

ORDINANCE NO. 4530

AN ORDINANCE CREATING AND ENACTING CHAPTER 12-11 OF TITLE 12 OF THE ROCHESTER CODE OF ORDINANCES RELATING TO THE REGULATION OF NONESSENTIAL WATER USAGE UPON DECLARATION OF A CRITICAL WATER DEFICIENCY AS AUTHORIZED BY MINN. STAT. § 103G.291, SUBDS. 1 AND 2.

THE COMMON COUNCIL OF THE CITY OF ROCHESTER DO ORDAIN:

Section 1. Chapter 12-11 of the Rochester Code of Ordinances is hereby created and enacted to read as follows:

**Sec. 12-11-1. Purpose; intent.**

- (a) The purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the city by regulating the conservation and use of the city's water supply, to the maximum extent practicable, as required by federal and state law. This chapter establishes methods for promoting the conservation and controlling the use of the city's water supply upon declaration, by executive order of the governor, of a critical water deficiency pursuant to Minnesota Statutes section 103G.291.
- (b) The objectives of this chapter are:
- (1) To regulate the use of the city's water supply when the governor has declared a critical water deficiency;
  - (2) To identify mandatory emergency water conservation measures which shall be in effect during a crucial water deficiency; and
  - (3) To establish legal authority to carry out inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this chapter.
- (c) By virtue of this chapter, it shall be unlawful for any person to make, cause, use, or permit the use of water received from a public water supply for residential, commercial, industrial, governmental, or any other purpose in any manner contrary to any provision in this chapter, except where variances have been provided in accordance with subsequent provisions of this chapter.
- (d) Mandatory emergency conservation measures shall be implemented based upon the declaration of a critical water emergency by the governor.

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**Sec. 12-11-2. Definitions.**

Clerk means the city clerk as defined in Chapter VIII, Sections 8.01 – 8.02 of the Rochester City Charter.

Customer means a residential, commercial, or industrial customer receiving water service from Rochester Public Utilities.

Department means Rochester Public Utilities, acting by and through its authority under Chapter XV of the Rochester City Charter.

Emergency means the declaration of a critical water deficiency by the governor.

General manager means the general manager and chief executive officer of the public water supplier, designated as Rochester Public Utilities.

Irrigation means the watering of shrubs, trees, sod, seeded areas, gardens, lawns, or any other outdoor vegetation, except outdoor vegetation utilized for agricultural purposes.

Notice of violation (NOV) means written notification that documents and communicates violations observed during an inspection to the business or individual.

Notification to public means notification through local media, including interviews and issuance of news releases.

Person means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Public water supplier means the city or other entity that owns, manages, or operates a public water supply, as defined in Minn. Stat. § 144.382, subdivision 4. The public water supplier for the City of Rochester is designated as Rochester Public Utilities.

Reclaimed water means water collected from rooftops, paved surfaces, or other collection devices and all water utilized more than once before re-entering the natural water cycle.

RPU Board means the governing board of Rochester Public Utilities, acting by and through its authority under Chapter XV of the Rochester City Charter.

Water recirculation system means any system which enables a user to reuse water at least once prior to returning the water to the natural water cycle.

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**Sec. 12-11-3. Applicability.**

This ordinance applies to all customers of the public water supplier who own or control water use on any premises.

**Sec. 12-11-4. Responsibility for administration.**

The general manager shall administer, implement, and enforce the provisions of this chapter. Any powers granted or duties imposed upon the public water supplier may be delegated in writing by the general manager to persons or entities acting in the beneficial interest of or in the employ of the city.

**Sec. 12-11-5. Compatibility with other regulations.**

This chapter is not intended to modify or repeal any other local, state, or federal ordinance, rule, regulation, or other provision of law. The requirements of this chapter are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

**Sec. 12-11-6. Ultimate responsibility.**

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore, this chapter does not intend or imply that compliance by any person will ensure that there will be no use of water from the public water supply in a manner not contrary to this chapter.

**Sec. 12-11-7. Declaration of critical water deficiency.**

Upon the declaration of a critical water deficiency by the governor, the public water supplier shall immediately post notice of the emergency declaration at the usual meeting place of the common council, or the official city bulletin board. The city shall provide notification to the public as quickly as possible or through established water supply plans emergency response plans or procedures.

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**Sec. 12-11-8. Mandatory emergency water conservation measures.**

Upon declaration of a water emergency and notification to the public, the following mandatory restrictions upon nonessential water use shall be enforced:

- a) Outdoor irrigation of yards, gardens, golf courses, parklands, and other non-agricultural land, except for those areas irrigated with reclaimed water, is prohibited.
- b) Washing or spraying of sidewalks, driveways, parking areas, tennis courts, patios, or other paved areas with water from any pressurized source, including garden hoses, except to alleviate immediate health or safety hazards, is prohibited.
- c) The outdoor use of any water-based play apparatus connected to a pressurized source is prohibited, except at facilities equipped with wash water recirculation systems.
- d) Restaurants and other food service establishments are prohibited from serving water to their customers, unless water is specifically requested by the customer.
- e) Operation of outdoor misting systems used to cool public areas is prohibited.
- f) The filling of swimming pools, fountains, spas, or other exterior water features is prohibited.
- g) The washing of automobiles, trucks, trailers, and other types of mobile equipment is prohibited, except at facilities equipped with wash water recirculation systems, and for vehicles requiring frequent washing to protect public health, safety, and welfare.

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### **Sec. 12-11-9. Variances.**

The general manager or designee is authorized to grant variances to this ordinance where strict application of its provisions would result in serious hardship to a customer. An applicant may appeal the denial of a variance within five (5) days of the decision by submitting a written appeal to the RPU Board. The RPU Board shall conduct a hearing according to Section 11-10(f), below. The decision of the RPU Board is final.

### **Sec. 12-11-10. Violations, enforcement and penalties.**

- a) Violations. It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. Any person who has violated or continues to violate the provisions of this chapter may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.
- b) Warning notice. When the public water supplier finds that any person has violated, or continues to violate, any provision of this chapter, or any order issued hereunder, the general manager or designee may serve upon that person a written warning notice, specifying the particular violation believed to have occurred and requesting the customer to immediately investigate the matter and to seek a resolution, whereby any offending activity will cease. Investigation and/or resolution of the matter in response to the warning notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the warning notice. Nothing in this subsection shall limit the authority of the general manager to take any action, including emergency action or any other enforcement action, if a warning notice is not issued.
- c) Notice of violation. Whenever the public water supplier finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the public water supplier may order compliance by written notice of violation to the responsible person. The notice of violation shall contain:
- (1) the name and address of the alleged violator;
  - (2) the address, when available, or a description of the building, structure or land upon which the violation is occurring, or has occurred;
  - (3) a statement specifying the nature of the violation and the date and time it started, along with its duration, if known;
  - (4) a description of the remedial measures necessary to restore compliance with this chapter and a time schedule for the completion of such remedial action;
  - (5) a statement of the penalty(ies) that shall or may be assessed against the alleged violator to whom the notice of violation is directed;

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- (6) a statement that the determination of violation may be appealed to the RPU Board by filing a written notice of appeal within ten (10) business days of receipt of the notice of violation; and
- (7) a statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.
- d) *Civil penalties.* In the event the alleged violator fails to take the remedial measures set forth in any written notice or otherwise fails to cure the violations according to the schedule described in the notice, then the public water supplier may impose a penalty of up to \$1,000.00 for each day the violation remains unremedied after receipt of the notice. Civil penalties shall be added to the monthly water bill of the owner or current occupant of the premises where the violation occurred. The imposition of civil penalties shall in no way limit the right of the public water supplier to pursue other legal remedies.
- e) *Suspension of water service due to ongoing violation of this chapter.* Where one or more violations of emergency mandatory water conservation measures are found to be continuing after the alleged violator has received a warning notice and a notice of violation, the public water supplier may suspend the provision of water to the property if such suspension would avoid further harm to the public water supply. The general manager or designee will notify a violator of the proposed suspension of its water services. A person commits an offense if the person reinstates water service pursuant to this section, without the prior approval of the general manager.
- f) *Appeal.* An alleged violator may appeal a warning notice, a notice of violation, a civil penalty, and/or a notice of suspension of water service under this chapter. The appeal shall be submitted in writing to the RPU Board within ten (10) business days from the date of the notice. Thereafter, the RPU Board shall provide notice of the time and place where the hearing will be held and shall notify the recipient of their right to appear in person or by counsel. At the conclusion of the hearing, the RPU Board may vacate the notice, or may affirm it and require the recipient to come into compliance within a reasonable time. The decision of the RPU Board is final. Violators may be granted an administrative waiver if evidence is provided that equipment failure was the cause of the violation. A letter from a qualified vendor or equipment invoice will be required to show proof of equipment failure.

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**Sec. 12-11-11. Enforcement measures after appeal.**

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal, within seven (7) business days of the decision of the city RPU Board affirming the notice of violation, then representatives of the public water supplier shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore compliance. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

**Sec. 12-11-12. Cost of abatement of violation.**

Costs of abatement may be assessed against the premises pursuant to Minn. Stats. § 429.101 if not paid following invoicing.

**Sec. 12-11-13. Violations deemed a public nuisance.**

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

**Sec. 12-11-14. Remedies not exclusive.**

The remedies listed in this chapter are not exclusive of any other remedies available under any applicable federal, state, or local law, and it is within the discretion of the general manager to seek cumulative remedies. The public water supplier may recover all attorney's fees, court costs, and other expenses associated with enforcement of this chapter, including sampling and monitoring expenses.

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Section 2. This ordinance shall be effective as of the date of its publication.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF  
ROCHESTER, MINNESOTA, THIS 22nd DAY OF April, 2024.

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PRESIDENT OF SAID COMMON COUNCIL

ATTEST: *Kelly M. Hill*  
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CITY CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2024.

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MAYOR OF SAID CITY

