

State of Alabama)
City of Tuscaloosa)

EXECUTIVE ORDER OF THE MAYOR

To: Citizens of Tuscaloosa
 All Department Heads

Executive Order Number: 2011- 004

Date: April 28, 2011

Regarding: Public Declaration of Emergency Water Conservation
(File No. A11-0419)

Authority:

By the authority vested in me by the applicable provisions of the laws of the State of Alabama, including but not limited to Ala. Code §11-44B-7 (1975), pursuant to which the Mayor of the City as the Chief Executive Officer has the general supervision and control of all other officers and the affairs of the City, and pursuant to the emergency powers vested in me as Mayor by Alabama State Law and the ordinances and resolutions of the City of Tuscaloosa including Section 16-31 of the Code of Tuscaloosa, except as otherwise provided by law, I, Walter Maddox, as Mayor do hereby order and direct as follows:

1. Due to demands on City and other public resources caused by the storm of April 27, 2011, the City is experiencing low and no water pressure situations. Pursuant to §16-31 of the Code of Tuscaloosa, I hereby declare and find that an emergency exists in relation to the city's ability to supply water to City of Tuscaloosa water customers and those other water authorities to whom the City provides water.

2. The following activity is hereby **prohibited** in the City of Tuscaloosa:
 - a. Watering of Lawns and Other Irrigation.

 - b. Water usage that is unrelated to essential purposes such as drinking, food preparation, medical care, emergency services, rescue and recovery, fire suppression, and other uses necessitated by human health and safety. All Department Head of the City of Tuscaloosa or

their designees are authorized to approve other specific water uses when, in their discretion, it is important for public health or safety or recovery efforts.

- c. All Water Customers are ordered to repair as soon as practicable all water leaks, or alternatively shut off water to the leaking pipe so that the water loss is stopped.
 - d. The City requests that all Citizens call to report any leaks or line breaks of water lines. Unexplained water flows or accumulations should also be reported. Please call 311, or 911 if it is an emergency.
 - e. All Citizens and Businesses are ordered and encouraged to conserve water in all reasonable manners.
3. It shall be unlawful for any person who has charge or control of any premises to violate this order. Violations of this order shall be enforced and punished as follows:
- a. Voluntary compliance shall first be sought unless impracticable or reasonably deemed to be futile.
 - b. The responsible person or household may be issued a written notice of violation by any officer, agent, or employee of the city. The notice of violation shall include as an attachment a copy of the executive order and a copy of Ordinance No. 7116. The notice of violation may be served by delivering it to any person at the location of the violation who has apparent charge or control of the premises; but if no person appears to be present after reasonable attempts at personal contact, then the notice of violation including the attachments may be posted on the property, and such posting shall constitute notice. Alternatively or additionally, the notice of violation may, at the discretion of the city, be attempted to be served by certified mail to the account holder, and in such case a return receipt showing delivery or refusal of delivery shall constitute the giving of notice. If the notice of violation is heeded and the violation ceased within twenty-four (24) hours of notice being given, then ordinarily no further enforcement action shall be taken so long as the person remains in compliance.
 - c. If notice of the violation including the attachments are served or attempted to be served on the responsible person as provided in subsection above, but the measures to seek compliance are not successful, then the responsible person may be issued a citation and summons to appear in municipal court for violation of this Code section. The citation and summons may be accompanied by an order given by any reasonable means to immediately come into compliance

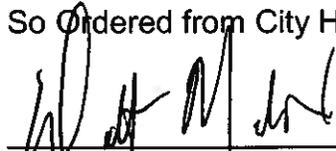
with the executive order. Each day that a person is in violation of the executive order after being given notice as provided in subsection (1) shall constitute a separate offense. Persons convicted of violating any provision of an executive order issued pursuant to this section shall on a first offense be fined one hundred dollars (\$100.00). For a second or subsequent offense, the person shall be fined two hundred fifty dollars (\$250.00), and subject to incarceration at the discretion of the judge trying the case for not more than thirty (30) days. For a third or subsequent offense the responsible person shall be fined five hundred dollars (\$500.00) and subject to incarceration at the discretion of the judge trying the case for not more than one hundred eighty (180) days.

- d. In addition to or in the alternative to the above, the city may terminate some or all of the water service to any person or entity that does not comply with the mayor's water conservation executive order within twenty-four (24) hours of being notified as provided above. Restoration of full water service to such locations may be conditioned upon the person or entity agreeing in writing to comply with the executive order, and upon the person or entity's continued compliance with the executive order.

Implementation:

All Departments of the City and their respective employees to whom this Executive Order applies shall forthwith implement the same in accordance with its terms and requirements. Nothing contained in this order shall relieve a person from any requirement to obtain a license or other authorization in compliance with applicable laws and regulations. This order is not intended to conflict with, supersede or contradict any lawful ordinance or resolution duly enacted by the City Council. This Order does not create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by a party against the City, its departments, agencies, entities, officers, employees, or agents, or any other person.

So Ordered from City Hall, effective immediately.



Walter Maddox
Mayor, City of Tuscaloosa

Adopted 08-14-07

APPROVED

City Attorney

Prepared By: THN
Requested: Mayor/Council
Presentation on: 8-14-07
Suspension of Rules: yes

ORDINANCE NO. 7116

**AN ORDINANCE GIVING THE MAYOR THE POWER TO DECLARE
WATER EMERGENCIES AND TO MANDATE WATER
CONSERVATION
(A07-0521)**

WHEREAS, although the City of Tuscaloosa has an abundant source of public drinking water in Lake Tuscaloosa as supplemented by Lake Nicol and Lake Harris, circumstances beyond the immediate control of the City can from time-to-time create conditions that burden the City's water supply system. Such conditions can arise quickly and unexpectedly and endure for varying periods of time.

WHEREAS, because these conditions can arise and dissipate more quickly than would allow the City Council the practical opportunity to adopt emergency water conservation measures by ordinance, it is essential to the health and well-being of the citizens that the Mayor have emergency powers to mandate water conservation.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF TUSCALOOSA that the Code of Tuscaloosa is amended to add Section 16-31, to read as follows:

"Sec. 16-31. Mayor empowered to mandate water conservation.

- (a) The Mayor shall have the power to declare a water conservation emergency by executive order when he or she makes a finding that an emergency exists in relation to the City's ability to supply water to any one or more water customers. The emergency may be based on any factor that reasonably requires that water customers engage in water conservation measures in order to allow the City to continue in its ability to supply potable water, including without limitation inadequate water supply; degradation of the quality of raw or treated water; accidents, construction, or repairs; partial or complete failure of any water works infrastructure such as a water treatment plant, water treatment equipment or systems, raw water pumps or lines, treated water pumps or lines, water tanks, valves, pipes, conduits, or other infrastructure; demand for water exceeding the City's ability to supply water; and/or any other reason or cause that adversely affects the

ability of the City to meet water use demands by one or more water customers.

(b) The executive order of the Mayor declaring a water conservation emergency may include any one or more of the following mandates and criteria:

1. A definition or description of persons and entities that are subject to the water conservation mandates. This power shall include without limitation the power to include all water customers; to include or exclude direct customers of the City of Tuscaloosa; to include or exclude water customers of other water utilities and authorities that purchase raw or treated water from the City of Tuscaloosa; to include or exclude particular areas that are subject to the mandates; to delineate types of water accounts that are subject to the mandates; and to otherwise make reasonable distinctions in application of the mandates to particular persons or entities based on objective criteria directly or indirectly related to the nature of the water conservation emergency.
2. To mandate that persons and entities subject to the mandate not engage in particular types of water usage, including without limitation the power to prohibit or limit watering lawns and other irrigation; prohibit or limit watering golf courses, ball fields, recreation or sports fields, or other defined areas; prohibit or limit washing vehicles, equipment, structures, sidewalks, driveways, paved areas, and other items or areas; prohibit or limit engaging in watering methods other than hand watering, syringe watering, and the like; prohibit or limit filling or replenishing pools, ponds, spas, outdoor tubs, fountains, and lakes; prohibit operating water recreation features; and/or prohibiting or limiting any other type of reasonably defined water usage.
3. To mandate that particular kinds of water usage be limited to defined days or dates, to particular hours of the day, and/or for stated periods of time. This includes without limitation the power to implement defined water usage protocols that allow certain water customers to engage in particular water uses only on certain days or dates, such as a lawn watering system allowing even-numbered addresses to engage in lawn watering and irrigation only on even-numbered dates, and odd-numbered addresses to engage in lawn watering and irrigation only on odd-numbered dates.

4. To prohibit or require particular kinds of water usage methods such as allowing only hand watering of lawns and other areas; requiring automatic cut-off nozzles on hosepipes used for washing vehicles and other purposes; and similar restrictions.
 5. To include reasonable exceptions to any water usage prohibition, restriction, or mandate including without limitation for businesses that depend on particular water usages, for newly sodden lawns or fields, for safety or structural integrity, and similar exceptions. The exceptions can be of any reasonable nature including without limitation classes of water customers or accounts, particular uses, particular watering methods, particular days or dates, particular times of day, limited time periods, and similar factors and distinctions. Any such exception may but shall not be required to be subject to a defined permitting system which would involve an application for an exemption which may be subject to discretionary review by the City on a case-by-case basis.
- (c) Upon issuing an executive order mandating water conservation the Mayor shall take reasonable measures to give public notice of the existence and contents of the executive order, including causing the executive order to be published in a newspaper in the same manner as ordinances are published. The executive order shall be effective upon being issued by the Mayor, but penalties for violating the executive order shall be effective only upon publication of the executive order in the same manner as ordinances become effective upon publication.
- (d) Promptly upon issuing a water conservation order, the Mayor shall attempt to notify all members of the City Council by any reasonable means of the issuance and substance of the order, and shall continue in such attempts until each City Council member has been so notified. The Mayor shall formally report the issuance of the order at the next meeting of the City Council and shall distribute copies of the order to each City Council member. The Mayor shall continue to report to the City Council at each subsequent City Council meeting unless and until the Mayor's order is revoked or expires.
- (e) It shall be unlawful for any person who has charge or control of any premises to violate a water conservation order issued by the Mayor pursuant to this code section. Violations of the Mayor's water conservation executive order shall be enforced and punished as follows:

1. The responsible person or household shall be issued a written notice of violation by any officer, agent, or employee of the City of Tuscaloosa. The notice of violation shall include as an attachment a copy of the executive order and a copy of this ordinance. The notice of violation may be served by delivering it to any person at the location of the violation who has apparent charge or control of the premises; but if no person appears to be present after reasonable attempts at personal contact, then the notice of violation including the attachments may be posted on the property, and such posting shall constitute notice. Alternatively or additionally, the notice of violation may, at the discretion of the City, be attempted to be served by certified mail to the account holder, and in such case a return receipt showing delivery or refusal of delivery shall constitute the giving of notice. If the notice of violation is heeded and the violation ceased within 24 hours of notice being given, then ordinarily no further enforcement action shall be taken so long as the person remains in compliance.
2. If notice of the violation including the attachments are served or attempted to be served on the responsible person as provided in subsection (e)1, but the measures to seek compliance are not successful, then the responsible person may be issued a citation and summons to appear in Municipal Court for violation of this code section. The citation and summons may be accompanied by an order given by any reasonable means to immediately come into compliance with the executive order. Each day that a person is in violation of the executive order after being given notice as provided in subsection (e)1 shall constitute a separate offense. Persons convicted of violating any provision of an executive order issued pursuant to this section shall on a first offense be fined \$100. For a second or subsequent offense, the person shall be fined \$250.00, and subject to incarceration at the discretion of the judge trying the case for not more than 30 days. For a third or subsequent offense the responsible person shall be fined \$500.00 and subject to incarceration at the discretion of the judge trying the case for not more than 180 days.
3. In addition to or in the alternative to subsections (e)2, the City may terminate some or all of the water service to any person or entity that does not comply with the Mayor's water conservation executive order within 24 hours of being notified as provided in subsection (e)1. Restoration of full water service to such locations may be conditioned upon the person or entity agreeing in writing to comply with the executive order, and upon the

person or entity's continued compliance with the executive order.

- (f) A water conservation order issued by the Mayor shall be effective until the Mayor revokes the order or it expires on its own terms, or until the City Council adopts a resolution revoking the Mayor's order. Any such resolution by the City Council revoking the Mayor's order may, at the City Council's discretion, be with or without prejudice to further orders by the Mayor declaring water conservation, or may restrict the circumstances under which further water conservation orders by the Mayor may be issued."

This ordinance and all its provisions are severable. In the event any part or portion of this ordinance is judicially declared invalid, then such ruling shall not affect the parts which remain.

FUNDING REQUIRED: Yes No

By: _____

Finance Director

COUNCIL ACTION

Resolution _____

Ordinance _____

Introduced 08-14-07

Passed _____

2nd Reading _____

Unanimous 08-14-07

Failed _____

Tabled _____

Amended _____

Comments: _____