

APPENDIX D

ORDINANCE FOR ADOPTION OF A DROUGHT CONTINGENCY PLAN CITY OF POTH

ORDINANCE NO. 082100

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

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

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

WHEREAS, Section 12.1272 of the Texas Water Code and applicable rules of the Texas Natural Resource Conservation Commission require all public water supply systems in Texas to prepare a drought contingency plan; and

WHEREAS, as authorized under law, and in the best interests of the citizens of POTH, Texas, the MAYOR and the POTH CITY COUNCIL deems it expedient and necessary to establish certain rules and policies for the orderly and efficient management of limited water supplies during drought and other water supply emergencies.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF POTH, TEXAS;

SECTION 1.

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

SECTION 2.

That all ordinances that are in conflict with the provisions of this ordinance, and the same are hereby, repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3.

Should any paragraph, sentence, subdivision, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this

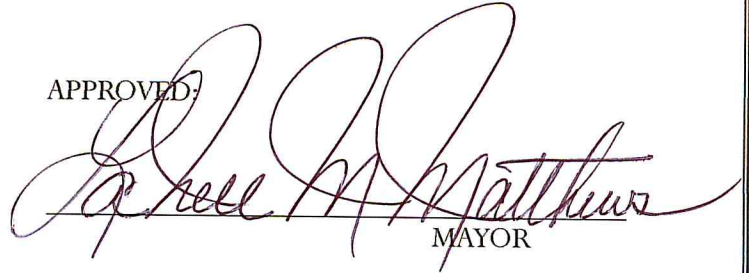
ordinance as a whole or any part or provision thereof, other than the part so declared to be invalid, illegal or unconstitutional.

SECTION 4.

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

DULY PASSED BY THE CITY OF POTH, TEXAS, on this 21ST day of AUGUST, 2000.

APPROVED:


MAYOR

ATTESTED TO:


CITY SECRETARY

CITY ATTORNEY

APPENDIX C
Drought Contingency Plan

DROUGHT CONTINGENCY PLAN
FOR THE
CITY OF POTH
SEPTEMBER 1, 2000

Section I: Declaration of Policy, Purpose, and Intent

In order to conserve the available water supply and protect the integrity of water supply facilities, with particular regard for domestic water use, sanitation, and fire protection, and to protect and preserve public health, welfare, and safety and minimize the adverse impacts of water supply shortage or other water supply emergency conditions, the CITY OF POTH hereby adopts the following regulations and restrictions on the delivery and consumption of water.

Water uses regulated or prohibited under this Drought Contingency Plan (the Plan) are considered to be non-essential and continuation of such uses during times of water shortage or other emergency water supply condition are deemed to constitute a waste of water which subjects the offender(s) to penalties as defined in Section XI of this Plan.

Section II: Public Involvement

Opportunity for the public to provide input into the preparation of the Plan was provided by the CITY OF POTH by means of an open public meeting to accept input on the Plan.

Section III: Public Education

The CITY OF POTH will periodically provide the public with information about the Plan, including information about the conditions under which each stage of the Plan is to be initiated or terminated and the drought response measures to be implemented in each stage. This information will be provided by means of press releases or utility bill inserts.

Section IV: Coordination with Regional Water Planning Groups

The service area of the CITY OF POTH is located within the SOUTH CENTRAL TEXAS regional water planning area and the CITY OF POTH has provided a copy of this Plan to the SAN ANTONIO RIVER AUTHORITY.

Section V: Authorization

The Mayor or his/her designee is hereby authorized and directed to implement the applicable provisions of this Plan upon determination that such implementation is necessary to protect public health, safety, and welfare. The Mayor, or his/her designee, shall have the authority to initiate or terminate drought or other water supply emergency response measures as described in this Plan.

Section VI: Application

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

Section VII: Definitions

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

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

Commercial and institutional water use: water use that is integral to the operations of commercial and non-profit establishments and governmental entities such as retail establishments, hotels and motels, restaurants, and office buildings.

Conservation: those practices, techniques, and technologies that reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water or increase the recycling and reuse of water so that a supply is conserved and made available for future or alternative uses.

Customer: any person, company, or organization using water supplied by CITY OF POTH.

Domestic water use: water use for personal needs or for household or sanitary purposes such as drinking, bathing, heating, cooking, sanitation, or for cleaning a residence, business, industry, or institution.

Even number address: street addresses, box numbers, or rural postal route numbers ending in 0, 2, 4, 6, or 8 and locations without addresses.

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

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

Non-essential water use: water uses that are not essential nor required for the protection of public, health, safety, and welfare, including:

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

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

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

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

The triggering criterion described below is based on the level of the above ground water storage tank levels.

Stage 1 Trigger -- MILD Water Shortage Conditions

Requirements for initiation

Customers shall be requested to *VOLUNTARILY* conserve water and adhere to the prescribed restrictions on non-essential water uses as defined in Section VII – Annually, beginning on May 1 through September 30th **when**

Water supply in the above ground water storage tanks cannot be replenished in its entirety for three (3) consecutive days.

Requirements for termination

Stage 1 of the Plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 3 (three) consecutive days.

Stage 2 Triggers -- MODERATE Water Shortage Conditions

Requirements for initiation

Customers shall be *required to comply* with the requirements and restrictions on all non-essential water uses provided in Section VII of this Plan **when the water supply in the above ground water storage tanks cannot be replenished above the 90% level for three (3) consecutive days.**

Requirements for termination

Stage 2 of the Plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 3 (three) consecutive days. Upon termination of Stage 2, Stage 1 becomes operative.

Stage 3 Triggers -- SEVERE Water Shortage Conditions

Requirements for initiation

Customers shall be required to comply with the requirements and restrictions on all non-essential water uses provided in Section VII of this Plan **when the water supply in the above ground water storage tanks cannot be replenished above the 80% level for three (3) consecutive days.**

Requirements for termination

Stage 3 of the Plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 3 (three) consecutive days. Upon termination of Stage 3, Stage 2 becomes operative.

Stage 4 Triggers -- CRITICAL Water Shortage Conditions

Requirements for initiation

Customers shall be required to comply with the requirements and restrictions on all non-essential water uses provided in Section VII of this Plan **when the water supply in the above ground water storage tanks cannot be replenished above the 70% level for three (3) consecutive days.**

Requirements for termination

Stage 4 of the Plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 3 (three) consecutive days. Upon termination of Stage 4, Stage 3 becomes operative.

Stage 5 Triggers -- EMERGENCY Water Shortage Conditions

Requirements for initiation

Customers shall be required to comply with the requirements and restrictions contained in the non-essential water uses provided in Section VII of this Plan **when the water supply in the above ground water storage tanks cannot be replenished above the 60% level for three (3) consecutive days or if the Mayor or his/her designee determines that a water supply emergency exists based on:**

- 1. Major water line breaks, or pump or system failures occur, which cause unprecedented loss of capability to provide water service; or**
- 2. Natural or man-made contamination of the water supply source(s); or**
- 3. System outage due to depletion of water supply or equipment failure which reduces residual pressure in the system below 20 psi for a period of 24 hours or longer; or**
- 4. Other unforeseen events, which could cause imminent health or safety risks to the public.**

Requirements for termination

Stage 5 of the Plan may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 3 (three) consecutive days.

Stage 6 Triggers -- WATER ALLOCATION IN EMERGENCY SITUATION

Requirements for initiation

Customers shall be required to comply with the water allocation plan prescribed in Section IX of this Plan and comply with the requirements and restrictions for **Stage 5** of this Plan when

1. **Major water line breaks, or pump or system failures occur, which cause unprecedented loss of capability to provide water service; or**
2. **Natural or man-made contamination of the water supply source(s) or**
3. **System outage due to depletion of water supply or equipment failure which reduces residual pressure in the system below 20 psi for a period of 24 hours or longer or**
4. **Other unforeseen events, which could cause imminent health or safety risks to the public.**

Requirements for termination – Water allocation may be rescinded when all of the conditions listed as triggering events have ceased to exist for a period of 3 (three) consecutive days.

Section IX: Drought Response Stages

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

Notification

Notification of the Public:

The Mayor or his/ here designee shall notify the public by means of:

Publication in a newspaper of general circulation, direct mail to each customer, public service announcements, signs posted in public places or take-home fliers at schools.

Additional Notification:

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

City Council; Utility Board; Fire Chief; City and/or County Emergency Management Coordinator(s); County Judge & Commissioner(s); State Disaster District / Department of Public Safety TNRCC (required when mandatory restrictions are imposed); Major water users; Critical water users, i.e. hospitals; Parks; and public facilities managers only as appropriate to respective drought stages.

Stage 1 Response -- MILD Water Shortage Conditions

Goal: Achieve a voluntary 10 percent reduction in total water use and daily water demand.

Supply Management Measures:

Raise public awareness of the supply situation and request voluntary reductions in non-essential water use.

Voluntary Water Use Restrictions:

- (a) Water customers are requested to voluntarily limit the irrigation of landscaped areas to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Saturdays and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9), and to irrigate landscapes only between the hours of midnight and 10:00 a.m. and 8:00 p.m. to midnight on designated watering days.
- (b) All operations of the CITY OF POTH shall adhere to water use restrictions prescribed for Stage 2 of the Plan.
- (c) Water customers are requested to practice water conservation and to minimize or discontinue water use for non-essential purposes.

Stage 2 Responses -- MODERATE Water Shortage Conditions

Goal: Achieve a 15 percent reduction in total water use and/or daily water demand.

Supply Management Measures:

Implement mandatory restrictions on non-essential water uses.

Water Use Restrictions. Under threat of penalty for violation, the following water use restrictions shall apply to all persons:

- (a) Irrigation of landscaped areas with hose-end sprinklers or automatic irrigation systems shall be limited to Sundays and Thursdays for customers with a street address ending in an even number (0, 2, 4, 6 or 8), and Saturdays and Wednesdays for water customers with a street address ending in an odd number (1, 3, 5, 7 or 9), and irrigation of landscaped areas is further limited to the hours of 12:00 midnight until 10:00 a.m. and between 8:00 p.m. and 12:00 midnight on designated watering days. However, irrigation of landscaped areas is permitted at anytime if it is by means of a hand-held hose, a faucet filled bucket or watering can of five (5) gallons or less, or drip irrigation system.

- (b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8:00 p.m. and 12:00 midnight. Such washing, when allowed, shall be done with a hand-held bucket or a hand-held hose equipped with a positive shutoff nozzle for quick rises. Vehicle washing may be done at any time on the immediate premises of a commercial car wash or commercial service station. Further, such washing may be exempted from these regulations if the health, safety, and welfare of the public is contingent upon frequent vehicle cleansing, such as garbage trucks and vehicles used to transport food and perishables.
- (c) Use of water to fill, refill, or add to any indoor or outdoor swimming pools, wading pools, or Jacuzzi-type pools is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8 p.m. and 12:00 midnight.
- (d) Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a re-circulation system.
- (e) Use of water from hydrants shall be limited to fire fighting, related activities, or other activities necessary to maintain public health, safety, and welfare, except that use of water from designated fire hydrants for construction purposes may be allowed under special permit from the CITY OF POTH.
- (f) Use of water for the irrigation of golf course greens, tees, and fairways is prohibited except on designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8 p.m. and 12:00 midnight. However, if the golf course utilizes a water source other than that provided by the CITY OF POTH, the facility shall not be subject to these regulations.
- (g) All restaurants are prohibited from serving water to patrons except upon request of the patron.
- (h) The following uses of water are defined as non-essential and are prohibited:
 - 1. wash down of any sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surfaced areas;
 - 2. use of water to wash down buildings or structures for purposes other than immediate fire protection;
 - 3. use of water for dust control;
 - 4. flushing gutters or permitting water to run or accumulate in any gutter or street; and
 - 5. failure to repair a controllable leak(s) within a reasonable period after having been given notice directing the repair of such leak(s).

Stage 3 Responses -- SEVERE Water Shortage Conditions

Goal: Achieve a 20 percent reduction in total water use and daily water demand.

Supply Management Measures:

Implement ban on non-essential water uses and water rate surcharge for excessive use.

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

- (a) Irrigation of landscaped areas shall be limited to designated watering days between the hours of 12:00 midnight and 10:00 a.m. and between 8 p.m. and 12:00 midnight and shall be by means of hand-held hoses, hand-held buckets, drip irrigation, or permanently installed automatic sprinkler system only. The use of hose-end sprinklers is prohibited at all times.
- (b) The watering of golf course tees (if applicable) is prohibited unless the golf course utilizes a water source other than that provided by the CITY OF POTH.
- (c) The use of water for construction purposes from designated fire hydrants under special permit is to be discontinued.

Stage 4 Responses -- CRITICAL Water Shortage Conditions

Goal: Achieve a 25 percent reduction in total water use and daily water demand.

Supply Management Measures:

Continue ban on non-essential water uses, increase water rate surcharge, and activate back-up wells..

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

- (a) Irrigation of landscaped areas shall be limited to designated watering days between the hours of 6:00 a.m. and 10:00 a.m. and between 8:00 p.m. and 12:00 midnight and shall be by means of hand-held hoses, hand-held buckets, or drip irrigation only. The use of hose-end sprinklers or permanently installed automatic sprinkler systems are prohibited at all times.
- (b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle not occurring on the premises of a commercial car wash and commercial service stations and not in the immediate interest of public health, safety, and welfare is prohibited. Further, such vehicle washing at commercial car washes and commercial service stations shall occur only between the hours of 6:00 a.m. and 10:00 a.m. and between 6:00 p.m. and 10 p.m.
- (c) The filling, refilling, or adding of water to swimming pools, wading pools, and Jacuzzi-type pools is prohibited.

- (d) Operation of any ornamental fountain or pond for aesthetic or scenic purposes is prohibited except where necessary to support aquatic life or where such fountains or ponds are equipped with a re-circulation system.
- (e) No application for new, additional, expanded, or increased-in-size water service connections, meters, service lines, pipeline extensions, mains, or water service facilities of any kind shall be approved, and time limits for approval of such applications are hereby suspended for such time as this drought response stage or a higher-numbered stage shall be in effect.

Stage 5 Responses -- EMERGENCY Water Shortage Conditions

Goal: Achieve a 30 percent reduction in total water use and daily water demand.

Supply Management Measures:

Initiate emergency response procedures

Water Use Restrictions. All requirements of Stage 2, 3, and 4 shall remain in effect during Stage 5 except:

- (a) Irrigation of landscaped areas is absolutely prohibited.
- (b) Use of water to wash any motor vehicle, motorbike, boat, trailer, airplane or other vehicle is absolutely prohibited.

Stage 6 Responses -- WATER ALLOCATION

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

Single-Family Residential Customers

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

Persons per Household	Gallons per Month
1 or 2	6,000
3 or 4	7,000
5 or 6	8,000
7 or 8	9,000
9 or 10	10,000
11 or more	12,000

“Household” means the residential premises served by the customer’s meter. “Persons per household” includes only those persons currently physically residing at the premises and expected to reside there for the entire billing period. It shall be assumed that a particular customer’s household is comprised of two (2) persons unless the customer notifies the CITY OF POTH of a greater number of persons per household on a form prescribed by the Mayor or his/her designated official. The Mayor or his/her designated official shall give his/her best effort to see that such forms are mailed, otherwise provided, or made available to every residential customer. If, however, a customer does not receive such a form, it shall be the customer’s responsibility to go to the CITY OF POTH offices to complete and sign the form claiming more than two (2) persons per household. New customers may claim more persons per household at the time of applying for water service on the form prescribed by the Mayor or his/her designated official. When the number of persons per household increases so as to place the customer in a different allocation category, the customer may notify the CITY OF POTH on such form and the change will be implemented in the next practicable billing period. If the number of persons in a household is reduced, the customer shall notify the CITY OF POTH in writing within two (2) days. In prescribing the method for claiming more than two (2) persons per household, the Mayor or his/her designated official shall adopt methods to insure the accuracy of the claim. Any person who knowingly, recklessly, or with criminal negligence falsely reports the number of persons in a household or fails to timely notify the CITY OF POTH of a reduction in the number of person in a household shall be fined not less than \$200.00.

Residential water customers shall pay the following surcharges:

- \$5.00 for the first 1,000 gallons over allocation.**
- \$10.00 for the second 1,000 gallons over allocation.**
- \$15.00 for the third 1,000 gallons over allocation.**
- \$20.00 for each additional 1,000 gallons over allocation.**

Surcharges shall be cumulative.

Master-Metered Multi-Family Residential Customers

The allocation to a customer billed from a master meter that jointly measures water to multiple permanent residential dwelling units (e.g., apartments, mobile homes) shall be allocated 6,000 gallons per month for each dwelling unit. It shall be assumed that such a customer's meter serves two dwelling units unless the customer notifies the CITY OF POTH of a greater number on a form prescribed by the Mayor. The Mayor shall give his/her best effort to see that such forms are mailed, otherwise provided, or made available to every such customer. If, however, a customer does not receive such a form, it shall be the customer's responsibility to go to the CITY OF POTH offices to complete and sign the form claiming more than two (2) dwellings. A dwelling unit may be claimed under this provision whether it is occupied or not. New customers may claim more dwelling units at the time of applying for water service on the form prescribed by the Mayor. If the number of dwelling units served by a master meter is reduced, the customer shall notify the CITY OF POTH in writing within two (2) days. In prescribing the method for claiming more than two (2) dwelling units, the Mayor shall adopt methods to insure the accuracy of the claim. Any person who knowingly, recklessly, or with criminal negligence falsely reports the number of dwelling units served by a master meter or fails to timely notify the CITY OF POTH of a reduction in the number of person in a household shall be fined not less than \$200.00. **Customers billed from a master meter** under this provision shall pay the following monthly surcharges:

- \$5.00** for 1,000 gallons over allocation up through 1,000 gallons for each dwelling unit.
- \$10.00** thereafter, for each additional 1,000 gallons over allocation up through a second 1,000 gallons for each dwelling unit.
- \$15.00** thereafter, for each additional 1,000 gallons over allocation up through a third 1,000 gallons for each dwelling unit.
- \$20.00** thereafter for each additional 1,000 gallons over allocation.

Surcharges shall be cumulative.

Commercial Customers

The Mayor, or his/her designee, for each nonresidential commercial customer other than an industrial customer who uses water for processing purposes, shall establish a monthly water allocation. The non-residential customer's allocation shall be approximately 75% of the customer's usage for corresponding month's billing period for the previous 12 months. If the customer's billing history is shorter than 12 months, the monthly average for the period for which there is a record shall be used for any monthly period for which no history exists. Provided, however, a customer, 75 percent of whose monthly usage is less than 5,000 gallons, shall be allocated 5,000 gallons. The Mayor shall give his/her best effort to see that notice of each non-residential customer's allocation is mailed to such customer. If, however, a customer does not receive such notice, it shall be the customer's responsibility to contact the CITY OF POTH to determine the allocation. Upon request of the customer or at the initiative of the Mayor, the allocation may be reduced or increased if, (1) the designated period does not accurately reflect the customer's normal water usage, (2) one nonresidential customer agrees to transfer part of its allocation to another nonresidential customer, or (3) other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the Mayor or alternatively to the Poth City Council

The surcharges shall be cumulative.

Industrial and Agricultural Customers

A monthly water allocation shall be established by the Mayor, or his/her designee, for each industrial and agricultural customer, which uses water for processing purposes. The industrial or agricultural customer's allocation shall be approximately 90% of the customer's water usage baseline. Ninety (90) days after the initial imposition of the allocation for industrial and agricultural customers, the industrial or agricultural customer's allocation shall be further reduced to 85% of the customer's water usage baseline. The industrial and agricultural customer's water use baseline will be computed on the average water use for the month period ending prior to the date of implementation of Stage 2 of the Plan. If the industrial and agricultural water customer's billing history is shorter than 12 months, the monthly average for the period for which there is a record shall be used for any monthly period for which no billing history exists. The Mayor shall give his/her best effort to see that notice of each industrial and agricultural customer's allocation is mailed to such customer. If, however, a customer does not receive such notice, it shall be the customer's responsibility to contact the CITY OF POTH to determine the allocation, and the allocation shall be fully effective notwithstanding the lack of receipt of written notice.

Upon request of the industrial and agricultural customer or at the initiative of the Mayor, the allocation may be reduced or increased, (1) if the designated period does not accurately reflect the customer's normal water use because the customer had shutdown a major processing unit for repair or overhaul during the period, (2) the customer has added or is in the process of adding significant additional processing capacity, (3) the customer has shutdown or significantly reduced the production of a major processing unit, (4) the customer has previously implemented significant permanent water conservation measures such that the ability to further reduce water use is limited, (5) the customer agrees to transfer part of its allocation to another industrial customer, or (6) if other objective evidence demonstrates that the designated allocation is inaccurate under present conditions. A customer may appeal an allocation established hereunder to the Mayor or alternatively to the Poth City Council. **Industrial and agricultural customers** shall pay the following surcharges:

\$5.00 per thousand gallons for the first 1,000 gallons over allocation.
\$10.00 per thousand gallons for the second 1,000 gallons over allocation.
\$15.00 per thousand gallons for the third 1,000 gallons over allocation.
\$20.00 per thousand gallons for each additional 1,000 gallons over allocation.

The surcharges shall be cumulative.

Section X: Enforcement

- (a) No person shall knowingly or intentionally allow the use of water from the CITY OF POTH for residential, commercial, industrial, agricultural, governmental, or any other purpose in a manner contrary to any provision of this Plan, or in an amount in excess of that permitted by the drought response stage in effect at the time pursuant to action taken by Mayor, or his/her designee, in accordance with provisions of this Plan.
- (b) Any person who violates this Plan is guilty of a misdemeanor and, upon conviction shall be punished by a fine of not less than **FIFTY** dollars (**\$50.00**) and not more than **TWO HUNDRED FIFTY** dollars (**\$250.00**) per occurrence. Each day that one or more of the provisions in this Plan is violated shall constitute a separate offense. If a person is convicted of three or more distinct violations of this Plan, the Mayor shall, upon due notice to the customer, be authorized to discontinue water service to the premises where such violations occur. Services discontinued under such circumstances shall be restored only upon payment of a re-connection charge, hereby established at **\$150.00**, and any other costs incurred by the CITY OF POTH in discontinuing service. In addition, suitable assurance must be given to the Mayor that the same action shall not be repeated while the Plan is in effect. Compliance with this plan may also be sought through injunctive relief in the district court.
- (c) Any person, including a person classified as a water customer of the CITY OF POTH, in apparent control of the property where a violation occurs or originates shall be presumed to be the violator, and proof that the violation occurred on the person's property shall constitute a rebuttable presumption that the person in apparent control of the property committed the violation, but any such person shall have the right to show that he/she did not commit the violation. Parents shall be presumed to be responsible for violations of their minor children and proof that a violation, committed by a child, occurred on property within the parents' control shall constitute a rebuttable presumption that the parent committed the violation, but any such parent may be excused if he/she proves that he/she had previously directed the child not to use the water as it was used in violation of this Plan and that the parent could not have reasonably known of the violation.
- (d) Any employee of the CITY OF POTH, police officer, or other CITY OF POTH employee(s) designated by the Mayor, may issue a citation to a person he/she reasonably believes to be in violation of this Ordinance. The citation shall be prepared in duplicate and shall contain the name and address of the alleged violator, if known, the offense charged, and shall direct him/her to appear in the CITY OF POTH Municipal Court on the date shown on the citation for which the date shall not be less than 3 days nor more than 5 days from the date the citation was issued. The alleged violator shall be served a copy of the citation. Service of the citation shall be complete upon delivery of the citation to the alleged violator, to an agent or employee of a violator, or to a person over 14 years of age who is a member of the violator's immediate family or is a resident of the violator's residence. The alleged violator shall appear in CITY OF POTH Municipal Court to enter a plea of guilty or not guilty for the violation of this Plan. If the alleged violator fails to appear in CITY OF POTH Municipal Court, a warrant for his/her arrest may be issued. A summons to appear may be issued in lieu of an arrest warrant. These cases shall be expedited and given preferential setting in the CITY OF POTH Municipal Court before all other cases.

Section XI: Variances

The Mayor, or his/her designee, may, in writing, grant temporary variance for existing water uses otherwise prohibited under this Plan if it is determined that failure to grant such variance would cause an emergency condition adversely affecting the health, sanitation, or fire protection for the public or the person requesting such variance and if one or more of the following conditions are met:

- (a) Compliance with this Plan cannot be technically accomplished during the duration of the water supply shortage or other condition for which the Plan is in effect.
- (b) Alternative methods can be implemented which will achieve the same level of reduction in water use.

Persons requesting an exemption from the provisions of this Ordinance shall file a petition for variance with the CITY OF POTH within 5 days after the Plan or a particular drought response stage has been invoked. All petitions for variances shall be reviewed by the Mayor, or his/her designee, and shall include the following:

- (a) Name and address of the petitioner(s).
- (b) Purpose of water use.
- (c) Specific provision(s) of the Plan from which the petitioner is requesting relief.
- (d) Detailed statement as to how the specific provision of the Plan adversely affects the petitioner or what damage or harm will occur to the petitioner or others if petitioner complies with this Ordinance.
- (e) Description of the relief requested.
- (f) Period of time for which the variance is sought.
- (g) Alternative water use restrictions or other measures the petitioner is taking or proposes to take to meet the intent of this Plan and the compliance date.
- (h) Other pertinent information.

Variances granted by the CITY OF POTH shall be subject to the following conditions, unless waived or modified by the Mayor or his/her designee:

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

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

Section XII: Severability

It is hereby declared to be the intention of the City Council of the CITY OF POTH that the sections, paragraphs, sentences, clauses and phrases of this Plan are severable and, if any phrase, clause, sentence, paragraph or section of this Plan shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Plan, since the same would not have been enacted by the City Council of the CITY OF POTH without the incorporation into this Plan of any such unconstitutional phrase, clause, sentence, paragraph or section.