

ORDINANCE NO. 557

AN ORDINANCE OF THE CITY OF KENNEDALE, TEXAS ADOPTING AN UPDATED DROUGHT CONTINGENCY AND EMERGENCY WATER MANAGEMENT PLAN; AMENDING CHAPTER 23, "WATER, SEWERS AND SEWAGE DISPOSAL" OF THE KENNEDALE CITY CODE OF ORDINANCES BY REPEALING ARTICLE VI, "DROUGHT CONTINGENCY/WATER EMERGENCY MANAGEMENT PLAN" AND ADOPTING A NEW ARTICLE VI; AMENDING CHAPTER 23 BY ADOPTING A NEW ARTICLE X "LAWN AND LANDSCAPE IRRIGATION"; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION IN PAMPHLET FORM; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Kennedale, Texas (the ACity@) 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 is a wholesale water service customer of the City of Fort Worth; and

WHEREAS, as a wholesale customer of the City of Fort Worth, the City is required to institute the same rationing and water use restrictions on City customers as does the City of Fort Worth for so long as any part of the total water supply is furnished by the City of Fort Worth; and

WHEREAS, as a wholesale customer of the City of Fort Worth, the City is required to adopt an updated drought contingency and emergency water plan; and

WHEREAS, the City has drafted a "Drought Contingency and Emergency Water Management Plan" which complies with Chapter 288, Title 30 of the Texas Administrative Code.

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

SECTION 1.

That the Drought Contingency and Emergency Water Management Plan attached as Exhibit "A" is hereby adopted and incorporated herein for all purposes. The Drought Contingency and Emergency Water Management Plan hereby adopted shall replace any previous such plans adopted by the City.

SECTION 2.

That Article VI, "Drought Contingency/Water Emergency Management Plan" of Chapter 23, "Water, Sewers and Sewage Disposal" is repealed in its entirety and replaced with the following:

"ARTICLE VI. DROUGHT CONTINGENCY/EMERGENCY WATER MANAGEMENT PLAN

Sec. 23-336. General

The Drought Contingency and Emergency Water Management Plan ("Plan") outlines the city's water emergency water demand management efforts. The City will revise the Plan as needed to meet objectives requested by the Texas Commission on Environmental Quality, regional water planning groups, the City of Fort Worth and to meet the goals stated in the Plan. The Plan established in this Article shall be administered by the Director of Public Works of the city or his/her duly appointed representative ("director").

Sec. 23-337. Drought Contingency and Emergency Water Management Plan

(a) The City has adopted the Plan which is on file and available for inspection at the City Secretary's office. The Plan may be amended from time to time by adopting an ordinance amending the Plan.

(b) 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:

- (1) All persons and premises within the city using water from the water system;
- (2) All retail customers who live in unincorporated areas within the city's extraterritorial jurisdiction and are served by the water system; and
- (3) All wholesale service customers outside the city to the extent provided in subsection (h).

(c) Authority. The director is authorized to implement measures prescribed when required by this section and by the Plan approved by the city council. The director is authorized to enforce the measures implemented and to promulgate regulations, not in conflict with this section, the Plan or state and federal laws, in aid of enforcement.

(d) Initiation of Plan stages. The director may order that the appropriate stage of the Plan be initiated upon determination that drought conditions or a water emergency exists. To be effective, the order must be made by some or all of the following methods:

- (1) publication in the local newspaper;

- (2) publication on the city's website; or
- (3) publication on utility bill inserts, the city's newsletter, or public access channel.

(e) Duration of stage; change. A stage will remain in effect until the conditions that triggered initiation of the stage have been eliminated. 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 director determines that conditions exist that will allow termination of the stage before September 30. When conditions change, the director may terminate, upgrade or downgrade the stage. Any such change must be made in the same manner prescribed in subsection (d).

(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 as prescribed in the Plan. For purposes of this subsection, 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 director.

(g) Penalties/enforcement of violations. Any person who is convicted of violating, disobeying, omitting, neglecting or refusing to comply with a measure implemented in accordance with this section and the Plan will be given a written warning that he has violated a mandatory water use restriction as a first offense. Any person who is convicted of violating, disobeying, omitting, neglecting or refusing to comply with a measure implemented in accordance with this section and the Plan may be fined not more than \$2,000.00 for each subsequent offense. In addition, the following penalties shall apply:

- (1) A person who is convicted of violating, disobeying, omitting, neglecting or refusing to comply with a measure implemented in accordance with this section and stage 1 of the Plan as a second offense, shall be fined not less than \$100.00.
- (2) A person who is convicted of violating, disobeying, omitting, neglecting or refusing to comply with a measure implemented in accordance with this section and stage 2 of the Plan as a second offense, shall be fined not less than \$250.00.
- (3) A person who is convicted of violating, disobeying, omitting, neglecting or refusing to comply with a measure implemented in accordance with this section and stage 3 of the Plan as a second offense, shall be fined not less than \$500.00.

- (4) If a person is convicted of violating, disobeying, omitting, neglecting or refusing to comply with a measure implemented in accordance with this section and the Plan as a third offense, the director may either:
- a. Install a flow restrictor in the water line to the premises where the violations occurred to limit the amount of water that may pass through the meter in a 24-hour period or a lock-out device to a backflow assembly; or
 - b. Discontinue water service to the premises where the violation occurred.
- (h) Wholesale service to customers outside the city. The director shall advise customers receiving wholesale water service from the city of actions taken under the Plan. The director may restrict service to customers outside the city as permitted under the contract and state law.
- (i) 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.
- (j) Variances. During the times the emergency order is operative, the director may grant variances only under the following circumstances and conditions:
- (1) The applicant signs a compliance agreement on a form provided by the director, and approved by the city attorney, agreeing to use the water only in the amount and manner permitted by the variance;
 - (2) Granting of the variance would not cause an immediate significant reduction in the city's water supply;
 - (3) Failure to approve the variance would result in an extreme hardship or need relating to the health, safety or welfare of the applicant; and
 - (4) Granting the variance would not adversely affect the premises at which the violation occurred.
- (k) Revocation of Variances. The director may revoke a variance when he or she determines that:
- (1) The conditions of subsection (j) are not being met or are no longer applicable;
 - (2) The terms of the compliance agreement are being violated; or
 - (3) Revocation is advisable to protect the health, safety or welfare of other persons.
- (l) Appeal. Denial or revocation of a variance by the director may be appealed to the city manager by filing a written notice of appeal with the city manager within ten days after issuance of the director's decision. The city manager's decision shall be final.

Secs. 23-338—23-375.—Reserved”

SECTION 3.

That Chapter 23, “Water, Sewers and Sewage Disposal” is amended by adding a new Article X, “Lawn and Landscape Irrigation” to read as follows:

“ARTICLE X. LAWN AND LANDSCAPE IRRIGATION

Sec. 23-570. Lawn and Landscape Irrigation Restrictions.

(a) Lawns and landscaping may be watered on any day, at any time, by handheld hose, drip irrigation, a soaker hose or tree bubbler. (The intent of this measure is to allow for the protection of structural foundations, trees, and other high value landscape materials). Except for hand watering, drip irrigation and the use of soaker hoses, a person may only irrigate, water, or cause or permit the irrigation or watering of any lawn or landscape, inclusive of structural foundations, trees, and other high value landscape materials, located on premises owned, leased, or managed by that person (i) on a day designated as an outdoor water use day for the property’s address as shown below; and (ii) between the hours of 12 midnight to 10 a.m. and 6 p.m. to 11:59 p.m. on such day.

(1) Residential addresses ending in an even number (0, 2, 4, 6 or 8) may water on Wednesdays and Saturdays.

(2) Residential addresses ending in an odd number (1, 3, 5, 7 or 9) may water on Thursdays and Sundays.

(3) All non-residential locations (apartment complexes, businesses, industries, parks, street and/or roadway medians, etc.) may water on Tuesdays and Fridays.

(b) Except for hand watering, drip irrigation and the use of soaker hoses, a person commits an offense if that person irrigates, waters, or causes or permits the irrigation or watering of any lawn or landscape located on premises owned, leased, or managed by that person between the hours of 10:00 a.m. and 6:00 p.m.

(c) Except for hand watering, drip irrigation and the use of soaker hoses, a person commits an offense if that person irrigates, waters, or causes or permits the irrigation or watering of any lawn or landscape located on premises owned, leased, or managed by that person on a day that is not designated as an outdoor water use for that property address as shown in subsection (a) above.

(d) A person commits an offense if a person knowingly or recklessly irrigates, waters, or causes or permits the irrigation or watering of a lawn or landscape located on premises owned, leased or managed by the person in a manner that causes:

(1) a substantial amount of water to fall upon impervious areas instead of a lawn or

landscape, such that a constant stream of water overflows from the lawn or landscape onto a street or other drainage area; or

(2) an irrigation system or other lawn or landscape watering device to operate during any form of precipitation.

(e) A person commits an offense if, on premises owned, leased, or managed by that person, a person operates a lawn or landscape irrigation system or device that:

(1) has any broken or missing sprinkler head; or

(2) has not been properly maintained in a manner that prevents the waste of water.

(f) Affirmative Defenses

(1) It shall be an affirmative defense to prosecution of an offense in section 86-301(a) that at the time such person irrigates, waters, or causes or permits the irrigation or watering of any lawn or landscape, such activity was for the purpose of:

(A) dust control of a sports field; or

(B) the maintenance, repair, or testing of an irrigation system.

(2) The activity described in subsection f(1) (A) and (B) may only occur within a period of two (2) days no more than once every thirty (30) days. Any such activity requiring a longer period or greater frequency shall require a variance as provided by subsection (g).

(g) Variances

(1) The city manager or his official designee (“director”) may grant variances to the twice per week watering and irrigation restrictions and schedule, if one or more of the following conditions are met:

(A) Failure to grant such a variance would cause an emergency condition adversely affecting health, sanitation, or fire safety for the public or the person requesting the variance;

(B) Compliance with the watering and irrigation restrictions and/or schedule cannot be accomplished due to technical or other limitations; or

(C) Alternative methods that achieve the same level of reduction in water use can be implemented.

(2) The director may grant variances to allow for establishment of hydromulch, grass sod, or grass seed for new lawns.

(3) Variances shall be granted or denied at the discretion of the director. All petitions for variances shall be in writing and shall include the following:

- (A) Name and address of the petitioner(s);
- (B) Purpose of the water use;
- (C) Specific provisions from which relief is requested;
- (D) Detailed statement of the adverse effect of the provision from which relief is requested;
- (E) Description of the relief requested;
- (F) Period of time for which the variance is sought;
- (G) Alternative measures that will be taken to reduce water use; and
- (H) Other pertinent information requested.

(h) A person who irrigates, waters, or causes or permits the irrigation or watering by use of an alternative water source such as a well, reclaimed or reused water, or water from the Trinity River is exempt from prosecution if that person has:

- (1) Registered such alternative water source with the City;
- (2) Provided sufficient proof to the director that the alternative water source is from a well, reclaimed or reused water or from the Trinity River and has allowed inspection by the director if deemed necessary; and
- (3) Complied with the City's Backflow and Cross-connection Control regulations.

Sec. 23-571. Rain sensing devices and freeze gauges.

(a) Any commercial or industrial customer class irrigation system installed within the City after the adoption of the Article must be equipped with rain and freeze sensors.

(b) Any installed commercial or industrial customer class system installed after the adoption of this Article may not be operated without being equipped with rain and freeze sensors.

(c) The potable water supply to lawn irrigation system shall be protected against backflow in accordance with the City's Backflow and Cross-connection Control regulations. All rain and freeze sensors for commercial class lawn irrigation systems shall undergo annual inspection and testing.

(d) Any residential customer class irrigation system installed within the City after adoption of this Article must be equipped with rain and freeze sensors.

(e) It shall be unlawful for any person to knowingly or recklessly install, operate, or cause or permit the installation of or the operation of, an irrigation system in violation of subsections 23-571 (a) through (d) on premises owned, leased, or managed by that person.

Sec. 23-572. Essential services.

The governmental use of water for essential services such as police, fire and emergency services which are necessary to preserve or protect the health, safety and welfare of the citizens of the City are exempt from any and all restrictions or mandates set forth in this Article.

Secs. 23-573—23-599.—Reserved”

**SECTION 4.
CUMULATIVE CLAUSE**

This Ordinance shall be cumulative of all provisions of all existing ordinances and of the Kennedale City Code, as amended, including but not limited to all ordinances of the City of Kennedale affecting drought contingencies or water emergencies, and shall not repeal any of the provisions of such ordinances except in those instances where provisions of such ordinances are in direct conflict with the provisions of this ordinance.

**SECTION 5.
SEVERABILITY CLAUSE**

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

**SECTION 6.
SAVINGS CLAUSE**

All rights and remedies of the City of Kennedale are expressly saved as to any and all violations of the provisions of the Kennedale City Code, as amended, or any other ordinances regarding drought contingencies and water emergencies that have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

**SECTION 7.
PENALTY CLAUSE**

Any person, firm or corporation, who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this Ordinance shall be fined no more than Two Thousand Dollars and no cents (\$2,000.00) for each violation, and in addition shall pay all costs and expenses involved in the case. Each day a violation occurs is a separate offense. Nothing herein contained shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violation.

**SECTION 8.
PAMPHLET FORM CLAUSE**

The City Secretary of the City is hereby authorized to publish this ordinance in book or pamphlet form for general distribution among the public, and the operative provisions of this ordinance as so published shall be admissible in evidence in all courts without further proof than the production thereof.

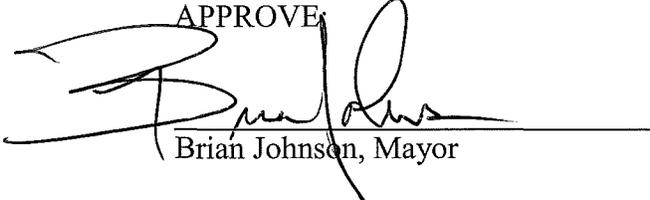
**SECTION 9.
PUBLICATION CLAUSE**

The City Secretary of the City of Kennedale is hereby directed to publish the caption penalty clause publication clause and effective date clause of this ordinance in every issue of the official newspaper of the City of Kennedale for two days or one issue of the newspaper if the official newspaper is a weekly newspaper as authorized by Section 3.10 of the City of Kennedale Charter.

**SECTION 10.
EFFECTIVE DATE CLAUSE**

This ordinance shall be in full force and effect from and after its passage and publication as required by law, and it is so ordained.

**PASSED AND APPROVED ON THE FIRST READING THIS 15TH DAY OF
DECEMBER, 2014.**

APPROVE:

Brian Johnson, Mayor



ATTEST:



Kelly Cooper, City Secretary

APPROVED AS TO FORM AND LEGALITY:



Wayne K. Olson, City Attorney