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Are Your Water-Use Rules Half Full or Half Empty? Why Communities Need to Pay Attention to Water Conservation



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ers must stay abreast how trending issues—like a severe drought—which can have a surprisingly strong impact on Park operations.

On May 5, 2015, the California State Water Resources Control Board (“Water Board”) adopted an emergency regulation requiring an immediate 25% reduction in overall potable urban water use statewide in accordance with Governor Brown’s April 1, 2015 Executive Order B-29-15. These are California’s first ever mandatory water restrictions.

Governor Brown’s executive order directs the Water Board to significantly increase efforts to enforce water conservation and prevent water waste. The Water Board is to “conduct inspections” to determine illegal and/or wasteful water usage, and will require monthly reports from water suppliers respecting usage, conservation, and enforcement efforts.

Most, if not all cities and municipalities across much of the country have adopted water conservation programs to promote activities aimed at lowering water usage, and waste. California has gone a step further by adopting aggressive water-use restrictions to achieve water saving results.

What’s the point?

Why should Community owners and management companies want to keep mindful of all this? Here’s why: In California, for example, and in other jurisdictions around the country also subject to drought conditions, mandatory watering schedules have become the rule rather than the exception. And if you’re a Community owner in California or any other drought-ridden area with a declared emergency regarding drought conditions, local agencies are expected to begin *aggressively* enforcing water conservation measures. As you can imagine, “enforcement” is political lingo for “citations,” “fines,” and “surcharges.”

Communities will now find themselves on the hook for covering water over-usage penalties and costs for resident overuse, regardless of whether or not those residents know about the water use restrictions.

So What Are Communities To Do?

Specificity of resident watering limitations can provide greater ability for Communities to enforce water restriction rules, especially when cities and municipalities begin to aggressively monitor and enforce water use by way of citations and penalties. In California, for example, fines for water over-usage and waste will run anywhere from \$45.00 per violation up to \$500.00 per violation, depending on the jurisdiction. Multiply penalties by tens, or hundreds of spaces, and it becomes quite easy to see that these new potential expenses and penalties can quickly become much more than

a “drop in the bucket.”

Before these days of drought, Communities could get by with “relaxed” rules and regulations about water use that merely cited a city’s municipal code or ordinance governing water usage. Nowadays, in the grips of a bone-dry drought, it is more important than ever for Communities to review and, if necessary, bulk up their park rules and regulations to not only ensure Community compliance with water use restrictions but also to effectively guard against unwanted citations, fines, or surcharges for overuse.

When reviewing Rules and Regulations, a Community owner must identify and address several concerns. First, and generally speaking, Community owners must make sure there are current rules governing water usage, and if not, implement such rules.

Second, and more specifically, Communities should aim to implement or revise (as necessary) water usage rules to *explicitly* require that all Community residents abide by and follow local governmental watering schedules and restrictions. What a Community should *not* do is provide some vague rule directing that residents merely “follow local water restrictions” or worse yet, simply cite some obscure municipal code section and advise residents to “look it up” for themselves and adhere to the restriction schedule. With such rules, a Community stands to encounter severe enforcement problems, especially if a Community intends to seek reimbursement from a resident cited or fined to have engaged in water misuse.

One solution is to set forth the exact language of the operative water-use ordinance in the rules themselves or a separate addendum to the rules. By notifying residents about exactly what is required in terms of water use, the serial car-washing residents who keep their hose running for an hour will be hard-pressed to exclaim “how was I supposed to know” when they are cited for waste.

As a corollary to effective rule enforcement, a Community should also review its lease agreements, particularly provisions governing governmental surcharges and cost pass-throughs. Should a Community be forced to pay fines or surcharges caused by a resident’s water abuse, a strong pass-through provision will make it that much easier for a Community to potentially recoup costs for such water abuse or overuse.

The bottom line: Clear standards in a Community’s residency documents (lease agreements and Community rules) which explicitly delineate exactly what residents must do to comply with water use rules by regarding water use rules will help ensure that Communities can be reimbursed by an offending resident for costs, fines or surcharges caused by water overuse or misuse as opposed to being left out to dry.

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