

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 VIII, ENTITLED "LANDSCAPE WATER MANAGEMENT," BY DELETING SECTION 110-425, "PURPOSE," IN ITS ENTIRETY, BY AMENDING PORTIONS OF SECTION 110-426, "LAWN AND LANDSCAPE IRRIGATION RESTRICTIONS," SECTION 110-427, "EVAPOTRANSPIRATION (ET) WEATHER BASED CONTROLLERS, RAIN AND FREEZE SENSORS," SECTION 110-428, "WAIVERS," AS PROVIDED HEREIN BELOW, BY DELETING SECTION 110-429, "ENFORCEMENT," IN ITS ENTIRETY AND REPLACING SAID SECTION WITH A NEW SECTION 110-429 THAT IS ALSO ENTITLED "ENFORCEMENT," AND BY DELETING SECTION 110-430, "PENALTY," IN ITS ENTIRETY AND REPLACING SAID SECTION WITH A NEW SECTION 110-430 THAT IS ENTITLED "APPEAL OF ADMINISTRATIVE PENALTY"; 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 Landscape Water Management regulations; and

**WHEREAS**, the City finds it necessary to amend its Landscape Water Management regulations; 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 its existing Landscape Water Management regulations to increase the City's water conservation efforts.

**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 VIII, entitled "Landscape Water Management," by deleting Section 110-425, entitled "Purpose," in its entirety.

Section 3. From and after the effective date of this Ordinance, Chapter 110, entitled "Utilities," is hereby amended through the amendment of Article VIII, entitled "Landscape Water Management," by amending Section 110-426, "Lawn and Landscape Irrigation Restrictions," in part, by amending Paragraph (a); inserting a new Paragraph (e) and re-lettering existing Paragraphs (e) and (f) as Paragraphs (f) and (g), respectively; and, by inserting a new Paragraph (h) such that hereafter said Section 110-426 entitled "Lawn and Landscape Irrigation Restrictions" shall be and read as follows:

**"Sec. 110-426. Lawn and Landscape Irrigation Restrictions**

(a) A person commits an offense if the person irrigates, waters, or causes or allows the irrigation or watering of any lawn or landscape located on any property owned, leased, occupied, controlled, or managed by the person between the hours of 10:00 a.m. and 6:00 p.m. between the months of April 1 through October 31 of any year.

(b) A person commits an offense if the person irrigates, waters, or causes or allows the irrigation or watering of any lawn or landscape located on any property owned, leased, occupied, controlled, or managed by the person if landscape watering occurs on a day other than the normally scheduled trash/recycling collection day in the property's residential trash/recycling collection zone or three (3)

calendar days thereafter. Holiday trash/recycling collection shall not alter the watering schedule for the property.

The watering schedule shall be as follows:

| First Watering Day:<br>Normal Residential Trash Zone<br>Day | Second Watering Day:<br>Three Calendar Days Later |
|---|---|
| Monday  | Thursday  |
| Tuesday   | Friday  |
| Wednesday   | Saturday  |
| Thursday  | Sunday  |
| Friday  | Monday  |

- (c) A person commits an offense if the person irrigates, waters, or causes or allows the irrigation or watering of any lawn or landscape located on any property owned, leased, occupied, controlled, or managed by that person during any form of precipitation or during freezing temperatures. This restriction applies to all forms of irrigation, including automatic sprinkler systems.
- (d) A person commits an offense if the person operates a lawn or landscape irrigation system or device on property that the person owns, leases, occupies, controls, or manages and that irrigation system or device has a broken, missing, or misdirected sprinkler head, or otherwise has not been properly maintained to prevent the waste of water.
- (e) A person commits an offense if the person knowingly or recklessly fills or refills any natural or manmade pond located on any property owned, leased, or managed by the person by introducing any treated water to fill or refill the pond. This does not restrict the filling or maintenance of pond levels by the effect of natural water runoff or the introduction of well water into the pond. A pond is considered to be a still body of water with a surface area of 500 square feet or more.
- (f) It is a defense to prosecution under Subsections (a) and (b) if the person was watering with a hand-held or soaker hose, or watering a golf course green.
- (g) It is a defense to prosecution under Subsections (a) and (b) if the person was watering a newly planted landscape within thirty (30) days of the date it was installed, provided that the person was watering only the newly planted landscape or an adjacent area incidental to effectively water the newly planted landscape. For

purposes of this section, the term “newly planted landscape” does not include the overseeding of a lawn with rye or other seed.

- (h) It is a defense to prosecution under Subsections (e) if pond water is used to water golf course greens and tees or public athletic fields.”

Section 4. From and after the effective date of this Ordinance, Chapter 110, entitled “Utilities,” is hereby amended through the amendment of Article VIII, entitled “Landscape Water Management,” by amending Section 110-427, “Evapotranspiration (ET) Weather Based Controllers, Rain and Freeze Sensors,” in part, through the amendment of Paragraph (a) by deleting the phrase “meeting the Smart Water Application Technologies™, or SWAT™, standards” from the end of the first sentence of Paragraph (a).

Section 5. From and after the effective date of this Ordinance, Chapter 110, entitled “Utilities,” is hereby amended through the amendment of Article VIII, entitled “Landscape Water Management,” by amending Section 110-428, “Waivers,” in part, through the amendment of Paragraph (a) by replacing the phrase “Chief Building Official” with the phrase “Water Utility and Infrastructure Director or designee” in said Paragraph (a).

Section 6. From and after the effective date of this Ordinance, Chapter 110, entitled “Utilities,” is hereby amended through the amendment of Article VIII, entitled “Landscape Water Management,” by deleting Section 110-429, “Enforcement,” in its entirety and replacing said section with a new Section 110-429 that is also entitled “Enforcement” to read as follows:

**“Sec. 110-429. Enforcement.**

- (a) No person, corporation, firm, association, or other entity shall use or allow the use of water supplied by or in the City of McKinney in a manner contrary to any provision of this Article, or any policy adopted pursuant to this Article, for residential, commercial, industrial, agricultural, governmental, or any other purpose.
- (b) Any person, corporation, firm, association, or other entity violating this Article may be assessed a civil penalty as set forth herein. Each day that one or more of the provisions of this Article are not complied with shall constitute a separate violation. The Water Utilities and Infrastructure Director shall assess the person, corporation, firm, association, or other entity an administrative fee for each violation. The administrative fee for each violation of this Article shall be as follows:

First violation – warning

2<sup>nd</sup> violation - \$50

3<sup>rd</sup> violation - \$100

4<sup>th</sup> and each subsequent violation - \$150

In addition, suitable assurances, in a manner to be determined and set by the Water Utilities and Infrastructure Director, must be given that no further violations shall occur while the restrictions contained in this Article are in effect. Further violations may result in further action by the City, up to and including the discontinuation or reduction of service. Compliance with this Article may also be sought through injunctive relief in the district court.

- (c) A person, corporation, firm, association, or other entity shall be presumed to be the violator if the person, corporation, firm, association, or other entity is the owner or occupant of the subject property, exercises actual or apparent control over the subject property, or is listed as the water customer of the City of McKinney for the subject property. Proof that the violation occurred on or originated from the subject property shall constitute a rebuttable presumption that the person, corporation, firm, association, or other entity who owns, occupies, exercises actual or apparent control of, or is listed as the water customer for the subject property committed the violation. Parents shall be responsible for violations of their children, for purposes of this Article a child is a person under 17 years old and proof that a violation, committed by a child, occurred on property where the parent is listed as the water customer or the parent is the owner or occupant of the property shall constitute a conclusive presumption that the parent committed the violation.
- (d) Any City of McKinney police officer or the Water Utilities and Infrastructure Director, or his/her designee, may issue the administrative penalty notice to a person he/she reasonably believes to be in violation of this Article. The notice of administrative penalty shall be prepared in duplicate and shall include the following information:
  - (1) The name and address of the person, corporation, firm, association, or other entity who owns the property where the violation occurred.
  - (2) The address and description of the violation alleged.
  - (3) The date and time of the violation.

- (4) The issuance date of the administrative penalty notice.
- (5) The amount of the administrative penalty to be imposed for the violation.
- (6) The date by which the administrative penalty must be paid or the request for an administrative appeal hearing must be made.
- (7) A statement that, in lieu of requesting an administrative appeal hearing, the person, corporation, firm, association, or other may pay the administrative penalty in person or by mail at an address designated on the administrative penalty.
- (8) A notification that the person, corporation, firm, association, or other entity has the right to contest the imposition of the administrative penalty in an administrative appeal hearing by submitting a written request for an administrative appeal hearing within fifteen (15) calendar days after the date the administrative penalty notice is issued.
- (9) A notification that any request by the person, corporation, firm, association, or other entity to have the enforcement officer, or other authorized person who issued the administrative penalty, present at the hearing must be made in writing as part of the written request for an administrative adjudication hearing under Paragraph (8) of this subsection and that failure to timely make this request constitutes a waiver of the person, corporation, firm, association, or other entity's right to require the presence of the enforcement officer or other authorized person at the hearing.
- (10) A notification that failure to pay the administrative penalty or to timely request an administrative appeal hearing is considered an admission of liability for the violation, is a waiver of the person, corporation, firm, association, or other entity's right to appeal the imposition of the administrative penalty, and will result in the assessment of appropriate civil fines, penalties, and costs.
- (11) A statement that the person, corporation, firm, association, or other entity will incur a late payment penalty if the person fails to pay the administrative penalty or request an administrative appeal hearing within 15 calendar days after the date of issuance of the administrative penalty notice.

- (12) A notification that an arrest warrant may not be issued for failure to timely pay the administrative penalty, penalties, and costs.
  - (13) A notification that the City may take appropriate action under Chapter 54 of the Texas Local Government Code, to enforce any administrative penalty assessed under this Article.
- (e) Service of the administrative penalty notice shall be complete upon either of the following occurrences: (1) personal delivery of the administrative penalty notice to the alleged violator or (2) mailing a copy of the administrative penalty notice addressed to the alleged violator's address, a copy sent by regular mail and a copy sent by certified mail, return receipt requested. Failure of the alleged violator to accept delivery, pick up or receive a copy of the administrative penalty notice sent via certified mail shall not constitute lack of service.
- (f) A violation of this Article is not subject to the provisions of Section 1-18 and 1-19 of this Code. No criminal enforcement shall be taken for a violation of this Article."

Section 7. From and after the effective date of this Ordinance, Chapter 110, entitled "Utilities," is hereby amended through the amendment of Article VIII, entitled "Landscape Water Management," by deleting Section 110-430, "Penalty," in its entirety and replacing said section with a new Section 110-430 that is entitled "Appeal of Administrative Penalty" to read as follows:

**"Sec. 110-430. Appeal of administrative penalty.**

- (a) Appeal. Upon receipt of a written notice of appeal of an administrative penalty, all papers, audio and video tapes, and any other items constituting the record of the action from which the appeal is taken shall be transmitted to the Water Utilities and Infrastructure Director. In the event that an appeal is taken from the decision of the Water Utilities and Infrastructure Director, all papers, audio and video, and any other items constituting the records of the action from which the appeal is taken shall be transmitted to the City Manager, or his designee.
- (b) Initial appeal process.
  - (1) The Water Utilities and Infrastructure Director shall hear an appeal of an administrative penalty under this article. The Water Utilities and Infrastructure Director shall give the appealing party an opportunity to present evidence and

make argument on his/her behalf. The formal rules of evidence do not apply to an appeal hearing under this section and the Water Utilities and Infrastructure Director shall make his ruling on a basis of a preponderance of the evidence presented at the hearing.

- (2) Upon receipt of the request for an appeal, a hearing before the Water Utilities and Infrastructure Director shall be scheduled to take place within ten calendar days from the date of receipt unless both parties agree to a certain date beyond the ten calendar days.
- (3) The Water Utilities and Infrastructure Director may affirm, modify, or reverse all or part of the administrative penalty being appealed.
- (4) After such hearing, the Water Utilities and Infrastructure Director shall notify the person, corporation, firm, association, or other entity of his decision by certified mail or by personal delivery.

(c) Final appeal process.

- (1) The City Manager, or his designee, shall hear any appeal of the Water Utilities and Infrastructure Director's decision under this section. The City Manager, or his designee, shall give the appealing party an opportunity to present evidence and make argument on his/her behalf. The formal rules of evidence do not apply to a final appeal hearing under this section and the City Manager, or his designee, shall make his ruling on a basis of a preponderance of the evidence presented at the hearing.
- (2) Upon receipt of the request for an appeal from the decision of the Water Utilities and Infrastructure Director, a hearing before the City Manager, or his designee, shall be scheduled to take place within ten calendar days from the date of receipt unless both parties agree to a certain date beyond the ten calendar days.
- (3) The City Manager, or his designee, may affirm, modify, or reverse all or part of the Water Utilities and Infrastructure Director's decision being appealed.
- (4) After such hearing, the City Manager shall notify the person, corporation, firm, association, or other entity of his decision



by certified mail or by personal delivery. The decision of the City Manager, or his designee, shall be final.”

- Section 8. 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 9. 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 10. 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 11. 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 12. 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 13. The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney, and this Ordinance shall become effective from and after the date of its final passage and publication as provided by law.

**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