

Sec. 19-45. Water shortage conservation measures.

(a) Adoption. For the protection of the public health, welfare and safety of the town, the town manager is authorized to determine when certain conditions exist in the town requiring water conservation or rations measures be imposed and to develop and enforce such conservation measures when the town manager determines that a water emergency exists in the town. The conservation measures may include voluntary conservation measures, mandatory conservation measures, and water shortage emergency measures. The town manager may impose such water conservation measures on all town water customers and other persons who use town water for such period of time as the manager determines constitutes a water emergency.

(1) The following definitions apply:

Customer means all persons in whose name the town maintains an account for water use, or who are responsible for payment of water passing through a particular meter. All customers are responsible for any use of water that passes through the meter for which they are responsible.

Emergency means that any one (1) or all of the following difficulties are being encountered: Water supplies are below the level necessary to meet normal needs causing serious shortages; there is inadequate water treatment capability; water transmission capability is disrupted or inadequate; finished water storage problems exist to the level that normal needs cannot be met; or any other unforeseen circumstance which results in or may result in a severe water shortage.

Manager means the town manager for the Town of Cary, or her designee.

Nonresidential user means every user except residential users, but does not include hospitals and health care facilities.

Person means any individual, association, partnership, firm, company, limited liability company, corporation, trust, estate, governmental entity or any other legal entity, or its legal representatives, agents or assigns.

Residential user means any person who receives water service for a single or multifamily dwelling unit. The term "residential user" does not include educational or other institutions, hotels, motels, or similar commercial establishments.

Water means all water available to the town for treatment by virtue of the town's water rights or withdrawal permits and any treated water introduced by the town into its potable water distribution system, including water purchased or offered for sale. Water does not include treated wastewater effluent reclaimed for reuse in irrigation or other approved uses. For the purposes of this section, the separation of the town's distribution system from the Town of Apex occurs at the Apex Meter Diversion vault on North Carolina Highway 55.

(2) Reserved.

(b) Water use classes. The following classes of users of town water are hereby established:

(1) Class 1: Essential water uses.

a. Class 1 domestic use: Use by residential users of such amount of water as is necessary to sustain human life and the lives of domestic pets, and to maintain reasonable minimum standards of hygiene and sanitation.

b. Class 1 hospital and health care facility use: Use by hospitals and health care facilities of such amount of water as is necessary for patient care and rehabilitation, and includes swimming pools necessary for patient care and rehabilitation.

c. Class 1 public use: Use of water from fire hydrants and other for firefighting and certain testing and drills by the fire department if performed in the interest of public safety and if approved by the town manager. This use also includes the flushing of sewers and hydrants as needed to ensure public health and safety if approved by the director of public works and utilities.

d. Class 1 nonresidential: Use by nonresidential users of such amount of water as is necessary to sustain human life and comfort in the workplace and to maintain reasonable minimum standards of hygiene and sanitation.

(2) Class 2: Socially or economically important uses of water.

a. Class 2 domestic use: Use by residential users of water for uses other than those uses specified as Class 1 or Class 3 uses. Unless further restricted by the manager, this use includes kitchen, bathroom, and laundry use; minimal watering of vegetable gardens and minimal watering of trees when necessary to preserve the trees.

b. Class 2 commercial/public use: Nonresidential use that is not a Class 1 or Class 3 use. This includes outdoor commercial watering (public or private) using conservation measures and to the extent that sources of water other than potable water are not available to use; irrigation for commercial vegetable gardens and fruit orchards or the maintenance of livestock; watering by commercial nurseries at the minimum level necessary to maintain stock; and use by arboretums and public gardens of national, state or regional significance where necessary to preserve specimens; use of water at a minimum rate necessary to implement vegetation following earth moving where such revegetation is required by law or regulation; minimal watering of golf course greens; minimum watering of playing fields to protect public safety; the filling and operation of swimming pools that serve more than twenty-five (25) dwellings, or are used by hospitals or health care facilities for patient care and rehabilitation; commercial car and truck washes and laundromats; use of water by restaurants, clubs and eating places for food service and customer comfort purposes and start-up and maintenance of air conditioning unit unless required for health reasons and approved by the town director of public works and utilities; use by schools, churches, motels/hotels and similar business and commercial establishments for the health and comfort of employees and those served; and the filling and testing of new water lines as part of the procedures required to accept those lines and integrate them into the town's potable water distribution system.

(3) Class 3: Nonessential uses of water.

a. Class 3 residential/nonresidential use. Use by residential users and nonresidential users, including hospitals and health care facilities, for ornamental purposes, noncommercial watering and motor vehicle washing purposes, including gardens, lawns, parks, golf courses (except greens), and other recreational areas; recreational purposes, including the filling and operation of swimming pools serving less than twenty-five (25) dwellings; refilling cooling towers after draining, except as specified in Class 1; the serving of water in restaurants, clubs, or eating places, except by specific request; and such other similar nonessential uses as may be specified by the manager in a policy statement.

b. Class 3 public use. Any use of water from fire hydrants, including use of sprinkler caps and testing fire apparatus and for fire department drills, and the flushing of sewers and hydrants, except as listed in Class 1.

(c) Declaration of voluntary conservation measures. Whenever the manager finds that a potential shortage of water supply is indicated, he is empowered to declare a state of voluntary conservation, and to call upon all water customers to employ voluntary water conservation measures.

(d) Declaration of mandatory conservation measures. Whenever the manager finds that there is the potential for a water emergency situation to occur or exist, the manager may declare a state of mandatory conservation. Under a state of mandatory conservation, the manager shall continue to encourage voluntary water conservation measures, and shall impose a scheduled water use program or an outright ban on all Class 3 uses until the mandatory conservation period is declared to be over by the manager.

(e) Declaration of water shortage emergency measures. Whenever the manager finds that a water emergency situation exists, the manager is empowered to declare that a water shortage emergency exists. During a water shortage emergency, Class 1 essential water uses shall be specifically identified as targets for voluntary conservation measures. Class 2 socially or economically important uses may be restricted or banned, and Class 3 nonessential uses shall be restricted or banned. These restrictions or bans shall continue until the water shortage emergency is declared ended by the manager.

(f) Declaration of rationing. Whenever the manager has declared a water shortage emergency and finds a need 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, the manager shall direct the director of public works and utilities to prepare a mandatory rationing policy and plan for implementation during the emergency period.

(g) Shortage water rates. Upon a declaration of mandatory conservation or a declaration of water shortage emergency as provided herein, or at such other times as the council deems necessary, the council may adopt water shortage rates designed to encourage conservation of water. Such rates may provide for, but shall not be limited to:

- (1) Higher charges per unit for increasing usage (increasing block rates);
- (2) Uniform charges for water usage per unit of use (uniform unit rate);
- (3) Extra charges for use in excess of a specified level (excess demand surcharge); or
- (4) Billing discounts for conserving water beyond specified levels.

Further, due to situations brought on by drought or other special infrastructure needs associated with a water emergency, the town council may decide to adopt special rates that will reflect the additional costs associated with treatment and distribution of water.

(h) Town policy. The manager is hereby authorized to prepare a town policy to implement these water conservation measures, to further define and give examples of the various classes of water use, to prepare a mandatory water rationing policy and plan, and to provide such other conditions and provisions as may be necessary to successfully carry out the goals of this section.

(i) Application, violation, enforcement, penalties. This section applies to all persons using town water, inside and outside the town limits, regardless of whether they have a contract for water service with the town. A customer of the town shall be responsible for all violations that occur in connection with water that passes through the meter for which the customer is billed by the town. Any person who uses water in violation of a restriction or ban imposed on the use of water during a mandatory conservation period, a period of water shortage emergency or in violation of a water rationing policy, or who otherwise violates the provisions of this section, or who impedes or interferes with any action undertaken or ordered pursuant to this section and policies adopted hereunder, shall be subject to the penalties listed below.

(1) Enforcement by police officers. Upon the declaration of mandatory conservation, water shortage emergency, or rationing, the manager and every police officer of the town may enforce any restrictions or bans imposed on the use of water.

(2) Suspicion of violation. Whenever the town has reasonable cause to believe that a person is violating any of the provisions of this section or any policy adopted hereunder, the town shall immediately notify that person of the violation by affixing a written notice of the violation to the property where the violation occurred and personally delivering or mailing such notice to the customer of record and to any other person known to the town who is responsible for the violation or its correction. Such notice shall describe the violation, order that it be corrected, cured or abated immediately or within such specified time as the manager determines is reasonable under the circumstances, and warn that more severe measures, such as civil penalties, criminal charges or termination of water service may be brought, assessed or imposed. If the order is not complied with within the time period, the manager may undertake enforcement action as follows.

(3) Enforcement action. Any person who, after being given notice of violation, does not comply with this section or policy adopted hereunder within the time period specified shall, at the option of the town, be subject to any of the following: Civil penalties, criminal penalties, termination of water service, injunctive relief, or any appropriate equitable remedy issuing from a court of competent jurisdiction.

a. Criminal penalties. Any person may be charged with violation of this section or policy adopted hereunder and prosecuted in district court. Any person so charged and found guilty of violating this section or policy shall be guilty of a misdemeanor. Each day's violation shall constitute a separate offense. The penalty for violation shall be a maximum fine of fifty dollars (\$50.00) per occurrence or imprisonment for not more than thirty (30) days. The imposition of one (1) or more penalties for any violation shall not excuse any violation or permit it to continue.

b. Civil penalties. In addition to or in lieu of criminal prosecution, violation of this section or any policy adopted hereunder may subject the violator or customer to a civil penalty of up to one thousand dollars (\$1,000.00) per violation per day for so long as the violation exists. Each day on which a violation occurs or continues shall constitute a separate and distinct violation. In determining the amount of the civil penalty, the manager shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, efforts to correct the violation, the compliance history of the person against whom the violation is assessed, the cost of enforcement to the town, whether the violation was willful or intentional and any other factor as justice requires. The town shall serve a written citation on the violator, and the customer, if different, by personal delivery or by certified or registered mail, return receipt requested. The citation shall describe the violation and shall specify the amount of the civil penalty levied. The civil penalty is collectible in a civil action in the nature of debt. The imposition of one (1) or more penalties for a violation shall not excuse any violation or permit it to continue.

c. Termination of service. The manager or his designee may make findings of fact and order whether service should continue, be flow restricted, or terminated. Termination of water service shall be performed in accordance with the town's ordinances, policies, procedures and practices. The standard reconnection charge shall be paid for the reconnection of any water service terminated pursuant to the current town ordinances and procedures.

(4) Appeal. Any person against whom enforcement action has been taken, hereafter referred to as "aggrieved party," is entitled to appeal to the town council upon serving written notice to the town manager and following administrative procedures for appeal to the town council.

(Ord. No. 95-020, 6-8-95; Ord. No. 96-006, § 1, 7-11-96)