



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### REPORT TO COUNCIL

#### **SUBJECT**

Introduce an Ordinance to Amend Title 19 (Zoning) of the Sunnyvale Municipal Code (SMC) and Update the Water-Efficient Landscaping Regulations per California Governor's Executive Order B-29-15 and make a Finding that the Project is Exempt from the Requirements of the California Environmental Quality Act (CEQA) Pursuant to CEQA Guidelines Sections 15307 and 15308 (Planning File: 2016-7032)

#### **BACKGROUND**

##### **Current Water-Efficient Landscaping Regulations and AB 1881**

On May 12, 2010, the City adopted the water-efficient landscaping provisions in Sunnyvale Municipal Code Chapter 19.37 (RTC 10-104) to comply with the California Water Conservation in Landscaping Act of 2006 (AB 1881). That state law was passed in an effort to protect the state's increasingly limited water supply. The 2006 law tasked the California Department of Water Resources (DWR) with updating the model water-efficient landscape ordinance (MWELo) in 2009, which local jurisdictions were required to adopt in 2010, or adopt an ordinance that was at least as effective as the 2009 MWELo.

The City's current regulations are more stringent than those in the 2009 MWELo. The regulations were based on a regional model ordinance developed by the Bay Area Water Supply and Conservation Agency (BAWSCA) and staff representatives from its member agencies, including Sunnyvale. BAWSCA is a state agency that represents the interests of 26 agencies in Santa Clara, San Mateo and Alameda counties that purchase water on a wholesale basis from the San Francisco Regional Water System. BAWSCA's regional model ordinance simplified the state requirements and was designed to achieve 25 percent in landscape water savings, exceeding the state mandated 20 percent reduction.

The Planning Commission considered this item at a public hearing on March 21, 2016 and voted to recommend the Council 1) Introduce an ordinance to amend Sunnyvale Municipal Code Chapter 19.37 (Landscaping and Usable Open Space) per the State of California Governor's Executive Order B-29-15, as set forth in Attachment 1 of the report and 2) Find that the project is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 (see Planning Commission minutes-Attachment 4).

##### **2015 California Executive Order**

On April 1, 2015, California Governor Brown issued Drought Executive Order B-29-15, directing DWR to update the MWELo to address the current drought and build resiliency for future droughts. The California Water Commission approved the revisions in July 2015. The [2015 MWELo](http://www.water.ca.gov/wateruseefficiency/landscapeordinance/) [<http://www.water.ca.gov/wateruseefficiency/landscapeordinance/>](http://www.water.ca.gov/wateruseefficiency/landscapeordinance/) requires local cities and counties either 1) adopt the 2015 MWELo or their own equivalent ordinance; or 2) adopt a regional model

ordinance that is at least as effective.

BAWSCA updated and finalized the model regional ordinance to comply with the 2015 MWELO in December 2015. The 2015 MWELO is estimated to further reduce water use by 20 percent in new residential and rehabilitated landscapes and by 35 percent in new nonresidential landscapes from that allowed in the 2009 MWELO. [BAWSCAs 2015 Regional Model Ordinance <https://www.dropbox.com/sh/kv5b3im4rdgpo23/AABmR44kDReor1Mm7TN2iOsBa?dl=0>](https://www.dropbox.com/sh/kv5b3im4rdgpo23/AABmR44kDReor1Mm7TN2iOsBa?dl=0) takes a more aggressive approach.

Although the regional model ordinance was expected to be adopted by BAWSCA jurisdictions by February 1, 2016, staff has notified DWR of the City's anticipated schedule for local adoption of the water-efficient landscaping ordinance amendments and DWR has not objected. As of February 19, 2016, six of the 26 BAWSCA agencies have adopted the regional ordinance as-is, two have adopted the regional ordinance with modifications, one adopted the 2015 MWELO and three have adopted their own local ordinance.

After four years of drought, the recent winter storms have been a welcome change. The State's two largest reservoirs, Shasta and Oroville, reached their average historical levels after the storm on Sunday, March 13, 2016. As of Monday, March 14, the snow pack in the Sierra was at 115 percent to 130 percent of average. With the improving water supply, the San Francisco Public Utilities Commission (SFPUC) has notified water agencies that the SFPUC will not be setting a water reduction target for next year but will defer to the State Water Board on what the next steps will be. The State Water Board is expected to evaluate water supply conditions by mid-April, after which it will issue recommendations on water reduction targets and propose any changes to water use restrictions. The Santa Clara Valley Water District (SCVWD) will also be evaluating water supply conditions by mid-April and will be recommending the next steps accordingly. In accordance with the actions by the State Board and SCVWD, staff will be returning to the City Council by the end of May with recommendations on updating Resolution 693-15 and enacting a revised water reduction target and water use restrictions.

## **EXISTING POLICY**

### **GENERAL PLAN:**

#### **Land Use and Transportation Chapter**

Policy LT8.2: Adopt management, maintenance and development practices that minimize negative impacts to the natural environment, such as supporting and enforcing the integrated pest management system; and landscaping in ways which minimize the need for water.

#### **Environmental Management Chapter**

**Goal EM-2 Water Conservation** - Promote more efficient use of the City's water resources to reduce the demands placed on the City's water supplies.

**Goal EM-10 Reduced Runoff and Pollutant Discharge** - Minimize the quantity of runoff and discharge of pollutants to the maximum extent practicable by integrating surface runoff controls into new development and redevelopment land use decisions.

### **CLIMATE ACTION PLAN:**

**WC-2 Water Conservation** - Reduce indoor and outdoor potable water use in residences, businesses and industry.

WC-2.1: Require new development to reduce potable indoor water consumption by 30 percent and outdoor landscaping water use by 40 percent.

**OR-1 Lawn and Garden Equipment** - Encourage residents and businesses to use efficient lawn and garden maintenance equipment or to reduce the need for landscape maintenance through native planting.

OR-1.3: In project review, encourage the replacement of high-maintenance landscapes (like grass turf) with native vegetation to reduce the need for gas-powered lawn and garden equipment.

## **RESOLUTION 693-15**

<http://sunnyvale.ca.gov/Departments/EnvironmentalServices/Water/WaterConservation.aspx>

On May 12, 2015, the City Council adopted a resolution declaring a 30 percent water reduction target through June 30, 2016. The resolution limits the use of potable water for outdoor landscapes, prohibits the use of potable water in a manner that causes runoff or water waste due to defective irrigation systems and imposes penalties on violations. The proposed water-efficient landscaping ordinance updates would further support the 30 percent water reduction target.

## **ENVIRONMENTAL REVIEW**

Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15307 (Class 7, Actions by Regulatory Agencies for Protection of Natural Resources) and Section 15308 (Class 8, Actions by Regulatory Agencies for Protection of the Environment), the proposed ordinance is categorically exempt from further environmental review as it is designed to manage the City's potable water supply in the short- and long-term and to avoid or minimize the effects of drought within the City.

## **DISCUSSION**

### **Proposed Water-Efficient Landscape Ordinance Amendments**

In order to comply with Governor Executive Order B-29-15, staff has prepared a draft ordinance (Attachment 1) that is based on BAWSCA's Regional Ordinance, but tailored to fit local conditions and the City's established review process, as was done in 2010. Incorporating the main elements of the BAWSCA regional ordinance into the City's regulations would help establish consistency in the region, further facilitating the implementation of new regulations.

Staff has prepared a chart (Attachment 2) which compares the key requirements of the 2015 MWELO to BAWSCA's 2015 Regional Model Ordinance, and to both current and proposed City requirements. Summarized below are the major changes in the [2015 MWELO](http://www.water.ca.gov/wateruseefficiency/landscapeordinance/) and how they compare to the provisions in BAWSCA's 2015 Regional Model Ordinance <https://www.dropbox.com/sh/kv5b3im4rdgpo23/AABmR44kDRor1Mm7TN2iOsBa?dl=0> and in the proposed City ordinance.

### **Applicability Thresholds Reduced**

The 2015 MWELO reduced the size threshold for projects subject to the regulations from 2,500 square feet to 500 square feet of landscaping in new construction projects, and from 5,000 square feet to 2,500 square feet of rehabilitated landscaping projects. Only projects subject to a permit, plan check or design review under local ordinance would be subject to the water-efficient landscaping provisions. For example, single-family homeowners that re-landscape their properties will not be

subject to the new regulations, unless the proposed work requires a permit (most projects do not). Non-residential projects typically require permits for any landscaping changes, and the new regulations would apply.

BAWSCA's 2015 Regional Model Ordinance maintains the 2015 MWELo 500 square feet threshold for new construction projects and reduces the threshold from 2500 to 1,000 square feet for rehabilitated landscaping projects. These thresholds have been incorporated into the draft City ordinance. The lower threshold reflects the characteristic nature of infill development in the Bay Area, and would capture more projects in the City. Capturing more projects would help achieve the goal to reduce outdoor landscaping water use by 40 percent in the City's Climate Action Plan.

Landscaping rehabilitation projects on existing single-family or duplex properties that are not tied to construction of a new dwelling unit do not require a discretionary permit in the Zoning Code, and would therefore not be subject to the water-efficient landscaping regulations. The City, in partnership with the Santa Clara Valley Water District, offers incentive programs for residents and businesses to rehabilitate their existing landscapes with water-efficient plants and irrigation systems.

#### Water Budget Reduced

Compared to the 2009 MWELo, the maximum landscape water allowance in the 2015 MWELo was reduced by 15 percent for residential landscapes and by 25 percent for nonresidential landscapes. The new landscape water budget effectively limits high water use plants (including turf) that can be planted in residential projects to 25 percent of the total landscaped area and effectively prohibits them in nonresidential projects. High water use plant installations are still permitted when used for specific functions, such as edible planting areas, recreational areas and areas irrigated with recycled water or graywater (considered "special landscaped areas" in the ordinance).

BAWSCA's 2015 Regional Model Ordinance offers two compliance options for projects subject to the ordinance, which limit the types of plants that can be included in the landscape design:

- 1) Water budget calculation approach to landscape design using the same limits in the 2015 MWELo; or
- 2) Prohibit turf or any high-water use plants and require a minimum 80% of the plants selected be native, low water or no water use plants (classifications based on the long-term average water needs of the plants, not the water needs for the establishment of such plants).

The 2010 Regional Ordinance offered similar compliance options, but the second option allowed turf/high-water use plants in up to 25 percent of the landscaped area (which is in the current City regulations). Staff proposes incorporating the updates in the BAWSCA's 2015 Regional Model Ordinance in the City regulations. The option that prohibits turf/high water use plants limits design flexibility, but it is a simpler approach for those homeowners who may not want to perform water budget calculations. Projects that include "special landscaped areas" such as edible planting areas would be required to take the water budget compliance option, which allows as much water needed to sustain these areas.

#### Irrigation System Standards Increased

The 2015 MWELO requires dedicated water meters for residential landscaped areas 5,000 square feet or more and for nonresidential landscaped areas 1,000 square feet or more for better water management. Pressure regulators, master shut-off valves, flow sensors and irrigation emission devices meeting a certain national standard are required. Required irrigation system efficiency has increased from 70 percent to 75 percent for overhead spray systems and to 81 percent for low volume systems (such as drip or bubblers). BAWSCA's 2015 Regional Model Ordinance includes the same irrigation system standards as those of the MWELO.

The proposed City ordinance incorporates the same irrigation system standards, except for the dedicated landscape water meter requirement. The City's Potable Water Systems Design and Construction Guidelines revised by the Public Works and Environmental Services Departments on November 17, 2015 requires dedicated landscape meters for any commonly owned landscaped areas (no minimum threshold) in common interest developments, any shared use landscaped areas in apartment complexes and landscaped areas over 1,000 square feet on nonresidential properties.

#### Streamlined Requirements for Graywater Landscapes

The 2015 MWELO provides streamlined requirements for landscape projects less than 2,500 square feet irrigated entirely by graywater or rainwater captured on site. These landscape projects are subject only to the irrigation system design standards and are not subject to the many other provisions in the ordinance, such as water budget or planting limitations, soil amendment documentation and a third party certified irrigation audit.

BAWSCA's 2015 Regional Model Ordinance and the proposed City ordinance incorporate the same streamlined requirements for graywater landscapes as those in the 2015 MWELO. For landscaping projects not subject to the ordinance, the City currently provides incentives for the use of graywater or rainwater in outdoor landscapes. This includes a rebate program, for rain barrel installations, provided in partnership with BAWSCA. The Council has also waived the permit fee for the installation of a graywater clothes washer system to irrigate outdoor landscaping if the system triggers a permit (Attachment 3).

#### **Annual Reporting Required**

The 2015 MWELO requires all local agencies to submit an annual report to DWR stating the number, type and total landscaped areas subject to the locally adopted ordinance during the reporting period.

#### **FISCAL IMPACT**

Review and reporting necessary due to the new regulations will require additional staff time to complete. There will be an increase in the number of applications to review since the proposed ordinance is designed to capture more projects. Additional resources may be needed to educate staff and applicants. Review time may lessen over time as staff becomes more familiar with new requirements; however, the state may choose to issue future directives with increasingly more stringent water-efficient landscaping standards and reporting requirements. If landscaping standards become more complex, the City could explore use of third-party experts for landscape plan reviews. Staff will monitor the extent of staff education required and the amount of time needed to review landscaping and irrigation plans and to prepare annual reports to the DWR. Future permit fee and budget recommendations will consider this experience to inform future recommendations on budget and permit application fees.

## **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

Staff held a study session with the Planning Commission on January 25, 2016. Staff provided an overview of the water-efficient landscaping ordinance updates required by the state and staff's intention to incorporate the main elements of BAWSCA's 2015 Regional Model Ordinance. The Commission supported the BAWSCA approach as it is more aggressive in reducing potable water use in landscaping. It was suggested that the ordinance strongly encourage the use of locally native plants. Staff supports the use of local native plant species where appropriate and notes that some native species do better in their native environment (open fields and forests or riparian settings) and may not thrive well in a built environment. Further, there are many introduced species that are well adapted to the local climate, local soil, low water conditions and built environment. It is important to have a variety of species to protect the urban landscape should specie specific disease be introduced into an area. The Sunnyvale Urban Forest Management Plan includes a number of findings and actions that promote the use of native trees, where appropriate. Staff recommends using promotional literature and conditions of approval as a better venue for encouraging use of locally native plants.

There was no public input at the Planning Commission public hearing on March 21, 2016.

## **ALTERNATIVES**

1. Introduce an ordinance to amend Sunnyvale Municipal Code Chapter 19.37 (Landscaping and Usable Open Space) per the State of California Governor's Executive Order B-29-15, as set forth in Attachment 1 of the report.
2. Find that the project is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308.
3. Introduce the ordinance with modifications to the staff recommendations.

## **STAFF AND PLANNING COMMISSION RECOMMENDATION**

Alternatives 1 and 2: 1) Introduce an ordinance to amend Sunnyvale Municipal Code Chapter 19.37 (Landscaping and Usable Open Space) per the State of California Governor's Executive Order B-29-15, as set forth in Attachment 1 of the report; and 2) Find that the project is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308.

The proposed ordinance is at least as effective as the state's 2015 model ordinance, and incorporates the main provisions of the regional model ordinance developed by BAWSCA, tailored to fit the City's local conditions and established review process. These regulations are projected to save more water than the 2015 MWELo because of the lower size thresholds for applicable landscape rehabilitation projects and because of the compliance option of no turf or high water use plants in the irrigated area with at least 80 percent of the plantings to be native, low water or no water use plants. These updates will further the state and City's efforts to protect the state's increasingly limited water supply.

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Reviewed by: Kent Steffens, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

### **ATTACHMENTS**

1. Proposed Ordinance
2. Comparison of Updated Requirements in State (MWELO), Regional (BAWSCA) and City's Water-Efficient Landscaping Regulations
3. Residential Gray Water Clothes Washer Systems Handout (Building Safety Division, Community Development Department)
4. Planning Commission Minutes of March 21, 2016