

AN ORDINANCE 100322

AMENDING CHAPTER 34, ARTICLE IV, DIVISION I,
OF THE SAN ANTONIO CITY CODE TO MAKE
PERMANENT A YEAR ROUND WATER
CONSERVATION ORDINANCE; PROVIDING FOR
CRIMINAL AND CIVIL PENALTIES; AND DIRECTING
PUBLICATION.

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WHEREAS, the San Antonio Water System ("System") and the City of San Antonio ("City") are committed to the protection of the Edwards Aquifer as a unique natural resource; and

WHEREAS, the System's Water Resource Plan and the Region L Plan include advance conservation when projecting water supply requirements for San Antonio and the San Antonio region's future water needs; and

WHEREAS, San Antonio has made significant progress in reducing the per capita usage from a high of 225 gallons per capita daily ("gpcd") in the mid-1980's to 139 gpcd in 2003; and

WHEREAS, to sustain an overall goal of 132 gpcd during drier times, water use reductions become more difficult to achieve; and

WHEREAS, in November 2000, Mayor Howard Peak requested the System to develop a year round water conservation ordinance that would result in a reduction of water use without significantly impacting the quality of life for San Antonio citizens; and

WHEREAS, System staff has drafted language that would increase water conservation standards with significant input from the Community Conservation Committee, general public, citizens groups, and stakeholders over the past three years; and

WHEREAS, the recommended provisions address a variety of water uses and center around specific methods, equipment, and behaviors, that, when undertaken, result in significant water savings; and

WHEREAS, amending Chapter 34, Article IV, Division I, of the San Antonio City Code to make permanent a year-round water conservation ordinance will assist in reaching the 132 gpcd goal without significantly impacting the lives of the citizens of San Antonio; and

WHEREAS, the San Antonio Water System Board of Trustees (the "Board") has requested that the City adopt an ordinance to make permanent a year-round water conservation effort; and

WHEREAS, the Board has found that the potential amount of water which will be saved annually through the implementation of a year-round water conservation ordinance is 4000 acre feet, including water savings of 515 acre feet for irrigation system audits; water savings of 664 acre feet for dining facility provisions; 250 acre feet for cooling tower provision; 165 acre feet annually for each 400 ton air conditioning unit collecting condensate; and 211 acre feet a year for residential landscape provisions; and

WHEREAS, the City Council of the City of San Antonio desires to amend Chapter 34, Article IV, Division I, of the San Antonio City Code to make permanent a year-round water conservation ordinance; **NOW, THEREFORE;**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Code of the City of San Antonio, Chapter 34, Article IV, Water Conservation and Reuse, Division I, is hereby amended as set forth in the appended text, Attachment "A," fully incorporated herein verbatim for all purposes. Language amended by omission from the City Code is indicated in Attachment "A" by a strike through (~~strike~~) and new language to be added to the City Code is identified by underline.

SECTION 2. Any penalty, fine, or forfeiture imposed for a violation arising from amended provisions, shall be effective five (5) days after publication, as required by law.

SECTION 3. Financial impact on the City of San Antonio has not been identified as of the passage of this ordinance. For any future financial impact, the Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, create allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

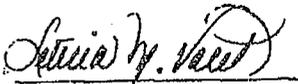
SECTION 4. The City Clerk shall publish this ordinance as may be required by law.

SECTION 5. If any part, section, paragraph, sentence, phrase or word of this ordinance is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this ordinance shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid or ineffective.

SECTION 6. This Ordinance shall take effect on January 30, 2005.

PASSED AND APPROVED this 20th day of January, 2005.

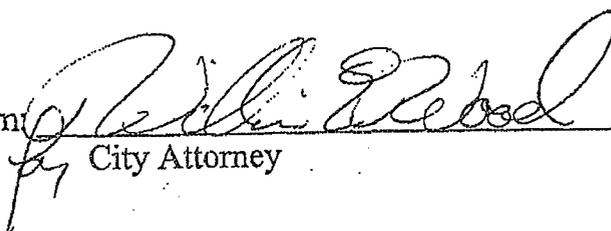
ATTEST:



City Clerk


M A Y O R
EDWARD D. GARZA

Approved as to form



City Attorney

ARTICLE IV. WATER CONSERVATION AND REUSE

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Division 1. GENERALLY REGULATED ACTIVITIES

Sec. 34-271. Definitions.

As used in this article, the following terms shall have the following meanings:

Air conditioning system(s). A mechanical system generally consisting of a compressor, thermostat and duct work permanently installed in a building for the purpose of controlling humidity and temperature. For the purposes of this division, an air conditioning system does not include window units.

Automatic irrigation controller. A device that automatically activates and deactivates an irrigation system at times selected by the operator.

Blowdown meter. A meter that tracks the amount of water discharged from a cooling tower system.

Commercial dining facility. A business that serves prepared food and beverages to be consumed on the premises.

Concentration. Re-circulated water that has elevated levels of total dissolved solids as compared to the original make up water.

Conservation Department. The Conservation Department of the San Antonio Water System.

Conductivity controller. A device used to measure the conductivity of total dissolved solids in the water of a cooling system and control the discharge of water in order to maintain efficiency.

Cooling Tower. An open water recirculation device that uses fans or natural draft to draw or force air to contact and cool water through the evaporative process.

Director of Conservation. The Director of the Department of Conservation of the San Antonio Water System.

Impervious surface. Patios, pathways and other areas where firm footing is desired, constructed in such a way that does not allow water to penetrate the ground. Examples include but are not limited to concrete slab patios, sidewalks and driveways, asphalt streets or pavers set with mortar.

Irrigation system. A system with fixed pipes and emitters or heads that apply water to landscape plants or turfgrass, including, but not limited to, in-ground and permanent irrigation systems.

Irrigation system analysis. A zone-by-zone analysis of an irrigation system that, at a minimum, includes a review of the following elements:

- (1) design appropriateness for current landscape requirements
- (2) irrigation spray heads and valves
- (3) precipitation rates expressed in inches per hour
- (4) annual maintenance plan that includes irrigation system maintenance, landscape maintenance, and a basic summer and winter irrigation scheduling plan.

Large property. A land tract owned by a general customer that equals or exceeds five acres in size and has an irrigation system.

Low-flow toilet. A tank toilet that uses 1.6 gallons or less of water per flush.

Make-up Meter. A meter that measures the amount of water entering a cooling tower system.

NPDES / TPDES permit holders. Those entities that have valid state or federal permits commonly referred to as NPDES or TPDES [National Pollutant Discharge Elimination System / Texas Pollutant Discharge Elimination System] permits to satisfy requirements of the federal Clean Water Act.

Person. Any individual, corporation (including a government corporation), organization, state or federal governmental subdivision or agency, political subdivision of a state, interstate agency or body, business, trust, partnership, limited partnership, association, firm, company, joint stock company, joint venture, commission or any other legal entity.

Pervious Hardscape. Patios, pathways and other areas where firm footing is desired, constructed in such a way that allows for water to penetrate the ground. Examples include flagstone set in sand and wood plank decks, but exclude concrete slab patios and sidewalks or pavers set with mortar.

Positive shut-off. A valve that is held in a closed position by system pressure until overridden by an outside force.

Power washer. A machine that uses water or a water-based product applied at high pressure to clean impervious surfaces.

Rain sensor. A device designed to stop the flow of water to an automatic irrigation system when rainfall has been detected.

Recycled Water. Domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use in accordance with applicable law.

Requestor. A customer who requests a variance under this Division.

Residential Customer. A single or multi-family dwelling unit containing two (2) or fewer family units.

Summer dormancy. The ability of turfgrass to survive without water for a period of sixty consecutive days during the months of May through September. Turfgrass with summer dormancy capabilities approved for use are set forth in the approved low water use plant list. The approved low water use plant list, as may be amended from time to time, shall be available from SAWS and located at www.saws.org/conservation.

Turfgrass. Perennial ground cover plants and grasses that are adapted to regular mowing and traffic through management.

Vacuum system. A system, often consisting of a pump, chamber, and tubes, that is used to create a vacuum for any of a variety of purposes, including but not limited to medical, dental and industrial applications.

Variance Administrator. Staff person in the Department of Conservation responsible for administering and hearing variance requests under this Division 1.

Vehicle wash facility. A permanently-located business that washes vehicles with water or water-based product, including but not limited to self-service car washes, full-service car washes, roll-over/in-bay style car washes, and fleet maintenance wash facilities.

Vehicle wash fundraiser. Any special-purpose vehicle wash event for which a fee is charged or donation accepted.

Water flow restrictor. An orifice or other device through which water passes at a restricted rate.

Xeriscape. A landscape consisting of a maximum of 50% turfgrass, with the remaining percentage of landscape incorporating low water use plants and/or pervious hardscape. The approved low water use plant list, as may be amended from time to time, shall be available from SAWS and located at www.saws.org/conservation.

Zonal irrigation system. An irrigation system that segregates by station areas of shrubs, ground cover, bedding plants, and turf to accommodate a diversity of watering requirements.

Sec. 34-272. Activities to be regulated on and after effective dates.

The following activities shall be regulated in the manner set out herein on and after the respective dates indicated in the sections and subsections. A person affected by such regulations may request a variance in the manner set out in Section 34-277. A violation of this section and subsections shall be subject to the enforcement provisions set out in Section 34-278. It shall be

and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this Division 1.

Sec. 34-272.1 Power Washers.

- (a) Effective January 1, 2006, a person who uses a power washer in any commercial manner or for compensation shall register with the Director of Conservation, and obtain a certificate for such use.
- (b) Exempted from this requirement are persons who use power washers for personal use at their own home and homebuilders who are performing a one-time clean up at a newly constructed house.
- (c) Holders of NPDES / TPDES permits are deemed certified.

Comment. This comment does not have force of law, but is offered for clarification only. The intent of this registration protocol is to complement and make effective mandates necessary to "critical period" conservation rules found elsewhere in the City Code. The conservation rules in question are intended to prevent water waste under certain circumstances when "critical periods" are observed. Examples of persons subject to year round registration are those hired, employed or contracted to clean sidewalks, parking lots, commercial / public buildings and other impervious areas associated with commercial or domestic properties; professional painters; businesses using their own in-house power washers such as chain stores, grocery stores, and any other entity, public or private.

Sec. 34-272.2 Vehicle Wash Fundraisers.

Effective March 1, 2005, any vehicle wash fundraiser shall be conducted at a vehicle wash facility using such facility's equipment.

Sec. 34-273. Activities to be regulated on and after January 1, 2006.

Except as provided by a specific and alternative application date, particularly systems analysis, the following activities shall be regulated in the manner set out herein on and after January 1, 2006. A person affected by such regulations may request a variance in the manner set out in Section 34-277. A violation of this section and subsections shall be subject to the enforcement provisions set out in Section 34-278. It shall be and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this Division 1.

Sec. 34-273.1 Minimum irrigation area and flow direction.

Newly installed irrigation systems using pop-up spray or rotor technology shall not be used in landscaped areas which have both: (a) dimensions less than five feet in length and/or width; and, (b) impervious pedestrian or vehicular traffic surfaces along two (2) or more perimeters. Where pop-up sprays and rotor heads are allowed in newly installed irrigation systems, they (a) must direct flow away from any adjacent impervious surface and (b) shall not be placed within ~~four~~ inches from an impervious surface.

34-273.2 Annual irrigation system analysis for athletic fields, golf courses, and large properties.

(a) An annual irrigation system analysis shall be required for all athletic fields, golf courses and large properties and shall be submitted in writing to the San Antonio Water System Conservation Department on or before May 1st of each year, beginning on May 1, 2006. Golf courses, other than those utilizing recycled water for irrigation in accordance with an agreement with SAWS, shall comply with residential irrigation requirements on areas other than tee boxes, fairways and greens.

(b) Municipal tenants and lessees of golf courses, sports and athletic playing fields, and any other municipally owned properties, shall be responsible for compliance with this section and subsection. The SAWS shall look directly to such tenants and lessees for compliance unless the municipality concedes by contractual agreement with the tenant / lessee to assume the tenant / lessee's responsibility for compliance.

34-273.3 Cooling towers

Effective January 1, 2006:

(a) Cooling Towers, not utilizing recycled water, shall operate a minimum of four cycles of concentration.

(b) Newly constructed cooling towers shall be operated with conductivity controllers, as well as make-up and blowdown meters.

34-273.4 Ice Machines

Newly installed ice machines shall not be single pass water-cooled.

34-273.5 Commercial Dining Facilities

Commercial dining facilities shall:

- (a) Serve water only upon request.
- (b) Utilize positive shut-offs for hand-held dish-rinsing wands.
- (c) Utilize water flow restrictors for all garbage disposals.

34-273.6 Vehicle wash facilities.

- (a) Vehicle wash facilities, commencing operation on or after January 1, 2006, using conveyORIZED, touchless, and / or rollover in-bay technology shall reuse a minimum of fifty percent of water from previous vehicle rinses in subsequent washes.
- (b) Vehicle wash facilities, commencing operation on or after January 1, 2006, using reverse osmosis to produce water rinse with a lower mineral content, shall incorporate the unused concentrate in subsequent vehicle washes.

- (c) Regardless of date of operation commencement, self-service spray wands used shall emit no more than three gallons of water per minute.

34-273.7 Vacuum Systems.

Vacuum systems shall not be water-cooled with single-pass potable water when alternative systems are available.

34-274 Other Activities to be regulated on and after January 1, 2006.

The following activities shall be regulated in the manner set out herein on and after January 1, 2006. A person affected by such regulations may request a variance in the manner set out in Section 34-277. A violation of this section and subsections shall be subject to enforcement provisions set out in Section 34-278. It shall be and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this Division 1.

34-274.1 Condensate collection. Newly constructed commercial buildings installing air conditioning systems on and after January 1, 2006, shall have a single and independent

condensate wastewater line to collect condensate wastewater to provide for future utilization as (i) process water and cooling tower make-up and/or (ii) landscape irrigation water. Condensate wastewater shall not be allowed to drain into a storm sewer, roof drain overflow piping system public way or impervious surface.

34-274.2. Rain Sensors. Effective January 1, 2006, rain sensors shall be installed and maintained on all irrigation systems equipped with automatic irrigation controllers.

34-275 Landscaping Regulations generally applicable on and after January 1, 2006.

Except as specifically provided with alternative effective dates, persons affected by the regulations set out herein below shall comply on and after January 1, 2006, and may request a variance to such regulations in the manner set out in Section 34-277. A violation of this section and subsections shall be subject to the enforcement provisions set out in Section 34-278. It shall be and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this Division 1.

34-275.1 Xeriscape option. Effective January 1, 2006, homebuilders and/or developers subdividing lots and/or constructing new single family residential homes shall offer a xeriscape option in any series of landscaping options offered to prospective home buyers.

34-275.2 Model. Effective January 1, 2006, homebuilders and/or developers who construct model homes for a designated subdivision shall have at least one model home per subdivision landscaped according to a xeriscape design.

34-275.3 Zonal system. In-ground irrigation systems installed on and after January 1, 2006, shall be zonal irrigation systems.

34-275.4 Turfgrass soil support.

- (a) Turfgrass installed during or associated with new construction on and after January 1, 2006, shall have a minimum of four inches of soil under the turfgrass.
- (b) Drainage utility projects, water and power utility projects, public property maintenance or repair, and those governmental activities necessary to NPDES / TPDES compliance with federal or state rules and regulations implementing the federal Clean Water Act; or governmental actions to comply with the Americans with Disabilities Act, shall not be deemed new construction for purposes of this subsection.

34-275.5 Turfgrass dormancy qualities. Turfgrass installed after January 1, 2007, shall have summer dormancy capabilities.

Legal comment: This comment does not have force of law, but is provided here for informational purposes only. The Texas Property Code, Chapter 202, Section 202.001, et. seq., entitled "Certain Restrictive Covenants," reflects a growing public interest in water conservation and its relationship to the public health, safety, and welfare.

Texas Property Code, Chapter 202, Section 202.007, provides that a property owners association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from implementing certain efficient irrigation systems, including underground drip or other drip systems. Any dedicatory instrument provision, attempting to restrict a property owner from installing such efficient systems, is void. Therefore, such restrictions, running counter certain conservation efforts, cannot be enforced. Texas Real Property Code, Sec. 202.007(b). Added by Acts 2003, 78th Legislature, chapter 1024, § 1, Effective, September 1, 2003.

As used within the Texas Property Code, "dedicatory instrument" means a governing instrument for the establishment, maintenance, and operation of a residential subdivision, planned unit development, condominium, townhouse regime, or any similar planned development. Texas Real Property Code, Sec. 202.007(1).

The Texas Property Code also allows that a property owners' association may restrict the type of turf used by a property owner in the planting of new turf [in the future] in order to encourage or require water conserving turf.

According to the Texas Property Code, property owners' associations may regulate, by dedicatory instrument or other legal means, installation of efficient irrigation systems, including establishing visibility limitations for aesthetic purposes.

The SAWS endorses and advocates the use of dedicatory instruments and other legal obligations among private parties which understandings may support and promote a culture of water conservation.

Section 34-276 Variances.

The authority to grant a variance and an appeal from such variance to the provisions of Article IV, Division 1, is hereby delegated to the San Antonio Water System in the manner described herein. A determination by the San Antonio Water System pursuant to this section shall be deemed final for purposes of appeal. Appeal procedures are detailed below.

34-276.1 Variance. A person who is affected by these provisions may seek a variance in the manner set out herein. A person shall request a variance within thirty (30) days of the date a provision becomes apparently applicable to that person's activities and/or properties. For example, a person will have standing to seek a variance within thirty (30) days following receipt of a formal (citation) or informal notice of violation; prior to a notice of violation; or at the discretion of the variance administrator when, in the administrator's judgment, to deny standing to pursue a variance would clearly deny the applicant an opportunity to have justice and equity done for the applicant's case. In the latter situation, for purposes of justice and equity, the standard for allowing a variance application to be heard or considered are the common notions of rightness and fair play.

34-276.2 Time, date, place. A person seeking a variance under these provisions shall make such request in writing to the Conservation Department. Such request shall be reviewed by the variance administrator. If the application, on its face, warrants a variance, the administrator may grant the request without hearing. Otherwise, the administrator shall review such request within thirty (30) days of receipt and shall inform the requestor in writing of the time, date and place for variance hearing, if necessary.

34-276.3 Representation and notice of SAWS' response. First Hearing. The requestor may be represented by a duly authorized representative and may introduce such evidence as the requestor believes to be relevant. The administrator and appropriate Conservation Department personnel shall hear the request. The requestor shall receive written notification by the administrator within thirty (30) days of the date of the hearing whether such variance is granted or denied.

34-276.4 Appeal. In the event the variance is granted, the decision of the administrator shall be final. Should the variance be denied, however, the requestor shall have ten (10) days from receipt of the denial of the variance to seek an appeal in writing. Within thirty (30) days of the written request for an appeal from the denial of a variance, the Director shall hear the appeal.

The requestor shall be informed in writing of the time, date and place where such appeal shall be heard. The requestor and/or his authorized representatives may present evidence to the Director why such appeal should be granted. The Director shall inform the requestor within thirty (30) days of the date of the hearing of the appeal whether the appeal has been granted or denied. The determination of the Director shall be final and shall be in writing. If a judicial appeal is pursued, applicant must take such appeal to District Court or other court of competent jurisdiction within 30 days of the Director's final determination, which further appeal shall be pursued under appropriate standards of the substantial evidence rule.

34-276.5 Variance qualifications. Variances to the regulated activities in this Division 1 may be issued through the Department of Conservation's variance administrator provided that the general intent of Article IV, Division 1 has been met, and compliance with Article IV, Division 1, is proven to be impracticable to accomplish and to cause unnecessary hardship. The criteria to determine hardship shall include, but not be limited to, a showing of level of capital outlay and technical complexity in relation to conservation benefit to be derived, and time and effort required to accomplish compliance with this Division.

34-276.6 The SAWS Director of Conservation shall also develop specific criteria to be used for the granting of variances from the provisions of Article IV, Division 1, which are appropriate to the provision for which a variance is being sought. Such criteria shall be applied equally to each request for variance under a particular provision. A requestor shall be furnished with the criteria to be utilized by the administrator and/or Director prior to his/her variance application and/or appeal being heard.

34-277 Enforcement

34-277.1 The President/CEO or his designee of the San Antonio Water System is hereby authorized to enforce this Division in the manner and to the extent allowed by law, including, but not limited to, filing complaints with the city municipal prosecutor's office for such violations, serving notices of violations of this Division and filing civil enforcement actions. Such authorization does not diminish the City Attorney's authority in regard to enforcement of Chapter 34 provisions.

34-277.2 Presumption and Exception. For purposes of this Division, it shall be presumed that the person, in whose name a water meter connection is registered with the water purveyor servicing the property, is the responsible party who has made, caused, , allowed, or permitted a violation of the provisions of Article IV, Division 1. Proof that the particular premises had a water meter connection registered in the name of the defendant cited in a criminal complaint filed pursuant to this division shall constitute a *prima facie* presumption that the defendant is a person who made, caused, allowed or permitted a violation pursuant to the provisions of this Division. [Exception to this presumption is found in subsection 34-273.2 above, wherein a city, whose premises are used by a tenant / lessee, is generally not responsible for the tenant / lessee's compliance. In such cases the tenant / lessee of the city is responsible for compliance and the city shall have no duty to enforce against the tenant / lessee except to the extent the city's municipal courts may be fully utilized by the SAWS enforcement officers or other duly authorized governmental personnel charged with enforcement duties.]

34-277.3 The President/CEO or his or her designee is authorized and instructed to commence any action, in law or in equity, including the filing of criminal charges, deemed necessary for the purpose of enforcing this Division. The San Antonio Water System President/CEO or the designee may seek civil penalties, as may be allowed by statute, and any other legal or equitable relief available under common law, Chapter 54 of the Texas Local Government Code as it may be amended to address the subject matter of this Division, or any other applicable city, state or federal code or statute.

34-277.4 Criminal. Any person violating any provision of this Division 1 of Article IV shall be guilty of a Class C misdemeanor and upon citation and conviction, shall be punished by a fine not less than fifty dollars (\$50.00) and not more than one hundred dollars (\$100.00) for the first offense; a fine not less than two hundred and fifty dollars (\$250.00) and not more than five hundred dollars (\$500.00) for the second offense; a fine of not less than one thousand dollars (\$1,000.00) and not more than two thousand dollars (\$2,000) for the third and additional offenses. Each violation of a particular section of this Division shall constitute a separate offense, and each day an offense continues shall be considered a new violation for purposes of enforcing this Division.

Civil. Civil penalties, imposed by courts of competent jurisdiction in Civil Actions for violations of this division, may also be assessed as may be allowed by applicable state law in any amount to be authorized by the State of Texas. Under Chapter 54 of the Texas Local Government Code, the SAWS and the Office of the City Attorney may presently pursue civil enforcement for injunctive relief and the imposition of \$1,000.00 per day civil penalties appropriately imposed by the Court. This statutory remedy is in addition to the City's common law right to bring Civil Actions for injunctive relief to stop harmful acts, independent of authority found in the Texas Local Government Code.

34-277.5 If, for any reason, any section, sentence, clause or part of this Division is held legally invalid, such judgment shall not prejudice, affect, impair or invalidate the remaining sections of this Division, but shall be confined to the specific section, sentence, clause, or part of this Division held legally invalid.

Sec. 34-278-34-286. Reserved.