

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the matter of:

**Amending Title 8, Planning and)
Zoning, Establishing Chapter 8.178 –)
Model Water Efficient Landscape)
Ordinance, in Order to Require Water)
Efficient Landscaping Design and)
Irrigation Practices Consistent with the)
Requirements of the State of California)
(CEQA Determination: Exempt)
Pursuant to CEQA Guidelines Section)
15061[b][3] - General Rule Exemption))**

ORDINANCE NO. 298

WHEREAS, the June 2002 Town of Moraga General Plan has policies that reflect a strong desire in the community regulations that further the Town's Environmental Conservation efforts with policies OS2.7, OS2.11, OS3.7 and OS3.8; and

WHEREAS, in 2014 the Town of Moraga accepted the Climate Action Plan, a long-term plan designed to reduce the community's greenhouse gas emissions which has a number of strategies WW.1, WW.2, WW.3, WW.4 and WW.5 that directly speak to Model Water Efficiency Landscape Ordinance (MWELo); and

WHEREAS, on April 1, 2015, Governor Jerry Brown issued Executive Order (EO) -B-29-15 and proclaimed a State of Emergency to exist throughout the State of California due to ongoing drought conditions, ordering mandatory actions by the State Water Resources Control Board (Water Board) to reduce water usage by 25% statewide from 2013 levels, increase enforcement to prevent water waste, and streamline government review of and response to drought-related measures; and

WHEREAS, on September 19, 2016, California Approved Senate Bill No. 1383, Short-Lived Climate Pollutant Reduction Strategy, which requires the California Department of Water Resources (DWR) to establish Model Water Efficient Landscape Ordinance (MWELo); and

WHEREAS, the Moraga Town Council and Community 2021 Goals and Priorities state "Continue evaluation and implementation of viable strategies in Moraga's Climate Action Plan to lessen the Town's impact on the environment;" and

WHEREAS, the proposed amendments to Moraga Municipal Code (MMC) are exempt from the California Environmental Quality Act (CEQA) under the "common sense" exception (CEQA Guidelines Section 15061[b][3]) because it can be seen with certainty

that there is no possibility that this action may have a significant effect on the environment; and

WHEREAS, the Town published a public hearing notice in the East Bay Times, a newspaper of general circulation, on December 24, 2021, to advertise the Planning Commission public hearing on January 4, 2022, in accordance with California Government Code Section 65091; and

WHEREAS, on January 4, 2022, at a duly noticed public hearing, the Planning Commission after consideration of all pertinent plans, documents, testimony and project information, considered the proposed amendments, received public testimony, and declared its intent to adopt a resolution recommending the Town Council adopt the proposed amendments by a vote of 7-0; and

WHEREAS, the Town published a public hearing notice in the East Bay Times, a newspaper of general circulation, on January 1, 2022, to advertise the Town Council public hearing on January 12, 2022, in accordance with California Government Code Section 65091; and

WHEREAS, on January 12, 2022, at a duly noticed public hearing, the Town Council, after consideration of all pertinent plans, documents, testimony, and project information, considered the proposed amendments, received public testimony, and declared its intent to adopt an Ordinance to amend the Moraga Municipal Code by a vote of 5-0; and

WHEREAS, the Town published two public hearing notices in the East Bay Times, a newspaper of general circulation, on January 13, 2022, and January 20, 2022, to advertise the Town Council public hearing on February 9, 2022, in accordance with California Government Code Section 65091.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MORAGA DOES ORDAIN AS FOLLOWS:

SECTION 1. The Town Council finds that the proposed amendments are exempt from the California Environmental Quality Act (CEQA) under the “common sense” exception (14 Cal. Code Regs. § 15061(b)(3)) because it can be seen with certainty that there is no possibility that this action may have a significant effect on the environment.

SECTION 2. Pursuant to Moraga Municipal Code Section 8.12.100, the Town Council hereby finds as follows:

- a. The change proposed is consistent with the objectives, policies, general land uses and programs specified in the general plan** in that the General Plan has policies that reflect a strong desire in the community to adopt regulations that further the Town’s Environmental Conservation efforts. The following policies from the General Plan align with MWELO or SB 1383: OS2.7 Reintroduction of Native Plant Species. Consider reintroduction into the natural environment of plant

species that are indigenous to the area and encourage programs to manage, reduce or eliminate the use and proliferation of non-native, invasive species. Encourage the use of native plant species in new landscaping plans; OS2.11 Recycling and Source Reduction. Enhance the long-term viability of natural resources and reduce the volume of material sent to solid waste sites by continuing source reduction and recycling programs, encouraging participation of all residents and businesses; OS3.7 Water Conservation Measures. Encourage water conservation in new building construction and retrofits, through measures such as low-flow toilets and drought-tolerant landscaping; OS3.8 Water Recycling. When and where feasible and appropriate, encourage the use of recycled water for landscape irrigation purposes.

In 2014 the Town of Moraga accepted the Climate Action Plan, a long term plan designed to reduce the community's greenhouse gas emissions, has a number of strategies that directly speak to MWELO: WW.1 Develop a local efficient landscape ordinance that exceeds the State's Model Water Efficient Landscape Ordinance; WW.2 Encourage water audits on remodels, new and existing businesses, and encourage installation of water conservation fixtures; WW.3 Encourage schools and Town to use Bay Friendly Landscaping; WW.4 Encourage Low Impact Development (LID); WW.5 Adopt a retrofit program to encourage installation of water conservation strategies in new and existing homes.

- b. **The change proposed is compatible with the uses authorized in, and the regulations prescribed for, the land use district which it is approved** in that the Ordinance applies to all zoning districts within the Town of Moraga. The Model Water Efficient Landscape Ordinance will be compatible and applicable with all authorized land uses within the Town.
- c. **A community need is demonstrated for the changes proposed** in that on April 1, 2015, Governor Jerry Brown issued Executive Order (EO) -B-29-15 and proclaimed a State of Emergency to exist throughout the State of California due to ongoing drought conditions, ordering mandatory actions by the State Water Resources Control Board (Water Board) to reduce water usage by 25% statewide from 2013 levels, increase enforcement to prevent water waste, and streamline government review of and response to drought-related measures. Town Council accepted the Executive Order as it is consistent with the 2002 General Plan policies and accepted Moraga Climate Action Plan (CAP) in October 2014. The CAP expressed the interest of the Town to reduce its carbon footprint and reduce water usage. MWELO is the mechanism of choice for one of the methods taken by Moraga to reduce water usage.
- d. **The adoption of the Ordinance will be in conformity with public convenience, general welfare, and good zoning practice** in that the proposed Ordinance will create a more water efficient community. By developing water efficient landscaping in all zoning districts in the Town of Moraga, our community reduces water usage as a Town. This will reduce the impact of Moraga on the surrounding

communities and the State of California. MWELO also helps protect the health, safety and wellness of the Town of Moraga and its residents.

SECTION 3. The Town Council adopts the following section of Chapter 8.178, “Model Water Efficient Landscape” within Title 8, “Planning and Zoning” of the Moraga Municipal Code as follows:

8.178.010 Purpose.

The purpose of this chapter is to meet the requirements of Title 23, Division 2, Chapter 2.7 of the California Code of Regulations and Section 65595 of the California Government Code, in accord with Governor’s Executive Order Number B-29-15 adopted on April 1, 2015. This chapter encourages water conservation through the use of water efficient landscaping design and irrigation practices consistent with the requirements of the state of California.

8.178.020 State Model Water Efficient Landscape Ordinance adopted by reference in its entirety.

The Model Water Efficient Landscape Ordinance of the state of California, as contained in the California Code of Regulations Title 23, Waters, Division 2, Department of Water Resources, Chapter 2.7, Model Water Efficient Landscape Ordinance, and as amended from time to time by the State of California, is hereby adopted by reference as the Water Efficient Landscape Ordinance of the Town of Moraga. A copy of the California State Model Water Efficient Landscaping Ordinance has been filed with the Town Clerk and the Ordinance is adopted by reference in its entirety as if incorporated and set out in full in this chapter.

8.178.030 Stormwater Management.

Proposed landscape and irrigation plans shall comply with all state requirements of the stormwater control plan (C.3) and the National Pollutant Discharge Elimination System (NPDES) intended to implement stormwater best management practices into the planting, irrigation, and grading plans to minimize runoff and to increase on-site retention and infiltration.

8.178.040 Compliance with MWELO

- (a) Property owners or their building or landscape designers, including anyone requiring a building or planning permit, plan check, or landscape design review from the Jurisdiction, who are constructing a new (Single-Family, Multi-Family, public, Institutional, or Commercial) project with a landscape area greater than 500 square feet, or rehabilitating an existing landscape with a total landscape area greater than 2,500 square feet, shall comply with Sections 492.6(a)(3)(B) (C), (D), and (G) of the MWELO, including sections related to use of compost and mulch as provided in this section.

- (b) The following compost and mulch use requirements that are part of the MWELo are now also included as requirements of this Ordinance. Other requirements of the MWELo are in effect as adopted by reference in section 8.178.020.
- (c) Property owners or their building or landscape designers that meet the threshold for MWELo compliance outlined in subsection (a) above shall:
 - (1) Comply with Sections 492.6 (a)(3)(B)(C),(D) and (G) of the MWELo, which requires the submittal of a landscape design plan with a soil preparation, mulch, and amendments section to include the following:
 - (A) For landscape installations, compost at a rate of a minimum of four cubic yards per 1,000 square feet of permeable area shall be incorporated to a depth of six (6) inches into the soil. Soils with greater than six percent (6%) organic matter in the top six (6) inches of soil are exempt from adding compost and tilling.
 - (B) For landscape installations, a minimum three- (3-) inch layer of mulch shall be applied on all exposed soil surfaces of planting areas except in turf areas, creeping or rooting groundcovers, or direct seeding applications where mulch is contraindicated. To provide habitat for beneficial insects and other wildlife up to five percent (5%) of the landscape area may be left without mulch. Designated insect habitat must be included in the landscape design plan as such.
 - (C) Organic mulch materials made from recycled or post-consumer materials shall take precedence over inorganic materials or virgin forest products unless the recycled post-consumer organic products are not locally available. Organic mulches are not required where prohibited by local fuel modification plan guidelines or other applicable local ordinances.
 - (2) The MWELo compliance items listed in this Section are not an inclusive list of MWELo requirements; therefore, property owners or their building or landscape designers that meet the threshold for MWELo compliance outlined in Section 14(a) shall consult the full MWELo for all requirements.
- (d) If, after the adoption of this ordinance, the California Department of Water Resources, or its successor agency, amends 23 CCR, Division 2, Chapter 2.7, Sections 492.6(a)(3)(B) (C), (D), and (G) of the MWELo requirements in a manner that requires jurisdictions to incorporate the requirements of an updated MWELo in a local Ordinance, and the amended requirements include provisions more stringent than those required in this Section, the revised requirements of 23 CCR, Division 2, Chapter 2.7 shall be enforced.

END OF CHAPTER

SECTION 4. Effective Date. This Ordinance becomes effective thirty (30) days after its final passage and adoption.

SECTION 5. Publication. The Clerk shall publish this Ordinance in accordance with the law.

SECTION 6. Severability. If any provision of the Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or applications of the Ordinance. To this end, the provisions of this Ordinance are severable. This Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

The foregoing Ordinance was introduced at a regular meeting of the Town Council of the Town of Moraga, California, held on January 12, 2022, and was adopted and ordered published at a regular meeting of the Town Council held on February 9, 2022 by the following vote:

AYES: Mayor Sos, Vice Mayor Woehleke, Councilmembers Makker,
McCluer and Onoda

NOES: None

ABSTAIN: None

ABSENT: None

AFFIRMED:

Renata M. Sos, Mayor

ATTEST:

Marty C. McInturf, Town Clerk