

ORDINANCE NO. 2016-180

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAGUNA NIGUEL, CALIFORNIA, AMENDING THE WATER EFFICIENT LANDSCAPING REGULATIONS

The City Council of the City of Laguna Niguel does ordain as follows:

SECTION 1. Article 3.

Article 3 (Water Efficient Landscaping Regulations) of Division 5 (Water Conservation) of Title 6 (Health and Sanitation) of the Laguna Niguel Municipal Code is hereby amended to read as follows:

Sec. 6-5-40. Purpose and Intent.

(a) The State Legislature has found that:

- (1)** The waters of the State are of limited supply and are subject to ever increasing demands;
- (2)** The continuation of California's economic prosperity is dependent on the availability of adequate supplies of water for future uses;
- (3)** 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;
- (4)** 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;
- (5)** Landscape design, installation, maintenance, and management can and should be water efficient; and
- (6)** 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.

(b) The City Council finds and determines that:

- (1)** The City has an established reclaimed water infrastructure system for landscape use, that reduces the need for importation of potable water supplies;

- (2) All water services within the City are metered and billed based on volume of use;
- (3) Incentive-based water use efficiency programs have been actively implemented within the City;
- (4) Current local design practices in new landscapes strive to achieve the intent of the State Model Water Efficient Landscape Ordinance water use goals;
- (4) Orange County is a leader in researching and promoting the use of smart automatic irrigation controllers with more than 12,900 installations as of June 2009;
- (5) All new irrigation controllers sold after 2012 within Orange County will be smart controllers that automatically adjust watering based on actual need;
- (6) Landscape plan submittal and review has been a long-standing practice in the City of Laguna Niguel;
- (7) The rainfall in the City averages approximately 12 inches per year and does not reliably offset the need for landscape irrigation; and,
- (8) The local water purveyor is implementing budget-based tiered-rate billing and enforcement of water waste prohibitions for all existing metered landscaped areas throughout its service area, which includes the City of Laguna Niguel in its entirety.

(c) Consistent with these findings, the purpose of the City's Water Efficient Landscaping Regulations is to establish alternative regulations acceptable under Governor Brown's April 1, 2015 Drought Executive Order (B-19-25) as being at least as effective as the State Model Water Efficient Landscape Ordinance in the context of conditions in the City, in order to:

- (1) Benefit from regulations that are consistent 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, 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; and
- (6) Encourage the use of economic incentives that promote the efficient use of water, including but not limited to a budget-based tiered-rate structure, providing rebate incentives and offering educational programs.

Sec. 6-5-41. Applicability.

- (a) Beginning February 1, 2016, and consistent with Executive Order No. B-29-14, the Water Efficient Landscaping Regulations shall apply to the following landscape projects:
 - (1) New landscape projects with an aggregate landscape area equal to or greater than 500 square feet, requiring a building or landscape permit, plan check and which are otherwise subject to design review and approval of a landscape plan pursuant to a discretionary permit (e.g., site development permit, coastal development permit, variance, use permit, minor adjustment and/or changed plan);
 - (2) Rehabilitated Landscape projects with an aggregate landscape area equal to or greater than 2,500 square feet, requiring a building or landscape permit, plan check and which are otherwise subject to design review and approval of a landscape plan pursuant to a discretionary permit (e.g., site development permit, coastal development permit, variance, use permit, minor adjustment and/or changed plan);
 - (3) New or rehabilitated landscape projects with an aggregate landscape area of 2,500 square feet or less may comply with the performance requirements of this ordinance or conform to the prescriptive measures contained in Appendix A of the Guidelines; and,
 - (4) New or rehabilitated landscape projects using treated or untreated graywater or rainwater capture on site, any lot or parcels within the project that has less than 2,500 square feet of landscape area and meets the lot or parcel's landscape water requirement (Estimated Total Water Use) entirely with the treated or untreated graywater or though stored rainwater capture on site is subject only to Appendix A of the Guidelines.

- (b) Section 6-5-43(b) of the Landscape Water Use Standards of these Water Efficient Landscaping Regulations shall apply to:
 - (1) All landscaped areas, whether installed prior to or after January 1, 2010; and
 - (2) All landscaped areas installed after February 1, 2016 to which Section 6-5-41(a) is applicable.
- (c) These Water Efficient Landscaping Regulations do not apply to:
 - (1) Registered local, state, or federal historical sites;
 - (2) Ecological restoration projects that do not require a permanent irrigation system;
 - (3) Mined-land reclamation projects that do not require a permanent irrigation system; or
 - (4) Plant collections, as part of botanical gardens and arboretums open to the public.

Sec. 6-5-42. Implementation Procedures.

- (a) The City shall adopt, by resolution, Guidelines for implementation to assure compliance with these Water Efficient Landscaping Regulations.

Sec. 6-5-43. Landscape Water Use Standards.

- (a) For applicable landscape installation or rehabilitation projects subject to Section 6-5-41(a) of this Water Efficient Landscaping Regulations, the Estimated Applied Water Use allowed for the landscaped area shall not exceed the MAWA calculated using an ET adjustment factor of 0.55 for residential areas and 0.45 for non-residential areas, 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 Guidelines.
- (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 local water purveyor or as mutually agreed by the local water purveyor and the local agency.

Sec. 6-5-44. Delegation.

The City may delegate to, or enter into a contract with, another local agency, water purveyor, or other contractor to implement, administer, and/or enforce any of the provisions of the Water Efficient Landscape Regulations on behalf of the City.

Sec. 6-5-45. Definitions.

The following definitions are applicable to Article 3:

“*Aggregate landscape areas*” pertains to the areas undergoing development as one project or for production home neighborhoods or other situations where multiple parcels are undergoing development as one project, but will eventually be individually owned.

“*Applied water*” means the portion of water supplied by the irrigation system to the landscape.

“*Budget-based tiered-rate structure*” means 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.

“*Ecological restoration project*” means a project where the site is intentionally altered to establish a defined, indigenous, historic ecosystem.

“*Estimated Applied Water Use*” means the average annual total amount of water estimated to be necessary to keep plants in a healthy state, calculated as provided in the *Guidelines*. 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.

“*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 *Guidelines*. 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 0.39 (indicating a low to moderate water need) and average irrigation efficiency of 0.71 produces an *ET adjustment factor* of $(0.55) = (0.39/0.71)$, which is the standard of water use efficiency generally required by this Water Efficient Landscape Ordinance and the *Guidelines* for residential landscapes. A site-wide average plant factor of 0.39 (indicating a low to moderate water need) and average irrigation efficiency of 0.71 produces an *ET adjustment factor* of $(0.45) = (0.32/0.71)$ for non-residential landscapes. The *ETAF* for a *special landscape area* shall not exceed 1.0. The *ETAF* for existing non-rehabilitated landscapes is 0.8.

“*Guidelines*” refers to the Guidelines for Implementation of the Water Efficient Landscape Ordinance, as adopted by the City, which describes procedures, calculations, and requirements for landscape projects subject to this Water Efficient Landscape Ordinance.

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

“*Irrigation efficiency*” means 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 *irrigation efficiency* for purposes of this Water Efficient Landscape Ordinance are 0.75 for overhead spray devices and 0.81 for drip systems.

“*Landscaped area*” means all the planting areas, turf areas, and water features in a landscape design plan subject to 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).

“*Landscape contractor*” means a person licensed by the State of California to construct, maintain, repair, install, or subcontract the development of landscape systems.

“*Landscape Documentation Package*” means the documents required to be provided to the City for review and approval of landscape design projects, as described in the *Guidelines*.

“*Landscape project*” means total area of landscape in a project, as provided in the definition of “*landscaped area*,” meeting the requirements under Section 6-5-41 of this Water Efficient Landscape Ordinance.

“*Local agency*” means a city or county, including a charter city or charter county, that is authorized to implement, administer, and/or enforce any of the provisions of the Water Efficient Landscape Ordinance. The *local agency* may be responsible for the enforcement or delegation of enforcement of this Water Efficient Landscape Ordinance including, but not limited to, design review and approval of a landscape plan pursuant to a discretionary permit, plan check, issuance of permits, and inspection of a landscape project.

“*Local water purveyor*” means any entity, including a public agency, city, county, or private water company that provides retail water service.

“*Maximum Applied Water Allowance*” or “*MAWA*” means the upper limit of annual *applied water* for the established *landscaped area* as specified in the *Guidelines*. 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*. MAWA = (ETo) (0.62) [(ETAF x LA) + ((1-ETAF) x SLA)].

“Mined-land reclamation projects” means any surface mining operation with a reclamation plan approved in accordance with the Surface Mining and Reclamation Act of 1975.

“New construction” means a new building with a landscape, or other new landscape such as a park, playground, or greenbelt without an associated building.

“Non-pervious” means any surface or natural material that does not allow for the passage of water through the material and into the underlying soil.

“Pervious” means any surface or material that allows the passage of water through the material and into the underlying soil.

“Permit” means an authorizing document issued by local agencies for *new construction* or *rehabilitated landscape*.

“Plant factor” or *“plant water use factor”* is a factor, when multiplied by *ETo*, that estimates the amount of water needed by plants. For purposes of this Water Efficient Landscape Ordinance, the *plant factor* range for very low water use plants is 0 to 0.1; the *plant factor* range for low water use plants is 0.1 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 to 1.0. *Plant factors* cited in this Water Efficient Landscape Ordinance are derived from the publication “Water Use Classification of Landscape Species.” *Plant factors* may also be obtained from horticultural researchers from academic institutions or professional associations as approved by the California Department of Water Resources (DWR).

“Recycled water” or *“reclaimed water”* means treated or recycled waste water of a quality suitable for non-potable uses such as landscape irrigation and *water features*. This water is not intended for human consumption.

“Reference evapotranspiration” or *“ETo”* means a standard measurement of environmental parameters which affect the water use of plants. *ETo* is given expressed in inches per day, month, or year as represented in Appendix D of the *Guidelines*, 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*.

“Rehabilitated landscape” means any re-landscaping project that meets the applicability criteria of Section 6-5-41(a), where the modified landscape area is equal to or greater than 2,500 square feet.

“Smart irrigation controller” means an automatic irrigation controllers utilizing either evapotranspiration or soil moisture sensor data with non-volatile memory shall be required for irrigation scheduling in all irrigation systems, recommending U.S. EPA WaterSense labeled devices as applicable.

“Special landscape area” means an area of the landscape dedicated solely to edible plants such as orchards and vegetable gardens; an area irrigated with *recycled water*; a *water feature* using *recycled water*, and a recreational area dedicated to active play such as parks, sports fields, golf courses, swimming pools and where *turf* provides a playing surface.

“Turf” means 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.

“Valve” means a device used to control the flow of water in an irrigation system.

“Water feature” means 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.

SECTION 2. California Environmental Quality Act (CEQA).

Pursuant to the California Environmental Quality Act (CEQA), the State CEQA Guidelines and the City's Environmental Review Guidelines, the City Council of the City of Laguna Niguel hereby finds 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. Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court or competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each section, subsection, subdivision, sentence, clause, phrases, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof, be declared invalid or unconstitutional.

SECTION 4. Effective Date.

This Ordinance shall go into effect and be in full force and operation on February 1, 2016.

SECTION 5. City Clerk's Certification.

The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duty designated posting places within the City and published once within fifteen (15) days after passage and adoption as required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance in the Office of the City Clerk five (5) days prior to the date of adoption of this Ordinance, and, within fifteen (15) days after adoption, the City Clerk shall cause to be published the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

PASSED, APPROVED, AND ADOPTED this 19th day of January, 2016.

Laurie Davies, Mayor

ATTEST:

Eileen C. Gomez, City Clerk