ORDINANCE NO. _____

AN ORDINANCE REPEALING AND REPLACING CITY CODE CHAPTER 6-4 RELATING TO WATER CONSERVATION; ESTABLISHING VIOLATIONS AND PENALTIES FOR VIOLATIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS.

The City Council finds that:

Given the potential for severe and frequent drought conditions in Central Texas, it is essential that water use policies balance the need to conserve water with the need to protect the City's urban landscape and tree canopy. Water conservation efforts, including policies for responsible outdoor water use, help maximize limited resources as population grows while ensuring supply for critical public health and safety needs including adequate supplies necessary for emergency fire fighting, fire suppression, and natural disaster or other emergency management or disaster response.

PART 2. City Code Chapter 6-4 (*Water Conservation*) is repealed and replaced with a new Chapter 6-4 to read as follows:

ARTICLE 1. GENERAL PROVISIONS.

§ 6-4-1 WATER USE MANAGEMENT PLAN.

This chapter establishes a Water Use Management Plan.

§ 6-4-2 DEFINITIONS.

Unless a different definition is expressly provided, in this chapter:

(1) ACTION of THE UTILITY means an action taken by Austin Water Utility pursuant to this chapter.

(2) AQUATIC LIFE means a vertebrate organism dependent upon an aquatic environment to sustain its life.

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(3) AUXILIARY WATER means a water supply from a source other than Austin Water Utility's potable water supply.

(4) AWU AUTHORIZED IRRIGATION INSPECTOR means an Irrigation Inspector licensed by the Texas Commission on Environmental Quality who has in addition both passed a director-approved class in landscape irrigation and has been awarded Austin Water Utility (AWU) Authorized Irrigation Inspector status in accordance with rules adopted pursuant to this chapter.

(5) COMMERCIAL FACILITY means a site with five or more dwelling units, or a municipal, business, or industrial building and the associated landscaping, but does not include the fairways, greens, or tees of a golf course.

(6) COMMERCIAL NURSERY means a facility where plant nursery stock, trees, seedlings, turf, shrubs, flowers, herbs, crops or other plant materials are cultivated, grown, stored, or maintained prior to retail consumer, installer, or reseller purchase, use, consumption, or installation of the materials at any location other than the commercial nursery.

(7) COMMON AREA means an area held, designed, or designated for the common use of the owners or occupants of a townhouse project, planned unit development, apartment, condominium, mobile home park, or subdivision.

(8) COSMETIC POWER WASHING means treatment or cleaning of a surface with specialized equipment that uses a spray of or directed water for the cosmetic cleaning of buildings, vehicles or other mobile equipment, or outdoor surfaces. It does not include industrial cleaning, cleaning associated with manufacturing activities, hazardous or toxic waste cleaning, or cleaning necessary to remove graffiti.

(9) DESIGNATED OUTDOOR WATER USE DAY means the day prescribed by rule on which a person is permitted to irrigate outdoors.

(10) DIRECTOR means the Director of the Austin Water Utility and includes a person the Director has designated to administer or perform any task, duty, function, role, or action related to this Chapter or on behalf of the Director.

(11) DRIP IRRIGATION means a method of irrigation which is typically installed below ground and consists of porous piping that allows the application of water at a slow and constant rate.

(12) DROUGHT CONTINGENCY PLAN means a strategy or combination of strategies for temporary supply management and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies required by Texas Administrative Code Title 30, Chapter 288, Subchapter B.

(13) FOUNDATION WATERING means an application of water to the soils directly abutting the foundation of a building, structure, or improvement on land.

(14) HOSE-END SPRINKLER means an above-ground water distribution device that may be attached to a garden hose.

(15) MULTI-FAMILY PROPERTY means property containing five or more dwelling units.

(16) GOVERNMENT PROPERTY means property owned or operated by a federal, state, or local governmental unit, entity, agency, or subdivision for a public purpose.

(17) NEW LANDSCAPE means vegetation:

(a) installed at the time of the construction of a residential or commercial facility;

(b) installed as part of a governmental entity's capital improvement project;

(c) installed to stabilize an area disturbed by construction; or

(d) that alters more than 500 contiguous square feet of an existing landscape.

(18) ORNAMENTAL FOUNTAIN means an artificially created structure from which a jet, stream, or flow of water emanates and is not utilized for the preservation of aquatic life.

(19) PERMANANTLY INSTALLED IRRIGATION SYSTEM means a custom-made, site-specific system of delivering water generally for landscape irrigation via a system of pipes or other conduits installed below ground. These systems may integrate or utilize PVC pipe for water distribution.

(20) PERSON means any natural person or legal entity such as an individual, business, partnership, association, firm, corporation, governmental, or other natural, business, or legal entity that receives, requests, manages, uses, maintains, or is responsible for water utility service at a service address, whether or not the person or entity is a customer or account holder of the Austin Water Utility.

(21) PREMISE means the outdoor area of property not enclosed by fencing or walls or containing living areas, or areas for storing vehicles or other motorized equipment.

(22) RECLAIMED WATER means reclaimed municipal wastewater that is under the direct control of the City treatment plants, satellite facilities, or a treatment plant with which the City contracts, and that has been treated to a quality that meets or exceeds the minimum standards of the 30 Texas Administrative Code, Chapter 210.

(23) RESIDENTIAL FACILITY means a site with four or fewer dwelling units.

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(24) SOAKER HOSE means a perforated or permeable garden-type hose or pipe that is laid above ground that provides irrigation at a slow and constant rate.

(25) TEMPORARILY INSTALLED IRRIGATION SYSTEM means a universally-applicable above ground irrigation system that commonly uses a flexible hose or hardened pipe to deliver water to a moveable water distribution device.

(26) THE UTILITY means the Austin Water Utility.

(27) VEHICLE WASH FACILITY means a permanently-located business that washes vehicles or other mobile equipment with water or water-based products, including but not limited to self-service car washes, full service car washes, roll-over/in-bay style car washes, and facilities managing vehicle fleets or vehicle inventory.

(28) XERISCAPE means a landscape which employs certain principles of design and installation which conserve water and energy and where the plant material, at mature growth, will provide, minimally, 50% of the new landscape's areal coverage. The plant material must consist of plants taken from a plant list provided by Austin Water Utility and identified as very low water usage and low water usage plants. The plant list may be amended as needed.

§ 6-4-3 APPLICABILITY OF REGULATIONS; AFFIRMATIVE DEFENSES.

(A) This chapter applies to a person who uses, directs, manages, or allows the use of potable water supplied by Austin Water Utility. The chapter does not apply to a person who uses, directs, manages, or allows the use of auxiliary water or reclaimed water unless the auxiliary water or reclaimed water is mixed with potable water supplied by Austin Water Utility.

(B) It is an affirmative defense to a violation of this chapter that the use of water that gave rise to the violation was consistent with the agreed upon terms and conditions of a water service contract with a wholesale water customer and that the use did not constitute water waste.

(C) It is an affirmative defense to a violation of this chapter that the use of water that gave rise to the violation properly utilized solely reclaimed water, did not endanger public health, safety, or property, and did not constitute water waste.

(D) It is an affirmative defense to a violation of this chapter that the act or omission that gave rise to the violation occurred solely because a documented emergency that prevented strict compliance, and that the act or omission did not disrupt the

availability of adequate water for other public emergency response or fire fighting or fire suppression purposes.

§ 6-4-4 COMPLIANCE REQUIRED.

A person may not use or permit the use of water in a manner that conflicts with the requirements of this chapter or in an amount greater than permitted by this chapter.

§ 6-4-5 FEES AND CHARGES.

(A) Fees and charges assessed pursuant to this chapter shall be set by City Council under a separate ordinance or, where permitted, by the director by rule.

(B) Fees and charges associated with enforcement of this chapter shall be clearly identified on the customer's utility billing invoice or on the order assessing the fee or charge, except as where otherwise provided by local ordinance or adopted rule.

§ 6-4-6 INSPECTIONS AND RIGHT OF ENTRY.

(A) The Director or director's designee may:

(1) conduct an inspection of any property, equipment or improvement to determine compliance with this chapter; and

(2) require an owner, occupant, operator, manager, or user of a property, equipment, or improvement to correct a violation of this chapter.

(B) The Director or director's designee may enter a commercial facility or premise to inspect the facility upon probable cause that a violation of this chapter may have occurred at the location, provided the Director or designee:

(1) presents official identification to an employee of the facility and expressly requests entry to inspect; and

(2) informs the employee of the facility of this section; or

(3) makes a reasonable effort to locate the owner of unoccupied property to request entry; or

(4) limits the inspection of commercial properties not opened for business at the time of inspection to areas accessible by the public during periods of business closure.

(C) An inspection of a residential property shall be conducted from:

(1) areas accessible to the general public; or

(2) a restricted access area only after the Director or director's designee has presented official identification to the property manager, owner, occupant, or other representative, and obtained consent to enter a restricted access area.

(D) If consent for entry necessary to conduct an inspection to determine compliance with this chapter is required but denied, withdrawn, limited, or impaired, the Director or

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designee may seek any recourse available under applicable law to obtain entry and inspection.

(E) An employee may enter onto a privately owned common area for the purposes of conducting inspections. The designee may seek recourse to available law to obtain entry into areas with restricted access.

(F) A person seeking a variance pursuant to Article II, Division 3(*Variances: Alternative Compliance*) or participation in an Austin Water Utility Conservation Program provides a designee of the director the right to enter the subject premise to conduct inspections and investigations necessary to determine compliance with this chapter.

(G) Conducting or failing to conduct an onsite inspection does not impose liability on the City, a City officer or employee, or a City representative for damage to a person or property.

§ 6-4-7 ADMINISTRATIVE RULES.

(A) The director shall adopt administrative rules for the implementation of this chapter.

(B) Before the director may adopt or amend a nonemergency rule, the director shall present for consideration the proposed rule to the Water and Wastewater Commission and the Resource Management Commission. In cases of emergency rule adoption, the director shall present the rule to the Water and Wastewater Commission and the Resource Management Commission as soon as practicable following emergency rule adoption.

(C) The rules shall provide for designated outdoor water use days.

(D) The rules shall provide for a commercial facility irrigation evaluation program and will include provisions for the assessment and the collection of any associated fees.

(E) The rules shall provide water efficiency standards for vehicle washing equipment.

(F) The rules shall be available for inspection at the Austin Water Utility administrative offices during normal business hours.

(G) Austin Water Utility shall maintain records of Irrigation Inspectors holding AWU Authorized Irrigation Inspector status in accordance with rules adopted pursuant to this chapter.

ARTICLE II: WATER USE MANAGEMENT

Division 1: Regulated Activities

§ 6-4-10 FACILITES REGULATED.

(A) Effective January 1, 2013, the owner of a commercial, multi-family residential or City municipal facility situated on property equal to or greater than 1.0 acre in size shall obtain an evaluation of any permanently installed irrigation system conducted at

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a frequency prescribed by rules adopted pursuant to this chapter. The irrigation evaluation shall, at a minimum:
(1) be conducted by an AWU Authorized Irrigation Inspector;
(2) be documented on forms provided by Austin Water Utility; and
(3) verify that the irrigation system operating on the property is a properly permitted system that complies with all applicable requirements of this chapter, rules adopted pursuant to this chapter, and other applicable technical codes.

(B) Effective January 1, 2013, the operators of vehicle washing facilities shall provide an evaluation of all vehicle washing equipment conducted at a frequency prescribed by rules adopted pursuant to this chapter. The vehicle washing facility evaluation shall, at a minimum:
(1) be conducted by a licensed plumber of the vehicle washing facility's choice;
(2) be documented on forms provided by Austin Water Utility; and
(3) establish that the equipment is operating in compliance with equipment standards prescribed by rules adopted pursuant to this chapter.

(C) Restaurants, bars, and other commercial food or beverage establishments may not provide drinking water to customers unless a specific request is made by the customer for drinking water.

(D) Effective January 1, 2013, the owner or operator of a hotel, motel short term rental or other establishment that offers or provides lodging or rental accommodations for compensation shall offer a towel and linen reuse water conservation option to its lodgers, renters, or customers and maintain in each applicable guest room, suite, or property informational signage to communicate information relating to this requirement and to offer the opportunity for guest participation.

§ 6-4-11 GENERAL REGULATIONS.

(A) A person may not conduct a charity car wash unless it occurs at an authorized vehicle washing facility meeting the requirements of Section 6-4-10(B) (*Facilities Regulated*) utilizing only the equipment of the facility that complies with this chapter and any associated rules.
(B) A person may not use commercially operated cosmetic power/pressure washing equipment unless it is fitted with a water recycling unit and a spray nozzle using no more than 3.5 gallons of water per minute and employing a working trigger shut-off with a protective weep mechanism.
(C) A person may not operate an ornamental fountain unless the fountain utilizes recirculated water.

(D) A person may not engage in foundation watering unless the watering occurs on a designated outdoor water use day for the property during the irrigation time period prescribed by this chapter or by rule.

(E) Except for municipal uses associated with law enforcement or public health and safety, all new commercial developments or redevelopments located within 250 feet of a reclaimed water distribution line are required to obtain and utilize permitted connections to reclaimed water for irrigation, cooling, and other significant non-potable water uses.

(F) A person may not use potable water for roadway base preparation or dust abatement work, applications, or other activity on any project or at any location where reclaimed water is available within one mile of the location or project site if the use of nonpotable or reclaimed water will not jeopardize public or environmental health or safety, including the safety of the location or health and safety of the project workers or residents. A person using reclaimed or nonpotable water must do so in accordance with all applicable health, safety, and environmental regulations, and the rules adopted pursuant to this chapter.

§ 6-4-12 WATER WASTE PROHIBITED.

(A) The section prohibits the waste of water.

(B) A person may not:

(1) fail to repair a controllable leak, including but not limited to a broken sprinkler head, a broken pipe or a leaking valve; or

(2) operate an irrigation system with:

(a) a broken head; or

(b) a head that is out of adjustment and the arc of the spray head is over a street, parking area, or other impervious surface; or

(c) a head that is misting because of high water pressure; or

(3) allow water flow during irrigation that:

(a) runs, flows, or streams in a way that extends into a street, parking area, or other impervious surface for a distance of 50 feet or greater; or

(b) allows water to pond to a depth greater than 0.25 inch in a street, parking area, or on other impervious surfaces.

(C) It is an affirmative defense to a charge of a violation of Subsection (B) that the act or omission charged in the complaint occurred during necessary repair, testing, or calibration of a new or existing irrigation or plumbing system, that the person performing the system testing, repair, or calibration was present at the site at the time of the act or omission charged in the complaint, and that the irrigation or plumbing system and its testing, repair, or calibration work at issue complied at the time with all applicable regulations, permit and development approval requirements.

(D) It is an affirmative defense to a charge of a violation of Subsection (B)(1) that the property where the leak occurred has been officially accepted into a government-assisted housing repair program, the condition is within the scope of repairs the government has agreed to fund or repair, and the person charged with the violation or the property where the violation occurs is not in default of any obligation of the government-assistance housing repair program at the time of the violation charged.

§ 6-4-13 WATER CONSERVATION GUIDELINES.

(A) The director shall recommend and the city manager shall adopt water conservation guidelines that include:
(1) policies for compliance by city or other governmental departments; and
(2) the criteria for determining when a conservation stage takes effect or terminates.

(B) The city manager shall update the guidelines if the city manager determines that changed conditions of the city's water supply system, regulatory obligations, or other environmental or situational factors warrant or necessitate guideline adjustment.

(C) The city manager may order that the water use restrictions of *Drought Response Stage One Regulations, Drought Response Stage Two Regulations, Drought Response Stage Three Regulations, or Emergency Stage Four Regulations* take effect after determining that the order is necessary to protect the public health, safety, or welfare. The City Manager may base a conservation, drought, or emergency stage declaration or termination on any condition, occurrence, factor, or an assessment of all relevant circumstances that in the judgment of the City Manager support such action for any lawful purpose. The order is effective immediately following official public notice.

(D) Water use regulations of the Water Conservation Stage (Section 6-4-15) remain in effect until such time as the city manager orders termination of the stage in accordance with section 6-4-13(C), (*Water Use Guidelines)*. Unless a drought or emergency stage is expressly declared by order of the City Manager, water use regulations of the Water Conservation Stage (section 6-4-15) automatically resume by default immediately upon any ordered termination of any drought or emergency stage.

(E) Any outdoor water use subject to the provisions of this Chapter shall occur only on a day designated for the applicable water use activity, property/facility type, and street number address classification indicated in the following table. A person may not conduct, authorize, or permit outdoor water use except in accordance with the designation schedule set out in the following table. In the following table, “EVEN” or “ODD” correspond to the street number of the physical property address where the outdoor water use occurs. The table below shall be referred to as “the Outdoor Water Use Schedule”.

Conservation Stage and Drought Response Stage 1 Watering Schedule		
Commercial/ Multifamily	**Residential EVEN**	**Residential ODD**
Tuesday and/or Friday	Sunday and/or Thursday	Wednesday and/or Saturday

Drought Response Stage 2 and Drought Response Stage 3 Watering Schedule	
Property Type	**Watering Day**
Residential - Hose- End EVEN	Sunday
Public Schools	Monday
Commercial/Multi Family -Automatic EVEN	Tuesday
Residential - Automatic ODD	Wednesday
Residential - Automatic EVEN	Thursday
Commercial/Multi Family - Automatic ODD	Friday
Residential Property – Hose-end ODD	Saturday

(F) The director may order temporary modification or adjustment to the Outdoor Water Use Schedule in the event of an unusual water system operational event, catastrophic occurrence, severe weather event, or other emergency, disaster situation, or occurrence necessitating the adjustment. A temporary modification or adjustment to the Outdoor Water Use Schedule shall be effective immediately upon official public notice and shall continue in effect for a period not to exceed fifteen (15) consecutive days. The director shall provide official public notice of the date upon which any temporary modification or adjustment to the Outdoor Water Use Schedule expires and the standard Outdoor Water Use Schedule resumes.

(G) The director shall monitor the daily supply and demand for water and make recommendations to the city manager about whether or when to implement or terminate water use restrictions in accordance with the Drought Contingency Plan in

effect and kept on file with Austin Water Utility or when relevant to any other circumstances effecting continuity of service or public health, safety, or welfare.

§ 6-4-14 EXEMPTIONS.

(A) Exemptions under this subsection apply to Section 6-4-15 *(Water Conservation Stage)*, Section 6-4-16 *(Drought Response Stage One Regulations)*, Section 6-4-17 (*Drought Response Stage Two Regulations),* Section 6-4-18 (*Drought Response Stage Three Regulations)*, and Section 6-4-19 (*Emergency Stage Four Regulations*) and are:

(1) The use of water necessary to protect the health, safety, or welfare of the public;

(2) The use of reclaimed or auxiliary water that is not supplemented by or mixed with potable water supplied by Austin Water Utility;

(3) Necessary use of water for lawful repair of a water distribution facility, flushing of utility lines or residential or commercial plumbing lines;

(4) Necessary use of water, other than for landscape irrigation, for a governmental entity performing a governmental function, including a capital improvement construction project;

(5) Use of water, other than for landscape irrigation, necessary to meet express requirements of federal, state, or local permits related to land development that include but are not limited to roadway base preparation, dust control, maintenance of trees subject to preservation restrictions or requirements, concrete or asphalt work, or modification or construction of improvements;

(6) Necessary washing or sanitizing to prevent public health or disease transmission risk associated with liquid, solid, or particulate residue in or on vehicles, containers, or equipment lawfully used to maintain, process, or transport food, perishables, garbage, liquid or solid waste, organic materials, or recyclables; or

(7) Water use immediately necessary for or related to fire fighting, fire prevention, or fire suppression activity or operations conducted because of actual risk to public or environmental health, safety, or welfare, life, or property associated with the presence of an uncontrolled fire on or approaching any person or property.

(B) The following activities shall be exempt from the application of Section 6-4-15*(Water Conservation Stage)*, Section 6-4-16 *(Drought Response Stage One Regulations)*, Section 6-4-17 (*Drought Response Two Regulations), and* Section 6-4-18 (*Drought Response Stage Three Regulations)*:

(1) Outdoor irrigation:

(a) using a hand-held hose or refillable watering vessel;

(b) using drip irrigation;

(c) of trees using an automatic bubbler system or soaker hose placed within the drip-line of the tree canopy;

(d) of vegetable gardens using a soaker hose;
(e) of athletic fields used for organized sports practice, competition, or exhibition events when the irrigation is necessary to protect the health and safety of the players, staff, or officials present for the athletic event;
(f) immediately following a commercial lawn treatment application by an applicator who possesses required licensure as applicable for use of such substances including but not limited to fertilizer, pesticides, and herbicides, provided receipts documenting such application and the applicator's credentials are provided upon request to a designee of the director; or
(g) of plant material at a commercial nursery.

(2) Water use:
(a) necessary for repair or installation of a permanently installed landscape irrigation system when the person performing the irrigation work is present in the area of irrigation; or
(b) necessary for the repair, testing, or installation of an ornamental fountain when the person performing the testing, repair or installation is present.

(C) The following activities shall be exempt from the application of Section 6-4-15 (*Water Conservation Stage*), Section 6-4-16*(Drought Response Stage One Regulations)* requirements:
(1) Water use necessary to comply with federal, state, or local land development permits requiring the establishment of new landscaping; and
(2) Irrigation of areas documented on a City approved and released site plan as golf course fairways, greens, or tees.

§ 6-4-15 WATER CONSERVATION STAGE.

(A) This section prescribes water conservation regulations and applies during the periods prescribed by Section 6-4-13(D) (*Water Conservation Guidelines)*.
(B) A person may not irrigate outdoors at a residential facility or a commercial facility except on a designated outdoor water use day for the location as set forth in Section 6-4-13 (E) .
(C) A person may not irrigate outdoors at a residential facility or a commercial facility between the hours of 10:00 a.m. and 7:00 p.m., even if the irrigation occurs on a day designated by rules as the outdoor water use day for the location.
(D) A person may not operate a patio mister at a commercial facility except between the hours of 4:00 p.m. and midnight.

§ 6-4-16 DROUGHT RESPONSE STAGE ONE REGULATIONS.

(A) This section prescribes Drought Response Stage One regulations and applies during the periods prescribed by Section 6-4-13(C) (*Water Conservation Guidelines).*

(B) A person may not irrigate outdoors at a residential facility or a commercial facility except on a designated outdoor water use day for the location as set forth in Section 6-4-13 (E).

(C) A person may not irrigate outdoors at a residential facility or a commercial facility with an automatic irrigation system between the hours of 5:00 a.m. and 7:00 p.m., even if the irrigation occurs on a day designated by rule as the outdoor water use day for the location.

(D) A person may not irrigate outdoors at a residential facility or a commercial facility with a hose-end sprinkler system between the hours of 10:00 a.m. and 7:00 p.m., even if the irrigation occurs on a day designated by rule as the outdoor water use day for the location.

(E) A person may not operate a patio mister at a commercial facility except between the hours of 4:00 p.m. and midnight.

(F) A person may not use or allow the use of water to wash or rinse an automobile, truck, trailer, boat, airplane, motorcycle, or other mobile equipment or vehicle. A person commits a separate offense for each vehicle or piece of equipment washed in violation of the terms and conditions of this Subsection. It is an affirmative defense to a violation of this subsection that the water use occurred at a vehicle wash facility for the water use charged in the complaint.

§ 6-4-17 DROUGHT RESPONSE STAGE TWO REGULATIONS.

(A) This section prescribes Drought Response Stage Two Regulations and applies during any Stage Two period ordered by the city manager in accordance with Section 6-4-13(C) (*Water Conservation Guidelines*).

(B) A person may not irrigate outdoors at a residential facility or a commercial facility except on the designated outdoor water use day for the location as set forth in Section 6-4-13 (E).

(C) A person may not irrigate outdoors at a residential facility or a commercial facility with an automatic irrigation system between the hours of 5:00 a.m. and 7:00 p.m. even if the irrigation occurs on a day designated by rule as the outdoor water use day for the location.

(D) A person may not irrigate outdoors at a residential facility or a commercial facility with a hose-end sprinkler system between the hours of 10:00 a.m. and 7:00 p.m. even if the irrigation occurs on a day designated by rule as the outdoor water use day for the location.

(E) Operation of a charity car wash is prohibited. It is not a defense to a violation of this section that the charity car wash occurred on the designated outdoor water use day for the location as prescribed by rule.

(F) A person may not use or allow the use of water to wash or rinse an automobile, truck, trailer, boat, airplane, motorcycle, or other mobile equipment or vehicle. A person commits a separate offense for each vehicle or piece of equipment washed in violation of the terms and conditions of this Subsection. It is an affirmative defense to a violation of this subsection that the water use occurred at a vehicle wash facility for the water use charged in the complaint.

(G) A person may not irrigate a golf fairway unless the irrigation occurs between the hours of midnight and 5:00 a.m. or between the hours of 7:00 p.m. and midnight on the designated outdoor water use day applicable to the property. A person may irrigate a golf course green or tee every other day only if the irrigation of the location is consistent with a noticed exception establishing the schedule for the property submitted on forms required by Austin Water Utility and approved by the director.

(H) A person may not operate an ornamental fountain with an aerial emission of water or aerial fall of water greater than four inches other than for aeration necessary to preserve habitat for aquatic life.

(I) A person may not operate a patio mister at a commercial facility except between the hours of 4:00 p.m. until midnight.

§ 6-4-18 DROUGHT RESPONSE STAGE THREE REGULATIONS.

(A) This section prescribes Drought Response Stage Three Regulations and applies during a period ordered by the city manager in accordance with Section 6-4-13(C) (*Water Conservation Guidelines)*.

(B) A person may not irrigate outdoors at a residential facility or a commercial facility except on a designated outdoor water use day for the location as set forth in Section 6-4-13 (E).

(C) A person may not irrigate outdoors at a residential facility or a commercial facility with an automatic irrigation system between the hours of 6:00 a.m. and midnight even if the irrigation occurs on a day designated by rule as the outdoor water use day for the location.

(D) A person may not irrigate outdoors at a residential facility or a commercial facility with a hose-end sprinkler system except between the hours of 7:00 a.m. and 10:00 a.m. or between the hours of 7:00 p.m. and 10:00 p.m. even if the irrigation occurs on a day designated by rule as the outdoor water use day for the location.

(E) Operation of a charity car wash is prohibited. It is not a defense to a violation of this section that the charity car wash occurred on a designated outdoor water use day for the location as prescribed by rule.

(F) A person may not use or allow the use of water to wash or rinse an automobile, truck, trailer, boat, airplane, motorcycle, or other mobile equipment or vehicle. A person commits a separate offense for each vehicle or piece of equipment washed in violation of the terms and conditions of this Subsection. It is an affirmative defense

to a violation of this subsection that the water use occurred at a vehicle wash facility for the water use charged in the complaint.

(G) A person may not irrigate a golf fairway unless the irrigation occurs between the hours of midnight and 5:00 a.m. or between the hours of 7:00 p.m. and midnight on the designated outdoor water use day applicable to the property. A person may irrigate a golf course green or tee every other day only if the irrigation of the location is consistent with a noticed exception establishing the schedule for the property submitted on forms required by the Utility and approved by the director.

(H) The filling of spas is prohibited.

(I) A person may not operate a splash pad except during the hours and subject to the restrictions set forth in a rule adopted pursuant this chapter.

(J) A person may not operate a patio mister at a commercial facility except between the hours of 4:00 p.m. and 8:00 p.m.

(K) A person may not operate an ornamental fountain with an aerial emission of water or aerial fall of water greater than four inches in distance other than for aeration necessary to preserve habitat for aquatic life.

§ 6-4-19 EMERGENCY STAGE FOUR REGULATIONS

This section prescribes Emergency Stage Four Regulations and applies during a time period ordered by the city manager in accordance with Section 6-4-13(C) (*Water Conservation Guidelines).*

(A) A person may not use or allow the use of water to irrigate vegetation outdoors.

(B) A person may not use or allow the use of water to test or repair a permanently installed irrigation system or drip irrigation system.

(C) A person may not use or allow the use of water to wash or rinse an automobile, truck, trailer, boat, airplane, or other mobile equipment.

(D) A person may not use or allow the use of water to operate an ornamental fountain or structure making similar use of water, other than the aeration necessary to preserve habitat for aquatic life.

(E) A person may not use or allow the use of water to fill, clean, rinse, supplement, operate or maintain a tub, spa, fountain, pond, pool, or other container, feature, or improvement used, designed, maintained, or intended for aesthetic, athletic, or recreational purpose. This does not apply to the filling of non-aerating birdbaths or animal watering containers.

(F) A person may not operate a splash pad or other similar aesthetic or recreational use of water.

(G) A person may not use or allow the use of water to wash, rinse, or treat any outdoor surface including but not limited to a sidewalk, driveway, parking area, street, tennis court, patio, or other paved area or outdoor building surface.

(H) A person may not use or allow the use of water to operate a patio mister.

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(I) A person may not use or allow the use of water in or related to a chemical lawn treatment unless specifically authorized in accordance with Section 6-4-30(G)(2) (*Variance*).

(J) A person may not use or allow the use of water for watering the ground around a building foundation to prevent or address foundation cracking except as specifically authorized in accordance with Section 6-4-30(G)(1) (*Variance*).

Division 2. Additional Restrictions

§ 6-4-20 DIRECTOR'S AUTHORITY TO IMPOSE ADDITIONAL RESTRICTIONS.

(A) The director may implement mandatory water restrictions in addition to those prescribed by Article II, Division 1 (*Regulated Activities*) to protect public health, safety, welfare, infrastructure or available resources in the event of an unusual water system operational event, catastrophic occurrence, severe weather event, or other emergency, disaster situation, or occurrence necessitating additional restrictions.

(B) The director may require municipal wholesale customers to curtail water use on a pro rata basis, in accordance with Section 11.039 (*Distribution of Water During Shortage*) of the Texas Water Code and as determined by any rules or plans adopted pursuant to this chapter.

(C) The director may implement additional mandatory water use restriction effective immediately upon official public notice.

Division 3. Variances; Alternative Compliance.

§ 6-4-30 VARIANCE.

(A) The director may grant a variance from a requirement of this chapter if the director determines that special circumstances exist and that:

(1) strict compliance with the provisions at issue adversely affects the health, safety, welfare or sanitation of the public, the applicant, or the environment; or

(2) strict compliance with the provisions at issue substantially threatens the applicant's primary source of income, the applicant is employing all reasonable water conservation measures, and approval of the variance will not result in water waste.

(B) The director may not grant a variance from a requirement of this chapter based on an alleged adverse impact to the environment unless the applicant submits an

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environmental impact study, hydrological analysis, and additional data or documentation as required by the director to establish that the specific variance requested is necessary to avoid or mitigate a significant adverse impact on an endangered or listed protected plant, animal, or aquatic species or critical environmental feature present on the property or to maintain the traditional and natural character of a critical environmental feature.

(C) The director may grant a variance from a requirement of Section 6-4-15*(Water Conservation Stage)*, Section 6-4-16 *(Drought Response Stage One Regulations)*, Section 6-4-17 *(Drought Response Stage Two Regulations),* or Section 6-4-18 (*Drought Response Stage Three Regulations)* only if the applicant establishes at least one of the following:

(1) an AWU Authorized Irrigation Inspector has determined that, due to its site-specific conditions, a site cannot be watered with an average coverage of 0.5 inches within the time limits prescribed by this chapter; and as applicable, a current irrigation system evaluation required pursuant to Section 6-4-10(A) (*Facilities Regulated*) is on file with Austin Water Utility; or

(2) the property owner or operator has a documented medical hardship or qualifying disability that prevents the person's strict adherence to a requirement of this chapter; or

(3) watering in a manner or at a time inconsistent with a requirement of this chapter is necessary for treatment of tree diseases or for pest control prescribed by a licensed arborist or pest control professional.

(D)The director may grant a variance from a requirement of Section 6-4-15*(Water Conservation Stage)*, Section 6-4-16 *(Drought Response Stage One Regulations)*, for a newly installed landscape. If the landscape installation is required in order to obtain a certificate of occupancy for a newly constructed single family home, the applicant shall provide a completed notice to the director on the form provided by Austin Water at least one full business day before the landscape is installed.

(E) A variance granted under Subsection 6-4-30(D)(*Variance*) is subject to and shall include the following conditions:

(1) the applicant may water a newly installed landscape no more than 0.5 inches in one day; and

(2) watering of the newly installed landscape must comply with the following schedule:

(a) for the first 10 days after installation, watering is permitted daily;

(b) for the 11th through 20th day after installation, watering is permitted every other day before 10:00 a.m. and after 7:00 p.m.; and

(c) for the 21st through 30th day after installation, watering is permitted every third day before 10:00 a.m. and after 7:00 p.m.

(F)The director may grant a variance from a requirement of Section 6-4-15 (*Water Conservation Stage*), Section 6-4-16 (*Drought Response Stage One Regulations*),

Section 6-4-17 (*Drought Response Stage Two Regulations*) or Section 6-4-18 (*Drought Response Stage Three Regulations*) for a newly installed landscape if

(1) the new landscaping is classified as Xeriscape in accordance with this chapter; and

(2) irrigation for the establishment of the Xeriscaping complies with the following:

(a) for the first 10 days following installation, irrigation is permitted daily before 10:00 a.m. and after 7:00 p.m.; and

(b) for the 11th through the 40th day following installation, irrigation is permitted twice per week before 10:00 a.m. and after 7:00 p.m.; and

(c) if the landscape installation is required in order to obtain a certificate of occupancy for a newly constructed single family home, the applicant shall provide a completed notice of irrigation variance to the director on the form provided by Austin Water at least one full business day before the landscape is installed.

(3) A one-time extension of the approved variance may be granted by the director only upon the submittal by the applicant of a written request which demonstrates a clear need for the extension to establish the new landscaping.

(G)The director may grant a variance to Section 6-4-19 (*Emergency Stage Four Regulations)* when:

(1) Watering is required to prevent or address foundation cracking. A variance approved pursuant to this subsection will specify a designated day for foundation watering and shall require the foundation watering to occur before 7:00 a.m. or after 7:00 p.m.

(2) Watering is necessary for the prescribed treatment of tree diseases or for pest control.

(3) Irrigation of athletic fields when irrigation is necessary to protect the health and safety of players and game officials.

(H) The director may grant a variance from Section 6-4-11(E) if site conditions are such that compliance would present a significant financial hardship or health risk to the applicant or the public.

(I)A person may seek a variance by filing an application with the director and paying the associated fees established by separate rule. The director may require the applicant to provide information the director determines is necessary to evaluate the variance request. If the director approves a variance, the applicant shall keep a copy of the approval provided in a location on the subject property that is accessible and visible to the public.

(J) A variance approved by the director must comply with Section 6-4-12 (*Water Waste Prohibited*).

(K) A variance following its approval by the director may be immediately suspended or revoked by Austin Water Utility if the director or director's designee determines any of the following:

(1) a violation of the terms of the variance occurs at the location during the effective period of the variance;

(2) the application submitted to the director upon which the variance approval was based included false, misleading, incomplete, or inaccurate information or attachments or

(3) the director declares an emergency recall of variances to control use or preserve supply based on protracted drought, unusual operational event, or other public necessity.

§ 6-4-31 EXPIRATION OF VARIANCE.

A variance from a requirement of this chapter expires immediately upon the termination, completion, or resolution of the event, occurrence, condition, or activity for which the variance is granted or at a time specified by the director or director's designee.

§ 6-4-32 ALTERNATIVE COMPLIANCE.

(A) The director may permit a person to comply with alternative water use restrictions after determining that:

(1) the alternative compliance meets or exceeds the intent of this chapter;

(2) the alternative compliance is specifically requested by the applicant in writing and the request demonstrates how compliance will be achieved through the alternative methods; and,

(3) the alternative compliance is expressly approved by the director.

(B) Alternative compliance approved by the director must comply with Section 6-4-12 (*Water Waste Prohibited*).

(C) If the director approves alternative compliance water use restrictions, the applicant shall keep a copy of the approval in a location on the subject property that is accessible and visible to the public.

(D) Alternative compliance approved by the director may be suspended or revoked if the director finds any of the following:

(1) violation of a term or condition of the approved alternative compliance authorization;

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(2) false, misleading, incomplete, or inaccurate information or documentation was submitted by the applicant in connection with the alternative compliance request and approval; or
(3) emergency conditions or unusual operational event or weather situation requires immediate suspension or revocation of the approved alternative compliance.

ARTICLE 3: ENFORCEMENT.

§ 6-4-40 APPLICABILITY.

This article is applicable to all parts of this chapter

§ 6-4-41 PRESUMPTION OF VIOLATION.

A person in whose name a water service account is held is presumed to be responsible for a violation of this chapter that occurs at the water service account location.

§ 6-4-42 PENALTY

(A) A person commits an offense if the person directs, performs, authorizes, requests, allows, assists, facilitates, or permits an act prohibited by this chapter or fails to perform an act required by this chapter. Each instance of a violation of this chapter is a separate offense.

(B) An offense under this chapter may be enforced as an administrative violation as authorized by Texas Local Government Code Chapter 54 and all penalties related to administrative liability for such violations at the service location automatically added to the water service account pursuant to the approved fee schedule published by the director, or approved pursuant to Section 6-4-44 (*Non-Administrative Enforcement*), unless the account holder opts out of the automatic administrative fee additions to the account on a form provided by the director not later than January 1 of each year or within 30 days of establishing an account with Austin Water Utility, whichever is sooner.

(C) A person alleged to be in violation of a requirement of this chapter shall receive notice in writing that shall, at a minimum, contain:
(1) the name of the responsible person ;
(2) the address of the alleged violation;
(3) a description of the alleged violation;

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(4) notice of the administrative penalty assessment to the next monthly utility statement; and

(5) information on the appeal process.

(D) Notice shall be delivered via United States Postal Service first class mail or the customer's email address if the customer consents to service of such administrative assessment notices by email. Notice is presumed valid and received when forwarded to the postal or email address on file with Austin Water Utility for the water service account holder.

§ 6-4-43 ADMINISTRATIVE PROCESS

(A) A person appealing an enforcement action of Austin Water Utility may request an administrative review conducted by the director. A request for an administrative review must be made in writing to Austin Water Utility on or before the 20th day following the date of the notice of violation. The review shall take place on or before the 10th day following a request for appeal. The person shall be notified of Austin Water Utility's determination including the results of the review and instructions on how to request an administrative hearing.

(B) A person appealing an administrative review decision may request a hearing conducted by a hearing officer appointed by the city manager.

(1) The person must request the administrative hearing in writing to the director on or before the 10th day following notice of the administrative review determination.

(2) Not later than the 10th day following a request for an administrative hearing, Austin Water Utility shall provide the person with information as to the time and place of the hearing. If the person fails to appear at the hearing, the person will be considered to admit liability and will be charged accordingly.

(3) A person who is found by a hearing officer to be liable for a violation of this chapter may appeal the liability finding by filing a petition in municipal court no later than the 31st day after the date of the hearing officer's determination. An appeal does not stay enforcement and collection of the judgment unless the person, before filing the appeal, posts a bond with Austin Water Utility in an amount equal to the amount of the liability assessment plus the appeal fee.

(4) If upon hearing the appeal from the hearing officer's liability finding the municipal court affirms or substantially affirms the liability finding, the utility will retain the appeal fee and apply the bond to the liability assessment previously determined. If the municipal court reverses the

hearing officer's liability finding, the appeal fee and administrative assessment bond will be refunded to the account holder.

§ 6-4-44 NON-ADMINISTRATIVE ENFORCEMENT

(A) An offense under this chapter may alternatively be prosecuted in the Municipal Court as a Class C Misdemeanor:

(1) An offense that does not present a threat to health and safety or that is pled as a strict liability offense is subject to a fine of $500.00 or less. Proof of a culpable mental state is not required;

(2) An offense that presents a threat to the health and safety of a person or the general public that is committed with criminal negligence is subject to a fine not to exceed $2,000.00.

(B) Proof of a higher degree of culpability than criminal negligence constitutes proof of criminal negligence.

(C) Each day that a violation occurs or continues is a separate offense.

(D) Prosecution of an offense and enforcement of other remedies under this chapter are cumulative.

§6-4-45 SEVERABILITY

It is hereby declared to be the intention of the city that the sections, subsections, paragraphs, sentences, clauses, and phrases of this chapter are severable and, if any phrase, clause, sentence, paragraph, subsection or section of this chapter shall be revoked or declared unconstitutional or unlawful by the valid judgment or decree of any court of competent jurisdiction, such declaration shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsection and sections of this chapter, since the same would not have been enacted by the city without the incorporation into this chapter of any such phrase, clause, sentence, paragraph, subsection or section declared or determined unconstitutional or unlawful.

PART 3. This ordinance takes effect on _____, 2012.

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PASSED AND APPROVED

§
§
_____, 2012 § _____
Lee Leffingwell
Mayor

APPROVED: _____ **ATTEST:** _____
Karen M. Kennard
City Attorney

Shirley A. Gentry
City Clerk

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Responsible Att'y: Buchanan