

ORDINANCE 2023-03

AN ORDINANCE AMENDING THE CITY OF FAIR OAKS RANCH CODE OF ORDINANCES, CHAPTER 13 "UTILITIES", ARTICLE 13.03 "WATER AND SEWER SYSTEM", DIVISION 3, PART II "DROUGHT CONTINGENCY PLAN" TO INCLUDE UPDATED DEFINITIONS, INITIATION AND TERMINATION CRITERIA AND CREATING AN APPEAL PROCESS; AND AMENDING APPENDIX A FEE SCHEDULE ARTICLE A9 (V) "WATER CHARGES – DROUGHT SURCHARGE RATES".

WHEREAS, the City of Fair Oaks Ranch, Texas, recognizes that the amount of water available to the City and its water utility customers is limited and subject to depletion during periods of extended drought or upon failure of major system components; and

WHEREAS, the City recognizes that natural limitations due to drought conditions and other acts of force majeure cannot guarantee an uninterrupted water supply for all purposes; and

WHEREAS, Section 11.1272 of the Texas Water Code and applicable rules of the Texas Commission on Environmental Quality ("TCEQ"), including Title 30, Chapter 288, Subchapters A and B of the Texas Administrative Code require all public water supply systems in Texas to prepare, update and adopt a water conservation and drought contingency plan at a minimum at least every five years; and

WHEREAS, the City previously updated and adopted the City's current water conservation and drought contingency plan under Chapter 13, of the City's Code of Ordinances; and

WHEREAS, in accordance with the regulations established by the TCEQ, it is necessary to review, update and adopt an amended water conservation and drought contingency plan; and

WHEREAS, as authorized under law, and in the best interests of the citizens of Fair Oaks Ranch, Texas, and its customers, the City Council deems it necessary to amend certain rules and policies for the orderly and efficient management of limited water supplies during drought and other water supply emergencies; and

WHEREAS, City Council deems it necessary to amend residential drought surcharge rates and create commercial drought surcharge rates to effectively manage water usage during times of drought.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAIR OAKS RANCH, TEXAS:

PART 1. Chapter 13 "Utilities", Article 13.03 "Water and Sewer System", Division 3 "Drought Surcharge Rates and Drought Contingency Plan", Part II "Drought Contingency Plan" and Appendix A Fee Schedule Article A9 (V) "Water Charges – Drought Surcharge Rates" is hereby amended as forth in the attached **Exhibit A**.

PART 2. That the recitals contained in the preamble hereto are hereby found to be true and such recitals are hereby made a part of this Ordinance for all purposes and are adopted as a part of the judgment and findings of the Council.

- PART 3.** It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs, and sections of this ordinance be severable, and, if any phrase, clause, sentence, paragraph, or section of this ordinance shall be declared invalid by judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, or sections of this ordinance and the remainder of this ordinance shall be enforced as written.
- PART 4.** That it is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.
- PART 5.** This ordinance shall take effect the 1st day of August 2023, after its second reading, passage and publication as may be required by governing law.
- PART 6.** The repeal or amendment of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying, or altering any penalty accruing or to accrue or as affecting any rights of the City of Fair Oaks Ranch under any section or provisions of any ordinances in effect at the time of passage of this ordinance.
- PART 7.** The provisions of this ordinance shall be cumulative of all ordinances not repealed by this ordinance and ordinances governing or regulating the same subject matter as that covered herein.

PASSED and APPROVED on first reading by the City Council of the City of Fair Oaks Ranch, Texas, on this 4th day of May 2023.

PASSED, APPROVED and ADOPTED on second and final reading by the City Council of the City of Fair Oaks Ranch, Texas, on this 18th day of May 2023.




Gregory C. Maxton, Mayor

ATTEST:



Christina Picioccio, TRMC, City Secretary

APPROVED AS TO FORM:


Denton Navarro Rocha Bernal & Zech, P.C.,
City Attorney

EXHIBIT A

Chapter 13 "Utilities", Article 13.03 "Water and Sewer System", Division 3 "Drought Surcharge Rates and Drought Contingency Plan", Part II "Drought Contingency Plan" is hereby amended as follows:

[Deletions shown as strikethrough and additions shown as underscore]

Part II. Drought Contingency Plan

Sec. 13.03.116 Definitions

For the purposes of this plan, the following definitions shall apply:

Aesthetic water use. Water use for ornamental or decorative purposes such as fountains, ponds, reflecting pools, and water gardens.

Billing period. That calendar period during which usage is measured.

Bulk water use. Water used by fire departments, contractors, road builders, lawn services, exterminators and others that do not have a metered connection. Their usage is measured by self-reporting the number of times they fill a container of a specified size from a fire hydrant.

Commercial and institutional water use. Water use which is integral to the operations of commercial and nonprofit establishments and governmental entities such as retail establishments, hotels and motels, restaurants, country clubs, associations, and office buildings.

Conservation. Those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternative uses.

Customer. Any person, individual, partnership, company, corporation, association, organization, or other legal entity using water supplied by FORU.

Daily production. The total treated source water provided to the FORU distribution system in a 24-hour period.

Distribution system. Those facilities (tanks, pumps, pipes, valves, and meters) that deliver treated, potable water to FORU water customers.

Domestic water use. Water used for personal needs or for household or sanitary purposes such as drinking, bathing, heating, cooking, or sanitation, or for cleaning a residence, business, or institution.

Extreme leak. A leak during any stage of the Drought Contingency Plan in which a utility customer's monthly consumption exceeds their two-year average for that same month by double. If two years of water consumption is unavailable, water consumption must be more than three times the amount used from the previous month.

Landscape areas. Changing the natural features of a plot of ground so as to make it more attractive, as by adding lawns, trees, bushes, etc.

Landscape irrigation use. Water used for the irrigation and maintenance of landscaped areas, whether publicly or privately owned, including residential and commercial lawns, gardens, golf courses, parks, rights-of-way and medians.

Landscape watering permit. A permit issued pursuant to section 13.06.006(d) of the City's Code of Ordinances.

Nonessential water use. Water uses that are not essential or required for the protection of public health, safety, and welfare, including:

- (1) Irrigation of landscape areas, including parks, athletic fields, and golf courses, except as otherwise provided under this plan;
- (2) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle;
- (3) Use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
- (4) Use of water to wash down buildings or structures for purposes other than immediate fire protection;
- (5) Flushing gutters or permitting water to run or accumulate in any gutter or street;
- (6) Use of water to fill, refill, or add to any indoor or outdoor swimming pools or Jacuzzi-type pools;
- (7) Use of water in a fountain or pond for aesthetic or scenic purposes except where necessary to support aquatic life;
- (8) Failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s); and
- (9) Use of water from fire hydrants for construction purposes or any purpose other than firefighting.

New Lawn Purchase. Purchases of sod equal or greater to one pallet (500 square feet).

Observation well. The FORU well located at 29435 Ralph Fair Road, Bexar County, and identified on facility records as Well 20.

Sec. 13.03.117 Criteria for Initiation and Termination of Drought Stages and Responses

- (a) Monitoring. FORU shall monitor water supply and/or demand conditions on a monthly basis until such time that conditions warrant initiation of stage 1, after which daily conditions shall be monitored to determine initiation and termination of each stage of the plan, that is, when the specified "triggers" are reached. The triggering criteria described below are based on analysis of the vulnerability of the water source under drought of record conditions, current water demands and current National Weather Service Bureau extended weather predictions.
- (b) Stage 1, moderate water shortage conditions.

(1) Triggers.

- (A) Requirements for initiation. Customers shall reduce nonessential water uses when two (2) of three (3) conditions have been met:
 - (i) The static water level in the FORU observation well averages less than or equal to 1,045 feet above mean sea level for 15 consecutive days;
 - (ii) The water system's average daily consumption of Trinity Aquifer groundwater for the same consecutive 15 days exceeds 1.2 million gallons per day; or
 - (iii) Either Guadalupe-Blanco River Authority (GBRA) or Trinity Glen Rose Groundwater Conservation District (TGRGCD) implements stage 1 water reduction requirements of their drought contingency plan.
- (B) Requirements for termination. Stage 1 of the plan may be rescinded when the static water level in the observation well averages greater than 1,045 feet above mean sea level for 60 consecutive days and GBRA or TGRGCD is no longer in stage 1 (or worse) conditions from their drought contingency plan.

(2) Response.

- (A) Goal. Achieve both a reduction in total water use and reduce monthly average Trinity Aquifer groundwater use for 30 consecutive days to less than 1.2 million gallons per day.
- (B) Supply management measures.
 - (i) Implementation of a surcharge on all water used over 20,000 ~~25,000~~ gallons per residential account per billing period and 50,000 gallons per commercial account per billing period.
 - (ii) Commercial car washing (using nonrecycled technology) banned.
 - (iii) Reduce water main flushing to that required to maintain quality standards.
 - (iv) All landscape watering permits issued prior to implementation of Stage 1 restrictions are rescinded. No additional permits shall be issued, with the exception of newly built homes or with proof of new lawn purchase, as defined in Sec. 13.03.116, within the last seven (7) days prior to Stage 1 implementation.

(c) Stage 2, severe water shortage conditions.

(1) Triggers.

- (A) Requirements for initiation. Customers shall ~~be requested to~~ further reduce nonessential water uses when two (2) of three (3) conditions have been met:
 - (i) The static water level in the FORU observation well averages less than or equal to 1,035 ~~1,030~~ feet above mean sea level for eight (8) consecutive days;
 - (ii) The water system's average daily consumption of Trinity Aquifer groundwater for the same consecutive eight (8) days exceeds 700,000 gallons per day; or

(iii) Guadalupe-Blanco River Authority (GBRA) or Trinity Glen Rose Groundwater Conservation District (TGRGCD) implements stage 2 water reduction requirements of their drought contingency plan.

(B) Requirements for termination. Stage 2 of the plan may be rescinded when the static water level in the observation well averages greater than 1,035 ~~1,030~~ feet above mean sea level for 60 consecutive days and GBRA or TGRGCD is no longer in stage 2 (or worse) conditions from their drought contingency plan. Upon termination of stage 2, stage 1 becomes operative.

(2) Response.

(A) Goal. Achieve both a reduction in total water use and reduce the average Trinity Aquifer groundwater use for 30 consecutive days to less than 0.7 million gallons per day.

(B) Supply management measures.

(i) Implementation of a surcharge on all water used over 15,000 ~~18,000~~ gallons per residential account per billing period and 40,000 gallons per commercial account per billing period.

(ii) Use of water from fire hydrants shall be limited to firefighting, related activities, or other activities necessary to maintain public health, safety, and welfare.

(iii) Ornamental water fountain water usage banned.

(iv) No sale of bulk water.

(v) Landscape watering permits for new lawn purchases are rescinded and no new permits will be issued.

(vi) Golf Course watering is limited to the use of effluent and non-potable irrigation well water provided by the FORU wastewater treatment plant and wells, unless approved by the City Manager or designee.

(d) Stage 3, critical water shortage conditions.

(1) Triggers.

(A) Requirements for initiation. Customers shall be required to comply with the requirements and restrictions on certain nonessential water uses provided in this plan when one (1) of three (3) conditions have been met:

(i) The static water level in the FORU observation well is equal to or less than 1,020 ~~1,015~~ feet above mean sea level;

(ii) At any time that the water system's production wells are failing so that normal production of 1.2 million gallons per day of Trinity Aquifer groundwater cannot be maintained for seven (7) consecutive days; or

(iii) Guadalupe-Blanco River Authority (GBRA) or Trinity Glen Rose Groundwater Conservation District (TGRGCD) implements stage 3 water reduction requirements of their drought contingency plan.

- (B) Requirements for termination. Stage 3 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for 60 consecutive days.
- (2) Response.
- (A) Goal. Limit consumption to domestic water use as defined in Sec. 13.03.116 definitions.
 - (B) Supply management measures.
 - (i) Implementation of a surcharge on all water used over 10,000 gallons per residential account per billing period and 30,000 gallons per commercial account per billing period.
 - (ii) All nonessential water uses, as defined in Sec. 13.03.116 definitions, are prohibited except for watering of household shrubbery by handheld hose.
 - ~~(iii)~~(ii) Golf course watering is limited to the use of effluent water provided by the FORU wastewater treatment plant or a water source other than that provided by FORU.
 - ~~(iv)~~(i) A moratorium is imposed on the issuance of irrigation (with the exception of newly built homes) and swimming pool permits. Swimming pools under construction during the implementation of this drought response shall be filled only with water purchased from a source other than FORU, unless approved by the City Manager or designee ~~new landscaping and construction of new swimming pools.~~
 - ~~(v)~~(iv) Hosston/Sligo aquifer water may be diverted to drinking water distribution, if authorized by TCEQ.
 - ~~(vi)~~(v) No application for new, additional, expanded, or increased-in-size water service connections, meters, service lines, pipeline extensions, mains, or water service facilities of any kind shall be approved, and time limits for approval of such applications are hereby suspended for such time as this drought response stage is in effect.
 - ~~(vii)~~(vi) Water-flow restrictors may be installed on customer meters.
 - ~~(vii)~~ The surcharge imposed in stage 2 remains in effect.

Sec. 13.03.118 Enforcement; Penalty

- (a) No person shall allow the use of water from FORU for residential, commercial, agricultural, governmental, or any other purpose in a manner contrary to any provision of this plan. A culpable mental state is not required for a violation of this article, and need not be proved.
- (b) Any person who violates the critical stage provisions of this plan is guilty of a misdemeanor and, upon conviction, shall be punished by a fine per violation as provided in section 1.01.009 of this Code. Each day that one (1) or more of the provisions in this plan is violated shall constitute a separate offense.

Sec. 13.03.119 Variances

- (a) The City Council may, in writing, grant a temporary variance for existing water uses otherwise prohibited under this plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting health, sanitation, or fire protection for the public or the person requesting such variance and if one (1) or more of the following conditions are met:
 - (1) Compliance with this plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the plan is in effect.
 - (2) Alternative methods can be implemented which will achieve the same level of reduction in water use.
- (b) Persons requesting an exemption from the provisions of this article shall file a petition for variance and a non-refundable variance fee, as set forth in **Appendix A** to this Code, with FORU within five (5) days after the plan or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the City Manager or his designated representative and shall include the following:
 - (1) Name and address of the petitioner(s).
 - (2) Purpose of water use
 - (3) Specific provision(s) of the plan from which the petitioner is requesting relief.
 - (4) Detailed statement as to how the specific provision of the plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if the petitioner complies with this article.
 - (5) Description of the relief requested.
 - (6) Period of time for which the variance is sought.
 - (7) Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this plan and the compliance date.
 - (8) Other pertinent information.
- (c) The City Manager or his designated representative shall forward his recommendation for granting or denying the variance to the City Council for final action. Recommendation for variances shall be subject to the following conditions, unless waived or modified by the City Council:
 - (1) Variances granted shall include a timetable for compliance.
 - (2) Variances granted shall expire when the plan is no longer in effect, unless the petitioner has failed to meet specified requirements.
- (d) No variance shall be retroactive or otherwise justify any violation of this plan occurring prior to the issuance of the variance.

Sec. 13.03.120 Drought Surcharge Appeal

- (a) A petition to remove Drought Surcharges from one monthly statement may be considered by the City Manager or designee for customers that experience an extreme leak, as defined in 13.03.116.
- (b) Upon discovery of an extreme leak by the customer, the cause of excess consumption due to the water leak shall be repaired within 30 days of discovery to be eligible for consideration of a Drought Surcharge Appeal.
- (c) Upon notice of excess consumption by the City, the customer shall be notified of a suspected water leak or excessive water consumption by phone, email, door hanger, personal contact, or water cutoff. To be eligible for consideration of a Drought Surcharge Appeal, the cause of excess consumption shall be repaired within 30 days of the notification.
- (d) All petitions for this appeal shall include the following in writing:
 - ____ (1) Name and address of petitioner
 - ____ (2) Explanation of excessive water leak
 - ____ (3) Proof the leak was repaired within 30 days of discovery or notification
 - ____ (4) Other pertinent information
- (e) Until the findings of the Drought Surcharge Appeal are determined (in no event more than six (6) weeks), the customer shall be required to pay, on a timely basis, the total amount due for all utility services.

Appendix A Fee Schedule Article A9 (V) "Water Charges – Drought Surcharge Rates" is hereby amended as follows:

[Deletions shown as strikethrough and additions shown as underscore]

(v) Drought surcharge rates - Residential:

(1) Stage 1, moderate water shortage conditions - residential cost per 1,000 gallons:

- (A) 0 – 20,000 ~~25,000~~ gallons.....\$0.00.
- (B) 20,001 ~~25,001~~ - 40,000 gallons.....\$5.00.
- (C) 40,001 - 60,000 gallons.....\$6.00.
- (D) 60,001 - 75,000 gallons.....\$7.00.
- (E) 75,001 - 100,000 gallons.....\$10.00.
- (F) Over 100,000 gallons.....\$12.50.

(2) Stage 2, severe water shortage conditions - residential cost per 1,000 gallons:

- (A) 0 – 15,000 ~~18,000~~ gallons.....\$0.00.
- (B) 15,001 – 20,000 ~~18,001 – 25,000~~ gallons.....\$5.00.
- (C) 20,001 ~~25,001~~ - 40,000 gallons.....\$7.50.
- (D) 40,001 - 60,000 gallons.....\$10.00.
- (E) 60,001 - 75,000 gallons.....\$15.00.
- (F) 75,001 - 100,000 gallons.....\$20.00.
- (G) Over 100,000 gallons.....\$30.00.

(3) Stage 3, critical water shortage conditions - residential cost per 1,000 gallons:

- (A) 0 – 10,000 ~~18,000~~ gallons.....\$0.00.
- (B) 10,001 – 20,000 ~~18,001 – 25,000~~ gallons.....\$7.50 ~~\$5.00~~.
- (C) 20,001 ~~25,001~~ - 40,000 gallons.....\$10.00 ~~\$7.50~~.
- (D) 40,001 - 60,000 gallons.....\$15.00 ~~\$10.00~~.
- (E) 60,001 - 75,000 gallons.....\$20.00 ~~\$15.00~~.
- (F) 75,001 - 100,000 gallons.....\$30.00 ~~\$20.00~~.
- (G) Over 100,000 gallons.....\$35.00 ~~\$30.00~~.

(w) Drought surcharge rates - Commercial:

(1) Stage 1, moderate water shortage conditions - commercial cost per 1,000 gallons:

- (A) 0 - 50,000 gallons.....\$0.00.
- (B) 50,001 - 60,000 gallons.....\$6.00.
- (C) 60,001 - 75,000 gallons.....\$7.00.
- (D) 75,001 - 100,000 gallons...\$10.00.
- (E) Over 100,000 gallons.....\$12.50.

(2) Stage 2, severe water shortage conditions - commercial cost per 1,000 gallons:

- (A) 0 - 40,000 gallons.....\$0.00.
- (B) 40,001 - 60,000 gallons.....\$10.00.
- (E) 60,001 - 75,000 gallons.....\$15.00.
- (F) 75,001 - 100,000 gallons.....\$20.00.
- (G) Over 100,000 gallons.....\$30.00.

(3) Stage 3, critical water shortage conditions - commercial cost per 1,000 gallons:

- (A) 0 - 30,000 gallons.....\$0.00.
- (B) 30,001 - 40,000 gallons.....\$10.00.
- (D) 40,001 - 60,000 gallons.....\$15.00.
- (E) 60,001 - 75,000 gallons.....\$20.00.
- (F) 75,001 - 100,000 gallons.....\$30.00.
- (G) Over 100,000 gallons.....\$35.00.