

ORDINANCE NO. 1191

AN ORDINANCE TO CREATE AND ENACT CHAPTER 9-05 OF THE REVISED ORDINANCES OF 1990 OF THE CITY OF WEST FARGO RELATING TO DROUGHT AND WATER SYSTEM RESPONSE MEASURES.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF WEST FARGO, NORTH DAKOTA:

SECTION 1. Chapter 9-05 of the Revised Ordinances of 1990 of the City of West Fargo, North Dakota, is hereby created and enacted to read as follows:

CHAPTER 9-05

DROUGHT AND WATER SYSTEM RESPONSE MEASURES

SECTIONS:

- 9-0501. Procedural Definitions.
- 9-0502. Declaration of Policy.
- 9-0503. Drought and Water System Management Regulations.
- 9-0504. Drought Severity Phases - Declaration.
- 9-0505. Waivers.
- 9-0506. Responsibility for Enforcement.
- 9-0507. Enforcement Procedures.
- 9-0508. Remedies and Enforcement Powers.
- 9-0509. Enforcement - Non-Compliance and Re-Inspection Fees.
- 9-0510. Other Powers.
- 9-0511. Continuation.
- 9-0512. Power and Authority of Inspection - Right of Entry.
- 9-0513. Savings Clause - Conflict.

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9-0501. PROCEDURAL DEFINITIONS. The following procedural definitions apply to this chapter:

1. "Notice of violation." A notice of violation is a written notice of the violation of an ordinance in this chapter which identifies the nature of the violation, the section or ordinance allegedly violated and the time of occurrence of the violation, if known.
2. "Administrative compliance order." An administrative order is an order issued by the City Administrator or his/her designee which identifies the nature of the violation, the section or ordinance allegedly violated, the time of occurrence of the violation, if known, the corrective steps necessary and the nature of subsequent

penalties and enforcement actions should the situation not be corrected and ordering that the alleged violator come into compliance with the section or ordinance allegedly violated. The administrative order may provide a time period within which compliance must occur.

3. "Administrative compliance order with fine." An administrative order with fine is an administrative order that also provides that the City will impose a civil fine if compliance does not occur within the time provided in the order.
4. "Order to show cause." An order issued by the City Administrator or his/her designee issued when there is reason to believe that the violation identified in the administrative order has not ceased or been corrected as required, and directing the alleged violator to appear before the City Commission to show cause why further enforcement measures should not be taken or ordered or fees imposed, or both.

9-0502. DECLARATION OF POLICY. It is hereby declared that, because of the conditions prevailing in the City of West Fargo, the health, safety and general welfare of the City requires that the water resources available to the City be put to the maximum beneficial use of the water resources, that unreasonable use of water and unreasonable methods of use of water be prevented, that waste of water be prevented, that water be conserved to the extent possible and that the reasonable and beneficial uses of water is all in the best interests of the people of the City of West Fargo.

9-0503. DROUGHT AND WATER SYSTEM MANAGEMENT REGULATIONS. The City Administrator or his/her designee is authorized to promulgate regulations describing restrictions and limitations on the use of water as well as affirmative action to be required by persons using water for one or more of the four drought severity phases, approved by a resolution of the Board of City Commissioners. The regulations may also include a schedule for irrigation or watering of gardens, residential, commercial and industrial lawns, and so forth. The regulations may also establish special water usage rates and surcharges for use of water by activity or by industry. The regulations approved by the Board of City Commissioners shall take effect upon a single publication of the regulations in a newspaper of general circulation in the City.

9-0504. DROUGHT SEVERITY PHASES - DECLARATION. The level of drought severity, established by the Board of City Commissioners from time to time, shall be one of the following four phases, listed in increasing order of severity: Phase I - Normal, Phase II - Advisory, Phase III - Warning, Phase IV - Emergency. Phase I, Normal, drought severity phase shall be deemed to be in effect unless another drought severity phase has been declared by

the Board of City Commissioners: The Board of City Commissioners may declare the particular drought severity phase to be in effect and may identify the effective date for implementation of the restrictions for such phase, as set forth in this article. In establishing the drought severity phase in effect, the Board of City Commissioners may rely upon the recommendation of the City Administrator or his/her designee. To initiate a particular drought response, the Board of City Commissioners shall declare a drought severity phase and the effective date for implementation of applicable restrictions for such phase. The Board of City Commissioners may determine that the declaration of drought severity phase is to take effect immediately. The declaration of the drought severity phase in effect shall be published in a newspaper of general circulation and shall take effect upon such publication of said declaration or the effective date in the declaration. In the case of an emergency declared by the Board of City Commissioners, the declaration may be deemed to take effect immediately upon passage, in which case the declaration shall be published in a newspaper of general circulation promptly after the declaration is declared by the Board of City Commissioners.

The Board of City Commissioners may revise the declared drought severity phase, from time to time, as conditions change.

Once a declaration has been made by the Board of City Commissioners as to the drought severity phase in effect, all persons shall comply with the regulations approved by a resolution of the Board of City Commissioners.

9-0505. WAIVERS. The City Administrator or his/her designee shall be authorized to waive any requirements within the approved drought management regulations upon making a finding that compliance with the requirement will involve an unnecessary hardship, and that waiver of such requirement is not contrary to the objectives of this chapter. All waivers must be in writing to be valid.

9-0506. RESPONSIBILITY FOR ENFORCEMENT. The City Administrator or his/her designee is authorized to enforce this chapter and any regulations approved by the Board of City Commissioners pursuant to this chapter.

9-0507. ENFORCEMENT PROCEDURES. The following enforcement procedures shall apply to violations of this chapter.

1. Non-emergency matters. In the case of violations of this chapter that do not constitute an emergency, the City Administrator or his/her designee may:
  - a. Issue a notice of violation;
  - b. Issue an administrative order; or,

c. Issue an administrative order with fine;

All notices and orders shall be issued to any person who is alleged to be in violation of this chapter.

2. Emergency matters. In the case of violations of this chapter that constitute an emergency situation, the City shall use all remedies, penalties and enforcement powers available under this chapter without prior notice, but the City Administrator or his/her designee must send notice simultaneously with beginning enforcement action to the person who is alleged to be in violation of this chapter and advise other persons who the City Administrator or his/her designee determines may be affected by the action taken that a hearing will be held within seven days from the date of such action. At the hearing, the City Commission will determine whether there were appropriate grounds for the action taken, and whether the action taken should continue.
3. Administrative compliance orders - Procedure. Persons receiving an administrative order or an administrative order with fee shall have ten (10) days, or such longer period as the City Administrator or his/her designee allows, to correct the violation. If the violation is not corrected within the required time frame, the City Administrator or his/her designee shall use all penalties, remedies and enforcement powers available under this chapter.
4. Administrative compliance order with fee/administrative complaint or citation - Procedure. The City Administrator or his/her designee shall include in the administrative complaint the amount of administrative fee to be paid by the person against whom the citation or complaint is issued. The authorized City employee or representative issuing the administrative citation need not issue an administrative order before issuing an administrative complaint.
5. Order to show cause - Hearing. In the event the City Administrator or his/her designee has issued an administrative order or an administrative order with fee, if the violation is not corrected by timely compliance, the City Administrator or his/her designee may order any person who causes or allows an unauthorized discharge to show cause before the City Commission why water service should not be shut off. A notice shall be served on the offending party, specifying the time and place of a hearing to be held by the City Commission regarding the violation, and directing the offending party to show cause before said board why an order should not be made

directing the shut off of water service. The notice of the hearing shall be served personally or by certified mail (return receipt requested) at least ten (10) days before the hearing.

9-0508. REMEDIES AND ENFORCEMENT POWERS. The City shall have the following remedies and enforcement powers.

1. Water shut off. The City Administrator or his/her designee or the Board of City Commissioners may order the shut off of the supply of water to the violator, subject to the procedure as set forth in this chapter.
2. Withhold permits. The City may deny or withhold all permits, certificates or other forms of authorization as to any applicant for any permit that is issued by the City. Instead of withholding or denying an authorization, the City may grant such authorization subject to the condition that the violation be corrected. The City may deny or withhold all permits, certificates or other forms of authorization on any land or structure or improvements owned by a person who owns, developed or otherwise caused an uncorrected violation of a provision of this chapter or of a condition or qualification of a permit, certificate, approval or other authorization previously granted by a decision-making body. This provision applies regardless of whether the property for which the permit or other approval is sought is the property where the violation occurred.
3. Injunctive relief. The City may seek an injunction or other equitable relief in court to stop any violation of this chapter or of a permit, certificate or other form of authorization granted hereunder.
4. City attorney's fees and costs. In addition to the fees and penalties provided herein, the City may recover reasonable attorney's fees, court costs, court reporter's fees, and other expenses of litigation by appropriate action against the person found to have violated this chapter or the orders, rules, regulations and permits issued hereunder.
5. Other remedies. The City shall have such other remedies as are and as may be from time to time provided by North Dakota law and municipal codes for the violation of this chapter or related provisions.

9-0509. ENFORCEMENT - NON-COMPLIANCE AND RE-INSPECTION FEES. Any person who is found to have violated an order of the City Administrator or his/her designee made in accordance with this chapter, or who has failed to comply with any provision of this

chapter and the orders, rules, regulations and permits issued hereunder, is guilty of an offense. Each day on which a violation occurs or continues to exist shall be deemed a separate offense. A schedule for noncompliance and re-inspection fees to defray the administrative and other costs of monitoring and enforcement of this ordinance may be approved by the Board of City Commissioners.

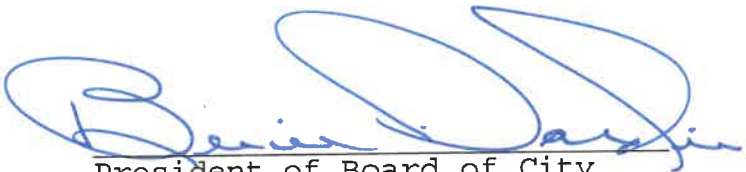
9-0510. OTHER POWERS. In addition to the enforcement powers specified in this chapter, the City may exercise any and all enforcement powers granted to them by North Dakota law.

9-0511. CONTINUATION. Nothing in this chapter shall prohibit the continuation of previous enforcement actions undertaken by the City pursuant to previous and valid ordinances and laws.

9-0512. POWER AND AUTHORITY OF INSPECTORS - RIGHT OF ENTRY. Where it is necessary to make an inspection to enforce the provisions of this ordinance, or where the City Administrator or his/her designee has reasonable cause to believe that there exists in a structure or upon a premises a condition which is contrary to or in violation of this chapter, the City Administrator or his/her designee or appointed designee is authorized to enter the structure or premises at reasonable times to inspect or to perform the duties imposed by this ordinance, provided that if such structure or premises be occupied that credentials be presented to the occupant and entry requested. If such structure or premises is unoccupied, the City Administrator or his/her designee or appointed designee shall first make a reasonable effort to locate the owner or other person having charge or control of the structure or premises and request entry. If entry is refused, the City Administrator or his/her designee shall have recourse to the remedies provided by law to secure entry.

9-0513. SAVINGS CLAUSE - CONFLICT. In the event that any provision, paragraph, word, section or chapter of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, sections and chapters shall not be affected and shall continue in full force and effect.

SECTION 2. Amendment Effective Date. This ordinance shall be in full force and effect from and after the date of its final passage and publication.

  
Dennis Dargin  
President of Board of City  
Commissioners of the City of  
West Fargo, North Dakota

ATTEST:

  
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City Auditor

Date of First Reading: August 16, 2021

Date of Second Reading: September 7, 2021

Date of Publication: September 22, 2021