

ORDINANCE NO. 300.5

AN ORDINANCE AUTHORIZING THE COUNTY JUDGE-EXECUTIVE TO ISSUE EXECUTIVE ORDERS TO DEAL WITH DROUGHT CONDITIONS; DESCRIBING LEVELS OF WATER CONSERVATION MEASURES; DEALING WITH RATIONING; AND IMPOSING PENALTIES.

BE IT ORDAINED by the Fiscal Court of County of Pendleton, Commonwealth of Kentucky:

Section 1: Purpose: The purpose of this ordinance is to insure to the extent possible the continued availability of as much water for public use as possible, consistent with prudent planning and conservation measures.

Section 2: Definitions:

(a) "Advisory Phase," as the term is used in this ordinance, shall mean that designation from time to time assigned to a watershed/water supply by the Division of Water, Cabinet for Natural Resources that indicates the need to:

- (1) Issue a water shortage advisory.
- (2) Set conservation goals and prepare for decreasing supply.
- (3) Inform the public about the potential problem.
- (4) Request voluntary conservation.

(b) "Alert Phase," as the term is used in this ordinance, shall mean that designation from time to time assigned to a watershed/water supply by the Division of Water, Cabinet for Natural Resources that indicates the need to:

- (1) Issue a water shortage alert.
- (2) Set more stringent conservation goals (than for the "advisory phase").
- (3) Ban or restrict some or all non-essential (Class 3) uses.
- (4) Inform the public about the problem.
- (5) Request voluntary conservation for all water use.
- (6) Monitor compliance with the ban on non-essential use and enforce when necessary.

(c) "Emergency phase," as the term is used in this ordinance, shall mean that designation from time to time assigned to the watershed/water supply by the Division of Water, Cabinet for Natural Resources that indicates the need to:

- (1) Issue a water shortage emergency declaration.
- (2) Set more stringent conservation goals (than for the "alert phase").

(3) Ban all non-essential (Class 3) and restrict socially and economically important (Class 2) water uses.

(4) Inform the public.

(5) Enact conservation water pricing.

(6) Monitor all drought-related activities, especially compliance with the bans and enforce as necessary.

d. "Water rationing phase," as used in this ordinance, shall mean that designation from time to time assigned to the watershed/water supply by the Division of Water, Cabinet for Natural Resources that indicates the need to:

(1) Begin mandatory allocation of water.

(2) Immediately reduce usage by 25 percent.

(3) Inform the public.

(4) Enact conservation pricing.

(5) Set new conservation goals and monitor all shortage-related activities, especially compliance with the allocations, with enforcement as necessary.

e. "Essential uses (of water)," as the term is used in this ordinance, shall mean only those uses of water necessary to sustain life and lives of persons and domestic pets, maintain minimum standards of hygiene and sanitation, and to address the public safety (for example, fire fighting and dispersing chemical spills) and are further called Class 1 uses.

f. "Non-essential uses (of water)," as the term is used in this ordinance shall mean those uses of water that has no direct connection to the public health, safety, or economic or social well-being, such as: using fire hydrants except for emergencies; flushing sewers and hydrants except as needed to ensure public health and safety; serving water in restaurants and other places, except by customer request; failure to repair a controllable leak, increasing water levels in scenic and recreational ponds and lakes, except as necessary to support fish and wildlife; fountains, reflecting pools, and artificial water falls, use of water for dirt control; watering annual or non-woody plants (other than watering vegetable gardens and the irrigation of crops), watering lawns, parks, golf course fairways, playing fields, and other recreational areas; washing sidewalks, walkways, driveways, parking lots, tennis courts, or other hard-surface areas; washing down buildings except for fire protection, flushing gutters or permitting water to run or accumulate in any gutter or street, non-commercial washing of vehicles and any obviously wasteful use, and are further called Class 3 uses.

g. "Socially or economically important uses (of water)," also known as Class 2 uses, as the term is used in this ordinance, shall mean all uses other than "Class 1" or "Class 3" uses, and shall include among other things the watering of farm livestock, watering of vegetable gardens, and irrigation of crops.

h. "Rationing," as the term is used in this ordinance, shall mean procedures established to provide for the equitable distribution of critically-limited water supplies, in order to balance demand and limited available supplies, and to assure that sufficient water is available to preserve public health and safety.

Section 3: The aforementioned phases shall be based upon criteria established by the Division of Water, Cabinet for Natural Resources, to wit:

a. Advisory: conditions indicate the potential for serious water supply shortages; with respect to streams where the demand equals 20-40% of the flow at the water intake; and with respect to reservoirs, when the available supply is down to 45-60 days.

b. Alert: when there exist visible or measurable signs that supplies are significantly lower than the seasonal norm and are diminishing; with respect to streams where the demand equals 40-65% of the flow at the water intake; and with respect to reservoirs, when the available supply is down to 21-45 days.

c. Critical (Emergency): when the water utility is experiencing a shortage with respect to streams where the demand equals 65-75% of the flow at the water intake; and with respect to reservoirs, when the available supply is down to 14-21 days.

d. Rationing: when the supply of water is clearly inadequate to meet projected demands; with respect to streams where the demand exceeds 75% of the flow at the water intake; and with respect to reservoirs, when the available supply is down to less than 14 days.

Section 4: The County Judge-Executive is hereby granted the authority to implement restrictions on water use, when he or she determines the need to exist, by the issuance of executive orders which shall remain in effect until removed by him or her or countermanded by a vote of at least six (6) members of Fiscal Court at a regular or special meeting called for purpose of such consideration.

Section 5: Any such executive order may refer to the aforementioned and defined terms and call for voluntary conservation, restrictions or bans on Class 3 uses, and/or restrictions on Class 2 and 1 uses in his or her considered discretion, and may further restrict or ban such uses at certain parts of the day in various parts of the county.

Section 6: Any such executive order may order rationing of available supplies where the same are metered, and require that total metered use be immediately curtailed by up to twenty-five (25%) percent and up to forty (40%) percent after a period of ten (10) days.

Section 7: All water utility operators shall forthwith develop a rationing plan that will equitably distribute critically short water supplies among customers in the event rationing is ordered hereunder, and shall present the same to the County Judge-Executive when requested.

Said plan shall provide for:

- (a) An immediate reduction in use of up to 25% normal.
- (b) Capability of further reduction as necessary up to 40% of normal.
- (c) Equal sacrifice on the part of each customer in a class, although preference shall be for less severe, ultimate restrictions on residential as opposed to commercial uses.
- (d) Preservation of sufficient supplies for the needs of public health and sanitation and for fire protection and other emergency service.

Said plan may also provide for:

- (e) Temporary service interruptions.
- (f) Excess user charges, which shall be placed in a reserve account dedicated to addressing water shortage problems and water conservation initiatives or such other purposes as the Public Service Commission or other governing body may later direct.
- (g) Discontinuation of service to any customer who fails to heed a warning.

Section 8: This ordinance is enacted pursuant to authority granted by KRS 67.083(3)(h), but shall not be deemed to interfere with the minimal rights of land owners under KRS 151.210(1) or with other statutory or common law riparian rights.

Section 9. Any person violating this ordinance or any Executive Order issued or rationing plan implemented pursuant to authority or mandate granted hereunder shall be issued a citation by a law enforcement officer and/or may be charged by any other person upon a summons or warrant:

- (a) For a first violation the person shall be warned only.
- (b) For a second violation and/or each subsequent violation, with each subsequent failure to cease and desist from the violation, regardless of lapse of time between the violations and/or the continued violation potentially giving rise to and constituting multiple violations, the person shall be subject to arrest, a fine of up to Five Hundred (\$500.00) Dollars and up to one (1) year in jail.
- (c) For violations by a household or a business where the individual operator or user is unknown, the head of such household or in the case of a business the

proprietor or an on-site or off-site officer of said business enterprise may be cited or arrested and charged for the offense.

Section 10. Severability. If any provision of this ordinance is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the ordinance and its applicability to other persons and circumstances shall not be affected thereby.

Section 11. Effective Date. This ordinance shall take effect immediately upon adoption or passage by the Fiscal Court and publication.

Section 12. Effective Period. This ordinance will remain in effect until termination by action of the Fiscal Court.

This Ordinance shall be read and published in summary form, the full text being available for public inspection in the office of the County Judge-Executive and/or the County Clerk.

Dated this 14~~TH~~ day of October, 1999.

ATTEST:

Bonnie S. Monroe - Clerk

BONNIE MONROE,
Pendleton County Clerk

First reading: September 30 TH, 1999

Second reading: October 14 TH, 1999

Passage: October 14 TH, 1999

Publication: October 5 TH & October 19 TH, 1999

Henry W. Bertram
HENRY W. BERTRAM,
Pendleton County Judge-Executive