor vegetation on residential and commercial properties located (i) at an even numbered street address shall be watered only on Tuesdays, Thursdays and Saturdays, and (ii) at an odd numbered address shall be watered only on Wednesdays, Fridays and Sundays.

2. For corner buildings or properties having both odd and even numbers, the number shown on the City's or the franchised water companies' utility records shall control.

3. Outdoor vegetation shall not be watered on Mondays without a written variance from the City's Utilities Department.

4. From April 1 to September 30, all outdoor watering of vegetation is prohibited between the hours of 10:00 a.m. and 6:00 p.m. without a variance from the City's Utilities Department.

B. Water wasting restrictions.

1. The washing of vehicles and other types of mobile equipment shall be done only with a handheld bucket or a handheld hose equipped with a functioning shutoff nozzle for quick rinses. This restriction does not apply to the washing of vehicles or mobile equipment at a commercial carwash or commercial service station. When used in this subsection, the term "bucket" means a container holding five gallons of water or less.

2. The following uses of water are defined as wasting water and are prohibited:

   a. Allowing water to flow onto adjacent property or onto any street, alley or other public right-of-way.

   b. Watering outdoor vegetation excessively so that water ponds on site.

   c. Failing to repair a water leak within five working days of the discovery of the leak.

   d. Washing sidewalks, driveways, parking areas, tennis courts, patios and other impervious surfaces with a hose, except in emergencies to remove spills of hazardous materials or to eliminate dangerous conditions which threaten the public health, safety or welfare. When used in this subsection, the term "impervious surface" means any surface covered with nonporous material.

C. Exceptions to compliance.

1. The following shall constitute exceptions from compliance with these regulations concerning outdoor vegetation watering restrictions and water wasting restrictions:

   a. The water flow is a result of natural events such as rain or snow, unless the water customer is watering at the same time.

b. The water flow is a result of temporary malfunctions of or vandalism to the municipal or to a franchised water utility's water supply system.

c. The water flow is a result of water used for firefighting purposes, including the inspection and pressure testing of fire hydrants, or the use of water for firefighting training activities.

d. The use of water is required for the control of dust or the compaction of soil as may be required by municipal codes.

e. The water is used to wash down areas where flammable or otherwise hazardous material has spilled and created a dangerous condition.

f. The water is used to prevent or abate public health, safety or accident hazards when alternate methods are not available.

g. The water is used for routine inspection or maintenance of the municipal or franchised water utility's water supply system.

h. The water is used to facilitate construction within a public right-of-way in accordance with City requirements and good construction practices.

i. The use of the water is permitted under a written variance granted by the City's Utilities Department. The variance may be revoked in a declared water emergency.

j. The water is used for street sweeping, sewer maintenance or other established utility practices.

D. Variances.

1. A person seeking a variance from the outdoor vegetation water restrictions or from the water wasting restrictions shall complete a form provided by the City's Water Conservation Coordinator, who shall grant, deny or modify the requested variance within fifteen (15) days of receipt of the completed form.

2. A variance shall remain in effect for the period stated in the variance not to exceed one calendar year from the date of issue.

3. The standard variances shall be as follows:

   a. After chemical application – 1 day;

   b. To establish new sod – 30 days;

   c. To establish reseeded turf grass – 45 days;

   d. To establish newly seeded turf grass – 120 days; and

   e. Other at the discretion of the Water Conservation Coordinator.

E. Violation Compliance Procedures

1. The responsible parties from whom compliance shall be sought are specified in LCMC Section 28-302(c).

2. Violations of the water conservation regulations may be reported on the City's water waste hotline or on a designated City web page which shall be referred to hereafter as "reported violations", or the violations may be observed by City compliance staff which shall be referred to hereafter as "observed violations".

3. When a reported violation is received, compliance staff may contact the responsible party either in person or by leaving a door hanger or by telephone or by mail, and explain that a violation was reported and the nature of the violation; or compliance staff may visit the site, observe the violation, and thereafter follow the procedure for observed violations.

4. For the first observed violation, compliance staff shall document the violation as effectively as possible with existing equipment, and shall then contact the responsible party in person, if possible, otherwise by leaving a door hanger or by telephone or by mail, and shall explain that a violation was observed and the nature of the violation. Compliance staff shall also inform the responsible party by giving him or her a form letter in person or by mailing the form letter that he or she has 48 hours from receipt of the hand delivery of the form letter or five (5) days from the date on the mailed form letter to correct the violation by changing the water schedule or duration, by fixing the system malfunction, by shutting off the irrigation system until the problem can be resolved, or by securing a variance at the discretion of the Water Conservation Coordinator.

5. For a second or subsequent observed violation, compliance staff shall send a letter to the responsible party informing him or her of the nature of the violation and referencing the prior observed violations, and informing the responsible party that an administrative fee shall be assessed on and added to the City utility account for the property with the water meter registering the violation. For example, if water flowed onto a City street from a malfunctioning sprinkler system located at 123 Smith Lane, then the City utility account with the water meter registering the water wasting violation will be assessed the administrative fee.

6. For a second or subsequent reported violation, compliance staff shall send a letter to the responsible party informing him or her of the nature of the violation and referencing the prior reported violations, and informing the responsible party that an administrative fee may be assessed on and added to the City utility for the property with the water meter registering the violation.

7. For responsible parties who are customers of franchised water utilities with an active City utility account for other City utility services, the administrative fees will be assessed on the City utility bill.

8. For responsible parties who are customers of franchised water utilities without an active City utility account for other City utility services, the violations shall be referred to the City's Codes Section for compliance through its standard procedures including but not limited to issuing a citation.

F. Administrative Fees

1. Violators are subject to progressively higher administrative fees until the violation ceases or until a variance is granted. The administrative fees shall be progressively higher for violations separated by less than five (5) years. Fees shall be suspended pending the outcome of an appeal or variance request.

2. Fees assessed on active City utility accounts shall be paid within the normal payment period for the billing system.

3. The responsible person will also be sent a written notice that the City utility account will be or has been assessed an administrative fee.

4. In lieu of paying the first administrative fee, the responsible person may have a landscape water audit performed by an authorized landscape irrigation auditor certified by the Irrigation Association. Documentation of the audit and subsequent changes to correct the violation shall be submitted to compliance staff before the normal billing payment due date for the account.

5. No administrative fees will be assessed for reported violations unless the reporter leaves contact information and signs an affidavit documenting the time, date and nature of the violation hereafter referred to as a "documented reported violation".

6. The schedule for assessment of administrative fees shall be as follows:

   a. First observed violation and first reported violation whether or not documented – no charge.

   b. Second observed violation and second documented reported violation - $20

   c. Third observed violation and third documented reported violation - $30

   d. Fourth observed violation and fourth documented reported violation - $40

   e. Fifth and subsequent observed or documented reported violation - $50

G. Codes Section Option:

1. Compliance staff may refer any violation, whether reported or observed, of the City's Water Conservation Regulations to the City's Codes Section for compliance.

2. The Codes Section with or without a referral from Utilities Department Compliance staff may respond to violations and seek compliance through its standard procedures including but not limited to issuing a citation.

H. Appeals to the Utilities Board.

1. A person who received a notice of the administrative fee assessment may appeal the administrative fee within thirty-five days from the date of the notice. The appeal shall be made on a form provided by the Utilities Department's Water Conservation Coordinator, which form will also be available on the Utilities Department website. The completed appeal form shall be mailed to and received by, or hand delivered to the Water

Conservation Coordinator during regular business hours within the thirty-five day period. If the period ends on a weekend or holiday, the period shall be extended to the next regular business day.

2. The Water Conservation Coordinator shall schedule an appeal hearing at the next regularly scheduled Utilities Board meeting and shall so notify the person who may request a one month extension to the next regularly scheduled Utilities Board meeting.

3. The Utilities Department shall have the burden to prove by a preponderance of the evidence that a violation of a water conservation regulation occurred. The person shall have the burden of proof to prove any defense by a preponderance of the evidence.

4. The person may be represented at the hearing by a third party if he or she resides out of state or is otherwise unable to attend the hearing.

5. The decision of the Utilities Board shall be final.