ORDINANCE NO. 20051020-005

AN ORDINANCE REPEALING AND REPLACING CHAPTER 15-3 OF THE CITY CODE RELATING TO FIRE HYDRANT REGULATION, CREATING OFFENSES, AND PROVIDING PENALTIES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. Chapter 15-3 of the City Code is repealed and replaced with a new Chapter 15-3 to read:

CHAPTER 15-3. FIRE HYDRANT REGULATION.

ARTICLE 1. GENERAL PROVISIONS.

§ 15-3-1 DEFINITIONS.

In this chapter:

(1) DIRECTOR means the director of the Austin Water Utility.

(2) METER means a water meter that measures the quantity of water service supplied to a customer.

(3) VEHICLE means a truck or trailer equipped to withdraw water from a fire hydrant connected to the utility's water distribution system.

(4) PERMITTEE means a person to whom a permit is issued under this chapter and includes the person's agent or employee.

§ 15-3-2 RATES AND FEES.

Rates and fees payable under this chapter are established by separate ordinance.

ARTICLE 2. WATER WITHDRAWAL FROM A FIRE HYDRANT.

Division 1. Applicability.

§ 15-3-21 APPLICABILITY.

This article applies to the withdrawal of water from a publicly or privately owned fire hydrant connected to the utility's water distribution system, except for a fire hydrant within the service area of a wholesale water customer of the utility.

Division 2. Requirements For Water Withdrawal From A Fire Hydrant.

§ 15-3-31 PERMIT REQUIREMENT; EXCEPTIONS.

(A) Except as provided in Subsection (B), a person may not withdraw water from a fire hydrant connected to the utility's water distribution system unless the person holds a permit issued by the director authorizing the temporary withdrawal of water from a fire hydrant.

(B) A permit is not required for a withdrawal of water from a fire hydrant by:

(1) an employee of the Austin Fire Department or the utility engaged in the performance of an official duty; or

(2) an emergency service provider engaged in fire fighting.

§ 15-3-32 PERMIT ISSUANCE.

(A) Except as provided in Section 15-3-33 *(Restrictions On Permit Issuance)*, the director may approve a permit to withdraw water from a fire hydrant:

(1) for construction; or

(2) if director determines:

(a) installation of a permanent meter is not practical; or

(b) the temporary withdrawal of water is necessary to protect or promote the public health, safety, or welfare.

(B) The director may include in a permit terms and conditions to implement this article.

§ 15-3-33 RESTRICTIONS ON PERMIT ISSUANCE.

(A) The director may not issue a permit to withdraw water from a fire hydrant for resale by the applicant, unless:

(1) the applicant provides documentation that the water is to be resold for potable water use in an area that lacks potable water service;

(2) the water is distributed by a vehicle that meets the requirements of Texas Administrative Code Title 30, Section 290.44(i) (*Water Hauling*); and

(3) the vehicle has metering and backflow protection approved by the director.

(B) The director may not issue a permit to withdraw water from a privately owned fire hydrant, unless:

(1) the applicant is the owner of the fire hydrant or provides written approval from the owner of the fire hydrant;

(2) the applicant installs director-approved backflow prevention and metering equipment on the private fire hydrant or the vehicle to be used to withdraw water from the private fire hydrant; and

(3) the applicant provides a cross connection test and maintenance report issued by a licensed backflow prevention assembly tester that documents installation and operation of a reduced pressure backflow assembly on the private fire hydrant or vehicle as prescribed by Chapter 15-1 (*Cross Connection Regulations*).

§ 15-3-34 APPLICATION FOR A PERMIT.

(A) A person who seeks a permit to withdraw water from a fire hydrant must file a written application with the director on a form provided by the director.

(B) An application under this section must include:

(1) the applicant's name, address, and telephone number;

(2) the purpose for which water is to be withdrawn;

(3) if the application includes a request for a fire hydrant-mounted meter, the location of the fire hydrant;

(4) if the application includes a request for a vehicle-mounted meter, the vehicle identification number of the vehicle;

(5) the period of time for which the permit is requested;

(6) the size of the meter requested; and

(7) other information reasonably required by the director.

(C) A permit to withdraw water from a fire hydrant is a service contract under Section 15-9-35 *(Service Contract Created)*.

§ 15-3-35 FEES AND DEPOSITS; EXCEPTION.

(A) An applicant shall pay to the utility the fees and equipment deposits established by ordinance. The utility may require a separate security deposit.

(B) A City department that applies for a permit is not required to pay an equipment deposit or a security deposit.

§ 15-3-36 INDEMNIFICATION REQUIRED.

The director may not approve a permit unless the applicant executes a written agreement approved by the city attorney that indemnifies the City against liability from the applicant's use of a fire hydrant. This requirement does not apply to a City department.

§ 15-3-37 VEHICLE INSPECTION REQUIRED.

If a vehicle is to be used to withdraw water from a fire hydrant, the director may not approve the permit unless the applicant submits the vehicle to the utility for an inspection to determine whether the vehicle is in compliance with the requirements of this article.

§ 15-3-38 CROSS CONNECTION SURVEY REQUIRED.

(A) This section applies if an applicant intends to use water withdrawn from a fire hydrant as potable water.

(B) Before the director may issue a permit, the director shall:

(1) conduct a cross connection survey as provided in Section 15-1-16 *(Cross Connection Survey)*; and

(2) conduct a cross connection survey of the applicant's potable water facilities, equipment, and appurtenances.

(C) The applicant shall pay the amount prescribed by separate ordinance for the cross connection surveys.

§ 15-3-39 PERMIT PROVISIONS.

(A) A permit issued under this article must include:

(1) the permittee's name, address and telephone number;

(2) if limited by the director, the specific fire hydrant from which the permittee may withdraw water;

(3) the purpose for which the water is to be withdrawn;

(4) if applicable, the vehicle identification number of the vehicle authorized to withdraw water under the permit; and

(5) the issuance and expiration dates of the permit.

(B) A permit issued under this article does not create a property interest or continued right of use.

§ 15-3-40 PERMIT EXPIRATION; REAPPLICATION OR CANCELLATION OF CERTAIN PERMITS.

(A) A permit that authorizes use of a fire hydrant-mounted meter expires on the earlier of:

(1) one year after the date of issuance; or

(2) the date all activities related to the purpose for which the permit was issued are completed.

(B) A permit that authorizes use of a vehicle-mounted meter expires on the earlier of:

(1) five years after the date of issuance; or

(2) the date all activities related to the purpose for which the permit was issued are completed.

(C) A permittee who holds a permit issued before (effective date of this ordinance), must reapply for a new permit not later than the 30th day after the permittee receives notice from the director. The director shall cancel the permit if the permittee does not reapply.

§ 15-3-41 REGULATIONS FOR FIRE HYDRANT USE.

(A) A permittee shall:

(1) use the meter installed by the utility to measure the volume of water withdrawn from a fire hydrant;

(2) use water withdrawn from a fire hydrant only for the purpose for which the permit is issued;

(3) know and comply with the utility's regulations and procedures relating to withdrawal of water from a fire hydrant;

(4) examine a fire hydrant before operation to verify that it is stable and not moveable, and if the hydrant is unstable or moveable, not use the hydrant and report the hydrant to the utility;

(5) if a fire hydrant or meter is damaged, leaking, or unsafe, not use the hydrant and report the hydrant to the utility;

(6) open or close a fire hydrant only with a special fire hydrant wrench that is designed and manufactured for that purpose;

(7) open a fire hydrant slowly to a fully open position and use a fire hydrant only in a fully open position;

(8) close a fire hydrant slowly to a completely closed position when not in use;

(9) to regulate the volume or flow of water from a fire hydrant:

(a) for a fire hydrant-mounted meter with a reduced pressure backflow prevention assembly, use a utility-installed gate valve; or

(b) for a fire hydrant used with a vehicle-mounted meter, provide and install a two-inch ball or gate valve on the hydrant;

(10) remove all hoses or appurtenances connected to a fire hydrant when not in use;

(11) for a vehicle-mounted meter, report meter readings to the director on a monthly basis; and

(12) if requested by the director, deliver a vehicle on which a meter has been installed for reading and inspection by the utility at the date, time, and location designated by the director.

(B) A permittee may not:

(1) make an unmetered withdrawal of water from a fire hydrant;

(2) use a fire hydrant valve to regulate the volume or flow of water withdrawn from the fire hydrant;

(3) open or close a fire hydrant except with a special fire hydrant wrench;

(4) remove a meter from a vehicle or fire hydrant after the meter has been installed by the utility;

(5) transfer a meter from a vehicle or fire hydrant to another vehicle or fire hydrant;

(6) obstruct a fire hydrant or street right-of-way or create a hazard to a person or property while withdrawing water from a fire hydrant; or

(7) damage, destroy, or tamper with a meter installed on a fire hydrant or vehicle.

(C) A permittee shall immediately:

(1) obey an order given by the director, the fire chief, or a law enforcement officer to cease withdrawal of water from a fire hydrant; and

(2) if requested by the director, a fire fighter, or a law enforcement officer, disconnect all equipment from a hydrant and leave the area.

§ 15-3-42 METER AND BACKFLOW PREVENTION EQUIPMENT REQUIRED.

(A) If water is to be withdrawn from a fire hydrant-mounted meter, the utility shall provide and install a one-inch meter or a three-inch meter depending on the intended use.

(B) If water from a fire hydrant is delivered into a vehicle, the utility shall provide and install a three-inch meter on the permittee's vehicle.

(C) A permittee shall:

(1) install a reduced pressure backflow prevention assembly on each meter connected to a fire hydrant;

(2) have each backflow prevention assembly tested by a licensed backflow prevention assembly tester to determine whether it meets the requirements of Chapter 15-1 (*Cross Connection Regulation*); and

(3) deliver a copy of each backflow prevention assembly test and maintenance report to the director.

(D) For a vehicle to be used to withdraw water from a fire hydrant, a permittee shall, at its expense:

(1) provide, install, and test a reduced pressure backflow prevention assembly; or

(2) install and maintain at least a six-inch unobstructed air gap from the vehicle piping to the top of the tank that meets the requirements of Chapter 15-1 (*Cross-Connection Regulation*).

Division 3. Enforcement; Offenses and Penalties.

§ 15-3-51 ENFORCEMENT; NOTICE OF VIOLATION.

(A) The director may immediately disconnect all equipment from a fire hydrant and terminate water service in the event of a violation of this article, the terms of a permit, order or agreement issued under this article, or a rule promulgated to implement this article.

(B) The director may immediately disconnect all equipment from a fire hydrant and terminate water service if the director determines that contamination or pollution due to a cross connection:

(1) presents an imminent threat to the City's public water system;

(2) presents an imminent threat to public heath or safety;

(3) presents a threat to the environment; or

(4) threatens to interfere with the operation of the City's public water system.

(C) The director shall issue written notice, and may issue verbal notice, of a violation to a person who has violated a requirement of this article, the terms of a permit, order or agreement issued under this article, or a rule promulgated to implement this article.

(D) The director may take enforcement action before the director issues a notice of violation.

§ 15-3-52 VOLUNTARY COMPLIANCE.

(A) The director may:

(1) accept a written agreement for voluntary compliance from a person responsible for a violation under this article, the terms of a permit, or a rule promulgated to implement this article; or

(2) issue an agreed consent order that establishes an agreement for voluntary compliance by a permittee.

(B) An agreement under this section must:

(1) describe the violation;

(2) describe the action the person must take to correct the violation;

(3) prescribe the time period for the person to complete the corrective action; and

(4) be signed and dated by the person responsible for compliance.

§ 15-3-53 COMPLIANCE ORDER.

(A) If the director determines that a person has violated this article, the terms of a permit, a rule promulgated to implement this article, or an agreement for voluntary compliance, the director may issue an order to the person directing the person to correct the violation within a prescribed time period.

(B) If a person does not comply within the time period prescribed, the director may suspend a permit to withdraw water from a fire hydrant and disconnect water service from a fire hydrant until the person corrects the violation.

§ 15-3-54 CEASE AND DESIST ORDER.

(A) If the director determines that a person is violating this article, the terms of a permit, order or agreement issued under this article, or rule promulgated to implement this article, or that a past violation committed by the person is likely to recur, the director may issue a written order, or may give a verbal order, directing the person to:

(1) immediately cease and desist the violation;

(2) immediately comply with this article the terms of a permit, order or agreement issued under this article, or rule promulgated to implement this article; and

(3) take all necessary remedial or preventive action to address a present, continuing, or threatened violation.

(B) If a verbal order remains in effect for more than 24 hours, the director shall follow the verbal order with a written order within a reasonable time period.

§ 15-3-55 SUSPENSION OF PERMIT TO WITHDRAW WATER FROM FIRE HYDRANT.

(A) The director may suspend a permit to withdraw water from a fire hydrant and disconnect water service from a fire hydrant if the permittee does not correct a violation within the time period prescribed by the notice of violation, agreement, or order issued under this article.

(B) The director may suspend a permit to withdraw water from a fire hydrant if the permittee does not pay an invoice for water withdrawn from a fire hydrant by its due date.

§ 15-3-56 REVOCATION OF PERMIT AND FORFEITURE OF DEPOSIT.

(A) If the director determines that a permittee has violated this article, the terms of a permit, order, or agreement issued under this article, or a rule promulgated to implement this article, the director may:

(1) immediately revoke the permit and order the permittee to stop withdrawing water from a fire hydrant; and

(2) forfeit the permittee's equipment deposit if the permittee does not return a vehicle-mounted meter to the place specified by the director within 10 business days after the expiration or revocation of a permit.

(B) A person whose permit is revoked under this section may reapply for a permit.

(C) A person whose permit is revoked is not entitled to a refund of or credit for a fee or forfeited deposit.

§ 15-3-57 LIABILITY.

(A) A person is liable for a violation if the person commits or assists in the commission of a violation of this article, the terms of a permit, order or agreement issued under this article, or rule promulgated to implement this article.

(B) A person who violates this article, the terms of a permit, order or agreement issued under this article, or rule promulgated to implement this article is liable to the City for expenses, loss, or damage incurred by the City.

(C) A person who damages, tampers with or removes the property or equipment of the City installed under this article is responsible to the utility for all loss, damage, or expenses incurred by the City.

(D) A person who causes damage to utility equipment or infrastructure as a consequence of a withdrawal of water from a fire hydrant is responsible to the utility for all loss, damage or expenses incurred by the City.

§ 15-3-58 CIVIL REMEDIES.

(A) The city attorney may enforce this article, the terms of a permit, order or agreement issued under this article, or a rule promulgated to implement this article by injunction, declaratory relief, or other action at law or in equity.

(B) The city attorney may initiate a suit against a person who violates this article, the terms of a permit, order or agreement issued under this article, or a rule promulgated to implement this article to recover a civil penalty not to exceed $1,000 for each violation. Each day that a violation occurs constitutes a separate violation.

§ 15-3-59 OFFENSES.

(A) A person commits an offense if:

(1) the person withdraws water from a fire hydrant without a permit issued under this article;

(2) the person makes an unmetered withdrawal of water from a fire hydrant;

(3) the person damages, destroys, or tampers with a meter installed on a vehicle used to withdraw water from a fire hydrant; or

(4) the person fails or refuses to present a permit for inspection at the request of the director, the fire chief, or a law enforcement officer.

(B) A person commits an offense in violation of both this and Section 15-1-4 (*Cross Connection Prohibited*) if the person withdraws water from a fire hydrant without an approved backflow prevention assembly.

(C) A permittee commits an offense if:

(1) the permittee does not comply with the terms of a permit, order or agreement issued under this article, or rule promulgated to implement this article;

(2) the permittee fails to return a vehicle-mounted meter to the utility within 10 business days after expiration of the permit; or

(3) the permittee makes a false report of the reading of a vehicle mounted meter used to measure water withdrawn from a fire hydrant.

§ 15-3-60 CRIMINAL PENALTIES.

(A) A person who acts with criminal negligence and violates this article, the terms of a permit, order, or agreement issued under this article, or a rule promulgated to implement this article commits a Class C misdemeanor punishable under Section 1-1-99 (*Offenses; General Penalty*).

(B) Each day that a violation occurs is a separate offense.

(C) Proof of a higher degree of culpability than criminal negligence constitutes proof of the culpability charged.

§ 15-3-61 CUMULATIVE REMEDIES.

The remedies authorized under this article are cumulative.

ARTICLE 3. PAINTING A CITY FIRE HYDRANT.

§ 15-3-81 APPLICATION.

This article applies to a City-owned fire hydrant.

§ 15-3-82 PAINTING A CITY FIRE HYDRANT; OFFENSES.

A person commits an offense if the person paints a fire hydrant:

(1) without the prior written approval of the director; or

(2) a color other than a color approved by the director.

§ 15-3-83 CRIMINAL PENALTY.

(A) A person who acts with criminal negligence and violates this article commits a Class C misdemeanor punishable under Section 1-1-99 (*Offenses; General Penalty*).

(B) Each day that a violation occurs is a separate offense.

(C) Proof of a higher degree of culpability than criminal negligence constitutes proof of the culpability charged.

PART 2. This ordinance takes effect on October 31, 2005.

PASSED AND APPROVED

October 20, 2005 § Will Wynn
Mayor

APPROVED: David Allan Smith
City Attorney

ATTEST: Shirley A. Brown
City Clerk