

Ordinance No. NS-1200.361

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF SANTA CLARA ADOPTING THE STATE MODEL
WATER EFFICIENT LANDSCAPE ORDINANCE AND AMENDING
DIVISION B33 OF THE COUNTY OF SANTA CLARA ORDINANCE
CODE**

Summary

This ordinance adopts the State Model Water-Efficient Landscape Ordinance (“MWELO”) with certain amendments to address local conditions in compliance with the California Water Conservation in Landscaping Act.

WHEREAS, on January 11, 2011, pursuant to Government Code Sections 65595 and 65596, the County complied with the California Water Conservation in Landscaping Act of 2006 by adopting its own water-efficient landscaping ordinances that were at least as effective at conserving water as MWELO;

WHEREAS, Governor Brown’s Drought Executive Order of April 1, 2015 (EO B-29-15) directed the California Department of Water Resources (“DWR”) to update the State’s MWELO through expedited regulation. The California Water Commission approved the revised MWELO on July 15, 2015; and,

WHEREAS, the Housing, Land Use, Environment and Transportation (“HLUET”) Committee recommended staff adopt the MWELO for ease of incorporating future changes by DWR.

THE BOARD OF SUPERVISORS HEREBY FINDS that each of the amendments to the State MWELO adopted below are reasonably necessary to address local conditions and are at least as efficient as the MWELO. The findings are set forth in Exhibit A, attached hereto and incorporated herein.

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA ORDAINS AS FOLLOWS:

SECTION 1: Division B33 of Title B of the Ordinance Code of the County of Santa Clara is hereby repealed and reenacted to read as follows:

WATER CONSERVATION IN LANDSCAPING

CHAPTER I. INCORPORATION BY REFERENCE

Sec. B33-1. California Model Water-Efficient Landscape Ordinance adopted.

The water-efficient landscape ordinance of the County is the Model Water-Efficient Landscape Ordinance adopted by the California Department of Water Resources and set forth in Chapter 2.7 of Division 2, Title 23, of the California Code of Regulations, Section 490 through 495 and Appendices A through D (the “MWELO”), and as further modified by the additions, deletions and amendments set forth in Chapter II of this Division. Any State amendments to the MWELO shall be subject to review and approval by the Board of Supervisors prior to taking effect in unincorporated County.

**CHAPTER II. ADDITIONS, DELETIONS AND AMENDMENTS
TO CALIFORNIA MODEL WATER-EFFICIENT LANDSCAPE
ORDINANCE**

Sec. B33-2. Additions, deletions and amendments.

Additions, deletions and amendments to the State Model Water-Efficient Landscape Ordinance (“MWELO”) are as set forth in this chapter.

Sec. B33-3. Section 490.1 Amendments.

Section 490.1 (Applicability) of the MWELO is amended to read as follows:

This division shall apply to landscaping on unincorporated county lands associated with project types listed in subsection (a), below, with exceptions provided in subsection (c).

- (a) This division shall apply to landscape projects associated with:
 - (1) New construction projects requiring a building permit where the aggregate new landscape area exceeds 500 square feet. Where aggregate project-related ground disturbance excluding the building or structure footprint exceeds 500 square feet, it is presumed that the landscape area will exceed 500 square feet.
 - (2) Installation of landscape irrigation hardware requiring a plumbing permit, electrical permit, or both, that provides water to an aggregate area that is greater than 500 square feet. Where such irrigation system provides water to an existing landscape area that is being maintained or

rehabilitated, the threshold for applicability of this division is 2,501 square feet. Maintenance and repair of existing irrigation hardware shall not be subject to this division provided there is no expansion of the irrigated area.

- (3) Earthwork that is subject to a grading permit pursuant to Sections C12-406 of this Code.
 - (4) Projects that are subject to building site approval, design review, a use permit or architecture and site approval, where the aggregate new landscape area or aggregate project-related ground disturbance excluding the building or structure footprint(s) exceeds 500 square feet. Where aggregate project-related ground disturbance excluding the building or structure footprint exceeds 500 square feet, it is presumed that the landscape area will exceed 500 square feet.
- (b) Any project with an aggregate landscape area of 2,500 square feet or smaller may comply with the prescriptive measures contained in Appendix D.
- (c) This division shall not apply to:
- (1) Hydraulic mulch seeding (hydroseeding) for erosion/sedimentation control where a permanent irrigation system is not required.
 - (2) Any commercial or educational cultivation of agricultural products, including but not limited to products of farms, orchards, production nurseries and forests.
 - (3) Ecological restoration activities where installed plant materials do not require a permanent irrigation system.
 - (4) Registered local, state or federal historical sites where landscaping is an integral component of the historic resource, or where landscaping provides beneficial historical context, as determined by the Santa Clara County Historic Heritage Commission or any other public board or commission responsible for architectural review or historic preservation for the particular property.
 - (5) Surface mine reclamation projects that do not require a permanent irrigation system.
 - (6) Community gardens or plant collections such as botanical gardens and arboreta that are open to the public.

- (7) Landscapes entirely irrigated by harvested rainwater onsite.
- (d) For projects using treated or untreated graywater or captured rainwater, any lot or parcel within the project that meets the lot or parcel’s landscape water requirement (Estimated Total Water Use) entirely with treated or untreated gray water or through captured rainwater is subject only to Appendix D section (5).

Sec. B33-4. Section 491 Amendments.

Section 491 (Definitions) of the MWELO is amended to modify the following definitions:

- (x) “*Fuel modification plan guidelines*” means guidelines from a local fire authority to assist residents and businesses that are developing land or building structures in a wildland urban interface fire hazard zone.
- (z) “*Hardscapes*” means any constructed features in a landscape built of concrete, stone, wood, or other such pervious or non-pervious durable material. It includes, but is not limited to, patios, walkways, and retaining walls.
- (cc) “*Invasive plant species*” means species of plants listed in the invasive plant inventory of the California Invasive Plant Council (“IPC”) that have been identified as invasive to areas within the IPC-delineated Central West (“CW”) region, and that are rated by the IPC as being either moderately invasive or highly invasive. It also includes plants in the United States Department of Agriculture invasive and noxious weeds database. Where a listing notes limited circumstances under which a plant may be invasive (e.g. “invasive in riparian areas and tidal marshes”), such plant shall not be considered invasive where those circumstances do not apply.
- (ii) “*Landscape area*” means the total horizontal surface area dedicated to plant installation (including adjacent ground that provides for the plants’ establishment), plus the horizontal surface area of any water features. It does not include footprints of buildings or structures, sidewalks, driveways, parking lots, decks, patios, gravel or stone walks, or other pervious or non-pervious hardscapes outside of planted areas (planted areas containing gravel or inorganic mulch *are* included). It does not include landscaping that is exempt from this division pursuant to Section B33-3, subdivision (c).
- (oo) “local agency” means the County.

(ggg) “*Plant factor*” means a numerical value that, when multiplied by reference evapotranspiration (“ET_o”), estimates the amount of water needed by plants. Plant factors are based on the publication “Water Use Classification of Landscape Species” (WUCOLS), or from any alternate horticultural resource approved by the California Department of Water Resources. A landscape architect may make a more site-specific plant factor determination upon consideration of locally observed water needs, site-specific characteristics and microclimate conditions. Such landscape architect shall document the basis of any plant factor determination that differs from the WUCOLS-assigned plant factor. Plant factor values are 0 to 0.1 for very low water use plants, 0.1 to 0.3 for low water use plants, 0.4 to 0.6 for moderate water use plants, and 0.7 to 1.0 for high water use plants.

(eeee) “*WUCOLS*” means the most recently published “Water Use Classification of Landscape Species” published by the University of California Cooperative Extension and the Department of Water Resources.

Sec. B33-5. Section 491 Additions.

Section 491 (Definitions) of the MWELO is amended to add the following definition:

(ffff) “*Native plant*” means a plant indigenous to a specific area of consideration. For the purpose of this division, the term shall refer to plants indigenous to the coastal ranges of Central and Northern California, and more specifically to such plants that are suited to the ecology of the present or historic natural community of the project’s vicinity.

Sec. B33-6. Section 492.1 Amendments.

Section 492.1 (Compliance with Landscape Documentation Package) of the MWELO is amended to read as follows:

- (a) Before approving any project subject to this Division B33, the County shall:
- (1) provide the project applicant with the ordinance and procedures for compliance with this Division;
 - (2) review the Landscape Documentation Package submitted by the project applicant;
 - (3) approve or deny the Landscape Documentation Package and submit a copy of the Water Efficient Landscape Worksheet to the local water purveyor.

- (b) The project applicant shall not commence any work on a project subject to this Division B33 until the County has approved a Landscape Documentation Package for the project.
- (c) Upon approval of the Landscape Documentation Package by the County, the project applicant shall:
 - (1) record the date of the permit in the Certificate of Completion;
 - (2) submit a copy of the approved Landscape Documentation Package, along with the record drawings and any other information, to the property owner or his/her designee; and
 - (3) submit a copy of the Water Efficient Landscape Worksheet to the local water purveyor.

Sec. B33-7. Section 492.3 Amendments.

Section 492.3 (Elements of the Landscape Documentation Package), subdivision (a)(6), of the MWELO is amended to read as follows:

- (6) grading design plan if a grading permit is required for the project pursuant to Section C12-406.
- (7) For regional of phased projects, a Regional Master Plan, location, and role of project within the larger plan, and estimated calculations for whole area can be submitted to establish the individual project's water budget.

Sec. B33-8. Section 492.4 Amendments.

Section 492.4 (Water Efficient Landscape Worksheet), subdivision (b)(1), of the MWELO is amended to read as follows:

- (1) The plant factor used shall be from WUCOLS or from horticultural researchers with academic institutions or professional associations as approved by the California Department of Water Resources (DWR). A landscape architect may also make a more site-specific plant factor determination upon consideration of locally observed water needs, site-specific characteristics and microclimate conditions. Such landscape architect shall document the basis any plant factor determination that differs from the WUCOLS-assigned plant factor. The plant factors are: 0 to 0.1 for very low water using plants, 0.1 to 0.3 for low water use plants, 0.4 to 0.6 for moderate water use plants, and 0.7 to 1.0 for high water use plants.

Sec. B33-9. Section 492.6 Amendments.

Subsection 492.6 (Landscape Design Plan), subdivision (a)(1)(G), of the MWELO is amended to read as follows:

(G) The use of invasive plant species, such as those listed by the California Invasive Plant Council, is prohibited.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California on _____ by the following vote:

AYES:

NOES:

ABSENT:

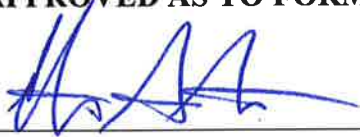
ABSTAIN:

Dave Cortese, President
Board of Supervisors

ATTEST:

Megan Doyle
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:



Elizabeth G. Pianca
Lead Deputy County Counsel

Attachment to this Ordinance—
Exhibit A

EXHIBIT A

BASIS FOR LOCAL AMENDMENTS TO 2015 MODEL WATER EFFICIENCY LANDSCAPE ORDINANCE

The local amendments to the 2015 Model Water Efficiency Landscape Ordinance (Model Ordinance) are reasonably necessary because of local climatic, geological, or topographical conditions for at least the following reasons:

(1) The local amendments will further the goals and policies of the State regarding water efficiency in landscaping in accordance with the State AB 1881 and Executive Order XYZ, by implementing the Model Ordinance with a few minimal changes necessary because of local regulatory, climatic, geological, or topographical conditions, without affecting its intent.

(2) There exists a wide range of micro climates within Santa Clara County. The following local amendments to the Model Ordinance will allow flexibility in its implementation, while meeting the intent of preserving water through efficiencies in landscaping.

(A) The Model Ordinance discourages use of non-native plants but does not forbid it. The proposed amendment to the definition of “invasive plant species” will allow limited use of plants generally considered invasive only in conditions where those species will not spread or propagate naturally.

(B) Adding a definition for “native plant” provides more specificity and guidance to applicants, and better references local geographic and climatic conditions.

(C) Modifying the definition for “plant factor” will allow a landscape professional to make a site-specific plant factor determination, providing more flexibility in plant choices, and allowing for better and more accurate assessment of water usage by specific plant species in the local ecosystem, and the requirement to provide documentation to support the site-specific plant factor determination will ensure that the intent of the ordinance is preserved.

(3) The proposed local amendments better reflect County-specific permits, County’s permit naming conventions, and other County Ordinance applicability thresholds, and will allow for improved implementation and enforcement through the following:

(A) The local amendments include defining more explicitly the exemptions to the Model Ordinance. These additional exemptions, carried over from the 2010 County Landscape Ordinance, were developed with significant stakeholder input and conform to local conditions by explicitly exempting certain uses such as agricultural uses, which provide public benefit and are not related to landscaping associated with development. In addition, the exemptions include landscapes

using harvested rain water to encourage rain-water harvesting practices, and conserve water. None of the exemptions conflict with the intent of the Model Ordinance.

(B) The proposed definition of “Landscaped Area” is more explicit and clearer than language used in the Model Ordinance for ease of implementation.

(C) Proposed modification to “WUCOLS” definition allows for automatic use of the most up to date Water Use Classification of Landscape Species list published by the University of California.