

WATER Chapter 206

WATER ARTICLE I Allocation; Utilization Permits

- § 206-1. Definitions.
- § 206-2. Determination of allocation.
- § 206-3. Notice of determination of allocation.
- § 206-4. Waiver of allocation procedures.
- § 206-5. Reallocation.
- § 206-6. Review of determination of allocation.
- § 206-7. Increase of usage.
- § 206-8. Excessive use prior to determination of allocation.
- § 206-9. Utilization permit required.
- § 206-10. Issuance or denial of utilization permit.
- § 206-11. Standards for issuance of permit.
- § 206-12. Conditions of permit.
- § 206-13. Conditions on utilization.
- § 206-14. Expiration of permit; extensions.
- § 206-15. Consideration of permit applications in filing priority order.
- § 206-16. Manner of giving notice.
- § 206-17. Filing fees.
- § 206-18. Successors in title.
- § 206-19. Violations and penalties.
- § 206-20. Severability.
- § 206-21. Effective date.

ARTICLE II Water Rates

- § 206-22. Definitions.
- § 206-23. Town administration costs to be covered.
- § 206-24. Metering.
- § 206-25. Establishment of rate to be paid.
- § 206-26. Dates to render bills.
- § 206-27. When bills due and payable.
- § 206-28. Defective meters.
- § 206-29. Use of water in absence of meter.

Adopted by the Board of Selectmen of the Town of Rutland as the Board of Water Commissioners: Art. I, 8-18-86; Art. II, 6-22-87.

ARTICLE I
Allocation; Utilization Permits
[Adopted 8-18-1986]

§ 206-1. Definitions.

As used in this Article, the following terms shall have the following meanings:

BOARD — The Board of Water Commissioners of the Town of Rutland, pursuant to 24 V.S.A. § 3312.

DEVELOPMENT — Any change or expansion in use of property or any building or structure thereon, any construction, reconstruction, conversion, alteration or enlargement of any building or structure and any other activity on property resulting in increased demand for water.

STRUCTURE — Any assembly of materials for occupancy or use.

§ 206-2. Determination of allocation.

After a building or structure has had at least thirty-six (36) months of actual usage, its town water allocation shall be based upon its average water usage over the twelve (12) months just prior to the date of determination thereof by the town. Average water usage shall be calculated by dividing the total gallonage utilized over such twelvemonth period by three hundred sixty (360) days. The quotient rounded up to the nearest one hundred (100) gallons per day shall be the property's water allocation, notwithstanding the amount specified in any original approval or permit for water.

- A. For purposes of the foregoing determination, portions of any thirty-six- or twelve-month period which have elapsed prior to the effective date of this Article shall be counted.
- B. If a notice of determination has issued to a property owner under the Policy, then until further redetermination under this Article, the amount stated in such determination, or in any revision thereof by the Board under § 206-6 hereafter, shall be the town water allocation for the building or structure involved.

§ 206-3. Notice of determination of allocation.

The owner of a building or structure shall be given written notice of the determination of the water allocation for such owner's building or structure, calculated in accordance with § 206-2 above. Thereafter, an owner desiring to utilize for such building or structure more than the amount specified in the notice shall apply for a permit for such additional amount pursuant to §§ 206-9 through 206-15 of this Article. A notice of determination given under the Policy

shall be deemed a notice under this section. Forthwith upon the effective date of this Article, the Board shall cause to be given to each owner who received a notice of determination under the Policy a further notice to the effect that such owner may have a review of such determination under § 206-6 hereafter.

§ 206-4. Waiver of allocation procedures.

The Board may waive or modify, in whole or in part, the provisions of §§ 206-2 through 206-8 in circumstances where it determines that a particular twelve-month history is not representative of a building's or structure's water usage because of interruption of usage, leaks or otherwise or in circumstances where strict application of §§ 206-2 through 206-8 would result in an inequitable situation.

§ 206-5. Reallocation.

The Board may, at any time after a building or structure has used town water for thirty-six (36) months, determine or re-determine the water allocation of such building or structure, based upon average water usage for the twelve-month period just prior to the date of determination or redetermination. In such event, the owner shall be given notice pursuant to § 206-3 above.

§ 206-6. Review of determination of allocation.

A property owner who receives a notice of right to have a review of a determination made under the Policy or who receives a notice determining such owner's water allocation under this Article, may have such determination reviewed by the Board by filing a written request for review with the Rutland Town Clerk within thirty (30) days of the date that the town gives the notice of right to have a review or notice of determination of water allocation under this Article, as the case may be. The Board shall, upon filing of such a request for review, proceed promptly, upon notice to the property owner and hearing, to determine the water allocation to which such owner is entitled.

- A. If the review request is as to a determination under the Policy, the water allocation shall be established as of the date of determination under the policy.
- B. If the review request is as to a determination under this Article, the water allocation shall be established as of the date of determination under this Article.
- C. If a request for review is not filed as prescribed in this section, the determination in the notice made under the Policy or this Article, as the case may be, shall be binding on such property owner.

§ 206-7. Increase of usage.

Upon determination of an owner's water allocation, whether by a written notice of determination, with no review request having been filed as provided above, or upon determination by the Board in a review proceeding, such determination shall be deemed to amend any permit or approval of an owner to use Town Water for a building or structure, and such property owner shall not, without a permit issued pursuant to §§ 206-9 through 206-15 of this Article, utilize more water for such building or structure than the amount specified in such determination. After a determination of allocation has been made, an increase in usage without a permit, caused by any development, shall be deemed a violation of this Article. Whether there has been such an increase in usage shall be established by comparing gallons per day averaged over a calendar month with the number of gallons per day in such determination of allocation. However, an increase in usage where no development has taken place, caused by normal temporary fluctuations or leakage, shall not be deemed a violation.

§ 206-8. Excessive use prior to determination of allocation.

Nothing contained herein shall be construed as permitting utilization of town water in excess of the amount permitted in any approval or permit during any period of time before a determination has been made under §§ 206-2 through 206-8.

§ 206-9. Utilization permit required.

An owner desiring to utilize town water for a new use or to service a new building or structure or to meet demand caused by any development shall first apply to the Board for a permit to do so. A separate application shall be filed for each use, building or structure involved. Such permit application shall be made on a form approved by the Board, or, if no form has been approved, then application shall be made by letter. No application shall be accepted unless signed by all owners of the property involved. Such application shall be accompanied by the prescribed fee and shall include the following information:

- A. A brief description of the building or structure for which water usage is requested, its location, its proposed use and, if the application is for increased usage, a description of the proposed development.
- B. The amount of new or increased water usage requested, stated in gallons per day as averaged over a calendar month, consistent with the terminology of the water agreement between the City of Rutland and the Town of Rutland.
- C. In the event that the application involves construction of a new subsystem or connecting system (as those terms are used in the agreement between the city and town), plans and specifications for the construction thereof.

- D. If the application involves construction of a new subsystem or connecting system, the maximum amount of water to be provided through such system and the maximum rate of draw through such system, consistent with the terminology in the agreement between the city and the town.
- E. Such other information, including without limitation data, plans or documents as may be necessary or as the town may require in order to properly evaluate the application. Such information shall include the design and specifications for water conservation devices and multiple use or recycling systems, as required under these regulations. **[Amended 3-12-1990]**

§ 206-10. Issuance or denial of utilization permit.

When the application is complete, the Board shall, after notice to the property owner and an opportunity to be heard, issue, issue with conditions or deny the permit application. A separate permit shall be issued for each use, building or structure and shall state the maximum water utilization for such use, building or structure, expressed in gallons per day as averaged over a calendar month. In the event of a denial, the reasons shall be stated in writing.

§ 206-11. Standards for issuance of permit.

The Board shall apply the following standards in determining whether a permit should issue:

- A. Whether the application contains all necessary supporting plans and documentation, prepared in accordance with sound engineering practice and acceptable to the town.
- B. The amount of water for which application is made shall not exceed the amount reasonably necessary to provide adequate water service for the use, building or structure or development proposed.
- C. The amount of water for which application is made shall not, in combination with other users, the amounts in other approvals and permits previously issued and the amounts involved in then pending permit applications filed prior to the property owner's application, cause the town's water consumption to exceed five hundred thousand (500,000) gallons per day, as averaged over a calendar month.
- D. The proposed water usage shall not have an adverse effect on the ability of the town to provide fire protection services or the availability of water to other users, whether by reduction in pressure or otherwise.
- E. The proposed water usage or any construction related to it shall not cause the town to violate any of the terms or conditions of the agreement between the City of Rutland and the Town of Rutland pertaining to water.

F. The proposed water usage shall not cause the town to be in violation of any agreement between the town and the city pertaining to the supply of sewage disposal services.

G. The new use, new building or structure or development shall utilize water-conserving devices, fixtures and systems and shall incorporate multiple use or recycling where technically and economically practical. The property owner shall utilize the best available technology for such devices, fixtures, systems, and applications and shall demonstrate provision for continued efficient operation of any systems involved. **[Added 3-12-1990]**

§ 206-12. Conditions of permit.

The Board may grant a permit for a lesser amount of water than that applied for and attach such reasonable conditions to any permit as may be necessary so that the proposed water usage will be in compliance with the standards, terms and conditions of this Article and will not be detrimental to the public health, safety and welfare.

§ 206-13. Conditions on utilization.

Whether or not stated on a permit, any utilization of town water shall be subject to the terms and conditions of any contract between the City and Town of Rutland for the supply of water, now existing or hereafter made, and any amendments, modifications, and renewals thereof and all applicable town policies and ordinances, rates and rules now or hereafter in effect, and redetermination of the amount which may be used pursuant to §§ 206-2 through 206-8 of this Article.

§ 206-14. Expiration of permit; extensions.

A. A permit for utilization of town water shall expire and become null and void at the expiration of twelve (12) months from the date of issuance by the Board unless within that time the property owner commences utilization of town water for the use, building or structure involved in such permit. If a permit expires because of failure to commence such usage, then the property owner shall, before using town water for such use, building or structure, submit a new permit application, with the supporting documentation and information required by § 206-9 and any required fees, the granting or denial of which permit shall be subject to all the terms of this Article.

B. A permit may be extended by the Board for an additional twelve-month period from the expiration of the original twelve-month period if:

- (1) Written application for an extension is made to the Board before expiration of the first twelve-month period.
- (2) The Board determines that the property owner continues to have a bona fide intention to complete the project, that the owner during the first twelve-month period has

diligently pursued the development of the project and that there is a reasonable expectation that the owner will begin utilization of water pursuant to the permit by the end of the extension period.

C. If, by the end of the second twelve-month period, town water utilization was not commenced for the use, building or structure involved in such permit, then the permit shall expire and become null and void unless again extended as provided hereafter, and the owner shall, before using town water for such use, building or structure, submit a new permit application in the same manner as required by § 2G6-14A above. **[Amended 3-27-89]**

D. [Added 3-27-89] A water permit may be extended upon written application made before expiration of the second twelve-month period or any further extension period if:

- (1) The Board determines that the owner is still diligently pursuing the project; and
- (2) The owner has not been able to commence utilization because the owner is in litigation before administrative bodies or courts relating to the obtaining of necessary permits for the project.

Any extension granted under this Subsection shall not be for more than one (1) year, and further extensions may be granted for one-year periods if Subsection D(1) and (2) are met.

E. A permit may be extended upon written application made to the Board before expiration of the second twelve-month period or any further extension period, if the Board determines that there has been a substantial start on construction. Such extension shall be for such additional time and on such conditions as may be equitable. **[Amended 3-27-89]**

F. The Board, after notice to the property owner and hearing, may, at any time during the initial twelve-month period or any extension thereof, revoke a permit if it determines that utilization of town water for the use, building or structure involved in the permit has not commenced and that the property owner has abandoned development of such use, building or structure. The Board shall not revoke any permit without first giving the property owner at least fifteen (15) days' notice of the time and place at which the Board shall hold its hearing. **[Editor's Note: Pursuant to the addition of Subsection D 3-27-89, former Subsections D through F have been re-designated as E through G, respectively.]**

G. As used in this section, the following terms shall have the meanings indicated:

COMMENCEMENT OF UTILIZATION - Active commencement of town water usage for a use, building or structure which is substantially complete and able to be used or occupied for its designed purpose.

§ 206-15. Consideration of permit applications in filing priority order.

Each permit application shall be considered in the order of its filing priority.

§ 206-16. Manner of giving notice.

- A. Any notice required to be given under this Article shall be deemed to have been given when deposited in the United States mail, registered or certified mail, return receipt requested, addressed to the property owner at such owner's address as carried on the books of the town for water billing purposes or, if at the time of notice such owner is not a user of town water, then to the address shown on the property owner's permit application or such other address as the property owner may in writing designate in connection with such application.
- B. In the event a property owner who has applied for town water transfers title, notice shall be deemed given if given to such successor in title.

§ 206-17. Filing fees.

The Board may prescribe reasonable fees for the filing of any request for review or permit application.

§ 206-18. Successors in title.

- A. Any rights of a property owner under this Article or any permit issued under this Article shall inure to the benefit of such owner's successors in title. Any obligations imposed on a property owner by this Article or by a permit issued under this Article shall bind such owner's successors in title.
- B. The Board shall keep a file on each owner pertaining to determinations and permits issued under this Article, which shall be available for inspection by the public at reasonable times during business hours.

§ 206-19. Violations and penalties.

- A. A person who without a permit issued under this Article, utilizes town water for a new use, building or structure or to meet demand caused by any development, or who increases water usage over the maximum amount specified in a permit or any notice of determination issued or referred to under §§ 206-2 through 206-8 by reason of any development, or who violates any provision of this Article or the terms of any permit, approval or order of the Board or the Selectmen shall be fined not more than five hundred dollars (\$500.). Each week that a violation continues shall constitute a separate offense.

B. The town may resort to any legal remedy to enforce this Article or the terms of any permit, approval or order, including actions for injunctive relief.

§206-20. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase in this Article or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Article or any part thereof.

§206-21. Effective date.

This Article shall become effective sixty (60) days after the date of its adoption.

ARTICLE II
Water Rates Adopted 6-22-1987

§206-22. Definitions.

As used hereafter, the following terms shall have the following meanings:

BASIC RATE — The rate per one hundred (100) cubic feet of town water charged by the city to the town from time to time under the Municipal Water Agreement. The basic rate is currently eighty-three and one-third cents (\$.831/3) per one hundred (100) cubic feet, but the rate shall increase or decrease with changes in the rate charged by the city to the town, without further amendment of these water rates.

MUNICIPAL WATER AGREEMENT — The agreement, dated March 2, 1972, between the City of Rutland and the Town of Rutland relating to the sale by the city to the town of water.

TOWN WATER — Water supplied to the town by the city under the Municipal Water Agreement, for distribution within the town pursuant to that agreement.

§ 206-23. Town administration costs to be covered. [Amended 1-29-1990]

The town incurs costs of its own in administering the distribution of water pursuant to the Municipal Water Agreement, which the Board finds are covered by a charge of twenty percent (20%) of the basic rate.

§206-24. Metering.

Payment for town water consumed within the town shall be based upon the quantity of water used by each user, which shall be determined by a meter attached to the user's water supply

prior to the commencement of service. Any such meter shall be installed by the property owner at the property owner's expense, and both the meter and the installation thereof shall be approved by the town.

§ 206-25. Establishment of rate to be paid.

Each property owner within the town shall pay, for water consumed on the property owner's premises, the basic rate, plus ten percent (10%) thereof.

§ 206-26. Dates to render bills.

Water bills shall be rendered quarterly for the quarters ending the 20th days of December, March, June and September.

§ 206-27. When bills due and payable.

Water bills shall be due and payable thirty (30) days from the date of rendition by the town.

§ 206-28. Defective meters.

If, for any cause, any meter fails to register the amount of water passing through it, the property owner shall pay to the town for water passing through the defective meter at the average daily water consumption rate based upon the previous quarter, as recorded by the meter when in operating order. However, if the meter was not in operating order for the entirety of such previous quarter or if during such previous quarter a less water-intensive use was being made of the premises or for part of the time water was not used, such that water consumption would not be fairly representative, then water consumption while the meter is defective shall be that amount for which the city lawfully charges the town.

§ 206-29. Use of water in absence of meter.

No property owner shall take any town water during any period of time when a meter is not installed. If any property owner takes town water during a period of time when a meter is not installed, the amount of water consumed during such period of time shall be that amount for which the city lawfully charges the town.