

ORDINANCE NO. 1583-12-11

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS AMENDING SECTION 106 "UTILITIES", ARTICLE VII "DROUGHT CONTINGENCY PLANS", DIVISION 3. "RETAIL SUPPLIER DROUGHT CONTINGENCY PLAN" OF THE CITY OF NACOGDOCHES, TEXAS CODE OF ORDINANCES; ESTABLISHING AN ASCENDING DROUGHT CONTINGENCY WATER RATE PLAN; AND MONITORING WATER USAGE FOR BEST PRACTICES OF COMMERCIAL AND INDUSTRIAL WATER CUSTOMERS.

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

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

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NACOGDOCHES, TEXAS that the City Code of Ordinance, Section 106 – "Utilities", Article V II "Drought Contingency Plans", Division 3- "Retail Supplier Drought Contingency Plan" be amended to read as follows:

CHAPTER 106 – UTILITIES

ARTICLE VII "Drought Contingency Plans"

Division 3. "Retail Supplier Drought Contingency Plan"

Sec. 106-631. Definitions

For the purpose of the Drought Contingency Plan the following definitions shall apply.

Aesthetic water use: water use for ornamental or decorative purpose such as fountains, reflecting pools, and water gardens.

Best practices: a technique or methodology that, through experience and research, has been proven to reliably lead to effective water conservation.

Commercial and institutional water use: water use, 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: 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.

Customer: any person, company, or organization using water supplied by the City.

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.

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

Odd numbered address: street addresses, box numbers, or rural postal route numbers ending in 1, 3, 5, 7, or 9.

Industrial water use: the use of water in processes designed to convert materials of lower value into forms having greater usability and value.

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

Non-essential water use: water uses that are neither essential nor 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 this Plan;
2. use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle;
3. use of water to wash sidewalks, walkways, driveways, parking lots, tennis courts, or other hard surfaced areas;
4. use of water to wash 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; and
8. failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s).

Sec. 106-632. Declaration of Policy, Purpose, and Intent states

- 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 NACOGDOCHES (hereinafter referred to as "City") hereby adopts the following regulations and restrictions on the delivery and consumption of water.
- b. Water uses regulated or prohibited under this Drought Contingency Plan (The Plan) are considered to be non-essential and continuation of such uses during times of water shortage or other emergency water supply condition are deemed to constitute a waste of water which subjects the offender(s) to penalties as defined in Section 106-641 of this Plan.

Sec. 106-633. Public Education

The City will periodically provide the public with information about the Plan, including information about the conditions under which each stage of the Plan is to be initiated or terminated, and the drought response measures to be implemented in each stage.

Sec. 106-634. Coordination with Regional Water Planning Groups

The service area of the City is located within the East Texas Regional Water Planning Group (Region I) and the City has provided a copy of this Plan to the East Texas Regional Water Planning Group, Texas Water Development Board and Texas Commission on Environmental Quality.

Sec. 106-635. Authorization

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

Sec. 106-636. Applicability

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

In the event the triggering criteria specified in Section 106-637 of the Plan for Stage 3 – Severe Water Shortage Conditions have been met, the City Council may initiate allocation of water supplies on a pro rata basis in accordance with Texas Water Code Section 11.039 and according to the following water allocation policies and procedures.

Sec 106-637. Triggering Criteria for Initiation and Termination of Drought Response Stages

- a. The City Manager, or designee, shall monitor water supply and/or demand on a daily basis and shall determine when conditions warrant initiation or termination of each stage of the Plan. Public notification of the initiation or termination of drought response stages shall be by press releases.
- b. The triggering criteria described below are based on a statistical analysis of the vulnerability of the water source under drought of record conditions.
 1. Stage 1 – Mild Water Shortage Conditions
 - (a) Requirements for initiation – Customers shall be requested to voluntarily conserve water and adhere to prescribed restrictions on certain water uses, defined in Section 106-631-Definitions, when total daily water demand equals or exceeds 90% of the daily water production capacity for 4 consecutive days or 92% of water capacity production on a single day.

- (b) Requirements for termination – Stage 1 of the Plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 14 consecutive days.

- 2. Stage 2 – Moderate Water Shortage Conditions
 - (a) Requirements for initiation – Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses defined in Section 106-631 of this Plan when total daily water demand equals or exceeds 92% of the daily water production capacity for 4 consecutive days or 94% of the daily production capacity on a single day.
 - (b) Requirements for termination – Stage 2 of the Plan may be rescinded when all conditions listed as triggering events have ceased to exist for a period of 7 consecutive days. Upon termination of Stage 2, Stage 1 becomes operative.

- 3. Stage 3 – Severe Water Shortage Conditions
 - (a) Requirements for initiation – Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses for Stage 3 of this Plan when total daily water production capacity equals or exceeds 94% of the daily production capacity for 4 consecutive days or 96% of the daily water production capacity on a single day.
 - (b) Requirements for termination – Stage 3 of the Plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 5 consecutive days. Upon termination of Stage 3, Stage 2 becomes operative.

- 4. Stage 4 – Critical Water Shortage Conditions
 - (a) Requirements for initiation – Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses for Stage 4 of this Plan when total daily water production capacity equals or exceeds 96% of the daily water production capacity for 4 consecutive days or 98% of the daily water production capacity on a single day.
 - (b) Requirements for termination – Stage 4 of the Plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 3 consecutive days. Upon termination of Stage 4, Stage 3 becomes operative.

- 5. Stage 5 – Emergency Water Shortage Conditions
 - (a) Requirement for initiation – Customers shall be required to comply with requirements and restrictions for Stage 5 of this Plan when the City Manager, or designee, determines a water supply emergency exists based on:

- (1) Major water line breaks, or pump or system failures occur which cause unprecedented loss of capability to provide water service; or
 - (2) Natural or man-made contamination of water supply source(s).
- (b) Requirements for termination – Stage 5 of the Plan may be rescinded when all conditions listed as triggering events have ceased to exist for a period of 24 consecutive hours (1 day).
 - (c) The City Council may initiate any phase of Plan when circumstance warrant, irrespective of triggering thresholds.

Sec. 106-638. Drought Response Stages

The City Manager, or designee, shall monitor water supply and/or demand conditions on a daily basis and in accordance with the triggering criteria set forth in Section 106-637 of the Plan, shall advise the City Council a mild, moderate, severe, critical, or emergency condition exists and the City Council may implement the following actions after public notice:

- 1. Stage 1 – Mild Water Shortage Conditions
 - (a) Goal: Achieve voluntary 10% reduction in landscape irrigation.
 - (b) Supply Management Measures:
In order to manage a limited water supply and/or reduce water demand, the City will implement the following supply management measures:
 - (1) reduce or discontinue flushing of water mains;
 - (2) discontinue fire hydrant testing;
 - (3) implement measures to return any system component to full production capability (i.e. water wells, booster pumps, etc.);
 - (4) repair all existing main breaks.
 - (d) Voluntary Water Use Restrictions:
 - (1) 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 landscape only between the hours of 8:00 p.m. and 8:00 a.m. on designated watering days. Landscape irrigation should be reduced by at least 10% per month.
 - (2) All operations of the City shall adhere to water use restrictions prescribed for Stage 1 of the Plan.
 - (3) Water customers are requested to practice water conservation and to minimize or discontinue water use for non-essential purposes.
- 2. Stage 2 – Moderate Water Shortage Conditions
 - (a) Goal: Achieve a 30% reduction in landscape irrigation.

- (b) **Supply Management Measures:**
 In order to manage a limited water supply and/or reduce water demand, the City will implement the following supply management measures:
- (1) all of the measures described for Stage 1;
 - (2) reduce or discontinue irrigation of public landscaped areas, including parks and ball fields
- (d) **Water Use Restrictions:**
 Under threat of penalty for violation, the following water use restrictions shall apply to all persons:
- (1) 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 (1, 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). The irrigation of landscaped areas is further limited to the hours of 8:00 p.m. and 8:00 a.m. on designated watering days. However, irrigation of landscaped areas is permitted at anytime if it is by means of a hand-held hose with a positive shutoff nozzle, a faucet filled bucket or watering can of five (5) gallons or less, or drip irrigation system. Landscape watering shall be reduced by at least 30% per month.
 - (2) 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 8:00 p.m. and 12:00 midnight. Such washing, when allowed, shall be done with 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. Further, such washing may be exempted from these regulations if the health, safety, and welfare of the public is contingent upon frequent vehicle cleaning, such as garbage trucks and vehicles used to transport food and perishables.
 - (3) 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 8:00 p.m. and 8:00 a.m.
 - (4) 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.
 - (5) Use of water from fire hydrants shall be limited to fire fighting and related activities, or other activities necessary to maintain public health, safety, and welfare, except use of water from designated

fire hydrants for construction purposes may be allowed under special permit from the City.

- (7) All restaurants are prohibited from serving water to patrons except when requested.
- (8) The following uses of water are defined as non-essential and are prohibited:
 - (i) washing sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
 - (ii) washing down buildings or structures for purposes other than immediate fire protection;
 - (iii) dust control;
 - (iv) flushing gutters or permitting water to run or accumulate in any gutter or street; and
 - (v) failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s).

(3) Stage 3 – Severe Water Shortage Conditions

- (a) Goal: Achieve a monthly 50% reduction in landscape irrigation.

- (b) Supply Management Measures:

In order to manage a limited water supply and/or reduce water demand, the City will continue implementing all of the measures described for Stage 1 and Stage 2. Irrigation of public landscaped areas, including parks and ball fields shall be discontinued.

- (c) Water Use Restrictions – All requirements of Stage 2 shall remain in effect during Stage 3 except:
 - (i) Irrigation of landscaped areas shall be limited to designated watering days between the hours of 8:00 p.m. and 8:00 a.m. and shall be by means of hand-held hoses with a positive shutoff nozzle, hand-held buckets, drip irrigation, or permanently installed automatic sprinkler systems only. The use of hose-end sprinklers is prohibited at all times. Landscape watering shall be reduced by at least 50% per month.
 - (ii) Watering golf course tees is prohibited unless the golf course utilizes a water source other than that provided by the City.
 - (iii) Use of water for construction purposes from designated fire hydrants under special permit is to be discontinued.

3. Stage 4 – Critical Water Shortage Conditions

- (a) Goal: Achieve a 90% reduction in landscape irrigation.
- (b) Supply Management Measures:
In order to manage a limited water supply and/or reduce water demand, the City will continue implementing all of the measures described in Stage 1, 2, and 3.
- (c) Water Use Restrictions - All requirements of Stage 2 and 3 shall remain in effect during Stage 4 except:
 - (i) Irrigation of landscaped areas shall be limited to designated water days between the hours of 8:00 p.m. and 8:00 a.m. and shall be by means of hand-held hoses with a positive shutoff nozzle, hand-held buckets, or drip irrigation only. The use of hose-end sprinklers or permanently installed automatic sprinkler systems are prohibited at all times. Landscape watering shall be reduced by at least 90% per month.
 - (ii) Use of water to wash any motor vehicle, motorbike, boat trailer, airplane, or other vehicle not occurring on the premises of a commercial service station and not in the immediate interest of public health, safety and welfare is prohibited. Further, such vehicle washing at commercial car washes and commercial service stations shall occur only between the hours of 10:00 a.m. and 4:00 p.m.
 - (iii) The filling, refilling, or adding of water to swimming pools, wading pools, and Jacuzzi-type pools is prohibited.
 - (iv) 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 re-circulation system.
 - (v) 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.

5. Stage 5 – Emergency Water Shortage Conditions

- (a) Goal: Achieve a 75% reduction in total daily water use.
- (b) Supply Management Measures:
In order to manage limited water and/or reduce water demand, the

City will continue implementing all of the measures described in Stages 1, 2, 3, and 4 above.

- (1) In addition, the City will use any or all alternative supply sources available, and will implement the usage of reclaimed water for non-potable purpose where available.
- (c) Water Use Restrictions - All requirements of Stage 2, 3, and 4 shall remain in effect during Stage 5 except;
 - (i) Irrigation of landscaped areas is absolutely prohibited.
 - (ii) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle is absolutely prohibited.
 - (iii) All water usage except what is required to protect health, safety, and welfare is prohibited.

Sec. 106-639 Drought Contingency Plan Water Rates

The following rates shall apply to all residential customers and all landscape irrigation meters. Said rates shall be 1.5 times for customers outside City limits:

Stage 2

- First 2,000 gallons - \$11.03
- 2,001 to 10,000 gallons - \$3.01 per 1,000 gallons
- 10,001 to 20,000 gallons - \$6.00 per 1,000 gallons
- 20,001 to 30,000 gallons - \$8.00 per 1,000 gallons
- Over 30,001 gallons - \$10.00 per 1,000 gallons

Stage 3

- First 2,000 gallons - \$11.03
- 2,001 to 10,000 gallons - \$3.01 per 1,000 gallons
- 10,001 to 20,000 gallons - \$ 8.00 per 1,000 gallons
- 20,001 to 30,000 gallons - \$10.00 per 1,000 gallons
- Over 30,001 gallons - \$12.00 per 1,000 gallons

Stage 4

First 2,000 gallons - \$11.03

2,001 to 10,000 gallons - \$3.01 per 1,000 gallons

10,001 to 20,000 gallons - \$10.00 per 1,000 gallons

20,001 to 30,000 gallons - \$12.00 per 1,000 gallons

Over 30,001 gallons - \$14.00 per 1,000 gallons

Sec. 106-640 Commercial and Industrial Customers

The commercial and industrial community is critical to the local economy. Many enterprises use water to create a value added product and practice sound water conservation practices. The City Manager, or designee, shall monitor water usage for best practices of commercial and industrial water customers. Failure to adhere to best practices for water conservation shall be a violation of the Plan, and subject commercial and industrial customers to the penalties in Section 106-641.

Sec. 106-641. 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 this Plan.
- b. Any person who violates this Plan is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than two hundred and fifty dollars (\$250.00) and not more than two thousand dollars (2,000.00). Each day one or more of the provisions in this Plan is violated it shall constitute a separate offense. If a person is convicted of three or more distinct violations of the Plan, the City Manager shall, upon due notice to the customer, 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 reconnection charges, hereby established at seventy-five dollars (\$75.00), and any other costs incurred by the City in discontinuing service. In addition, suitable assurance must be given to the City Manager 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 district court.
- 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, and proof the violation occurred on the person's property shall constitute a rebuttable presumption the person in apparent control of the property committed the violation.
- d. Any City police officer, or other City employee designated by the City Manager, may issue a citation to a person he/she reasonably believes to be in violation of this Ordinance. The citation shall be prepared in duplicate and shall contain the name and address of the alleged violator, if known, the

offense charges, and shall direct him/her to appear in the Nacogdoches Municipal Court on the date shown on the citation. That appearance date shall not be less than 3 days, nor more than 5 days from the date citation was issued. The alleged violator shall be served a copy of the citation. Service of the citation shall be complete upon delivery of the citation to the alleged violator, to an agent or employee or to a person over 14 years of age who is a member of the violator's immediate family or is a resident of the violator's residence. The alleged violator shall appear in Nacogdoches Municipal Court, a warrant for his/her arrest may be issued. A summons to appear may be issued in lieu of an arrest warrant. These cases shall be expedited and given preferential setting in Nacogdoches Municipal Court.

Sec. 106-642. Variances

- a. The City Manager, or designee, may in writing, grant temporary variance for existing water uses otherwise prohibited under this Plan if it is determined 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 one or more of the following conditions are met:
- (1) Compliance with this Plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the Plan is in effect.
 - (2) Alternative methods can be implemented which will achieve the same level of reduction in water use.
- b. Persons requesting an exemption from the provisions of this Ordinance shall file a petition for variance with the City. All petitions for variances shall be reviewed by the City Manager, or his/her designee, and shall include the following:
1. name and address of the petitioner(s);
 2. purpose of water use;
 3. specific provision(s) of the Plan from which the petitioner is requesting relief;
 4. detailed statement specifying how the provision of the plan adversely affects the petitioner and 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;
 8. other pertinent information.
- c. Variances granted by the City shall be subject to the following conditions, unless waived or modified by the City Manager, or designee:
1. variances granted shall include a timetable for compliance;
 2. variances granted shall expire when the Plan is no longer in effect, unless the petitioner has failed to meet specified requirements.

- d. No variance shall be retroactive or otherwise justify any violation of this Plan occurring prior to the issuance of the variance.

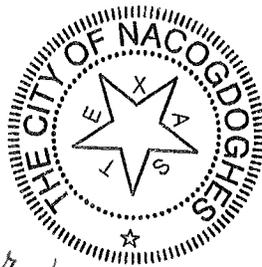
Sec. 106-643. Severability

It is hereby declared to be the intention of the Nacogdoches City Council, the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable and if any phrase, clause, sentence, paragraph, or section of this Plan shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Plan, since the same would not have been enacted by the Nacogdoches City Council without the incorporation into this Plan of any such unconstitutional phrase, clause, sentence, paragraph, or section.

FURTHER, that if any provision or any section of this Ordinance shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of this ordinance, which shall remain in full force and effect.

FURTHER, that any person, firm, or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 106-641 of this Ordinance. Each day violations continue, or are permitted to continue, will be deemed a separate offense. Since this ordinance has a penalty for violation, it shall become effective 10 days after its publication.

PASSED AND APPROVED by the Nacogdoches City Council this 6th day of December 2011.



Roger Van Horn

 Roger Van Horn, Mayor

ATTEST:

Lila Fuller

 Lila Fuller, City Secretary

Approved as to Content:

Jim Jeffers

 Jim Jeffers, City Manager

Approved as to Form:

Rob Atherton

 Rob Atherton, City Attorney