

ORDINANCE NO. 2020-33

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FLAGSTAFF, AMENDING CITY CODE TITLE 7, HEALTH AND SANITATION, CHAPTER 03-001-0014, WATER CONSERVATION TO PROHIBIT THE USE OF POTABLE WATER TO FILL AMENITY LAKES, PONDS, OR OTHER BODIES OF WATER; PROVIDING FOR SEVERABILITY, AUTHORITY FOR CLERICAL CORRECTIONS, AND ESTABLISHING AN EFFECTIVE DATE

RECITALS:

WHEREAS, the City of Flagstaff is nationally recognized as a leading municipality in developing policy and regulations related to water management; and

WHEREAS, the City of Flagstaff consistently places a high value on water as a valuable resource to be conserved where possible; and

WHEREAS, the City of Flagstaff continues to create policies and regulations on the use of water which demonstrates the high value the City of Flagstaff places on water as a resource; and

WHEREAS, many of those policies were adopted by the City Council on April 1, 2014, in the form of Resolution 2014-13 which was then known as the Utilities Integrated Master Plan, and is now more commonly known as the Water Services Integrated Master Plan; and

WHEREAS, the Water Services Integrated Master Plan contains Section D entitled "Water Conservation" which provides the underlying policy and support for many of the City of Flagstaff's efforts to encourage and regulate the wise use of water as a resource; and

WHEREAS, Section 7-03-001-0014 of the Flagstaff City Code which is entitled "Water Conservation" contains numerous regulations requiring water conservation; and

WHEREAS, from time to time, the City Council for the City of Flagstaff can update, add to, or amend the water conservation regulations to provide for additional methods and requirements increasing water conservation; and

WHEREAS, the City Council has determined that the use of potable water for amenity lakes or other sizable ponds of water for recreational, decorative, or other similar purposes should be regulated to further increase water conservation in the City of Flagstaff.

ENACTMENTS:

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. City Code Title 7, *Health and Sanitation*, Chapter 03-001-0014, *Water Conservation*, is hereby amended as follows:

7-03-001-0014 Water Conservation

A. Definitions:

1. "Body of water" means a body of water including a lake, pond, lagoon, artificial pond or stream, that has a surface area greater than thirteen thousand square feet (approximate area of an Olympic-sized pool) and that is filled or refilled for landscape, scenic or recreational purposes. An exception can be granted as per Section 7-03-001-0014 E.1.e. Only for the purpose of determining the surface area of a body of water, two or more bodies of water that are connected are considered to be one body of water.
- 4.2. Commercial Provision: An agreement between the ~~Utilities~~ **Water Services** Division and a commercial customer where compliance with the Strategy Level may cause unreasonable economic hardship. A Commercial Provision may be applied for by a business that requires a water use for its day-to-day business operation to succeed. There is no fee associated with obtaining a Commercial Provision. Commercial Provisions shall not be considered for aesthetic landscaping purposes. Examples of businesses that may request a Commercial Provision include, but are not limited to, landscapers and nurseries. A request for a Commercial Provision shall be made in writing to the ~~Utilities~~ **Water Services** Director and shall include the nature of the business, the anticipated water usage per day, and what steps are being taken to conserve water at the business location. Approval and denial commercial provision letters shall be copied to the City Manager and City Council for informational purposes.
- 2.3. Emergency Authority: Authority to make operational adjustments and/or changes to the potable water and reclaimed water system for the purpose of protecting the system from damage, maintaining water supply, or restoring the system to operation after a system failure. This includes authority to mix potable water with reclaimed water for the purpose of protecting the system from imminent system damage.
- 3.4. Even-numbered address: Any street address ending in; zero (0), two (2), four (4), six (6), or eight (8).
- 4.5. Irrigate: To supply land or crops with water by means of pipes or hoses.
- 5.6. Odd-numbered address: Any street address ending in; one (1), three (3), five (5), seven (7), or nine (9).
- 6.7. Potable Water: Water that is safe and satisfactory for drinking and cooking.¹
- 7.8. Reclaimed Water: Water that has been treated or processed by a wastewater treatment plant or an on-site treatment facility. (ARS [49-201.31](#))
- 8.9. Resource Status I: When water demand is equal to or less than safe production capability.
- 9.10. Resource Status II: When water demand exceeds safe production capability for five (5) consecutive days.

- ~~40-11.~~ Resource Status III: When water demand exceeds total production capability and the amount of water in storage may impair fire protection for the City.
- ~~44-12.~~ Safe Production Capability: 90% of total water resources available measured in million gallons per day (MGD), based on potable water production and distribution components.
- ~~42-13.~~ Special Provision: An agreement between the **Utilities Water Services** Division and a large-volume irrigator allowing special hours of irrigation due to public access concerns or hydraulic constraints.
- ~~43-14.~~ Surcharge: To charge an additional fee, cost, or levy.
15. "Swimming pool" means an artificially constructed pool for swimming purposes that meets the applicable design standards and specifications for swimming pools prescribed by Flagstaff City Code Chapter 4-10 2018 International Swimming Pool and Spa Code, that is less than thirteen thousand square feet.
- ~~44-16.~~ Total Production Capability: The total water resources available measured in million gallons per day (MGD), based on potable water production and distribution components.
- ~~45-17.~~ Unreasonable Economic Hardship: A hardship where a business' ability to operate using normally accepted practices is adversely affected by the water restriction.
- ~~46- 18.~~ Water Availability Strategy: An effort initiated to ensure the availability of adequate water resources for the future, and in times of emergency.
- ~~47-19.~~ Wasting Water: To use or expend water thoughtlessly or carelessly. Examples include, but are not limited to, allowing water to run into the street/gutter, allowing water to pool, irrigating during precipitation events, and failing to repair water leaks. The determination of Wasting Water shall be made by a representative of the City of Flagstaff.

¹ Symons, James M. et al., The Drinking Water Dictionary (American Water Works Association, 2001), P. 333.

- B. The City Manager, upon the recommendation of the **Utilities Water Services** Director, after notification to the City Council is hereby authorized to declare and suspend Water Availability Strategies and elements of Strategies. The Strategies may be initiated and suspended based upon Resource Status Levels, or other pertinent information, which evaluate the relationship between water demand and municipal safe production capability.
- C. The **Utilities Water Services** Division has emergency authority to take operational measures deemed necessary to protect the potable and reclaimed water systems.
- D. Augmentation of the reclaimed water system with potable water except as referenced in Paragraph C shall require prior approval of the City Manager, upon the recommendation of the **Utilities Water Services** Director and after notification to the City Council.
- E. The following Water Availability Strategies shall govern the use of City water by any user of the City potable water system, as prescribed below:

1. Strategy I: Water Awareness (may implement with Resource Status I). Conserve water, in and outside of the home, using the best practices available to minimize waste. Water users are specifically encouraged to landscape with plant materials requiring little or no supplemental irrigation water. The following uses are restricted or prohibited.

No person shall:

- a. Irrigate between the hours of 9 AM and 5 PM. Even-numbered street addresses shall irrigate Wednesday, Friday, and Sunday. Odd-numbered street addresses shall irrigate Tuesday, Thursday, and Saturday. No irrigation shall be allowed on Monday. Daily hand watering with a hose or watering can is allowed. Strategy I irrigation hours shall apply to hand watering. Water use for maintenance of irrigation systems is permitted during all times of the day.
- b. Use water from a fire hydrant unless for public health or safety, or with the authorization of the **Utilities Water Services** Division.
- c. Waste water, as defined in section A.
- d. Irrigate golf courses with potable water.
- e. Fill or refill all or a portion of a body of water for landscape, scenic or recreational purposes unless it is filled with reclaimed water or stormwater runoff that is not subject to appropriation. This section does not apply to a body of water if any of the following applies:
 - i. The body of water was filled prior to, or the facility that holds the body of water existed prior to, January 1, 2021. If the surface area of the body of water is increased on or after January 1, 2021, this exception does not apply to the quantity of water that is added.
 - ii. The body of water is located in a recreational facility that is open to the public and owned or operated by the United States, the State of Arizona, Coconino County, and/or the City of Flagstaff.
 - iv. The body of water is a swimming pool less than thirteen thousand square feet as defined here-in.
 - v. An exception was granted by City Council allowing the body of water to be filled with potable water.

New landscape permits. Daily irrigation of new landscape may be allowed for elective landscaping and will be allowed for required landscaping by obtaining a permit from the Water Conservation Office. The permit shall be good for a maximum of thirty (30) days. The fee for the permit shall be ten dollars (\$10) to cover administration and printing, and shall be adjusted to cover changing costs. The permit shall be obtained prior to landscape installation and prominently posted at the irrigation site. The determination of provision of an elective landscaping permit shall be made by a representative of the **Utilities Water Services** Division

and may be appealed by the applicant to the Flagstaff Water Commission if thought to be unreasonably denied. The decision of the Water Commission shall be final. Strategy I irrigation hours shall apply to irrigation permits.

2. Strategy II: Water Emergency (may implement with Resource Status II). In addition to the requirements of Strategy I, the following uses are restricted or prohibited.

No person shall:

- a. Irrigate or wash vehicles, except as provided. Even-numbered street addresses are restricted to said uses on Wednesday, Friday, and Sunday. Odd-numbered street addresses are restricted to said uses on Tuesday, Thursday, and Saturday. No outdoor watering activity shall be allowed between the hours of 9 AM and 5 PM. Vehicle washing for public health and safety shall be exempt. This restriction shall not apply to commercial car washes.
- b. Wash paved areas such as drives, sidewalks and tennis courts, or buildings, except for health or safety. Restriction shall not apply to commercial high pressure water blasting for maintenance or construction purposes during strategy II. The use of Reclaimed Water for said uses shall not be restricted.
- c. Use potable water for filling ornamental fountains, ~~artificial ponds or streams.~~
- d. Fill recreational swimming pools, spas, or wading pools holding more than one hundred (100) gallons.
- e. Use potable water for major construction activity, such as dust control, soil compaction, or street cleaning. Major construction activity shall be considered that activity requiring the use of a hydrant meter for the dispensing of potable water or obtaining the water from City of Flagstaff standpipes.

Single-Family Residential, and all lawn meter rates shall increase to one hundred fifty percent (150%) of the established rate for any water consumption between six thousand two hundred one (6,201) and eleven thousand five hundred (11,500) gallons. Rates shall increase to two hundred percent (200%) of the established rate for any water consumption greater than eleven thousand five hundred one (11,501) gallons per billing cycle. Rate increases shall take effect with the billing cycle(s) following the implementation of Strategy II.

Multi-family, Commercial, Industrial, and Institutional water rates shall increase to 120% of the established rate. The rate increase shall take effect with the billing cycle(s) following the implementation of Strategy II.

Potable water standpipe rates shall increase to one hundred thirty percent (130%) of the established rate. The rate increase shall take effect upon implementation of Strategy II. Standpipe water shall be limited to uses within a twenty-five (25) mile radius of City Hall. Standpipe water shall not be used for major construction

activity, dust control, irrigation of decorative landscaping and/or turf.

No new elective or required landscaping permits shall be issued. Landscaping not installed and required by the City of Flagstaff to meet the Land Development Code will not delay a Certificate of Occupancy to be issued providing its installation is delayed as a result of a suspension of new landscaping permits and a surety is provided acceptable to the Community Development Division.

Upon suspension of Strategy II, rates shall return to their respective level with the billing cycle(s) following the date of the suspension, or in the case of standpipe rates, upon suspension.

3. Strategy III. Water Crises (may implement with Resource Status III). In addition to the requirements of Strategy I and Strategy II, the following uses are restricted or prohibited.

No person shall:

- a. Use any potable water for outside use.
- b. Use fire hydrants, unless for public health, safety, and welfare by authorized government agencies only.
- c. Waste water intentionally or unintentionally. Specifically applies to all residential, commercial, industrial, and institutional use.
- d. Use potable water in violation of any other restriction deemed necessary by the City Council for the purpose of protecting the welfare of the citizens of Flagstaff.

No new Special or Commercial provisions shall be allowed unless approved by the Flagstaff City Council or the Water Commission.

D. Surcharges/Appeals:

1. A Surcharge of \$25.00 shall be assessed to the account of record for a violation of Strategy I.
2. A Surcharge of \$50.00 shall be assessed to the account of record for a violation of Strategy II.
3. A Surcharge of \$100.00 shall be assessed to the account of record for a violation of Strategy III.
4. Surcharges shall double for every repeat violation. Each succeeding Surcharge under the prevailing strategy level may be twice the previous Surcharge assessed for the previous violation.
5. A commercial water hauler determined to be violating the standpipe restrictions shall pay a surcharge equal to that for the appropriate Strategy Level prior to the receipt of additional water.

6. The assessment of the Surcharge may be informally appealed, in writing, within fourteen (14) calendar days of the notice of the Surcharge assessment. The written appeal shall be received by the City of Flagstaff **Utilities Water Services** Division within said fourteen (14) day time limit or the right to such appeal shall be permanently waived. Address all Surcharge-related correspondence to:

City of Flagstaff **Utilities Water Services** Division
Water Conservation Program Manager
211 West Aspen Avenue
Flagstaff, AZ 86001

SECTION 2. Repeal of Conflicting Ordinances

All ordinances and parts of ordinances in conflict with the provisions of the code adopted herein are hereby repealed.

SECTION 3. Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance or any part of the code adopted herein by reference is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 4. Clerical Corrections

The City Clerk is hereby authorized to correct clerical and grammatical errors, if any, related to this ordinance, and to make formatting changes appropriate for purposes of clarity, form, or consistency with the Flagstaff City Code.

SECTION 5. Effective Date

This Ordinance shall be effective thirty (30) days following adoption by the City Council.

PASSED AND ADOPTED by the City Council of the City of Flagstaff this 8th day of December, 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY