

**DEP STRONGLY ADVISES YOU TO CONSULT WITH YOUR TOWN OR CITY COUNSEL TO ENSURE ADOPTION OF AN APPROPRIATE, ENFORCEABLE AND LEGALLY VALID BY-LAW THAT WILL MEET YOUR MUNICIPAL AND/OR DISTRICT NEEDS.**

The terms “town” and “bylaw” used throughout this document are intended also to refer to cities and ordinances, respectively. References to Boards of Water Commissioners throughout this model bylaw should be edited by particular cities and towns or water districts or boards to accurately describe the municipal department or water district or board having authority and responsibility for the operation and maintenance of the public water supply.

**2018 DEP MODEL OUTDOOR WATER USE BY-LAW/ORDINANCE**

**Includes optional language for specific restrictions during drought and/or for regulating private wells**

**Section 1: Authority**

This By-law is adopted by the Town [or Water District]<sup>1</sup> under its police powers pursuant to the Home Rule Amendment of the Massachusetts Constitution, Article LXXXIX, to protect public health and welfare and pursuant to its powers under M.G.L. c. 40, §§ 21 *et seq.* and implements the Town’s authority to regulate water use pursuant to M.G.L. c. 41, § 69B. This by-law also implements the Town’s [or Water District’s] authority under M.G.L. c. 40, § 41A, conditioned upon a declaration of water supply emergency issued by the Department of Environmental Protection under G.L. c. 21G, §§ 15-17. This by-law is also intended to implement other water conservation requirements of M.G.L. c. 21G, the “Massachusetts Water Management Act” and its regulations promulgated at 310 CMR 36.00.

**Section 2: Purpose**

The purpose of this by-law is to protect, preserve and maintain the public health, safety, welfare and the environment whenever there is in force a “State of Water Supply Conservation”, a “State of Drought” or a “State of Water Supply Emergency” by ensuring an adequate supply of water for drinking and fire protection and to protect the quality and quantity of water in local aquatic habitats such as ponds, rivers and wetlands. This purpose will be accomplished by providing for the imposition and enforcement of any duly implemented restrictions, requirements, provisions or conditions on water use imposed by the Town [or Water District] in accordance with this by-law and/or by the Department of Environmental Protection under its state law authorities.

**Section 3: Applicability**

All Town [or Water District] residents that are customers of the public water supply system [and private well users (see footnote 3)] shall be subject to this by-law. This by-law shall be in effect year round.

**Section 4: Definitions**

Agriculture shall mean farming in all its branches as defined at M.G.L. c. 128, § 1A.<sup>2</sup>

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<sup>1</sup> If the public water supplier in the city or town is an independently authorized entity having its own legislative authority, that authority should be cited in this section rather than the municipal statutory authorities. See also, M.G.L. c 40N “Model Water and Sewer Reorganization Act”. The citation to M.G.L. c. 40, § 41A (“Restraint of Use of Water During Emergency”) should, however, be retained for both municipal authorities and districts. Both municipal entities and independent entities will be referred herein as “the Town or Water District”.

<sup>2</sup> This statutory definition includes cultivation of the soil, dairying and the production, cultivation, growing and harvesting of agricultural, aquacultural, floricultural or horticultural commodities as well as forest harvesting, raising livestock inclusive of

Automatic irrigation system, including sprinklers, shall mean any system for watering vegetation other than a hand-held hose or a bucket.

Nonessential outdoor water use shall mean those uses that are not required:

1. for health or safety reasons;
2. by regulation;
3. for the production of food and fiber;
4. for the maintenance of livestock; or
5. to meet the core functions of a business.

Nonessential outdoor water uses that are subject to mandatory restrictions include:

- irrigation of lawns via sprinklers or automatic irrigation systems;
- washing of vehicles, except in a commercial car wash or as necessary for operator safety or to prevent damage and/or maintain performance of agricultural or construction vehicles or equipment; and
- washing of exterior building surfaces, parking lots, driveways or sidewalks, except as necessary to apply paint, preservatives, stucco, pavement or cement.

Exceptions to nonessential outdoor water uses are:

- irrigation of lawns, gardens, flowers and ornamental plants by means of a hand-held hose controlled by a nozzle or a drip-irrigation system; and
- irrigation with harvested and stored stormwater runoff.

The following outdoor water uses are subject to review and approval by The Town [or Water District], through its Board of Water Commissioners [or Selectmen or Water District Commissioners] or their designee:

- irrigation of public parks and recreation fields outside the hours of 9 AM to 5 PM;
- irrigation to establish replanted or resodded lawn or plantings during the months of May and September;
- irrigation of newly planted lawns (seeded or sodded) in the current calendar year for homes or businesses newly constructed in the previous twelve months; and
- filling of privately owned outdoor pools.

Person shall mean any individual, corporation, trust, partnership, association, agency or authority, or other entity and any officer, employee, group or agent of such persons.

State of Drought shall mean a Drought Advisory, Watch, Warning or Emergency declared by the Secretary of Energy and Environmental Affairs in consultation with the Massachusetts Drought Management Task Force.

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bees and fur-bearing animals and forestry, lumbering, preparation for market, delivery to storage or market or to carriers to market incidental to an agricultural operation.

State of Water Supply Emergency shall mean a State of Water Supply Emergency declared by the Department of Environmental Protection under M.G.L. c. 21G, §§ 15-17.

State of Water Supply Conservation shall mean a State of Water Supply Conservation declared by the Town [or Water District] pursuant to Section 5 of this by-law.

Water Customers shall mean all persons using the public water supply irrespective of that person's responsibility for payment for use of the water.

Water Users shall mean all persons using the public water supply or using privately-owned wells within the Town [or Water District] boundaries.<sup>3</sup>

### **Section 5: Declaration of a State of Water Supply Conservation**

The Town [or Water District], through its Board of Water Commissioners [or Selectmen or Water District Commissioners] or their designee authorized to act as such:

- a) may declare a State of Water Supply Conservation upon a determination that conservation measures are appropriate to ensure an adequate supply of water for drinking and fire protection, to protect the quality and quantity of water in local aquatic habitats such as ponds, rivers and wetlands; and
- b) shall declare a State of Water Supply Conservation as necessary to ensure compliance with the Water Management Act.

Upon notification to the public that a State of Water Supply Conservation has been declared, no water customer [water user] shall violate any provision, restriction, requirement or condition of the declaration. The Water Commissioners may designate the [Water Department Superintendent, Town Manager, DPW Director] to declare a State of Water Supply Conservation at any time that conditions warrant. Public notice of a State of Water Conservation shall be given under Section 9 of this by-law before it may be enforced. The applicable restrictions, conditions or requirements shall be included in the public notice.

### **Section 6: State of Drought<sup>4</sup>**

Upon notification to the public that a State of Drought has been declared, no water customer [water user] shall violate any provision, restriction, requirement or condition of the Town's [Water District's] water use

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<sup>3</sup> This model by-law has been drafted to provide the option for a Town or Water District to capture the use of privately-owned wells for nonessential outdoor water use. If you do not intend to include privately-owned wells, strike the "water users" definition and replace the term "water users" with "water customers" wherever applicable.

If you intend to include privately-owned wells during times of drought only, include the definitions of both "water customers" and "water users", and use the terms as applicable. If you intend to include both water supply system customers and private well users at all times, strike the "water customers" definition and use the term "water users" throughout.

<sup>4</sup> Section 6: State of Drought has been included in this model by-law to provide the option:

- a) to capture the use of privately-owned wells specifically during times of drought when recharge to municipal water sources may be impacted by private well withdrawals, and/or
- b) to provide the option of instituting more stringent restrictions during times of drought for water customers and private well users through inclusion of additional restrictions in the required Public Notice of a State of Drought.

If you do not intend to institute specific restrictions during times of drought, strike the State of Drought Definition, State of Drought section, and references to "State of Drought" wherever applicable.

restrictions. Public notice of a State of Drought shall be given under Section 9 of this by-law before it may be enforced. The applicable restrictions, conditions or requirements shall be included in the public notice.

**Section 7: Declaration of a State of Water Supply Emergency**

Upon notification to the public that a declaration of a State of Water Supply Emergency has been issued by the Department of Environmental Protection, no person shall violate any provision, restriction, requirement, condition of any order approved or issued by the Department for the purpose of bringing about an end to the State of Water Supply Emergency. Public notice of a State of Water Supply Emergency shall be given under Section 9 of this by-law before it may be enforced. The applicable restrictions, conditions or requirements shall be included in the public notice.

**Section 8: Restricted Water Uses<sup>5</sup>**

A declaration of a State of Water Supply Conservation, State of Drought or State of Water Supply Emergency shall include one or more of the following restrictions, conditions, or requirements limiting nonessential outdoor water use by water customers (water users) as necessary to control the volume of water pumped each day, except as provided as acceptable in Section 4. The applicable restrictions, conditions or requirements shall be included in the public notice required under Section 9.

- a) Nonessential outdoor water use days: Nonessential outdoor water use is permitted only on the days per week specified in the State of Water Supply Conservation, State of Drought or a State of Water Supply Emergency and public notice thereof. During a State of Water Supply Conservation, nonessential outdoor water use is restricted as necessary to ensure compliance with the Water Management Act, or for a Town or Water District without a Water Management Act permit, to two days or fewer per week.
- b) Nonessential outdoor water use hours: Nonessential outdoor water use is permitted only during the hourly periods specified in the State of Water Supply Conservation, State of Drought or State of Water Supply Emergency and public notice thereof. At a minimum, nonessential outdoor water use is prohibited during the hours from 9AM to 5PM.
- c) Nonessential outdoor water use method restriction: Nonessential outdoor water use is restricted to a bucket or hand-held hose controlled by a nozzle.
- d) Nonessential outdoor water use ban: Nonessential outdoor water use is prohibited at all times.
- e) Automatic irrigation systems, including sprinklers: The use of automatic irrigation systems is prohibited.

**Section 9: Public Notification and Notification of DEP**

- a) Public Notification of a State of Water Supply Conservation or a State of Drought – Notice to the public of all provisions, including all restrictions, requirements and conditions imposed by the Town [Water District] as part of a State of Water Supply Conservation or a State of Drought shall be made as soon as possible, but no later than 48 hours following the declaration of a State Water Supply Conservation or State of Drought by publication in a newspaper of general circulation within the Town and by signage on major roadways or intersections. Notification may also include email, Web sites, public service

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<sup>5</sup> Many Water Management permits include specific language restricting outdoor water uses. Each town, city or district should consult their Water Management permit to ensure consistency with permit requirements.

announcements on local media, reverse 911 calls or other such means reasonably calculated to reach and inform all water customers [water users].

- b) Public Notification of a State of Water Supply Emergency – Notice to the public of all provisions, including all restrictions, requirements and conditions imposed by a State of Water Supply Emergency declared by the Department shall be made as soon as possible, but not later than 48 hours after the public water system receives notice of the Department’s declaration of a State of Water Supply Emergency, by publication in a newspaper of general circulation with the Town and by signage on major roadways or intersections. Notification may also include email, Web sites, public service announcements on local media, reverse 911 calls or other such means reasonably calculated to reach and inform all water customers [water users] of the State of Water Supply Emergency.
- c) Any restriction imposed pursuant to Section 5 or Section 6 or in the Department’s State of Water Supply Emergency or Order shall not be effective until notification to the public is provided.
- d) Notification of DEP: Submittal of MassDEP’s form “Notification of Water Use Restriction” shall be provided to the Massachusetts Department of Environmental Protection within 14 days of the effective date of the restrictions, per MassDEP regulations (310 CMR 22.15(8)).

**Section 10: Termination of a State of Water Supply Conservation; Notice**

A State of Water Supply Conservation may be terminated by a majority vote of the Board of Water Commissioners or by decision of their designee upon a determination by either or both of them that the conditions requiring the State of Water Supply Conservation no longer exist, or in accordance with the Water Management Act permit conditions. Public notification of the termination of a State of Water Supply Conservation shall be given in the same manner as is required in Section 9a for notice of its imposition.

**Section 11: Termination of a State of Drought; Notice**

Upon notification to the Town [Water Commissioners or their designee or to the Water District] that the declaration of a State of Drought has been terminated by the Secretary of Energy and Environmental Affairs, the public will be notified of the termination in the same manner as is required in Section 9a for notice of its imposition.

**Section 12: Termination of a State of Water Supply Emergency; Notice**

Upon notification to the Town [to the Water Commissioners or their designee or to the Water District] that the declaration of a State of Water Supply Emergency has been terminated by the Department of Environmental Protection, the public will be notified of the termination in the same manner as is required in Section 9b for notice of its imposition.

**Section 13: Penalties**

The Town [or Water District] through its Water Commissioners or their designee including the water superintendent, building inspector and/or local police may enforce this by-law. Any person violating this by-law shall be liable to the Town in the amounts listed below:

- 1) First violation: Warning
- 2) Second violation: \$ \_\_\_\_
- 3) Third violation: \$ \_\_\_\_
- 4) Fourth and subsequent violations: \$ \_\_\_\_

Each day of violation shall constitute a separate offense. Fines shall be recovered by complaint before the District Court, or by non-criminal disposition in accordance with section 21D of chapter 40 of the general laws.

For purposes of non-criminal disposition, the enforcing person shall be any police officer of the town or the water superintendent or the superintendent's designee. If a State of Water Supply Emergency has been declared the Water Commissioners may, in accordance with G.L. c. 40, § 41A, shut off the water at the meter or the curb stop.

**Section 14: Severability**

The invalidity of any portion or provision of this by-law shall not invalidate any other portion or provision thereof.

**Section XX: Controls on In-Ground Irrigation Systems<sup>6</sup>**

Subsection XX.1 Registration and Installation

- a) All new and existing in-ground irrigation systems shall be registered with the Town's Board of Water Commissioners in such form and manner as they shall determine. A fee may be charged for this registration. Registration fees shall be set by the Board of Water Commissioners.<sup>7</sup> The Board may require inspection of the irrigation system.
- b) All in-ground irrigation systems shall be equipped with a timing device that can be set to make the system conform to the Town's [or Water District's] nonessential outdoor water use restrictions. Whenever outdoor water use restrictions are in force, the timing device must be set to conform to the daily and hourly nonessential outdoor water use restrictions.
- c) All in-ground irrigation systems shall be plumbed so that a shutoff valve is located outside the building and situated so that it may be shut off if found to be in violation of this by-law. For the purposes of this section only, Police Officers of the Town and/or Agents of the Board of Water Commissioners may enter upon any property to enforce this section.<sup>8</sup>

Subsection XX.2 Soil Moisture-Sensor Devices

- a) All in-ground irrigation systems installed in the Town [or Water District] after the date of effect of this bylaw shall be equipped with a soil moisture-sensor device, approved by the Board of Water Commissioners, to prevent the system from starting automatically when not needed. Proof of this installation shall be provided to the Board of Water Commissioners at the time of registration.
- b) Any service or repair to an existing in-ground irrigation system shall include the installation of an approved moisture-sensor device, if the same is not already installed and in good working condition. Proof of this installation shall be provided to the Board of Water Commissioners at the time of installation.

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<sup>6</sup> This section is intended to govern automatic irrigation systems and may be passed as part of a water use restriction bylaw or separately. It is included here for convenience.

<sup>7</sup> Be sure that fees charged avoid characterization as a tax under the principles of Emerson College vs. City of Boston, 391 Mass. 415, 424-426 (1984) by ensuring that they are directly related to and are used to pay for the services provided (inspection, etc.).

<sup>8</sup> Depending on the circumstances of a particular case, a warrant may also be required to enter onto private property.

- c) The Board of Water Commissioners shall maintain a list, available to the public, of approved soil moisture-sensor devices.

#### Subsection XX.3 Backflow Prevention

- a) All in-ground irrigation systems connected to the municipal water system in the Town [or Water District] shall be protected from backflow events by the installation of a backflow prevention device approved by the Board of Water Commissioners. Each backflow prevention device shall be registered with the Board of Water Commissioners. [A fee may be charged for this registration. Registration fees shall be set by the Board of Water Commissioners.]
- b) The Board of Water Commissioners shall maintain a list, available to the public, of approved backflow prevention devices. Refer to Table 22-1 in 310 CMR 22.22 for the recommended backflow protection for irrigation systems.
- c) Each backflow prevention device shall be installed in accordance with 310 CMR 22.22 and the manufacturer's instructions. Each device shall be tested upon its installation and annually thereafter. A Massachusetts Certified Backflow Device Tester shall perform all testing. Copies of results of all testing shall be filed with the Board of Water Commissioners or Water Department.