AN ORDINANCE AMENDING CHAPTER 26, "UTILITIES AND SERVICES"," OF THE CODE OF THE CITY OF GRAND PRAIRIE), AS AMENDED, BY ADDING ARTICLE XI "LAWN AND LANDSCAPE MANDATE CONSERVATION" TO IRRIGATION WATERING AND IRRIGATION RESTRICTIONS AND TO PROVIDE **EXECEPTIONS AFFIRMATIVE DEFENSES** AND PROSECUTION OF AN OFFENSE UNDER THIS ARTICLE; TO MANDATE "RAIN SENSING DEVICES AND FREEZE GAUGES" TO REQUIRE PROPERLY WORKING RAIN AND FREEZE SENSORS; ADDING SECTIONS 26-158 THROUGH 26-161; PROVIDING AN ENFORCEMENT AND PENALTY CLAUSE; PROVIDING THAT THIS **CUMULATIVE: PROVIDING ORDINANCE** SHALL BE SEVERABILITY CLAUSE; PROVIDING FOR PUBLICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council finds that conservation of water and protection of water supplies are in the best interest of its citizens; and

WHEREAS, the State Water Plan and the designated water planning agencies for the North Texas region have recommended water conservation measures to extend the life of existing water supplies and;

WHEREAS, The 2007 Texas legislative session passed H.B. 4 requiring retail public utilities that supply potable water service to more than 3,300 connections submit to the Texas Water Development Board by May 1, 2009 a water conservation plan meeting certain criteria and;

WHEREAS, the City's wholesale suppliers, including the Cities of Dallas and Fort Worth have adopted ordinances requiring certain rationing, conservation, and restrictions that meet the requirements of H.B. 4 and;

WHEREAS, and the City's wholesale water contracts generally require that the City apply the same rationing, conservation measures, or restrictions to the use of water as the wholesale suppliers and;

WHEREAS, the City wishes to comply with the requirements of H.B. 4 as well as contractual requirements of its wholesale water suppliers; and

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND PRAIRIE, TEXAS:

SECTION 1.

Part II of the Code of the City Grand Prairie, Texas, as amended, Chapter 26, "Utilities and Services" is hereby amended, adding Article XI "Lawn and Landscape Irrigation".

ARTICLE XI. LAWN AND LANDSCAPE IRRIGATION CONSERVATION

SECTION 26-158. Lawn and Landscape Irrigation Restrictions.

- (a) Except for hand watering and the use of soaker hoses, a person commits an offense if that person irrigates, waters, or causes or permits the irrigation or watering of any lawn or landscape located on premises owned, leased, or managed by that person between the hours of 10:00 a.m. and 6:00 p.m during the period between April and October first of any year subsequent to the effective date of this ordinance..
- (b) A person commits an offense if he knowingly or recklessly irrigates, waters, or causes or permits the irrigation or watering of a lawn or landscape located on premises owned, leased or managed by the person in a manner that causes:
 - (1) a substantial amount of water to fall upon impervious areas instead of a lawn or landscape, such that a constant stream of water overflows from the lawn or landscape onto a street or other drainage area; or
 - (2) an irrigation system or other lawn or landscape watering device to operate during any form of precipitation.
- (c) A person commits an offense if, on premises owned, leased, or managed by that person, a person operates a lawn or landscape irrigation system or device that:
 - (1) has any broken or missing sprinkler head; or
 - (2) has not been properly maintained in a manner that prevents the waste of water.

(d) Affirmative Defenses

- (1) It shall be an affirmative defense to prosecution of an offense in section 35-151 (a) that at the time such person irrigates, waters, or causes or permits the irrigation or watering of any lawn or landscape, such activity was for the purpose of:
 - (A) establishing hydromulch, grass sod, or grass seed;
 - (B) dust control of a sports field; or
 - (C) for the maintenance, repair, or testing of an irrigation system.
 - (D) watering by use of a hand held hose
- (2) Such activity described in Subsection (d) (1) may be an affirmative defense to prosecution only if the activity occurred for a period of thirty consecutive days or less. After the thirtieth consecutive day of such activity, a person who

- irrigates, waters, or causes or permits the irrigation or watering of any lawn or landscape in violation of this section shall be subject to administrative fees and criminal penalties.
- (3) The above affirmative defenses may be suspended if prohibited by the Emergency Water Use Plan (Drought Contingency Plan) and such plan is in effect at the time of the activity.
- (e) It shall be an exception to prosecution of an offense in this section, if a person who irrigates, waters, or causes or permits the irrigation or watering does so by use of an alternative water source such as a well, reclaimed or reused water, or other alternative source if that person has:
 - (1) Registered such alternative water source with the City;
 - (2) Provided sufficient proof to the director that the alternative water source is from a well, reclaimed or reused water and has allowed inspection by the director if deemed necessary; and
 - (3) Complied with the City's Backflow and Cross-connection Control Program and Unified Development Code Article 8 Section 8.4.1.4 through 8.4.1.6.
 - (4) A posting on the property easily visible from the road on which the property fronts (as determined by address) stating the alternative source of water.

SECTION 26-159. Rain and Wind Sensing Devices and Freeze Gauges.

- (a) Any commercial, industrial or governmental customer class irrigation system installed within the City on or after June 1, 2009 must be equipped with properly working rain, wind and freeze sensors.
- (b) The potable water supply to lawn irrigation system shall be protected against backflow in accordance with the City's Backflow and Cross-connection Control Program, City Unified Development Code Article 8 Section 8.4.1.4 through 8.4.1.6. All rain and freeze sensors for commercial customer class lawn irrigation systems shall under go annual inspection and testing concurrent with schedules associated with the requirements of the Unified Development Code Section 8.4.1.7.
- (d) Any residential customer class irrigation system installed within the City on or after June 1, 2009 must be equipped with properly working rain, wind, and freeze sensors.
- (e) It shall be unlawful for any person to knowingly or recklessly install, operate, or cause or permit the installation of or the operation of, an irrigation system in violation of subsections 26-158 (a) through (e) on premises owned, leased, or managed by that person.

SECTION 26-160. Essential Services.

The governmental use of water for essential services such as police, fire, water system flushing by city personnel and other emergency services which are necessary to preserve or protect the health, safety and welfare of the citizens of Grand Prairie are exempt from any and all restrictions or mandates set forth in this Article.

SECTION 26-161. Enforcement and Penalty.

- (a) <u>Authority</u>. The director is authorized to enforce the provisions of this chapter.
- (b) <u>Civil jurisdiction</u>. This chapter may be enforced by civil and /or criminal court action as provided by state and federal law. Injunctive relief may be imposed if violations of the ordinance occur on more than three (3) occasions during any one calendar year with each day or portion of a day constituting a separate offense.
- (c) Offenses. A person who violates Sections 26-158 (a), 26-158 (b), 26-158 (c), 26-159 (a), 26-159 (b), 26-159 (c), 26-159(d) of this chapter is guilty of a misdemeanor with each day or portion of a day constituting a separate offense during which the violation continues.

(d) Penalty.

- (1) Each offense under Sections 26-158 (a), 26-158 (b), 26-158 (c), 26-159 (a), 26-159 (b), 26-159 (c), 26-159(d) is punishable by a fine not to exceed \$2,000.
- (2) In addition to the maximum fine prescribed by Subsection (d) (1), an offense under the above sections is punishable by a fine of not less than \$250. This minimum fine will be doubled for the second conviction of the same offense within any 12-month period and trebled for the third and subsequent convictions of the same offense within any 12-month period. At no time may the minimum fine exceed the maximum fine established in Subsection (d) (1).
- (e) <u>Culpability</u>. A person is criminally responsible for a violation of this chapter if the person:
 - (1) Commits or assists in the commission of a violation; or
 - (3) is a customer, owner, tenant, permittee or other person in control of the premises determined to be the source of a violation.

SECTION 2. CUMULATIVE PROVISIONS

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Grand Prairie, Texas, as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 3. SEVERABILITY CLAUSE

It is hereby declared to be the intention of the City Council that the phrase, clause, sentence, paragraph or section of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance 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 ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 4. PENALTY CLAUSE

Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be fined not more than two thousand dollars (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 5. RIGHTS AND REMEDIES

All rights and remedies of the City of Grand Prairie, Texas, are expressly saved as to any and all violations of the provisions of the ordinances amended herein, which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 6. PUBLICATION

The City Secretary of the City of Grand Prairie, Texas, is hereby directed to publish the caption of this ordinance for two (2) days in the official newspaper of the City of Grand Prairie, Texas, as authorized by Section 52.013, Texas Local Government Code.

SECTION 7. EFFECTIVE DATE

This Ordinance shall take effect on June 1, 2009.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GRAND PRAIRIE, TEXAS, THIS THE $7^{\rm TH}$ DAY OF APRIL, 2009.

APPROVED:

<u>Mavor</u>

ATTEST:

APPROVED AS TO FORM:

City Attorney