

ORDINANCE 19 - 18

AN ORDINANCE OF THE CITY OF COMMERCE, TEXAS, REPEALING THE CITY'S DROUGHT CONTINGENCY PLAN ADOPTED AS DIVISION 4, "DROUGHT CONTINGENCY PLAN" OF ARTICLE II. "WATER AND SEWER" OF CHAPTER 94, "UTILITIES" OF THE CODE OF ORDINANCES OF THE CITY AND ADOPTING AN UPDATED DROUGHT CONTINGENCY PLAN FOR THE CITY CODIFIED AS DIVISION 4, ARTICLE II, CHAPTER 94 OF THE CODE OF ORDINANCES OF THE CITY; PROVIDING FOR THE INCORPORATION OF PREMISES; PROVIDING FOR AN AMENDMENT TO ADOPT THE DROUGHT CONTINGENCY PLAN; ESTABLISHING CRITERIA FOR ENCOURAGING WATER SAVING PRACTICES ON A CONTINUAL BASIS, AS WELL AS DURING EMERGENCY SITUATIONS; ESTABLISHING WATER SAVING GOALS; ESTABLISHING RESTRICTIONS ON CERTAIN WATER USES; ESTABLISHING PROVISIONS FOR ENFORCEMENT OF THESE RESTRICTIONS IN THE PLAN, ESTABLISHING PROCEDURES FOR GRANTING VARIANCES; PROVIDING A CUMULATIVE REPEALER; PROVIDING SEVERABILITY; PROVIDING A PENALTY IN AN AMOUNT NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE, AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED UPON EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Commerce recognizes that the amount of water available to its customers is limited and subject to depletion, especially during periods of extended drought; and

WHEREAS, the City of Commerce recognizes that natural limitations cannot guarantee an unlimited and uninterrupted water supply for all purposes; and

WHEREAS, Section 11.1272 of the Texas Water Code and applicable rules of the Texas Commission on Environmental Quality require all public water supply systems in Texas to prepare a drought contingency plan; and

WHEREAS, the City has adopted and continued to maintain a Drought Contingency Plan since July 2002, codified in Division 4 of Article 2 of Chapter 94 of the Code of Ordinances of the City; and

WHEREAS, the Texas Commission on Environmental Quality (TCEQ) has indicated a deficiency in the City's May 2018 plan, and we are adding the required language as item "J" under "Contract Provisions" to be in compliance with TCEQ requirements; and

WHEREAS, as authorized under law, and in the best interests of the citizens of Commerce, the Commerce City Council deems it expedient and necessary to update the Drought

Contingency Plan as set forth in Exhibit A in order to continue to maintain rules and policies for the orderly and efficient management of limited water supplies;

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

SECTION 1. INCORPORATION OF PREMISES

The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

SECTION 2. AMENDMENT/ADOPTION OF PLAN

Division 4, "Drought Contingency Plan" of Article II, "Water and Sewer" of Chapter 94, "Utilities" of the Code of Ordinances of the City of Commerce, Texas, the "Drought Contingency Plan" is hereby repealed in its entirety, and a new "Drought Contingency Plan" as set forth in Exhibit "A", a copy of which is attached hereto and incorporated herein, is hereby adopted and codified as Division 4, "Drought Contingency Plan" of Article II, "Water and Sewer" of Chapter 94, "Utilities" of the Code of Ordinances of the City of Commerce.

SECTION 3. CUMULATIVE REPEALER

This Ordinance shall be cumulative of all other Ordinances and shall not repeal any of the provisions of such Ordinances except for those instances where there are direct conflicts with the provisions of this Ordinance. Ordinances or parts thereof in force at the time this Ordinance shall take effect and that are inconsistent with this Ordinance are hereby repealed to the extent that they are inconsistent with this Ordinance. Provided however, that any complaint, action, claim, or lawsuit which has been initiated or has arisen under or pursuant to such Ordinance on the date of adoption of this Ordinance shall continue to be governed by the provisions of that Ordinance and for that purpose the Ordinance shall remain in full force and effect.

SECTION 4. SEVERABILITY

Should any paragraph, sentence, subdivision, clause, phrase or section of this Ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

SECTION 5. PENALTY

Any person who knowingly, intentionally or recklessly violates any provision of this Ordinance, upon conviction, shall be deemed guilty of a misdemeanor and shall be fined a sum not to exceed two thousand dollars (\$2,000.00) for each offense, and a separate offense shall be deemed committed upon each day during or on which a violation occurs or continues.

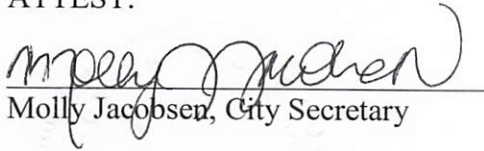
SECTION 6. EFFECTIVE DATE

This Ordinance shall take effect immediately from and after its passage, compliance with reading requirements of the City Charter, and the public of the caption, as the law in such cases provides.

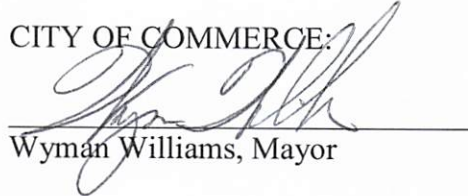
FIRST READING – DULY PASSED BY THE CITY OF COMMERCE, TEXAS, on
November 19, 2019.

SECOND READING – DULY PASSED BY THE CITY OF COMMERCE, TEXAS
on November 21, 2019.

ATTEST:

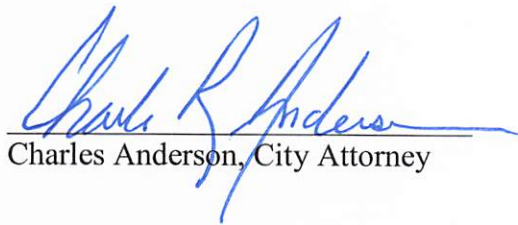

Molly Jacobsen, City Secretary

CITY OF COMMERCE:

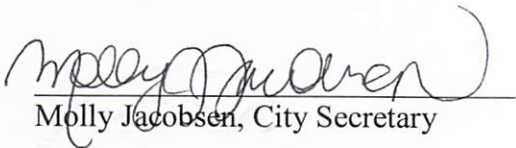

Wyman Williams, Mayor

(seal)

APPROVED AS TO FORM:


Charles Anderson, City Attorney

I, Molly Jacobsen, City Secretary of the City of Commerce, Texas, do hereby certify that the above is a true and correct copy of an ordinance, and that the same has not been repealed and is in full force and effect.


Molly Jacobsen, City Secretary

(seal)

CITY OF COMMERCE, HUNT COUNTY, TEXAS
DROUGHT CONTINGENCY PLAN

May 2018

(Revised from 2009 Version, Updated in November 2019)

- A. Declaration of Policy, Purpose, and Intent:** The City's drought contingency plan (DCP) was originally adopted in July 2002, and has been updated here as required by the Texas Commission on Environmental Quality (TCEQ) in 30 TAC Chapter 288.

Commerce understands that water conservation is a viable strategy for protecting water resources both now and in the future, and that adequate planning for times of drought or emergency is a necessary part of conservation. The purpose of this plan is to prepare for the possibility of a drought or emergency situation where water is in short supply. This plan will help to ensure the City uses water wisely and efficiently during periods of drought.

Commerce's water supply comes from 6 wells in the Nacatoch Aquifer and a water supply contract with the Sabine River Authority through 2025. Currently, Commerce has 3,140 connections and the average daily use is 159 gpcpd.

Water uses regulated or prohibited under this Drought Contingency Plan are considered to be non-essential, and continuation of such uses during times of water shortage or other emergency water supply condition are deemed to constitute a waste of water which subjects the offender(s) to penalties as defined in this Plan.

- B. Public Comment:** Opportunity for retail and wholesale customers to provide input into preparation of the Plan was provided by the City of Commerce during the September 1, 2009 regular City Council meeting. Notice of agenda was posted at City Hall in advance of the meeting.

C. Public Education:

Wholesale: All wholesale customers will be provided with a copy of this Plan. In addition, the City will inform all wholesale customers of any changes or updates to the Plan within 30 days after revisions are made. This information, as well as any other information deemed necessary by the City Manager, will be provided by means of written notice.

Retail: Information about the Plan will be provided to the public through the City's regular Council meetings. As necessary, information about the Plan will be conveyed to the public via the Commerce Journal and/or local radio stations.

D. Coordination with Regional Water Planning Groups: The service area of the City of Commerce is located within Region D, and a copy of this Plan has been provided to Region D.

E. Authorization: The City Manager will oversee the implementation of the drought contingency plan. He or she will initiate or terminate drought response measures in accordance with the plan.

F. Triggering Criteria: The City Manager shall monitor the water supply on a weekly basis and shall determine when conditions warrant initiation of the response stages. Notification of the initiation/termination of response stages for wholesale customers will be via personal contact and/or letter. Notification for retail customers will be via newspaper and/or radio.

a. Mild Condition (Stage 1):

Requirements for initiation – The City will recognize that a mild water shortage condition exists when (1) the water level in Lake Tawakoni drops below 432.5', or (2) the PDSI reaches -2 to -3 "moderate drought", or (3) when requested by the Sabine River Authority.

Requirements for termination – Stage 1 of the Plan may be rescinded when the trigger conditions have ceased to exist.

***Target Goal:** When a mild water shortage exists, Commerce will implement water management strategies in an attempt to reduce daily water use by 5% by voluntary measures.*

b. Moderate Condition (Stage 2):

Requirements for initiation – The City will recognize that a moderate water shortage condition exists when (1) water production reaches 2,500,000 GPD for 5 consecutive days, or (2) the elevated storage has not completely refilled for 3 consecutive days.

OR

The City will recognize that a moderate water shortage condition exists when (1) the water level in Lake Tawakoni drops below 430.0', or (2) when requested by the Sabine river Authority.

Requirements for termination – Stage 2 of the Plan may be rescinded when the trigger conditions have ceased to exist for a period of 3 consecutive days. Stage 1 then takes effect.

Target Goal: When a moderate water shortage exists, Commerce will implement water management strategies in an attempt to reduce daily water use by 10%, or to 2,250,000 GPD.

c. Severe Condition (Stage 3):

Requirements for initiation – The City will recognize that a severe water shortage condition exists when (1) the City’s emergency pump is put into service because other pumps have failed, or (2) other conditions within the system present water shortages deemed severe by the City Manager.

Requirements for termination – Stage 3 of the Plan may be rescinded when the trigger conditions have ceased to exist for a period of 3 consecutive days. Stage 2 then takes effect.

Target goal: When a severe water shortage exists, Commerce will implement water management strategies in an attempt to reduce daily water use to 2,030,000 GPD.

d. Critical Condition (Stage 4):

Requirements for initiation – The City will recognize that a critical water shortage condition exists when (1) water production reaches 3,500,000 GPD for 7 consecutive days, or (2) the elevated storage has not completely refilled for 5 consecutive days.

OR

The City will recognize that a critical water shortage condition exists when (1) the water level in Lake Tawakoni drops below 425.0’ or (2) when requested by the Sabine River Authority.

Requirements for termination – Stage 4 of the Plan may be rescinded when the trigger conditions have ceased to exist for a period of 3 consecutive days. Stage 3 then takes effect

Target Goal: When a critical water shortage exists, Commerce will implement water management strategies in an attempt to reduce daily water use by 10%, or to 3,150,000 GPD.

e. Emergency Condition (Stage 5):

Requirements for initiation – The City will recognize that an emergency condition exists when (1) the water system is contaminated, or (2) water system fails from acts of God (tornados, hurricanes) or man, or (3) major water line breaks or pump

or system failures, which cause unprecedented loss of capability to provide water service. Severe condition is initiated immediately upon detection.

Requirements for termination – Stage 5 of the Plan may be rescinded when the City Manager determines that the emergency has ceased.

G. Drought Response Stages: The City Manager or his/her designee shall monitor water supply and/or demand conditions regularly and, in accordance with the triggering criteria set forth in Section F of the Plan, shall determine when a mild, moderate, severe, critical, or emergency condition exists. The City has a reasonably secure groundwater supply, which can be expanded by drilling additional wells. In addition, the City is a member of the Sulphur River Municipal Water District, which could supply emergency supplies from other members. Furthermore, the contract with Upper Trinity Regional Water District for the sale of water from Cooper Reservoir provides for access to that water in an emergency. The following contingency measures are considered to be adequate and appropriate for the City of Commerce and are within its capability to implement.

a. Mild Condition: When a mild condition is reached, the City Manager will inform the City Council and general public in a meeting of the City Council. At this meeting, a Public Information Official shall be designated. The Public Information Official will advise both wholesale and retail customers of the mild condition and request voluntary water conservation. The City Manager will also implement a review of the City's water system operation and capabilities. Adjustments in operations procedures shall be made as appropriate.

b. Moderate Condition: Moderate condition curtailment applies to both wholesale and retail customers, and is to be initiated by the City Manager after giving notice to Council members in a regular or special meeting of the City Council. Listed actions are compulsory on users and are intended to prohibit water waste. "Water Waste" is defined as (a) permitting water from landscape irrigation or other uses to escape into gutters, ditches, streets, sidewalks, and other surface drains, (b) failure to promptly repair a controllable leak due to defective plumbing after it is discovered, (c) recreational use of faucets, hoses, and hydrants, and (d) other obviously wasteful uses.

1. Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems shall be limited to between the hours of 8:00 p.m. and 10:00 a.m. However, irrigation of landscaped areas is permitted at anytime if it is by means of a hand-held hose, a faucet filled bucket or watering can of five (5) gallons or less, or drip irrigation system.
2. Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle is prohibited except between the hours of 8:00 p.m. and 10:00 a.m. Such washing, when allowed, shall be done with a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for

quick rises. Vehicle washing may be done at any time on the immediate premises of a commercial car wash or commercial service station. Further, such washing may be exempted from these regulations if the health, safety, and welfare of the public is contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables.

3. Use of water to fill, refill, or add to any indoor or outdoor swimming pools, wading pools, or Jacuzzi-type pools is prohibited except between the hours of 8:00 p.m. and 10:00 a.m.
4. Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a recirculation system.
5. Use of water from hydrants shall be limited to fire fighting, related activities, or other activities necessary to maintain public health, safety, and welfare.
6. The following uses of water are defined as non-essential and are prohibited:
 - a. Wash down of any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas.
 - b. Use of water to wash down buildings or structures for purposes other than immediate fire protection.
 - c. Use of water for dust control.
 - d. Flushing gutters or permitting water to run or accumulate in any gutter or street.
 - e. Failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s).
- c. **Severe Condition:** Severe conditions curtailment shall be initiated after a regular or special called meeting of the City Council upon existence of severe drought conditions as determined by the City Manager.
 1. All water uses listed in Moderate Condition Stage of the Plan shall be prohibited. In addition, lawn irrigation will be allowed only on Saturdays and Sundays by an odd/even address system.
- d. **Critical Condition:** Critical condition curtailment shall be initiated after a regular or special called meeting of the City Council upon existence of critical drought conditions as determined by the City Manager.
 1. All water uses listed in Severe Condition Stage of the Plan shall be prohibited.

2. The City shall install a pro rata curtailment of all wholesale water customers as provided in Texas Water Code §11.039. All wholesale customers will be limited to 80% of the average of their last five years of daily water use. The City will calculate this figure and the wholesale customer will be informed of the amount of water allowed in writing.

Businesses requiring water as a basic function of the business, such as nurseries, commercial car washes, laundromats, high pressure water cleaning, etc., may request a variance from prescribed measures if, in the opinion of the City Manager, an urgent business or public health condition exists and sufficient water is available.

The System Priority for water service shall be made on the following basis:

- a. Hospitals.
 - b. Residential.
 - c. Schools.
 - d. Industrial.
 - e. Commercial.
 - f. Recreational.
- e. **Emergency Condition:** Emergency condition curtailment shall be initiated after a regular or special called meeting of the City Council upon existence of emergency drought conditions as determined by the City Manager. Since the emergency stage is triggered by system contamination or acts of God, response measures will be determined depending on the situation, as deemed appropriate by the City Manager.

H. Enforcement:

- a) No person shall knowingly or intentionally allow the use of water from the City of Commerce for residential, commercial, industrial, agricultural, governmental, or any other purpose in a manner contrary to any provision of this Plan, or in an amount in excess of that permitted by the drought response stage in effect at the time pursuant to action taken by the City Manager in accordance with provisions of this Plan.
- b) Any person who violates this Plan is guilty of a Class C Misdemeanor and, upon conviction shall be punished by a fine of not more than \$2,000. Each day that one or more of the provisions in this Plan is violated shall constitute a separate offense. If a person is convicted of three or more distinct violations of this Plan, the City Manager shall, upon due notice to the customer, be authorized to discontinue water service to the premises where such violations occur. Services discontinued under such circumstances shall be restored only upon payment of a re-connection charge, hereby established at \$30, and any other costs incurred by

the City of Commerce in discontinuing service. In addition, suitable assurance must be given to the City Manager that the same action shall not be repeated while the Plan is in effect. Compliance with this plan may also be sought through injunctive relief in the district court.

- c) Any person, including a person classified as a water customer of the City of Commerce, in apparent control of the property where a violation occurs or originates shall be presumed to be the violator, and proof that the violation occurred on the person's property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to show that he/she did not commit the violation. Parents shall be presumed to be responsible for violations of their minor children and proof that a violation, committed by a child, occurred on property within the parents control shall constitute a rebuttable presumption that the parent committed the violation, but any such parent may be excused if he/she proves that he/she had previously directed the child not to use the water as it was used in violation of this Plan and that the parent could not have reasonably known of the violation.
 - d) The City of Commerce Police Department or the Community Development Code Enforcement Officers may issue a citation to a person reasonably believed to be in violation of this Ordinance. The citation shall be prepared in duplicate and shall contain the name and address of the alleged violator, if known, the offense charged, and shall direct him/her to appear in the municipal court on the date shown on the citation for which the date shall not be less than 3 days nor more than 5 days from the date the citation was issued. The alleged violator shall be served a copy of the citation. Service of the citation shall be complete upon delivery of the citation to the alleged violator, to an agent or employee of a violator, or to a person over 14 years of age who is a member of the violator's immediate family or is a resident of the violator's residence. The alleged violator shall appear in municipal court to enter a plea of guilty or not guilty for the violation of this Plan. If the alleged violator fails to appear in municipal court, a warrant for his/her arrest may be issued. A summons to appear may be issued in lieu of an arrest warrant. These cases shall be expedited and give preferential setting in municipal court before all other cases.
- I. Variances:** The City Manager may, in writing, grant temporary variance for existing water uses otherwise prohibited under this Plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the health, sanitation, or fire protection for the public or the person requesting such variance and if one or more of the following conditions are met:
- a. Compliance with this Plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the Plan is in effect.
 - b. Alternative methods can be implemented which will achieve the same level of reduction in water use.

Persons requesting an exemption from the provisions of this plan shall file a petition for variance with the City of Commerce within 30 days after the Plan or 5 days after a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the City Manager and shall include the following:

- a. Name and address of the petitioner(s).
- b. Purpose of water use.
- c. Specific provision(s) of the Plan from which the petitioner is requesting relief.
- d. Detailed statement as to how the specific provision of the Plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this plan.
- e. Description of the relief requested.
- f. Period of time for which the variance is sought.
- g. Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this Plan and the compliance date.
- h. Other pertinent information.

Variances granted by the City shall be subject to the following conditions, unless waived or modified by the Mayor:

- a. Variances granted shall include a timetable for compliance.
- b. Variances granted shall expire when the Plan is no longer in effect, unless the petitioner has failed to meet specified requirements.

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

J. Contract Provisions: The city of Commerce will include a Provision in every wholesale water contract entered into or renewed after adoption of the plan, including contract extensions, that in case of a shortage of water resulting from drought, the water to be distributed shall be divided in accordance with Texas Water Code Texas Water Code §11.039.

K. Severability: It is hereby declared to be the intention of the Commerce City Council that the sections, paragraphs, sentences, clauses, and phrases of this Plan are severable and, if any phrase, clause, sentence, paragraph, or section of this Plan shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Plan.

L. Plan Updates: This plan shall be revaluated and updated every 5 years based on updated information, particularly population and water use changes, system changes, and the latest version of the Region D Regional Water Plan.