

SAN MARCOS CITY CODE CHAPTER 86, ARTICLE 2

DIVISION 2. WATER CONSERVATION

Section 86.056. Definitions.

Terms in this division have the following meanings unless otherwise specified:

Aesthetic water feature means a fountain, waterfall, landscape lake or pond, or another decorative feature where the use is entirely ornamental and serves no other functional purpose.

Alternative water means any water source on or available to a customer's premises from a source other than directly from the city's water sources. Alternative water sources include the following:

- (1) Water from a natural source such as a spring, pond, or river (if permitted).
- (2) Reclaimed water.
- (3) Gray water.
- (4) Rain water.
- (5) Any water supplied by the city water system that has passed through a point of delivery and is no longer controlled by the public water system.

The term does not include water from a well.

Aquifer means the Edwards Aquifer.

ARWA means Alliance Regional Water Authority.

Automatic sprinkler irrigation system means a system of fixed pipes and sprinkler heads that apply water to landscape plants or turf.

Capacity means total available output from SMTXU water supplies in million gallons per day (MGD).

Charity car wash means any special event involving the washing of vehicles for a donation.

Commercial car wash means any permanently located or mobile car wash that washes automobiles, trucks, trailers, boats and other mobile equipment for a fee.

Commercial vehicle washing means washing of automobiles, trucks, trailers, boats, and other mobile equipment at any commercial car wash or fleet maintenance facility, or at any location other than a private residence.

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CRWA means Canyon Regional Water Authority.

Curtailment means the amount of water supply available for each water source during drought stage.

(1)

Designated weekday means the weekday within each calendar week for which particular types of water use are allowed based on the last number of the street address for a property, as follows:

- (1) Monday - street addresses ending with 0 or 1
- (2) Tuesday - street addresses ending with 2 or 3
- (3) Wednesday - street addresses ending with 4 or 5
- (4) Thursday - street addresses ending with 6 or 7
- (5) Friday - street addresses ending with 8 or 9

Designated weekend day means the weekend day within each calendar week for which particular types of water use are allowed based on the last number of the street address for a property, as follows:

- (1) Saturday – street addresses ending with 0, 1, 2, 3 or 4
- (2) Sunday – street addresses ending with 5, 6, 7, 8 or 9

Director means the Director of San Marcos Texas Utilities (SMTXU) , or a person designated by the Director to act in his or her behalf

Drip irrigation system means a system of fixed pipes or hoses with emitters designed to apply water to plants slowly and under pressurized conditions at or below the soil surface without airborne streams or droplets.

EAA means Edwards Aquifer Authority.

Existing facility means a swimming pool, hot tub, aesthetic water feature or any similar facility, installed during any period for which a drought response stage is not in effect.

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Existing landscape means landscaping plants and/or turf on which installation was completed more than 30 days from current date.

GBRA means the Guadalupe Blanco River Authority.

Gray water means water that has previously been used in sinks, showers, bathtubs, and clothes washing machines.

Hand-held bucket means a container holding five gallons or less.

Hand-held hose means a common garden hose not more than 1 inch in diameter and equipped with a positive shutoff device, used while being held in the hand of one person.

Health and safety use means use of water for any purpose that is necessary to protect human health and safety.

Hose-end sprinkler means a sprinkler that applies water to landscape plants through a flexible, movable hose.

Impervious surface means a type of surface that prevents water from penetrating directly into the ground. Impervious surfaces include, but are not limited to, sidewalks, driveways, paved streets, and pavers or stones set with mortar.

Irrigation conservation plan means a plan that outlines specific measures to be taken during drought stages to progressively reduce consumption in higher drought stages. The plan must include an irrigation system maintenance plan and an irrigation system analysis, and must meet reduction goals as established by the Director.

Landscape watering means the application of water to grow landscaping plants.

Landscaping plant means any plant, including any tree, shrub, vine, herb, flower, vegetable, fruit, succulent, ground cover or grass species that is used for landscaping purposes or for the support of intensive recreational areas including playgrounds and playing fields.

Makeup means partial refilling of a swimming pool or hot tub or aesthetic water feature to replace water lost through evaporation or backwashing.

New facility means a swimming pool, hot tub, aesthetic water feature or any similar facility, installed during any period for which a drought response stage is in effect. When the stage, together with all other stages which precede or succeed that stage in a continuous time period, is rescinded, the new facility will be treated thereafter as an existing facility.

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New landscape means landscaping plants and/or turf on which installation was completed within the last 30 days.

Non-commercial vehicle washing means washing of automobiles, trucks, trailers, boats, and other mobile equipment at a private residence.

Non-essential water use means any usage of water that is not required for:

- (1) a health and safety use;
- (2) personal needs such as drinking, bathing, cooling, heating, cooking, food preparation, cleaning or sanitation;
- (3) medical or industrial processes; or
- (4) watering of livestock.

Not in use means as it relates to swimming pools, hot tubs and similar facilities, a facility which is not used during any 24 hour period.

Person means, with respect to this division, any individual, corporation, partnership, or other legal entity within the corporate limits of the City, or any individual, corporation, partnership, or other legal entity outside the corporate limits of the city who is a city water customer.

Positive shutoff device means a device which permits water to flow through it only when a continuous pressure is applied to a handle, trigger, or similar portion of the device.

Reclaimed water means treated wastewater that is recycled or reused after it has been used for another purpose.

SMTXU means San Marcos Texas Utilities.

Soaker hose means a portable hose with small openings that applies water slowly to plants at the soil surface.

Swimming pool means any structure, basin, chamber or tank, including hot tubs, containing an artificial body of water for swimming, diving or recreational bathing, and having a depth of two (2) feet or more at any point.

Tree bubbler means an emission device on an automatic irrigation system that is designed to apply water slowly to the ground surface area around a tree without airborne streams or droplets.

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Vegetable garden means a plot of land dedicated to cultivation of edible plants intended for human consumption.

Waste means any activity which causes or results in excessive water usage, including but not limited to the following:

- (1) allowing water to run off a property onto adjacent properties, or into a gutter, ditch, drain, creek, or any other natural or man-made water course;
- (2) allowing water to puddle or pond to a depth greater than ¼ inch;
- (3) operating a sprinkler system with broken heads or pipes, or with misaligned spray heads that direct water over a street or parking lot; or
- (4) failure to repair any controllable leak.

(Ord. No. 2015-15, §1, 4-21-15)

Section 86.057. Applicability.

The requirements set forth under this division apply to all persons and entities located within the San Marcos city limits, and to all persons and entities using water provided directly by SMTXU. These requirements do not apply to alternative sources of water such as rainwater, gray water and reclaimed water.

Section 86.058. Implementation and termination of drought response stages.

The Director shall monitor water supply conditions on a daily basis and provide information to the City Manager. The Director shall issue notices to implement or terminate drought response stages based on any one or a combination of the following:

- (1) Edwards Aquifer levels, Canyon Lake levels, ARWA and CRWA supplies, and availability of other ground and surface water sources;
- (2) *Mild water shortage Stage 1.*
 - a. *The average daily water consumption reaches approximately 70% of the available water production capacity, and has been that high for a period of seven-days;*
- (3) *Moderate water shortage Stage 2.*
 - a. *The average daily water consumption reaches approximately 75% of the rated available water production capacity for a seven-day period;*

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- (4) *Severe water shortage Stage 3.*
 - a. *The average daily water consumption reaches approximately 80% of available water production capacity for a period of seven days;*
- (2) Drought and weather conditions;
- (3) Water system demands and usage;
- (4) Production or distribution system limitations;
- (5) Water quality or distribution system emergencies.
 - (6) Any stage may be implemented when an emergency exists as determined by the Director. The stage will be terminated when the conditions which prompted initiation of the restrictions no longer exist.

Section 86.058-1. Notice of implementation and termination of drought response stages.

Notices of implementation and termination of drought stages shall be provided to the public on the City's internet website and by a news release to public media outlets.

Section 86.059. Year-round water use allowances and restrictions.

The following allowances and restrictions are in effect at all times; however, the allowances and restrictions may be superseded by more stringent restrictions upon implementation of a drought response stage.

- (1) Waste of water is prohibited at all times.
- (2) Irrigation with hose-end sprinklers and automatic sprinkler irrigation systems is allowed during designated usage times.
- (3) Irrigation with soaker hose and drip irrigation systems is allowed on any day and at any time.
- (4) Irrigation with hand-held bucket or hand-held hose is allowed on any day and at any time.
- (5) Irrigation of golf courses and athletic fields with sprinklers is allowed during designated usage times.

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- (6) Irrigation of plants in inventory at commercial nurseries is allowed on any day and at any time.
- (7) Irrigation of vegetable gardens is allowed on any day and at any time.
- (8) Vehicle washing.
 - a. Charity car washes are prohibited unless held at a commercial car wash.
 - b. Non-commercial vehicle washing is allowed on any day and at any time, but must be done using a hand-held bucket or a hand-held hose equipped with a positive shutoff device.
 - c. Commercial vehicle washing is allowed on any day and at any time.
- (9) Swimming pools located outdoors should be covered while not in use to minimize evaporative losses.
- (10) Operation of non-recirculating aesthetic water features is prohibited at all times.
- (11) Washing of impervious surfaces is allowed but should be limited unless required for health and safety use.
- (12) Foundation watering is allowed on any day and at any time.
- (13) Other non-essential water uses are allowed but all reasonable measures shall be taken to limit the use.

(Ord. No. 2015-15, § 1, 4-21-15)

Section 86.060. Stage 1 water use allowances and restrictions.

The following measures are in effect for any period when stage 1 of the drought response plan has been implemented:

- (1) Waste of water is prohibited.
- (2) Irrigation with hose-end sprinklers and automatic sprinkler irrigation systems is allowed two days per week on the designated weekday and designated weekend day before 10 a.m. or after 8 p.m.

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- (3) Irrigation with soaker hose and drip irrigation system is allowed on any day and at any time.
 - (4) Irrigation with hand-held bucket or hand-held hose is allowed on any day and at any time.
 - (5) Irrigation of golf courses and athletic fields is restricted as follows:
 - a. Irrigation of out-of-play areas such as entryways and clubhouses shall follow general Stage 1 irrigation restrictions.
 - b. Irrigation of in-play areas shall follow general Stage 1 irrigation restrictions unless an irrigation conservation plan has been submitted and approved by the director.
 - (6) Irrigation of plants in inventory at commercial nurseries is allowed on any day and at any time.
 - (7) Irrigation of vegetable gardens using hand-held bucket, hand-held hose, soaker hose or drip irrigation is allowed on any day and at any time.
 - (8) Vehicle washing is restricted as follows:
 - a. Charity car washes are prohibited unless held at a commercial car wash facility using such facility's equipment.
 - b. Non-commercial vehicle washing is allowed one day per week and must be done using a hand-held bucket or a hand-held hose equipped with a positive shutoff device.
 - c. Commercial vehicle washing is allowed on any day and at any time.
 - (9) Swimming pools located outdoors should be covered when not in use to minimize evaporative losses.
 - (10) Operation of non-recirculating aesthetic water features is prohibited.
 - (11) Washing of impervious surfaces is allowed only one day per week.
 - (12) Foundation watering using drip system, soaker hose or hand-held hose is allowed only one day per week.
 - (13) Other non-essential water uses are allowed but all reasonable measures shall be taken to limit the use.
- (Ord. No. 2015-15, §1, 4-21-15)

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Section 86.061. Stage 2 water use allowances and restrictions.

The following measures are in effect for any period when stage 2 of the drought response plan has been implemented:

- (1) Waste of water is prohibited.
- (2) Irrigation with hose-end sprinklers and automatic sprinkler irrigation systems is allowed only one day per week on the designated weekday before 10 a.m. or after 8 p.m.
- (3) Irrigation with soaker hose and drip irrigation system is allowed on any day before 10 a.m. or after 8 p.m.
- (4) Irrigation with hand-held bucket or hand-held hose is allowed on any day and at any time.
- (5) Irrigation of golf courses and athletic fields is restricted as follows:
 - a. Irrigation of out-of-play areas such as entryways and clubhouses shall follow general Stage 2 irrigation restrictions.
 - b. Irrigation of in-play areas shall follow general Stage 2 irrigation restrictions unless an irrigation conservation plan has been submitted and approved by the director. (6) Irrigation of plants in inventory at commercial nurseries is allowed on any day and at any time.
- (7) Irrigation of vegetable gardens using hand-held bucket, hand-held hose, soaker hose or drip irrigation is allowed on any day and at any time.
- (8) Vehicle washing is restricted as follows:
 - a. Charity car washes are prohibited except at a commercial car wash facility using such facility's equipment.
 - b. Non-commercial vehicle washing is allowed one day per week and must be done using a hand-held bucket or hand-held hose equipped with a positive shutoff device.
 - c. Commercial vehicle washing is allowed on any day and at any time.
- (7) Swimming pools:

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- a. Swimming pools located outdoors should be covered when not in use to minimize evaporative losses.
- b. Draining and re-filling existing swimming pools is prohibited unless required for health and safety.
- c. Filling new swimming pools is allowed.
- d. Adding make-up water to maintain existing swimming pools is allowed.

(10) Filling of outdoor aesthetic water features is prohibited.

(11) Washing of impervious surfaces is allowed only one day per week.

(12) Foundation watering using a drip system, soaker hose or hand-held hose is allowed only one day per week.

(13) Other non-essential water uses are allowed but all reasonable measures shall be taken to limit the use.

(Ord. No. 2015, § 1, 4-21-15)

Section 86.062. Stage 3 water use allowances and restrictions.

The following measures are in effect for any period when stage 3 of the drought response plan is in effect:

- (1) Waste of water is prohibited.
- (2) Irrigation with hose-end sprinklers and automatic sprinkler irrigation systems is allowed only one day every other week on the designated weekday before 10 a.m. or after 8 p.m.
- (3) Irrigation with soaker hose and drip irrigation system is allowed only one day per week on the designated weekday before 10 a.m. or after 8 p.m.
- (4) Irrigation with hand-held bucket or hand-held hose is allowed on any day before 10 a.m. or after 8 p.m.
- (5) Irrigation of golf courses and athletic fields is restricted as follows:
 - a. Irrigation of out-of-play areas such as entryways and areas around clubhouses shall follow general Stage 3 irrigation restrictions.

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- b. Irrigation of in-play areas shall follow general Stage 3 irrigation restrictions unless an irrigation conservation plan has been submitted and approved by the director.
- (6) Irrigation of plants in inventory at commercial nurseries is allowed on any day and at any time
- (7) Irrigation of vegetable gardens using hand-held bucket, hand-held hose, soaker hose or drip irrigation is allowed on any day and at any time.
- (8) Vehicle washing is restricted as follows:
 - a. Charity car washes are prohibited unless held at a commercial car wash facility using such facility's equipment.
 - b. Non-commercial vehicle washing is prohibited.
 - c. Commercial vehicle washing is allowed on any day and at any time.
- (5) Swimming pools:
 - a. Swimming pools located outdoors should be covered when not in use to minimize evaporative losses.
 - b. Draining and re-filling existing swimming pools is prohibited unless required for health and safety.
 - c. Filling new swimming pools is prohibited.
 - d. Adding make-up water to maintain existing swimming pools is allowed.
- (10) Operation of outdoor aesthetic water features is prohibited.
- (11) Washing of impervious surfaces is prohibited unless required for health and safety purposes.
- (12) Foundation watering using a drip system, soaker hose or hand-held hose is allowed only one day per week.
- (13) Other non-essential water uses are allowed but all reasonable measures shall be taken to limit the use.
(Ord. No. 2015-15, § 1, 4-21-15)

Section 86.063. Stage 4 water use allowances and restrictions.

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The Director may implement additional measures as deemed appropriate for any period when stage 4 of the drought response plan is in effect.

Section 86.064. Variances.

(a) The Director or Director of CIP/Engineering may grant a variance from the requirements of this article if it is determined that special circumstances exist and that:

- (1) compliance with this article adversely affects the health or safety of the public;
- (2) compliance with this article can not be technically accomplished;
- (3) alternative methods can be implemented that will achieve the same reduction in water use; or
- (4) the Director of CIP/Engineering may only grant a variance for a CIP project, and only if it is determined that one of the above three criteria exist.

(b) A request for variance will not be considered if submitted after an enforcement action has been taken.

(c) A person may seek a variance from the provisions of this article by filing a written petition for variance with the director. Any petition for variance must include the following information:

- (1) Name and address of petitioner(s);
- (2) Purpose and location of water use;
- (3) Specific provisions of this division for which the petitioner is requesting a variance;
- (4) Detailed explanation of how the specific provisions will adversely affect the petitioner(s);
- (5) Period of time for which the variance is sought;
- (6) Alternative measures the petitioner proposes to implement in order to meet the intent of this division; and
- (7) Any other pertinent information as required by the director.

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(d) The Director will have two weeks from receipt of the petition for variance to review and act upon the request. If no action is taken within two weeks, the request shall be considered denied.

(e) Approved variances shall include a description of the variance and a specific time frame. A copy of the approved variance shall be retained by the petitioner.

(f) **A petitioner may appeal a denial of a variance petition to the City Manager. The City Manager will have two weeks from receipt to review and act on an appeal. If no action is taken within two weeks, the appeal shall be considered denied.**

Section 86.065. New landscape variance.

The Director may grant a variance from the requirements of this article to allow additional watering days for the establishment of new landscaping. New landscape variances may not be issued at any time when Stage 3 or higher is in effect. The Director shall develop and promulgate criteria for the granting of a variance under this section and any forms consistent with such criteria for customers to request a variance.

Section 86.066. Violations.

(a) It shall be unlawful for any person to intentionally, knowingly, recklessly, or with criminal negligence allow or cause any violation of any provision or restriction of this division.

(b) The Director 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 Director may seek civil penalties and any other legal or equitable relief available under common law, Chapter 54 of the Texas Local Government Code or any other applicable city, state or federal code or statute necessary to enforce this division. To the extent allowed by law, the municipal court shall have concurrent jurisdiction over any civil enforcement for violations of this division.

(c) It is not a defense to prosecution under any provision of this division that the violation charged is no longer occurring or no longer exists. A judge of the municipal court may not dismiss a complaint or enter a finding of not guilty on the grounds that the violation is no longer occurring or no longer exists.

(d) Violations of this division by a customer of the city water system may result in installation of a flow control device on the customer's water line, or termination of the customer's water service.

Section 86.067. Enforcement personnel.

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In addition to all peace officers, code enforcement officers, and other persons authorized to enforce city ordinances, the Director is authorized to enforce this division by issuing citations to violators, filing complaints in the municipal court, and filing civil enforcement actions.

Section 86.068. Registered water user presumed.

For purposes of this division, in any case where water has been used on a property in violation of this division, it shall be presumed that the person in whose name a water meter connection is registered with the city for the property has intentionally, knowingly, recklessly, or negligently caused or allowed the violation to occur. Proof that the particular premises had a water meter connection registered in the name of the defendant cited in a criminal or civil complaint filed under this division shall constitute *prima facie* evidence that the defendant caused or allowed the violation to occur.

Section 86.069. Penalties

(a) *Criminal Penalties:* A person who violates any provision of this division commits a misdemeanor, and upon conviction, shall be punished by a fine in the respective amounts shown:

- (1) 1st offense – not less than \$100.00 or more than \$250.00
- (2) 2nd offense – not less than \$250.00 or more than \$500.00.
- (3) 3rd offense – not less than \$500.00 or more than \$2,000.00.

(b) Each violation of a particular provision of this division shall constitute a separate offense, and each day a violation occurs or continues shall be considered a new offense.

(c) *Civil Penalties.* At the option of the Director for each violation of this division a civil notice of violation may be issued in lieu of a criminal citation. Civil penalty assessments shall not exceed one thousand dollars (\$1,000.00); however, each violation of a particular section of this division shall constitute a separate violation, and each day a violation continues shall be considered a new violation for purposes of enforcing this division.

- (1) Civil penalties may be assessed by mailing, certified mail, a notice of violation to the person who is the registered water user at the address of the alleged violation, or may be hand delivered to a person accepting responsibility for premises where the alleged violation occurred. The notice of violation shall set forth the details of the violation and the proposed penalty.

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- (2) The registered user, or other person receiving a notice of violation, shall be given ten (10) calendar days from the receipt of a notice of violation to file a written notice to the director requesting an appeal of the violation. If an appeal is not requested within the ten (10) day period, the notice of violation becomes final, and the stated penalty is due.
- (3) After the Director receives a request for an appeal, the request will be forwarded to the Municipal Court of Record where a hearing on the appeal will be conducted.
- (4) The Municipal Court of Record shall have jurisdiction to hear appeals of the assessment of civil penalties. An appeal hearing will be conducted in the same manner as a bench trial for a Class C misdemeanor. At the conclusion of the trial, the Judge may, based on the evidence and testimony, enter an order dismissing, upholding, or amending the penalty that was previously assessed by the director. The order entered by the Municipal Court of Record is a final order on the matter.
- (5) A civil penalty assessed against a utility customer for violation of this division may be collected through the utility billing system as part of the consolidated billing system. All such civil penalties are subject to the provisions of Sections 86.199 and 86.200 of the San Marcos Code of Ordinances.

(d) Enforcement personnel may issue verbal and/or written warnings prior to issuance of a citation.

Sec. 86.070. Liability of corporate officers for penalty.

Whenever a corporation or association violates any provision of this division or in a drought response order issued under this division, the president, vice-president, secretary, treasurer, manager or any agent or employee of the corporation or association who is responsible for the violation shall be subject to the penalty prescribed for the violation.