

## Chapter 47

### WATER AND SEWERS

#### ARTICLE VII. WATER SHORTAGES

##### DIVISION 1. GENERAL

#### **Sec. 47-249. Definitions.**

As used in this article, the following words, terms, and phrases shall have the meanings ascribed to them in this section, unless the context clearly indicates another meaning:

*Agricultural use* has the same meaning as provided in section 47-89 of this Code.

*Authorized governmental use* means the use of city water by a governmental entity to flush any water line for public health and safety purposes, wet any surface for the purpose of testing for leaks in buildings or structures, or alleviate any conditions threatening the life, safety, or welfare of the public, including fire suppression.

*Available treatment capacity* means a calculation of how much city water can be produced and distributed by the city's functioning operations.

*City treated water distribution system* includes, but is not limited to, any and all infrastructure used to convey, store, or deliver city water that has been processed to make it fit for its desired end use.

*City water* means water obtained directly or indirectly from infrastructure owned or operated by the city.

*City water supply system* includes, but is not limited to, any and all infrastructure used to convey, treat, store, or deliver city water.

*Current water production* means the city's daily combined surface water and groundwater production averaged over the most recent three-day period.

*Combined total storage of surface water supply* means the aggregate volume of water available to the city from reservoirs as calculated from the current elevations that are measured by the United States Geological Survey.

*Customer* has the same meaning as provided in section 47-61 of this Code.

*Even-numbered street address* means water service addresses ending in 0, 2, 4, 6, or 8 or ending in a fraction and 0, 2, 4, 6, or 8. For purposes of this definition, locations without addresses, addresses ending in letters, unit or suite numbers, and locations having multiple street addresses that are served by one or more water meters shall be deemed to have an even-numbered street address.

*Multifamily residential customer* has the same meaning as provided in section 47-61 of this Code.

*Non-residential customer* has the same meaning as provided in section 47-61 of this Code.

*Odd-numbered street address* means water service addresses ending in 1, 3, 5, 7, or 9 or in a fraction and 1, 3, 5, 7, or 9.

*Outdoor use* means the use of city water for

- (1) Aesthetic purposes, including ornamental, decorative, or scenic devices located outside a structure, including but not limited to fountains, reflecting pools, and water gardens;
- (2) Irrigation, including the wetting and maintaining of planted areas, whether publicly or privately owned, including but not limited to lawns, gardens, golf courses, parks, athletic fields, public rights-of-way, and esplanades; notwithstanding the foregoing, for purposes of section 47-252 of this Code only, outdoor use for irrigation shall not include water administered by an individual human holding a hose with a diameter of one inch or less, a bucket, watering can or other similar device; or
- (3) Other purposes that occur outside a structure, including but not limited to washing motor vehicles and other self-propelled vehicles and trailers; washing any impervious surface, including but not limited to sidewalks, driveways, parking lots, playing surfaces, buildings or structures; foundation watering; and filling or adding to any swimming pool, spa, or whirlpool.

*Residential customer* has the same meaning as provided in section 47-61 of this Code.

*Single-family residential customer* has the same meaning as provided in section 47-61 of this Code.

*Water shortage period* means the period of time during which any water shortage declaration is in effect.

**Sec. 47-250. Administrative policy.**

The director may establish administrative policies relating to the implementation of this article. A copy of the policies shall be available for inspection in the offices of the utility official and on the department's website.

- (1) The director shall establish a water information management plan that includes provisions to be implemented during each water shortage period. The director may use water billing statements, media, and other sources to disseminate information regarding voluntary or mandatory water use measures to be imposed during each water shortage period for all customers and advise customers that additional restriction measures may be imposed should water shortage periods escalate as provided by this article.
- (2) The directors of each department in the city shall prepare department-specific water use reduction plans that will achieve the same or greater level of reduction in water use for each declared water shortage period, and shall submit the plans to the director on January 1 of each year. The water use reduction plans shall be implemented immediately upon the declaration of any water shortage period and shall remain in effect until the conclusion of the water shortage period.

**DIVISION 2. SHORTAGES AND EMERGENCIES**

**Sec. 47-251. Stage one water shortage; abnormal conditions; voluntary restrictions targeted to reduce overall water use by five percent.**

(a) A stage one water shortage is a period of time that begins when the director finds that the city's water supply system is under stress because of lower than average annual rainfall, temperatures that are higher or lower than normal, or other circumstances.

(b) The director's declaration, which may cover all or a portion of the city's water supply system, shall be in writing and filed with the city secretary. The declaration shall state that the city's overall water use reduction goal during a stage one water shortage is five percent. A stage one water shortage ends when the director finds that the abnormal conditions leading to the declaration either no longer exist, have been

mitigated, or have been escalated and the director files a written declaration to that effect with the city secretary.

(c) City departments' water use reduction plans shall be implemented immediately upon the declaration of a stage one water shortage period and shall remain in effect until the conclusion of the water shortage period.

(d) During a stage one water shortage, all customers are requested to take the following voluntary water use restriction measures:

- (1) Check for and repair all leaks, dripping faucets, and running toilets;
- (2) Check for and correct excessive irrigation or uncorrected leaks that result in city water leaving the customer's property by drainage onto adjacent properties or public or private roadways or streets or gutters; and
- (3) Limit irrigation to between 7:00 p.m. and 5:00 a.m. of the following day on no more than two days per week in conformity with the following schedule:
  - a. Sundays and Thursdays for single-family residential customers with even-numbered street addresses; and
  - b. Saturdays and Wednesdays for single-family residential customers with odd-numbered street addresses; and
  - c. Tuesdays and Fridays for all other customers.

**Sec. 47-252. Stage two water shortage; severe conditions; certain mandatory restrictions targeted to reduce overall water use by ten percent.**

(a) A stage two water shortage is a period of time that begins when, upon the recommendation of the director, the mayor declares a stage two water shortage upon finding that one or more of the following conditions exist that may impact all or a portion of the city's water supply system:

- (1) Combined total storage of surface water supply is less than 24 months based on a calculated projection of monthly production of city water that includes historic production and information provided by customers;
- (2) Combined total storage of surface water supply is less than 16 months, based on a calculated projection of current water production for the most recent 24-hour period;
- (3) Current water production is 80 percent of the available treatment capacity;

- (4) Loss of approximately 20 percent of available treatment capacity; or
- (5) Water pressure readings of 45 pounds per square inch or less throughout all or material portions of the city's treated water distribution system.

(b) The declaration may cover all or only a portion of the city's water supply system and shall be in writing and filed with the city secretary. The declaration shall state that the city's overall water use reduction goal during a stage two water shortage is ten percent. A stage two water shortage ends when the mayor declares, based on the recommendation from the director, that the severe conditions leading to the declaration either no longer exist, have been mitigated, or have been escalated, and the director files a written declaration to that effect with the city secretary.

(c) City departments' water use reduction plans shall be implemented immediately upon the declaration of a stage two water shortage period and shall remain in effect until the conclusion of the water shortage period.

(d) During a stage two water shortage, unless otherwise stated in the declaration, all classes of customers, as defined in section 47-61 of the Code, are subject to mandatory restrictions of outdoor use. During a stage two water shortage, outdoor use shall be unlawful with the exception of the following time periods:

- (1) Between 7:00 p.m. and 5:00 a.m. of the following day on no more than two days per week in conformity with the following schedule:
  - a. Sundays and Thursdays for single-family residential customers with even-numbered street addresses; and
  - b. Saturdays and Wednesdays for single-family residential customers with odd-numbered street addresses; and
  - c. Tuesdays and Fridays for all other customers; or
- (2) Between 7:00 p.m. and 5:00 a.m. of the following day on no more than one day per week in conformity with the following schedule:
  - a. Saturdays for single-family residential customers with odd-numbered addresses;
  - b. Sundays for single-family residential customers with even-numbered addresses; and
  - c. Tuesdays for all other customers.

(e) During a stage two water shortage, all customers are required to repair detectible water leaks within 72 hours of discovery.

(f) Any outdoor water use that results in city water leaving the customer's property by drainage onto adjacent properties or public or private roadways or streets or gutters shall be unlawful.

**Sec. 47-253. Stage three water shortage; extreme conditions; mandatory reductions targeted to reduce overall water use by 20 percent.**

(a) A stage three water shortage is a period of time that begins when, upon the finding of the director of an extreme shortage and the recommendation of the mayor, the city council declares a stage three water shortage upon finding that one or more of the following conditions exist that may impact all or a portion of the city's water supply system:

- (1) Combined total storage of surface water supply is less than 18 months based on a calculated projection of monthly production of city water that includes historic production and information provided by customers;
- (2) Combined total storage of surface water supply is less than 12 months, based on a calculated projection of current water production for the most recent 24-hour period;
- (3) Current water production is 85 percent of the available treatment capacity;
- (4) Loss of approximately 25 percent of available treatment capacity; or
- (5) Water pressure readings of 40 pounds per square inch or less throughout all or material portions of the city's treated water distribution system.

(b) The declaration may cover all or a portion of the city's water supply system and shall be in writing and filed with the city secretary. The declaration shall state that the city's overall water use reduction goal during a stage three water shortage is 20 percent. A stage three water shortage ends when, upon the recommendations of the director and the mayor, the city council finds that the extreme conditions leading to the declaration either no longer exist, have been mitigated, or have been escalated and the city council makes a declaration to that effect and files such declaration with the city secretary.

(c) City departments' water use reduction plans shall be implemented immediately upon the declaration of a stage three water shortage period and shall remain in effect until the conclusion of the water shortage period.

(d) During a stage three water shortage, all outdoor use shall be unlawful except that customers, as defined in section 47-61 of this Code, may use city water to continue production and protect inventory of their primary business products.

(e) Immediately upon the declaration of a stage three water shortage, the city may claim force majeure to all of its existing water service contracts consistent with the terms of such water service contracts and in accordance with applicable state law.

**Sec. 47-254. Stage four water shortage; exceptional conditions; rationing of city water targeted to reduce overall water use by 35 percent.**

(a) A stage four water shortage is a period of time that begins when, upon the finding of the director of an exceptional shortage, and the recommendation of the mayor, the city council declares a stage four water shortage upon finding that one or more of the following conditions exist that may impact all or a portion of the city's water supply system:

- (1) Combined total storage of surface water supply is less than 12 months, based on a calculated projection of monthly production of city water that includes historic production and information provided by customers;
- (2) Combined total storage of surface water supply is less than six months, based on a calculated projection of current water production for the most recent 24-hour period;
- (3) Current water production is 90 percent of the available treatment capacity; or
- (4) Water pressure readings of 35 pounds per square inch or less throughout all or material portions of the city's treated water distribution system.

(b) The declaration may cover all or a portion of the city's water supply system and shall be in writing and filed with the city secretary. The declaration shall state that the city's overall water use reduction goal during a stage four water shortage is 35 percent. A stage four water shortage ends when, upon the recommendations of the director and the mayor, the city council finds that the exceptional conditions leading to the declaration either no longer exist or have been mitigated and the city council makes a declaration to that effect and files such declaration with the city secretary.

(c) City departments' water use reduction plans shall be implemented immediately upon the declaration of a stage four water shortage period and shall remain in effect until the conclusion of the water shortage period.

(d) During a stage four water shortage, all outdoor use shall be unlawful.

(e) During a stage four water shortage, it shall be unlawful for the following residential customers to use more than 4,000 gallons of city water per month:

- (1) Single-family residential customers; and
- (2) Multifamily residential customers, as used per unit, as provided in section 47-71 of this chapter.

(f) During a stage four water shortage, it shall be unlawful for non-residential customers to fail to reduce their use of city water by 15 percent of baseline usage of 12 months immediately preceding the declaration, or other percentage if recommended by the director and adopted by city council in the stage four water shortage declaration.

(g) During a stage four water shortage, the director may authorize a ten percent rate reduction for water usage to retail customers for reductions of city water use by 20 percent or more than those restrictions set forth in subsection (d) and (e), except that the ten percent rate reduction shall not be available to retail customers whose average monthly usage during the preceding 12-month period was less than 4,000 gallons. The rate reduction for water usage shall be effective for the duration of the existing water shortage period.

(h) Immediately upon the declaration of a stage four water shortage, the city may claim force majeure to all of its existing water service contracts consistent with the terms of such water service contracts and in accordance with applicable state law.

**Sec. 47-255. Emergency water shortage.**

(a) An emergency water shortage is a period of time that begins when the director finds that there is an imminent threat to the capability of the city's water supply system to provide adequate service to assure the health or safety of the public, such as may result from a natural disaster, act of war or terrorism, or catastrophic system accident or failure. The declaration of a water emergency must be subsequently ratified within ten days following its declaration by the city council. An emergency water shortage ends when, upon the recommendation of the director, the city council finds that the conditions leading to the declaration no longer exist.

(b) During an emergency water shortage all provisions of sections 47-252, 47-253, and 47-254 shall apply.

**Sec. 47-256. Wholesale water customers.**

In the event of a water shortage diminishing the supply of water for wholesale water customers, the department shall curtail pro-rata water deliveries to all affected customers in accordance with section 11.039 of the Texas Water Code. The department shall include in each wholesale water contract a requirement that, in the event of a



water shortage, water will be distributed according to the requirements of section 11.039 of the Texas Water Code.

### DIVISION 3. ENFORCEMENT

#### **Sec. 47-257. Variances.**

(a) The utility official may grant in writing a temporary variance for an otherwise prohibited water use if the utility official determines that failure to grant the variance would cause an emergency condition immediately threatening to the life, safety, welfare, or fire protection of the public, the person requesting the variance, or the environment, and one or both of the following conditions are met:

- (1) The applicant cannot comply with the prohibition for technical reasons; or
- (2) The applicant agrees to implement alternative methods that will achieve the same or a greater level of reduction in water use.

(b) An application for a variance shall be made in writing with the utility official and shall include the following:

- (1) Name and address of the applicant;
- (2) Purpose of water use;
- (3) Specific provision(s) of this article from which the applicant is requesting relief;
- (4) A detailed statement as to how the specific provision(s) of this article adversely affects the applicant or what damage or harm will occur to the applicant or others if the applicant complies with this article;
- (5) Description of the relief requested;
- (6) Period of time for which the variance is sought;
- (7) Alternative water use restrictions or other measures the applicant is taking or proposes to take to conform to the provisions of this article and the compliance date; and
- (8) Other pertinent information reasonably required by the utility official to determine whether the criteria of subsection (a) have been met.

(c) No variance shall be retroactive or otherwise justify any violation of the prohibitions hereunder occurring prior to the issuance of the variance. A variance is

valid for only the declared water shortage period in existence at the time of issuance and shall expire at the conclusion of the existing water shortage period. If the conclusion of the existing water shortage period is immediately followed by a newly declared water shortage period, consisting of either more or less threatening conditions, a new application for a variance must be filed in accordance with subsection (b) of this section. Notwithstanding the foregoing, a variance issued to a residential customer who is a member of a family consisting of five or more persons living in a single residential unit served by a single water meter may be applied retroactively.

**Sec. 47-258. Penalties**

(a) With the exception of contract customers, in accordance with section 54.001 of the Texas Local Government Code, any person who violates any provision of this article shall be guilty of an offense and upon conviction thereof, shall be punished by a fine of not less than \$100 nor more than \$2,000 for each violation. Each act of city water use in violation of this article shall constitute and be punishable as a separate offense. Each day that any violation continues shall constitute and be punishable as a separate offense. Unless another penalty is specifically provided by this Code or by state law, the penalty for violation of any provision of this article shall be as follows:

- (1) For violations of section 47-252 (stage two water shortage), the department may issue a written warning to a customer for a first-time violation. Any subsequent violations are subject to a fine of \$100 to \$2,000.
- (2) For violations of section 47-253 (stage three water shortage), the department may issue a written warning to a customer for a first-time violation. Any subsequent violations are subject to a fine of \$500 to \$2,000. Additionally, the director may monitor the water account of any customer who has received a fine for a violation of section 47-253. Daily monitoring may continue through the end of the existing water shortage period. The director may turn off city water if a customer has violated the authorized water use during a stage three water shortage on three separate instances within a 30-day period. Water service may be reinstated to a customer after a termination only upon a) payment of all applicable fines and any outstanding water service charges; and b) agreeing to the maximum rate in existence, regardless of the customer's billing rate class, for all future water service provided during the 12 months immediately following the termination and filing such agreement in writing with the department.
- (3) Violations of section 47-254 (stage four water shortage) are subject to fines of \$1,000 to \$2,000. Additionally, all customers exceeding the allowed water usage during a stage four water shortage by ten percent or more shall pay a 20 percent surcharge for the current and two subsequent

billing periods. The director may also turn off city water if a customer has exceeded the authorized water use during a stage four water shortage on three separate instances within a 30-day period. Water service may be reinstated to a customer after termination only upon a) payment of all applicable fines and any outstanding water service charges; and b) agreeing to the maximum rate in existence, regardless of the customer's billing rate class, for all future water service provided during the 12 months immediately following the termination and filing such agreement in writing with the department.

(b) In the event that a contract customer engages in the unauthorized use of city water, the city shall have the right to pursue any and all rights and remedies allowed under existing contracts with customers, and any and all remedies allowed under Texas law.

**Sec. 47-259. Affirmative defenses**

(a) It is an affirmative defense to prosecution under sections 47-252, 47-253, and 47-254 that the water use was:

- (1) Authorized by a variance issued under section 47-257; or
- (2) An authorized governmental use; or
- (3) Required to comply with federal, state, or local law or regulations.

(b) Additionally, it is an affirmative defense to prosecution under sections 47-252 and 47-253 that the water use was:

- (1) To wet any surface for the purpose of complying with air pollution laws;
- (2) For maintaining public gardens and arboretums of national, state, or regional significance when necessary to preserve specimens; or
- (3) For agricultural use.

(c) It is an affirmative defense to prosecution under section 47-254 that the water use was:

- (1) For the operation of a health care facility as defined in section 21-236 of this Code; however, no outdoor use by a health care facility is permitted during stage three and stage four water shortages; or

- (2) For a multifamily residential customer that participates in an annual education program, approved by the utility official, that addresses at minimum water shortages.