

ARTICLE III. WATERWORKS

DIVISION 2. WATER SHORTAGE RESPONSE PROCEDURES*

***Editor's note:** Ord. No. 9-08, § 1, adopted March 17, 2008, repealed Art. III, §§ 23-67.1--23-67.6 and §§ 23-68--23-78, and enacted new provisions as set out herein. The former Art. III pertained to the emergency water conservation and restriction plan and derived from Ord. No. 42-2000, §§ 23A-1--23A-6, adopted June 29, 2000; Ord. No. 33-02, adopted Aug. 9, 2002; Ord. No. 35-02, adopted Aug. 20, 2002; Ord. No. 39-02, adopted Sept. 20, 2002; Ord. No. 40-02, adopted Sept. 20, 2002; Ord. No. 41-02, adopted Sept. 26, 2002; Ord. No. 42-02, adopted Sept. 27, 2002; and Ord. No. 53-02, adopted Oct. 14, 2002.

Sec. 23-67. Purpose.

The purpose of Division 2 of Article III of Chapter 23 (referred to herein as "this division") is to provide sufficient authority to the city manager and director of water resources under the supervision of the city manager to develop and implement measures that respond to water shortages in a manner that is reasonably expected to: minimize harmful impacts on the public health, safety, and welfare, including the local economy; be consistent with state law and guidance from state drought management authorities; and, when appropriate, reduce Statesville's Catawba River water use consistent with the Catawba LIP. This division shall be liberally construed to effect such purpose.

(Ord. No. 9-08, § 1, 3-17-08)

Sec. 23-68. Definitions.

For the purpose of this division, the following terms, phrases, words and their derivations shall have the meanings stated herein; and words not defined in this division shall have the meanings stated in Chapter 1 of this Code.

Catawba River Low Inflow Protocol or *Catawba LIP* shall mean the written set of procedures for reductions in water use during periods of drought or other emergency conditions published by the DMAG.

Customer shall mean any person in whose name the city maintains an account for water use.

Director shall mean the director of water resources of the City of Statesville.

Drought advisory shall mean an advisory issued by the NCDMAC that delineates the geographic extent and severity of a water as follows: abnormally dry, moderate drought, severe drought, extreme drought, or exceptional drought.

Drought management advisory group or *DMAG* shall mean the team of owners of large water intakes in the Catawba-Wateree River basin, state and federal agencies and Duke Energy Carolinas, LLC, that has formulated a basin-wide, shared response for low inflow conditions that may affect the reservoirs of the hydropower developments operated by Duke Energy Carolinas, LLC on the Catawba River basin.

Enforcement team member shall mean a city employee or other person authorized by the manager to monitor compliance, issue citations to users and other persons for violations, and direct users and other persons to cease violations.

Manager shall mean the city manager of the City of Statesville, North Carolina.

NCDMAC shall mean the North Carolina Drought Management Advisory Council.

Noncompliant water use shall mean any use or release of water from the water system in a manner that does not comply with a mandatory water conservation measure in a water shortage declaration or with a variance granted pursuant to this division.

User shall mean any person, including a customer, who, with or without the city's knowledge: receives or releases or is capable of receiving or releasing water from the water system; or owns, controls, or is otherwise responsible for, personal or real property that receives or releases or is capable of receiving or releasing water from the water system.

Water shortage factors shall mean relevant water quantity and quality information; the water conservation stages, water use goals, water shortage criteria, and water conservation measures listed in Table 1 and Table 2 of this division; recommendations from the director of water resources; available pressures at various points in the water system; the water system's ability to maintain adequate storage tank water levels; downstream conditions including water shortages for other public water suppliers; and other relevant factors.

Water sources shall mean the multiple water sources that supply the water system, including but not limited to the intake on the Catawba River, the intake on the South Yadkin River, and the Statesville-Salisbury water supply interconnection.

Water system shall mean the city's potable water treatment and distribution system.

(Ord. No. 9-08, § 1, 3-17-08)

Sec. 23-69. Operational adjustments by director.

The director shall have authority to make operational adjustments in the water system, including but not limited to adjusting the relative amounts of water being received by the water system from the water sources in order to achieve consistency of the water system with the Catawba LIP, a drought advisory, or for other appropriate purposes consistent with this division. Operational adjustments may be made without a declaration of water shortage pursuant to section 23-70.

(Ord. No. 9-08, § 1, 3-17-08)

Sec. 23-70. Declaration of water shortage.

The manager, or in the absence of the manager, the director, after careful consideration of the water shortage factors, may declare a water shortage for the entire water system or for a portion of the water system by signing a declaration of water shortage ("declaration"). Upon signing the declaration, the water conservation measures identified in Table 1 and Table 2, and any additional measures or modifications of measures stated in the declaration, shall be in effect. A declaration shall include the following information:

- (1) The date and time the declaration is to take effect;
- (2) The expiration date and time, if any;
- (3) Facts supporting the declaration;
- (4) A statement that the area served by the entire water system is affected by the declaration or, alternatively, that an area served by a portion of the water system is affected by the declaration;
- (5) The water conservation stage and water use goal;
- (6) Any voluntary conservation measures;
- (7) Any mandatory water conservation measures;
- (8) Notice that violations of mandatory water conservation measures are subject to civil penalty assessments and other enforcement actions; and
- (9) Notice that a procedure is available for requesting a waiver of requirements under some limited circumstances.

Table 1. Water Use Goals, Water Shortage Criteria, and Water Conservation Measures

TABLE INSET:

Water Use Goal	Water Shortage Criteria	Water Conservation Measures
1A: Reduce Catawba River water use 3% to 5% (below normal use)	DMAG declares Stage 1 and water use goal not achieved through use of non-Catawba River sources	Stage 1 conservation measures, as specified in Table 2 of this Division, except as otherwise provided in a declaration
1B: Reduce system or portion of system water use 3% to 5% (below normal use)	NCDMAC drought advisory, water system operational disruption, or other factor warrants	

	reduction of use by 3% to 5%	
2A: Reduce Catawba River water use 5% to 10% (below normal use)	DMAG declares Stage 2 and water use goal not achieved through use of non-Catawba River sources	Stage 2 conservation measures, as specified in Table 2 of this Division, except as otherwise provided in a declaration
2B: Reduce system or portion of system water use 5% to 10% (below normal use)	NCDMAC drought advisory, water system operational disruption, or other factor warrants reduction of use by 5% to 10%	
3A: Reduce Catawba River water use 10% to 20% (below normal use)	DMAG declares Stage 3 and water use goal not achieved through use of non-Catawba River sources	Stage 3 conservation measures, as specified in Table 2 of this Division, except as otherwise provided in a declaration
3B: Reduce system or portion of system water use 10% to 20% (below normal use)	NCDMAC drought advisory, water system operational disruption, or other factor warrants reduction of use by 10% to 20%	
4A: Reduce Catawba River water use 20% to 30% (below normal use)	DMAG declares Stage 4 and water use goal not achieved through use of non-Catawba River sources	Stage 4 conservation measures, as specified in Table 2 of this Division, except as otherwise provided in a declaration
4B: Reduce system or portion of system water use 20% to 30% (below normal use) or other reduction as specified in a declaration	NCDMAC drought advisory, water system operational disruption, or other factor warrants reduction of use by 20% to 30%	

Table 2. Stage 1, Stage 2, Stage 3, and Stage 4 Water Conservation Measures

TABLE INSET:

Water Conservation Stage	Water Conservation Measures
Stage 1	Voluntary limitation of lawn and landscape irrigation to the following times and locations:
	- At odd-numbered street addresses from Tuesday 8 p.m. to Wednesday 8 a.m. and Saturday 8 p.m. to Sunday 8 a.m.

		- At even-numbered street addresses and unnumbered addresses from Thursday 8 p.m. to Friday 8 a.m. and Sunday 8 p.m. to Monday 8 a.m.
	Voluntary reduction in residential vehicle washing	
	If the director determines the need for additional measures to better achieve the water use goal, the director may publish additional voluntary water conservation measures and may impose mandatory water conservation measures at city facilities.	
Stage 2	Irrigation is prohibited except as follows:	
		- Lawn and landscape irrigation at the following times and locations:
		• At odd-numbered street addresses from Tuesday 8 p.m. to Wednesday 8 a.m. and Saturday 8 p.m. to Sunday 8 a.m.
		• At even-numbered street addresses and unnumbered addresses from Thursday 8 p.m. to Friday 8 a.m. and Sunday 8 p.m. to Monday 8 a.m.
		- Tree and bed irrigation by bubble, drip, or hand irrigation only
		- Watering of athletic fields and golf course fairways in compliance with an alternative watering plan approved by the director
	Residential vehicle washing is prohibited	
	Voluntary reduction of all water consumption and deferral of non-essential water uses to early morning or late evening hours	
	The washing of public buildings, sidewalks, and streets is prohibited except as required for safety and for compliance with safety and health regulations.	
	If the director determines the need for additional measures to better achieve the water use goal, the director may publish additional voluntary water conservation measures and may impose mandatory water conservation measures at city facilities.	
Stage 3	Irrigation is prohibited except as follows:	
		- Tree and bed irrigation by bubble, drip, or hand irrigation methods only at the following times and locations:
		• At odd-numbered street addresses from Saturday 8 p.m. to Sunday 8 a.m.
		• At even-numbered street addresses and unnumbered addresses from Sunday 8 p.m. to Monday 8 a.m.
		- Watering of athletic fields and golf course fairways in compliance with an alternative watering plan approved by the director
	Residential vehicle washing is prohibited	
Voluntary reduction of all water consumption and deferral of non-		

	essential water uses to early morning or late evening hours
	The washing of public buildings, sidewalks, and streets is prohibited except as required for safety and for compliance with safety and health regulations.
	Outdoor ornamental water use (fountains and ponds without fish) is prohibited.
	Filling or refilling swimming pools is prohibited (top-offs allowed)
	Dust suppression, street washing and hydrant flushing are prohibited except to maintain safety, water quality and regulatory compliance.
	Voluntary industrial water use reductions through process changes; employers are asked to educate their employees about water conservation.
	If the director determines the need for additional measures to better achieve the water use goal, the director may publish additional voluntary water conservation measures and may impose mandatory water conservation measures at city facilities.
Stage 4	All irrigation is prohibited.
	Residential vehicle washing is prohibited.
	Outdoor ornamental water use (fountains and ponds) is prohibited.
	Filling, refilling, and topping-off swimming pools, hot tubs, and similar uses are prohibited.
	Voluntary reduction of all water consumption and deferral of non-essential water uses to early morning or late evening hours.
	The washing of public buildings, sidewalks, and streets is prohibited except as required for safety and for compliance with safety and health regulations.
	Dust suppression, street washing and hydrant flushing are prohibited except to maintains safety, water quality and regulatory compliance.
	Voluntary industrial water use reductions through process changes: employers are asked to educate their employees about water conservation.
	Users who have essential water uses (hospitals, nursing homes, emergency care providers, etc.) are asked to monitor their water use and implement measures to conserve water.
	If the director determines the need for additional measures to better achieve the water use goal, the director may publish additional voluntary water conservation measures and may impose mandatory water conservation measures at city facilities.

(Ord. No. 9-08, § 1, 3-17-08)

Sec. 23-71. Declaration amendment, suspension, and termination.

The manager, or in the absence of the manager, the director, after consideration of water shortage factors, may amend, suspend, or terminate a declaration at any time by signing a written instrument stating such action. City council may issue, amend, suspend, or terminate a declaration.

(Ord. No. 9-08, § 1, 3-17-08)

Sec. 23-72. Water shortage monitoring and management plan.

The manager shall develop and implement a water shortage monitoring and management plan that includes, but is not limited to, plans for the following city actions to anticipate and respond to water shortages:

- (a) Monitor the water system and water sources in order to identify and anticipate circumstances that may make a declaration appropriate, to evaluate water shortage factors, to determine the need for operational adjustments, to address the appropriateness of a declaration or the appropriateness of amending, suspending, or terminating a declaration, to review or determine compliance with a declaration, to assess the need to revise or amend this division or the water shortage monitoring and management plan, or for other purposes consistent with this division.
- (b) Communications to city personnel, customers, users, the public, NCDMAC, DMAG, city of Salisbury and any other water supply interconnection partners, and other appropriate parties identified by the manager.
- (c) Monitoring, including enforcement team members patrolling the water system, to identify violations of water conservation measures while a declaration is in effect.
- (d) Issuance by enforcement team members of citations to users and other persons for violations of mandatory water conservation measures, assessment of civil penalties by the director, and recommendation by the director to the manager of cases for additional enforcement actions.
- (e) Other management needs identified by the manager.

(Ord. No. 9-08, § 1, 3-17-08)

Sec. 23-73. Suspension of issuance of other permits/approvals.

After consideration of the water shortage factors, the manager, or in the absence of the manager, the director, may suspend, or direct the appropriate city official to suspend, the issuance of zoning permits and other approvals that involve waterline connections or extensions or any upgrade in capacity for water usage, for the period or a portion of the period that a declaration imposes mandatory water conservation measures.

(Ord. No. 9-08, § 1, 3-17-08)

Sec. 23-74. Suspension of water service.

After consideration of the water shortage factors, the manager, or in the absence of the manager, the director, may suspend service to a specific user connected to the water system, including a bulk user, for the period or a portion of the period that a declaration imposes mandatory water conservation measures. Whenever circumstances allow, the user shall be provided notice of suspension twenty-four (24) hours in advance of the suspension of service. Approval of city council is required before suspending service to a public school satisfying compulsory education requirements of the state, a public facility for police, sheriff, fire or other emergency medical services, or a hospital.

(Ord. No. 9-08, § 1, 3-17-08)

Sec. 23-75. Variances.

(a) *General.* After considering the stage of water conservation, the type of mandatory limitations required for that stage, the anticipated quantity of water to be used and any other appropriate factors, the director may grant a variance that permits a user to use water in a manner that would otherwise be prohibited by a declaration then in effect, in the following circumstances:

- (1) A public or volunteer fire department during any training exercise reasonably necessary to maintain effective fire fighting capabilities.
- (2) A user undertaking an activity required by law.

- (3) Any user or other person proposing to eliminate or reduce unsanitary or unsafe conditions that pose a substantial risk of injury or disease.
 - (4) During Stage 2, a user seeking to water, during specified hours and under special conditions for outdoor water use, a new lawn and/or newly landscaped area on the day of installation and thirty (30) days thereafter; and if requested and warranted, an additional thirty (30) days.
 - (5) During Stage 3, a user seeking to water, during specified hours and under special conditions for outdoor water use, a new lawn and/or newly landscaped area that was installed prior to Stage 3, for a period of thirty (30) days. No new landscape installations installed after a Stage 3 declaration takes effect will be granted a variance.
 - (6) Unusually severe circumstances that make it both appropriate and necessary to allow a water use that is otherwise prohibited.
 - (b) *Variance conditions.* In granting a variance, the director may impose such conditions as the director determines are reasonably necessary to minimize any adverse effect the variance may have on the purposes or effects of the declaration.
 - (c) *Variance expiration.* Any variance shall contain an expiration date at which time the variance shall no longer apply. In the event a variance is limited to a particular water conservation stage, then such variance shall automatically expire when the stage expires.
- (Ord. No. 9-08, § 1, 3-17-08)

Sec. 23-76. Enforcement.

- (a) *Violations.* During the period that a declaration is in effect each of the following shall constitute a separate violation of this division and shall be unlawful:
 - (1) Causing or contributing to a noncompliant water use;
 - (2) Failure by any person causing or contributing to a noncompliant water use to immediately cause such noncompliant water use to cease upon notification by an enforcement team member that the noncompliant water use is prohibited; and
 - (3) Failure by any person who owns, operates, or otherwise controls pipes, fixtures, or other plumbing to repair a leak in such pipes, fixtures, or other plumbing within five (5) calendar days of receiving notice from the director to repair the leak.
- (b) *Separate violations.* Each day that a violation of this division occurs shall constitute a separate violation. In addition, if a person, after receiving a citation pursuant to this division and ceasing such violation, resumes the violation on the same day, the resumption of the violation shall constitute an additional, separate violation.
- (c) *Issuance of citations for violations.* The director and enforcement team members, under the direction and supervision of the director, shall monitor compliance with a declaration and this division and shall issue written citations to any person who commits a violation identified by section 23-76(a)--(b). The manager is authorized to approve citation forms that may be used by enforcement team members for the issuance of citations. Citations may be issued without the use of such forms, but citations must be in writing and must reasonably identify the violation.
- (d) *Enforcement actions.* Any violation of this division may be enforced by the assessment of a civil penalty by the director as provided in this division, suspension of service, an action for injunction, order of abatement or other equitable relief, and by any and all other remedies authorized by law for noncompliance with municipal ordinances.
- (e) *Civil penalties.* Any person who commits a violation identified by section 23-76(a)--(b) or any person who otherwise causes or contributes to a violation of this division shall be subject to assessment by the director of a civil penalty and shall be required to pay to the city the amount of the civil penalty. Civil penalties shall be assessed and paid according to the following schedule of penalties:
 Penalties for Violation of Stages 2A and 2B Mandatory Water Conservation Measures or Variances and for Other Violations of a Declaration or This Division Except Violation of Stages 3A, 3B, 4A, and 4B Mandatory Water Conservation Measures or Variances:
 First violation . . . \$100.00
 Second violation . . . 200.00
 Third or subsequent violation . . . 300.00

Penalties for Violation of Stages 3A, 3B, 4A, and 4B Mandatory Water Conservation Measures or Variances:

First violation . . . \$200.00

Second violation . . . 400.00

Third or subsequent violation . . . 600.00

(f) *Assessment of civil penalties.* A civil penalty assessment shall be in writing and shall describe the appeal rights of the person against whom the civil penalty is assessed.

(g) *Collection of civil penalty assessed against customers.* No sooner than ten (10) days after receipt by a customer of written notice of a civil penalty assessment, or at the conclusion of any appeals, whichever is later, the assessment shall be added to the customer's water bill, shall be paid in the same manner as set forth in this chapter for the payment of water bills, and shall be subject to the same remedies available to the city for failure to timely pay a water bill.

(h) *Collection of civil penalty assessed against persons other than customers.* No later than thirty (30) days after receipt by a person other than a customer of written notice of a civil penalty assessment or at the conclusion of any appeals, whichever is later, the amount assessed shall be paid to the city by the person responsible for payment of the civil penalty. If payment is not timely made, the city may use any and all of the remedies available to it pursuant to ordinance, statute, and common law for collection of the amount of the assessment.

(Ord. No. 9-08, § 1, 3-17-08)

Sec. 23-77. Appeal of civil penalty assessment.

(a) *Based on erroneous citation.* A person assessed a civil penalty may appeal the assessment on the grounds that the citation on which the assessment was based was issued for circumstances that did not constitute an actual violation by delivering to the manager, no later than ten (10) days after receiving notice of the assessment, a completed notice of appeal of civil penalty assessment, which attaches a copy of the citation and provides all of the information indicated in a notice of appeal of civil penalty assessment form, as follows:

NOTICE OF APPEAL OF CIVIL PENALTY ASSESSMENT

Your Name: _____

Date of citation for violating Water Shortage Response Procedures ordinance: _____

Is a copy of the citation attached as required for this appeal? _____

Date that you received notice of the civil penalty assessment: _____

State your grounds for asserting that you did not violate the Water Shortage Response Procedures Ordinance: _____

(Attach pages if additional space needed)

Once an appeal is filed, the manager may modify or rescind the citation and the assessment if the manager determines that the citation on which the assessment was based was issued for circumstances that did not constitute an actual violation.

(b) *Based on other grounds.* An appeal of a denial of an appeal pursuant to section 23-77(a) or an appeal of a civil penalty assessment on grounds other than the grounds provided in section 23-77(a) may only be made pursuant to section 5-1 of this Code.

(Ord. No. 9-08, § 1, 3-17-08)

Sec. 23-78. Appeal of service suspension.

A user whose service is suspended or who receives notice of suspension may appeal the suspension or notice of suspension pursuant to section 5-1 of this Code.

(Ord. No. 9-08, § 1, 3-17-08)

Sec. 23-79. Use of water from sources other than the water system.

The use of water from sources other than the water system shall be subject to this division in the same manner as the use of water from the water system, except as follows:

(a) *Private wells.* The use of water from private wells shall be subject to this division unless the use satisfies all of the following requirements:

(1) *Posting of sign.* During the period that a declaration is in effect, there shall be conspicuously posted at the location of the private well water use a sign provided by the director for that purpose.

(2) *Verification.* Upon request by an enforcement team member, any person claiming to be using water that is from a private well and not the water system shall demonstrate to the satisfaction of the enforcement team member that the water being used is from a private well and not the water system and shall fully cooperate with any enforcement team member in the sampling and analysis of the water being used.

(3) *Further restrictions.* The manager may impose additional and further restrictions if the manager determines that conditions warrant such restrictions and provides to the private well user a written statement of the additional or further restrictions and of reasons for such restrictions.

(b) *Tanker service.* The use of water delivered by a tanker service from a source other than the water system shall be subject to this division unless the use satisfies all of the following requirements:

(1) *Posting of sign.* During the period that a declaration is in effect, there shall be conspicuously posted at the location of the water use a sign provided by the director for that purpose.

(2) *Verification.* Upon request by an enforcement team member, any person claiming to be using water delivered by a tanker service from a source other than the water system shall provide documentation that demonstrates to the satisfaction of the enforcement team member all of the following regarding such water:

- a. Source other than the water system;
- b. Location, date, time, and volume of loading of tanker;
- c. Identity, street address, and telephone number of the tanker service that loaded and delivered the water and the identity of the tanker driver involved in the delivery; and
- d. Location, date, time, and volume of delivery.

(3) *Further restrictions.* The manager may impose additional and further restrictions if the manager determines that conditions warrant such restrictions.

(Ord. No. 9-08, § 1, 3-17-08)

Sec. 23-80. Applicability.

This division shall be binding upon and enforceable against, among others, all customers and users. This division shall be deemed to be incorporated in any and all contracts for water service to which the City of Statesville is a party. Compliance with this division and compliance with declarations pursuant to this division are and shall be a condition of service inside and outside the municipal limits for all customers, water corporations and units of government purchasing water from the city, and any other persons supplied water by the city. This section shall not narrow or limit and shall not be interpreted as narrowing or limiting the applicability of any section or provision of this division or any declaration pursuant to this division.

(Ord. No. 9-08, § 1, 3-17-08)

Secs. 23-81--23-150. Reserved.