

## DIVISION 2. - CONSERVATION AND EMERGENCY DROUGHT MANAGEMENT<sup>21</sup>

Footnotes:

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**Editor's note**— Ord. No. 2005-77, adopted Jan. 10, 2006, amended Div. 2 in its entirety to read as herein set out. Former Div 2, §§ 22-51—22-61, pertained to similar subject matter, and derived from Ord. No. 2000-20, §§ 1—6, adopted July 18, 2000; Ord. No. 2002-35, adopted Sept. 17, 2002.

Sec. 22-51. - Generally.

- (a) *Declaration of policy, purpose and intent* . In order to conserve and maintain the quality of the available water supply and protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety and minimize the adverse impacts of water supply shortage or other water supply emergency conditions, the City of Boerne (the City) hereby adopts the following regulations and restrictions on the delivery and consumption of water.

Water uses regulated or prohibited (under this Conservation and Emergency Drought Management Ordinance) are considered to be nonessential and continuation of such uses during times of water shortage or other emergency water supply condition are deemed to constitute a waste of water which subjects the offender(s) to penalties as defined in this article.

For most effective watering apply no more than one (1) inch of water per week, preferably at one (1) time per week. Shorter run times can produce non-drought resistant root systems.

Drip systems are very water efficient and should be used to the greatest extent possible on new or renovated irrigation systems.

Watering is prohibited when temperatures fall below thirty-two (32) degrees (F), as this is damaging to plants and may create hazardous walking or driving conditions.

- (b) *Public involvement* . Opportunity for the public to provide input into the preparation of the ordinance was provided by the City of Boerne by means of public input opportunities during city council meetings.
- (c) *Public education* . The City of Boerne will periodically provide the public with information about the ordinance, including information about the conditions under which each stage of the ordinance is to be initiated or terminated and the drought response measures to be implemented in each stage. This information will be provided by means of the City of Boerne website, press releases, utility bill notifications, social media, and/or other methods noted herein.
- (d) *Coordination with regional water planning groups* . The service area of the City of Boerne is located within the South Central Texas Regional Water Planning Group (Region L). The City of Boerne will provide a copy of [the ordinance from which this division is derived] to the Region L Water Planning Group to ensure consistency with the appropriate approved regional water plans.

(Ord. No. 2005-77, 1-10-06; Ord. No. 2015-43, 12-15-15)

Sec. 22-52. - Water sources.

The primary water sources for the City of Boerne are Boerne City Lake, city-owned Trinity Aquifer wells, and Canyon Reservoir through the Guadalupe Blanco River Authority (GBRA) as part of the Western Canyon Regional Water Supply Project. In addition, the city provides for use of type II recycled water at a fill station adjacent to the wastewater treatment plant on Esser Road, as well as type I

reclaimed water from the wastewater treatment and recycling center on Old San Antonio Road, which can be utilized for irrigation purposes only in certain developments.

(Ord. No. 2005-77, 1-10-06; Ord. No. 2011-07, 3-22-11; Ord. No. 2015-43, 12-15-15)

Sec. 22-53. - Emergency action by city manager.

The city manager may cause any of the water usage restrictions prescribed in this division to be implemented, in such combination and at such time as may be determined, upon presentation of evidence that a critical water shortage exists, or is imminent, including reclaimed water. Relevant data considered in this determination will include:

- Water storage levels at Boerne City Lake and production capacity at the water treatment plant(s).
- Water levels in the city's Trinity Aquifer wells & any withdrawal restrictions placed on the wells by the Cow Creek Groundwater Conservation District.
- Water storage levels at Canyon Lake and any water use restrictions placed on the city's permitted withdrawals by GBRA.
- The city's ability to meet water consumption and peak production demands from customers considering operational limitations and cost constraints.
- Water quality conditions which impact access to a water source.
- Other issues which have or could have a quantitative and/or qualitative impact on water supply, production capacity, and/or storage, including reclaimed water.

(Ord. No. 2005-77, 1-10-06; Ord. No. 2011-07, 3-22-11; Ord. No. 2015-43, 12-15-15; Ord. No. 2018-32, 9-11-18)

Sec. 22-54. - Application.

The provisions of this division shall apply to all persons, corporations and other entities including without limitation any customer or property wherever situated utilizing potable water provided by the City.

(Ord. No. 2005-77, 1-10-06; Ord. No. 2011-07, 3-22-11; Ord. No. 2015-43, 12-15-15)

Sec. 22-55. - Criteria for initiation and termination of drought response stages (except when a critical water shortage exists).

- (a) Upon determination that a critical water shortage exists or is imminent as described in section 22-53, or other pertinent conditions indicate that implementation criteria have been met, the director of public works shall report the condition of the water supply to the deputy city manager and city manager.
- (b) The city manager shall report the water supply conditions to the city council within three (3) days seventy-two (72) hours of consultation with the deputy city manager and utilities director.

- (c) Upon consultation with the mayor, deputy city manager and utilities director on water supply conditions, storage and production restraints, the city manager shall determine the implementation date of stage I and all consequent water use restrictions. Thereafter, each subsequent stage shall take effect after determination by the city manager that the new implementation conditions have been reached and with at least twenty-four (24) hours public notice of the change.
- (d) The city manager may terminate emergency water use restrictions or water stage restrictions, when conditions warrant such termination. Public notice of such termination, giving the effective date and listing the restrictions being terminated, shall be posted electronically, if feasible, and in the usual physical location for posting of public notices.
- (e) No person, corporation or other entity including, without limitation, any customer utilizing water provided by the city (including reclaimed water) shall knowingly make, cause, use or permit the use of water received from the city for residential, commercial, industrial, agricultural, governmental or any other purpose in a manner contrary to any provision of this division. There shall be four (4) designated stages which incorporate progressive water use restrictions intended to curb non-essential water use to both lower overall water consumption as well as minimize peak demand for water production.
- (f) The city manager may initiate and terminate emergency water use restrictions on reclaimed water use as a response to limitations on production and/or supply, including implementation of drought response stages shown in section 22-56.

(Ord. No. 2005-77, 1-10-06; Ord. No. 2011-07, 3-22-11; Ord. No. 2015-43, 12-15-15; Ord. No. 2018-32, 9-11-18)

Sec. 22-56. - Drought response stages.

All of the following drought response stages are mandatory compliance. Reclaimed water use is subject to the waste of water provisions as listed in [section 22-56(a)] (8, 9, 10).

(a) *Stage I.*

- (1) Formal public notification by the city manager or duly authorized representative of an existing or impending water supply, production, or quality concern.
- (2) Request public to initiate water use curtailments.
- (3) Increase efforts to educate the public by disseminating information on such subjects as water saving tips, water saving devices, irrigation practices, etc.
- (4) Irrigation utilizing individual sprinklers or sprinkler systems of lawns, gardens, landscaped areas, trees, shrubs, and other plants is prohibited except on the two designated outdoor water use days (see section 22-57, designated outside water use days) and only then during the non-restricted hours of 7:00 p.m. to 11:00 a.m. However, this restriction does not apply to the irrigation of commercial nurseries, commercial sod farms, and similarly situated commercial establishments. Said establishments will be requested to curtail all nonessential water use. Irrigation of lawns, gardens, landscaped areas, trees, shrubs, or other plants is permitted at any time if:
  - a. A hand-held hose is used with a manual or automatic shutoff nozzle;
  - b. A hand-held, faucet-filled bucket of five (5) gallons or less is used; or
  - c. A properly functioning drip irrigation system is used.
- (5) Request general curtailment of indoor water use.
- (6) Washing of automobiles, trucks, trailers, recreational vehicles, boats, airplanes and other mobile equipment must be done with a hand-held bucket and hand-held hoses must be equipped with a manual or automatic shutoff nozzle.

- (7) Identify and eliminate defective plumbing in a home, business establishment or any location where water is used on the premises to avoid wasting of any water by such defective plumbing.
  - (8) Allowing defective plumbing in a home, business establishment or any location where water is used on the premises is prohibited. Wasting of any water by reason of defective plumbing as hereinabove mentioned is prohibited and shall include the existence of out-of-repair water closets, underground leaks, defective faucets and taps. Allowing water to flow constantly through a tap, hydrant, valve or otherwise by any user of water connected to the city system, shall be considered wasting of water and is prohibited.
  - (9) The following uses of water are defined as "waste of water" and are prohibited:
    - a. Allowing water to run off into a gutter, ditch, or drain;
    - b. Failing to repair a controllable leak;
    - c. Applying water to impermeable surfaces; or
    - d. Operating an irrigation system with damaged sprinkler heads.
  - (10) Any use of water for the purposes or in a manner prohibited in this section shall be deemed to be a waste of water; and any person in whose name a water meter connection is registered in the utilities department (including reclaimed water meters), which water connection serves premises upon which a violation occurs, shall constitute in evidence a prima facie presumption that the person in whose name such water connection is registered was the person who permitted or caused the act of waste charged to occur on the premises.
  - (11) The city manager or his duly authorized representative shall consider permit requests of water users for special consideration to be given due to their respective particular circumstances and shall review and decide such requests. The city manager is hereby authorized, in special cases, to grant a permit from the terms of this division as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this division will result in unnecessary hardship, and so that the spirit of this division shall be observed and substantial justice done. Should a permit for special exception be granted, it shall be in effect from the time of granting; provided, that the permit is prominently posted on the premises. Should the city manager receive written protest after granting of any such permit which indicates the conditions of the permit are not being met, the city manager or his duly authorized representative may reconsider the permit. After the conclusion of reconsideration, the city manager shall take such action by way of revocation of such permit, or refusal to revoke the same, or modification of such permit as the city manager may deem proper under the circumstances.
  - (12) The city manager shall update members of the city council on a regular basis of any water supply, production, quality or system issues.
- (b) *Stage II*.
- (1) All of the restrictions of Stage I shall apply in addition to those hereinafter set forth.
  - (2) Formal notification of the public by city manager or his duly authorized representative through media notice, social media outlets, message boards, and/or direct contact with all customers.
  - (3) Continue public education program set forth in Stage I.
  - (4) Irrigation utilizing individual sprinklers or sprinkler systems of lawns, gardens, landscaped areas, trees, shrubs, and other plants is prohibited except on the one designated outdoor water use day (see section 22-57, designated outside water use days) and only then during the non-restricted hours of 7:00 p.m. to 11:00 a.m. However, this restriction does not apply to the irrigation of commercial nurseries, commercial sod farms, and similarly situated commercial establishments. Said establishments will be requested to curtail all

nonessential water use. Irrigation of lawns, gardens, landscaped areas, trees, shrubs, or other plants is permitted at any time if:

- a. A hand-held hose is used with a manual or automatic shutoff nozzle;
  - b. A hand-held, faucet-filled bucket of five (5) gallons or less is used; or
  - c. A properly functioning drip irrigation system is used.
- (5) Refrain from installation of new or replacement turf grass lawn or other landscape features which require water use.
  - (6) Entities operating athletic playing fields must apply for a special use permit to allow irrigation on more than the one (1) designated water use day. The permit must be reviewed and approved by the city manager or designee. The entity must file a conservation plan and satisfy the "Guidelines for Athletic Field Variance on Water Restrictions" (Exhibit A). All reclaimed, rain catchment or condensate water systems will be used as a first source of water for irrigation if feasible.
  - (7) The use of water for dust control is prohibited other than from reclaimed water sources.
  - (8) The refilling or adding of water to swimming and/or wading pools is prohibited except on the one (1) designated outdoor water use day during the non-restricted hours of 7:00 p.m. to 11:00 a.m. However, this restriction does not apply to public swimming pools which must be maintained pursuant to health regulations.
- (c) *Stage III* .
- (1) All of the restrictions of Stages I and II shall apply in addition to those hereafter set forth.
  - (2) Irrigation utilizing individual sprinklers or sprinkler systems of lawns, gardens, landscaped areas, trees, shrubs, and other plants is prohibited except every other week beginning on the first Monday after Stage III has been declared on the designated outdoor water use day (see section 22-57, designated outside water use day) and only then during the non-restricted hours of 7:00 p.m. to 11:00 a.m. However, this restriction does not apply to the irrigation of commercial nurseries, commercial sod farms, and similarly situated commercial establishments. Said establishments will be requested to curtail all nonessential water use. Irrigation of lawns, gardens, landscaped areas, trees, shrubs, or other plants is permitted at any time if:
    - a. A hand-held hose is used with a manual or automatic shutoff nozzle;
    - b. A hand-held, faucet-filled bucket of five (5) gallons or less is used; or
    - c. A properly functioning drip irrigation system is used.
  - (3) Request the discontinued operation of all ornamental fountains, water-falls, and similar amenities drawing water from city supply, except for those fountains/structures with a recirculating system.
  - (4) Curtail all nonessential public and governmental water uses such as City vehicle washing and street cleaning.
  - (5) Commercial nurseries, commercial sod farms and other similar establishments must curtail all nonessential water use and shall use only hand held hoses, drip irrigation systems or hand held buckets.
  - (6) All restaurants are prohibited from serving water to their customers except when specifically requested by the customer.
  - (7) Work with large commercial water customers to develop and implement individual water conservation plans.
- (d) *Stage IV* .

- (1) All restrictions of Stages I, II and III shall apply in addition to those hereinafter set forth.
- (2) All variances granted by the city manager under Stage II and III shall become null and void upon implementation of Stage IV and no new permits shall be granted.
- (3) The sprinkling or watering of lawns is prohibited. The city manager or designee may authorize the watering of trees, shrubbery, annual, biennial or perennial plants, vines, gardens, vegetables and flowers through the means of a hand-held hose equipped with a positive shutoff nozzle, properly functioning drip irrigation or a hand-held bucket or watering can. When authorized, such watering shall be done only between the non-restricted hours of 7:00 p.m. and 11:00 a.m. on the one (1) designated outside water use day as specified in section 22-57, stage III. Commercial nurseries shall be exempted from this prohibition and shall be permitted to water nursery stock by means of a hand-held hose equipped with a positive shut-off nozzle, drip irrigation or hand-held bucket or watering can on any day during the non-restricted hours of 7:00 p.m. and 11:00 a.m.
- (4) Vehicle washing allowed only at commercial or automatic car wash establishments which utilize water recycling systems.
- (5) Commercial or automatic car wash establishments shall use minimum practical water settings.
- (6) Washing sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas, except to alleviate immediate health or fire hazards are prohibited.
- (7) The washing of building exteriors is prohibited, except in the interest of public health.
- (8) The draining and filling of public swimming pools not equipped with filtration and re-circulation equipment is prohibited; said pools shall be closed.
- (9) The operation of any ornamental fountain or similar structure is prohibited.
- (10) The following water uses are hereby determined to be nonessential and are prohibited:
  - a. The use of water for the expansion of commercial nursery facilities.
  - b. The use of water for scenic and recreational ponds and lakes (except for the minimum amount required to support aquatic life) or for the filling of swimming pools or spas (except where the pool is required by a medical doctor's prescription).
  - c. The use of water to put new agricultural land into production.
  - d. The use of water for new planting or landscaping.
- (11) A drought surcharge, at the rate of five dollars (\$5.00) per one thousand (1,000) gallons for residential water used in excess of ten thousand (10,000) gallons per billing cycle, shall be implemented. The city council of Boerne may implement other surcharges to insure compliance.

(Ord. No. 2005-77, 1-10-06; Ord. No. 2011-07, 3-22-11; Ord. No. 2015-07, 3-24-15; Ord. No. 2015-43, 12-15-15; Ord. No. 2018-32, 9-11-18)

Sec. 22-57. - Designated outside water use days.

## STAGE I

Last Digit of Address	Days
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0 or 1	Monday, Saturday
2 or 3	Tuesday, Saturday
4 or 5	Wednesday, Saturday
6 or 7	Thursday, Sunday
8 or 9	Friday, Sunday

**STAGE II AND STAGE III**

Last Digit of Address	Days
0 or 1	Monday
2 or 3	Tuesday
4 or 5	Wednesday
6 or 7	Thursday
8 or 9	Friday

(Ord. No. 2005-77, 1-10-06; Ord. No. 2011-07, 3-22-11; Ord. No. 2015-43, 12-15-15)

Sec. 22-58. - Special exemptions.

None of the water and use regulations in section 22-56 above shall apply to the following uses of water:

- (a) The necessary use of water by a governmental entity in pursuit of its governmental functions for the benefit of the general public, such as for capital improvement construction projects, flushing of utility lines, concrete work, and for building construction purposes;
- (b) The necessary use of water for land development, such as roadway construction, flushing and installation of utility lines, concrete and asphalt work, and for building construction processes, other than for landscape irrigation;

- (c) The necessary use of water for emergency maintenance or repair of water distribution, wastewater collection, residential and commercial plumbing and permanently installed landscape irrigation systems.

(Ord. No. 2005-77, 1-10-06; Ord. No. 2011-07, 3-22-11)

Sec. 22-59. - Enforcement.

- (a) No person, corporation, firm, association, customer or other entity shall use or allow the use of potable or reclaimed water supplied by or in the city in a manner contrary to any provision of this division, or any policy adopted pursuant to this division, for residential, commercial, industrial, agricultural, governmental, or any other purpose.
- (b) Any person, corporation, firm, association, customer or other user of the city's potable or reclaimed water systems violating this division is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not more than one thousand dollars (\$1,000.00). Each day that one (1) or more of the provisions of this division is violated shall constitute a separate offense. If a person, corporation, firm, association, customer or other user of the city's water systems is convicted of three (3) or more distinct violations of this division, the public works director shall, upon due notice to the customer, be authorized to discontinue water service to the premises where such violations occur. Services discontinued under such circumstances shall be restored only upon payment of a reconnection charge and any other costs incurred by the City in discontinuing service and any outstanding fines for violations of this division. 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 division are in effect. Further convictions for violations of this division may result in further action by the city, with the authorization of the city manager, up to and including the service discontinuation, having installed a flow restriction device, or reduction of service. Compliance with this division may also be sought through injunctive relief in the district court.
- (c) A person, corporation, firm, association, customer or other user of the city's water systems shall be presumed to be the violator if the person, corporation, firm, association, customer or other user of the city's water system 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 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, customer or other user of the city's water system 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 division a child is a person under seventeen (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 police officer or code enforcement officer, may issue a citation to a person he reasonably believes to be in violation of this division. The citation shall be prepared in duplicate and shall contain the name and address of the alleged violator, the offense charged, and shall direct the alleged violator to appear in the municipal court by the time shown on the citation for which date shall not be less than ten (10) days from the date the citation was issued. The alleged violator shall be served a copy of the citation.
- (e) Service of the citation shall be complete upon either of the following occurrences:
  - (1) Personal delivery of the citation to the alleged violator; or
  - (2) Mailing a copy of the citation 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 citation sent via certified mail shall not constitute lack of service. If the alleged violator fails to appear in municipal court, a warrant for his arrest may be issued. A summons to appear may be issued in lieu of an arrest warrant

(Ord. No. 2005-77, 1-10-06; Ord. No. 2011-07, 3-22-11; Ord. No. 2015-43, 12-15-15)

Secs. 22-60, 22-61. - Reserved.