



ORDINANCE 2110

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA AMENDING THE CITY’S OUTDOOR WATER USE RESTRICTIONS BY ESTABLISHING PERMANENT RESTRICTIONS ON TIMES OF DAY AND DAY OF THE WEEK AND CREATING EXEMPTIONS FROM SAID RESTRICTIONS, ESTABLISHING THE CITY’S DROUGHT CONTINGENCY RESPONSE, INCLUDING AUTHORIZING THE CITY MANAGER TO DECLARE A DROUGHT, PROVIDING FOR DROUGHT SURCHARGE RATES DURING A DROUGHT, AND ESTABLISHING STANDARDS FOR USE OF CITY UTILITY WATER DURING A DECLARED DROUGHT.

WHEREAS, [Mon. Const. Art. IX, Sec. 3](#) declares the use of all water, including “the sites for reservoirs necessary for collecting and storing water shall be held to be a public use” for the people of Montana and that such water is “subject to appropriation for beneficial uses as provided by law”; and

WHEREAS, pursuant to [Mont. Code Ann. § 7-13-4402 \(2021\)](#), the City of Bozeman “has power to adopt, enter into, and carry out means for securing a supply of water for the use” of the city or its citizens; and

WHEREAS, the City is a local government with [self-governing powers](#) and its City Commission has the power to [adopt or amend](#) the Bozeman Municipal Code; and

WHEREAS, the City has an interest in protecting the availability of water from the City’s water utility by managing its use; and

WHEREAS, Bozeman is a semi-arid, headwaters community dependent on limited water supplies that are subject to impacts from drought. Drought events, population growth, and impacts of climate change on water supply yields, make Bozeman highly-susceptible to water supply reliability challenges; and

WHEREAS, drought is part of the City of Bozeman’s history; and

Ordinance No. 2110, An Ordinance Amending the City's Outdoor Water Use Restrictions, and Establishing Drought Contingency Response and Standards

WHEREAS, on December 21, 2021, the City Commission adopted [Resolution 5368](#) which established the Commission's priority of promoting water conservation for 2022 and 2023; and

WHEREAS, irrigation water use for lawns and landscapes represents approximately fifty percent of total city water demand during summer months; and

WHEREAS, permanent outdoor watering restrictions are a necessary and effective tool for reducing excessive outdoor water usage while maintaining landscape health; and

WHEREAS, the City Commission is committed to drought preparedness pursuant to the [Drought Management Plan](#) (Plan) adopted by [Resolution 4728](#) by the City Commission on January 9, 2017; and

WHEREAS, on May 3, 2022, the City Commission passed Resolution 5398 and adopted the City's 2022 Drought Management Plan;

WHEREAS, the Plan provides the City tools to continuously assess and evaluate drought factors, guidelines about how to proactively implement drought mitigation and response actions, and strategic responses specific to each of the four stages of drought; and

WHEREAS, the City has a legitimate interest in protecting the City's water supply as drought severity increases to preserve the City's available water supply for those purposes essential to public health, safety, and welfare; and

WHEREAS, Bozeman Municipal Code Chapter 40, Division 4, provides the authority for the City Manager to implement outdoor water use restrictions.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BOZEMAN, MONTANA:

Section 1

That Chapter 40, Article 2, Division 4 of the Bozeman Municipal Code be re-named as follows:

DIVISION 4. – OUTDOOR WATER USE RESTRICTIONS AND DROUGHT CONTINGENCY RESPONSE

Section 2

Ordinance No. 2110, An Ordinance Amending the City's Outdoor Water Use Restrictions, and Establishing Drought Contingency Response and Standards

That Sec. 40.02.1250, "Definitions," will be re-named and amended as follows:

Sec. 40.02.1250. Definitions. -Findings.

- A. ~~For the purposes of this division, the following terms, phrases, words, and their derivations shall have the meaning given herein.~~
1. ~~"Outdoor use" means the use of water, excepting water which has been used indoors and is being recycled for outdoor use, for:~~
 - a. ~~Sprinkling or irrigating gardens, lawns or other outdoor vegetation;~~
 - b. ~~Washing automobiles, trucks, or other mobile equipment except at places of business where such are washed on every business day either with attendants, with automatic equipment or by self-service;~~
 - c. ~~Washing sidewalks, driveways, outside building walls or other outdoor surfaces;~~
 - d. ~~Washing any business or industrial equipment machinery;~~
 - e. ~~Operating any ornamental fountain or other similar structure not employing a recirculating system;~~
 - f. ~~Swimming and wading pools not employing a filter and recirculating system;~~
 - g. ~~Leakage or other escape outdoors through defective plumbing when a person has knowingly permitted the defective plumbing to remain in disrepair;~~
 - h. ~~Settling back fill around foundations, pipes, etc.; and~~
 - i. ~~Other outdoor uses except use for fire protection.~~
 2. ~~"Water" means water from the city's water service utility.~~

A reliable minimum supply of water is essential to the public health, safety and welfare of the people and the economy of the City of Bozeman.
- B. Bozeman is a semi-arid, headwaters community dependent on limited water supplies that are driven by snowpack and subject to impacts from drought. Drought events, population growth, and impacts of climate change on water supply yields, make Bozeman highly-susceptible to water supply reliability challenges.
- C. Responsible water management requires active conservation measures not only in times of drought but at all times.
- D. A reliable minimum supply of water is essential to meet current and future water supply needs.

Section 3

That Sec. 40.02.1260, "Application of restrictions," will be re-named and amended as follows:

Sec. 40.02.1260. Application of restrictions. -Purpose and intent.

- A. ~~The provisions of this division or any restriction or prohibition in force pursuant thereto shall apply as follows:~~

Ordinance No. 2110, An Ordinance Amending the City's Outdoor Water Use Restrictions, and Establishing Drought Contingency Response and Standards

~~1. To all persons using water both in and outside the city, and regardless of whether any person using water shall have a contract for water service with the city; or~~

~~2. To persons contracting for water service at a location who shall be responsible and strictly liable for all water use at that location.~~

To minimize or avoid the effect and hardship of potential water supply shortages to the greatest extent possible, this division establishes the means and authority to:

1. Implement the City of Bozeman's Drought Management Plan;

2. Reduce water consumption long-term through permanent, outdoor water use restrictions, and short-term through additional water demand mitigation actions;

3. Enable effective water supply reliability planning;

4. Assure reasonable and beneficial use of water;

5. Ensure adequate supplies of water are available for essential uses during times of water shortage; and

6. Prevent waste of water and ensure water use efficiency.

Section 4

That Section 40.02.1270, "Authority to restrict outdoor use of water," will be re-named and amended as follows:

Sec. 40.02.1270. ~~Authority to restrict outdoor use of water.~~ Definitions.

~~The director of public works is, with the concurrence of the city manager, authorized, directed and empowered, whenever in the director's opinion the necessities of the situation demand such action, to restrict or wholly prohibit the outdoor use of the water supply of the water service utility.~~

A. For the purposes of this division only, the following terms, phrases, words, and their derivations shall have the meaning given herein.

1. "Drought restriction" means a required curtailment of specific water uses enacted due to a drought declaration.

2. "Water" means water from the city's water service utility. "Essential use" means the use of water necessary for firefighting, health, welfare and safety; water needed to sustain basic human, aquatic and animal life; and water necessary to satisfy federal, State, and local laws for the protection of public health, sanitation and safety.

3. "Excessive water use" means use that is not considered reasonable, prudent, or a wise use of water for an authorized purpose.

4. "Landscape" means an area with vegetative groundcover or other natural living plant materials including but not limited to: grass, turf, trees, ornamental perennials, shrubs, perennial flowers, annual flowers, food gardens, and surrounding landscape design elements such as rock mulch and wood mulch.

Ordinance No. 2110, An Ordinance Amending the City's Outdoor Water Use Restrictions, and Establishing Drought Contingency Response and Standards

5. "Low volume drip irrigation" means the application of irrigation water at low pressure through a system of tubing or lateral lines and low volume emitters such as drip, drip lines, and bubblers.
6. "Non-essential use" means the use of water not for essential use, which may be curtailed during times of shortage without compromising public health, sanitation, welfare and safety.
7. "Outdoor water use" means the use of water, excluding water which has been used indoors and is being recycled for outdoor use, for:
 - a. Sprinkling or irrigating gardens, lawns or other outdoor vegetation;
 - b. Washing motorized and non-motorized vehicles, including but not limited to automobiles, trucks, vans, buses, motorcycles, boats, bikes and trailers;
 - c. Washing sidewalks, walkways, driveways, parking areas, outside building walls, patios, alleys or other outdoor surfaces;
 - d. Washing any business or industrial equipment machinery;
 - e. Operating any ornamental fountain or other similar structure not employing a recirculating system; and
 - f. Filling swimming pools, wading pools, hot tubs and spas not employing a filter and recirculating system.
8. "Spray irrigation" means the act of applying water to landscape by sprinklers or spray nozzles that deliver water to the landscape through the air.
9. "Turf" means grass and the surface layer of earth held together by its roots, including but not limited to cool season lawn grasses.
10. "Water" means water from the city's water service utility.
11. "Water waste" means the intentional or unintentional excessive use of water; allowing water to be applied in any manner, rate or quantity such that the runoff from the landscaped area being watered is allowed to pool or flow across the ground, into any drainage way, or onto any impervious surface; water that has escaped or run to waste; and the escape of water through defective plumbing, breaks, leaks, or malfunctions in the plumbing or irrigation system.
12. "Watering window" means the period, timeframe, or continuous hours of the day(s) in which outdoor watering is permitted.

Section 5

That Section 40.02.1280, "Restriction of particular indoor uses," will be re-named and amended as follows:

Sec. 40.02.1280. - Restriction of particular indoor uses. - Application of restrictions division.

~~Whenever outdoor use restrictions are in effect, business establishments which serve beverages for human consumption shall be prohibited from serving water except upon request.~~

Ordinance No. 2110, An Ordinance Amending the City's Outdoor Water Use Restrictions, and Establishing Drought Contingency Response and Standards

A. The provisions of this division or any restriction or prohibition in force ~~pursuant thereto~~ shall apply as follows:

1. To all persons using water both in and outside the city, and regardless of whether any person using water shall have a contract for water service with the city; or
2. To persons contracting for water service at a location who shall be responsible and strictly liable for all water use at that location.

B. This division is intended to ensure an adequate and reliable water supply for essential uses, ensure the public's health safety during times of water shortage, and to further the beneficial use and conservation of water.

Section 6

That Section 40.02.1290, "Sprinkling systems; timing" will be re-named and amended as follows:

Sec. 40.02.1290. Sprinkling systems; timing. -Outdoor water use restrictions.

~~Whenever outdoor use restrictions are in effect, the director of public works may set alternative time restrictions for the use of large scale sprinkling systems or those which are equipped with a timing device.~~

A. Authority to restrict outdoor use of water. The city manager is authorized and empowered, whenever the situation demands, to restrict or wholly prohibit outdoor water use of the city's water service utility. This includes the power to approve exemptions and relaxations to outdoor water use restrictions. Except for the restrictions in 40.02.1290.B, any restriction imposed by order of the city manager shall become effective at midnight immediately following notice posted and available on the city's website.

B. Outdoor water use restrictions. Notwithstanding the city manager's authority in 40.02.1290.A, the following restrictions apply to all property using water from the city's water utility:

1. Permanent time of day and day of week watering restrictions. Outdoor watering of landscapes with the use of spray irrigation shall be limited to an assigned three (3) days per week watering schedule as follows:
 - a. Properties with even numbered physical addresses: Tuesday, Thursday, and Saturday;
 - b. Properties with odd numbered physical addresses: Wednesday, Friday, and Sunday;
and
 - c. Public parks, private open spaces, street right-of-ways: Monday, Wednesday, and Friday.
2. Time of day watering prohibition. The outdoor watering of landscapes with the use of spray irrigation is prohibited seven (7) days a week between the hours of 10:00am and 8:00pm.

Ordinance No. 2110, An Ordinance Amending the City's Outdoor Water Use Restrictions, and Establishing Drought Contingency Response and Standards

3. Watering window. For the purposes of identifying the allowable watering windows associated with the allowable watering day and times of day, the watering window begins at 12am and ends at 10am, and the second watering window begins at 8pm and ends at 11:59pm on the allowable watering day. The allowable watering day refers to a calendar day (12:00am – 11:59pm).

4. Water waste prohibited. Outdoor water use that results in water escaping or running to waste, excessive use, and the escape of water through breaks, leaks, or malfunctions in the plumbing or irrigation system is prohibited.

C. Exemptions to outdoor water use restrictions. The following activities are exempt from the requirements of 40.02.1290.B:

1. Outdoor watering of trees, drought tolerant ornamental perennials, shrubs, flowers and food gardens only when watered with the use of a hose equipped with positive shut-off nozzle or device, hand-held bucket or similar container, slow release watering bag, or landscape irrigation system that exclusively uses low-volume drip irrigation.

2. Turf establishment. Watering, for the sole purpose of turf establishment, is permitted for up to 45 days upon the installation of new turf from sod or seed.

3. Irrigation system maintenance. Water use associated with irrigation system operation for the purposes of installation, repair, adjustments, performance assessments, and other related maintenance issues provided that the system is attended to throughout the period of operation.

D. Special circumstances. The city manager may establish standards for the exemption or relaxation of the restrictions in this division. When reasonable cause exists, the city manager may grant an exemption or relaxation for special circumstances not described in this division, including but not limited to the use of new irrigation technology, and preservation of turf subject to heavy public use. The city manager must maintain a list of approved exemptions and relaxations to requirements in this section.

Section 7

That Section 40.02.1300, "Landscaping; seeding; sodding; planting" will be re-named and amended as follows:

Sec. 40.02.1300. Landscaping; seeding; sodding; planting. -Drought contingency response.

~~While it is not the intent of this division to place restrictions on the normal conduct of business, whenever outdoor use restrictions are in effect, the director of public works may restrict or wholly prohibit the seeding, sodding or planting of live vegetation.~~

A. Authority to enact a drought declaration. The city manager is, upon notification

Ordinance No. 2110, An Ordinance Amending the City's Outdoor Water Use Restrictions, and Establishing Drought Contingency Response and Standards

to the city commission, authorized to order a drought declaration and corresponding water use restrictions. This includes the power to approve exemptions and relaxations to enacted water use restrictions.

B. Drought restriction and response measure implementation.

1. Response measures must substantially protect the City's water supply as drought severity increases or water supply availability decreases, in order to preserve the City's available water supply for purposes essential to public health, sanitation, safety, welfare and essential services including but not limited to police and fire services.

2. A drought declaration may necessitate that the city manager implement additional water use restrictions not listed in 40.02.1290. These drought restrictions may vary based upon drought severity and other pertinent circumstances. Any additional water use restriction must consider the response measures outlined in the city's Drought Management Plan.

C. Drought surcharge rates.

1. Effective Date. Upon a drought declaration, drought surcharge rates provided for in the effective water utility rate structure adopted by the city commission shall go into effect pursuant to the drought stage, customer class, and water rate tier, as applicable.

2. Billing Cycle. Drought surcharge rates shall not go into effect prior to the effective date of the declared drought, and shall be reflected in utility customer billing statements representing water usage during the declared drought.

D. Water Superintendent Emergency Authority. Nothing in this division diminishes the authority given to the water superintendent in 40.02.840 to prohibit or restrict water use during an emergency.

E. Irrigation systems; timing. When drought restrictions are in effect, the city manager may set alternative watering time and/or duration restrictions for the use of automatic irrigation systems or those which are equipped with a timing device.

F. Landscaping; seeding; sodding; planting. When drought restrictions are in effect, the city manager may restrict or wholly prohibit the seeding, sodding or planting of live vegetation. Landscaping not installed for new development projects due to the implementation of this section may be allowed an extended time to complete landscaping improvements of an additional 12 months to the timing provisions outlined in 38.270.060 for the purpose of receiving issuance of a certificate of occupancy.

G. Restriction of certain outdoor uses when drought restrictions are in effect.

1. Hosing or washing down hard or paved surfaces.

a. When drought restrictions are in effect, hosing or washing down hard or paved surfaces including, but not limited to, sidewalks, walkways, driveways, parking areas, outside building walls, patios or alleys is prohibited.

b. When it is necessary to hose or wash down hard or paved surfaces for purposes essential to protect public health, sanitation, safety, and welfare, the following devices may

Ordinance No. 2110, An Ordinance Amending the City's Outdoor Water Use Restrictions, and Establishing Drought Contingency Response and Standards

be used: hand-held bucket or similar container; hand-held hose equipped with a positive shut-off nozzle or device; and low volume, high-pressure cleaning machine.

2. Hosing or washing down vehicles.

a. When drought restrictions are in effect, hosing or washing down motorized and non-motorized vehicles, including but not limited to automobiles, trucks, vans, buses, motorcycles, boats, bikes and trailers is prohibited.

b. The following devices are exempt from this restriction: use of hand-held bucket or similar container; use of hand-held hose equipped with a positive shut-off nozzle or device; and commercial car washing facility.

3. A drought declaration may warrant the implementation of drought restrictions that require additional curtailments of outdoor water uses beyond those identified in this division. All additional curtailments must consider the city's Drought Management Plan.

H. Restriction of particular indoor uses when drought restrictions are in effect.

1. Water served only upon request. When drought restrictions are in effect, business establishments are prohibited from serving complimentary water for human consumption unless requested by a customer.

2. Option not to have towels/linens laundered. Whenever drought restrictions are in effect, hotels, motels, and other commercial lodging establishments must provide guests the option to decline having used towels and linens laundered daily. Such establishments must prominently display notice of this option in each room using clear and easily understood language.

Section 8

That Section 40.02.1310, "Notice required" will be re-named and amended as follows:

Sec. 40.02.1310. ~~Notice required. Wasting water prohibited.~~

~~Restrictions or prohibitions imposed by the director of public works shall become effective at midnight immediately following the publication of notice thereof in any daily newspaper published in the city.~~

No person shall waste water which shall include but not be limited to permitting water to escape or run to waste, excessive use, and escape of water through breaks, leaks, or malfunctions in the plumbing or irrigation system.

Section 9

That Section 40.02.1320, "Wasting water prohibited," will be repealed in its entirety.

Ordinance No. 2110, An Ordinance Amending the City's Outdoor Water Use Restrictions, and Establishing Drought Contingency Response and Standards

Section 10

Repealer.

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

Section 11

Savings Provision.

This ordinance does not affect the rights and duties that matured, penalties that were incurred or proceedings that were begun before the effective date of this ordinance. All other provisions of the Bozeman Municipal Code not amended by this Ordinance shall remain in full force and effect.

Section 12

Severability.

That should any sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be unconstitutional, illegal, or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof, other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Bozeman Municipal Code as a whole.

Section 13

Codification.

This Ordinance shall be codified as indicated in Sections 1 – 9.

Section 14

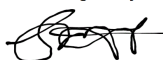
Effective Date.

This ordinance shall be in full force and effect thirty (30) days after final adoption.

PROVISIONALLY ADOPTED by the City Commission of the City of Bozeman, Montana, on first reading at a regular session held on the 3rd day of May, 2022.

Ordinance No. 2110, An Ordinance Amending the City's Outdoor Water Use Restrictions, and Establishing Drought Contingency Response and Standards

DocuSigned by:



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CYNTHIA L. ANDRUS

Mayor

ATTEST:

DocuSigned by:



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MIKE MAAS

City Clerk

DocuSigned by:



FINALLY PASSED, ADOPTED AND APPROVED by the City Commission of the City of Bozeman, Montana on second reading at a regular session thereof held on the 17 of May 20²². The effective date of this ordinance is June 16²², 2022.

DocuSigned by:



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CYNTHIA L. ANDRUS

Mayor

ATTEST:

DocuSigned by:



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MIKE MAAS

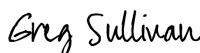
City Clerk

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APPROVED AS TO FORM:

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GREG SULLIVAN

City Attorney