



CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE BY ADDING CHAPTER 18.01 (WATER EFFICIENT LANDSCAPING ORDINANCE), TO COMPLY WITH THE STATE REQUIREMENT TO PROMOTE WATER CONSERVATION AND EFFICIENT USE OF WATER IN LANDSCAPING; AND ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS

WHEREAS, the State of California has established provisions to promote water conservation and efficient use of water in landscaping through the Model Water Efficient Landscape Ordinance (WELO) as amended September 15, 2015; and

WHEREAS, Senate Bill (SB) 1383, the Short-Lived Climate Pollutant Reduction Act of 2016 (SB 1383), which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the State of California Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the State of California Public Resources Code, established methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants, and is implemented by the regulations of the California Department of Resources, Recycling and Recovery (CalRecycle) to achieve the goals of SB 1383; and

WHEREAS, CalRecycle created Chapter 12 of Title 14, Division 7 of the California Code of Regulations (CCR) and amended portions of regulations of Title 14 CCR and Title 27 CCR and as set forth in 14 CCR, Section 18989.2. These new regulations were finalized by CalRecycle in November 2020 and take effect in January 2022 (SB 1383 Regulations). The SB 1383 Regulations require jurisdictions to adopt an ordinance or other enforceable mechanism that requires compliance with Sections 492.6(a)(3)(B) (C), (D), and (G) of the WELO; and

WHEREAS, the State requires local agencies such as the City of Oakland to adopt, implement and enforce the WELO or a more stringent ordinance; and

WHEREAS, this Ordinance is adopted pursuant to CalRecycle's SB 1383 Regulations. The SB 1383 Regulations were the subject of a program environmental impact report (EIR) prepared by CalRecycle under the California Environmental Quality Act (CEQA). The activities to be carried out under this Ordinance are entirely within the scope of the SB 1383 Regulations and that EIR. No mitigation measures identified in the EIR are applicable to the City of Oakland's enactment of this Ordinance. Moreover, none of the conditions requiring a subsequent or

supplemental EIR, as described in CEQA, at Public Resources Code Section 21166 and its regulations at 14 CCR Sections 15162 and 15163, have occurred. The EIR therefore adequately analyzes any potential environmental effects of the Ordinance and no additional environmental review is required. On a separate and independent basis, the Ordinance is exempt from CEQA pursuant to Section 15308, Class 8 of the CEQA Guidelines as an action that will not have a significant impact on the environment and as an action taken by a regulatory agency for the protection of the environment, specifically, for the protection of the climate. There are no unusual circumstances that would cause this Ordinance to have a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Amend Oakland Municipal Code. Chapter 18.01, entitled “Water Efficient Landscaping Ordinance” is hereby adopted and added to Oakland Municipal Code to read as follows (section numbers and titles are indicated in bold type; additions are indicated by underscoring and deletions are indicated by strike-through).

18.01.010 Title.

This Chapter shall be known as the "Water Efficient Landscaping Ordinance" and is referred to herein in this chapter as the "WELO." The full California State Model Water Efficient Landscape Ordinance, can be found at: [https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I55B69DB0D45A11DEA95CA4428EC25FA0&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)&bhcp=1](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I55B69DB0D45A11DEA95CA4428EC25FA0&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)&bhcp=1) A copy of the 2015 WELO will be maintained on file in the office of the City Clerk.

18.01.020 Purpose and intent.

The City of Oakland is required to enforce the State WELO through the Building Permit plan review process. WELO establishes many landscape and irrigation water conservation techniques. This Chapter is intended to promote economic development and enhance the health, safety, and welfare of its residents, workers, and visitors through the integration of environmentally sustainable water strategies in landscapes in Oakland. The minimum standards in the WELO are intended to minimize the use of water and maximize the healthfulness of landscapes and promote drought-tolerant landscaping and prudent water use.

18.01.030 WELO Adoption

The 2015 edition of the State Model Water Efficient Landscaping Ordinance as published by the State of California is adopted as the City of Oakland's Water Efficient Landscaping Ordinance, as if fully set out in this chapter, and as amended from time to time.

18.01.040 Definitions:

“WELO” means the Model Water Efficient Landscape Ordinance, Title 23, Division 2, Chapter 2.7 of the California Code of Regulations as amended September 15, 2015, and as amended, supplemented, superseded, and replaced from time to time.

All definitions contained in the WELO are adopted as if fully set out in this chapter, and as amended from time to time.

18.01.050 Scope and applicability.

This Chapter establishes the scope and applicability of the WELO.

On December 1, 2015, the State of California Revision to the Model Water Efficient Landscape Ordinance became effective for new construction projects with total landscape area equal to or greater than 500 square feet in size and rehabilitated landscape projects with total landscape area of 2,500 square feet or larger.

WELO applies to any single family or multi-family residential, commercial, industrial and institutional projects that require a permit, plan check, or design review **and** that meet the following size thresholds:

a. New construction projects with total landscape area equal to or greater than 500 square feet in size.

b. Rehabilitated landscape projects with total landscape area of 2,500 square feet or larger.

The City’s Department Planning and Building Department will be the administrative entity for these requirements.

WELO requires affected project applicants to submit a signed landscape documentation package along with their permit application. After the permit is approved and the landscape installed, the project applicant must submit a certificate of completion with required information.

The City of Oakland additionally requires project applicants for civic, multifamily, and commercial landscape projects to meet the three Bay Friendly Basics practices which are not in the current WELO as follows:

1. Divert construction and demolition debris, excavated soil spoils and land clearing debris in compliance with OMC 15.34, Construction and Demolition Waste Reduction and Recycling Ordinance.

2. Choose and locate plants to grow to their natural size.

3. Do not plant invasive species listed by Cal-IPC's *Don't Plant A Pest* brochure.

18.01.060 Authority.

- A. General. The Green Building Compliance Officer is hereby authorized to enforce the provisions of this Chapter. The Green Building Compliance Officer may also adopt rules and regulations to implement this Chapter.
- B. Abatement of Violations. It shall be unlawful for any person, firm, or corporation to construct or renovate a landscape, subject to these requirements, in violation of this Chapter. In addition to the civil penalties provided by pursuant to Oakland Municipal Code Chapter 15.08, a violator shall be liable for such costs, expenses, accruing interest, and disbursements paid or incurred by the City or any of its contractors in correcting, abating, and/or prosecuting such violation pursuant to Oakland Municipal Code Section 15.08.110.
- C. Notification of Violations. A notice of violation under this Chapter shall be served in accordance with Oakland Municipal Code Section 15.08.110 B.
- D. Fees, Costs, Penalties and Interest. The fees and costs incurred and the civil penalties assessed and the interest accrued in ascertaining violations or affecting abatement thereof and in collecting such fees, costs, penalties, accruing interest, and attorneys' fees shall be a charge against the real property and record title holder. Such fees, costs, penalties, and accruing interest shall be as established in the Master Fee Schedule and may be recovered by all appropriate legal means, including nuisance abatement liens, prospective and priority liens, special assessments of the general tax levy, and civil and small claims court action brought by the City, and combinations of such actions.
- E. Service and Collection. The methods of service for collection actions and the types and contents of the instruments of collection shall be as set forth in Chapter 15.08 of the Oakland Municipal Code, as may be amended.

18.01.070 Conflict.

Wherever the provisions of this Chapter conflict with each other or with the provisions of other associated codes, regulations, or ordinances, the more restrictive provision or standard shall control, where consistent with state law.

18.01.080 Amendments.

Where any section, subsection, sentence, clause, phrase, or other part of this Chapter and the referenced law recited herein are amended subsequently, all provisions of the original recitation not so specifically amended shall remain in full force and effect and all amended provisions shall be considered as added thereto.

SECTION 2. California Environmental Quality Act (CEQA). The City Council finds that the ordinance reflects SB 1383 requirements and is adopted pursuant to CalRecycle's SB 1383 Regulations. The SB 1383 Regulations were the subject of a program EIR prepared by CalRecycle. The activities to be carried out under this ordinance is entirely within the scope of the SB 1383

Regulations and that EIR. No mitigation measures identified in the EIR apply to the City of Oakland's enactment of this ordinance. Moreover, none of the conditions requiring a subsequent or supplemental EIR have occurred as described in CEQA at Public Resources Code Section 21166 or the CEQA Guidelines at 14 CCR Sections 15162 and 15163. The EIR, therefore, adequately analyzes any potential environmental effects of the ordinances, and no additional environmental review is required.

On a separate and independent basis, the City Council finds, pursuant to the CEQA Guidelines, that this ordinance is categorically exempt in accordance with Section 15307 as an action taken by a regulatory agency as authorized by California law to assure maintenance or protection of natural resources; and in accordance with Section 15308 as an action taken by a regulatory agency as authorized by California law to assure maintenance or protection of the environment. The Council therefore directs that the City Administrator or their designee may file a Notice of Exemption with the Alameda County Clerk in accordance with CEQA.

SECTION 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 3. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS

NOES –
ABSENT –
ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Date of Attestation: _____

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE BY ADDING CHAPTER 18.02 (WATER EFFICIENT LANDSCAPING ORDINANCE), TO COMPLY WITH THE STATE REQUIREMENT TO PROMOTE WATER CONSERVATION AND EFFICIENT USE OF WATER IN LANDSCAPING; AND ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS

The State of California has established provisions to promote water conservation and efficient use of water in landscaping through the Model Water Efficient Landscape Ordinance (WELO) as amended September 15, 2015. Senate Bill (SB) 1383, the Short-Lived Climate Pollutant Reduction Act of 2016, established methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate, and, as implemented by the regulations of the California Department of Resources, Recycling and Recovery (CalRecycle), to achieve the goals of SB 1383, including adopting, implementing and enforcing the WELO or a more stringent ordinance. The City of Oakland is adopting the WELO pursuant to this requirement.