

ORDINANCE NO. 2010-1

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
NEWPORT BEACH, CALIFORNIA, AMENDING IN ITS
ENTIRETY CHAPTER 14.17 OF TITLE 14 OF THE
NEWPORT BEACH MUNICIPAL CODE REGULATIONS
PERTAINING TO WATER-EFFICIENT LANDSCAPING
REGULATIONS**

WHEREAS, the State Legislature has found that the continuation of California's economic prosperity is dependent on the availability of adequate supplies of water for future uses; and

WHEREAS, it is the policy of the State to promote the conservation and efficient use of water and to prevent the waste of this valuable resource; and

WHEREAS, landscapes are essential to the quality of life in California by providing *areas for active and passive recreation and as an enhancement to the environment* by cleaning air and water, preventing erosion, offering fire protection, and replacing ecosystems lost to development; and

WHEREAS, landscape design, installation, maintenance, and management can and should be water efficient; and

WHEREAS, Article X, Section 2 of the California Constitution specifies that the right to use water is limited to the amount reasonably required for the beneficial use to be served, and the right does not and shall not extend to waste or unreasonable method of use of water; and

WHEREAS, the City finds that: the average rainfall in Orange County is approximately 12 inches per year; and

WHEREAS, Orange County has an established, large reclaimed water infrastructure system; and

WHEREAS, current local area design practices in new landscapes typically achieve the State Model Water Efficient Landscape Ordinance water use goals; and

WHEREAS, incentive-based water use efficiency programs have been actively implemented within Orange County since before 1991; and

WHEREAS, the City has further found that all water services within the City are metered; and

WHEREAS, the City is implementing enforcement of water waste prohibitions for all existing metered landscaped areas within its jurisdiction; and

WHEREAS, it is required that the City adopt a Water Efficient Landscape Ordinance “as least as effective as” the State Model Ordinance or implement the State Model Ordinance by January 1, 2010; and

WHEREAS, the City has drafted an ordinance incorporating the minimum requirements of and which is “at least as effective as” the State Model Ordinance; and

WHEREAS, this agenda item has been noticed in accordance with the Ralph M. Brown Act (72 hours in advance of the public meeting). The item appeared upon the agenda for this meeting which was posted at City Hall and on the City website.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, HEREBY ORDAINS AS FOLLOWS:

SECTION 1: Chapter 14.17 of Title 14 of the Newport Beach Municipal Code is hereby amended in its entirety to read as follows:

CHAPTER 14.17: WATER EFFICIENT LANDSCAPING

- 14.17.005: Purpose
- 14.17.010: Definitions
- 14.17.020: Applicability
- 14.17.030: Landscape Water Use Standards
- 14.17.040: Implementation Procedures

14.17.005: Purpose

The purpose of the City’s Water Efficient Landscape Ordinance and related Design Standards document is to establish an alternative model acceptable under AB 1881 (2006) as being at least as effective as the State Model Water Efficient Landscape Ordinance, in order to:

- (1) promote the benefits of consistent landscape ordinances with neighboring local and regional agencies;
- (2) promote the values and benefits of landscapes while recognizing the need to invest water and other resources as efficiently as possible;

- (3) establish a structure for planning, designing, installing, and maintaining and managing water efficient landscapes in new construction and rehabilitated projects;
- (4) establish provisions for water management practices and water waste prevention for existing landscapes;
- (5) use water efficiently without waste by setting a Maximum Applied Water Allowance as an upper limit for water use and reduce water use to the lowest practical amount;
- (6) encourage the use of economic incentives that promote the efficient use of water.

14.17.010: Definitions

For the purposes of this chapter, the following words and phrases shall have the meaning set forth in this section.

(a) **Applied water:** the portion of water supplied by the irrigation system to the landscape.

(b) **Budget-based tiered-rate structure:** tiered or block rates for irrigation accounts charged by the retail water agency in which the block definition for each customer is derived from lot size or irrigated area and the evapotranspiration requirements of landscaping.

(c) **Design Standards:** refers to the Design Standards for Implementation of the Water Efficient Landscape Ordinance which describes procedures, calculations, and requirements for landscape projects subject to this Water Efficient Landscape Ordinance.

(d) **Ecological restoration project:** a project where the site is intentionally altered to establish a defined, indigenous, historic ecosystem.

(e) **Estimated Applied Water Use (EAWU):** the average annual total amount of water estimated to be necessary to keep plants in a healthy state, calculated as provided in the Design Standards. It is based on the reference evapotranspiration rate, the size of the landscape area, plant water use factors, and the relative irrigation efficiency of the irrigation system.

(f) **ET adjustment factor or "ETAF":** is equal to the plant factor divided by the irrigation efficiency factor for a landscape project, as described in the Design Standards. The ETAF is calculated in the context of local reference evapotranspiration, using site-specific plant factors and irrigation efficiency factors that influence the amount of water that needs to be applied to the specific landscaped area. -- A combined plant mix with a site-wide

average plant factor of 0.5 (indicating a moderate water need) and average irrigation efficiency of 0.71 produces an ET adjustment factor of $(0.7) = (0.5/0.71)$, which is the standard of water use efficiency generally required by this Water Efficient Landscape Ordinance and the Design Standards, except that the ETAF for a special landscape area shall not exceed 1.0.

(g) **Hardscapes:** any durable material or feature (pervious and non-pervious) installed in or around a landscaped area, such as pavements or walls. Surface area of pools and other water features are considered part of the landscaped area and not considered hardscapes for purposes of this Water Efficient Landscape Ordinance.

(h) **Homeowner installed landscape:** any landscaping either installed by a private individual for a single family residence or installed by a licensed contractor hired by a homeowner. A homeowner, for purposes of this ordinance, is a person who occupies the dwelling he or she owns. This definition excludes speculative homes, which are not owner-occupied dwellings and which are subject under this ordinance to the requirements applicable to developer-installed residential landscape projects.

(i) **Irrigation efficiency:** the measurement of the amount of water beneficially used divided by the amount of water applied. Irrigation efficiency is derived from measurements and estimates of irrigation system characteristics and management practices. The minimum average irrigation efficiency for purposes of this Water Efficient Landscape Ordinance is 0.71. Greater irrigation efficiency can be expected from well designed and maintained systems. An average plant factor of 0.5 (indicating a moderate water need) and average irrigation efficiency of 0.71 produces an ET adjustment factor of $(0.7) = (0.5/0.71)$

(j) **Landscape Documentation Package:** the documents required to be provided to the City for review and approval of landscape design projects, as described in the Design Standards.

(k) **Landscape rehabilitation project:** any re-landscaping project that meets the criteria of Section 14.17.020 (Applicability), where the modified landscaped area is greater than 2,500 square feet (or 5,000 square feet for home owner installed) , is 50% of the total landscaped area, and the modifications are planned to occur within one year.

(l) **Landscaped area:** all the planting areas, *turf* areas, and *water features* (including pools, ponds, fountains, and any other water feature) in a Landscape Design Plan which are subject to and must be included in the *Maximum Applied Water Allowance* and *Estimated Applied Water Use* calculations. The *landscaped area* does not include footprints of buildings or structures, sidewalks, driveways, parking lots, decks, patios, gravel or stone walks, other *pervious* or *non-pervious hardscapes*, and other non-irrigated areas designated for non-development (e.g., open spaces and existing native vegetation).

(m) **Licensed professional:** a licensed landscape architect, California licensed landscape contractor, civil engineer, architect, or any other person authorized to design or construct a landscape pursuant to Sections 5500.1, 5615, 5641, 5641.1, 5641.2, 5641.3, 5641.4, 5641.5, 5641.6, 6701, 7027.5 of the California Business and Professions Code, Section 832.27 of Title 16 of the California Code of Regulations, and Section 6721 of the California Food and Agriculture Code.

(n) **Local water supplier:** any entity, including a public agency, city, county, or private water company that provides retail water service.

(o) **Maximum Applied Water Allowance (MAWA):** is the upper limit of annual applied water for the established landscaped area as specified in Section 2.2 of the Design Standards. It is based upon the area's reference evapotranspiration, the ET Adjustment Factor, and the size of the landscaped area. The Estimated Applied Water Use shall not exceed the Maximum Applied Water Allowance.

(p) **Ministerial Permit:** an authorizing document issued by the City of Newport Beach Building Department in conjunction with a landscape project which may include, but is not limited to: grading, pools, spas, fountains, ponds, retaining walls, fences and walls, shade structures, trellis structures, barbecues, outdoor fireplaces, etc.

(q) **New landscape installation project:** a landscape installed in conjunction with any type of new development, whether or not the new development includes construction of new building(s). (Examples of a new development not associated with a new building could include parks, playgrounds, greenbelts).

(r) **Non-pervious:** any surface or natural material that does not allow for the passage of water through the material and into the underlying soil.

(s) **Pervious:** any surface or material that allows the passage of water through the material and into the underlying soil.

(t) **Plant factor or plant water use factor:** is a factor, when multiplied by ETo, which estimates the amount of water needed by plants. For purposes of this Water Efficient Landscape Ordinance, the plant factor range for low water use plants is 0 to 0.3; the plant factor range for moderate water use plants is 0.4 to 0.6; and the plant factor range for high water use plants is 0.7 (70%) to 1.0 (100%). Plant factors cited in this Water Efficient Landscape Ordinance are derived from the Department of Water Resources 2000 publication "Water Use Classification of Landscape Species."

(u) **Recycled water or reclaimed water:** a wastewater which, as a result of treatment, is suitable for non-potable uses not intended for human consumption such as landscape irrigation and water features.

(v) **Reference evapotranspiration or “ET_o”:** a standard measurement of environmental parameters which affect the water use of plants. ET_o is given expressed in inches per day, month, or year as represented in Appendix A of the Design Standards and is an estimate of the evapotranspiration of a large field of four-to seven-inch tall, cool-season grass that is well watered. Reference evapotranspiration is used as the basis of determining the Maximum Applied Water Allowances (MAWA).

(w) **Smart automatic irrigation controller:** an automatic timing device used to remotely control valves that operate an irrigation system and which schedules irrigation events using either evapotranspiration (weather-based) or soil moisture data.

(x) **Special Landscaped Area or SLA:** an area of the landscape dedicated solely to edible plants such as orchards and vegetable gardens, areas irrigated with *recycled water*, *water features* using *recycled water*, or areas dedicated to active play such as parks, sports fields, golf courses, or areas where *turf* provides a playing surface. These areas may have an ET adjustment factor (ETAF) to 1.0 (100%).

(y) **Turf:** a ground cover surface of mowed grass. Annual bluegrass, Kentucky bluegrass, Perennial ryegrass, Red fescue, and Tall fescue are cool-season grasses. Bermudagrass, Kikuyugrass, Seashore Paspalum, St. Augustinegrass, Zoysiagrass, and Buffalo grass are warm-season grasses.

(z) **Valve:** a device used to control the flow of water in an irrigation system.

(aa) **Water feature:** a design element where open water performs an aesthetic or recreational function. Water features include ponds, lakes, waterfalls, fountains, artificial streams, spas, and swimming pools (where water is artificially supplied). The surface area of water features is included in the high water use hydrozone of the landscaped area. Constructed wetlands used for on-site wastewater treatment, habitat protection or storm water best management practices that are not irrigated and used solely for water treatment or storm water retention are not water features and, therefore, are not subject to the water budget calculation.

14.17.020: Applicability.

- (a) All planting, irrigation, and landscape-related improvements required by this Water Efficient Landscape Ordinance shall apply to the following:
 - (1) New landscape installations or landscape rehabilitation projects by public agencies or private non-residential developers with a landscaped area (see definition) equal to or greater than 2,500 square feet, and which are otherwise subject to a discretionary approval of a landscape plan, or which otherwise require a ministerial permit for a landscape or water feature;

- (2) New landscape installations or landscape rehabilitation projects by developers or property managers of single-family and multi-family residential projects or complexes with a landscaped area (see definition) equal to or greater than 2,500 square feet, and which are otherwise subject to a discretionary approval of a landscape plan, or which otherwise require a ministerial permit for a landscape or water feature;
 - (3) New landscape installation projects or landscape rehabilitation projects installed by individual homeowners on single-family or multi-family residential lots with a total project landscaped area (see definition) equal to or greater than 5,000 square feet and which are otherwise subject to a discretionary approval of a landscape plan, or which otherwise require a ministerial permit for a landscape or water feature;
 - (4) New landscape installation projects or landscape rehabilitation projects installed at cemeteries shall be subject to the following sections of the Design Standards: Sections 2.2: Water Efficient Landscape Calculations and Alternatives, 2.8 Post-Installation Irrigation Scheduling, and 2.9 Post-Installation Landscape and Irrigation Maintenance, but shall not require a Landscape Design Package (Design Standards: Section 2.1).
- (b) This Water Efficient Landscape Ordinance does not apply to:
- (1) landscape rehabilitation projects that consist of replacement plantings with equal or lower water needs and the irrigation system is designed, operable and programmed to comply with the City's water conservation regulations;
 - (2) registered local, state, or federal historical sites;
 - (3) ecological restoration projects that do not require a permanent irrigation system;
 - (4) plant collections, as part of botanical gardens and arboretums open to the public; or
 - (5) landscape in Hazard Reduction and Fuel Modification Zones, where applicable.
- (c) Section 14.17.030(b) of the of the Landscape Water Use Standards of this Water Efficient Landscape Ordinance (requiring compliance with the City's Water Conservation Ordinance) shall apply to:

- (1) All landscaped areas, whether installed prior to (existing landscapes) or after adoption of this ordinance.

14.17.030: Landscape Water Use Standards.

- (a) For new landscape installation or rehabilitation projects subject to Section 14.17.020) (Applicability) of this Water Efficient Landscape Ordinance, the Estimated Applied Water Use allowed for the landscaped area shall not exceed the MAWA calculated using an ET adjustment factor of 0.7, except for special landscaped areas where the MAWA is calculated using an ET adjustment factor of 1.0; or the design of the landscaped area shall otherwise be shown to be equivalently water-efficient in a manner acceptable to the City; as provided in the Design Standards.
- (b) Irrigation of all landscaped areas shall be conducted in a manner conforming to the rules and requirements, and shall be subject to penalties and incentives for water conservation and water waste prevention, as determined and implemented by the City's Water Conservation Ordinance (NBMC Chapter 14.16).

14.17.040: Implementation Procedures.

- (a) A Landscape Documentation Package shall be submitted to the City for review and approval of all landscape projects subject to the provisions of this Water Efficient Landscape Ordinance. Any Landscape Documentation Package submitted to the City shall comply with the provisions of the Design Standards.
- (b) The Landscape Documentation Package shall include a Certification of Design by a professional appropriately licensed in the State of California stating that the landscape design and water use calculations have been prepared by or under the supervision of the licensed professional and are certified to be in compliance with the provisions of this Water Efficient Landscape Ordinance and the Design Standards.
 - (1) Landscape and irrigation plans shall be submitted to the City for review and approval with appropriate water use calculations. Water use calculations shall be consistent with the procedures and calculations provided in the Design Standards document.
 - (2) Verification of compliance of the landscape installation with the approved plans shall be obtained through a Certification of Completion which shall be submitted to the City prior to final of the

permit, per the procedures provided in the Design Standards document.

SECTION 2: The City Council hereby determines that this Ordinance is exempt from review under the California Environmental Quality Act (CEQA) (California Public Resources Code Section 21000 et seq.), because pursuant to State CEQA Regulation 15307 (14 Cal. Code Regs., § 15307), this Ordinance is covered by the CEQA Categorical Exemption for actions taken to assure the maintenance, restoration, enhancement, or protection of a natural resource where the regulatory process involves procedures for protection of the environment. The adoption of this Ordinance will result in the enhancement and protection of water resources in the City, and will not result in cumulative adverse environment impacts. It is therefore exempt from the provisions of CEQA. The City Council hereby directs the City Manager or designee to prepare and file a Notice of Exemption as soon as possible following adoption of this Ordinance .

SECTION 3: If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

SECTION 4: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the same to be published once in the official newspaper of the City, and it shall be effective thirty (30) days after its adoption.

SECTION 5: This Ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 26th day of January, 2010, and adopted on the 9th day of February, 2010, by the following vote, to wit:

AYES, COUNCIL MEMBERS Salich, Rosansky, Henn, Webb, Gardner, Daigle, Mayor Curry

NOES, COUNCIL MEMBERS None

ABSENT, COUNCIL MEMBERS None



Keith D. Curry, Mayor

ATTEST:

Leilani L. Brown

Leilani Brown, City Clerk
APPROVED AS TO FORM,
OFFICE OF CITY ATTORNEY:



David R. Hunt 1-26-10

David R. Hunt, City Attorney
For the City of Newport Beach

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Ordinance No. 2010-1 was duly and regularly introduced on the 26th day of January, 2010, and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 9th day of February, 2010, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Selich, Rosansky, Henn, Webb, Gardner, Daigle, Mayor Curry

Noes: None

Absent: None

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 10th day of February, 2010.



(Seal)

Leilani I. Brown
City Clerk
City of Newport Beach, California

CERTIFICATE OF PUBLICATION

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, LEILANI I. BROWN, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2010-1 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in *The Daily Pilot*, a daily newspaper of general circulation on the following dates:

Introduced Ordinance: January 30, 2010
Adopted Ordinance: February 13, 2010

In witness whereof, I have hereunto subscribed my name this 22nd day of February 2010.

Leilani I. Brown
City Clerk
City of Newport Beach, California

