

AN ORDINANCE OF THE TOWN BOARD
OF THE TOWN OF BROADWAY, NORTH CAROLINA
CREATING A NEW ARTICLE
"WATER SHORTAGE RESPONSE"

Be it ordained by the Town Board of the Town of Broadway that the Code of Ordinances, Town of Broadway, North Carolina, is hereby created as follows:

ARTICLE 1. WATER SHORTAGE RESPONSE

DIVISION 1. PURPOSE & DEFINITIONS

See A. Purpose & Authority

The procedure herein are written to reduce potable water demand and supplement existing drinking water supplies whenever existing water supply sources are inadequate to meet current demands for potable water.

i. Authorization

The Broadway Town Manager shall enact the following water shortage response provisions whenever the trigger conditions outlined in Section IV are met. In his absence, the Public Works Director will assume this role.

Mr. Robert Stevens
Broadway Town Manager
Phone: (919)258-9922
Email: bwaytownhall@windstream.net

Mr. Craig Buchanan
Broadway Public Works Director
Phone: (919)258-9922
Email: bwaytownhall@windstream.net

1. "User," as the term is used in this ordinance, shall mean any person using water for any purpose from the Town of Broadway water distribution system and for which either a regular charge is made or, in the case of bulk sales, a cash charge is made at the side of delivery.
2. "Voluntary Conservation," as the term is used in this ordinance, shall mean that conditions exist which indicate the potential for water supply shortages. Users are asked to limit their use of water and eliminate the waste of water.
3. "Mandatory Restriction," as the term is used in this ordinance, shall mean that raw water supplies (i.e. streamflows, reservoir levels) are consistently below seasonal averages. Thus, conservation measures are not voluntary, and if Users fail to comply, they will be subject to penalties outlined herein.

4. "Emergency," as the term is used in this ordinance, shall mean that treated water supplies cannot meet User demand and that serious shortages exist in the area. An immediate further reduction in water usage is required.
5. "Rationing," as the term is used in this ordinance, shall mean procedures approved by the Broadway Town Council 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.
6. "Water Supply," as the term is used in this ordinance, shall mean the body of water from which the Town of Broadway obtains water for treatment and subsequent distribution into the potable water supply system.
7. "Treated Water," as the term is used in this ordinance, shall mean that water has been withdrawn from an approved source and has been processed by the Town of Broadway or City of Sanford Water Treatment Plant.
8. "Fresh Water," as the term is used in this ordinance, shall mean water withdrawn from surface or groundwater that has not been previously used.
9. "Contamination," as the term is used in this ordinance, shall mean the addition to any reservoir, storage tank, or distribution system any material that appears in an above-normal concentration or has high nuisance or harmful effect on the User or the system.
10. "Water Shortage," as the term is used in this ordinance, shall mean that conditions exist where the demands and requirements of Users served by the Town of Broadway water distribution system 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 demand.
 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 Town of Broadway water distribution system;
 6. Natural disasters.

11. "Water Use Classes," as the term is used in this ordinance, shall be established as follows:

Class 1: Essential Water Uses

Domestic Use:

*Water necessary to sustain human life and the lives of domestic pets, and to maintain minimum standards of hygiene and sanitation.

Health Care Facilities:

*Patient care and rehabilitation, including pools used for patient care and rehabilitation.

Public Use:

*Fire Hydrants

1. Firefighting
2. Certain testing and drills by the fire department if performed in the interest of public safety and if approved by the municipal governing body.

*Flushing of Sewers and Hydrants: As needed to ensure public health and safety and if approved by the municipal governing body.

Class 2: Socially or Economically Important Uses of Water

All Domestic Uses Other Than Those Included in Classes 1 and 3:

*Home water use including kitchen, bathroom, and laundry use

*Minimal watering of vegetable gardens

*Watering of trees where necessary to preserve them.

Commercial, Agricultural, Industrial, and Institutional Uses

*Outdoor commercial watering (public or private) using conservation measures and to the extent that sources of water other than fresh water are not available to use.

*Irrigation for commercial vegetable gardens and fruit orchards or the maintenance of livestock.

*Watering by commercial nurseries at a minimum level necessary to maintain stock.

*Use of fresh water at a minimum rate necessary to implement vegetation following earth moving, where such vegetation is required by law or regulation.

*Watering of golf course greens.

*Filling and Operation of Swimming Pools:

- Residential Pools which service more than 25 dwelling units

- Pools used by health care facilities for patient care and rehabilitation

- Municipal and County owned pools

*Commercial Car and Truck Washes

*Commercial Laundromats

*Restaurants, Clubs, and Eating Places

*Air Conditioning:

- Refilling for start up at the beginning of the cooling season

- Make-up of water during the cooling season

- Refilling specifically approved by health officials and the municipal governing body, where the system has been drained for health protection or repair purposes.

*Schools, Churches, Motels/Hotels and Similar Commercial Establishments

Class 3: Non-Essential Uses of Water

Ornamental Purposes:

*Fountains, reflecting pools, and artificial waterfalls

*Outdoor Non-Commercial Watering (public or private)

*Flower Gardens, Lawns, Parks, Golf Courses (except greens), playing fields and other recreational areas

*Filling and operation of recreational swimming pools that serve fewer than 25 dwellings

*Non-commercial washing of motor vehicles

*Serving water in indoor commercial establishments, except by specific request.

*Air Conditioning: refilling cooling towers after draining except as specified in Class 2.

Public Use:

*Fire Hydrants: any purpose, including use of sprinkler caps and testing fire apparatus and for fire department drills, except as listed in Class 1

*Flushing of Sewers and Hydrants except as listed in Class 1.

DIVISION II. NOTIFICATION

The following notification methods will be used to inform water system employees and customers of a water shortage declaration: employee e-mail announcements, notices at municipal buildings, notices in water bills. Required water shortage response measures will be communicated through the Town's website <http://www.broadwaync.com>, PSA announcements on local radio and cable stations. Declaration of emergency water restrictions or water rationing will be communicated to all customers by telephone through use of reverse 911.

DIVISION III. LEVELS OF RESPONSE

Five levels of water shortage response are outlined in the table below. The five levels of water shortage response are: voluntary reductions, mandatory reductions I and II, emergency reductions and water rationing. A detailed description of each response level and corresponding water reduction measures follow below.

Stage	Response	Description
1	Voluntary Reductions	Water users are encouraged to reduce their water use and improve water use efficiency; however, no penalties apply for noncompliance. Water supply conditions indicate a potential for shortage.
2	Mandatory Reductions I	Water users must abide required water use reduction and efficiency measures; penalties apply for noncompliance. Water supply conditions are significantly lower than the seasonal norm and water shortage conditions are expected to persist.
3	Mandatory Reductions II	Same as in Stage 2
4	Emergency Reductions	Water supply conditions are substantially diminished and pose an imminent threat to human health or environmental integrity.
5	Water Rationing	Water supply conditions are substantially diminished and remaining supplies must be allocated to preserve human health and environmental integrity.

In Stage 1, Voluntary Reductions, all water users will be asked to reduce their normal water use by 5%. Customer education and outreach programs will encourage water conservation and efficiency measures including: irrigating landscapes a maximum of one inch per week; preventing water waste, runoff and watering impervious surfaces; watering plants deeply to encourage root growth; washing only full loads in clothes and dishwashers; using spring-loaded nozzles on garden hoses; and identifying and repairing all water leaks.

In Stage 2, Mandatory Reductions I, all customers are expected to reduce their water use by 10% in comparison to their previous month's water bill. In addition to continuing to encourage all voluntary reduction actions, the following restrictions apply; irrigation is limited to a half inch per week between 8:00 p.m. and 8:00 a.m.; outdoor use of drinking water for washing impervious surfaces is prohibited; and all testing and training purposes requiring drinking water (e.g. fire protection) will be limited.

In Stage 3, Mandatory Reductions II, customers must continue actions from all previous stages and further reduce water use by 20% compared to their previous month's water bill. All non-essential uses of drinking water are banned and garden and landscape irrigation must be reduced to the minimum amount necessary for survival. Additionally, in Stage 3, a drought surcharge of 1.5 times the normal water rate applies.

In Stage 4, Emergency Reductions, customers must continue all actions from previous stages and further reduce their water use by 25% compared to their previous month's water bill. A ban on all use of drinking water except to protect public health and safety is implemented and drought surcharges increase to 2 times the normal water rate.

The goal of Stage 5, Water Rationing, is to provide drinking water to protect public health (e.g. residences, residential health care facilities and correctional facilities). In Stage 5, all customers are only permitted to use water at the minimum required for public health protection. Firefighting is the only allowable outdoor water use and pickup locations for distributing potable water will be announced according to Broadway's Emergency Response Plan. Drought surcharges increase to 5 times the normal water rate.

Sec. A. Declaration of Voluntary Conservation

Voluntary Conservation is needed when streamflows are consistently below seasonal norms, and continued dry conditions are forecast, or when the usable water supply storage of the raw water reservoir is less than 80%.

Whenever the Public Works Director finds there is a potential water shortage, the Town Manager, or his Designee, shall be empowered to declare that Voluntary Conservation conditions exist, and that the Public Works Director shall monitor the supply and demand of treated water daily and advise the Town Manager of the need to increase water conservation measures to the next stage or cancel the Voluntary Conservation directive if it is no longer needed.

A notification shall be published in a newspaper of general circulation in the water distribution system area advising the public of the water shortage situation.

When Voluntary Conservation is declared, use of water from the public water system supplied by the City of Sanford is discouraged for the following purposes:

- a. To water lawns, grass, shrubbery, trees, flower and vegetable gardens except as follows:
 1. If your address ends in an odd number, watering can be done on odd-numbered calendar days. If your address is an even number, watering can be done on even-numbered days.
 2. Any person regularly engaged in the sale of plants shall be permitted to use water for such purposes.

- b. To wash automobiles, trucks, trailers, boats, airplanes, or any other type of mobile equipment. However, any person regularly engaged in the business of washing motor vehicles, and any commercial car wash facility, shall be permitted to use water for such purposes.
- c. 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 to use water for other similar purposes. However, any person regularly engaged in the business of washing such areas shall be permitted to use water for such purposes.
- d. To introduce water into any ornamental fountain pool or pond or other structure making similar use of water.
- e. To use water from public or private fire hydrants for any purpose other than fire suppression or other public emergency or water department need.
- f. To use for dust control or compaction, except by persons regularly engaged in construction where such use is normal.
- g. To intentionally waste treated water.

Sec. B. Declaration of Mandatory Restriction

Mandatory Restriction is required when User demand is greater than 50% of the estimated streamflow above the intake that is available for water supply, or when the raw water reservoir has less than 60% of usable water supply remaining.

Whenever the Public Works Director determines that either the treated water or water supply is not adequate to meet normal needs, the Town Manager shall be empowered to declare Mandatory Restriction. The declaration shall exist for the duration of the shortage or until it is declared to have ended by the Town Manager. Class 3 water uses will be banned during Mandatory Restriction. Penalties will be applied for non-compliance.

In the event of Mandatory Restriction, the voluntary restrictions heretofore recommended shall be made mandatory with the following additional mandatory water restriction measures imposed, and it shall be unlawful to use water from the public water distribution system supplied by the Town of Broadway for the following purposes:

- A. To water or sprinkle any lawn, grass, shrubbery, trees, or flowers with treated water. However, any person regularly engaged in the sale of plants shall be permitted to use treated water for such purposes.

- B. To water any vegetable garden with treated water except during the hours of 6:00 a.m. to 9:00 a.m. on Saturday. Such watering is only to be done by hand-held hose or container or drip irrigation system.
- C. To fill newly constructed swimming and/or wading pools or refill swimming and/or wading pools which have been drained.
- D. To serve drinking water in restaurants, cafeterias, or other food establishments, except upon request.
- E. To use treated water outside a structure for any use other than an emergency involving fire or as needed by the Town of Broadway to maintain the water system.
- F. To wash motor vehicles, except for commercial washing.
- G. To water golf courses, except for greens.
- H. To fill fountains, reflecting pools, or artificial waterfalls.
- I. To make any nonessential use of treated water for commercial or public use.

Sec. C. Declaration of Emergency Phase

This phase should be enacted when there is an extreme water shortage. Demand should be greater than 75% of the estimated streamflow above the intake that is available for water supply, or when less than 40% of usable storage remains in the raw water reservoir. Emergency pricing measures may be implemented at this stage to discourage the wasting of water. Class II and III water uses are banned.

Whenever the Public Works Director has determined that serious water shortages exist, the Town Manager is empowered to declare a Water Shortage Emergency. The Town Manager, with approval of the Broadway Town Board, may implement a rationing policy that provides for the equitable distribution of critically limited treated water or water supplies to ensure that sufficient treated water is available to preserve public health and safety of the citizens. The Public Works Director shall monitor compliance with the water rationing policy approved by the Broadway Town Board. Such rationing policy may be developed at the time of the declaration of the Water Shortage Emergency and should be reflective of the following criteria:

- A. It is imperative that water Users achieve an immediate further reduction in water use in order to extend existing water supplies, and at the same time ensure, that sufficient water is available to preserve the public health and sanitation and to provide fire protection service. This

immediate further reduction in water usage is another step along a continuum of responses to any Water Shortage Emergency. Should the crisis continue, further reductions in water usage might be required. It must be emphasized that additional usage reductions in the rationed area is a valid and attainable goal reflective of the conditions of the crisis.

- B. The policy must provide for equitable reductions in water usage and for equal sacrifice on the part of each water user. The success of this policy depends on the cooperation of all water users in the emergency area.

DIVISION IV. ENFORCEMENT & PENALTIES

Sec. A. Regulations

During the effective period of any water shortage, the Broadway Town Board is empowered to authorize such regulations or policies as may be necessary to carry out the provisions of this Ordinance. The Town Manager is hereby granted the authority to implement and enforce any of the treated water use restrictions.

The Broadway Town Board shall have authority to implement, maintain, and rescind any one or more of the above restrictions and to make them applicable during various times of the day as they deem appropriate to protect the public health, safety and welfare until the Public Works Director determines that the conditions requiring their imposition no longer exists.

Sec. B Triggers

Broadway is provided water solely by purchase from the City of Sanford. When the City of Sanford declares a water shortage, Broadway is required to do so as well. During this time Broadway Public Works Director will stay in close contact with Sanford and follow their triggers.

Return to Normal

When water shortage conditions have abated and the situation is returning to normal, water conservation measures employed during each phase should be decreased in reverse order of implementation. Permanent measures directed toward long-term monitoring and conservation should be implemented or continued so that the community will be in a better position to prevent shortages and respond to recurring water shortage conditions.

Sec. C Variances

- A. Applications for water use variance requests are available from the Town Public Works Office. All applications must be submitted to the Public Works Office for review by the Public Works Director or his designee. A decision to approve or

deny individual variance requests will be determined within two weeks of submittal after careful consideration of the following criteria: impact on water demand, expected duration, alternative source options, social and economic importance, purpose (i.e. necessary use of drinking water) and the prevention of structural damage.

Sec. D. Enforcement

Any person who violates the provisions of this Ordinance, who fails to carry out the duties and responsibilities imposed by this Ordinance, or who impedes or interferes with any action undertaken or ordered pursuant to this Ordinance shall be subject to enforcement actions.

The provisions of the water shortage response plan will be enforced by Town of Broadway Public Works department and police personnel. Violators may be reported to the Town’s dedicated water conservation hotline. Citations are assessed according to the following schedule depending on the number of prior violations and current level of water shortage.

Water Shortage Level	First Violation	Second Violation	Third Violation
Voluntary Reductions	N/A	N/A	N/A
Mandatory Reductions (Stages 2 & 3)	Warning	\$250	Discontinuation of Service
Emergency Reductions	\$500	Discontinuation of Service	Discontinuation of Service
Water Rationing	\$1,000	Discontinuation of Service	Discontinuation of Service

Enforcement actions may include, but are not limited to the following:

A. Notice of Violation (NOV)

When the Public Works Director finds that any User has violated or is violating this Ordinance or any prohibition, limitation, or requirement contained therein, the Town Manager, or his Designee, shall serve upon such a person a written notice stating the nature of the violation. The written notice of the violation shall be affixed to the property where the violation(s) occurred and

mailed to the customer of record and to any other person known to the Public Works Director who is responsible for the violation or its correction. Hand delivery of the written notice to the customer of record or to the person in charge of the premise where the violation(s) occurred shall also constitute service, and regular mail not returned shall constitute service. The NOV shall inform the User of the violation and their responsibility to halt the activity within a specified period of time.

B. Civil Penalties

The Town Manager may assess a civil penalty of up to \$1,000 per violation to any offender who shall continue any violation beyond the time limit provided for in the aforementioned Notice of Violation. Each day in which a violation of any provision of this Ordinance shall occur or continue shall constitute a separate and distinct offense.

In determining the amount of the civil penalty, the Town Manager shall consider the following:

1. The degree and extent of the harm to the natural resources, to the public health, or to public or private property resulting from the violation;
2. The duration and gravity of the violation;
3. Whether the violation was committed willfully or intentionally;
4. The prior record of the violator in complying or failing to comply with the Water Shortage Response Ordinance;
5. The costs of enforcement to the Town of Broadway.

Appeals of civil penalties assessed in accordance with this section shall be as provided in Division IV.

E. Emergency Suspensions

In the event any treated water use restriction implemented by the Broadway Town Board is violated, the Town Manager may terminate or restrict the service of the User(s) where such violation occurs and may in addition thereto or in the alternative take such other appropriate legal action as provided by law.

At such time as the Public Works Director is satisfied that the User is no longer in violation of any treated water use restrictions, the Town Manager shall authorize the User's water services be restored pursuant to the following:

1. After payment of a suspension/reconnection charge of \$75 for first time offenders.
2. After payment of a suspension/reconnection charge of \$125 for second time offenders.
3. After payment of a suspension/reconnection charge of \$225 for each additional violation.

Water service will not be restored until all penalties are paid.

DIVISION V. PUBLIC COMMENT

A copy of the Water Shortage Response Plan is on file at the Town Hall, 117 S. Main St. Broadway, NC, and any comment directed at the Board of Commissioners can be handled at the Public Comment Section of each Board meeting, which is held the 4th Monday of each month at Council Chambers, 100 East Lake Drive, Broadway, NC.

Customers will have multiple opportunities to comment on the provisions of the water shortage response plan. A notice will be included in customer water bill notifying them of such. Also a draft plan will be published on the Town's website. All subsequent revisions to the draft plan will be published at least 30 days prior to an adoption vote by Broadway's Town Commissioners.

DIVISION VI. APPEALS

Sec. A. Adjudicatory Hearing/Appeals

- A. Any User whose water use has been restricted or terminated or who has been assessed a civil penalty under Division III, shall have the right to an adjudicatory hearing before the Town Manager. Users requesting an adjudicatory hearing must do so by submitting a written request, which identifies the specific issues to be contended, to the Town Manager within 30 days following notice of final decision to issue a civil penalty. Unless such demand is made within the time specified herein, the decision to restrict or terminate the water use, or the civil penalty assessment shall be final and binding.
- B. The Adjudicatory Hearing shall take place within ten (10) calendar days from the date of receipt by the Town Manager of the written request from the User. Upon mutual agreement of the User and the Town Manager, the date of the hearing may be scheduled at a later date but in no event more than thirty (30) days from the date of receipt by the Town Manager of the written request from the User. The Town Manger shall notify the User of the date, time, and place for the hearing. A decision shall be made within 10 (ten) calendar days from the date of the hearing and copy of the written decision shall be mailed to the user by

certified mail, return receipt requested.

- C. Decisions of the Town Manager may be appealed by any party to the Broadway Town Board upon filing a written demand within ten (10) days of receipt of notice of the decision. Hearings held under this section shall be conducted in accordance with Town of Broadway hearing procedures. Failure to make written demand within the time specified herein shall bar further appeal. The Broadway Town Board shall make a decision on the appeal within 90 days of the date appeal was filed and shall transmit a written copy of its decision by certified mail, return receipt requested.
- D. When a final decision is issued under Division IV of this section, the Town Attorney shall prepare an official record of the case that includes:
1. All notices, motions, and other like pleadings;
 2. A copy of all documentary evidence introduced;
 3. 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 is taken.
 4. A copy of the final decision of the Town Board.
- E. Any applicant against whom a final decision of the Broadway Town Board is entered, may appeal the order or decision by filing a written petition for judicial review in the nature of certiorari within 30 days after receipt of notice by certified mail of the order or decision to the General Court of Justice of Lee County. A copy of the appeal shall be served on the Town Attorney.

DIVISION VII. EFFECTIVENESS OF PLAN

The effectiveness of the Broadway water shortage response plan will be determined by comparing the stated water conservation goals with observed water use reduction data. Other factors to be considered include frequency of plan activation, any problem periods without activation, total number of violation citations, desired reductions attained and evaluation of demand reductions compared to the previous year's seasonal data.

DIVISION VIII. GENERALLY

SEC. A. REVISION

The water shortage response plan will be reviewed and revised as needed to adapt to new circumstances affecting water supply and demand, following implementation of emergency restrictions, and at a minimum of every five years in conjunction with the updating of our Local Water Supply Plan. Further, a water shortage response planning work group will

review procedures following each emergency or rationing stage to recommend any necessary improvements to the plan to Broadway's Town Commissioners. The Town of Broadway Public Works Director is responsible for initiating all subsequent revisions.

SEC. B. 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.

SEC. C. Effective Date

This Ordinance shall take effect immediately upon adoption by the Broadway Town Board, of the Town of Broadway, North Carolina.

Adopted this _____ day of _____ 2010

Donald F. Andrews, Mayor

ATTEST:

Laura K. Duval, Town Clerk

Jimmy Love, Town Attorney

TOWN OF BROADWAY WATER SHORTAGE ORDINANCE _____