



CITY OF RIVERBANK
APPEALS BOARD MEETING
City Hall North • Council Chambers
6707 Third Street • Suite B • Riverbank • CA • 95367



AGENDA

TUESDAY, AUGUST 16, 2016 – 7:00 P.M.

(THE AGENDA PACKET IS POSTED AT THE CITY CLERK'S OFFICE AND AT WWW.RIVERBANK.ORG)

CALL TO ORDER: Chair Carlos Villapudua

ROLL CALL: Chair Carlos Villapudua
Vice Chair Anthony McKinney
Appeals Board Member Larry King
Appeals Board Member Joan Stewart
Appeals Board Member Edward Tabacco

1. CONFLICT OF INTEREST

Any Appeals Board Member or Staff who has a direct Conflict of Interest on any scheduled agenda item to be considered is to declare their conflict at this time.

2. PUBLIC COMMENTS (No Action Can Be Taken)

At this time, members of the public may comment on any item not appearing on the agenda, and within the subject matter jurisdiction of the Appeals Board. Individual comments will be limited to a **maximum of 5 minutes** per person and each person may speak once during this time; time cannot be yielded to another person. Under State Law, matters presented during the public comment period cannot be discussed or acted upon. For record purposes, state your name and City of residence. Please make your comments directly to the Appeals Board.

3. CONSENT CALENDAR There are no items to consider.

4. BUSINESS

Item 4.1 **Administrative Citation Appeal Hearings for Water Use Violations** – It is recommended that the Appeals Board uphold Administrative Citation fines for outdoor water use violations issued in accordance with Riverbank Municipal Code Chapter 52: Water, Section 52.34 Restricted Water Use, and Resolution No. 2015-096 and Resolution No. 2016-026.

ADJOURNMENT

Any documents that are not privileged or part of a Closed Session provided to a majority of the City Council/LRA Board after distribution of the agenda packet, regarding any item on this agenda, will be made available for public inspection at North City Hall, 6707 Third Street, Riverbank, CA, during normal business hours. 1

AFFIDAVIT OF POSTING

I, Annabelle Aguilar, do hereby certify under penalty of perjury, under the laws of the State of California that the foregoing agenda was posted 72 hours prior to the meeting in accordance to the Brown Act.

**Posted this 11th day of August, 2016
/s/Annabelle H. Aguilar, CMC, City Clerk**

Notice Regarding Americans with Disabilities Act: In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at (209) 863-7122 or cityclerk@riverbank.org. Notification 72-hours before the meeting will enable the City to make reasonable arrangements to ensure any special needs are met. [28 CFR 35.102-35.104 ADA Title II].

Notice Regarding Non-English Speakers: Pursuant to California Constitution Article III, Section IV, establishing English as the official language for the State of California, and in accordance with California Code of Civil Procedures Section 185, which requires proceedings before any State Court to be in English, notice is hereby given that all proceedings before the City of Riverbank Appeals Board shall be in English and anyone wishing to address the Council is required to have a translator present who will take an oath to make an accurate translation from any language not English into the English language.

GENERAL INFORMATION

Meeting Schedule	<p><u>Appeals Board:</u> Meets on an "as needed" basis.</p> <p>The Appeals Board is a 5-member Board appointed by the Riverbank City Council and who also serve as the Riverbank Planning Commission.</p>
Appeals Board Agenda & Reports	<p>The Appeals Board agenda is posted pursuant to the California Brown Act, which only requires agenda title pages to be posted near the entrance of the location where the meeting is to be held and, when technologically able, on the City's website. Additional documents may be provided by the City in its efforts of transparency to keep the public well informed. The agenda packet (agenda plus supporting documents) are posted for public review at the City Clerk's Office, 6707 Third Street, Riverbank, CA and at www.riverbank.org upon distribution to a majority of the Appeals Board. A subscription to receive the agenda can be purchased for a nominal fee through the City Clerk's Office.</p>
Public Hearings	<p>In general, a public hearing is an open consideration within a meeting of the Appeals Board, for which special notice has been given and may be required. During a specified portion of the hearing, any resident or concerned individual is invited to present protests or offer support for the subject under consideration.</p>
Televised / Video of Meetings (Meetings are not currently televised)	<ul style="list-style-type: none"> · Charter – Channel 2 · AT&T Uverse – Channel 99 <p>Visit www.riverbank.org to connect to meeting videos. (Note: Technical difficulty occurs on occasion preventing the televising or recording of the meeting.)</p>
City Hall Hours	<p>City Hall is open Monday – Thursday; 7:30 am – 5:30 pm and Fridays: 8:00 am – 5:00 pm; CLOSED alternating Fridays</p>
Questions	<p>Contact the City Clerk at (209) 863-7122 or cityclerk@riverbank.org</p>

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RIVERBANK APPEALS BOARD AGENDA ITEM NO. 4.1

SECTION 4: BUSINESS

Meeting Date:	August 16, 2016
Subject:	Administrative Citation Appeal Hearings for Water Use Violations
From:	Jill Anderson, City Manager
Submitted by:	Michael Riddell, Public Works Superintendent Annabelle Aguilar, CMC, City Clerk/Sr. Management Analyst

RECOMMENDATION

It is recommended that the Appeals Board uphold Administrative Citation fines for outdoor water use violations issued in accordance with Riverbank Municipal Code Chapter 52: Water, Section 52.34, Restricted Water Use, and Resolution No. 2015-096 and Resolution No. 2016-026.

INTRODUCTION

The culmination of Governor Brown's Proclamation and Executive Orders calling for a state of emergency due to severe drought conditions, and the State Water Resources Control Board ("Water Board") imposing restrictions to achieve a statewide 25% reduction in potable urban water use through February 28, 2016; along with the Water Board's directives requiring the City of Riverbank ("City") to achieve conservation standards that reduced water use by 32% or be subject to a civil liability of up to \$500 per day for each day the violation continued, demanded action by the City to implement strong and supportive water use restriction policies that would achieve the requirements of all orders issued, and provide the City with the enforcement mechanisms to comply.

Administrative Citations

Administrative citations for violation of the City's outdoor water use policy pursuant to Resolution No. 2015-096 (effective 12/01/15 – 04/30/16) and Resolution No. 2016-026 (effective May 1, 2016) were issued to the following list of individuals. City policy provides for the opportunity to contest an issued citation before an Appeals Board. The listed individuals have submitted an appeal request form and are scheduled to have their hearing this evening during a public forum of the Appeals Board.

Notice of Scheduled Hearings

In accordance to policy, public notices of the hearings were mailed prior to the scheduled date, to each individual listed via email and also via U.S. Postal Service.

CIT. #	NAME	DATE OF CITATION	VIOLATION NO.	FINE	\$25 FEE ADMIN. PROCESS	WATER USE VIOLATION & POLICY
1143	Susana and Juan Gallegos	07/07/16	2 nd	\$200	Paid	Water running/spraying off property; water on unscheduled day (Resolution 2016-026)
1178	Matthew Gregory	07/24/16	1 st	\$35	Paid	Water running or spraying off property; watering on unscheduled day (Resolution No. 2016-026)
2028	Melissa Franzia	01/10/16	1 st	\$100	N/A	Water on unscheduled day; using sprinklers (Resolution No. 2015-096)
2036	Melissa Franzia	01/17/16	2 nd	\$200	N/A	Watering on unscheduled day (Resolution 2015-096)
2049	Melissa Franzia	01/28/16	3 rd	\$300	N/A	Watering on unscheduled day; using sprinklers (Resolution 2015-096)
2054	Melissa Franzia	02/04/16	4 th	\$400	N/A	Watering on unscheduled day (Resolution 2015-096)
2066	Melissa Franzia	02/07/16	5 th	\$500	N/A	Watering on unscheduled day; using sprinklers (Resolution 2015-096)
2255	Kenneth Bruner	04/29/16	1 st	\$100	N/A	Water running or spraying off property; watering on unscheduled day; using sprinklers (Resolution 2015-096)

Due to the difficulty in meeting the required 32% water use reduction, the City was obligated to make stronger modifications to its policies on outdoor water use, including penalties for noncompliance of those regulations. In accordance with the City's adopted Urban Water Management Plan, further analysis of the outdoor water use policy, and seasonal climate changes, the City Council adopted Resolution No. 2016-026 on April 26, 2016, updating and implementing outdoor water use restrictions effective May 1, 2016:

Effective May 1, 2016: Resolution No. 2016-026 – Current Outdoor Watering Policy

1. Landscape Irrigation Schedule

(A) ***SUMMER SCHEDULE:*** Is the period from April 1st through October 31st.

(B) **Summer Restrictions (Limited to watering two (2) days per week):**

- (1) No landscape irrigating between **10:00 a.m. and 7:00 p.m.**
- (2) **Odd-numbered addresses:** Irrigation is allowed only on Wednesdays and Sundays before 10:00 a.m. and after 7:00 p.m.
- (3) **Even-numbered addresses:** Irrigation is allowed only on Tuesdays and Saturdays before 10:00 a.m. and after 7:00 p.m.
- (4) Landscape irrigation is prohibited at all times on Mondays, Thursdays, and Fridays.
- (5) Landscape irrigation is prohibited within (48) hours after a measurable rainfall event ends, regardless of the permitted aforementioned summer watering schedule.
- (6) Drip or micro-spray irrigation systems are exempt from the restrictions.

(C) **WINTER SCHEDULE:** Is the period from November 1st through March 31st.

(D) **Winter Restrictions (Limited to watering one (1) day per week):**

- (1) No landscape irrigating between **10:00 a.m. and 4:00 p.m.**
- (2) **Odd-numbered addresses:** Irrigation is allowed only on Sundays before 10:00 a.m. and after 4:00 p.m.
- (3) **Even-numbered addresses:** Irrigation is allowed only on Saturdays before 10:00 a.m. and after 4:00 p.m.
- (4) Landscape irrigation is prohibited at all times Monday through Friday.
- (5) Landscape irrigation is prohibited within (48) hours after a measurable rainfall event ends, regardless of the permitted aforementioned winter watering schedule.
- (6) Drip or micro-spray irrigation systems are exempt from the restrictions.

(A) **No Excessive Water Flow or Runoff.** Watering or irrigating any lawn, landscape or other vegetated area in a manner that causes or allows excessive water flow or runoff onto an adjoining street, alley, gutter or ditch is prohibited.

(B) **Obligation to Fix Leaks, Breaks or Malfunctions.** Excessive use, loss or escape of water through breaks, leaks or other malfunctions is prohibited and should be immediately corrected to stop the waste of water.

2. Other Outdoor Water Use

- (A) **Vehicle Washing.** The washing of commercial and noncommercial privately owned automobiles, trucks, trailers, motor homes, boats, buses, and other types of vehicles is restricted to the use of a hand-held bucket and quick rinses using a hose with a quick-acting positive shut-off nozzle.

(1) Vehicle washing is limited to one (1) washing per car, per week.

- (B) **Washing Exterior Surfaces.** There shall be no washing of building exteriors, mobile home exteriors, sidewalks, patios, driveways, gutters or other exterior surfaces, unless it is done for health and safety reasons (e.g., to wash animal waste, mold, etc.) and done with the use of a quick-acting positive shut-off nozzle on the hose.

3. Temporary Waiver

The City may grant or conditionally grant a temporary waiver of the restrictions for existing potable water use otherwise prohibited under the policy, if it is determined that failure to grant such a waiver would cause an emergency condition adversely affecting the health, sanitation, and fire protection of the public or person requesting the waiver.

A temporary waiver may also be granted for one time outdoor activities that require the use of water, such as power washing to prepare for painting, the establishment of new landscape, new concrete work, etc.

- (A) Persons requesting a waiver from the provisions of the outdoor water use policy requirements shall file a temporary waiver application with the Public Works Superintendent or his/her designee.

(1) *Application.* The application form to file for a temporary waiver shall be provided by the City of Riverbank, and must be submitted to the Public Works Superintendent, or his/her designee.

(2) *Supporting Documentation.* The application may be accompanied by photographs, maps, drawings, or other relevant information.

- (B) Waivers granted by the City shall be for a short period of time and shall expire at the end of the period granted by the Public Works Superintendent or his/her designee. New applications for waivers must be filed for each reoccurrence.

- (C) No waiver shall be retroactive or otherwise apply to any previous violation and/or subsequent penalties of this policy that occurred prior to the issuance of the waiver.

- (D) *Approval Authority.* The Public Works Superintendent or his/her designee shall act upon any completed application for a temporary waiver no later than seven (7) business days after submittal. The request for a waiver may be approved, conditionally approved, or denied. The applicant shall be promptly notified in writing of any action taken. The decision made by the Public Works Superintendent or his/her designee shall be final.

4. Hardship Exemption

An exemption of the water use policy may be granted or conditionally granted by the City Manager or his/her designee due to extreme extenuating circumstances that would result in undue hardship to a person using water or to a property upon which water is used.

- (A) Persons requesting an exemption from the provisions of the outdoor water use policy restrictions shall file an application for exemption with the Public Works Superintendent or his/her designee.
 - (1) *Application.* The application form to file for an exemption shall be provided by the City of Riverbank, and must be submitted to the Public Works Superintendent, or his/her designee.
 - (2) *Supporting Documentation.* The application must be accompanied by photographs, maps, drawings, or other relevant information, including a written statement by the applicant indicating reasons why an exemption is sought.
 - (3) *Required Finding.* An application for an exemption shall be denied unless the City Manager, or his/her designee, finds, based on the information provided in the application and supporting documents, all of the following:
 - (a) That due to extreme extenuating circumstances a specific requirement would result in undue hardship;
 - (b) That the exemption does not constitute a grant of special privilege inconsistent with the limitations upon other residents and businesses;
 - (c) That because of the special circumstances applicable to the property or its use, the strict application of this policy would have a disproportionate impact on the property or use that exceeds the impacts to residents and businesses generally;
 - (d) That the authorization of such exemption will not be of substantial detriment to adjacent properties, and will not materially affect the ability of the City of Riverbank to execute the purpose of this policy, and will not be detrimental to the public interest; and
 - (e) That the condition or situation of the subject property or the intended use of the property for which the exemption is sought is not common, recurrent or general in nature.
- (B) A granted or conditional granted exemption provides relief from the regulations for up to one year to the person and related property indicated on the application, which is subject for review at any time by the City. The exemption shall expire at the end of one year. The application process must be completed to request continued exemption relief.

- (C) *Approval Authority.* The City Manager or his/her designee shall act upon any completed application for exemption no later than ten (10) business days after submittal. The request for exemption may be approved, conditionally approved, or denied. The applicant shall be promptly notified in writing of any action taken. The decision made by the City Manager or his/her designee shall be final.

5. Penalties

- (A) Penalties for noncompliance with the outdoor water use policy as set by City Council resolution in accordance with the Riverbank Municipal Code Sections of Chapter 52, under Title V, are established as follows:
- (1) The fine for the first (1st) violation is thirty-five dollars (\$35).
 - (2) The fine for the second (2nd) violation is two hundred dollars (\$200).
 - (3) The fine for the third (3rd) violation is three hundred dollars (\$300).
 - (4) The fine for the fourth (4th) violation is four hundred dollars (\$400).
 - (5) The fine for the fifth (5th) violation and each subsequent violation thereafter is five hundred dollars (\$500).
- (B) Pursuant to Riverbank Municipal Code, Section 52.34 (E)(2), an administrative citation may be reduced to a formal written warning and the related citation fines waived, or the citation may be entirely cancelled after review of the findings by the Public Works Superintendent or his/her designee.
- (C) *Payment of Fines.* Fines shall be placed on the customer's water bill and paid in accordance with Section 52.64 of the Riverbank Municipal Code.

6. Administrative Appeal

- (A) *Citation Appeal Hearing.* Appeal hearings shall be conducted in accordance with the Water, Chapter 52, Section 52.34(G), under Title V of the Riverbank Municipal Code.
- (1) A citation appeal request form must be filed with the City Clerk within fifteen (15) days from the date the citation was issued, along with an administrative processing fee of \$25, which may be refundable.

Adoption of Resolution No. 2015-096 – Previous Outdoor Watering Policy

- 1) Use of Landscape Irrigation Systems (Sprinklers) would be prohibited from December 1, 2015 to May 1, 2016. Only hand watering will be allowed and a person must be present to control the use of water.

- 2) Dwellings or establishments with **even-numbered** street addresses shall water only on **Tuesdays**. Only hand watering is allowed and a person must be present to control the use of water. *(It is currently allowed on Tuesdays and Saturdays.)*
- 3) Dwellings or establishments with **odd-numbered** street addresses shall water only on **Fridays**. Only hand watering is allowed and a person must be present to control the use of water. *(It is currently allowed on Mondays and Fridays.)*
- 4) No outdoor watering is allowed on days other than when it is expressly allowed.
- 5) No watering may occur for forty eight (48) hours after a rain event ends.
- 6) All fines are due 30 days from date of issuance of violation. If no payment is received, the fine will be added to the next utility bill.
 - (a) First violation – Change from a “warning” to a \$100 fine.
 - (b) Second violation – Change from a \$20 fine to a \$200 fine.
 - (c) Third violation – Change from a \$50 fine to a \$300 fine.
 - (d) Fourth violation – Change from a \$100 fine to \$400 fine.
 - (3) Fifth violation and each violation thereafter – Change from a \$200 fine to a \$500 fine.
- 7) No outdoor water use will be allowed between 9:00 a.m. and 9:00 p.m.

BACKGROUND

On January 17, 2014, Governor Brown issued a Proclamation declaring a State of Emergency due to severe drought conditions calling for the reduction of water use by 20%. On April 25, 2014, Governor Brown issued a proclamation extending the State of Emergency due to the ongoing drought conditions in California, and to strengthen the measures the state may take to manage water effectively. On April 1, 2015, Governor Brown, issued Executive Order B-29-15, mandating that the State Water Resources Control Board (“Water Board”) impose restrictions to achieve a statewide 25% reduction in potable urban water use through February 28, 2016 in response to the continuing drought conditions.

The Water Board adopted regulations under the Executive Order B-29-15 mandate on May 5, 2015, requiring local urban water suppliers such as the City of Riverbank to achieve conservation standards based on conservation tiers. The City’s assigned tier requires it to reduce water use by 32% as compared to the same month’s water production in the year 2013.

Water use in the City was reduced by 21% in June 2015, and 20% in July 2015; however, water use increased by 17% in August 2015, and then again reduced by 27.3% in September 2015 and 6.2% in October 2015. Unable to meet the required 32% water use reduction, the Water Board issued a Notice of Violation and Information Order on August 7, 2015, to the City in order to determine what actions the City had taken to comply with the mandated water conservation standard. On October 21, 2015, City staff met with the Water Board to further discuss the City's water conservation program and areas of potential water use savings.

Adopted Ordinance No. 2016-004

There are several factors that constitute the declaration of a water drought or water shortage that requires the City to implement water conservation regulations as expeditiously as changes occur. On March 8, 2016, City Council adopted Ordinance 2016-004 amending several Sections of the Riverbank Municipal Code, Chapter 52, Water, to update and establish water restrictions for outdoor water use, seasonal landscape irrigation schedules, prevent water waste, establish penalties for noncompliance of the regulations, and the ability to request an appeal hearing to settle administrative citations issued to violators. In addition, the Ordinance also provides the City Council with the flexibility to set water use restrictions by adoption of a resolution; thereby, promptly adapting the City's regulations to the changing water conservation measures and mandates. The current Ordinance reads as follows:

The RMC, Title V: Public Works, Chapter 52: Water, Section 52.34 reads as follows:

§ 52.34 RESTRICTED WATER USE.

In addition to all other provisions and requirements of this chapter, the following additional rules and regulations for the use of water are hereby established. These provisions shall apply to all persons using water in the city regardless of whether any person using water shall have a contract for water service with the city.

(A) *Vehicle Washing.* The washing of commercial and noncommercial privately owned automobiles, trucks, trailers, motor homes, boats, buses, and other types of vehicles is restricted to the use of a hand-held bucket and quick rinses using a hose with a quick-acting positive shut-off nozzle.

(B) *Washing Exterior Surfaces.* There shall be no washing of building exteriors, mobile home exteriors, sidewalks, patios, driveways, gutters or other exterior surfaces, unless permitted by the Public Works Director, or Superintendent, or his/her designee, and done with the use of a quick-acting positive shut-off nozzle on the hose.

(C) *Outdoor Water Use.* A drought, water shortage, or waste of water may require the city to implement regulations as expeditiously as such findings occur. The City Council by resolution shall establish water conservation regulations to address such findings, which may include but are not limited to water conservation regulations that are mandated by the state or federal government.

(D) *Violations.* It shall be unlawful for any customer or person to fail to comply with any of the provisions set forth by this section or by City Council resolution. The Enforcement Officer or designee may issue an administrative citation for failure to comply.

(E) *Penalties.* Failure to comply with any provision, requirement, rules or regulations under this chapter shall be unlawful and punishable as an infraction.

(1) In addition to the stated penalties, the city may pursue any available civil remedies and criminal penalties together with any and all costs incurred by the city as a result of violation of this section or any City Council resolution adopted pursuant to this section.

(2) At the discretion of the Enforcement Officer with the approval of the City Manager, an issued administrative citation for noncompliance of this section may be reduced to a formal written warning and the related citation fines waived or the citation may be cancelled after review of the findings. All results of a citation issued shall be entered into the record. Any further violation of the water conservation regulations provided in this section or adopted pursuant to this section shall result in the imposition of an administrative citation and its related penalties as set forth herein.

(3) Penalties for noncompliance with water conservation regulations provided in this section or adopted pursuant to this section shall be as follows and may be amended from time to time by City Council resolution:

(a) The fine for the first violation is one hundred dollars (\$100).

(b) The fine for the second violation is two hundred dollars (\$200).

(c) The fine for the third violation is three hundred dollars (\$300).

(d) The fine for the fourth violation is four hundred dollars (\$400).

(e) The fine for the fifth violation and each subsequent violation thereafter is five hundred dollars (\$500).

(F) *Payment of Fines.* Fines shall be placed on the customer's water bill and paid in accordance with Section 52.64 of this chapter.

(G) *Citation Appeal Hearing.* Any customer or person receiving an administrative citation for noncompliance of this section may request an appeal hearing pursuant to the administrative remedies provided in Chapter 99 of the Riverbank Municipal Code. Any customer or person seeking an appeal hearing of an issued administrative citation for noncompliance of this section shall file an appeals request

form within fifteen (15) days of the citation. Failure to timely file a request form shall waive the right to appeal the violation. At the end of the fifteen (15) day period, all fines incurred for noncompliance with this section shall be placed on the customer's water bill for payment.

The emphasis of the amendments made to the Riverbank Municipal Code were to clarify the aforementioned policies, implement conservation measures to meet state orders, and incorporate the ability to appeal an administrative citation.

RECOMMENDED ACTION

In support of Governor Brown's Proclamations and City Council's adopted Urban Water Management Plan, adopted Resolution No. 2015-096, adopted Resolution No. 2016-026 and the Riverbank Municipal Code establishing the City's water use policy in response to the State Water Board's Conservation Orders, it is recommended:

1. that a public hearing be conducted to consider each individual Administrative Citation issued as listed; and
2. by a majority vote of the Board, find that each Administrative Citation issued were in accordance to policies and therefore are upheld.

ATTACHMENTS

There is no attachment to this report.