

Notice of Public Hearing
New York City Department of Environmental Protection

What are we proposing? The New York City Department of Environmental Protection proposes to amend Chapter 21 of Title 15 of the Rules of the City of New York, currently entitled the “Drought Emergency Rules,” to address water shortage emergencies due to circumstances other than natural conditions.

When and where is the hearing? The Department will hold a public hearing on the proposed amendments. The public hearing will take place at 11 am on February 23, 2022. The hearing will be conducted by video conference and is accessible by:

Microsoft Teams meeting

Join on your computer or mobile app:

[Click here to join the meeting](#)

Or call in (audio only):

+1 347-921-5612,,575323790#

Phone Conference ID: 575 323 790#

How do I comment on the proposed amendments? Anyone can comment on the proposed amendments by:

- **Website.** You can submit comments to the Department of Environmental Protection through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to nycrules@dep.nyc.gov.
- **Mail.** You can mail written comments to the Department of Environmental Protection, Bureau of Legal Affairs, Attention: Casey B. McCormack, Assistant Counsel, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to the Department of Environmental Protection, Bureau of Legal Affairs, Attention: Casey B. McCormack, Assistant Counsel, at 718-595-6543.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed amendments at the public hearing may speak for up to three minutes. Please access the public hearing by internet video and audio, or by telephone, using the instructions above.

Is there a deadline to submit written comments? Yes, you may submit written comments until 5 pm on February 23, 2022.

What if I need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may contact us by email at nycrules@dep.nyc.gov or by mail at the address given above. Advance notice is required to allow sufficient time to arrange accommodations. Please tell us by February 16, 2022.

Can I review the comments made on the proposed amendments? You can review the comments that have been submitted online by visiting the NYC rules website at <http://rules.cityofnewyork.us/>. Shortly after the public hearing, a summary of oral comments and copies of all written comments will be available to the public at the Department's Bureau of Legal Affairs.

What authorizes the Department to make these amendments? 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 authorize the Department to make these proposed amendments. These proposed amendments were included in the Department's regulatory agenda for this fiscal year.

Where can I find the Department's rules? The Department's rules are in Chapter 21 of Title 15 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the Charter.

Statement of Basis and Purpose

Section 1403 of the Charter of the City of New York and §§ 24-337 and 24-346 of the Administrative Code of the City of New York authorize the New York City Department of Environmental Protection ("DEP") to promulgate rules to avoid and address water shortages. In section one of this proposed rule, DEP is proposing to amend the Drought Rules, codified in Chapter 21 of Title 15 of the Rules of the City of New York, in order to cover water shortage emergencies caused by circumstances other than natural conditions, such as planned and unplanned infrastructure outages and repairs. The proposed amendments would clarify existing language and provide such that the rules apply to all types of water shortage emergencies, not just natural drought conditions. These amendments would make the provisions of Chapter 21 more clear, detailed and comprehensive.

The amendments to § 21-01 would revise the language to state the provisions of the subchapter apply to a water shortage emergency, and would add a new subdivision (b) that provides that the Commissioner has the power to declare any one of the stages of a water shortage emergency in accordance with the rules, based on the anticipated severity of the shortage and the need to reduce consumption. The addition of subdivision (b) makes it easier for the regulated community to understand the applicability of Chapter 21.

The proposed amendments to § 21-02 revise existing definitions to edit punctuation, clarify ambiguities, and correct outdated or incorrect citations. The term "drought emergency" would be

deleted and replaced with “water shortage emergency” to reflect the purpose of the rule’s revision to apply not only natural conditions of drought, but other types of water shortage emergencies caused by circumstances other than natural conditions, such as planned and unplanned infrastructure outages and repairs. The term “Commissioner” would be revised to clarify that the Commissioner’s designee may perform all functions of the Commissioner authorized under Chapter 21. The term “ECB” would be deleted and its references throughout the chapter are replaced with the term “OATH,” which would be added as a defined term meaning the Office of Administrative Trials and Hearings. The terms “golf course fairway and rough,” “golf course tee box and green,” “nursery,” “person,” “waste of City water,” and “Water Board” would be added to clarify and define their uses and references throughout Chapter 21. The definition of “non-turf plants” would be amended to clarify that trees are considered non-turf plants, and the definition of “well water” would be revised to clarify that it means an individual source of potable water.

§21-03 would be amended to more clearly set forth the procedure for imposing sanctions and taking other actions related to §§24-337 and 24-346 of the Administrative Code.

§21-04 would be amended to transfer the authority to grant variances from a Variance Board comprised of personnel designated by the Commissioner directly to the Commissioner. Subdivision (e) of such section governing variance appeals would be amended to clarify rights of the regulated community to appeal the imposition of an arbitrary and substantial condition in the grant of a variance by the Commissioner, and the procedure by which community members may initiate such an appeal. Subdivision (f) of such section would be removed in the entirety, because the amendments to the definition of Commissioner would make this provision redundant.

§§ 21-05, 21-06 and 21-07 would be amended to replace references to the term “Drought Emergency” with “Water Shortage Emergency.” In addition, with respect to §§ 21-06 and 21-07, language would be added to clarify signage requirements during such an emergency, including the size, content and locations of required signs, in order to make it easier for the regulated community to comply with the requirements.

§21-08, which provides how a person may qualify for the exception to the well water use prohibition during water shortage emergencies, would be revised by making a series of technical edits, including replacing references to Drought Emergency with Water Shortage. Similarly, language would be added to clarify signage requirements, including size and content.

This proposed rule would amend § 21-09 by modifying the schedule and times in which permissible watering is permitted during a declared Stage I Water Shortage from an odd-and-even day schedule to a Monday-through-Friday schedule, and permit watering days based on the final digit or letter of the address number. Subdivision (b) of this section would be amended to incorporate specific water use reduction percentage thresholds during a declared Stage I Water Shortage Emergency. These reduction thresholds would apply to nurseries with respect to the watering of non-turf plants, and golf courses to water tee boxes and greens, playgrounds and athletic playing fields, provided that with respect to such tee boxes and greens, playgrounds and athletic playing fields, such watering involves the use of hand-held hoses equipped with nozzle tips or in-line flow regulators or water-conserving irrigation systems. In addition, persons operating bottling plants, paper recycling facilities, or hotels in the City which use an average of

at least 100,000 gallons of City water per day will be required to reduce water use by at least 5% per month at each such location during a declared Stage I Water Shortage Emergency. Restrictions on shower head flow capacity would be eliminated.

The proposed edits to §§ 21-10 and 21-11, which relate to Stage II and Stage III Water Shortage Emergencies, largely parallel proposed amendments described in relation to § 21-09, provided, however, that the reduction thresholds would be more significant. The water use reduction percentage thresholds for nurseries, bottling plants, paper recycling facilities, and hotels would be 10% and 15%, respectively, during a Stage II and Stage III Water Shortage Emergency. The water use reduction percentage thresholds for golf course tee boxes and greens, playgrounds, and athletic play fields would be 30% and 50%, respectively, during a Stage II and Stage III Water Shortage Emergency.

Section two of this proposed rule would amend § 32-01 of Title 15 of the Rules of the City of New York to clarify that adjudication of several provisions of § 21-03 of such Title, discussed above, are subject to the procedure set forth in Chapter 32 of such title.

New material is underlined.

[Deleted material is in brackets.]

Section one. Chapter 21 of Title 15 of the Rules of the City of New York is amended to read as follows:

Chapter 21

[Drought] Water Shortage Emergency Rules

Subchapter A

General Provisions

§ 21-01. Introduction.

(a) The provisions of this subchapter apply to all stages of [Drought] a Water Shortage Emergency in the City, unless otherwise specifically provided herein.

(b) The Commissioner may declare any one of three stages of a Water Shortage Emergency, based on the anticipated severity of the shortage and the need to reduce consumption, as described in these rules.

§ 21-02. Definitions.

Acceptable [Irrigation Controller] irrigation controller. “Acceptable [Irrigation Controller] 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] §§ 21-09, 21-10 and 21-11, and that incorporates a rain sensor, soil moisture sensor or evapo-transpiration control.

Active [Source] 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 supply system.

City water supply system. “City water supply system” means [the City water supply system] any public water supply system owned or operated by the City.

Commissioner. “Commissioner” means the [commissioner] Commissioner of the [department] Department or his or her designee or successor in function, who may perform all functions of the Commissioner authorized under the Chapter.

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]

Golf course fairway and rough. “Golf course fairway and rough” means all the turf on a golf course other than the golf course tee box and green.

Golf course tee box and green. “Golf course tee box and green” means the area from which golf balls are teed-up or placed for the first stroke on a hole, and the area immediately surrounding

the golf hole or the green where putts are played. The golf course tee and green are not included in the golf course fairway and rough for the purposes of these rules.

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] Commissioner, relief from the prohibition contained in § [21-10(j)] 21-11(a)(9) is necessary to protect the health and well-being of such persons.

Non-turf plants. “Non-turf plants” means all plants, including trees, but excluding turf.

Nursery. “Nursery” means the private or public grounds and premises on or in which nursery stock is propagated, grown, or cultivated for the commercial purpose of distributing or selling the same.

OATH. “OATH” means the Office of Administrative Trials and Hearings in its capacity pursuant to § 1049-a of the Charter.

Person. “Person” means an individual, firm, partnership, company, corporation, association, governmental agency, administration, or department, or other legal entity, or an officer or employee thereof.

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

Waste of City water. “Waste of City water” means (i) any leak or waste from any water pipe, valve, faucet, conduit, equipment, facility, or device connected to the City water supply system or which uses city water, or (ii) any failure to reduce water consumption as required by this chapter.

Water Board. “Water Board” means the New York City Water Board.

Water-conserving [Irrigation System] irrigation system. “Water-conserving [Irrigation System] 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 “Tregators.”

Water Shortage Emergency. “Water Shortage Emergency” means a declaration by the Commissioner that there is a reasonable probability of a shortage of City water, or an expected

shortage of City water, that would threaten public health and safety absent the implementation of measures to reduce water consumption.

Well water. “Well water” means an individual source of potable 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 of the terms and conditions of any variances granted pursuant to § 21-04 [of these rules, shall be] are punishable by fines and penalties established by [the Administrative Code,] §§ 24-337 and 24-346 of the Administrative Code, and may be returnable before [the ECB] OATH.

(b) [In addition to any penalties that may be imposed by the ECB, where] 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 within the time set for compliance, the Commissioner may, after notice and opportunity for a hearing before the Commissioner in accordance with the hearing procedures set forth in §32-02 of this title, impose a fine of up to fifty dollars per day [may be imposed by the commissioner], in addition to any penalties that may be imposed by OATH.

(c) [A] 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 within the time set for compliance, the Commissioner may, after notice and opportunity for a hearing before the Commissioner in accordance with the hearing procedures set forth in § 32-02 of this title, install a flow restrictor [may be installed] or terminate water service to the premises [may be terminated for violation of any provision of the rules contained in this chapter for any waste of water].

(d) Nothing in this section shall be construed to limit the Commissioner’s power to shut off water supply without notice, or with such notice as the Commissioner may deem practicable, where a leak exists; or where emergency action is otherwise deemed essential. If the Commissioner shuts off water in accordance with this subdivision, the Commissioner shall provide notice and an opportunity to be heard after the shut off is performed. Such notice and hearing shall be conducted in accordance with the procedures set forth in § 32-02 of this title.

§ 21-04. Variances.

(a) The Commissioner may [appoint a “Drought Emergency Variance Board” (the “Variance Board”) for the purpose of entertaining requests for variances] in his or her discretion, upon written application, grant a variance 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] file a notarized application for a variance to the [Variance Board] Commissioner. The [applicant] person must demonstrate, at a minimum, to the satisfaction of the [Variance Board] Commissioner, that:

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

(2) [that] there are no reasonable alternatives;

(3) [that] the [applicant] person has taken and will continue to take all [possible] reasonable measures to conserve water, [with] and will provide a complete description of such measures that have been implemented to achieve reductions and the anticipated water savings [to be effected]; and

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

(c) The [Variance Board] Commissioner may grant a variance relieving a person [or entity] from compliance with any of the requirements of the rules in this [subchapter] chapter. In connection with any variance that may be granted, the [Variance Board shall] Commissioner may impose [such] terms and conditions as deemed appropriate. Requests for variances [shall] must be processed in a timely fashion, and determinations [shall] must not be unreasonably withheld or delayed. The filing or pendency of a variance application [shall] does not relieve any person [or entity] from complying with [these rules] any of the requirements of this chapter, including any rules cited in the variance application, and [shall] does not [immunize] grant immunity to 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, Attention: Office of the General Counsel, or by calling 311.

(e) Appeals.

(1) [An applicant] A person may appeal the denial of a variance [issued], or the imposition of an arbitrary and substantial condition in the grant of a variance, by the [Variance Board under

the rules of this subchapter] Commissioner by filing a notarized petition in writing with the Commissioner and with OATH within thirty (30) days of the date the [denial notification] determination was mailed. The [appeal shall] petition must state the name, [and] address and email address of the petitioner and [shall] must 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] specific provision of these rules from which the variance is sought, the proposed location of the activity, and the date of the [Variance Board's denial] variance determination by the Commissioner. A copy of the [denial notification] determination being appealed [shall] must be attached to the petition. In addition, a completed OATH intake sheet must be included with the petition. The Department will provide blank intake sheets upon request.

(2) [The applicant] A person may appeal only the [issue] issues of whether the [Variance Board] Commissioner abused [its] his or her discretion in denying a request for a variance or in imposing [a] an arbitrary and substantial condition in a grant of a variance.

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

(4) The filing of an appeal [shall] does not relieve [the petitioner] a person from complying with any of the requirements of the rules [of] in this [subchapter] chapter, including any rules cited in the variance application, and [shall] does not [immunize] grant immunity to any person [or entity] from any civil or criminal prosecution or sanction [authorized] under [such] the 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] Water Shortage Rate Plan.

At any time after the actual declaration of a [Phase I Drought] Water Shortage Emergency, the Commissioner may recommend and request that the [New York City] Water Board consider

the adoption of a [drought emergency] Water Shortage 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] a Water Shortage Emergency by the Commissioner, “Save Water” signs, as described below, [shall] must be prominently posted in every building or premises connected to the [city] City water supply system or in which [city] City water is used, in the locations specified below. [It shall be the responsibility of every] Every person [or entity] owning, using, leasing, managing, operating or controlling any such building or premises [to assure] must ensure that such signs are properly posted. The provisions set forth in this [§ 21-06] section do not apply to one-, two-[,] or three- [or four-] family dwellings.

(b) Sign size and content. Such signs required pursuant to [§ 21-06(a) above shall not] this section must be [less than 6] at least six inches in height by [9] nine inches in [size] width. The [heading “Save Water”] required text on the signs [should] must be printed in letters [not less than] at least 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] that is desired by the person [or entity] posting the sign, and must include the following required text:

SAVE WATER
Report Leaks and Water Waste
Call 311

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

(1) Multiple dwellings (four units or more). [In multiple dwellings (five units or more):] At each entrance, near mailboxes, in each elevator and on each floor with more than one dwelling.

(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 in height by five inches in [size] width).

(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 in height by five inches in [size] width).

(6) All other nonresidential buildings[. In all other nonresidential buildings], including all commercial and industrial buildings[:], schools, universities and community centers. 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] a Water Shortage Emergency by the Commissioner, [“Water-Conserving Irrigation System”] water-conserving irrigation system signs, as described below, [shall] must be prominently posted [at] in every building or premises connected to the City water supply system or in which [city] City water is used in [Water-conserving Irrigation Systems] water-conserving irrigation systems for [the irrigation of] non-turf plants. [It shall be the responsibility of every] Every person [or entity] owning, using, leasing, managing, operating or controlling any such building or premises [to assure] must ensure that such signs are properly posted. A sign [not less than 6] at least six inches in height by [9] nine inches in [size] width must be prominently posted at the watering location indicating that a [Water-conserving] 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] that is desired by the person [or entity] posting the sign and must include the following required text, which must be in letters at least three-quarters inch (3/4”) in height:

SAVE WATER
WATER-CONSERVING IRRIGATION SYSTEM IN USE

REPORT LEAKS AND WATER WASTE
CALL 311

The sign must include the time periods in which such water-conserving irrigation systems are permitted to be in use pursuant to §§ 21-09, 21-10 and 21-11.

§ 21-08. Well Water Use Prohibition [Exceptions] Exception Conditions.

No person shall cause, permit or allow the use of well water for any purpose for which the use of [city] City water is prohibited by the rules [contained] in this chapter, unless:

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

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

(c) immediately upon the declaration of any stage of a Water Shortage Emergency, signs are prominently displayed, [not less than 8½] at least eight and a half inches in height by [11] eleven inches in [size] width and with lettering [not less than] at least one inch in height, [bearing]with the following wording including the permit number:

[DROUGHT] WATER SHORTAGE EMERGENCY
PRIVATE WELL WATER IN USE
[HEALTH DEPT] DOHMH PERMIT NO. _____

The permission to use well water granted by this [§ 21-07] section may be revoked by the [commissioner] 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 and Reductions.

(a) Prohibitions. Upon declaration [of] by the Commissioner of a Stage I [Drought Emergency] Water Shortage Emergency, no person [or entity] shall cause, permit or allow:

[(a)] (1) 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,] of City water on or in any premises owned, used, leased, managed, operated or controlled by such person [or entity];

[(b)] (2) The use of [city] 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] City water for washing [of] such vehicles where mandated by law or for health or safety purposes;

[(c)] (3) The use of [city] 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]; provided, however, that 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] as determined by the Commissioner, provided such use is consistent with [the provisions] any restrictions 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] 20-08(a)(8) of this title;

[(d)] (4) The use of [city] 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 Shortage Emergency, and provided further that where City water is not used (e.g., private well water), a sign [not less than 6]at least six inches in height by [9] nine inches in width must be prominently posted at the location indicating that the water being used in such fountain, waterfall, reflecting pool, lake or pond is not [city] 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] (5) The use of [city] City water by means of a hose or other active

source to water any turf or any non-turf plants, except that, subject to any restrictions set forth in § 20-08(a)(6)(ii) and (iii):

[~~(1)~~ city] ~~(i)~~ City water may be used to water any turf[, except for golf course fairways,] from [~~7:00 a.m.~~] 10:00 a.m. to [~~9:00 a.m. and from 7:00 p.m. to 9:00 p.m.~~] 12:00 p.m. and from 10:00 p.m. to 12:00 a.m., on the following schedule, based on the final digit or letter of the address number:

~~(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.]

~~(a)~~ On Mondays, if the address number ends in 0, 1 or a fraction;

~~(b)~~ On Tuesdays, if the address number ends in 2 or 3;

~~(c)~~ On Wednesdays, if the address number ends in 4 or 5;

~~(d)~~ On Thursdays, if the address number ends in 6 or 7; or

~~(e)~~ On Fridays, if the address number ends in 8, 9, or a letter;

[~~(2)~~] ~~(ii)~~ newly seeded or newly sodded turf (excluding golf course fairways and roughs) or newly planted non-turf plants[,] may be irrigated with [~~city~~] City water, in addition to the scheduled times in [~~(e)(1)(i) and (ii)~~] § 21-09(a)(5)(i), on the day of planting and for the two days following planting;

[~~(3)~~] ~~(iii)~~ 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 at eighty pounds per square inch are utilized, [~~city~~] City water may be used to water non-turf plants (except in nurseries) from [~~7:00 a.m.~~] 10:00 a.m. to [~~9:00 a.m.~~] 12:00 p.m. and from [~~7:00 p.m. to 9:00 p.m.~~] 10:00 p.m. to 12:00 a.m., on the following schedule, based on the final digit or letter of the address number:

~~(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;]

- (a) On Mondays, if the address number ends in 0, 1 or a fraction;
- (b) On Tuesdays, if the address number ends in 2 or 3;
- (c) On Wednesdays, if the address number ends in 4 or 5;
- (d) On Thursdays, if the address number ends in 6 or 7; or
- (e) On Fridays, if the address number ends in 8, 9, or a letter; and

[(4) If] (iv) if a hand-held [containers] container or a water-conserving irrigation [systems] system with an acceptable irrigation [automatic] controller is utilized, [city] City water may be used to water non-turf plants (except in nurseries) for [any] one or both of the two two-hour periods on the appropriate day [of the month] as set forth [above] in § 21-09(a)(5)(iii), provided that, for water-conserving irrigation systems, these time periods are indicated on the signage mandated by § 21-07 [of these Rules];

[(f)] (6) The opening or use of any fire hydrant, or of the [city] 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] pursuant to § 20-08(b) [of Title 15 of the Rules of the City of New York];

[(g)] (7) The serving of water from the [city] City water supply 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; or

[(h)] (8) The use of [city] 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] City water once during each calendar year and may thereafter use the minimum amount of [city] 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].

(b) Reductions. Upon declaration by the Commissioner of a Stage I Water Shortage Emergency:

(1) Notwithstanding any provisions of § 21-09(a), nurseries may continue to use City water to water non-turf plants but must reduce their water use by at least 5% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the Water Shortage Emergency;

(2) Notwithstanding any provisions of § 21-09(a), golf course tee boxes and greens, playgrounds, and athletic play fields may be irrigated using City water, provided that (i) all irrigation is done using hand-held hoses equipped with nozzle tips or in-line flow regulators, or water-conserving irrigation systems, and (ii) water use is reduced by at least 15% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the Water Shortage Emergency; and

(3) Persons operating bottling plants, paper recycling facilities, or hotels in the City, any of which use an average of at least 100,000 gallons of City water per day, as calculated on an annual basis, must reduce water use at each such plant, facility, or hotel by at least 5% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the Water Shortage Emergency; provided, however, that such person may instead reduce total water use by at least 5% per month, if such person demonstrates in writing to the Department that such reduction equals or exceeds the sum of reducing water use at each such plant, facility, or hotel by at least 5% per month.

Subchapter C

Stage II

§ 21-10. Prohibitions and Reductions.

(a) Prohibitions. Upon declaration [of] by the Commissioner of a Stage II [Drought Emergency] Water Shortage Emergency, no person [or entity] shall cause, permit or allow:

[(a)] (1) 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,] of City water on or in any premises owned, used, leased, managed, operated or controlled by such person [or entity];

[(b)] (2) The use of [city] 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] City water for washing [of] such vehicles where mandated by law or for health or safety purposes;

[(c)] (3) The use of [city] 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]; provided, however, that 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] provided such use is consistent with [the provisions] any restrictions 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] 20-08(a)(8) of this title;

[(d)] (4) The use of City 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] Water Shortage Emergency, and provided further that where City water is not used (e.g., private well water), a sign at least six inches in height by nine inches in width must be prominently posted at the location indicating that the water being used in such fountain, waterfall, reflecting 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] (5) The use of [city] City water by means of a hose or other active source to water any turf or any other non-turf plants, except that, subject to any restrictions set forth in § 20-08(a)(6)(ii) and (iii):

[(1)] (i) newly seeded or newly sodded turf (excluding golf course fairways and roughs) or newly planted non-turf plants may be irrigated with [city] City water on the day of planting and for the first day following planting;

[(2)] (ii) if hand-held hoses equipped with [automatic shut-off nozzles] nozzle tips or in-line [hose] flow regulators or water-conserving irrigation systems 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] City water may be used to water non-turf plants (except in nurseries) only in accordance with the schedule set forth in [subchapter B above] § 21-09(a)(5)(iii); and

[(3)] (iii) if a hand-held [containers] container or a [water conserving] water-conserving irrigation system with an acceptable irrigation controller is utilized, [city] City water may be used to water non-turf plants intended as food for human consumption for [any] one or both of the two two-hour periods on the appropriate day [of the month] as set forth in [Subchapter B above] § 21-09(a)(5)(iii), provided that, for water-conserving irrigation systems, these time periods are indicated on the signage mandated by § 21-07 [of these Rules];

[(f)] (6) The opening or use of any fire hydrant, or of the [city] 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] pursuant to § 20-08(b) [of Title 15 of the Rules of the City of New York];

[(g)] (7) The serving of water from the [city] City water supply 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; or

[(h)] (8) The use of [city] City water to fill or maintain the water level in any swimming pool, except that [city] 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].

(b) Reductions. Upon declaration by the Commissioner of a Stage II Water Shortage Emergency:

(1) Notwithstanding any provisions of § 21-10(a), nurseries may continue to use City water to water non-turf plants but must reduce their water use by at least 10% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the Water Shortage Emergency;

(2) Notwithstanding any provisions of § 21-10(a), golf course tee boxes and greens, playgrounds, and athletic play fields may be irrigated using City water, provided that (i) all irrigation is done using hand-held hoses equipped with nozzle tips or in-line flow regulators, or water-conserving irrigation systems, and (ii) water use is reduced by at least 30% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the Water Shortage Emergency; and

(3) Persons operating bottling plants, paper recycling facilities, or hotels in the City, any of which use an average of at least 100,000 gallons of City water per day, as calculated on an annual basis, must reduce water use at each such plant, facility, or hotel by at least 10% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the Water Shortage Emergency; provided, however, that such person may instead reduce total water use by at least 10% per month, if such person demonstrates in writing to the Department that such reduction equals or exceeds the sum of reducing water use at each such plant, facility, or hotel by at least 10% per month.

Subchapter D

Stage III

§ 21-11. Prohibitions and Reductions.

(a) Prohibitions. Upon declaration [of] by the Commissioner of a Stage III [Drought Emergency] Water Shortage Emergency, no person [or entity] shall cause, permit or allow:

[(a)] (1) 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,] of City water on or in any premises owned, used, leased, managed, operated or controlled by such person [or entity];

[(b)] (2) The use of [city] 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] City water for washing [of] such vehicles where mandated by law or for health or safety purposes;

[(c)] (3) The use of [city] 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]; provided, however, that 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] provided such use is consistent with [the provisions] any restrictions 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] 20-08(a)(8) of this title;

[(d)] (4) The use of City 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; provided that where City water is not used (e.g., private well water), a sign at least six inches in height by nine inches in width must be prominently posted at the location indicating that the water being used in such fountain, waterfall, reflecting 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] (5) The use of [city] City water by means of a hose or other active source to water any turf or any [other] non-turf plants, except that, subject to any restrictions set forth in § 20-08(a)(6)(ii) and (iii):

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

[(2)] (ii) if hand-held hoses equipped with nozzle tips or in-line [hose] flow regulators or water-conserving irrigation systems 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] City water may be used to water non-turf plants (except in nurseries) only in accordance with the schedule set forth in [subchapter B above] § 21-09(a)(5)(iii); and

[(3)] (iii) if a hand-held [containers] container using recycled water from a non-prohibited use or a water-conserving irrigation [systems] system using recycled water from a non-prohibited use with an acceptable irrigation controller is utilized, [city] City water may be used to water non-turf plants intended as food for human consumption for [any] one or both of the two two-hour periods on the appropriate day of the month as set forth in [Subchapter B above] § 21-09(a)(5)(iii),

provided that, for water-conserving irrigation systems, these time periods are indicated on the signage mandated by § 21-07 [of these Rules];

[(f)] (6) The opening or use of any fire hydrant, or of the [city] 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] pursuant to § 20-08(b) [of Title 15 of the Rules of the City of New York];

[(g)] (7) The serving of water from the [city] City water supply 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)] (8) The use of [city] City water to fill or maintain the water level in any swimming pool, except that [city] 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)] or (9) The use of any [non air-cooled] air conditioning system utilizing water from the [city] City water supply system [unless the] to cool a room [dry-bulb temperature is not permitted to fall] below 79 degrees Fahrenheit, except that:

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

[(2)] (ii) 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], provided that the burden [or] 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.

(b) Reductions. Upon declaration by the Commissioner of a Stage III Water Shortage Emergency:

(1) Notwithstanding any provisions of § 21-11(a), nurseries may continue to use City water to water non-turf plants but must reduce their water use by at least 15% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the Water Shortage Emergency;

(2) Notwithstanding any provisions of § 21-11(a), golf course tee boxes and greens, playgrounds, and athletic play fields may be irrigated with City water, provided that (i) all irrigation is done using hand-held hoses equipped with nozzle tips or in-line flow regulators, or water-conserving irrigation systems, and (ii) water use is reduced by at least 50% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the Water Shortage Emergency; and

(3) Persons operating bottling plants, paper recycling facilities, or hotels in the City, any of which use an average of at least 100,000 gallons of City water per day, as calculated on an annual basis, must reduce water use at each such plant, facility, or hotel by at least 15% per month, as compared to the average meter reading data for the same month in the year immediately preceding the declaration of the Water Shortage Emergency; provided, however, that such person may instead reduce total water use by at least 15% per month, if such person demonstrates in writing to the Department that such reduction equals or exceeds the sum of reducing water use at each such plant, facility, or hotel by at least 15% per month.

§ 2 . Section 32-01 of Title 15 of the Rules of the City of New York is amended by adding a new subdivision e-1 to read as follows:

(e-1) Adjudications of sanctions or other actions imposed pursuant to § 24-337 of the Administrative Code of the City of New York in accordance with the procedure set forth in subdivisions (b), (c) or (d) of § 21-03 of this title.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Water Shortage Rules

REFERENCE NUMBER: DEP-62

RULEMAKING AGENCY: Department of Environmental Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

January 3, 2022
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Water Shortage Rules

REFERENCE NUMBER: 2019 RG 001

RULEMAKING AGENCY: Department of Environmental Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: January 3, 2022