

ORDINANCE NO. 2014-04-\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS AMENDING THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, THROUGH THE AMENDMENT OF CHAPTER 110, ENTITLED "UTILITIES," THROUGH THE AMENDMENT OF ARTICLE VI, ENTITLED "DROUGHT CONTINGENCY PLAN," BY REPLACING ALL REFERENCES CONTAINED IN SAID ARTICLE VI TO THE "PUBLIC WORKS DIRECTOR" WITH THE NEW TITLE OF SUCH POSITION BEING "WATER UTILITIES AND INFRASTRUCTURE DIRECTOR," BY AMENDING SECTION 110-371, "DROUGHT CONDITION OPERATIONS," BY DELETING SAID SECTION IN ITS ENTIRETY AND REPLACING IT WITH A NEW SECTION 110-371 ALSO ENTITLED "DROUGHT CONDITION OPERATIONS," AND BY DELETING PARAGRAPH (D) OF SECTION 110-372, "SYSTEM LIMITATION OPERATIONS," IN ITS ENTIRETY; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; RESERVING ALL EXISTING RIGHTS AND REMEDIES; PROVIDING FOR IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE

**WHEREAS**, the City of McKinney, Texas (the "City") is a Home Rule City possessing the full power of local self-government pursuant to Article XI, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

**WHEREAS**, the City recognizes that the amount of water available to its water customers is limited; and

**WHEREAS**, the City recognizes that due to natural limitations, drought conditions, system failures and other acts of God which may occur, the City cannot guarantee an uninterrupted water supply for all purposes at all times to its customers; and

**WHEREAS**, pursuant to the Water Code and the regulations of the Texas Commission on Environmental Quality (the "Commission") the City has previously adopted a Drought Contingency Plan; and

**WHEREAS**, the City finds it necessary to amend its Drought Contingency Plan; and

**WHEREAS**, pursuant to Chapter 54 of the Local Government Code, the City is authorized to adopt such Ordinances necessary to preserve and conserve its water resources; and

**WHEREAS**, the City Council of the City of McKinney desires to amend the existing Drought Contingency plan, modeled after the North Texas Municipal

Water District (the "NTMWD") Model Drought Contingency Plan, for the conservation of water.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS THAT:**

Section 1. All of the above premises are found to be true and correct and are incorporated into the body of this Ordinance as if set forth in their entirety.

Section 2. From and after the effective date of this Ordinance, Chapter 110, entitled "Utilities," is hereby amended through the amendment of Article VI, entitled "Drought Contingency Plan," by replacing all references contained in said Article VI to the "Public Works Director" with the new title of such position being "Water Utilities and Infrastructure Director."

Section 3. From and after the effective date of this Ordinance, Chapter 110, entitled "Utilities," is hereby amended through the amendment of Article VI, entitled "Drought Contingency Plan," by deleting Section 110-371, "Drought Condition Operations," in its entirety and replacing it with a new Section 110-371 also entitled "Drought Condition Operations," to read as follows:

**"Sec. 110-371. Drought Condition Operations.**

- (a) Stage 1 Drought Conditions.
  - (1) Requirement for initiation. Customers shall be requested to conserve water and adhere to the prescribed restrictions on certain water uses for stage 1 of this plan when, notification is received from NTMWD that stage 1 drought conditions exist and requests that the city initiate the appropriate stage of their drought contingency plan.
  - (2) Drought responses.
    - a. Goal. Stage 1, is intended to raise public awareness of potential drought problems. The goal for reduction of water use is 5%.
    - b. Water use restrictions. The city manager must implement any action required by NTMWD. In addition, the city manager may order the implementation of any of the actions set forth in the stage 1 policy, as adopted by the city council by resolution. The adoption of the stage 1 policy shall not replace the requirements set forth in the ordinance from which this section is derived.

- (3) Requirements for termination. Stage 1 of this plan may be rescinded when notification is received from NTMWD, that triggering conditions for stage 1 have ceased.
- (b) Stage 2 Drought Conditions.
- (1) Requirement for initiation. Customers shall be required to comply with the requirements and restrictions on certain nonessential water uses for stage 2 of this plan when, notification is received from NTMWD that stage 2 drought conditions exist and requests that the city initiate the appropriate stage of their drought contingency plan.
  - (2) Drought responses.
    - a. Goal. The goal for water use reduction under stage 2, moderate, is a ten percent reduction in the use that would have occurred in the absence of drought contingency measures.
    - b. Water use restrictions. The city manager must implement any action required by NTMWD. In addition, the city manager may order the implementation of any of the actions set forth in the stage 2 policy, as adopted by the city council by resolution. The adoption of the stage 2 policy shall not replace the requirements set forth in the ordinance from which this section is derived.
  - (3) Requirements for termination. Stage 2 of this plan may be rescinded when notification is received from NTMWD, that triggering conditions for stage 2 have ceased. Upon termination of stage 2, stage 1 becomes operative.
- (c) Stage 3 Drought Conditions.
- (1) Requirement for initiation. Customers shall be required to comply with the requirements and restrictions on certain nonessential water uses for stage 3 of this plan when, notification is received from NTMWD that stage 3 severe drought conditions exist and requests that the city initiate the appropriate stage of their drought contingency plan.

(2) Drought responses.

- a. The goal for water use reduction under Stage 3 is a reduction of whatever amount is necessary in the amount of water obtained from NTMWD from the previous annual payment period prior to drought restrictions. If circumstances warrant or if required by NTMWD, the City Manager, General Manager, Mayor, Chief Executive, or official designee can set a goal for greater or lesser water use reduction.
- b. Water use restrictions. The city manager must implement any action required by NTMWD. In addition, the city manager may order the implementation of any of the actions set forth in the stage 3 policy, as adopted by the city council by resolution. The adoption of the stage 3 policy shall not replace the requirements set forth in the ordinance from which this section is derived.

(3) Requirements for termination. Stage 3 of this plan may be rescinded when notification is received from NTMWD, that triggering conditions for stage 3 have ceased. Upon termination of stage 3, stage 2 becomes operative.”

Section 4. From and after the effective date of this Ordinance, Chapter 110, entitled “Utilities,” is hereby amended through the amendment of Article VI, entitled “Drought Contingency Plan,” by deleting Paragraph (D) of Section 110-372, “System Limitation Operations,” in its entirety.

Section 5. This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.

Section 6. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 7. All rights and remedies of the City of McKinney are expressly saved as to any and all violations of the provisions of any Ordinances which 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 8. All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of McKinney in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties.

Section 9. Any violation of this ordinance can be enjoined by a suit filed in the name of the City of McKinney in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of McKinney.

Section 10. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney following the City Council's adoption hereof as provided by law. Notwithstanding such publication, this Ordinance shall not become effective unless and until such time as all stages of the current Drought Contingency Plan that have been implemented and declared to be in effect by and through the NTMWD and the City of McKinney have been rescinded and the water restrictions imposed thereby have been reduced to "Stage 1-Mild Drought Conditions" or less by formal action of the NTMWD and the City of McKinney, from and after which occurrence this Ordinance shall become fully effective and the appropriate Drought Contingency Plan as provided in this Ordinance shall be initiated.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF  
McKINNEY, TEXAS ON THE 15<sup>th</sup> DAY OF April, 2014.**

CITY OF McKINNEY, TEXAS

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BRIAN LOUGHMILLER  
Mayor

CORRECTLY ENROLLED:

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SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE  
Assistant City Secretary

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

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MARK S. HOUSER  
City Attorney