

ORDINANCE NO. 569

AN ORDINANCE OF THE CITY OF KYLE, TEXAS ADOPTING AND ENDORSING A DROUGHT CONTINGENCY PLAN IN COMPLIANCE WITH THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY RULES AND PROCEDURES; PROVIDING FOR STAGE 1 WATER CONSERVATION PERIOD; PROVIDING STAGE 2 MANDATORY USE MANAGEMENT; PROVIDING FOR STAGE 3 CRITICAL WATER USE MANAGEMENT; PROVIDING FOR VARIANCES; PROVIDING FOR PENALTIES AND DEFINITIONS;

Whereas, the City of Kyle (the "City") continues to experience rapid growth and development in recent years that greatly increases the demand for water services from the City's residents and water customers;

Whereas, in order to comply with the Texas Commission on Environmental Quality ("TCEQ") rules in Title 30 Texas Administrative Code Chapter 288 and to review the City's approach to water use and conservation during drought conditions, the City must update its Drought Contingency Plan;

Whereas, the City's current Drought Contingency Plan, also referred to as the "City's Complete Water Management Ordinance," was adopted in 2003 and amended in 2005 and the City is required to review and update its Drought Contingency Plan at least once every five years;

Whereas, the City Manager has reviewed and made appropriate amendments to the City's Drought Contingency Plan, and the amended plan shall replace all previous Drought Contingency Plans adopted by the City, including Ordinance Nos. 427, 427-1, 320, and 320-1;

Whereas, the City has provided the opportunity for public input on the provisions of its Drought Contingency Plan by means of a properly noticed City Council meeting; and

Whereas, the Mayor and City Council have authorized the City Manager to implement certain water use management practices, policies, and procedures to effectively monitor and manage the City's water resources.

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

Section 1. Findings. The recitals are hereby found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 2. Adoption and Endorsement. The Mayor and City Council do hereby adopt and endorse the Drought Contingency Plan, a copy of which is attached hereto marked "Exhibit A" and made part of this Ordinance as if copied verbatim herein. The adopted Drought Contingency Plan hereby supersedes all previous Drought Contingency Plans adopted by the City, including City Ordinance Nos. 427, 427-1, 320, and 320-1.

Section 3. Effective Date. This Ordinance shall take effect from and after the date of its passage as authorized by the Charter of the City of Kyle.

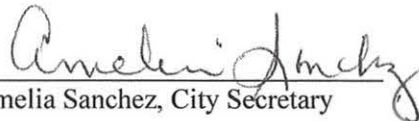
Section 6. Open Meetings. It is hereby officially found and determined that the meeting at which this Ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551, Local Government Code.

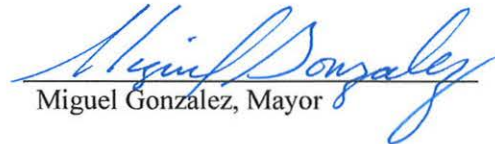
PASSED AND APPROVED on First Reading this 5th day of May, 2009

FINALLY PASSED AND APPROVED on this the 19th day of May, 2009.

ATTEST:

THE CITY OF KYLE, TEXAS


Amelia Sanchez, City Secretary


Miguel Gonzalez, Mayor

THE CITY OF KYLE

DROUGHT CONTINGENCY PLAN

The City of Kyle prepared this Drought Contingency Plan ("Plan") as part of its on-going efforts to maintain an adequate supply of high quality water. This Plan will help provide the City of Kyle with an opportunity to effectively manage its water system and water resources during drought conditions in a conscientious, fair, and appropriate manner. It is not designed to punish, stigmatize, or criticize anyone as to their usage of water. The sole intent of this Plan is to help maintain an adequate supply of water during the various stages of drought conditions that may occur from time to time. The City of Kyle utilizes groundwater from the Barton Springs Edwards Aquifer Conservation District and the Edwards Aquifer Authority and utilizes surface water obtained from the Guadalupe-Blanco River Authority. The City of Kyle will manage these various sources of supply to maintain an adequate supply of water during drought conditions.

The City of Kyle believes that significant reductions in water usage may be achieved through voluntary efforts by customers. Voluntary reductions in water usage are encouraged at all times, but especially during pending or early drought conditions. Voluntary efforts, if sufficiently effective, may delay the need to implement more restrictive water use measures and curtailments. Should drought conditions reach more critical stages, the City of Kyle is prepared to restrict or curtail certain types of usage. The City of Kyle hopes that severe drought conditions requiring such stringent restrictions will not occur, but recognizes that is only prudent to have plans and procedures in place to respond to drought conditions, should the need arise.

Section 1. Definitions.

The following words, terms and phrases, when used in this Plan, and when used in any other plan or ordinance of the City and not defined in such plan or ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words used in the present tense include the future tense. Words used in the plural number include the singular, and words in the singular include the plural. The word "shall" is always mandatory. The word "herein" means in this Plan. The word "regulations" means the provisions of any applicable ordinance, rule, regulation or policy. The word "person" means any human being or legal entity and includes a corporation, a partnership, and an incorporated or unincorporated association. "New landscape" means vegetation: (1) installed at the time of the construction of a new house, new multifamily building, or new commercial building; (2) installed as part of a governmental entity's capital improvement project; or (3) which alters more than one half of the area of an existing landscape.

Section 2. Compliance With Water Conservation Guidelines.

Except when the City Manager institutes Stage 2 or Stage 3 use restrictions of this Plan, the Stage 1 Water Conservation Period is in effect from May 1 through September 30 of each year, and other time periods as determined by the City Manager or his authorized designee. The City Manager shall promulgate water conservation guidelines including policies for compliance by city departments and criteria for determining when the drought stages are to be implemented and

terminated. The City Manager shall update the guidelines when, in the City Manager's discretion, changed conditions of the water system require the update. The guidelines shall be available for inspection at the City Administrative Offices during normal business hours.

Section 3. Continuing Water Use Management and Criteria.

- (a) Any person who receives water service directly or indirectly from the City shall comply with this Section and this Plan at all times, unless otherwise provided by law or authorized permit. Notwithstanding the drought stages and triggers set forth in this Plan, the City Council or City Manager may designate a particular stage and/or any water use restrictions as the City Council or City Manager determines in order to protect the City's water supply and the public health, safety, and welfare of the residents within the City. The City Manager or his designee shall continually monitor water supply and/or demand conditions and shall determine when the conditions warrant initiation or termination of Stage 2 or 3 drought stages. While the City will observe the Barton Springs/Edwards Aquifer Conservation District and the Edwards Aquifer Authority drought stages as its trigger criteria for initiation of the drought stages of this Plan in certain circumstances, the City's criteria for the initiation and termination of drought stages shall be based on continual monitoring and management of its multiple sources of water supply.
- (b) The City will utilize its multiple sources of water supply as needed in response to water supply, demand, drought, system and contamination conditions that may arise. The City shall implement the measures provided in this Plan as determined by the City Manager or his designee, to respond to situations including, but not limited to:
 - (1) Reduction in available water supply up to a repeat of the drought of record;
 - (2) Water production or distribution system limitations;
 - (3) Supply source contamination; or
 - (4) System outage due to the failure or damage of major water system components
- (c) The following actions constitute a waste of water and are prohibited:
 - (1) Failing to repair a controllable leak, including a broken sprinkler head, a leaking valve, leaking or broken pipes, or a leaking faucet;
 - (2) Operating a permanently installed irrigation system with:
 - (A) A broken head;
 - (B) A head that is out of adjustment where the arc of the spray head is over a street or parking lot; or
 - (C) A head that is misting due to high water pressure;
 - (3) During watering or irrigation:

- (A) Allowing water to run off property such that there is a trail of water running in the street for a distance of 50 feet or greater;
- (B) Allowing water to pond in the street or parking lot to a depth greater than ¼ inch; or
- (C) Watering or irrigating landscape between the hours of 10:00 a.m. and 8:00 p.m.

(4) Violating measures provided in this Plan or initiated by the City.

(d) In order to limit the volume of water required for turf, grass areas shall be planted with drought resistant species normally grown as permanent laws, such as Bermuda, Zoysia, Buffalo, or other similar drought resistant grasses. Grass areas may be sodded, plugged, sprigged, or seeded except that solid sod shall be used in areas subject to erosion. Grass areas must be installed on four to six inches of top soil or other similar soil surface. This subsection applies to all zoning classifications.

- (1) Other low water maintenance turf products shall be considered and may be approved by a designated City official or body on a case-by-case basis.
- (2) The requirements set forth in this subsection shall not prohibit the installation or planting of any turf not described in this subsection (a “non-conforming turf”) if at least 50% of the non-impervious cover area of the lot or parcel was planted with a non-conforming turf prior to September 20, 2005 and the same non-conforming turf is installed or planted.

Section 4. Stage 1 – Water Conservation Period

- (a) Any individual, group, business, or corporation who receives water service directly or indirectly from the City of Kyle shall comply with this Section when Stage 1 is in effect.
- (b) The City shall annually enter into the Water Conservation Period beginning May 1 and ending September 30 of each year. During Stage 1 Water Conservation Period, the City’s goal is to achieve a 10% reduction in water use. To accomplish this goal, the City shall manage its groundwater and surface water supplies in order to best utilize its water resources in accordance with the reduction goals during the Stage 1 Water Conservation Period.
- (c) Landscape watering by permanently installed automatic irrigation system or sprinkler system is prohibited between the hours of 10:00 a.m. and 8:00 p.m. This prohibition does not apply to irrigation:
 - (1) of a new landscape, if the owner provides notice to the City Manager or his designee at least one day before the installation;
 - (2) during a repair or testing of a new or existing irrigation system only if the person doing the testing is present; or

- (3) for watering nursery stock including potted plants, shrubs, and trees at a commercial plant nursery.
- (d) During Stage 1 Water Conservation Period, all users shall comply with the City's schedule for lawn watering, as amended by the City and within the City Manager or his designee's discretion to achieve the water use reduction goals in this Plan.

Section 5. Stage 2 – Mandatory Water Use Management.

- (a) Any individual, group, business, or corporation who receives water service directly or indirectly from the City shall comply with this Section when the City Manager institutes Stage 2 Mandatory Water Use Management.
- (b) The City shall declare a Stage 2 Mandatory Water Use Management status when the City Manager determines the conditions warrant initiation of Stage 2 measures to reduce water use. During Stage 2 Mandatory Water Use Management, the City's goal is to achieve a 20% reduction in water use.
- (c) The Stage 2 measures do not apply to a customer that uses treated wastewater effluent or raw water. The prohibitions in Section 5 (Stage 1 Water Conservation Period) of this Plan apply when Stage 2 Mandatory Water Use Management reductions are in effect.
- (d) This subsection prescribes the requirement for outdoor irrigation, excluding watering nursery stock including potted plants, shrubs, and trees at a commercial plant nursery. Outdoor irrigation is permitted:
 - (1) by a handheld hose, or handheld bucket at any time during the day or night;
 - (2) by a hose and sprinkler, a soaker hose, or drip irrigation, from 8:00 p.m. to 10:00 a.m. on an outdoor water use day as designated by the City;
 - (3) by a permanently installed automatic irrigation system from 12:00 midnight to 10:00 a.m. on an outdoor water use day as designated by the City; and
 - (4) for property which a person obtains a variance from the City Manager or his designee to divide the property into sections, to be watered on different outdoor water use days.
- (e) This subsection prescribes requirements for washing an automobile, truck, trailer, boat, airplane, or other type of vehicle or mobile equipment.
 - (1) Washing is prohibited except on a designated outdoor water use day from 12:00 midnight to 10:00am and from 7:00pm to 12:00 midnight;
 - (2) Washing must be done with a handheld bucket or a handheld hose equipped with a positive shutoff nozzle;

- (3) Charity carwashes are prohibited;
- (4) Each washing of a vehicle or piece of equipment in violation of the terms and conditions of this Section constitutes a separate violation under this Plan.
- (5) This subsection does not apply to a commercial carwash that meets the following standards at the time this Plan is adopted:
 - (A) Inbay, handheld spray wash equipment including spray wands and foaming brushes may use no more than 3.0 gallons of water power minute and must be equipped with trigger shutoffs;
 - (B) Portable pressure wash equipment with spray nozzles may use no more than 3.5 gallons of water per minute with trigger shutoffs;
 - (C) Conveyor frictions systems may use no more than 20 gallons per vehicle;
 - (D) Conveyor touchless systems may use no more than 40 gallons per vehicle;
 - (E) Rollover automatic systems may use no more than 45 gallons per vehicle;
 - (F) All chamois ringers must have positive shutoff valves.
- (f) Using an automatic fill valve to add water to an outdoor swimming or wading pool or to a pond is prohibited.
- (g) Washing a sidewalk, driveway, parking area, street, tennis court, patio, or other paved area, is prohibited except to alleviate an immediate health or safety hazard.
- (h) Athletic fields for organized sports such as football, softball, baseball, or soccer must comply with Stage 2 restrictions.
- (i) Stage 2 restrictions do not apply to the following:
 - (1) necessary use of water, other than for landscape irrigation, by a governmental entity in pursuit of a governmental function for the benefit of the public;
 - (2) necessary use of water, other than for landscape irrigation, for land development including roadway base preparation, flushing utility lines, dust control, concrete or asphalt work and building construction.
 - (3) necessary use of water for repair of water distribution facility, residential and commercial plumbing, or permanently installed irrigation system; and
 - (4) use of water under a variance to the requirements of this Plan granted by the City Manager.

Section 6. Stage 3 – Critical Water Use Management.

- (a) Any individual, group, business, or corporation who receives water service directly or indirectly from the City shall comply with this Section when the City Manager institutes

Stage 3 Critical Water Use Management. Stage 3 restrictions do not apply to a customer using treated wastewater effluent or raw water. All elements of Stage 2 remain in effect during a Stage 3 Critical Water Use Management status except following additional measures listed below.

- (b) The City shall declare a Stage 3 Critical Water Use Management status when the City Manager determines the conditions warrant initiation of Stage 3 measures to reduce water use. During Stage 3 Critical Water Use Management, the City's goal is to achieve a 30% reduction in water use.
- (c) Outdoor irrigation of vegetation by handheld hoses, or handheld watering cans may occur only between the hours of 6:00am to 10:00am and 7:00pm to 10:00pm on designated outdoor water use days.
- (d) Landscape watering or irrigation using sprinkler systems, permanently installed irrigation systems, hose end irrigation, and drip irrigation is prohibited;
- (e) Washing automobiles, trucks, trailers, boats, airplanes, and other type of mobile equipment is prohibited unless washing is in the immediate interest of public health, safety, and welfare.
- (f) Washing automobiles, trucks, trailers, boats, airplanes, and other type of mobile equipment on the immediate premises of a commercial carwash or a commercial service station may occur between 12:00 noon and 5:00 p.m. only when washing is in the immediate interest of public health, safety, and welfare;
- (g) Commercial plant nurseries may use only handheld hoses, handheld watering cans, or drip irrigation;
- (h) Filling, refilling, or adding of potable water to swimming or wading pools, fountains and ponds is prohibited; and
- (i) Installation of new landscapes may not be started.

Section 7. Rain Sensing Devices and Freeze Gauges Mandatory.

- (a) Any permanent irrigation system installed within the City on or after August 1, 2003 must be equipped with rain sensing devices and freeze gauges approved as to number and type by the City Manager or his designee.
- (b) Any irrigation system installed before August 1, 2003 may not be operated after January 1, 2005 without being equipped with rain sensing devices and freeze gauges approved as to number and type by the City Manager or his designee.
- (c) A person commits an offense if, on premises owned, leased, or managed by him, he or she:

- (1) installs, causes, or permits the installation of a new irrigation system in violation of this Section; or
 - (2) operates, causes, or permits the operation of an irrigation system that does not comply with this Section;
- (d) The City Manager may, in special cases, grant variances from the provisions of this Section to persons demonstrating extreme hardship and need.

Section 8. Emergency Water Use Management.

Nothing in this Plan shall be construed to restrict or hinder the ability of the City Manager to completely restrict any and all use of water in an emergency in the immediate interest of the public health, safety and, welfare.

Section 9. Public Notification of Water Use Restrictions.

It shall be the responsibility of the City Manager or his designated agent to make all reasonable efforts to properly inform the general public and City water customers of any and all water use restrictions as defined by this Plan. The public shall be notified of the initiation of the various stages of water use restrictions by methods including, but not limited to the following methods: (1) posting, along with other public notices, at Kyle City Hall; and (2) posting on the official City of Kyle internet website. The City Manager or his designee shall also determine whether additional notification is warranted based on the circumstances. Additional notification may be accomplished by methods including, but not limited to direct mail, public service announcements, press releases, and distribution of fliers at public facilities.

Section 10. Public Information on Drought Contingency Plan.

The City shall provide public education and information as to the requirements and measures set forth in this Plan by posting this Plan on the official City of Kyle internet website and making this Plan available at Kyle City Hall. The City shall also distribute this Plan as the City determines is appropriate under the circumstances. As of the effective date of this Plan, the City's service area is within the Region L – Regional Water Planning Group ("Region L"). The City shall send this Plan, as it may be amended from time to time, to Region L to coordinate its efforts with Region L. A copy of the letter documenting coordination with Region L is attached to this Plan as "Appendix A."

Section 11. Variance.

- (a) Any person who receives water service directly or indirectly from the City of Kyle and his subject to the regulations of this Plan may file an application for a variance from this Plan for any property that receives city water. The City Manager may require the applicant to provide information deemed necessary to evaluate the variance request.

(b) The City Manager may grant a variance from the requirements of this Plan after determining that special circumstances exist and that compliance with this Plan:

(1) will adversely affect the health, sanitation, or fire protection for the public or the applicant; or

(2) will substantially threaten the applicant's primary source of income.

(c) If the variance is granted, the applicant will maintain a copy of the variance in a location on the affected property, accessible and visible to the public.

Section 12. Violation and Penalties.

(a) It shall be unlawful for any person to violate any provisions of this Plan, which shall remain in effect at the designated times set forth in this Plan. Any person who violates this Plan or part thereof shall be guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than \$50.00 nor more than \$2,000.00 and each day the violation continues shall constitute a separate offense.

(b) If a customer is irrigating during a time period or on a day when such irrigation is prohibited and a city worker cannot locate any person at that street address to turn off the irrigation system, the city worker may turn off the irrigation system if it is accessible.

(c) The City of Kyle is hereby authorized to discontinue water service to any person(s) who knowingly violate any provision of Stage 3 Critical Water Use Management rules on three (3) occasions.

APPENDIX A