

ORDINANCE NO. 20201210-007

AN ORDINANCE AMENDING CHAPTER 6-4 TO THE CITY CODE RELATING TO WATER CONSERVATION, REGULATION OF COOLING TOWERS, PUBLIC HEALTH MEASURES, AND THE ADDING OF NEW OFFENSES THAT MAY BE SUBJECT TO ASSESSMENT OF ADMINISTRATIVE PENALTIES; OR CIVIL AND CRIMINAL PENALTIES; AND AMENDING SECTION 15-9-241 RELATING TO EVAPORATIVE LOSS CREDIT ON WASTEWATER CHARGES FOR COOLING TOWERS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. FINDINGS.

The City Council finds that:

1. Given the potential for severe and frequent drought conditions in Central Texas, it is essential that new water use policies to conserve water continue to be developed.
2. Water conservation efforts, including policies for responsible water conservation and regulations for cooling towers, help maximize limited resources as population grows while ensuring supply for critical public health and safety needs including adequate supplies necessary for emergency fire fighting, fire suppression, and natural disaster or other emergency management or disaster response.
3. As water is essential to public health and sanitation and the City's water supply is the sole or primary water supply for over a million people, water conservation and drought condition measures that help assure the maintenance of a sufficient City water supply for the City's customers are necessary to protect public health and for the purposes of sanitation.

PART 2. City Code Section 6-4-2 (*Definitions*) is repealed and replaced with a new Section 6-4-2 to read as follows:

§ 6-4-2 - DEFINITIONS.

Unless a different definition is expressly provided, in this chapter:

- (1) ACTION OF THE UTILITY means an action taken by Austin Water pursuant to this chapter.
- (2) AQUATIC LIFE means a vertebrate organism dependent upon an aquatic environment to sustain its life.
- (3) AUTOMATIC IRRIGATION SYSTEM means any irrigation system connected to and being operated by a programmable controller, including a permanently or temporarily installed irrigation system.
- (4) AUSTIN WATER, AW, AWU, and the Utility mean the Austin Water Utility.
- (5) AUXILIARY WATER means a water supply from a source other than Austin Water's potable water supply.
- (6) AUSTIN WATER AUTHORIZED IRRIGATION INSPECTOR means an Irrigation Inspector licensed by the Texas Commission on Environmental Quality who has also both passed a director-approved class in landscape irrigation and has been awarded Austin Water Authorized Irrigation Inspector status in accordance with rules adopted pursuant to this chapter.
- (7) BLEED-OFF (BLOWDOWN) means the circulating water in a cooling tower which is discharged to help keep the dissolved solids concentrating in the water below a maximum allowable limit.
- (8) BLOWDOWN METER or discharge meter means a meter that tracks the amount of water discharged from a cooling tower system.
- (9) COMMERCIAL FACILITY means a site with five or more dwelling units, or a municipal, business, or industrial building and the associated landscaping, but does not include the fairways, greens, or tees of a golf course.
- (10) COMMERCIAL NURSERY means a facility where plant nursery stock, trees, seedlings, turf, shrubs, flowers, herbs, crops or other plant materials are cultivated, grown, stored, or

maintained prior to retail consumer, installer, or reseller purchase, use, consumption, or installation of the materials at any location other than the commercial nursery.

- (11) COMMON AREA means an area held, designed, or designated for the common use of the owners or occupants of a townhouse project, planned unit development, apartment, condominium, mobile home park, or subdivision.
- (12) CONCENTRATION means re-circulated water in a cooling tower that has elevated levels of total dissolved solids as compared to the original make-up water.
- (13) CONDUCTIVITY CONTROLLER means 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.
- (14) COOLING TOWER means an open water recirculation system that uses fans or natural draft to draw or force air to contact and cool water through the evaporative process that removes heat from water-cooled air conditioning systems and from industrial processes.
- (15) COSMETIC POWER WASHING means treatment or cleaning of a surface with specialized equipment that uses a spray of or directed water for the cosmetic cleaning of buildings, vehicles or other mobile equipment, or outdoor surfaces. It does not include industrial cleaning, cleaning associated with manufacturing activities, hazardous or toxic waste cleaning, or cleaning necessary to remove graffiti.
- (16) CYCLES OF CONCENTRATION means the ratio of the dissolved solids in recirculating water to the dissolved solids in the make-up water
- (17) DESIGNATED OUTDOOR WATER USE DAY means the day during which a person is permitted to irrigate outdoors as prescribed in City Code Section 6-4-13(E) (*Water Conservation Guidelines*).
- (18) DIRECTOR means the Director of Austin Water.

- (19) DRIFT ELIMINATOR means a device that captures large water droplets caught in the cooling tower air stream to prevent the water droplets and mist from escaping the cooling tower.
- (20) DRIP IRRIGATION means a method of irrigation which is typically installed below ground and consists of porous piping that allows the application of water at a slow and constant rate.
- (21) DROUGHT CONTINGENCY PLAN means a strategy or combination of strategies for temporary supply management and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies required by Texas Administrative Code Title 30, Chapter 288, Subchapter B.
- (22) FOUNDATION WATERING means an application of water to the soils directly abutting the foundation of a building, structure, or improvement on land.
- (23) GOVERNMENT PROPERTY means property owned or operated by a federal, state, or local governmental unit, entity, agency, or a government subdivision for a public purpose.
- (24) HOSE-END SPRINKLER means an above-ground water distribution device that may be attached to a garden hose.
- (25) MAKE-UP means the amount of water required to replace normal losses caused by bleed-off (blowdown), drift, and evaporation.
- (26) MAKE-UP METER or intake meter means a meter that measures the amount of water entering a cooling tower system.
- (27) MANUAL IRRIGATION SYSTEM means an irrigation system designed to require the manual operation of valves or the attachment of a quick-coupling device.
- (28) MULTI-FAMILY PROPERTY means property containing five or more dwelling units.
- (29) NEW LANDSCAPE means vegetation:

- (a) installed at the time of the construction of a residential or commercial facility;
 - (b) installed as part of a governmental entity's capital improvement project;
 - (c) installed to stabilize an area disturbed by construction; or
 - (d) that alters more than 500 contiguous square feet of an existing landscape.
- (30) **ONSITE ALTERNATIVE WATER SOURCE** means a water source including recycled manufacturing process water, air conditioner condensate, rainwater, stormwater, graywater, black water, cooling tower blow down, and foundation drain water.
- (31) **ORNAMENTAL FOUNTAIN** means an artificially created structure from which a jet, stream, or flow of water emanates and the water is not used for the preservation of aquatic life.
- (32) **OVERFLOW ALARM** means a system that includes a level switch and an electronic signaling device that sends an audible signal or provides an alert via the energy management control system to the tower operator in case of sump overflow.
- (33) **PERMANENTLY INSTALLED IRRIGATION SYSTEM** means a custom- made, site-specific system of delivering water generally for landscape irrigation via a system of pipes or other conduits installed below ground.
- (34) **PERSON** means any natural person or legal entity such as an individual, business, partnership, association, firm, corporation, governmental, or other natural, business, or legal entity that receives, requests, manages, uses, maintains, or is responsible for water utility service at a service address, whether or not the person or entity is a customer or account holder of Austin Water.
- (35) **PREMISE** means the outdoor area of property not enclosed by fencing or walls or containing living areas, and not including areas for storing vehicles or other motorized equipment.

- (36) RECLAIMED WATER means reclaimed municipal wastewater that is under the direct control of the City treatment plants, satellite facilities, or a treatment plant with which the City contracts, and that has been treated to a quality that meets or exceeds the minimum standards of the 30 Texas Administrative Code, Chapter 210.
- (37) RESIDENTIAL FACILITY means a site with four or fewer dwelling units.
- (38) SOAKER HOSE means a perforated or permeable garden-type hose or pipe that is laid above ground that provides irrigation at a slow and constant rate.
- (39) TEMPORARILY INSTALLED IRRIGATION SYSTEM means a universally applicable above ground irrigation system that uses a flexible hose or hardened pipe to deliver water to a moveable water distribution device.
- (40) TON means an evaporative cooling ton of 15,000 British Thermal Units (BTUs) per hour.
- (41) VEHICLE WASH FACILITY means a permanently-located business that washes vehicles or other mobile equipment with water or water-based products, including but not limited to self-service car washes, full service car washes, roll-over/in-bay style car washes, and facilities managing vehicle fleets or vehicle inventory.
- (42) XERISCAPE means a landscape which employs certain principles of design and installation which conserve water and energy and where the plant material, at mature growth, will provide at least 50% of the new landscape's areal coverage. The plant material must consist of plants identified on a plant list provided by Austin Water that are very low water usage and low water usage plants.

PART 3. City Code Section 6-4-3 (*Applicability of Regulations; Affirmative Defenses*) is amended to read as follows:

§ 6-4-3 - APPLICABILITY OF REGULATIONS; AFFIRMATIVE DEFENSES.

- (A) This chapter applies to a person who uses, directs, manages, or allows the use of potable water supplied by Austin Water [Utility]. The chapter does not apply to a person [who] when the person only uses, directs, manages, or allows the use of auxiliary water or reclaimed water~~[unless the auxiliary water or reclaimed water is mixed with potable water supplied by Austin Water Utility]~~.
- (B) It is an affirmative defense to a violation of this chapter that the use of water that gave rise to the violation was consistent with the agreed upon terms and conditions of a water service contract with a wholesale water customer and that the use did not constitute water waste.
- (C) It is an affirmative defense to a violation of this chapter that the use of water that gave rise to the violation properly utilized solely auxiliary water, and did not endanger public health, safety, or property.
- (~~D~~[E]) It is an affirmative defense to a violation of this chapter that the use of water that gave rise to the violation properly utilized solely reclaimed water, did not endanger public health, safety, or property, and did not constitute water waste in accordance with 6-4-12 (*Water Waste Prohibited*).
- (~~E~~[D]) It is an affirmative defense to a violation of this chapter that the act or omission that gave rise to the violation occurred solely because a documented emergency that prevented strict compliance, and that the act or omission did not disrupt the availability of adequate water for other public emergency response or fire fighting or fire suppression purposes.

PART 4. City Code Section 6-4-7 (*Administrative Rules*) is repealed and replaced with a new Section 6-4-7 to read as follows:

§ 6-4-7 - ADMINISTRATIVE RULES.

- (A) The director may adopt administrative rules as necessary for the implementation of this chapter.
- (B) Before the director may adopt or amend a nonemergency rule, the director will present the proposed rule to the Water and Wastewater Commission and the Resource Management Commission. In cases of emergency rule adoption, the director will present the rule to the

Water and Wastewater Commission and the Resource Management Commission as soon as practicable following emergency rule adoption.

- (C) The rules shall be available for inspection on Austin Water's website and at the Austin Water administrative offices during normal business hours.

PART 5. City Code Section 6-4-10 (*Facilities Regulated*) is repealed and replaced with a new Section 6-4-10 to read as follows:

§ 6-4-10 - FACILITIES REGULATED.

- (A) The owner or water account holder of a commercial, or multi-family residential situated on property equal to or greater than 1.0 acre in size shall obtain an evaluation of any permanently installed automatic irrigation system conducted at a frequency prescribed by rules adopted pursuant to this chapter. The irrigation evaluation shall, at a minimum:
 - (1) be conducted by an Austin Water authorized irrigation inspector who has been authorized in accordance with rules adopted pursuant to this chapter and whose authorization is reflected in records maintained by Austin Water;
 - (2) be documented on forms provided by Austin Water; and
 - (3) verify that the irrigation system operating on the property complies with all applicable requirements of this chapter, rules adopted pursuant to this chapter, and other applicable technical codes.
- (B) The owner, or any water account holder, of vehicle washing facilities shall provide an evaluation of all vehicle washing equipment conducted at a frequency prescribed by rules adopted pursuant to this chapter. The vehicle washing facility evaluation shall, at a minimum:
 - (1) be conducted by a Texas-licensed plumber of the vehicle washing facility's choice;
 - (2) be documented on forms provided by Austin Water; and

- (3) establish that the equipment is operating in compliance with equipment standards prescribed by rules adopted pursuant to this chapter.
- (C) The owner or water account holder of a cooling tower must:
- (1) register the tower with Austin Water using a form provided by Austin Water;
 - (2) register a new or replacement tower prior to operation; and
 - (3) submit a fully completed annual inspection of the tower to Austin Water by March 1 of each year using a form provided by Austin Water verifying that the cooling tower is properly permitted and complies with all applicable requirements of this chapter, rules adopted pursuant to this chapter, and applicable technical codes. The inspection must:
 - (a) be performed by an independent third-party Texas-licensed mechanical or chemical engineer, or a person holding a Texas Department of Licensing and Regulations Air Conditioning and Registration License (Class A) with a combined endorsement for process cooling and refrigeration; and
 - (b) be performed not more than 90 days before the March 1 due date.
- (D) A facility with 100 tons or greater of combined cooling capacity using an evaporative cooling tower must:
- (1) have the make-up and blowdown meters and overflow alarm connected to the building's central energy management system or utility monitoring dashboard; and
 - (2) offset a minimum of 10% of the make-up water with reclaimed or onsite alternative water sources.
- (E) Restaurants, bars, and other commercial food or beverage establishments may not provide drinking water to customers unless a specific request is made by the customer for drinking water.

- (F) The owner or operator of a hotel, motel, short term rental, or other establishment that offers or provides lodging or rental accommodations for compensation shall offer a towel and linen reuse water conservation option to its lodgers, renters, or customers and maintain in each applicable guest room, suite, or property informational signage to communicate information relating to this requirement and to offer the opportunity for guest participation.

PART 6. City Code Section 6-4-11 (*General Regulations*) is amended to add new Subsections (G) and (H) to read:

- (G) The owner or water account holder of a cooling tower must:
 - (1) operate the cooling tower in a manner to achieve a minimum of five cycles of concentration if the cooling tower utilizes potable water as its primary source of make-up water;
 - (2) equip the cooling tower with:
 - (a) overflow sensors and alarms connected to the building's central energy management system or utility monitoring dashboard;
 - (b) make-up water and blowdown meters to manage water consumption;
 - (c) conductivity controllers; and
 - (d) a drift eliminator with a drift rate of not more than 0.005% of the circulated water flow rate for crossflow towers and 0.002% for counter flow towers;
- (H) The owner or water account holder of a cooling tower shall use a biocide to treat the cooling system recirculation water to minimize the growth of Legionella and other microorganisms.

PART 7. Subsection (B) of City Code Section 6-4-12 (*Water Waste Prohibited*) is amended to read as follows:

- (B) A person may not:
 - (1) fail to repair a controllable leak, including [~~but not limited to~~] a broken sprinkler head, a broken pipe or a leaking valve; [~~or~~]

- (2) operate an irrigation system with:
 - (a) a broken head; [ø€]
 - (b) a head that is out of adjustment and the arc of the spray head is over a street, parking area, or other impervious surface; or
 - (c) a head that is misting because of high water pressure;[-ø€]
- (3) allow water flow during irrigation that:
 - (a) runs, flows, or streams in a way that extends into a street, parking area, or other impervious surface for a distance of 50 feet or greater; or
 - (b) allows water to pond to a depth greater than 0.25 inch in a street, parking area, or on other impervious surfaces[-:]; or
- (4) operate a cooling tower:
 - (a) in a manner that allows an overflow from the cooling tower basin to occur; or
 - (b) without a functioning drift eliminator.

PART 8. Subsections (D) and (E) of City Code Section 6-4-13 (*Water Conservation Guidelines*) are amended to read as follows:

§ 6-4-13 - WATER CONSERVATION GUIDELINES.

- (D) Water use regulations of Section 6-4-15 (*Water Conservation Stage*) [~~(Section 6-4-15)~~] remain in effect until such time as the city manager orders termination of the stage in accordance with Subsection (C) of [s]Section 6-4-13[(C)], (*Water [Use] Conservation Guidelines*). Unless a drought or emergency stage is expressly declared by order of the [C]city [M]manager, water use regulations of the Section 6-4-15 (*Water Conservation Stage*) [~~(section 6-4-15)~~] automatically resume by default immediately upon any ordered termination of any drought or emergency stage.
- (E) Any outdoor water use subject to the provisions of this Chapter shall occur only on a day designated for the applicable water use activity,

property/facility type, and street number address classification indicated in the following table. A person may not conduct, authorize, or permit outdoor water use except in accordance with the designation schedule set out in the following table. In the following table, "EVEN" or "ODD" correspond to the street number of the physical property address where the outdoor water use occurs. The table below shall be referred to as "the Outdoor Water Use Schedule".

Conservation Stage and Drought Response Stage 1 Watering Schedule	
Property Type	Watering Day
Residential Property - Hose-end EVEN	Sunday and Thursday
Public Schools	Monday
Commercial/Multi family - Automatic <u>& Manual</u> EVEN	Tuesday
Residential – Automatic <u>& Manual</u> ODD	Wednesday
Residential - Automatic <u>& Manual</u> EVEN	Thursday
Commercial/Multi Family - Automatic <u>& Manual</u> ODD	Friday
Residential Property - Hose-end ODD	Wednesday and Saturday
Drought Response Stage 2 and Stage 3 Watering Schedule	
Property Type	Watering Day
Residential Property - Hose-end EVEN	Sunday
Public Schools	Monday
Commercial/Multi family - Automatic <u>& Manual</u> EVEN	Tuesday
Residential - Automatic <u>& Manual</u> ODD	Wednesday
Residential - Automatic <u>& Manual</u> EVEN	Thursday

Commercial/Multi Family - Automatic & Manual ODD	Friday
Residential Property - Hose-end ODD	Saturday

PART 9. Subsections (B) and (C) of City Code Section 6-4-14 (*Exemptions*) are amended to read as follows:

(B) The following activities shall be exempt from the application of Section 6-4-15 (*Water Conservation Stage*), Section 6-4-16 (*Drought Response Stage One Regulations*), Section 6-4-17 (*Drought Response Stage Two Regulations*), and Section 6-4-18 (*Drought Response Stage Three Regulations*):

- (1) Outdoor irrigation:
 - (a) using a hand-held hose or refillable watering vessel;
 - (b) using drip irrigation;
 - (c) of trees using an automatic bubbler system or soaker hose placed within the drip-line of the tree canopy;
 - (d) of vegetable gardens using a soaker hose;
 - (e) of athletic fields used for organized sports practice, competition, or exhibition events when the irrigation is necessary to protect the health and safety of the players, staff, or officials present for the athletic event;
 - (f) immediately following a commercial lawn treatment application by an applicator who possesses required licensure as applicable for use of such substances including [~~but not limited to~~] fertilizer, pesticides, and herbicides, provided receipts documenting such application and the applicator's credentials are provided upon request to a designee of the director; or
 - (g) of plant material at a commercial nursery.
- (2) Water use:

- (a) necessary for repair or installation of a permanently or temporarily installed landscape irrigation system when the person performing the irrigation work is present in the area of irrigation; or
 - (b) necessary for the repair, testing, or installation of an ornamental fountain when the person performing the testing, repair or installation is present.
- (C) The following activities shall be exempt from the application of Section 6-4-15 (*Water Conservation Stage*), Section 6-4-16 (*Drought Response Stage One Regulations*) requirements:
- (1) Water use necessary to comply with federal, state, or local land development permits requiring the establishment of new landscaping between the hours of 7:00 p.m. to 10:00a.m.; and
 - (2) Irrigation of areas documented on a City approved and released site plan as golf course fairways, greens, or tees.

PART 10. Subsection (D) of City Code Section 6-4-16 (*Drought Response Stage One Regulations*) is amended to read as follows:

- (D) A person may not irrigate outdoors at a residential facility or a commercial facility with a hose-end or manual sprinkler system between the hours of 10:00 a.m. and 7:00 p.m., even if the irrigation occurs on the designated outdoor water use day for the location.

PART 11. Subsection (D) of City Code Section 6-4-17 (*Drought Response Stage Two Regulations*) is amended to read as follows:

- (D) A person may not irrigate outdoors at a residential facility or a commercial facility with a hose-end or manual sprinkler system between the hours of 10:00 a.m. and 7:00 p.m. even if the irrigation occurs on the designated outdoor water use day for the location.

PART 12. Subsection (D) of City Code Section 6-4-18 (*Drought Response Stage Three Regulations*) is amended to read as follows:

- (D) A person may not irrigate outdoors at a residential facility or a commercial facility with a hose-end or manual sprinkler system except between the hours of 7:00 a.m. and 10:00 a.m. or between the

hours of 7:00 p.m. and 10:00 p.m. even if the irrigation occurs on the designated outdoor water use day for the location.

PART 13. Subsection (B) of City Code Section 6-4-19 (*Emergency Stage Four Regulations*) is amended to read as follows:

- (B) A person may not use or allow the use of water to test or repair a permanently or temporarily installed irrigation system or drip irrigation system.

PART 14. Subsection (A) of City Code Section 6-4-30 (*Variance*) is amended to read as follows:

- (A) The director may grant a variance from a requirement of this chapter if the director determines that special circumstances exist and that:
- (1) strict compliance with the provisions at issue adversely affects the health, safety, welfare or sanitation of the public, the applicant, or the environment; or
 - (2) strict compliance with the provisions at issue substantially threatens the applicant's primary source of income, the applicant is employing all reasonable water conservation measures, and approval of the variance will not result in water waste in accordance with Section 6-4-12 (*Water Waste Prohibited*).

PART 15. City Code Chapter 6-4, Article 3 (*Enforcement*) is repealed and replaced with Article 5 (*Enforcement*) to read as follows:

ARTICLE 5. ENFORCEMENT.

§ 6-4-50 APPLICABILITY.

This article applies to all parts of this chapter.

§ 6-4-51 OFFENSE.

- (A) A person commits an offense if the person:
- (1) directs, performs, authorizes, requests, allows, assists, facilitates, or permits an act prohibited by this chapter;

- (2) fails to perform an act required by this chapter;
 - (3) makes or transmits to the director a false registration, log, inspection, report or other document required by this chapter; or
 - (4) tampers with a conductivity controller, intake or discharge meter, readout device, read data transmittal equipment, or attached plumbing or electrical connections in a manner that causes inaccurate or false readings or reports of the water use or system operation to meet any inspection, evaluation or assessment required by this chapter.
- (B) Each day or part of the day during which the violation is committed or continued is a separate offense.

§ 6-4-52 ENFORCEMENT.

- (A) This chapter may be enforced in:
- (1) an administrative hearing process established in Chapter 2-13 (*Administrative Adjudication of Violations*);
 - (2) a civil action described in Subsection (B) of Chapter 54 of the Texas Local Government Code; or
 - (3) a criminal prosecution in Municipal Court.
- (B) In an administrative hearing conducted pursuant to Chapter 2-13 (*Administrative Adjudication of Violations*), a person in whose name a water service account is held is presumed to be responsible for a violation of this Chapter that occurs at the water service account location.
- (C) In a Municipal Court prosecution:
- (1) an offense under this chapter subject to the penalty prescribed by Section 1-1-99 (*Offenses; General Penalty*); and
 - (2) a culpable mental state is not required for fines of \$500 or less and need not be proved.
- (D) Nothing in this chapter shall preclude the City's pursuit of any and all enforcement remedies to address a violation of this chapter.

PART 16. City Code Chapter 6-4, Article 2 (*Water Use Management*) is amended to remove references to Divisions 1, 2, and 3; and to rename the article to read as follows:

ARTICLE 2. WATER USE MANAGEMENT; REGULATED ACTIVITIES.

PART 17. City Code Chapter 6-4 (*Water Conservation*) is amended to add a new Article 3 (*Drought Contingency Plan and Conservation Stages*) that includes Section 6-4-13 (*Water Conservation Guidelines*), Section 6-4-14 (*Exemptions*), Section 6-4-15(*Water Conservation Stage*), Section 6-4-16 (*Drought Response Stage One Regulations*), Section 6-4-17(*Drought Response Stage Two Regulations*), Section 6-4-18 (*Drought Response Stage Three Regulations*), Section 6-4-19 (*Emergency Stage Four Regulations*), and Section 6-4-20 (*Director's Authority to Impose Additional Restrictions*) to read as follows:

ARTICLE 3. DROUGHT CONTINGENCY AND CONSERVATION STAGES.

PART 18. City Code Chapter 6-4 is amended to add a new Article 4 (*Variances and Alternative Compliance*) that includes Section 6-4-30 (*Variance*), Section 6-4-31 (*Expiration of Variance*), and Section 6-4-32 (*Alternative Compliance*); and current Article 3 (*Enforcement*) is renumbered to be Article 5 (*Enforcement*).

PART 19. City Code Section 15-9-241 (*Evaporative Loss Adjustment for Evaporative Cooling Towers*) is repealed and replaced with a new Section 15-9-241 to read as follows:

§ 15-9-241 - EVAPORATIVE LOSS ADJUSTMENT FOR EVAPORATIVE COOLING TOWERS.

- (A) In this section, "director" means the director of Austin Water.
- (B) A retail customer of Austin Water who takes water from the City's public water system for operation of one or more evaporative cooling towers may receive an adjustment in the calculation of the monthly wastewater billing for the amount of evaporated water not returned to the City's wastewater system (evaporative loss adjustment) provided that all of the following conditions are met:
 - (1) For each customer utility account for which the customer desires to receive the evaporative loss adjustment, the customer must make written application to the director and receive

written approval from the director in accordance with this article. The customer application for approval to receive the evaporative loss adjustment shall be made on a form provided by the director for this purpose.

- (2) The application shall be accompanied by the customer's payment to Austin Water of a non-refundable processing fee for handling, analysis and processing of the application and appurtenant materials for the premises housing the subject cooling tower installation. Payment of a fee under this section does not excuse the payment of fees required by other city codes and ordinances for permits, inspections, or other approvals necessary for lawful installation of facilities required by this chapter. The fee is set by separate ordinance.
- (3) An applicant requesting the evaporative loss adjustment must install, at the customer's sole expense, for each cooling tower or set of cooling towers, submetering equipment of a size, type, design, number, location and configuration approved by the director to measure accurately both the amount of water that is taken into the cooling tower or set of towers (commonly referred to as a "makeup meter," referred to in this section as the "intake meter") and to measure the amount of water that is discharged from each cooling tower into the City's wastewater system (commonly referred to as a "blowdown meter," here referred to as the "discharge meter").
- (4) In addition to intake and discharge submeters conforming to this section, a customer requesting the evaporative loss adjustment shall install, at the customer's sole expense, the readout equipment or data transmittal equipment of a size, type, design, number, location and configuration as the director may determine to be necessary for the safe, accurate and efficient reading of the intake and discharge meters required to be installed by the customer.
- (5) The director may prescribe special conditions for approval of the evaporative loss adjustment that the director determines are necessary because of particular circumstances relating to the nature of the cooling tower installation or other operations

conducted on the subject premises including special conditions concerning:

- (a) the number, size, design, location, configuration or security of intake and discharge meters,
- (b) installation of readout and data transmittal equipment,
- (c) reconfiguration of plumbing servicing the subject premises or cooling tower installation,
- (d) access to submetering, readout and data transmittal facilities,
- (e) conditions for proper recording and reporting of water consumption and discharge to the sewer system,
- (f) submeter read date(s),
- (g) elimination or metering of bypass plumbing,
- (h) securing or sealing of bypass plumbing,
- (i) meter reading and billing protocols,
- (j) meter maintenance protocols,
- (k) safety of applicant personnel, city personnel and third persons,
- (l) installation of backflow prevention devices or other measures for protection of the potable water supply, and
- (m) other special conditions that the director determines are necessary for the safe, proper and efficient installation, operation and maintenance of the submetered installation and the proper documentation, reporting, calculation and administration of wastewater billings for the subject premises. The evaporative loss adjustment shall be granted only in accordance with the general conditions stated in this Article and the special conditions prescribed by the director. The director may reject an application or revoke approval for receipt of the evaporative loss

adjustment for failure to comply with the special conditions prescribed and the adjustment shall not be granted for any portion of the billing cycle in which the customer has failed to comply with any of the special conditions.

- (6) The customer application for approval of the evaporative loss adjustment shall:
 - (a) describe the processes or operations conducted on the subject premises;
 - (b) describe the subject cooling tower installation, its location and the location of primary city water meters;
 - (c) describe the size, type, design, number and location of backflow prevention devices existing or proposed to be installed on the subject premises;
 - (d) describe the size, type, design, number, location and configuration of intake and discharge meters and appurtenances proposed to be installed;
 - (e) describe the readout and data transmittal equipment and appurtenances proposed to be installed by the applicant;
 - (f) demonstrate the feasibility of submetering the cooling tower installation in accordance with all requirements of this section, other applicable city codes and ordinances and sound engineering, utility and billing practices;
 - (g) be accompanied by electronic copies, compatible with City of Austin requirements, of the following plumbing diagrams:
 - (i) water diagram plan view of the proposed installation;
 - (ii) water diagram elevation view of the proposed installation;
 - (iii) drainage diagram plan view of the proposed installation; and

- (iv) drainage diagram elevation view of the proposed installation.
 - (h) where the director determines the same to be necessary, the applicant shall prepare and submit for review and approval by the director plans and specifications for installation of readout or data transmittal equipment required by the director to be installed; and
 - (i) provide other and further information as the director shall determine to be necessary for proper review and consideration of the application.
- (7) Review by director; grounds for rejection; proceedings upon rejection.
- (a) The director shall review and may reject an application that the director determines:
 - (i) is false, inaccurate, incomplete;
 - (ii) fails to demonstrate the feasibility of submetering the cooling tower installation in accordance with this article;
 - (iii) fails to comply with other applicable City codes and ordinances and sound engineering, utility and billing practices; or
 - (iv) otherwise fails to conform to this article.
 - (b) If the director rejects the application, the director shall notify the applicant in writing of the rejection of the application and the reasons for rejection.
 - (c) If the application is rejected, the applicant may, at its option, submit a revised application conforming to this article for review and approval without payment of another application and processing fee provided that the revised application is received by the director within 90 days of the initial rejection by the director.

- (d) The director may extend the time for resubmittal of the application upon written request by the applicant demonstrating that good cause exists for the extension.
- (8) If the director determines that a site review of the cooling tower installation is necessary for proper consideration of the application, the applicant shall provide the director access to the subject cooling tower installation.
- (9) If a customer had requested approval for receipt of the evaporative loss adjustment before the effective date of this Article, but no written agreement was executed, or where an application is submitted by a customer who has received notice of the termination of a prior written agreement for receipt of the evaporative loss adjustment, or in the case of reapplications or renewal applications under this article, the director may modify or waive the documentary submittal requirements set forth above in a manner the director shall determine to be just and equitable so long as:
 - (a) the director determines that information describing the cooling tower installation, submeter facilities and appurtenances sufficient for processing the application has been obtained from the applicant;
 - (b) the director has conducted a site inspection of the submeter facilities previously installed;
 - (c) the applicant has paid all applicable fees for processing the application; and
 - (d) the applicant complies with all other requirements of this article for receipt of the evaporative loss adjustment.
- (10) The applicant must:
 - (a) obtain all permits, and approvals;
 - (b) comply with all City Code provisions applicable to the installation of the intake and discharge meters, readout and data transmittal equipment, the discharge from the cooling tower installation, or water efficiency standards and equipment; and

- (c) comply with the registration and inspection requirements in Section 6-4-10 (*Facilities Regulated*).
- (11) Any piping constituting or capable of being utilized as an unmetered bypass of the discharge meter installed (the unmetered bypass piping or unmetered bypass) must be sealed in a manner specified by the director and the seal shall not be broken except following written or telephonic notice to the director indicating the intent of the customer to utilize the unmetered bypass piping and providing an estimate of the time for completion of meter maintenance or other activity requiring utilization of the unmetered bypass piping.
- (12) Before final approval by the director, to ensure the proper calibration and performance in accordance with American Water Works Association standards for meter accuracy, the customer shall use a qualified independent meter calibration and testing firm approved by the director:
 - (a) to calibrate and test the intake and discharge meters; and
 - (b) to calibrate the readout or data transmittal equipment if the installation is required by the director.

The customer shall forward the written results evidencing proper calibration and performance of the equipment to the director as a condition for final approval to receive the evaporative loss adjustment.

- (13) The director must notify the applicant in writing of the completion of all requirements for final approval for application of the evaporative loss adjustment to wastewater billings for the subject cooling tower installation.
- (14) Approval to receive the evaporative loss adjustment is valid for a period of five years following which the applicant must reapply under the then existing conditions for application and approval of the evaporative loss adjustment. If the customer fails to reapply for approval to receive the evaporative loss adjustment on or before the expiration of the prior approval, wastewater billings to the premises will be based on the standard wastewater billing method for that premises' metered water consumption, until the customer reapplies and is again granted approval to receive the evaporative loss adjustment.

- (15) Austin Water will apply the evaporative loss adjustment to customer billings with the first complete billing cycle following inspection, testing and final approval of the submetered installation and the director's issuance of a letter to the customer acknowledging that all requirements for approval of the evaporative loss adjustment have been completed and accepted.
- (16) In order to continue receipt of the evaporative loss adjustment for each calendar year in the five year period following final approval by the director, the customer must have the intake and discharge meters calibrated and tested for accuracy at least annually and forward written evidence of the completion of calibration and testing to the director no later than one calendar year from the date of the previous calibration and testing.
- (17) The customer shall, at all times, operate and maintain the intake and discharge meters, readout and data transmittal equipment in accordance with the manufacturer's specifications for same and in accordance with American Water Works Association standards for meter accuracy. A submeter not meeting the above standards for accuracy must be repaired or replaced and recalibrated to conform to the American Water Works Association standards for accuracy. In the event that a submeter stops registering or otherwise becomes inaccurate, the evaporative loss adjustment shall be adjusted back to the beginning of the inaccuracy. If the beginning date of the inaccuracy cannot be determined, the adjustment period will be one-half the time from the last submeter test date.
- (18) The intake and discharge meters, readout and read data transmittal equipment installed by the customer shall be subject to inspection and testing by the director at any time. The customer shall ensure access for the purpose of the inspection and testing without delay at all times.
- (19) In order to receive the evaporative loss adjustment for each monthly billing cycle, the customer approved to receive the evaporative loss adjustment must read correctly the intake and discharge meters on the same day that the city meter readers read the city water meters for the subject premises (the city meter read date) and before the close of business on the city meter read date, the customer shall transmit the submeter reading data to the director by the method designated by the director, which may include telephone, telefax, email, radio, or

computer controlled data transmittal equipment. The director shall notify the customer in writing of the approved city meter read date on which the intake and discharge meters must be read and reported to the director.

- (20) The evaporative loss adjustment shall not be granted for any monthly billing cycle in which the customer has failed to read the intake and discharge meters and transmit the submeter readings to the director before the close of business on the city meter read date, unless the customer has been granted an exception by the director under other ordinance or city code provisions. In addition, in the event of the failure by the customer to report or transmit the required submeter readings on the city meter read date, the customer's wastewater bill for the monthly billing cycle in question shall be determined on the basis of the standard wastewater billing method for the premises.
- (21) The following rules shall apply to the calculation of the wastewater bill for premises for which the evaporative loss adjustment has been approved:
 - (a) The amount of evaporative loss shall be determined for each monthly billing cycle by the readings of each intake and discharge meter reported to the director in accordance with this Article unless the director determines that the meter readings are false, inaccurate, or otherwise unreliable in which case Austin Water will not grant the evaporative loss adjustment for the subject billing period.
 - (b) Nothing in this section shall be construed to permit or require the retroactive application of this Article or the adjustment or recalculation of the wastewater bill of a customer for any monthly billing cycle or portion occurring prior to final approval by the director of the customer's application for receipt of the evaporative loss adjustment.
 - (c) Austin Water will not subtract from the winter average water consumption the amount of evaporative loss determined by readings of the intake and discharge meters in the calculation of the wastewater bill for the customer premises for which the evaporative loss adjustment has been approved.

- (d) Subject to any special billing conditions or protocol approved by the director, and subject to this Article, for customers having a City water meter used to service the building (including the cooling towers) and an irrigation system, Austin Water will calculate the wastewater bill for the premises for which the evaporative loss adjustment has been approved as follows:
- (i) For each year following approval of the customer application for receipt of the evaporative loss adjustment, a revised wastewater average for the customer premises housing the approved cooling tower installation (revised wastewater average) shall be established. The revised wastewater average shall be the daily average of the differences between the volume registered by the City water meter and the the customer's intake meter for the months during the standard wastewater averaging period, multiplied by 30.4, the average number of days in a month.
 - (ii) Once the revised wastewater average for the customer premises is established in the above manner, the wastewater volume for the ensuing months will be the revised wastewater average so established or the actual water consumption determined by the readings of each City water meter for each billing cycle, whichever is less, plus the volume of cooling tower blowdown determined by each discharge meter reading for each monthly billing cycle.
 - (iii) The volume of wastewater derived in accordance with (ii) above shall then be multiplied by the wastewater rate for the applicable customer class and the monthly charges established by the city council shall be added to the total to derive the wastewater bill for the customer premises.
 - (iv) A revised wastewater average for the customer premises shall be established as set forth above in the winter months for each year of the five year term that the approval for the evaporative loss adjustment is in effect.

- (v) For any year in which a revised wastewater average for the customer premises cannot be derived as set forth above due to the timing of the application or approval of the evaporative loss adjustment, the wastewater volume will be based on the actual water consumption for customer premises determined by the reading of the city water meter for each monthly billing cycle less the volume of cooling tower makeup water determined by the intake meter in the monthly billing cycle plus the volume of cooling tower blowdown water discharged to the city's wastewater system determined by the discharge meter reading for the monthly billing cycle.
- (e) Subject to any special conditions or billing protocol approved by the director, wastewater billings for those utility customers having one or more city water meters to service the building (including the cooling towers) and one or more separate city water meters used solely to service an irrigation system will not be based on the standard wastewater average method or the revised wastewater average calculation described in Subparagraph (d) but will be calculated as follows:
 - (i) for each billing period following approval of the customer application for receipt of the evaporative loss adjustment, the difference between the intake meter reading and the discharge meter reading shall be subtracted from the actual water consumption for the building (including the cooling towers) determined by the readings of the city meters servicing the building (and cooling towers) for each monthly billing cycle; and
 - (ii) the volume of wastewater derived in accordance with Subdivision (i) shall be multiplied by the wastewater rate for the applicable customer class and the monthly charges established by the city council shall be added to the total to derive the wastewater bill for the building utility account.
- (f) Subject to any special billing conditions or protocol approved by the director, for customer premises that have one or more separate city water meters that service both an irrigation system as well as one or

more cooling towers (but not the building proper), or for customer premises having one or more separate city water meters used solely to service each cooling tower (but not the building proper), the wastewater bill for each utility account servicing each cooling tower shall be calculated by multiplying the wastewater volume determined by the discharge meter reading for each monthly billing period by the rate for the applicable customer class and the customer account charge established by the city council shall be added to the total to derive the wastewater bill for the utility account.

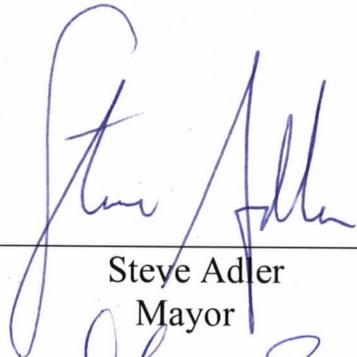
- (22) Customer premises whose total wastewater discharge to the City's wastewater system (meaning the discharge from all buildings, cooling towers and other installations on the site) is monitored by one or more wastewater flow meters whose installation has been separately approved by the director are not eligible to receive the evaporative loss adjustment.
- (23) For users of evaporative cooling towers whose particular circumstances do not meet the literal requirements of this Article, but in which the director reasonably determines that the grant of evaporative loss adjustment is just and equitable and capable of being implemented and administered in accordance with generally accepted metering, billing and engineering practices, the director may enter into written agreements approved by the city attorney setting forth terms and conditions for approval and application of the evaporative loss adjustment to non-standard situations. A written agreement shall reflect the substantive requirements of this Article as closely as possible and the existence of an agreement shall not exempt the customer from the obligation to comply with Section 15-9-242 (*Offenses*) nor limit the applicability of the sanctions set forth in Section 15-9-243 (*Revocation of Adjustment*).

PART 20. This ordinance takes effect on December 21, 2020.

PASSED AND APPROVED

December 10, 2020

§
§
§



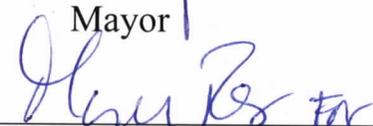
Steve Adler
Mayor

APPROVED:


Anne L. Morgan
City Attorney

Thomas

ATTEST:


Jannette S. Goodall
City Clerk