

ORDINANCE No. _____

AN ORDINANCE OF THE CITY OF BURLESON PROVIDING FOR THE AMENDMENT OF DIVISION 3, "DROUGHT CONTINGENCY AND WATER CONSERVATION", IN ARTICLE I, "IN GENERAL," IN CHAPTER 82, "UTILITIES," OF THE CODE OF ORDINANCES, CITY OF BURLESON, TEXAS, BY AMENDING SECTION 82-14, "DROUGHT CONTINGENCY; REGULATIONS AUTHORIZED" IN ITS ENTIRETY; INCORPORATING THE RECITALS; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL PRIOR ORDINANCES NOT IN DIRECT CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR INCORPORATION INTO THE CODE OF ORDINANCES; FINDING COMPLIANCE WITH OPEN MEETINGS ACT; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Burleson, Texas is a home-rule city acting under its charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Local Government Code; and

WHEREAS, the City Council of the City of Burleson has adopted drought contingency and water conservation plan and enforcement provisions, which establish the City's policy in the event of shortages or delivery limitations in the City's water supply and to establish water restrictions to be enforced in case of drought or emergency conditions; and

WHEREAS, the City Council finds it in the best interest of the citizens to modify the City's current enforcement structure to include the assessment of administrative penalties in accordance with Chapter 54 of the Texas Local Government Code and other applicable law; and

WHEREAS, the provisions herein are necessary to promote and protect the health, safety, and welfare of the public by creating an urban environment that is protective of the City's water supply and provides an enhanced quality of life for the citizens of the City of Burleson.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, THAT:

SECTION 1

Section 82-14, "Drought Contingency; Regulations Authorized," in Division 3, "Drought Contingency and Water Conservation," in Article I, "In General," in Chapter 82, "Utilities," of the Code of Ordinances, City of Burleson, Texas, is hereby amended in its entirety to read as follows:

“§ 82.14 Drought contingency; regulations authorized.

- (a) Purpose and scope. The purpose of this section is to establish the city's policy in the event of shortages or delivery limitations in the city's water supply and to establish water restrictions to be enforced in case of drought or emergency conditions. This section applies to all persons and premises within the city using water from a public water system. This section is intended to be in coordination with, and not in limitation of, the City's police power and home-rule authority.
- (b) The plan. The drought contingency plan is attached hereto as Exhibit A and is adopted and incorporated herein by reference.
- (c) Authority. The city manager, or his/her duly appointed representative, is authorized to define the trigger conditions as detailed in the adopted plan, to upgrade or downgrade the condition, to initiate the appropriate actions as detailed in the adopted plan, and to terminate the conditions when the emergency has ended. All determinations made pursuant to this subsection shall be based upon objective criteria contained in the adopted plan. The city manager, or his/her duly appointed representative, is authorized to enforce the measures implemented and to promulgate regulations, may assess administrative noncompliance fees, lock out fees, and lock tampering fees as specifically authorized by the City Council's adopted fee schedule and not in conflict with this section or state or federal laws, in aid of enforcement.

Subject to the notice requirements and enforcement procedures set forth in this section, the director of public works or the director's designee may:

- (1) Provide written warnings to customers;
- (2) After providing a written warning, assess administrative noncompliance fees as approved by City Council for violations of this article;
- (3) Notify the responsible party, including, but not limited to, the owner or operator of the irrigation system, that the irrigation system may be locked out if subsequent violations occur after the assessment of administrative noncompliance fees;
- (4) Place a locking mechanism on an irrigation system if continued violations occur after notifying the responsible party that their irrigation system may be locked out; and
- (5) Terminate water service to irrigation systems found to be operating in violation of this article after a lockout has occurred and service has been restored.

(d) Initiation or termination of stages. Initiation or termination of any stage of the plan may be done by one or more or all of the following:

- (1) Publication in the local newspaper; and/or
- (2) Public announcement to the news media (press release); and/or
- (3) Utility bill inserts; and/or
- (4) A posting in the city's newsletter; and/or
- (5) A posting on the city's website and public access channel.

Substantial compliance with one or more of the notice methods shall constitute sufficient notice for enforcement purposes.

(e) Duration of stage; change. Any initiated stage of the plan will remain in effect until the director of public works or the director's designee determines that conditions that initiated the stage have ended. If the stage is initiated because of excessive demands, all initiated actions will remain in effect through September 30 of the year in which they were triggered unless the city manager, or the city manager's designee, determines that conditions exist that will allow termination of the stage before September 30 of said year.

(f) Violation of section. A person commits an offense if he knowingly makes, causes or permits a use of water contrary to the measures implemented by the director of public works or the director's designee, as prescribed in the plan. For purposes of enforcement, a violation of this section constitutes a separate offense for each day the violation continues or occurs. For purposes of this section, it is presumed that a person has knowingly made, caused or permitted a use of water contrary to the measures implemented if the mandatory measures have been formally ordered consistent with the terms of subsection (d), and:

- (1) The manner of use has been prohibited by the plan;
- (2) The amount of water used exceeds that allowed by the plan; or
- (3) The manner or amount used violates the terms and conditions of a compliance agreement made pursuant to a variance granted by the city manager or the city manager's designee pursuant to subsection (h).

(g) Penalties for violation.

- (1) Administrative Penalties. A progressive administrative enforcement process shall apply to any person, firm, or corporation violating any provision of this article under the discretion of the director of public works or the director's designee. Any

person who violates, disobeys, omits, neglects, or refuses to comply with a measure implemented in accordance with this section and the plan shall be subject to the following administrative penalties for each offense:

- a. First offense. A person who violates, disobeys, omits, neglects or refuses to comply with a measure implemented in accordance with this section and the plan shall be issued a written notice of violation accompanied by educational information on proper irrigation scheduling.
 - b. Second offense. A person who violates, disobeys, omits, neglects or refuses to comply with a measure implemented in accordance with this section and plan two times shall be issued a written notice of violation accompanied by educational information on proper irrigation scheduling plus an administrative fee of \$25.
 - c. Third offense. A person who violates, disobeys, omits, neglects or refuses to comply with a measure implemented in accordance with this section and the plan three times shall be issued a written notice of violation accompanied by educational information on proper irrigation scheduling plus an administrative fee of \$50.
 - d. Fourth offense. A person who violates, disobeys, omits, neglects or refuses to comply with a measure implemented in accordance with this section and plan four times shall be issued an administrative fee of \$75 and written notification by US mail to the property owner, property manager, or business representative for commercial properties.
 - e. Subsequent offenses. A person convicted of violating, disobeying, omitting, neglecting or refusing to comply with a measure implemented in accordance with this section and the plan more than four times Temporary shut off of irrigation service and assessment of a shut off and restoration fee in accordance with the City's adopted fee schedule. Each day that a violation occurs constitutes a separate violation. However, the utility will generally aggregate violations into a single enforcement action administered within a customer's monthly billing cycle. Irrigation service will be restored only upon payment of a reconnection fee as prescribed in the current city fee schedule and any outstanding administrative fee.
- (2) Criminal Proceedings. The City may pursue criminal enforcement of a violation of this section. Any person who violates, disobeys, omits, neglects, or refuses to comply with a measure implemented in accordance with this section and the plan commits an offense. A violation of this section constitutes a separate offense for each day the violation continues or occurs. An offense under this section shall be punishable by a fine not to exceed \$2,000.

(2) The penalties available under this section are non-exclusive and the City may pursue any or all of the penalties for a violation of this section independently or concurrently. Nothing herein shall be construed to limit the City's authority to pursue the stated or any other enforcement actions when necessary to protect public health, safety, or the City's water supply.

(h) Immediate enforcement for egregious or hazardous conditions. The director of public works or the director's designee may not order the immediate lock out of an irrigation system for the first violation of this article unless it is necessary to prevent:

- (1) Excessive or continuous water loss creating flooding or infrastructure damage; Unsafe or unsanitary conditions; or
- (2) Any other condition determined by the director or the director's designee poses a significant risk to public health, public safety, or the City's water supply.

Notice of the action taken and the reason for the immediate lock out of an irrigation system pursuant to this section shall be provided to the customer as soon as practicable. Immediate enforcement actions taken pursuant to this subsection shall be limited to the minimum action reasonably necessary to abate the hazardous condition.

(i) Irrigation System Lock Out.

- (1) The director of public works or the director's designee may install a locking device on a double check valve to the irrigation system, or at the meter for systems with a dedicated meter, found to be operating in violation of this article and may assess a lock out fee as approved by the city council.
- (2) Notice of the lock out shall be left on the premises to advise the individual responsible for the irrigation system.
- (3) Notice shall also be sent by United States postal service to the person identified as the city's water customer notifying that person that the irrigation system has been locked out. The notice shall indicate the amount of the lock out fee and the restoration fee. The notice shall provide the procedures for payment of the fees and the procedure to request a hearing to contest the assessment of the fees.
- (4) It shall be unlawful for any person to tamper with, cause damage to, or remove a locking device placed by the director or the director's designee on a double check valve or a meter.

(j) Re-Establishment of Service to Locked or Shut Off Irrigation Systems or Meters. The locking device will be removed by the director of public works or the director's

designee within three (3) business days after payment and verification that the violation has been remedied. If the director or his or her designee reasonably determines additional inspections of the irrigation system or meter after service is restored are required to ensure compliance with this article, the account holder or individual responsible for the irrigation system or meter shall allow City staff to enter the premises to perform such inspections.

- (k) Variances. The director of public works or the director's designee may grant and/or revoke variances to the plan only under circumstances and conditions consistent with the plan.
- (l) Appeal. A decision by director of public works or the director's designee to deny or revoke a variance to the plan can be appealed by filing a written notice of appeal with the city manager. The written notice of appeal must be filed within seven days after issuance of the director of public works or the director's designee decision of denial or revocation. The city manager's decision shall be final.
- (m) Authority under other laws. Nothing in this section shall be construed to limit the authority of the mayor, the city council or the city manager to seek emergency relief under the provisions of any state or federal disaster relief act."

SECTION 2.

The findings set forth above in the recitals of this Ordinance are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 3.

This ordinance shall be cumulative of all provisions of ordinances of the City of Burleson, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances, in which event the conflicting provisions of such ordinances are hereby repealed. To the extent that the provisions of the City of Burleson's various development ordinances conflict with this ordinance, the terms of this ordinance shall control.

SECTION 4.

That the terms and provisions of this ordinance shall be deemed to be severable and that if any section, subsection, sentence, clause, or phrase of this ordinance shall be declared to be invalid or unconstitutional, the same shall not affect the validity of any other section, subsection, sentence, clause, or phrase of this ordinance and the remainder of such ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

SECTION 5.

Any complaint, notice, notice of violation, action, cause of action, hearing request, appeal, or claim which prior to the effective date of this Ordinance that has been initiated or arisen under or pursuant to any other ordinance(s) shall continue to be governed by the provision of that ordinance or ordinances, and for that purpose that ordinance or ordinances shall be deemed to remain and shall continue in full force and effect.

SECTION 6.

That it is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become a part of the Code of Ordinances of the City of Burleson, and that the sections of this ordinance may be renumbered or relettered to accomplish such intention.

SECTION 7.

That it is hereby officially found and determined that the meeting at which this ordinance 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.

SECTION 8.

Pursuant to Section 36 of the Charter of the City of Burleson, that this ordinance shall take effect thirty (30) days after its passage and publication, and that the City Secretary is hereby directed to give notice of the passage of this ordinance by causing the caption or title and the penalty clause of this ordinance to be published once in a newspaper of general circulation in the city and on the city's website.

PASSED AND APPROVED:

First Reading: the _____ day of _____, 20_____.

Final Reading: the _____ day of _____, 20_____.

Chris Fletcher, Mayor
City of Burleson, Texas

ATTEST:

Amanda Campos, City Secretary

APPROVED AS TO FORM & LEGALITY:

E. Allen Taylor, Jr., City Attorney