

ORDINANCE NO. 2616

AN ORDINANCE REVISING TITLE 13 UTILITIES, CHAPTER 10.140 CONSERVATION POLICY – FEES – PENALITIES OF THE GARDNER MUNICIPAL CODE.

WHEREAS, the City has previously adopted Municipal Code provisions regulating water;

WHEREAS, the City wishes to amend its Municipal Code relating to its water conservation policy.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GARDNER, KANSAS:

SECTION ONE: The Governing Body of the City of Gardner, Kansas now deems it advisable to revise Chapter 10.140 “Conservation policy – Fees – Penalties” as follows:

10.140 Conservation policy – Fees – Penalties.

The City of Gardner shall provide for 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.

A. Definitions.

1. “Water” shall mean water available to the City of Gardner for treatment by virtue of its water rights or any treated water introduced by the City into its water distribution system, including water offered for sale at any coin-operated site.
2. “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.
3. “Waste of water” shall include but not be limited to: (a) permitting water to escape down a gutter, ditch, or other surface drain; or (b) failure to repair a controllable leak of water due to defective plumbing.

B. Classes of uses of water shall be established as follows:

1. Class 1: 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 of motor vehicles, boats, trailers, or the exterior of any building or structure.
2. Class 2: water used for any commercial or industrial, including agricultural, purposes; except water actually necessary to maintain the health and personal hygiene of bona fide employees while such employees are engaged in the performance of their duties at their place of employment.
3. Class 3: domestic usage, other than that which would be included in either classes 1 or 2.
4. Class 4: water necessary only to sustain human life and the lives of domestic pets and maintain standards of hygiene and sanitation.

C. Water Conservation Plan. The City Council shall adopt by resolution a water conservation plan establishing the conditions triggering water conservation and the

education, management and regulation actions to be taken at various stages of water shortage.

D. Declaration of Water Watch. Whenever the Governing Body of the City finds that conditions indicate that the probability of a drought or some other condition causing a major water supply shortage is rising, it shall be empowered to declare, by resolution, that a water watch exists and it shall take steps to inform the public and ask for voluntary reductions in water use. Such a watch 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 watch shall be effective upon their passage and submission to the official City newspaper.

E. Declaration of Water Warning. Whenever the Governing Body of the City 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 nonessential uses during the period of the warning. Such a warning shall be deemed to continue until it is declared by resolution of the Governing Body to have ended. The resolutions declaring the beginning and ending of the water warning shall be effective upon their passage and submission to the official City newspaper.

F. Declaration of Water Emergency. Whenever the Governing Body of the City 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 supply emergency exists and that it will impose mandatory restrictions on water use during the period of the emergency. Such an 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 supply emergency shall be effective upon their passage and submission to the official City newspaper.

G. Voluntary Conservation Measures. Upon the declaration of a water watch as provided in subsection (D) of this section, the City Administrator or Utilities Director is authorized to call on all water consumers to employ voluntary water conservation measures to limit or eliminate nonessential water uses including, but not limited to, limitations on the following uses:

1. Sprinkling of water on lawns, shrubs or trees (including golf courses).
2. Washing of automobiles.
3. Use of water in swimming pools, fountains and evaporative air conditioning systems.
4. Waste of water.

H. Mandatory Conservation Measures. Upon the declaration of a water supply warning or emergency as provided in subsections (E) and (F) of this section, the City Administrator or Utilities Director is also authorized to implement certain mandatory water conservation measures, including, but not limited to, the following:

1. 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;
2. Restrictions on the uses of water in one or more classes of water use, wholly or in part;
3. Restrictions on the sales of water at coin-operated facilities or sites;

4. 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 consumer restrictions;
5. Complete or partial bans on the waste of water; and
6. Any combination of the foregoing measures.

I. Emergency Water Rates. Upon the declaration of a water supply emergency as provided in subsection (F) of this section, the Governing Body of the City 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:

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

J. Regulations. During the effective period of any water supply warning or emergency as provided for in subsections (E) and (F) of this section, the City Administrator or Utilities Director is empowered to promulgate such regulations as may be necessary to carry out the provisions of this section, any water supply emergency resolution, or emergency water rate ordinance.

K. Violations, Disconnections and Penalties.

1. If the City Administrator, Utilities Director, or their designee charged with implementation and enforcement of this section or a water supply emergency resolution learn of any violation of any water use restrictions imposed pursuant to subsection (H) or (J) of this section, a written notice of the violation shall be affixed to the property where the violation occurred and the customer of record and any other person known to the City who is responsible for the violation or its correction shall be provided with either actual or mailed notice. Said notice shall describe the violation and order that it be corrected, cured or abated immediately or within such specified time as the City determines is reasonable under the circumstances. If the order is not complied with, the City may terminate water service to the customer subject to the following procedures:

- a. 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 and that the customer will have the opportunity to appeal the termination by requesting a hearing scheduled before the City Governing Body or a City official designated as a Hearing Officer by the Governing Body;
- b. If such a hearing is requested by the customer charged with the violation, he or she shall be given a full opportunity to be heard before termination is ordered; and
- c. The Governing Body or Hearing Officer shall make findings of fact and order whether service should continue or be terminated.

2. A fee shall be paid for the reconnection of any water service terminated pursuant to subsection (K)(1)(a) of this section, in the event of subsequent violation, an additional reconnection fee shall be paid. Said reconnection fees shall be set by the Governing Body by resolution.

3. Violations of this section 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 of this section shall be guilty of a municipal offense. Each day's violation shall constitute a separate offense. The penalty for an initial

violation shall be a mandatory fine of \$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 30 days. The penalty for a second or subsequent conviction shall be a mandatory fine of \$200.00. In addition, such customer may serve a definite term of confinement in the City or County Jail which shall be fixed by the Court and which shall not exceed 30 days.

L. Emergency Termination. Nothing in this section 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 such City official that emergency termination of water service is required to protect the health and safety of the public.

M. Severability. If any provision of this section is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the section and its applicability to other persons and circumstances shall not be affected thereby. (Ord. 2531 § 19; Ord. 2267 § 25; Ord. 1832 § 1. Code 1990 § 15-214)

SECTION THREE: All other ordinances not in conformity herewith are hereby repealed or amended to conform hereto.

SECTION FOUR: This Ordinance shall take effect and be in force after its passage, approval and publication as provided by law.

PASSED by the City Council this _____ day of May, 2019.

SIGNED by the Mayor this _____ day of May, 2019.

CITY OF GARDNER, KANSAS

(SEAL)

Steve Shute
Mayor

ATTEST:

Sharon Rose
Interim City Clerk