10- O-0417

(Do Not Write Above This Line)

AN ORDINANCE BY
CITY UTILITIES COMMITTEE

AN ORDINANCE TO AMEND CHAPTER 154 OF THE CITY OF ATLANTA CODE OF ORDINANCES TO REQUIRE REPLACEMENT OF INEFFICIENT PLUMBING FIXTURES WITH WATER-CONSERVING PLUMBING FIXTURES AT THE TIME WATER SERVICE IS ESTABLISHED; AND FOR OTHER PURPOSES.

Filed

MAY 17 2010

- ☑ CONSENT REFER
- ☐ REGULAR REPORT REFER
- ☐ ADVERTISE & REFER
- ☐ 1st ADOPT 2nd READ & REFER
- ☐ PERSONAL PAPER REFER

Date Referred 03/15/10

Referred To: City Utilities

Date Referred

Refferred To:

Date Referred

Referred To:

First Reading

Committee City Utilities

Date March 9, 2010

Chair

Referred To

Committee	Committee
City Utilities	
Date March 30, 2010	Date
Chair	Chair
Action Fav, Adv, Hold (see rev. side) Other	Action Fav, Adv, Hold (see rev. side) Other
Members	Members
Refer To	Refer To

Committee	Committee
City Utilities	
Date May 1 2010	Date
Chair	Chair
Action Fav, Adv, Hold (see rev. side) Other	Action Fav, Adv, Hold (see rev. side) Other
Members	Members
Refer To	Refer To

FINAL COUNCIL ACTION

☐ 2nd ☐ 1st & 2nd Readings ☐ 3rd

☐ Consent ☐ V Vote ☐ RC Vote

CERTIFIED

MAY 17 2010

ATLANTA CITY COUNCIL PRESIDENT

CERTIFIED

MAY 17 2010

Rhonda Dauphin Johnson
MUNICIPAL CLERK

MAYOR'S ACTION

RCS# 262
5/17/10
4:11 PM

Atlanta City Council

REGULAR SESSION

10-O-0417 AMEND CHAPT.154 OF THE CITY CODE OF ORDINANCES
FILE

YEAS:	14
NAYS:	0
ABSTENTIONS:	0
NOT VOTING:	1
EXCUSED:	0
ABSENT	1

Y Smith	Y Archibong	Y Moore	Y Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	B Bottoms	Y Willis
Y Winslow	Y Adrean	Y Sheperd	NV Mitchell

10-O-0417

AN ORDINANCE BY CITY UTILITIES COMMITTEE

TO AMEND CHAPTER 154 OF THE CITY OF ATLANTA CODE OF ORDINANCES TO REQUIRE REPLACEMENT OF INEFFICIENT PLUMBING FIXTURES WITH WATER-CONSERVING PLUMBING FIXTURES AT THE TIME WATER SERVICE IS ESTABLISHED; AND FOR OTHER PURPOSES.

WHEREAS, the City of Atlanta ("City") is authorized to adopt such ordinances for the governing and policing of the City for the purpose of protecting and preserving the safety, health, peace and general welfare of the City and its residents; and

WHEREAS, the City is authorized to adopt this ordinance pursuant to Article IX, Section II, Paragraphs II (home rule powers) and III (a)(7) (supplementary power to develop, store, treat, purify and distribute water) of the Georgia Constitution, O.C.G.A. § 36-35-3 (home rule powers), O.C.G.A. § 8-2-1 *et seq.* (state requirements for efficient plumbing fixtures), O.C.G.A. § 12-5-6 (rain-sensor shut-off), Atlanta City Charter §§ 1-102 (b) (police powers), (c)(9) (system of waterworks inside and outside corporate limits), and (c)(16) (regulate buildings and plumbing); and

WHEREAS, the City recognizes that water is a vital resource, essential to the protection of the safety, health, peace and general welfare of its residents, the approximately 1.5 million customers reliant upon the City for drinking water, and the new residents and customers that will rely upon the City for drinking water in the future; and

WHEREAS, the 2003 Water Supply and Water Conservation Management Plan prepared by the Metropolitan North Georgia Water Planning District ("2003 Water Supply Plan") requires the City to speed the conversion of older, inefficient plumbing fixtures toward current lower flow models and the 2003 version of the Water Supply Plan recommended that new state legislation be enacted to require this conversion upon the sale of a home or other structure; and

WHEREAS, the General Assembly has repeatedly failed to take action to require conversion to water conserving plumbing fixtures upon sale of a home or other structure in the State of Georgia or in the Metropolitan North Georgia Water Planning District area; and

WHEREAS, the 2009 Water Supply and Water Conservation Management Plan prepared by the Metropolitan North Georgia Water Planning District ("2009 Water Supply Plan") requires the City to implement a program targeting replacement of older plumbing fixtures; and

WHEREAS, the City recognizes that water is a potentially scarce natural resource and therefore supports the use of conservation measures to ensure the continuance of an adequate water supply for its residents and customers as well as for other jurisdictions that rely upon the same water sources as the City; and

WHEREAS, buildings and homes constructed in the City and its water service area after January 1, 1993, are required by state law, the Atlanta City Code and the relevant local codes applicable to the residents of other jurisdictions using water from the City's water system to be built with water conserving plumbing fixtures but, buildings and homes constructed prior to 1993 do not necessarily contain these water conserving plumbing fixtures, thereby wasting a vital natural resource necessary for life, commerce and the environment; and

WHEREAS, requiring buildings and homes constructed in 1993 and prior to January 1, 1993 to install water conserving plumbing fixtures upon establishment of water service significantly accelerates conversion toward installation of water conserving plumbing fixtures resulting in conservation of vital water resources so that the residents of the City and the customers of the City's water system will continue to have adequate water supplies for their use.

NOW, THEREFORE THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY ORDAINS:

SECTION 1: That a new Division 4 entitled Inefficient Plumbing Fixture Replacement be added to Article III Water, Chapter 154 Utilities and that a new Section 154-121 entitled Short Title be added to read as follows:

This Division shall be known as the "Inefficient Plumbing Fixtures Replacement Ordinance."

SECTION 2: That a new Section 154-122 entitled Authority, Purpose, and Intent be added to read as follows:

The Atlanta City Council makes the findings listed below.

(a) The City is authorized to adopt this Division pursuant to the 1983 Georgia Constitution, Article IX, Section II, Paragraphs II and III (a)(7), O.C.G.A. § 36-35-3, O.C.G.A. § 8-2-1 *et seq.*, O.C.G.A. § 12-5-6, O.C.G.A. § 12-5-570 *et seq.*, and Atlanta City Charter §§ 1-102 (b), (c)(9), and (c)(16).

(b) Water is a vital resource, essential to the protection of the safety, health, peace and general welfare of the City's residents and the customers reliant upon the City for drinking water, and the new residents and customers that will rely upon the City for drinking water in the future.

(c) Water is a potentially scarce and shared natural resource and that requires the use of conservation measures to ensure the continuance of an adequate supply for the City's residents and customers as well as other users and natural systems reliant upon it.

(d) The 2009 Water Supply and Water Conservation Management Plan prepared by the Metropolitan North Georgia Water Planning District requires the City to implement a program targeting replacement of older plumbing fixtures.

(e) Buildings and homes constructed in the City and the City's water service area after January 1, 1993, are required by O.C.G.A. § 8-2-1 *et seq.*, Section 925 *et seq.* of the Plumbing Code of the City of Atlanta, 1992, and other local laws to be built with water conserving plumbing fixtures. Landscape irrigation systems with electronic controllers installed in the City and the City's water service area after January 1, 2005 were are required to have a rain sensor shut-off switch and all automatic sprinkler systems installed for the purpose of landscape irrigation in the City and the City's water service area after December 11, 2007 are also required to have a rain sensor shut-off device that ensures the automatic irrigation system will not operate during times of precipitation, or when the temperature reaches 32 degrees Fahrenheit (zero degrees Celsius) or below. However, buildings and homes constructed in 1993 and prior to 1993, and landscape irrigation systems installed prior to December 11, 2007 do not necessarily contain these water conserving plumbing fixtures or devices, thereby wasting a vital natural resource necessary for the safety, health, peace and general welfare of the City's inhabitants and the continued operation of the City's water system both inside and outside the City's corporate limits.

(f) Requiring buildings and homes constructed in 1993 and prior to January 1, 1993 to install water conserving plumbing fixtures upon establishment of water service significantly accelerates conversion toward installation of water conserving plumbing fixtures resulting in conservation of vital water resources so that the residents of the City and the customers of the City's water system will continue to have adequate water supplies for their use.

(g) Requiring landscape irrigation systems installed prior to December 11, 2007 to install rain sensor shut-off devices that also shut-off when the temperature reaches 32 degrees Fahrenheit (zero degrees Celsius) or below to install water conserving plumbing devices significantly accelerates conversion toward installation of rain sensor shut-off devices resulting in conservation of vital water resources so that the residents of the City and the customers of the City's water system will continue to have adequate water supplies for their use.

SECTION 3: That a new Section 154-123 entitled Definitions be added to read as follows:

As used in this Division the term:

(a) *City* shall mean the City of Atlanta.

(b) *Certificate of Compliance* shall mean a written form prescribed and provided by the Commissioner of the Department of Watershed Management in which a plumber licensed pursuant to the laws of the State of Georgia or a home inspector asserts under penalty established in O.C.G.A. § 16-10-20 and this ordinance that all structures on the property contain only water conserving plumbing fixtures and that all other kinds of plumbing fixtures have been removed from all structures on the property.

(c) *Extreme Economic Hardship* shall mean a cost to comply with the requirements of this ordinance that exceeds one thousand dollars ($1,000) per toilet.

(c) *Home Inspector* shall have the same meaning as provided in O.C.G.A. § 8-3-330 as amended.

(d) *Inefficient Plumbing Fixture* shall mean any plumbing fixture exceeding the water flow restrictions for listed fixtures in section 925of the Plumbing Code of the City of Atlanta, 1992.

(e) *Plumber* shall mean a master plumber or journeyman plumber as those terms are defined in O.C.G.A. § 43-14-2 (9) and (11) as amended.

(f) *Rain Sensor Shut-off device* shall mean a device that ensures that an automatic irrigation system will not operate during times of precipitation, or when the temperature reaches 32 degrees Fahrenheit (zero degrees Celsius) or below as required by section 1206 of the Plumbing Code of the City of Atlanta, 1992.

(g) *Qualifying Property* shall mean any land containing at least one structure constructed in 1993 or prior to 1993 that is located in the City of Atlanta, or that is located outside the City of Atlanta and uses water supplied directly by the City of Atlanta.

(h) *Water-Conserving Plumbing Fixture* shall mean any toilet, shower head, urinal, lavatory faucet or lavatory replacement aerator, or kitchen faucet or kitchen replacement aerator that at a minimum complies with water flow restrictions set forth in section 925of the Plumbing Code of the City of Atlanta, 1992 or as amended.

SECTION 4: That a new Section 154-124 entitled Replacement of Inefficient Plumbing Fixtures Upon Application for Service Required be added to read as follows:

(a) *Purchaser Replacement Responsibility*. On or after January 1, 2011, at the time a person applies for water service for a qualifying property the qualifying property's inefficient plumbing fixtures shall be replaced by water conserving plumbing fixtures. On or after January 1, 2011, at the time a customer applies for water service for a qualifying property the property's landscape irrigation system shall be equipped with a

functioning rain sensor shut-off device. No person who requests establishment of water service for a qualifying property after January 1, 2011 shall be allowed to obtain water service from the City for a qualifying property until such time as the owner of the qualifying property has provided a valid certificate of compliance to the City.

(b) *Seller Disclosure Requirement.* Any person selling qualifying property after January 1, 2011, shall disclose the requirements of this ordinance and the seller's knowledge with respect to the qualifying property's status of compliance with this ordinance to potential purchasers prior to the execution of any contract to purchase and sell such property.

(c) *No Duty of Agent.* Nothing in this ordinance shall be construed to create any duty upon the agent of any transferee of any qualifying property; unless otherwise mutually agreed to in writing.

SECTION 5: That a new Section 154-125 entitled Exemptions be added to read as follows:

The Commissioner of the Department of Watershed Management may grant an exemption to the provisions of this ordinance to any person if the Commissioner of the Department of Watershed Management determines that any of the following conditions exist:

(a) A water-conserving plumbing fixture would be installed in an existing structure that has been identified by a local, state, or federal government entity as a historical site, and a historically accurate water-conserving plumbing fixture is not available;

(b) Installation of a water conserving plumbing fixture would cause the plumbing or sewage system to malfunction due to its capacity, design, or installation; or

(c) When the inefficient plumbing fixtures installed are:

(1) Specifically designed for use by persons with disabilities

(2) Specifically designed to withstand unusual abuse or installation in a penal institution; or

(3) Toilets for juveniles.

(d) Any qualifying property that, because of its historic restrictions or plumbing and/or drainage system configurations would cause the owner to suffer extreme economic hardship as that term is defined in this ordinance; or

(e) Any qualifying property that will not be inhabited but instead will be demolished after sale provided that prior to demolition the purchaser shall not be allowed to obtain water service for the qualifying property unless such water service is solely for demolition or construction related purposes; or

(f) Any qualifying property that is sold or conveyed between spouses, domestic partners, or between parents and their children, including conveyances during the administration of the estate of such spouse, domestic partner, parent or child.

SECTION 6: That a new Section 154-126 entitled Violation and Penalties be added to read as follows:

(a) Any material omission, untrue or misleading information contained in or left out of a certificate of compliance under this Division shall be unlawful and a violation of this Code.

(b) In addition, failure to comply with any provision of this Division shall subject the user to termination of water service pursuant to Atlanta City Code § 154-63.

SECTION 7: That a new Section 154-127 entitled Rulemaking Authority be added to read as follows:

The Commissioner is authorized to make all necessary and reasonable rules and policies with respect to the enforcement of this division. All such rules and policies shall be consistent with the provisions of this division.

SECTION 8: That a new Section 154-128 entitled Severability be added to read as follows:

If any provision, clause, sentence or paragraph of this division, or the application thereof to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions or application of the provisions of this division which can be given effect without the invalid provisions or application and, to this end, the provisions of this division are hereby declared to be severable.

SECTION 9: That Section 154-114.1 entitled Establishment of Water Service be amended to read as follows:

The commissioner may require proof of identity of each applicant and occupancy information sufficient to establish the identity of the consumer of water and sewer services. In addition, the commissioner may require tenant and/or property ownership information on each property served at the time of application regardless of whether the property owner is the occupant or consumer. No new account shall be established for customers with delinquent charges on any account in the name of such customers or for

customers on any partial payment plan agreement until such charges are paid. The commissioner may require proof of installation of water conserving plumbing fixtures of each applicant and may condition establishment of water service upon compliance with Division 4 Inefficient Plumbing Fixtures Replacement.

SECTION 10: That all ordinances or parts in conflict herewith, be and the same are hereby repealed.