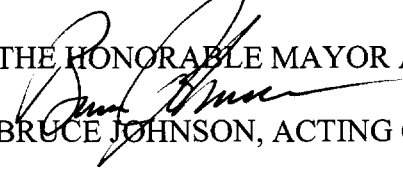


City of Alexandria, Virginia

MEMORANDUM

DATE: DECEMBER 6, 2011

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM:  BRUCE JOHNSON, ACTING CITY MANAGER

SUBJECT: CONSIDERATION OF AMENDING THE WATER SUPPLY EMERGENCY ORDINANCE

ISSUE: Consideration of amending City Code Sections 5-6-1 through 5-6-20 related to water supply emergencies to:

1. Add definitions for a water shortage condition and a water supply emergency;
2. Expand the list of possible voluntary or mandatory restrictions or prohibitions during a water shortage condition or water supply emergency in order to conserve water; and
3. Include new and updated sections related to: (a) exemptions for the public health, safety and welfare, (b) appeals, and c) penalties.

RECOMMENDATION: That City Council pass the proposed ordinance (Attachment 1) on first reading and schedule it for public hearing, second reading and final passage on Saturday January 21, 2012.

DISCUSSION: The Northern Virginia Regional Commission (NVRC) has completed a draft of the Northern Virginia Regional Water Supply Plan (Regional WSP) as mandated by the Commonwealth's Local and Regional Water Supply Planning Regulation (State Regulation 9 VAC 25-780-10), which was submitted to the Virginia Department of Environmental Quality on November 2, 2011. This regulation was developed largely as a result of the regional droughts experienced in 1999 and 2002. The purpose of the regulation is to ensure that adequate and safe drinking water is available to all citizens of the Commonwealth, encourage, promote and protect all other beneficial uses of the Commonwealth's water resources, and encourage, promote and develop incentives for water conservation and for alternative water resources.

The State regulation requires local jurisdictions to develop a drought response and contingency plan detailing the procedures to implement and enforce water supply emergency measures through local ordinances. In June 2000, the City, along with other participating local jurisdictions, adopted the Metropolitan Washington Water Supply and Drought Awareness Response Plan (Drought Awareness Response Plan). The Regional WSP recommends that the City of Alexandria update its water supply emergency regulations to incorporate the key

components of the Drought Awareness Response Plan. Staff is proposing to update the City Code based on the recommendations provided in the Regional WSP. Proposed changes to Sections 5-6-1 through 5-6-20 of the City Code are discussed below.

New sections have been added to the existing ordinance. A purpose (Sec. 5-6-4) and definitions (Sec. 5-6-5) section has been added to specify what constitutes a water shortage condition and a water supply emergency and to state that the regulation provides for the necessary curtailment of water use by the City's residents and businesses during either of these conditions. Section 5-6-8 has been proposed to allow for exemptions to any mandatory water usage restrictions for those uses which are essential to the preservation of the public health, safety and welfare. An appeals section (Sec. 5-6-9) has been added to allow an individual water customer to request to the City Manager less than full compliance with any mandatory restrictions during a water supply emergency.

The existing ordinance only recognizes water supply emergencies, but the Drought Awareness Response Plan also specifies water shortage conditions, which are those conditions, if action is not taken, that could lead to a drought condition and the declaration of a water supply emergency. Section 5-6-6 has been added to the ordinance to include voluntary restrictions and water conservation practices that can be implemented during these water shortages.

The proposed ordinance expands the list of possible mandatory restrictions during a water shortage condition or water supply emergency (Sec. 5-6-6 and 5-6-7). The current ordinance restricts the watering of certain vegetation or washing of driveways or sidewalks. The proposed ordinance also includes restrictions on the operation of ornamental fountains, filling of swimming or wading pools, use of water from fire hydrants (other than emergencies), serving water in restaurants unless requested, requesting water users to inspect for and fix plumbing leaks, and establishing maximum daily water consumption goals.

The proposed ordinance changes the penalties for violation to a Class V Civil Violation (Sec. 1-1-11). Under this violation, the penalty will be a \$25 fine for the first violation, \$50 for the second violation and \$100 for each subsequent violation. The section also allows the City Manager the authority to seek suspension of water service to prevent continued future violations. The current ordinance assigns a general fine between \$10 and \$50. The proposed change is consistent with other code violations.

FISCAL IMPACT: None.

ATTACHMENT: Attachment 1- Proposed Ordinance

STAFF:

Mark Jinks, Deputy City Manager
Richard J. Baier, P.E., LEED AP, Director, Transportation & Environmental Services
Emily Baker, City Engineer, Transportation & Environmental Services
Maurice Daly, Division Chief, Transportation & Environmental Services
Erin Bevis-Carver, Civil Engineer III, Transportation & Environmental Services

1	Introduction and first reading:	12/13/11
2	Public hearing:	1/21/12
3	Second reading and enactment:	1/21/12

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE to amend and reordain Article A (WATER), Chapter 6 (WATER AND SEWER) of Title 5 (TRANSPORTATION & ENVIRONMENTAL SERVICES), all of The Code of the City of Alexandria, Virginia, 1981, as amended.

Summary

The proposed ordinance creates two divisions within Article A; Division 1, which contains the current code provisions related to stagnant water, and Division 2, which contains new sections related to local and regional water supply emergencies and related processes and procedures.

Sponsor

N/A

Staff

Rich Baier, Director, T&ES
Emily Baker, City Engineer
Erin Bevis-Carver, T&ES
Christopher P. Spera, Deputy City Attorney

Authority

Alexandria City Charter Sections 2.04(c) and (h)

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

None

ORDINANCE NO. _____

AN ORDINANCE to amend and reordain Article A (WATER), Chapter 6 (WATER AND SEWER) of Title 5 (TRANSPORTATION & ENVIRONMENTAL SERVICES), all of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Title 5, Chapter 6, Article A of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, amended and reordained by the creation of 2 Divisions, the deletion of current Section 5-6-1, the renumbering of Sections 5-6-2 through -4 and the addition of new Section 5-6-4 through -10, to read as follows:

Division 1 – Stagnant Water

~~Sec. 5-6-1 – Use in emergencies.~~

~~It shall be unlawful for any person, when an emergency has been declared to exist in the water supply of the city by published printed notice by the city manager, to use water obtained from the mains supplying the city, for the watering of lawns, plants or flowers, except plants or flowers grown by a duly licensed florist, the washing of automobiles, sidewalks or porches or any other unnecessary or wasteful use. Any violation of this section shall be subject to a fine of not less than \$10 nor more than \$50. (Code 1963, Sec. 40-1)~~

Sec. 5-6-12 - Stagnant water—owner to fill in place of collection.

(a) It shall be the duty of the owner of any lot or parcel of land located in the city which, because of the contour of the surface of the land, catches and holds rain and surface water, so that pools or ponds of stagnant water result, to fill in the lots, or parcels of land with earth to a grade as will prevent the collection of pools or ponds of stagnant water. In cases where the basin formed by the contour of the land in which the water collects is composed of two or more lots or parcels of land in separate ownership, the owners shall be responsible for the filling in of the portions of their respective lots or parcels of land as may be affected. At the request of any owner, the city engineer shall furnish the proper grade to which the fill should be made.

(b) The provisions of this section shall be applicable in all cases where stagnant water collects, whether the result of abandoned excavations, establishments of street grades or otherwise.

Sec. 5-6-3-2 - Same—action by city when owner refuses to fill in.

(a) In the event that any owner shall fail or refuse to fill in any lot or parcel of land as provided in the preceding section, within 10 days of receipt of written notice from the city

1 manager to do so, the notice to be sent by registered mail, the city manager may cause the lot or
2 parcel of land to be filled in with earth to the proper grade, and the cost thereof shall be a charge
3 against the owner and the amount thereof shall be certified by the city manager to the director of
4 finance to be added to the current tax bill against the land, which shall constitute a lien thereon as
5 a part of the current tax bill, and the charges shall bear interest at the rate of six percent
6 commencing 30 days after completion of this work.

7
8 (b) In addition to certifying the amount of the charges to the director of finance, the city
9 manager may certify same to the city attorney for any appropriate action at law to recover that as
10 may be deemed proper.

11
12 **Sec. 5-6-4 3 - Same—penalty for violation of two preceding sections.**

13
14 Any violation of the provisions of the two preceding sections shall be subject to a fine of
15 not less than \$5 nor more than \$100, and each day that any owner fails or refuses to comply after
16 10 days from receipt of the written notice from the city manager as provided in the preceding
17 section, shall constitute a separate offense, but the notice shall not be prerequisite to liability for
18 violation of the provisions of section 5-6-2 of this code.

19
20 [The following is all new text]

21
22 DIVISION 2 – WATER SUPPLY EMERGENCY

23
24 **Sec. 5-6-4 – Purpose.**

25
26 The purpose of this division is to provide for the necessary reduction and curtailment of
27 water usage through voluntary and/or mandatory restrictions during a water shortage condition or
28 water supply emergency affecting the City and its residents and businesses.

29
30 **Sec. 5-6-5 – Definitions.**

31
32 (a) Water shortage condition. A state wherein the Potomac River Basin is experiencing
33 unusually dry weather, or a state wherein there exists the potential for a water supply emergency
34 if water demands are not reduced.

35
36 (b) Water supply emergency. A condition wherein the present or expected future ability of
37 the City to deliver adequate supplies of water to customers to enable normal levels of potable
38 water usage is endangered due to an extended drought and/or disruption in the City’s water
39 supply system.

40
41 **Sec. 5-6-6 – Declaration of Water Shortage Condition.**

42
43 (a) Whenever the City Manager, or designated agent, determines that a water shortage
44 condition exists, a water shortage condition may be declared by the City Manager. The City

1 Manager, or designated agent, shall notify the general public that a water shortage condition has
2 been declared and that more specific voluntary restrictions of water usage by residents and
3 businesses are requested in order to help preserve the supply of potable water to the City.
4

5 (b) Upon the declaration of a water shortage condition, the City Manager, or designated
6 agent, may issue voluntary restrictions or recommend water conservation practices to help
7 preserve the supply of potable water to the City. Such voluntary restrictions or conservation
8 practices may include, but shall not be limited to, voluntary restriction of one (1) or more of the
9 following:

10
11 (1) Watering of shrubbery, trees, lawns, grass, plants, or other vegetation, except
12 plants of flowers grown by a duly licensed florist;

13
14 (2) Washing of automobiles, trucks, trailers or other mobile equipment, except in a
15 vehicle wash facility with an effective and efficient water recycling system;
16

17 (3) Washing of streets, driveways, parking lots, service station aprons, the exterior of
18 commercial or residential buildings, or any other outdoor surfaces unless such washing is
19 required to eliminate a hazard;
20

21 (4) Operation of any ornamental fountain or other structure making similar use of water;
22

23 (5) Serving water to customers in restaurants, cafeterias, or any other establishment,
24 unless specifically requested;
25

26 (6) Filling of swimming and/or wading pools and use of water for outdoor recreation;
27

28 (7) Use of water from fire hydrants, except for health and safety purposes;
29

30 (8) Request water users to inspect all plumbing and repair leaks; and
31

32 (9) Suggestion of a maximum daily consumption goal for residents to strive and achieve.
33

34 (c) At any time after the declaration of a water shortage condition, if the City Manager
35 determines that such a condition no longer exists, then he or she may declare the rescission of the
36 water shortage condition and the termination of all associated voluntary restrictions and
37 recommended water conservation practices.
38
39
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1 **Sec. 5-6-7 – Declaration of Water Supply Emergency**
2

3 (a) Whenever the City Manager finds that a water supply emergency exists, or is reasonably
4 likely to occur if water conservation measures are not taken, he or she may declare a water
5 supply emergency restricting or prohibiting the use of water by residents and businesses for the
6 duration of such emergency or for a period of time necessary to prevent the occurrence of a
7 water supply emergency. Such a condition may be determined from information obtained by the
8 City Manager through the City's water supplier (Virginia American Water Company),
9 information obtained from a recognized authority, or from other sources as determined
10 appropriate and prudent by the City Manager.
11

12 (b) Upon the declaration by the City Manager of a water supply emergency he or she is
13 authorized to promulgate and implement, in writing, mandatory water consumption restrictions
14 or prohibitions necessary to preserve the ability of the City to provide adequate and acceptable
15 levels of potable water to preserve the public health, safety and welfare. Water restrictions or
16 prohibitions promulgated by the City Manager may include, but shall not be limited to,
17 restriction or prohibition of one (1) or more of the following activities as provided in Section 5-
18 6-6 (b).
19

20 (c) If, at any time after the City Manager declares a water supply emergency and the City
21 Manager finds that a water supply emergency no longer exists, then the City Manager may
22 declare that the water supply emergency has ended. At any time during a water supply
23 emergency, the City Manager may, by written declaration, declare the rescission, in whole or in
24 part, of any restrictions or prohibitions promulgated and implemented under Section 5-6-7 (b).
25 Such declarations by the City Manager shall be based upon a factual finding that the ability of
26 the City to deliver acceptable quantities of potable water is no longer limited, or that the extent of
27 the declared emergency is reduced and that the existing restrictions or prohibitions, or some part
28 thereof, are no longer required to protect the public health, safety and welfare.
29

30 (d) The City Manager, or designated agent, shall notify the general public, and the City
31 Council, when the City Manager promulgates, or rescinds, mandatory restrictions or prohibitions
32 authorized by this Section or by any ordinance adopted hereafter. Such notification shall
33 describe the mandatory restrictions and prohibitions promulgated or rescinded by the City
34 Manager, the effective date or dates thereof, and the penalties for noncompliance. Such a notice
35 to the general public shall be published in a newspaper of general circulation within the City and
36 posted in a public space in the City Manager's office. Such notice shall be deemed due and
37 proper notice to every customer supplied with water by the City.
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1 **Sec. 5-6-8 – Exemptions of Essential Uses for Public Health, Safety and Welfare.**

2
3 The provisions of any declaration by the City Manager of a water supply emergency, and
4 any restrictions or prohibitions implemented by the City Manager, shall not apply to any
5 governmental, business, or industrial use which is deemed by the City Manager to be essential to
6 the preservation of the public health, safety and/or welfare.

7
8 **Sec. 5-6-9 – Appeals.**

9
10 Upon receipt of a written request by an individual customer of water supplied by the City,
11 the City Manager, for good cause shown, including evidence that the applicant is affected in a
12 substantial manner not common to other persons or businesses generally, may permit less than
13 full compliance with any of the water restrictions or prohibitions promulgated during a declared
14 water supply emergency. No waiver shall be granted by the City Manager unless he or she
15 determines that the public health, safety and welfare will not be adversely affected by the waiver.

16
17
18 **Sec. 5-6-10 – Penalties.**

19
20 (a) Any person who violates or fails to comply with any of the mandatory provisions of this
21 Division may be charged with a Class Five Civil Violation and may be fined as provided in
22 Section 1-1-11(b)(5) of this Code.

23
24 (b) The imposition of a fine or penalty for violating any of the mandatory provisions of this
25 Division shall not excuse the violation or permit it to continue.

26
27 (c) The City Manager, or designated agent, may seek suspension of water service to any
28 violation of the mandatory provisions of this Division by injunction, abatement or other
29 appropriate legal remedy, if the City Manager determines that such action is necessary to prevent
30 any continued or future violation.

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32 **Secs. 5-6-11 through 5-6-20 – Reserved.**

1 Section 2. That this ordinance shall become effective upon the date and at the time of its
2 final passage.

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WILLIAM D. EUILLE
Mayor

Introduction:	12/13/2011
First Reading:	12/13/2011
Publication:	
Public Hearing:	1/21/2012
Second Reading:	1/21/2012
Final Passage:	1/21/2012