

**City Council  
Agenda Memo**



**TO: David A. Vela, Interim City Manager**

**City Council  
Meeting Date: 4/9/2015**

**FROM: Jon C. James, AICP  
Director of Planning & Development Services**

**SUBJECT: Discussion item regarding managing landscaping expectations during drought conditions**

**GENERAL INFORMATION**

Given the historic drought and the possibility of future water restrictions, citizens and the development community have raised the issue of whether or not the City's landscaping requirements should be modified to defer installation of new landscaping during certain stages of water restrictions.

This discussion item will allow staff and the Council to consider alternatives. This will include a comparison with our west Texas peer cities (Lubbock, Midland, Odessa, San Angelo, and Wichita Falls) in relationship to their water conservation plans and how they address the issue of landscaping.

**STAFF RECOMMENDATION**

At the meeting, staff will make a presentation and will offer some suggestions for how to proceed.

**ATTACHMENTS**

Water Conservation Plan

Prepared by:

Name: Jon James

Title: Director of Planning &  
Development Services

Item No. 7.6

Disposition by City Council

- Approved    Ord/Res# \_\_\_\_\_
- Denied        \_\_\_\_\_
- Other         \_\_\_\_\_

\_\_\_\_\_  
City Secretary

Chapter 32 UTILITIES*
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**ARTICLE VI. WATER CONSERVATION PLAN\***

ARTICLE VI. WATER CONSERVATION PLAN*
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**DIVISION 1. GENERALLY**

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**Sec. 32-140. Declaration of policy.**

In order to conserve the available water supply and protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire prevention 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 Abilene hereby adopts the following regulations and restrictions on the delivery and consumption of water.

Water uses regulated or prohibited under this water conservation plan (the plan) are considered to be non-essential and continuation of such uses during times of water shortage or other emergency water supply conditions are deemed to constitute a waste of water which subjects the offender(s) to penalties as defined in [sections 32-147](#) through [32-155](#) of this plan.

No person shall make, cause, use or permit the use of water from the City of Abilene Water Utility System for residential, commercial, industrial, agricultural, governmental or any other purpose in a manner contrary to provisions of this plan or in an amount in excess of that use permitted by the plan in effect pursuant to action taken by the mayor or his/her designee in accordance with the provisions of this plan.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

DIVISION 1. GENERALLY
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**Sec. 32-141. Authorization.**

The mayor, mayor pro tempore, or the city manager, if so designated, is hereby authorized, consistent with the Charter of the City of Abilene, [Sections 21](#) and [22](#) to exercise those powers considered to be reasonable or necessary for the protection of persons or property in assessing the current state of our water supply and directing the city manager to implement or terminate any stage, phase, or portion of the water conservation plan. Implementation and termination of any stage may occur, but is not mandated to occur, when conditions warrant.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

DIVISION 1. GENERALLY
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**Sec. 32-142. Application.**

The provisions of this plan shall apply to persons, customers, and property utilizing the Abilene Water Utility System wherever situated, including customers such as water supply corporations, and any others that receive water from the city on a contract basis. If a shortage of water in the city's water supply occurs, the water to be distributed shall be divided among all users pro rata, according to the amount each may be entitled to, so that preference is given to no one and everyone suffers alike.

These water use restrictions do not apply to the use of alternate water sources from groundwater (well water). Customers using water from private groundwater wells on days other than those designated in this plan, or those watering from private groundwater wells during the hours of 10:00 a.m. and 6:00 p.m., must post a sign stating "WELL WATER." The sign must be properly sized and posted so it is visible from the street. The city strongly encourages the use of alternative water sources from groundwater for landscape purposes.

These water use restrictions do apply to those persons without a reclaimed water contract who divert raw surface water from Lake Kirby or Lake Fort Phantom Hill for landscape irrigation. Whenever the term or reference to water, or potable water or similar and like words are used in this "water conservation plan," it shall be understood to include the use of raw surface water from Lake Kirby and Lake Fort Phantom Hill for landscape irrigation.

These water restrictions do apply to the time for the use of treated wastewater (reclaimed water) for landscape irrigation. Use of reclaimed water or raw water under a reclaimed water contract for landscape irrigation is only allowed during the hours of 12:00 midnight to 10:00 a.m., and from 6:00 p.m. until 12:00 midnight. All other uses of reclaimed water shall be in accordance with Title 30 Texas Administrative Code, chapter 210 and the City of Abilene's Authorization No. R10334-004, as amended.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03; Ord. No. 61-2014, pt. 1 (Exh. A), 10-9-14)

DIVISION 1. GENERALLY
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**Sec. 32-143. Regional water planning groups and public involvement and education.**

DIVISION 1. GENERALLY
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**Sec. 32-143.1. Coordination with regional planning groups.**

The service area of the City of Abilene is currently located within the Region G water planning area. The City of Abilene will cooperate and provide information regarding the plan as needed to all regional planning area groups.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

DIVISION 1. GENERALLY
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**Sec. 32-143.2. Public involvement.**

The adoption of this plan and any amendments will provide for public input at a public hearing held in conjunction with one of the readings of said ordinance enacting the plan or amendments thereto.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

DIVISION 1. GENERALLY
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**Sec. 32-143.3. Public education.**

The initial implementation of the plan and any subsequent stage shall be made public via announcement at a media conference. Year round water use management and any subsequent water conservation stages shall be publicized and shall become effective immediately upon such announcement. All implementation and termination of water conservation stages shall likewise occur via media conference.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

ARTICLE VI. WATER CONSERVATION PLAN*
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**DIVISION 2. WATER CONSERVATION PLAN PROCEDURES**

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**Sec. 32-144. Year round water use management.**

To conserve water supplies available to the City of Abilene, year round water use management shall be implemented to restrict certain potable water use activities by all customers of the City of Abilene Water Utility System.

When conditions warrant, pursuant to [section 32-141](#), the water conservation plan will be implemented in accordance with the applicable provisions of this plan.

(1) Year round water use management. The following year round provisions shall apply to all potable water customers of the City of Abilene Water Utility System:

- a. Watering days: Customers are encouraged to conserve water by watering their lawn areas only once every seven (7) days on one of their designated watering days.

A customer's watering day is determined by the last digit of the house number or property address. Multi-unit properties will use the lowest address number, customers on rural routes will use the last number of their post office box number or their route number if they do not have a post office box number. Customers at Ft. Phantom Lake will use the last number of their lake lot. Customers in trailer parks will use the last number of their lot number.

When Ft. Phantom Reservoir is above 1630.9 feet elevation (less than five (5) feet below the spillway) the following three (3) day a week watering schedule applies:

Designated Watering Days:

Wednesday, Friday, Sunday    Odd numbered addresses

Tuesday, Thursday,  
Saturday                            Even numbered addresses

Monday, Wednesday,  
Friday                                Industrial, commercial, government  
customers, public and private schools and  
universities

When Ft. Phantom Reservoir is between 1630.9 feet and 1625.9 feet elevation (between five (5) and ten (10) feet below the spillway), the following two (2) day a week watering schedule applies:

Designated Watering Days:

Thursday, Sunday                Odd numbered addresses

Tuesday, Saturday                Even numbered addresses

Monday, Friday                    Industrial, commercial, government  
customers, public and private schools and  
universities

b. Watering times: Watering by all commercial, industrial, and residential customers utilizing individual sprinklers, or sprinkler systems, on lawns, gardens, landscaped areas, trees, shrubs or other plants is prohibited except on designated day

(s) and then only during the hours of 12:00 midnight to 10:00 am and from 6:00 pm until 12:00 midnight.

c. Watering of gardens, flowerbeds, trees and shrubs is permitted at any time of any day if:

i. A garden hose is used and is held in the hand during the duration of the irrigation event, or

ii. A faucet-filled container of five gallons or less is used, or

iii. A drip irrigation system such as a soaker hose, deep root water system, or bubbler is used. For the purpose of this section a drip irrigation system is defined as an irrigation device or system designed to emit water at low volumes and low pressures directly onto soil surface or below soil surface without airborne streams or droplets.

d. Irrigation of lawns is permitted at any time on any day if:

i. A garden hose is used and is held in the hand during the duration of the irrigation event, or

ii. A faucet-filled container of five (5) gallons or less is used.

A drip irrigation system shall not be used to irrigate lawns except on designated days and at designated times.

e. New lawns that have been seeded (not to include re-seeding or overseeding existing turf), sodded or mulched may be watered daily for eight minutes once during each of the following periods: 11:00 a.m. to 1:00 p.m.; 2:00 p.m. to 4:00 p.m.; 5:00 p.m. to 7:00 p.m.; and at regular intervals between 9:00 p.m. and 10:00 a.m. for a maximum of three (3) weeks. To qualify under this section, new lawns are those installed in conjunction with the construction of a new residence and for a period six (6) months thereafter or the re-tilling of an area equaling at least fifty (50) per cent of an existing yard.

f. Water wasting. The following uses of water are defined as “waste of water” and are absolutely prohibited:

i. Allowing water to run off a property through the street, gutter, ditch, alley, or drain for more than seventy-five (75) feet from the downgrade of the property line;

ii. Failure to repair a controllable leak, including a broken sprinkler head, a leaking valve, leaking or broken pipes, or a leaking faucet.

iii. Operating a permanently installed irrigation system with a broken sprinkler head; a sprinkler head that is spraying over a street or parking lot because it is out of adjustment; or a sprinkler head that is misting due to high pressure.

- g. Use of water from fire hydrants shall be limited to firefighting activities or other activities necessary to maintain public health, safety, and welfare. The director of water utilities will review written requests on a case by case basis for the purchase and withdrawal of fire hydrants for land development and building construction processes.
- h. Ornamental fountains are allowed if the fountain is equipped with a device for recycling water and water may be added to sustain appropriate maintenance levels only on the customer's regularly designated watering days.
- i. Water may be added to swimming pools to sustain appropriate maintenance levels only on the customer's regularly designated watering days.
- j. The operation of charity car washes must:
  - i. Not allow water to run-off more than seventy-five (75) feet, and
  - ii. Use hoses with on/off nozzles and buckets.
- k. Large-scale recreational development, such as, but not limited to, water parks, shall submit a plan to the director of water utilities that detail expected water consumption and maintenance requirements. Any deviation from the requirements of this article will be resolved on a case by case method.

(2) Administrative enforcement, presumption of ownership and control; hearing officers; administration of hearings, hearings, appeals, payment, subsequent violations, fees, and requests for variances as pertaining to year round water use management are addressed in [sections 32-147](#) through [32-156](#).

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

DIVISION 2. WATER CONSERVATION PLAN PROCEDURES
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**Sec. 32-145. Water conservation stages.**

(a) Watering days.

(1) During water conservation stages, a customer's watering day is determined by the last digit of the house number or property address. Multi-unit properties will use the lowest address number. Customers on rural routes will use the last number of their post office box number or their route number if they do not have a post office box number. Customers at Ft. Phantom Lake will use the last number of their lake lot. Customers in trailer parks will use the last number of their lot number.

If a residential customer's last Customer's watering day is:  
number is:

7 or 8	Sunday
9	Monday
0	Tuesday
1	Wednesday
2	Thursday
3 or 4	Friday
5 or 6	Saturday

For example: If an address is 555 Walnut Street, the last number is five (5) and the watering day is Saturday.

For purposes of this section only, residential usage includes single family residences, multi-family residences and apartment complexes. Non-residential customers shall follow the above schedule with the exception of the following changes:

7 or 8	Wednesday
5 or 6	Tuesday

(2) Bi-weekly watering as prescribed in Stage 2 will occur according to location in east or west sides of the city, bounded on the north side of the city by Grape St. and then Pine St. to the north city limits (north of Grape St.) and on the south side of the city by Sayles Blvd. to Buffalo Gap Road and then Buffalo Gap Road to the south city limits.

(3) Entities with large, open spaces (e.g., schools, universities, city parks, golf courses) using potable water may submit alternate watering schedules to the director of water utilities except as otherwise prohibited in this article. Upon his/her written approval acknowledged by the entity in question, these entities may follow the approved schedule rather than the calendar system, and will be held responsible for all the provisions of this article, based on the approved schedule.



(b) Stage 1 water alert–Implementation criteria: Combined treatment plant pumpage in excess of 49.5 (mgd) for two (2) consecutive days; or, continually falling water storage facility levels which do not refill above fifty (50) per cent overnight; or, depletion of the Ft. Phantom Reservoir to the elevation 1625.9 (10 ft. below spillway) if Hubbard Creek Reservoir is at sixty (60) per cent capacity or less or 1624.9 (eleven (11) ft. below spillway) if Hubbard Creek Reservoir is at greater than sixty (60) per cent of capacity, or any unforeseen conditions that may occur that cause the city manager to recommend implementation to the mayor.

Upon announcement and implementation by the city, the following restrictions shall apply to all persons:

(1) Landscape irrigation.

a. Irrigation by all commercial, industrial, (including agricultural irrigation), and residential customers utilizing individual sprinklers, or sprinkler systems, of lawns, gardens, landscaped areas, trees, shrubs or other plants is prohibited except on a designated day which shall be once every seven (7) days and then only during the hours of 12:00 midnight to 10:00 a.m. and from 6:00 p.m. until 12:00 midnight.

Provided, however, irrigation of gardens, flowerbeds, trees and shrubs is permitted at any time of day if:

- i. A garden hose is used and is held in the hand during the duration of the irrigation event, or
- ii. A faucet-filled container of five (5) gallons or less is used, or
- iii. A drip irrigation system such as soaker hose, deep root water system, or bubbler is used. For the purpose of this section a drip irrigation system is defined as an irrigation device or system designed to emit water at low volumes and low pressures directly onto soil surface or below soil surface without airborne streams or droplets.

Irrigation of lawns is permitted at any time on any day if:

- i. A garden hose is used and is held in the hand during the duration of the irrigation event, or
- ii. A faucet-filled container of five (5) gallons or less is used.

A drip irrigation system shall not be used to irrigate lawns except on designated days and at designated times.

b. New lawns that have been seeded (not to include re-seeding or overseeding existing turf), sodded or mulched may be watered daily for eight (8) minutes once during each of the following periods: 11:00 a.m. to 1:00 p.m.; 2:00 p.m. to 4:00 p.m.; 5:00 p.m. to 7:00 p.m.; and at regular intervals between 9:00 p.m. and 10:00 a.m. for a maximum of three (3) weeks. To qualify under this section, new lawns are those installed in conjunction with the construction of a new residence and for a period six (6) months thereafter or the re-tilling of an area equaling at least fifty (50) per cent of a new yard.

(2) Vehicle washing.

- a. It is permissible to wash automobiles, trucks, trailers, boats, and other types of mobile equipment at any time on the immediate premises of a commercial car wash or commercial service station or at any location including a residence by using a five (5) gallon container and/or a hand held hose equipped with a quick shut-off nozzle for quick rinses.
- b. If the health, safety and welfare of the public depends upon frequent vehicle cleaning, as determined by the director of water utilities or his/her designee, then washing of vehicles such as emergency vehicles, aircraft, garbage trucks, and vehicles used to transport food and perishables will be allowed.
- c. Charity car washes are prohibited.

(3) Water may be added to swimming pools to sustain appropriate maintenance levels only on designated irrigation day.

(4) Ornamental fountains are allowed if the fountain is equipped with a device for recycling water and water may be added to sustain appropriate maintenance levels only on the customer's regularly designated watering day.

(5) Use of water from fire hydrants shall be limited to firefighting activities or other activities necessary to maintain public health, safety and welfare. By written approval from the director of water utilities, businesses may purchase and draw water from fire hydrants for land development and building construction processes.

(6) The following uses of water are defined as "waste of water" and are absolutely prohibited:

- a. Allowing water to run off a property through the street, gutter, ditch, alley, or drain for more than seventy-five (75) feet from the downgrade of the property line;
- b. Failure to repair a controllable leak; including a broken sprinkler head, a leaking valve, leaking or broken pipes, or a leaking faucet.
- c. Operating a permanently installed irrigation system with:
  - i. A broken sprinkler head;
  - ii. A sprinkler head that is spraying over a street or parking lot because it is out of adjustment; or
  - iii. A sprinkler head that is misting due to high pressure
- d. Washing sidewalks, driveways, parking areas, tennis courts, patios or other paved areas, except to alleviate immediate fire, health and safety hazards, or to prepare an area for pavement repair or application.

(7) Commercial and industrial users.

- a. Commercial and industrial users of water shall, in addition to complying with other applicable articles in this article, reduce their monthly consumption of water by a minimum of fifteen (15) per cent compared to use during the same month of the previous year.
- b. Industrial users may, in order to justify water use, present a conservation plan for approval by the director of water utilities.
- c. Golf courses will submit a conservation plan for approval by the director of water utilities if potable irrigation water is to be used.

(c) Stage 2 water warning—Implementation criteria: Combined treatment plant pumpage in excess of 49.5 mgd for two (2) days; or, continually falling water storage facility levels which do not refill above fifty (50) per cent overnight or, depletion of the Ft. Phantom Reservoir to the elevation 1618.9 (seventeen (17) ft. below spillway); or, major line breaks, or pump system failure which causes unprecedented loss of capability to provide service, or any unforeseen conditions that may occur that cause the city manager to recommend implementation to the mayor.

Upon announcement and implementation by the city, the following restrictions shall apply to all persons:

(1) Landscape irrigation.

- a. Irrigation by all commercial, industrial and residential customers utilizing individual sprinklers, or sprinkler systems, of lawns, gardens, landscaped areas, trees, shrubs or other plants is prohibited except on a designated day which shall be once every two (2) weeks and then only during the hours of 12:00 midnight to 10:00 a.m. and from 6:00 p.m. until 12:00 midnight.

Provided, however, irrigation of gardens, flowerbeds, trees and shrubs is permitted at any time of day if:

- i. A garden hose is used and is held in the hand during the duration of the
- ii. Irrigation event, or
- iii. A faucet-filled container of five (5) gallons or less is used, or
- iii. A drip irrigation system such as soaker hose, deep root water system, or bubbler is used. For the purpose of this section a drip irrigation system is defined as an irrigation device or system designed to emit water at low volumes and low pressures directly onto soil surface or below soil surface without airborne streams or droplets.

Irrigation of lawns is permitted at any time on any day if:

- i. A garden hose is used and is held in the hand during the duration of the irrigation event, or
- ii. A faucet-filled container of five (5) gallons or less is used.

A drip irrigation system shall not be used to irrigate lawns except on designated days and at designated times.

b. New lawns may be watered daily for eight (8) minutes once during each of the following periods: 11:00 a.m. to 1:00 p.m.; 2:00 p.m. to 4:00 p.m.; 5:00 p.m. to 7:00 p.m.; and at regular intervals between 9:00 p.m. and 10:00 a.m. for a maximum of three (3) weeks. To qualify under this section, new lawns are those installed in conjunction with the construction of a new residence and for a period six (6) months thereafter. Re-tilling or any replanting or reseeding of existing lawns shall not qualify for new lawn status in this section.

(2) Vehicle washing.

a. It is permissible to wash automobiles, trucks, trailers, boats, and other types of mobile equipment at any time on the immediate premises of a commercial car wash or commercial service station or at any location including a residence by using a five (5) gallon container and/or a hand held hose equipped with a quick shut-off nozzle for quick rinses.

b. If the health, safety and welfare of the public depends upon frequent vehicle cleaning, as determined by the director of water utilities or his/her designee, then washing of vehicles such as emergency vehicles, aircraft, garbage trucks, and vehicles used to transport food and perishables will be allowed.

c. Charity car washes are prohibited.

(3) Water may be added to swimming pools to sustain appropriate maintenance levels weekly, on the customer's regularly designated irrigation day.

(4) Ornamental fountains are allowed if the fountain is equipped with a device for recycling water and water may be added to sustain appropriate maintenance levels only on the customer's regularly designated watering day.

(5) Use of water from fire hydrants shall be limited to firefighting activities or other activities necessary to maintain public health, safety and welfare. By written approval from the director of water utilities, businesses may purchase and draw water from fire hydrants for land development and building construction processes.

(6) The following uses of water are defined as "waste of water" and are absolutely prohibited:

a. Allowing water to run off a property through the street, gutter, ditch, alley, or drain for more than seventy-five (75) feet from the downgrade of the property line;

b. Failure to repair a controllable leak; including a broken sprinkler head, a leaking valve, leaking or broken pipes, or a leaking faucet;

c. Operating a permanently installed irrigation system with:

i. A broken sprinkler head;

ii. A sprinkler head that is spraying over a street or parking lot because it is out of adjustment; or

iii. A sprinkler head that is misting due to high pressure.

d. Washing sidewalks, driveways, parking areas, tennis courts, patios or other paved areas, except to alleviate immediate fire, health or safety hazards, or to prepare an area for pavement repair or application.

(7) Commercial and industrial users.

a. Commercial and industrial users of water shall continue to maintain at least a fifteen (15) per cent monthly reduction of water use compared to use during the same month of the previous year.

Individual allotments may be adjusted by the director based on historical water usage conservation practices of customer. The other restrictions of Stage 2 still apply to commercial and industrial users.

b. Industrial users may present a conservation plan for approval by the director of water utilities.

c. Golf courses using potable water will reduce consumption by thirty (30) per cent of contracted amount.

(d) Stage 3 water emergency–Implementation criteria: Combined treatment plant pumpage in excess of thirty (30) mgd for three (3) days and depletion of the Ft. Phantom Reservoir to the elevation 1614.9 (twenty-one (21) ft. below spillway); or major line breaks, or pump system failure which causes unprecedented loss of capability to provide service, or any unforeseen conditions that may occur that cause the city manager to recommend implementation to the mayor.

Upon announcement and implementation by the city, the following restrictions shall apply to all persons:

(1) Landscape irrigation. Irrigation of gardens, flowerbeds, trees and shrubs (not lawns) by all commercial, industrial, and residential customers is permitted at any time on any day only if:

a. A garden hose is used and is held in the hand during the duration of the irrigation event, or

b. A faucet-filled container of five (5) gallons or less is used, or

c. A drip irrigation system such as soaker hose, deep root water system, or bubbler is used. For the purpose of this section a drip irrigation system is defined as an irrigation device or system designed to emit water at low volumes and low pressures directly onto soil surface or below soil surface without airborne streams or droplets.

Watering of lawns is prohibited at any time. No new lawns may be installed.

(2) Vehicle washing.

- a. It is permissible to wash automobiles, trucks, trailers, boats, and other types of mobile equipment at any time on the immediate premises of a commercial car wash or commercial service station.
  - b. If the health, safety and welfare of the public depends upon frequent vehicle cleaning, as determined by the director of water utilities or his/her designee, then washing of vehicles such as emergency vehicles, aircraft, garbage trucks, and vehicles used to transport food and perishables will be allowed.
  - c. Charity car washes are prohibited.
- (3) Water may be added to swimming pools to sustain appropriate maintenance levels weekly, on the customer's regularly designated irrigation day. New construction of swimming pools is prohibited.
- (4) Ornamental fountains are allowed if the fountain is equipped with a device for recycling water and water may be added to sustain appropriate maintenance level only on the customer's regularly designated watering day. New construction of ornamental fountains is prohibited.
- (5) Use of water from fire hydrants shall be limited to fire-fighting activities or other activities necessary to maintain public health, safety and welfare. By written approval from the director of water utilities, businesses may purchase and draw water from fire hydrants for land development and building construction processes.
- (6) The following uses of water are defined as "waste of water" and are absolutely prohibited:
- a. Allowing water to run off a property through the street, gutter, ditch, alley, or drain for more than seventy-five (75) feet from the downgrade of the property line;
  - b. Failure to repair a controllable leak; including a broken sprinkler head, a leaking valve, leaking or broken pipes, or a leaking faucet;
  - c. Operating a permanently installed irrigation system with:
    - i. A broken sprinkler head;
    - ii. A sprinkler head that is spraying over a street or a parking lot because it is out of adjustment; or
    - iii. A sprinkler head that is misting due to high pressure
  - d. Washing sidewalks, driveways, parking areas, tennis courts, patios or other paved areas, except to alleviate immediate fire, health or safety hazards, or to prepare an area for pavement repair or application.
- (7) Commercial and industrial users.

a. Commercial and industrial users of water shall continue to maintain at least a fifteen (15) per cent monthly reduction of water use compared to use during the same month of the previous year.

Commercial and industrial users of water shall continue to maintain at least a fifteen (15) per cent monthly reduction of water use compared to use during the same month of the previous year.

A surcharge rate will be assessed for any water consumption that does not comply with the required reductions. The surcharge in addition to regular charges is as follows:

	<u>First Occurrence</u>	<u>Subsequent Occurrence(s)</u>
First 5,000 gallons over allowed amount per 1,000 gallons	\$5.00	\$10.00
Next 5,000 gallons, per 1,000 gallons	10.00	20.00
For higher usage, per 1,000 gallons	20.00	30.00

Additionally, if a customer uses more than the allowed amount more than once at any time during Stage 3, the customer's water may be turned off and there will be a two hundred fifty dollar (\$250.00) re-connect fee, in addition to the listed fees.

Individual allotments may be adjusted by the director of water utilities based on historical water usage conservation practices of customer. The other restrictions of Stage 3 still apply to commercial and industrial users.

b. Industrial users may present a conservation plan for approval by the director of water utilities.

c. Each golf course using potable water will reduce consumption by fifty (50) per cent of contracted amount.

(e) Stage 4 water crisis—Implementation criteria: Loss of capability to provide water service or contamination of supply source, or any unforeseen/unexpected conditions that may occur that cause the city manager to recommend implementation to the mayor.

Upon announcement and implementation by the city, the following restrictions shall apply to all persons:

(1) All outdoor irrigation of vegetation including lawns, using potable water is prohibited.

(2) Only washing of mobile equipment in the critical interest of the public health or safety shall be allowed.

(3) The filling, refilling or adding of water to swimming and/or wading pools is prohibited. The construction of new swimming pools is prohibited.

(4) The operation of any ornamental fountain or similar structure is prohibited. The construction of new ornamental fountains is prohibited.

(5) Use of water from fire hydrants shall be limited to fire fighting and related activities or other activities necessary to maintain public health, safety and welfare. Water for domestic use only may be purchased from the bulk loading station.

(6) The following uses of water are defined as “waste of water” and are absolutely prohibited:

a. Allowing water to run off a property through the street, gutter, ditch, alley, or drain for more than seventy-five (75) feet from the downgrade of the property line;

b. Failure to repair a controllable leak; including a broken sprinkler head, a leaking valve, leaking or broken pipes, or a leaking faucet;

c. Operating a permanently installed irrigation system with:

i. A broken sprinkler head;

ii. A sprinkler head that is spraying over a street or parking lot because it is out of adjustment; or

iii. A sprinkler head that is misting due to high pressure

d. Washing sidewalks, driveways, parking areas, tennis courts, patios or other paved areas, except to alleviate immediate fire, health or safety hazards.

(7) Commercial and industrial users.

a. Commercial and industrial users of water (for other than drinking water and rest rooms) shall continue to maintain at least a fifteen (15) per cent reduction of water use compared to use during the same month of the previous year.

A surcharge rate will be assessed for any water consumption that does not comply with the required reductions. The surcharge in addition to regular charges is as follows:

	<u>First Occurrence</u>	<u>Subsequent Occurrence(s)</u>
First 5,000 gallons over allowed amount per 1,000 gallons	\$10.00	\$20.00



Next 5,000 gallons, per 1,000 gallons	20.00	40.00
For higher usage, per 1,000 gallons	30.00	60.00

Additionally, if a customer uses more than the allowed amount more than once at any time during Stage 4, then after each such overuse these surcharges will be added and the customer's water may be turned off and there will be a five hundred dollar (\$500.00) re-connect fee, in addition to the listed fees.

Individual allotments may be adjusted by the director of water utilities based on historical water usage and conservation practices of the customer. The other restrictions of Stage 4 still apply to commercial and industrial users.

b. Water used for industrial purposes not in the immediate interest of the public health, safety and welfare will be curtailed to the extent necessary to effectuate the needs and purposes of this plan.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

## DIVISION 2. WATER CONSERVATION PLAN PROCEDURES

### **Sec. 32-146. Target water use goals.**

The following target goals for water usage are established for use during water conservation stages as contained in [section 32-145](#):

- (1) Stage 1. Water alert–Target water use goal: Combined treatment plant production less than 49.5 million gallons per day (MGD) for all Abilene water treatment facilities.
- (2) Stage 2. Water warning–Target water use goal: Combined treatment plant production less than 49.5 MGD for all Abilene water treatment facilities.
- (3) Stage 3. Water emergency–Target water use goal: Combined treatment plant production less than 30 MGD for all Abilene water treatment facilities.
- (4) Stage 4. Water crisis–Target water use goal: Combined treatment plant production less than 30 MGD for all Abilene water treatment facilities.

(Ord. No. 9-2005, pt. 1(Exh. A), 4-14-05)

## ARTICLE VI. WATER CONSERVATION PLAN\*

### **DIVISION 3. WATER CONSERVATION PLAN ENFORCEMENT**

<b>DIVISION 3. WATER CONSERVATION PLAN ENFORCEMENT</b>
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**Sec. 32-147. Administrative enforcement.**

Violations of this plan are declared to be civil penalties with remedies being fines paid directly to municipal court. Non-payment of fines will result in surcharges assessed to the customer's water utility bill. Each violation of a particular component of this plan shall constitute a separate violation, and each day a violation continues shall be considered a new violation for purposes of enforcement and enhancement.

The surcharge will be in addition to the regular water utility bill amount. The water utility office may discontinue water service to the premises if the surcharge is not paid as required under the plan. Any person whose service is discontinued for failure to pay the surcharge shall not be restored until payment of a reconnection charge and any other costs incurred by the city in discontinuing service.

The city's authority to seek injunctive or other civil relief available under the law is not limited by this section.

The following procedures shall apply to anyone contesting the penalties for violating the plan. The hearing process shall be a two-phase hearing process with the final phase being heard before the municipal clerk/administrator or deputy in charge of hearing appeals.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

<b>DIVISION 3. WATER CONSERVATION PLAN ENFORCEMENT</b>
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**Sec. 32-148. Presumption of ownership and control.**

Presumption of ownership/control. Any person, including a person classified as a water customer of city, in apparent control of the property where a violation occurs or originates shall be presumed to be the violator, and proof that the violation occurred on the person's property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to show that he/she did not commit the violation.

All notices shall be issued to the person or entity whose name appears on the water bill.

In any case of a violation of any terms or provisions of this plan by any corporation, business, partnership, or entity, the officers and/or agents actively in charge of the business or entity shall be subject to the penalty provided herein.

If a customer is irrigating during a time period or on a day when irrigation is not permitted for the street address of that customer and a city worker cannot find any person at that street address to turn off the irrigation system, the city worker may enter the property and turn off the irrigation system and/or the water source.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

DIVISION 3. WATER CONSERVATION PLAN ENFORCEMENT
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**Sec. 32-149. Hearing officers.**

- (a) There shall be designated a hearing officer(s) who shall be appointed by the municipal court clerk/administrator.
- (b) Hearing officer(s) shall have the authority to administer oaths and to issue orders compelling the attendance of witnesses and the production of documents.
- (c) An order compelling the attendance of witnesses or the production of documents may be enforced by the municipal court.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

DIVISION 3. WATER CONSERVATION PLAN ENFORCEMENT
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**Sec. 32-150. Administration of hearings.**

- (a) The administrative adjudication process for plan violations shall be initiated by the issuance of a notice which may be issued by a peace officer or other authorized enforcement agent. Authorized enforcement agents shall include any police officer, water utilities worker, city marshal, or other employee of the city designated by the city manager to enforce the provisions of this Code in regard to the plan.
- (b) The notice may be issued by affixing it to the front door of the property in question, in a conspicuous place.
- (c) The notice shall provide that the person charged with violation of the plan shall have the right of hearing to determine the validity for the charged offense. Such right to a hearing shall be exercised by mail or by appearing in person before a hearing officer within ten (10) days from the date of the notice.
- (d) The original or any copy of the notice or summons is a record kept in the ordinary course of business in the city and is rebuttable proof of the facts it contains.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

DIVISION 3. WATER CONSERVATION PLAN ENFORCEMENT
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**Sec. 32-151. Hearings.**

- (a) At the hearing before the hearing officer, the violator may admit, admit with explanation, or deny the alleged infraction. It is not a defense to the offense that the violator did not intend the alleged infraction, there being no culpable mental state required for the infraction.

- (b) The issuing officer shall not be required to attend the hearing.
- (c) It is not required that the city's attorney attend the hearing. Provided, however, that if the defendant is represented by legal counsel at the hearing, the hearing officer shall notify the city attorney who shall have a right to appear on behalf of the city at said hearing.
- (d) No formal or sworn complaint shall be necessary. The hearing officer shall examine the contents of the notice and the evidence related to ownership of the property in question and shall hear and review the testimony and evidence presented by the violator. If the hearing officer determines by the preponderance of the evidence that the infraction was committed by the violator, he shall find the violator responsible and assess a fine.
- (e) At the conclusion of the hearing, the hearing officer shall issue an order stating whether or not the person charged is responsible for the violation of the plan and the amount of the fine assessed against him. The order shall be filed with the clerk of the municipal court. All such orders shall be kept in a separate index or file by the municipal court clerk using appropriate data processing techniques.
- (f) Failure of a person charged with the offense to appear at a hearing within the aforesaid ten-day period shall be considered an admission of liability for the charged offense.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

DIVISION 3. WATER CONSERVATION PLAN ENFORCEMENT
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**Sec. 32-152. Appeals.**

A person determined by the hearing officer to be in violation of any provision of the Plan may appeal this determination to the municipal court clerk or a deputy so designated to hear plan appeals.

The appeal must be instituted by filing a written petition, not later than the tenth day after the filing of the hearing officer's order, with the clerk of the municipal court along with payment of a nonrefundable administrative appeal filing fee in the amount of ten dollars (\$10.00).

After filing a petition for appeal, the municipal clerk shall schedule a hearing and notify all parties of the date, time, and place of the hearing.

The appeal hearing shall be a de novo review. The municipal court clerk shall examine the evidence presented at the appellate hearing and if the court clerk determines by the preponderance of the evidence that the infraction was committed by the violator, the court clerk shall find the violator responsible therefore.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

DIVISION 3. WATER CONSERVATION PLAN ENFORCEMENT
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**Sec. 32-153. Payment.**

(a) Any person alleged to have violated the plan who merely desires to make payment shall provide same to the municipal court clerk in charge of water violations within ten (10) days after receiving notice of said violation.

(b) Any person alleged to have violated the plan and who fails to appear within the ten (10) days as reflected in 32-149.3(c) above shall be assessed a surcharge on their next water bill in the amount of the minimum fine.

(c) Any person found to have violated the plan by the hearing officer shall pay the fine within ten (10) days of said hearing or the fee shall be assessed in a surcharge on the violator's next water bill.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

<b>DIVISION 3. WATER CONSERVATION PLAN ENFORCEMENT</b>
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**Sec. 32-154. Subsequent violations; increased fees; discontinuation of service; injunctive relief.**

Subsequent violations of the plan shall result in increased fine or upon the occurrence of three (3) violations, after notice, the discontinuation of services. Services discontinued under this provision shall be restored only upon payment of a reconnection fee and any other costs incurred by the city in discontinuing service.

Compliance with the plan may also be sought through injunctive relief in district court.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

<b>DIVISION 3. WATER CONSERVATION PLAN ENFORCEMENT</b>
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**Sec. 32-155. Fines—Minimum and maximum.**

(a) Any person, firm, or corporation found to have violated any provision of the plan, shall be assessed a fine in an amount not to exceed one thousand dollars (\$1,000.00) for each offense, the amount to be determined by the hearing officer in his reasonable discretion, subject to review on appeal to the municipal court clerk.

(b) Unless higher amounts are required by state law or a lesser amount is determined by the hearing officer or municipal court clerk or so designated deputy, the minimum fines for violating the plan shall be as follows:

- (1) Violation of year round water use management, first offense . . . \$50.00
- (2) Violation of year round water use management, second offense . . . 75.00
- (3) Violation of year round water use management, subsequent offenses . . . 250.00
- (4) Violation of Stage 1, first offense . . . 50.00

- (5) Violation of Stage 1, second offense . . . 75.00
- (6) Violation Stage 1, subsequent offenses . . . 250.00
- (7) Violation of Stage 2, first offense . . . 100.00
- (8) Violation of Stage 2, second offense . . . 150.00
- (9) Violation of Stage 2, subsequent offenses . . . 500.00
- (10) Violation of Stage 3 or 4, first offense . . . 250.00
- (11) Violation of Stage 3 or 4, second offense . . . 500.00
- (12) Violation of Stage 3 or 4, subsequent offenses . . . 1,000.00
- (13) Reconnect fees for failure to pay the surcharge . . . 250.00
- (14) Reconnect fees for repeated violations of the plan . . . 500.00

(c) It is an affirmative defense to any violation of this article if the customer proves that the misused wasted water is from an operable water well serving said property.

(d) Fraudulent misrepresentation of well water use will result in a five hundred dollar (\$500.00) fine.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

<b>DIVISION 3. WATER CONSERVATION PLAN ENFORCEMENT</b>
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**Sec. 32-156. Requests for variance.**

Requests for variance should be made in writing to the director of water utilities. Requests must include name of customer, location, type of variance requested, reason for variance request and duration of deviation from this plan. Upon the director's written approval acknowledged by the entity in question, these entities may follow the requested variance and will be responsible for all other provisions of this article.

(Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

<b>DIVISION 3. WATER CONSERVATION PLAN ENFORCEMENT</b>
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**Sec. 32-157. Severability.**

If any provision or any section of this plan shall be held to be void or unconstitutional, such holding shall in no way affect the validity of the remaining provisions or sections of the plan, which shall remain in full force and effect. (Ord. No. 21-2003, pt. 1(Exh. A), 5-22-03)

DIVISION 3. WATER CONSERVATION PLAN ENFORCEMENT

**Secs. 32-158, 32-159. Reserved**