

ORDINANCE NUMBER 2018-983-DD

AN ORDINANCE OF THE BROWNSVILLE CITY COMMISSION AMENDING THE CODE OF ORDINANCES, CHAPTER 102-UTILITIES, BY ADDING THE NEW ARTICLE XI-CROSS CONNECTION CONTROL AND BACK FLOW PREVENTION PROGRAM, SECTIONS 102-700 THROUGH 102-720, PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; ESTABLISHING PENALTIES FOR THE VIOLATION OF AND PROVISIONS FOR ENFORCEMENT OF THESE RESTRICTIONS; FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

WHEREAS, a serious public health risk is the contamination of water from the backflow of contaminants through plumbing cross-connections; and

WHEREAS, in order to reduce this public health risk within territory subject to the jurisdiction of the City of Brownsville, the City Commission of the City of Brownsville adopts an ordinance regulating plumbing cross-connections within the corporate limits and extraterritorial jurisdiction of the City of Brownsville; and

WHEREAS, the City Commission finds that this ordinance is reasonable and is in the public interest of the citizens residing within territory subject to the jurisdiction of the City of Brownsville;

NOW THEREFORE, BE IT ORDAINED by the City of Brownsville:

PART 1. That Chapter 102 – Utilities is hereby amended by adding the new Article XI.- “Cross Connection Control and Back Flow Prevention Program”, section 102-700 through 102-720, to read as follows:

ARTICLE XI.- CROSS CONNECTION CONTROL AND BACK FLOW PREVENTION PROGRAM

Sec. 102-700.- General

- (a) No water service connection shall be made, or allowed to continue, to any establishment where a potential or actual contamination hazard exists unless the water supply is protected in accordance with the Texas Commission on Environmental Quality (the “TCEQ”) Rules and Regulations for Public Water Systems found in the Texas Administrative Code, Title 30, Part 1, Chapter 290, Subchapter D, Sections 290.38 – 290.47, as those rules may be amended or superseded from time to time (the “290 Rules”) and this ordinance. A Retail Public Utility, as defined in Sec. 102-701 below, providing water service within the corporate limits or extraterritorial limits of the City of Brownsville shall discontinue water service to a customer if a required backflow prevention assembly is not installed, maintained and tested in accordance with this

ordinance, the 290 Rules, and the then-current Cross Connection Control and Backflow Prevention Program adopted by the Retail Public Utility.

- (b) This section shall apply within the corporate limits and the extraterritorial jurisdiction of the City of Brownsville and shall apply to every retail water customer of the Retail Public Utility regardless of the location of the service address.
- (c) A Retail Public Utility providing water service within the corporate limits or extraterritorial jurisdiction of the City of Brownsville shall adopt and enforce a Cross Connection Control and Backflow Prevention Program in accordance with the 290 Rules, TCEQ Regulatory Guidance 478, and this ordinance.

Sec. 102-701.- Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. *290 Rules* - The rules and regulations for public water systems are established by the TCEQ in Title 30 Texas Administrative Code (30 TAC), Chapter 290, as those rules may be amended or superseded from time to time by the TCEQ. The rules found in 30 TAC Chapter 290, Subchapter D, specify water treatment plant design, operation, and maintenance requirements for public water systems.
2. *Auxiliary Water Supply* - Auxiliary water supply means, when applied to premises, any water supply on or available to the premises other than the primary potable water supply for the premises, ex. Rain Water Reclaim, Well Water, Resaca Water, or other water of unknown quality used.
3. *Backflow* - The reversal of the flow of water or mixtures of water and other liquids, gases, or other substances into the distribution pipes of a public water system.
4. *Chief Executive Officer* - means the chief executive officer or the general manager of the Retail Public Utility subject to this ordinance, including designated departments and employees of the Retail Public Utility.
5. *Customer* - The person, organization or corporation responsible for payment for all electric, water or wastewater services used at a specific location and further defined as that person, organization or corporation who signed the application requesting that electric, water and/or wastewater services be made available at the specific location and thereby agreeing to pay for all usage of such services occurring at said location.
6. *Cross Connection* - Is an actual or potential connection between a potable water supply and any non-potable substance or source.
7. *Private Water Supply* - A water supply on or available to the premises other than the Potable Water Retailer water supply. These auxiliary waters may include water from

another purveyor's public water supply or natural source such as a well, river, Resaca, canal, ponds, etc.

8. *Public Water System* – A system for the provision of water to the public as defined in title 30 of the Texas Administrative Code, Section 290.38.
9. *Retail Public Utility* – means any person, corporation, public utility, water supply corporation, municipality, political subdivision or agency operating, maintaining, or controlling facilities for providing potable water service for compensation within the corporate limits or extraterritorial jurisdiction of the City of Brownsville, as the terms “facilities” and “service” are defined by Texas Water Code, section 13.002. Retail Public Utility includes, but is not limited to the Brownsville Public Utility Board, Military Highway Water Supply Corporation, El Jardin Water Supply Corporation, and Olmito Water Supply Corporation.
10. *TCEQ* - means the Texas Commission on Environmental Quality or successor agency.
11. *Thermal Expansion* – means the hazardous condition described and regulated by Sec. 102-704, below.

Sec. 102-702.- Backflow Prevention Assembly Installation, Testing, and Maintenance

- (a) A person shall not have an unprotected cross connection, plumbing fixture, equipment, or any other device that allows backflow, or fail to install a backflow prevention device that is required by this Ordinance. If a backflow prevention device is required by this Ordinance, or any other ordinance, or a Retail Public Utility's service policies, then the water customer shall cause a backflow prevention device to be installed in compliance with the provisions of this Ordinance.
 - (1) Each water customer is responsible for the maintenance and repair of each backflow prevention device that is located on the property.
 - (2) Each water customer shall have each backflow prevention device located on their property inspected and tested in accordance with this Ordinance, or the Retail Public Utility's Cross Connection Control and Back Flow Prevention Program, whichever is stricter. The person performing the inspection and test shall be licensed by the TCEQ as a backflow assembly tester.. The licensed tester performing the inspection and testing shall complete a report of each inspection and testing on a form approved by the Retail Public Utility that provides water to the property where the backflow prevention device is located.
 - (3) Each water customer shall cause a TCEQ licensed backflow assembly tester to repair a backflow prevention device that fails a test before returning the backflow prevention device to service. If the backflow assembly tester identifies that the device requires replacement, the replacement shall be performed by a service

provider registered with the Retail Public Utility and qualified under this Ordinance to perform the work as follows:

- a. Landscape Irrigators can install, replace or repair devices only on residential and commercial lawn sprinkler systems;
- b. Master Plumbers can install, replace and repair devices on domestic residential and commercial plumbing lines and residential and commercial lawn sprinkler systems;
- c. Fire Line Contractors can install, replace, and repair devices on Fire Systems; and
- d. Individuals licensed by the TCEQ as a backflow assembly tester who are not a Landscape Irrigator, Master Plumber, or Fire Line Contractor can only test and repair backflow devices on landscape residential and commercial lawn sprinkler systems.

(4) It is the water customer's responsibility to submit, or cause the inspector to submit, the - inspection report that is required by this Ordinance to the Retail Public Utility providing service to the property within 30 calendar days of the completion of the inspection". Each water customer shall deliver, or cause to be delivered, the annual report of testing and inspection that is required to be performed by this Ordinance to the Retail Public Utility that provides water to the property where the backflow prevention device is located no later than thirty days after the date of the inspection and testing.

- (b) All backflow prevention assemblies shall be tested upon installation by a TCEQ licensed backflow prevention assembly tester and certified to be operating within specifications.
- (c) Backflow prevention assemblies which are installed to provide protection against health hazards must also be tested and certified to be operating within specifications at least annually by a TCEQ licensed backflow prevention assembly tester.
- (d) All backflow prevention assemblies shall be installed and tested in accordance with the manufacturer's instructions, the Retail Public Utility's Cross Connection Control and Back Flow Prevention Program, and the then-most current edition of The University of Southern California Manual of Cross-Connection Control whichever is stricter. In the event of an irreconcilable conflict between the requirements of The University of Southern California Manual of Cross-Connection Control and the International Building Code as adopted by Section 18-116 of the Code of Ordinances of the City of Brownsville, the stricter requirement shall apply.
- (e) All failing and/or defective backflow prevention assemblies shall be repaired, overhauled, or replaced at the expense of the customer. It is the customer's responsibility to ensure that all appropriate permits required for the repair, replacement or removal of the backflow prevention assembly are obtained before beginning work. Original forms of such test, repairs, and overhaul shall be kept and submitted to the Retail Public Utility serving the customer, within a reasonable time after receipt of the form, but not more

than thirty (30) calendar days after the test, repair or overhaul of each backflow prevention assembly.

- (f) No backflow prevention assembly or device shall be removed from use, relocated, or other assembly or device substituted without the inspection and approval of the Retail Public Utility serving the customer. Whenever the existing assembly or device is moved from the present location or cannot be repaired, the backflow assembly or device shall be replaced with a backflow prevention assembly or device that complies with this Ordinance, the then-current edition of The University of Southern California Manual of Cross-Connection Control and the Retail Public Utility's Cross Connection Control and Back Flow Prevention Program, whichever is stricter. In the event of an irreconcilable conflict between the requirements of The University of Southern California Manual of Cross-Connection Control and the International Building Code as adopted by Section 18-116 of the Code of Ordinances of the City of Brownsville, the stricter requirement shall apply.
- (g) Test gauges used for backflow prevention assembly testing shall be tested for accuracy annually in accordance with the then-current edition of The University of Southern California's Manual of Cross-Connection Control. The original gauge accuracy test form must be submitted to the Retail Public Utility serving the customer within a reasonable time after receipt of the form, but not more than thirty (30) calendar days after the gauge has been tested for accuracy.

Sec. 102-703.- Customer Service Inspections

- (a) The customer shall allow his property to be inspected by the Retail Public Utility providing service to the customer for possible cross-connections and other potential contamination hazards. These inspections shall be conducted by a TCEQ licensed customer service inspector or an individual with the credentials described under Sec. 102-703(c) below prior to initiating new water service; when there is reason to believe that cross-connections or other potential contamination hazards exist; or after any major changes to the private water distribution facilities. The inspections shall be conducted during normal business hours.
- (b) A customer service inspection shall be completed prior to providing continuous water service to all new construction, on any existing service when the Retail Public Utility serving the customer has reason to believe that cross-connections or other contaminant hazards exist, or after any material improvement, correction, or addition to the private water distribution facilities. A customer service inspection shall be performed every 10 years thereafter.
- (c) Only individuals with the following credentials shall be recognized as capable of conducting a customer service inspection:
 - (1) Plumbing Inspectors and Water Supply Protection Specialists that have been licensed by the Texas State Board of Plumbing Examiners.

- (2) Customer Service Inspectors that have been licensed by the TCEQ.
- (d) Commercial and Residential customers that have a private water supply for a lawn irrigation system shall have an inspected and approved backflow prevention assembly at the service connection. The backflow prevention assembly must be maintained and tested in accordance with the 290 Rules. In addition, a customer that utilizes resaca, well water, or auxiliary water for lawn irrigation systems shall register that system with the Brownsville Public Utilities Board Cross Connection Control Department. The Brownsville Public Utilities Board may discontinue water service to any customer who fails to register as required by this subsection after the Brownsville Public Utilities Board provides the customer notice and a reasonable opportunity to comply.
- (e) The Customer Service Inspection must certify that:
 - (1) No direct connection between the potable water retailer water supply and a potential source of contamination including any auxiliary sources of water is permitted. Potential sources of contamination shall be isolated from the potable water retailer by a properly installed air gap or an appropriate backflow prevention assembly.
 - (2) No cross-connection between the potable water retailer and a private water source including any auxiliary sources of water exists. Where an actual properly installed air gap is not maintained between the potable water retailer and a private water supply, an approved reduced pressure-zone backflow prevention assembly is properly installed and a service agreement exists for annual inspection and testing by a TCEQ licensed backflow prevention assembly tester.
 - (3) No connection exists which allows water to be returned to the public drinking water supply.
 - (4) No pipe or pipe fitting which contains more than 8.0% lead may be used in private water distribution facilities installed on or after July 1, 1988 and prior to January 4, 2014. Plumbing installed after January 4, 2014 that bears the expected label indicating less than 0.25% lead (or the most current TCEQ-approved value for lead concentrations) may be used for the installation or repair of plumbing at any connection that provides water for human use.
 - (5) No solder or flux which contains more than 0.2 % lead (or the most current TCEQ-approved value for lead concentrations) can be used for the installation or repair of plumbing at any connection that provides water for human use. A minimum of one lead test shall be performed for each inspection.

Sec. 102-704.- Thermal Expansion

(a) With the installation of backflow prevention assemblies at the service connection a "closed-system" is created. This closed system could result in injury to the water system customer or damage to the customer's property if adequate safety measures, such as the installation of thermal expansion tanks, are not implemented.

(1) Thermal expansion may cause damage ranging from leaking faucets to a ruptured water heater if the condition is not addressed.

(2) The Retail Public Utility shall provide its customers with information regarding thermal expansion when a backflow prevention assembly is required to be installed at the customer's service connection.

(3) Neither the City of Brownsville nor the Brownsville Public Utilities Board shall be liable for any damage, personal injury, or death resulting from thermal expansion at a customer's property.

Sec. 102-705.- Fire Hydrant Protection

(a) Reduced-pressure principle backflow prevention assembly (RPBA) shall be the minimum protection for fire hydrant water meters which are used as a temporary water supply during any construction or other use which would pose a potential hazard to the potable water retailer.

(1) An RPBA must be installed if any solution other than potable water can be introduced into the system.

(2) It is the responsibility of all persons engaging in the use and rental of a fire hydrant water meter to abide by the conditions of this Article. All fire hydrant meter rentals shall meet the current requirements as provided for by the City of Brownsville and the Retail Public Utility that owns the fire hydrant.

Sec. 102-706.- Full Flow Testing and/or Backflow Prevention Assembly Tear Down Requirements for Fire Lines

(a) The Brownsville Public Utilities Board requires backflow prevention assemblies installed on fire-lines to be completely disassembled at a minimum of every five (5) years, if full flow testing cannot be accomplished. The assembly will be cleaned and rubber parts replaced when deemed necessary by the TCEQ licensed backflow prevention assembly tester and/or manufacturer. Assemblies should be appropriately labeled and tagged by the tester to indicate last tear down date. The Brownsville Public Utilities Board Cross Connection Control Department will track individual assemblies over a five year period to ensure provisions are met.

(b) A backflow prevention assembly found to be malfunctioning should be completely disassembled, repaired, reassembled and tested by a fire line contractor and certified that the backflow preventer is operating as specified by manufacture's specifications.

Sec. 102-707.- Requirements for Chemical Dispensers

- (a) All chemical dispensers will require the use of a testable backflow prevention assembly. Backflow prevention assemblies installed on chemical dispensers will be subject to all of the requirements described in this Ordinance.

Sec. 102- 708.- Emergency suspension

- (a) The Chief Executive Officer of a Retail Public Utility may suspend water service and disconnect service to a customer if the Chief Executive Officer determines that contamination or pollution due to backflow presents an imminent threat to the portable water retailer, presents an imminent danger to public health or safety, or threatens to interfere with the operation of the portable water retailer.
- (b) A customer notified of the suspension of the person's service by a Retail Public Utility pursuant to this Ordinance shall immediately stop the use of the potable water system. If a person fails to immediately suspend use of the potable water retailer water, the Retail Public Utility may take action it deems necessary to prevent contamination or pollution, or to minimize damage to the potable water retailer system.

Sec. 102-709.- Testing and Inspection Notices and Enforcement

- (a) All retail public utilities shall send customers cross connection control backflow prevention test and inspection notices. It is the customer's responsibility to comply with the necessary process required by the Retail Public Utility serving the customer.
- (b) Cross connection controls and backflow preventions are to be inspected and tested as specified by the Retail Public Utility serving the customer's premises.
- (c) The failure to perform the required testing and inspection as required by the customer's Retail Public Utility may result in the Retail Public Utility to solicit the City of Brownsville's assistance with enforcement.
- (d) When the City of Brownsville is solicited to assist with enforcement by any Retail Public Utility, the Planning and Development Services Department Director, Assistant Director, or Building Official will authorize a Code Enforcement Officer to issue citations as needed. The citation issued shall state the alleged violation, the date of such violation, and the section of the code or section violated. Such citations are returnable to the municipal court, and each violation cited shall be a finable offense, not in excess of \$2,000.00 per violation per day.
- (e) The failure to perform any action that is required by this Ordinance or the performance of any action that is prohibited by this Ordinance shall constitute a violation of this Ordinance.

- (f) A conviction for a violation of any provision of this Ordinance shall constitute a Class C misdemeanor. A person convicted of a violation of any provision of this Ordinance shall be fined an amount of not less than two hundred dollars (\$200.00) per violation and a maximum not to exceed two thousand dollars (\$2,000.00) per violation. Each violation of this Ordinance shall constitute a separate offense, and each day a violation continues shall be considered a new offense.
- (g) Civil Penalty. A civil penalty may be imposed for each violation of any provision of this Ordinance in an amount not to exceed five thousand dollars (\$5,000.00) per violation. Each violation of any provision of this Ordinance shall constitute a separate violation, and each day a violation continues shall be considered a new violation.
- (h) Authorization to enforce. The Brownsville Public Utilities Board is authorized to take any action authorized by this Ordinance against any person committing a violation of this Ordinance who is a water customer of the Brownsville Public Utilities Board. The grant of authority set out in this Ordinance does not in any way diminish the authority of the City of Brownsville, or take any action necessary to enforce the terms of this Ordinance, to prosecute violations of this Ordinance, and to defend the legality of this Ordinance, if challenged.
- (i) Additional enforcement remedies. In addition to any other remedies provided in this Ordinance for violations of this Ordinance that occur within its service area, the City of Brownsville or Brownsville Public Utilities Board at any time, pursue any other legal and/or equitable remedy to require compliance with this Ordinance.

Sec. 102-710.- Potable Water Retailer Fees

- (a) The Brownsville Public Utilities Board's governing body is authorized to adopt fees for services provided by the Brownsville Public Utilities Board in accordance with this Ordinance in an amount determined to be sufficient to recover potable water retailer's costs.

Sec. 102-711.- Effective Date

- (a) Pursuant to the Brownsville City Charter Sections 14, 17 and 18, this Ordinance, once passed by the City Commission and signed by the Mayor and City Secretary within two (2) days of any such passage, shall then be immediately recorded by the City Secretary in the City's Official Ordinance Book for public records, and then become immediately effective and lawfully enforceable. Non-conforming cross-connections and backflow devices shall not be grandfathered.

Sec. 102-712.- Repeal

- (a) That all ordinances that are in conflict with the provisions of this Ordinance be, 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.

Sec. 102-713.- Severability

- (a) All of the regulations provided in this Ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public.
- (b) It is hereby declared to be the intention of the City Commission of the City of Brownsville that the phrases, clauses, sentences, paragraphs, and sections 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.


Secs.102-714. through 102-720. - RESERVED

Passed and approved on this the 4th day of December, 2018.



Antonio "Tony" Martinez
Mayor

Attest:


City Secretary

Approved as to form and legality


City Attorney *Legal Consultant*