

Chapter 5

EMERGENCY MANAGEMENT*

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***Cross references**—Administration generally, ch. 2; flood damage prevention and protection, ch. 7; motor vehicles and traffic, ch. 11.

State law reference—Similar provisions, Texas Disaster Act of 1975, V.T.C.A., Government Code § 418.001 et seq.

ARTICLE I. IN GENERAL**Sec. 5-1. Mayor as director of emergency management; appointment of coordinator; organization.**

(a) There exists the office of emergency management director of the city, which shall be held by the mayor.

(b) An emergency management coordinator may be appointed by and serve at the pleasure of the director.

(c) The director shall be responsible for a program of comprehensive emergency management within the city and for carrying out the duties and responsibilities set forth in this chapter. He may delegate authority for execution of these duties to the coordinator, but ultimate responsibility for such execution shall remain with the director.

(d) The operational emergency management organization of the city shall consist of the city officers and employees so designated by the director in the emergency management plan, as well as organized volunteer groups. The functions and duties of this organization shall be distributed among such officers and employees in accordance with the terms of the emergency management plan.

(Ord. No. 134, § 1, 9-12-1988)

Sec. 5-2. Powers and duties of director.

The duties and responsibilities of the emergency management director shall include the following:

- (1) Conduct an ongoing survey of actual or potential hazards which threaten life and property within the city and an ongoing program of identifying and requiring or recommending the implementation of measures which would tend to prevent the occurrence or reduce the impact of such hazards if a disaster did occur.
- (2) Supervision of the development and approval of an emergency management plan for the city, and recommend for adoption by the city council all mutual aid arrangements deemed necessary for the implementation of such plan.

- (3) Authority to declare a local state of disaster. The declaration may not be continued or renewed for a period in excess of seven days except with the consent of the city council. Any order or proclamation declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the city secretary.
- (4) Issuance of necessary proclamations, regulations or directives which are necessary for carrying out the purposes of this chapter. Such proclamations, regulations, or directives shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless circumstances attendant on the disaster prevent or impede, promptly filed with the city secretary.
- (5) Direction and control of the operations of the city emergency management organization as well as the training of emergency management personnel.
- (6) Determination of all questions of authority and responsibility that may arise within the emergency management organization of the city.
- (7) Maintenance of liaison with other municipal, county, district, state, regional or federal emergency management organizations.
- (8) Marshaling of all necessary personnel, equipment or supplies from any city department to aid in the carrying out of the provisions of the emergency management plan.
- (9) Supervision of the drafting and execution of mutual aid agreements, in cooperation with the representatives of the state and of any municipality, county, rural fire prevention district, emergency services district, fire protection agency, organized volunteer group, or other emergency services entity, and the drafting and execution, if deemed desirable, of an agreement with the county in which the city is located and with other municipalities within the county, for the countywide coordination of emergency management efforts.

- (10) Supervision of and final authorization for the procurement of all necessary supplies and equipment, including acceptance of private contributions which may be offered for the purpose of improving emergency management within the city.
 - (11) Authorizing of agreements, after approval by the city attorney, for use of private property for public shelter and other purposes.
 - (12) Survey of the availability of existing personnel, equipment, supplies and services which could be used during a disaster, as provided for in this chapter.
- (Ord. No. 134, § 2, 9-12-1988)

Sec. 5-3. Contents of plan.

(a) A comprehensive emergency management plan shall be developed and maintained in a current state. The emergency management plan of the county shall be applicable in the city. The plan shall set forth the form of the organization; shall establish and designate divisions and functions; shall assign responsibilities, tasks, duties, and powers; and shall designate officers and employees to carry out this chapter. As provided by state law, the plan shall follow the standards and criteria established by the state division of emergency management. Insofar as possible, the form of organization, titles and terminology shall conform to the recommendations of the state division of emergency management. When approved, it shall be the duty of all departments and agencies to perform the functions assigned by the plan and to maintain their portion of the plan in a current state of readiness at all times. The emergency management plan shall be considered supplementary to this chapter and shall have the effect of law during the time of a disaster.

(b) The plan must provide for the following:

- (1) Wage, price, and rent controls and other economic stabilization methods if a disaster occurs; and

- (2) Curfews, blockades, and limitations on utility use in an area affected by a disaster, rules governing entrance to and exit from the affected area, and other security measures.

(Ord. No. 134, § 3, 9-12-1988)

Sec. 5-4. Interjurisdictional program participation authorized.

The mayor is hereby authorized to join with the county judge and the mayors of the other cities in the county in the formation of an emergency management council for the county and shall have the authority to cooperate in the preparation of a joint emergency management plan and in the appointment of a joint emergency management coordinator, as well as all powers necessary to participate in a countywide program of emergency management insofar as such program may affect the city.

(Ord. No. 134, § 4, 9-12-1988)

Sec. 5-5. Applicability of regulations.

At all times when the orders, rules, and regulations made and promulgated pursuant to this chapter shall be in effect, they shall supersede and override all existing ordinances, orders, rules, and regulations insofar as the latter may be inconsistent therewith.

(Ord. No. 134, § 5, 9-12-1988)

Sec. 5-6. Liability of parties.

This chapter is an exercise by the city of its governmental functions for the protection of the public peace, health, and safety, and, except as otherwise provided by law, neither the city, the agents and representatives of the city, nor any individual, receiver, firm, partnership, corporation, association, or trustee, nor any of the agents thereof, in good faith carrying out, complying with or attempting to comply with any order, rule, or regulation promulgated pursuant to this chapter shall be liable for any damage sustained to persons as the result of such activity. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants to the city a license or privilege or otherwise permits the city to inspect, designate

and use the whole or any part of such real estate or premises for the purpose of sheltering persons during an actual, impending or practice enemy attack or natural or manmade disaster shall, together with his successors in interest, if any, not be civilly liable for the death of or injury to any person on or about such real estate or premises under such license, privilege or other permission or for loss of or damage to the property of such person. (Ord. No. 134, § 6, 9-12-1988)

Sec. 5-7. Council approval required for expenditure of public funds.

No person shall have the right to expend any public funds of the city in carrying out any emergency management activity authorized by this chapter without prior approval by the city council, nor shall any person have any right to bind the city by contract, agreement or otherwise without prior and specific approval of the city council unless during a declared disaster. During a declared disaster, the mayor may expend and commit public funds of the city when deemed prudent and necessary for the protection of health, life, or property. (Ord. No. 134, § 7, 9-12-1988)

Sec. 5-8. Violations; penalties.

(a) It shall be unlawful for any person willfully to obstruct, hinder, or delay any member of the emergency management organization in the enforcement of any rule or regulation issued pursuant to this chapter or pursuant to the county emergency management plan or to do any act forbidden by any rule or regulation issued pursuant to the authority contained in this chapter or in the county emergency management plan.

(b) Convictions for violations of this chapter shall be punishable as provided in section 1-5 of this Code. (Ord. No. 134, § 8, 9-12-1988)

Secs. 5-9—5-20. Reserved.

ARTICLE II. DROUGHT CONTINGENCY PLAN**Sec. 5-21. Declaration of policy, purpose, and intent.**

In order to conserve the available water supply and protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety and minimize the adverse impacts of water supply shortage or other water supply emergency conditions, the City of Shepherd hereby adopts the following regulations and restrictions on the delivery and consumption of water.

Water uses regulated or prohibited under this drought contingency plan (the 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 section 5-31 of this article.
(Ord. No. 191, § 1, 7-10-2000)

Sec. 5-22. Public involvement.

Opportunity for the public to provide input into the preparation of the plan was provided by the city means of public notice, in local paper and copy of drought contingency plan available at city hall for the public.
(Ord. No. 191, § 1, 7-10-2000)

Sec. 5-23. Public education.

The City of Shepherd will periodically provide the public with information about the plan, including information about the conditions under which each stage of the plan is to be initiated or terminated and the drought response measures to be implemented in each stage. This information will be provided by means of public notice in customer's bill and/or press release in local newspaper.
(Ord. No. 191, § 1, 7-10-2000)

Sec. 5-24. Coordination with regional water planning groups.

The service area of the City of Shepherd is located within the SB1, Region H planning area and City of Shepherd has provided a copy of this plan to the SB1, Region H planning group.
(Ord. No. 191, § 1, 7-10-2000)

Sec. 5-25. Authorization.

The mayor, or his/her designee is hereby authorized and directed to implement the applicable provisions of this plan upon determination that such implementation is necessary to protect public health, safety, and welfare. The mayor, or his/her designee, shall have the authority to initiate or terminate drought or other water supply emergency response measures as described in this plan.
(Ord. No. 191, § 1, 7-10-2000)

Sec. 5-26. Application.

The provisions of this plan shall apply to all persons, customers, and property utilizing water provided by the City of Shepherd. The terms "person" and "customer" as used in the plan include individuals, corporations, partnerships, associations, and all other legal entities.
(Ord. No. 191, § 1, 7-10-2000)

Sec. 5-27. Definitions.

For the purposes of this plan, the following definitions shall apply:

Aesthetic water use means water use for ornamental or decorative purposes such as fountains, reflecting pools, and water gardens.

Commercial and institutional water use means water use which is integral to the operations of commercial and non-profit establishments and governmental entities such as retail establishments, hotels and motels, restaurants, and office buildings.

Conservation means those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternative uses.

Customer means any person, company, or organization using water supplied by City of Shepherd.

Domestic water use means water use for personal needs or for household or sanitary purposes such as drinking, bathing, heating, cooking, sanitation, or for cleaning a residence, business, industry, or institution

Even number address means street addresses, box numbers, or rural postal route numbers ending in 0, 2, 4, 6, or 8 and locations without addresses.

Industrial water use means the use of water in processes designed to convert materials of lower value into forms having greater usability and value.

Landscape irrigation use means water used for the irrigation and maintenance of landscaped areas, whether publicly or privately owned, including residential and commercial lawns, gardens, golf courses, parks, and rights-of-way and medians.

Non-essential water use means water uses that are not essential nor required for the protection of public, health, safety, and welfare, including:

- (1) Irrigation of landscape areas, including parks, athletic fields, and golf courses, except otherwise provided under this plan;
- (2) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle;
- (3) Use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
- (4) Use of water to wash down buildings or structures for purposes other than immediate fire protection;

- (5) Flushing gutters or permitting water to run or accumulate in any gutter or street;
- (6) Use of water to fill, refill, or add to any indoor or outdoor swimming pools or jacuzzi-type pools;
- (7) Use of water in a fountain or pond for aesthetic or scenic purposes except where necessary to support aquatic life;
- (8) Failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s); and
- (9) Use of water from hydrants for construction purposes or any other purposes other than fire fighting.

Odd numbered address means street addresses, box numbers, or rural postal route numbers ending in 1, 3, 5, 7, or 9.
(Ord. No. 191, § 1, 7-10-2000)

Sec. 5-28. Triggering criteria for initiation and termination of drought response stages.

The mayor, or his/her designee, shall monitor water supply and/or demand conditions on a daily, weekly, and/or monthly basis and shall determine when conditions warrant initiation or termination of each stage of the plan. Public notification of the initiation or termination of drought response stages shall be by means of publication in a newspaper of general circulation, direct mail to each customer, and or signs posted in public places.

The triggering criteria described below are based on historical and statistical analysis of the vulnerability of the water source under drought of record conditions (year 1998).

- (1) Stage 1—Mild water shortage conditions.
 - a. *Requirements for initiation.* Customers shall be requested to voluntarily conserve water and adhere to the prescribed restrictions on certain water uses, defined in section 5-27, when:
 1. Trigger condition: When total daily water demand equals or exceeds 500,000 gallons for three consecutive days (e.g., based on the "safe" operating capacity of water supply facilities).

2. **Trigger Condition:** Continually falling treated water reservoir levels which do not refill above 75 percent overnight (e.g., based on an evaluation of minimum treated water storage required to avoid system outage).
 - b. *Requirements for termination.* Stage 1 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of five consecutive days.
- (2) **Stage 2—Moderate water shortage conditions.**
- a. *Requirements for initiation.* Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses provided in section 5-27 of this article, when:
 1. **Trigger condition:** When total daily water demand equals or exceeds 600,000 gallons for three consecutive days (e.g., based on the "safe" operating capacity of water supply facilities).
 2. **Trigger condition:** Continually falling treated water reservoir levels which do not refill above 85 percent overnight (e.g., based on an evaluation of minimum treated water storage required to avoid system outage).
 - b. *Requirements for termination.* Stage 2 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of five consecutive days. Upon termination of stage 2, stage 1 becomes operative.
- (3) **Stage 3—Severe water shortage conditions.**
- a. *Requirements for initiation.* Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses for stage 3 of this plan when:
 1. **Trigger condition:** When total daily water demand equals or exceeds 700,000 gallons for three consecutive days (e.g., based on the "safe" operating capacity of water supply facilities).

2. **Trigger condition:** Continually falling treated water reservoir levels which do not refill above 95 percent overnight (e.g., based on an evaluation of minimum treated water storage required to avoid system outage).
 - b. *Requirements for termination.* Stage 3 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of five consecutive days. Upon termination of stage 3, stage 2 becomes operative.
- (4) **Stage 4—Critical water shortage conditions.**
- a. *Requirements for initiation.* Customers shall be required to comply with the requirements and restrictions on certain non-essential water uses for stage 4 of this plan when:
 1. **Trigger condition:** When total daily water demand equals or exceeds 800,000 gallons for three consecutive days (e.g., based on the "safe" operating capacity of water supply facilities).
 2. **Trigger condition:** Continually falling treated water reservoir levels which do not refill above 100 percent overnight (e.g., based on an evaluation of minimum treated water storage required to avoid system outage).
 - b. *Requirements for termination.* Stage 4 of the plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of five consecutive days. Upon termination of stage 4, stage 3 becomes operative.
- (5) **Stage 5—Emergency water shortage conditions.**
- a. *Requirements for initiation.* Customers shall be required to comply with the requirements and restrictions for stage 5 of this plan when the mayor, or his/her designee, determines that a water supply emergency exists based on:
 1. **Triggering criteria:** Major water line breaks, or pump or system failures occur, which cause unprecedented loss of capability to provide water service; or

- 2. **Triggering criteria:** Natural or man-made contamination of the water supply source(s).
 - b. *Requirements for termination.* Stage 5 of the plan may be rescinded following the absence of triggering events or for a maximum period of five consecutive days.
- (6) **Water rationing.**
- a. *Requirements for initiation.* Customers shall be required to comply with the water allocation plan prescribed in section 5-30 of this article and comply with the requirements and restrictions for stage 5 of this plan when the triggering criteria described above for stage 4 and stage 5 have been met.
 - b. *Requirements for termination.* Water rationing may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of five consecutive days.

(Ord. No. 191, § 1, 7-10-2000)

Sec. 5-29. Drought response stages.

The mayor, or his/her designee, shall monitor water supply and/or demand conditions on a daily basis and, in accordance with the triggering criteria set forth in section 5-28 of this article, shall determine that a mild, moderate, severe, critical, or emergency condition exists and shall implement the following actions upon publication of notice in a newspaper of general circulation.

- (1) **Stage 1—Mild water shortage conditions.**
 - a. *Goal:* Achieve a voluntary 25 percent reduction in total daily water demand.
 - b. *Supply management measures:* Describe measures, if any, to be implemented directly by City of Shepherd to manage limited water supplies and/or reduce water demand. Reduced or discontinued flushing of water mains, activation and use of an alternative supply source(s); use of reclaimed water for non-potable purposes.

- c. *Voluntary water use restrictions:*
1. Water customers are requested to voluntarily limit the irrigation of landscaped areas to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Saturdays and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9), and to irrigate landscapes only between the hours of midnight and 10:00 a.m. and 8:00 p.m. to midnight on designated watering days.
 2. All operations of the City of Shepherd shall adhere to water use restrictions prescribed for stage 2 of the plan.
 3. Water customers are requested to practice water conservation and to minimize or discontinue water use for non-essential purposes.

(2) Stage 2—Moderate water shortage conditions.

- a. *Goal:* Achieve a 35 percent reduction in total daily water demand.
- b. *Supply management measures:* Describe measures, if any, to be implemented directly by City of Shepherd to manage limited water supplies and/or reduce water demand. Reduced flushing of water mains, reduced irrigation of public landscaped areas; use of an alternative supply source(s); use of reclaimed water for non-potable purposes.
- c. *Water use restrictions.* Under threat of penalty for violation, the following water use restrictions shall apply to all persons:
 1. Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems shall be limited to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Saturdays and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9), and irrigation of landscaped areas is further

- limited to the hours of 12:00 midnight until 10:00 a.m. and between 8:00 p.m. and 12:00 midnight on designated watering days. 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 gallons or less, or drip irrigation system.
2. Use of water to wash any motor vehicle, motor-bike, boat, trailer, airplane or other vehicle is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8:00 p.m. and 12:00 midnight. 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 rinses. 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 on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8 p.m. and 12:00 midnight.
 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, except that use of water from

designated fire hydrants for construction purposes may be allowed under special permit from the City of Shepherd.

6. Use of water for the irrigation of golf course greens, tees, and fairways is prohibited except on designated watering days between the hours 12:00 midnight and 10:00 a.m. and between 8 p.m. and 12:00 midnight. However, if the golf course utilizes a water source other than that provided by the City of Shepherd, the facility shall not be subject to these regulations.
 7. All restaurants are prohibited from serving water to its patrons except when requested.
 8. The following uses of water are defined as non-essential and are prohibited:
 - i. Wash down of any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
 - ii. Use of water to wash down buildings or structures for purposes other than immediate fire protection;
 - iii. Use of water for dust control;
 - iv. Flushing gutters or permitting water to run or accumulate in any gutter or street; and
 - v. Failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s).
- (3) Stage 3—Severe water shortage conditions.
- a. *Goal:* Achieve a 50 percent reduction in total daily water demand.
 - b. *Supply management measures:* Describe measures, if any, to be implemented directly by City of Shepherd to manage limited water supplies and/or reduce water demand. Reduced flushing of water mains,

discontinued irrigation of public landscaped area; use of an alternative supply source(s); use of reclaimed water for non-potable purposes.

- c. *Water use restrictions.* All requirements of stage 2 shall remain in effect during stage 3 except:
 - 1. Irrigation of landscaped areas shall be limited to designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8 p.m. and 12:00 midnight and shall be by means of hand-held hoses, hand-held buckets, drip irrigation, or permanently installed automatic sprinkler system only. The use of hose-end sprinklers is prohibited at all times.
 - 2. The watering of golf course tees is prohibited unless the golf course utilizes a water source other than that provided by the City of Shepherd.
 - 3. The use of water for construction purposes from designated fire hydrants under special permit is to be discontinued.

- (4) Stage 4—Critical water shortage conditions.
 - a. *Goal:* Achieve a 65 percent reduction in (e.g., total water use, daily water demand, etc.).
 - b. *Supply management measures:* Describe measures, if any, to be implemented directly by City of Shepherd to manage limited water supplies and/or reduce water demand. Discontinued flushing of water mains, discontinued irrigation of public landscaped areas; use of an alternative supply source(s); use of reclaimed water for non-potable purposes.
 - c. *Water use restrictions.* All requirements of stage 2 and 3 shall remain in effect during stage 4 except:
 - 1. Irrigation of landscaped areas shall be limited to designated watering days between the hours of 6:00 a.m. and 10:00 a.m. and between 8:00 p.m. and 12:00 midnight and shall be by means of hand-held hoses, hand-held buckets, or drip

irrigation only. The use of hose-end sprinklers or permanently installed automatic sprinkler systems are prohibited at all times.

2. Use of water to wash any motor vehicle, motor-bike, boat, trailer, airplane or other vehicle not occurring on the premises of a commercial car wash and commercial service stations and not in the immediate interest of public health, safety, and welfare is prohibited. Further, such vehicle washing at commercial car washes and commercial service stations shall occur only between the hours of 6:00 a.m. and 10:00 a.m. and between 6:00 p.m. and 10 p.m.
 3. The filling, refilling, or adding of water to swimming pools, wading pools, and jacuzzi-type pools is prohibited.
 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. No applications for new, additional, expanded, or increased-in-size water service connections, meters, service lines, pipeline extensions, mains, or water service facilities of any kind shall be allowed or approved.
- (5) Stage 5—Emergency water shortage conditions.
- a. *Goal:* Achieve an 80 percent reduction in total daily water demand.
 - b. *Supply management measures:* Describe measures, if any, to be implemented directly by City of Shepherd to manage limited water supplies and/or reduce water demand. Discontinued flushing of water mains, discontinued irrigation of public landscaped areas; use of an alternative supply source(s); use of reclaimed water for non-potable purposes.

- c. *Water use restrictions.* All requirements of stage 2, 3, and 4 shall remain in effect during stage 5 except:
 - 1. Irrigation of landscaped areas is absolutely prohibited.
 - 2. Use of water to wash any motor vehicle, motor-bike, boat, trailer, airplane or other vehicle is absolutely prohibited.

(Ord. No. 191, § 1, 7-10-2000)

Sec. 5-30. Water rationing.

In the event that water shortage conditions threaten public health, safety, and welfare, the mayor is hereby authorized to ration water according to the following water allocation plan:

- (1) *Single-family residential customers.*

The allocation to residential water customers residing in a single-family dwelling shall be as follows:

| <i>Persons per Household</i> | <i>Gallons per Month</i> |
|------------------------------|--------------------------|
| 1 or 2 | 2,000 |
| 3 or 4 | 4,000 |
| 5 or 6 | 6,000 |
| 7 or 8 | 8,000 |
| 9 or 10 | 10,000 |
| 11 or more | 12,000 |

"Household" means the residential premises served by the customer's meter. "Persons per household" includes only those persons currently physically residing at the premises and expected to reside there for the entire billing period. It shall be assumed that a particular customer's household is comprised of two persons unless the customer notifies the City of Shepherd of a greater number of persons per household on a form prescribed by the mayor. The mayor shall give his/her best effort to see that such forms are mailed, otherwise provided, or made available to every residential customer. If, however, a customer does not receive such a form, it shall be the customer's responsibility to go to the City of Shepherd offices to complete and sign the form claiming more than

two persons per household. New customers may claim more persons per household at the time of applying for water service on the form prescribed by the mayor. When the number of persons per household increases so as to place the customer in a different allocation category, the customer may notify the City of Shepherd on such form and the change will be implemented in the next practicable billing period. If the number of persons in a household is reduced, the customer shall notify the City of Shepherd in writing within two days. In prescribing the method for claiming more than two persons per household, the mayor shall adopt methods to insure the accuracy of the claim. Any person who knowingly, recklessly, or with criminal negligence falsely reports the number of persons in a household or fails to timely notify the City of Shepherd of a reduction in the number of person in a household shall be fined not less than \$300.00. Residential water customers shall pay the following surcharges:

\$3.00 for the first 1,000 gallons over allocation.

\$4.00 for the second 1,000 gallons over allocation.

\$5.00 for the third 1,000 gallons over allocation.

\$6.00 for each additional 1,000 gallons over allocation.

Surcharges shall be cumulative.

(2) *Master-metered multi-family residential customers.*

The allocation to a customer billed from a master meter which jointly measures water to multiple permanent residential dwelling units (e.g., apartments, mobile homes) shall be allocated 2,000 gallons per month for each dwelling unit. It shall be assumed that such a customer's meter serves two dwelling units unless the customer notifies the City of Shepherd of a greater number on a form prescribed by the mayor. The mayor shall give his/her best effort to see that such forms are mailed, otherwise provided, or made available to every such customer. If, however, a customer does not receive such a form, it shall be the customer's responsibility to go to the City of Shepherd offices to complete and sign the form

claiming more than two dwellings. A dwelling unit may be claimed under this provision whether it is occupied or not. New customers may claim more dwelling units at the time of applying for water service on the form prescribed by the mayor. If the number of dwelling units served by a master meter is reduced, the customer shall notify the City of Shepherd in writing within two days. In prescribing the method for claiming more than two dwelling units, the mayor shall adopt methods to insure the accuracy of the claim. Any person who knowingly, recklessly, or with criminal negligence falsely reports the number of dwelling units served by a master meter or fails to timely notify the City of Shepherd of a reduction in the number of persons in a household shall be fined not less than \$300.00. Customers billed from a master meter under this provision shall pay the following monthly surcharges:

\$5.00 for 1,000 gallons over allocation up through 1,000 gallons for each dwelling unit.

\$6.00, thereafter, for each additional 1,000 gallons over allocation up through a second 1,000 gallons for each dwelling unit.

\$7.00, thereafter, for each additional 1,000 gallons over allocation up through a third 1,000 gallons for each dwelling unit.

\$8.00, thereafter for each additional 1,000 gallons over allocation.

Surcharges shall be cumulative.

(3) *Commercial customers.*

A monthly water usage allocation shall be established by the mayor, or his/her designee, for each nonresidential commercial customer other than an industrial customer who uses water for processing purposes. The non-residential customer's allocation shall be approximately 75 percent of the customer's usage for corresponding month's billing period for the previous 12 months. If the customer's billing history is shorter than 12 months, the monthly average for the period for which there is a record

shall be used for any monthly period for which no history exists. Provided, however, a customer, 75 percent of whose monthly usage is less than 2,000 gallons, shall be allocated 2,000 gallons. The mayor shall give his/her best effort to see that notice of each non-residential customer's allocation is mailed to such customer. If, however, a customer does not receive such notice, it shall be the customer's responsibility to contact the City of Shepherd to determine the allocation. Upon request of the customer or at the initiative of the mayor the allocation may be reduced or increased if, (1) the designated period does not accurately reflect the customer's normal water usage, (2) one nonresidential customer agrees to transfer part of its allocation to another nonresidential customer, or (3) other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the city council. Nonresidential commercial customers shall pay the following surcharges:

Customers whose allocation is zero gallons through 2,000 gallons per month:

\$6.00 per thousand gallons for the first 1,000 gallons over allocation.

\$7.00 per thousand gallons for the second 1,000 gallons over allocation.

\$8.00 per thousand gallons for the third 1,000 gallons over allocation.

\$9.00 per thousand gallons for each additional 1,000 gallons over allocation.

Customers whose allocation is 2,000 gallons per month or more:

Two times the block rate for each 1,000 gallons in excess of the allocation up through five percent above allocation.

Three times the block rate for each 1,000 gallons from five percent through ten percent above allocation.

Four times the block rate for 1,000 gallons from ten percent through 15 percent above allocation.

Five times the block rate for each 1,000 gallons more than 15 percent above allocation.

The surcharges shall be cumulative. As used herein, "block rate" means the charge to the customer per 1,000 gallons at the regular water rate schedule at the level of the customer's allocation.

(4) *Industrial customers.*

A monthly water usage allocation shall be established by the mayor, or his/her designee, for each industrial customer, which uses water for processing purposes. The industrial customer's allocation shall be approximately 90 percent of the customer's water usage baseline. Ninety days after the initial imposition of the allocation for industrial customers, the industrial customer's allocation shall be further reduced to 85 percent of the customer's water usage baseline. The industrial customer's water usage baseline will be computed on the average water usage for the 12 month period ending prior to the date of implementation of stage 2 of the plan. If the industrial water customer's billing history is shorter than 12 months, the monthly average for the period for which there is a record shall be used for any monthly period for which no billing history exists. The mayor shall give his/her best effort to see that notice of each industrial customers allocation is mailed to such customer. If, however, a customer does not receive such notice, it shall be the customer's responsibility to contact the City of Shepherd to determine the allocation, and the allocation shall be fully effective notwithstanding the lack of receipt of written notice. Upon request of the customer or at the initiative of the mayor, the allocation may be reduced or increased, (1) if the designated period does not accurately reflect the customer's normal water usage because the customer had shutdown a major processing unit for repair or overhaul during the period, (2) the customer has added or is in the process of adding significant additional processing capacity, (3) the customer has shutdown or

significantly reduced the production of a major processing unit, (4) the customer has previously implemented significant permanent water conservation measures such that the ability to further reduce usage is limited, (5) the customer agrees to transfer part of its allocation to another industrial customer, or (6) if other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the city council. Industrial customers shall pay the following surcharges:

Customers whose allocation is zero gallons through 45,000 gallons per month:

\$6.00 per thousand gallons for the first 1,000 gallons over allocation.

\$7.00 per thousand gallons for the second 1,000 gallons over allocation.

\$8.00 per thousand gallons for the third 1,000 gallons over allocation.

\$9.00 per thousand gallons for each additional 1,000 gallons over allocation.

Customers whose allocation is 45,000 gallons per month or more:

Two times the block rate for each 1,000 gallons in excess of the allocation up through five percent above allocation.

Three times the block rate for each 1,000 gallons from five percent through ten percent above allocation.

Four times the block rate for each 1,000 gallons from ten percent through 15 percent above allocation.

Five times the block rate for each 1,000 gallons more than 15 percent above allocation.

The surcharges shall be cumulative. As used herein, "block rate" means the charge to the customer per 1,000 gallons at the regular water rate schedule at the level of the customer's allocation.

(Ord. No. 191, § 1, 7-10-2000)

Sec. 5-31. Enforcement.

(a) No person shall knowingly or intentionally allow the use of water from the City of Shepherd 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 mayor, or his/her designee, in accordance with provisions of this plan.

(b) Any person who violates this plan is guilty of a misdemeanor and, upon conviction shall be punished by a fine of not less than \$300.00 and not more than \$1000.00. 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 mayor 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 \$40.00, and any other costs incurred by the City of Shepherd in discontinuing service. In addition, suitable assurance must be given to the mayor 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 Shepherd, 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) Any employee of the City of Shepherd, police officer, or other person designated by the mayor, may issue a citation to a person he/she reasonably believes to be in violation of this article. 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 three days nor more than five 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 given preferential setting in municipal court before all other cases.

(Ord. No. 191, § 1, 7-10-2000)

Sec. 5-32. Variances.

The mayor, or his/her designee, 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:

- (1) 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.
- (2) 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 article shall file a petition for variance with the City of Shepherd within five days after the plan or a particular drought response

stage has been invoked. All petitions for variances shall be reviewed by the mayor, or his/her designee, and shall include the following:

- (1) Name and address of the petitioner(s).
- (2) Purpose of water use.
- (3) Specific provision(s) of the plan from which the petitioner is requesting relief.
- (4) 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 article.
- (5) Description of the relief requested.
- (6) Period of time for which the variance is sought.
- (7) 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.
- (8) Other pertinent information.

Variances granted by the City of Shepherd shall be subject to the following conditions, unless waived or modified by the mayor or his/her designee:

- (1) Variances granted shall include a timetable for compliance.
- (2) 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.

(Ord. No. 191, § 1, 7-10-2000)