

*PROCEDURE:*

**WATER SHORTAGE RESPONSE**

*SECTION*

*NUMBER:* **800.03**

--ORDINANCE NO. S2010-007

**CITY OF FAYETTEVILLE, NORTH CAROLINA**

**WATER SHORTAGE RESPONSE**

**ADOPTED: MAY 24, 2010**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE  
AMENDING ARTICLE "V", OF CHAPTER 28 OF THE CODE OF ORDINANCES  
OF THE CITY OF FAYETTEVILLE, NORTH CAROLINA**

**BE IT ORDAINED** by the City Council of the City of Fayetteville that:

Section 1. Article V, Chapter 28, of the Code of Ordinances, entitled "Water Shortage Response" is deleted in its entirety and the following is substituted in lieu thereof:

**Sec. 28-261. Introduction.**

1. The purpose of this water shortage response article is to provide for the declaration of increasingly serious stages of water shortages and to define voluntary and mandatory water conservation measures to be implemented during these various stages. These written procedures will minimize the need to make last minute decisions and will allow the Public Works Commission to respond quickly to changing conditions, which will preserve the water resources of the Public Works Commission to provide for the water demands of human consumption, sanitation, and fire protection throughout the service area of the Public Works Commission of the City of Fayetteville, North Carolina.
2. This article shall apply to all users connected directly or indirectly to the Public Works Commission's public treated water supply, regardless of whether the user is located within the city limits or outside of the city limits.

**Sec. 28-262. Objectives of article.**

The specific objectives of this article are as follows:

1. To establish the authority of the General Manager of the Public Works Commission of the City to declare water shortage conditions and implement and enforce the procedures established in this article;
2. To establish a chain of command for implementation of the procedures established herein;
3. To establish voluntary and mandatory water conservation measures;
4. To establish enforcement protocol for violations of mandatory water conservation measures outlined in this article.

**Sec. 28-263. Definitions.**

1. 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:
  - (a) **Contamination** means the addition to any watershed area, reservoir, storage tank, or distribution system of any material that appears in an above-normal concentration or has high nuisance or harmful effect on the consumer or the system.
  - (b) **Emergency** means, when referring to water shortage, that conditions exist such that treated water supplies cannot meet customer demands and that serious treated water shortages exist.
  - (c) **Essential Use** means:
    - (1) Use of water to sustain normal life and the lives of domestic pets, and to maintain minimum standards of hygiene and sanitation;
    - (2) Use of water for patient care and rehabilitation;
    - (3) Firefighting, including certain testing and drills by the fire department if conducted in the interest of public safety and if approved by the Public Works Commission;
    - (4) Health and public protection purposes, if specifically approved by health officials and the Public Works Commission, including flushing of water lines and hydrants.
  - (d) **Non-Essential Use** means categories of water use, other than essential use, that may be curtailed during droughts and water emergencies.
  - (e) **Mandatory Conservation** means that conservation measures are not voluntary, and that if users fail to comply, they are subject to the penalties outlined in this article.
  - (f) **Public Works Commission** means the Public Works Commission of the City acting through its General Manager, deputy, agent, or designated representative.
  - (g) **Treated Water** means water that has been withdrawn from an approved source and has been processed by the Public Works Commission.
  - (h) **User** means any person using water for any purpose from the Public Works Commission's water distribution system, either directly or indirectly, and for which either a regular charge is made or, in the case of bulk sales, a cash charge is made at the site of delivery.

- (i) ***Water Shortage*** means that conditions exist when the demands and requirements of water customers served by the Public Works Commission cannot be satisfied without depleting the available supply of treated water or the available water supply to or below a critical level, i.e., the level at which the continued availability of water for human consumption, sanitation, and fire protection is jeopardized. Conditions contributing to a water shortage may include but are not limited to the following:
- (1) Water supplies are below the level necessary to meet needs;
  - (2) Water quality has been threatened due to a contamination situation;
  - (3) Power outages or equipment malfunction;
  - (4) Peak customer demands on the water system;
  - (5) Inability to maintain adequate pressure and/or water supply throughout every portion of the Public Works Commission water distribution system;
  - (6) Natural disasters.
- (j) ***Water Supply*** means any body of water from which the Public Works Commission obtains water for treatment and subsequent distribution into the public treated water supply system.

#### **Sec. 28-264. Chain of Command**

The Chief Operating Officer of the Water Resources Division (COOWR) shall be responsible for continually monitoring the water supply, water demands, and area conditions. Based upon any one or more of the triggers established by Section 28-270, the COOWR shall notify the General Manager that water conservation measures be implemented. The General Manager shall be empowered and shall declare and implement conservation stages I and II. In instances in which declaration and implementation of stages III and IV are required, the General Manager shall notify the Mayor of the City of Fayetteville, who shall issue a proclamation declaring the implementation of a water conservation stage III or IV. The General Manager shall also notify PWC's Communications and Community Relations Manager and Key Accounts Agent. The Communications and Community Relations Manager shall notify local government agencies, water system employees, and all water system users of the water restrictions through a public awareness campaign using any or all of the following strategies; 1) local daily newspaper for 2 consecutive issues or weekly as long as conditions persist; 2) public service announcement via local radio and government access television channel; 3) signs posted in City Hall, City office buildings, and utility department offices; 4) website; 5) water bills; and any other means as appropriate for the shortage situation. The Key Accounts Agent shall notify key customers. Notifications should include but not be limited to the description of the conservation stage and the conservation measures enacted. Any changes to the water shortage situation will be announced through the same strategies used initially and other means as deemed appropriate.

Once a conservation stage is declared or changed, the conservation stage shall remain in effect until lifted by the General Manager or in the case of stage III or IV, the Mayor of the

City of Fayetteville. The COOWR shall continually monitor the conditions responsible for activation of the conservation stage, and if the trigger for a more stringent stage is met, then the COOWR shall so advise the General Manager who shall be empowered to declare the more stringent stage consistent with the above paragraph.

When the current stage triggers have abated, the stage shall either be reduced to the appropriate stage or all conservation measures rescinded depending on conditions. This chain of command process shall be repeated whenever a change in the status of the conservation stage or conservation measures is necessary.

During the effective period of any water shortage, the PWC is empowered to promulgate such regulations or policies as may be necessary to carry out the provisions of this Ordinance. The PWC General Manager, or his duly authorized agent charged with implementation and enforcement of this Ordinance shall be and is hereby granted the authority to implement and enforce any of the treated water use restrictions.

The General Manager shall have authority to implement, maintain, modify, and rescind any one or more of the conservation measures in a conservation stage and to make them applicable during various times of the month, week, or day as he deems appropriate to protect the public health, safety, and welfare until the PWC determines that the conditions requiring their imposition no longer exist.

#### **Sec. 28-265 Water Conservation Measures**

1. It shall be mandatory for every user to comply with the following schedule for the irrigation of outdoor landscaping (such as grass, shrubbery, trees, flowers, and vegetable gardens) on a year round basis.
  - (a) For addresses that end in the number 1,3,5,7,or 9 watering of lawns, grass, shrubbery, trees, flowers, and vegetable gardens using an automatic irrigation or sprinkler system or hose end sprinkling device shall only be done on Sunday, Tuesday, and Thursday. For addresses that end in the number 0,2,4,6, or 8 watering shall only be done on Saturday, Monday, and Wednesday. Provided however that a person regularly engaged in the sale of plants shall be permitted to use water for such purposes at any time or any day.
  - (b) For new sod, seeded lawns, or planted landscapes, the user may water any day of the week as necessary to establish the new plantings for a period of 30 days following the planting.
  - (c) These measures shall remain in effect as long as there has been no Stage II, III, or IV declaration as stated in Sections 28-267 through 28-269 of this Article. If a Stage II, III, or IV declaration is made the restrictions therein supersede the conservation measures in this section.

2. The owner or occupant of any land or building which receives water from the Public Works Commission and that also utilizes water from a well or supply other than that of the Public Works Commission shall post and maintain in a prominent place thereon a sign furnished by the Public Works Commission giving public notice of the use of the well or other sources of supply.
3. In addition, all users should attempt to conserve treated water at all times. Users may refer to PWC's water conservation guidelines for tips and information on various water conservation measures.

**Sec. 28-266 Water Conservation Stage I – Water Shortage Alert**

1. When a Water Shortage Alert is declared users should begin limiting the following uses where possible:
  - (a) Outdoor water use for landscape irrigation.
  - (b) Washing of automobiles, trucks, trailers, boats, airplanes, or any other type of mobile equipment.
  - (c) Washing of outside areas such as streets, driveways, service station aprons, parking lots, office buildings, exteriors of existing or newly constructed homes or apartments, sidewalks.
  - (d) Introduction of water into any pond, ornamental fountain, pool, or other structure.
  - (e) Use of water from public or private fire hydrants for purposes other than fire suppression, public emergency, or PWC need.
  - (f) Use of treated water for dust control or compaction.

**Sec. 28-267. Water Conservation Stage II--Water Shortage Warning.**

1. When a Water Shortage Warning is declared, the following mandatory conservation measures shall be in effect:
  - (a) For addresses that end in 1,3,5,7, or 9 watering of lawns, grass, shrubbery, trees, flowers and vegetable gardens using an automatic irrigation or sprinkler system or hose end sprinkling device shall only be done on Sunday and Thursday. For addresses that end in the number 0,2,4,6, or 8 watering shall only be done on Saturday and Wednesday. Provided however, that a person regularly engaged in the sale of plants shall be permitted to use water for such purposes at any time or any day.
  - (b) It shall be unlawful to intentionally waste treated water.

- (c) All residential, industrial, manufacturing, and commercial users shall reduce consumption to any degree feasible with a goal of reduction of at least 10%. It is the primary responsibility of each user to meet its mandated water use reduction in whatever manner possible, including limitation of operating hours, or days, if necessary.

**Sec. 28-268. Water Conservation Stage III--Water Shortage Emergency.**

1. In the event of a Water Shortage Emergency, the following mandatory water conservation measures shall apply:
  - (a) It shall be unlawful to water or sprinkle any lawn, grass, shrubbery, trees, or flowers with treated water using an automated irrigation or sprinkler system or hose end sprinkling device. Watering is permitted only by hand held hose with a spring-loaded nozzle, by container, or by installed drip type irrigation. Provided, however, that any person regularly engaged in the sale of plants shall be permitted to use automated irrigation or sprinkler systems but only in amounts necessary to prevent the loss of nursery stock.
  - (b) It shall be unlawful to intentionally waste treated water.
  - (c) All residential, industrial, manufacturing, and commercial users shall reduce consumption to any degree feasible with a goal of reduction of at least 20%. It is the primary responsibility of each user to meet its mandated water use reduction in whatever manner possible, including limitation of operating hours, or days if necessary.
  - (d) Restaurants and other food serving establishments shall use single serving utensils, plates, and cups and shall serve water only at the patron's request.
  - (e) It shall be unlawful to use treated water from hydrants except fire suppression or other public emergency or PWC need.
  - (f) It shall be unlawful to use treated water for dust control or compaction without demonstrating a lack of alternative sources.

**Sec. 28-269. Water Conservation Stage IV--Water Shortage Crisis.**

1. In the event of a Water Shortage Crisis, in addition to the restrictions made unlawful heretofore, the following mandatory conservation measures shall be in effect:
  - (a) It shall be unlawful to water any lawn, grass, shrubbery, trees, or flowers with treated water. Provided, however, that any person regularly engaged in the sale of plants shall be permitted to use automated irrigation or sprinkler systems but

only in amounts necessary to prevent the loss of nursery stock. Persons regularly engaged in the sale of plants shall meet the same percent reduction goals as other commercial establishments as stated in Section 28-269(c) below.

- (b) It shall be unlawful to intentionally waste treated water.
- (c) All residential, industrial, manufacturing, and commercial users (to include nursery operations) shall reduce consumption to the degree feasible with a goal of a reduction of at least 30%. It is the primary responsibility of each user to meet its mandated water use reduction in whatever manner possible, including limitation of operating hours, or days if necessary.
- (d) Restaurants and other food serving establishments shall use single serving utensils, plates, and cups and shall serve water only at the patron's request.
- (e) It shall be unlawful to use treated water from hydrants except fire suppression or other public emergency or PWC need. Fire suppression must be maintained but where possible tank trucks shall use untreated water.
- (f) It shall be unlawful to use treated water for dust control or compaction.
- (g) It shall be unlawful to wash automobiles, trucks, trailers, boats, airplanes, or any other type of mobile equipment except at commercial car wash facilities. Commercial car wash facilities shall meet the same percent reduction goals as other commercial establishments as stated in Section 28-269(c) above.
- (h) It shall be unlawful to use treated water to wash down outside areas such as streets, driveways, service station aprons, parking lots, office buildings, exteriors of existing or newly constructed homes or apartments, sidewalks, or patios or use water for other similar purposes, provided however, that any person regularly engaged in the business of washing such areas shall be permitted to use water for such purposes. Persons engaged in the business of washing such areas shall meet the same percent reduction goals as other commercial establishments as stated in Section 28-269(c) above.
- (i) It shall be unlawful to introduce treated water into any pond, ornamental fountain, or other structure making similar use of water.
- (j) It shall be unlawful to fill newly constructed swimming or wading pools, or refill swimming or wading pools that have been drained. Supplementing of existing pools shall only be done in amounts necessary to maintain structural integrity or filtration systems.
- (k) The General Manager may declare additional measures of mandatory conservation controls such as larger percentage reductions in consumption, banning of all non-essential use, termination of service to specific areas in the

water system on a rotating basis, prohibition of all industrial uses of treated water, etc., or whatever is necessary to protect the health and safety of the customers of the water system.

**Sec. 28-270 Water Conservation Stage Triggers**

There are a variety of conditions that might contribute to a water shortage, including but not limited to: peak customer demands on the water system; water supplies below the level necessary to meet needs; water quality threatened or impaired due to contamination; power outages or equipment malfunction; and natural disasters. The following water conservation stage triggers have been established to allow the PWC to respond to a water shortage with the appropriate stage of conservation.

1. Triggers Based on Water Supply

Water Conservation Stage	PWC Trigger
<b>Water Shortage Alert</b>	<b>Unusually dry conditions result in severely low stream flows that are consistently below seasonal norms and dry conditions are forecast.</b>
<b>Water Shortage Warning</b>	<b>Target flow of the Cape Fear River at Lillington is reduced to 250 CFS or less.</b>
<b>Water Shortage Emergency</b>	<b>Daily demands exceed 50% of available flow.</b>
<b>Water Shortage Crisis</b>	<b>Daily demands exceed 75% of available flow.</b>

2. Triggers Based on Wet Well Levels

Water Conservation Stage	Hotter Wet Well Level (ft)	River Stage at Fayetteville (ft)	Elevation at G&D #3 (ft)
<b>Voluntary Water Shortage Alert</b>	<b>7 consecutive days at 12.4</b>	<b>9.45</b>	<b>29.97</b>
<b>Water Shortage Warning</b>	<b>11.85</b>	<b>8.9</b>	<b>29.42</b>
<b>Water Shortage Emergency</b>	<b>11.35</b>	<b>8.4</b>	<b>28.92</b>
<b>Water Shortage Crisis</b>	<b>10.66</b>	<b>7.66</b>	<b>28.18</b>

3. Triggers Based on Daily Water Demands

Water Conservation Stage	PWC Trigger
<b>Voluntary Water Shortage Alert</b>	<b>3 consecutive days of demand exceeding 85% of available capacity</b>
<b>Water Shortage Warning</b>	<b>3 consecutive days of demand exceeding 90% of available capacity</b>
<b>Water Shortage Emergency</b>	<b>5 consecutive days of demand exceeding 90% of available capacity</b>
<b>Water Shortage Crisis</b>	<b>1 day of demand exceeding 100% of available capacity</b>

**Sec. 28-271. Enforcement.**

1. Any person who violates the provisions of this article, who fails to carry out the duties and responsibilities imposed by this article, or who impedes or interferes with any action undertaken or ordered pursuant to this article shall be subject to enforcement actions. In addition to the enforcement actions in Sections 28-271.2, continued or recurring violations may subject the violator to criminal prosecution in Environmental Court.
2. The COORWR shall be responsible for monitoring and enforcement of this Article. Enforcement actions may include, but are not limited to, the following:

(a) Written Warning

Whenever the COOWR or his duly authorized representative finds that any user has violated or is violating this Article or any prohibition, limitation, or requirement contained herein, or policy issued pursuant thereto, a written warning may be issued to such offender by an authorized representative of the Public Works Commission. The written warning shall notify the violator of the nature of the violation and the need to take corrective action and that failure to do so will result in the issuance of a Notice of Violation.

(b) Notice Of Violation

The COOWR or his duly authorized agent may serve upon such offender a written Notice Of Violation stating the nature of the violation. The written Notice Of Violation shall be affixed to the property where the violation occurred and/or mailed certified with return receipt requested to the customer of record and to any other person known to the Public Works Commission to be responsible for the violation or its correction. When a customer of record refuses to accept a Notice Of Violation by certified mail, hand delivery of the written Notice Of Violation to the customer of record or to the person in charge of the premises where the violation occurred shall also constitute service. The notice of violation shall inform the user of the violation, their responsibility to discontinue the activity within a specified period of time, and possible recriminations including civil penalties and termination of service if the violation continues.

(c) Civil penalties.

The Public Works Commission's General Manager may assess a civil penalty to any offender who shall continue any violation beyond the time limit provided for in the aforementioned Notice Of Violation. Each day, beginning at 12:01 AM, in which a violation of any provision of this article shall occur or continue shall constitute a separate and distinct offense. The amount of the civil penalty shall be in accordance with the penalty schedule as stated in the Public Works

Commission Policies and Procedure Manual, Section 640.03, Water Shortage Ordinance Civil Penalty Policy. Appeals of civil penalties assessed in accordance with this section shall be as provided in section 28-272.

(d) Suspension of Service

If after issuance of a Civil Penalty, compliance is not achieved and/or the penalty is not paid within 30 days, the COOWR or his duly authorized agent may immediately terminate or restrict the service to the premise where such violation has occurred and may in addition thereto, or in the alternative, take such other appropriate legal action as provided by law.

At such time the COOWR is satisfied that the offender(s) are no longer in violation of any treated water use restrictions, the Public Works Commission may reinstate water service to the premise following the payment of all civil penalties assessed as well as any applicable suspension/reconnection fees as outlined in PWC's Rates and Policies Manual.

(e) The Public Works Commission may implement special rates, fees, and/or surcharges to further encourage water conservation by its users.

(f) Any and All Measures

The PWC General Manager may use any and all enforcement measures listed in this section without prior notice, warning, or prerequisite enforcement action depending on the severity and/or nature of the violation as deemed necessary to achieve compliance with the provisions of this article. In addition, enforcement may include any one, all or a combination of the remedies authorized and prescribed by the North Carolina General Statutes.

**Sec. 28-272. Adjudicatory hearing/appeals.**

1. Any user whose water use has been restricted or terminated or who has been assessed a civil penalty under 28-271 shall have the right to an adjudicatory hearing before a hearing officer designated by the general manager of the Public Works Commission. Users requesting an adjudicatory hearing must do so by submitting a written request, which identifies the specific issues to be contended, to the general manager of the Public Works Commission within 72 hours following notice of the issuance of a civil penalty. Unless such demand is made within the time specified in this section, the decision to restrict or terminate the water use, or the civil penalty assessment, shall be final and binding.
2. The hearing officer shall notify the user of the date, time, and place for the hearing. The hearing shall take place within 10 business days of the written request for a hearing. A decision shall be made within 10 calendar days from the date of the hearing and a copy of the written decision shall be mailed to the user by certified mail, return receipt requested.

3. When a final decision is issued pursuant to the above subsection, the Public Works Commission shall prepare an official record of the case that includes:
  - (a) All notices, motions, and other like pleadings;
  - (b) A copy of all documentary evidence introduced;
  - (c) A certified transcript of all testimony taken, if testimony is transcribed. If testimony is taken and not transcribed, then a narrative summary of any testimony taken;
  - (d) A copy of the final decision of the Public Works Commission.
4. Any user against whom a final decision of the Public Works Commission is entered pursuant to the hearing procedure under Section 28-272.1 of this Article may appeal the order or decision by filing a written petition for judicial review within 30 days after receipt of notice by certified mail of the order or decision to the general court of justice of the county or of the county where the order or decision is effective, along with a copy to the Public Works Commission. Within 30 days after receipt of the copy of the petition of judicial review, the Public Works Commission shall transmit to the reviewing court the original or a certified copy of the official record, as outlined in Section 28-272.3 of this Article.

#### **Sec 28-273. Ordinance Changes**

This ordinance may be changed, revised, amended, replaced or rescinded by approval of the Board of Commissioners of the Public Works Commission and subsequent approval of the City Council of the City of Fayetteville. Public input will be considered through the normal process of adoption/modification of ordinances by City Council.

#### **Sec 28-274 Variances and Variance Criterion**

A variance from prevailing water conservation measures may be granted to a customer that would otherwise be prohibited. The General Manager or his duly authorized designee shall have the authority to issue variances to the water use restrictions in sections 28-265 through 28-269. In order to qualify for a variance, a customer/user must apply, in writing, to the General Manager or his designee, indicating: 1) the physical address of the location where the water will be used or where the water bill is mailed; 2) the basis for the variance from prevailing water restrictions; and, 3) the duration of the requested variance.

Until such time as the variance is approved, if it is, the customer will continue to comply with the restrictions until a decision has been made. If and when the variance is approved the variance notification will be sent to the customer who must maintain a copy of the variance for inspection. The customer must abide by all conditions and provisions of the variance. All variances will be recorded for use by enforcement officials.

Notification of approval or disapproval of the requested variance shall be sent to the customer within 5 business days from the date the request was received. Depending on the exigency for which the variance is requested, other methods of notification may also be used in the discretion of the General Manager or his designee.

Each variance will be considered on a case by case basis. Criterion used for consideration of approval of the variance will include but not be limited to: impact on water supply demand; existence of an alternative source; social or economic importance; prevention of structural damage; or other reasons deemed important by the General Manager or his designee.

#### **Sec 28-275 Evaluation**

The effectiveness of the restrictions in this Article will be evaluated based on review of raw water pumping data. Daily flows will be tracked and compared to pre-water shortage conditions to determine if restrictions are achieving the necessary usage reduction. If the restrictions are not meeting the flow reductions necessary to achieve the goals established by the General Manager additional measures may be taken at that time and the ordinance will be reviewed for possible modifications.

#### **Sec. 28-276 Revision**

This Water Shortage Ordinance will be reviewed and revised as necessary to adapt to new circumstances, after the occurrence of a water shortage emergency, or every five years, whichever occurs first.

#### **Sec 28-275.5. Severability**

If any section, subsection, sentence, or clause of this article is adjudged to be unconstitutional or otherwise invalid, such adjudication shall not affect the validity of the remaining portion of this article. It is hereby declared that this article would have been passed, and each section, sentence, or clause thereof, irrespective of the fact that any one or more sections, subsections, sentences, or clauses might be adjudged to be unconstitutional, or for any other reason invalid.

Section 2. It is the intention of the City Council, and it is hereby ordained that the foregoing amendments shall become and be made a part of the Code of Ordinances of the City of Fayetteville, North Carolina, and that Article V of Chapter 28 is rewritten as above provided. The effective date of this ordinance is May 24, 2010.

ADOPTED this 24th day of May, 2010

CITY OF FAYETTEVILLE

*Anthony G. Chavonne*

ANTHONY G. CHAVONNE., Mayor



ATTEST:

*Rita Perry*

Rita Perry, City Clerk