

ORDINANCE NO. 2019 - 17

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS AMENDING CHAPTER 130, ARTICLE IV. OF THE CODE OF ORDINANCES OF THE CITY OF NEW BRAUNFELS, TEXAS, TO AMEND THE WATER CONSERVATION AND DROUGHT MANAGEMENT PLAN ORDINANCE, REPEALING ALL ORDINANCES IN CONFLICT, ADDING A SAVINGS CLAUSE, AND DECLARING AN EFFECTIVE DATE.

WHEREAS, the Board of Trustees of the New Braunfels Utilities has recommended that the City Council approve amendments to Chapter 130, Article IV, Divisions 5, 6 and 7 of the Code of Ordinances of the City of New Braunfels concerning water conservation and drought management; and

WHEREAS, City Councilmembers have determined that the recommended amendments to the water conservation and drought management ordinance should be accepted and approved; and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEW BRAUNFELS, TEXAS:

I.

THAT, the following sections in Chapter 130, Article IV, Code of Ordinances, as heretofore established by ordinance, be and are hereby amended as set forth below effective for all customers on or after June 1, 2019:

A. Section 130-209 concerning authorization to enforce is amended to read in its entirety as follows:

Sec. 130-209. – Authorization to Enforce.

The CEO of NBU or his or her designee and/or the city is authorized and directed to commence any action, in law or in equity, including the filing of criminal charges deemed necessary for the purpose of enforcing this article. As a condition of service, all customers, including those whose service properties are located outside the city limits of the City of New Braunfels, are subject to Chapter 130 of New Braunfels Code of Ordinances. The CEO of NBU or the designee and/or the city may seek civil penalties or impose surcharges as may be allowed by statute and this ordinance and any other legal or equitable relief available under common law or this article, under V.T.C.A., Local Government Code ch. 54 as it may be amended to address the subject matter of this article, or any other applicable city, state or federal code, ordinance, statute, rule or

regulation.

B. Section 130-213.1 with respect to landscape watering in general is amended to read in its entirety as follows:

Sec. 130-213.1. – Landscape Watering.

From and after June 1, 2019, landscape watering is regulated as described in section 130-220.1

C. Section 130-219(a) concerning enforcement and violations is amended to read in its entirety as follows:

Sec. 130-219. – Enforcement.

(a) *Violations.* It shall be a violation of this article for any person in the corporate limits of the city or its extra territorial jurisdiction or any person in the NBU CCN that receives water service from NBU to intentionally, knowingly, recklessly or criminally negligently allow or cause water waste, allow landscape watering outside the prescribed hours for sprinkling, or allow or cause any violation of any provision of this division or of the drought management plan. As a condition of service, all customers, including those whose service properties are located outside the city limits of the City of New Braunfels, are subject to Chapter 130 of New Braunfels Code of Ordinances.

D. A new Section 130.220.1 providing for regulation of landscape watering is added to read in its entirety as follows:

Sec. 130-220.1. – Landscape Watering.

It is the policy of the city to promote the efficient use of water without waste at all times on a year round basis. From and after June 1, 2019, landscape watering for residential and commercial properties will be limited to two days per week according to the street address as follows.

Last number of address	Watering Day
Even number (0,2,4,6,8)	Monday, Thursday
Odd number (1,3,5,7,9)	Tuesday, Friday
No address, more than one address associated with a single contiguous property	Monday, Friday

It is unlawful for any person to perform or permit landscape watering on any property within the city or its extraterritorial jurisdiction or areas covered by NBU's CCN between the hours of 10:00 a.m. and 8:00 p.m. on any day, except as expressly provided herein. Landscape watering is also

restricted further during the times the drought management plan is in effect as provided herein.

E. Section 130-221 establishing the basis of water use reduction measures and aquifer stage conditions is amended to read in its entirety as follows:

Sec. 130-221. – Basis of water use reduction measures and aquifer stage conditions.

The water use reduction measures may be based on the Edwards Aquifer water levels in Well AY-68-37-203 in San Antonio (also known as "Dodd Field Test Well" or "J-17") as set out in section 130-224, or on the discharge level of the Comal Springs, NBU water supply, or on aquifer water quality or other aquifer, potable water system capacity, or seasonal or weather conditions not based on water levels in J-17 (set out in section 130-226).

F. Section 130-222 is amended by deleting the title and text and indicating that it is reserved.

G. Section 130-223(a) concerning authorization of the Mayor to declare water use reductions is amended to read in its entirety as follows:

Sec. 130-223. – Declaration of Water Use Restriction Stages in effect; notice by publication required.

(a) The Mayor of the City of New Braunfels or his or her designee, in consultation with NBU, is hereby authorized to declare that water use reduction measures are in effect.

H. Section 130-224 establishing trigger levels for water use reduction is amended to read in its entirety as follows:

Sec. 130-224. – “Trigger levels” for implementation and termination of water use reduction measures, stages 1, II and III.

Implementation and termination of stages I, II and III of the water use reduction measures, based upon the J-17 Edwards Aquifer water levels or the Comal Springs discharge may occur according to the following schedule:

	Description	Stage I	Stage II	Stage III
1	When the aquifer is at or below this level msl, based on a 10 day rolling average calculated and determined by the Edwards Aquifer Authority, or the discharge from the Comal Springs is at or below this cfs, whichever happens first, or as determined by section 130-221, the Mayor of the City of New Braunfels, in consultation with NBU, may officially declare the respective stage. NBU shall coordinate water use reduction with customers in its service area. The City and NBU shall enforce the water use reduction provisions set out in section 130-225, for each stage.	660 msl 225 cfs	650 msl 200 cfs	640 msl 150 cfs
2	When the aquifer subsequently rises above this level msl or the discharge from the Comal Springs rises above this cfs, whichever occurs last, NBU staff will monitor the consistency of the various levels and other conditions as set out in section 130-221 for a period of 15 calendar days, before consulting with the Mayor of the City of New Braunfels on whether to terminate the drought restrictions for that stage.	660 msl 225 cfs	650 msl 200 cfs	640 msl 150 cfs

I. Section 130-225 designating landscape irrigation times and days is amended to read in its entirety as follows:

Sec. 130-225. – Designated landscape irrigation times and days (stages I, II and III).

During any period when stages I, II, or III have been declared to be in effect, irrigation with a sprinkler or irrigation system of existing landscape on any property (other than parks and athletic fields, the restrictions for which are set out in section 130-228) may occur only on certain designated days and at certain times, as follows:

(1) For stage I, landscape watering for residential and commercial properties will be limited to one day per week according to the street address as follows:

Last number of address	Watering day
0, 1	Monday
2, 3	Tuesday
4, 5	Wednesday
6, 7	Thursday
8, 9	Friday

If there is no street address associated with the property, such as a parkway, or if there is more than one street address associated with a single contiguous property, the irrigation day is Wednesday.

(2) For stage II, landscape watering for residential and commercial properties will be limited to one day per week, according to the street address as follows:

Last number of address	Watering day
0, 1	Monday
2, 3	Tuesday
4, 5	Wednesday
6, 7	Thursday
8, 9	Friday

If there is no street address associated with the property, such as a parkway, or if there is more than one street address associated with a single contiguous property, the irrigation day is Wednesday.

(3) For stage III, landscape watering for residential and commercial properties will be limited to one day per week **every other week**, beginning on the second Monday after the stage III has been declared according to the street address as follows:

Last number of address	Watering day
0, 1	Monday
2, 3	Tuesday
4, 5	Wednesday
6, 7	Thursday
8, 9	Friday

If there is no street address associated with the property, such as a parkway, or if there is more than one street address associated with a single contiguous property, the irrigation day is Wednesday.

(4) For stage I, II and III the following associated irrigation methods apply: Irrigation with a hose-end sprinkler or in-ground irrigation system is allowed on the days specified.

(5) For stage I landscape irrigation with a soaker hose (that does not send spray in the air), handheld hose, drip irrigation system or bucket is allowed on any day at any time.

(6) For stage II and III landscape irrigation with a soaker hose (that does not send spray in the air), handheld hose, drip irrigation system or bucket is allowed on any day.

Note: Vehicle washing at home is limited to designated landscape sprinkling watering days and times, but use of a commercial facility is permitted any day for all drought stages.

II.

THAT, all other ordinances or parts of ordinances in conflict herewith are repealed to the extent that they are in conflict.

III.

THAT, all provisions hereof are hereby declared to be severable and if any provision hereof is declared to be invalid or unconstitutional, such shall not invalidate or affect the remaining provisions hereof which will be and remain in full force and effect.

IV.

THAT, this ordinance shall become adopted as shown below and effective June 1, 2019.

PASSED AND APPROVED: First reading this the 11 day of March, 2019.

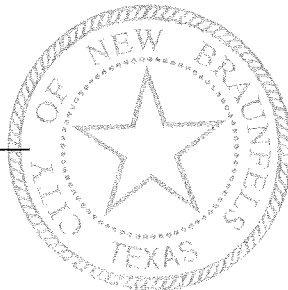
PASSED AND APPROVED: Second and final reading this the 25 day of March, 2019.

CITY OF NEW BRAUNFELS


BARRON CASTEEL, Mayor

ATTEST:


PATRICK ATEN, City Secretary



APPROVED AS TO FORM:


VALERIA M. ACEVEDO, City Attorney

Approved: February 10, 2014
Draft 0219

**DIVISION 5. - WATER CONSERVATION AND CRITICAL PERIOD MANAGEMENT
PLAN—GENERALLY ^[124]**

⁽¹²⁴⁾ **Editor's note**— Ord. No. 2008-50, § I, adopted July 28, 2008, amended division 5 in its entirety to read as herein set out. Formerly, division 5 pertained to similar subject matter, and derived from Ord. No. 2006-33, § I(Exh. A), adopted April 24, 2006.

Sec. 130-206.- Definitions.

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

Aesthetic use means the use of water for outdoor fountains, waterfalls, and landscape lakes, ponds, or other water related features where such use is entirely ornamental and serves no other functional purpose.

Agricultural irrigation means irrigation for the purpose of growing crops commercially for human consumption or to use as feed for livestock or poultry.

Athletic field means a sports playing field, the essential feature of which is turf grass, used primarily for organized sports for schools, professional sports, or organized league play.

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

Base usage means the average monthly total water usage for the three lowest months of November and December and the following January and February during each of the three consecutive 12-month periods preceding the commencement of the user's use of water.

Beneficial use means the amount of water that is economically necessary for a purpose not otherwise prohibited by the city, state or federal law or regulation, when reasonable intelligence and reasonable diligence is used in applying water for that purpose.

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

Bucket means a bucket or other container holding five gallons or less, used singly by one person.

CEO means the chief executive officer of NBU or designee.

Certificate of convenience and necessity (CCN) means the service area of NBU as granted by the TCEQ. Also referred to as the certified service area.

Cfs means cubic feet per second.

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

Computer controlled irrigation system (CCIS) means a system comprised of a computer controller (digital

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operating system), software, interface modules, satellite field controllers, soil sensors, weather station, or similar devices which is capable of achieving maximum efficiency and conservation in the application of water for irrigation. A CCIS, at a minimum, should be designed to:

- (1) Prevent overwatering, flooding, pooling, evaporation and run-off; and
- (2) Prohibit sprinkler heads from applying water at an intake rate exceeding the capability of the soil.

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.

Conservation compliance officer or compliance officer means the person acting in the position of conservation compliance officer.

Conservation coordinator or coordinator means the person acting in the position of conservation coordinator of New Braunfels Utilities.

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

Day means a 24-hour period beginning at midnight.

Drip irrigation means an irrigation system (drip, porous pipe, etc.) designed to emit water at low pressures directly onto soil surface or below soil surface without airborne streams or droplets.

Drought means any condition, whether man-made or natural, where the available water supply or resources are not meeting the water demand, or if the water supply or resources are being depleted at a faster rate than they are being replenished. It is not intended to be limited to any meteorological definition of the term.

Drought management plan means the plan for management of the aquifer described and set out in division 7, as amended from time to time.

EAA means Edwards Aquifer Authority.

Edwards Aquifer or aquifer means that portion of an arcuate belt of porous, water-bearing, predominately carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone extending from west to east to northeast from the hydrologic division near Brackettville in Kinney County that separates underground flow toward the Comal Springs and San Marcos Springs from underground flow to the Rio Grande Basin through Uvalde, Medina, Atascosa, Bexar, Guadalupe and Comal counties, and in Hays County south of the hydrologic division near Kyle that separates flow toward the San Marcos River from flow to the Colorado River Basin.

Essential use means a use of water which is:

- (1) Essential to the protection of public health, safety, or welfare, including but not limited to use for drinking, food preparation, personal hygiene, public sanitation, control or prevention of disease and firefighting;
- (2) Essential to an industrial use or agricultural or military activity which directly supports gainful employment, unless the use is specifically defined in this article as a discretionary use;

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(3) Watering of livestock.

Evapotranspiration rate (ET rate) means the rate which the combination of evaporation from soil surface and transpiration from vegetation will occur for specific climatic conditions.

Existing landscaping plant means a landscaping plant existing after such period of time as to accomplish an establishment and maintenance of growth.

Golf course means an irrigated and landscaped playing area made up of greens, tees, fairways and roughs and related areas used for the playing of golf.

Gray water means water after use in bath and utility sinks, tubs, showers and washing machines.

Hand-held hose means a hose attended by one person, fitted with a manual or automatic shutoff nozzle.

Health care facility means any hospital, clinic, nursing home or other health care or medical research facility.

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

Household use means the use of water, other than uses in the outdoor category, for personal needs or for household purposes, such as drinking, bathing, heating, cooking, sanitation or cleaning, whether the use occurs in a residence or in a commercial or industrial facility.

Impervious surface area means any structure or any street, driveway, sidewalk, patio or other surface area covered with asphalt, concrete, brick, paving, tile or other material preventing water to penetrate the ground.

Industrial use means the use of water for or in connection with commercial or industrial activities, including manufacturing, bottling, brewing, food processing, scientific research and technology, recycling, production of concrete, asphalt, and cement, commercial uses of water for tourism, entertainment, and hotel or motel lodging, generation of power other than hydroelectric, and other business activities.

Irrigation system, also referred to as an in-ground or permanent irrigation system, being a system with fixed pipes and emitters or heads that apply water to landscape plants or turfgrass.

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

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

Landscape renovation means the removal and replacement of existing landscape plants with new landscape plants.

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Landscape watering means the application of water to grow or maintain landscaping plants, such as flowers, ground covers, turf or grasses (other than golf courses or athletic fields), shrubs, and trees, but for purposes of this article does not include:

- (1) Essential use without waste of water by a commercial nursery to the extent the water is used for production rather than decorative landscaping;
- (2) Application of water without waste to a noncommercial family garden or orchard the produce of which is for household consumption only; and
- (3) Except when stages II and III of the drought management plan are in effect, application of water at any time on any day by means of a bucket, hand-held hose, soaker hose (but not one that sprays water in the air), or properly installed drip irrigation system.

Landscaping plant means any member of the kingdom plantae, including any tree, shrub, vine, herb, flower, succulent, groundcover or grass species that grows or has been planted out-of-doors.

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

Livestock means cattle, sheep, goats, hogs, poultry, horses, and game, domestic, exotic and other animals and birds, including zoo animals, used for commercial or personal purposes.

Livestock use means the use of water for drinking by or washing of livestock.

Low-flow toilet means a tank toilet that is designed to use 1.6 gallons or less of water per flush.

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

Maintenance level means the level of water in a swimming pool required for proper circulation for operation of filter equipment for the swimming pool.

Master valve - A remote control valve located after the backflow prevention device that controls the flow of water to the irrigation system mainline.

msl means elevation above mean sea level.

Mulch means any material such as bark, leaves, straw or other materials left loose and applied to the soil surface to reduce evaporation.

NBU means New Braunfels Utilities.

New landscaping plant means any plant or seed planted in or transplanted to an area within such period of time as to accomplish a reasonable establishment and maintenance of growth. Application of grass seed to an existing stand of grass or turf is not considered new landscaping.

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

Organic material means organic substances in differing stages of decay.

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Other outdoor use means the use of water outdoors for the maintenance, cleaning and washing of structures and mobile equipment, including automobiles and boats, or the washing of streets, driveways, sidewalks, patios and other similar areas.

Park means a tract of land maintained by a city, private organization, or individual, as a place of beauty or of public recreation.

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

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

Pervious surface means any ground surface which can absorb water or other liquids.

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

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

Precipitation rate means the speed at which a sprinkler or irrigation system applies water. Precipitation rates are measured in inches per hour or inches per minute.

Prescribed hours for sprinkling means between the hours of 8:00 p.m. and 10:00 a.m. when the drought management plan is not in effect, and during the hours specified therein when the drought management plan is in effect.

Private residential swimming pool. See "Swimming pool."

Property address means the street address of a property, unless multiple street addresses are served by a single meter, in which case the billing address will be used.

Public facilities means municipally-owned or operated facilities.

Public swimming pool. See "Swimming pool".

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

Recycled or reuse water means domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use in accordance with applicable law.

Requestor means a customer who requests a variance under this article.

Residential customer means a single or multi-family dwelling unit containing two or fewer family units.

Responsible Person means a natural person or legal entity who causes, maintains or allows a violation(s) of the city code to occur or continue by action or failure to act. A responsible person includes, but is not limited to, the owner, tenant, co-tenant, lessee, sub-lessee or other person with any right to possession of

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the property where a city code violation that is related to the use or condition of property occurs, the on-site manager who normally works daily at the site when the business is open and is responsible for the activities at such premises, and the owner, and general partners of a legal entity. There may be more than one responsible person for a violation.

Soaker hose means plastic or flexible hose that emit water across the entire length based on water pressure, and connect directly to a flexible hose or spigot.

Soil holding capacity means the amount of moisture in the soil that can occur without becoming saturated.

Sprinkler means an emitter that applies water to the landscape plants in a stream that travels through the air. Sprinkler irrigation can be applied by an irrigation system or hose-end sprayer or a soaker hose that sprays water in the air.

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 feet or more at any point.

(1) *Private residential swimming pool.* Any swimming pool located on private property under the control of the homeowner, the use of which is limited to swimming or bathing by the homeowner's family or invited guests.

(2) *Public swimming pool.* Any swimming pool, other than a private residential swimming pool, intended to be used collectively by persons for swimming or bathing, operated by any person as defined herein, whether owner, lessee, operator, licensee, or concessionaire, regardless of whether a fee is charged for such use. The term includes, but is not limited to, apartment community pools, condominium association pools and community association pools.

TCEQ means the Texas Commission on Environmental Quality.

TDS means total dissolved solids.

Trigger level means the mean sea level of the Edwards Aquifer as indicated by the J-17 index well and/or the discharge from the Comal Springs according to the USGS log in cubic feet per second (cfs) that result in the implementation or termination of water use reduction measures.

Turf means a surface layer of earth containing mowed grass with roots.

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

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

Vegetable garden means any "non-commercial" vegetable garden planted primarily for household use; "non-commercial" includes incidental direct selling of produce from such a vegetable garden to the public.

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

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

Water includes, but is not limited to potable water supplied by NBU or other water purveyor, potable water withdrawn from their groundwater well, surface water from any river, creek, natural watercourse, pond, lake or reservoir, and recycled water supplied by NBU or other water purveyor.

Water waste means use of water without obtaining maximum beneficial use thereof.

Water waste shall also include, but not be limited to:

- a. causing, suffering, or permitting a flow of water used for landscape watering to run into any river, creek or other natural water course or drain, superficial or underground channel, bayou, or unto any sanitary or storm sewer, any street, road or highway or other impervious surface area, or upon the lands of another person or upon public lands.
- b. Any discharge of water used for commercial, industrial, or domestic purposes to any storm, sanitary sewer, or septic system without the user first having obtained maximum beneficial use thereof.
- c. Failure by any Responsible Person, to repair any controllable leak on property. See also Sec. 130-228 for additional information on leaks.
- d. Watering landscaped areas during rain or high wind.
- e. Washing outdoor impervious surfaces, with a pressure washer or garden hose, such as sidewalks, driveways and patios during drought stage, except to remove spills of hazardous materials, eliminate dangerous conditions which threaten the public health, safety, or welfare, or to prepare surface for maintenance work.
- f. Washing buildings, houses or structures with a pressure washer or garden hose for aesthetic purposes during a drought stage.
- g. Washing vehicles with a hose that lacks an automatic shut-off valve.

Water conservation plan means the water conservation plan required as part of the drought management plan referred to in Division 7 must include proof of irrigation efficiency of 60 percent or greater and demonstrate specific measures to be taken to reduce consumption to meet the reduction goal established for each stage I, II and III. A plan should also include precipitation rates and irrigation schedules with run times. NBU may, on a case by case basis, waive the requirements for irrigation efficiency and/or submission of a water conservation plan.

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

Water purveyor use means water used for withdrawal, treatment, remediation, transmission and distribution by a potable water purveyor.

Watering day means a day designated for landscape watering in this ordinance. Thus, if it is stage I and Wednesday is a designated watering day, the period of time referenced is Wednesday morning between midnight to 10:00 a.m., and Wednesday evening between 8:00 p.m. and 11:59pm.

Xeriscape means a landscape consisting of a maximum of 50 percent turf grass, with the remaining percentage of landscape incorporating low water use plants and/or pervious hardscape. The approved low water use plant list, as may be amended from time to time, shall be available from NBU and located at NBU and at www.nbutexas.com.

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

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-207.- Nuisance declared.

The violation of any part of division 6 and 7 is deemed a nuisance which may be abated and enjoined by the city. Any person creating a public nuisance shall be subject to the provisions of this Code and other applicable law governing such nuisances, including reimbursing NBU or the city for any costs incurred in removing, abating or remedying such nuisance. The owner of any property where such nuisance has occurred shall be liable to the city and/or NBU for the cost of such abatement, removal or remediation, and shall pay such cost on demand, and the city acting for itself and/or NBU shall have the right to file a lien on the property to secure payment of the cost of such abatement, removal or remediation of the nuisance.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-208.- Presumption and exception.

For purposes of this article, it shall be presumed that the person in whose name a water and/or electric meter connection is registered with NBU, or other purveyor servicing the property, is the responsible party who has made, caused, allowed or permitted a violation of the provisions of this article.

Proof that the particular premises had a water and/or electric meter connection registered in the name of the defendant cited in a criminal or civil complaint filed pursuant to this article shall constitute a prima facie presumption that the defendant is a person who made, caused, allowed or permitted a violation pursuant to the provisions of this article.

An exception to these presumptions can be granted if:

- a. the meter holder can prove that another party is the Responsible Person.
- b. exception to this presumption is found in subsection 130-214.3(b), wherein the city, whose premises are used by a tenant/lessee, is generally not responsible for the tenant/lessee's compliance. In such cases, the tenant/lessee of the city is responsible for compliance, and the city shall have no duty to enforce against the tenant/lessee except to the extent the city's municipal courts may be fully utilized by the NBU enforcement officers or other duly authorized governmental personnel charged with enforcement duties.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-209.- Authorization to enforce.

The CEO of NBU or his or her designee and/or the city is authorized and directed to commence any action, in law or in equity, including the filing of criminal charges deemed necessary for the purpose of enforcing this article. As a condition of service, all customers, including those whose service properties are located outside the city limits of the City of New Braunfels, are subject to Chapter 130 of New Braunfels Code of Ordinances. The CEO of NBU or the designee and/or the city may seek civil penalties or impose surcharges as may be allowed by statute and this ordinance and any other legal or equitable relief available under common law or this article, under V.T.C.A., Local Government Code ch. 54 as it may be amended to address the subject matter of this article, or any other applicable city, state or federal code, ordinance, statute, rule or regulation.

(Ord. No. 2008-50, § I, 7-28-08)

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Sec. 130-210.- Access to premises.

The city and NBU and all persons or agents employed by either shall, at all reasonable hours, have free access to properties to ascertain if water is being wasted and whether provisions of this article have been and are being complied with in all aspects, however, this section does not authorize entry into a residence without consent of the owner or occupant.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-211.- Divisions 5, 6 and 7 to prevail if conflict.

In the event any section or provision of divisions 5, 6 and 7 of this article conflict in effect or application with any other section of this Code, the section or provision of divisions 5, 6 and 7 of this article will prevail.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-212.- Severability.

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

(Ord. No. 2008-50, § I, 7-28-08)

DIVISION 6. - REGULATED ACTIVITIES ^[125]

⁽¹²⁵⁾ **Editor's note**— Ord. No. 2008-50, § I, adopted July 28, 2008, amended division 6 in its entirety to read as herein set out. Formerly, division 6 pertained to similar subject matter, and derived from Ord. No. 2006-33, § I(Exh. A), adopted April 24, 2006.

Sec. 130-213.- Activities to be regulated on and after effective dates.

The following activities shall be regulated in the manner set out herein on and after the respective dates indicated in the sections and subsections. A person affected by such regulations may request a variance in the manner set out in section 130-218. A violation of this section and subsections shall be subject to the enforcement provisions set out in section 130-219. It shall be and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this division or of the drought management plan set out in division 7.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-213.1.- Landscape watering.

From and after the effective date of this division, landscape watering is regulated as described in section 130-220.1

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-213.2.- Vehicle wash fundraisers.

From and after the effective date of this division, any vehicle wash fundraiser shall be conducted at a vehicle wash facility using such facility's equipment.

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(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-213.3.- Golf courses.

From and after the effective date of this division, no golf courses shall be allowed to irrigate the greens, tees, roughs or fairways with potable water. Use of potable water for landscape irrigation in and around the club house will be permitted but must conform to all other requirements for landscape irrigation.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-214.- Activities to be regulated on and after January 1, 2007.

Except as provided by a specific and alternative application date, particularly systems analysis, the following activities shall be regulated in the manner set out herein on and after January 1, 2007. A person affected by such regulations may request a variance in the manner set out in section 130-218. A violation of this section and subsections shall be subject to the enforcement provisions set out in section 130-219. It shall be and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this division.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-214.1.- Minimum irrigation area and flow direction.

Effective January 1, 2007, newly installed irrigation systems using pop-up spray or rotor technology shall not be used in landscaped areas which have both: (a) dimensions less than five feet in length and/or width; and, b) impervious pedestrian or vehicular traffic surfaces along two (2) or more perimeters. Where pop-up sprays and rotor heads are allowed in newly installed irrigation systems, they (a) must direct flow away from any adjacent impervious surface and (b) shall not be placed within four (4) inches from an impervious surface.

Sec. 130-214.2.- Annual irrigation system analysis for athletic fields, and large properties requiring variance from water use reduction measures.

Effective January 1, 2007:

- (1) An annual irrigation system analysis demonstrating no water waste shall be required for all athletic fields and large properties and shall be submitted in writing to the NBU conservation coordinator on or before May 1st of each year, beginning on May 1, 2007.
- (2) Municipal tenants and lessees of sports and athletic playing fields and any other municipally owned properties shall be responsible for compliance with this section and subsection. NBU shall look directly to such tenants and lessees for compliance unless the municipality concedes by contractual agreement with the tenant/lessee to assume the tenant/lessee's responsibility for compliance.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-214.3. - Cooling towers.

Effective January 1, 2007:

- (1) Cooling towers, not utilizing recycled water, shall operate a minimum of four cycles of concentration. For the purposes of this section "concentration" means recirculated water that has elevated levels of total dissolved solids as compared to the original make-up water.
- (2) Newly constructed cooling towers shall be operated with conductivity controllers, as well as make-up and blowdown meters.

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(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-214.4.- Ice machines.

Effective January 1, 2007, newly installed ice machines shall not be single pass water-cooled. (Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-214.5.- Commercial dining facilities.

Effective January 1, 2007, commercial dining facilities shall:

- (1) Utilize positive shut-offs for hand-held dish-rinsing wands
- (2) Utilize water flow restrictors for all garbage disposals.

Comment: NBU strongly encourages that water be served to guests only upon request. Many guests do not drink water which is not requested and water use involved with dishwashing occurs whether or not the guest consumes the water served.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-214.6.- Vehicle wash facilities.

(a) Vehicle wash facilities, commencing operation on or after January 1, 2007, using conveyORIZED, touchless, and/or rollover in-bay technology shall reuse a minimum of 50 percent of water from previous vehicle rinses in subsequent washes.

(b) Vehicle wash facilities, commencing operation on or after January 1, 2007, using reverse osmosis to produce water rinse with a lower mineral content, shall incorporate the unused concentrate in subsequent vehicle washes.

(c) Regardless of date of operation commencement, from and after January 1, 2007, self-service spray wands used shall emit no more than three gallons of water per minute.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-215.- Other activities to be regulated on and after January 1, 2007.

The following activities shall be regulated in the manner set out herein on and after January 1, 2007. A person affected by such regulations may request a variance in the manner set out in section 130-218. A violation of this section and subsections shall be subject to enforcement provisions set out in section 130-219. It shall be and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this division 6.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-215.1.- Condensate collection.

Newly constructed commercial buildings installing air conditioning systems on and after January 1, 2007, shall have a single and independent condensate wastewater line to collect condensate wastewater to provide for future utilization as:

- (1) Process water and cooling tower make-up, and/or
- (2) Landscape irrigation water. Condensate wastewater shall not be allowed to drain into a storm sewer, roof drain overflow piping system public way or impervious surface.

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(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-215.2.- Rain sensors.

Effective January 1, 2007, rain sensors shall be properly maintained and operational on all irrigation systems equipped with automatic irrigation controllers.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-216.- Landscaping regulations generally applicable on and after January 1, 2007.

Except as specifically provided with alternative effective dates, persons affected by the regulations set out herein below shall comply on and after January 1, 2007, and may request a variance to such regulations in the manner set out in section 130-218. A violation of this section and subsections shall be subject to the enforcement provisions set out in section 130-219. It shall be and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this division 6.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-216.1.- Xeriscape option.

Effective January 1, 2007, homebuilders and/or developers subdividing lots and/or constructing new single family residential homes shall offer a xeriscape option in any series of landscaping options offered to prospective home buyers.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-216.2.- Model homes.

Effective January 1, 2007, homebuilders and/or developers who construct one or more model homes for a designated subdivision shall have at least one model home per subdivision landscaped according to a xeriscape design.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-216.3.- Zonal system.

In-ground irrigation systems installed on and after January 1, 2007, shall be zonal irrigation systems.

(Ord. No. 2008-50, § I, 7-28-08)

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

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

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

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

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

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

Sec. 130-217.- Conservation provisions in wholesale water contracts.

Each wholesale potable water supply contract entered into by NBU after this division becomes effective, including contract extensions, must include:

- (1) A provision that the wholesale customer is required to conform to the city's water conservation ordinance set out as article IV, divisions 5, 6 and 7, as amended from time to time;
- (2) A provision that NBU may implement a pro rata curtailment of water deliveries to or diversions by wholesale water customers as provided by V.T.C.A., Administrative Code tit. 30, ch. 288;
- (3) A provision that in case of a shortage of water resulting from drought, the water to be distributed shall be divided in accordance with V.T.C.A., Administrative Code tit. 30, ch. 288.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-218.- Variances.

The authority to grant a variance and an appeal from such variance to the provisions of this division 6 or division 7, is hereby delegated to NBU in the manner described herein. A determination by NBU pursuant to this section shall be deemed final for purposes of appeal. Appeal procedures are detailed below.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-218.1.- Variance. A person who is affected by these provisions may seek a variance in the manner set out herein. A person shall request a variance within 30 days of the date a provision becomes apparently applicable to that person's activities and/or properties. For example, a person will have standing to seek a variance within 30 days following receipt of a formal (citation) or informal notice of violation; prior to a notice of violation; or at the discretion of the conservation coordinator when, in the coordinator's judgment, to deny standing to pursue a variance would clearly deny the applicant an opportunity to have justice and equity done for the applicant's case. In the latter situation, for purposes of justice and equity, the standard for allowing a variance application to be heard or considered are the common notions of rightness and fair play.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-218.2.- Time, date, place.

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

(Ord. No. 2008-50, § I, 7-28-08)

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Sec. 130-218.3.- Representation and notice of NBU's response; first hearing.

The requestor may be represented by a duly authorized representative and may introduce such evidence as the requestor believes to be relevant. The coordinator and appropriate NBU personnel shall hear the request. The requestor shall receive written notification by the coordinator within 30 days of the date of the hearing whether such variance is granted or denied.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-218.4.- Appeal.

In the event the variance is granted, the decision of the coordinator shall be final. Should the variance be denied, however, the requestor shall have ten days from receipt of the denial of the variance to seek an appeal in writing. Within 30 days of the written request for an appeal from the denial of a variance, a three member variance appeals panel composed of NBU customers appointed by and serving at the pleasure of the NBU board of trustees shall hear the appeal. The requestor shall be informed in writing of the time, date and place where such appeal shall be heard. The requestor and/or his authorized representatives may present evidence to the variance appeals panel why such appeal should be granted. The variance appeals panel shall inform the requestor within 30 days of the date of the hearing of the appeal whether the appeal has been granted or denied. The determination of the variance appeals panel shall be final and shall be in writing. If a judicial appeal is pursued, the applicant must take such appeal to district court or other court of competent jurisdiction within 30 days of the variance appeals panel's final determination, which further appeal shall be pursued under appropriate standards of the substantial evidence rule.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-218.5.- Variance qualifications.

Variances to the regulated activities in this division 6 or the drought management plan in division 7 may be issued by the conservation coordinator provided that the general intent of the provisions of this division 6 or division 7 has been met, and strict compliance with this division 6 or division 7 is proven to be impracticable to accomplish and to cause unnecessary hardship. The criteria to determine hardship shall include, but not be limited to, a showing of level of capital outlay and technical complexity in relation to conservation benefit to be derived, and time and effort required to accomplish compliance with this article. See also Sec. 130-228 for additional variance qualifications.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-218.6.- Variance criteria.

The conservation coordinator shall also develop specific criteria to be used for the granting of variances from the provisions of division 6 or division 7 which are appropriate to the provision for which a variance is being sought. Such criteria shall be applied equally to each request for variance under a particular provision. A requestor shall be furnished with the criteria to be utilized by the coordinator prior to his/her variance application and/or appeal being heard.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-219.- Enforcement

(a) *Violations.* It shall be a violation of this article for any person in the corporate limits of the city or its extra territorial jurisdiction or any person in the NBU CCN that receives water service from NBU to intentionally, knowingly, recklessly or criminally negligently allow or cause water

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waste, allow landscape watering outside the prescribed hours for sprinkling, or allow or cause any violation of any provision of this division or of the drought management plan. As a condition of service, all customers, including those whose service properties are located outside the city limits of the City of New Braunfels, are subject to Chapter 130 of New Braunfels Code of Ordinances.

(b) *Continued violations.* At locations of repeated or continued violations of this division or of the drought management plan, the CEO of NBU shall have the authority to discontinue the supply of potable water to the registered meter holder or Responsible Person.

Penalties; fines.

(1) *Criminal.* Any person violating any provision of this article shall be guilty of an offense, and upon citation and conviction, shall be punished by a fine not less than \$100.00 and not more than \$500.00 for the first offense; a fine not less than \$200.00 and not more than \$500.00 for the second offense; a fine of not less than \$400.00 and not more than \$500.00 for the third and additional offenses. If the court determines the offense relates to public health or sanitation, the maximum fine is \$2,000.00, regardless of the number of offenses. Each violation of a particular section of this division or division 7 shall constitute a separate offense, and each day an offense continues shall be considered a new violation for purposes of enforcing this article. All fines collected under this section shall be remitted to NBU and used by NBU for the furtherance of water conservation programs and to help defray the cost of enforcement of this article.

(2) *Civil.* Civil penalties, imposed by courts of competent jurisdiction in civil actions for violations of this article, may also be assessed as may be allowed by applicable state law in any amount to be authorized by the state. Under V.T.C.A., Local Government Code ch. 54, NBU and the office of the city attorney may presently pursue civil enforcement for injunctive relief and the imposition of up to \$1,000.00 per day civil penalties appropriately imposed by the court. This statutory remedy is in addition to the city's common law right to bring civil actions for injunctive relief to stop harmful acts, independent of authority found in the Texas Local Government Code.

(3) *Surcharges.* Any person who violates the watering restriction provisions of this division or of the drought management plan will be held strictly liable and the punishment for such violation may include the imposition of punitive surcharges. NBU is authorized to assess one or more surcharges on the water bill of any person presumed to have been the one who violated this division or a provision of the drought management plan. In the event NBU determines a violation has occurred, the person assessed the punitive surcharge by NBU is prima facie presumed to have violated this division or the drought management plan for the purpose of assessment of surcharges. Punitive surcharges may be assessed as follows:

First violation in any 12-month period	Warning
Second violation in any 12-month period	\$25.00
Third violation in any 12-month period	\$250.00
Fourth violation in any 12-month period	\$500.00

Non-payment of any assessed surcharge or repeated or continued violations of watering restrictions imposed by this article can result in termination of water service. A person who believes that a surcharge was unwarranted because either the violation did not occur or the violation was excused, may appeal the determination to the conservation coordinator and then to the variance appeals panel, whose decision on the matter is final. (Ord. No. 2008-50, § I, 7-28-08)

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Secs. 130-219.1—130-219.3.- Reserved.

Sec. 130-219.4.- Defenses.

(a) It shall be a defense to prosecution or imposition of punitive surcharges that landscape watering was performed on any plant or seed planted in or transplanted to an area within such period of time as to accomplish a reasonable establishment and maintenance of growth, generally three weeks.

(b) It shall be a defense to prosecution or imposition of punitive surcharges that landscape watering was performed by a commercial enterprise in the business of growing or maintaining plants for sale, such as plant nurseries; provided, however, that such landscape watering shall be performed solely for the establishment, growth, and maintenance of such plants and not wasted.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-219.5.- Conservation compliance officer.

(a) A conservation compliance officer shall be appointed by NBU. The compliance officer shall be authorized to administer and enforce this article.

(b) The compliance officer is authorized and directed to enforce all of the provisions of this article, and the compliance officer, upon presentation of proper credentials, may enter properties in accordance with section 130-210 at reasonable times for the purpose of making inspections or preventing violations of this article. This section shall not be construed as imposing upon NBU and/or the city (or any official or employee of either) any liability or responsibility for damages to any property by reason of the inspections authorized under this section.

(Ord. No. 2008-50, § I, 7-28-08)

DIVISION 7. - DROUGHT MANAGEMENT PLAN ^[126]

⁽¹²⁶⁾ **Editor's note—** Ord. No. 2008-50, § I, adopted July 28, 2008, amended division 7 in its entirety to read as herein set out. Formerly, division 7 pertained to similar subject matter, and derived from Ord. No. 2006-33, § I(Exh. A), adopted April 24, 2006.

Sec. 130-220.- Adoption of drought management plan, water use reduction measures, and aquifer stage conditions.

The drought management plan, including the water use reduction measures and associated aquifer stage conditions set out therein, is hereby adopted.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-220.1.- Landscape watering.

It is the policy of the city to promote the efficient use of water without waste at all times on a year round basis. From and after the effective date of this division, landscape watering for residential and commercial properties will be limited to two days per week according to the street address as follows.

Last number of address	Watering Day
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Even number (0,2,4,6,8)	Monday, Thursday
Odd number (1,3,5,7,9)	Tuesday, Friday
No address, more than one address associated with a single contiguous property	Monday, Friday

It is unlawful for any person to perform or permit landscape watering on any property within the city or its extraterritorial jurisdiction or areas covered by NBU's CCN between the hours of 10:00 a.m. and 8:00 p.m. on any day, except as expressly provided herein. Landscape watering is also restricted further during the times the drought management plan is in effect as provided herein.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-221.- Basis of water use reduction measures and aquifer stage conditions.

The water use reduction measures may be based on the Edwards Aquifer water levels in Well AY-68-37-203 in San Antonio (also known as "Dodd Field Test Well" or "J-17") as set out in section 130-224, or on the discharge level of the Comal Springs, NBU water supply, or on aquifer water quality or other aquifer, potable water system capacity, or seasonal or weather conditions not based on water levels in J-17 (set out in section 130-226).

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-222.- Reserved

Implementation of water use reduction measures and stages, generally.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-223.- Declaration of Water Use Reduction Stages in effect; notice by publication required

(a) The Mayor of the City of New Braunfels or his or her designee, in consultation with NBU, is hereby authorized to declare that water use reduction measures are in effect.

(b) Notices of the implementation and termination of the water use reduction measures and each of the various stages, as appropriate, shall be publicly announced in the local media for a minimum of one day. The implementation or termination of the measures and each of the stages shall become effective immediately upon publication of the respective notice.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-224.- "Trigger levels" for implementation and termination of water use reduction measures, stages I, II and III.

Implementation and termination of stages I, II and III of the water use reduction measures, based upon the J-17 Edwards Aquifer water levels or the Comal Springs discharge may occur according to the following schedule:

Description	Stage I	Stage II	Stage III
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1	When the aquifer is at or below this level msl, based on a 10 day rolling average calculated and determined by the Edwards Aquifer Authority, or the discharge from the Comal Springs is at or below this cfs, whichever happens first, or as determined by section 130-221, the Mayor of the City of New Braunfels, in consultation with NBU, may officially declare the respective stage. NBU shall coordinate water use reduction with customers in its service area. The City and NBU shall enforce the water use reduction provisions set out in section 130-225, for each stage.	660 msl 225 cfs	650 msl 200 cfs	640 msl 150 cfs
2	When the aquifer subsequently rises above this level msl or the discharge from the Comal Springs rises above this cfs, whichever occurs last, NBU staff will monitor the consistency of the various levels and other conditions as set out in section 130221 for a period of 15 calendar days, before consulting with the Mayor of the City of New Braunfels on whether to terminate the drought restrictions for that stage.	660 msl 225 cfs	650 msl 200 cfs	640 msl 150 cfs

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-225.- Designated landscape irrigation times and days (stages I, II, III).

During any period when stages I, II, or III have been declared to be in effect, irrigation with a sprinkler or irrigation system of existing landscape on any property (other than parks and athletic fields, the restrictions for which are set out in section 130-228) may occur only on certain designated days and at certain times, as follows:

- (1) For stage I, landscape watering for residential and commercial properties will be limited to one day per week according to the street address as follows:

Last number of address	Watering day
0, 1	Monday
2, 3	Tuesday
4, 5	Wednesday
6, 7	Thursday
8, 9	Friday

If there is no street address associated with the property, such as a parkway, or if there is more than one street address associated with a single contiguous property, the irrigation day is Wednesday.

- (2) For stage II, landscape watering for residential and commercial properties will be limited to one day per week, according to the street address as follows:

Last number of address	Watering day
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0, 1	Monday
2, 3	Tuesday
4, 5	Wednesday
6, 7	Thursday
8, 9	Friday

If there is no street address associated with the property, such as a parkway, or if there is more than one street address associated with a single contiguous property, the irrigation day is Wednesday.

- (3) For stage III, landscape watering for residential and commercial properties will be limited to one day per week **every other week**, beginning on the second Monday after the stage III has been declared according to the street address as follows:

Last number of address	Watering day
0, 1	Monday
2, 3	Tuesday
4, 5	Wednesday
6, 7	Thursday
8, 9	Friday

If there is no street address associated with the property, such as a parkway, or if there is more than one street address associated with a single contiguous property, the irrigation day is Wednesday.

- (4) For stage I, II and III the following associated irrigation methods apply: Irrigation with a hose-end sprinkler or in-ground irrigation system is allowed on the days specified.
- (5) For stage I landscape irrigation with a soaker hose (that does not send spray in the air), handheld hose, drip irrigation system or bucket is allowed on any day at any time.
- (6) For stage II and III landscape irrigation with a soaker hose (that does not send spray in the air), handheld hose, drip irrigation system or bucket is allowed on any day.

Note: Vehicle washing at home is limited to designated landscape sprinkling watering days and times, but use of a commercial facility is permitted any day for all drought stages.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-226.- Implementation of additional water use reduction measures, ("aquifer risk").

- (a) Implementation of additional water use reduction measures, such as declaring Stage IV in periods of exceptional drought conditions, need not be based on the trigger levels set forth in section 130-224 but may instead be based on consideration of aquifer water quality or on other aquifer, seasonal or weather conditions not based on water levels in J-17.
- (b) Whenever aquifer quality measures 30 percent TDS above historical average and above the maximum TDS value for any public supply water well, the Mayor of the City of New Braunfels, in consultation with NBU, shall declare additional measures to protect the aquifer and shall be implemented by the city council as necessary.

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(c) Regardless of consideration of aquifer quality, whenever the Mayor of the City of New Braunfels in consultation with NBU may determine that the NBU water supply, or other aquifer, seasonal, or weather conditions not based on water levels in J-17 warrant, the Mayor may also impose additional restrictions for all water uses

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-227.- Termination of water use reduction measures, stages.

The Mayor of the City of New Braunfels, in consultation with NBU, may declare the termination of water use reduction measures and stages as scheduled in Sec. 130-224. Notice of the termination of the water use reduction measures and each of its various stages, as appropriate, shall be publicly announced in local media for a minimum of one day. Termination of the measures and each of its stages shall become effective immediately upon publication of the respective notice.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-228.- Specific water use reduction measures.

Specific water use reduction measures, their corresponding stages and scope are set out in the table, below:

Measures for	Stages	Scope of Restrictions
Essential Services	I, II, III	Fire-fighting & medical uses — no restrictions.
	I	Reduction in fire hydrant; sewer line flushing recommended.
	II, III	Hydrant flushing & sewer line flushing — only on emergency basis.
Water Purveyor Use	I, II, III	Water purveyors are encouraged to implement voluntary measures, such as improving leak detection surveys and repair programs and stabilizing and equalizing system pressure.
Power Production	I, II, III	Water used for power production shall be voluntarily reduced.
Agricultural	I	Reduction of water use by any means available is encouraged.
	II, III	The escape of irrigation tail water, as that term is commonly used in the agricultural community, is prohibited. Water loss through percolation in transmission canals is prohibited.
	III	Additional reductions may be imposed by the City Council if conditions warrant.
Livestock Use	I, II, III	Reduction of water use by any means available is encouraged.

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Industrial, Commercial, and Other	I, II, III	Reduction of water use by any means available is encouraged. Compliance with the mandatory demand reduction measures is required for those uses in the outdoor category, including landscape watering, swimming pools, hot tubs and similar facilities, golf courses, aesthetic uses such as fountains; such restrictions specifically include industrial users, as well as all others. Use of gray water, treated wastewater or reuse water is a defense to prosecution.
	III	Additional reductions may be imposed by the Mayor if conditions warrant. Use of treated wastewater or recycled water is a defense to prosecution.
Restaurants, or other Eating Establishments	Year Round	NBU strongly encourages that water be served to guests only upon request.
Household	I, II, III	Reduction of water use by any means available is encouraged. Compliance with the mandatory demand reduction measures shall be achieved for those uses in the outdoor category, such as landscape watering, swimming pools, hot tubs, and similar facilities.
Swimming Pools, Hot Tubs, etc.	I, II, III	NBU strongly encourages that all swimming pools, other than public swimming pools, be covered with an effective evaporation cover or screen or evaporation shields covering at least 25% of the surface of the pool when the pool is not in active use. Active use includes necessary maintenance that requires removal of the cover, screen, or shields. Active use of public, commercial and apartment pools is whenever the pool is not officially closed.
Replenishing Pool, Hot Tubs, etc. water levels	I, II, III	Replenishing to maintenance level permitted within watering hours.
New Pools, Filling New Pools, Hot Tubs etc.	I, II	Construction, installation, and filling of new pools will be allowed.
	III	Construction, installation, and filling of new pools will not be allowed. If a building permit has already been issued for pool construction, before the drought management stage was declared, construction, installation, and filling of new pools is allowed. Property owners, prior to construction, installation, or filling of pools should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name, address where the new pool is to be installed, the date of installation, and copy of the approved building permit in order to receive an approval letter from NBU.
Draining Pools, Hot Tubs, etc.	I, II, III	Draining permitted only onto pervious surface, or onto pool deck where the water is transmitted directly to a previous surface, only if:

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		<p>(1) Draining excess water from pool due to rain in order to lower water to maintenance level;</p> <p>(1) Repairing, maintaining or replacing pool component that has become hazardous; or</p> <p>(2) Repairing pool leak</p> <p>(3) Refilling of public swimming pool permitted only if pool has been drained for the repairs, maintenance or replacement set out in items 2 or 3 above</p> <p>It is prohibited to drain swimming pools into the street, alley, gutter or other public right-of-way, ditch, or storm water drainage system or facility. It is considered water waste to drain a pool and allow the water to leave the property in which the pool is located.</p>
Aesthetics (fountains, waterfalls, etc.)	I, II, III	<p>Outside prohibited. The one hundred (100) percent use of treated wastewater, condensate, or cooling tower blow down is defense to prosecution under this paragraph. Alternate on-site reclaimed sources may be approved through variance on a case-by-case basis.</p> <p>If one hundred (100) percent use of gray water, treated wastewater or reuse water, condensate water, cooling tower blow will be used, signs identifying this property as using recycled or reclaimed water source must be posted on site at a location for the general public view.</p>
Ornamental lakes and ponds, etc.	I, II, III	<p>Re-filling of ornamental lakes or ponds is prohibited; except to the extent needed to sustain aquatic life, provided that such animals are of significant value and have been actively managed within the water feature prior to declaration of a drought response level under this ordinance.</p> <p>A user may file, in writing, with NBU a request for an Aquatic Life Variance. The request must include:</p> <p>(1) a statement indicating compelling reasons why the users aquatic life qualifies as significant value; and</p> <p>(2) the amount of time the aquatic life have been present in the said lake/pond; and</p> <p>(3) a management plan for the aquatic life.</p>
Foundation Watering	I, II, III	<p>Foundations may be watered up to two hours on any day, during watering times, by handheld hose; or using a soaker hose or drip system placed within 24 inches of the foundation that does not produce a spray of water above the ground.</p>
Other Outdoor Uses	I, II, III, II, III	<p>Waste is prohibited. No person may allow irrigation tail water to escape from that person's land. Non-commercial washing of vehicles and mobile equipment (e.g., washing vehicle at a residence) is permitted only on assigned residential landscape sprinkling watering days and times</p>

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		<p>(see Sec. 130-225) with hand-held hose (with automatic shut-off nozzle) or bucket of five (5) gallons or less, but is prohibited between the hours of 11:00 a.m. and 7:00 p.m. every day. Use of commercial vehicle wash facility permitted any day. Citizens are encouraged to wash their cars no more than twice a month. Use of gray water, treated wastewater or recycled water is a defense to prosecution.</p>
<p>Pressure Washing</p>	<p>I, II, III</p>	<p>Washing sidewalks, walkways, driveways, parking lots, street, tennis courts, and other impervious surfaces is prohibited except in emergencies to remove spills of hazardous materials or to eliminate dangerous conditions which threaten the public health, safety, or welfare.</p> <p>Washing buildings, houses or structures with a pressure washer or garden hose is prohibited for aesthetic purposes but allowable for surface preparation of maintenance work to be performed;</p> <p>A variance from NBU must be obtained for any pressure washing performed during drought stage.</p>
<p>Landscape Irrigation: Established Plants</p>	<p>I</p>	<p>Landscape watering using sprinkler or irrigation systems is permitted only on designated landscape watering days and times [see Sec. 130-225]. The use of gray water, treated wastewater or reuse water is a defense to prosecution. Voluntary irrigation system audits encouraged. A user may file, in writing, with NBU a request for an exception to the designated days and times. The request must include:</p> <p>(1) a statement indicating compelling reasons why the user is unable to meet the specific designated watering times and days; and</p> <p>(2) a water conservation plan. The water conservation plan must also include proof of irrigation efficiency of sixty percent (60%) or greater and demonstrate specific measures to be taken to reduce consumption to meet the reduction goal established for Stage I.</p> <p>NBU may, on a case by case basis, waive the requirements for irrigation efficiency and/or submission of a water conservation plan. Upon the approval of the water conservation plan as set forth herein, the user may be granted an exception.</p>

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	II, III	<p>Landscape watering using sprinklers or irrigation systems is permitted only on designated landscape watering days and times [see Sec. 130-225]. The use of gray water, treated wastewater or reuse water is a defense to prosecution. Voluntary irrigation system audits encouraged. A user may file, in writing, with NBU a request for an exception to the designated days and times. The request must include:</p> <p>(1) a statement indicating compelling reasons why the user is unable to meet the specific designated watering times and days; and</p> <p>(2) a water conservation plan. The water conservation plan must also include proof of irrigation efficiency of sixty percent (60%) or greater and demonstrate specific measures to be taken to reduce consumption to meet the reduction goal established for Stage II or III.</p> <p>NBU may, on a case by case basis, waive the requirements for irrigation efficiency and/or submission of a water conservation plan. Upon the approval of the water conservation plan as set forth herein, the user may be granted an exception.</p>
Landscape Irrigation: New Landscaping Plants	I	<p>Landscape watering permitted with variance confirmation letter to maintain adequate growth until established, generally three (3) weeks. Prior to installation, property owners should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name, address where the new landscape is to be installed, receipt reflecting the type of landscaping installed, and the date of installation in order to receive a confirmation letter from NBU. Thereafter, landscape watering using sprinkler or irrigation systems for landscaping plants is permitted only on designated landscape watering days and times [see Sec. 130-225(a) and (d)]. Watering with hand-held hose, soaker hose (but not one that sprays water in the air), bucket of five (5) gallons or less, or drip irrigation system is permitted at any time. The use of gray water, treated wastewater or reuse water is a defense to prosecution.</p>
	II	<p>New Landscape installation restricted: during stage II drought restrictions, variance requests must be approved prior to new landscape installation.</p> <p>Prior to installation, property owners should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name and address where the new landscape is to be installed, receipt reflecting the type of landscaping installed, and the date of installation in order to receive a</p>

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		<p>confirmation letter from NBU. Thereafter, landscape watering using sprinkler or irrigation systems for landscaping plants is permitted only on designated landscape watering days and times [see Sec. 130-225(a) and (d)]. Watering with hand-held hose, soaker hose (but not one that sprays water in the air), bucket of five (5) gallons or less, or drip irrigation system is permitted but only until adequate growth is established as set out in NBU's confirmation letter. Use of gray water, treated wastewater or reused water is a defense to prosecution. Voluntary irrigation system audits encouraged</p> <p>Once variance letter has been received , Landscape watering permitted, to maintain adequate growth until established, generally three (3) weeks.</p>
	<p>III</p>	<p>New Landscape installation restricted: during stage III drought restrictions variances requests must be approved prior to new landscape installation.</p> <p>Installation of new landscapes is permitted only if not more than fifty percent (50%) of the available landscape area is planted with turf and If proper horticultural practices are followed, including use of mulch and zonal irrigation systems if a permanent irrigation system is installed. A user may file with NBU a request to install more than fifty percent (50%) turf. The request must include:</p> <p>(1) a statement or plan describing the landscaping plan; and</p> <p>(2) a statement indicating how the landscaping plan will achieve the goals of this chapter. Upon the approval of the alternate landscaping plan as set forth herein, the user may be granted an exception. Landscape renovation is allowed only if proper horticultural practices are followed, including use of mulch. Additionally, if the newly renovated landscaped area is watered with an irrigation system, then a zonal irrigation system must be installed.</p> <p>Prior to installation, property owners should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name, address where the new landscape is to be installed, receipt reflecting the type of landscaping installed, and the date of installation in order to receive a confirmation letter from NBU. Thereafter,</p>

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		<p>landscape watering using sprinkler or irrigation systems for landscaping plants is permitted only on designated landscape watering days and times [see Sec. 130-225(a) and (d)]. Watering with hand-held hose, soaker hose (but not one that sprays water in the air), bucket of five (5) gallons or less, or drip irrigation system is permitted but only until adequate growth is established as set out in NBU's confirmation letter. Use of gray water, treated wastewater or reused water is a defense to prosecution. Voluntary irrigation system audits encouraged</p> <p>Once variance letter has been received, Landscape watering permitted, to maintain adequate growth until established, generally three (3) weeks.</p>
Parks/Athletic Fields	I, II, III	<p>Park and athletic field owner/operators shall be required to submit a water conservation plan and shall be defined as "conforming" or "non-conforming". An athletic field or park will be deemed "conforming" if there is a CCIS in place and the owner/operator is utilizing the system to achieve maximum conservation and the goals of this division. Conforming facilities should have a conservation plan approved and on file with NBU. A park or athletic field that is not conforming is deemed "non-conforming" for the purposes of this division. Owners/operators of athletic fields or parks shall reduce water usage under the following terms:</p>
	I, II, III	<p>Use of gray water, treated wastewater or recycled water is a defense to prosecution.</p>
	I	<p>A. A conforming park/athletic fields shall implement a ten percent (10%) reduction in the replacement of daily evapotranspiration rate ("ET rate") or daily soil-holding capacity, achieved by use of an existing and properly operating CCIS (as defined) capable of achieving such water conservation goals.</p>
		<p>B. A non-conforming park/athletic fields shall not use more than 1.8 times the base usage for a park/athletic field not equipped with a CCIS. If not separately metered an irrigation audit showing precipitation rates and run times along with a conservation plan shall be submitted and approved by NBU for the purpose of establishing acceptable irrigation run times and days as approved by NBU.</p>

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	II	A. A conforming park/athletic field shall implement a twenty percent (20%) reduction in replacement of daily ET rate or daily soil holding capacity, achieved by use of an existing and properly operating CCIS (as defined) capable of achieving such water conservation goals;
		B. A non-conforming park/athletic field shall not use more than 1.6 times the base usage for a park/athletic field not equipped with a CCIS. If not separately metered an irrigation audit showing precipitation rates and run times along with a conservation plan shall be submitted and approved by NBU for the purpose of establishing acceptable irrigation run times and days as approved by NBU.
	III	A. A conforming park/athletic field shall implement a thirty percent (30%) reduction in replacement of daily ET rate or daily soil holding capacity, achieved by use of an existing and properly operating CCIS (as defined) capable of achieving such water conservation goals;
		B. A non-conforming park/athletic field shall not use more than 1.4 times the base usage for a park/athletic field not equipped with a CCIS. If not separately metered an irrigation audit showing precipitation rates and run times along with a conservation plan shall be submitted and approved by NBU for the purpose of establishing acceptable irrigation run times and days as approved by NBU.
Construction	I, II, III	Construction operations receiving water from a construction meter, fire hydrant meter or water truck shall not use water unnecessarily for any purpose other than those required by regulatory agencies. Construction projects requiring watering for new landscaping materials shall adhere to the designated irrigation requirements set forth herein.
Hotels, Motels, Bed and Breakfasts	I, II	Hotels, motels and B&B's must offer and clearly notify guests of a "no linen/towel change" program.
	III	Hotels, motels, B&B's must limit linen/towel changes to once every three (3) nights or for the entire stay, whichever is shorter, except for health and safety.
Leaks	Year Round	Repair all water leaks within seventy-two (72) hours of notification from NBU unless other arrangements are made with the Conservation Coordinator.
	I, II	Repair all leaks within forty-eight (48) hours of notification from NBU unless other arrangements are made with the Conservation Coordinator.
	III	Repair all water leaks within twenty-four (24) hours of notification from NBU unless other arrangements are made with the Conservation Coordinator.

(Ord. No. 2008-50, § I, 7-28-08)
Secs. 130-229, 130-230.- Reserved.

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Approved: February 10, 2014

Draft 0219

**DIVISION 5. - WATER CONSERVATION AND CRITICAL PERIOD MANAGEMENT
PLAN—GENERALLY ^[124]**

⁽¹²⁴⁾ Editor's note— Ord. No. 2008-50, § 1, adopted July 28, 2008, amended division 5 in its entirety to read as herein set out. Formerly, division 5 pertained to similar subject matter, and derived from Ord. No. 2006-33, § 1(Exh. A), adopted April 24, 2006.

Sec. 130-206.- Definitions.

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

Aesthetic use means the use of water for outdoor fountains, waterfalls, and landscape lakes, ponds, or other water related features where such use is entirely ornamental and serves no other functional purpose.

Agricultural irrigation means irrigation for the purpose of growing crops commercially for human consumption or to use as feed for livestock or poultry.

Athletic field means a sports playing field, the essential feature of which is turf grass, used primarily for organized sports for schools, professional sports, or organized league play.

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

Base usage means the average monthly total water usage for the three lowest months of November and December and the following January and February during each of the three consecutive 12-month periods preceding the commencement of the user's use of water.

Beneficial use means the amount of water that is economically necessary for a purpose not otherwise prohibited by the city, state or federal law or regulation, when reasonable intelligence and reasonable diligence is used in applying water for that purpose.

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

Bucket means a bucket or other container holding five gallons or less, used singly by one person.

CEO means the chief executive officer of NBU or designee.

Certificate of convenience and necessity (CCN) means the service area of NBU as granted by the TCEQ. Also referred to as the certified service area.

Cfs means cubic feet per second.

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

Computer controlled irrigation system (CCIS) means a system comprised of a computer controller (digital

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operating system), software, interface modules, satellite field controllers, soil sensors, weather station, or similar devices which is capable of achieving maximum efficiency and conservation in the application of water for irrigation. A CCIS, at a minimum, should be designed to:

- (1) Prevent overwatering, flooding, pooling, evaporation and run-off; and
- (2) Prohibit sprinkler heads from applying water at an intake rate exceeding the capability of the soil.

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.

Conservation compliance officer or *compliance officer* means the person acting in the position of conservation compliance officer.

Conservation coordinator or *coordinator* means the person acting in the position of conservation coordinator of New Braunfels Utilities.

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

Day means a 24-hour period beginning at midnight.

Drip irrigation means an irrigation system (drip, porous pipe, etc.) designed to emit water at low pressures directly onto soil surface or below soil surface without airborne streams or droplets.

Drought means any condition, whether man-made or natural, where the available water supply or resources are not meeting the water demand, or if the water supply or resources are being depleted at a faster rate than they are being replenished. It is not intended to be limited to any meteorological definition of the term.

Drought management plan means the plan for management of the aquifer described and set out in division 7, as amended from time to time.

EAA means Edwards Aquifer Authority.

Edwards Aquifer or *aquifer* means that portion of an arcuate belt of porous, water-bearing, predominately carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone extending from west to east to northeast from the hydrologic division near Brackettville in Kinney County that separates underground flow toward the Comal Springs and San Marcos Springs from underground flow to the Rio Grande Basin through Uvalde, Medina, Atascosa, Bexar, Guadalupe and Comal counties, and in Hays County south of the hydrologic division near Kyle that separates flow toward the San Marcos River from flow to the Colorado River Basin.

Essential use means a use of water which is:

- (1) Essential to the protection of public health, safety, or welfare, including but not limited to use for drinking, food preparation, personal hygiene, public sanitation, control or prevention of disease and firefighting;
- (2) Essential to an industrial use or agricultural or military activity which directly supports gainful employment, unless the use is specifically defined in this article as a discretionary use;

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(3) Watering of livestock.

Evapotranspiration rate (ET rate) means the rate which the combination of evaporation from soil surface and transpiration from vegetation will occur for specific climatic conditions.

Existing landscaping plant means a landscaping plant existing after such period of time as to accomplish an establishment and maintenance of growth.

Golf course means an irrigated and landscaped playing area made up of greens, tees, fairways and roughs and related areas used for the playing of golf.

Gray water means water after use in bath and utility sinks, tubs, showers and washing machines.

Hand-held hose means a hose attended by one person, fitted with a manual or automatic shutoff nozzle.

Health care facility means any hospital, clinic, nursing home or other health care or medical research facility.

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

Household use means the use of water, other than uses in the outdoor category, for personal needs or for household purposes, such as drinking, bathing, heating, cooking, sanitation or cleaning, whether the use occurs in a residence or in a commercial or industrial facility.

Impervious surface area means any structure or any street, driveway, sidewalk, patio or other surface area covered with asphalt, concrete, brick, paving, tile or other material preventing water to penetrate the ground.

Industrial use means the use of water for or in connection with commercial or industrial activities, including manufacturing, bottling, brewing, food processing, scientific research and technology, recycling, production of concrete, asphalt, and cement, commercial uses of water for tourism, entertainment, and hotel or motel lodging, generation of power other than hydroelectric, and other business activities.

Irrigation system, also referred to as an in-ground or permanent irrigation system, being a system with fixed pipes and emitters or heads that apply water to landscape plants or turfgrass.

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

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

Landscape renovation means the removal and replacement of existing landscape plants with new landscape plants.

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Landscape watering means the application of water to grow or maintain landscaping plants, such as flowers, ground covers, turf or grasses (other than golf courses or athletic fields), shrubs, and trees, but for purposes of this article does not include:

- (1) Essential use without waste of water by a commercial nursery to the extent the water is used for production rather than decorative landscaping;
- (2) Application of water without waste to a noncommercial family garden or orchard the produce of which is for household consumption only; and
- (3) Except when stages II and III of the drought management plan are in effect, application of water at any time on any day by means of a bucket, hand-held hose, soaker hose (but not one that sprays water in the air), or properly installed drip irrigation system.

Landscaping plant means any member of the kingdom plantae, including any tree, shrub, vine, herb, flower, succulent, groundcover or grass species that grows or has been planted out-of-doors.

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

Livestock means cattle, sheep, goats, hogs, poultry, horses, and game, domestic, exotic and other animals and birds, including zoo animals, used for commercial or personal purposes.

Livestock use means the use of water for drinking by or washing of livestock.

Low-flow toilet means a tank toilet that is designed to use 1.6 gallons or less of water per flush.

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

Maintenance level means the level of water in a swimming pool required for proper circulation for operation of filter equipment for the swimming pool.

Master valve - A remote control valve located after the backflow prevention device that controls the flow of water to the irrigation system mainline.

msl means elevation above mean sea level.

Mulch means any material such as bark, leaves, straw or other materials left loose and applied to the soil surface to reduce evaporation.

NBU means New Braunfels Utilities.

New landscaping plant means any plant or seed planted in or transplanted to an area within such period of time as to accomplish a reasonable establishment and maintenance of growth. Application of grass seed to an existing stand of grass or turf is not considered new landscaping.

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

Organic material means organic substances in differing stages of decay.

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Other outdoor use means the use of water outdoors for the maintenance, cleaning and washing of structures and mobile equipment, including automobiles and boats, or the washing of streets, driveways, sidewalks, patios and other similar areas.

Park means a tract of land maintained by a city, private organization, or individual, as a place of beauty or of public recreation.

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

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

Pervious surface means any ground surface which can absorb water or other liquids.

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

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

Precipitation rate means the speed at which a sprinkler or irrigation system applies water. Precipitation rates are measured in inches per hour or inches per minute.

Prescribed hours for sprinkling means between the hours of 8:00 p.m. and 10:00 a.m. when the drought management plan is not in effect, and during the hours specified therein when the drought management plan is in effect.

Private residential swimming pool. See "Swimming pool."

Property address means the street address of a property, unless multiple street addresses are served by a single meter, in which case the billing address will be used.

Public facilities means municipally-owned or operated facilities.

Public swimming pool. See "Swimming pool".

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

Recycled or reuse water means domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use in accordance with applicable law.

Requestor means a customer who requests a variance under this article.

Residential customer means a single or multi-family dwelling unit containing two or fewer family units.

Responsible Person means a natural person or legal entity who causes, maintains or allows a violation(s) of the city code to occur or continue by action or failure to act. A responsible person includes, but is not limited to, the owner, tenant, co-tenant, lessee, sub-lessee or other person with any right to possession of

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the property where a city code violation that is related to the use or condition of property occurs, the on-site manager who normally works daily at the site when the business is open and is responsible for the activities at such premises, and the owner, and general partners of a legal entity. There may be more than one responsible person for a violation.

Soaker hose means plastic or flexible hose that emit water across the entire length based on water pressure, and connect directly to a flexible hose or spigot.

Soil holding capacity means the amount of moisture in the soil that can occur without becoming saturated.

Sprinkler means an emitter that applies water to the landscape plants in a stream that travels through the air. Sprinkler irrigation can be applied by an irrigation system or hose-end sprayer or a soaker hose that sprays water in the air.

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 feet or more at any point.

(1) *Private residential swimming pool.* Any swimming pool located on private property under the control of the homeowner, the use of which is limited to swimming or bathing by the homeowner's family or invited guests.

(2) *Public swimming pool.* Any swimming pool, other than a private residential swimming pool, intended to be used collectively by persons for swimming or bathing, operated by any person as defined herein, whether owner, lessee, operator, licensee, or concessionaire, regardless of whether a fee is charged for such use. The term includes, but is not limited to, apartment community pools, condominium association pools and community association pools.

TCEQ means the Texas Commission on Environmental Quality.

TDS means total dissolved solids. *Trigger level* means the mean sea level of the Edwards Aquifer as indicated by the J-17 index well and/or the discharge from the Comal Springs according to the USGS log in cubic feet per second (cfs) that result in the implementation or termination of water use reduction measures.

Deleted: §

Turf means a surface layer of earth containing mowed grass with roots.

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

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

Vegetable garden means any "non-commercial" vegetable garden planted primarily for household use; "non-commercial" includes incidental direct selling of produce from such a vegetable garden to the public.

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

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

Water includes, but is not limited to potable water supplied by NBU or other water purveyor, potable water withdrawn from their groundwater well, surface water from any river, creek, natural watercourse, pond, lake or reservoir, and recycled water supplied by NBU or other water purveyor.

Water waste means use of water without obtaining maximum beneficial use thereof.

Water waste shall also include, but not be limited to:

- a. causing, suffering, or permitting a flow of water used for landscape watering to run into any river, creek or other natural water course or drain, superficial or underground channel, bayou, or unto any sanitary or storm sewer, any street, road or highway or other impervious surface area, or upon the lands of another person or upon public lands.
- b. Any discharge of water used for commercial, industrial, or domestic purposes to any storm, sanitary sewer, or septic system without the user first having obtained maximum beneficial use thereof.
- c. Failure by any Responsible Person, to repair any controllable leak on property. See also Sec. 130-228 for additional information on leaks.
- d. Watering landscaped areas during rain or high wind.
- e. Washing outdoor impervious surfaces, with a pressure washer or garden hose, such as sidewalks, driveways and patios during drought stage, except to remove spills of hazardous materials, eliminate dangerous conditions which threaten the public health, safety, or welfare, or to prepare surface for maintenance work.
- f. Washing buildings, houses or structures with a pressure washer or garden hose for aesthetic purposes during a drought stage.
- g. Washing vehicles with a hose that lacks an automatic shut-off valve.

Water conservation plan means the water conservation plan required as part of the drought management plan referred to in Division 7 must include proof of irrigation efficiency of 60 percent or greater and demonstrate specific measures to be taken to reduce consumption to meet the reduction goal established for each stage I, II and III. A plan should also include precipitation rates and irrigation schedules with run times. NBU may, on a case by case basis, waive the requirements for irrigation efficiency and/or submission of a water conservation plan.

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

Water purveyor use means water used for withdrawal, treatment, remediation, transmission and distribution by a potable water purveyor.

Watering day means a day designated for landscape watering in this ordinance. Thus, if it is stage I and Wednesday is a designated watering day, the period of time referenced is Wednesday morning between midnight to 10:00 a.m., and Wednesday evening between 8:00 p.m. and 11:59pm.

Xeriscape means a landscape consisting of a maximum of 50 percent turf grass, with the remaining percentage of landscape incorporating low water use plants and/or pervious hardscape. The approved low water use plant list, as may be amended from time to time, shall be available from NBU and located at NBU and at www.nbutexas.com.

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

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-207.- Nuisance declared.

The violation of any part of division 6 and 7 is deemed a nuisance which may be abated and enjoined by the city. Any person creating a public nuisance shall be subject to the provisions of this Code and other applicable law governing such nuisances, including reimbursing NBU or the city for any costs incurred in removing, abating or remedying such nuisance. The owner of any property where such nuisance has occurred shall be liable to the city and/or NBU for the cost of such abatement, removal or remediation, and shall pay such cost on demand, and the city acting for itself and/or NBU shall have the right to file a lien on the property to secure payment of the cost of such abatement, removal or remediation of the nuisance.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-208.- Presumption and exception.

For purposes of this article, it shall be presumed that the person in whose name a water and/or electric meter connection is registered with NBU, or other purveyor servicing the property, is the responsible party who has made, caused, allowed or permitted a violation of the provisions of this article.

Proof that the particular premises had a water and/or electric meter connection registered in the name of the defendant cited in a criminal or civil complaint filed pursuant to this article shall constitute a prima facie presumption that the defendant is a person who made, caused, allowed or permitted a violation pursuant to the provisions of this article.

An exception to these presumptions can be granted if:

- a. the meter holder can prove that another party is the Responsible Person.
- b. exception to this presumption is found in subsection 130-214.3(b), wherein the city, whose premises are used by a tenant/lessee, is generally not responsible for the tenant/lessee's compliance. In such cases, the tenant/lessee of the city is responsible for compliance, and the city shall have no duty to enforce against the tenant/lessee except to the extent the city's municipal courts may be fully utilized by the NBU enforcement officers or other duly authorized governmental personnel charged with enforcement duties.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-209.- Authorization to enforce.

The CEO of NBU or his or her designee and/or the city is authorized and directed to commence any action, in law or in equity, including the filing of criminal charges deemed necessary for the purpose of enforcing this article. As a condition of service, all customers, including those whose service properties are located outside the city limits of the City of New Braunfels, are subject to Chapter 130 of New Braunfels Code of Ordinances. The CEO of NBU or the designee and/or the city may seek civil penalties or impose surcharges as may be allowed by statute and this ordinance and any other legal or equitable relief available under common law or this article, under V.T.C.A., Local Government Code ch. 54 as it may be amended to address the subject matter of this article, or any other applicable city, state or federal code, ordinance, statute, rule or regulation.

(Ord. No. 2008-50, § I, 7-28-08)

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Sec. 130-210.- Access to premises.

The city and NBU and all persons or agents employed by either shall, at all reasonable hours, have free access to properties to ascertain if water is being wasted and whether provisions of this article have been and are being complied with in all aspects, however, this section does not authorize entry into a residence without consent of the owner or occupant.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-211.- Divisions 5, 6 and 7 to prevail if conflict.

In the event any section or provision of divisions 5, 6 and 7 of this article conflict in effect or application with any other section of this Code, the section or provision of divisions 5, 6 and 7 of this article will prevail.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-212.- Severability.

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

(Ord. No. 2008-50, § I, 7-28-08)

DIVISION 6. - REGULATED ACTIVITIES ^[125]

⁽¹²⁵⁾ Editor's note— Ord. No. 2008-50, § I, adopted July 28, 2008, amended division 6 in its entirety to read as herein set out. Formerly, division 6 pertained to similar subject matter, and derived from Ord. No. 2006-33, § I(Ex. A), adopted April 24, 2006.

Sec. 130-213.- Activities to be regulated on and after effective dates.

The following activities shall be regulated in the manner set out herein on and after the respective dates indicated in the sections and subsections. A person affected by such regulations may request a variance in the manner set out in section 130-218. A violation of this section and subsections shall be subject to the enforcement provisions set out in section 130-219. It shall be and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this division or of the drought management plan set out in division 7.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-213.1.- Landscape watering.

~~From and after the effective date of this division, landscape watering is regulated as described in section 130-220.1.~~

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-213.2.- Vehicle wash fundraisers.

From and after the effective date of this division, any vehicle wash fundraiser shall be conducted at a vehicle wash facility using such facility's equipment.

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Deleted: It is the policy of the city to promote the efficient use of water without waste at all times on a year round basis.

Deleted: It is unlawful for any person to perform or permit landscape watering on any property within the city or its extraterritorial jurisdiction or areas covered by NBU's CCN between the hours

Deleted: of 10:00 a.m. and 8:00 p.m. on any day, except as expressly provided herein. Landscape watering is also restricted further during the times the drought management plan is in effect as provided herein.

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(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-213.3.- Golf courses.

From and after the effective date of this division, no golf courses shall be allowed to irrigate the greens, tees, roughs or fairways with potable water. Use of potable water for landscape irrigation in and around the club house will be permitted but must conform to all other requirements for landscape irrigation.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-214.- Activities to be regulated on and after January 1, 2007.

Except as provided by a specific and alternative application date, particularly systems analysis, the following activities shall be regulated in the manner set out herein on and after January 1, 2007. A person affected by such regulations may request a variance in the manner set out in section 130-218. A violation of this section and subsections shall be subject to the enforcement provisions set out in section 130-219. It shall be and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this division.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-214.1.- Minimum irrigation area and flow direction.

Effective January 1, 2007, newly installed irrigation systems using pop-up spray or rotor technology shall not be used in landscaped areas which have both: (a) dimensions less than five feet in length and/or width; and, b) impervious pedestrian or vehicular traffic surfaces along two (2) or more perimeters. Where pop-up sprays and rotor heads are allowed in newly installed irrigation systems, they (a) must direct flow away from any adjacent impervious surface and (b) shall not be placed within four (4) inches from an impervious surface.

Sec. 130-214.2.- Annual irrigation system analysis for athletic fields, and large properties requiring variance from water use reduction measures.

Effective January 1, 2007:

- (1) An annual irrigation system analysis demonstrating no water waste shall be required for all athletic fields and large properties and shall be submitted in writing to the NBU conservation coordinator on or before May 1st of each year, beginning on May 1, 2007.
- (2) Municipal tenants and lessees of sports and athletic playing fields and any other municipally owned properties shall be responsible for compliance with this section and subsection. NBU shall look directly to such tenants and lessees for compliance unless the municipality concedes by contractual agreement with the tenant/lessee to assume the tenant/lessee's responsibility for compliance.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-214.3. - Cooling towers.

Effective January 1, 2007:

- (1) Cooling towers, not utilizing recycled water, shall operate a minimum of four cycles of concentration. For the purposes of this section "concentration" means recirculated water that has elevated levels of total dissolved solids as compared to the original make-up water.
- (2) Newly constructed cooling towers shall be operated with conductivity controllers, as well as make-up and blowdown meters.

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(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-214.4.- Ice machines.

Effective January 1, 2007, newly installed ice machines shall not be single pass water-cooled. (Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-214.5.- Commercial dining facilities.

Effective January 1, 2007, commercial dining facilities shall:

- (1) Utilize positive shut-offs for hand-held dish-rinsing wands
- (2) Utilize water flow restrictors for all garbage disposals.

Comment: NBU strongly encourages that water be served to guests only upon request. Many guests do not drink water which is not requested and water use involved with dishwashing occurs whether or not the guest consumes the water served.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-214.6.- Vehicle wash facilities.

(a) Vehicle wash facilities, commencing operation on or after January 1, 2007, using conveyORIZED, touchless, and/or rollover in-bay technology shall reuse a minimum of 50 percent of water from previous vehicle rinses in subsequent washes.

(b) Vehicle wash facilities, commencing operation on or after January 1, 2007, using reverse osmosis to produce water rinse with a lower mineral content, shall incorporate the unused concentrate in subsequent vehicle washes.

(c) Regardless of date of operation commencement, from and after January 1, 2007, self-service spray wands used shall emit no more than three gallons of water per minute.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-215.- Other activities to be regulated on and after January 1, 2007.

The following activities shall be regulated in the manner set out herein on and after January 1, 2007. A person affected by such regulations may request a variance in the manner set out in section 130-218. A violation of this section and subsections shall be subject to enforcement provisions set out in section 130-219. It shall be and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this division 6.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-215.1.- Condensate collection.

Newly constructed commercial buildings installing air conditioning systems on and after January 1, 2007, shall have a single and independent condensate wastewater line to collect condensate wastewater to provide for future utilization as:

- (1) Process water and cooling tower make-up, and/or
- (2) Landscape irrigation water. Condensate wastewater shall not be allowed to drain into a storm sewer, roof drain overflow piping system public way or impervious surface.

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(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-215.2.- Rain sensors.

Effective January 1, 2007, rain sensors shall be properly maintained and operational on all irrigation systems equipped with automatic irrigation controllers.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-216.- Landscaping regulations generally applicable on and after January 1, 2007.

Except as specifically provided with alternative effective dates, persons affected by the regulations set out herein below shall comply on and after January 1, 2007, and may request a variance to such regulations in the manner set out in section 130-218. A violation of this section and subsections shall be subject to the enforcement provisions set out in section 130-219. It shall be and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this division 6.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-216.1.- Xeriscape option.

Effective January 1, 2007, homebuilders and/or developers subdividing lots and/or constructing new single family residential homes shall offer a xeriscape option in any series of landscaping options offered to prospective home buyers.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-216.2.- Model homes.

Effective January 1, 2007, homebuilders and/or developers who construct one or more model homes for a designated subdivision shall have at least one model home per subdivision landscaped according to a xeriscape design.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-216.3.- Zonal system.

In-ground irrigation systems installed on and after January 1, 2007, shall be zonal irrigation systems.

(Ord. No. 2008-50, § I, 7-28-08)

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

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

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

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

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

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

Sec. 130-217.- Conservation provisions in wholesale water contracts.

Each wholesale potable water supply contract entered into by NBU after this division becomes effective, including contract extensions, must include:

- (1) A provision that the wholesale customer is required to conform to the city's water conservation ordinance set out as article IV, divisions 5, 6 and 7, as amended from time to time;
- (2) A provision that NBU may implement a pro rata curtailment of water deliveries to or diversions by wholesale water customers as provided by V.T.C.A., Administrative Code tit. 30, ch. 288;
- (3) A provision that in case of a shortage of water resulting from drought, the water to be distributed shall be divided in accordance with V.T.C.A., Administrative Code tit. 30, ch. 288.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-218.- Variances.

The authority to grant a variance and an appeal from such variance to the provisions of this division 6 or division 7, is hereby delegated to NBU in the manner described herein. A determination by NBU pursuant to this section shall be deemed final for purposes of appeal. Appeal procedures are detailed below.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-218.1.- Variance. A person who is affected by these provisions may seek a variance in the manner set out herein. A person shall request a variance within 30 days of the date a provision becomes apparently applicable to that person's activities and/or properties. For example, a person will have standing to seek a variance within 30 days following receipt of a formal (citation) or informal notice of violation; prior to a notice of violation; or at the discretion of the conservation coordinator when, in the coordinator's judgment, to deny standing to pursue a variance would clearly deny the applicant an opportunity to have justice and equity done for the applicant's case. In the latter situation, for purposes of justice and equity, the standard for allowing a variance application to be heard or considered are the common notions of rightness and fair play.

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(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-218.2.- Time, date, place.

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

(Ord. No. 2008-50, § I, 7-28-08)

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Sec. 130-218.3.- Representation and notice of NBU's response; first hearing.

The requestor may be represented by a duly authorized representative and may introduce such evidence as the requestor believes to be relevant. The coordinator and appropriate NBU personnel shall hear the request. The requestor shall receive written notification by the coordinator within 30 days of the date of the hearing whether such variance is granted or denied.

(Ord. No. 2008-50, § 1, 7-28-08)

Sec. 130-218.4.- Appeal.

In the event the variance is granted, the decision of the coordinator shall be final. Should the variance be denied, however, the requestor shall have ten days from receipt of the denial of the variance to seek an appeal in writing. Within 30 days of the written request for an appeal from the denial of a variance, a three member variance appeals panel composed of NBU customers appointed by and serving at the pleasure of the NBU board of trustees shall hear the appeal. The requestor shall be informed in writing of the time, date and place where such appeal shall be heard. The requestor and/or his authorized representatives may present evidence to the variance appeals panel why such appeal should be granted. The variance appeals panel shall inform the requestor within 30 days of the date of the hearing of the appeal whether the appeal has been granted or denied. The determination of the variance appeals panel shall be final and shall be in writing. If a judicial appeal is pursued, the applicant must take such appeal to district court or other court of competent jurisdiction within 30 days of the variance appeals panel's final determination, which further appeal shall be pursued under appropriate standards of the substantial evidence rule.

(Ord. No. 2008-50, § 1, 7-28-08)

Sec. 130-218.5.- Variance qualifications.

Variances to the regulated activities in this division 6 or the drought management plan in division 7 may be issued by the conservation coordinator provided that the general intent of the provisions of this division 6 or division 7 has been met, and strict compliance with this division 6 or division 7 is proven to be impracticable to accomplish and to cause unnecessary hardship. The criteria to determine hardship shall include, but not be limited to, a showing of level of capital outlay and technical complexity in relation to conservation benefit to be derived, and time and effort required to accomplish compliance with this article. See also Sec. 130-228 for additional variance qualifications.

(Ord. No. 2008-50, § 1, 7-28-08)

Sec. 130-218.6.- Variance criteria.

The conservation coordinator shall also develop specific criteria to be used for the granting of variances from the provisions of division 6 or division 7 which are appropriate to the provision for which a variance is being sought. Such criteria shall be applied equally to each request for variance under a particular provision. A requestor shall be furnished with the criteria to be utilized by the coordinator prior to his/her variance application and/or appeal being heard.

(Ord. No. 2008-50, § 1, 7-28-08)

- (a) **Sec. 130-219.- Enforcement**~~Violations~~. It shall be a violation of this article for any person in the corporate limits of the city or its extra territorial jurisdiction or any person in the NBU CCN that receives water service from NBU to intentionally, knowingly, recklessly or criminally negligently allow or cause water waste, allow landscape watering outside the prescribed hours for sprinkling,

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or allow or cause any violation of any provision of this division or of the drought management plan. As a condition of service, all customers, including those whose service properties are located outside the city limits of the City of New Braunfels, are subject to Chapter 130 of New Braunfels Code of Ordinances.

(b) *Continued violations.* At locations of repeated or continued violations of this division or of the drought management plan, the CEO of NBU shall have the authority to discontinue the supply of potable water to the registered meter holder or Responsible Person.

Penalties; fines.

(1) *Criminal.* Any person violating any provision of this article shall be guilty of an offense, and upon citation and conviction, shall be punished by a fine not less than \$100.00 and not more than \$500.00 for the first offense; a fine not less than \$200.00 and not more than \$500.00 for the second offense; a fine of not less than \$400.00 and not more than \$500.00 for the third and additional offenses. If the court determines the offense relates to public health or sanitation, the maximum fine is \$2,000.00, regardless of the number of offenses. Each violation of a particular section of this division or division 7 shall constitute a separate offense, and each day an offense continues shall be considered a new violation for purposes of enforcing this article. All fines collected under this section shall be remitted to NBU and used by NBU for the furtherance of water conservation programs and to help defray the cost of enforcement of this article.

(2) *Civil.* Civil penalties, imposed by courts of competent jurisdiction in civil actions for violations of this article, may also be assessed as may be allowed by applicable state law in any amount to be authorized by the state. Under V.T.C.A., Local Government Code ch. 54, NBU and the office of the city attorney may presently pursue civil enforcement for injunctive relief and the imposition of up to \$1,000.00 per day civil penalties appropriately imposed by the court. This statutory remedy is in addition to the city's common law right to bring civil actions for injunctive relief to stop harmful acts, independent of authority found in the Texas Local Government Code.

(3) *Surcharges.* Any person who violates the watering restriction provisions of this division or of the drought management plan will be held strictly liable and the punishment for such violation may include the imposition of punitive surcharges. NBU is authorized to assess one or more surcharges on the water bill of any person presumed to have been the one who violated this division or a provision of the drought management plan. In the event NBU determines a violation has occurred, the person assessed the punitive surcharge by NBU is prima facie presumed to have violated this division or the drought management plan for the purpose of assessment of surcharges. Punitive surcharges may be assessed as follows:

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First violation in any 12-month period	Warning
Second violation in any 12-month period	\$25.00
Third violation in any 12-month period	\$250.00
Fourth violation in any 12-month period	\$500.00

Non-payment of any assessed surcharge or repeated or continued violations of watering restrictions imposed by this article can result in termination of water service. A person who believes that a surcharge was unwarranted because either the violation did not occur or the violation was excused, may appeal the determination to the conservation coordinator and then to the variance appeals panel, whose decision on the matter is final. (Ord. No. 2008-50, § I, 7-28-08)

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Secs. 130-219.1—130-219.3.- Reserved.

Sec. 130-219.4.- Defenses.

(a) It shall be a defense to prosecution or imposition of punitive surcharges that landscape watering was performed on any plant or seed planted in or transplanted to an area within such period of time as to accomplish a reasonable establishment and maintenance of growth, generally three weeks.

(b) It shall be a defense to prosecution or imposition of punitive surcharges that landscape watering was performed by a commercial enterprise in the business of growing or maintaining plants for sale, such as plant nurseries; provided, however, that such landscape watering shall be performed solely for the establishment, growth, and maintenance of such plants and not wasted.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-219.5.- Conservation compliance officer.

(a) A conservation compliance officer shall be appointed by NBU. The compliance officer shall be authorized to administer and enforce this article.

(b) The compliance officer is authorized and directed to enforce all of the provisions of this article, and the compliance officer, upon presentation of proper credentials, may enter properties in accordance with section 130-210 at reasonable times for the purpose of making inspections or preventing violations of this article. This section shall not be construed as imposing upon NBU and/or the city (or any official or employee of either) any liability or responsibility for damages to any property by reason of the inspections authorized under this section.

(Ord. No. 2008-50, § I, 7-28-08)

DIVISION 7. - DROUGHT MANAGEMENT PLAN ^[126]

⁽¹²⁶⁾ Editor's note— Ord. No. 2008-50, § I, adopted July 28, 2008, amended division 7 in its entirety to read as herein set out. Formerly, division 7 pertained to similar subject matter, and derived from Ord. No. 2006-33, § I(Exh. A), adopted April 24, 2006.

Sec. 130-220.- Adoption of drought management plan, water use reduction measures, and aquifer stage conditions.

The drought management plan, including the water use reduction measures and associated aquifer stage conditions set out therein, is hereby adopted.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-220.1.- Landscape watering.

It is the policy of the city to promote the efficient use of water without waste at all times on a year round basis. From and after the effective date of this division, landscape watering for residential and commercial properties will be limited to two days per week according to the street address as follows.

<u>Last number of address</u>	<u>Watering Day</u>
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Even number (0,2,4,6,8)	Monday, Thursday
Odd number (1,3,5,7,9)	Tuesday, Friday
No address, more than one address associated with a single contiguous property	Monday, Friday

It is unlawful for any person to perform or permit landscape watering on any property within the city or its extraterritorial jurisdiction or areas covered by NBU's CCN between the hours of 10:00 a.m. and 8:00 p.m. on any day, except as expressly provided herein. Landscape watering is also restricted further during the times the drought management plan is in effect as provided herein.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-221.- Basis of water use reduction measures and aquifer stage conditions.

The water use reduction measures may be based on the Edwards Aquifer water levels in Well AY-68-37-203 in San Antonio (also known as "Dodd Field Test Well" or "J-17") as set out in section 130-224, or on the discharge level of the Comal Springs, NBU water supply, or on aquifer water quality or other aquifer, potable water system capacity, or seasonal or weather conditions not based on water levels in J-17 (set out in section 130-226).

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-222.- Reserved

Implementation of water use reduction measures and stages, generally.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-223.- Declaration of Water Use Reduction Stages in effect; notice by publication required

(a) The Mayor of the City of New Braunfels or his or her designee, in consultation with NBU, is hereby authorized to declare that water use reduction measures are in effect.

(b) Notices of the implementation and termination of the water use reduction measures and each of the various stages, as appropriate, shall be publicly announced in the local media for a minimum of one day. The implementation or termination of the measures and each of the stages shall become effective immediately upon publication of the respective notice.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-224.- "Trigger levels" for implementation and termination of water use reduction measures, stages I, II and III.

Implementation and termination of stages I, II and III of the water use reduction measures, based upon the J-17 Edwards Aquifer water levels or the Comal Springs discharge, may occur according to the following schedule:

Description	Stage I	Stage II	Stage III
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Deleted: ~~<object>~~When the aquifer falls to 675 msl, NBU staff shall begin preparations for public awareness, education and enforcement of the respective stage provisions, as set out in section 130-223. The water use reduction measures shall be declared to be in effect when the aquifer level in the index well J-17 is at or below 660 feet msl or the discharge from the Comal Springs is at or below 225 cfs. Each stage of the water use reduction measures shall be implemented when the aquifer level in J-17 or the discharge from the Comal Springs reaches the "trigger levels" set out in sections 130-224, 130-225 and 130-226. Specific water use reduction measures are set out in table I of this division and shall cover the categories of regulated use, applicable stages and corresponding required water use reduction measures.¶
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1	When the aquifer is at or below this level msl, based on a 10 day rolling average calculated and determined by the Edwards Aquifer Authority, or the discharge from the Comal Springs is at or below this cfs, whichever happens first, or as determined by section 130-221, the Mayor of the City of New Braunfels, in consultation with NBU, may officially declare the respective stage. NBU shall coordinate water use reduction with customers in its service area. The City and NBU shall enforce the water use reduction provisions set out in section 130-225, for each stage.	660 msl 225 cfs	650 msl 200 cfs	640 msl 150 cfs
2	When the aquifer subsequently rises above this level msl or the discharge from the Comal Springs rises above this cfs, whichever occurs last, NBU staff will monitor the consistency of the various levels and other conditions as set out in section 130221 for a period of 15 calendar days, before consulting with the Mayor of the City of New Braunfels on whether to terminate the drought restrictions for that stage.	660 msl 225 cfs	650 msl 200 cfs	640 msl 150 cfs

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(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-225.- Designated landscape irrigation times and days (stages I, II, III).

During any period when stages I, II, or III have been declared to be in effect, irrigation with a sprinkler or irrigation system of existing landscape on any property (other than parks and athletic fields, the restrictions for which are set out in section 130-228) may occur only on certain designated days and at certain times, as follows:

- (1) For stage I, landscape watering for residential and commercial properties will be limited to one day per week according to the street address as follows:

Last number of address	Watering day
0, 1	Monday
2, 3	Tuesday
4, 5	Wednesday
6, 7	Thursday
8, 9	Friday

If there is no street address associated with the property, such as a parkway, or if there is more than one street address associated with a single contiguous property, the irrigation day is Wednesday.

- Deleted: If the last digit of the address ends in 0 or 1, the irrigation day is Monday. If the last digit of the address ends in 2 or 3, the irrigation day is Tuesday.¶
- Deleted: If the last digit of the address ends in 4 or 5, the irrigation day is Wednesday. If the last digit of the address ends in 6 or 7, the irrigation day is Thursday.¶
- Deleted: If the last digit of the address ends in 8 or 9, the irrigation day is Friday.¶

- (2) For stage II, landscape watering for residential and commercial properties will be limited to one day per week, according to the street address as follows:

Last number of address	Watering day
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0,1	Monday
2, 3	Tuesday
4, 5	Wednesday
6, 7	Thursday
8, 9	Friday

If there is no street address associated with the property, such as a parkway, or if there is more than one street address associated with a single contiguous property, the irrigation day is Wednesday.

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 If the last digit of the address ends in 0 or 1, the irrigation day is Monday. If the last digit of the address ends in 2 or 3, the irrigation day is Tuesday.¶
 If the last digit of the address ends in 4 or 5, the irrigation day is Wednesday. If the last digit of the address ends in 6 or 7, the irrigation day is Thursday.¶
 If the last digit of the address ends in 8 or 9, the irrigation day is Friday.¶

- (3) For stage III, landscape watering for residential and commercial properties will be limited to one day per week **every other week**, beginning on the second Monday after the stage III has been declared according to the street address as follows:

Last number of address	Watering day
0,1	Monday
2, 3	Tuesday
4, 5	Wednesday
6, 7	Thursday
8, 9	Friday

If there is no street address associated with the property, such as a parkway, or if there is more than one street address associated with a single contiguous property, the irrigation day is Wednesday.

Deleted: If the last digit of the address ends in 0 or 1, the irrigation day is Monday. If the last digit of the address ends in 2 or 3, the irrigation day is Tuesday.¶
 If the last digit of the address ends in 4 or 5, the irrigation day is Wednesday. If the last digit of the address ends in 6 or 7, the irrigation day is Thursday.¶
 If the last digit of the address ends in 8 or 9, the irrigation day is Friday.¶

- (4) For stage I, II and III the following associated irrigation methods apply: Irrigation with a hose-end sprinkler or in-ground irrigation system is allowed on the days specified.
- (5) For stage I landscape irrigation with a soaker hose (that does not send spray in the air), handheld hose, drip irrigation system or bucket is allowed on any day at any time.
- (6) For stage II and III landscape irrigation with a soaker hose (that does not send spray in the air), handheld hose, drip irrigation system or bucket is allowed on any day.

Note: Vehicle washing at home is limited to designated landscape sprinkling watering days and times, but use of a commercial facility is permitted any day for all drought stages.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-226.- Implementation of additional water use reduction measures, ("aquifer risk").

- (a) Implementation of additional water use reduction measures, such as declaring Stage IV in periods of exceptional drought conditions, need not be based on the trigger levels set forth in section 130-224 but may instead be based on consideration of aquifer water quality or on other aquifer, seasonal or weather conditions not based on water levels in J-17.
- (b) Whenever aquifer quality measures 30 percent TDS above historical average and above the maximum TDS value for any public supply water well, the Mayor of the City of New Braunfels, in consultation with NBU, shall declare additional measures to protect the aquifer and shall be implemented by the city council as necessary.

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(c) Regardless of consideration of aquifer quality, whenever the Mayor of the City of New Braunfels in consultation with NBU may determine that the NBU water supply, or other aquifer, seasonal, or weather conditions not based on water levels in J-17 warrant, the Mayor may also impose additional restrictions for all water uses

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(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-227.- Termination of water use reduction measures, stages.

The Mayor of the City of New Braunfels, in consultation with NBU, may declare the termination of water use reduction measures and stages as scheduled in Sec. 130-224. Notice of the termination of the water use reduction measures and each of its various stages, as appropriate, shall be publicly announced in local media for a minimum of one day. Termination of the measures and each of its stages shall become effective immediately upon publication of the respective notice.

(Ord. No. 2008-50, § I, 7-28-08)

Sec. 130-228.- Specific water use reduction measures.

Specific water use reduction measures, their corresponding stages and scope are set out in the table, below:

Measures for	Stages	Scope of Restrictions
Essential Services	I, II, III	Fire-fighting & medical uses — no restrictions.
	I	Reduction in fire hydrant; sewer line flushing recommended.
	II, III	Hydrant flushing & sewer line flushing — only on emergency basis.
Water Purveyor Use	I, II, III	Water purveyors are encouraged to implement voluntary measures, such as improving leak detection surveys and repair programs and stabilizing and equalizing system pressure.
Power Production	I, II, III	Water used for power production shall be voluntarily reduced.
Agricultural	I	Reduction of water use by any means available is encouraged.
	II, III	The escape of irrigation tail water, as that term is commonly used in the agricultural community, is prohibited. Water loss through percolation in transmission canals is prohibited.
	III	Additional reductions may be imposed by the City Council if conditions warrant.
Livestock Use	I, II, III	Reduction of water use by any means available is encouraged.

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Industrial, Commercial, and Other	I, II, III	Reduction of water use by any means available is encouraged. Compliance with the mandatory demand reduction measures is required for those uses in the outdoor category, including landscape watering, swimming pools, hot tubs and similar facilities, golf courses, aesthetic uses such as fountains; such restrictions specifically include industrial users, as well as all others. Use of gray water, treated wastewater or reuse water is a defense to prosecution.
	III	Additional reductions may be imposed by the Mayor if conditions warrant. Use of treated wastewater or recycled water is a defense to prosecution.
Restaurants, or other Eating Establishments	Year Round	NBU strongly encourages that water be served to guests only upon request.
Household	I, II, III	Reduction of water use by any means available is encouraged. Compliance with the mandatory demand reduction measures shall be achieved for those uses in the outdoor category, such as landscape watering, swimming pools, hot tubs, and similar facilities.
Swimming Pools, Hot Tubs, etc.	I, II, III	NBU strongly encourages that all swimming pools, other than public swimming pools, be covered with an effective evaporation cover or screen or evaporation shields covering at least 25% of the surface of the pool when the pool is not in active use. Active use includes necessary maintenance that requires removal of the cover, screen, or shields. Active use of public, commercial and apartment pools is whenever the pool is not officially closed.
Replenishing Pool, Hot Tubs, etc. water levels	I, II, III	Replenishing to maintenance level permitted within watering hours.
New Pools, Filling New Pools, Hot Tubs etc.	I, II	Construction, installation, and filling of new pools will be allowed.
	III	Construction, installation, and filling of new pools will not be allowed. If a building permit has already been issued for pool construction, before the drought management stage was declared, construction, installation, and filling of new pools is allowed. Property owners, prior to construction, installation, or filling of pools should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name, address where the new pool is to be installed, the date of installation, and copy of the approved building permit in order to receive an approval letter from NBU.
Draining Pools, Hot Tubs, etc.	I, II, III	Draining permitted only onto pervious surface, or onto pool deck where the water is transmitted directly to a previous surface, only if:

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		<p>(1) Draining excess water from pool due to rain in order to lower water to maintenance level;</p> <p>(1) Repairing, maintaining or replacing pool component that has become hazardous; or</p> <p>(2) Repairing pool leak</p> <p>(3) Refilling of public swimming pool permitted only if pool has been drained for the repairs, maintenance or replacement set out in items 2 or 3 above</p> <p>It is prohibited to drain swimming pools into the street, alley, gutter or other public right-of-way, ditch, or storm water drainage system or facility. It is considered water waste to drain a pool and allow the water to leave the property in which the pool is located.</p>
Aesthetics (fountains, waterfalls, etc.)	I, II, III	<p>Outside prohibited. The one hundred (100) percent use of treated wastewater, condensate, or cooling tower blow down is defense to prosecution under this paragraph. Alternate on-site reclaimed sources may be approved through variance on a case-by-case basis.</p> <p>If one hundred (100) percent use of gray water, treated wastewater or reuse water, condensate water, cooling tower blow will be used, signs identifying this property as using recycled or reclaimed water source must be posted on site at a location for the general public view.</p>
Ornamental lakes and ponds, etc.	I, II, III	<p>Re-filling of ornamental lakes or ponds is prohibited; except to the extent needed to sustain aquatic life, provided that such animals are of significant value and have been actively managed within the water feature prior to declaration of a drought response level under this ordinance.</p> <p>A user may file, in writing, with NBU a request for an Aquatic Life Variance. The request must include:</p> <p>(1) a statement indicating compelling reasons why the users aquatic life qualifies as significant value; and</p> <p>(2) the amount of time the aquatic life have been present in the said lake/pond; and</p> <p>(3) a management plan for the aquatic life.</p>
Foundation Watering	I, II, III	<p>Foundations may be watered up to two hours on any day, during watering times, by handheld hose; or using a soaker hose or drip system placed within 24 inches of the foundation that does not produce a spray of water above the ground.</p>
Other Outdoor Uses	I, II, III, II, III	<p>Waste is prohibited. No person may allow irrigation tail water to escape from that person's land. Non-commercial washing of vehicles and mobile equipment (e.g., washing vehicle at a residence) is permitted only on assigned residential landscape sprinkling watering days and times</p>

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		(see Sec. 130-225) with hand-held hose (with automatic shut-off nozzle) or bucket of five (5) gallons or less, but is prohibited between the hours of 11:00 a.m. and 7:00 p.m. every day. Use of commercial vehicle wash facility permitted any day. Citizens are encouraged to wash their cars no more than twice a month. Use of gray water, treated wastewater or recycled water is a defense to prosecution.
Pressure Washing	I, II, III	<p>Washing sidewalks, walkways, driveways, parking lots, street, tennis courts, and other impervious surfaces is prohibited except in emergencies to remove spills of hazardous materials or to eliminate dangerous conditions which threaten the public health, safety, or welfare.</p> <p>Washing buildings, houses or structures with a pressure washer or garden hose is prohibited for aesthetic purposes but allowable for surface preparation of maintenance work to be performed;</p> <p>A variance from NBU must be obtained for any pressure washing performed during drought stage.</p>
Landscape Irrigation: Established Plants	I	<p>Landscape watering using sprinkler or irrigation systems is permitted only on designated landscape watering days and times [see Sec. 130-225]. The use of gray water, treated wastewater or reuse water is a defense to prosecution. Voluntary irrigation system audits encouraged. A user may file, in writing, with NBU a request for an exception to the designated days and times. The request must include:</p> <p>(1) a statement indicating compelling reasons why the user is unable to meet the specific designated watering times and days; and</p> <p>(2) a water conservation plan. The water conservation plan must also include proof of irrigation efficiency of sixty percent (60%) or greater and demonstrate specific measures to be taken to reduce consumption to meet the reduction goal established for Stage I.</p> <p>NBU may, on a case by case basis, waive the requirements for irrigation efficiency and/or submission of a water conservation plan. Upon the approval of the water conservation plan as set forth herein, the user may be granted an exception.</p>

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	II, III	<p>Landscape watering using sprinklers or irrigation systems is permitted only on designated landscape watering days and times [see Sec. 130-225]. The use of gray water, treated wastewater or reuse water is a defense to prosecution. Voluntary irrigation system audits encouraged. A user may file, in writing, with NBU a request for an exception to the designated days and times. The request must include:</p> <p>(1) a statement indicating compelling reasons why the user is unable to meet the specific designated watering times and days; and</p> <p>(2) a water conservation plan. The water conservation plan must also include proof of irrigation efficiency of sixty percent (60%) or greater and demonstrate specific measures to be taken to reduce consumption to meet the reduction goal established for Stage II or III.</p> <p>NBU may, on a case by case basis, waive the requirements for irrigation efficiency and/or submission of a water conservation plan. Upon the approval of the water conservation plan as set forth herein, the user may be granted an exception.</p>
Landscape Irrigation: New Landscaping Plants	I	<p>Landscape watering permitted with variance confirmation letter to maintain adequate growth until established, generally three (3) weeks. Prior to installation, property owners should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name, address where the new landscape is to be installed, receipt reflecting the type of landscaping installed, and the date of installation in order to receive a confirmation letter from NBU. Thereafter, landscape watering using sprinkler or irrigation systems for landscaping plants is permitted only on designated landscape watering days and times [see Sec. 130-225(a) and (d)]. Watering with hand-held hose, soaker hose (but not one that sprays water in the air), bucket of five (5) gallons or less, or drip irrigation system is permitted at any time. The use of gray water, treated wastewater or reuse water is a defense to prosecution.</p>
	II	<p>New Landscape installation restricted: during stage II drought restrictions, variance requests must be approved prior to new landscape installation.</p> <p>Prior to installation, property owners should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name and address where the new landscape is to be installed, receipt reflecting the type of landscaping installed, and the date of installation in order to receive a</p>

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		<p>confirmation letter from NBU. Thereafter, landscape watering using sprinkler or irrigation systems for landscaping plants is permitted only on designated landscape watering days and times [see Sec. 130-225(a) and (d)]. Watering with hand-held hose, soaker hose (but not one that sprays water in the air), bucket of five (5) gallons or less, or drip irrigation system is permitted but only until adequate growth is established as set out in NBU's confirmation letter. Use of gray water, treated wastewater or reused water is a defense to prosecution. Voluntary irrigation system audits encouraged</p> <p>Once variance letter has been received , Landscape watering permitted, to maintain adequate growth until established, generally three (3) weeks.</p>
	<p>III</p>	<p>New Landscape installation restricted: during stage III drought restrictions variances requests must be approved prior to new landscape installation.</p> <p>Installation of new landscapes is permitted only if not more than fifty percent (50%) of the available landscape area is planted with turf and If proper horticultural practices are followed, including use of mulch and zonal irrigation systems if a permanent irrigation system is installed. A user may file with NBU a request to install more than fifty percent (50%) turf. The request must include:</p> <p>(1) a statement or plan describing the landscaping plan; and</p> <p>(2) a statement indicating how the landscaping plan will achieve the goals of this chapter. Upon the approval of the alternate landscaping plan as set forth herein, the user may be granted an exception. Landscape renovation is allowed only if proper horticultural practices are followed, including use of mulch. Additionally, if the newly renovated landscaped area is watered with an irrigation system, then a zonal irrigation system must be installed.</p> <p>Prior to installation, property owners should submit by mail, facsimile, or e-mail to the NBU Conservation Coordinator their name, address where the new landscape is to be installed, receipt reflecting the type of landscaping installed, and the date of installation in order to receive a confirmation letter from NBU. Thereafter,</p>

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		<p>landscape watering using sprinkler or irrigation systems for landscaping plants is permitted only on designated landscape watering days and times [see Sec. 130-225(a) and (d)]. Watering with hand-held hose, soaker hose (but not one that sprays water in the air), bucket of five (5) gallons or less, or drip irrigation system is permitted but only until adequate growth is established as set out in NBU's confirmation letter. Use of gray water, treated wastewater or reused water is a defense to prosecution. Voluntary irrigation system audits encouraged</p> <p>Once variance letter has been received, Landscape watering permitted, to maintain adequate growth until established, generally three (3) weeks.</p>
Parks/Athletic Fields	I, II, III	<p>Park and athletic field owner/operators shall be required to submit a water conservation plan and shall be defined as "conforming" or "non-conforming". An athletic field or park will be deemed "conforming" if there is a CCIS in place and the owner/operator is utilizing the system to achieve maximum conservation and the goals of this division. Conforming facilities should have a conservation plan approved and on file with NBU. A park or athletic field that is not conforming is deemed "non-conforming" for the purposes of this division. Owners/operators of athletic fields or parks shall reduce water usage under the following terms:</p>
	I, II, III	<p>Use of gray water, treated wastewater or recycled water is a defense to prosecution.</p>
	I	<p>A. A conforming park/athletic fields shall implement a ten percent (10%) reduction in the replacement of daily evapotranspiration rate ("ET rate") or daily soil-holding capacity, achieved by use of an existing and properly operating CCIS (as defined) capable of achieving such water conservation goals.</p> <p>B. A non-conforming park/athletic fields shall not use more than 1.8 times the base usage for a park/athletic field not equipped with a CCIS. If not separately metered an irrigation audit showing precipitation rates and run times along with a conservation plan shall be submitted and approved by NBU for the purpose of establishing acceptable irrigation run times and days as approved by NBU.</p>

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	II	<p>A. A conforming park/athletic field shall implement a twenty percent (20%) reduction in replacement of daily ET rate or daily soil holding capacity, achieved by use of an existing and properly operating CCIS (as defined) capable of achieving such water conservation goals;</p> <p>B. A non-conforming park/athletic field shall not use more than 1.6 times the base usage for a park/athletic field not equipped with a CCIS. If not separately metered an irrigation audit showing precipitation rates and run times along with a conservation plan shall be submitted and approved by NBU for the purpose of establishing acceptable irrigation run times and days as approved by NBU.</p>
	III	<p>A. A conforming park/athletic field shall implement a thirty percent (30%) reduction in replacement of daily ET rate or daily soil holding capacity, achieved by use of an existing and properly operating CCIS (as defined) capable of achieving such water conservation goals;</p> <p>B. A non-conforming park/athletic field shall not use more than 1.4 times the base usage for a park/athletic field not equipped with a CCIS. If not separately metered an irrigation audit showing precipitation rates and run times along with a conservation plan shall be submitted and approved by NBU for the purpose of establishing acceptable irrigation run times and days as approved by NBU.</p>
Construction	I, II, III	Construction operations receiving water from a construction meter, fire hydrant meter or water truck shall not use water unnecessarily for any purpose other than those required by regulatory agencies. Construction projects requiring watering for new landscaping materials shall adhere to the designated irrigation requirements set forth herein.
Hotels, Motels, Bed and Breakfasts	I, II	Hotels, motels and B&B's must offer and clearly notify guests of a "no linen/towel change" program.
	III	Hotels, motels, B&B's must limit linen/towel changes to once every three (3) nights or for the entire stay, whichever is shorter, except for health and safety.
Leaks	Year Round	Repair all water leaks within seventy-two (72) hours of notification from NBU unless other arrangements are made with the Conservation Coordinator.
	I, II	Repair all leaks within forty-eight (48) hours of notification from NBU unless other arrangements are made with the Conservation Coordinator.
	III	Repair all water leaks within twenty-four (24) hours of notification from NBU unless other arrangements are made with the Conservation Coordinator.

(Ord. No. 2008-50, § I, 7-28-08)
 Secs. 130-229, 130-230.- Reserved.