

ORDINANCE NO. CO13.19.04.25.E1

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CEDAR PARK, TEXAS, AMENDING CHAPTER 18 UTILITIES, ARTICLE 18.08, DROUGHT CONTINGENCY AND WATER EMERGENCY PLAN, OF THE CITY OF CEDAR PARK CODE OF ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A REPEALER; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED WAS NOTICED AND IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, The Drought Contingency and Water Emergency Plan (“Plan”) is to help ensure that water resources are available to the City and that water be put to the maximum beneficial use, or unreasonable method of use of water be prevented, in the interests of the people of the City and for the public health and; and

WHEREAS, Updates to this Plan must be submitted to the Texas Commission of Environmental Quality every five years.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CEDAR PARK, TEXAS:

SECTION 1. That Chapter 18 Utilities, Article 18.08 Drought Contingency and Water Emergency Plan, of the City of Cedar Park Code of Ordinances is hereby amended as follows: As amended in Exhibit A.

SECTION 2. That the provisions of this ordinance are severable and the invalidity of any word, phrase or part of this ordinance shall not affect the validity or effectiveness of the remainder of the ordinance.

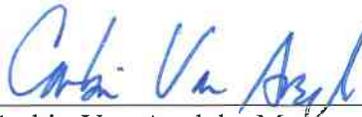
SECTION 3. That the ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 4. That it is hereby officially found and determined that the meeting at which this resolution is passed is open to the public and that public notice of the time, place, and purpose of said meeting was given as required by law.

READ AND CONSIDERED ON FIRST READING by the City Council of Cedar Park at a regular meeting on the 11th day of April, 2019, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

READ, CONSIDERED, PASSED AND APPROVED ON SECOND AND FINAL READING by the City Council of Cedar Park at a regular meeting on the 25th day of April, 2019, at which a quorum was present and for which due notice was given pursuant to Section 551.001, et. Seq. of the Government Code.

CITY OF CEDAR PARK, TEXAS



Corbin Van Arsdale, Mayor

ATTEST:



LeAnn M. Quinn, TRMC
City Secretary

APPROVED AS TO FORM
AND CONTENT:



J.P. LeCompte, City Attorney



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EXHIBIT A

ARTICLE 18.08 DROUGHT CONTINGENCY AND WATER EMERGENCY PLAN

Sec. 18.08.001 Approval of the plan

The City Council hereby approves the addition of definitions, prohibiting water waste during all drought response stages, and revisions to drought response stages to the City's drought contingency and water emergency plan (the "plan"). The City commits to implement the program changes according to the procedures set forth in the revised plan.

Sec. 18.08.002 Declaration of policy, purpose, and intent

(a) It is hereby declared that, because of the water conditions prevailing in the City, the water resources available to the City shall be put to the maximum beneficial use and that the waste, unreasonable use, or unreasonable method of use of water be prevented, and the conservation of such water to be extended with a view to the reasonable and beneficial use thereof in the interests of the people of the City and for the public health and welfare.

(b) Water uses regulated or prohibited under the plan are considered to be nonessential and continuation of such uses during times of water shortage or other emergency water supply condition are deemed to constitute a waste of water which subjects the offender(s) to enforcement as defined in section 18.08.013 of this article.

Sec. 18.08.003 Public education

All information, including updates, regarding the plan will be made available to the public at all times on the City's website.

Sec. 18.08.004 Wholesale water customer education

Information regarding the plan will be available to wholesale water customers at all times on the City's website.

Sec. 18.08.005 Coordination and compliance with regional groups

The service area of the City is located within the Lower Colorado Regional Water Planning Area (Region K) and the Brazos Region G., and the City has provided a copy of this plan to both. Furthermore, this plan shall be altered by the City to reflect any regulations dictated by the Lower Colorado River Authority (LCRA) or any other governmental entity authorized to promulgate water conservation regulations applicable to the City.

Sec. 18.08.006 Authorization

The City manager is hereby authorized and directed to implement the applicable provisions of this plan upon determination that such implementation is necessary to protect public health, safety, and welfare. The City shall have the authority to initiate or terminate drought or other water supply emergency response measures as described in this plan.

Sec. 18.08.007 Application

The provisions of this plan shall apply to all persons, customers, and property utilizing water provided by the City. The terms “persons” and “customer” as used in the plan include individuals, corporations, partnerships, associations, and all other legal entities.

Sec. 18.08.008 Definitions

For the purpose of this plan, the following definitions shall apply:

Acre-feet. The amount of water required to cover an area of one acre to a depth of one foot. One acre-foot of water is equal to 325,851 gallons.

Auxiliary source. A source of water other than the City’s public water system which may include reuse effluent, raw, ground or well water.

City. The City of Cedar Park, Texas.

City manager. The City manager or any designated person acting on the City manager’s behalf.

Combined storage. The amount of water stored in acre-feet in Lake Travis and Lake Buchanan according to records kept by the Lower Colorado River Authority (LCRA).

Commercial/nonresidential customer. All other customers not classified as residential customer, including but not limited to businesses, schools, churches, large properties, athletic fields, municipally sponsored public gatherings, government entities, multifamily developments and property management associations (e.g. homeowners associations).

Conservation. Those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternative uses.

Customer. Any person, company, organization, or legal entity receiving water supplied by the City.

Drip irrigation. A method of irrigation which is typically installed below ground and consists of porous piping or emitters which allow the application of water at a slow and constant rate.

Drought tolerant landscaping. A method of landscaping which conserves water through the use of specific principles of design, plant selection, installation, maintenance, and irrigation methods.

Efficient irrigation technology. Irrigation techniques that use the latest technology with variables such as but not limited to soil moisture sensors, rain shutoff devices, and evapotranspiration based watering system controllers.

Landscape irrigation use. Water used for the irrigation and maintenance of landscaped areas, whether privately or publicly owned, including residential and commercial lawns, gardens, golf courses, parks, and rights-of-way and medians.

Nonessential water use. Water uses that are neither essential nor required for the protection of public health, safety, and welfare. These uses are considered nonessential depending on the current severity drought stage. Such nonessential uses include:

- (1) Irrigation of landscaped areas, including parks, athletic fields, and golf courses, except as otherwise provided by this plan;
- (2) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle;
- (3) Use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
- (4) Use of water to wash down buildings or structures for purposes other than immediate fire protection;
- (5) Flushing gutters or permitting water to run or accumulate in any gutter or street;
- (6) Use of water to fill, refill, or add to any swimming pools or Jacuzzi-type pools;
- (7) Use of water in a fountain or pond for aesthetic or scenic purposes except if the fountain utilizes recirculated water and/or supports aquatic life or wildlife. A person may not operate an ornamental fountain with an aerial emission of water or aerial fall of water greater than four (4) inches other than for aeration necessary to preserve habitat for aquatic life or wildlife;
- (8) Failure to repair a controllable leak(s) within ten (10) business days after having been given notice directing the repair of such leak(s); and
- (9) Use of water for dust control, other than for purposes of public health and safety.

Outdoor water use. Includes, but is not limited to, watering lawns, shrubs, vegetables, athletic fields, large properties, and other types of outdoor vegetation; washing vehicles, boats, and trailers; use of landscape irrigation systems; refilling or adding water to swimming pools or wading pools or ponds; the operation of aesthetic or recreational devices such as water slides; the watering of patios, driveways, parking areas, streets, tennis courts, sidewalks or other paved areas; and the watering of ground foundations.

Residential customer. Any person, company, organization, or other legal type entity receiving water supplied by the City at a location where the principal use of the property is for single-family or duplex habitation.

Soaker hose. A perforated or permeable garden-type hose or pipe that is laid above ground that provides irrigation at a slow and constant rate.

Sec. 18.08.009 Triggering and termination criteria for drought response stages

(a) The City Manager shall monitor the water supply and/or production and shall determine when conditions warrant initiation or termination of each drought response stage of the plan.

(b) The triggering criteria described below are based on combined storage, customer water consumption and water treatment plant production/distribution system capacity; however, the stated triggering criteria are not intended as an exhaustive or finite listing, and regardless of whether any stated triggering criteria are present, the City manager may initiate and/or terminate each drought response stage of the plan to protect the public health, safety, and welfare and in the best interest of the City.

(1) Stage 1–Voluntary water conservation conditions.

(A) Requirements for initiation. This stage shall be considered the baseline water conservation stage for the City and will be implemented at all times when stages 2–5 are not in effect. Customers shall be requested to adhere to a voluntary twice-per-week outdoor watering schedule and adhere to the water restrictions on nonessential water use, defined in section 18.08.008 of this plan at all times. This stage is designed to promote water efficiency throughout the City.

(B) Target reduction goal. During this stage, the target reduction goal is 5%.

(C) Requirements for termination. Stage 1 of the plan may be rescinded at any time by the City manager.

(2) Stage 2–Moderate water shortage conditions.

(A) Requirements for initiation. Customers shall be required to comply with the requirements and restrictions on nonessential water uses, defined in section 18.08.008 of this plan at all times when one or a combination of such triggering criteria occurs:

(i) Total daily water demand equals or exceeds 90% of the total operating system treatment capacity for three consecutive days;

(ii) If the combined water storage of lakes Buchanan and Travis are less than 1,100,000 acre-feet but greater than 750,000 acre-feet;

(iii) Weather conditions are to be considered in drought classification determination. Predicted long, cold, or dry periods are to be considered in impact analysis;

(iv) City manager discretion.

(B) Target reduction goal. During this stage, the target reduction goal is 10%–20%.

(C) Requirements for termination. Stage 2 of the plan may be rescinded by the City manager when all of the conditions listed as triggering events have ceased to exist for at least a period of three (3) consecutive days, or at the City manager’s discretion. Upon termination of stage 2, stage 1 becomes operative.

(3) Stage 3–Severe water shortage conditions.

(A) Requirements for initiation. Customers shall be required to comply with the requirements and restrictions on nonessential water uses, defined in section 18.08.008, for stage 3 of this plan when one or a combination of such triggering criteria occurs:

(a) Total daily water demand equals or exceeds 95% of the total operating system treatment capacity for three consecutive days;

(b) The combined storage of lakes Buchanan and Travis are less than 750,000 acre-feet but greater than 600,000 acre-feet;

(c) Water system is contaminated whether accidentally or intentionally. Severe condition is reached immediately upon detection; and/or

(d) City manager discretion.

(B) Target reduction goal. During this stage, the target reduction goal is a minimum of 20%.

(C) Requirements for termination. Stage 3 of the plan may be rescinded by the City manager when all of the conditions listed as triggering events have ceased to exist for a period of three (3) consecutive days. Upon termination of stage 3, stage 2 becomes operative.

(4) Stage 4–Emergency water shortage conditions.

(A) Requirements for initiation. Customers shall be required to comply with the requirements and restrictions on nonessential water uses, defined in section 18.08.008, for stage 4 of this plan when the City manager declares it is in the best interest of the City.

(B) Target reduction goal. During this stage, the target reduction goal is a minimum of 30%, or as determined by the LCRA board.

(C) Requirements for termination. Stage 4 of the plan may be rescinded by the City manager.

Sec. 18.08.010 Drought response stages

The City shall monitor the water supply and/or production as needed and, in accordance with the triggering criteria set forth in section 18.08.009 of the plan, shall determine that a moderate, severe, or extreme condition exists and shall implement the following actions upon public notification:

(1) Stage 1–Voluntary water conservation stage. The goal for stage 1 of the plan is to maintain baseline water conservation measures and raise public and customer awareness of water demand conditions. This stage is designed to promote water efficiency throughout the City.

(A) Voluntary water use measures.

(i) Water customers shall voluntarily limit outdoor water use by participating in the two-day per week watering schedule for outdoor water use. Outdoor water use shall only occur on a designated outdoor watering day, which shall be two days per week. The two-day per week watering schedule will be determined and distributed by the City.

(ii) Residential customer watering days:

a. Last digit of their street address ending in a 0, 2, 4, 6, or 8: Thursday and Sunday.

b. Last digit of their street address ending in a 1, 3, 5, 7, 9: Wednesday and Saturday.

(iii) Commercial customer watering days: Tuesday and Friday.

(iv) Outdoor water use is discouraged between the hours of 10:00 a.m. and 7:00 p.m. except with handheld hoses equipped with a positive pistol grip nozzle or other device that automatically shuts off water flow when the hose is not being used, or handheld buckets. The following outdoor water uses are exempt from the voluntary weekly watering schedule and can be done at any time of day:

a. The irrigation of commercial plant nurseries and residential food-supplying vegetable gardens.

- b. Irrigation using an auxiliary source.
- c. Irrigation using a soaker hose or drip irrigation.
- d. New landscape installation during installation and the first twenty-one (21) days.
- e. The testing of new irrigation systems or existing irrigation systems being tested or under repair.

(v) All operations of the City shall adhere to nonessential water use restrictions, defined in section 18.08.008.

(vi) Water customers are requested to practice water conservation and adhere to the restrictions on nonessential water uses, defined in section 18.08.008. The following uses constitute a waste of water and are prohibited:

- a. Washing sidewalks, walkways, driveways, parking lots, tennis courts, patios or other hard-surfaced areas except to alleviate immediate health or safety hazards.
- b. Allowing water to run off a property, or allowing water to pond in the street or parking.
- c. Operating a permanently installed irrigation system with broken heads, with heads that are out of adjustment that spray more than 10% of the spray on street or parking lots, or that are misting.
- d. Failure to repair a controllable leak(s) within ten (10) business days after having been given notice directing the repair of such leak(s).
- e. Washing an automobile, truck, trailer, boat, airplane, or other mobile equipment with a handheld hose not equipped with a pistol grip nozzle or other device that automatically shuts off water flow when the hose is not being used.

(B) Demand management measures. The City will contact wholesale water customers to discuss water supply and/or production conditions and will request that wholesale water customers initiate voluntary measures to reduce water use.

(2) Stage 2–Moderate water shortage conditions. The goal for stage 2 of the plan is reduce water use by 10%–20%.

(A) Water use restrictions. Under threat of penalty for violation, the following water use restrictions shall apply to all persons:

(i) Water customers shall be required to limit outdoor water use by participating in the two-day per week watering schedule for outdoor water use. Outdoor water use shall only occur on a designated outdoor watering day. The two-day per week watering schedule will be determined and distributed by the City. Drip irrigation and soaker hoses are permitted for use at all times and are exempt from the weekly watering schedule and daily watering time restrictions. Soaker hoses may be used at any time to water vegetable gardens or trees. Drip irrigation attached to an automatic sprinkler system must have spray head zones turned off.

(ii) Residential customer watering days:

a. Last digit of their street address ending in a 0, 2, 4, 6, or 8: Thursday and Sunday.

b. Last digit of their street address ending in a 1, 3, 5, 7, 9: Wednesday and Saturday.

(iii) Commercial customer watering days: Tuesday and Friday.

(iv) Outdoor water use is prohibited between the hours of 10:00 a.m. and 7:00 p.m. except with handheld hoses equipped with a positive pistol grip nozzle or other device that automatically shuts off water flow when the hose is not being used, or handheld buckets. Handheld watering can be done on any day without time restrictions. The time restrictions do not apply to:

a. The irrigation of commercial plant nurseries and residential food-supplying vegetable gardens.

b. Irrigation using an auxiliary source.

c. Irrigation using a soaker hose or drip irrigation.

d. New landscape installation during installation and the first twenty-one (21) days.

e. The testing of new irrigation systems or existing irrigation systems being tested or under repair.

(v) Charity carwashes are allowed on any day at any time with a handheld hose equipped with a pistol grip nozzle or other device that automatically shuts off water flow when the hose is not being used.

(vi) The washing of automobiles, trucks, motorbikes, boats, trailers, airplanes and other vehicles is allowed on any day and can be done at any time of day. The washing shall be done with a handheld bucket or handheld

hose equipped with a pistol grip nozzle or other device that automatically shuts off water flow when the hose is not being used.

(vii) Splash pads and other commercial recreational water devices are allowed to operate during this stage.

(viii) A person may not use commercially operated cosmetic power/pressure washing equipment unless it is fitted with a spray nozzle using no more than 3.5 gallons of water per minute and employing a working trigger shutoff with a protective weep mechanism. Equipment fitted with this technology is exempt from the watering schedule and is permitted for use at any time of day.

(ix) Use of water from fire hydrants shall be limited to firefighting and activities necessary to maintain public health, safety, and welfare. Use of water from designated fire hydrants for construction purposes may be allowed under special conditions and requires a meter; a variance application must be submitted with an explanation of the special conditions

(x) Use of water for the irrigation of golf course greens, tees, and fairways is prohibited except on designated watering days. Such irrigation may not take place between the hours of 10:00 a.m. and 7:00 p.m. These restrictions do not apply to the irrigation of any golf course which uses an auxiliary source.

(B) Demand management measures.

(i) The City will initiate contact with wholesale water customers to discuss water supply and/or production conditions and the possibility of pro rata curtailment of water diversions and/or deliveries.

(ii) The City will request wholesale water customers to initiate mandatory measures to reduce nonessential water use (e.g., implement stage 2 of the customer's drought contingency plan).

(iii) The City will initiate preparations for the implementation of pro rata water curtailment of water diversions and/or deliveries by preparing a monthly water usage allocation baseline for the wholesale customer according to the procedures specified in section 18.08.011 of the plan.

(iv) The City will provide a report to news media with information regarding current water supply and/or production conditions, projected water supply and demand conditions if drought conditions persist, and consumer information on water conservation measure and practices as needed.

(3) Stage 3–Severe water shortage conditions. The goal for stage 3 of the plan is to reduce water use by 20%.

(A) Water use restrictions. Under threat of penalty for violation, the following water use restrictions shall apply to all persons:

(i) All requirements of stage 2 shall remain in effect during stage 3 except:

a. Water customers shall be required to participate in the one-day per week watering schedule for outdoor water use within the designated times. Outdoor water use shall only occur on the customer's designated outdoor watering day, which shall be one day every seven days. The one-day per week watering schedule will be determined and distributed by the City manager.

b. Extended variances beyond 21 days will not be granted for newly installed landscape plant material.

c. Events involving the use of water such as: festivals, parties, water slides, and other activities involving the use of water are permitted if the water being used drains to a recirculating device, or onto a pervious surface to prevent water waste.

(B) Demand management measures. The demand management measures for stage 2 will apply.

(4) Stage 4–Emergency water supply conditions. The goal for stage 4 of the plan is to significantly reduce water use during temporary, emergency water shortage conditions. During stage 4 all outdoor watering is prohibited.

(A) Supply management measures. The City will cease the flushing of water mains except when necessary for reasons of health or safety. All City departments will discontinue irrigating public landscaped areas except when such areas are irrigated with auxiliary water.

(B) Water use restrictions. Under threat of penalty for violation, the following water use restrictions shall apply to all persons:

(i) All requirements of stage 3 shall remain in effect during stage 4 except:

a. Commercial plant nurseries and owners of residential food-supplying vegetable gardens may use only handheld hoses equipped with a positive pistol grip nozzle or other device that automatically shuts off water flow when the hose is not being used or handheld buckets.

- b. Water may only be served at restaurants upon request.
- c. Events involving the use of water such as: festivals, parties, water slides, and other activities involving the use of water are prohibited.
- d. All irrigation of landscaped areas is prohibited, including the use of drip and soaker hoses. Outdoor water use with handheld hose is prohibited.
- e. Commercial car washing facilities may operate for health and safety purposes only.
- f. Use of water from fire hydrants shall be limited to firefighting and activities necessary to maintain public health, safety, and welfare only.
- g. All cosmetic power/pressure washing is prohibited.
- h. The washing of automobiles, trucks, trailers, boats, airplanes, and other types of mobile equipment is prohibited.
- i. Water use at events such as: festivals, parties, water slides, and other activities is prohibited.
- j. A person may not operate a splash pad or other similar aesthetic or recreational use of water.
- k. A person may not use or allow the use of water to test or repair a permanently installed irrigation system or drip irrigation system.
- l. The use of ornamental fountains is prohibited unless the water is necessary to support aquatic life.
- m. Filling of all new and existing swimming pools, hot tubs, wading pools, is prohibited. Replenishing to maintenance level is permitted. Draining is permitted only onto pervious surfaces or onto a surface where water will be transmitted directly to a pervious surface, and only if:
 - 1. Draining excess water from pool due to rain in order to lower water to maintenance level;
 - 2. Repairing, maintaining or replacing pool components that have become hazardous; or
 - 3. Repair of a pool leak.

A. Single-family and commercial pools. The automatic filling, refilling, or adding of potable water to single-family and commercial residential swimming or wading pools and hot tubs due to a leak is prohibited. Single-family residential swimming or wading pools and hot tubs may be refilled manually on the designated watering day before 8:00 a.m. and after 8:00 p.m., or may be refilled using an auxiliary source with no restriction.

B. Public pools. Refilling of public swimming pools as needed due to a leak is permitted on the designated watering day before 8:00 a.m. and after 8:00 p.m., or may be refilled using an auxiliary source with no restriction.

(C) Demand management measures. The demand management measures for stage 3 will apply.

(i) The City manager will contact wholesale water customers to discuss water supply and/or demand conditions and will request that wholesale water customers initiate additional mandatory measures to reduce nonessential water use (e.g., implement stage 3 or 4 of the customer's drought contingency plan).

(ii) The City manager will initiate pro rata water curtailment of water diversions and/or deliveries for each wholesale customer according to the procedures specified in section 18.08.011 of the plan.

(iii) The City manager will provide a report to news media with information regarding current water supply and/or demand conditions, projected water supply and demand conditions if drought conditions persist, and consumer information on water conservation measures and practices.

(D) In the event that severe water shortage conditions persist (stage 4) for an extended period of time, the City manager may order water rationing and/or terminate service to selected users of the system in accordance with the following sequence:

(i) Commercial yard meters.

(ii) Commercial users.

(iii) Residential users.

(iv) Hospitals, public health and safety facilities.

(v) Additional measures. Through a contractual agreement with the Lower Colorado River Authority (LCRA), the LCRA may interrupt or curtail the water supplied to the City in accordance with the LCRA's drought management plan.

Sec. 18.08.011 Pro rata water allocation

Every wholesale water contract entered into or renewed by the City after the effective date of this plan, including contract extensions, shall provide that in case of a shortage of water resulting from drought, the water to be distributed shall be divided in accordance with Texas Water Code section 11.309 and the provisions of this plan.

Sec. 18.08.012 Variances

(a) The City manager may, in writing, grant temporary variance for existing water uses otherwise prohibited under this plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the health, sanitation, primary business, or fire protection for the public or the person requesting such variance and if one or more of the following conditions are met:

- (1) Compliance with this plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the plan is in effect.
- (2) Alternative methods can be implemented which will achieve the same level of reduction in water use.

(b) Persons requesting an exemption from the provisions of this article shall file a petition for variance with the City manager after the plan or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the City manager and shall include the following:

- (1) Name and address of the petitioner(s);
- (2) Purpose of water use;
- (3) Specific provision(s) of the plan from which the petitioner is requesting relief;
- (4) Detailed statement as to how the specific provision of the plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this plan;
- (5) Description of the relief requested;
- (6) Period of time for which the variance is sought;

(7) Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this plan and the compliance date; and

(8) Other pertinent information.

(c) Variances granted by the City manager shall be subject to the following conditions, unless waived or modified by the City manager:

(1) Variances granted shall include a start and end date for compliance;

(2) Variance requests must be submitted no more than two (2) months prior to the requested start date, and no less than 48 hours prior to the requested start date; and

(3) Variances granted shall expire on the date set at the time when the application was granted.

(d) No variance shall be retroactive or otherwise justify any violation of this plan occurring prior to the issuance of the variance.

(e) Additionally, variances may be granted when a customer is using efficient irrigation technology for outdoor irrigation purposes. In order to receive this variance, the requestor must have a master valve or flow sensor, the irrigation controller must have a cycle and soak capability, and will be subject to annual random irrigation checks by the City manager.

Sec. 18.08.013 Enforcement

(a) No person or entity shall use or benefit from the use of water from the City for any purpose in a manner contrary to any provision of this plan, or in an amount in excess of that permitted by the drought response stage in effect at the time pursuant to action taken by the City, in accordance with provisions of this plan.

(b) Any person or entity in apparent control of the property where a violation occurs or originates shall be presumed to be the violator, and proof that the violation occurred on the person or entity's property shall constitute a rebuttable presumption that the person or entity in apparent control of the property committed the violation, but any such person or entity shall have the right to show that he/she/it did not commit the violation. Parents shall be presumed to be responsible for violations of their minor children and proof that a violation, committed by a child, occurred on property within the parents' control shall constitute a rebuttable presumption that the parent committed the violation, but any such parent may be excused if he/she proves that he/she had previously directed the child not to use the water as it was used in violation of this plan and that the parent could not have reasonably known of the violation. Each day that one or more of the provisions in this plan is violated shall constitute a separate violation/offense.

(c) Administrative violation. Except as otherwise stated herein, each violation of this plan may be enforced as an administrative violation, pursuant to the following:

Residential Customer

<u>1st Violation</u>	<u>2nd Violation</u>	<u>3rd Violation</u>	<u>4th Violation</u>
Warning letter	\$50.00 fee	\$100.00 fee	\$200.00 fee

Commercial Customer

<u>1st Violation</u>	<u>2nd Violation</u>	<u>3rd Violation</u>	<u>4th Violation</u>
Warning letter	\$200.00 fee	\$400.00 fee	\$1,000.00 fee

(1) First violation. If the City manager or their designee reasonably believes that a person or entity has violated this plan, he/she may forward to the person or entity alleged to be in violation of this plan a notice of first violation. The notice of first violation shall be in writing, contain the name and address of the alleged violator (if known), provide a location and brief description of the alleged violation, provide a warning for this first violation and inform him/her of the administrative fees and consequences for subsequent violations, and be forwarded to the alleged violator's utility billing address via first class mail.

(2) Second (and/or subsequent) violation(s). If the City manager or their designee reasonably believes that a person or single-family residential entity has violated this plan again within the 12-month calendar year immediately following the date of a preceding violation, he/she shall forward to the person or entity alleged to be in violation of this plan a notice of second (or subsequent) violation. If the City Manager or their designee reasonably believes that a non-single-family residential entity has violated this plan again within the 24-month calendar years immediately following the date of a preceding violation, he/she shall forward to the person or entity alleged to be in violation of this plan a notice of second (or subsequent) violation. The notice of second (or subsequent) violation shall be in writing, contain the name and address of the alleged violator (if known), provide a location and brief description of the alleged violation, inform him/her of the administrative fee that will be added to the alleged violator's next monthly utility bill and the administrative fees and consequences for subsequent violations, and be forwarded to the alleged violator's utility billing address via first class mail.

(3) Each day that one or more of the provisions in this plan is violated shall constitute a separate violation. Any person, including one classified as a water customer of the City, in apparent control of the property where a violation occurs or originates, shall be presumed to be the violator. Any such person, however, shall have the right to show that he/she did not commit the violation.

(d) Appeal of administrative violation; effect on payment, hearing procedure.

(1) Any alleged violator shall be entitled to appeal an administrative violation under this article as set forth in this subsection. The request or pendency of an appeal under this subsection shall not suspend or delay an alleged violator's obligation to pay current outstanding utility fees and/or administrative fines assessed under this article. Upon successful appeal of an alleged administrative violation, the City shall refund all administrative fines paid by or on behalf of an alleged violator pursuant to this article.

(2) At the alleged violator's discretion, any appeal or final review hearing hereunder this subsection may be conducted via scheduled telephone conference involving the alleged offender, hearing officer(s), City manager or their designee, and any testifying witnesses. Prior to the commencement of any telephone conference under this subsection, each testifying witness' name, address, telephone number, and relationship to the alleged violator shall be submitted to the City manager or their designee prior to commencement of such telephone conference, along with any documentary or physical evidence to be presented in such telephone conference. No unidentified witness or unsubmitted evidence shall be considered at the hearing.

(3) If the alleged violator shall fail to attend a scheduled appeal or final review hearing for any reason, it shall be the alleged violator's responsibility to contact the City manager or their designee to reschedule within three (3) working days of the unattended hearing; failure to do so, or failure to attend the rescheduled hearing for any reason shall constitute a default, render final the pending administrative violation and any assessed administrative fines, and waive the alleged violator's right to appeal.

(4) Within fifteen (15) business days of the date of a notice of violation, an alleged violator may appeal the administrative violation and fee by submitting a written request to the City manager or their designee. Within ten (10) business days of the City manager's receipt of such request, the City manager or their designee shall appoint one or more hearing officers and an appeal hearing ("appeal hearing") shall be held. At the appeal hearing, the alleged violator shall present relevant evidence and bear the burden of proof to show by the majority of the evidence why he/she should not be held in violation of the plan or the administrative fee should not be assessed. The hearing officer(s) shall consider all relevant evidence presented and render a decision in writing within five (5) business days of the conclusion of the appeal hearing ("appeal hearing decision"). A copy of the appeal hearing decision shall be forwarded to the alleged violator's utility billing address via first class mail and email.

(5) The alleged violator may appeal the appeal hearing decision by submitting a written request to the City manager or their designee within five (5) business days of forwarding the appeal hearing decision. Within five (5) business days of receipt of the alleged violator's timely appeal of the appeal hearing decision, the City manager or their designee shall conduct a final review hearing ("final review hearing"). At the final review hearing, the alleged violator shall present relevant evidence and bear the burden of proof to show by the majority of the evidence why he/she should not be held in violation of the plan or the administrative fee should not be assessed. The City manager or their designee shall consider all relevant evidence presented and render a decision in

writing within five (5) business days of the conclusion of the final review hearing (“final review hearing decision”). A copy of the final review hearing decision shall be forwarded to the alleged violator’s utility billing address via first class mail and email. The final review hearing decision by the City manager or their designee is final and binding.

(e) Notices. All notices regarding alleged administrative violations under this article, including without limitation notices of violation, appeal hearing decisions, and final review hearing decisions, shall be in writing and forwarded to the alleged violator via first class mail and/or certified mail, return receipt requested, to the alleged violator’s current billing address. All notices forwarded in such manner shall be deemed received by the alleged violator within three (3) days of the mailing’s postmark. At an appeal hearing and/or final review hearing under this article, an alleged violator may present evidence that a required notice was not received.

(f) Class C misdemeanor. Alternatively, and at the discretion of the City manager or their designee, third and subsequent violations of single-family residential properties within the 12-month period from the date of the alleged violator’s immediately preceding violation may be treated as class C misdemeanor offenses. Third and subsequent violations of non-single-family residential properties within the 24-month period from the date of the alleged violator’s immediately preceding violation may be treated as class C misdemeanor offenses. Any person or entity alleged to have violated this plan may be cited to appear in municipal court for such offense, and, upon conviction, shall be punished by a fine in accordance with the general penalty provision found in section 1.01.009 of this code.

(g) Termination of service. Upon a ~~person or entity’s~~ single-family residential second or subsequent violation within the 12-month period immediately following the date of the preceding violation and upon due notice to the person or entity as set forth herein, the City shall be authorized to discontinue water service to the premises where such violations occur. Upon a non-single-family residential second or subsequent violation within the 24-month period immediately following the date of the preceding violation and upon due notice to the person or entity as set forth herein, the City shall be authorized to discontinue water service to the premises where such violations occur. The City shall be so authorized regardless of whether such violation is being simultaneously enforced administratively, under subsection (c), or criminally, under subsection (f). Services discontinued under such circumstances shall be restored only upon payment of a reconnection charge and all other costs incurred by the City in discontinuing service. In addition, suitable assurance must be given to the City that the same action shall not be repeated while the plan is in effect. Compliance with this plan may also be sought through injunctive relief in a court of proper jurisdiction. This subsection shall not be construed to reduce, diminish, or in any manner restrict the City’s right to terminate utility service for nonpayment of fees and fines.

(Ordinance CO40-14-04-10-C7 adopted 4/10/14)