

# COUNCIL COMMUNICATION

<b>Meeting Date:</b> April 13, 2021	<b>Agenda Item:</b> 10B	<b>Agenda Location:</b> Consent Calendar	<b>Goal(s):</b>	<b>Legal Review:</b> <i>WAT</i>	<input type="checkbox"/> 1 <sup>st</sup> Reading <input checked="" type="checkbox"/> 2 <sup>nd</sup> Reading
<b>Subject:</b> An ordinance amending Chapter 74, Article III, of the Thornton City Code, pertaining to the conservation of water resources, to provide for water use rules, violations, and enforcement; appeal rights; and the authority to correct water leak and water waste violations and assess costs.					
<b>Recommended by:</b> Brett Henry <i>BEH</i>				<b>Approved by:</b> Kevin S. Woods <i>KW</i>	
<b>Presenter(s):</b> Emily Hunt, Deputy Infrastructure Director					<b>Ordinance previously introduced by:</b>  _____ <b>Acunto</b> _____

**SYNOPSIS:**

The purpose of this ordinance is to the amend Article III of Chapter 74 – Conservation of Water Resources to include Water Use Rules. Water Use Rules are an effective tool to promote and enforce best practices for the efficient water use. The amendment defines water leaks and gives the City authority to enforce the timely repair of leaks. Additionally, the proposed Water Use Rules would limit turf irrigation to no more than three days per week. No irrigation will be allowed between 10:00 a.m. and 6:00 p.m. Due to the difference in irrigation best practices for large properties compared to residential yards, the rules allow for large turf areas, such as homeowners’ association property and sports fields, to be irrigated outside of the restricted schedule, as long as the water saving goals of the City are met.

**RECOMMENDATION:**

Staff recommends Alternative No. 1, to approve the ordinance amending Chapter 74, Article III, of the City Code – Conservation of Water Resources to include Water Use Rules and enforcement of timely repair of water leaks.

**BUDGET/STAFF IMPLICATIONS:**

Minimal additional staff time is anticipated for response to issues related to the Water Use Rules. The rules are consistent with ongoing public outreach about efficient irrigation and fixing leaks that Water Resources staff has been promoting since 2007.

**ALTERNATIVES:**

1. Approve the ordinance as recommended.
2. Approve the ordinance with amendments directed by City Council.
3. Do not approve the ordinance.

**BACKGROUND (ANALYSIS/NEXT STEPS/HISTORY):** (includes previous City Council action)

On August 13, 2002, Council approved Article III of Chapter 74 of the City Code pertaining to conservation of water resources.

The City’s water supply is a limited community resource and its efficient and appropriate use is crucial. Water Use Rules have been proven by other municipalities to be an effective tool to manage water demand during the irrigation season. Additionally, it is important for water leaks to be fixed in a timely manner to reduce waste.

INTRODUCED BY: Acunto

AN ORDINANCE AMENDING CHAPTER 74, ARTICLE III, OF THE THORNTON CITY CODE, PERTAINING TO THE CONSERVATION OF WATER RESOURCES, TO PROVIDE FOR WATER USE RULES, VIOLATIONS, AND ENFORCEMENT; APPEAL RIGHTS; AND THE AUTHORITY TO CORRECT WATER LEAK AND WATER WASTE VIOLATIONS AND ASSESS COSTS.

WHEREAS, because of the State's semi-arid climate, water is a scare resource in Colorado; and

WHEREAS, the City's Infrastructure Department is a municipal water utility that supplies this scare resource to customers; and

WHEREAS, the City wishes to establish Water Use Rules that promote the wise, efficient, and appropriate use of water by customers; and

WHEREAS, the City believes violations of Water Use Rules should be enforced through appropriate means, including warnings, notices of violations, penalties and, potentially for water leak and water waste violations, corrective action, while also providing for the right to appeal a notice of violation; and

WHEREAS, the City should be able to assess charges incurred to correct water leak and water waste violations, while providing the right to appeal those charges; and

WHEREAS, the City finds these City Code amendments are necessary to promote the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF THORNTON, COLORADO, AS FOLLOWS:

1. Section 74-57 of the Thornton City Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken below, to read as follows:

**Sec. 74-57. - Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Deputy city manager* means the deputy city manager ~~for~~ the infrastructure department or the deputy city manager's duly authorized representative.

*Infrastructure department* means the utility managed by the deputy city manager—~~infrastructure department~~ through which municipal water and sewer systems are operated under the direction of the ~~city manager~~ utilities director.

*Permit* means permission by the deputy city manager—~~infrastructure department~~ to use water service for the purpose specified, including permits for exemption to any rule and regulation that may be approved by the utilities director in response to a declared drought stage.

~~*Permittee* means any person authorized to use water service under a permit.~~

*Turf* means a defined area of cultivated grass.

*Utilities director* ~~or director~~ means the city manager.

*Water leak* means water that intermittently or constantly escapes from any damaged, broken, or malfunctioning plumbing, pipe, water meter connections, or irrigation system.

*Water waste* means the intentional or unintentional excessive use of water. Excessive use shall mean use that is not considered reasonable, prudent or a wise use of water for an authorized purpose, and includes, by way of illustration, but is not limited to:

(a) Allowing water to be applied in any manner, rate or quantity such that the runoff from the landscaped area being watered is allowed to pool or flow across the ground or into any drainage way, such as gutters, streets, alleys or storm drains. Incidental runoff from an irrigation system operated in a reasonable and prudent manner is excepted.

~~(b) Failing to repair, for a period of more than ten days after notice, leaking or damaged pipe or irrigation components.~~

~~*Watercourse* means a natural or artificial channel for the passage of water, either continuously or intermittently.~~

2. Section 74-58 of the Thornton City Code is hereby amended by the addition of the words double-underlined below, to read as follows:

**Sec. 74-58. - Wise water use.**

(a) Generally. The City of Thornton encourages and promotes prudent use of the city's water resources at all times. The city will make available to the citizens and customers of the city's water supply system information on water conserving practices as identified in the city's water conservation plan, as amended from time to time. In the case of a declared drought stage, the city will provide information on the severity of the drought and the actions or measures the city is taking in response to the drought. The city will provide, by a means determined to be appropriate by the utilities director, information

on any restrictions, curtailments, or prohibitions included in rules and regulations approved by the utilities director.

(b) Water use rules. The following water use rules shall be followed:

(1) Outdoor irrigation rules. Unless a drought stage has been declared by the city council pursuant to Section 74-59, in which case the rules and regulations promulgated by the utilities director thereunder shall be in effect, the following outdoor irrigation rules shall apply April 1 through October 31 of each year:

a. Turf. Turf may be watered not more than three days per week, selected at the customer's discretion. Turf shall not be watered between 10:00 a.m. and 6:00 p.m, except for very short periods of time to adjust or repair an irrigation system.

b. Turf seed or sod. Newly planted turf seed or sod may be watered as needed and appropriate for up to 21 days for sod and 28 days for seed. Thereafter, the turf irrigation schedule provided in subparagraph a. of this paragraph shall be followed.

c. Large turf areas. Notwithstanding the turf irrigation schedule provided in subparagraph a. of this paragraph, large areas of turf located on school property, homeowners' association property, city maintained public areas, public parks, recreational fields, golf courses, and other similar properties with large areas of turf may be irrigated as needed and appropriate, provided that best practices that meet the city's water saving goals are used.

d. Trees, shrubs, bushes, flowers, and vegetable gardens. Trees, shrubs, bushes, perennial beds, annual flowers, and vegetable gardens may be watered as needed and appropriate using deep root, drip, or hand irrigation.

(2) Water leaks. Plumbing, pipes, water meter connections, and irrigation systems shall be maintained and operated free of water leaks. Upon the issuance of a notice of violation pursuant to Section 74-60(b), a water leak shall be shut off or repaired by the customer as soon as is practicable but in no event more than 10 days from the date of the notice. Any water leak that continues beyond this 10-day period is hereby declared to be a public nuisance.

(3) Water waste. No customer or owner shall commit water waste. Upon the issuance of a notice of violation pursuant to Section 74-60(b), water waste shall be remedied as soon as is practicable but in no event more than 10 days from the date of the notice. Any water waste that continues beyond this 10-day period is hereby declared to be a public nuisance.

3. Section 74-60 of the Thornton City Code is hereby amended by the addition of the words double-underlined and the deletion of the words stricken below, to read as follows:

**Sec. 74-60. - Violations; penalties; corrections of water waste and water leak violations; and assessments.**

(a) *Violations.* Any person or water customer or user of the city that violates any curtailment, restriction, ~~or~~ prohibition, ~~on or duty relating to~~ the use of water ~~authorized prescribed~~ pursuant to Section ~~74-58(b) or~~ 74-59, ~~or that engages in or permits water waste,~~ shall be in violation of this Article III.

(b) *Notice of violation.* Written notice of a violation will be personally served, posted on a structure on the property, or mailed by certified or regular mail to the customer and the owner of the property, if different from the customer, ~~no later than ten days after observing the violation upon the failure to comply with a written warning issued in accordance with paragraph (d)(1) of this section.~~ The notice shall advise the customer or owner of the right to a hearing under ~~subparagraph subsection~~ (c) of this section and that if payment of the penalty imposed under ~~subparagraph paragraph~~ (d) (2) of this section, if any, is not received by the city or a hearing requested within ~~ten~~ 10 days of the date of the notice, the penalty shall be placed on the next regular water utility bill. A notice of violation regarding a water leak or water waste shall further advise the customer or owner that upon the failure to correct the violation within 10 days after the date of the notice, the city may, without further notice unless otherwise required by law, correct or cause to be corrected the violation and assess any charges thereby incurred in accordance with subsection (g) of this section.

(c) *Request for hearing.* The customer or owner of the property notified of a violation, or any agent of the owner authorized in writing by the owner, may file a written request for a hearing objecting to the factual basis for ~~imposing the penalty the alleged violation~~ with the infrastructure department within ~~ten~~ 10 days from the date of the notice. The request must identify the notice being appealed by attaching a copy or otherwise identifying it, and shall contain the name, time, and telephone number of the person to whom notice of the date, time, and place of the hearing should be given. Filing occurs when the infrastructure department receives the request. The hearing shall be an administrative hearing conducted before a hearing officer appointed by the city manager. The city bears the burden of establishing the factual basis for ~~imposing the penalty the alleged violation~~ by a preponderance of the evidence, and if that basis is established the hearing officer shall affirm the violation and order the penalty, ~~including if one was imposed, and the~~ costs of the hearing, ~~be~~ paid within ~~ten~~ 10 days, and the collection procedures of this chapter shall apply if not paid within that time. Failure to request a hearing within the time provided constitutes a waiver of the right to such hearing. Failure to attend a scheduled hearing constitutes a waiver of any right to present evidence and the hearing officer shall make a determination of all issues then existing as supporting the factual basis for ~~imposing the penalty the alleged violation~~

and issue an order within 15 days from the date of the hearing. The order shall be mailed by first class delivery to the customer and the owner.

(d) *Penalties.* Any person or water customer or permit user or user of the city that violates this article shall be subject to the following penalties:

(1) Before a first notice of violation may be issued pursuant to subsection (b) of this section, ~~T~~the water customer and the owner ~~may~~ shall be issued a written warnings warning that provides a reasonable time, as solely determined by the deputy city manager, to correct the violation described in the warning and advises that a notice of violation will be issued in accordance with subsection (b) of this section in the event of non-compliance.

(2) Unless a notice of violation does not impose any penalties, ~~T~~the following penalties shall be due, payable and collectible from any person, customer, or owner of the property pursuant to the provisions of this chapter within ~~ten~~ 10 days of the date of a notice of violation issued pursuant to subsection (b) of this section, based upon the water use rules provided in Section 74-58(b) or declared drought stage:

Single Family, Duplex, Manufactured Home, and Multifamily Individually Meter Water Accounts

<u>Violation</u>	<u>Water Use Rules and Drought Stage 1</u>	<u>Drought Stage 2</u>	<u>Drought Stage 3</u>
1 <sup>st</sup> Violation	\$100.00	\$200.00	\$400.00
2 <sup>nd</sup> Violation	250.00	500.00	1,000.00
3 <sup>rd</sup> <u>or Subsequent</u> Violation	500.00	1,000.00	2,000.00

Commercial, Multifamily Master Meter, and Irrigation Water Accounts

<u>Violation</u>	<u>Water Use Rules and Drought Stage 1</u>	<u>Drought Stage 2</u>	<u>Drought Stage 3</u>
<u>1<sup>st</sup> Violation</u>	<u>\$250.00</u>	<u>\$500.00</u>	<u>\$1000.00</u>
<u>2<sup>nd</sup> Violation</u>	<u>500.00</u>	<u>1000.00</u>	<u>2000.00</u>
<u>3<sup>rd</sup> or Subsequent Violation</u>	<u>1000.00</u>	<u>2,000.00</u>	<u>3,000.00</u>

(3) Unless a notice of violation does not impose any penalties, ~~T~~the following penalties shall be due, payable and collectible for any water construction permit customer pursuant to the provisions of this chapter within ~~ten~~ 10 days of the date of notice, based upon the water use rules provided in Section 74-58(b) or declared drought stage:

Violation	<u>Water Use Rules and</u> Drought Stage 1	Drought Stage 2	Drought Stage 3
1 <sup>st</sup> Violation	\$1,000.00	\$2,000.00	\$4,000.00
2 <sup>nd</sup> Violation	2,500.00	3,500.00	7,000.00
3 <sup>rd</sup> <u>or Subsequent</u> Violation	5,000.00	7,000.00	14,000.00

(e) Determining number of violations. For the purposes of this section, determination of the number of violations will be attributed to a customer or owner for a property on which violations have occurred. ~~In the event the city has not declared a drought stage, the penalty for a water waste violation shall be as provided for a drought stage 1.~~

(f) *Costs.* In addition to any other penalties or remedies imposed for a violation of this article, the city may recover any and all costs associated with enforcement including, but not limited to, costs of collection, expert witness fees, reasonable attorney fees and reasonable hearing officer fees.

(g) Correction of a water leak or water waste violation; assessment. In addition to or in lieu of imposing the penalties prescribed in paragraph (d)(2) of this section, the deputy city manager may, upon the failure to correct a water leak or water waste violation within 10 days from the date of the notice of violation, take lawful and appropriate action to correct or cause to be corrected the violation without further notice unless otherwise required by law. Any such action shall be charged against the affected property and shall be a lien upon such property. Assessment of such charges shall be in accordance with Section 38-453(b).

4. Section 74-65 of the Thornton City Code is hereby amended by the addition of the words double-underlined below, to read as follows:

**Sec. 74-65. - Uniform application.**

In order to enable the city to provide an adequate supply of water to its inhabitants and those users under the city system, any restrictions, curtailments or prohibitions contemplated pursuant to Section 74-59 will be uniformly applied to all water users from the city system. During any declared drought stage 1, 2, or 3, the utilities director is authorized to supersede any contractual obligation of the city that requires installation of landscaping in public or private areas, including those requirements identified in developer's agreements and development permits, through any reasonable and prudent measure that would extend, replace, modify or cancel such requirements.

5. If any portion of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the constitutionality or validity of the remaining portions of this ordinance. City Council hereby declares that it

would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared unconstitutional or invalid.

6. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portions hereof are hereby repealed to the extent of such inconsistency or conflict.
7. The repeal or amendment of any provision of the Code by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.
8. This ordinance shall become effective on the first day of the month that is at least 30 days after date of its adoption.

INTRODUCED, READ, PASSED on first reading, ordered posted in full, and title ordered published by the City Council of the City of Thornton, Colorado, on March 24, 2021.

PASSED AND ADOPTED on second and final reading on \_\_\_\_\_, 2021.

CITY OF THORNTON, COLORADO

\_\_\_\_\_  
Jan Kulmann, Mayor

ATTEST:

\_\_\_\_\_  
Kristen N. Rosenbaum, City Clerk

THIS ORDINANCE IS ON FILE IN THE CITY CLERK'S OFFICE FOR PUBLIC INSPECTION.

APPROVED AS TO LEGAL FORM:

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William A. Tuthill III, Interim City Attorney

PUBLICATION:

Posted at City Hall, Margaret W. Carpenter Recreation Center, and Thornton Active Adult Center after first and second readings.

Published on the City's official website after first reading on March 24, 2021, and after second and final reading on \_\_\_\_\_, 2021.