

ORDINANCE NO. 2014-23

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GEORGETOWN, TEXAS, AMENDING CHAPTER 13.15 ENTITLED "WATER UTILITY SERVICES" OF THE CODE OF ORDINANCES OF THE CITY OF GEORGETOWN TEXAS TO INCLUDE WATER CONSERVATION, LANDSCAPE AND IRRIGATION REQUIREMENTS AND PROVIDING ADDITIONAL ENFORCEMENT MECHANISMS; REPEALING CONFLICTING ORDINANCES AND RESOLUTIONS; INCLUDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, The City of Georgetown values and supports water conservation as an effective resource to manage, sustain and protect the City's potable water supply; and

WHEREAS, The City of Georgetown wishes to adopt provisions for landscape and irrigation maintenance practices that discourage wasteful use of water and that foster long-term landscape water conservation, as directed by the Texas Administrative Code, Title 30, Chapter 288; and

WHEREAS, The City of Georgetown wishes to provide an effective enforcement strategy, including penalties, that encourages compliance with water conservation and water efficiency ordinances, as well as, fully recovers the cost of the enforcement program for the Utility; and

WHEREAS, The City of Georgetown wishes to identify water conservation and efficiency activities and integrate them into the water services provided to the City's water customers, and

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

Section 1. The meeting at which this ordinance was approved was in all things conducted in compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551.

Section 2. The facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct and are incorporated by reference herein and expressly made a part hereof, as if copied verbatim. The City Council hereby finds that this ordinance complies with the Vision Statement 4.0(G) of the City of Georgetown 2030 Comprehensive Plan relating to the conservation of water resources.

Section 3. Amendments to Chapter 13.15 are hereby adopted and shall provide as shown in EXHIBIT A.

Section 4. All ordinances that are in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

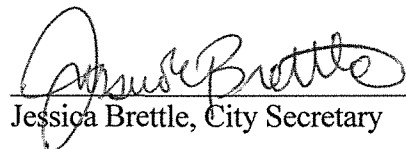
Section 5. If any provision of this ordinance or application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the other provisions, or application thereof, of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are hereby declared to be severable.

Section 6. The Mayor is hereby authorized to sign this ordinance and the City Secretary to attest. This Ordinance shall become effective in accordance with the provisions of the Charter of the City of Georgetown.


PASSED AND APPROVED on First Reading on the 8 day of APRIL, 2014.

PASSED AND APPROVED on Second Reading on the 22 day of APRIL, 2014.

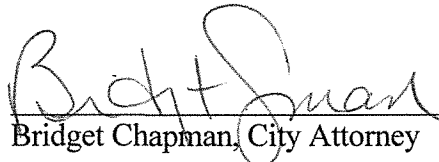
ATTEST:

  
\_\_\_\_\_  
Jessica Brettle, City Secretary

THE CITY OF GEORGETOWN:

  
\_\_\_\_\_  
George Garver, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bridget Chapman, City Attorney

## EXHIBIT A

### CHAPTER 13.15 – WATER UTILITY SERVICES

#### Sec. 13.15.010. - Definitions.

For the purpose of this chapter only the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"Commission" means the Texas Commission on Environmental Quality or its successor agency (TCEQ)

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

"Customer's potable water system" means that 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 the potable water.

"Foundation Footprint" means the square footage of the structure that includes the house or facility and garage, but does not include driveways, sidewalks, patios or unenclosed parking areas.

"General Manager" means the Georgetown Utility Systems General Manager of the City of Georgetown, responsible for the operation of the Georgetown Utility Systems or his authorized representative or designee.

"Hydrozone" means grouping plants with similar water requirements together in an effort to conserve water.

"Landscape or Landscaping" means the soil, water, landscape materials and hardscape that affect the aesthetics and/or function of the land.

"Landscape site" means an area of the lot where landscaping is installed.

"Lawn or Turf grass" means a layer of a particular species of grass and roots used to grow or assemble a lawn, usually chosen for its uniformity of growth and ease of care.

"Lot" means a platted lot, parcel or tract.

"Irrigation System" means the pipes, tanks, backflow prevention device, valves, controllers, spray heads, and appurtenances installed after the point of delivery and used to irrigate landscape with Potable water.

“New Construction” means the building or installing of a new primary structure on an otherwise vacant property.

“New Installation” means the connection or set up of an irrigation system that was not previously existing at a specific location and requiring the contractor or installer to obtain a permit in order to perform the work. This includes a complete replace of a system or equipment, but not the repair of an existing system.

“Plant Materials” means living trees, shrubs, vines, ground covers, sod, and flowering annuals, biennials and perennials adapted to the Georgetown soil and climate.

"Potable water" means water that is satisfactory for drinking, culinary and domestic purposes and meets the requirements of the Commission.

"Public potable water system" means the publicly owned water system operated as a public utility under a 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.

"Residential" means one or two dwelling unit structures intended to be occupied for domestic purposes.

“Seasonal irrigation schedule” means a watering schedule that changes appropriately when the local weather changes in order to efficiently irrigate landscaping and lawns and can be administered within the standard 3-day watering schedule.

"Service connection" means the terminal end of a service connection from the public potable water system, i.e., where the utility loses jurisdiction and sanitary control over 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.

“Soil Depth” means the vertical distance into the soil from the surface to a layer that essentially stops the downward growth of plant roots. The barrier layer may be rock, sand, gravel, heavy clay, or a cemented layer (e.g. caliche).

“Summer Dormancy Capabilities” means the ability of turf grass to survive without water for a period of sixty consecutive days between the months of May through September.

“UDC” refers to the Unified Development Code, which is the primary regulatory document governing development within the City of Georgetown. The UDC incorporates procedures, standards and regulations for development applications including, but not limited to, zoning, site plan, and subdivision applications.

“UDC Development Manual” refers to the companion document to the UDC, containing forms, templates, and other information relevant to development including, but not limited to,

templates for Tree Surveys, Tree Preservation Plans, landscape and tree calculations, and the Preferred Plant List.

"Utility" means Georgetown Utility Systems.

"Zonal Irrigation" means an automated irrigation system that can isolate and manage the irrigation needs of sections of landscape with similar watering requirements, allowing independent operation of each section of the system.

Sec. 13.15.020. - General Provisions.

- A. Declaration of policy. It is declared the policy of the City to preserve the public health, safety and welfare of the City's water supply, in adequate quantities, as stated in the Texas Health and Safety Code, Title 5, Section 341 by:
1. Implementing the rules for Drinking Water Standards governing drinking water quality and reporting requirements for Public Water Supply Systems, promulgated by the State and Federal Authorities; and
  2. Implementing potable water system connection and usage requirements for customers of the system; and
  3. Implementing requirements to permit the location and connection of private groundwater wells within the City's water service area; and
  4. Implementing landscaping and irrigation requirements that reflect the use of native and drought resistant plant species with low water requirements and the methods and schedule of irrigation used to conserve our potable water supply; and
  5. Achieving compliance of water conservation ordinances through several mechanisms, including customer contact, information, education, administrative penalties and municipal court action.
- B. Purposes. This chapter shall be construed so as to achieve the following objectives:
1. To preserve the public potable water supply of the City by promoting the efficient use of the City's water resources to provide for sustainable development and future growth; and
  2. To preserve the underground aquifers used by the City to provide a public water supply by identifying the use of the underground aquifers by private water users within the City's water service area; and
  3. To encourage the installation of landscaping with low-water requirements to provide for the efficient use of our natural resources and reduce dependence on irrigation in order to conserve the potable water supply
  4. To maximize the efficiency of landscape irrigation and avoid wasteful and unnecessary use of our potable water supply.
- C. Applicability. This chapter shall apply to all water utility customers and private well owners within the following parameters:
1. The corporate city limits of Georgetown, the extraterritorial jurisdiction (ETJ,) where potable water is provided by the City; and
  2. Any area outside the city limits of Georgetown and the ETJ where the City

provides retail water service.

- D. Rulemaking. The General Manager is authorized to promulgate regulations not in conflict with this chapter, the Plumbing Code, the City Charter, or the laws of the State of Texas. Texas Health and Safety, Section 341.031 et seq., as amended, and the Federal Safe Drinking Water Act, 42 U.S.C.A., Section 300F et seq., as amended.

#### Sec. 13.15.030. - Water System Requirements.

- A. An authorized utility connection is required. It is unlawful for any owner, lessee, tenant or other person in possession of any premises where any person lives or works, or occupies the same, to establish water service to such premises by any means other than those stated in Chapter 13.15 including:
1. Connection to an approved private well on the property in accordance with the requirements of this chapter; or
  2. Connection to an approved rainwater collection system on the property; or
  3. Connection to a public water supply system.
- B. Upon the development of the property, the provisions of Chapter 13 of the Unified Development Code shall govern the provision of water service to the property. For purposes of this Section, the term "development" shall have the same meaning as in Section 16.02 of the City's Unified Development Code.

#### Sec. 13.15.040 Water Use Requirements

- A. It is unlawful for any customer to waste water through use that serves no practical purpose. Such water waste includes the failure to repair a leak, either inside or outside a home, building, or facility, within a reasonable time, not to exceed sixty (60) days from the date notice of the leak that resulted in water runoff or accumulation in a street, gutter, or parking lot, was provided.
- B. The use of an automatic irrigation system and hose-end sprinklers is restricted to the following schedule:
1. Property with an address ending in an ODD number may be irrigated on Tuesday and/or Thursday and/or Saturday, but no other day of the week without an approved variance from the City.
  2. Property with an address ending in an EVEN number may be irrigated on Wednesday and/or Friday and/or Sunday, but no other day of the week without an approved variance from the City.
  3. There shall be NO irrigation, except by means of a handheld hose, drip irrigation, or soaker hoses on Monday.
- C. Landscape irrigation is allowed anytime, if it meets one or more of the following criteria:
1. Watering occurs by means of a hand-held hose, soaker hoses, or drip irrigation;
  2. Watering occurs within the first 14 days after installation of new landscaping, with a qualifying variance;
  3. Watering occurs at a commercial plant nursery; or
  4. Watering occurs during testing of new irrigation system installation or existing irrigation repair.
- D. Irrigation Variance.

1. Applications for a variance from the standard irrigation schedule shall be filed with the General Manager and shall be in effect for two weeks from the date of approval.
2. A customer may file an application for an irrigation variance, which may include, but is not limited to vacation absence, installation of new landscaping, and installation of new turf.
3. The General Manager may grant an irrigation variance upon his/her determination that special circumstances exist, which upon strict enforcement, will adversely affect the health, sanitation, or fire protection for the public or the applicant.
4. Irrigation Variances granted under this section will expire upon implementation of any phase of the Drought Contingency Plan.

Sec. 13.15.050. – Irrigation System Requirements for New Installations.

- A. Applicability. The requirements of this section shall apply to new installations on residential lots only.
- B. In addition to the requirements of Title 15 of the City of Georgetown Code of Ordinances, all in-ground irrigation systems shall be zonal irrigation systems and meet the following requirements:
  1. Irrigation systems must comply with all applicable regulations and standards required by Chapter 344, Title 30 of the Texas Administrative Code.
  2. Pop-up spray and rotor heads shall direct flow away from any impervious surface and be placed at least four (4) inches from an impervious surface;
  3. All automatic irrigation systems that are installed shall include an operational rain sensor and soil moisture sensor. These may be part of the original irrigation system or stand-alone products that are integrated with the irrigation system at the time of installation.
  4. Irrigation systems shall be programmed to meet the City's required watering schedule for both required day and time of irrigation.
  5. Automatic irrigation systems shall be programmed not to water during rain events or when soil moisture is higher than the programmed threshold of the installed soil moisture sensor.
  6. Irrigation systems installed on residential lots may not irrigate an area larger than 2.5 times the foundation footprint or 10,000 square feet, whichever is the smaller, with spray or rotor irrigation heads; and
    - a. The use of drip irrigation, bubblers and micro-sprayers may be used to expand the irrigation coverage area, without being included in the area calculation for spray or rotor irrigation heads.
- C. An irrigation permit shall only be given to irrigation systems meeting the above requirements. The application for an irrigation permit shall include a detailed irrigation system plan meeting the requirements above and including the appropriate prescribed settings for the rain sensor and the moisture sensor based on the water requirements of the plants and the soil depth at the site of installation.
- D. All irrigators installing irrigation systems shall provide to the irrigation system owner, in writing, the following:

1. A recommended seasonal irrigation schedule and instructions specifying how to use the irrigation system and set the controller;
2. A copy of the irrigation system design plan; and
3. The schedule and design plan shall be affixed to the irrigation controller or an adjacent wall, if the owner is not available at the time of installation.

Sec. 13.15.060. – Residential Landscaping Requirements.

A. Applicability. The requirements of this section shall apply to new construction on residential lots only. This section shall not apply to new construction on residential lots that have a final recorded plat as of the effective date of this Ordinance.

B. Residential Landscaping Requirements.

1. Landscape sites shall have a soil depth of at least 6 inches prior to the installation of any landscaping.
2. If it is necessary to add soil to achieve 6 inches of soil depth, the additional soil shall either be native soil from the site or non-native, or fertile, loose, easily broken into pieces and, blended sand / loam / compost topsoil containing at least 20% organic material.
3. The soil depth requirement does not apply to areas unaffected by construction, uncultivated or remaining in their natural state.
4. All new plant materials, not including lawn or turf grasses, shall be selected from the City of Georgetown Preferred Plant List and shall be bedded by hydrozone.
5. Trees shall have at least one bubbler installed per newly installed tree if a new irrigation system is also installed.
6. Installation of new lawn or turf grasses shall meet the following criteria:
  - a. the lawn or turf grass shall not cover an area larger than 2.5 times the foundation footprint or 10,000 square feet, whichever is the smaller square footage.
  - b. Any lawn or turf grass installed shall be fully sodded or seeded in a warm weather grass variety that has summer dormancy capabilities.
  - c. The installation of Saint Augustine turf grasses is allowed only in an area:
    - i. With at least 10 inches of soil depth; and
    - ii. With less than 6 or more hours of full sun a day.

C. Irrigation Systems. The installation of an irrigation system is not mandatory. If an irrigation system is voluntarily installed, it must meet the requirements of Sec 13.15.050.

D. Exemption.

1. A residential lot that is allowed to remain in its unaltered, natural state or is landscaped 100% in plants native to its specific location within the Edwards Plateau or the Blackland Prairies, with no automatic irrigation system installed, is exempt from soil depth and turf area restrictions and is eligible to have a 5/8" water meter installed.
2. In the event that an automatic irrigation system is installed on the residential lot at a later date, the following criteria must be met, in addition to the requirements of Section 13.15.050:
  - a. The 5/8" meter must be replaced with a 3/4" or larger meter;
  - b. The incremental cost of the corresponding impact fee for the installation of the



- larger meter must be paid;
- c. Landscape requirements, including but not limited to soil depth and turf area restrictions, must be met; and
- d. No landscaping or irrigation incentives shall be provided to sites installing automatic irrigation systems where there was not one previously.
- 3. Residential lots that are one acre or larger in size may be exempt from the turf area limitations and soil depth requirements on portions of the lot. Qualifications for the exemption are as follows:
  - a. The exemption applies only to the areas of the lot *not* included in the 2.5 times the foundation footprint measurement for irrigable turf.
  - b. The additional turf on the lot is not irrigated with an automatic irrigation system.
  - c. The remaining landscaping, not including lawn and turf grasses, on the lot is native to the specific site location within the Edwards Plateau or the Blackland Prairies
- 4. In order to qualify for the above exemptions, the applicant must submit a Residential Landscape Plan pursuant to Section 13.15.070 demonstrating compliance with the above exemption requirements.

Sec. 13.15.070. -- Permitting Requirements for Residential Landscape Plan

- A. An application for a residential landscape plan shall be submitted prior to an application for a building permit.
- B. The application shall include the following information:
  - 1. Landscape Plan, designed by a professional landscaper indicating:
    - a. Location and type of proposed new plant materials;
    - b. Any undisturbed areas;
    - c. Soil depth in landscape sites;
    - d. Type of topsoil added if additional soil required; and
  - 2. Indication if a new irrigation system will be installed; and
  - 3. Any additional information requested by the City to complete its review.
- C. If the applicant is seeking one of the exemptions in Section 13.15.060, the application must establish compliance with the exemption requirements.
- D. Review of the Landscape Plan application shall follow the following procedures:
  - 1. The application shall be reviewed for completeness and the applicant shall be notified of any missing or required information.
  - 2. Staff shall review the completed application, considering any applicable criteria for approval and notify the applicant of any necessary corrections.
  - 3. Additional procedures may be established for administrative review to ensure compliance with this Code and State statutes.
  - 4. After completion of the review, the Landscape Plan shall be approved if it meets the following criteria:
    - a. A complete application has been submitted; and
    - b. The application and content of the application are consistent with provisions of this Chapter and any other applicable City regulations or ordinances.

Sec. 13.15.080. - Inspection and Approval of Installation.

At the time of final building inspection, the City shall inspect all landscaping to ensure compliance with the approved Landscaping Plan. All landscaping must be installed pursuant to the approved Landscaping Plan in order to pass final building inspection.

Sec. 13.15.090. – Postponement of Installation of Landscaping

In the case of weather restrictions, seasonal or inclement, the owner may post fiscal surety for the full cost of the materials and installation of any remaining landscaping approved in a Residential Landscape Plan. The owner will then have 30 days from either 1) the date of the start of the next planting season or 2) the last day of the inclement weather situation to complete the installation. The City may draw on the fiscal surety and pay to complete the planting if it is determined that the owner has breached the obligations secured by the fiscal surety.

Sec. 13.15.100. - Maintenance responsibility.

The customer is responsible for general maintenance and upkeep of their plumbing and irrigation system starting at the point of delivery. 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 by the GM for maintenance.

Sec. 13.15.110. – Private Wells.

- A. The use of a private well for potable water shall be in accordance with the requirements of this chapter and the Commission.
- B. Owners of private wells within the water service area of the City of Georgetown shall initially report the location and any other such information as may be determined to be necessary by the General Manager using a reporting method developed by the City. The deadline for making the initial report to the City shall be January 1, 2014.
- C. If a private well is in use on a property where a connection to the public water supply is in service, such well shall not be connected to the same plumbing system as that which is supplied by the public water supply, and the plumbing system must have a backflow prevention assembly to protect the public supply from contamination in the event of inadvertent connection of the private well to the same plumbing system served by the public water supply. Such backflow prevention assembly installation, maintenance, and testing shall be in accordance with Section 13.36.
- D. The owner of the private hydrants or private wells shall maintain records of maintenance that are available for inspection or viewing upon request by the water purveyor or his representative.
- E. Owners of private wells that are decommissioned in accordance with the requirements of the Commission shall report such decommissioning to the City. Upon proper decommissioning and reporting, the use of a backflow prevention assembly due to the existence of a private well on the property is no longer required and the backflow prevention assembly may be removed in accordance with Section 13.36.

Sec. 13.15.120. – Private Fire Hydrant Maintenance.

- A. All private hydrant barrels will be painted red with the bonnet painted using the Hydrant Flow Standard in paragraph C of this section to indicate flow. It will be the customer's responsibility to test and maintain their private fire hydrant(s).
- B. All private fire hydrants should be tested annually and shall be color coded to indicate the expected fire flow from the hydrant during normal operation. Such color applied to the fire hydrant by painting the bonnet the appropriate color for the expected flow condition.
- C. Hydrant Flow Coding Standards:

FLOW	COLOR
Greater than 1500 GPM	BLUE
1000 to 1500 GPM	GREEN
500 to 999 GPM	ORANGE
Less than 500 GPM	RED
NOT WORKING	BLACK OR BAGGED

Section 13.15.130. - Inspections.

The General Manager shall be authorized, under this chapter, to inspect any premise, real property or building connected to the public potable water system. Inspections shall include, without limitation, a survey of such premise, real property or building for plumbing code violations, cross connections, and irrigation system controller settings.

Sec. 13.15.140. - Violations.

It shall be a violation of this ordinance for any person to intentionally, knowingly, recklessly or with criminal negligence disregard any provisions, specifications or requirements of this ordinance.

Sec. 13.15.150. – Enforcement .

- A. Enforcement Authority. The General Manager and the City Attorney of the City of Georgetown and each of them are authorized to enforce the provisions of this chapter by any one or more of the enforcement mechanisms set forth in this chapter.
- B. The General Manager is hereby granted the authority to designate specific City staff to act as his/her agents, and assign the designated staff administrative authority to address violations of this ordinance.
- C. Inspection and Enforcement a Governmental Function. The General Manager and his designees that are charged with enforcement of this chapter shall be deemed to be performing a governmental function for the benefit of the general public and neither the City, the General Manager, nor the designee engaged in inspection or enforcement activities under this chapter 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.

- D. Right of Entry. 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 this chapter, 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 inspect any customer's potable water system, or piping, or records pertinent thereto, required under this chapter and/or the cross connection control ordinance, rules or regulations of any governmental entity with whom the City may have an inter-local 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.
- E. Arrangement for Access. 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 General Manager.
- F. Obstruction of Access, Unreasonable Delays Prohibited. Obstruction or unreasonable delay security barriers or other obstacles are prohibited to access by the General Manager.
- G. Administrative Search Warrants. If the General 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 General Manager has demonstrated probable cause to believe that a violation of this chapter, 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 chapter or any permit or order issued hereunder, or to protect the overall health, safety and welfare of the community then, upon application by the General Manager, a judge of the Municipal Court shall issue a search and/or seizure warrant describing therein the specific location subject to search and the property or items subject to seizure. Such warrant shall be served at reasonable hours in the company of a uniformed police officer. In the event of an emergency affecting public health and safety, such inspection shall be made without the necessity of a warrant.
- H. Administrative Penalties. Administrative penalties may be assessed for violations of this Chapter pursuant to Section 13.15.160 in order to recover the cost of notification and administration of violations of this Chapter, including the cost of water education classes. All revenue collected as administrative penalties shall be allocated to Conservation Services to fund the enforcement and education programs.
- I. Criminal Penalty. Notwithstanding any other provisions of this Chapter, a person who violates any provision of this chapter is violating a City ordinance that governs health and safety and 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 \$2,000.00.
- J. Civil Actions. The City Attorney is authorized to enforce this chapter 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.
- K. Civil Penalties. Notwithstanding any other provisions of this chapter, if (1) a person has received actual notice of the provisions of this chapter; and (2) after the person received

notice of the provisions of this chapter, such person committed or continued acts in violation of this chapter or failed to take action necessary for compliance with this chapter; the City Attorney may initiate a suit against the owner, occupant or manager of premises that are in violation of this chapter to recover a civil penalty not to exceed \$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 chapter. Water service may be discontinued if violations are not corrected within five days of notification by the General Manager.

1. 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 chapter. 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.
- L. Remedies Cumulative. All remedies authorized under this chapter 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 chapter nor shall the filing of a civil action preclude the pursuit of any other action or remedy, administrative or criminal, and the administrative authority of the General Manager does not diminish the City Attorney's authority in regard to enforcement of this ordinance.
- M. Persons Responsible. A person is responsible for a violation of this chapter if:
  1. The person commits or assists in the commission of a violation; or
  2. The person is the owner, occupant or manager of the property or facilities determined to be the source of a violation of this chapter.
- N. Tenant Responsibility. 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 by the General Manager for noncompliance with the provisions of this chapter.
- O. Expenses, Loss or Damage. Any person violating the provisions of this chapter shall be liable to the City for all expenses, loss or damage incurred by the City by reason of such violation.

#### Sec 13.15.160: Administrative Penalties.

- B. Administrative Violation. Except as otherwise stated herein, each violation of this Chapter may be enforced as an administrative violation, pursuant to the following:

##### **Violation**

First Violation within 12-month period	\$60 or Water Conservation Class
Second Violation within 12-month period from date of immediately preceding violation	\$75
Third and subsequent violations within 12-month	\$100

period from date of immediately preceding violation

1. First Violation. If the General Manager reasonably believes that a person or entity has violated this, he/she shall 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, inform him/her of the administrative fee that will be added to the alleged violator's next monthly utility bill, and notify the violator 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 Violation. If the General Manager reasonably believes that a person or entity has violated this plan again subsequent to and within the 12-month period immediately following the date of the preceding violation, he/she shall forward to the person or entity alleged to be in violation of this plan a notice of second violation. The notice of second 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 notify the violator of the administrative fees and consequences for subsequent violations, and be forwarded to the alleged violator's utility billing address via first class mail.
  3. Third and Subsequent Violations. If the General Manager reasonably believes that a person or entity has violated this plan a third or more time subsequent to and within the 12-month period immediately following the date of the preceding violations, he/she shall forward to the person or entity alleged to be in violation of this plan a notice of third or subsequent violation. The notice of third 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 notify the violator of the administrative fees and consequences for subsequent violations, and be forwarded to the alleged violator's utility billing address via first class mail..
- C. Penalties resulting from the use of a faulty or unrepaired irrigation system may be waived by providing documentation verifying a comprehensive irrigation system check-up is performed on the irrigation system within 30 days of the violation.
1. All issues identified on the check-up documentation must have been repaired or otherwise resolved.
  2. Only one waiver is allowed per 12 month period.
  3. Once the necessary repairs have been identified, they must be repaired within 30 calendar days, or penalties will be reassessed.
- 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), General Manager, 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 General Manager 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 General Manager 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 General Manager. Within ten (10) business days of the General Manager's receipt of such request, the General Manager 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.
5. A customer may appeal the appeal hearing decision by submitting a written request to the City Manager 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. 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. Termination of service. Upon a person or entity's third 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. Services discontinued under such circumstances shall be restored only upon payment of a reconnection charge, hereby established at fifty dollars (\$50.00), 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.