

AN ORDINANCE OF THE CITY OF NACOGDOCHES, TEXAS AMENDING CHAPTER 106, "UTILITIES," DIVISION 2, "WHOLESALE SUPPLIER DROUGHT CONTINGENCY PLAN," SECTION 106-591, "DECLARATION OF POLICY, PURPOSE, AND INTENT," SECTION 106-592, "WHOLESALE WATER CUSTOMER EDUCATION," SECTION 106-596, "TRIGGERING CRITERIA AND TERMINATION OF DROUGHT RESPONSE STAGES," SECTION 106-597, "DROUGHT RESPONSE STAGES," SECTION 106-598, "PRO RATA WATER ALLOCATION," SECTION 106-600, "VARIANCES," SECTION 106-601, "SEVERABILITY AND VIOLATIONS," AND DIVISION 3, "RETAIL SUPPLIER DROUGHT CONTINGENCY PLAN," SECTION 106-639, "DROUGHT CONTINGENCY PLAN WATER RATES;" PROVIDING A SEVERABILITY CLAUSE; PROVIDING A CONTINUATION CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Section 11.1272 of the Texas Water Code and the Texas Administrative Code, Title 30, Chapter 288 require all public water supply systems in Texas to prepare and update a Drought Contingency Plan; and

WHEREAS, the City of Nacogdoches operates a public water supply system; and

WHEREAS, the City Council periodically reviews its Code of Ordinances in an effort to timely update and enact required amendments to same and in doing so believes Chapter 106, "Utilities," of the Nacogdoches Code of Ordinances should be amended in certain sections to correct typographical errors and modify water rate schedules in accordance with State law; and

WHEREAS, updating the City's Drought Contingency Plan will achieve and further the protection of public health, safety and welfare; and

WHEREAS, after deliberation of the facts involved in the amendments, the City Council of the City of Nacogdoches is of the opinion that Chapter 106, "Utilities," of the Code of Ordinances of the City of Nacogdoches, Texas should be amended as set forth hereinafter.

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

SECTION I

All the above premises are hereby found to be true and correct factual findings.

SECTION II

Chapter 106, "Utilities," Division 2, "Wholesale Supplier Drought Contingency Plan," Section 106-591, "Declaration of policy, purpose, and intent," of the Code of Ordinances of Nacogdoches, Texas, is hereby amended so that henceforth same shall read as follows:

Sec. 106-591. Declaration of policy, purpose, and intent.

In order to conserve the available water supply and/or to protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety and minimize the adverse impacts of water supply shortage or other water supply emergency conditions, the City of Nacogdoches (hereinafter referred to as "City") adopts the following drought contingency plan (the plan) for wholesale water customers.

SECTION III

Chapter 106 “Utilities,” Division 2, “Wholesale Supplier Drought Contingency Plan,” Section 106-592, “Wholesale water customer education,” of the Code of Ordinances of Nacogdoches, Texas, is hereby amended so that henceforth same shall read as follows:

Sec. 106-592. Wholesale water customer education.

The city will periodically provide wholesale water customers with information about the plan, including information about the conditions under which each stage of the plan is to be initiated or terminated and the drought response measures to be implemented in each stage. This information will be provided by means of providing copies of the plan and/or changes to the plan, and scheduled meetings to discuss the plan and any changes.

Title 30 TAC Chapter 288.30(4) states: Wholesale public water suppliers shall submit a drought contingency plan meeting the requirements of Subchapter B of this Chapter to the executive director not later than September 1, 1999, after adoption of the drought contingency plan by the governing body of the water supplier. Thereafter, any new or revised plans shall be submitted to the executive director within 90 days of adoption by the governing body of the wholesale public water supplier. Wholesale public water suppliers shall also provide a copy of the drought contingency plan to the regional water planning group for each region within which the wholesale water supplier operates.

SECTION IV

Chapter 106, “Utilities,” Division 2, “Wholesale Supplier Drought Contingency Plan,” Section 106-596, “Triggering criteria for initiation and termination of drought response stages,” of the Code of Ordinances of Nacogdoches, Texas, is hereby amended so that henceforth same shall read as follows:

Sec. 106-596. Triggering criteria for initiation and termination of drought response stages.

- (a) The manager, or his/her designee, shall monitor water supply and/or demand conditions on a daily basis and shall determine when conditions warrant initiation or termination of each stage of the plan. Customer notification of the initiation or termination of drought response stage will be made directly by telephone, followed by certified mail. The news media will also be informed.
- (b) The triggering criteria described below are based on a statistical analysis of the vulnerability of the water source under drought of record conditions.
 - (1) Stage 1—Mild water shortage conditions.
 - a. Requirements for initiation—The city will recognize that a mild condition exists when total daily water demand equals or exceeds 90 percent of the daily water plant production for four consecutive days or 92 percent of the daily water plant production for a single day.
 - b. Requirement for termination—Stage 1 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 14 consecutive days. The city will notify its wholesale customers and the media of the termination of Stage 1 in the manner described above.
 - (2) Stage 2—Moderate water shortage conditions.
 - a. Requirements for initiation—The city will recognize that a moderate water shortage condition exists when daily water demand equals or exceeds 92 percent of the daily water

plant production for four consecutive days or 94 percent of the daily water plant production for a single day.

- b. Requirements for terminations—Stage 2 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of seven consecutive days. Upon termination of Stage 2, Stage 1 becomes operative. The city will notify its wholesale customers and the media of the termination of Stage 2 in the manner described above.

(3) Stage 3—Severe water shortage conditions.

- a. Requirements for initiation—The city will recognize that a severe water shortage condition exists when total daily water demand equals or exceeds 94 percent of the daily water plant production for four consecutive days or 96 percent of the daily water plant production for a single day.
- b. Requirements for terminations—Stage 3 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of five consecutive days. Upon termination of Stage 3, Stage 2 becomes operative. The city will notify its wholesale customers and the media of the termination of Stage 2 in the manner described above.

(4) Stage 4—Emergency water shortage conditions.

- a. Requirements for initiation—The city will recognize that an emergency water shortage condition exists, when:
 - (i) Major water line breaks, or pump or system failures occur which cause unprecedented loss of capability to provide water service; or
 - (ii) Manmade contamination of the water supply source(s) has occurred.
- b. Requirements for termination—Stage 4 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 24 consecutive hours (one day). The city will notify its wholesale customers and the media of the termination of Stage 4 in the manner described above.

SECTION V

Chapter 106, “Utilities,” Division 2, “Wholesale Supplier Drought Contingency Plan,” Section 106-597, “Drought response stages,” of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended so that henceforth same shall read as follows:

Sec. 106-597. Drought response stages.

The manager, or his/her designee, shall monitor water supply and/or demand conditions and, in accordance with the triggering criteria set forth in section 106-596, shall determine that mild, moderate, or severe water shortage conditions exist, or that an emergency condition exists, and shall implement the following actions:

A. *Stage 1—Mild water shortage conditions.*

1. *Goal:* Achieve a voluntary five percent reduction in total daily water use.
2. *Supply management measures:*
 - (a) In order to manage a limited water supply and/or reduce water demand, the city will implement the following supply management measures:

- (1) Reduce or discontinue flushing of water mains.
- (2) Discontinue fire hydrant testing;
- (3) Implement measures to return any system component to full production capability (i.e. water wells, booster pumps, etc.);
- (4) Repair all existing main breaks.

(b) Demand management measures:

- (1) The manager, or his/her designee, will contact wholesale water customer to discuss water supply and/or demand conditions and will request that wholesale water customers initiate voluntary measures to reduce water use (e.g., implement Stage 1 of the customer's drought contingency plan).
- (2) The manager, or his/her designee, will provide a weekly report to news media with information regarding current water supply and/or demand conditions, projected water supply and demand conditions if drought conditions persist, and consumer information on water conservation measures and practices.

B. *Stage 2—Moderate water shortage conditions.*

1. Goal: Achieve a seven percent reduction in total daily water use.
2. Supply management measures:
 - (a) In order to manage a limited water supply and/or reduce water demand, the city will implement the following supply management measures:
 - (1) All of the measures described for Stage 1;
 - (2) Alternatively, discontinued irrigation of public landscaped areas, including parks and ball fields.
 - (b) Water use restrictions. Under threat of penalty for violation, the following water uses restrictions shall apply to all persons:
 - (1) Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems shall be limited to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6, or 8), and Saturdays and Wednesdays for 1, 3, 5, 7, or 9). The irrigation of landscaped areas is further limited to the hours of 10:00 p.m. and 6:00 a.m. on designated watering days. However, irrigation of landscaped areas is permitted at anytime if it is by means of a hand-held hose, a faucet filled bucket or watering can of five gallons or less, or drip irrigation system.
 - (2) Use of water to wash any motor vehicle is prohibited except on designated watering days between the hours of 8:00 p.m. and 12:00 midnight. Such watering, when allowed, shall be done with a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for quick rinses. Vehicle washing may be done at any time on the immediate premises of a commercial car wash or commercial service station. Further, such washing may be exempted from these regulations if the health, safety, and welfare of the public is contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables.
 - (3) Use of water to fill, refill, or add to any indoor or outdoor swimming pools, wading pools, or Jacuzzi-type pools is prohibited except on designated watering days between the hours of 10:00 p.m. and 6:00 a.m.
 - (4) Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.

- (5) Use of water from fire hydrants shall be limited to fire fighting and related activities, or other activities necessary to maintain public health, safety, and welfare, except that use of water from designated fire hydrants for construction purposes may be allowed under special permit from the city.
- (6) Use of water for the irrigation of golf course greens, tees, and fairways is prohibited except on designated watering days between the hours of 10:00 p.m. and 6:00 a.m. However, if the golf course utilizes a water source other than that provided by the city, the facility shall not be subject to these regulations.
- (7) All restaurants are prohibited from serving water to its patrons except when requested.
- (8) The following uses of water are defined as nonessential and are prohibited:
 - (i) Wash down of any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas.
 - (ii) Use of water to wash down buildings or structures for purposes other than immediate fire protection;
 - (iii) Use of water for dust control;
 - (iv) Flushing gutters or permitting water to run or accumulate in any gutter or street; and
 - (v) Failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s).

3. Demand management measures:

- (a) The manager, or his/her designee, will initiate weekly contact with wholesale water customers to discuss water supply and/or demand conditions and the possibility of pro rata curtailment of water diversions and/or deliveries.
- (b) The manager, or his/her designee, will request wholesale water customers to initiate mandatory measures to reduce nonessential water use (e.g., implement the appropriate stage (usually Stage 2) of the customer's drought contingency plan).
- (c) The manager, or his/her designee, will initiate preparations for the implementation of pro rata curtailment of water diversions and/or allocation baseline for each wholesale customer according to the procedures specified in section 106-598 of the plan.
- (d) The manager, or his/her designee, will provide a weekly report to news media with information regarding current water supply and/or demand conditions, projected water supply and demand conditions if drought persists, and consumer information on water conservation measures and practices.

C. *Stage 3—Severe water shortage conditions.*

1. *Goal:* Achieve a nine percent reduction in total daily water use.
2. *Supply management measures:* In order to manage a limited water supply and/or reduce water demand, the city will continue implementing all of the measures described for Stage 1 and Stage 2. Irrigation of public landscaped areas, included parks and ball fields shall be discontinued.
3. *Demand management measures:*
 - (a) The manager, or his/her designee, will contact wholesale water customers to discuss water supply and/or demand conditions and will request that wholesale water customers initiate additional mandatory measures to reduce nonessential water use (e.g., implement the appropriate stage (usually Stage 3) of the customer's drought contingency plan).

- (b) The manager, or his/her designee, will initiate pro rata curtailment of water diversions and/or deliveries for each wholesale customer according to the procedures specified in section 106-598 of the plan.
 - (c) The manager, or his/her designee, will provide a weekly report to news media with information regarding current water supply and/or demand conditions, projected water supply and demand conditions if drought conditions persist, and consumer information on water conservation measures and practices.
- D. *Stage 4—Emergency water shortage conditions.* Whenever emergency water shortage conditions exist as defined in section 106-596 of the plan, the manager shall;
1. Assess the severity of the problem and identify the actions needed and time required to solve the problem.
 2. Inform the utility director or other responsible official of each wholesale water customer by telephone or in person and suggest actions, as appropriate, to alleviate problems (e.g., notification of the public to reduce water use until service is restored).
 3. If appropriate, notify city, county, and/or state emergency response officials for assistance.
 4. Undertake necessary actions, including repairs and/or clean up as needed.
 5. Prepare a post-event assessment report on the incident and
 6. Critique of emergency response procedures and actions.

SECTION VI

Chapter 106, “Utilities,” Division 2, “Wholesale Supplier Drought Contingency Plan,” Section 106-598, “Pro rata water allocation, “ of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended so that henceforth same shall read as follows:

Sec. 106-598. Pro rata water allocation.

In the event that the triggering criteria specified in section 106-596 of the plan for Stage 3—Severe water shortage conditions have been met, the manager is hereby authorized to initiate allocation of water supplies on a pro-rate basis in accordance with V.T.C.A., Water Code § 11.039 and according to the following water allocation policies and procedures;

- (1) A wholesale customer's monthly allocation shall be a percentage of the customer's water usage baseline. The percentage will be set by resolution of the Nacogdoches City council based on the manager's assessment of the severity of the water shortage condition and the need to curtail water diversions and/or deliveries and may be adjusted periodically by resolution of the council as conditions warrant. Once pro rata allocation is in effect, water diversions by, or deliveries to, each wholesale customer shall be limited to the allocation established for each month.
- (2) A monthly water usage allocation shall be established by the manager, or his/her designee, for each wholesale customer. The wholesale customer's water usage baseline will be computed on the average water usage by month for the last five-year period as shown in the example given below. If the wholesale water customer's billing history is less than five years, the monthly average for the period for which there is a record shall be used for any monthly period for which no billing history exists.

Example Calculation of Monthly Allocation For a Hypothetical Wholesale Water Customer

	1994	1995	1996	1997	1998	SUM	AVE	Allocation Percentage	Monthly Allocation
Jan.									
Feb.									
March									
April									
May									
June									
July									
August									
Sept.									
Oct.									
Nov.									
Dec.									
Total									

- (3) The manager shall provide notice by certified mail to each wholesale customer informing them of their monthly water usage allocations and shall notify the news media and the Executive Director of the Texas Commission on Environmental Quality upon initiation of the pro rata water allocation.
- (4) Upon request of the customer or at the initiative of the manager, the allocation may be reduced or increased if: (1) the designated period does not accurately reflect the wholesale customer's normal water usage; (2) the customer; agrees to transfer part of its allocation to another wholesale customer; or (3) other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the Nacogdoches City Council.

SECTION VII

Chapter 106, "Utilities," Division 2, "Wholesale Supplier Drought Contingency Plan," Section 106-600, "Variances," of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended so that henceforth same shall read as follows:

Sec. 106-600. Variances.

- (a) The manager, or his/her designee, may in writing, grant a temporary variance to pro rata water allocation policies provided by this plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the public health, welfare, or safety and if one or more of the following conditions are met:
 - (1) Compliance with this plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the plan is in effect.
 - (2) Alternative methods can be implemented which will achieve the same level of reduction in water use.
- (b) Persons requesting an exemption from the provisions of this plan shall file a petition for variance with the city within five days after pro rata allocation has been invoked. All petitions for variances shall be reviewed by the manager, and shall include the following
 - (1) Name and address of the petitioner(s).
 - (2) Detailed statement with supporting data and information as to how the pro rata allocation for water under the policies and procedures established in the plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this division.
 - (3) Description of the relief requested.
 - (4) Period of time for which the variance is sought.
 - (5) Alternative measures the petitioner is taking or proposes to take to meet the intent of this plan and the compliance date.
 - (6) Other pertinent information.
- (d) Variances granted by the city shall be subject to the following conditions, unless waived or modified by the manager or its designee:
 - (1) Variances granted shall include a timetable for compliance.
 - (2) Variances granted shall expire when the plan is no longer in effect, unless the petitioner has failed to meet specified requirements.
- (e) No variance shall be retroactive or otherwise justify any violation of this plan occurring prior to the issuance of the variance.

SECTION VIII

Chapter 106, "Utilities," Division 2, "Wholesale Supplier Drought Contingency Plan," Section 106-601, "Severability and violations," of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended so that henceforth same shall read as follows:

Sec. 106-601. Severability and violations.

It is hereby declared to be the intention of the Nacogdoches City Council and the sections, paragraphs, sentences, clauses, and phrases of this plan are severable and, if any phrase, clause, sentence,

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

That any person, firm, or corporation violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Ordinance No. 1252-4-01 of the Nacogdoches Code. Each day such violation shall continue, or be permitted to continue, shall be deemed a separate offense. Since this article has a penalty for violation, it shall become effective ten days after its publication.

SECTION IX

Chapter 106, "Utilities," Division 3, "Retail Supplier Drought Contingency Plan," Section 106-639, "Drought contingency plan water rates," of the Code of Ordinances of the City of Nacogdoches, Texas, is hereby amended so that henceforth same shall read as follows:

Sec. 106-639. Drought contingency plan water rates.

The following rates shall apply to all residential customers and all landscape irrigation meters. Water rates shall be the same as those listed in Sec. 106-321 with the following modifications:

- (a) Stage 2 residential and irrigation water use, inside and outside city limits
 - (1) 10,001-30,000 gallons: 2 times the current water rate
 - (2) 30,001-75,000 gallons: 2.5 times the current water rate
 - (3) 75,001 gallons and above: 3 times the current water rate

- (b) Stage 3 residential and irrigation water use, inside and outside city limits
 - (1) 10,001-30,000 gallons: 2.5 times the current water rate
 - (2) 30,001-75,000 gallons: 3 times the current water rate
 - (3) 75,001 gallons and above: 4 times the current water rate

- (c) Stage 4 residential and irrigation water use, inside and outside city limits
 - (1) 10,001-30,000 gallons: 3 times the current water rate
 - (2) 30,001-75,000 gallons: 4 times the current water rate
 - (3) 75,001 gallons and above: 5 times the current water rate

SECTION X

If any word, article, phrase, paragraph, sentence, clause, or provision of this Ordinance shall be held to be invalid or unconstitutional, such holding shall in no way affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

SECTION XI

All provisions of Chapter 106 of the Code of Ordinances not specifically herein repealed remain in full force and effect. Moreover, this ordinance shall be and is hereby declared to be cumulative of all other ordinances of the City of Nacogdoches, and this ordinance shall not operate to repeal or affect any of such ordinances except insofar as the provisions thereof might be inconsistent or in conflict with the provisions

of this ordinance, in which event such conflicting provisions, if any, in such other ordinance or ordinances are hereby repealed.

SECTION XII

This Ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

SECTION XIII

It is hereby officially found and determined that the meeting at which this Ordinance was 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 of the Texas Government Code.

SECTION XIV

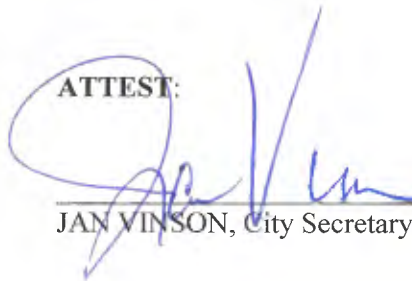
The City Secretary is hereby authorized and instructed to file a signed and sealed copy of this Ordinance in and among the records of the City of Nacogdoches, Texas.

PASSED AND APPROVED, this the 4 day of April, 2019.

By: 
SHELLEY BRUMPHY, Mayor



ATTEST:


JAN VINSON, City Secretary

APPROVED AS TO FORM:


JEFFERSON B. DAVIS, City Attorney

APPROVED AS TO CONTENT:


STEVE BARTLETT, City Engineer