

ORDINANCE NO. 1147-13-06-25

AN ORDINANCE OF THE CITY OF PFLUGERVILLE, TEXAS, AMENDING CHAPTER 53 OF THE CITY CODE; REGARDING THE DROUGHT CONTINGENCY PLAN; ESTABLISHING RATES FOR SURCHARGES; ESTABLISHING ADMINISTRATIVE PENALTIES FOR VIOLATIONS OF THE PLAN; PROVIDING A CRIMINAL PENALTY FOR VIOLATIONS OF THE RATIONING PROVISIONS OF THE PLAN NOT TO EXCEED \$2,000 PER OFFENSE; AND PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, in compliance with applicable legal requirements and the City's wholesale water contract with the Lower Colorado River Authority, the City Council desires to amend its drought contingency plan;

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PFLUGERVILLE, TEXAS:

Section 1. General

That §§ 53.200-53.215 of the Code of Ordinances of the City of Pflugerville, Texas are hereby deleted in their entirety and amended to read as shown on Exhibit "A", which is made part of this Ordinance for all purposes and is hereby adopted and will be the official policy of the City.

Section 2. Conflicts.

All ordinances that are in conflict with the provisions of this ordinance are hereby repealed and all other ordinances of the City not in conflict with the provisions of this ordinance remain in full force and effect.

Section 3. Effective Date.

This Ordinance will take effect on June 25, 2013, upon its passage by three affirmative votes on first reading; provided that this Ordinance will be posted and adopted at a subsequent meeting in accordance with the provisions of Section 3.15(d) of the City Charter.

Section 4. Severability.

If any provision of this Ordinance is illegal, invalid, or unenforceable under present or future laws, the remainder of this Ordinance will not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid, and enforceable will be added to this Ordinance.

PASSED AND APPROVED this 25 day of June, 2013.

CITY OF PFLUGERVILLE, TEXAS

By: 

Jeff Coleman, Mayor

ATTEST:



Karen Thompson, City Secretary

APPROVED AS TO FORM:



George Hyde, City Attorney

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DROUGHT CONTINGENCY PLAN

§ 53.200 SCOPE.

The requirements in §§53.200 through 53.215 (“Subchapter”) are established as the city’s Drought Contingency Plan (the “Plan”). Copies of this Plan will be available for inspection or reproduction in the office of the City Secretary and on the City’s website www.pflugervilletx.gov.

§ 53.201 DECLARATION OF POLICY, PURPOSE, AND INTENT.

(A) 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 of Pflugerville hereby adopts the regulations and restrictions on the delivery and consumption of potable water set forth in this Subchapter.

(B) Water uses regulated or prohibited under the Plan 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 defined in § 53.211 of this Plan.

(C) The City of Pflugerville operates a reuse irrigation system that utilizes wastewater effluent to provide water for irrigation. The use of effluent irrigation water will not be affected by this plan.

§ 53.202 PUBLIC INVOLVEMENT.

The public was able to provide input into the preparation of the Plan during the public hearing that was held prior to City Council consideration of the Ordinance adopting the Plan.

§ 53.203 PUBLIC EDUCATION.

The city will educate the public about conservation and drought conditions by information distributed from the Water Conservation Information Center located at the Public Works Department, 15500 Sun Light Near Way # B or call (512) 990-6400. As trigger conditions approach, the public will be notified through articles on the current conditions and water conservation methods on the city’s internet website.

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§ 53.204 COORDINATION WITH REGIONAL WATER PLANNING GROUPS AND COMPLIANCE WITH THE LCRA WATER MANAGEMENT PLAN.

The service area of the City of Pflugerville is located within the Lower Colorado Regional Water Planning Area and the City of Pflugerville will provide a copy of this Plan to the regional water planning group. The City of Pflugerville will comply with firm water drought response requirements as required in the Lower Colorado River Authority Water Management Plan.

§ 53.205 AUTHORIZATION.

The City Manager is hereby authorized and directed to implement the applicable provisions of this Plan upon determination that such implementation is necessary to protect public health, safety, and welfare. The City Manager may initiate or terminate drought or other water supply emergency response measures as described in this Plan.

§ 53.206 APPLICATION.

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

§ 53.207 DEFINITIONS.

For the purposes of this Plan, the following definitions apply:

(A) **AESTHETIC WATER USE.** Water use for ornamental or decorative purposes such as fountains, reflecting pools, and water gardens.

(B) **COMMERCIAL AND INSTITUTIONAL WATER USE.** Water use that is integral to the operations of commercial and nonprofit establishments and governmental entities such as retail establishments, hotels and motels, restaurants, and office buildings.

(C) **CONSERVATION.** 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 alternative uses.

(D) **CUSTOMER.** Any person, company, or organization using water supplied by the city.

(E) **DOMESTIC WATER USE.** Water use 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.

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(F) DRIP IRRIGATION SYSTEM. Small diameter pressurized lines directly buried in the soil to a nominal depth of six inches and containing pressure reducing emitters to restrict water flow to a very low rate.

(G) INDUSTRIAL WATER USE. The use of water in processes designed to convert materials of lower value into forms having greater usability and value.

(H) 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, athletic fields, parks, and rights-of-way and medians.

(I) NONESSENTIAL WATER USE: Water uses that are neither essential nor required for the protection of public health, safety, and welfare, including:

(1) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle;

(2) Use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;

(3) Use of water to wash down buildings or structures for purposes other than immediate fire protection;

(4) Flushing gutters or permitting water to run or accumulate in any gutter or street;

(5) Use of water to fill, refill, or add to any indoor or outdoor swimming pools or Jacuzzi-type pools;

(6) Use of water in a fountain or pond for aesthetic or scenic purposes except where necessary to support aquatic life;

(7) Failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s); and

(8) Use of water from hydrants for construction purposes or any other purposes other than firefighting.

(J) HOUSEHOLD. Means the residential premises served by the customer's meter.

(K) PERSONS PER HOUSEHOLD. Includes only those persons currently physically residing at the premises and expected to reside there for the entire billing period.

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(L) OUTDOOR WATER USE DAY for Stage 1 and Stage 2. The day that a Customer may use water outdoors for purposes permitted by this subchapter. Addresses, box numbers or rural postal route numbers ending in the following number are assigned the following days for outdoor water use:

Wednesday and Saturday	Residential homes with a street address ending in an odd number.
Thursday and Sunday	Residential homes with a street address ending in an even number.
Tuesday and Friday	Watering days for commercial facilities including apartments, condominiums, civic, commercial, industrial and institutional properties.
Monday	No watering.

§ 53.208 TRIGGERING CRITERIA FOR INITIATION AND TERMINATION OF DROUGHT RESPONSE STAGES.

The City will monitor water supply and/or demand conditions on a daily basis and will advise the Mayor and the City Council when conditions warrant initiation or termination of each stage of the Plan. The City Manager may order that the appropriate stage of water conservation be implemented or terminated in accordance with the applicable provisions of this Subchapter by public notification. Public notification of the initiation or termination of drought response stages will be by means of notice mailed to the service address of each water customer no later than the billing date prior to the change taking effect. The triggering criteria described below are based on the statistical analysis of the vulnerability of the city's water source under drought of record conditions.

The triggering criteria described below are based on the statistical analysis of the vulnerability of the city's water source under drought of record conditions.

(A) Stage 1 - Mild Water Shortage Conditions

Requirements for initiation - Customers will be requested to voluntarily conserve water and adhere to the prescribed restrictions on non-essential water uses, defined in § 53.209(A) of this Plan year round.

(B) Stage 2 - Moderate Water Shortage Conditions

Requirements for initiation - Customers must comply with the requirements and restrictions on certain non-essential water uses, defined in § 53.207(I) of this Plan, from March 1st through October 31st or when the average daily water consumption reaches 80% of production/distribution capacity for a period of three consecutive days, or the combined storage of the Highland Lakes falls to 900,000 acre feet. At 900,000 acre feet the City Manager must implement our Stage 2 water

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restrictions as mandated under the city's wholesale water purchase contract with the Lower Colorado River Authority.

Requirements for termination - Stage 2 of the Plan may be rescinded by the City Manager when all of the conditions listed as triggering events have ceased to exist for a period of 3 consecutive days or by the City Council if any of the conditions listed as triggering events, other than requirements imposed by the city's wholesale water contract with the Lower Colorado River Authority, have ceased to exist and the City Council finds that termination of the Drought Response Stage 2 will not adversely affect the public health, safety or welfare. Upon termination of Stage 2, Stage 1 becomes operative.

(C) Stage 3 - Severe Water Shortage Conditions

Requirements for initiation - Customers must comply with the requirements and restrictions on certain non-essential water uses for Stage 3 of this Plan when the average daily water consumption reaches 90% of production/distribution capacity for a period of 3 consecutive days; or the combined storage of the Highland Lakes falls to 700,000 acre feet or the City Manager determines that Stage 3 implementation is necessary to protect the City's water supply for essential usages. No variances will be granted during Stage 3 Severe Water Shortage Conditions.

Requirements for termination - Stage 3 of the Plan may be rescinded by the City Manager when all of the conditions listed as triggering events have ceased to exist for a period of 3 consecutive days or by the City Council if any of the conditions listed as triggering events, other than requirements imposed by the city's wholesale water contract with the Lower Colorado River Authority, have ceased to exist and the City Council finds that termination of the Drought Response Stage 3 will not adversely affect the public health, safety or welfare. Upon termination of Stage 3, the City will determine what stage will become operative, based on current lake levels.

(D) Stage 4 - Emergency Water Shortage Conditions

Requirements for initiation - Customers must comply with the requirements and restrictions for Stage 4 of this Plan when the City Manager determines that a water supply emergency exists based on:

(1) The combined storage of the Highland Lakes reaches 600,000 acre feet or Lake Pflugerville is down to its 625 elevation.

(2) Major water line breaks, or pump or system failures occur, and cause unexpected loss of capability to provide water service;

(3) System demand exceeds available high service pump capacity;

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(4) There is detection of accidental or intentional contamination of the water system;

(5) There is detection of water systems failure from acts of God (e.g., tornados, hurricanes, etc.) or man;

(6) A mechanical failure of pumping equipment occurs during a moderate drought and will require more than 12 hours to repair; or

(7) Implementation is necessary under the city's wholesale water contract with the Lower Colorado River Authority.

Requirements for termination – Stage 4 of the Plan may be rescinded by the City Manager when all of the conditions listed as triggering events have ceased to exist for a period of 3 consecutive days or the emergency condition no longer exists or by the City Council if any of the conditions listed as triggering events, other than requirements imposed by the city's wholesale water contract with the Lower Colorado River Authority, have ceased to exist and the City Council finds that termination of the Drought Response Stage 2 will not adversely affect the public health, safety or welfare.

(E) Water Rationing

Requirements for initiation - Customers must comply with the water allocation plan prescribed in § 53.210 of this Plan and comply with the requirements and restrictions for Stage 4 of this Plan when the City Manager determines that water rationing is necessary.

Requirements for termination - Water rationing may be rescinded when all of the conditions listed warranting water rationing have ceased to exist for a period of 3 consecutive days.

§ 53.209 DROUGHT RESPONSE STAGES.

The Public Works Department will monitor water supply and/or demand conditions on a daily basis and, in accordance with the triggering criteria set forth in § 53.208 of the Plan, will recommend to the City Manager the extent of the conservation required through the implementation or termination of particular conservation stages in order for the city to prudently plan for and supply water to its customers. The City Manager may order the appropriate stage of water conservation implemented or terminated in accordance with the applicable provisions of this Subchapter by public notification. The conservation stage will take effect immediately upon public notification:

(A) Stage 1 - Mild Water Shortage Conditions

(1) Goal. Achieve a voluntary 5% reduction in average daily water use (e.g., total water use, daily water demand, etc.).

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(2) Supply Management Measures. The city must comply with the voluntary water use restrictions year round.

(3) Required Water Use Restrictions. Outdoor irrigation by a permanently installed automatic irrigation system is prohibited between the hours of 10:00 a.m. and 7:00 p.m. This prohibition does not apply to irrigation:

- (a) Using treated wastewater effluent or raw water; or
- (b) During repair or testing of a new or existing irrigation system; or
- (c) At a commercial plant nursery; or
- (d) Watering with a hand held hose with an automatic shutoff nozzle.

(4) Voluntary Water Use Restrictions.

(a) Customers whose use is not restricted by Stage 1, as referenced in § 53.209(A) (3) are requested to voluntarily comply with the restrictions in § 53.209(B) Stage 2.

(b) All city operations will comply with the water use restrictions prescribed for Stage 1 of the Plan.

(c) Water Customers are requested to practice water conservation and to minimize or discontinue water use for non-essential purposes.

(5) Prohibited Waste of Water. The following uses constitute a waste of water and are prohibited:

(a) Failing to repair a controllable leak, including a broken sprinkler head, a leaking valve, or a leaking faucet;

(b) Operating a permanently installed irrigation system with a broken head, with a head that is out of adjustment and spraying more than 10 percent of the spray on a street or parking lot, or that is misting;

(c) During irrigation:

(i) Allowing a substantial amount of water to run off a property; or

(ii) Allowing water to pond in the street or parking lot to a depth greater than 1/4 of an inch.

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(B) Stage 2 - Moderate Water Shortage Conditions

(1) Goal. Achieve a 10 percent reduction in average daily water use (e.g., total water use, daily water demand, etc.).

(2) Supply Management Measures. The city will reduce or discontinue flushing of water mains; reduce or discontinue irrigation of public landscaped areas; use an alternative water supply source, where possible; and use reclaimed water for non-potable purposes, where possible. The city will comply with the water use restrictions for Stage 2 when Stage 2 is implemented.

(3) Water Use Restrictions. The water use and waste restrictions in Stage 1, as referenced in § 53.209(A) and the following water use restrictions will apply to all Customers during Stage 2:

(a) Outdoor irrigation is permitted at any time if it is by means of a hand-held hose equipped with a positive shutoff nozzle, a faucet-filled bucket or watering can of five gallons or less.

(b) Outdoor irrigation is permitted by a hose end sprinkler, a soaker hose, or drip irrigation, from 12:00 midnight to 10:00 a.m. and 7:00 p.m. to 12:00 midnight on an outdoor water use day as designated by the City.

(c) Outdoor irrigation is permitted by a permanently installed automatic irrigation system from 12:00 midnight to 10:00 a.m. and 7:00 p.m. to 12:00 midnight on an outdoor water use day as designated by the City.

(d) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle is prohibited except on designated watering days from 12:00 midnight to 10:00 a.m. and 7:00 p.m. to 12:00 midnight. Such washing, when allowed, must be done with a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle. This restriction does not apply to a commercial carwash or a commercial service station or if washing is necessary to protect the health, safety, and welfare of the public. Charity car washes are prohibited without a permit approved by the City.

(e) Watering the ground around a foundation to prevent foundation cracking is prohibited except on a designated outdoor water use day from 12:00 midnight to 10:00 a.m. or 7:00 p.m. to 12:00 midnight.

(f) 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 water days from 12:00 midnight to 10:00 a.m. and 7:00 p.m. to 12:00 midnight.

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(g) 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.

(h) Use of water from hydrants will be limited to fire-fighting and 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 a permit for construction water from the city.

(i) 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 to 10:00 a.m. and 7:00 p.m. to 12:00 midnight. However, if the golf course utilizes an irrigation water source other than potable water obtained from the utility provider's water distribution system, the facility will not be subject to these regulations.

(j) All restaurants are prohibited from serving water to their customers except upon the customer's request.

(4) The following uses of water are non-essential and prohibited except to alleviate an immediate health or safety hazard:

(a) Wash down of any sidewalks, walkways, driveways, parking lots, tennis courts, patios or other hard-surfaced areas;

(b) Use of water to wash down buildings or structures for purposes other than immediate fire protection.

(c) Use of water for dust control;

(d) Flushing gutters or permitting water to run or accumulate in any gutter or street; and

(e) Failure to repair a controllable leak within a reasonable period after being given notice to repair such leak.

(5) Notwithstanding the prohibitions in this section, irrigation of new landscape installation is permitted. In that event, irrigation may only occur during the hours permitted under § 53.209(A) (3) and in accordance with the following 30 day irrigation schedule:

(a) For the first ten days after installation, once a day;

(b) For day 11 through 20 after installation, once every other day; and

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(c) For day 21 through 30 after installation, once every third day.

(6) The Stage 2 restrictions do not apply to the following:

(a) The necessary use of water other than for landscape irrigation, by a governmental entity in pursuit of a governmental function for the benefit of the public, including for a capital improvement construction project;

(b) the necessary use of water, other than for landscape irrigation, for land development including roadway base preparation, flushing utility lines, dust control, concrete or asphalt work and building construction;

(c) The necessary use of water for repair of a water distribution facility, residential and commercial plumbing, or a permanently installed landscape irrigation system; and

(d) The use of water under a variance granted by the Review Board in accordance with § 53.212.

(C) Stage 3 - Severe Water Shortage Conditions

(1) Goal. Achieve a 25 percent reduction in average daily water usage (e.g., total water use, daily water demand, etc.).

(2) Supply Management Measures. The city will reduce or discontinue flushing of water mains; reduce or discontinue irrigation of public landscaped areas; use an alternative water supply source, where possible; and use reclaimed water for non-potable purposes, where possible. The city must comply with the water use restrictions for Stage 3 when Stage 3 is implemented.

(3) Water Use Restrictions. All requirements of Stage 2 will remain in effect during Stage 3 except:

(a) Irrigation of landscaped areas by any means is limited to a once a week watering schedule on the designated watering day, during designated watering times 12:00 midnight to 10:00 am and 7:00 pm to 12:00 midnight. The last digit of your street address will determine your watering day.

0 or 1	Monday
2 or 3	Tuesday
4 or 5	Wednesday
6 or 7	Thursday

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8 or 9 Friday

No watering on weekends

(b) The watering of golf course fairways is prohibited unless golf course utilizes an irrigation water source other than potable water obtained from the utility provider's distribution system.

(c) The washing of automobiles, trucks, trailers, boats, airplanes, and other types of mobile equipment not occurring on the immediate premises of a commercial carwash or a commercial service station and not necessary to protect the public health, safety, and welfare is prohibited.

(d) Commercial plant nurseries may use only hand-held hoses, hand-held watering cans, or drip irrigation.

(e) The filling, refilling, or adding of potable water to public swimming or wading pools is allowed on your designated watering days during designated watering times.

(D) Stage 4 - Emergency Water Shortage Conditions

(1) Goal. Achieve a 75 percent reduction in average daily water use (e.g., total water use, daily water demand, etc.) from a rolling 12 month period.

(2) Supply Management Measures. The city must reduce or discontinue flushing of water mains; reduce or discontinue irrigation of public landscaped areas; use an alternative water supply source, where possible; and use reclaimed water for non-potable purposes, where possible. The city must comply with the water use restrictions for Stage 4 when the restrictions are implemented.

(3) Water Use Restrictions. All requirements of Stage 2 and 3 will remain in effect during Stage 4 except:

(a) Irrigation of landscaped areas will be once a week by hand held hose only, equipped with a positive shut-off nozzle. Watering times are between the hours of 7:00 am -10:00 am and 7:00 pm – 10:00 pm.

0 or 1 Monday

2 or 3 Tuesday

4 or 5 Wednesday

6 or 7 Thursday

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8 or 9 Friday

No watering on weekends

(4) No applications for the following will be allowed or approved:

(a) Building permits for new landscapes, pools or irrigation facilities.

(b) No new landscapes of any type may be established.

(c) Irrigation of new landscape installation under § 53.209(B) (4) is prohibited.

§ 53.210 WATER RATIONING.

If water shortage conditions threaten public health, safety, and welfare, the City Manager may ration water according to the following water allocation plan:

(A) Single-Family Residential Customers

The allocation to residential water customers residing in a single-family dwelling will be as follows:

Persons per Household	Gallons per Month
1 or 2	6,000
3 or 4	7,000
5 or 6	8,000
7 or 8	9,000
9 or 10	10,000
11 or more	12,000

It will be assumed that a particular customer's household is comprised of two persons unless the customer notifies the City of Pflugerville of a greater number of persons per household on a form prescribed by the City Manager. The City Manager will use best efforts to see that the forms are mailed, otherwise provided, or made available to every residential customer. If, however, a customer does not receive such a form, it will be the customer's responsibility to go to the City of Pflugerville Utility Billing offices to complete and sign the form claiming more than two persons per household. New customers may claim more persons per household at the time of applying for water

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service on the form prescribed by the City Manager. When the number of persons per household increases so as to place the customer in a different allocation category, the customer may notify the city on such form and the change will be implemented in the next practicable billing period. If the number of persons in a household is reduced, the customer must notify the city in writing within two days.

Any person who falsely reports the number of persons in a household or fails to timely notify the City of a reduction in the number of person in a household commits a Class C misdemeanor offense and may be fined not less than \$50.00 and more than \$500. No culpable mental state is required to prove this offense. However, if it is shown on the trial of the offense that the offense was committed intentionally, knowingly, recklessly, or with criminal negligence then the person may be fined not more than \$2,000.

Residential water customers who exceed their monthly allocation of water will pay the following surcharges:

\$2.50 per 100 gallons for the first 1,000 gallons over allocation.

\$5.00 per 100 gallons for the second 1,000 gallons over allocation.

\$7.50 per 100 gallons for the third 1,000 gallons over allocation.

\$10.00 per 100 gallons for any additional amount over allocation.

Surcharges shall be cumulative, added to the monthly utility bill, and subject to late payment penalties including suspension of services.

(B) Master-Metered Multi-Family Residential Customers

A customer billed from a master meter that jointly measures water to multiple permanent residential dwelling units (e.g., apartments, mobile homes) will be allocated 6,000 gallons per month for each dwelling unit. All master meter customers shall notify the city of the number of dwelling units served from the master meter on a form prescribed by the City Manager. The city will use best efforts to see that the forms are mailed, otherwise provided, or made available to every customer. If, however, a customer does not receive a form, it will be the customer's responsibility to go to the City of Pflugerville Utility Billing offices to complete and sign the form claiming the number of dwelling units. A dwelling unit may be claimed under this provision whether it is occupied or not. New customers may claim more dwelling units at the time of applying for water service on the form prescribed by the City Manager. If the number of dwelling units served by a master meter is reduced, the customer must notify the city in writing within two days. In prescribing the method for claiming more than two dwelling units, the City Manager will adopt methods to insure the accuracy of the claim.

Any person who falsely reports the number of dwelling units served by a master meter or fails to timely notify the city of a reduction in the number of persons in a household

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commits a Class C misdemeanor offense and may be fined not less than \$500.00. No culpable mental state is required to prove this offense. However, if it is shown on the trial of the offense that the offense was committed intentionally, knowingly, recklessly, or with criminal negligence then the person may be fined not more than \$2,000.

Customers billed from a master meter under this provision who exceed their monthly allocations must pay the following monthly surcharges:

\$2.50 per 100 gallons for the first 1,000 gallons over allocation up through 1,000 gallons for each dwelling unit.

\$5.00 per 100 gallons, thereafter, for each additional 1,000 gallons over allocation up through a second 1,000 gallons for each dwelling unit.

\$7.50 per 100 gallons, thereafter, for each additional 1,000 gallons over allocation up through a third 1,000 gallons for each dwelling unit.

\$10.00 per 100 gallons, thereafter for each additional 1,000 gallons over allocation.

Surcharges shall be cumulative, added to the monthly utility bill, and subject to late payment penalties including suspension of services.

(C) Commercial Customers

A monthly water usage allocation will be established by the city for each nonresidential commercial customer other than an industrial customer who uses water for processing purposes. The non-residential customer's allocation will be 75% of the customer's usage for corresponding month's billing period for the immediately preceding 12 months. If the customer's billing history is shorter than 12 months, the monthly average for the period for which there is a record will be used for any monthly period for which no history exists. Provided, however, a customer, 75% of whose monthly usage is less than 6,000 gallons, will be allocated 6,000 gallons. The city will use best efforts to see that notice of each non-residential customer's allocation is mailed to each customer. If, however, a customer does not receive the notice, it will be the customer's responsibility to contact the City of Pflugerville Utility Billing offices to determine the allocation. Upon request of the customer or at the initiative of the city, the allocation may be reduced or increased if: (1) the designated period does not accurately reflect the customer's normal water usage; (2) one nonresidential customer agrees to transfer part of its allocation to another nonresidential customer in a binding agreement satisfactory to the city; or (3) other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal the request for allocation decision to the City Manager.

Nonresidential commercial customers who exceed monthly allocation must pay the following surcharges:

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Customers whose allocation is 0 gallons through 10,000 gallons per month:

\$2.50 per 100 gallons for the first 1,000 gallons over allocation.

\$5.00 per 100 gallons for the second 1,000 gallons over allocation.

\$7.50 per 100 gallons for the third 1,000 gallons over allocation.

\$10.00 per 100 gallons for each additional 1,000 gallons over allocation.

Customers whose allocation is 10,001 gallons per month or more:

\$5.00 per 100 gallons for the first 1,000 gallons in excess of the allocation up through 5 percent above allocation.

\$10.00 per 100 gallons for the second 1,000 gallons from 5 percent through 10 percent above allocation.

\$15.00 per 100 gallons for the third 1,000 gallons from 10 percent through 15 percent above allocation.

\$20.00 per 100 gallons for each additional 1,000 gallons more than 15 percent above allocation.

Surcharges shall be cumulative, added to the monthly utility bill, and subject to late payment penalties including suspension of services.

(D) Industrial Customers

A monthly water usage allocation will be established by the city for each industrial customer. The industrial customer's allocation will be approximately 90% of the customer's water usage baseline as defined below. Ninety days after the initial imposition of the allocation for industrial customers, the industrial customer's allocation will be further reduced to 80% of the customer's water usage baseline. The industrial customer's water usage baseline will be computed on the average water usage for the immediately preceding 12 month period. If the industrial water customer's billing history is shorter than 12 months, the monthly average for the period for which there is a record will be used for any monthly period for which no billing history exists. The city will use best efforts to see that notice of each industrial customer's allocation is mailed to each customer. If, however, a customer does not receive the notice, it will be the customer's responsibility to contact the City of Pflugerville Utility Billing offices to determine the allocation, and the allocation will be fully effective notwithstanding the lack of receipt of written notice. Upon request of the customer or at the initiative of the city, the allocation may be reduced or increased if: (1) the designated period does not accurately reflect the customer's normal water usage because the customer had shutdown a major processing unit for repair or overhaul during the period; (2) the customer has added or is in the

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process of adding significant additional processing capacity; (3) the customer has shutdown or significantly reduced the production of a major processing unit; (4) the customer has previously implemented significant permanent water conservation measures such that the ability to further reduce usage is limited; (5) the customer agrees to transfer part of its allocation to another industrial customer in a binding document satisfactory to the city; or (6) if other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the City Manager.

Industrial customers who exceed monthly allocation must pay the following surcharges:

Customers whose allocation is 0 gallons through 20,000 gallons per month:

\$2.50 per 100 gallons for the first 1,000 gallons over allocation.

\$5.00 per 100 gallons for the second 1,000 gallons over allocation.

\$7.50 per 100 gallons for the third 1,000 gallons over allocation.

\$10.00 per 100 gallons for each additional 1,000 gallons over allocation.

Customers whose allocation is 20,001 gallons per month or more:

\$5.00 per 100 for the first 1,000 gallons in excess of the allocation up through 5 percent above allocation.

\$10.00 per 100 for the second 1,000 gallons from 5 percent through 10 percent above allocation.

\$15.00 per 100 for the third 1,000 gallons from 10 percent through 15 percent above allocation.

\$20.00 per 100 for each additional 1,000 gallons more than 15 percent above allocation.

Surcharges shall be cumulative, added to the monthly utility bill, and subject to late payment penalties including suspension of services.

§ 53.211 ENFORCEMENT.

(A) No person may 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 this Plan, or in an amount in excess of that permitted by the drought response stage in effect at the time.

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(B) Proof of a culpable mental state is not required for a conviction of an offense established under section 53.210 or levy of an administrative fee under this section. 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, is presumed to be the violator. Each day that one or more of the provisions in this Plan is violated is a separate offense. A person who violates any provision of this Plan may be subject to the civil actions and administrative fees detailed below.

(C) The City may take the following civil actions for water use violations in affect for Stage 2, 3 and 4.

First Notice: The customer will be given a YELLOW notice of the violation outlining the City's watering schedule and drought stage.

Second Notice: The customer will be given a RED notice of the violation along with a letter from the City outlining the watering violation. A visit will be made by the City to inform the home owner about our water restrictions that are in place and ideas to conserve water.

Third Notice: The customer will receive a letter from the City informing them of the \$100 administrative fee being added to their water bill.

Fourth Notice: The customer will receive a certified letter or phone call informing them their water is being disconnected due to continuing violations of the current water restrictions set forth in this Plan.

(D) Any employee of the city designated by the City Manager may issue an administrative notice and/or fee described above to a person reasonably believed to be in violation of this Plan. The notice of administrative fee will be prepared in duplicate and will contain the name and address of the alleged violator, if known and will inform the person that the fee will be added to their water bill.

§ 53.212 VARIANCES.

(A) A Review Board consisting of the city staff members appointed by the City Manager will be established on May 1 of each year. The Review Board will review hardship and special cases that cannot strictly comply with this Subchapter to determine whether the cases warrant a variance, permit, or compliance agreement (collectively, "Variance").

(B) All applications for a variance must be submitted to the Review Board on an "Application for Variance/Permit/Compliance Agreement" form and must include a non-refundable fee of \$200 and the following:

- (1) Name and address of the petitioner(s);
- (2) Purpose of water use;

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(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 petitioner complies with this ordinance;

(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; and

(8) Other pertinent information.

(C) The Review Board will make a determination no later than the 5th working day after receipt of a properly completed "Application for Variance/Permit/Compliance Agreement" form and the non-refundable administrative fee of \$200.00 is received by the Review Board.

(D) Until the Review Board has acted on an application, the applicant must comply with all provisions of this Subchapter. The Review Board may not approve a variance if the terms and conditions do not meet or exceed the purpose and intent of this Subchapter.

(E) A variance may be granted only for reasons of economic hardship or health conditions substantiated by a licensed physician. In this section, "economic hardship" means an imminent threat to a person's or entities primary source of income. If the Review Board determines there is an economic hardship, it may authorize the implementation of alternative water use restrictions that further the purposes of the Plan. The alternative water use restrictions must be set forth on the face of the variance and the customer must keep a copy of the variance in a location that is accessible by and visible to the public. Inconvenience or the potential for damage to landscaping does not constitute an economic hardship under this section. **NO VARIANCES MAY BE GRANTED WHILE THE CITY IS IN STAGE 3 OF THIS PLAN OR HIGHER.**

(F) The Review Board may, in writing, grant a temporary variance for existing water uses otherwise prohibited under this Plan if it determines that failure to grant such variance would cause an emergency condition adversely affecting the health, sanitation, or fire protection for the public or the person requesting such variance and if either 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; or

(2) Alternative methods can be implemented that will achieve the same level of reduction in water use.

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(G) Variances granted by the City of Pflugerville are subject to the following conditions, unless waived or modified by the Review Board;

(1) Variances must include a timetable for compliance; and

(2) Variances expire when the Plan is no longer in effect, unless the petitioner has failed to meet specified requirements.

(H) A variance may not be retroactive or otherwise justify any violation of this Plan occurring before the variance is issued.

§ 53.213 WHOLESALE CUSTOMERS IMPLEMENTATION OF PLAN.

Each wholesale customer of the city must develop and implement a water conservation plan or water conservation measures using the applicable elements in this Plan. If the wholesale customer intends to resell the water, then the contract between the city and the wholesale customer must provide that the contract for the resale of the water must have water conservation requirements so that each successive customer in the resale of the water will be required to implement water conservation measures in accordance with applicable provision of this Plan.

§ 53.214 PRO RATA WATER ALLOCATION (WHOLESALE CUSTOMERS).

(A) In the event that the triggering criteria specified in § 53.208 of this chapter have been met, the City Manager is hereby authorized initiate allocation of water supplies on a pro rata basis in accordance with Texas Water Code § 11.039 and according to the following water allocation policies and procedures:

(1) A wholesale customer's monthly allocation shall be a percentage of the customer's water usage baseline. The percentage will be set by resolution of the City Council based on the City Manager's assessment of the severity of the water shortage condition and the need to curtail water diversions and/or deliveries and may be adjusted periodically by resolution of the City Council as conditions warrant. Once pro rata allocation is in effect, water diversions by or deliveries to each wholesale customer shall be limited to the allocation established for each month.

(2) A monthly water usage allocation shall be established by the City Manager, or his/her designee, for each wholesale customer. The wholesale customer's water usage baseline will be computed on the average water usage by month for the 36 month period immediately prior to the implementation of the computation. If the wholesale water customer's billing history is less than 36 months, the monthly average for the period for which there is a record shall be used for any monthly period for which no billing history exists.

(3) The city shall provide notice, by certified mail, to each wholesale customer informing them of their monthly water usage allocations and shall notify the

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news media and the executive director of the Texas Commission on Environmental Quality upon initiation of pro rata water allocation.

(4) Upon request of the customer or at the initiative of the city, the allocation may be reduced or increased if, (1) the designated period does not accurately reflect the wholesale customer's normal water usage; (2) the customer agrees to transfer part of its allocation to another wholesale customer; or (3) other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the City Council of the city.

(B) The requirements of this section must be included in any contract that is entered into, renewed or amended after the effective date of this section.

§ 53.215 SEVERABILITY.

If any provision of this Plan is illegal, invalid, or unenforceable under present or future laws, the remainder of this Plan will not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision as similar in terms to the illegal, invalid, or unenforceable provision as is possible and is legal, valid, and enforceable will be added to this Plan.