

ORDINANCE NO. 2010-31

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE CITY OF ROSENBERG, TEXAS, BY DELETING ALL OF ARTICLE II OF CHAPTER 10 THEREOF AND SUBSTITUTING THEREFOR A NEW ARTICLE II; ESTABLISHING RULES AND REGULATIONS FOR INITIATION AND TERMINATION OF DROUGHT CONTINGENCY PLANS WITHIN THE CITY; ESTABLISHING RESPONSE STAGES AND RESTRICTIONS ON CERTAIN WATER USES DURING DROUGHT CONDITIONS; PROVIDING FOR ENFORCEMENT OF SUCH RESTRICTIONS; ESTABLISHING PROCEDURES FOR GRANTING OF VARIANCES; PROVIDING A PENALTY IN AN AMOUNT OF NOT MORE THAN \$500 FOR VIOLATION OF ANY PROVISION HEREOF; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES INCONSISTENT OR IN CONFLICT HEREWITH; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the City Council of the City of Rosenberg recognizes the amount of water available to the City and its water utility customers is limited and subject to depletion during periods of extended drought; and

WHEREAS, Section 11.1272 of the Texas Water Code and applicable rules of the Texas Commission on Environmental Quality require all public water systems in Texas to prepare a drought contingency plan; and

WHEREAS, as authorized under law and in the best interest of the residents, citizens and inhabitants of the City of Rosenberg, the City Council deems it expedient and necessary to establish certain rules and procedures for the orderly and efficient management of limited water supplies during drought conditions and other water-related emergencies; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ROSENBERG:

Section 1. That the Code of Ordinances of the City of Rosenberg is hereby amended by deleting from Chapter 10 all of Article II thereof, entitled "Drought Contingency Regulations," and substituting therefor, a new Article II to provide as follows:

"ARTICLE II. – DROUGHT CONTINGENCY REGULATIONS

Sec. 10 – 30. Declaration of policy, purpose, intent and regulation.

In order to conserve the available water supply and protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety and minimize the adverse impacts of water supply shortage or other water supply emergency conditions, the City hereby adopts the following regulation and restrictions on the delivery and consumption of water.

Water uses regulated or prohibited under these Drought Contingency Regulations (Regulations) are considered to be non-essential and continuation of such uses during times of water shortage or other emergency water supply conditions are deemed to constitute a waste of water which subjects the offender(s) to penalties as provided for in this article and generally in this Code.

Sec. 10-31. Statement of public involvement.

Opportunity for the public to provide input into the preparation of the Regulations was provided by the City by means of providing public notice in a newspaper of general circulation and a public hearing to accept input on these Regulations.

Sec. 10-32. Public education.

The City will periodically provide the public with information about these Regulations, including information about the conditions under which each stage of these Regulations is to be initiated and the drought response measures to be implemented in each stage. This information will be provided by means of utility bill inserts.

Sec. 10-33. Coordination with Regional Water Planning Groups.

The service area of the City of Rosenberg is located within the Region H Water Planning Group and the City has provided a copy of this article to Region H and will cooperate with governmental entities located within Region H.

Sec. 10-34. Authorization.

The City Manager or his/her designee is hereby authorized and directed to implement the applicable provisions of this article upon determination that such implementation is necessary to protect public health, safety and welfare. The City Manager, or his/her designee, shall have the authority to initiate or terminate drought or other water emergency response measures as described in this article.

Sec. 10-35. Application.

The provisions of this article shall apply to all persons, customers, and property utilizing water provided by the City. The terms "person" and "customer" as used in the article include individuals, corporations, partnerships, associations and all other legal entities.

The beneficial use of treated wastewater (reuse or recycled water), condensate water, or cooling tower blow down, without waste, is exempt from the provisions of this Article and a defense to prosecution. The use of alternate on-site reclaimed sources may be approved through variance from the City Manager, or his/her designee on a case by case basis.

All references herein to materials contained in this article shall be deemed to refer to "the Plan" and any modifications and/or changes thereof as shall be approved from time to time by the City Council as an amendment to the terms and provision of this article.

Sec. 10-36. Definitions.

For the purpose of this article, the following definitions shall apply:

Aesthetic water use shall mean water used for ornamental or decorative purposes such as fountains, reflecting pools and water gardens.

Beneficial use shall mean the use of treated wastewater (reuse or recycled water), condensate water, or cooling tower blown down for a purpose not otherwise prohibited by city, state, or federal law or

regulation, when such use is a reasonable viable alternative offering efficiency of use and economic benefits.

Commercial and institutional water use shall mean water used which is integral to the operations of commercial and non-profit establishments and governmental entities such as retail establishments, hotels and motels, restaurants, and office buildings.

Conservation shall mean those practices, techniques, and technologies, that reduce the consumption of water, reduce the loss or waste of water, improve the 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 alternate uses.

Customer shall mean any person, company or organization using water supplied by the city.

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

Even number address shall mean street addresses, box numbers, or rural postal route numbers ending in 0, 2, 4, 6, or 8 and locations without addresses.

Industrial water use shall mean the use of water in processes designed to convert materials of lower value into forms that have greater usability and value.

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

Non-essential water use shall mean 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 otherwise provided under these regulations;
- (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 hydrants for construction purposes or any other purposes other than fire fighting

Odd numbered address shall mean street addresses, box numbers, or rural postal numbers ending in 1, 3, 5, 7, or 9

Reuse or recycled water shall mean domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use in accordance with applicable law.

Waste shall mean the use of water without obtaining maximum beneficial use thereof. Waste shall also include, but not be limited to, causing, suffering, or permitting a flow of water used for landscape watering to run into any river, creek, stream, or other natural water course or drain, superficial or underground channel, bayou, or unto any sanitary or storm sewer, any street, road or highway or other impervious surface area, or upon the lands of another person or upon public lands. Waste shall also include, but not be limited to, failure to repair any controllable leak on property owned by any registered water meter holder.

Sec. 10-37. Triggering criteria for initiation and termination of drought response stages

The City Manager, or his/her designee, shall monitor water supply and/or demand conditions on a daily basis and shall determine when conditions warrant initiation or termination of each stage of this article. Public notification of the initiation or termination of drought response stages shall be by means of publication in a newspaper of general circulation and/or by notification via the electronic media depending upon the severity of conditions.

(a) Stage 1 – Mild Water Shortage Conditions

Requirements for initiation- Customers shall be requested to voluntarily conserve water and adhere to the prescribed conditions on certain water uses, defined in this article and the Regulations as herein set out when the demand on the City's water supply facilities reaches or exceeds sixty-five (65) percent of the production capacity of such facilities for five (5) consecutive days, as determined by the City Manager or his/her designee.

Requirements for termination- Stage 1 of the Regulations may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of three (3) consecutive days, as determined by the City Manager or his/her designee.

(b) Stage 2 – Moderate Water Shortage Conditions

Requirements for initiation- Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses provided for under these Regulations when the demand on the City's water supply facilities reaches or exceeds seventy-five (75) percent of the production capacity of such facilities for five (5) consecutive days, as determined by the City Manager or his/her designee.

Requirements for termination- Stage 2 of these regulations may be rescinded when all of the conditions listed as triggering events have ceased to exist for three (3) consecutive days, as determined by the City Manager or his/her designee.

(c) Stage 3 – Severe Water Shortage Conditions

Requirements for initiation- Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses provided in Sec. 10-36 of these Regulations when the demand on the City's water supply facilities reaches or exceeds eighty (80) percent of the production capacity of such facilities for three (3) consecutive days, as determined by the City Manager or his/her designee.

Requirements for termination – Stage 3 of these regulations may be rescinded when all of the conditions listed as triggering events have ceased to exist for three (3) consecutive days, as determined by the City Manager or his/her designee.

(d) Stage 4 – Critical Water Shortage Conditions

Requirements for initiation – Customers shall be required to comply with requirements and restrictions on certain non-essential water uses provided in Sec. 10-36 of these Regulations when the demand on the City's water supply facilities reaches or exceeds eighty-five (85) percent of the production capacity of such facilities for 24- hours, as determined by the City Manager or his/her designee.

Requirements for termination – Stage 4 of the article may be rescinded when all of the conditions listed as triggering events have ceased to exist for two (2) consecutive days, as determined by the City Manager or his/her designee.

(e) Stage 5 – Emergency Water Shortage Conditions

Requirements for initiation – Customers shall be required to comply with the requirements and restrictions for Stage 5 of these Regulations when the City Manager or his/her designee determines that a water supply emergency exists based on:

1. Major water line breaks, or pump or system failures, which cause unprecedented loss of capacity to provide water service; or
2. Natural or man-made contamination of the water supply source(s).

Requirements for termination – Stage 5 of the article may be rescinded when all of the conditions listed as triggering events have ceased to exist as determined by the City Manager or his/her designee.

Sec. 10-38. Drought response stages.

The City Manager, or his/her designee, shall monitor water supply and/or demand conditions on a daily basis and, in accordance with the triggering criteria set forth in this article, shall determine that a mild, moderate, severe, critical or emergency condition exists and shall implement the following actions upon publication of notice in a newspaper of general circulation:

Stage 1 – Mild Water Shortage Conditions

Supply Management Measures – Voluntary Water Use Restrictions.

- (a) Water customers are requested to voluntarily limit the irrigation of landscaped areas to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Saturdays and Wednesdays for water customers with a street address ending

in an odd number (1, 3, 5, 7 or 9), and to irrigate landscapes only between the hours of 12:00 midnight and 10:00 a.m. and 8:00 p.m. and 12:00 midnight on the designated watering days.

- (b) All operations of the City shall adhere to water use restrictions prescribed for Stage 2 of this article.
- (c) Water customers are requested to practice water conservation and to minimize or discontinue water use for non-essential purposes.

Stage 2 – Moderate Water Shortage Conditions

Target: Achieve a ten percent (10%) reduction in daily water demand.

Supply Management Measures – Water Use Restrictions.

It shall be a violation of this Code punishable as otherwise set out in this Code for any person not to adhere to the following water use restrictions which shall apply to all persons:

- (a) Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems shall be limited to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Saturdays and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9), and irrigation of landscaped areas is further limited to the hours of 12:00 midnight until 10:00 a.m. and between 8:00 p.m. and 12:00 midnight on designated watering days. However, irrigation of landscaped areas is permitted at anytime if it is by means of a hand-held hose, a faucet filled bucket or water can of five (5) gallons or less, or a drip irrigation system.
- (b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane, or other vehicle is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8:00 p.m. and 12:00 midnight. Such washing, when allowed, shall be done with a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for quick rinses. Vehicle washing may be done at any time on the immediate premises of a commercial car wash or commercial service station. The provisions of this section shall not be applicable if the health, safety, and welfare of the public is contingent upon frequent cleaning, such as garbage trucks and vehicles used to transport food and perishables.
- (c) Use of water to fill, refill, or add to any indoor or outdoor swimming pools, wading pools, or Jacuzzi-type pools is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and 8:00 p.m. and 12:00 midnight.
- (d) Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
- (e) Use of water from hydrants shall be limited to fire fighting, related activities, or other activities necessary to maintain public health, safety and welfare, except that use of water from designated fire hydrants for construction purposes may be allowed under special permit from the City.
- (f) Use of water for the irrigation of golf course greens, tees and fairways is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between

8:00 p.m. and 12:00 midnight. However, if the golf course utilizes a water source other than that provided by the City, the facility shall not be subject to these Regulations.

- (g) All restaurants are prohibited from serving water to their patrons except when requested.
- (h) The following uses of water are defined as non-essential and are prohibited:
 - 1. Wash down of any sidewalks, walkways, driveways, parking lots, tennis courts or other hard-surfaced areas;
 - 2. Use of water to wash down buildings or structures for purposes other than immediate fire protection;
 - 3. Use of water for dust control;
 - 4. Flushing gutters or permitting water to run or accumulate in any gutter or street; and
 - 5. Failure to repair controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s).

Stage 3 – Severe Water Shortage Conditions

Target: Achieve a fifteen percent (15%) reduction in daily water demand.

Supply Management Measures – Water Use Restrictions.

All requirements of Stage 2 shall remain in effect during Stage 3 except:

- (a) Irrigation of landscaped areas shall be limited to designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8:00 p.m. and 12:00 midnight and shall be by means of hand-held hoses, hand-held buckets, drip irrigation or permanently installed automatic sprinkler system only. The use of hose-end sprinklers is prohibited at all times.
- (b) The watering of golf course tees is prohibited unless the golf course utilizes a water source other than that provided by the City.
- (c) The use of water for construction purposes from designated fire hydrants under special permit is to be discontinued.

Stage 4 – Critical Water Shortage Conditions

Target: Achieve a twenty percent (20%) reduction in daily water demand.

Supply Management Measures – Water Use Restrictions.

All requirements of Stage 2 and 3 shall remain in effect during Stage 4 except:

- (a) Irrigation of landscaped areas shall be limited to designated watering days between the hours of 6:00 a.m. and 10:00 a.m. and between 8:00 p.m. and 12:00 midnight and shall be by means of hand-held hose, hand-held buckets or drip irrigation only. The use of hose-end sprinklers or permanently installed automatic sprinkler systems are prohibited at all times.
- (b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle not occurring on the premises of commercial car wash and commercial service stations and not in the

immediate interest of public health, safety and welfare is prohibited. Further, such vehicle washing at commercial car washes or service stations shall occur only between the hours of 6:00 a.m. and 10:00 a.m. and between 6:00 p.m. and 10:00 p.m.

- (c) The filling, refilling, or adding of water to swimming pools, wading pools, and Jacuzzi-type pools is prohibited.
- (d) Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
- (e) No applications 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 allowed or approved.

Stage 5 – Emergency Water Shortage Conditions

Target: Eliminate conditions that triggered drought response Stage 5.

Supply Management Measures – Water Use Restrictions.

All requirements of Stage 2, 3, and 4 shall remain in effect during Stage 5, except:

- (a) Irrigation of landscaped areas is absolutely prohibited.
- (b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane, or other vehicle is absolutely prohibited.

Interconnections with the City of Richmond Water System and/or Fort Bend County Municipal Utility District No. 5 Water System are to be used as alternative water sources, as needed.

Sec. 10-39. Enforcement.

- (a) No person shall knowingly or intentionally allow the use of water from the City for residential, commercial, industrial, agricultural, governmental or any other purpose in a manner contrary to any provision of these Regulations, or in an amount in excess of that permitted by the drought response stage in effect at the time pursuant to action taken by the City Manager or his/her designee, in accordance with provisions of these Regulations.
- (b) Any person who shall violate any provisions of this article shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine in an amount not to exceed \$500. Each day that one or more of the provisions in this article is violated shall constitute a separate offense. If a person is convicted of three or more violations of this article, the City Manager or his/her designee shall be authorized, upon due notice to the customer, 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 established by the City and any other costs incurred by the City in discontinuing service. In addition, suitable assurance must be given to the City Manager or his/her designee that the same actions shall not be repeated while the Regulations are in effect. In addition to the relief as otherwise provided herein, the City shall have the authority in the proper case to seek injunctive relief in a court of competent jurisdiction.

- (c) Any person, including a person classified as a water customer of the City, in apparent control of the property where a violation occurs or originates shall be presumed to be the violator. Proof that the violation occurred on the person's property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to show that he/she did not commit the violation. Parents shall be presumed to be responsible for violations of their minor children and proof that violation, committed by a child, occurred on property within the parents' control shall constitute as a rebuttable presumption that the parent committed the violation. Any such parent may be excused if he/she had previously directed the child not to use the water as it was used in violation of these Regulations and the parent could not have reasonably known of the violation.
- (d) Any City police officer, Code enforcement employee or any other employee designated by the City Manager may issue a citation to a person he/she reasonably believes to be in violation of these Regulations. Such citation, when issued, shall be served and appropriate hearing set in the manner otherwise provided for by law for citations in the municipal court of the City of Rosenberg, Texas.

Sec. 10-40. Variances.

The City Manager or his/her designee may, in writing, grant temporary variance for existing water uses otherwise prohibited under this article 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 or more of the following conditions are met:

- (a) Compliance with this article cannot be technically accomplished during the duration of the water supply shortage or other conditions for which the Regulations are in effect.
- (b) Alternative methods can be implemented which will achieve the same level of reduction in water use.

Persons requesting an exemption from the provisions of this article shall file a petition for variance with the City within five (5) days after the provisions of this article or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the City Manager or his/her designee, and shall include the following:

- (a) Name and address of the petitioner(s),
- (b) Purpose of water use,
- (c) Specific provision(s) of this article from which the petitioner is requesting relief,
- (d) Detailed statement as to how the specific provision of this article adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with the provisions of this article,
- (e) Description of the relief requested,
- (f) Period of time for which the variance is sought,
- (g) Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this article and the compliance date, and

(h) Other pertinent information.

Variances granted by the City shall be subject to the following conditions, unless waived or modified by the City Manager or his/her designee:

(a) Variances granted shall include a timetable for compliance.

(b) Variances granted shall expire when the Regulations are no longer in effect, unless the petitioner has failed to meet specified requirements.

No variance shall be retroactive or otherwise justify any violation of these Regulations prior to the issuance of the variance.

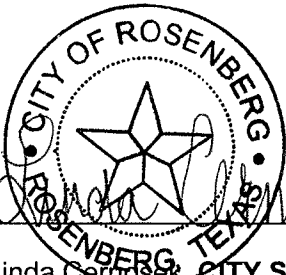
Section 2. All ordinances or parts of inconsistent or in conflict herewith are, to the extent of such inconsistency or conflict, hereby repealed.

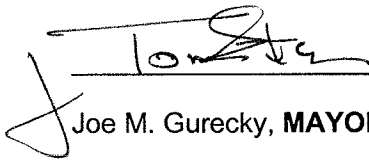
Section 3. In the event any clause, phrase, provision, sentence, or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Rosenberg, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional whether there be one or more parts.

PASSED AND APPROVED by a vote of 6 "ayes" in favor and 0 "noes" against on this first and final reading in full compliance with the provisions of Section 3.10 of the Charter of the City of Rosenberg on this, the 14th day of December, 2010.


ATTEST:

APPROVED:


Linda Cornosek, **CITY SECRETARY**


Joe M. Gurecky, **MAYOR**

APPROVED AS TO FORM:


William A. Olson, Jr. **CITY ATTORNEY**