

ORDINANCE NO. 2107

AN ORDINANCE AMENDING CHAPTER 26 “WATER AND SANITARY SEWERS” ARTICLE II, “IN GENERAL” OF THE CODE OF THE CITY OF HURST (1968), AS AMENDING SECTION 26-36, BY ADDING “EMERGENCY AUTHORITY” AS EXHIBIT B, FURTHER AMENDING SECTION 26-36 BY ADOPTING A REVISED DROUGHT CONTINGENCY/EMERGENCY WATER MANAGEMENT PLAN AND AMENDING THE SECTION TO REFLECT THE NEW DROUGHT STAGES; PROVIDING THAT THIS ORDINANCE SHALL BE CUMULATIVE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Hurst, Texas recognizes that the amount of water available to the City and its water utility customers is limited and subject to depletion during periods of extended drought; and

WHEREAS, Fort Worth and the Mid-Cities receives less rainfall than areas to the east of it in Texas; and

WHEREAS, the occurrence of droughts cannot be predicted as to when one will begin or end; and emergency situations can occur at any time as result of incidents such as pipeline failures, power outages, and pump failures.

WHEREAS, the City recognizes in order to conserve the available water supply and protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, fire protection, and to protect and preserve public health, safety, welfare, and in order to minimize the adverse impacts of water supply shortage or other water supply emergency conditions.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HURST, TEXAS:

SECTION 1.

Code of the City of Hurst, Texas (1968) as amended, Chapter 26, “Water and Sanitary Sewers”, Article II, “In General”, Section 26-36 “Drought Contingency Plan Adopted” is hereby further amended to replace the Drought Contingency/Emergency Management Plan as Exhibit A with the revised Exhibit A to this Ordinance and incorporated herein for all purposes.

SECTION 2.

Code of the City of Hurst, Texas (1968) as amended, Chapter 26, "Water and Sanitary Sewers", Article II, "In General", Section 26-36 "Emergency Authority", is hereby adopted into the Drought Contingency/Emergency Management Plan as Exhibit B to this Ordinance and incorporated herein for all purposes.

Section 26-36, Exhibit B Emergency Authority.

- (a) Purpose and scope. The purpose of this section is to establish the city's policy in the event of shortages or delivery limitations in the city's water supply and to establish water restrictions to be enforced in case of drought or emergency conditions. This section applies to:
 - (1) All persons and premises within the city using water from the water system;
 - (2) All retail customers who live in unincorporated areas within the city's extraterritorial jurisdiction and are served by the water system; and
 - (3) All wholesale service customers outside the city to the extent provided in Subsection (k).
- (b) Drought contingency/emergency water management plan. The drought contingency/emergency water management plan is attached hereto as Exhibit A and is incorporated herein by reference.
- (c) Authority. The city manager is authorized to implement measures prescribed when required by this section and by the drought contingency/emergency water management plan approved by the city council. The director is authorized to enforce the measure implemented and to promulgate regulations, not in conflict with this section or state and federal laws, in aid of enforcement.
- (d) Initiation of plan stages. The director, upon determination that drought conditions or a water emergency exists, shall advise the city manager. The city manager may order that the appropriate stage of the drought contingency/emergency water management plan be initiated. To be effective, the order must be:
 - (1) Made by public announcement to the news media;
 - (2) Published on the city's website; and
 - (3) Published in the newspaper of general circulation in the city.
- (e) Duration of stage; change. A stage will remain in effect until the conditions that triggered initiation of the stage have been eliminated. If the stage is initiated because of excessive demands, all initiated actions will remain in effect through September 30 of the year in which they were triggered unless the city manager determines that conditions exist that

will allow termination of the stage before September 30. Upon recommendation of the director, the city manager may terminate, upgrade or downgrade the stage. Any such change must be made in the same manner prescribed in subsection (d).

- (f) Violation of section. A person commits an offense if he knowingly makes, causes or permits a use of water contrary to the measures implemented by the city manager as prescribed in the drought contingency/emergency water management plan. For purposes of this subsection, it is presumed that a person has knowingly made, caused or permitted a use of water contrary to the measures implemented if the mandatory measures have been formally ordered consistent with the terms of subsection (d) and;
 - (1) The manner of use has been prohibited by the drought contingency/emergency water management plan;
 - (2) The amount of water used exceeds that allowed by the drought contingency/emergency water management plan.
 - (3) The manner or amounts used violates the terms and conditions of a compliance agreement made pursuant to a variance granted by the director pursuant to subsection.

- (g) Penalties for violation. Any person who is convicted of violating, disobeying, omitting, neglecting or refusing to comply with a measure implemented in accordance with this section and the drought contingency/emergency water management plan may be fined not more than two thousand dollars (\$2,000.00) for each offense, In addition, the following penalties shall apply:
 - (1) A person who is convicted of violating, disobeying, omitting, neglecting or refusing to comply with a measure implemented in accordance with this section and stage 2 of the drought contingency/emergency water management plan shall be fined not less than two hundred fifty dollars (\$250.00).
 - (2) A person who is convicted of violating, disobeying, omitting, neglecting or refusing to comply with a measure implemented in accordance with this section and stage 3 of the drought contingency/emergency water management plan shall be fined not less than five hundred dollars (\$500.00).
 - (3) If a person who is convicted of violating, disobeying, omitting, neglecting or refusing to comply with a measure implemented in accordance with this section and the drought contingency/emergency water management plan (2) times, the director may install a flow restrictor in the water line to the premises where the violations occurred to limit the amount of water that pass through the meter in a twenty-four hour period or a lock out device to a backflow assembly.
 - (4) A person who is convicted of violating, disobeying, omitting, neglecting or refusing to comply with a measure implemented in accordance with this section and stage 2 of the drought contingency/emergency water management plan 2) times, the director may discontinue water service to the premises where the violation occurred.

- (h) Variances. During the times the emergency order is operative, the director may grant variances only under the following circumstances and conditions:
 - (5) The applicant signs a compliance agreement on a form provided by the director, and

- approved by the city attorney, agreeing to use the water only in the amount and manner permitted by the variance ;
- (6) Granting of the variance would not cause an immediate significant reduction in the city's water supply;
 - (7) Failure to approve the variance would result in an extreme hardship or need relating to the health, safety or welfare of the applicant; and
 - (8) Granting the variance would not adversely affect the premises at which the violation occurred.
- (i) Revocation of variances. The director may revoke a variance when he or she determines that:
 - (1) The conditions of subsection (h) are not being met or no longer applicable;
 - (2) The terms of the compliance agreement are being violated; or
 - (3) Renovation is advisable to protect the health, safety or welfare of other persons.
 - (j) Appeal. Denial or revocation of a variance by the director can be appealed to the city manager by filing a written notice of appeal with the city manager within ten (10) days after issuance of the director's decision. The city manager's decision shall be final.
 - (k) Wholesale service to customers outside the city. The director shall advise customers receiving wholesale water service from the city of actions taken under the drought contingency/emergency water management plan. The director may restrict service to customers outside the city as permitted under the contract and state law.
 - (l) Authority under other laws. Nothing in this section shall be construed to limit the authority of the mayor, the city council or the city manager to seek emergency relief under the provisions of any state or federal disaster relief act.

SECTION 3. CUMULATIVE PROVISIONS

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Hurst, Texas (1968), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 4. SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrase, clause, sentence, paragraph or section of this ordinance are severable and, if any phrase, clause, sentence,

paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutionality phrase, clause, sentence, paragraph or section.

**SECTION 5.
PENALTY CLAUSE**

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance to include Exhibit A shall be fined not more than two thousand dollars (\$2,000) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

**SECTION 6.
RIGHTS AND REMEDIES**

All rights and remedies of the City of Hurst, Texas, are expressly saved as to any and all violations of the provisions of the ordinances amended herein, which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

**SECTION 7.
PUBLICATION**

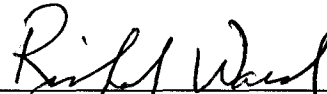
The City Secretary of the City of Hurst, Texas, is hereby directed to publish the caption of this ordinance and the penalty clause for two (2) days in the official newspapers of the City of Hurst, Texas, as authorized by Section 2, Chapter XXV of the Chapter of the City of Hurst, Texas and by Section 52.013, Texas Local Government Code.

AND IT IS SO ORDERED.

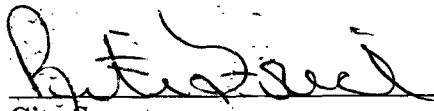
Passed on the first reading on the 10TH day of March 2009, by a vote of 6 to 0.

Passed on the second reading on the 24th day of March 2009, by a vote of 6 to 0.

CITY OF HURST

By: 
Richard Ward, Mayor

ATTEST:


City Secretary

Approved as to form and legality:


City Attorney