

From: [Jen Klose](#)
To: [Smith, Maraskeshia](#); [_CityCouncilListPublic](#)
Cc: [Calum Weeks](#); [Ramon Meraz](#)
Subject: [EXTERNAL] WDO Policy
Date: Monday, March 28, 2022 4:30:35 PM

Dear Mr. Mayor, Mr. Vice Mayor, Councilmembers, and Ms. City Manager:

I write, as always, with great respect for the difficulty of balancing priorities and the weight of your responsibility. I don't want to catch anyone off guard when we appear tomorrow to oppose the proposed WDO policy.

We have looked over the materials that staff provided in support of Agenda Item 15.2 for tomorrow's meeting. While we are still in the process of preparing a more comprehensive written statement and our public comments, our position remains much the same as when we last appeared before you on this: (1) this is an inequitable way to approach managing the water crisis that is inconsistent with council goals around housing and homelessness and equity; and (2) staff has failed (again) to provide evidence as to why this is the most effective way to address our shortage.

I wanted to bring a few points and questions to your attention:

1. On November 30, 2021, Council made the following specific requests of staff: (1) to provide its budget, as it would to accompany any request to change rates; and (2) to specifically describe what programs the WDO fees would fund and *how* that would create/conservate more water, and *when* it would create/conservate more water.

Neither of these requests have been addressed in the materials in the agenda.

2. While I am not a water law expert, the way in which the California Water Code has been presented by staff here seems misleading. Section 350 does impose the mandatory requirement to declare a water emergency when one such exists.

But how to approach that emergency is left to the sound discretion of this council by Section 353, which, in pertinent part, reads "it shall thereupon adopt such regulations and restrictions on the delivery of water and the consumption within said area of water supplied for public use **as will in the sound discretion of such governing body conserve the water supply for the greatest public benefit with particular regard to domestic use, sanitation, and fire protection.**" (emphasis added)

Section 356 provides that this body *may* "include the right to deny applications for new or additional service connections, and provision for their enforcement by discontinuing service to consumers wilfully violating the regulations and restrictions," but it most certainly does not require it, which the presentation implies it would be in the absence of a WDO policy, which is a response mechanism not even specifically enumerated in the Code.

Sections 353 and 356, taken together, plainly provide this body with the ability to try any number of solutions, and yet, even though the Council directed staff to review and come back with other options, the staff report presents each of those "options" as some version of a false dichotomy – WDO or no WDO – and various ways to pay for a WDO fee. Not only are there no other options presented, as requested, but, as addressed above, staff has failed to base its

strong recommendation on any evidence or data whatsoever, or even to provide some specificity of what this fee pays for. If there are already funding streams aimed at reducing water consumption, where is that information as it relates to this proposed fee/policy — how would this additional money amplify the impact of those programs?

Additionally misleading are the project examples In its presentation, which show that these fees would constitute just a fraction of the development costs. What is left out is that fees currently total 11-20 percent of project costs *before* this WDO fee. These are the fees that are already making development unmanageable and in some cases completely infeasible.

There was also no response to the facially inequitable nature of the conservation programs that this fee would presumably fund, which allow residents to get governmental subsidies for conservation efforts without showing the financial need for such subsidies.

Finally, as an issue of transparency — with the public and you — Attachment A is referred to as a "revised" policy and a "redline." It is not, in fact, a redline, and so there is really no way to know whether or not or if so, how, this is revised. It's unclear what this is at all.

I have witnessed each of you make well-reasoned decisions guided by data and evidence. I understand that this drought is dire and requires action, but that action should be similarly well-considered, and it does not appear that you have been any more prepared to exercise your "sound discretion" than you were four months ago. If the PD asked how this WDO policy would help "conserve" water, could you answer that question based on what you've been provided? Even if the fee effectively halted all development, that would not necessarily mean additional water was *conserved*.

This decision may slow down progress on your priorities to develop housing, reduce homelessness, and advance equity, which would most significantly impact our communities of color. Accordingly, I would suggest that you apply a particularly stringent test to the proposed solution, not unlike the Supreme Court's "Strict Scrutiny" standard of review applied to issues of discrimination, which requires that government action be "narrowly tailored" to achieve a "compelling government interest." There is no doubt that the government interest here is compelling. But is this narrowly tailored? Based on what you have been presented with, there is no way to know.

I'd ask that you push this one more time to give staff an opportunity to answer the questions you put to them last November.

Feel free to reach out if you want to discuss further.

Thank you,
Jen

Jen Klose, J.D. [[she/her](#)] | Executive Director

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1275 Fourth St. #179 | Santa Rosa, CA 95404

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