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 BASIC MODEL OUTDOOR WATER USE BY-LAW/ORDINANCE

**Section 1: Authority**

This By-law is adopted by the Town [or Water District][[1]](#footnote-2) 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” 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 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.[[2]](#footnote-3)

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 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 billing purposes for use of the water.

**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:

1. 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
2. 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 user shall violate any provision, restriction, requirement or condition of the declaration. The Water Commissioners may designate the [Water Department Superintendant, 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 8 of this by-law before it may be enforced. The applicable restrictions, conditions or requirements shall be included in the public notice.

**Section 6: 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 water user 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 8 of this by-law before it may be enforced. The applicable restrictions, conditions or requirements shall be included in the public notice.

**Section 7: Restricted Water Uses[[3]](#footnote-4)**

A declaration of a State of Water Supply Conservation and/or a 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 (and water users2) 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 8.

1. 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 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.
2. Nonessential outdoor water use hours: Nonessential outdoor water use is permitted only during the hourly periods specified in the State of Water Supply Conservation 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.
3. Nonessential outdoor water use method restriction: Nonessential outdoor water use is restricted to a bucket or hand-held hose controlled by a nozzle.
4. Nonessential outdoor water use ban: Nonessential outdoor water use is prohibited at all times.
5. Automatic irrigation systems, including sprinklers: The use of automatic irrigation systems is prohibited.

**Section 8: Public Notification and Notification of DEP**

1. Public Notification of a State of Water Supply Conservation – 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 shall be made as soon as possible, but no later than 48 hours following the declaration of a State Water Supply Conservation 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 announcements on local media, reverse 911 calls or other such means reasonably calculated to reach and inform all water customers.
2. 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 of the State of Water Supply Emergency.
3. 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.
4. 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 9: 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 8a for notice of its imposition.

**Section 10: 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 8b for notice of its imposition.

**Section 11: 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, s. 41A, shut off the water at the meter or the curb stop.

**Section 12: Severability**

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

1. 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”. [↑](#footnote-ref-2)
2. 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 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. [↑](#footnote-ref-3)
3. 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. [↑](#footnote-ref-4)