

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 City Code Chapter 6-4 (*Water Conservation*) is repealed and replaced with a new Chapter 6-4 to read as follows: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

- 1 (3) **AUXILIARY WATER** means a water supply from a source other than
2 Austin Water Utility's potable water supply.
- 3 (4) **AWU AUTHORIZED IRRIGATION INSPECTOR** means an Irrigation
4 Inspector licensed by the Texas Commission on Environmental Quality who
5 has in addition both passed a director-approved class in landscape irrigation
6 and has been awarded Austin Water Utility (AWU) Authorized Irrigation
7 Inspector status in accordance with rules adopted pursuant to this chapter.
- 8 (5) **COMMERCIAL FACILITY** means a site with five or more dwelling units,
9 or a municipal, business, or industrial building and the associated
10 landscaping, but does not include the fairways, greens, or tees of a golf
11 course.
- 12 (6) **COMMERCIAL NURSERY** means a facility where plant nursery stock,
13 trees, seedlings, turf, shrubs, flowers, herbs, crops or other plant materials
14 are cultivated, grown, stored, or maintained prior to retail consumer,
15 installer, or reseller purchase, use, consumption, or installation of the
16 materials at any location other than the commercial nursery.
- 17 (7) **COMMON AREA** means an area held, designed, or designated for the
18 common use of the owners or occupants of a townhouse project, planned
19 unit development, apartment, condominium, mobile home park, or
20 subdivision.
- 21 (8) **COSMETIC POWER WASHING** means treatment or cleaning of a surface
22 with specialized equipment that uses a spray of or directed water for the
23 cosmetic cleaning of buildings, vehicles or other mobile equipment, or
24 outdoor surfaces. It does not include industrial cleaning, cleaning associated
25 with manufacturing activities, hazardous or toxic waste cleaning, or cleaning
26 necessary to remove graffiti.
- 27 (9) **DESIGNATED OUTDOOR WATER USE DAY** means the day prescribed
28 by rule on which a person is permitted to irrigate outdoors.
- 29 (10) **DIRECTOR** means the Director of the Austin Water Utility and includes a
30 person the Director has designated to administer or perform any task, duty,
31 function, role, or action related to this Chapter or on behalf of the Director.
- 32 (11) **DRIP IRRIGATION** means a method of irrigation which is typically
33 installed below ground and consists of porous piping that allows the
34 application of water at a slow and constant rate.
- 35 (12) **DROUGHT CONTINGENCY PLAN** means a strategy or combination of
36 strategies for temporary supply management and demand management
37 responses to temporary and potentially recurring water supply shortages and
38 other water supply emergencies required by Texas Administrative Code
39 Title 30, Chapter 288, Subchapter B.

- 1 (13) FOUNDATION WATERING means an application of water to the soils
2 directly abutting the foundation of a building, structure, or improvement on
3 land.
- 4 (14) HOSE-END SPRINKLER means an above-ground water distribution device
5 that may be attached to a garden hose.
- 6 (15) MULTI-FAMILY PROPERTY means property containing five or more
7 dwelling units.
- 8 (16) GOVERNMENT PROPERTY means property owned or operated by a
9 federal, state, or local governmental unit, entity, agency, or subdivision for a
10 public purpose.
- 11 (17) NEW LANDSCAPE means vegetation:
12 (a) installed at the time of the construction of a residential or commercial
13 facility;
14 (b) installed as part of a governmental entity's capital improvement
15 project;
16 (c) installed to stabilize an area disturbed by construction; or
17 (d) that alters more than 500 contiguous square feet of an existing
18 landscape.
- 19 (18) ORNAMENTAL FOUNTAIN means an artificially created structure from
20 which a jet, stream, or flow of water emanates and is not utilized for the
21 preservation of aquatic life.
- 22 (19) PERMANENTLY INSTALLED IRRIGATION SYSTEM means a custom-
23 made, site-specific system of delivering water generally for landscape
24 irrigation via a system of pipes or other conduits installed below ground.
25 These systems may integrate or utilize PVC pipe for water distribution.
- 26 (20) PERSON means any natural person or legal entity such as an individual,
27 business, partnership, association, firm, corporation, governmental, or other
28 natural, business, or legal entity that receives, requests, manages, uses,
29 maintains, or is responsible for water utility service at a service address,
30 whether or not the person or entity is a customer or account holder of the
31 Austin Water Utility.
- 32 (21) PREMISE means the outdoor area of property not enclosed by fencing or
33 walls or containing living areas, or areas for storing vehicles or other
34 motorized equipment.
- 35 (22) RECLAIMED WATER means reclaimed municipal wastewater that is under
36 the direct control of the City treatment plants, satellite facilities, or a
37 treatment plant with which the City contracts, and that has been treated to a
38 quality that meets or exceeds the minimum standards of the 30 Texas
39 Administrative Code, Chapter 210.
- 40 (23) RESIDENTIAL FACILITY means a site with four or fewer dwelling units.

- 1 (24) SOAKER HOSE means a perforated or permeable garden-type hose or pipe
2 that is laid above ground that provides irrigation at a slow and constant rate.
- 3 (25) TEMPORARILY INSTALLED IRRIGATION SYSTEM means a
4 universally-applicable above ground irrigation system that commonly uses a
5 flexible hose or hardened pipe to deliver water to a moveable water
6 distribution device.
- 7 (26) THE UTILITY means the Austin Water Utility.
- 8 (27) VEHICLE WASH FACILITY means a permanently-located business that
9 washes vehicles or other mobile equipment with water or water-based
10 products, including but not limited to self-service car washes, full service car
11 washes, roll-over/in-bay style car washes, and facilities managing vehicle
12 fleets or vehicle inventory.
- 13 (28) XERISCAPE means a landscape which employs certain principles of design
14 and installation which conserve water and energy and where the plant
15 material, at mature growth, will provide, minimally, 50% of the new
16 landscape's areal coverage. The plant material must consist of plants taken
17 from a plant list provided by Austin Water Utility and identified as very low
18 water usage and low water usage plants. The plant list may be amended as
19 needed.
20

21 **§ 6-4-3 APPLICABILITY OF REGULATIONS; AFFIRMATIVE DEFENSES.**

- 22 (A) Except for reclaimed water, this chapter applies to a person who uses, directs,
23 manages, or allows the use of potable water supplied by Austin Water Utility.
24 Auxiliary water or reclaimed water which is mixed with or supplemented by
25 potable water supplied by Austin Water Utility is also subject to the regulatory
26 authority of this chapter.
- 27 (B) It is an affirmative defense to a violation of this chapter that the use of water that
28 gave rise to the violation was consistent with the agreed upon terms and conditions
29 of a water service contract with a wholesale water customer and that the use did
30 not constitute water waste.
- 31 (C) It is an affirmative defense to a violation of this chapter that the use of water that
32 gave rise to the violation properly utilized solely reclaimed water, did not endanger
33 public health, safety, or property, and did not constitute water waste.
- 34 (D) It is an affirmative defense to a violation of this chapter that the act or omission
35 that gave rise to the violation occurred solely because a documented emergency
36 that prevented strict compliance, and that the act or omission did not disrupt the

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

3 **§ 6-4-4 COMPLIANCE REQUIRED.**

4 A person may not use or permit the use of water in a manner that conflicts with the
5 requirements of this chapter or in an amount greater than permitted by this chapter.
6

7 **§ 6-4-5 FEES AND CHARGES.**

- 8
- 9 (A) Fees and charges assessed pursuant to this chapter shall be set by City Council
10 under a separate ordinance or, where permitted, by the director by rule.
 - 11 (B) Fees and charges associated with enforcement of this chapter shall be clearly
12 identified on the customer's utility billing invoice or on the order assessing the fee
13 or charge, except as where otherwise provided by local ordinance or adopted rule.
14

15 **§ 6-4-6 INSPECTIONS AND RIGHT OF ENTRY.**

- 16
- 17 (A) The Director or director's designee may:
 - 18 (1) conduct an inspection of any property, equipment or improvement to determine
19 compliance with this chapter; and
 - 20 (2) require an owner, occupant, operator, manager, or user of a property, equipment,
21 or improvement to correct a violation of this chapter.
 - 22 (B) The Director or director's designee may enter a commercial facility or premise to
23 inspect the facility upon probable cause that a violation of this chapter may have
24 occurred at the location, provided the Director or designee:
 - 25 (1) presents official identification to an employee of the facility and expressly
26 requests entry to inspect; and
 - 27 (2) informs the employee of the facility of this section; or
 - 28 (3) makes a reasonable effort to locate the owner of unoccupied property to request
29 entry; or
 - 30 (4) limits the inspection of commercial properties not opened for business at the time
31 of inspection to areas accessible by the public during periods of business closure.
 - 32 (C) An inspection of a residential property shall be conducted from:
 - 33 (1) areas accessible to the general public; or
 - 34 (2) a restricted access area only after the Director or director's designee has
35 presented official identification to the property manager, owner, occupant, or
36 other representative, and obtained consent to enter a restricted access area.
 - 37 (D) If consent for entry necessary to conduct an inspection to determine compliance with
38 this chapter is required but denied, withdrawn, limited, or impaired, the Director or

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

- 3 (E) An employee may enter onto a privately owned common area for the purposes of
4 conducting inspections. The designee may seek recourse to available law to obtain
5 entry into areas with restricted access.
- 6 (F) A person seeking a variance pursuant to Article II, Division 3 (*Variances: Alternative*
7 *Compliance*) or participation in an Austin Water Utility Conservation Program
8 provides a designee of the director the right to enter the subject premise to conduct
9 inspections and investigations necessary to determine compliance with this chapter.
- 10 (G) Conducting or failing to conduct an onsite inspection does not impose liability on
11 the City, a City officer or employee, or a City representative for damage to a person
12 or property.

13
14 **§ 6-4-7 ADMINISTRATIVE RULES.**

- 15
16 (A) The director shall adopt administrative rules for the implementation of this chapter.
- 17 (B) Before the director may adopt or amend a nonemergency rule, the director shall
18 present for consideration the proposed rule to the Water and Wastewater
19 Commission and the Resource Management Commission. In cases of emergency
20 rule adoption, the director shall present the rule to the Water and Wastewater
21 Commission and the Resource Management Commission as soon as practicable
22 following emergency rule adoption.
- 23 (C) The rules shall provide for designated outdoor water use days.
- 24 (D) The rules shall provide for a commercial facility irrigation evaluation program and
25 will include provisions for the assessment and the collection of any associated fees.
- 26 (E) The rules shall provide water efficiency standards for vehicle washing equipment.
- 27 (F) The rules shall be available for inspection at the Austin Water Utility
28 administrative offices during normal business hours.
- 29 (G) Austin Water Utility shall maintain records of Irrigation Inspectors holding AWU
30 Authorized Irrigation Inspector status in accordance with rules adopted pursuant to
31 this chapter.

32
33 **ARTICLE II: WATER USE MANAGEMENT**

34
35 **Division 1: Regulated Activities**

36
37 **§ 6-4-10 FACILITIES REGULATED.**

- 38
39 (A) Effective January 1, 2013, the owner of a commercial, multi-family residential or
40 City municipal facility situated on property equal to or greater than 1.0 acre in size
41 shall obtain an evaluation of any permanently installed irrigation system conducted at

1 a frequency prescribed by rules adopted pursuant to this chapter. The irrigation
2 evaluation shall, at a minimum:

- 3 (1) be conducted by an AWU Authorized Irrigation Inspector;
- 4 (2) be documented on forms provided by Austin Water Utility; and
- 5 (3) verify that the irrigation system operating on the property is a properly permitted
6 system that complies with all applicable requirements of this chapter, rules adopted
7 pursuant to this chapter, and other applicable technical codes.

8
9 (B) Effective January 1, 2013, the operators of vehicle washing facilities shall provide an
10 evaluation of all vehicle washing equipment conducted at a frequency prescribed by
11 rules adopted pursuant to this chapter. The vehicle washing facility evaluation shall, at
12 a minimum:

- 13 (1) be conducted by a licensed plumber of the vehicle washing facility's choice;
- 14 (2) be documented on forms provided by Austin Water Utility; and
- 15 (3) establish that the equipment is operating in compliance with equipment standards
16 prescribed by rules adopted pursuant to this chapter.

17
18 (C) Restaurants, bars, and other commercial food or beverage establishments may not
19 provide drinking water to customers unless a specific request is made by the customer
20 for drinking water.

21
22 (D) Effective January 1, 2013, the owner or operator of a hotel, motel short term rental or
23 other establishment that offers or provides lodging or rental accommodations for
24 compensation shall offer a towel and linen reuse water conservation option to its
25 lodgers, renters, or customers and maintain in each applicable guest room, suite, or
26 property informational signage to communicate information relating to this
27 requirement and to offer the opportunity for guest participation.

28 29 **§ 6-4-11 GENERAL REGULATIONS.**

30
31 (A) A person may not conduct a charity car wash unless it occurs at an authorized vehicle
32 washing facility meeting the requirements of Section 6-4-10(B) (*Facilities*
33 *Regulated*) utilizing only the equipment of the facility that complies with this chapter
34 and any associated rules.

35 (B) A person may not use commercially operated cosmetic power/pressure washing
36 equipment unless it is fitted with a water recycling unit and a spray nozzle using no
37 more than 3.5 gallons of water per minute and employing a working trigger shut-off
38 **with a protective weep mechanism.**

39 (C) A person may not operate an ornamental fountain unless the fountain utilizes
40 recirculated water.

- 1 (D) A person may not engage in foundation watering unless the watering occurs on a
2 designated outdoor water use day for the property during the irrigation time period
3 prescribed by this chapter or by rule.
- 4 (E) Except for municipal uses associated with law enforcement or public health and
5 safety, all new commercial developments or redevelopments located within 250 feet
6 of a reclaimed water distribution line are required to obtain and utilize permitted
7 connections to reclaimed water for irrigation, cooling, and other significant non-
8 potable water uses.
- 9 (F) A person may not use potable water for roadway base preparation or dust abatement
10 work, applications, or other activity on any project or at any location where reclaimed
11 water is available within one mile of the location or project site if the use of
12 nonpotable or reclaimed water will not jeopardize public or environmental health or
13 safety, including the safety of the location or health and safety of the project workers
14 or residents. A person using reclaimed or nonpotable water must do so in accordance
15 with all applicable health, safety, and environmental regulations, and the rules adopted
16 pursuant to this chapter.

17
18 **§ 6-4-12 WATER WASTE PROHIBITED.**

- 19 (A) The section prohibits the waste of water.
- 20 (B) A person may not:
- 21 (1) fail to repair a controllable leak, including but not limited to a broken
22 sprinkler head, a broken pipe or a leaking valve; or
- 23 (2) operate an irrigation system with:
- 24 (a) a broken head; or
- 25 (b) a head that is out of adjustment and the arc of the spray head is
26 over a street, parking area, or other impervious surface; or
- 27 (c) a head that is misting because of high water pressure; or
- 28 (3) allow water flow during irrigation that:
- 29 (a) runs, flows, or streams in a way that extends into a street, parking
30 area, or other impervious surface for a distance of 50 feet or greater;
31 or
- 32 (b) allows water to pond to a depth greater than 0.25 inch in a street,
33 parking area, or on other impervious surfaces.
- 34 (C) It is an affirmative defense to a charge of a violation of Subsection (B) that the act or
35 omission charged in the complaint occurred during necessary repair, testing, or
36 calibration of a new or existing irrigation or plumbing system, that the person
37 performing the system testing, repair, or calibration was present at the site at the time
38 of the act or omission charged in the complaint, and that the irrigation or plumbing
39 system and its testing, repair, or calibration work at issue complied at the time with
40 all applicable regulations, permit and development approval requirements.

1 (D) It is an affirmative defense to a charge of a violation of Subsection (B)(1) that the
2 property where the leak occurred has been officially accepted into a government-
3 assisted housing repair program, the condition is within the scope of repairs the
4 government has agreed to fund or repair, and the person charged with the violation or
5 the property where the violation occurs is not in default of any obligation of the
6 government-assistance housing repair program at the time of the violation charged.
7

8 **§ 6-4-13 WATER CONSERVATION GUIDELINES.**
9

- 10 (A) The director shall recommend and the city manager shall adopt water conservation
11 guidelines that include:
12 (1) policies for compliance by city or other governmental departments; and
13 (2) the criteria for determining when a conservation stage takes effect or
14 terminates.
- 15 (B) The city manager shall update the guidelines if the city manager determines that
16 changed conditions of the city's water supply system, regulatory obligations, or other
17 environmental or situational factors warrant or necessitate guideline adjustment.
- 18 (C) The city manager may order that the water use restrictions of *Drought Response*
19 *Stage One Regulations, Drought Response Stage Two Regulations, Drought*
20 *Response Stage Three Regulations, or Emergency Stage Four Regulations* take effect
21 after determining that the order is necessary to protect the public health, safety, or
22 welfare. The City Manager may base a conservation, drought, or emergency stage
23 declaration or termination on any condition, occurrence, factor, or an assessment of
24 all relevant circumstances that in the judgment of the City Manager support such
25 action for any lawful purpose. The order is effective immediately following official
26 public notice.
- 27 (D) Water use regulations of the Water Conservation Stage (Section 6-4-15) remain in
28 effect until such time as the city manager orders termination of the stage in
29 accordance with section 6-4-13(C), (*Water Use Guidelines*). Unless a drought or
30 emergency stage is expressly declared by order of the City Manager, water use
31 regulations of the Water Conservation Stage (section 6-4-15) automatically resume
32 by default immediately upon any ordered termination of any drought or emergency
33 stage.
- 34 (E) The director shall monitor the daily supply and demand for water and make
35 recommendations to the city manager about whether or when to implement or
36 terminate water use restrictions in accordance with the Drought Contingency Plan in
37 effect and kept on file with Austin Water Utility or when relevant to any other
38 circumstances effecting continuity of service or public health, safety, or welfare.
39

40 **§ 6-4-14 EXEMPTIONS.**
41

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

- 6 (1) The use of water necessary to protect the health, safety, or welfare of the public;
- 7 (2) The use of reclaimed or auxiliary water that is not supplemented by or mixed with
8 potable water supplied by Austin Water Utility;
- 9 (3) Necessary use of water for lawful repair of a water distribution facility, flushing of
10 utility lines or residential or commercial plumbing lines;
- 11 (4) Necessary use of water, other than for landscape irrigation, for a governmental
12 entity performing a governmental function, including a capital improvement
13 construction project;
- 14 (5) Use of water, other than for landscape irrigation, necessary to meet express
15 requirements of federal, state, or local permits related to land development that
16 include but are not limited to roadway base preparation, dust control, maintenance
17 of trees subject to preservation restrictions or requirements, concrete or asphalt
18 work, or modification or construction of improvements;
- 19 (6) Necessary washing or sanitizing to prevent public health or disease transmission
20 risk associated with liquid, solid, or particulate residue in or on vehicles,
21 containers, or equipment lawfully used to maintain, process, or transport food,
22 perishables, garbage, liquid or solid waste, organic materials, or recyclables; or
23 (7) Water use immediately necessary for or related to fire fighting, fire prevention, or
24 fire suppression activity or operations conducted because of actual risk to public or
25 environmental health, safety, or welfare, life, or property associated with the
26 presence of an uncontrolled fire on or approaching any person or property.
27

28 (B) The following activities shall be exempt from the application of Section 6-4-
29 15(*Water Conservation Stage*), Section 6-4-16 (*Drought Response Stage One*
30 *Regulations*), Section 6-4-17 (*Drought Response Two Regulations*), and Section 6-4-
31 18 (*Drought Response Stage Three Regulations*):

32 (1) Outdoor irrigation:

- 33 (a) using a hand-held hose or refillable watering vessel;
- 34 (b) using drip irrigation;
- 35 (c) of trees using an automatic bubbler system or soaker hose placed within
36 the drip-line of the tree canopy;
- 37 (d) of vegetable gardens using a soaker hose;
- 38 (e) of athletic fields used for organized sports practice, competition, or
39 exhibition events when the irrigation is necessary to protect the health
40 and safety of the players, staff, or officials present for the athletic event;

1 (f) immediately following a commercial lawn treatment application by an
2 applicator who possesses required licensure as applicable for use of such
3 substances including but not limited to fertilizer, pesticides, and
4 herbicides, provided receipts documenting such application and the
5 applicator's credentials are provided upon request to a designee of the
6 director; or

7 (g) of plant material at a commercial nursery.

8 (2) Water use:

9 (a) necessary for repair or installation of a permanently installed landscape
10 irrigation system when the person performing the irrigation work is
11 present in the area of irrigation; or

12 (b) necessary for the repair, testing, or installation of an ornamental fountain
13 when the person performing the testing, repair or installation is present.
14

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

18 (1) Water use necessary to comply with federal, state, or local land development
19 permits requiring the establishment of new landscaping; and

20 (2) Irrigation of areas documented on a City approved and released site plan as golf
21 course fairways, greens, or tees.
22

23 **§ 6-4-15 WATER CONSERVATION STAGE.**

24
25 (A) This section prescribes water conservation regulations and applies during the periods
26 prescribed by Section 6-4-13(D) (*Water Conservation Guidelines*).

27 (B) A person may not irrigate outdoors at a residential facility or a commercial facility
28 except on a designated outdoor water use day for the location as set forth in a rule
29 adopted pursuant this chapter

30 (C) A person may not irrigate outdoors at a residential facility or a commercial facility
31 between the hours of 10:00 a.m. and 7:00 p.m., even if the irrigation occurs on a day
32 designated by rules as the outdoor water use day for the location.

33 (D) A person may not operate a patio mister at a commercial facility except between the
34 hours of 4:00 p.m. and midnight.
35

36 **§ 6-4-16 DROUGHT RESPONSE STAGE ONE REGULATIONS.**

37
38 (A) This section prescribes Drought Response Stage One regulations and applies during
39 the periods prescribed by Section 6-4-13(C) (*Water Conservation Guidelines*).

- 1 (B) A person may not irrigate outdoors at a residential facility or a commercial facility
2 except on a designated outdoor water use day for the location as set forth in a rule
3 adopted pursuant this chapter.
- 4 (C) A person may not irrigate outdoors at a residential facility or a commercial facility
5 with an automatic irrigation system between the hours of 5:00 a.m. and 7:00 p.m.,
6 even if the irrigation occurs on a day designated by rule as the outdoor water use day
7 for the location.
- 8 (D) A person may not irrigate outdoors at a residential facility or a commercial facility
9 with a hose-end sprinkler system between the hours of 10:00 a.m. and 7:00 p.m.,
10 even if the irrigation occurs on a day designated by rule as the outdoor water use day
11 for the location.
- 12 (E) A person may not operate a patio mister at a commercial facility except between the
13 hours of 4:00 p.m. and midnight.
- 14 (F) A person may not use or allow the use of water to wash or rinse an automobile, truck,
15 trailer, boat, airplane, motorcycle, or other mobile equipment or vehicle. A person
16 commits a separate offense for each vehicle or piece of equipment washed in
17 violation of the terms and conditions of this Subsection. It is an affirmative defense
18 to a violation of this subsection that the water use occurred at a vehicle wash facility
19 for the water use charged in the complaint.

20
21 **§ 6-4-17 DROUGHT RESPONSE STAGE TWO REGULATIONS.**

- 22
- 23 (A) This section prescribes Drought Response Stage Two Regulations and applies during
24 any Stage Two period ordered by the city manager in accordance with Section 6-4-
25 13(C) (*Water Conservation Guidelines*).
- 26 (B) A person may not irrigate outdoors at a residential facility or a commercial facility
27 except on the designated outdoor water use day for the location as determined by
28 rules adopted pursuant to this chapter.
- 29 (C) A person may not irrigate outdoors at a residential facility or a commercial facility
30 with an automatic irrigation system between the hours of 5:00 a.m. and 7:00 p.m.
31 even if the irrigation occurs on a day designated by rule as the outdoor water use day
32 for the location.
- 33 (D) A person may not irrigate outdoors at a residential facility or a commercial facility
34 with a hose-end sprinkler system between the hours of 10:00 a.m. and 7:00 p.m. even
35 if the irrigation occurs on a day designated by rule as the outdoor water use day for
36 the location.
- 37 (E) Operation of a charity car wash is prohibited. It is not a defense to a violation of this
38 section that the charity car wash occurred on the designated outdoor water use day for
39 the location as prescribed by rule.
- 40 (F) A person may not use or allow the use of water to wash or rinse an automobile, truck,
41 trailer, boat, airplane, motorcycle, or other mobile equipment or vehicle. A person

1 commits a separate offense for each vehicle or piece of equipment washed in
2 violation of the terms and conditions of this Subsection. It is an affirmative defense
3 to a violation of this subsection that the water use occurred at a vehicle wash facility
4 for the water use charged in the complaint.

- 5 (G) A person may not irrigate a golf fairway unless the irrigation occurs between the
6 hours of midnight and 5:00 a.m. or between the hours of 7:00 p.m. and midnight on
7 the designated outdoor water use day applicable to the property. A person may
8 irrigate a golf course green or tee every other day only if the irrigation of the location
9 is consistent with a noticed exception establishing the schedule for the property
10 submitted on forms required by Austin Water Utility and approved by the director.
- 11 (H) A person may not operate an ornamental fountain with an aerial emission of water or
12 aerial fall of water greater than four inches other than for aeration necessary to
13 preserve habitat for aquatic life.
- 14 (I) A person may not operate a patio mister at a commercial facility except between the
15 hours of 4:00 p.m. until midnight.

16
17 **§ 6-4-18 DROUGHT RESPONSE STAGE THREE REGULATIONS.**

- 18
19 (A) This section prescribes Drought Response Stage Three Regulations and applies
20 during a period ordered by the city manager in accordance with Section 6-4-13(C)
21 (*Water Conservation Guidelines*).
- 22 (B) A person may not irrigate outdoors at a residential facility or a commercial facility
23 except on a designated outdoor water use day for the location as determined by rules
24 adopted pursuant to this chapter.
- 25 (C) A person may not irrigate outdoors at a residential facility or a commercial facility
26 with an automatic irrigation system between the hours of 6:00 a.m. and midnight
27 even if the irrigation occurs on a day designated by rule as the outdoor water use day
28 for the location.
- 29 (D) A person may not irrigate outdoors at a residential facility or a commercial facility
30 with a hose-end sprinkler system except between the hours of 7:00 a.m. and 10:00
31 a.m. or between the hours of 7:00 p.m. and 10:00 p.m. even if the irrigation occurs on
32 a day designated by rule as the outdoor water use day for the location.
- 33 (E) Operation of a charity car wash is prohibited. It is not a defense to a violation of this
34 section that the charity car wash occurred on a designated outdoor water use day for
35 the location as prescribed by rule.
- 36 (F) A person may not use or allow the use of water to wash or rinse an automobile,
37 truck, trailer, boat, airplane, motorcycle, or other mobile equipment or vehicle. A
38 person commits a separate offense for each vehicle or piece of equipment washed in
39 violation of the terms and conditions of this Subsection. It is an affirmative defense
40 to a violation of this subsection that the water use occurred at a vehicle wash facility
41 for the water use charged in the complaint.

- 1 (G) A person may not irrigate a golf fairway unless the irrigation occurs between the
2 hours of midnight and 5:00 a.m. or between the hours of 7:00 p.m. and midnight on
3 the designated outdoor water use day applicable to the property. A person may
4 irrigate a golf course green or tee every other day only if the irrigation of the location
5 is consistent with a noticed exception establishing the schedule for the property
6 submitted on forms required by the Utility and approved by the director.
- 7 (H) The filling of spas is prohibited.
- 8 (I) A person may not operate a splash pad except during the hours and subject to the
9 restrictions set forth in a rule adopted pursuant this chapter.
- 10 (J) A person may not operate a patio mister at a commercial facility except between the
11 hours of 4:00 p.m. and 8:00 p.m.
- 12 (K) A person may not operate an ornamental fountain with an aerial emission of water or
13 aerial fall of water greater than four inches in distance other than for aeration
14 necessary to preserve habitat for aquatic life.

15
16 **§ 6-4-19 EMERGENCY STAGE FOUR REGULATIONS**

17
18 This section prescribes Emergency Stage Four Regulations and applies during a time
19 period ordered by the city manager in accordance with Section 6-4-13(C) (*Water*
20 *Conservation Guidelines*).

- 21 (A) A person may not use or allow the use of water to irrigate vegetation outdoors.
- 22 (B) A person may not use or allow the use of water to test or repair a permanently
23 installed irrigation system or drip irrigation system.
- 24 (C) A person may not use or allow the use of water to wash or rinse an automobile,
25 truck, trailer, boat, airplane, or other mobile equipment.
- 26 (D) A person may not use or allow the use of water to operate an ornamental fountain
27 or structure making similar use of water, other than the aeration necessary to
28 preserve habitat for aquatic life.
- 29 (E) A person may not use or allow the use of water to fill, clean, rinse, supplement,
30 operate or maintain a tub, spa, fountain, pond, pool, or other container, feature, or
31 improvement used, designed, maintained, or intended for aesthetic, athletic, or
32 recreational purpose. This does not apply to the filling of non-aerating birdbaths or
33 animal watering containers.
- 34 (F) A person may not operate a splash pad or other similar aesthetic or recreational use
35 of water.
- 36 (G) A person may not use or allow the use of water to wash, rinse, or treat any outdoor
37 surface including but not limited to a sidewalk, driveway, parking area, street,
38 tennis court, patio, or other paved area or outdoor building surface.
- 39 (H) A person may not use or allow the use of water to operate a patio mister.

- 1 (I) A person may not use or allow the use of water in or related to a chemical lawn
2 treatment unless specifically authorized in accordance with Section 6-4-30(G)(2)
3 (*Variance*).
- 4 (J) A person may not use or allow the use of water for watering the ground around a
5 building foundation to prevent or address foundation cracking except as specifically
6 authorized in accordance with Section 6-4-30(G)(1) (*Variance*).
- 7
8

9 **Division 2. Additional Restrictions**

10
11 **§ 6-4-20 DIRECTOR'S AUTHORITY TO IMPOSE ADDITIONAL**
12 **RESTRICTIONS.**

- 13
14 (A) The director may implement mandatory water restrictions in addition to those
15 prescribed by Article II, Division 1 (*Regulated Activities*) to protect public health,
16 safety, welfare, infrastructure or available resources in the event of an unusual
17 water system operational event, catastrophic occurrence, severe weather event, or
18 other emergency, disaster situation, or occurrence necessitating additional
19 restrictions.
- 20 (B) The director may require municipal wholesale customers to curtail water use on a
21 pro rata basis, in accordance with Section 11.039 (*Distribution of Water During*
22 *Shortage*) of the Texas Water Code and as determined by any rules or plans
23 adopted pursuant to this chapter.
- 24 (C) The director may implement additional mandatory water use restriction
25 effective immediately upon official public notice.
- 26
27

28 **Division 3. Variances; Alternative Compliance.**

29
30 **§ 6-4-30 VARIANCE.**

- 31 (A) The director may grant a variance from a requirement of this chapter if the director
32 determines that special circumstances exist and that:
- 33 (1) strict compliance with the provisions at issue adversely affects the health,
34 safety, welfare or sanitation of the public, the applicant, or the environment;
35 or
- 36 (2) strict compliance with the provisions at issue substantially threatens the
37 applicant's primary source of income, the applicant is employing all
38 reasonable water conservation measures, and approval of the variance will
39 not result in water waste.
- 40 (B) The director may not grant a variance from a requirement of this chapter based on
41 an alleged adverse impact to the environment unless the applicant submits an

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

6 (C) The director may grant a variance from a requirement of Section 6-4-15(*Water*
7 *Conservation Stage*), Section 6-4-16 (*Drought Response Stage One Regulations*), Section
8 6-4-17 (*Drought Response Stage Two Regulations*), or Section 6-4-18 (*Drought*
9 *Response Stage Three Regulations*) only if the applicant establishes at least one of the
10 following:

- 11 (1) an AWU Authorized Irrigation Inspector has determined that, due to its site-
12 specific conditions, a site cannot be watered with an average coverage of 0.5
13 inches within the time limits prescribed by this chapter; and as applicable, a
14 current irrigation system evaluation required pursuant to Section 6-4-10(A)
15 (*Facilities Regulated*) is on file with Austin Water Utility; or
- 16 (2) the property owner or operator has a documented medical hardship or
17 qualifying disability that prevents the person's strict adherence to a requirement
18 of this chapter; or
- 19 (3) watering in a manner or at a time inconsistent with a requirement of this
20 chapter is necessary for treatment of tree diseases or for pest control prescribed
21 by a licensed arborist or pest control professional.

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

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

- 30 (1) the applicant may water a newly installed landscape no more than 0.5 inches
31 in one day; and
- 32 (2) watering of the newly installed landscape must comply with the following
33 schedule:
 - 34 (a) for the first 10 days after installation, watering is permitted daily;
 - 35 (b) for the 11th through 20th day after installation, watering is permitted
36 every other day before 10:00 a.m. and after 7:00 p.m.; and
 - 37 (c) for the 21st through 30th day after installation, watering is permitted
38 every third day before 10:00 a.m. and after 7:00 p.m.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (2) the application submitted to the director upon which the variance approval
2 was based included false, misleading, incomplete, or inaccurate information
3 or attachments or
4 (3) the director declares an emergency recall of variances to control use or
5 preserve supply based on protracted drought, unusual operational event, or
6 other public necessity.
7

8 **§ 6-4-31 EXPIRATION OF VARIANCE.**
9

10 A variance from a requirement of this chapter expires immediately upon the
11 termination, completion, or resolution of the event, occurrence, condition, or activity
12 for which the variance is granted or at a time specified by the director or director's
13 designee.
14

15 **§ 6-4-32 ALTERNATIVE COMPLIANCE.**
16

- 17 (A) The director may permit a person to comply with alternative water use restrictions
18 after determining that:
19 (1) the alternative compliance meets or exceeds the intent of this chapter;
20 (2) the alternative compliance is specifically requested by the applicant in
21 writing and the request demonstrates how compliance will be achieved
22 through the alternative methods; and,
23 (3) the alternative compliance is expressly approved by the director.
24
- 25 (B) Alternative compliance approved by the director must comply with Section 6-4-12
26 (*Water Waste Prohibited*).
- 27 (C) If the director approves alternative compliance water use restrictions, the applicant
28 shall keep a copy of the approval in a location on the subject property that is
29 accessible and visible to the public.
30
- 31 (D) Alternative compliance approved by the director may be suspended or revoked if the
32 director finds any of the following:
33 (1) violation of a term or condition of the approved alternative compliance
34 authorization;
35 (2) false, misleading, incomplete, or inaccurate information or documentation
36 was submitted by the applicant in connection with the alternative
37 compliance request and approval; or
38 (3) emergency conditions or unusual operational event or weather situation
39 requires immediate suspension or revocation of the approved alternative
40 compliance.
41

1 **ARTICLE 3: ENFORCEMENT.**

2
3 **§ 6-4-40 APPLICABILITY.**

4
5 This article is applicable to all parts of this chapter

6
7 **§ 6-4-41 PRESUMPTION OF VIOLATION.**

8
9 A person in whose name a water service account is held is presumed to be responsible for
10 a violation of this chapter that occurs at the water service account location.

11
12 **§ 6-4-42 PENALTY**

- 13
14 (A) A person commits an offense if the person directs, performs, authorizes, requests,
15 allows, assists, facilitates, or permits an act prohibited by this chapter or fails to
16 perform an act required by this chapter. Each instance of a violation of this chapter
17 is a separate offense.
18
- 19 (B) An offense under this chapter may be enforced as an administrative violation as
20 authorized by Texas Local Government Code Chapter 54 and all penalties related to
21 administrative liability for such violations at the service location automatically
22 added to the water service account pursuant to the approved fee schedule published
23 by the director, or approved pursuant to Section 6-4-44 (*Non-Administrative*
24 *Enforcement*), unless the account holder opts out of the automatic administrative fee
25 additions to the account on a form provided by the director not later than January 1
26 of each year or within 30 days of establishing an account with Austin Water Utility,
27 whichever is sooner.
28
- 29 (C) A person alleged to be in violation of a requirement of this chapter shall receive
30 notice in writing that shall, at a minimum, contain:
31 (1) the name of the responsible person ;
32 (2) the address of the alleged violation;
33 (3) a description of the alleged violation;
34 (4) notice of the administrative penalty assessment to the next monthly utility
35 statement; and
36 (5) information on the appeal process.
37
- 38 (D) Notice shall be delivered via United States Postal Service first class mail or the
39 customer's email address if the customer consents to service of such administrative
40 assessment notices by email. Notice is presumed valid and received when

1 forwarded to the postal or email address on file with Austin Water Utility for the
2 water service account holder.

3
4 **§ 6-4-43 ADMINISTRATIVE PROCESS**
5

- 6 (A) A person appealing an enforcement action of Austin Water Utility may request an
7 administrative review conducted by the director. A request for an administrative
8 review must be made in writing to Austin Water Utility on or before the 20th day
9 following the date of the notice of violation. The review shall take place on or
10 before the 10th day following a request for appeal. The person shall be notified of
11 Austin Water Utility's determination including the results of the review and
12 instructions on how to request an administrative hearing.
13
- 14 (B) A person appealing an administrative review decision may request a hearing
15 conducted by a hearing officer appointed by the city manager.
- 16 (1) The person must request the administrative hearing in writing to the director
17 on or before the 10th day following notice of the administrative review
18 determination.
- 19 (2) Not later than the 10th day following a request for an administrative
20 hearing, Austin Water Utility shall provide the person with information as to
21 the time and place of the hearing. If the person fails to appear at the hearing,
22 the person will be considered to admit liability and will be charged
23 accordingly.
- 24 (3) A person who is found by a hearing officer to be liable for a violation of
25 this chapter may appeal the liability finding by filing a petition in municipal
26 court no later than the 31st day after the date of the hearing officer's
27 determination. An appeal does not stay enforcement and collection of the
28 judgment unless the person, before filing the appeal, posts a bond with
29 Austin Water Utility in an amount equal to the amount of the liability
30 assessment plus the appeal fee.
- 31 (4) If upon hearing the appeal from the hearing officer's liability finding the
32 municipal court affirms or substantially affirms the liability finding, the
33 utility will retain the appeal fee and apply the bond to the liability
34 assessment previously determined. If the municipal court reverses the
35 hearing officer's liability finding, the appeal fee and administrative
36 assessment bond will be refunded to the account holder.
37

38 **§ 6-4-44 NON-ADMINISTRATIVE ENFORCEMENT**
39

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

- 1 (1) An offense that does not present a threat to health and safety or that is pled as
2 a strict liability offense is subject to a fine of \$500.00 or less. Proof of a
3 culpable mental state is not required;
- 4 (2) An offense that presents a threat to the health and safety of a person or the
5 general public that is committed with criminal negligence is subject to a fine
6 not to exceed \$2,000.00.

7
8 (B) Proof of a higher degree of culpability than criminal negligence constitutes proof
9 of criminal negligence.

10
11 (C) Each day that a violation occurs or continues is a separate offense.

12
13 (D) Prosecution of an offense and enforcement of other remedies under this chapter
14 are cumulative.

15
16 **§6-4-45 SEVERABILITY**

17
18 It is hereby declared to be the intention of the city that the sections, subsections,
19 paragraphs, sentences, clauses, and phrases of this chapter are severable and, if any
20 phrase, clause, sentence, paragraph, subsection or section of this chapter shall be revoked
21 or declared unconstitutional or unlawful by the valid judgment or decree of any court of
22 competent jurisdiction, such declaration shall not affect any of the remaining phrases,
23 clauses, sentences, paragraphs, subsection and sections of this chapter, since the same
24 would not have been enacted by the city without the incorporation into this chapter of any
25 such phrase, clause, sentence, paragraph, subsection or section declared or determined
26 unconstitutional or unlawful.

27
28
29 **PART 3.** This ordinance takes effect on _____, 2012.
30

PASSED AND APPROVED

§
§
§

_____, 2012

Lee Leffingwell
Mayor

APPROVED: _____
Karen M. Kennard
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk

DRAFT

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