

ORDINANCE B- 789-09

AN ORDINANCE AMENDING CHAPTER 82 OF THE CODE OF ORDINANCES OF THE CITY OF BURLESON, TEXAS, BY REVISING SECTION 82-1 (WATER SHORTAGE; REGULATIONS AUTHORIZED) AND ADOPTING AN AMENDED DROUGHT CONTINGENCY/WATER EMERGENCY PLAN (THE PLAN); ESTABLISHING AUTHORITY FOR THE CITY MANAGER TO EXECUTE ELEMENTS OF THE PLAN; AMENDING PROVISIONS RELATING TO IMPLEMENTATION OF VARIANCES TO THE PLAN AND PENALTIES FOR VIOLATION OF THE PLAN; EXPRESSLY REPEALING ORDINANCE NO. B-737; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE OF ALL ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALER CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Burleson, Texas (the City), recognizes that due to natural limitations caused by system failures, drought conditions and other acts of God that may occur, the City cannot always guarantee an uninterrupted water supply for all purposes at all times; and

WHEREAS, the City currently has in effect an emergency water management plan that was approved by the City Council in 2005; and

WHEREAS, applicable laws and regulations of the Texas Commission on Environmental Quality (TCEQ) require that the City adopt an amended Drought Contingency/Water Emergency Management Plan to include specific, quantified targets for water reductions to be achieved during each stage of the Plan; and

WHEREAS, it is advisable to amend the Code of Ordinances, Chapter 82, Section 82-1 to adopt a revised plan consistent with the requirements of TCEQ.

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

SECTION 1.

That Code of Ordinances, Chapter 82, Section 82-1, is hereby amended to read as follows:

"Section 82-1. Water shortages; regulations authorized.

(a) *Purpose and scope.* The purpose of this section is to establish the city's policy in the event of shortages or delivery limitations in the city's water supply and to establish

water restrictions to be enforced in case of drought or emergency conditions. This section applies to all persons and premises within the city using water from the city's water system.

(b) *The plan.* The plan is attached hereto as Exhibit A and is adopted and incorporated herein by reference.

(c) *Authority.* The city manager, or his/her duly appointed representative, is authorized to define the trigger conditions as detailed in the adopted plan, to upgrade or downgrade the condition, to initiate the appropriate actions as detailed in the adopted plan, and to terminate the conditions when the emergency has ended. The city manager, or his/her duly appointed representative, is authorized to enforce the measures implemented and to promulgate regulations, not in conflict with this section or state or federal laws, in aid of enforcement.

(d) *Initiation or termination of stages.* Initiation or termination of any stage of the plan may be done by one or more or all of the following:

- (1) Publication in the local newspaper, and/or
- (2) Public announcement to the news media (press release), and/or
- (3) Utility bill inserts, and/or
- (4) A posting in the city's newsletter, and/or
- (5) A posting on the city's website and public access channel.

(e) *Duration of stage; change.* Any initiated stage of the plan will remain in effect until the city manager, or his/her duly appointed representative, determines that conditions that initiated the stage have ended. If the stage is initiated because of excessive demands, all initiated actions will remain in effect through September 30th of the year in which they were triggered unless the city manager, or his/her duly appointed representative, determines that conditions exist that will allow termination of the stage before September 30 of said year.

(f) *Violation of section.* A person commits an offense if he knowingly makes, causes or permits a use of water contrary to the measures implemented by the city manager, or his/her duly appointed representative, as prescribed in the plan. For purposes of this section, it is presumed that a person has knowingly made, caused or permitted a use of water contrary to the measures implemented if the mandatory measures have been formally ordered consistent with the terms of subsection (d), and:

- (1) The manner of use has been prohibited by the plan, or
- (2) The amount of water used exceeds that allowed by the plan, or

(3) The manner or amount used violates the terms and conditions of a compliance agreement made pursuant to a variance granted by the city manager or his/her duly appointed representative pursuant to subsection (h).

(g) *Penalties for violation.* Any person who violates, disobeys, omits, neglects or refuses to comply with a measure implemented in accordance with this section and the plan shall be subject to the following penalties for each offense:

(1) *First offense.* A person, who violates, disobeys, omits, neglects or refuses to comply with a measure implemented in accordance with this section and the plan, shall be issued a written warning.

(2) *Second offense.* A person, who violates, disobeys, omits, neglects or refuses to comply with a measure implemented in accordance with this section and plan two times, shall be cited and fined not less than \$250.00.

(3) *Third offense.* A person, who violates, disobeys, omits, neglects or refuses to comply with a measure implemented in accordance with this section and the plan three times, shall be cited and fined not less than \$500.00.

(4) *Subsequent offenses.* A person convicted of violating, disobeying, omitting, neglecting or refusing to comply with a measure implemented in accordance with this section and the plan more than three times, shall be cited and fined not less than \$750.00 for each offense and the city manager, or his/her duly appointed representative, may authorize the discontinuance of water service to premises where the violations occurred. Each day a person violates, disobeys, omits, or refuses to comply with a measure implemented in accordance with this section and the plan, shall constitute a new and separate violation.

Water service that has been discontinued consistent with the terms of subparagraph (4) of this subsection will be restored only upon payment of a reconnection fee as prescribed in the current city fee schedule and any outstanding fines.

(h) *Variances.* The director of public works may grant and/or revoke variances to the plan only under circumstances and conditions consistent with Section 8.4 of the plan.

(i) *Appeal.* A decision by the director or public works to deny or revoke a variance to the plan can be appealed by filing a written notice of appeal with the city manager himself/herself. The written notice of appeal must be filed within seven days after issuance of the duly appointed representative's decision of denial or revocation. The city manager's decision shall be final.

(j) *Authority under other laws.* Nothing in this section shall be construed to limit the authority of the mayor, the city council or the city manager to seek emergency relief under the provisions of any state or federal disaster relief act.

SECTION 2.

Ordinance No. B-737 of the City of Burleson is hereby expressly repealed.

SECTION 3.

All other ordinances or parts of ordinances not consistent or conflicting with the provisions of this Ordinance are hereby repealed. Provided that such repeal shall be only to the extent of such inconsistency and in all other respects this Ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered in this Ordinance.

SECTION 4.

It is hereby declared to be the intention of the City Council that the phrases, clauses, sentences, paragraphs and sections of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance 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 ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5.

This ordinance shall be cumulative of all provisions of ordinances of the City of Burleson, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of other ordinances, in which event the conflicting provisions of the other ordinances are hereby repealed.

SECTION 6.

All rights and remedies of the City of Burleson are expressly saved as to any and all violations of ordinances concerning water usage that have accrued at the time of the effective date of this ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 7.

The City Secretary of the City of Burleson is hereby directed to publish in the official newspaper of the City of Burleson, the caption, penalty clause, publication clause and effective date clause of this ordinance at least two (2) times within fourteen (14) days after the passage of this ordinance as required by Section 36 of the Charter of

the City of Burleson.

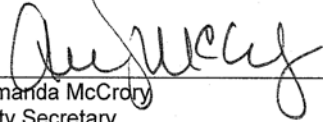
SECTION 8.

This ordinance shall be in full force and effect from and after its passage and publication as required by law.

PASSED AND APPROVED this 20th day of April, 2009.


Stuart Gillaspie
MAYOR PRO-TEM

ATTEST:


Amanda McCrory
City Secretary