

ORDINANCE No. 2008-01

AN ORDINANCE PROHIBITING WATER WASTE IN THE CITY OF BELEN; AND PROVIDING FOR THE ADMINISTRATION AND ENFORCEMENT OF WATER WASTE RESTRICTIONS.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF BELEN, NEW MEXICO.

SECTION 1. Statement of Policy.

- A. The Governing Body has determined that wasted water unnecessarily depletes the water supply, results in the loss of a valuable natural resource, causes soil erosion and degrades streets, and may create public safety hazards.
- B. Water waste is prohibited as a condition of receiving service from the municipal water utility. Water waste within the municipal limits is prohibited even if the water is not provided by the municipal water utility.

SECTION 2. Authorization.

The Mayor, or the Mayor's designee, shall be responsible for the enforcement of this Ordinance. The Governing Body may prescribe policies, rules, or regulations to carry out the intent and purposes of this Ordinance.

SECTION 3. Definitions.

- A. **DRIP IRRIGATION** means low pressure, low volume irrigation applied slowly, near or at ground level.
- B. **FUGITIVE WATER** means the pumping, flow, release, escape, or leakage of any water from any pipe, valve, faucet, connection, diversion, well, or any facility for the purposes of water supply, transport, storage, disposal, or delivery onto adjacent property or the public right-of-way. Fugitive water shall not include:
 - 1. Storm water runoff;
 - 2. Flow of water resulting from temporary water supply system failures or malfunctions;

3. Water applied to prevent or abate health, safety, or accident hazards when alternate methods are not available. The washing of outdoor eating areas and sidewalks is not included in this exemption;
 4. Flow of water resulting from vandalism, weather conditions, or emergencies; and
 5. The occurrence of an unforeseeable or unpreventable failure or malfunction of plumbing or irrigation system hardware.
- C. **GREYWATER** means untreated household wastewater that has not come in contact with toilet waste. Greywater also does not include water from kitchen sinks or dishwashers.
- D. **HARVESTED WATER** means precipitation or irrigation runoff collected, stored and available for reuse for irrigation purposes.
- E. **PUBLIC RIGHT-OF-WAY** means dedicated public land for the use of the public for the movement of people, goods, vehicles, or storm water. For purposes of this Ordinance, public right-of-way shall include curbs, streets, and storm water drainage structures.
- F. **RESPONSIBLE PARTY** means the owner, manager, supervisor, or person who receives the water bill, or person in charge of the property, facility, or operation during the period of time the violation is observed.
- G. **SHUT-OFF NOZZLE** means a device attached to the end of a hose that completely shuts off the flow of water, even if left unattended.
- H. **SPRAY IRRIGATION** means the application of water to landscaping by means of a device that projects water through the air in the form of small particles or droplets.
- I. **SUB-SURFACE IRRIGATION** means low pressure, low volume irrigation applied slowly, below ground level.
- J. **WATER WASTE** means any water, other than natural precipitation, that flows from a property to the public right-of-way or adjacent private property. Water waste is a non-beneficial use of water. Non-beneficial uses include but are not restricted to:
1. Landscape water applied in such a manner that it overflows the landscaped area being watered and runs onto adjacent property or public right-of-way;

2. Landscape water which leaves a sprinkler, sprinkler system, or other application device in such a manner as to spray onto adjacent property or public right-of-way; and
3. Washing of vehicles, equipment, or hard surfaces such as parking lots or driveways when water is applied in sufficient quantity to result in excessive flow onto an adjacent property or the public right-of-way.

SECTION 4. Water Waste Restrictions.

- A. No person, firm, corporation, or government facility or operation shall cause, or permit to occur, any water waste or the flow of fugitive water onto adjacent properties or public right-of-way whether served by the municipal water utility or by a private well.
- B. The following restrictions apply to all properties that use spray irrigation within the municipal limits or are served by the municipal water utility:
 1. Beginning April 1 through September 30, spray irrigation is allowed only from 6:00 p.m. to 10:00 a.m. on all properties.
 2. Shut-off nozzles are required on any hoses used for hand watering, vehicle or equipment washing, or other outdoor uses.
 3. Additional scheduling or restrictions may be applied during declared drought or emergency events.
- C. The water waste restrictions do not apply to the following:
 1. Outdoor watering performed with permanent drip irrigation system, sub-surface irrigation, harvested water, or greywater is exempt.
 2. Watering of containerized plants and nursery plant stock is exempt.
 3. Repair and maintenance of irrigation systems.
 4. Single day irrigation needed for application of chemicals for maintenance of existing or new landscape.
 5. Use of potable water for dust control or soil compaction when no alternative source is available.

6. Non-profit car washes held as fund raisers, if vehicles are washed using hand held buckets and hoses equipped with shut-off nozzles.

SECTION 5. Violations and Penalty Fees.

- A. Any responsible party who violates any of the provisions of this Ordinance shall be subject to progressively higher penalty fees until the violation ceases, an extension of time for corrective measures is granted, or an appeal is initiated in accordance with the provisions of this Ordinance.
- B. Upon discovery of a violation of this ordinance, a verbal warning and placement of a door tag shall initiate a series of inspections by the City to correct the violation. The responsible party must correct the violation, or may request an extension of time to take corrective measures, or may initiate an appeal in accordance with this Ordinance within thirty (30) days following receipt of a verbal warning or a written notice of violation. If a violation has not been corrected within thirty (30) days following a verbal warning or receipt of a written notice of violation, unless an extension of time or an appeal is pursued in accordance with this Ordinance, then an additional observed violation will be recorded.
- C. A written notice of violation shall be sent to the responsible party by certified mail within five (5) working days following discovery of a continuing violation of this Ordinance. If the violation is not corrected within the time allowed by this Ordinance, unless an extension of time or an appeal is pursued in accordance with this Ordinance, then the assessed penalty fee must be paid within thirty (30) calendar days following the date of receipt of the certified mail notification.
- D. The assessment of penalty fees for violations defined by this Ordinance shall be as follows:
 1. First observed violation – (Verbal warning: no penalty fee);
 2. Second observed violation – (Notice in writing: no penalty fee);
 3. Third observed violation - \$50 (fifty dollars);
 4. Fourth observed violation - \$100 (one hundred dollars);
 5. Fifth observed violation – (WATER SERVICE DISCONNECTED).
 6. For purposes of assessing penalty fees, any previous violation after the effective date of this Ordinance shall not be considered if a period of two (2) years has elapsed since the violation occurred, or the property has been transferred to a new owner.

SECTION 6. Extension of Time and Appeals.

- A. The City Manager may grant an extension of time to allow the responsible party to take corrective measures, provided that the general intent of this Ordinance has been met, but compliance with this Ordinance will cause practical difficulties or unnecessary hardship.
- B. An extension of time may be granted for a period not to exceed one year and shall stipulate both short-term corrective measures and a schedule for completion of long-term corrective measures.
- C. Any responsible party may appeal a written notice of violation to this Ordinance to the City Manager within fifteen (15) calendar days of receiving a notice of violation of this Ordinance. Appeals shall be made in writing and filed at the Office the City Manager. The appeal shall be considered by the City Manager within fifteen (15) calendar days and, if the City Manager's decision is adverse to the appellant, the appellant may appeal to District Court.

SECTION 7. Severability.

The provisions of this Ordinance shall be deemed to be severable, and should any part of this Ordinance be declared by the courts to be unconstitutional or invalid, such holdings shall not affect the validity of this Ordinance other than the part so declared to be unconstitutional or invalid.

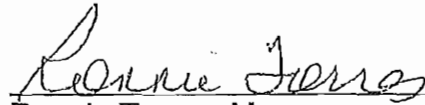
SECTION 8. Moratorium on Penalty Fees.

In order to provide adequate time for public education and individual actions to minimize violations of this Ordinance, there shall be a one-year moratorium on penalty fees as required herein. The moratorium shall begin on the effective date of this Ordinance. All observed violations of this Ordinance during the moratorium shall be notified in writing from the City which shall include a reference to this Ordinance and an explanation of the violation.

SECTION 9. Effective Date.

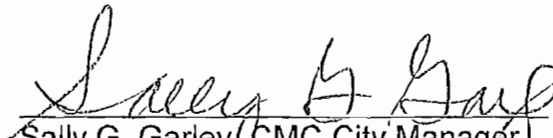
PASSED, APPROVED AND ADOPTED this 17 day of March, 2008
by the Governing Body of the City of Belen, New Mexico.

This Ordinance shall become effective on the 27th day of March, 2008.



Ronnie Torres, Mayor

ATTEST:



Sally G. Garley, CMC City Manager