
Meeting Date: March 21, 2018
Staff Contact: Carlos A. Bustos, Water Conservation Program Manager

TITLE: O-18-1 – Amending the Water Waste Ordinance

ACTION: Recommend Approval

BACKGROUND:

Measures to reduce water waste were established to ensure adequate use of water resources since the inception of the long-range water conservation strategy. The Water Waste Ordinance has been in place since 1995 and has served as a regulatory tool to establish the importance of wise water usage stewardship in our community. The ordinance empowers the Water Authority to issue violations and subsequent fines. The Water Waste Ordinance goal is to reduce water waste in the service area by changing customer behavior. Over the past 22 years, water use compliance staff have issued thousands of fines which have modified customer water waste. The greatest benefit of this effort has been the change in public perception, as customers have learned the importance of efficient water use in the desert environment. Through time the ordinance has been modified to allow for better response to violations. The water use compliance team has also built an effective working relationship with the highest irrigation water users, the City of Albuquerque and Bernalillo County Parks and Recreation departments, to reduce response time to wasted water.

SUMMARY:

The most recent change to water waste was in 2015 with a pilot study to determine if a warning system could be offered in lieu of violations. An educational warning system for residential customers after first complaint was implemented as a pilot to determine effectiveness. Based on the success of the pilot program, an amendment to the Water Waste Ordinance is proposed to utilize the warning system with all customers. Due to the success of the Water Conservation Program, water use compliance will focus more education and less on enforcement. The ordinance will be implemented in calendar year 2019 to allow time to educate customers of the changes.

Proposed changes to the Water Waste Ordinance include:

- A. Ordinance will be known as “Water Waste Reduction Ordinance”

B. All customer classes will receive at least one warning notice and the opportunity to schedule a free irrigation efficiency visit prior to receiving a fee. Upon identifying water waste the process will be:

- Reported Warning Notice - report of Water Waste
- Observed Warning Notice - observation and documentation of Water Waste
- Certified Notice of Violation – observation and documentation of Water Waste
- Opportunity to schedule an Irrigation Efficiency Consultation upon receipt of Certified Notice of Violation
- Fee assessed if not audit scheduled/problem not fixed

C. Reduction to the Fee Structure from 8 tiers to 3 tiers (after receiving warning and opportunity for irrigation consultation or fix problem)

a. meter size of 1.5 inch or less

- First observed violation - \$20
- Second observed violation - \$50
- Third observed violation - \$100

b. meter size larger than 1.5 inch and up to 4 inches

- First observed violation - \$100
- Second observed violation - \$250
- Third observed violation - \$500

c. meter size larger than 4 inches and up to 8 inches

- First observed violation - \$250
- Second observed violation - \$500
- Third observed violation - \$1,000

The amended Water Waste Reduction Ordinance will provide the following benefits:

1. Emphasize less enforcement and more education
2. Create opportunities for more positive interaction with the public
3. Increase participation in Efficient Irrigation Audits and education
4. Lessen staff tracking efforts
5. Increase staff response effectiveness
6. Streamline workflow

FISCAL IMPACT:

No fiscal impact is anticipated.

ALBUQUERQUE BERNALILLO COUNTY WATER UTILITY AUTHORITY

BILL NO. O-18-1

1 **ORDINANCE**

2 **AMENDING THE WATER WASTE ORDINANCE**

3 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD, THE GOVERNING
4 BODY OF THE WATER AUTHORITY:

5 Section 1. Section 4-1-1 is amended as follows:

6 This article shall be known as the "Water Waste Reduction Ordinance."

7 4-1-2 INTENT.

8 (A) To assist in reducing overall per capita water use in accordance with
9 goals adopted by the Water Authority Board ~~by 40%.~~

10 (B) To reduce ~~yard spray~~ irrigation and irrigation-related water waste;
11 Outdoor usage accounts by about ~~which comprise over~~ 40% of the total annual
12 water usage.

13 (C) To reduce peak summer usage, which is one and a half to two ~~to~~
14 ~~three~~-times winter usage and determines the need for capital facilities to
15 adequately meet system demand.

16 (D) To reduce water waste; i.e., overwatering, inefficient watering, or
17 release of water which generates fugitive water in the public right-of-way,
18 easements, alleyways or onto impervious surfaces.

19 (E) To reduce damage to publicly owned streets and the public
20 expenditures necessary to repair the damage caused by this wasted water.

21 (F) To increase street safety by reducing the potential ~~of~~ frozen water in
22 the public right-of-way or on impervious surfaces.

23 4-1-2 DEFINITIONS.

24 For the purpose of this article, the following definitions shall apply unless the context
25 clearly indicates or requires a different meaning.

1 WATER AUTHORITY. The Albuquerque Bernalillo County Water Utility
2 Authority or its authorized agent. It includes the water, wastewater and reuse
3 facilities and all operations and management of such facilities necessary to provide
4 water, ~~and wastewater~~ and reuse service in the Service Area.

5 BARREN. Land which produces inferior or little to no vegetation.

6 BUBBLERS. Irrigation heads which deliver water directly to the soil adjacent
7 to the heads.

8 ~~CURBSIDE CAR WASHING.~~ VEHICLE WASHING. ~~Car~~ vehicle washing
9 near a public right-of-way, hose sweeping, charity or fundraiser ~~car~~ vehicle
10 washes, ~~car~~ vehicle washing on dealer lots.

11 CUSTOMER. Any person, association, corporation or other entity
12 receiving Water Authority's service in the Service Area.

13 DRIP IRRIGATION. Low pressure, low volume irrigation applied slowly, near
14 or at ground level to minimize runoff and loss to evaporation.

15 DROUGHT. Drought occurs when there is insufficient precipitation combined
16 with other environmental factors that cause an increase of overall water usage.

17 DROUGHT MANAGEMENT STRATEGY. The Water Authority's Drought
18 Management Plan as adopted by the Water Authority Board. ~~which contains four~~
19 ~~different drought severity levels, with each level containing increasingly stringent~~
20 ~~measures to reduce demand on the Authority's water system.~~

21 EFFICIENT IRRIGATION CONSULTATION. A way to inventory outdoor
22 irrigation practices, identify ways to fix water waste problem to increase water use
23 efficiency.

24 EXECUTIVE DIRECTOR. The Executive Director of the Water Authority's
25 or his/her designee.

26 EXEMPTION. A Water Authority approved watering schedule that permits
27 watering during Time-of-Day-Watering Restrictions to establish newly seeded turf
28 or to support inter-seeding.

29 FUGITIVE WATER. The pumping, flow, release, escape, or leakage of any
30 water from any pipe, valve, faucet, connection, diversion, well, or any facility for the
31 purposes of water supply, transport, storage, disposal, recreational, cleaning

process or delivery onto adjacent property or the public right-of-way.

HAND WATERING. The application of water for irrigation purposes through a hand-held hose, including hoses moved into position by hand and left to flow freely or through a shut-off nozzle.

IMPERVIOUS SURFACES. Solid surfaces, such as asphalt and concrete that do not allow water to penetrate, forcing the water to run off.

INFILTRATION RATE. The amount of water absorbed by the soil per unit of time, usually expressed in inches per hour

INSPECTION. An ~~entry into and~~ examination of ~~premises~~ site for the purpose of ascertaining the existence or nonexistence of violations of this article.

INTER-SEEDED: Seeding of an area within an existing turf area to repair damage.

This type of process is also known as re-seeding.

~~MISTER. A device that produces a cooling effect by emitting fine particles of water into the air in the form of a mist.~~

NEWLY SEEDED. Seed planted in a barren area with the intent of establishing a turf area.

NEWLY SODDED. Sodded harvest grass transplanted in a barren area with the intent of establishing a turf area

PUBLIC RIGHT-OF-WAY. The area of land acquired or obtained by the city, county, or state primarily for the use of the public for the movement of people, goods, vehicles, or storm water. For the purposes of this article the public right-of-way shall include sidewalks, curbs, streets, alleyways, easements and storm water drainage inlets.

RESPONSIBLE PARTY. The owner, manager, supervisor, or person who receives the water bill, or person in charge of the property, facility, or operation during the period of time the violation(s) is observed.

RUNOFF. Water which is not absorbed by the soil or landscape to which it is applied. Runoff occurs when water is applied too quickly (application rate exceeds infiltration rate), particularly if there is a ~~severe~~ slope. This article does not apply to stormwater runoff which is created by natural precipitation rather than human-

1 caused or applied water use.

2 SERVICE AREA. ~~All parts of Bernalillo County that are served or may be~~
3 ~~served in the future by the Authority.~~ Those parts of Bernalillo County and
4 contiguous territory served by the Water Authority.

5 SHUT-OFF NOZZLE. Device attached to end of hose that completely shuts
6 off the flow when left unattended.

7 SLOPE. A surface of which one end or side is at a higher level than another.
8 For Xeric conversions, anything greater than 6 to 1 grade.

9 SPRAY IRRIGATION. The application of water to landscaping by means of
10 a device that projects water through the air in the form of small particles or
11 droplets.

12 VALVE. A device used to control the flow of water in the irrigation system.

13 VARIANCE. A Water Authority approved deviation from the Time-of-Day
14 Watering Restrictions that allows for irrigation of newly landscaped areas, or long
15 term maintenance.

16 WATER WASTE. The non-beneficial use of potable or non-potable water.
17 Non-beneficial uses include but are not restricted to:

18 (1) Landscape water applied in such a manner, rate and/or
19 quantity that it overflows the landscaped area being watered and runs onto
20 adjacent property or public right-of-way;

21 (2) Landscape water which leaves a sprinkler, sprinkler system,
22 or other application device in such a manner or direction as to spray onto
23 adjacent property or public right-of-way;

24 (3) Washing of vehicles, equipment, or hard surfaces such as
25 parking lots, aprons, pads, driveways, or other surfaced areas when water is
26 applied in sufficient quantity to flow from that surface onto adjacent property or
27 the public right-of-way;

28 (4) Water applied in sufficient quantity to cause ponding on
29 impervious surfaces.

30 (5) Water applied in sufficient quantity to cause ice formation on
31 adjacent property or the public right-of-way including sidewalks.

1 4-1-4 WATERING RESTRICTIONS.

2 These restrictions apply to all customers within the Water Authority's service
3 area.

4 (A) All spray irrigation during the period beginning on April 1 and ending
5 on October 31 of each year must occur between 7:00 p.m. and 11:00 a.m. This
6 restriction shall not apply to drip irrigation and low precipitation bubblers, hand
7 watering, or watering of containerized plants and plant stock.

8 (B) Shutoff nozzles are required on any hoses used for hand
9 watering, ~~car~~vehicle washing or other outdoor uses.

10 (C) If approved by the Water Authority Board under the adopted ~~Under~~
11 ~~the four levels of Drought defined in the Drought Management Strategy, the~~ Water
12 Authority's may, at its sole discretion, require that customers water every other
13 day. The Authority's may require that customer's water no more than one, two, or
14 three time(s) per week. The Water Authority's may also prohibit ~~curbside~~vehicle
15 ~~car-washing~~ if the water used runs off the property.

16 (D) Restrictions in divisions (A), and (C) above do not apply to the
17 following:

18 (1) Outdoor irrigation necessary for the establishment of *newly sodded*
19 lawns and landscaping within the first 30 days of planting upon the issuance of a
20 Watering Restriction Exemption;

21 (2) Outdoor irrigation necessary for the establishment of *newly seeded*
22 lawns within the first 120 days of planting upon the issuance of a Watering
23 Restriction Variance.

24 (3) Outdoor irrigation necessary for the establishment of *inter-seeded*
25 lawns within the first 45 days of planting upon the issuance of a Watering
26 Restriction Exemption.

27 (4) Irrigation necessary for one day only where treatment with an
28 application of chemicals requires immediate watering to preserve an existing
29 landscape or to establish a new landscape;

30 (5) Water used to control dust or compact soil;

1 (6) Attended watering systems that have one or more repair or maintenance
2 personnel present at the irrigated zone being serviced for purposes of inspecting
3 system condition and function and/or repairing or maintaining the watering
4 system.

5 4-1-5 WATER WASTE.

6 These restrictions apply to all customers within the Water Authority's service
7 area.

8 (A) No person, firm, corporation, or municipal or other government
9 facility or operation shall waste, cause or permit any water to be wasted.

10 (B) No person, firm, corporation, or municipal or other government
11 facility or operation shall cause or permit the flow of fugitive water onto adjacent
12 property, ~~or~~ public right-of-way, or impervious surfaces.

13 (C) The restrictions in divisions (A), and (B) above do not apply to the
14 following:

15 (1) Storm runoff allowed under provisions of the City of
16 Albuquerque or Bernalillo County drainage ordinances as currently adopted or
17 subsequently amended;

18 (2) Flow resulting from temporary water supply system failures
19 or malfunctions. These failures or malfunctions shall be repaired within 48 hours
20 of notification or the system shut off until repair can be completed;

21 (3) Flow resulting from firefighting or routine inspection of fire
22 hydrants or from fire training activities;

23 (4) Water applied as a dust control measure;

24 (5) Water applied to abate spills of flammable or otherwise
25 hazardous materials, where water is the appropriate methodology;

26 (6) Water applied to prevent or abate health, safety, or accident
27 hazards when alternate methods are not available;

28 (7) Flow resulting from routine inspection, operation, or
29 maintenance of a utility water supply system;

30 (8) Water used in the course of installation or maintenance of
31 traffic flow control devices;

(9) Water used for construction or maintenance activities where the application of water is the appropriate methodology and where no other practical alternative exists.

~~4-1-6~~ SPECIAL PERMITS

~~These restrictions apply to all customers within the Authority's service area.~~

~~(D) Use of Misters~~

~~(1) The use of misters shall require a special permit, issued by the Authority. The Executive Director shall develop regulations and administrative procedures for the issuance and conditions of such permits. The Executive Director shall have the authority to limit the number of permits or revoke permits as deemed necessary to protect the public interest.~~

~~(2) The use of misters without a permit, or in violation of permit conditions, shall constitute a violation of this article and shall be subject to the fee assessment processes described in § 4-1-8 and 4-1-99.~~

~~(3) Any person, firm, corporation, or municipal or other government facility selling, leasing, renting, installing or otherwise making misters available to any other person, firm, corporation, or municipal or other government facility shall provide notification to their customers of the special permit requirement for mister use. Notice may be delivered by prominently posting a sign at the point of purchase or by providing a document to each individual customer. The Authority shall provide approved language for such notification.~~

~~4-1-7~~ 4-1-6 VARIANCES, EXEMPTIONS AND APPEALS

The Executive Director or his/her designee shall be responsible for the enforcement of this article. The Executive Director may prescribe policies, rules, or regulations to carry out the intent and purposes of this article.

(E) Variances or Exemptions to 4-1-4 (Watering Restrictions) and 4-1-5 (Water Waste), ~~and 4-1-6 (Special Permits).~~

(1) Administrative variances or exemptions to the restrictions in §4-1-4, and 4-1-5, ~~and 4-1-6~~ may be issued by the Executive Director or his/her designee, only for the purposes of installing or retrofitting landscaping, provided that the general intent of this article has been met, compliance with this article is

1 ~~determined~~ proven to cause practical difficulties and unnecessary hardship, and
2 all options for abatement through modified water management have been
3 exhausted. ~~The criteria to determine hardship shall include level of capital outlay~~
4 ~~and time required to be in compliance with this article.~~ For the purpose of
5 advancing the general intent of this article, the Executive Director may at his
6 discretion waive, credit, and or remove penalty fees or other fees from any
7 account.

8 (2) Water Waste Variances may be issued for a period not to
9 exceed one year and shall stipulate both short-term corrective measures and a
10 schedule for completion of long-term corrective measures. Variances may be
11 renewed on an annual basis if long-term corrective measures cannot be
12 completed within one year.

13 (3) Watering Restriction Variances may be issued for a period
14 not to exceed 120 days to establish a turf area on properly prepared barren
15 ground.

16 (4) Watering Restriction Exemptions may be issued for a period
17 not to exceed 30 days to establish newly *sodded turf* and/or landscape.

18 (5) Watering Restriction Exemptions may be issued for a period
19 not to exceed 45 days to establish *inter-seeded* areas with an established turf
20 area.

21 (B) Appeal of 4-1-4 (Watering Restrictions), 4-1-5 (Water Waste), and 4-
22 ~~4-6 (Special Permits)~~. Any responsible party may appeal fees for violations of §4-
23 1-4, and 4-1-5, and 4-1-6 to the Executive Director or his/her designee by filing an
24 appeal within seven calendar days of receiving a notice of violation. The notice of
25 violation shall provide information on the right to appeal and the procedures to
26 follow. The appeal shall identify the property and state the grounds of appeal
27 together with all material facts in support thereof. A non-refundable \$50 filing fee ~~of~~
28 \$50 must accompany each appeal filed. ~~be added to the water bill in the event the~~
29 ~~violation is upheld by the Executive Director or his/her designee.~~ When a hearing
30 is requested, the Executive Director or his/her designee shall send written notice
31 by certified mail, return receipt requested, to the appellant of the time and place of

1 the hearing. At the hearing the appellant shall have the right to present evidence
2 as to the alleged facts upon which the Executive Director or his/her designee
3 based the determination of the need for assessment of fee or restriction of service
4 and any other facts which may aid the Executive Director or his/her designee in
5 determining whether this article has been violated. The Executive Director or
6 his/her designee shall, within seven working days following the hearing, issue a
7 written decision specifying the fee, if appropriate, and the action that must be
8 taken to avoid additional penalty. ~~Fees will be void and service will not be~~
9 ~~restricted if the written decision is not issued within seven working days.~~

10 (C) Judicial Review. The exclusive remedy for parties dissatisfied with
11 the action of the Executive Director or his/her designee on §4-1-4, and 4-1-5,
12 ~~and 4-1-6~~ shall be the filing of a petition for a writ of certiorari with the State
13 District Court. The petition for review shall be limited to the record made at the
14 administrative hearing held pursuant to this article.

15 ~~4-1-8~~ 4-1-7 FEES; ASSESSMENT

16 (A) Fees. Any responsible party who violates any of the provisions of
17 §4-1-4, and 4-1-5, ~~and 4-1-6~~ shall be subject to progressively higher fees until the
18 violation ceases or a variance is granted. The assessment of fees shall be
19 consecutive for violations separated by less than ~~five calendar years~~ one calendar
20 year. Fees shall be suspended pending the outcome of an appeal or variance
21 request.

22 (B) Assessment of Fees. Assessment of fees for violations of the
23 regulations in
24 §4-1-4, 4-1-5, ~~and 4-1-6~~ will be through the utility bills for the responsible party's
25 billing account. Fees shall be assessed to the account within 15 days following
26 expiration of the appeal period or issuance of appeal findings. ~~Responsible parties~~
27 ~~shall be notified of the fee through certified mail within 15 days of the assessment.~~
28 Fees must be paid within the normal payment period allowed by the utility billing
29 system. In the event the individual property to be assessed a fee is sub-metered
30 through a master meter account(s), the property in violation will be assessed the
31 fee in accordance with this ordinance through the master meter account(s). It shall

1 be the responsibility of the master meter account(s) to assess and collect the fee
2 from the individual sub-metered property.

3 (C) In lieu of fees for violations of §4-1-4 and 4-1-5, the responsible
4 party may ~~have a landscape water audit~~ schedule an efficient irrigation
5 consultation performed by ~~an authorized~~ a qualified landscape irrigation auditor
6 ~~certified by the Irrigation Association. The audit will be conducted in accordance~~
7 ~~with the current edition of the Landscape Auditor's Handbook. The audit must be~~
8 ~~performed~~ consultation must be scheduled within 15 days and ~~performed within~~
9 ~~30 days of~~ following the notification of violation and the ~~audit~~ recommendation
10 must be implemented within 60 days of the consultation ~~audit~~. If these deadlines
11 are not met, the fees for violation will apply.

12 ~~4-1-99~~ 4-1-8 PENALTY.

13 (A) A Warning system will be initiated upon receipt of the first report of
14 Water Waste. A minimum of one warning notice will be issued to the responsible
15 party via USPS mail prior to assessing fees as follows:

16 (1) Reported Warning Notice - report of Water Waste

17 (2) Observed Warning Notice - observation and documentation of Water
18 Waste

19 (3) Certified Notice of Violation – observation and documentation of
20 Water Waste

21 (B) The schedule for assessment of fees for a violation of ~~§4-1-4, and 4-~~
22 ~~1-5, and 4-1-6~~ that have a meter size of 1.5 inch or less shall be as follows:

23 ~~(1) First observed violation - \$20;~~

24 ~~(2) Second observed violation - \$50;~~

25 ~~(3) Third observed violation - \$100;~~

26 ~~(4) Fourth observed violation - \$300;~~

27 ~~(5) Fifth observed violation - \$400;~~

28 ~~(6) Sixth observed violation - \$600;~~

29 ~~(7) Seventh observed violation - \$800;~~

30 ~~(8) Eighth observed violation - \$1,000;~~

31 ~~(9) Each observed violation over the eighth - \$2,000 each~~

- 1 (1) Observed Warning Notice;
- 2 (2) First observed violation - \$20;
- 3 (3) Second observed violation - \$50;
- 4 (4) Third observed violation - \$100;

5 (C) The schedule for assessment of fees for a violation of §4-1-4 and 4-
6 1-5 that have a meter size larger than 1.5 inch and up to 4 inches shall be as
7 follows:

- 8 (1) Observed Warning Notice;
- 9 (2) First observed violation - \$100;
- 10 (3) Second observed violation - \$250;
- 11 (4) Third observed violation - \$500;

12 (D) The schedule for assessment of fees for a violation of §4-1-4 and 4-
13 1-5-that have a meter size larger than 4 inches and up to 8 inches shall be as
14 follows:

- 15 (1) Observed Warning Notice;
- 16 (2) First observed violation - \$250;
- 17 (3) Second observed violation - \$500;
- 18 (4) Third observed violation - \$1,000;

19 (E) If approved by the Water Authority Board under the adopted Under
20 ~~the four levels of Drought defined in the Drought Management Strategy, the~~ Water
21 ~~Authority's~~ may, at its sole discretion, increase water waste fees described above
22 by a factor of two, three, four or more as may be necessary to assist in water waste
23 reduction during a drought. During a drought, the Water Authority's shall declare to
24 the public the Drought Level, which can be raised and lowered by the Water
25 Authority's, and the proposed increase in water waste fees. The Drought level only
26 applies to the current year and must be approved by the Water Authority's on a year
27 by year basis.

28 ~~The Authority delegates the implementation of the Drought~~
29 ~~Management Strategy including the increase of water waste fees to the Executive~~
30 ~~Director. Based on the Drought Level approved by the Authority, the~~ The Executive
31 Director shall direct water waste enforcement staff of the Effective Date of the new

1 water waste fines. Water waste fees, however, shall revert to the fees described in
2 Section ~~4-1-99~~ 4-1-8 after November 1 of that same year.

3 (F) For the purpose of assessing fees for violations of §4-1-4, 4-
4 1-5, and ~~4-1-6~~, any previous violation shall not be considered if:

5 (1) A period of ~~five years~~ one calendar year has elapsed
6 since the violation was incurred; or

7 (2) The property is acquired by a new owner.

8 (G) Any person who violates the provisions of this article for
9 which no other penalty is set forth, shall be subject to the general penalty
10 provision of this code set forth in ~~4-1-99~~ 4-1-8.
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Changes to Water Waste Ordinance

1. “Water Waste Reduction Ordinance”

1. All customer classes with equal actions:
 - **Warning** for first report
 - Certified notice of violation with opportunity for Irrigation Efficiency Consultation
 - Fee assessed if audit not scheduled/problem not fixed

2. Modify fee schedule by meter size:

- a) Meter size of 1.5 inches or less
 - First observed violation – \$20
 - Second observed violation – \$50
 - Third observed violation – \$100
- b) Meter size larger than 1.5 inch and up to 4 inches
 - First observed violation – \$100
 - Second observed violation – \$250
 - Third observed violation – \$500
- c) Meter size larger than 4 inches and up to 8 inches
 - First observed violation – \$250
 - Second observed violation – \$500
 - Third observed violation – \$1,000



The amended Water Waste Reduction Ordinance will provide the following benefits:

- Emphasize less enforcement and more education
- Create opportunities for more positive interaction with the public
- Increase participation in Efficient Irrigation Visits for education
- Lessen staff tracking efforts
- Increase staff response effectiveness

