

**ALBUQUERQUE BERNALILLO COUNTY
WATER UTILITY AUTHORITY
WATER WASTE ORDINANCE**

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4-1-1 SHORT TITLE.

This article shall be known as the “Water Waste Ordinance.”

4-1-2 INTENT.

(A) To assist in reducing overall per capita water use by 40%.

(B) To reduce yard irrigation and irrigation-related water waste, which comprise over 40% of the total annual water usage. To reduce peak summer usage, which is two to three times winter usage and determines the need for capital facilities to adequately meet system demand.

(C) To reduce water waste; i.e., overwatering, inefficient watering, or release of water which generates fugitive water in the public right-of-way. To reduce damage to publicly owned streets and the public expenditures necessary to repair the damage caused by this wasted water. To increase street safety by reducing the potential of frozen water in the public right-of-way.

4-1-3 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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AUTHORITY. The Albuquerque Bernalillo County Water Utility Authority or its authorized agent. It includes the water and wastewater facilities and all operations and management of such facilities necessary to provide water and wastewater service in the Service Area.

BUBBLERS. Irrigation heads which deliver water directly to the soil adjacent to the heads.

CURBSIDE CAR WASHING. Car washing near a public right-of-way, hose sweeping, charity or fundraiser car washes, car washing on dealer lots.

CUSTOMER. Any person, association, corporation or other entity receiving Authority service in the Service Area.

DRIP IRRIGATION. Low pressure, low volume irrigation applied slowly, near or at ground level to minimize runoff and loss to evaporation.

DROUGHT. Drought occurs when there is insufficient precipitation combined with other environmental factors that cause an increase of overall water usage.

DROUGHT MANAGEMENT STRATEGY. The Authority's Drought Management Plan which contains four different drought severity levels, with each level containing increasingly stringent measures to reduce demand on the Authority's water system.

EXECUTIVE DIRECTOR. The Executive Director of the Authority or his/her designee.

FUGITIVE WATER. 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, recreational, cleaning process or delivery onto adjacent property or the public right-of-way.

HAND WATERING. The application of water for irrigation purposes through a hand-held hose, including hoses moved into position by hand and left to flow freely or through a shut-off nozzle.

INFILTRATION RATE. The amount of water absorbed by the soil per unit of time, usually expressed in inches per hour.

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INSPECTION. An entry into and examination of premises for the purpose of ascertaining the existence or nonexistence of violations of this article.

INTER-SEEDED: Seeding of an area within an existing turf area to repair damage. This type of process is also known as re-seeding.

MISTER. A device that produces a cooling effect by emitting fine particles of water into the air in the form of a mist.

NEWLY SEEDED: Seed planted in a barren area with the intent of establishing a turf area.

PUBLIC RIGHT-OF-WAY. The area of land acquired or obtained by the city, county, or state primarily for the use of the public for the movement of people, goods, vehicles, or storm water. For the purposes of this article the public right-of-way shall include sidewalks, curbs, streets, and storm water drainage inlets.

RESPONSIBLE PARTY. 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(s) is observed.

RUNOFF. Water which is not absorbed by the soil or landscape to which it is applied. Runoff occurs when water is applied too quickly (application rate exceeds infiltration rate), particularly if there is a severe slope. This article does not apply to stormwater runoff which is created by natural precipitation rather than human-caused or applied water use.

SERVICE AREA. All parts of Bernalillo County that are served or may be served in the future by the Authority.

SHUT-OFF NOZZLE. Device attached to end of hose that completely shuts off the flow when left unattended.

SPRAY IRRIGATION. 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.

VALVE. A device used to control the flow of water in the irrigation system.

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WATER WASTE. The nonbeneficial use of water. Nonbeneficial uses include but are not restricted to:

(1) Landscape water applied in such a manner, rate and/or quantity 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 or direction as to spray onto adjacent property or public right-of-way;

(3) Washing of vehicles, equipment, or hard surfaces such as parking lots, aprons, pads, driveways, or other surfaced areas when water is applied in sufficient quantity to flow from that surface onto adjacent property or the public right-of-way;

(4) Water applied in sufficient quantity to cause ponding on impervious surfaces.

(5) Water applied in sufficient quantity to cause ice formation on adjacent property or the public right-of-way including sidewalks.

4-1-4 WATERING RESTRICTIONS.

These restrictions apply to all customers within the Authority's service area.

(A) All spray irrigation during the period beginning on April 1 and ending on October 31 of each year must occur between 7:00 p.m. and 11:00 a.m. This restriction shall not apply to drip irrigation and low precipitation bubblers, hand watering, or watering of containerized plants and plant stock.

(B) Shutoff nozzles are required on any hoses used for hand watering, car washing or other outdoor uses.

(C) Under the four levels of Drought defined in the Drought Management Strategy, the Authority may, at its sole discretion, require that customers water every other day. The Authority may require that customers water no more than one, two, or three time(s) per week. The Authority may also prohibit curbside car washing.

(D) Restrictions in divisions (A), and (C) above do not apply to the following:

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(1) Outdoor irrigation necessary for the establishment of newly sodded lawns and landscaping within the first 30 days of planting upon the issuance of a Watering Restriction Exemption;

(2) Outdoor irrigation necessary for the establishment of newly seeded lawns within the first 120 days of planting upon the issuance of a Watering Restriction Variance.

(3) Outdoor irrigation necessary for the establishment of inter-seeded lawns within the first 45 days of planting upon the issuance of a Watering Restriction Exemption.

(4) Irrigation necessary for one day only where treatment with an application of chemicals requires immediate watering to preserve an existing landscape or to establish a new landscape;

(5) Water used to control dust or compact soil;

(6) Attended watering systems that have one or more repair or maintenance personnel present at the irrigated zone being serviced for purposes of inspecting system condition and function and/or repairing or maintaining the watering system.

4-1-5 WATER WASTE.

These restrictions apply to all customers within the Authority's service area.

(A) No person, firm, corporation, or municipal or other government facility or operation shall waste, cause or permit any water to be wasted.

(B) No person, firm, corporation, or municipal or other government facility or operation shall cause or permit the flow of fugitive water onto adjacent property or public right-of-way.

(C) The restrictions in divisions (A) and (B) of this section do not apply to the following:

(1) Storm runoff allowed under provisions of the City of Albuquerque or Bernalillo County drainage ordinances as currently adopted or subsequently amended;

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(2) Flow resulting from temporary water supply system failures or malfunctions. These failures or malfunctions shall be repaired within 48 hours of notification or the system shut off until repair can be completed;

(3) Flow resulting from firefighting or routine inspection of fire hydrants or from fire training activities;

(4) Water applied as a dust control measure;

(5) Water applied to abate spills of flammable or otherwise hazardous materials, where water is the appropriate methodology;

(6) Water applied to prevent or abate health, safety, or accident hazards when alternate methods are not available;

(7) Flow resulting from routine inspection, operation, or maintenance of a utility water supply system;

(8) Water used in the course of installation or maintenance of traffic flow control devices;

(9) Water used for construction or maintenance activities where the application of water is the appropriate methodology and where no other practical alternative exists.

4-1-6 SPECIAL PERMITS

These restrictions apply to all customers within the Authority's service area.

(A) Use of Misters

(1) The use of misters shall require a special permit, issued by the Authority. The Executive Director shall develop regulations and administrative procedures for the issuance and conditions of such permits. The Executive Director shall have the authority to limit the number of permits or revoke permits as deemed necessary to protect the public interest.

(2) The use of misters without a permit, or in violation of permit conditions, shall constitute a violation of this article and shall be subject to the fee assessment processes described in § 4-1-8 and 4-1-99.

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(3) Any person, firm, corporation, or municipal or other government facility selling, leasing, renting, installing or otherwise making misters available to any other person, firm, corporation, or municipal or other government facility shall provide notification to their customers of the special permit requirement for mister use. Notice may be delivered by prominently posting a sign at the point of purchase or by providing a document to each individual customer. The Authority shall provide approved language for such notification.

4-1-7 VARIANCES, EXEMPTIONS AND APPEALS

The Executive Director shall be responsible for the enforcement of this article. The Executive Director may prescribe policies, rules, or regulations to carry out the intent and purposes of this article.

(A) Variances or Exemptions to 4-1-4 (Watering Restrictions) and 4-1-5 (Water Waste), and 4-1-6 (Special Permits).

(1) Administrative variances or exemptions to the restrictions in §4-1-4, 4-1-5, and 4-1-6 may be issued by the Executive Director or his/her designee, only for the purposes of installing or retrofitting landscaping, provided that the general intent of this article has been met, compliance with this article is proven to cause practical difficulties and unnecessary hardship, and all options for abatement through modified water management have been exhausted. The criteria to determine hardship shall include level of capital outlay and time required to be in compliance with this article.

(2) Water Waste Variances may be issued 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. Variances may be renewed on an annual basis if long-term corrective measures cannot be completed within one year.

(3) Watering Restriction Variances may be issued for a period not to exceed 120 days to establish a turf area on properly prepared barren ground.

(4) Watering Restriction Exemptions may be issued for a period not to exceed 30 days to establish newly sodded turf and/or landscape.

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(5) Watering Restriction Exemptions may be issued for a period not to exceed 45 days to establish inter-seeded areas with an established turf area.

(B) Appeal of 4-1-4 (Watering Restrictions), 4-1-5 (Water Waste), and 4-1-6 (Special Permits). Any responsible party may appeal fees for violations of §4-1-4, 4-1-5, and 4-1-6 to the Executive Director or his/her designee by filing an appeal within seven calendar days of receiving a notice of violation. The notice of violation shall provide information on the right to appeal and the procedures to follow. The appeal shall identify the property and state the grounds of appeal together with all material facts in support thereof. A filing fee of \$50 shall be added to the water bill in the event the violation is upheld by the Executive Director or his/her designee. When a hearing is requested, the Executive Director or his/her designee shall send written notice by certified mail, return receipt requested, to the appellant of the time and place of the hearing. At the hearing the appellant shall have the right to present evidence as to the alleged facts upon which the Executive Director or his/her designee based the determination of the need for assessment of fee or restriction of service and any other facts which may aid the Executive Director or his/her designee in determining whether this article has been violated. The Executive Director or his/her designee shall, within seven working days following the hearing, issue a written decision specifying the fee, if appropriate, and the action that must be taken to avoid additional penalty. Fees will be void and service will not be restricted if the written decision is not issued within seven working days.

(C) Judicial Review. The exclusive remedy for parties dissatisfied with the action of the Executive Director or his/her designee on §4-1-4, 4-1-5, and 4-1-6 shall be the filing of a petition for a writ of certiorari with the State District Court. The petition for review shall be limited to the record made at the administrative hearing held pursuant to this article.

4-1-8 FEES; ASSESSMENT

(A) Fees. Any responsible party who violates any of the provisions of §4-1-4, 4-1-5, and 4-1-6 shall be subject to progressively higher fees until the violation ceases or a

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variance is granted. The assessment of fees shall be consecutive for violations separated by less than five calendar years. Fees shall be suspended pending the outcome of an appeal or variance request.

(B) **Assessment of Fees.** Assessment of fees for violations of the regulations in §4-1-4, 4-1-5, and 4-1-6 will be through the utility bills for the responsible party's billing account. Fees shall be assessed to the account within 15 days following expiration of the appeal period or issuance of appeal findings. Responsible parties shall be notified of the fee through certified mail within 15 days of the assessment. Fees must be paid within the normal payment period allowed by the utility billing system. In the event the individual property to be assessed a fee is sub-metered through a master meter account(s), the property in violation will be assessed the fee in accordance with this ordinance through the master meter account(s). It shall be the responsibility of the master meter account(s) to assess and collect the fee from the individual sub-metered property.

(C) In lieu of fees for violations of §4-1-4 and 4-1-5, the responsible party may have a landscape water audit performed by an authorized landscape irrigation auditor, certified by the Irrigation Association. The audit will be conducted in accordance with the current edition of the Landscape Auditor's Handbook. The audit must be performed within 30 days of notification of violation and the audit recommendation must be implemented within 60 days of the audit. If these deadlines are not met, the fees for violation will apply.
4-1-99 PENALTY.

(A) The schedule for assessment of fees for a violation of §4-1-4, 4-1-5, and 4-1-6 shall be as follows:

- (1) First observed violation - \$20;
- (2) Second observed violation - \$50;
- (3) Third observed violation - \$100;
- (4) Fourth observed violation - \$300;
- (5) Fifth observed violation - \$400;
- (6) Sixth observed violation - \$600;

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- (7) Seventh observed violation - \$800;
- (8) Eighth observed violation - \$1,000;
- (9) Each observed violation over the eighth - \$2,000 each

(B) Under the four levels of Drought defined in the Drought Management Strategy, the Authority may, at its sole discretion, increase water waste fees described above by a factor of two, three, four or more as may be necessary to assist in water waste reduction during a drought. During a drought, the Authority shall declare to the public the Drought Level, which can be raised and lowered by the Authority, and the proposed increase in water waste fees. The Drought level only applies to the current year and must be approved by the Authority on a year by year basis.

The Authority delegates the implementation of the Drought Management Strategy including the increase of water waste fees to the Executive Director. Based on the Drought Level approved by the Authority, the Executive Director shall direct water waste enforcement staff of the Effective Date of the new water waste fines. Water waste fees, however, shall revert to the fees described in Section 4-1-99 after November 1 of that same year.

(C) For the purpose of assessing fees for violations of §4-1-4, 4-1-5, and 4-1-6, any previous violation shall not be considered if:

- (1) A period of five years has elapsed since the violation was incurred; or
- (2) The property is acquired by a new owner.

(D) Any person who violates the provisions of this article for which no other penalty is set forth, shall be subject to the general penalty provision of this code set forth in 4-1-99.