New legislation protects conservation from HOA restrictions

A trio of new state laws prevents homeowners associations (HOA) from prohibiting or fining members for practicing conservation, especially during a drought-caused state of emergency. These laws affect prohibitions that HOAs might have against the installation of drought tolerant landscaping and fines levied against residents who reduce or stop watering their lawns and other plants during a drought. City codes remain the same.

These new laws seek to address the concerns of homeowners who want to participate in water saving efforts, but are limited by their HOA’s rules regarding appearance and maintenance of their landscaping.

Can a resident belonging to a HOA be penalized for replacing lawns (turf) with water-efficient plants?

No, although the laws will be more specific at the start of 2015. AB 2100, which became law in late July 2014, amended a state civil code so that HOAs cannot prohibit the use of water-efficient plants; but there is no specific mention of turf removal. AB 2104, however, which goes into effect Jan. 1, 2015, specifically indicates that HOAs cannot prohibit the use of desert-friendly plants to replace turf.

What happens if HOA rules conflict with local water-efficient landscaping codes or other state government or water codes?

AB 2100 makes such HOA rules legally void and unenforceable. The HOA can still establish landscaping rules, however, provided they conform to the new law, so residents should check with their HOAs about review committees or other requirements that remain in effect.

Can HOAs require member residents to water their lawns, and fine or otherwise penalize them if they don’t?

Members cannot be fined or penalized by their HOA for reducing or ceasing to water lawns or other landscaping if there is a drought and the governor (or local government entity) has declared a state of emergency. Gov. Jerry Brown declared a state of emergency due to drought on Jan. 17, 2014. City codes still apply (see below).

Any exceptions?

Yes. If an HOA irrigates with recycled water and its rules require members to water their landscaping, members can be fined or otherwise penalized for not doing so. This is the result of SB 992, which went into effect in September 2014. The new law fails to distinguish between situations where an HOA uses recycled water to irrigate the landscaping it manages and residents using potable water from their private source to water their own lawns and other landscaping. Residents should check with their HOAs before they reduce or cease watering their lawns and vegetation to ensure they do not subject themselves to fines or other penalties.

The same legislation voids HOA rules that require pressure washing of the exterior of residences during a drought-caused state of emergency.

What about city codes?

City codes that prohibit brown lawns or other neglect of landscaping remain in force. In the Coachella Valley virtually all cities have such codes; the County of Riverside does not. A bill to prohibit such code enforcement during a drought-caused state of emergency failed to get out of the state legislature in 2014.

Where can I find additional information?

To view legislation of the state laws referred to above visit CVWD’s website at http://www.cvwd.org/conservation/businesses.php.