

## **ARTICLE THIRTIETH**

### **AMEND CHAPTER 245, ARTICLE II, OF THE TOWN CODE, WATER USE RESTRICTIONS**

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## **ARTICLE II, CHAPTER 245 - WATER USE RESTRICTION BYLAW**

245-12 AUTHORITY. This bylaw is adopted by the Town ~~under~~ *pursuant* its police powers *and power* to protect public health and welfare *under M.G.L. c. 40, §21(1)*, ~~and its powers under the Home Rule Amendment of the Massachusetts Constitution, Article LXXXIX, under MGL c. 40, § 21 et seq., as amended from time to time, and implements the Town's~~ *its* authority to regulate water use pursuant to M.G.L. c. 41, §69B. This bylaw ~~also implements the Town's authority during times of declared drought or other emergency declared by the Department of Environmental Protection under M.G.L. c. 40, §41A, conditioned upon a declaration of water supply emergency issued by the Department of Environmental Protection; and to achieve the water conservation goals of M.G.L. c. 21G, the "Massachusetts Water Management Act" and the regulations promulgated there under 310 CMR 36.00.~~

### 245-13 PURPOSE.

The purpose of this Bylaw is to protect, preserve and maintain the public health, safety and welfare whenever there is in force a "State of Water Supply Conservation", *a "State of Drought" or a "State of Water Supply Emergency"* ~~providing for~~ *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 the imposition and* enforcement of any duly imposed restrictions, requirement, provisions or conditions imposed by the Town *in accordance with this Bylaw* ~~and/or by the Department of Environmental Protection under its state authorities. and to comply with Water Management Act requirements as administered by the Department of Environmental Protection.~~

### 245-14 APPLICABILITY

*All Town Water Customers and Water Users, as defined herein, shall be subject to this Bylaw. This Bylaw shall be in effect year-round.*

### 245-145 DEFINITIONS.

*Automatic Irrigation Systems shall mean any system for watering vegetation other than a hand-held hose or a bucket, including sprinklers, whether on a timer or manually activated.*

Conservation Measures shall mean restrictions on water use as defined in Section 245-167.

DEP shall mean the Massachusetts Department of Environmental Protection.

**Groundwater Protection District shall mean the area defined under Article XI of the Town of Topsfield's Zoning Bylaws.**

~~Essential Use shall include uses of water that have a health or safety impact, are required by regulation or are needed to meet the core functions of a business or other organization. All other uses shall be considered non-essential.~~

~~Nonessential~~ **Essential Outdoor Water** Use shall include uses of water that are not essential uses ***mean those uses that are required:***

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

**Low Intensity Uses shall mean:**

- 1. irrigation of lawns, gardens, flowers and ornamental plants by means of hand-held hose controlled by a nozzle or a drip-irrigation system.*

***Nonessential Outdoor Water Uses shall mean:***

- 1. irrigation of lawns via sprinklers or automatic irrigation systems*
- 2. 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*
- 3. washing of exterior building surfaces, parking lots, driveways, or sidewalks, except as necessary to apply paint, preservatives, stucco, pavement or cement.*

Off-Peak Hours shall be between 5 P. M. and 9 A.M. the following day.

Outdoor Water Use ~~shall include but is not limited to outdoor watering~~ ***Outdoor Watering***, filling of swimming pools, and the washing of automobiles, boats or other vehicles, ***and any other use of water outdoors for purposes other than human or animal consumption.***

Outdoor Watering **shall** include watering of lawns, shrubbery, bushes or other outdoor vegetation.

Peak Hours **shall be** between 9:00 a.m. and 5:00 p.m. each day.

Person shall mean any Individual, Corporation Trust, Partnership or Association, or other entity.

**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 that encompasses all or part of Topsfield.**

State of Water Supply Conservation shall mean a State of Water Supply Conservation declared by the Town pursuant to Section 245-156 of this Bylaw.

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 through 17.

**Town Owned Irrigation Wells shall mean groundwater wells located on Town property that are used for irrigation of athletic fields.**

Water Customers shall mean all users of the ~~Town~~ **Town's** public water system **and private Water Sources on properties served by the Town's public water system**, irrespective of any person's responsibility for billing purposes for water used at any particular location.

**Water Sources shall mean primary points of supply such as wells, rivers, ponds, lakes, streams, and wetlands as well as systems used to collect and store water such as cisterns, tanks, roof drains, stormwater & rainwater collection systems.**

Water Users shall mean all persons **or entities**, ~~regardless of their geographic location~~, using water withdrawn from ~~water sources~~ **Water Sources** located within the Town of Topsfield.

WMA shall mean the Water Management Act, M. G. L. c. 21G and any requirement or special condition imposed ~~under~~ **by** the Town under said act.

## 245-156 DECLARATION OF A STATE OF WATER SUPPLY CONSERVATION.

- A. The Town, through its ~~Board of Water Commissioners~~ **Select Board or its designee**, may declare a State of Water Supply Conservation upon a determination ~~by a majority vote of the Board~~ that one or more of the following conditions exist:
1. A shortage of water exists. When a shortage exists, conservation measures will be imposed on ~~water customers~~ **Water Customers and Town Owned Irrigation Wells located in the Groundwater Protection District** to ensure an adequate supply of water

for all customers. A shortage of water may be caused by drought, loss of water storage, or other condition that impairs the Town's ability to meet water demand for its customers.

2. Water use may exceed ~~permitted~~ **allowable** limits. When the water system's use may exceed that which is ~~permitted-allowed by~~ through the WMA, conservation measures will be imposed on water customers in order to comply with WMA limits.
  3. Ipswich River streamflow is low. When Ipswich River **average daily** streamflow falls below ~~limits specified through the WMA requiring~~ **100 cubic feet per second as measured at the United States Geologic Survey's (USGS) Ipswich Gauge for three consecutive days between May 1<sup>st</sup> and September 30<sup>th</sup> of any given year** the implementation of ~~the~~ **a voluntary** conservation measure specified as Outdoor Water Use Peak Hours Ban, ~~an Outdoor Water Use Peak Hours Ban~~ will be imposed on all ~~water users~~ **Water Customers and Town owned irrigation wells located in the Groundwater Protection District** ~~in order to comply with the WMA requirements.~~
  4. Ipswich River streamflow is very low. When Ipswich River **average daily** streamflow falls below ~~limits specified through the WMA requiring~~ **52.5 cubic feet per second as measured at the USGS's Ipswich Gauge for three consecutive days between May 1<sup>st</sup> and September 30<sup>th</sup> of any given year** the implementation of ~~the~~ **a mandatory** conservation measure specified as Outdoor Water Use Restriction, ~~and Outdoor Water Use Restriction~~ will be imposed on all ~~water users~~ **Water Customers and Town Owned Irrigation Wells located in the Groundwater Protection District** ~~in order to comply with the WMA requirements.~~
  5. ***A Level 1 (Mild Drought) State of Drought has been declared by the Secretary of Energy and Environmental Affairs. When a Level 1 State of Drought is declared, a mandatory Single Day of Watering per Week Restriction shall be implemented and shall apply to all Water Customers.***
  6. ***A Level 2 (Significant Drought) State of Drought has been declared by the Secretary of Energy and Environmental Affairs. When a Level 2 State of Drought is declared, a mandatory Outdoor Water Use Restriction shall be implemented and shall apply to all Water Users.***
  7. ***A Level 3 (Critical Drought) State of Drought or greater is declared by the Secretary of Energy and Environmental Affairs. When a Level 3 State of Drought is declared, a mandatory Total Outdoor Water Use restriction shall be implemented and shall apply to all Water Users.***
- B. The Declaration shall clearly state the reason for the declaration and shall specify whether it is voluntary or mandatory and whether the associated conservation measures apply to Water Customers or all Water Users.** Public Notice of a State of Water Supply Conservation shall be given under Section 58-2.67 of this Bylaw before it can be enforced.

*All water usage restrictions issued by the Select Board pursuant to this Bylaw shall be superseded by water usage restrictions issued by the DEP under its emergency declaration.*

245-167 Conservation measures.

A declaration of a State of Water Supply **Conservation shall** specify one or more of the following conservation measures and shall specify whether the measure(s) are voluntary or mandatory and whether the measure(s) apply to ~~water customers~~ **Water Customers** only or to all ~~water users~~ **Water Users**. ~~The applicable restrictions, conditions, or requirements shall be included in the Public Notice required under Section 58 2.6 and shall~~ **Conservation measures, shall only apply to Nonessential Outdoor Water Uses and shall** not apply to ~~essential~~ **Essential Outdoor Water Uses**.

- A. *Single Day of Watering per Week Restriction: Nonessential Outdoor Uses, will be limited to one day per week (Sunday through Saturday) during Off Peak hours per a schedule determined by the Select Board or their designee. Said schedule shall be included in the Public Notice.*
- B. *Outdoor Watering Odd / Even Day Restriction: Nonessential Outdoor Water Uses watering for odd numbered addresses is restricted to odd numbered days; outdoor Nonessential Outdoor Water Uses watering at for even numbered addresses is restricted to even numbered days.*
- C. *Outdoor Water Use Peak Hours Ban: Nonessential Outdoor water uses Water Uses, except Low Intensity Uses, is are prohibited during peak hours Peak Hours.*
- D. *Outdoor Water Use Restriction: Nonessential Outdoor water use Water Use is prohibited during peak hours Peak Hours and outdoor water Outdoor Water Use during off-peak hours Off Peak Hours is limited to hand-held hoses, buckets, or watering cans. Low Intensity Uses.*
- E. *Total Outdoor Water Use Ban: All Nonessential Outdoor water use Water Use, including Low Intensity Uses, is prohibited.*

*The following Outdoor Water Uses are subject to review and approval with conditions by the Town, through its Select Board or their designee during any State of Water Supply Conservation:*

- A. *Irrigation of public parks and recreation fields by automatic irrigation systems used outside the hours of 9:00 a.m. to 5:00 p.m.:*
- B. *Irrigation to establish replanted or resodded lawn or plantings during the months of May and September;*

*C. Irrigation of newly planted lawns (seeded or sodded) in the current calendar year for homes or businesses newly constructed in the previous twelve month period; and*

*D. Filling of privately owned swimming pools.*

#### ~~245-178~~ PUBLIC NOTIFICATION OF A STATE OF WATER SUPPLY CONSERVATION.

Notification of any provision, restriction, or condition imposed by the Town as part of a State of Water Supply Conservation *or DEP as part of a State of Water Supply Emergency* shall be published in a newspaper of general circulation within the Town, or by such means reasonably calculated to reach and inform all users of water ~~of the State of Water Supply Conservation~~ *the Town*. Any restriction imposed under Section 58-2.5 shall not be effective until such notification is provided. Notification of the State of Water Supply Conservation may also be simultaneously provided to the Massachusetts Department of Environmental Protection.

#### ~~245-189~~ TERMINATION OF A STATE OF WATER SUPPLY CONSERVATION.

A State of Water Supply Conservation may be terminated by ~~a majority vote of the Board of Water Commissioners~~ *the Select Board or its designee* upon a determination that the conditions requiring the State of Water Supply Conservation no longer exists. Public notification of the termination of a State of Water Supply Conservation shall be given in the same manner required by Section 245-178.

~~All water usage restrictions issued by the Board pursuant to the Bylaw shall be superseded by water usage restrictions issued by the DEP under its declaration.~~

#### ~~245-1920~~ 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 DEP, no person shall violate any provision, restriction, requirement, or condition of any order approved or issued by the DEP intended to bring about an end to the State of Emergency. *Public notice of a State of Water Supply Emergency shall be given under Section 245-18 of this Bylaw before it may be enforced. The applicable restrictions, conditions or requirements shall be included in the public notice. Conditions or restrictions set under a State of Water Supply Emergency shall supersede those implemented through a Declaration of a State of Water Supply Conservation.*

#### ~~245-201~~ VIOLATIONS AND PENALTIES.

A. Any person violating any Section of this Bylaw shall be liable to the Town in the amount listed below:

1. First Violation: Warning
2. Second Violation: ~~\$50~~**100.00**
3. Third ~~violation: \$100.00~~ **and subsequent Violations: \$300.00**
4. ~~Fourth and subsequent violations: \$300.00~~

B. The fines and charges shall inure to the Town. Fines shall be recovered by indictment or on complaint before the District Court, or by non-criminal disposition in accordance with M.G.L. c. 40, §21D. For purposes of non-criminal disposition, the enforcing person shall be any Police Officer of the Town or the Water Superintendent. Each day of violation within a declared State of Water Supply Conservation or State of Water Supply Emergency shall constitute a separate offense.

#### 245-242 RIGHT OF ENTRY.

Entrance to any Building, Dwelling or Business Property shall be restricted as follows:

- A. Public Buildings may only be entered during normal business hours and in areas normally available to the general public, or upon the order of a Court of Law having jurisdiction.
- B. Private property may be entered only with the advice and consent of the owner, or upon the order of a Court of Law having jurisdiction.

#### 245-223 SEVERABILITY.

If any portion or provision of this ~~b~~**B**ylaw is deemed invalid, the remaining portions and provisions shall remain binding.