

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE OF ADOPTION OF
DROUGHT EMERGENCY RULES

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY GRANTED TO THE New York City Department of Environmental Protection as set forth in Section 24-315 of Title 24, Chapter 3 of the New York City Administrative Code and in accordance with Section 1043(a) of the New York City Charter and after a duly advertised public hearing held on July 20, 2004 that the Department of Environmental Protection has repealed and repromulgated the drought emergency rules.

STATEMENT OF BASIS AND PURPOSE

On April 1, 2002, Mayor Michael Bloomberg declared a Stage I Drought Emergency in the City of New York. The legal implication of this declaration was that the Drought Emergency Rules (the "Rules") contained in the Rules of the City of New York (Title 15, Chapter 21) became immediately effective and enforceable. The Drought Emergency lasted until November 1, 2002. During this seven-month period, Department of Environmental Protection ("DEP") officials worked with other agency representatives to ensure that the public was aware of the rules and the applicable provisions therein.

To deal with internal drought policy determinations, DEP Commissioner Christopher Ward appointed a Drought Emergency Variance Board (the "Board"). The Board primarily entertained requests, made pursuant to the Rules, for variances from the Rules in circumstances of hardship and difficulty. As many of these requests implicated general agency policy on drought issues, the Board served as an advisory panel on drought policy as well.

DEP, in light of the recent experiences with the drought, recognized that amendments to the Drought Emergency Rules were needed. The amended Rules are streamlined and simplified. Redundancy has been omitted and inconsistencies eliminated. Definitions have been added for greater clarity and conformance with general style of RCNY rules. The appointment of a Drought Emergency Variance Board to entertain variance requests has been formalized in the Rules. In addition, a process by which an applicant may appeal an adverse determination has been created. The Rules have been amended to provide for greater flexibility and consistency for water usage during the various stages of drought.

The Rules are authorized by section 1403 of the Charter of the City of New York and sections 24-337 and 24-346 of the Administrative Code of the City of New York.

Please note that new material is indicated by underlining.

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Chapter 21 of Title 15 of the Rules of the City of New York is repealed and repromulgated to read as follows:

Chapter 21

Drought Emergency Rules

Subchapter

A General Provisions

B Stage I

C Stage II

D Stage III

Subchapter A

General Provisions

§21-01 Introduction

§21-02 Definitions

§21-03 Sanctions

§21-04 Variances

§21-05 Drought Emergency Rate Plan

§21-06 “Save Water” Signage

§21-07 Well Water Use Prohibition Exceptions

§21-01 Introduction. The provisions of this subchapter apply to all stages of Drought Emergency in the City.

§21-02 Definitions.

Acceptable Irrigation Controller means a microprocessor –based controller for the valve(s) of an irrigation system that can be programmed for the various time and date intervals set forth in §21-09(e), 21-10(e) and 21-11(e) of these Rules, and that incorporates a rain sensor, soil moisture sensor or evapo-transpiration control.

Active Source. “Active source” means any sprinkling device or system and any device that delivers water under pressure.

City. “City” means the City of New York.

City water. “City water” means water supplied by or taken from the City water system.

City water system. “City water system” means the City water supply system.

Commissioner. “Commissioner” means the commissioner of the department or his or her designee or successor in function.

Department. “Department” means the New York City Department of Environmental Protection or its successor in function.

Drought emergency. “Drought emergency” as declared by the commissioner, exists when, in the opinion of the commissioner, there is a reasonable probability that without the implementation of stringent measures to reduce consumption, a protracted dry period would cause the City’s reservoirs to drop to levels that would threaten public health and safety.

ECB. “ECB” means the New York City Environmental Control Board.

Health care facilities. “Health care facilities” means hospitals, hospices, medical clinics, physician’s offices, nursing homes or any other facility caring for persons who are ill, aged or infirm, where, in the opinion of the commissioner, relief from the prohibition contained in §21-10(j) is necessary to protect the health and well-being of such persons.

Non-turf plants. “Non-turf plants” means all plants excluding turf.

Turf. “Turf” means grasses used as ground cover or lawn.

Water-conserving Irrigation System. “Water-conserving Irrigation System” means an irrigation system that delivers water at low pressure and low flow rate directly to the roots of non-turf plants, including trees, such as “drip irrigation systems,” “soaker hoses,” or “Treegators.”

Well water. “Well water” means water drawn from a subsurface well under permit from the New York City Department of Health and/or the New York State Department of Environmental Conservation.

§21-03 Sanctions. (a) Violations of the rules contained in this chapter or any variances granted pursuant to §21-04 of these rules, shall be punishable by fines and penalties established by the Administrative Code, §§24-337 and 24-346, and may be returnable before the ECB.

(b) In addition to any penalties that may be imposed by the ECB, where a leak and waste notice has been served in accordance with §24-337 of the Administrative Code and the condition to which such notice relates has not been corrected, a fine of up to fifty dollars per day may be imposed by the commissioner.

(c) A flow restrictor may be installed or water service may be terminated for violation of any provision of the rules contained in this chapter for any waste of water.

§21-04 Variances. (a) The Commissioner may appoint a “Drought Emergency Variance Board” (the “Variance Board”) for the purpose of entertaining requests for variances from compliance with any of the requirements of the rules contained in this chapter. Variance Board members shall only be appointed from the personnel of the Department or the New York City Water Board.

(b) Any person or entity applying for a variance must submit a notarized application for a variance to the Variance Board. The applicant must demonstrate, at a minimum, to the

satisfaction of the Variance Board:

(1) that compliance with such rules would result in an undue hardship;

(2) that there are no reasonable alternatives;

(3) that the applicant has taken and will take all possible measures to conserve water, with a complete description of such measures and the water savings to be effected; and

(4) that such variance is not inconsistent with the purpose of such rules.

(c) The Variance Board may grant a variance relieving a person or entity from compliance with the requirements of the rules in this subchapter. In connection with any variance that may be granted, the Variance Board shall impose such terms and conditions as deemed appropriate. Requests for variances shall be processed in a timely fashion, and determinations shall not be unreasonably withheld or delayed. The filing or pendency of a variance application shall not relieve any person or entity from complying with these rules, and shall not immunize any person or entity from any civil or criminal prosecution or sanction under the rules.

(d) Variance application forms may be obtained at 59-17 Junction Boulevard, Flushing, NY 11373, or by calling 311.

(e) Appeals.

(1) An applicant may appeal the denial of a variance issued by the Variance Board under the rules of this subchapter by filing a notarized petition in writing with the Commissioner within thirty (30) days of the date the denial notification was mailed. The appeal shall state the name and address of the petitioner and shall include a short and plain statement of the matters to be adjudicated, identifying the variance sought by the petitioner with citation to the applicable provisions of such rules, the proposed location of the activity, and the date of the Variance Board's denial. A copy of the denial notification being appealed shall be attached to the petition.

(2) The applicant may appeal only the issue of whether the Variance Board abused its discretion in denying a request for a variance or in imposing a substantial condition in a grant of a variance.

(3) Upon review of any appeal filed pursuant to §21-04(e), the Commissioner may, in his/her discretion, grant a variance relieving a person or entity from compliance with any of the requirements of the rules. In connection with any variance that may be granted, the Commissioner may impose such terms and conditions as deemed appropriate. Appeals shall be processed in a timely fashion, and determinations shall not be unreasonably withheld or delayed.

(4) The filing of an appeal shall not relieve the petitioner from complying with any requirements of the rules of this subchapter, and shall not immunize any person or entity from any civil or criminal prosecution or sanction authorized under such rules.

(f) The Commissioner may delegate to personnel of the Department or of the New York City Water Board any or all of his or her powers relating to the Drought Emergency Rule variances and/or appeals thereof.

§21-05 Drought Emergency Rate Plan. At any time after the actual declaration of a Phase I Drought Emergency, the Commissioner may recommend and request that the New York City Water Board consider the adoption of a drought emergency contingency rate plan that conforms with §24-360 of the Administrative Code of the City of New York. Such rate plan shall have as its goal the creation of enhanced incentives for water conservation by increasing the cost of city water by such amounts, and for such duration, as the Commissioner may recommend and which the Water Board in its sole discretion shall consider appropriate.

§21-06 “Save Water” Signage. (a) Introduction. Immediately upon the declaration of any stage of Drought Emergency by the Commissioner, “Save Water” signs, as described below, shall be prominently posted in every building or premises connected to the city water system or in which city water is used, in the locations specified below. It shall be the responsibility of every person or entity owning, using, leasing, managing, operating or controlling any such building or premises to assure that such signs are properly posted. The provisions set forth in this §21-06 do not apply to one-, two-, three- or four-family dwellings.

(b) Sign size and content. Such signs required pursuant to §21-06(a) above shall not be less than 6 inches by 9 inches in size. The heading “Save Water” on the signs should be in letters not less than three-quarters inch (3/4”) in height. The signs shall include the following wording and may include any artwork or additional language, related to water conservation, which may be desired by the person or entity posting the sign:

<p><u>SAVE WATER</u> <u>Report Leaks and Water Waste</u> <u>Call 311</u></p>

(c) Sign locations. Such signs shall be prominently posted in the following locations:

(1) Multiple dwellings. In multiple dwellings (five units or more): At each entrance, near mailboxes, in each elevator and on each floor.

(2) Hotels. In hotels: At each entrance, near each check-in desk and cashier, near each entrance to each restaurant or other public eating place, in each elevator, in the public hallway on every floor and in each bathroom (except signs in private bathrooms in individual hotel rooms may be reduced to three inches by five inches in size).

(3) Hospitals. In hospitals: At each entrance, in each elevator, on every floor by an elevator, in each bathroom and shower room, in each laboratory, and in each restaurant or cafeteria.

(4) Office buildings. In office buildings: At each entrance, in each elevator, on every floor by an elevator, in each bathroom and in each dining room or cafeteria or other places where food is sold.

(5) Restaurants. In restaurants: In each bathroom and at each table (except signs at tables may be reduced to three inches by five inches in size).

(6) All other nonresidential buildings. In all other nonresidential buildings, including all commercial and industrial buildings: At each entrance, in each elevator, on every floor by an elevator, in each bathroom and shower room, above each sink or group of sinks, in each eating area and in the work area of every process or operation using any water.

§21-07 “Water-Conserving Irrigation System” signage. Immediately upon the declaration of any stage of Drought Emergency by the Commissioner, “Water-Conserving Irrigation System” signs, as described below, shall be prominently posted at every building or premises in which city water is used in Water-conserving Irrigation Systems for the irrigation of non-turf plants. It shall be the responsibility of every person or entity owning, using, leasing, managing, operating or controlling any such building or premises to assure that such signs are properly posted. A sign not less than 6 inches by 9 inches in size must be prominently posted at the watering location indicating that a Water-conserving irrigation system is in use. The sign shall include the following wording and may include any artwork or additional language, related to water conservation, that may be desired by the person or entity posting the sign:

<p><u>SAVE WATER</u> <u>WATER -CONSERVING IRRIGATION SYSTEM IN USE</u> <u>REPORT LEAKS AND WATER WASTE</u> <u>CALL 311</u></p>
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§21-08 Well Water Use Prohibition Exceptions. No person shall cause, permit or allow the use of well water for any purpose for which the use of city water is prohibited by the rules contained in this chapter unless:

(a) such installation is covered by a valid permit from the New York City Department of Health; and

(b) there are no cross-connections and all swing-joint connections have been replaced by permanent rigid piping or the connection to the city system has been sealed; and

(c) signs are prominently displayed, not less than 8 ½ by 11 inches in size and with lettering not less than one inch in height, bearing the following wording including the permit number:

<p><u>DROUGHT EMERGENCY</u> <u>PRIVATE WELL WATER IN USE</u> <u>HEALTH DEPT PERMIT NO. _____</u></p>
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The permission to use well water granted by this §21-07 may be revoked by the commissioner for any violation of the foregoing conditions, or of these rules, or of any applicable laws, rules or regulations.

Subchapter B

Stage I

§21-09 Prohibitions

§21-09 Prohibitions. Upon declaration of the Commissioner of a Stage I Drought Emergency, no person or entity shall cause, permit or allow:

(a) The continuing of any leak or waste from any water pipe, valve, faucet, conduit, equipment, facility or device connected to the city water system, or that utilizes city water, on or in any premises owned, used, leased, managed, operated or controlled by such person or entity;

(b) The use of city water to wash any vehicle (including any aircraft, watercraft or land vehicle whether on- or off-road), provided that this provision shall not be construed to prohibit the reasonable use of city water for washing of such vehicles where mandated by law or for health or safety purposes;

(c) The use of city water to spray, wash or wet any hard or paved surfaces, including, but not limited to, streets, sidewalks, driveways, outdoor areaways (including any recreational areas, whether at ground level or on a structure), parking areas or outdoor steps. This provision, however, shall not be construed to prohibit the washing of such surfaces, particularly the exterior surface of a building, where such washing is required as part of repairs mandated by the Administrative Code or to protect the health and safety of the public, assuming such use is consistent with the provisions set forth in §24-332 of the Administrative Code of the City of New York and §20-08(a)(5) of Title 15 of the Rules of the City of New York;

(d) The use of city water for any ornamental or aesthetic purpose, including, but not limited to, use in fountains, artificial waterfalls, reflecting pools, lakes and ponds, unless the pond or lake is a habitat for animals living in such body of water prior to the declaration of a drought emergency. In the case where city water is not used, a sign not less than 6 inches by 9 inches must be prominently posted at the location indicating that the water being used in such fountain, waterfall, pool, lake or pond is not city water;

(e) In accordance with the provisions set forth in §20-08(a)(5) of Title 15 of the Rules of the

City of New York, the use of city water by means of a hose or other active source to water any turf or any non-turf plants, except that:

(1) city water may be used to water any turf, except for golf course fairways, from 7 a.m. to 9 a.m. and from 7 p.m. to 9 p.m., on the following schedule:

(i) At even numbered addresses, city water may be so used during the above-specified hours on even-numbered days of the month;

(ii) At odd-numbered addresses, city water may be used during the above-specified hours on odd-numbered days of the month.

(2) newly seeded or newly sodded turf (excluding golf course fairways) or newly planted non-turf plants, may be irrigated with city water, in addition to the scheduled times in (e)(1)(i) and (ii), on the day of planting and for the two days following planting;

(3) if hand-held hoses equipped with nozzle tips or in-line flow regulators, or water conserving irrigation systems that effectively limit water output to a maximum flow rate of five gallons per minute are utilized, city water may be used to water non-turf plants from 7 a.m. to 9 a.m. and from 7 p.m. to 9 p.m. on the following schedule:

(i) At even numbered addresses, city water may be used during the above specified hours on even-numbered days of the month;

(ii) At odd-numbered addresses, city water may be used during the above specified hours on odd-numbered days of the month;

(4) If hand-held containers or a water conserving irrigation systems with an acceptable irrigation automatic controller is utilized, city water may be used for any two two-hour periods on the appropriate day of the month as set forth above, provided that, for water-conserving irrigation systems, these time periods are indicated on the signage mandated by 21-07 of these Rules.

(f) The opening or use of any fire hydrant, or of the city water therefrom, for any purpose other than fire protection, except in accordance with the terms and conditions set forth in a permit obtained from the Department, in accordance with the provisions set forth in §20-08(b) of Title 15 of the Rules of the City of New York;

(g) The serving of water from the city water system to any patron of a restaurant, club, hotel, café, cafeteria or other public place where food is served or offered for sale, unless specifically requested by such patron;

(h) The use of city water to fill or maintain the water level in any swimming pool, except that pools operated with recirculating equipment may be filled with city water once during each calendar year and may thereafter use the minimum amount of city water necessary to maintain the water level at a level no greater than that necessary to ensure continued operation of such

recirculating equipment;

(i) The use, or the maintaining so as to be capable of use, of any shower head in any residential building or premises, or in any nonresidential building or premises, including any commercial or industrial building or premises, unless it flows at a maximum rate of 2.5 gallons of water per minute at a constant water pressure of eighty pounds per square inch.

Subchapter C **Stage II**

§21-10 Prohibitions

§21-10 Prohibitions. Upon declaration of the Commissioner of a Stage II Drought Emergency, no person or entity shall cause, permit or allow:

(a) The continuing of any leak or waste from any water pipe, valve, faucet, conduit, equipment, facility or device connected to the city water system, or that utilizes city water, on or in any premises owned, used, leased, managed, operated or controlled by such person or entity;

(b) The use of city water to wash any vehicle (including any aircraft, watercraft or land vehicle whether on- or off-road), provided that this provision shall not be construed to prohibit the reasonable use of city water for washing of such vehicles where mandated by law or for health or safety purposes;

(c) The use of city water to spray, wash or wet any hard or paved surfaces, including, but not limited to, streets, sidewalks, driveways, outdoor areaways (including any recreational areas, whether at ground level or on a structure), parking areas or outdoor steps. This provision, however, shall not be construed to prohibit the washing of such surfaces, particularly the exterior surface of a building, where such washing is required as part of repairs mandated by the Administrative Code or to protect the health and safety of the public, as determined by the Commissioner, assuming such use is consistent with the provisions set forth in §24-332 of the Administrative Code of the City of New York and §20-08(a)(5) of Title 15 of the Rules of the City of New York;

(d) The use of water from any source for any ornamental or aesthetic purpose, including, but not limited to, use in fountains, artificial waterfalls, reflecting pools, lakes and ponds, unless the pond or lake is a habitat for animals living in such body of water prior to the drought emergency;

(e) In accordance with the provisions set forth in §20-08(a)(5) of Title 15 of the Rules of the City of New York, the use of city water by means of a hose or other active source to water any turf or any other non-turf plants, except that:

(1) newly seeded or newly sodded turf (excluding golf course fairways) or newly planted

non-turf plants may be irrigated with city water on the day of planting and for the first day following planting;

(2) if hand-held hoses equipped with automatic shut-off nozzles or in-line hose flow regulators that effectively limit water output to a maximum flow rate of five gallons per minute at eighty pounds per square inch; or water-conserving low-flow/low pressure irrigation systems are utilized, city water may be used to water non-turf plants in accordance with the schedule set forth in subchapter B above.

(3) if hand-held containers or a water conserving irrigation system with an acceptable irrigation controller is utilized, city water may be used to water non-turf plants for any two two-hour periods on the appropriate day of the month as set forth in Subchapter B above, provided that, for water-conserving irrigation systems, these time periods are indicated on the signage mandated by 21-07 of these Rules.

(f) The opening or use of any fire hydrant, or of the city water therefrom, for any purpose other than fire protection, except in accordance with the terms and conditions set forth in a permit obtained from the Department, in accordance with the provisions set forth in §20-08(b) of Title 15 of the Rules of the City of New York;

(g) The serving of water from the city water system to any patron of a restaurant, club, hotel, café, cafeteria or other public place where food is served or offered for sale, unless specifically requested by such patron;

(h) The use of city water to fill or maintain the water level in any swimming pool, except that city water may be used to fill municipally-operated swimming pools and other swimming pools open to the general public, that are operated with recirculating equipment and are filled once during each calendar year, and thereafter may be used as necessary to maintain the water level in such pools open to the general public at a level no greater than that necessary to ensure continued operation of such recirculating equipment;

(i) The use, or the maintaining so as to be capable of use, of any shower head in any residential building or premises, or in any nonresidential building or premises, including any commercial or industrial building or premises, unless it flows at a maximum rate of 2.5 gallons of water per minute at a constant water pressure of eighty pounds per square inch.

Subchapter D

Stage III

§21-11 Prohibitions

§21-11 Prohibitions. Upon declaration of the Commissioner of a Stage III Drought Emergency, no person or entity shall cause, permit or allow:

(a) The continuing of any leak or waste from any water pipe, valve, faucet, conduit, equipment, facility or device connected to the city water system, or that utilizes city water, on or

in any premises owned, used, leased, managed, operated or controlled by such person or entity;

(b) The use of city water to wash any vehicle (including any aircraft, watercraft or land vehicle whether on- or off-road), provided that this provision shall not be construed to prohibit the reasonable use of city water for washing of such vehicles where mandated by law or for health or safety purposes;

(c) The use of city water to spray, wash or wet any hard or paved surfaces, including, but not limited to, streets, sidewalks, driveways, outdoor areaways (including any recreational areas, whether at ground level or on a structure), parking areas or outdoor steps. This provision, however, shall not be construed to prohibit the washing of such surfaces, particularly the exterior surface of a building, where such washing is required as part of repairs mandated by the Administrative Code or to protect the health and safety of the public, as determined by the Commissioner, assuming such use is consistent with the provisions set forth in §24-332 of the Administrative Code of the city of New York and §20-08(a)(5) of Title 15 of the Rules of the City of New York;

(d) The use of water from any source for any ornamental or aesthetic purpose, including, but not limited to, use in fountains, artificial waterfalls, reflecting pools, lakes and ponds;

(e) In accordance with the provisions set forth in §20-08(a)(5) of Title 15 of the Rules of the City of New York, the use of city water by means of a hose or other active source to water any turf or any other non-turf plants, except that:

(1) newly seeded or newly sodded turf (excluding golf course fairways), or newly planted non-turf plants may be irrigated with city water on the day of planting;

(2) if hand-held hoses equipped with nozzle tips or in-line hose flow regulators that effectively limit water output to a maximum flow rate of five gallons per minute at eighty pounds per square inch or water conserving irrigation systems are utilized, city water may be used to water non-turf plants only in accordance with the schedule set forth in subchapter B above.;

(3) if hand-held containers, or water-conserving irrigation systems with an acceptable irrigation controller is utilized, city water may be used to water non-turf plants for any two two-hour periods on the appropriate day of the month as set forth in Subchapter B above, provided that, for water-conserving irrigation systems, these time periods are indicated on the signage mandated by 21-07 of these Rules;

(f) The opening or use of any fire hydrant, or of the city water therefrom, for any purpose other than fire protection, except in accordance with the terms and conditions set forth in a permit obtained from the Department, in accordance with the provisions set forth in §20-08(b) of Title 15 of the Rules of the City of New York;

(g) The serving of water from the city water system to any patron of a restaurant, club, hotel, café, cafeteria or other public place where food is served or offered for sale, unless specifically requested by such patron;

(h) The use of city water to fill or maintain the water level in any swimming pool, except that city water may be used to fill municipally-operated swimming pools and other swimming pools open to the general public, that are operated with recirculating equipment and are filled once during each calendar year, and thereafter may be used as necessary to maintain the water level in such pools open to the general public at a level no greater than that necessary to ensure continued operation of such recirculating equipment;

(i) The use, or the maintaining so as to be capable of use, of any shower head in any residential building or premises, or in any nonresidential building or premises, including any commercial or industrial building or premises, unless it flows at a maximum rate of 2.5 gallons of water per minute at a constant water pressure of eighty pounds per square inch;

(j) The use of any non air-cooled air conditioning system utilizing water from the city water system unless the room dry-bulb temperature is not permitted to fall below 79 degrees Fahrenheit, except that:

(1) this subdivision (j) shall not apply in health care facilities or to buildings that use non-city water for cooling tower makeup water;

(2) when essential for the continuous operation of electronic data processing equipment, the temperature in a room or floor occupied predominantly by such equipment may be maintained lower than 79 degrees Fahrenheit but at the highest temperature compatible with such continuous operation. The burden of proof shall be upon the respondent in any administrative proceeding to show that the temperature maintained was the highest temperature compatible with continuous operation of such equipment, and respondent's proof must include documentation of the manufacturer's temperature control specification for such equipment.