

### Summary of Ordinance No. 3203

On August 27, 2012, the City of Abilene, Kansas, adopted Ordinance No. 3203, amending Chapter 7, Article 10, of the City Code of the City of Abilene, Kansas, pertaining to Water Emergencies . A complete copy of this Ordinance is available online at [www.abilenecityhall.com](http://www.abilenecityhall.com) or during normal business hours at City Hall, located at 419 N. Broadway Street in Abilene, Kansas. The Ordinance is not subject to a protest petition. Questions pertaining this Ordinance may be directed to the City Attorney Mark Guilfoyle at (785) 263-3070 or City Manager David Dillner at (785)263-2550. This summary has been reviewed and certified by Mark Guilfoyle, P.A., City Attorney.

  
Mark Guilfoyle, City Attorney

**ORDINANCE NO. 3203**

**AN ORDINANCE AMENDING CHAPTER 7, ARTICLE 10 OF THE CITY CODE OF THE CITY OF ABILENE, KANSAS, PERTAINING TO WATER EMERGENCIES**

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ABILENE, KANSAS:**

**SECTION 1.** That Article 10, Chapter 7 of the City Code of the City of Abilene, Kansas, be amended as follows:

7-1001 **PURPOSE.** The purpose of this Ordinance is to provide for a progressive water supply conservation program, including the declaration of a water supply watch, warning or emergency and the implementation of voluntary and mandatory water conservation measures throughout the City in the event such a watch, warning or emergency is declared by the Governing Body of the City.

7-1002 **DEFINITIONS.**

- a. "Water" shall mean water available to the City of Abilene (hereinafter "City") for treatment by virtue of the City's water rights, water supply, water supply contracts or any treated water introduced by the City into its water distribution system, including water offered for sale at any coin-operated site.
- b. "Customer" shall mean the customer of record using water for any purpose from the City's water distribution system and for which either a regular charge is made or, in the case of coin sales, a cash charge is made at the site of delivery.
- c. "Waste of Water" includes, but is not limited to:
  1. permitting water to escape down a street, roadway, or other surface intended for vehicle driving purposes, and any gutter, ditch, or other surface drain; or
  2. failure to repair a controllable leak of water due to defective plumbing.
- d. The following classes of uses of water are hereby established:
  1. "Class 1" shall be defined as water used for outdoor watering, either public or private, for gardens, lawns, trees, shrubs, plants, parks, golf courses, playing fields, swimming pools, or other recreational areas, or the washing or motor vehicles, boats, trailers, or the exterior of any building or structure.
  2. "Class 2" shall be defined as water used for commercial, agricultural or industrial purposes, except water actually necessary to maintain health and personal hygiene of bona fide employees of such businesses or interests while such employees are engaged in the performance of their duties at their place of employment.
  3. "Class 3" shall be defined as water used for domestic usage, other than that which would be included in either Class 1 or 2, as defined above.
  4. "Class 4" shall be defined as water necessary only to sustain human life and the lives of domestic livestock, pets, and to maintain standards of hygiene and sanitation.

7-1003 **WATER CONSERVATION PROGRAM.** In the event that the City Manager determines that the City's water supply may be subject to a shortage in supply or that there is need for conservation of the public water supply for any reason, the City Manager may begin the progressive three-stage Water Conservation Program by declaring a Water Watch as described in Section 3(a) or, in times of need and/or duress, the Governing Body may choose to declare any section of the Program described in Section 3, in effect at any time:

- a. Stage 1: Declaration of a Water Watch. Whenever the City Manager finds that conditions indicate the probability of a drought or some other condition causing a major water supply shortage is rising, he shall be empowered to declare that a Water Watch exists and he shall take steps to inform the public and ask for voluntary water reductions in water use. The City Manager shall declare the existence and end of a Water Watch, which shall be effective upon publication of said notice in the official City newspaper. Such a Water Watch shall be deemed to continue until it is declared by notice in the official newspaper to have ended.
- b. Stage 2: Declaration of a Watch Warning. Whenever the Governing Body finds that drought conditions or some other condition causing a major water supply shortage are present and supplies are starting to decline, it shall be empowered to declare, by resolution, that a Water Warning exists and that it will recommend restrictions on non-essential uses during the period of the Water Warning. Such a Water Warning shall be deemed to continue until it is declared by resolution of the Governing Body to have ended. The resolutions declaring the existence and end of a Water Warning shall be effective upon their publication in the official City newspaper.
- c. Stage 3: Declaration of a Watch Emergency. Whenever the Governing Body finds that an emergency exists by reason of a shortage of water supply needed for essential uses, it shall be empowered to declare, by resolution, that a Water Emergency exists and that it will impose mandatory restrictions on water use during the period of the Water Emergency. Such an Water Emergency shall be deemed to continue until it is declared by resolution of the Governing Body to have ended. The resolutions declaring the existence and end of a Water Emergency shall be effective upon their publication in the official City newspaper.

7-1004 **VOLUNTARY CONSERVATION MEASURES.** Upon declaration of a Water Watch or Water Warning, as provided in Sections 7-1003, the City Manager, or other designated official, is authorized to call on all water customers to employ voluntary water conservation measures to limit or eliminate non-essential water uses including, but not limited to, limitations on the following uses:

- a. Class 1 use of water; and
- b. Waste of water.

7-1005 **MANDATORY CONSERVATION MEASURES.** Upon declaration of a Water Emergency as provided in Section 7-1003(c), the City Manager, or other designated official, is also authorized to implement certain mandatory conservation measures, including, but not limited to, the following conservation measures:

- a. Suspension of new connections to the City's water distribution system, except connections of fire hydrants and those made pursuant to agreements entered into by the City prior to the effective date of the declaration of the Emergency;
- b. Restrictions on the uses of water in one or more classes of water use, as defined in Section 7-1002(d), wholly or in part;
- c. Restrictions on the sales of water at coin-operated facilities or sites;
- d. The imposition of water rationing based on any reasonable formula including, but not limited to, the percentage of normal use and per capita or per customer restrictions;
- e. Complete or partial bans on the waste of water; and
- f. Any combination of the measures in Sections 7-1005 as the Governing Body, or authorized City official, may deem appropriate and/or necessary.

**7-1006 EMERGENCY WATER RATES.** Upon the declaration of a Water Emergency as provided in Section 7-1003(c), the Governing Body shall have the power to adopt emergency water rates by ordinance designed to conserve water supplies. Such emergency rates may provide for, but are not limited to:

- a. Higher charges for increasing usage per unit of use (increasing block rates);
- b. Uniform charges for water use per unit of use (uniform unit rate); or
- c. Extra charges in excess of a specified level of water use (excess demand surcharge).

**7-1007 REGULATIONS.** During the effective period of any Water Emergency as provided for in Section 7-1003(c), the City Manager is empowered to promulgate such regulations as may be necessary to carry out the provisions of this ordinance, any water supply emergency resolution, or emergency water rate ordinance. Such regulations shall be subject to the approval of the Governing Body at its next regular or special meeting.

**7-1008 VIOLATIONS, DISCONNECTIONS AND PENALTIES.**

- a. If the City Manager, or other authorized City official(s) charged with implementation and enforcement of this ordinance or a water supply emergency resolution, learn of any violation of any water use restrictions imposed pursuant to Sections 7-1005 or 7-1007 of this ordinance, a written notice of the violation shall be affixed to the property where the violation occurred and the customer of record and/or any other person known to the City to be responsible for the violation shall be provided with either an actual or mailed notice. Said notice shall describe the violation(s) and order that the noted violation(s) be corrected, cured or abated immediately or within such specified time as the City determines is reasonable for such correction, cure, or abatement under the circumstances. In the event that the order is not cured within the time period given in the notice, the City may terminate water service to the customer subject to the following procedures:
  - 1. The City shall give the customer notice by mail or actual notice that water service will be discontinued within a specified time due to the violation(s) and that the customer will

have the opportunity to appeal the termination by requesting a hearing scheduled before the City Manager.

2. If such a hearing is requested by the customer charged with the violation, the customer shall be given a full opportunity to be heard by the City Manager before the termination is ordered and executed.
3. The City Manager shall make findings of fact and order whether service should continue or be terminated.

**7-1009 RECONNECTION FEE.** A fee of Fifty Dollars (\$50.00) shall be paid for the reconnection of any water service terminated pursuant to Section 7-1008(a). In the event of subsequent violations, the reconnection fee shall be Two Hundred Dollars (\$200.00) for the second reconnection and Three Hundred Dollars (\$300.00) for any subsequent additional reconnections within a one year period.

**7-1010 MUNICIPAL OFFENSE.** Violations of this ordinance shall be a municipal offense and may be prosecuted in Municipal Court. Any person so charged and found guilty in Municipal Court of violating the provisions in this ordinance shall be guilty of a municipal offense. Each calendar day in which a violation is observed shall constitute a separate offense. The penalty for an initial violation shall be a mandatory fine of One Hundred Dollars (\$100.00). In addition, such customer may be required by the Court to serve a definite term of confinement in the City or County jail, which shall be fixed by the Court and which shall not exceed thirty (30) days. The penalty for a second or subsequent conviction shall be a mandatory fine of Five Hundred Dollars (\$500.00). In addition, such customer may be required by the Court to serve a definite term of confinement in the City or County jail, which shall be fixed by the Court and which shall not exceed thirty (30) days.

**7-1011 EMERGENCY TERMINATION.** Nothing in this ordinance shall limit the ability of any properly authorized City official from terminating the supply of water to any or all customers upon the determination of the City Manager that emergency termination of water service is required to protect the health and safety of the public, or for any other emergency, as required or authorized by ordinance, or as otherwise deemed necessary by the Governing Body.

**7-1012 SEVERABILITY.** If any provision of this ordinance is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the ordinance and its applicability to other persons and circumstances shall not be affected thereby.

**SECTION 3.** This Ordinance shall become effective and in full force from and after its passage, adoption and publication in the official City newspaper.

**PASSED AND ADOPTED** this 27<sup>th</sup> day of August, 2012

  
Dennis P. Weishaar, Mayor

ATTEST:

*Penny Soukup, CMC*  
Penny Soukup, CMC  
City Clerk

