

ORDINANCE NO. 2009-156

AN ORDINANCE OF THE CITY OF MAGNOLIA, TEXAS,
ADOPTING A DROUGHT CONTINGENCY PLAN; ESTABLISHING
CRITERIA FOR THE INITIATION AND TERMINATION OF DROUGHT
RESPONSE STAGES; ESTABLISHING RESTRICTIONS ON CERTAIN
WATER USES; ESTABLISHING PENALTIES FOR THE VIOLATION OF
AND PROVISIONS FOR ENFORCEMENT OF THESE RESTRICTIONS;
ESTABLISHING PROCEDURES FOR GRANTING VARIANCES; AND
PROVIDING SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, the City of Magnolia, Texas recognizes that the amount of water available to the City and its water utility customers is limited and subject to depletion during periods of extended drought;

WHEREAS, the City recognizes that natural limitations due to drought conditions and other acts of God cannot guarantee an uninterrupted water supply for all purposes;

WHEREAS, Section 11.1272 of the Texas Water Code and applicable rules of the Texas Commission on Environmental Quality require all public water supply systems in Texas to prepare a drought contingency plan; and

WHEREAS, as authorized under law, and in the best interests of the citizens of Magnolia, Texas, the City Council of the City of Magnolia deems it expedient and necessary to establish certain rules and policies for the orderly and efficient management of limited water supplies during drought and other water supply emergencies;

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF MAGNOLIA, TEXAS:

SECTION 1.

That the City of Magnolia, Texas Drought Contingency Plan attached hereto as Exhibit "A" and made part hereof for all purposes be, and the same is hereby, adopted as the official policy of the City.

SECTION 2.

That all ordinances that are in conflict with the provisions of this ordinance be, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3.

Should any paragraph, sentence, subdivision, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

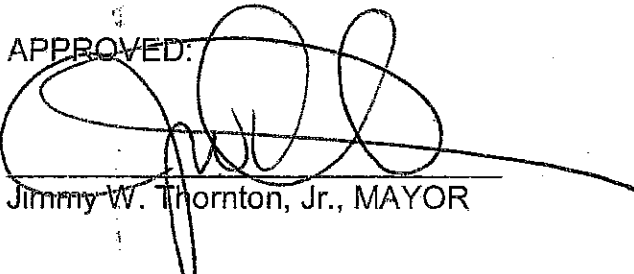
SECTION 4.

This ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

DULY PASSED BY THE CITY OF MAGNOLIA, TEXAS, on the

8th day of September, 2009.

APPROVED:



Jimmy W. Thornton, Jr., MAYOR

ATTESTED TO:



Debra Brent
INTERIM CITY SECRETARY

APPROVED AS TO FORM:



CITY ATTORNEY



Drought Contingency Plan

Adopted by City Council 09/08/09

DROUGHT CONTGENCY PLAN FOR THE CITY OF MAGNOLIA

Section I: Introduction

The City of Magnolia recognizes its fundamental responsibility to provide an adequate supply of safe drinking water for residents and businesses within its City limits. Because drinking water is precious natural resource, careful planning is needed to ensure that water suppliers are protected from contamination, are distributed effectively and efficiently to end users, and that procedures are in place to monitor consumption and to avoid waste.

Water conservation and consumption planning are integral elements for ensuring that the water supplies are not exhausted. To further this goal, the City Council has adopted this plan, through the passage of Ordinance # 2009-156. This ordinance establishes the City's policies for promoting water conservation and emergency planning, and provides the vision, resource and overall methodologies for establishing an effective program.

This plan addresses the following elements:

- The need for and the goals of the City of Magnolia's water conservation program
- Methods to reduce water consumption
- Methods to reduce loss or waste of water
- Methods to improve efficient water use
- Methods to increase recycling and reuse of water

Section II. General

2.1 Planning area description

The City of Magnolia is located in the southern Montgomery County. It was incorporated in 1968. The 2000 census population was 1,111 inhabitants.

The City's water system in 2009 consists of three water wells for water supply, two ground storage tanks and two elevated tanks for water storage, six high service (booster) pumps, and distribution lines from 16" to 2" in size. The wells, storage facilities, and pumping facilities are located at two separate water plants. All of the water wells are completed in the Evangeline aquifer. Sands screened by the wells are at a depth of approximately 500' to 770', varying in each well. Water treatment consists of chlorination for disinfection and injection of polyphosphate to sequester iron naturally occurring in the water. Distribution system pressure is approximately 50 p.s.i. to 70 p.s.i.

The City in 2009 serves approximately 881 meters. Based on actual meter sizes served, the capacity of the actual meters served is equivalent to the capacity of 1,506 5/8" meters; therefore

capacity of the actual meters served is equivalent to the capacity of 1,506 5/8" meters; therefore the water system is considered to serve 1,506 equivalent connections in year 2009.

Approximately 738 single family residences are served. Major commercial water users include schools, clinics, a number of restaurants and motels, and retail establishments.

Annual water use in 2007 and 2008 was 140.6 MGD (million gallons per day) and 147.3 MGD, respectively. Average daily water use during this period was 0.386 MGD, and the peak day use was 0.8 MGD.

The following production/capacity applies to year 2009:

The production (pumping) rate from all three wells combined is approximately 1,730 gpm (gallon per minute). One well at Plant No. 1 produces approximately 350 gpm, a second well at Plant No. 1 produces approximately 380 gpm, and Well No. 6 at Plant No. 2 produces approximately 1,000 GPM. The Texas Commission On Environmental Quality (TCEQ) minimum water supply capacity requirement is 0.6 gpm per connection; therefore for the 1,506 equivalent connection, a minimum water supply (well production) of 904 gpm is required. The current City's cumulative pump rate exceeds this requirement.

The system has a total of 400,000 gallons ground storage and 400,000 gallons elevated storage. The TCEQ minimum storage capacity requirement is 200 gallons per connection total storage and 100 gallons per connection elevated storage; therefore for the 1,506 equivalent connections, a minimum of 301,200 gallons total storage is required, and a minimum of 150,600 gallons elevated storage is required. Both requirements are met by the City's existing facilities.

The system has a total rated booster pump capacity of 5,000 gpm with the capacity of the largest pump being 1,000 gpm. The TCEQ minimum booster pump capacity requirements is two or more pumps that have a total capacity of 2.0 gpm per connection or that have a total capacity of at least 1,000 gpm and the ability to meet peak hourly demands with the largest pump out of service (firm capacity), whichever is less, at each pump station or pressure plane. The TCEQ defines peak hourly demand in the absence of verified historical data as 1.25 times the maximum daily demand (prorated to an hourly rate) if a public water supply meets the commission's minimum requirements for elevated storage capacity. For the lower pressure plane (area normally served by plant no. 1, the firm booster pump capacity is 1,000 gpm and the TCEQ minimum required capacity is 972 gpm; for the upper pressure plane area normally served by plant no. 2, the firm booster pump capacity is 2,000 gpm and the TCEQ minimum required capacity is 816 gpm.

Section III: 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 Magnolia 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 nonessential 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 XI of this Plan.

Section IV: Public Involvement

Opportunity for the public to provide input into the preparation of the Plan was provided by the City of Magnolia by means of Public Notice and Public Hearings.

Section V: Public Education

A program of public education and information to promote water conservation by the public will be instituted. The program will include the following:

Distribution to customers of educational materials including but not limited to water saving materials furnished by the Texas Water Development Board and the American Water Works Association will be issued to all customers and may be made on a semi-annual basis and will be timed to correspond with the peak summer and winter demand periods.

Section VI: Coordination with Regional Water Planning Groups

The City of Magnolia is a member of the Region H (Houston-Galveston) Planning Group. A copy of the Drought Contingency Plan will be provided to this agency.

Section VII: 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 the 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.

Section VIII: Application

The provisions of this Plan shall apply to all persons, customers, and property utilizing water provided by the City of Magnolia. The terms "person" and "customer" as used in the Plan include individuals, corporations, partnerships, associations, and all other legal entities.

Section IX: Definitions

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

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

Commercial and institutional water use: 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: 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: any person, company, or organization using water supplied by the City of Magnolia.

Domestic water use: 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: street addresses, box numbers, or rural postal route numbers ending in 0,2,4,6, or 8 and locations without addresses.

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

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

Non-essential water use: water uses that are neither essential nor required for the protection of public, health, safety, and welfare, including but not limited to:

- (a) irrigation of landscape areas, including parks, and athletic fields, except otherwise provided under this Plan;
- (b) use of water to wash any motor vehicle, motorbike, boat, trailer or other vehicle;
- (c) use of water to wash down any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
- (d) use of water to wash down buildings or structures for purposes other than immediate fire protection;
- (e) flushing gutters or permitting water to run or accumulate in any gutter or street;
- (f) use of water to fill, refill, or add to any indoor or outdoor swimming pools or Jacuzzi-type pool;
- (g) use of water in a fountain or pond for aesthetic or scenic purposes except where necessary to support aquatic life;
- (h) failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s);
- (i) use of water from hydrants for construction purposes only other purposes other than fire fighting.

Odd numbered address: street addresses, box numbers, or rural postal route numbers ending in 1, 3, 5, 7, or 9.

Pumping Capacity: the rate at which treated water can be supplied to the customers without depleting the storage facilities, typically evaluated on the basis of gallons per day.

Section X: Criteria for Initiation and Termination of Drought Response Stages

The Mayor or his/her designee shall monitor water supply and demand conditions on a regular basis and shall determine when conditions warrant initiation or termination of each stage of the Plan, that is, when the specified "triggers" are reached.

The triggering criteria described below are based on pumping capacity as defined herein and on water use (demand)

Stage 1 Triggers --MODERATE Water Shortage Conditions

Requirements for initiation

Customers shall be required to comply with the requirements and restrictions on certain nonessential water uses as prescribed in Section XI of this Plan when the daily water usage exceeds 60% of the then combined current pumping capacity for five (5) consecutive days.

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 fourteen (14) consecutive days.

Stage 2 Triggers --SEVERE Water Shortage Conditions

Requirements for initiation

Customers shall be required to comply with the requirements and restrictions on certain nonessential water uses as prescribed in Section XI of this Plan when the daily water usage exceeds 70% of the then combined current pumping capacity for five (5) consecutive days.

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 fourteen (14) consecutive days. Upon termination of Stage 2, Stage 1 becomes operative.

Stage 3 Triggers --CRITICAL Water Shortage Conditions

Requirements for initiation

Customers shall be required to comply with the requirements and restrictions on certain nonessential water uses as prescribed in Section XI of this Plan when the daily water usage exceeds 80% of the then current combined pumping capacities City of Magnolia's wells for five (5) consecutive days.

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 fourteen (14) consecutive days. Upon termination of Stage 3, Stage 2 becomes operative.

Stage 4 Triggers --EMERGENCY Water Shortage Conditions

Requirements for initiation

Customers shall be required to comply with the requirements and restrictions for stage 4 of this Plan as prescribed in Section XI of this Plan when the daily water usage exceeds 90% of the pumping capacity for five (5) consecutive days, or the Mayor or designee, determines that a water supply emergency exists based on:

- 1 Major water line breaks, or pump or system failures occur, which cause unprecedented loss of capability to provide water service; or
- 2 Natural or man-made contamination of the water supply source(s).

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 fourteen (14) consecutive days.

Upon termination of Stage 4, Stage 3 becomes operative when Stage 5 is triggered by pumping capacity.

Stage 5 Triggers --WATER ALLOCATION

Requirements for initiation Customers shall be required to comply with the water allocation plan prescribed in Section XI of this Plan and comply with the requirements and restrictions for Stage 5 of this Plan as prescribed in Section XI of this Plan when the daily water usage exceeds 95% of pumping capacity for five consecutive days or water system failures have created a condition that is an imminent threat to health, safety and welfare of the public.

Requirements for termination -Water allocation may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of fourteen (14) consecutive days. Upon termination of Stage 5, Stage 4 becomes operative when Stage 5 triggered by pumping capacity.

Section XI: Drought Response Stages

The Mayor, or designee, shall monitor water supply and/or demand conditions on a daily basis and, in accordance with the triggering criteria set forth in Section VIII of this Plan, shall determine that a mild, moderate, severe, critical, emergency or water shortage condition exists and shall implement the following notification procedures:

Notification

Notification of the Public: The Mayor or his / her designee shall notify the public by means of any or all of the below:

- publication in a newspaper of general circulation and/or,
- direct mail to each customer and/or,
- public service announcements and/or,
- signs posted in public places.

Additional Notification: The Mayor or his/ her designee shall notify directly, or cause to be notified directly, the following individuals and entities:

- Members of the City Council and the Magnolia Volunteer Fire Chief
- City Emergency Management Coordinator(s)
- TCEQ (required when mandatory restrictions are imposed)
- Critical water users, i.e. school

Stage 1 Response --MODERATE Water Shortage Conditions

Goal: Achieve a fifteen percent (15%) reduction in daily water demand.

Supply Management Measures:

The City of Magnolia will reduce water demand by discontinuing the flushing of water mains and reducing irrigation of public landscaped areas.

Water Use Restrictions: The following water use restrictions shall apply to all persons as a voluntary program:

(a) Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems shall be limited to Monday, Wednesday and Friday for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Tuesday, Thursday and Saturday for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9). 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 (5) gallons or less, or drip irrigation system.

(b) Use of water to wash any motor vehicle, motorbike, boat, trailer or other vehicle is prohibited except on designated watering days. 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 release. 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.

(c) Use of water to fill, refill, or add to any indoor or outdoor swimming pools, wading pools Jacuzzi-type pools is prohibited except on designated watering days.

(f) 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 Magnolia.

(g) Use of water for the irrigation of athletic fields is prohibited except on designated watering days.

(h) All restaurants are prohibited from serving water to patrons except upon request of the patron.

(i) The following uses of water are defined as non-essential and are prohibited:

1. Wash down of any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard surfaced areas
2. Use of water to wash down buildings or structures for purposes other than immediate fire protection;
3. Use of water for dust control;
4. Flushing gutters or permitting water to run or accumulate in any gutter or street; and
5. Failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s).

Stage 2 Response --SEVERE Water Shortage Conditions

Goal: Achieve a twenty percent (20%) reduction in daily water demand.

Supply Management Measures:

The City of Magnolia will reduce water demand by discontinuing the flushing of water mains and reducing irrigation of public landscaped areas.

Water Use Restrictions: Under threat of penalty for violation, the following water use restrictions shall apply; all requirements of Stage 1 shall remain in effect during Stage 2 except:

(a) Water use restrictions are no longer on a voluntary basis.

(b) Irrigation of athletic fields and landscaped areas shall be limited to Monday, Wednesdays and Fridays on even number (2, 4, 6, or 8,), and Tuesday, Thursdays and Saturdays for customers with a street address ending in an odd number (1, 3, 5, 7, 9), 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 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.

(c) The use of water for construction purposes from designated fire hydrants under special permit is to be discontinued.

(d) The sale of bulk water shall be prohibited.

Stage 3 Response --CRITICAL Water Shortage Conditions

Goal: Achieve a twenty five percent (25%) reduction in daily water demand.

Supply Management Measures:

The City of Magnolia will reduce water demand by discontinuing the flushing of water mains and reducing irrigation of public landscaped areas under the threat of penalty.

Water Use Restrictions: All requirements of Stage 1 and 2 shall remain in effect during Stage 3 except:

(a) 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.

(b) Use of water to wash any motor vehicle, motorbike, boat, trailer 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 12 hours continuous hours per day.

(c) The filling, refilling, or adding of water to swimming pools, wading pools, and Jacuzzi-type pools is prohibited.

(d) 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.

(e) No application 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 approved, and time limits for approval of such applications are hereby suspended for such time as this drought response stage or a higher-numbered stage shall be in effect.

Stage 4 Response --EMERGENCY Water Shortage Conditions

Goal: Achieve a thirty percent (30%) reduction in daily water demand.

Supply Management Measures:

The City of Magnolia will reduce water demand by discontinuing the flushing of water mains and reducing irrigation of public landscaped areas under the threat of penalty.

Water Use Restrictions: All requirements of Stage 1, Stage 2, and Stage 3 shall remain in effect during Stage 4 except:

(a) Irrigation of landscaped areas is absolutely prohibited.

(b) Use of water to wash any motor vehicle, motorbike, boat, trailer, or other vehicle is absolutely prohibited. This includes commercial car wash facilities.

Stage 5 Response --WATER ALLOCATION

In the event that water shortage conditions threaten public health, safety, and welfare, the Mayor, or designee is hereby authorized to allocate water according to the following water allocation plan:

Single-Family Residential Customers

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

Persons per Household	Gallons per Month
1 or 2	7,000
3 or 4	8,000
5 or 6	9,000
7 or 8	10,000
9 or 10	11,000
11 or more	13,000

"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 (2) persons unless the customer notifies the City of Magnolia of a greater number of persons per household on a form prescribed by the Mayor, or designee. The Mayor or designee 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 Magnolia offices to complete and sign the form claiming more than two (2) 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, or designee. 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 Magnolia 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 Magnolia in writing within two (2) days. In prescribing the method for claiming more than two (2) persons per household, the Mayor, or designee 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 Magnolia of a reduction in the number of person in a household shall be fined not more than \$2,000.00.

Residential water customers shall pay the following surcharges:

Exhibit is for 1 or 2 people household

Inside City Limits:

Double the per 1,000-gallon rate for uses over 7,000 gallons.

Irrigation Meter

Double the per 1,000-gallon rate for uses over 7,000 gallons.

Outside City Limits:

Double the per 1,000-gallon rate for uses over 7,000 gallons.

Irrigation Meter

Double the per 1,000-gallon rate for uses over 7,000 gallons.

Surcharges shall be cumulative.

Master-Metered Multi-Family Residential and Commercial 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 7,000 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 Magnolia of a greater number on a form prescribed by the Mayor, or designee. The Mayor, or designee, 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 Magnolia offices to complete and sign the form claiming more than two (2) 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, or designee. If the number of dwelling units served by a master meter is reduced, the customer shall notify the City of Magnolia in writing within two (2) days. In prescribing the method for claiming more than two (2) dwelling units, the Mayor, or designee 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 Magnolia of a reduction in the number of person in a household shall be fined not more than \$2,000.00. Customers billed from a master meter under this provision shall pay the following monthly surcharges:

Inside City Limits:

Double the per 1,000-gallon rate for uses over 7,000 gallons.

Commercial

Double the per 1,000-gallon rate for uses over 7,000 gallons.

Outside City Limits:

Double the per 1,000-gallon rate for uses over 7,000 gallons.

Commercial

Double the per 1,000-gallon rate for uses over 7,000 gallons.

Surcharges shall be cumulative.

Commercial Customers

The Mayor, or designee, for each nonresidential commercial customer other than an industrial customer who uses water for processing purposes, shall establish a monthly water allocation. The non-residential customer's allocation shall be approximately seventy-five percent (75%) 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. The Mayor, or designee 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 Magnolia 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 Mayor. Nonresidential commercial customers shall pay the following surcharges:

Inside City Limits

Double the per 1,000-gallon rate for uses over allocation gallons. 5/8"-3/4" and 1" meters.

Double the per 1,000-gallon rate for uses over allocation gallons. 1 1/2"-2" and 3" meters

Outside City Limits

Double the per 1,000-gallon rate for uses over allocation gallons. 5/8"-3/4" and 1" meters.

Double the per 1,000-gallon rate for uses over allocation gallons. 1 1/2"-2" and 3" meters

Section XII: Enforcement

(a) No person shall knowingly or intentionally allow the use of water from the City of Magnolia 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 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 more than two thousand dollars (\$2,000.00). 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, or designee, 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 standard re-connection charge in effect at this time and any other costs incurred by the City of Magnolia in discontinuing service. In addition, suitable assurance must be given to the Mayor, or designee, 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 Magnolia 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. Parents shall be presumed to be responsible for the 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 Magnolia, police officer, department head, or other employee designated by the Mayor may issue a citation to a person he/she reasonably believes to be in violation of this Ordinance. 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 sate shall not be less than 3 days nor more than 5 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.

Section XIII: Variances

The Mayor, or 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:

- (a) 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.
- (b) 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 Ordinance shall file a petition for variance with the City of Magnolia within 5 days after the Plan or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the Mayor, or designee, and shall include the following:

- (a) Name and address of the petitioner(s).
- (b) Purpose of water use.
- (c) Specific Provision(s) of the Plan from which the petitioner is requesting relief.
- (d) 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 Ordinance.
- (e) Description of the relief requested.
- (f) Period of time for which the variance is sought
- (g) Alternative water use restrictions or other measures the petitioner is taking or propose to take to meet the intent of this Plan and the compliance date.
- (h) Other pertinent information.

Variances granted by the City of Magnolia shall be subject to the following conditions, unless waived or modified by the Mayor, or designee:

- (a) Variances granted shall include a timetable for compliance.
- (b) Variances granted shall expire when the Plan is no longer in effect, unless the petitioner has failed to meet specific requirements.

No variance shall be retroactive or otherwise justify any violation of this Plan occurring prior to the issuance of the variance.

END OF PLAN