

# CITY CODE CHAPTER 86, ARTICLE 2

## DIVISION 2. WATER CONSERVATION

### Section 86.056. Definitions

Terms in this division have the following meanings unless otherwise specified:

*Aesthetic water feature* means a fountain, waterfall, landscape lake or pond, or another decorative feature where the use is entirely ornamental and serves no other functional purpose.

*Aquifer* means the Edwards Aquifer.

*Automatic sprinkler irrigation system* means a system of fixed pipes and sprinkler heads that apply water to landscape plants or turf.

*Certified commercial car wash* means a commercial car wash that has met the water conservation criteria in the Commercial Car Wash Certification Program on file at the offices of the Water and Wastewater Department.

*Cfs* means cubic feet per second.

*Charity car wash* means any special event involving the washing of vehicles for a donation.

*Commercial car wash* means any permanently located or mobile car wash that washes automobiles, trucks, trailers, boats and other mobile equipment for a fee.

*Commercial vehicle washing* means washing of automobiles, trucks, trailers, boats, and other mobile equipment at any commercial car wash or fleet maintenance facility, or at any location other than a private residence.

*Designated weekday* means the day within each calendar week for which particular types of water use are allowed, based on the last number of the street address for a property, as follows:

- (1) Monday - street addresses ending with 0 or 1
- (2) Tuesday - street addresses ending with 2 or 3
- (3) Wednesday - street addresses ending with 4 or 5
- (4) Thursday - street addresses ending with 6 or 7
- (5) Friday - street addresses ending with 8 or 9

*Director* means the director of the Public Services Department, or a person designated by the director to act in his or her behalf, including the water conservation coordinator.

*Drip irrigation system* means a system of fixed pipes or hoses with emitters designed to apply water to plants slowly and under pressurized conditions at or below the soil surface.

*EAA* means Edwards Aquifer Authority.

*Existing facility* means a swimming pool, hot tub, aesthetic water feature or any similar facility, installed during any period for which a drought response stage is not in effect.

*Existing landscape* means landscaping plants and/or turf on which installation was completed more than 21 days from current date.

*Gray water* means water that has previously been used in sinks, showers, bath tubs and clothes washing machines.

*Hand-held bucket* means a container holding five gallons or less.

*Hand-held hose* means a hose equipped with a positive shutoff device.

*Health and safety use* means use of water for any purpose that is necessary to protect human health and safety.

*Impervious surface* means a type of surface that prevents water from penetrating directly into the ground. Impervious surfaces include, but are not limited to, sidewalks, driveways, paved streets, and pavers or stones set with mortar.

*Index well* means the Edwards Aquifer water level index well in San Antonio, Texas denoted as well AY-68-37-203 (J-17).

*Landscape watering* means the application of water to grow landscaping plants.

*Landscaping plant* means any plant, including any tree, shrub, vine, herb, flower, vegetable, fruit, succulent, ground cover or grass species that is used for landscaping purposes or for the support of intensive recreational areas including playgrounds and playing fields.

*Makeup* means partial refilling of a swimming pool or hot tub or aesthetic water feature to replace water lost through evaporation or backwashing.

*Mobile car wash* means a commercial car wash equipped with a vehicle or trailer-mounted self-contained washing system with any of the following: water or detergent solution, storage tank, high pressure/low flow pumping equipment, hoses, spray wand and related appurtenances.

*New facility* means a swimming pool, hot tub, aesthetic water feature or any similar facility, installed during any period for which a drought response stage is in effect.

When the stage, together with all other stages which precede or succeed that stage in a continuous time period, is rescinded, the new facility will be treated thereafter as an existing facility.

*New landscape* means landscaping plants and/or turf on which installation was completed within the last 21 days.

*Non-commercial vehicle washing* means washing of automobiles, trucks, trailers, boats, and other mobile equipment at a private residence.

*Non-essential water use* means any usage of water that is not required for:

- (1) a health and safety use;
- (2) personal needs such as drinking, bathing, cooling, heating, cooking, food preparation, cleaning or sanitation;
- (3) medical or industrial processes; or
- (4) watering of livestock.

*Not in use* means as it relates to swimming pools, hot tubs and similar facilities, a facility which is not used during any 24 hour period.

*Person* means, with respect to this division, any individual, corporation, partnership, or other legal entity within the corporate limits of the City, or any individual, corporation, partnership, or other legal entity outside the corporate limits of the city who is a city water customer.

*Positive shutoff device* means a device which permits water to flow through it only when a continuous pressure is applied to a handle, trigger, or similar portion of the device.

*Reclaimed water* means treated wastewater that is recycled or reused after it has been used for another purpose.

*Soaker hose* means a portable hose with small openings that applies water slowly to plants at the soil surface.

*Waste* means any activity which causes or results in excessive water usage, including but not limited to the following:

- (1) allowing water to run off a property onto adjacent properties, or into a gutter, ditch, drain, creek, or any other natural or man-made water course;
- (2) operating a sprinkler system with broken heads or pipes, or with misaligned spray heads that direct water over a street or parking lot; or
- (3) failure to repair any controllable leak.

**Section 86.057. Applicability.**

The requirements set forth under this division apply to all persons and entities located within the city limits, and to all persons and entities using water provided by the city water utility. These requirements do not apply to alternative sources of water such as rainwater, gray water and reclaimed water.

**Section 86.058. Implementation and termination of drought response stages.**

The director shall monitor water supply conditions on a daily basis and provide information to the city manager. The director shall issue notices to implement or terminate drought response stages as follows:

(a) *Stage 1.*

(1) Stage 1 shall be implemented when any one of the following conditions occur:

(A) The 10-day average aquifer level is less than 660 feet above mean sea level as measured at the J-17 index well; or

(B) The 10-day average discharge rate of San Marcos Springs is below 96 cfs as measured at the San Marcos gauging station; or

(C) The 10-day average discharge rate of Comal Springs is below 225 cfs as measured at the Comal gauging station.

(2) Stage 1 shall be terminated when the conditions in subsection (1) are no longer satisfied, or as otherwise determined by the director.

(b) *Stage 2.*

(1) Stage 2 shall be implemented when any one of the following conditions occur:

(A) The 10-day average aquifer level is less than 650 feet above mean sea level as measured at the J-17 index well; or

(B) The 10-day average discharge rate of San Marcos Springs is below 80 cfs as measured at the San Marcos gauging station; or

(C) The 10-day average discharge rate of Comal Springs is below 454 200 cfs as measured at the Comal gauging station.

(2) Stage 2 shall be terminated when the conditions in subsection (1) are no longer satisfied, or as otherwise determined by the director.

(c) *Stage 3.*

(1) Stage 3 shall be implemented when any one of the following conditions occur:

(A) The 10-day average aquifer level is less than 640 feet above mean sea level as measured at the J-17 index well; or

(B) The 10-day average discharge rate of San Marcos Springs is below 65 cfs as measured at the San Marcos gauging station; or

(C) The 10-day average discharge rate of Comal Springs is below 150 cfs as measured at the Comal gauging station.

(2) Stage 3 shall be terminated when the conditions in subsection (1) are no longer satisfied, or as otherwise determined by the director.

(d) *Stage 4.*

(1) Stage 4 shall be implemented when any one of the following conditions occur:

(A) The 10-day average aquifer level is less than 630 feet above mean sea level as measured at the J-17 index well; or

(B) The 10-day average discharge rate of San Marcos Springs is below 50 cfs as measured at the San Marcos gauging station; or

(C) The 10-day average discharge rate of Comal Springs is below 100 cfs as measured at the Comal gauging station.

(2) Stage 4 shall be terminated when the conditions in subsection (1) are no longer satisfied, or as otherwise determined by the director.

(e) *Water quality, water supply, distribution system or other emergency.* Any stage may be implemented when a water quality, water supply, distribution system or other emergency exists as determined by the director. The stage will be terminated when the conditions which prompted initiation of the restrictions no longer exist.

(f) *Notice of implementation and termination of stages.* Notices of implementation and termination of stages shall be posted on the city internet web site, broadcast on the city cable channel, released to public media outlets, and published in whole or in summary form in at least one newspaper of general circulation within the city.

#### **Section 86.059. Year-round water use allowances and restrictions.**

The following allowances and restrictions are in effect at all times; however, the allowances and restrictions may be superseded by more stringent restrictions upon implementation of a drought response stage.

(a) Waste of water is prohibited at all times.

(b) Irrigation with hose-end sprinklers and automatic sprinkler irrigation systems is prohibited between the hours of 10:00 a.m. and 8:00 p.m.

(c) Irrigation with hand-held bucket, hand-held hose, soaker hose and drip irrigation systems is allowed on any day and at any time.

(d) Irrigation of golf courses, athletic fields and commercial nurseries with sprinklers is prohibited between the hours of 10:00 a.m. and 8:00 p.m.

(e) Vehicle washing.

(1) Charity car washes are prohibited unless held at a certified commercial car wash.

(2) Non-commercial vehicle washing is allowed on any day and at any time, but must be done using a hand-held bucket or a hand-held hose equipped with a positive shutoff device.

(3) Commercial vehicle washing is allowed on any day and at any time.

(f) Swimming pools are allowed to operate and be filled as normal. It is recommended that pools be covered while not in use to minimize evaporative losses.

(g) Operation of non-recirculating aesthetic water features is prohibited at all times.

(h) Washing of impervious surfaces is allowed but should be limited unless required for health and safety use.

(i) Foundation watering is allowed on any day and at any time.

(j) Other non-essential water uses are allowed but all reasonable measures shall be taken to limit the use.

**Section 86.060. Stage 1 water use allowances and restrictions.**

The following measures are in effect for any period when stage 1 of the drought response plan has been implemented:

(a) Waste of water is prohibited.

(b) Irrigation with hose-end sprinklers and automatic sprinkler irrigation systems is allowed only one day per week on the designated weekday between the hours of midnight to 10 a.m. and 8:00 p.m. to midnight.

(c) Irrigation with hand-held bucket, hand-held hose, soaker hose or drip irrigation system is allowed on any day and at any time.

(d) Irrigation of golf courses, athletic fields and commercial nurseries is restricted as follows:

(1) Irrigation of golf courses with sprinklers is allowed only one day per week on the designated weekday between the hours of midnight to 10:00 a.m. and 8:00 p.m. to midnight.

(2) Irrigation of athletic fields with sprinklers is allowed only one day per week on the designated weekday between the hours of midnight to 10:00 a.m. and 8:00 p.m. to midnight.

(3) Irrigation of plants in inventory at commercial nurseries is allowed on any day and at any time.

(e) Vehicle washing is restricted as follows:

(1) Charity car washes are prohibited unless held at a certified commercial car wash.

(2) Non-commercial vehicle washing is allowed only on the designated weekday and must be done using a hand-held bucket or a hand-held hose equipped with a positive shutoff device.

(3) Commercial vehicle washing is allowed on any day and at any time.

(f) Swimming pools located outdoors must have at least 25% of the water surface area covered when not in use.

(g) Filling of new aesthetic water features is prohibited.

(h) Washing of impervious surfaces is prohibited unless required for health and safety use.

(i) Foundation watering is allowed on any day and at any time.

(j) Other non-essential water uses are restricted as follows:

(1) Restaurants are allowed to serve water only upon specific request by the customer.

(2) All reasonable efforts shall be undertaken to reduce other non-essential water uses.

**Section 86.061. Stage 2 water use allowances and restrictions.**

The following measures are in effect for any period when stage 2 of the drought response plan has been implemented:

(a) Waste of water is prohibited.

(b) Irrigation with hose-end sprinklers and automatic sprinkler irrigation systems is allowed only one day per week on the designated weekday between the hours of 6:00 a.m. to 10 a.m. and 8:00 p.m. to midnight.

(c) Irrigation with hand-held bucket, hand-held hose, soaker hose and drip irrigation system is restricted as follows:

(1) Irrigation with a hand-held bucket or a hand-held hose is allowed on any day and at any time.

(2) Irrigation with a soaker hose or drip irrigation system is allowed only one day per week on the designated weekday between the hours of 6:00 a.m. to 10:00 a.m. and 8:00 p.m. to midnight.

(d) Irrigation of golf courses, athletic fields and commercial nurseries is restricted as follows:

(1) Irrigation of golf courses with sprinklers is allowed only one day per week on the designated weekday between the hours of midnight to 10:00 a.m. and 8:00 p.m. to midnight.

(2) Irrigation of athletic fields with sprinklers is allowed only one day per week on the designated weekday between the hours of midnight to 10:00 a.m. and 8:00 p.m. to midnight.

(3) Irrigation of plants in inventory at commercial nurseries is allowed on any day and at any time.

(e) Vehicle washing is restricted as follows:

(1) Charity car washes are prohibited except at a certified commercial car wash.

(2) Non-commercial vehicle washing is allowed only on the designated weekday between the hours of 6:00 a.m. to 10:00 a.m. and 8:00 p.m. to midnight and must be done using a hand-held bucket or hand-held hose equipped with a positive shutoff device.

(3) Commercial vehicle washing is allowed on any day and at any time.

(f) Swimming pools:

(1) Swimming pools located outdoors must have at least 25% of the water surface area covered when not in use.

(2) Filling of new swimming pools is prohibited.

(3) Filling and make-up of existing pools is allowed.

(g) Operation of outdoor aesthetic water features is prohibited.

(h) Washing of impervious surfaces is prohibited unless required for health and safety use.

(i) Foundation watering is allowed only one day per week on the designated weekday between the hours of midnight to 10:00 a.m. and 8:00 p.m. to midnight.

(j) Other non-essential water uses are restricted as follows:

(1) Restaurants are allowed to serve water only upon specific request by the customer.

(2) All other non-essential water use is prohibited.

**Section 86.062. Stage 3 water use allowances and restrictions.**

The following measures are in effect for any period when stage 3 of the drought response plan is in effect:

(a) Waste of water is prohibited.

(b) Irrigation with hose-end sprinklers and automatic sprinkler irrigation systems is allowed only one day every other week beginning on the second Monday after stage 3 has been declared, on the designated weekday between the hours of 6:00 a.m. to 10 a.m. and 8:00 p.m. to midnight.

(c) Irrigation with hand-held bucket, hand-held hose, soaker hose and drip irrigation system is allowed only one day per week on the designated weekday between the hours of 6:00 a.m. to 10:00 a.m. and 8:00 p.m. to midnight.

(d) Irrigation of golf courses, athletic fields and commercial nurseries is restricted as follows:

(1) Irrigation of golf courses with sprinklers is allowed only one day every other week beginning on the second Monday after stage 3 has been declared, on the designated weekday between the hours of midnight to 10:00 a.m. and 8:00 p.m. to midnight.

(2) Irrigation of athletic fields with sprinklers is allowed only one day every other week beginning on the second Monday after stage 3 has been declared, on the designated weekday between the hours of 6:00 a.m. to 10:00 a.m. and 8:00 p.m. to midnight.

(3) Irrigation of plants in inventory at commercial nurseries is allowed on any day between the hours of 6:00 a.m. to 10:00 a.m.

(e) Vehicle washing is restricted as follows:

(1) Charity car washes are prohibited unless held at a certified commercial car wash.

(2) Non-commercial vehicle washing is prohibited.

(3) Commercial vehicle washing is prohibited except at certified commercial car washes.

(f) Swimming pools:

(1) Swimming pools located outdoors must have at least 25% of the water surface area covered when not in use.

(2) Filling of new and existing swimming pools is prohibited.

- (3) Make-up of existing pools is allowed.
- (g) Operation of outdoor and indoor aesthetic water features is prohibited.
- (h) Washing of impervious surfaces is prohibited unless required for health and safety purposes.
- (i) Foundation watering is allowed only one day per week on the designated weekday between the hours of midnight to 10:00 a.m. and 8:00 p.m. to midnight.
- (j) Other non-essential water uses are restricted as follows:
  - (1) Restaurants are allowed to serve water only upon specific request by the customer.
  - (2) All other non-essential water use is prohibited.

**Section 86.063. Stage 4 water use allowances and restrictions.** For any period when stage 4 of the drought response plan has been declared pursuant to section 86.058(c) of this article, the city may adopt and enforce any or all additional measures as needed to protect water supplies and the aquifer.

**Section 86.064. Variances.**

- (a) The director may grant a variance from the requirements of this article if it is determined that special circumstances exist and that:
  - (1) compliance with this article adversely affects the health or safety of the public;
  - (2) compliance with this article can not be technically accomplished; or
  - (3) alternative methods can be implemented that will achieve the same reduction in water use.
- (b) A request for variance will not be considered if submitted after an enforcement action has been taken.
- (c) A person may seek a variance from the provisions of this article by filing a written petition for variance with the director. Any petition for variance must include the following information:
  - (1) Name and address of petitioner(s);
  - (2) Purpose and location of water use;
  - (3) Specific provisions of this division for which the petitioner is requesting a variance;
  - (4) Detailed explanation of how the specific provisions will adversely affect the petitioner(s);

(5) Period of time for which the variance is sought;

(6) Alternative measures the petitioner proposes to implement in order to meet the intent of this division; and

(7) Any other pertinent information as required by the director.

(d) The director will have two weeks from receipt of the petition for variance to review and act upon the request. If no action is taken within two weeks, the request shall be considered denied.

(e) Approved variances shall include a description of the variance and a specific time frame. A copy of the approved variance shall be retained by the petitioner.

(f) A petitioner may appeal a denial of a variance petition to the City Manager. The City Manager will have two weeks from receipt to review and act on an appeal. If no action is taken within two weeks, the appeal shall be considered denied.

**Section 86.065. Violations.**

(a) It shall be unlawful for any person to intentionally, knowingly, recklessly, or with criminal negligence allow or cause any waste of water, to allow or cause landscape watering at any time other than during a prescribed time for landscape watering, or to allow or cause any violation of any provision or restriction of this division.

(b) The director is authorized and instructed to commence any action, in law or in equity, including the filing of criminal charges, deemed necessary for the purpose of enforcing this division. The director may seek civil penalties and any other legal or equitable relief available under common law, Chapter 54 of the Texas Local Government Code or any other applicable city, state or federal code or statute.

(c) It is not a defense to prosecution under any provision of this division that the violation charged is no longer occurring or no longer exists. A judge of the municipal court may not dismiss a complaint or enter a finding of not guilty on the grounds that the violation is no longer occurring or no longer exists.

**Section 86.066. Enforcement personnel.**

In addition to all peace officers, code enforcement officers, and other persons authorized to enforce city ordinances, the director is authorized to enforce this division by issuing citations to violators, filing complaints in the municipal court, and filing civil enforcement actions.

**Section 86.067. Registered water user presumed.**

For purposes of this division, in any case where water has been used on a property in violation of this division, it shall be presumed that the person in whose name a water meter connection is registered with the city for the property has intentionally, knowingly, recklessly, or negligently caused or allowed the violation to occur. Proof that the particular premises had a water meter connection registered in the name of the

defendant cited in a criminal or civil complaint filed under this division shall constitute *prima facie* evidence that the defendant caused or allowed the violation to occur.

**Section 86.068. Additional enforcement remedies.**

(a) The director is authorized and instructed to commence any action, in law or in equity, including the filing of criminal charges, necessary to enforce this division.

(b) The director may seek civil penalties and any other legal or equitable relief available under common law, Chapter 54 of the Texas Local Government Code, or any other applicable city, state or federal code or statute necessary to enforce this division.

(c) To the extent allowed by law, the municipal court shall have concurrent jurisdiction over any civil enforcement for violations of this division.

(d) Violations of this division by a customer of the city water system may result in installation of a flow control device on the customer's water line, or termination of the customer's water service.

**Section 86.069. Penalties**

(a) *Criminal Penalties:* A person who violates any provision of this division commits a misdemeanor, and upon conviction, shall be punished by a fine in the respective amounts shown:

(1) 1<sup>st</sup> offense – not less than \$100.00 or more than \$250.00

(2) 2<sup>nd</sup> offense – not less than \$250.00 or more than \$500.00.

(3) 3<sup>rd</sup> offense – not less than \$500.00 or more than \$2,000.00.

(b) Each violation of a particular provision of this division shall constitute a separate offense, and each day a violation occurs or continues shall be considered a new offense.

(c) *Civil Penalties.* At the option of the Director for each violation of this division a civil notice of violation may be issued in lieu of a criminal citation. Civil penalty assessments shall not exceed one thousand dollars (\$1,000.00); however, each violation of a particular section of this division shall constitute a separate violation, and each day a violation continues shall be considered a new violation for purposes of enforcing this division

(1) Civil penalties may be assessed by mailing, certified mail, a notice of violation to the person who is the registered water user at the address of the alleged violation. A notice of violation may also be hand delivered to a person accepting responsibility for premises where the alleged violation occurred. The person receiving the notice shall sign a statement acknowledging receipt of the notice and acquiescence to the procedures stated therein. The notice of violation shall set forth the details of the violation and the proposed penalty.

(2) The registered user, or other person receiving a notice of violation, shall be given ten (10) calendar days from the receipt of a notice of violation to file a written notice to the Director requesting an appeal of the violation. If an appeal is not requested within the ten (10) day period, the notice of violation becomes final, and the stated penalty is due.

(3) After the Director receives a request for an appeal, the request will be forwarded to the Municipal Court of Record where a hearing on the appeal will be conducted.

(4) The Municipal Court of Record shall have jurisdiction to hear appeals of the assessment of civil penalties. An appeal hearing will be conducted in the same manner as a bench trial for a Class C misdemeanor. At the conclusion of the trial, the Judge may, based on the evidence and testimony, enter an order dismissing, upholding, or amending the penalty that was previously assessed by the Director. The order entered by the Municipal Court of Record is a final order on the matter.

(5) A civil penalty assessed against a utility customer for violation of this division may be collected through the utility billing system as part of the consolidated billing system. All such civil penalties are subject to the provisions of Sections 86.199 and 86.200 of the San Marcos Code of Ordinances.

(d) Enforcement personnel may issue verbal and/or written warnings prior to issuance of a citation.

**Sec. 86.070. Liability of corporate officers for penalty.**

Whenever a corporation or association violates any provision of this division or in a drought response order issued under this division, the president, vice-president, secretary, treasurer, manager or any agent or employee of the corporation or association who is responsible for the violation shall be subject to the penalty prescribed for the violation.