

ORDINANCE NO. 2024-02

AN ORDINANCE OF THE CITY OF BRECKENRIDGE, TEXAS AMENDING CHAPTER 21 “WATER AND SEWERS” OF THE BRECKENRIDGE CODE OF ORDINANCES TO ADD ARTICLE IV “CROSS CONNECTION CONTROL” TO IMPLEMENT REGULATIONS GOVERNING BACKFLOW PREVENTION ASSEMBLIES; PROVIDING A PENALTY; PROVIDING SEVERABILITY AND REPEALER CLAUSES; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Breckenridge (the “City”) is a Home Rule Municipality acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code;

WHEREAS, the City has the authority to regulate its water and sewer systems pursuant to Sections 3-15 and 3-16 of the City Charter and Section 552.001 of the Texas Local Government Code;

WHEREAS, the City Commission of the City of Breckenridge (the “City Commission”) finds it important to protect its potable water supply from the possibility of contamination or pollution by isolating, within the customer’s internal distribution system(s) or the customer’s private water system(s), such contaminants or pollutants that could backflow into the public water system;

WHEREAS, the City Commission supports the elimination or control of existing cross connections, actual or potential, between the customer’s potable water system(s) and non-potable water systems, plumbing fixtures, and process piping systems in conjunction with the current adopted plumbing code;

WHEREAS, the City Commission finds it necessary to establish a cross connection control program with uniform regulations governing the installation, testing and certification of backflow prevention assemblies and technicians; and

WHEREAS, the City Commission desires to establish requirements to permit and control the installation, routine maintenance, and inspection of backflow prevention assemblies.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRECKENRIDGE, TEXAS THAT:

I. Findings Incorporated. All the above premises are found to be true and correct findings of the City Commission and are incorporated into the body of this Ordinance as if fully set forth herein.

II. Adoption of Article IV. Chapter 21 “Water and Sewers” of the Breckenridge Code of Ordinances is hereby amended by the adoption of Article IV “Cross Connection Control” to read as follows:

ARTICLE IV. – CROSS CONNECTION CONTROL

Sec. 21-55. Definitions

As used in this article the following words have the meaning indicated:

Air gap separation means a physical separation between the free-flowing discharge end of a potable water supply pipeline and an open or non-pressure receiving vessel. An approved air gap separation shall be at least double in the diameter of the supply pipe measured vertically above the overflow rim of the vessel, and in no case less than one (1) inch (2.54cm).

Atmospheric vacuum breaker (AVB) means a device consisting of a float check, a check seat, and an air inlet port. A shutoff valve immediately upstream may be an integral part of the assembly. The AVB is designed to allow air to enter the downstream water line to prevent back siphonage. This unit may never be subjected to a backpressure condition or have a downstream shutoff valve or be installed where it will be in continuous operation for more than twelve (12) hours.

Auxiliary water supply means any water supply on or available to the premises other than the purveyor's approved public water supply. This auxiliary water may include water from another purveyor's public potable water supply or any natural sources, such as, but not limited to, a well, spring, river, stream, used water, or industrial fluids. These waters may be contaminated or polluted, or they may be objectionable and constitute an unacceptable water source over which the water purveyor does not have sanitary control.

Backflow means the undesirable reversal of flow of water or mixtures of water and other liquids, gases, or other substances into the distribution pipes of a potable water supply from any source(s).

Backflow pressure assembly means a device or means to prevent backflow into the potable water system, including reduced pressure backflow assemblies, double check valve assemblies, atmospheric vacuum breakers, pressure vacuum breaker assemblies or air gap.

Backpressure means a pressure higher than the supply pressure, caused by a pump, elevated tank, boiler, air/stream pressure, or any other means, which may cause backflow.

Back siphonage means a form of backflow due to a reduction in system pressure which causes a negative or sub-atmospheric pressure to exist at a site in the water system.

Certified backflow prevention technician means a technician certified in writing by the commission as capable and licensed to check, repair, and maintain backflow prevention devices.

City Manager means the City Manager or his or her authorized representative or designee.

Commission means the Texas Commission on Environmental Quality (TCEQ).

Contamination means an impairment of the quality of the public potable water supply or a private potable water supply by the introduction or admission of any foreign substance that degrades the quality, and which creates an actual hazard to the public health through poisoning or through the spread of disease by sewage, industrial fluids, or waste.

Cross connection means any actual or potential connection or structural arrangement between a public or private water system through which it is possible to introduce any used water, industrial fluids, gas, or substance other than the intended potable water with which the system is supplied; bypass

arrangements, jumper connections, removal sections, swivel, or changeover devices and other temporary or permanent devices through which or because of which backflow can or may occur.

Cross connection survey means a detailed inspection of a location and disposition of the water lines, including, without limitation, establishing water lines on the premises, the existence of cross connections, the availability of auxiliary or used water supplies, the use of or availability of pollutants, contaminants and other liquid, solid or gaseous substances which may be used for stabilization of water supplies and such other processes necessary to determine the degree of hazard.

Customer means the person, company or entity contracting with the city to receive potable water service.

Customer's potable water system means that a portion of the privately-owned potable water system lying between the point of delivery and the point of use. This system will include all pipes, conduits, tanks, receptacles, fixtures, equipment, and appurtenances used to produce, convey, store or utilize potable water.

Customer service inspection means an inspection of the customer's premises as defined in Chapter 290 of the commission rules and regulations.

Degree of hazard means the low or high hazard classification that shall be attached to all actual or potential cross connections.

(1) *Health hazard* means an actual or potential threat of contamination of a physical or toxic nature to the public potable water system or the consumer's potable water system that would be a danger to health.

(2) *High hazard* means the classification assigned to an actual or potential cross connection that potentially could allow a substance that may cause illness or death to backflow into the potable water supply.

(3) *Low hazard* means the classification assigned to an actual or potential cross connection that potentially could allow a substance that may be objectionable but not hazardous to one's health to backflow into the potable water supply.

(4) *Plumbing hazard* means an internal or plumbing-type cross connection in a consumer's potable water system that may be either a pollutant or a contamination-type hazard.

(5) *Pollution hazard* means an actual or potential threat to the physical properties of the water system or the potability of the public or the consumer's potable water system, but which would not constitute a health or system hazard, as defined. The maximum degree of intensity of pollution to which the potable water system could be degraded under this definition would cause a nuisance or be aesthetically objectionable or could cause damage to the system or its appurtenances.

(6) *System hazard* means an actual or potential threat of severe danger to the physical properties of the public or consumer's potable water supply or of a pollution or contamination that would have a detrimental effect on the quality of the potable water in the system.

Double check valve means an assembly composed of two (2) independently acting approved check valves, including tightly closing resilient seated shutoff valves located at each end of the assembly and fitted with properly located resilient seated test cocks. This assembly shall only be used to protect against a non-health hazard. (i.e., pollutant).

Non-potable water means water that does not comply with the commission's rules and regulations governing drinking water.

Pollution means an impairment of the quality of the public potable water supply to a degree which does not create a hazard to the public health but does adversely and unreasonably affect the aesthetic qualities of such potable water for domestic use.

Potable water or water means water which is satisfactory for drinking, culinary, and domestic purposes and meets the requirements of the commission.

Pressure vacuum breaker assembly means an assembly containing an independently operating internally loaded check valve and an independently operating loaded air inlet valve located on the discharge side of the check valve. The assembly shall be equipped with properly located resilient seated test cocks and tightly closing resilient seated shutoff valves attached to each end of the assembly.

Public potable water system means any publicly or privately-owned water system operated as a public utility under a health permit to supply water for domestic purposes. This system will include all sources, facilities and appurtenances between the source and the point of delivery such as valves, pumps, pipes, conduits, tanks, receptacles, fixtures, equipment, and appurtenances used to produce, convey, treat, or store potable water for public consumption or use.

Reduced pressure backflow prevention assembly shall consist of two (2) independently acting approved check valves together with a hydraulically operating, mechanically independent pressure differential relief valve located between the check valves and below the first check valve. These units are located between two (2) tightly closing resilient seating shutoff valves and are fitted with properly located resilient seated test cocks.

Service connection means the terminal end of a service connection from the public potable water system, i.e., where the water purveyor loses jurisdiction and sanitary control of the water at its point of delivery to the consumer's water system. If a meter is installed at the end of the service connection, then the service connection shall mean the downstream end of the meter.

Used water means any water supplied by a water purveyor from a public water system to a consumer's water system after it passes through the point of delivery and service connection and is no longer controlled by the water purveyor. Used water shall not be returned to the public potable water system.

Utility means city's water distribution system.

Water purveyor means the utility, private owner, political subdivision, or operator of a potable water system connected to the city's public water supply and supplying water to other water connections.

Sec. 21-56. Applicability.

This article shall apply to the utility water service area and all cross connections and installations of backflow prevention assemblies within any area where potable water is provided by the utility and areas where water is purchased from the utility for the purpose of resale.

Sec. 21-57. Cross Connections Prohibited.

(a) No installation of potable water supply, piping, or part thereof shall be made in such a manner that allows used, polluted, or contaminated water, mixtures, gases, or other substances to enter any portion of such piping by reason of back siphonage, backpressure or any other cause.

(b) No person shall install any water-operated equipment or mechanism, or use any water-treating chemical or substance, if it is found that such equipment, mechanism, chemical or substance may cause pollution or contamination of the public potable water supply. Such equipment or mechanism may be permitted only when equipped with the approved backflow prevention assembly.

(c) No person shall connect to the public potable water system any mechanism(s) or system(s) designed to return used water to the public potable water system through any measure.

(d) No person shall connect an auxiliary water system to the public potable water system.

Sec. 21-58. Backflow Prevention Assemblies.

(a) *Installation.*

(1) *New installation or replacement.*

(A) New, replacement, or reconditioned backflow prevention assemblies shall be installed in accordance with the regulations promulgated by the City Manager in order to achieve proper compliance with this article, commission rules, and the currently adopted plumbing code, as amended.

(B) Prior to installation, a duly authorized person must obtain a plumbing permit.

(C) For any connection requiring a testable backflow prevention assembly, a completed test and maintenance report must be submitted to the City Manager before a certificate of occupancy will be issued. Documentation of an approved air gap can be substituted where applicable.

(2) *High health hazard installations.*

(A) Only approved air gaps or reduced pressure backflow prevention assemblies can be installed at high health hazard applications. All assemblies must be tested, at a minimum, on an annual basis, or more frequently at the City Manager's discretion.

(B) The City Manager may require a secondary device if deemed necessary to protect the public water supply from the failure of, or to allow maintenance of, the primary cross control device.

(3) *Other installations.* A backflow prevention assembly shall be installed to protect the potable water system from contamination or pollution when such system is connected to any automatic fire protection systems, standpipe systems, or privately-owned fire hydrants.

(A) A reduced pressure backflow prevention assembly shall be required if chemicals or additives are combined or added to any fire protection system.

(B) Installation of a reduced pressure backflow prevention assembly shall be required on temporary water meters connected to the public potable water system unless an approved air gap is authorized.

(4) *Wholesale customers.* Any customer purchasing water for the purpose of resale or distribution shall:

(A) Install an air gap separation or a reduced pressure backflow prevention assembly at the service connection, certified for operation upon installation and annually thereafter by a certified backflow prevention assembly technician forwarding the results to the City Manager within ten (10) days; or

(B) Implement a plumbing inspection and cross connection control program not less restrictive than that of the city and provide annual program records to the director for review and audit.

(C) A reduced pressure backflow prevention assembly shall be required on all carbonating beverage equipment.

(5) *Government customers.* Any premises owned, operated, or occupied by a state, federal, county, city or foreign government or agency refusing to comply with the provisions of this article shall install a reduced pressure backflow prevention assembly at each service connection, being certified and tested for proper operation upon installation and annually thereafter. In those instances where the City Manager deems potential or actual hazard to be deleterious to human health, certified inspections and operational testing shall be required semiannually.

(6) *Water hauling trucks.* Water hauling trucks obtaining water from a connection to the utility's public potable water system shall have an approved air gap separation or a reduced pressure backflow prevention assembly installed permanently on the vehicle and said assembly shall be registered with the utility and certified for operation annually. Test reports shall be due within ten (10) days of the certification date or water will not be sold.

(b) *Existing commercial service connections.*

(1) The premises owner, customer or the designated representative shall have all testable backflow prevention assemblies which are currently installed certified for operation by a certified backflow prevention technician on an annual basis. If the device has not been certified for operation within the last year, the device must be tested and, if required, repaired, and the documentation submitted to the City Manager within ninety (90) days of the effective date of this article.

(2) Any existing connection which meets the definition of high health hazard must be protected by a backflow prevention device as required by (a) of this section within ninety (90) days of the effective date of this article unless the City Manager determines that circumstances exist which require installation within a shorter timeframe.

(3) Installation of backflow prevention devices against non-high health hazard cross connections at existing facilities must be provided on a schedule determined by the City Manager.

Sec. 21-59. Inspection and Testing of Backflow Prevention Assemblies.

(a) It shall be the duty of the customer at any premises where testable backflow prevention assemblies are installed to have certified inspections and operational tests conducted annually. In those instances where the City Manager deems the hazard to be deleterious to human health, certified inspections may be required semiannually. Inspections and tests shall be at the expense of the owner, owner's representative, or customer and shall be performed by a certified backflow prevention technician.

(b) Assemblies shall be repaired, overhauled, or replaced at the expense of the customer whenever said assemblies are found to be defective. Records of such tests, repairs, and overhaul shall be kept and submitted to the City Manager within five (5) days of the tests, repairs or overhaul of each backflow prevention assembly.

(c) No device or assembly shall be removed from use, relocated, or other device or assembly substituted without the approval of the City Manager. Whenever an existing assembly is relocated, replaced, or requires more than minimum maintenance, or when the City Manager finds that the maintenance constitutes a hazard to health, the unit shall be replaced by a backflow prevention assembly complying with requirements of this article and the current plumbing code. Such relocation or replacement shall require a permit from and inspection by the City.

(d) The City Manager shall have the authority to conduct a customer service inspection at:

- (1) All new construction prior to providing continuous water service, and
- (2) Any existing service connection or customer's premises, when there is a reason to believe that cross connections or other unacceptable plumbing practices exist or when any material improvement, correction or addition to the private plumbing facilities has occurred.

(e) *Quality control.* The utility reserves the authority to maintain a program of quality control by taking the following measures:

- (1) Notifying the technician certifying the operation of a backflow prevention assembly of test discrepancies; and
- (2) Taking legal action against the certified technician for verified testing or reporting discrepancies, including without limitation:
 - (A) False, incomplete, or inaccurate reporting of test completion or certification of a backflow prevention assembly;
 - (B) Use of inaccurate gauges;
 - (C) Improper operational certification backflow prevention method; and/or
 - (D) Failure to supply the original and one (1) copy of a test report to the City Manager as required by this article.

Sec. 21-60. Customer Responsibility

(a) The customer shall be responsible for all aspects associated with the installation, general maintenance, testing, upkeep, and replacement of the approved backflow prevention assembly.

(b) Where an owner of property leases or rents the same to any person as tenant or lessee, the owner or tenant or both may be held responsible for any of the requirements of this article.

Sec. 21-61. Registration Requirements.

(a) All individuals contracting to conduct backflow prevention assembly installations and/or certification and testing of devices installed within the city's jurisdiction shall register with the City Manager prior to performing any work. Registration shall include, but not limited to, the following minimum requirements:

- (1) State-licensed master plumbers performing only the installation of backflow prevention assemblies shall register such current license.
- (2) Backflow prevention assembly testers must provide documentation that he/she is currently accredited as a backflow prevention assembly tester registered with the Commission.
- (3) Each backflow prevention assembly tester shall register the serial number of each test kit and shall furnish evidence, upon the City Manager request, that all test kits are certified annually in accordance with the University of Southern California's Foundation of Cross Connection Control and Hydraulic Research and/or the American Water Works Association Manual of Cross Connection Control (M-14).
- (4) Other requirements as deemed necessary by the City Manager.

(b) A registered tester must immediately notify, in writing, the City Manager if:

- (1) The commission revokes his/her accreditation as a backflow prevention assembly tester.
- (2) The test gauges used to certify the backflow prevention devices are not functioning properly or additional gauges have been put into service.
- (3) Any of the information provided in the registration has changed or is incorrect.

(c) Failure to comply with the above requirements will be cause for revocation of registration, suspension of any permits, and enforcement action.

Sec. 21-62. Test and Maintenance Report.

The registered backflow prevention assembly tester must provide the original and one (1) copy of the completed test and maintenance report form to the City Manager within ten (10) days of the date of the test.

Sec. 21-63. Thermal Expansion and Pressure loss.

(a) It shall be the responsibility of the installer of any backflow assembly which creates a closed system to inform the owner or customer of the potential of thermal expansion.

(b) If a closed system has been created by the installation of a backflow assembly, the property owner or customer shall provide provisions for thermal expansion on the customer's potable water system in a manner approved by the building official.

(c) The utility shall not be responsible for any water pressure drop caused by the installation of a backflow assembly device.

Sec. 21-64. Enforcement.

(a) *Enforcement authority.* The City Manager and the city attorney are hereby authorized to enforce the provisions of this article by any one or more of the enforcement mechanisms set forth in this section.

(b) *Inspection and enforcement is a governmental function.* The inspectors, agents or representatives of the city charged with enforcement of this article shall be deemed to be performing a governmental function for the benefit of the general public. Neither the city, the City Manager nor the individual inspector, agent, or representative of the city engaged in inspection or enforcement activities under this article, when acting in good faith and without malice, shall ever be held liable for any loss or damage, whether real or asserted, caused or alleged to have been caused as a result of the performance of such governmental function.

(c) *Right of entry.*

(1) As a condition of the city providing water service, directly or indirectly, to property, whether within or outside the corporate limits, and as a condition of connection to the public potable water system by customers under the conditions hereinafter set forth, any authorized officer or employee of the city may enter, inspect, monitor or conduct enforcement activities with respect to any part of the public or private potable water system servicing such premises, and shall have a right to enter without delay to, upon, or through any premises to gain access to a cross connection, backflow prevention assembly or piping, without limitation, and may inspect any customer's potable water system or piping or records pertinent thereto, required under this article and rules or regulations of any governmental entity with whom the city may have an agreement for the provision of wholesale water services. This right of entry shall extend to public streets, easements, and private property within which any portion of the public or private potable water system servicing such premises may be located. If right of entry is refused by the customer an administrative search warrant will be pursued under the conditions of this article and water service may be terminated at this time.

(2) The customer connected to the public potable water system shall make all necessary arrangements, at its sole expense, to remove without delay security barriers or other obstacles to access by the City Manager.

(3) Obstruction or unreasonable delay in allowing access by the City Manager to premises connected to the public potable water system shall constitute a violation of this article.

(d) *Administrative search warrants.* If the City Manager has been refused access to a building, structure, or property or any private potable system connected to the public potable water system and if the City Manager has demonstrated probable cause to believe that a violation of this article, a plumbing permit, or other order issued hereunder exists or that there is a need to inspect as part of the city's routine inspection program designed to verify compliance with this article or any permit or order issued hereunder, or to protect the overall health, safety, and welfare of the community,

then, upon application by the City Manager, the municipal court judge may issue a search and/or seizure warrant describing therein the specific location subject to search and the property or items subject to seizure.

(e) *Notice of violation (NOV).* Upon violation of the conditions of registration as a certified backflow prevention technician, a plumbing permit, installation requirements of a backflow prevention assembly under this article, or any other cross connection requirement, the City Manager may, but shall not be required to, serve upon said person a written NOV describing the violation and the action required to correct the same. Such NOV shall inform the recipient that within seven (7) calendar days of receipt thereof, the person receiving the same shall provide to the City Manager an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific actions for correction of the violation, provided, however that:

(1) Submission of the proposed corrective plan shall in no form or manner relieve the user of criminal or civil liability for violations of this article whether before or after receipt of the NOV; and

(2) Nothing in this subpart shall be construed to limit the authority of the City Manager to pursue any other enforcement action or remedy, including, without limitation, such emergency actions the City Manager determines to be necessary, without first issuing an NOV.

(f) *Criminal penalty.* A person who violates any provision of this article shall be guilty of a Class C misdemeanor for each day or portion thereof during which the violation is continued. Each such offense is punishable by a fine not to exceed two thousand dollars (\$2,000.00).

(g) *Civil actions.* The city attorney is hereby authorized to enforce this article by civil court actions in accordance with the procedures therefor provided by state or federal law, including, without limitation, actions for injunction, damages, declaratory relief or other remedies that the city attorney shall deem appropriate to pursue.

(h) *Civil penalties.* Notwithstanding any other provision of this article, if a person has received actual notice of the provisions of this article and, after the person received said notice, such person committed or continued acts in violation of this article or failed to take action necessary for compliance with this article, the city attorney may initiate a suit against the owner, occupant, agent or manager of premises that are in violation of this article to recover a civil penalty not to exceed one thousand dollars (\$1,000.00) per day for each such violation. Each day or fractional part thereof that such noncompliance continues shall constitute a separate violation for which civil penalties shall accrue under this article. A suit for civil penalties hereunder shall not prevent nor be a prerequisite for taking any other action against a person in violation of this article. Such suit may also include therein a request for such other and further relief as the city attorney shall deem advisable, including, without limitation, an action for injunction or claim for damages to recover for expenses, loss, or damage to city property occasioned by reason of such violation.

(i) *Remedies cumulative.* All remedies authorized under this article are cumulative of all others unless otherwise expressly provided. Accordingly, the filing of a criminal action shall not preclude the pursuit of a civil or administrative action for violation of this article, nor shall the filing of a civil action preclude the pursuit of any other action or remedy, administrative or criminal.

(j) *Persons responsible.* A person is responsible for a violation of this article if the person commits or assists in the commission of a violation or the person is the owner, occupant, agent, or manager of the property or facilities determined to be the source of a violation of this article. Where an owner of property or his agent leases or rents the same to any person as tenant or lessee, the owner, agent or tenant or all may be held responsible for noncompliance with the provisions of this article.

Sec. 21-65. Water Purveyor.

(a) Under this article, the water purveyor has primary responsibility to prevent water from unapproved sources, or any other substances, from entering the public potable water supply. The water purveyor is prohibited from installing or maintaining a water service connection to a consumer's water supply system within its jurisdiction where a health, contaminant, plumbing, or pollution hazard exists, or will probably exist, unless the potable water supply is protected against backflow by an approved assembly.

(b) The water purveyor shall exercise reasonable vigilance to ensure that the customer has taken the proper steps to protect the public potable water supply. To ensure that the proper precautions are taken, the water purveyor is required to determine the degree of hazard to the public potable water supply. When it is determined that a backflow prevention assembly is required for the protection of the public potable water supply, the water purveyor shall require the customer, at the customer's expense, to install an approved backflow prevention assembly, to test immediately upon installation and to test periodically as required by this article and/or the plumbing code.

III. Severability. The provisions of this Ordinance are declared to be severable. If any section, sentence, clause or phrase of this ordinance shall for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this ordinance, but they shall remain in effect notwithstanding the validity of any part.

IV. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Texas Local Government Code.

V. Effective Date. This Ordinance shall take effect immediately upon its adoption by the City Commission and after publication as required by the Texas Local Government Code.

The above and foregoing ordinance was duly proposed, read in full and adopted on the 9th day of January, 2024 at a regular meeting of the City Commission.

Bob Sims, Mayor

ATTEST:

Jessica Sutter, City Secretary

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