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CITY OF SAN ANTONIO AGENDA ITEM NO. _____
PUBLIC WORKS DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM

TO: Mayor and City Council

FROM: Thomas G. Wendorf, P.E., Director of Public Works

SUBJECT: An Ordinance Amending Chapter 34, Article IV, Division I, of the San Antonio City Code to Make Permanent a Year Round Conservation Ordinance

DATE: January 20, 2005

SUMMARY AND RECOMMENDATIONS

The attached ordinance is an amendment to Chapter 34, Article IV, Division I, of the San Antonio City Code to make permanent a year round conservation ordinance. The complete proposed ordinance amendments are appended hereto as Attachment IV.

The San Antonio Water System Board of Trustees approved Resolution No. 04-421 on November 2, 2004, requesting that City Council amend Chapter 34, Article IV, Division I, of the San Antonio City Code to make permanent a year round conservation ordinance. Such amendments are set out in Attachment IV. Over the past two months, San Antonio Water System staff has worked with City of San Antonio staff and stakeholder groups to finalize the ordinance language to be presented to City Council for approval. Staff recommends the approval of this ordinance.

BACKGROUND INFORMATION

In November 2000, Mayor Howard Peak requested SAWS develop a year round water conservation ordinance that would result in a reduction of water use without significantly impacting the quality of life for San Antonio citizens.

In 2001, the SAWS Community Conservation Committee (CCC) identified the conservation ordinance as a top priority and created a workgroup to assist in the development of the language.

The ordinance language was drafted to increase water conservation standards with significant input from the CCC, general public, citizens groups and stakeholders over the past three years. A public meeting, to which all stakeholders were invited, was held on January 11, 2005 at the Witte Museum.

The recommended provisions address a variety of water uses. The provisions center around specific proven methods, equipment, and behaviors that, when undertaken, result in significant water savings.

Key recommendations and their proposed effective dates are:

- New construction will include low water use landscapes defined by 4 inches of soil under turf grass areas. Effective January 1, 2006.
- Turf grass on new construction shall have summer dormancy capabilities that allow for 60 day survival without water. Effective January 1, 2007.
- Rain Sensors will be required on all commercial and residential irrigation systems. Effective January 1, 2006.
- Charitable car washes must be held at certified car wash facilities. Effective March 1, 2005.
- All athletic fields, parks, golf courses, and landscapes of 5 or more acres will be required to submit an irrigation system audit to SAWS by May 1st of every year. Effective January 1, 2006.
- Cooling towers must operate at a minimum of 4 cycles and metering devices must be installed in newly constructed cooling towers. Effective January 1, 2006.
- Effective January 1, 2006, air conditioning systems installed in commercial buildings shall have a single and independent condensate wastewater line capable of condensate wastewater collection for process water and cooling tower make-up and/or landscape irrigation water. Condensate wastewater shall not be allowed to drain into a storm sewer, roof drain, overflow piping system, public way, or impervious surface.

It is estimated that the ordinance provisions could result in a savings of 4000 acre-feet annually or a per capita reduction of 3 gallons per person per day, including water savings of 515 acre feet for irrigation system audits, 250 acre feet for cooling tower provision, 165 acre feet annually for each 400 ton air conditioning unit collecting condensate, and 211 acre feet a year for residential landscape provisions.

A variance section was included in the ordinance to allow alternatives when a person's circumstances, in complying, would cause unreasonable practical difficulties and unnecessary hardship.

The SAWS Community Conservation Committee endorsed the provisions presented by Conservation Department staff to the CCC on October 20, 2004.

A comparison table, of ordinances from other Texas and non-Texas cities, is set forth on Attachment II.

FISCAL IMPACT

The passage of this ordinance may have a financial impact on the City of San Antonio. SAWS and COSA staff are working together to minimize any financial impact to the COSA.

This revision to the City Code of Ordinances may have financial implications to SAWS through changes in revenues resulting from requirements and enforcement.

The proposed City Ordinance is intended to balance curtailment of water usage with protection of economic, health and safety needs of the San Antonio community. It is estimated that the value of the water saved, associated with the full implementation of this ordinance in 2006, is estimated to be \$2,128,000.00. In 2016, the value of the water saved in a single year is estimated to be \$4,460,000.00.

COORDINATION


SAWS along with the Public Works Department, Development Services Department, Parks and Recreation Department, and the City Attorney's Office have coordinated this item.

SUPPLEMENTARY COMMENTS

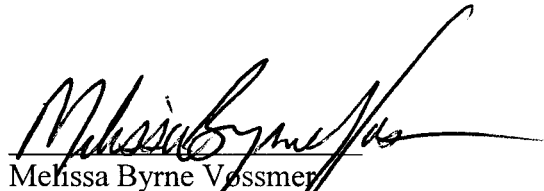
A Discretionary Contracts Disclosure Form is not required.

ATTACHMENTS

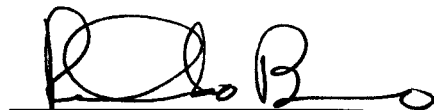
1. Implementation Outline
2. City Comparison
3. SAWS Board Resolution No. 04-421
4. Copy of completed Ordinance Amendment



Thomas G. Wendorf, P.E.
Director of Public Works



Melissa Byrne Vossmer
Assistant City Manager



J. Rolando Bono
Interim City Manager

CONSERVATION ORDINANCE IMPLEMENTATION OUTLINE

Provision	Description	Effective Date
Vehicle Wash Fundraisers	Vehicle wash fundraisers shall be conducted at a vehicle wash facility using such facility's equipment.	March 1, 2005
Power Washers	A person who uses a power washer in any commercial manner or for compensation shall register with the Director of Conservation, and obtain a certificate for such use.	January 1, 2006
Minimum irrigated turf area	Newly installed irrigation systems using pop-up spray or rotor technology shall not be used in landscaped areas which have both: (a) dimensions less than five feet in length and/or width; and, (b) impervious pedestrian or vehicular traffic surfaces along two (2) or more perimeters. Where pop-up sprays and rotor heads are allowed in newly installed irrigation systems, they (a) must direct flow away from any adjacent impervious surface and (b) shall not be placed within 6 (six) inches from an impervious surface.	January 1, 2006
Annual Irrigation System Analysis	An annual irrigation system analysis shall be required for all athletic fields, golf courses and large properties using potable water and submitted to SAWS on or before May 1 st of each year.	January 1, 2006
Cooling Towers	-Cooling Towers, not utilizing recycled water, shall operate a minimum of four cycles of concentration. -Newly constructed cooling towers shall be operated with conductivity controllers, as well as make-up and blowdown meters.	January 1, 2006
Ice Machines	Newly installed ice machines shall not be single pass water-cooled.	January 1, 2006
Commercial Dining Facilities	Commercial dining facilities shall: -Serve water only upon request. -Utilize positive shut-offs for hand-held dish-rinsing wands. -Utilize water flow restrictors for all garbage disposals.	January 1, 2006
Vehicle Wash Facilities	-Vehicle wash facilities using touchless and rollover in-bay technology shall reuse a minimum of fifty percent reclaimed water. -Vehicle wash facilities, using reverse osmosis shall incorporate the unused concentrate in subsequent vehicle washes. -Self-service spray wands shall emit no more than three gallons of water per minute.	January 1, 2006
Vacuum Systems	Vacuum systems shall not be water-cooled with single-pass potable water when alternative systems are available.	January 1, 2006

Provision	Description	Effective Date
Condensate Collection	Newly constructed commercial buildings installing air conditioning systems shall have a single and independent condensate wastewater line to collect condensate wastewater for future utilization.	January 1, 2006
Rain Sensors	Homebuilders and/or developers subdividing lots and/or constructing new single-family residential homes shall offer a xeriscape option.	January 1, 2006
Xeriscape Option	Homebuilders and/or developers subdividing lots and/or constructing new single-family residential homes shall offer a xeriscape option in any series of landscape options offered to prospective homebuyers.	January 1, 2006
Model Home	Homebuilders and/or developers who construct model homes for a designated subdivision shall have at least one model home landscaped according to a xeriscape design.	January 1, 2006
Zonal Irrigation Systems	In-ground irrigation systems on new construction shall be zonal irrigation systems.	January 1, 2006
Turfgrass soil support	Installed turfgrass on new construction shall have a minimum of four inches of soil under the turfgrass.	January 1, 2006
Turfgrass dormancy qualities	Installed turfgrass on new construction shall have summer dormancy capabilities.	January 1, 2007

Comparison of Ordinances		
Our Ordinance Provision	Other Texas Cities	Other US Cities
Power washers. person who uses a power washer as its principal source of business shall register with SAWS and obtain a certificate for such use.	Ft. Worth Required permits with fees for all "cosmetic powerwashers in the city to meet EPA stormwater regulations	
Vehicle wash fundraisers. Any vehicle wash fundraiser shall be conducted at a vehicle wash facility using such facility's equipment.	El Paso, Fund raisers must be held at a commercial car wash facility	
Rain sensors. Rain sensors shall be installed and maintained on all irrigation systems equipped with automatic irrigation controllers		
Minimum irrigated area. Irrigation systems using pop-up spray or rotor technology shall not be used in landscaped areas with dimensions less than five feet in length and width. Pop-up spray heads shall not be placed within 12 inches from an impervious surface.	Corpus Christi. Has not allowed strips of turf less than 5 ft wide to be irrigation with pop-up spray since 1991. El Paso. Turfgrass prohibited in all parkways, narrow strips of land and sloped areas within residential and commercial sites after 2002 unless irrigated with subsurface irrigation	Clarke County, NV. No turf allowed in areas within 6 feet of the curb in commercial, residential turf areas must be 10 ft wide unless adjacent to a planting bed. Maximum slope not to exceed 33%
Annual irrigation system analysis for athletic fields, golf courses and large properties. An annual irrigation system analysis shall be required for all athletic fields, golf courses and large properties and shall be submitted in writing to the San Antonio Water System Conservation Department on or before May 1st of each year. Golf courses shall comply with residential irrigation requirements on areas other than tee boxes, fairways and greens.	El Paso. Large users (using over 25,000 gpd) must submit a conservation plan demonstrating reasonable diligence will be used to avoid waste including identification of new technologies available. Plans must be submitted every 5 years with an \$25 fee as a condition of continued or new water service.	Albuquerque, Audits required by certified auditor not assoc. with the facility for all new irrigation over 1/2 acre. Distribution uniformity for spray at 60% , for rotary at 70%
Cooling towers. Cooling Towers not utilizing recycled water shall operate a minimum of four cycles of concentration	El Paso, no single pass cooling unless reused	
Ice machines. Single pass water-cooled ice machines shall not be operated unless a variance has been granted by the SAWS Conservation Department		
Commercial Dining Facilities Commercial dining facilities shall: (a) Serve water only upon request. (b) Utilize positive shut-offs for hand-held dish-rinsing wands. (c) Utilize water flow restrictors for all garbage disposals.		Albuquerque, Restaurants to serve water on request only. Also hotels are required to offer a "linen change" program
Vehicle Wash Facilities (a) Vehicle wash facilities using touchless and roll-over in-bay technology shall reuse a minimum of fifty percent of water from previous vehicle rinses in subsequent washes. (b) Vehicle wash facilities using reverse osmosis to produce water rinse with a lower mineral content shall incorporate the unused concentrate in subsequent vehicle washes. (c) Self-service spray wands shall emit no more than three gallons of water per minute.	El Paso, Car washes may not use more than 50 gallons per car	

Comparison of Ordinances

<p>Residential landscapes For residential landscapes, the following shall be applicable effective January 1, 2006:</p> <p>(a) Newly installed in-ground irrigation systems shall be zonal irrigation systems.</p> <p>(b) Newly installed turfgrass shall have summer dormancy capabilities.</p> <p>(c) Homebuilders and developers that offer landscaping packages to prospective homeowners must offer a xeriscape landscaping option.</p> <p>(d) Model homes shall be landscaped according to a xeriscape design.</p> <p>(e) A person may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from maintaining less than a certain percentage of turfgrass in a landscaped area, or from maintaining a species of turfgrass that has summer dormancy capabilities in a landscaped area, or from not having an irrigation system, or from not operating an irrigation system on a certain schedule.</p> <p>(f) Installed turf lawns shall have four inches of soil under the turf.</p>	<p>El Paso - No more than 50% grass allowed in residential landscapes. No more than 33 1/3 % for commercial</p>	<p>Aurora, Colorado- New sod or seed requires a \$20 percent, for builders- they must incorporate 4 cu. Yds per 1000 sf tilled to a depth of 4"-6" and a lawn permit sign must be displayed on property. Clarke County NV. And Las Vegas, NV, Turf areas in new residential limited to 50% of area counting driveways and walkways, no subdivision development, deed restriction etc... may impose restriction that require the use of turf or prevent xeriscape landscape. Commercial and multi-family can have no more that 30% turf. Golf courses limited to 90 acres for 18 holes, 10 acres for driving range. If they need more they have to mitigate including paying for retrofits off site equally to twice the savings of water they will be using over the allotted amount</p>
<p>Low-flow toilets. Effective January 1, 2006, An affidavit will be required for establishing new accounts that either confirms that low flow toilets are installed at the property or will be in the next 90 days.</p>	<p>El Paso, for very large water users (>10,000 gpd) an extensive conservation plan is required for new service or existing service. Must show all water use and a five yr. Plan to implement plan. Plans are due every 5 yrs. Appeals process available. Albuquerque NM, large users must convert to low water use toilets by 2004 (from 1998). Extensive water conservation plans required, for new customers they are required prior to service. Los Angeles requires toilet up grades at time of sale for commercial and residential properties. San Diego requires toilet upgrades at time of sale</p>	
<p>Vacuum systems. Vacuum systems may not be water-cooled with single-pass potable water when alternative systems are available</p>		
<p>Condensate collection. Effective January 1, 2006, air conditioning systems installed in commercial buildings shall have a single and independent condensate wastewater line capable of condensate wastewater collection for process water and cooling tower make-up and/or landscape irrigation water. Condensate wastewater shall not be allowed to drain into a storm sewer, roof drain, overflow piping system, public way or impervious surface</p>	<p>El Paso, Bleeder lines shall be conducted and discharged so that effluent can be used for landscaping except where not feasible</p>	

RESOLUTION NO. 04-121

OF THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES RECOMMENDING TO THE SAN ANTONIO CITY COUNCIL AMENDMENTS TO CHAPTER 34, ARTICLE IV, DIVISION I OF THE SAN ANTONIO CITY CODE TO MAKE PERMANENT A YEAR-ROUND CONSERVATION ORDINANCE; TO ADOPT THE AMENDMENTS TO CHAPTER 34, ARTICLE IV, DIVISION I AND II OF THE SAN ANTONIO CITY CODE TO MAKE PERMANENT A YEAR ROUND CONSERVATION ORDINANCE; AND DELEGATING AUTHORITY TO THE PRESIDENT/CHIEF EXECUTIVE OFFICER AND/OR HIS DESIGNEE TO FURTHER NEGOTIATE MODIFICATIONS TO SECTION 34-275.5 AND SECTION 34-276 OF THE AMENDMENTS TO CHAPTER 34, ARTICLE IV, DIVISION I WITH STAKEHOLDER GROUPS; FINDING THE RESOLUTION TO HAVE BEEN CONSIDERED PURSUANT TO THE LAWS GOVERNING OPEN MEETINGS; PROVIDING A SEVERABILITY CLAUSE; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the San Antonio Water System ("System") and the City of San Antonio ("City") are committed to the protection of the Edwards Aquifer as a unique natural resource; and

WHEREAS, the System's Water Resource Plan and the Region L Plan include advance conservation when projecting water supply requirements for San Antonio and the San Antonio region's future water needs; and

WHEREAS, San Antonio has made significant progress in reducing the per capita usage from a high of 225 gallons per capita daily ("gpcd") in the mid-1980's to 139 gpcd in 2003; and

WHEREAS, to sustain an overall goal of 132 gpcd during drier times, water use reductions become more difficult to achieve; and

WHEREAS, in November 2000, Mayor Howard Peak and members of City Council requested the System to develop a year round water conservation ordinance that would result in a reduction of water use without significantly impacting the quality of life of San Antonio citizens; and

WHEREAS, System staff has drafted language that would increase water conservation standards with significant input from the Community Conservation Committee, general public, citizens groups and stakeholders over the past three years; and

WHEREAS, the recommended provisions address a variety of water uses and center around specific methods, equipment, and behaviors that when undertaken result in significant water savings; and

WHEREAS, amending Chapter 34, Article IV, Division I of the San Antonio City Code to make permanent a year-round conservation ordinance will assist in reaching the 132 gpcd goal without significantly impacting the lives of the citizens of San Antonio; and

WHEREAS, the System's Board of Trustees therefore desires to (i) recommend to the San Antonio City Council amendments to Chapter 34, Article IV, Division I of the San Antonio City Code to make permanent a year-round conservation ordinance; (ii) adopt the amendments, as set out in Attachment I, to Chapter 34, Article IV, Division I of the San Antonio City Code to make permanent a year-round conservation ordinance and upon final negotiated modification to the amendments set out in Attachment I-A; and (iii) delegate authority to the President/Chief Executive Officer and/or his designee to further negotiate modifications to Section 34-275.5 and Section 34-276 of the amendments to Chapter 34, Article IV, Division I with stakeholder groups; now, therefore

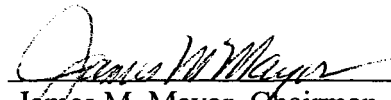
BE IT RESOLVED BY THE SAN ANTONIO WATER SYSTEM BOARD OF TRUSTEES:

1. That the San Antonio Water System Board of Trustees finds that a year-around water conservation ordinance will result in a reduction of water use without negatively impacting the quality of life of San Antonio citizens. Specifically, the Board of Trustee finds that the potential amount of water which will be saved annually through the implementation of the attached year-round conservation ordinance is 3526 acre feet, including water savings of 515 acre feet for irrigation system audits, water savings of 664 acre feet for dining facility provisions, 250 acre feet for cooling tower provision, 165 acre feet for each 400 ton air conditioning unit collecting condensate, and 211 acre feet a year for residential landscape provisions.
2. That the San Antonio Water System Board of Trustees recommends to the San Antonio City Council that Chapter 34, Article IV, Division I of the San Antonio City Code be amended to make permanent a year-round conservation ordinance.
3. The recommended amendment, containing a variance provision, is attached hereto as Attachment I, and incorporated herein.
4. That the San Antonio City Council adopt the amendments, set out in Attachment I, to Chapter 34, Article IV, Division I of the San Antonio City Code to make permanent a year-round conservation ordinance and upon final negotiated modification to the amendments set out in Attachment I-A.
5. That the President/Chief Executive Officer and/or his designee is hereby delegated the authorize to further negotiate modifications to Section 34-275.5 and Section 34-276 of the amendments to Chapter 34, Article IV, Division I with stakeholder groups. Such amendments are set out in Attachment I-A.
6. It is officially found, determined and declared that the meeting at which this resolution is adopted was open to the public, and that public notice of the time, place and subject matter of the public business to be conducted at such meeting, including this resolution, was given to all as required by the Texas Codes Annotated, as amended, Title 5, Chapter 551, Government Code.

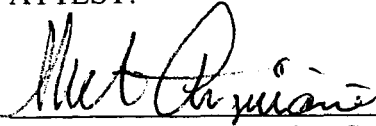
7. If any part, section, paragraph, sentence, phrase or word of this resolution is for any reason held to be unconstitutional, illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional, illegal, invalid or ineffective, the remainder of this resolution shall nevertheless stand effective and valid as if it had been enacted without the portion held to be unconstitutional, illegal, invalid, or ineffective.

8. This Resolution will take effect immediately upon its passage.

PASSED AND APPROVED this 2nd day of November, 2004.


James M. Mayor, Chairman

ATTEST:


Salvadore M. Hernández, Secretary

ATTACHMENT I

AMENDMENTS TO ARTICLE IV, WATER CONSERVATION AND REUSE,
CHAPTER 34 SAN ANTONIO CITY CODE

The City Code of the City of San Antonio Chapter 34 Water Service and Rates Article IV, Water Conservation and Reuse is hereby amended by adding new Sections 34-271-34-278 to Division 1 which are underlined (added) as set forth herein. Division 1, generally, shall be renamed Regulated Activities.

Division 1. REGULATED ACTIVITIES**Sec. 34-271. Definitions.**

As used in this article, the following terms shall have the following meanings:

Air conditioning system(s). A mechanical system generally consisting of a compressor, thermostat and duct work permanently installed in a building for the purpose of controlling humidity and temperature. For the purposes of this division, an air conditioning system does not include window units.

Automatic irrigation controller. A device that automatically activates and deactivates an irrigation system at times selected by the operator.

Blowdown meter. A meter that tracks the amount of water discharged from a cooling tower system.

Commercial dining facility. A business that serves prepared food and beverages to be consumed on the premises.

Concentration. Re-circulated water that has elevated levels of total dissolved solids as compared to the original make up water.

Conservation Department. The Conservation Department of the San Antonio Water System.

Conductivity controller. A device used to measure the conductivity of total dissolved solids in the water of a cooling system and control the discharge of water in order to maintain efficiency.

Cooling Tower. An open water recirculation device that uses fans or natural draft to draw or force air to contact and cool water through the evaporative process.

Director of Conservation. The Director of the Department of Conservation of the San Antonio Water System.

Impervious surface. Patios, pathways and other areas where firm footing is desired, constructed in such a way that does not allow water to penetrate the ground. Examples include but are not limited to concrete slab patios, sidewalks and driveways, asphalt streets or pavers set with mortar.

ATTACHMENT I

Irrigation system. A system with fixed pipes and emitters or heads that apply water to landscape plants or turfgrass, including but not limited to in-ground and permanent irrigation systems.

Irrigation system analysis. A zone-by-zone analysis of an irrigation system that at a minimum includes a review of the following elements:

- (1) design appropriateness for current landscape requirements
- (2) irrigation spray heads and valves
- (3) precipitation rates expressed in inches per hour
- (4) annual maintenance plan that includes irrigation system maintenance, landscape maintenance, and a basic summer and winter irrigation scheduling plan.

Large property. A land tract owned by a general customer that equals or exceeds five acres in size and has an irrigation system.

Low-flow toilet. A tank toilet that uses 1.6 gallons or less of water per flush.

Make-up Meter. A meter that measures the amount of water entering a cooling tower system.

Person. Any individual, corporation (including a government corporation), organization, state or federal governmental subdivision or agency, political subdivision of a state, interstate agency or body, business, trust, partnership, limited partnership, association, firm, company, joint stock company, joint venture, commission or any other legal entity.

Pervious Hardscape. Patios, pathways and other areas where firm footing is desired, constructed in such a way that allows for water to penetrate the ground. Examples include flagstone set in sand and wood plank decks, but exclude concrete slab patios and sidewalks or pavers set with mortar.

Positive shut-off. A valve that is held in a closed position by system pressure until overridden by an outside force.

Power washer. A machine that uses water or a water-based product applied at high pressure to clean impervious surfaces.

Rain sensor. A device designed to stop the flow of water to an automatic irrigation system when rainfall has been detected.

Recycled Water. Domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use in accordance with applicable law.

Requestor. A customer who requests a variance under this Division.

Residential Customer. A single or multi-family dwelling unit containing two (2) or less family units.

ATTACHMENT I

Summer dormancy. The ability of turfgrass to survive without water for a period of sixty consecutive days without water during the months of May through September. Turfgrass with summer dormancy capabilities approved for use are set forth in the approved low water use plant list. The approved low water use plant list, as may be amended from time to time, shall be available from SAWS and located at www.saws.org/conservation.

Turfgrass. Perennial ground cover plants and grasses that are adapted to regular mowing and traffic through management.

Vacuum system. A system, often consisting of a pump, chamber, and tubes, that is used to create a vacuum for any of a variety of purposes, including but not limited to medical, dental and industrial applications.

Variance Administrator. Staff person in the Department of Conservation responsible for administering and hearing variance requests under this Division 1.

Vehicle wash facility. A permanently-located business that washes vehicles with water or water-based product, including but not limited to self-service car washes, full-service car washes, roll-over/in-bay style car washes, and fleet maintenance wash facilities.

Vehicle wash fundraiser. Any special-purpose vehicle wash event for which a fee is charged or donation accepted.

Water flow restrictor. An orifice or other device through which water passes at a restricted rate.

Xeriscape. A landscape consisting of a maximum of 50% turfgrass, with the remaining percentage of landscape incorporating low water use plants and/or pervious hardscape. The approved low water use plant list, as may be amended from time to time, shall be available from SAWS and located at www.saws.org/conservation.

Zonal irrigation system. An irrigation system that segregates by station areas of shrubs, ground cover, bedding plants, and turf to accommodate a diversity of watering requirements.

Sec. 34-272. Activities to be regulated on and after January 1, 2005.

The following activities shall be regulated in the manner set out herein on and after January 1, 2005. A person affected by such regulations may request a variance in the manner set out in Section 34-277. A violation of this section shall be subject to the enforcement provisions set out in Section 34-278.

Sec. 34-272.1 Power Washers.

A person who uses a power washer as his/her principal source of business shall register with the Director of Conservation, and obtain a certificate for such use.

ATTACHMENT I

Sec. 34-272.2 Vehicle Wash Fundraisers.

Any vehicle wash fundraiser shall be conducted at a vehicle wash facility using such facility's equipment.

Sec. 34-273. Activities to be regulated on and after May 1, 2005.

The following activities shall be regulated in the manner set out herein on and after May 1, 2005. A person affected by such regulation may request a variance in the manner set out in Section 34-277. A violation of this section shall be subject to the enforcement provisions set out in Section 34-278.

Sec. 34-273.1 Minimum irrigation area.

Newly installed irrigation systems using pop-up spray or rotor technology shall not be used in landscaped areas with dimensions less than five feet in length and/or width, and where pop-up sprays are allowed in newly installed irrigation systems, they shall not be placed within 12 inches from an impervious surface.

34-273.2 Annual irrigation system analysis for athletic fields, golf courses, and large properties.

An annual irrigation system analysis shall be required for all athletic fields, golf courses and large properties and shall be submitted in writing to the San Antonio Water System Conservation Department on or before May 1st of each year. Golf courses shall comply with residential irrigation requirements on areas other than tee boxes, fairways and greens.

34-273.3 Cooling towers

Cooling Towers not utilizing recycled water shall operate a minimum of four cycles of concentration.

34-273.4 Ice Machines

Newly installed ice machines shall not be single pass water-cooled.

34-273.5 Commercial Dining Facilities

Commercial dining facilities shall:

- (a) Serve water only upon request.
- (b) Utilize positive shut-offs for hand-held dish-rinsing wands.
- (c) Utilize water flow restrictors for all garbage disposals.

ATTACHMENT I

34-273.6 Vehicle wash facilities.

- (a) Vehicle wash facilities using touchless and rollover in-bay technology shall reuse a minimum of fifty percent of water from previous vehicle rinses in subsequent washes.
- (b) Vehicle wash facilities using reverse osmosis to produce water rinse with a lower mineral content shall incorporate the unused concentrate in subsequent vehicle washes.
- (c) Self-service spray wands shall emit no more than three gallons of water per minute.

34-273.7 Vacuum Systems.

Vacuum systems may not be water-cooled with single-pass potable water when alternative systems are available.

34-274 Activities to be regulated on and after January 1, 2006.

The following activities shall be regulated in the manner set out herein on and after January 1, 2006. A person affected by such regulation may request a variance in the manner set out in Section 34-277. A violation of this section shall be to the enforcement provision set out in Section 34-278.

34-274.1 Newly constructed commercial buildings installing air conditioning systems on and after January 1, 2006 shall be required to install a system which has a single and independent condensate wastewater line capable of condensate wastewater collection for process water and cooling tower make-up and/or landscape irrigation water. Condensate wastewater shall not be allowed to drain into a storm sewer, roof drain overflow piping system public way or impervious surface.

34-275 Landscaping Regulations applicable on and after January 1, 2006.

Persons affected by the regulations set out herein may request a variance to such regulations in the manner set out in Section 34-277. A violation of this section shall be subject to the enforcement provisions set out in Section 34-278.

34-275.1 Homebuilders and/or developers subdividing lots and/or constructing new single family residential homes shall be required to offer a xeriscape option in any series of landscaping options offered to prospective home buyers.

34-275.2 Homebuilders and/or developers who construct model homes for a designated subdivision shall have at least one model home per subdivision landscaped according to a xeriscape design

34-275.3 In-ground irrigation systems installed on and after January 1, 2006 shall be required to be a zonal irrigation system.

ATTACHMENT I

34-275.4 Turfgrass installed during new construction on and after January 1, 2006 shall be required: (a) to have a minimum of four inches of soil under the turfgrass and (b) to use a turfgrass having summer dormancy capabilities.

Section 34-277 Variances.

The authority to grant a variance and an appeal from such variance to the provisions of Article IV, Division 1, is hereby delegated to the San Antonio Water System in the manner described herein. A determination by the San Antonio Water System pursuant to this section shall be deemed final.

34-277.1 A person who is affected by these provisions may seek a variance in the manner set out herein. A person shall request a variance within thirty (30) days of the date a provision becomes applicable to that person's activities and/or properties.

34-277.2 A person seeking a variance under these provisions shall make such request in writing to the Conservation Department. Such request shall be reviewed by the variance administrator. The administrator shall review such request within thirty (30) days of receipt and shall inform the requestor in writing of the time, date and place for variance hearing.

34-277.3 The requestor may be represented by a duly authorized representative and may introduce such evidence as the requestor believes to be relevant. The administrator and appropriate Conservation Department personnel shall hear the request. The requestor shall receive written notification by the administrator within thirty (30) days of the date of the hearing whether such variance is granted or denied.

34-277.4 In the event the variance is granted, the decision of the administrator shall be final. Should the variance be denied, the requestor shall have ten (10) days from receipt of the denial of the variance to seek an appeal. Within thirty (30) days of the request for an appeal from the denial of a variance, the Director shall hear the appeal. The requestor shall be informed in writing of the time, date and place where such appeal shall be heard. The requestor and/or his authorized representatives may present evidence to the Director why such appeal should be granted. The Director shall inform the requestor within thirty (30) days of the date of the hearing of the appeal whether the appeal has been granted or denied. The determination by the Director shall be final.

34-277.5 Variances to the regulated activities in this Division 1 may be issued through the Department of Conservation provided that the general intent of Article IV, Division 1 has been met, compliance with Article IV, Division 1 is proven to cause practical difficulties and unnecessary hardship. The criteria to determine hardship shall include level of capital outlay and time required to be in compliance with this Division.

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34-277.6 The Director shall also develop specific criteria to be used for the granting of variances from the provisions of Article IV, Division 1, which are appropriate to the provision for which a variance is being sought. Such criteria shall be applied equally to each request for variance under a particular provision. A requestor shall be furnished with the criteria to be utilized by the administrator and/or Director when his/her variance and/or appeal to such variance is heard.

34-278 Violations.

It shall be a violation of this Division for any person in the corporate limits of the City intentionally, knowingly, recklessly or criminally negligently to allow or cause any violation of any provision of this Division 1 of Article IV.

34-278.1 The President/CEO or his designee of the San Antonio Water System is hereby authorized to enforce this Division in the manner and to the extent allowed by law, including, but not limited to, filing complaints with the city municipal prosecutor's office for such violations, serving notices of violations of this Division and filing civil enforcement actions.

34-278.2 For purposes of this Division, it shall be presumed that the person in whose name a water meter connection is registered with the water purveyor servicing the property, has intentionally, knowingly, recklessly, or negligently made, caused, used or permitted a violation of the provisions of Article IV, Division 1. Proof that the particular premises had a water meter connection registered in the name of the defendant cited in a criminal complaint filed pursuant to this division shall constitute a *prima facie* presumption that the defendant is a person who made, caused, used or permitted a violation pursuant to the provision of this Division.

34-278.3 The President/CEO or his or her designee is authorized and instructed to commence any action, in law or in equity, including the filing of criminal charges, deemed necessary for the purpose of enforcing this Division. The San Antonio Water System President/CEO or the designee may seek civil penalties and any other legal or equitable relief available under common law, Chapter 54 of the Texas Local Government Code or any other applicable city, state or federal code or statute.

34-278.4 *Criminal.* Any person violating any provision of this Division 1 of Article IV shall be guilty of a misdemeanor and upon citation therefore and conviction thereof, shall be punished by a fine not less than fifty dollars (\$50.00) and not more than one hundred dollars (\$100.00) for the first offense, a fine not less than two hundred and fifty dollars (\$250.00) and not more than five hundred dollars (\$500.00) for the second offense, and a fine not less than one thousand dollars (\$1,000.00) and not more than two thousand dollars (\$2,000.00) for the third or any additional offense. Each violation of a particular section of this Division shall constitute a separate offense, and each day an offense continues shall be considered a new violation for purposes of enforcing this Division.

Civil. Civil penalties for violations of this division may also be assessed as allowed by applicable state law in an amount not to exceed one thousand dollars (\$1,000.00) per violation. Each violation of a particular section of this Division shall constitute a separate violation, and each day a violation continues shall be considered a new violation for purposes of enforcing this Division.

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34.278.5 If, for any reason, any section, sentence, clause or part of this Division is held legally invalid, such judgment shall not prejudice, affect, impair or invalidate the remaining sections of this Division, but shall be confined to the specific section, sentence, clause, or part of this Division held legally invalid.

ATTACHMENT I-A

**AMENDMENTS TO ARTICLE IV, WATER CONSERVATION AND REUSE,
CHAPTER 34 SAN ANTONIO CITY CODE**

The City Code of the City of San Antonio Chapter 34 Water Service and Rates Article IV, Water Conservation and Reuse is hereby amended by adding new Section 34-275.5 and Section 34-276 to Division 1 which are underlined (added) as set forth herein. Division 1, generally, shall be renamed Regulated Activities.

34-275 Landscaping Regulations applicable on and after January 1, 2006.

Persons affected by the regulations set out herein may request a variance to such regulations in the manner set out in Section 34-277. A violation of this section shall be subject to the enforcement provisions set out in Section 34-278.

34-275.5 A person may not include and/or enforce, on and after January 1, 2006, any provision in a deed restriction and/or any dedicatory instrument which attempts to prohibit and/or restrict a property owner from: (a) maintaining a certain percentage of turf grass in a landscaped area, (b) maintaining a species of turf grass that has summer dormancy capabilities, and (c) electing not to install irrigation systems, or operate irrigation systems on a certain schedule.

34-276 Low-flow toilets.

Persons affected by the regulations set out herein may request a variance to such regulations in the manner set out in Section 34-277 and subsection 34-376.4 herein.

34-276.1 Any person seeking to establish a new account with the San Antonio Water System on and after January 1, 2006 shall be required to file an affidavit as described herein. The affidavit shall state that in the event the applicant does not have a low-flow toilet(s) and fails to install a low-flow toilet(s) for the premises for which the new account is being opened within ninety (90) days of the date of application, the applicant shall no longer be eligible to receive reimbursements under any Conservation Department low-flow toilet replacement incentive program. Should the applicant install a low flow toilet(s) within the ninety (90) day period, proof of such installation will be provided to SAWS by the applicant.

34-276.2 In the event an applicant under this provision receives a notice of violation pursuant to any provision of Article IV herein, the fact that such applicant has not provided evidence of the installation of a low flow toilet may be considered as additional evidence in a hearing for which the notification was given.

34-276.3 Should an applicant for a new account be eligible for one of the San Antonio Water System's affordability programs, provisions of this section shall not apply. Such applicant shall be encouraged to work with the Conservation Department to obtain a low flow toilet for the premises for which a new account is being opened.

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34-276.4 A variance will be available to properties with multiple toilet units (generally over 5) under the following circumstances:

1. A plan submitted within 90 days to the Conservation Department including:
 - a. An inventory of the type and number of toilets on the property
 - b. A schedule for replacing high use toilets with low flow toilets within 5 years or by 2011 whichever time period is shorter
 - c. All contact information of responsible party

SAWS will not guarantee that any toilet programs will be available at any time in the future, but while programs are available at SAWS variance recipients may use them to fulfill their commitments.

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ARTICLE IV. WATER CONSERVATION AND REUSE

Division 1. ~~GENERALLY~~ REGULATED ACTIVITIES

Sec. 34-271. Definitions.

As used in this article, the following terms shall have the following meanings:

Air conditioning system(s). A mechanical system generally consisting of a compressor, thermostat and duct work permanently installed in a building for the purpose of controlling humidity and temperature. For the purposes of this division, an air conditioning system does not include window units.

Automatic irrigation controller. A device that automatically activates and deactivates an irrigation system at times selected by the operator.

Blowdown meter. A meter that tracks the amount of water discharged from a cooling tower system.

Commercial dining facility. A business that serves prepared food and beverages to be consumed on the premises.

Concentration. Re-circulated water that has elevated levels of total dissolved solids as compared to the original make up water.

Conservation Department. The Conservation Department of the San Antonio Water System.

Conductivity controller. A device used to measure the conductivity of total dissolved solids in the water of a cooling system and control the discharge of water in order to maintain efficiency.

Cooling Tower. An open water recirculation device that uses fans or natural draft to draw or force air to contact and cool water through the evaporative process.

Director of Conservation. The Director of the Department of Conservation of the San Antonio Water System.

Impervious surface. Patios, pathways and other areas where firm footing is desired, constructed in such a way that does not allow water to penetrate the ground. Examples include but are not limited to concrete slab patios, sidewalks and driveways, asphalt streets or pavers set with mortar.

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Irrigation system. A system with fixed pipes and emitters or heads that apply water to landscape plants or turfgrass, including, but not limited to, in-ground and permanent irrigation systems.

Irrigation system analysis. A zone-by-zone analysis of an irrigation system that, at a minimum, includes a review of the following elements:

- (1) design appropriateness for current landscape requirements
- (2) irrigation spray heads and valves
- (3) precipitation rates expressed in inches per hour
- (4) annual maintenance plan that includes irrigation system maintenance, landscape maintenance, and a basic summer and winter irrigation scheduling plan.

Large property. A land tract owned by a general customer that equals or exceeds five acres in size and has an irrigation system.

Low-flow toilet. A tank toilet that uses 1.6 gallons or less of water per flush.

Make-up Meter. A meter that measures the amount of water entering a cooling tower system.

NPDES / TPDES permit holders. Those entities that have valid state or federal permits commonly referred to as NPDES or TPDES [National Pollutant Discharge Elimination System / Texas Pollutant Discharge Elimination System] permits to satisfy requirements of the federal Clean Water Act.

Person. Any individual, corporation (including a government corporation), organization, state or federal governmental subdivision or agency, political subdivision of a state, interstate agency or body, business, trust, partnership, limited partnership, association, firm, company, joint stock company, joint venture, commission or any other legal entity.

Pervious Hardscape. Patios, pathways and other areas where firm footing is desired, constructed in such a way that allows for water to penetrate the ground. Examples include flagstone set in sand and wood plank decks, but exclude concrete slab patios and sidewalks or pavers set with mortar.

Positive shut-off. A valve that is held in a closed position by system pressure until overridden by an outside force.

Power washer. A machine that uses water or a water-based product applied at high pressure to clean impervious surfaces.

Rain sensor. A device designed to stop the flow of water to an automatic irrigation system when rainfall has been detected.

Recycled Water. Domestic or municipal wastewater which has been treated to a quality suitable for a beneficial use in accordance with applicable law.

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Requestor. A customer who requests a variance under this Division.

Residential Customer. A single or multi-family dwelling unit containing two (2) or fewer family units.

Summer dormancy. The ability of turfgrass to survive without water for a period of sixty consecutive days without water during the months of May through September. Turfgrass with summer dormancy capabilities approved for use are set forth in the approved low water use plant list. The approved low water use plant list, as may be amended from time to time, shall be available from SAWS and located at www.saws.org/conservation.

Turfgrass. Perennial ground cover plants and grasses that are adapted to regular mowing and traffic through management.

Vacuum system. A system, often consisting of a pump, chamber, and tubes, that is used to create a vacuum for any of a variety of purposes, including but not limited to medical, dental and industrial applications.

Variance Administrator. Staff person in the Department of Conservation responsible for administering and hearing variance requests under this Division 1.

Vehicle wash facility. A permanently-located business that washes vehicles with water or water-based product, including but not limited to self-service car washes, full-service car washes, roll-over/in-bay style car washes, and fleet maintenance wash facilities.

Vehicle wash fundraiser. Any special-purpose vehicle wash event for which a fee is charged or donation accepted.

Water flow restrictor. An orifice or other device through which water passes at a restricted rate.

Xeriscape. A landscape consisting of a maximum of 50% turfgrass, with the remaining percentage of landscape incorporating low water use plants and/or pervious hardscape. The approved low water use plant list, as may be amended from time to time, shall be available from SAWS and located at www.saws.org/conservation.

Zonal irrigation system. An irrigation system that segregates by station areas of shrubs, ground cover, bedding plants, and turf to accommodate a diversity of watering requirements.

Sec. 34-272. Activities to be regulated on and after effective dates.

The following activities shall be regulated in the manner set out herein on and after the respective dates indicated in the sections and subsections. A person affected by such regulations may request a variance in the manner set out in Section 34-277. A violation of this section and subsections shall be subject to the enforcement provisions set out in Section 34-278. It shall be

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and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this Division 1.

Sec. 34-272.1 Power Washers.

- (a) Effective January 1, 2006, a person who uses a power washer in any commercial manner or for compensation shall register with the Director of Conservation, and obtain a certificate for such use.
- (b) Exempted from this requirement are persons who use power washers for personal use at their own home and homebuilders who are performing a one-time clean up at a newly constructed house.
- (c) Holders of NPDES / TPDES permits are deemed certified.

Comment. This comment does not have force of law, but is offered for clarification only. The intent of this registration protocol is to complement and make effective mandates necessary to "critical period" conservation rules found elsewhere in the City Code. The conservation rules in question are intended to prevent water waste under certain circumstances when "critical periods" are observed. Examples of persons subject to year round registration are those hired, employed or contracted to clean sidewalks, parking lots, commercial / public buildings and other impervious areas associated with commercial or domestic properties; professional painters; businesses using their own in-house power washers such as chain stores, grocery stores, and any other entity, public or private.

Sec. 34-272.2 Vehicle Wash Fundraisers.

Effective March 1, 2005, any vehicle wash fundraiser shall be conducted at a vehicle wash facility using such facility's equipment.

Sec. 34-273. Activities to be regulated on and after January 1, 2006.

Except as provided by a specific and alternative application date, particularly systems analysis, the following activities shall be regulated in the manner set out herein on and after January 1, 2006. A person affected by such regulations may request a variance in the manner set out in Section 34-277. A violation of this section and subsections shall be subject to the enforcement provisions set out in Section 34-278. It shall be and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this Division 1.

Sec. 34-273.1 Minimum irrigation area and flow direction.

Newly installed irrigation systems using pop-up spray or rotor technology shall not be used in landscaped areas which have both: (a) dimensions less than five feet in length and/or width; and, (b) impervious pedestrian or vehicular traffic surfaces along two (2) or more perimeters. Where pop-up sprays and rotor heads are allowed in newly installed irrigation systems, they (a) must direct flow away from any adjacent impervious surface and (b) shall not be placed within 6 (six) inches from an impervious surface.

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34-273.2 Annual irrigation system analysis for athletic fields, golf courses, and large properties.

(a) An annual irrigation system analysis shall be required for all athletic fields, golf courses and large properties and shall be submitted in writing to the San Antonio Water System Conservation Department on or before May 1st of each year, beginning on May 1, 2006. Golf courses, other than those utilizing recycled water for irrigation in accordance with an agreement with SAWS, shall comply with residential irrigation requirements on areas other than tee boxes, fairways and greens.

(b) Municipal tenants and lessees of golf courses, sports and athletic playing fields, and any other municipally owned properties, shall be responsible for compliance with this section and subsection. The SAWS shall look directly to such tenants and lessees for compliance unless the municipality concedes by contractual agreement with the tenant / lessee to assume the tenant / lessee's responsibility for compliance.

34-273.3 Cooling towers

Effective January 1, 2006:

- (a) Cooling Towers, not utilizing recycled water, shall operate a minimum of four cycles of concentration.
- (b) Newly constructed cooling towers shall be operated with conductivity controllers, as well as make-up and blowdown meters.

34-273.4 Ice Machines

Newly installed ice machines shall not be single pass water-cooled.

34-273.5 Commercial Dining Facilities

Commercial dining facilities shall:

- (a) Serve water only upon request.
- (b) Utilize positive shut-offs for hand-held dish-rinsing wands.
- (c) Utilize water flow restrictors for all garbage disposals.

34-273.6 Vehicle wash facilities.

- (a) Vehicle wash facilities using touchless and rollover in-bay technology shall reuse a minimum of fifty percent of water from previous vehicle rinses in subsequent washes.
- (b) Vehicle wash facilities, using reverse osmosis to produce water rinse with a lower mineral content, shall incorporate the unused concentrate in subsequent vehicle washes.
- (c) Self-service spray wands shall emit no more than three gallons of water per minute.

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34-273.7 Vacuum Systems.

Vacuum systems shall not be water-cooled with single-pass potable water when alternative systems are available.

34-274 Other Activities to be regulated on and after January 1, 2006.

The following activities shall be regulated in the manner set out herein on and after January 1, 2006. A person affected by such regulations may request a variance in the manner set out in Section 34-277. A violation of this section and subsections shall be subject to enforcement provisions set out in Section 34-278. It shall be and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this Division 1.

34-274.1 Condensate collection. Newly constructed commercial buildings installing air conditioning systems on and after January 1, 2006, shall have a single and independent

condensate wastewater line to collect condensate wastewater to provide for future utilization as (i) process water and cooling tower make-up and/or (ii) landscape irrigation water. Condensate wastewater shall not be allowed to drain into a storm sewer, roof drain overflow piping system public way or impervious surface.

34-274.2. Rain Sensors. Effective January, 1, 2006, rain sensors shall be installed and maintained on all irrigation systems equipped with automatic irrigation controllers.

34-275 Landscaping Regulations generally applicable on and after January 1, 2006.

Except as specifically provided with alternative effective dates, persons affected by the regulations set out herein below shall comply on and after January 1, 2006, and may request a variance to such regulations in the manner set out in Section 34-277. A violation of this section and subsections shall be subject to the enforcement provisions set out in Section 34-278. It shall be and is hereby declared unlawful for any person to violate, refuse or fail to implement the requirements of this Division 1.

34-275.1 Xeriscape option. Effective January 1, 2006, homebuilders and/or developers subdividing lots and/or constructing new single family residential homes shall offer a xeriscape option in any series of landscaping options offered to prospective home buyers.

34-275.2 Model. Effective January 1, 2006, homebuilders and/or developers who construct model homes for a designated subdivision shall have at least one model home per subdivision landscaped according to a xeriscape design.

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34-275.3 Zonal system. In-ground irrigation systems installed on and after January 1, 2006, shall be zonal irrigation systems.

34-275.4 Turfgrass soil support.

- (a) Turfgrass installed during or associated with new construction on and after January 1, 2006, shall have a minimum of four inches of soil under the turfgrass.
- (b) Drainage utility projects, water and power utility projects, public property maintenance or repair, and those governmental activities necessary to NPDES / TPDES compliance with federal or state rules and regulations implementing the federal Clean Water Act; or governmental actions to comply with the Americans with Disabilities Act, shall not be deemed new construction for purposes of this subsection.

34-275.5 Turfgrass dormancy qualities. Turfgrass installed after January 1, 2007, shall have summer dormancy capabilities.

Legal comment: This comment does not have force of law, but is provided here for informational purposes only. The Texas Property Code, Chapter 202, Section 202.001, et. seq., entitled "Certain Restrictive Covenants," reflects a growing public interest in water conservation and its relationship to the public health, safety, and welfare.

Texas Property Code, Chapter 202, Section 202.007, provides that a property owners association may not include or enforce a provision in a dedicatory instrument that prohibits or restricts a property owner from implementing certain efficient irrigation systems, including underground drip or other drip systems. Any *dedicatory instrument* provision, attempting to restrict a property owner from installing such efficient systems, is void. Therefore, such restrictions, running counter certain conservation efforts, cannot be enforced. Texas Real Property Code, Sec. 202.007(b). *Added by Acts 2003, 78th Legislature, chapter 1024, § 1, Effective, September 1, 2003.*

As used within the Texas Property Code, "dedicatory instrument" means a governing instrument for the establishment, maintenance, and operation of a residential subdivision, planned unit development, condominium, townhouse regime, or any similar planned development. Texas Real Property Code, Sec. 202.007(1).

The Texas Property Code also allows that a property owners' association may restrict the type of turf used by a property owner in the planting of new turf [in the future] *in order to encourage or require water conserving turf.*

According to the Texas Property Code, property owners' associations may regulate, by dedicatory instrument or other legal means, *installation of efficient irrigation systems*, including establishing visibility limitations for aesthetic purposes.

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The SAWS endorses and advocates the use of dedicatory instruments and other legal obligations among private parties which understandings may support and promote a culture of water conservation.

Section 34-276 Variances.

The authority to grant a variance and an appeal from such variance to the provisions of Article IV, Division 1, is hereby delegated to the San Antonio Water System in the manner described herein. A determination by the San Antonio Water System pursuant to this section shall be deemed final for purposes of appeal. Appeal procedures are detailed below.

34-276.1 *Variance.* A person who is affected by these provisions may seek a variance in the manner set out herein. A person shall request a variance within thirty (30) days of the date a provision becomes apparently applicable to that person's activities and/or properties. For example, a person will have standing to seek a variance within thirty (30) days following receipt of a formal (citation) or informal notice of violation; prior to a notice of violation; or at the discretion of the variance administrator when, in the administrator's judgment, to deny standing to pursue a variance would clearly deny the applicant an opportunity to have justice and equity done for the applicant's case. In the latter situation, for purposes of justice and equity, the standard for allowing a variance application to be heard or considered are the common notions of rightness and fair play.

34-276.2 *Time, date, place.* A person seeking a variance under these provisions shall make such request in writing to the Conservation Department. Such request shall be reviewed by the variance administrator. If the application, on its face, warrants a variance, the administrator may grant the request without hearing. Otherwise, the administrator shall review such request within thirty (30) days of receipt and shall inform the requestor in writing of the time, date and place for variance hearing, if necessary.

34-276.3 *Representation and notice of SAWS' response. First Hearing.* The requestor may be represented by a duly authorized representative and may introduce such evidence as the requestor believes to be relevant. The administrator and appropriate Conservation Department personnel shall hear the request. The requestor shall receive written notification by the administrator within thirty (30) days of the date of the hearing whether such variance is granted or denied.

34-276.4 *Appeal.* In the event the variance is granted, the decision of the administrator shall be final. Should the variance be denied, however, the requestor shall have ten (10) days from receipt of the denial of the variance to seek an appeal in writing. Within thirty (30) days of the written request for an appeal from the denial of a variance, the Director shall hear the appeal. The requestor shall be informed in writing of the time, date and place where such appeal shall be heard. The requestor and/or his authorized representatives may present evidence to the Director why such appeal should be granted. The Director shall inform the requestor within thirty (30) days of the date of the hearing of the appeal whether the appeal has been granted or denied. The

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determination of the Director shall be final and shall be in writing. If a judicial appeal is pursued, applicant must take such appeal to District Court or other court of competent jurisdiction within 30 days of the Director's final determination, which further appeal shall be pursued under appropriate standards of the substantial evidence rule.

34-276.5 *Variance qualifications.* Variances to the regulated activities in this Division 1 may be issued through the Department of Conservation's variance administrator provided that the general intent of Article IV, Division 1 has been met, and compliance with Article IV, Division 1, is proven to be impracticable to accomplish and to cause unnecessary hardship. The criteria to determine hardship shall include, but not be limited to, a showing of level of capital outlay and technical complexity in relation to conservation benefit to be derived, and time and effort required to accomplish compliance with this Division.

34-276.6 The SAWS Director of Conservation shall also develop specific criteria to be used for the granting of variances from the provisions of Article IV, Division 1, which are appropriate to the provision for which a variance is being sought. Such criteria shall be applied equally to each request for variance under a particular provision. A requestor shall be furnished with the criteria to be utilized by the administrator and/or Director prior to his/her variance application and/or appeal being heard.

34-277 Enforcement

34-277.1 The President/CEO or his designee of the San Antonio Water System is hereby authorized to enforce this Division in the manner and to the extent allowed by law, including, but not limited to, filing complaints with the city municipal prosecutor's office for such violations, serving notices of violations of this Division and filing civil enforcement actions. Such authorization does not diminish the City Attorney's authority in regard to enforcement of Chapter 34 provisions.

34-277.2 *Presumption and Exception.* For purposes of this Division, it shall be presumed that the person, in whose name a water meter connection is registered with the water purveyor servicing the property, is the responsible party who has made, caused, , allowed, or permitted a violation of the provisions of Article IV, Division 1. Proof that the particular premises had a water meter connection registered in the name of the defendant cited in a criminal complaint filed pursuant to this division shall constitute a *prima facie* presumption that the defendant is a person who made, caused, allowed or permitted a violation pursuant to the provisions of this Division. [Exception to this presumption is found in subsection 34-273.2 above, wherein a city, whose premises are used by a tenant / lessee, is generally not responsible for the tenant / lessee's compliance. In such cases the tenant / lessee of the city is responsible for compliance and the city shall have no duty to enforce against the tenant / lessee except to the extent the city's municipal courts may be fully utilized by the SAWS enforcement officers or other duly authorized governmental personnel charged with enforcement duties.]

34-277.3 The President/CEO or his or her designee is authorized and instructed to commence any action, in law or in equity, including the filing of criminal charges, deemed necessary for the purpose of enforcing this Division. The San Antonio Water System President/CEO or the designee may seek civil penalties, as may be allowed by statute, and any other legal or equitable

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relief available under common law, Chapter 54 of the Texas Local Government Code as it may be amended to address the subject matter of this Division, or any other applicable city, state or federal code or statute.

34-277.4 *Criminal.* Any person violating any provision of this Division 1 of Article IV shall be guilty of a Class C misdemeanor and upon citation and conviction, shall be punished by a fine not less than fifty dollars (\$50.00) and not more than one hundred dollars (\$100.00) for the first offense; a fine not less than two hundred and fifty dollars (\$250.00) and not more than five hundred dollars (\$500.00) for the second offense; a fine of not less than one thousand dollars (\$1,000.00) and not more than two thousand dollars (\$2,000) for the third and additional offenses. Each violation of a particular section of this Division shall constitute a separate offense, and each day an offense continues shall be considered a new violation for purposes of enforcing this Division.

Civil. Civil penalties, imposed by courts of competent jurisdiction in Civil Actions for violations of this division, may also be assessed as may be allowed by applicable state law in any amount to be authorized by the State of Texas. Under Chapter 54 of the Texas Local Government Code, the SAWS and the Office of the City Attorney may presently pursue civil enforcement for injunctive relief and the imposition of \$1,000.00 per day civil penalties appropriately imposed by the Court. This statutory remedy is in addition to the City's common law right to bring Civil Actions for injunctive relief to stop harmful acts, independent of authority found in the Texas Local Government Code.

34-277.5 If, for any reason, any section, sentence, clause or part of this Division is held legally invalid, such judgment shall not prejudice, affect, impair or invalidate the remaining sections of this Division, but shall be confined to the specific section, sentence, clause, or part of this Division held legally invalid.

Sec. 34-278-34-286. Reserved.