

ORDINANCE NO. 2016-0-3

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SONORA, TEXAS, TO PROMOTE WATER CONSERVATION AND PROVIDE ENFORCEMENT MECHANISMS, A SEVERABILITY CLAUSE AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, The City of Sonora 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 Sonora wishes to adopt provisions that discourage wasteful use of water and that foster long term water conservation, as directed by the Texas Administrative Code, Title 30, Chapter 288; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SONORA, 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.

Section 3. All ordinances that are in conflict with the provisions of this ordinance be and the same are hereby repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.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 4. 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 5. The Mayor is hereby authorized to sign this ordinance and the City Secretary to attest. This Ordinance shall become effective on 21st day of March, 2016 in accordance with the provisions of the Charter of the City of Sonora.

Said ordinance is attached hereto Marked Exhibit "A" and made a part hereof by reference.

Signed this 21st day of March, 2016

Wanda Shurley
Wanda Shurley, Mayor

Bella Fay
City Secretary

EXHIBIT "A"

WATER CONSERVATION REGULATIONS

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.

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

"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.

"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.

"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.

"Utility" means City of Sonora Utility Systems.

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 irrigation requirements and the methods and schedule of irrigation used to conserve our potable water supply; and
 2. 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 efficient use of our natural resources and reduce dependence on irrigation in order to conserve the potable water supply; and
 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 City of Sonora, the extraterritorial jurisdiction (ETJ,) where potable water is provided by the City; and
 2. Any area outside the city limits of City of Sonora 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.

Water Use Requirements

A. It is unlawful for any customer to waste water through use that serves no practical purpose.

Such water waste includes:

1. runoff more than 150 feet from the lot line down any street, gutter, alley, ditch or parking lot;
2. 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, alley, ditch or parking lot;

B. The use of an automatic irrigation system and hose end sprinklers is restricted to the same requirement of water runoff and leakage.

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 leaks that waste water.

Inspections.

The City Code Enforcement officer or his designee 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.

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.

Enforcement.

A. Enforcement Authority. The General Manager of the City of Sonora 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 interlocal 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 therefore 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.

Administrative Penalties.

- A. **Administrative Violation.** Except as otherwise stated herein, each violation of this Chapter may be enforced as an administrative violation, pursuant to the following:
- First Violation within 12month period \$60 and/or Water Conservation Class
 - Second Violation within 12month period \$75 from date of immediately preceding violation
 - Third and subsequent violations within 12month \$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 12month 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 12month 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.

B. Penalties resulting from the use of a faulty or unrepaired irrigation system may be waived by providing documentation verifying a comprehensive irrigation system checkup is performed on the irrigation system within 30 days of the violation.

1. All issues identified on the checkup 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.

C. 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.

D. 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.

E. 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.