

**ORDINANCE NO. 2011-10-\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY AMENDING CHAPTER 110, ARTICLE VI OF THE CODE OF ORDINANCES RELATING TO DROUGHT CONTINGENCY PLANS; AMENDING THE ENFORCEMENT PROCESS; ADOPTING AN APPEAL PROCESS; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS,** the City of McKinney, Texas ("City"), is a Home Rule City possessing the full power of local self-government pursuant to Article 11, 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 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 copied in their entirety.

Section 2. Chapter 110, Article VI, Section 110-373 of the Code of Ordinances of the City of McKinney is hereby amended to read as follows:

**"Sec. 110-373. 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 Public Works 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 Public Works 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, code enforcement officer, irrigation inspection officer or the Public Works 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 posted on the property where the violation occurs and shall include the following information:
  - (1) The date and time of the violation.
  - (2) The amount of the administrative penalty to be imposed for the violation.
  - (3) The date by which the administrative penalty must be paid or the request for an administrative appeal hearing must be made.
  - (4) A reference to this Code, Article and Section number.
  - (5) The address where the person, corporation, firm, association, or other may pay the administrative penalty in person or by mail.
  - (6) 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.

- (7) 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.
  - (8) 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.
  - (9) A notification that an arrest warrant may not be issued for failure to timely pay the administrative penalty, penalties, and costs.
  - (10) 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) In the event that a person, corporation, firm association, or other entity responsible for a property where an administrative penalty notice is posted fails to respond to such notice, the City shall mail to the address of the person, corporation, firm, association, or other entity listed as the owner of the property where the violation occurred, via regular and certified mail, return receipt requested, a second notice with 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 and the amount of penalties, if any, to be assessed due to the failure to pay the administrative penalty in a timely manner.
  - (6) A notification that the person, corporation, firm, association, or other entity has waived the right to contest the imposition of the administrative penalty through an administrative appeal hearing.
  - (7) A notification that an arrest warrant may not be issued for failure to timely pay the administrative penalty, penalties, and costs.

- (8) 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.

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 3. Chapter 31, Article V, Section 31-191 of the Code of Ordinances of the City of McKinney is hereby amended in part to read as follows:

**“Sec. 110-376. 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 Public Works Director. In the event that an appeal is taken from the decision of the Public Works 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 Public Works Director shall hear an appeal of an administrative penalty under this Article. The Public Works 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 Public Works 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 Public Works Director shall be scheduled to take place within ten (10) calendar days from the date of receipt unless both parties agree to a certain date beyond the ten (10) calendar days.
- (3) The Public Works Director may affirm, modify, or reverse all or part of the administrative penalty being appealed.
- (4) After such hearing, the Public Works 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 Public Works 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 Public Works Director, a hearing before the City Manager, or his designee, shall be scheduled to take place within ten (10) calendar days from the date of receipt unless both parties agree to a certain date beyond the ten (10) calendar days.
- (3) The City Manager, or his designee, may affirm, modify, or reverse all or part of the Public Works 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 4. That 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 5. 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 6. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 18th DAY OF OCTOBER, 2011.**

CITY OF MCKINNEY, TEXAS

---

BRIAN LOUGHMILLER  
Mayor

CORRECTLY ENROLLED:

---

SANDY HART, TRMC, MMC  
City Secretary  
BLANCA I GARCIA  
Assistant City Secretary

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

APPROVED AS TO FORM:

---

MARK S. HOUSER  
City Attorney