

## **ORDINANCE NO. 310**

**AN ORDINANCE OF THE CITY OF ARCHER CITY, TEXAS, AMENDING THE CITY'S CODE OF ORDINANCES, CHAPTER 13 UTILITIES, ARTICLE 13.06 DROUGHT CONTINGENCY PLAN TO INCLUDE PROVISIONS FOR THE REVISED DROUGHT CONTINGENCY PLAN; ESTABLISHING THE SEVERABILITY OF THIS ORDINANCE AND PROVIDING FOR ANY CONFLICTING PROVISIONS; ESTABLISHING A PENALTY; ESTABLISHING AN EFFECTIVE DATE FOR THIS ORDINANCE; AND REPEALING ORDINANCE 303 OF THE CITY OF ARCHER CITY CODE OF ORDINANCES.**

**WHEREAS**, it is required by the Texas Commission on Environmental Quality to have on record an approved Drought Contingency Plan with various activities at increasing Stages of drought; and,

**WHEREAS**, at its April 24, 2014 meeting, the City Council passed Ordinance No. 303, providing for a Drought Contingency Plan; and,

**WHEREAS**, the City Council now desires to repeal Ordinance 303; and,

**WHEREAS**, the City Council now desires to provide for a revised Drought Contingency Plan as written below.

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

Chapter 13, Utilities, of the Archer City Code of Ordinances is hereby amended at Article 13.06.001, so that each section shall hereafter read as follows:

### **SECTION 1.**

(a) **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 Archer City adopts the following Drought Contingency Plan (the Plan).

(b) Public Involvement

Opportunity for the public and wholesale water customers to provide input into the preparation of the Plan was provided by the City of Archer City by means of Public Hearing.

(c) Water Customer Education

The City of Archer City will periodically provide water customers (residential and wholesale) with information about the Contingency 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 news paper articles and flyers.

(d) Coordination with Region B Planning

The water service of the City of Archer City is located within the Region B Planning Commission planning area and the City of Archer City has provided a copy of the Plan to the Region B Planning Commission.

(e) Authorization

The city manager, or his/her 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 city manager, or his/her designee, shall have the authority to initiate or terminate drought or other water supply emergency response measures as described in this Plan.

(f) Criteria for Initiation and Termination of Drought Response Stages

The city manager shall declare that each “trigger level” of the Plan has been reached and that the water use restrictions for each respective stage are in effect. The water restrictions will remain in effect until the lake rises to a level that, when combined with the long-term forecast, assures the city an adequate supply of water. When an adequate supply of water is available, the city council, by majority vote, and after consultation with the city manager, shall announce the end to each respective stage of the restrictions.

(g) Restrictions

It shall be unlawful for any person, firm, corporation or other entity, at any time of the year, to:

(1) Run outside spray type irrigation on any day of the week between 11:00 a.m. and 6:00 p.m. Landscape watering is permitted any time with a handheld hose, soaker hose, bucket, watering can, bubbler or drip irrigation system. A spray type irrigation system may be used any time for the purposes of cooling golf course putting surfaces when warranted by weather conditions and only with run cycles of less than five minutes.

(2) Wash any motor vehicle at any location other than a commercial carwash or automotive shop unless the hose is equipped with a positive shutoff nozzle. Such nozzle shall stop the flow of water through the hose when released by the operator.

(3) Install new irrigation systems unless they are designed by a licensed professional recognized by the state to design such systems, and these systems shall be designed so as to be water conserving. Each new system shall utilize zonal irrigation, drip irrigation, subsurface irrigation and other water conserving features as appropriate. When application for the irrigation permit is made by other than a licensed irrigation specialist or landscape architect, or the irrigation system is designed by a licensed professional recognized by the state to design such systems plans shall be made available to the city building officials.

(4) Provide drinking water to customers of restaurants, bars, or clubs unless the customer requests such water.

(h) Stage 1 - drought watch.

When the levels of Lake Arrowhead and Kickapoo reach a capacity of 60-percent (or the demand exceeds design treatment capacity for three days, or the demand equals 105-percent of design treatment capacity), or the water supply system is unable to deliver water due to mechanical failure or damage of major water system components which will require more than 72 hours to repair when dry weather conditions exist and continued dry weather are expected over the course of the repair period a drought watch will be initiated. The following actions shall occur under the direction of the city manager:

(1) The city council and other city departments will be notified of the impending problem and the proposed immediate and future actions.

(2) The city shall initiate an education program through all available media to:

(A) Alert the public to the depletion of the reservoirs; current rate of withdrawals and the effect of such withdrawals; current treatment rates; current meteorological conditions; and the long-range weather forecast from the National Weather Service.

(B) Alert the public to the drought management program, the various stages and measures, and the possibility of implementation.

(C) Keep a constant flow of information to the public to condition them for more stringent measures.

(3) The city manager will coordinate with other departments on the structure of a program to implement voluntary and non-voluntary water restrictions.

(4) The city manager will conduct training necessary to implement the water restriction program.

(5) The city manager will prepare all administrative processes (forms, affidavits, maps, offices, etc.) for the restriction program.

(i) Stage 2 - drought warning.

When the levels of Lake Arrowhead and Kickapoo reach a capacity of 50-percent (or the demand exceeds design treatment capacity for three days, or the demand equals 110-percent of design treatment capacity, after a drought watch has been declared), or the water supply system is unable to deliver water due to mechanical failure or damage of major water system components (which require more than 48 hours to repair) while a drought watch is in progress, a drought warning will be initiated. The following actions shall occur under the direction of the city manager:

(1) It shall be unlawful for any person, firm, corporation or other entity to:

(A) Run outside irrigation systems (including sprinklers, automatic sprinkler systems and unattended hoses) except on the day of the week permitted for the area as identified on the attached water rationing zone map, an official copy of which shall be kept on file in the office of the city secretary; except that landscape watering is permitted any day at any time with a handheld hose, soaker hose, bucket (five gallons or less), watering can, bubbler or drip irrigation system. On days other than the day of the week permitted by the water rationing zone map, testing and troubleshooting of irrigation systems that involve the release of water is permissible any time, including between the hours of 11:00 a.m. to 6:00 p.m., as long as a licensed plumber or irrigator is present on location during testing (and visible to the ticket writer). Testing and troubleshooting of irrigation systems by other than a licensed plumber or irrigator that involves the release of water is otherwise permissible only on the day of week and time of day permitted by the water rationing zone map. Water used for irrigation from private wells, aerobic septic systems, wastewater effluent or other nonpotable water will be exempt from all drought-related restrictions but must comply with all other city, state and federal regulations.

(B) Run any type of outside watering on any day of the week between 11:00 a.m. and 6:00 p.m., except as authorized by subsection (c)(1).

(C) Wash any motor vehicle at any location other than a commercial carwash or automotive shop. The washing of a vehicle for health and safety reasons, sufficient to remove the hazard, is permitted any time (a dirty windshield is not sufficient excuse to wash the entire vehicle). Washing vehicles with a bucket, washing vehicles on the day to water or washing vehicles on the lawn while watering, other than at a commercial carwash, car dealership, detail shop or automotive shop, is prohibited.

(D) Conduct fundraising carwashes during the time the drought warning is in effect.

(E) Wash sidewalks, driveways, or concrete slabs unless an immediate health or safety risk is present.

(2) A drought emergency task force shall be formed for guidance through the remainder of the drought and to interface with the public.

(3) All nonessential operational use of water by the city staff should be suspended, such as flushing water mains, street sweeping, water jet cleaning of sanitary sewer mains, firefighter training, etc.), except where such use of water is critical to the health and safety of the citizens.

(4) Notify all wholesale customers of the situation and ask each to adopt similar reduction goals for their systems in accordance with their individual contracts with the city. Pro-rata curtailment by wholesale customers will be based upon their contractual limits as provided in Texas Water Code, section 11.039.

(j) Stage 3 - drought emergency.

When the levels of Lake Arrowhead and Kickapoo reach a capacity of 40-percent (or the demand exceeds design treatment capacity for four weeks, or the demand equals 115-percent of design treatment capacity, after a drought warning has been declared), or the water supply system is unable to deliver water due to mechanical failure or damage of major water system components (which require more than 24 hours to repair) while a drought warning is in progress, a drought emergency will be initiated. The following actions shall occur under the direction of the city manager:

(1) Tighten restrictions on nonessential outdoor uses of water (sprinkling, gardening, washing of cars, filling public/private swimming pools) to fewer days per week.

(2) Monitor all fire hydrant meters that are for contractor use, to determine what conservation can be achieved through this type of water usage.

(3) Specify and impose mandatory reductions on wholesale (raw and treated) water customers in accordance with Texas Water Code, section 11.039.

(4) Begin establishing a program for a drought disaster, which will allow restriction on the essential uses of water and prepare for implementation.

(k) Stage 4 - drought disaster.

When mandatory restrictions on nonessential uses does not adequately slow withdrawal of water from the lake and when the levels of Lake Arrowhead and Kickapoo reach a capacity of 30-percent (or the demand exceeds 120-percent of design treatment capacity, after a drought emergency has been declared), or the water supply system is unable to deliver water due to mechanical failure or damage of major water system components (which require more than 12 hours to repair) while a drought emergency is in progress, or the water system is contaminated either accidentally or intentionally, or the water system fails from acts of nature or man, a drought disaster will be initiated. The city manager shall impose further mandatory restrictions on nonessential uses of water. All restrictions from stage 3 remain in effect, except as specifically modified below. In stage 4, the following additional restrictions shall apply, but are not limited to:

(1) Place a total ban on the outdoor use of water for nonessential uses. This restriction includes all forms of irrigation, including, spray, bubbler, drip, hand watering, etc. This shall include the possible removal of all irrigation meters from residences.

(2) Continue the aggressive public relations and education program.

(3) Implement enforceable restrictions on essential uses as developed during the drought emergency.

(4) Other/miscellaneous.

(A) The watering of home foundations is restricted to once a week, on the day the property was authorized to spray irrigate in accordance with the water rationing map.

(i) Foundations may only be watered between the hours of 10:00 p.m. and 12:00 midnight.

(ii) Foundations may only be watered with soaker hoses.

(B) It shall be unlawful to wash sidewalks, driveways, concrete slabs, any structure or any part of a structure during stage 4 restrictions.

(l) Stage 5 - drought catastrophe.

When mandatory restrictions on nonessential uses does not adequately slow withdrawal of water from the lake and when the levels of Lake Arrowhead and Kickapoo reach a capacity of 25-percent (or the demand exceeds 120-percent of design treatment capacity, after a drought emergency has been declared), or the water supply system is unable to deliver water due to mechanical failure or damage of major water system components (which require more than 12 hours to repair) while a drought emergency is in progress, or the water system is contaminated either accidentally or intentionally, or the water system fails from acts of nature or man, a drought disaster [catastrophe] will be initiated. The city manager shall impose further mandatory restrictions on nonessential uses of water. All restrictions from stage 4 remain in effect, except as specifically modified below. In stage 5, the following additional restrictions shall apply, but are not limited to:

(1) The city manager shall declare a stage 5 drought catastrophe when the levels of Lakes Arrowhead and Kickapoo reach a combined capacity of 25-percent.

(2) The following actions shall occur under the direction of the city manager, with the goal of reducing the amount of potable water being provided by the city to less than .16 MGD:

(A) Impose further mandatory restrictions on nonessential uses of water and essential uses of water.

(B) Continue the aggressive public relations and education program.

(3) In stage 5 drought, the following restrictions shall apply:

(A) Irrigation:

(i) Irrigation prohibited. It shall be unlawful to utilize any type of irrigation using potable water produced by the city that is distributed through the city's distribution system on any day at any time. This restriction includes all forms of irrigation, including, spray, bubbler, drip, hand watering, etc. Testing of irrigation systems only upon approval by city manager.

(ii) Public golf courses. It shall be unlawful to irrigate any and all vegetated landscape areas on the golf course including greens, tee boxes, fairways, roughs, trees, shrubs, etc. The golf courses will be allowed to utilize the

remaining water within their pond system, as they see fit; but, will not be allowed to refill the ponds from the city system, while in a stage 5 drought disaster [catastrophe].

(B) Washing cars when Lakes Arrowhead and Kickapoo are between 20% and 25%:

(i) Location of washing cars limited to reduce runoff. It shall be unlawful for any person to wash a vehicle at any location other than a commercial carwash or commercial property that is owned by the owner of a fleet of vehicles.

a. It shall be an affirmative defense to prosecution pursuant to this subsection (i) that a person was washing a vehicle for health and safety reasons, only to an extent sufficient to remove the hazard, is permitted any time.

(ii) Allowable times for washing vehicles limited to reduce evaporation. It shall be unlawful for any person to use potable water to wash a vehicle at any time on Sunday or Monday.

(iii) Nozzles. It shall be unlawful for any carwash to use a nozzle that discharges more than 3.0 gallons per minute.

(iv) Bays. It shall be unlawful for a carwash to wash any of its bays with water, except on Fridays.

(C) Washing vehicles when Lakes Arrowhead and Kickapoo are below 20%: It shall be unlawful for any person to use potable water to wash a vehicle at any time when the levels of Lakes Arrowhead and Kickapoo are at a combined capacity of less than 20%.

(D) Restaurants/bars/clubs/school cafeterias:

(i) It shall be unlawful to provide drinking water to customers of restaurants, bars, or clubs unless the customer requests such water.

(ii) It shall be unlawful for a food establishment to thaw food with water. Food must be thawed by another legal method, such as refrigeration or cooking process.

(iii) It shall be unlawful for a food establishment to clean kitchen or food handling areas with spray hoses.

(E) Pools:

(i) It shall be unlawful to operate a water feature on any pool, including, but not limited to, fountains, waterfalls, descents, arcs, and slides.

(ii) It shall be unlawful to fill, refill or add potable water to private or public swimming, or wading pool that is not located entirely within a fully-enclosed climate-controlled structure from the city water supply.

(iii) Indoor pools are exempt from the restrictions of this subsection.

(F) Watering structures:

(i) The watering of home foundations is restricted to once a week, on the day the property was authorized to irrigate in accordance with the water rationing zone map.

a. Foundations may only be watered between the hours of 8:00 p.m. and 12:00 a.m. (midnight).

b. Foundations may only be watered with soaker hoses.

(ii) It shall be unlawful to wash sidewalks, driveways, concrete slabs, any structure or any part of a structure.

(m) Public and private golf courses:

Public and private golf courses may utilize spray irrigation on greens at any time for the purposes of cooling golf course putting surfaces when warranted by weather conditions and only with run cycles of less than five minutes. Golf course greens may be spray irrigated any day of the week.

(1) During a stage 2 drought warning (50% capacity), it shall be unlawful for golf courses to spray irrigate tee boxes and fairways, except on the day of the week permitted for the area as identified on the water rationing zone map.

(2) During a stage 3 drought emergency (40% capacity) it shall be unlawful for golf courses to spray irrigate tee boxes, except on the day of the week permitted for the area as identified on the water rationing zone map. It shall be unlawful for golf courses to spray irrigate fairways.

(3) During a stage 4 drought disaster (30% capacity) it shall be unlawful to irrigate any and all turf areas on the golf course including greens, tee boxes, and fairways.

(4) The golf courses will be allowed to utilize the remaining water within their pond system, as they see fit; but, will not be allowed to refill the ponds from the city system, while in a stage 4 drought disaster.

(5) Water used for irrigation from private wells, private ponds aerobic septic systems or wastewater effluent will be exempt from all drought-related restrictions but must comply with all other city, state and federal regulations.

(n) Water Conservation Surcharges:



A water conservation surcharge will be applied to all applicable accounts when the 50-percent, 40-percent, 30-percent and 25-percent trigger levels are reached.

(1) When a stage 2 drought warning is declared (lake level of Arrowhead and Kickapoo is at or below 50%) the surcharges will be:

(A) For residential water meters:

- (i) \$0.50 per thousand gallon between 8,000 and 15,000 gallons;
- (ii) \$1.00 per thousand gallon between 15,000 and 30,000 gallons; and
- (iii) \$2.00 per thousand over 30,000 gallons.

(B) For irrigation and raw water meters:

- (i) \$0.50 per thousand gallon between 0 and 8,000 gallons;
- (ii) \$1.00 per thousand gallon between 8,000 and 15,000 gallons;
- (iii) \$2.00 per thousand gallon between 15,000 and 30,000 gallons; and
- (iv) \$4.00 per thousand over 30,000 gallons.

(2) When a stage 3 drought emergency is declared (lake level of Arrowhead and Kickapoo is at or below 40%) the surcharges will be:

(A) For residential water meters:

- (i) \$1.00 per thousand gallon between 8,000 and 15,000 gallons;
- (ii) \$2.00 per thousand gallon between 15,000 and 30,000 gallons; and
- (iii) \$4.00 per thousand over 30,000 gallons.

(B) For irrigation and raw water meters:

- (i) \$1.00 per thousand gallon between 0 and 8,000 gallons;
- (ii) \$2.00 per thousand gallon between 8,000 and 15,000 gallons;
- (iii) \$4.00 per thousand gallon between 15,000 and 30,000 gallons; and
- (iv) \$8.00 per thousand over 30,000 gallons.

(3) When a stage 4 drought disaster is declared (lake level of Arrowhead and Kickapoo is at or below 30%) the surcharges will be:

(A) For residential water meters:

- (i) \$3.00 per thousand gallon between 8,000 and 15,000 gallons;
- (ii) \$6.00 per thousand gallon between 15,000 and 30,000 gallons; and
- (iii) \$12.00 per thousand over 30,000 gallons.

(B) For irrigation and raw water meters:

- (i) \$3.00 per thousand gallon between 0 and 8,000 gallons;
- (ii) \$6.00 per thousand gallon between 8,000 and 15,000 gallons;
- (iii) \$12.00 per thousand gallon between 15,000 and 30,000 gallons;
- (iv) \$24.00 per thousand over 30,000 gallons.

(4) When a stage 5 drought disaster [catastrophe] is declared (lake level of Arrowhead and Kickapoo is at or below 25%) the surcharges will be:

(A) For residential water meters:

- (i) \$6.00 per thousand gallon between 8,000 and 15,000 gallons;
- (ii) \$12.00 per thousand gallon between 15,000 and 30,000 gallons; and
- (ii) \$24.00 per thousand over 30,000 gallons.

(B) For irrigation and raw water meters:

- (i) \$6.00 per thousand gallon between 0 and 8,000 gallons;
- (ii) \$12.00 per thousand gallon between 8,000 and 15,000 gallons;
- (iii) \$24.00 per thousand gallon between 15,000 and 30,000 gallons;
- (iv) \$48.00 per thousand over 30,000 gallons.

(5) Surcharges will remain in effect until the city council announces the end to the restrictions.

(o) Pro Rata Water Allocation

In the event that the triggering criteria specified in the Plan for Stage 3- Drought Emergency - have been met, the city manager is here by authorized to initiate allocation of wholesale water supplies on a pro rata basis in accordance with Texas Water Code, §11.039.

(p) Contract Provisions

The City of Archer City will include a provision in every wholesale water contract entered into or renewed after adoption of this Plan, including contract extensions, 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.

(q) Variances:

The city manager, or his/her designee, may, in writing, grant a temporary variance to the 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.

Persons requesting an exemption from the provisions of this Plan shall file a petition for variance with the city manager within 5 days after pro rata allocation has been invoked. All petitions for variances shall be reviewed by the city council, 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 of 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 Ordinance.
- (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.

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

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

- (r) Any person, firm, corporation or other entity found in violation of any provision of this section shall be punished by a fine of \$100.00 for the first offense; not more than \$500.00 for each additional offense. Each fine shall be in addition to any applicable court costs. Each day of violation of this section shall constitute a separate offense. Proof of a culpable mental state shall not be required. In the event that this section is flagrantly violated by repeated offenses, the city manager is authorized to order the pulling of the customer's water meter until all fees and fines are paid.

SECTION 2. Ordinance No. 303 is repealed in its entirety.

SECTION 3. Severability of Ordinance:

If any section, subsection, sentence, phrase, or word of this Ordinance shall be held to be unconstitutional by a court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

SECTION 4. Conflicting Provisions:

That all ordinances or parts of ordinance in conflict herewith are, to the extent of such conflict, hereby repealed.

SECTION 5. Effective Date:

This Ordinance shall become effective ten (10) days after its publication in the *Archer County News*.

SECTION 6. It is hereby officially found and determined that the meeting at which this ordinance was passed was open to the public as required by law.

**PASSED AND APPROVED this the 20th day of November, 2014.**

Kelvin Green, Mayor

ATTEST:

Kim Whitsitt, City Secretary