

ARTICLE III. - DROUGHT CONTINGENCY PLAN³

Footnotes:

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Editor's note— Ord. No. 2012-03, § 1(Exh. A, §§ I—XII), adopted March 12, 2012, amended article III in its entirety to read as herein set out. Former article III, §§ 70-76—70-87, pertained to similar subject matter. See Code Comparative Table for complete derivation.

Sec. 70-76. - Declaration of policy, purpose, and intent.

In order to conserve the available water supply and 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 Nederland, Texas (the city) hereby adopts the following regulations and restrictions on the delivery and consumption of water through Ordinance No. 2012-03.

Water uses regulated or prohibited under this drought contingency plan (the plan) are considered to be non-essential and continuation of such uses during times of water shortage or other emergency water supply condition are deemed to constitute a waste of water which subjects the offender(s) to penalties as defined in section 70-85 of this plan.

(Ord. No. 2012-03, § 1(Exh. A, § I), 3-12-12)

Sec. 70-77. - Public involvement.

Opportunity for the public to provide input into the preparation of the plan was provided by the city by means of a public meeting held on March 12, 2012 at City Hall in the council chamber.

(Ord. No. 2012-03, § 1(Exh. A, § II), 3-12-12)

Sec. 70-78. - Public education.

The city will periodically provide the public 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 would be provided by means of a public meeting.

(Ord. No. 2012-03, § 1(Exh. A, § III), 3-12-12)

Sec. 70-79. - Coordination with regional water planning groups.

The service area of the city is located within the Deep East Texas Region (I) and the city has provided a copy of this plan to the Deep East Texas Region (I). A copy of the transmittal letter is attached as Exhibit 2.*

(Ord. No. 2012-03, § 1(Exh. A, § IV), 3-12-12)

***Editor's Note**— Exhibit 2 to Ord. No. 2012-03 can be found in the city offices.

Sec. 70-80. - Authorization.

The Mayor and/or the City Manager of the City of Nederland, or their designee, is hereby authorized and directed to implement the applicable provisions of this plan upon determination that such implementation is necessary to protect public health, safety, and welfare. The mayor and/or the city manager or their designee, shall have the authority to initiate or terminate drought or other water supply emergency response measures as described in this plan.

(Ord. No. 2012-03, § 1(Exh. A, § V), 3-12-12)

Sec. 70-81. - Application.

The provisions of this plan shall apply to all persons, customers, and property utilizing water provided by the city. The terms "person" and "customer" as used in the plan include individuals, corporations, partnerships, associations, and all other legal entities.

(Ord. No. 2012-03, § 1(Exh. A, § VI), 3-12-12)

Sec. 70-82. - Definitions.

For the purposes of this plan, the following definitions shall apply:

Aesthetic water use: Water use for ornamental or decorative purposes such as fountains, reflecting pools, and water gardens.

Commercial and institutional water use: Water use, which is integral to the operations of commercial and non-profit establishments and governmental entities, such as retail establishments, hotels and motels, restaurants, and office buildings.

Conservation: Those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternative uses.

Customer: Any person, company, or organization using water supplied by the city.

Domestic water use: Water use for personal needs or for household or sanitary purposes, such as drinking, bathing, heating, cooking, sanitation, or for cleaning a residence, business, industry, or institution.

Even number address: Street addresses, box numbers, or rural postal route numbers ending in 0, 2, 4, 6, or 8 and locations without addresses.

Industrial water use: The use of water in processes designed to convert materials of lower value into forms having greater usability and value.

Landscape irrigation use: Water used for the irrigation and maintenance of landscaped areas, whether publicly or privately owned, including residential and commercial lawns, gardens, golf courses, parks, and rights-of-way and medians.

Non-essential water use: Water uses that are not essential or required for the protection of public health, safety, and welfare, including:

- (a) Irrigation of landscape areas, including parks, athletic fields, and golf courses, except otherwise provided under this plan;
- (b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle;
- (c) Use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
- (d) Use of water to wash down buildings or structures for purposes other than immediate fire protection;
- (e) Flushing gutters or permitting water to run or accumulate in any gutter or street;
- (f) Use of water to fill, refill, or add to any indoor or outdoor swimming pools or jacuzzi-type pools;
- (g) Use of water in a fountain or pond for aesthetic or scenic purposes except where necessary to support aquatic life;
- (h) Failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s); and
- (i) Use of water from hydrants for construction purposes or any other purposes other than firefighting.

Odd numbered address: Street addresses, box numbers, or rural postal route numbers ending in 1, 3, 5, 7, or 9.

(Ord. No. 2012-03, § 1(Exh. A, § VII), 3-12-12)

Sec. 70-83. - Triggering criteria for initiation and termination of drought response stages.

The mayor and city council, the city manager, and/or the director of public works, or their 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. Public notification of the initiation or termination of drought response stages shall be by means of publication in a newspaper or general circulation, use of the broadcast media, internet services, direct mail to each customer, signs posted in public places, and/or available notification technology. The triggering criteria described below will be initiated as follows:

- By public works director, or designated personnel (*)
- By city manager and/or the mayor and city council (**)
- By mayor and city council (***)

The city has an existing water conservation plan dated October 1996 and subsequently updated. The information in that plan is to be the same as presented herein and there are no conflicts intended. The city's raw water supplier, the Lower Neches Valley Authority (LNVA) has established trigger conditions based on the water surface elevation in Sam Rayburn Reservoir. The trigger conditions vary seasonally and are described, along with the actions taken and goals of the response measures for each water shortage stage.

(a) *Stage I—Moderate water shortage condition.*

Requirements for initiation: The city will recognize that a moderate water shortage condition is in progress and customers shall adhere to the prescribed restrictions on certain water uses, defined in section 70-82, definitions, when the following conditions exist:

- (1) The LNVA provides official notice to the city that Sam Rayburn Reservoir has remained below the following season critical lake level shown below:

Lake Level	Time Period
158.0 MSL	January 1—March 31
160.0 MSL	April 1—July 31
158.0 MSL	August 1—August 31
156.0 MSL	September 1—December 31

- (2) Water demand is approaching the safe capacity of the system on a sustained basis. Sustained water usage over 4.0 mgd for five consecutive days is the stage I trigger condition. (*)
- (3) If a mild contamination is noted in the raw surface water, but the water can still be treated by the existing facilities by means such as increasing chlorine dosage; or additional sources of pollution, serious enough to threaten the quality of water at the city's intake, are reported within the Neches River basin upstream from the LNVA intakes. (*)
- (4) Water levels in tanks are consistently below $\frac{3}{4}$ full (five days uninterrupted). (**)
- (5) Local power failures are imminent as a result of power station failures, storms, transmission problems, or excessive power demand in the area. (**)
- (6) Performance of surface water pumps, booster pumps, or other equipment (including pumping equipment for the LNVA Canal) indicates imminent failure. (**)

- (7) The transmission line from canal to water plant is in imminent danger of failure. (**)
- (8) Levees are approaching failure conditions in portions of the LNVA Canal system which are vital to providing Nederland with raw water. (**)
- (9) Water supply emergencies in outlying communities interconnected to the city could require diversion of local water supplies. (***)
- (10) Severe freezing conditions are forecast, and widespread breakage of home plumbing, water treatment units, and/or breakage of distribution lines is anticipated. (***)
- (11) The Mid County area is under a severe storm warning and falls in the path of the storm. (***)

Goal: Achieve a voluntary 30 percent reduction of non-essential water use and prevent wasting of water.

Measures:

- When the system reaches moderate water shortage conditions, the city will advise its customers and may request customers to curtail their consumption of water for nonessential uses.
- The city will request its residential customers implement voluntary conservation measures, including restriction of lawn irrigation. Customers may be requested to prohibit other non-essential outdoors uses, such as car washing, filling of swimming pools, etc. The city will use the news media to inform the public of the need to limit non-essential water use.
- The city will request its commercial and industrial customers evaluate water conservation practices in order to minimize process water use to the extent feasible and to encourage basic water conservation practices among employees.
- City personnel will monitor water delivery facilities to prevent wasting of water.

Requirements for termination: The city will recognize that the stage I condition has ended when the Sam Rayburn Reservoir is above the critical water levels defined above for 30 consecutive days. In addition, the city manager, the director of public works, and/or the mayor and city council must use judgment as to whether to upgrade, continue, downgrade, or discontinue an emergency. The decision to terminate or downgrade an emergency will normally be made at the level mayor and city council, city manager, or public works director at which the emergency was declared, such as water demand has been reduced to safe levels and is expected to remain stable, actual contamination of water supplies is ended or is under control; or threat of contamination has subsided; or alternate supply has been obtained on temporary or permanent basis, water levels in elevated or ground storage tanks have been restored to normal, etc. The city will notify its customers via the media of the termination of stage I in the same manner as the notification of initiation of stage I.

(b) *Stage II—Severe water shortage condition.*

Requirements for initiation: The city will recognize that a severe water shortage condition is in progress and customers shall adhere to the prescribed restrictions on certain water uses, defined in section 70-83, definitions, when the following conditions exist:

- (1) The LNVA provides official notice to the city that Sam Rayburn Reservoir has remained below 153.0 MSL for a continuous period of 20 days. With Sam Rayburn water surface at elevation 153.0 MSL the remaining water in the conservation pool is sufficient to sustain LNVA's water use demands for approximately one year without significant rainfall in the basin.

- (2) Water demand occasionally reaches firm capacity (6.0 mgd) of the system (two days within a 30-day period), and failure of any pump, chlorine feeder, or surface treatment unit could reduce the level of service to the system. (*)
- (3) Surface water contamination is approaching limit of treatability with existing facilities. (*)
- (4) Over 20 percent of storage tank capacity is out of service due to structural failure, leakage, maintenance, or contamination. (*)
- (5) Water level in tanks is consistently below half full (three days uninterrupted). (**)
- (6) A surface water treatment unit has been damaged from a severe storm. (**)
- (7) Water emergencies in adjacent communities require diversion of so much water that the level of service to any part of the Nederland system is threatened. (**)
- (8) The transmission line from canal to water plant has failed. (**)
- (9) Levee failure (LNVA Canal) has shut off the supply of raw water to Nederland, and it will be several days before the supply can be resumed. (***)
- (10) Severe freezing conditions have resulted in widespread damage to home plumbing and/or distribution lines. (***)
- (11) One or more surface water pumps have failed due to mechanical problems, but several pumps remain operable. (***)

Goal: Achieve a 90 percent reduction from non-essential water use and a ten percent reduction in total water use.

Measures:

- When the system reaches moderate water shortage conditions, the city will advise its customers and may request customers to curtail their consumption of water for nonessential uses.
- The city will request its residential customers implement voluntary conservation measures, including restriction of lawn irrigation. Customers may be requested to prohibit other non-essential outdoors uses, such as car washing, filling of swimming pools, etc. The city will use the news media to inform the public of the need to limit non-essential water use.
- The city shall prohibit outdoor use and all wasteful use under authority of Ordinance No. 1996-12 (and all future amendments), imposing a surcharge system, if appropriate.
- The city will request its commercial and industrial customers evaluate water conservation practices in order to minimize process water use to the extent feasible and to encourage basic water conservation practices among employees.
- City personnel will monitor water delivery facilities to prevent wasting of water.

Requirements for termination: The city will recognize that the stage II condition has ended when the water surface elevation in Sam Rayburn Reservoir is above 153.0 MSL for 30 consecutive days. In addition, the city manager, the director of public works, and/or the mayor and city council must use judgment as to whether to upgrade, continue, downgrade, or discontinue an emergency. The decision to terminate or downgrade an emergency will normally be made at the level mayor and city council, city manager, or public works director at which the emergency was declared, such as water demand has been reduced to safe levels and is expected to remain stable, actual contamination of water supplies is ended or is under control; or threat of contamination has subsided; or alternate supply has been obtained on temporary or permanent basis, water levels in elevated or ground storage tanks have been restored to normal, etc. The city will notify its customers via the media of the termination of stage II in the same manner as the notification of initiation of stage II.

(c) *Stage III—Emergency water shortage condition.*

Requirements for initiation: The city will recognize that a severe water shortage condition is in progress and customers shall adhere to the prescribed restrictions on certain water uses, defined in section 70-82, definitions, when the following conditions exist:

- (1) The LNVA provides official notice to the city that Sam Rayburn Reservoir has remained below 151.5 MSL for a continuous period of ten days. With Sam Rayburn water surface at elevation 151.5 MSL the remaining water in the conservation pool is sufficient to sustain LNVA's water use demands for approximately six months without significant rainfall in the basin.
- (2) Water demand is exceeding firm capacity (6.0 mgd) on a regular basis (five consecutive days). (*)
- (3) Surface water is so contaminated that it cannot be treated with existing facilities, or such contamination is imminent because of nearby canal or stream pollution. (**)
- (4) An immediate health or safety hazard could result from actual or imminent failure of a system component. (**)
- (5) Water levels in elevated tanks are too low to provide adequate fire protection (generally less than one-fourth full). (***)
- (6) Several elevated or ground storage tanks are out of service. (***)
- (7) Rupture of distribution lines or filter compartments in water plant has resulted in loss of water from storage tanks, and the pumps are not capable of refilling tanks quickly. (***)
- (8) Levee failure (LNVA Canal) has shut off the supply of raw water to Nederland, and it will be an extended length of time before the supply can be resumed. (***)
- (9) All or most surface water pumps in any group (canal or city pumps) have failed due to mechanical problems and will be out of service for an extended period of time. (***)
- (10) Water emergencies in adjacent communities require so much water diversion that service to portions of the Nederland system is severely disrupted. (***)

Goal: Eliminate all non-essential water use to the maximum extent possible and achieve a 20 percent reduction in total water use.

Measures:

- When the system reaches moderate water shortage conditions, the city will advise its customers and may request customers to curtail their consumption of water for nonessential uses.
- The city will request its residential customers implement voluntary conservation measures, including restriction of lawn irrigation. Customers may be requested to prohibit other non-essential outdoors uses, such as car washing, filling of swimming pools, etc. The city will use the news media to inform the public of the need to limit non-essential water use.
- The city shall prohibit outdoor use and all wasteful use under authority of Ordinance No. 1996-12 (and all future amendments), imposing a surcharge system, if appropriate.
- The city will request its commercial and industrial customers evaluate water conservation practices in order to minimize process water use to the extent feasible and to encourage basic water conservation practices among employees.
- City personnel will monitor water delivery facilities to prevent wasting of water.

Requirements for termination: The city will recognize that the stage III condition has ended when the water surface elevation in Sam Rayburn Reservoir is above 151.5 MSL for 30 consecutive

days. In addition, the city manager, the director of public works, and/or the mayor and city council must use judgment as to whether to upgrade, continue, downgrade, or discontinue an emergency. The decision to terminate or downgrade an emergency will normally be made at the level mayor and city council, city manager, or public works director at which the emergency was declared, such as water demand has been reduced to safe levels and is expected to remain stable, actual contamination of water supplies is ended or is under control; or threat of contamination has subsided; or alternate supply has been obtained on temporary or permanent basis, water levels in elevated or ground storage tanks have been restored to normal, etc. The city will notify its customers via the media of the termination of stage III in the same manner as the notification of initiation of stage III.

(d) *Stage IV—Exceptional water shortage condition.*

Requirements for initiation: The city will recognize that an exceptional water shortage condition is in progress and customers shall adhere to the prescribed restrictions on certain water uses, defined in section 70-82, definitions, when the following conditions exist:

- (1) The LNVA provides official notice to the city that Sam Rayburn Reservoir has remained below 149.0 MSL for a continuous period of three days. With Sam Rayburn water surface at elevation 149.0 MSL the remaining water in the conservation pool is sufficient to sustain LNVA's water use demands for approximately three months without significant rainfall in the basin. An emergency water supply may be made available from the inactive pool of Sam Rayburn Reservoir upon approval of the US Army Corps of Engineers.

Goal: Eliminate all non-essential water use to the maximum extent possible and achieve a 30 percent reduction in total water use.

Measures:

- When the system reaches moderate water shortage conditions, the city will advise its customers and may request customers to curtail their consumption of water for nonessential uses.
- The city will request its residential customers implement voluntary conservation measures, including restriction of lawn irrigation. Restrictions may include prohibited outdoor water use and implementation of applicable conservation measures to minimize indoor uses until the water shortage condition improves to moderate or better condition. The city will use the news media to inform the public of the need to limit non-essential water use.
- The city shall prohibit outdoor use and all wasteful use under authority of Ordinance No. 1996-12 (and all future amendments), imposing a surcharge system, if appropriate.
- The city will request its commercial and industrial customers evaluate water conservation practices in order to minimize process water use to the extent feasible and to encourage basic water conservation practices among employees.
- City personnel will monitor water delivery facilities to prevent wasting of water.

Requirements for termination: The city will recognize that the stage IV condition has ended when the water surface elevation in Sam Rayburn Reservoir is above 149.0 MSL for 30 consecutive days. The city will notify its customers via the media of the termination of stage IV in the same manner as the notification of initiation of stage IV.

(Ord. No. 2012-03, § 1(Exh. A, § VIII), 3-12-12)

Sec. 70-84. - Water rationing.

In the event that water shortage conditions threaten public health, safety, and welfare, the city council may declare a water use emergency as noted in Ordinance No. 1996-12 and authorize water rationing as follows:

All customers allowed consumption:

- Residential—50 gallons/household member/day.
- School—100 gallons (plus five gallons per student on days that classes are held).
- Commercial—75 percent of daily average consumption.
- Recreational facility—75 percent of daily average consumption.
- Industrial—75 percent of daily average consumption.
- Rationing shall become effective as soon as the meter serving the user can be read and the user notified either directly or through the news media. The city shall provide notice to each wholesale customer informing them of the water use emergency and the implementation of water rationing. Pro rata curtailment of water deliveries to or diversions by wholesale water customers shall be initiated as provided in Texas Water Code § 11.039. Wholesale water contracts entered into or renewed after adoption of the drought contingency plan, including contract extensions, shall include a provision that in case of a shortage of water resulting from drought, the water to be distributed shall be divided in accordance with Texas Water Code, § 11.039.

(Ord. No. 2012-03, § 1(Exh. A, § IX), 3-12-12)

Sec. 70-85. - Enforcement.

- (a) No person shall knowingly or intentionally allow the use of water from the city for residential, commercial, industrial, agricultural, or any other purpose in a manner contrary to any provision of this plan, or in an amount in excess of that permitted by the drought response stage in effect at the time pursuant to action taken by the mayor and city council and/or city manager, or his/her designee, in accordance with provisions of this plan.
- (b) Any person who violates this plan is guilty of a misdemeanor and, upon conviction, shall be punished by a fine noted in the provisions of Ordinance No. 1996-12.
- (c) Any person, including a person classified as a water customer of the city, in apparent control of the property where a violation occurs or originates shall be presumed to be the violator, and proof that the violation occurred on the person's property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to show that he/she did not commit the violation. Parents shall be presumed to be responsible for violations of their minor children and proof that a violation, committed by a child, occurred on property within the parents' control shall constitute a rebuttable presumption that the parent committed the violation, but any such parent may be excused if he/she proves that he/she had previously directed the child not to use the water as it was used in violation of this plan and that the parent could not have reasonably known of the violation.
- (d) Any employee of the city, police officer, or other person designated by the city manager, may file charges on a person he/she reasonably believes to be in violation of Ordinance No. 1996-12.

(Ord. No. 2012-03, § 1(Exh. A, § X), 3-12-12)

Sec. 70-86. - Variances.

The mayor and city council, or their designee, may, in writing, grant a temporary variance for existing water uses otherwise prohibited under this plan if it is determined that failure to grant such variance would

cause an emergency condition adversely affecting the health, sanitation, or fire protection for the public or the person requesting such variance and if one or more of the following conditions are met:

- (a) Compliance with the plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the plan is in effect.
- (b) Alternative methods can be implemented which will achieve the same level of reduction in water use.

Persons requesting an exemption from the provisions of this plan shall file a petition for variance with the mayor and city council, through the city manager, within five calendar days after the plan or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the director of public works, or his/her designee, and shall include the following:

- (a) Name and address of the petitioner(s).
- (b) Purpose of water use.
- (c) Specific provision(s) of the plan from which the petitioner is requesting relief.
- (d) Detailed statement as to how the specific provision of the plan adversely affects the petitioner or what damage or harm will occur to the petitioner or other if petitioner complies with this plan.
- (e) Description of the relief requested.
- (f) Period of time for which the variance is sought.
- (g) Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this plan and the compliance date.
- (h) Other pertinent information.

Variances granted by the city shall be subject to the following conditions, unless waived or modified by the mayor and city council:

- (a) Variances granted shall include a timetable for compliance.
- (b) Variances granted shall expire when the plan is no longer in effect, unless the petitioner has failed to meet specified requirements.

No variance shall be retroactive or otherwise justify any violation of this plan occurring prior to the issuance of the variance.

(Ord. No. 2012-03, § 1(Exh. A, § XI), 3-12-12)