

Chapter 18.132 – HABITAT CONSERVATION

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18.132.010 – Purpose

- A. The purpose of this Chapter 18.132 is to implement the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan ("HCP/NCCP") and the associated implementing agreement and Take permits in order to provide a regulatory framework for promoting the protection and recovery of natural resources, including covered species, while streamlining the permitting process for both publicly funded and privately funded planned development in the City of Morgan Hill. The HCP/NCCP was developed by the County of Santa Clara, the Cities of Gilroy and Morgan Hill, the Santa Clara Valley Water District, and the Santa Clara Valley Transportation Authority (collectively the "local partners") under the guidance of the U.S. Fish and Wildlife Service and the California Department of Fish and Game, and in consultation with stakeholder groups and the general public.
- B. As a result of the adoption of the HCP/NCCP by the city, the city (among the other local partners) is the recipient of long-term endangered species permits/authorized Take coverage from the U.S. Fish and Wildlife Service and the California Department of Fish and Game for the city's own activities. In addition to coverage of its own public projects, the county will be able to extend authorized Take coverage to private project applicants under its jurisdiction.
- C. Rather than separately permitting and mitigating individual projects, the HCP/NCCP evaluates natural resource impacts and mitigation requirements comprehensively in a manner that is more efficient and effective for at-risk species and their essential habitats. This approach allows the city to streamline mitigation requirements into one comprehensive program. The Take coverage authorized by the U.S. Fish and Wildlife Service ("USFWS") and the California Department of Fish and Game ("CDFG") also provides assurances that no further commitments of funds, land, or water will be

required to address impacts on covered species beyond that described in the HCP/NCCP to address changed circumstances as long as the HCP/NCCP is properly implemented.

- D.** In addition to strengthening local control over land use and species protection, the HCP/NCCP provides a more efficient process for protecting natural resources by creating new habitat reserves that will be larger in scale, more ecologically valuable, and easier to manage than the individual mitigation sites created under the current approach. This more efficient and streamlined approach to obtaining authorized Take coverage for both public and private projects will significantly reduce the time and resources previously required to obtain Take coverage on an individual project-by-project basis. All covered activities that occur within the local plan area will be subject to applicable conditions and fees described in the HCP/NCCP unless the CDFG and USFWS have determined that the activity is not subject to, has already received the necessary take authorizations pursuant to, or has otherwise complied with federal and state endangered species laws, as verified by the implementing entity and described in Chapter 6.2 of the HCP/NCCP.

18.132.020 – Adoption of Habitat Conservation Plan/Natural Community Conservation Plan by Reference

The HCP/NCCP is incorporated by reference as though fully set forth herein. Complete copies of the HCP/NCCP are available for inspection at the City of Morgan Hill Community Development Agency.

18.132.030 – Definitions

The definitions set forth in this section shall govern the application and interpretation of this chapter. Words and phrases not defined in this section shall be interpreted so as to give this chapter its most reasonable application.

- A.** "Building permit" means a building permit for a building or structure, including a partial permit such as a foundation-only permit, or any other ministerial permit or approval for a project that authorizes a ground-disturbing activity for a covered activity.
- B.** "Covered activity" means any activity defined in Section 2.3 of Chapter 2 of the HCP/NCCP as a covered activity and not otherwise exempted from the requirements of the HCP/NCCP as provided in the HCP/NCCP.
- C.** "Covered species" means the species, listed and non-listed, whose conservation and management are provided for in the HCP/NCCP and for which incidental Take is authorized by the wildlife agencies pursuant to the Take permits. Covered species are also listed in Exhibit A to the implementing agreement.
- D.** "Habitat conservation plan/natural community conservation plan" or "HCP/NCCP"

means the Santa Clara Valley Habitat Conservation Plan/Natural Community Conservation Plan adopted by the board of supervisors on October 17, 2012, and any amendments thereto.

- E.** "Implementing agreement" means that agreement made and entered into by and among the United States Fish and Wildlife Service ("USFWS") of the United States Department of the Interior, the California Department of Fish and Game ("CDFG") of the State of California Natural Resources Agency, the Santa Clara Valley Habitat Agency (the "implementing entity"), the County of Santa Clara ("county"), the City of San Jose ("San Jose"), the City of Gilroy ("Gilroy"), the City of Morgan Hill ("Morgan Hill"), the Santa Clara Valley Water District ("water district"), and the Santa Clara Valley Transportation Authority ("VTA") that defines the parties' respective roles and responsibilities and provides a common understanding of actions that will be undertaken to implement the HCP/NCCP.
- F.** "Implementing entity" means the Santa Clara Valley Habitat Agency formed by and among the County of Santa Clara and the Cities of Gilroy, Morgan Hill, and San Jose pursuant to the Joint Powers Act, Government Code § 6500 et seq. ;p0;"Local plan area" means that portion of the geographic study area defined in the HCP/NCCP that lies within the City of Morgan Hill.
- G.** "Mitigation fees" or "fees" means any habitat plan fee(s) that applies to covered activities in the local plan area as adopted by the implementing entity in accordance with Chapter 9 of the HCP/NCCP and the fee studies in support thereof, and any amendments to those fees, unless otherwise exempted from the fee requirements of the HCP/NCCP by the implementing entity.
- H.** "Planning permit" means any discretionary permit or approval that authorizes a ground-disturbing activity for a covered activity including, but not limited to, a tentative subdivision map, parcel map, conditional use permit, architecture and site approval, building site approval, grading permit or any other discretionary permit, excluding general plan amendments, zoning and rezoning, annexation, specific plans, and area development policies.
- I.** "Project applicant" means any person or entity applying for a planning permit or building permit for a project authorizing a ground-disturbing activity for a covered activity, including any person or entity opting in to the HCP/NCCP pursuant to Chapter 6.2 of the HCP/NCCP.
- J.** "Take" and "Taking" have the same meaning provided by the Federal Endangered Species Act ("ESA") (16 U.S.C. §§ 1531-1544) and its implementing regulations with regard to activities subject to the ESA, and also have the same meaning provided in Section 86 of the California Fish and Game Code with regard to activities subject to the California Endangered Species Act ("CESA") (Fish & Game Code § 2050 et seq.), and

the California Natural Community Conservation Planning Act ("NCCPA") (Fish & Game Code §§ 2800-2835).

- K. "Take permits" means the federal incidental Take permit issued by USFWS to the implementing entity, the county, San Jose, Gilroy, Morgan Hill, the water district, and VTA (collectively, "permittees") based on the HCP/NCCP pursuant to Section 10(a)(1)(B) of the ESA, and the state incidental Take permit issued by CDFG to the permittees based on the HCP/NCCP pursuant to Section 2835 of the California Fish and Game Code.

18.132.040 – Application to Covered Activities

All project applicants for covered activities within the local plan area shall comply with the conditions on covered activities listed in Chapter 6 of the HCP/NCCP. Each planning permit application (or building permit application where no planning permit is required) for a covered activity in the local plan area shall include details of the methods and timing in which the project will comply with the HCP/NCCP in the form and manner required by the director of community and economic development (or any successor officer). Applicable conditions on covered activities from Chapter 6 of the HCP/NCCP as well as other measures required to implement the conservation strategy of the HCP/NCCP shall be included in each planning permit (or building permit where no planning permit is required) approval for a covered activity.

18.132.050 – Mitigation Fees

- A. As a condition of each planning permit (or building permit where no planning permit is required) for a covered activity in the local plan area, the mitigation fees shall be paid in full by the private project applicant to the city no later than the date of issuance by the city of a building permit. The mitigation fees shall be paid to the city at the time of issuance of the first building permit if more than one building permit is required for the project. These mitigation fees are in addition to any fees that may be charged by the city for processing building permits and planning permits.
- B. If the implementing entity authorizes another manner of compensation in lieu of the mitigation fees (such as a land donation in lieu of payment of the mitigation fees), the project applicant shall provide the city with written documentation from the implementing entity of compliance with such alternative manner of payment and the dollar equivalent amount of such alternative manner of compensation.
- C. In the event the city determines the project subject to the planning permit or building permit to be exempt from payment of the mitigation fees, for reasons specified in Section 9.4.1 of the HCP/NCCP, no mitigation fees shall be required for the project.
- D. The city shall transmit the mitigation fees to the implementing entity pursuant to the

schedule established by the implementing entity.

18.132.060 – Authorized Take Coverage

Upon payment in full of the mitigation fees and approval of planning or building permits incorporating all applicable HCP/NCCP conditions of approval, the project applicant shall receive authorized Take coverage for the covered activity in accordance with the terms of the HCP/NCCP, the implementing agreement, and the Take permits.

18.132.070 – Guidelines

The director of community and economic development (or any successor officer) may adopt guidelines to assist in the implementation and administration of all aspects of this chapter with respect to project applicants.

18.132.080 – Interpretation

In the event of a conflict between any term or requirement of this chapter, the HCP/NCCP, the implementing agreement or the Take permits, the term or requirement of the Take permits shall govern.

18.132.090 – Operative Date

This chapter shall be operative upon adoption by the implementing entity of the mitigation fees and the issuance of the Take permits by the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

Chapter 18.136 – CEQA GUIDELINES

Sections:

- 18.136.010 – Guidelines Document—Created—Title
- 18.136.020 – Guidelines Document—Administrative Uses
- 18.136.030 – Guidelines Document—General contents
- 18.136.040 – Guidelines Document—Regulations Adopted by Reference
- 18.136.050 – Delegation of Responsibility
- 18.136.060 – Appeal—From Necessity to File EIR
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- 18.136.080 – Appeal—Filing Stays Director's Determination
- 18.136.090 – Length of Review Period
- 18.136.100 – Public Agencies with Special Expertise or Jurisdiction by Law
- 18.136.110 – Forms
- 18.136.120 – Guidelines Document—Compilation
- 18.136.130 – Guidelines document—Available to Public
- 18.136.140 – Mitigation Monitoring

18.136.010 – Guidelines Document—Created—Title

There is created a document known as the "City of Morgan Hill Guidelines for Evaluating Environmental Impacts and Reviewing Projects."

18.136.020 – Guidelines Document—Administrative Uses

The document referred to in Section 18.136.010 of this chapter shall be used by the city in administering its responsibilities under the California Environmental Quality Act.

18.136.030 – Guidelines Document—General contents

The document referred to in Section 18.136.010 of this chapter shall include:

- A.** The ordinance codified in this chapter and any amendments to it; and
- B.** All documents incorporated by reference into this chapter.

18.136.040 – Guidelines Document—Regulations Adopted by Reference

The document referred to in Section 18.136.010 of this chapter shall include the State CEQA Guidelines prescribed by the Secretary of Resources, state of California, on January 1, 1993, and found in Sections 15000 et seq. of the California Administrative Code (hereinafter "Guidelines"), and these Guidelines are adopted and by this reference incorporated into this chapter as though fully set forth herein.

18.136.050 – Delegation of Responsibility

The following delegation of responsibility is made pursuant to Section 15025 of the Guidelines. The director of the community development department shall be responsible for the following functions:

- A. Determining whether a project is exempt, ministerial or of no environmental effect;
- B. Conducting an initial study and deciding whether to prepare a draft EIR or negative declaration;
- C. Preparing a negative declaration or EIR;
- D. Determining that a negative declaration or other environmental document has been completed within a period of as specified in the California Environmental Quality Act or its Guidelines;
- E. Preparing responses to comments on environmental documents;
- F. Filing of notices;
- G. Approval of negative declarations for administrative project approvals that are not categorically exempt.
- H. Preparation of mitigations to negative declarations and the mitigation monitoring programs; and reviewing compliance with adopted mitigation monitoring programs after adoption of negative declarations;
- I. Determination that a project is "de minimis" in its effect on fish and game resources of the state, and therefore that payment to the State Department of Fish and Game of fees for review of negative declarations or EIR's is unnecessary, where based upon evidence on file with the city pursuant to law;
- J. Identification of bibliographic sources on which the findings of an initial study can be based, relative to geology, biology, traffic engineering and similar disciplines, to substantiate determinations of impacts or nonimpacts.
- K. Reviewing the work of consultants used in expanded initial studies and EIR's and making determinations that the work is adequate for submittal to the planning commission, and that such studies reflect the independent judgment of the city once modified with the director's final comments.
- L. Pursuant to Section 15106 of the CEQA Guidelines, sending a draft environmental impact report to the state clearinghouse for a period of forty-five days, unless the clearinghouse allows a shorter review period.

18.136.060 – Appeal—From Necessity to File EIR

Any person may appeal to the city council the community development director's final determination that a project requires an environmental impact report. The appeal shall be in writing and shall be filed with the city clerk not later than the tenth day following the date upon which the notice of preparation was first posted or mailed to the applicant.

18.136.070 – Appeal—Decisions on negative declarations

- A. Reconsideration.** Any person may request reconsideration of the community development director's decision to prepare a negative declaration. The request shall be in writing and shall be filed with the community development director not later than the tenth day following the date upon which the notice of negative declaration was first posted or mailed to the applicant. The community development director shall schedule a hearing within twenty-one days after the date of filing of the request for reconsideration. The director shall cause notice of time, date and place of the hearing to be given not less than five days prior to the subject hearing to the requestor and applicant, and to any other person who requests such in writing. The director shall advise the requestor and the applicant in writing of his decision. The decision reached by the director upon reconsideration shall be final.
- B. Appeal Following Reconsideration.** Any person may appeal to the city council the community development director's final decision that a project requires a negative declaration. The appeal shall be in writing and shall be filed with the city clerk not later than the tenth day following the date upon which the requestor and applicant are notified of the community development director's final decision on a request for reconsideration.

18.136.080 – Appeal—Filing Stays Director's Determination

The filing of the appeal pursuant to Section 18.136.060 or subsection B of Section 18.136.070 shall stay the community development director's determination until a final decision is rendered by the city council, and the decision shall be rendered within forty-five days after the filing of the appeal with the city clerk. The city clerk shall cause notice of the time, date and place of the hearing to be given not less than five days prior to subject hearing to the appellant and applicant, if he is not the appellant, and to any other person who requests such in writing. In making its determination, the council shall be guided by the same criteria as the community development director must use in making his determination. The city clerk shall advise the appellant and the applicant, if he is not the appellant, in writing of the council's decision.

18.136.090 – Length of Review Period

The public review period referred to in Section 15087(c) of the Guidelines shall be forty-five days from the date of the notice, unless a shorter period of time is authorized by the state

clearinghouse. A period of up to an additional sixty days may be allowed when it is determined that the draft EIR is unusually complex or lengthy, and that the additional time is necessary to allow the public adequate time to review and comment upon the draft EIR.

18.136.100 – Public Agencies with Special Expertise or Jurisdiction by Law

The following public agencies have jurisdiction by law and/or special expertise with respect to various projects and project locations (Section 15087(f), Guidelines). Depending upon the specific project, some or all of the following agencies must be given the opportunity to review and comment upon the draft EIR:

- A. Santa Clara County, planning and public works;
- B. Local agency formation commission of Santa Clara County;
- C. California Department of Transportation (CalTrans);
- D. City of San Jose;
- E. Santa Clara Valley Water District;
- F. California State Regional Water Quality Control Board;
- G. California State Resources Agency (for projects of statewide concern).

18.136.110 – Forms

In furtherance of the duties delegated to him in Section 18.136.050 of this chapter, the community development director shall develop and utilize forms substantially similar to those found in the appendices of the Guidelines.

18.136.120 – Guidelines Document—Compilation

The community development director shall compile the elements of the document referred to in Section 18.136.010 of this chapter, and shall make the document available for sale to the general public for a reasonable fee.

18.136.130 – Guidelines document—Available to Public

A copy of the document referred to in Section 18.136.010 of this chapter shall be maintained in the city clerk's office at all times, and shall be made available to the public upon request.

18.136.140 – Mitigation Monitoring

- A. The city shall maintain a program to monitor and implement mitigations of negative declarations, and environmental impact reports administered by the community development director. Such mitigations may be included in any of the following:

1. Separate lists of mitigations in a negative declaration;
 2. Conditions of any subdivision, use permit, variance, site review or other similar entitlement, which address environmental concerns;
 3. Amendments to plot plans, subdivision maps or other visual exhibits, which eliminate any significant impact identified by the city through integration of mitigations into the design of the project as finally approved.
- B.** The monitoring program shall consist of the customary reviews by city departments for conformity of final plans and specifications with adopted requirements and mitigations. In exceptional circumstances, such as the approval of a unique and complex land use which produces measurable pollutants or other materials in need of mitigation, additional steps may be taken by the city to monitor mitigation of such impacts on an ongoing basis.
- C.** In the public interest, the community development director may accept reports and other forms of monitoring submitted by interested third parties, at no cost to the city, regarding the effectiveness of the mitigation measures which have been adopted. The community development director shall decide whether the reports or other monitoring submitted are accurate and provide a necessary supplement to the monitoring performed by the city, and may apply the submitted information to the monitoring program.

Chapter 18.140 – POST CONSTRUCTION STORMWATER POLLUTION PREVENTION

Sections:

- 18.140.010 – Purpose and Intent
- 18.140.020 – Definitions
- 18.140.030 – Applicability: Permanent Storm Water Pollution Prevention Measures Required
- 18.140.040 – Design Standards and Selection of Best Management Practices
- 18.140.050 – Stormwater Runoff Management Plan Required
- 18.140.060 – Stormwater Runoff Management Plan Contents
- 18.140.070 – Preparation of the Stormwater Runoff Management Plan
- 18.140.080 – Stormwater BMP Operation, Maintenance, and Replacement Responsibility
- 18.140.090 – Stormwater BMP Operation and Maintenance Agreement
- 18.140.100 – Stormwater BMP Inspection Responsibility
- 18.140.110 – Records of Maintenance and Inspection Activities
- 18.140.120 – Failure to Maintain
- 18.140.130 – Authority to Inspect
- 18.140.140 – Notice of Violation
- 18.140.150 – Appeal
- 18.140.160 – Abatement by City
- 18.140.170 – Charging Cost of Abatement
- 18.140.180 – Urgency Abatement
- 18.140.190 – Violations
- 18.140.200 – Compensatory Action
- 18.140.210 – Violations Deemed a Public Nuisance
- 18.140.220 – Acts Potentially Resulting in a Violation of the Federal Clean Water Act and/or California Porter-Cologne Act
- 18.140.230 – Fees Set by Resolution

18.140.010 – Purpose and Intent

The purpose of this chapter is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing in watersheds in compliance with applicable provisions of the Federal Clean Water Act and any National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permits issued to the City of Morgan Hill, through the following objectives:

- A.** Minimize increases in stormwater runoff from any development in order to reduce flooding, siltation and streambank erosion and maintain the integrity of stream channels;

- B. increases in nonpoint source pollution caused by stormwater runoff from development which would otherwise degrade local water quality
- C. Minimize the total annual volume of surface water runoff which flows from any specific site during and following development to not exceed the pre-development hydrologic regime to the maximum extent practicable.
- D. Reduce stormwater runoff rates and volumes, soil erosion and nonpoint source pollution, wherever possible, through stormwater management controls and to ensure that these management controls are properly maintained and pose no threat to public safety.

The above objectives shall be met through adoption and implementation of best management practices (BMPs) in design, construction and maintenance. These BMPs shall be incorporated into permanent site design features, which shall remain functioning throughout the life of the development.

18.140.020 – Definitions

The terms used in this chapter shall have the following meanings:

- A. "One hundred thousand square foot commercial development" means any commercial development that creates at least one hundred thousand square feet of impermeable surface, including parking areas.
- B. "Automotive repair shop" means a facility that is categorized in any one of the following Standard Industrial Classification (SIC) codes: 5013, 5014, 5541, 7532-7534, or 7536-7539.
- C. "Authorized enforcement officer" means the City of Morgan Hill Chief Engineer and those individuals designated by the chief engineer to enforce the provisions of this chapter, including the code enforcement officer(s) of the City of Morgan Hill's community development department.
- D. "Best management practices" or "BMP" means activities, practices, and procedures as specified in Section 18.140.110 to prevent or reduce the discharge of pollutants directly or indirectly to the municipal storm drain system and waters of the United States. Best management practices (BMPs) include but are not limited to: treatment facilities and methods to remove pollutants from storm water; operating and maintenance procedures; facility management practices to control runoff, spillage or leaks of non-storm water, waste disposal, and drainage from materials storage; erosion and sediment control practices; and the prohibition of specific activities, practices, and procedures and such other provisions as the city determines appropriate for the control of pollutants.
- E. "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

- F. "Commercial development" means any development on private land that is not heavy industrial or residential. The category includes, but is not limited to: hospitals, laboratories and other medical facilities, educational institutions, recreational facilities, plant nurseries, multi-apartment buildings, car wash facilities, mini-malls and other business complexes, shopping malls, hotels, office buildings, public warehouses and other light industrial complexes.
- G. "Development" means land disturbing activities; structural development, including construction or installation of a building or structure, creation of impervious surfaces; and improvements related to land subdivision; any activity that moves soils or substantially alters the pre-existing vegetated or man-made cover of any land. This includes, but is not limited to, grading, digging, cutting, scraping, stockpiling or excavating of soil, placement of fill materials, paving, pavement removal, exterior construction, substantial removal of vegetation where soils are disturbed including but not limited to removal by clearing or grubbing, or any activity which bares soil or rock or involves streambed alterations or the diversion or piping of any watercourse. Development does not include routine maintenance to maintain original line and grade, hydraulic capacity, or the original purpose of the facility, nor does it include emergency construction activities (i.e., land disturbances) required to protect public health and safety.
- H. "Authorized enforcement officer" means the chief engineer and his or her designee, including authorized enforcement officer.
- I. "Hillside" means property located in an area with known erosive soil conditions, where the development contemplates grading on any natural slope that is twenty-five percent or greater.
- J. "Impervious surface" means a surface composed of any material that significantly impedes or prevents the natural infiltration of water into soil. Impervious surfaces include, but are not limited to, rooftops, buildings, streets and roads, and any concrete or asphalt surface.
- K. "Industrial General Permit" means a NPDES permit issued by the state water resources control board for the discharge of storm water associated with industrial activity.
- L. "National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permits" means general, group, and individual storm water discharge permits which regulate facilities defined in federal NPDES regulations pursuant to the Clean Water Act. The California Regional Water Quality Control Board, Central Coast Region (hereinafter, Regional Board) and the State Water Resources Control Board have adopted general storm water discharge permits, including but not limited to the general construction activity and general industrial activity permits.
- M. "Operation and maintenance agreement" means a written agreement entered into pursuant to Section 18.140.160, providing for the long-term operation and maintenance

of stormwater management facilities and practices on a site or with respect to a land development project, which when properly recorded in the deed records constitutes a restriction on the title to a site or other land involved in a land development project.

- N. "Owner" means the legal or beneficial owner of a site, including but not limited to, a mortgagee or vendee in possession, receiver, executor, trustee, lessee or other person, firm or corporation in control of the site.
- O. "Parking lot" means land area or facility for the temporary parking or storage of motor vehicles used personally, for business or for commerce with a lot size of five thousand square feet or more, or with twenty-five or more parking spaces.
- P. "Receiving waters" means any natural stream, river, creek, ditch, channel, canal, waterway, gully, ravine or wash, in and including any adjacent area that is subject to inundation from overflow or flood water.
- Q. "Redevelopment" means, on an already developed site, the creation or addition of at least five thousand square feet of impervious surface, or the expansion of a building footprint or addition of a structure; structural development including an increase in gross floor area and/ or exterior construction or remodeling; and land disturbing activities related with structural or impervious surfaces that results in an increase of fifty percent of the impervious surface of a previously existing development.
- R. "Restaurant" means a stand-alone facility that sells prepared foods and drinks for consumption, including stationary lunch counters and refreshment stands selling prepared foods and drinks for immediate consumption. (SIC code 5812).
- S. "Retail gasoline outlet" means any facility engaged in selling gasoline and lubricating oils.
- T. "Site" means any tract, lot or parcel of land or combination of tracts, lots, or parcels of land, which are in one ownership, or are contiguous and in diverse ownership where a development is to be performed as part of a unit, subdivision, or project.
- U. "Storm drain" means any pipe, conduit or sewer of the city designed or used for the disposal of storm and surface waters and drainage including unpolluted cooling water and unpolluted industrial process water, but excluding any community sanitary sewer system.
- V. "Stormwater management" means the collection, conveyance, storage, treatment and disposal of stormwater runoff to enhance and promote the public health, safety and general welfare.
- W. "Stormwater runoff management plan" means a document required pursuant to Section 18.140.120, describing how existing runoff characteristics will be affected by a land development project and containing measures for complying with the provisions of this ordinance.

- X. "Stormwater runoff" means water from rain, landscape irrigation, or other sources that flows over the land surface without entering the soil.
- Y. "Treatment control BMP" means any engineered system designed to remove pollutants by simple gravity settling of particulate pollutants, filtration, biological uptake, media adsorption or any other physical, biological, or chemical process.
- Z. "Watercourse" means any natural or artificial stream, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine or wash, in and including any adjacent area that is subject to inundation from overflow or flood water.
- AA. "Water quality impact" means any deleterious effect on waters or wetlands, including their quality, quantity, surface area, species composition, aesthetics or usefulness for human or natural uses that are or may potentially be harmful or injurious to human health, welfare, safety or property, to biological productivity, diversity, or stability or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation.

**18.140.030 – Applicability: Permanent Storm Water Pollution Prevention Measures
Required**

- A. The provisions of this chapter shall apply to development or redevelopment of the following:
 - 1. One hundred thousand square feet commercial development.
 - 2. Automotive repair shops.
 - 3. Retail gasoline outlets.
 - 4. Restaurants.
 - 5. Hillside residential.
 - 6. Parking lots residential with ten or more units or greater than five thousand square feet of impervious area.
 - 7. Projects requiring a general NPDES permit for stormwater discharges associated with industrial activities.
 - 8. Impervious surfaces ten thousand or more square feet.
 - 9. Impervious surfaces within one hundred feet of receiving waters.
 - 10. Vehicle or equipment fueling, washing, or maintenance area.
 - 11. Commercial or industrial waste handling or storage, excluding typical office or household waste.
 - 12. Development or redevelopment projects disturbing greater than or equal to one acre.

- B. No final building or occupancy permit shall be issued without the written certification of the chief engineer or designee that the requirements of this chapter have been satisfied.

18.140.040 – Design Standards and Selection of Best Management Practices

Projects meeting the criteria of Section 18.140.030A, must meet the requirements of the following design standards and selection of best management practices:

- A. Stormwater best management practices shall be selected and designed to the satisfaction of the chief engineer or designee in accordance with the requirements contained in the most recent versions of the following documents:
1. City of Morgan Hill stormwater post construction best management practices development standards for new development and redevelopment;
 2. California Storm Water Quality Association Best Management Practice Handbooks;
 3. City of Gilroy, City of Morgan Hill and County of Santa Clara Regional Stormwater Management Plan (SWMP), as approved by the Central Coast Regional Water Quality Control Board;
 4. City of Morgan Hill Hydro-modification Management Plan, as approved by the Central Coast Regional Water Quality Control Board;
- Any conflict of BMPs from the above documents shall be approved by the chief engineer.
- B. Other references which can be used for selection of design BMPs to the satisfaction of the chief engineer or designee are:
1. Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) "Guidance for Implementing Stormwater Regulations for New and Redevelopment Projects;"
 2. "Start at the Source Design Guidance Manual developed by the Bay Area Storm Water Management Agencies Association (BASMAA);
 3. Bay Area Stormwater Management Agencies Association "Using Site Design Standards to Meet Development Standards for Stormwater Quality - A Companion Document to Start at the Source".
- C. **Design Standards for Structural or Treatment Control BMPs.** The post-construction treatment control BMPs shall incorporate, at a minimum, either a volumetric or flow based treatment control design standard, or both, as identified below to mitigate (infiltrate, filter or treat) storm water runoff.
1. Volumetric Treatment Control BMP - Treatment systems depending on volume capacity, such as detention/retention units or infiltration structures, shall be designed to treat stormwater runoff equal to:

- a. The maximized stormwater quality capture volume for the area, based on historical rainfall records, determined using the formula and volume capture coefficients set forth in Urban Runoff Quality Management, WEF Manual of Practice No. 23/ASCE Manual of Practice No. 87, (1998), pages 175-178 (e.i. approximately the eighty-fifth percentile twenty-four-hour storm runoff event); or
 - b. The volume of annual runoff required to achieve 80 percent or more capture, determined in accordance with the methodology set forth in Appendix D of the California Stormwater Best Management Practices Handbook for New Development and Redevelopment (2003), using local rainfall data; or
 - c. The volume of runoff produced from a historical-record based reference twenty-four-hour rainfall criterion for "treatment" that achieves approximately the same reduction in pollutant loads achieved by the eighty-fifth percentile twenty-four-hour runoff event.
2. Flow-Based Treatment Control BMP - Treatment BMPs whose primary mode of action depends on flow capacity, such as swales, sand filters, or wetlands, shall be sized to treat:
- a. The flow of runoff produced from a rain event equal to at least two times the 85th percentile hourly rainfall intensity for the area; or
 - b. The flow of runoff produced from a rain event that will result in treatment of the same portion of runoff as treated using volumetric standards above.
- D. **Design Standards for Peak Storm Water Runoff Discharge Rates.** Post-development peak storm water runoff discharge rates shall not exceed the estimated pre development rate for developments where the increased peak storm water discharge rate will result in increased potential for downstream erosion.

18.140.050 – Stormwater Runoff Management Plan Required

- A. Projects meeting the criteria of Section 18.140.030A must provide a stormwater runoff management plan. The stormwater runoff management Plan shall detail how runoff and associated water quality impacts resulting from the activity will be controlled or managed by the project's post construction BMP designs.
- B. No building permit shall be issued until the stormwater runoff management plan has been reviewed and approved by the chief engineer or designee.

18.140.060 – Stormwater Runoff Management Plan Contents

The stormwater runoff management plan shall include sufficient information to evaluate the environmental characteristics of affected areas, the potential impacts of the proposed

development on water resources, and the effectiveness and acceptability of measures proposed for managing stormwater runoff. The minimum information submitted for support of the stormwater management plan shall meet the requirements as outlined in City of Morgan Hill Stormwater Post Construction Best Management Practices Development Standards for New Development and Redevelopment manual.

18.140.070 – Preparation of the Stormwater Runoff Management Plan

- A. The stormwater runoff management plan shall be prepared under the direction of a professional civil engineer registered in the State of California. The responsible professional civil engineer shall stamp and sign the approved stormwater runoff management plan.
- B. The chief engineer or designee may require a developer to provide a signed certification from the civil engineer responsible for preparing the stormwater runoff management plan that all stormwater best management practices have been designed to meet the requirements of this chapter.
- C. Each certifying civil engineer shall establish to the city's satisfaction that such person has been trained on the design of stormwater quality best management practices not more than three years prior to the certification signature date.
- D. Qualifying training shall be conducted by an organization with stormwater quality management expertise, such as a university, the Bay Area Stormwater Management Agencies Association, the American Society of Civil Engineers, the American Public Works Association, or the California Water Environment Association.

18.140.080 – Stormwater BMP Operation, Maintenance, and Replacement Responsibility

- A. For the life of projects meeting the criteria of Section 18.140.030A, all on-site stormwater management facilities shall be operated and maintained in good condition and promptly repaired/replaced by the property owner(s), an owners' or homeowners' association or other legal entity approved by the city.
- B. Any repairs or restoration/replacement and maintenance shall be in accordance with city-approved plans.
- C. The property owner(s) shall develop a maintenance schedule for the life of any stormwater management facility and shall describe the maintenance to be completed, the time period for completion, and who shall perform the maintenance. This maintenance schedule shall be included with the approved stormwater runoff management plan.

18.140.090 – Stormwater BMP Operation and Maintenance Agreement

- A. Prior to the issuance of any building permit requiring stormwater management BMPs, the owner(s) of the site shall enter into a formal written stormwater BMP operation and maintenance agreement with the city. The city shall record this agreement, against the property or properties involved, with the County of Santa Clara and it shall be binding on all subsequent owners of land served by the stormwater management treatment BMPs.
- B. The stormwater BMP operation and maintenance agreement shall require that the BMPs not be modified and that BMP maintenance activities not alter the designed function of the facility from its original design unless approved by the city prior to the commencement of the proposed modification or maintenance activity.
- C. The stormwater BMP operation and maintenance agreement shall provide that in the event that maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health or safety, the city shall have the authority to perform maintenance and/or repair work and to recover the costs from the owner.

18.140.100 – Stormwater BMP Inspection Responsibility

- A. The property owner(s) shall be responsible for having all stormwater management facilities inspected for condition and function by a knowledgeable party.
- B. Unless otherwise required by the chief engineer or designee, stormwater facility inspections shall be done at least twice per year, once in fall, in preparation for the wet season, and once in winter. Written records shall be kept of all inspections and shall include, at minimum, the following information:
 - 1. Site address;
 - 2. Date and time of inspection;
 - 3. Name of the person conducting the inspection;
 - 4. List of stormwater facilities inspected;
 - 5. Condition of each stormwater facility inspected;
 - 6. Description of any needed maintenance or repairs; and
 - 7. As applicable, the need for site reinspection.

18.140.110 – Records of Maintenance and Inspection Activities

On or before April 15th of each year, the party responsible for the operation and maintenance of on-site stormwater management facilities under the BMP operation and maintenance agreement shall provide the chief engineer or designee with records of all inspections, maintenance and repairs.

18.140.120 – Failure to Maintain

- A. If the responsible party fails or refuses to meet the requirements of the stormwater BMP operation and maintenance agreement, the authorized enforcement officer may give a thirty-day written notice to such responsible party under BMP operation and maintenance agreement to correct the failure and breach of contractual obligation.
- B. If such responsible party fails to correct such conditions, the city may take such remedies such provided in the BMP operation and maintenance agreement. Additionally, such conditions shall be deemed a nuisance subject to all procedures, abatement of such conditions and remedies as provided in Chapter 1.18 of this code.
- C. In the event the city determines that the violation constitutes an immediate danger to public health or public safety, twenty-four hours written notice from the city shall be sufficient in lieu of the thirty-day written notice required under Section 18.140.190A.

18.140.130 – Authority to Inspect

- A. Whenever necessary to make an inspection to enforce any provision of this chapter, or whenever the authorized enforcement officer has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this chapter, the authorized enforcement officer may enter such premises at all reasonable times to inspect the same and to inspect and copy records related to storm water compliance provided that (i) if such building or premises be occupied, he or she shall first present proper credentials and request entry; and (ii) if such building or premises be unoccupied, he or she shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the city is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.
- B. In any circumstance where there appears an immediate threat to the public health or safety, the authorized enforcement officer may enter any structure or premises without the consent of any person or court process.
- C. Routine or area inspections shall be based upon such reasonable selection processes as may be deemed necessary to carry out the objectives of this chapter, including but not limited to random sampling and/or sampling in areas with evidence of storm water contamination, illicit discharges, discharges of non-storm water to the storm water system, or similar factors.
- D. The city shall have the right to establish on any property such devices as are necessary to conduct sampling or metering operations. During any inspection as provided herein, the authorized enforcement officer may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

18.140.140 – Notice of Violation

Whenever the authorized enforcement officer finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the authorized enforcement officer may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- A. The performance of monitoring, analyses, and reporting;
- B. The elimination of illicit connections or discharges;
- C. That violating discharges, practices, or operations shall cease and desist;
- D. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- E. Payment of a fine to cover administrative and remediation costs; and
- F. The implementation of BMP, source control or treatment BMPs;
- G. Compliance with the stormwater runoff management plan and the BMP operation and maintenance agreement.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by the city or a contractor designated by the authorized enforcement officer and the expense thereof shall be charged to the violator pursuant to Section 18.140.240.

18.140.150 – Appeal

Any person receiving a notice of violation under Section 18.140.210, above may appeal the determination of the authorized enforcement officer to the city manager. The notice of appeal must be received by the city manager within five days from the date of the notice of violation. Hearing on the appeal before the city manager or his/her designee shall take place within fifteen days from the date of city's receipt of the notice of appeal. The decision of the city manager or designee shall be final.

18.140.160 – Abatement by City

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal under Section 18.140.220, within ten days of the decision of the city manager upholding the decision of the authorized enforcement officer, then the city or a contractor designated by the authorized enforcement officer may enter upon the subject private property and is authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or

person in possession of any premises to refuse to allow the city or designated contractor to enter upon the premises for the purposes set forth above.

18.140.170 – Charging Cost of Abatement

Within 30 days after abatement of the nuisance by city, the authorized enforcement officer shall notify the property owner of the property of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment with the city clerk within fifteen days. The city clerk shall set the matter for public hearing by the city council. The decision of the city council shall be set forth by resolution and shall be final.

18.140.180 – Urgency Abatement

The authorized enforcement officer is authorized to require immediate abatement of any violation of this chapter that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the authorized enforcement officer, the city is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the city shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent city from seeking other and further relief authorized under this chapter.

18.140.190 – Violations

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this chapter. A violation of or failure to comply with any of the requirements of this chapter shall constitute a misdemeanor and shall be punished as set forth in Chapter 1.24 of this code.

18.140.200 – Compensatory Action

In lieu of enforcement proceedings, penalties, and remedies authorized by this chapter, the authorized enforcement officer may impose upon a violator alternative compensatory actions, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

18.140.210 – Violations Deemed a Public Nuisance

In addition to the enforcement processes and penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored by the city at the violator's expense, and/or a civil action to

abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the city pursuant to Chapter 1.18 of this code.

18.140.220 – Acts Potentially Resulting in a Violation of the Federal Clean Water Act and/or California Porter-Cologne Act

Any person who violates any provision of this chapter or any provision of any requirement issued pursuant to this chapter may also be in violation of the Clean Water Act and/or the Porter-Cologne Act and may be subject to the sanctions of those acts including civil and criminal penalties. Any enforcement action authorized under this chapter shall also include written notice to the violator of such potential liability.

18.140.230 – Fees Set by Resolution

The city council shall establish, by resolution, any fees necessary to carry out the purpose of this chapter.

Chapter 18.144 – SCHOOL IMPACTION

Sections:

- 18.144.010 – Findings of Overcrowding—Notice to City
- 18.144.020 – Notice of Findings—Contents
- 18.144.030 – Notice of Findings—Public Hearing—Expiration and Renewal
- 18.144.040 – Mitigating Measures—Submittal Required
- 18.144.050 – Mitigating Measures—Required when—Type
- 18.144.060 – Satisfaction of Mitigating Measures—Certification
- 18.144.070 – Mitigating Measures—Annual Report
- 18.144.080 – Prior Agreements not Affected
- 18.144.090 – Waiver of Mitigation Fees—Conditions

18.144.010 – Findings of Overcrowding—Notice to City

If at any time during the school year the board of education of the Morgan Hill Unified School District finds that overcrowding exists within the district which impairs the normal functioning of educational programs, and that all reasonable methods of mitigating conditions of overcrowding have been evaluated and no feasible method for reducing such conditions exists, the board of education of the Unified School District shall so notify the city council.

18.144.020 – Notice of Findings—Contents

The notice of findings shall be in the form of a resolution by the board of education of the Morgan Hill Unified School District specifying:

- A. The school or schools found to be overcrowded, including a map of the attendance area;
- B. The criteria used by the board of education to determine overcrowding;
- C. The various methods of mitigating conditions considered by the board of education, including:
 - 1. Temporary buildings,
 - 2. Busing,
 - 3. Double sessions,
 - 4. Extended day programs,
 - 5. Year-round school attendance,
 - 6. Open enrollment,
 - 7. Attendance area realignment,
 - 8. Elimination of low-priority uses at impacted schools.

18.144.030 – Notice of Findings—Public Hearing—Expiration and Renewal

- A. The city council shall set a public hearing within thirty days of receipt of such notice of findings by the board of education of the Morgan Hill Unified School District. Following completion of the public hearing, the city council shall adopt a declaration of impaction if it concurs with the findings of the board of education that conditions of overcrowding exist.
- B. "Conditions of overcrowding" means that the total enrollment of a school, including enrollment from proposed development, exceeds the capacity of such school, as determined by the board of education of the district.
- C. The declaration of impaction automatically expires one year from date of adoption unless application for renewal is made by the board of education. Application for renewal shall be processed and acted upon in the same manner as the original notice of findings.

18.144.040 – Mitigating Measures—Submittal Required

- A. Together with its notice of findings, the board of education shall submit the range of mitigating measures available to an applicant for a building permit. The specific mitigating measures shall be based upon the following:
 - 1. That any dedication of land or fees to be paid, or both, as determined by the board of education, shall bear a reasonable relationship and will be limited to the needs of the community for interim school facilities;
 - 2. Shall be reasonably related and limited to the need for school facilities caused by the development.
- B. Fees shall not exceed the amount necessary to pay five annual lease payments for the interim facilities.
- C. Only the payment of fees may be required in subdivisions containing fifty parcels or less.
- D. In lieu of fees, the builder of a residential development may, at his/her option and at his/her expense, provide interim facilities, owned or controlled by such builder, at the place designated by the school district, and at the conclusion of the fifth year, the builder shall, at the builder's expense, remove the interim facilities from such place. Facilities provided under this section shall:
 - 1. Meet all the standards of safety, access, durability, aesthetics and usability required of other district facilities;
 - 2. Conform with all building requirements of the district, city, county and state;
 - 3. Be maintained by the builder pursuant to district standards;

4. Be insured to the level of insurance carried by the district, including liability, fire, allied perils, and vandalism;
5. Be energy-efficient;
6. Be provided within ninety days of request by the district;
7. Be removed within sixty days of a request by the district, with the site restored to its original condition. Further, the builder shall be responsible for all damages suffered by the district in the installation, operation and removal of such facilities.

18.144.050 – Mitigating Measures—Required When—Type

- A. Upon the adoption of a declaration of impaction by the city council, all persons applying for a building permit to construct a new residential structure, or move a residential structure into the city, shall be required to dedicate land or pay an appropriate fee to mitigate any potential impact cause by such development. "Residential structure" shall include mobile homes.
- B. Based upon the recommendations of the board of education and the criteria in Section 18.144.040, the city council shall adopt the mitigation measures to be applied and/or set the mitigation fee by resolution.

18.144.060 – Satisfaction of Mitigating Measures—Certification

The responsibility for assuring that actions are taken to obtain compliance with the mitigation measures and/or collect mitigation fees shall be the responsibility of the Morgan Hill Unified School District, in accordance with the provisions outlined within this chapter. The district shall issue to each developer, meeting his/her obligation of mitigation, a letter so stating. The city shall issue the building permit only upon receipt of a copy of the letter.

18.144.070 – Mitigating Measures—Annual Report

Prior to August 1st of each year, the district shall submit to the city council a report indicating:

- A. The mitigation fee fund balance as of the close of the previous fiscal year, showing income from each jurisdiction;
- B. A listing of the facilities leased, purchased and constructed during the previous fiscal year;
- C. The identification of those attendance areas which are anticipated to be overcrowded at the beginning of the fall semester, and the anticipated date when the overcrowding will no longer exist.

18.144.080 – Prior Agreements not Affected

The adoption of the ordinance codified in this chapter shall not be construed as to change any agreements currently in effect between a developer and the Morgan Hill Unified School District.

18.144.090 – Waiver of Mitigation Fees—Conditions

- A. Any applicant for a building permit may request of the board of education of the Morgan Hill Unified School District that all or a portion of the fee be waived.
- B. Following a public hearing on the request for waiver, the board of education may, upon finding overriding economic or personal hardship, waive all or a portion of the mitigating fees, and so notify the city.

Chapter 18.148 – WATER CONSERVATION

Sections:

- 18.148.010 – Title
- 18.148.020 – Applicability
- 18.148.030 – Definitions
- 18.148.040 – Water Conservation in Landscaping Ordinance Requirements
- 18.148.050 – Compliance with Chapter
- 18.148.060 – Landscape Project Application and Documentation Package
- 18.148.070 – Soil Management Report
- 18.148.080 – Water Budget Calculations
- 18.148.090 – Landscape Design Plan
- 18.148.100 – Irrigation Design Plan
- 18.148.110 – Grading Design Plan
- 18.148.120 – Certificate of Completion
- 18.148.130 – Landscape Audit Report
- 18.148.140 – Irrigation Scheduling
- 18.148.150 – Landscape and Irrigation Maintenance Schedule
- 18.148.160 – Stormwater Management and Rainwater Retention
- 18.148.170 – Recycled Water
- 18.148.180 – Graywater Systems
- 18.148.190 – Environmental Review
- 18.148.200 – Provisions for Existing Landscapes
- 18.148.210 – Provisions for Existing Landscapes over One Acre in Size
- 18.148.220 – Penalties

Note— The appendices referenced in Ch. 18.73 are not set out herein at length, but are on file and available for public inspection in the offices of the city.

18.148.010 – Title

This chapter shall be known as the city of Morgan Hill water conservation in landscaping ordinance.

18.148.020 – Applicability

- A. The provisions of this ordinance shall apply to all of the following landscape projects:
 - 1. New construction projects with an aggregate landscape area equal to or greater than five hundred square feet requiring a building or landscape permit, plan check or design review,

2. Rehabilitated landscape projects with an aggregate landscape area equal to or greater than one thousand square feet requiring a building or landscape permit, plan check, or design review;
 3. Existing landscapes limited to Sections 493, 493.1 and 493.2 in Division 2, Title 23 of the California Code of Regulations; all other existing landscapes shall only be subject to the provisions for existing landscapes provided for in Section 18.148.210, "Provisions for existing landscapes over one acre in size".
 4. **Cemeteries.** New and rehabilitated cemeteries shall only be subject to the provisions of Section 18.148.080, "Water budget calculations", Section 18.148.130, "Landscape audit report", and Section 18.148.150, "Landscape and irrigation maintenance schedule." Existing cemeteries are limited to Section 18.148.210, "Provisions for existing landscapes over one acre in size."
- B. Any project with an aggregate landscape area of two thousand five hundred square feet or less may comply with the performance requirements of this ordinance or conform to the prescriptive measures contained in Appendix D.
- C. For projects using treated or untreated graywater or rainwater captured on site, any lot or parcel within the project that has less than two thousand five hundred square feet of landscape and meets the lot or parcel's landscape water requirement (estimated total water use) entirely with treated or untreated graywater or through stored rainwater captured on site is subject only to Appendix D, Section B.5.
- D. This ordinance does not apply to:
1. New construction with irrigated landscape areas less than five hundred square feet;
 2. Rehabilitated landscapes with irrigated landscape areas less than one thousand square feet;
 3. Landscapes that do not require a building or landscape permit, plan check or design review, or new or expanded water service;
 4. Landscapes, or portions of landscapes, that are designed to be only irrigated for an establishment period of one to three years and will not be irrigated after the establishment period;
 5. Registered local, state or federal historical sites where landscaping establishes a historical landscape style, as determined by a public board or commission responsible for architectural review or historic preservation;
 6. Ecological restoration or mined-land reclamation projects that do not require a permanent irrigation system; or
 7. Community gardens or plant collections, as part of botanical gardens and arboretums open to the public, agricultural uses, commercial nurseries and sod farms.

18.148.030 – Definitions

- A. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
1. "Applied water" means the portion of water supplied by the irrigation system to the landscape.
 2. "Automatic irrigation controller" means a timing device used to remotely control valves that operate an irrigation system. Automatic irrigation controllers are able to self-adjust and schedule irrigation events using either evapotranspiration (weather-based) or soil moisture data.
 3. "Backflow prevention device" means a safety device used to prevent pollution or contamination of the water supply due to the reverse flow of water from the irrigation system.
 4. "Certificate of completion" means the document required under Section 492.9.
 5. "Certified irrigation designer" means a person certified to design irrigation systems by an accredited academic institution, a professional trade organization or other program such as the U.S. Environmental Protection Agency's WaterSense irrigation designer certification program and irrigation association's certified irrigation designer program.
 6. "Certified landscape irrigation auditor" means a person certified to perform landscape irrigation audits by an accredited academic institution, a professional trade organization or other program such as the U.S. Environmental Protection Agency's WaterSense irrigation auditor certification program and irrigation association's certified landscape irrigation auditor program.
 7. "Check valve" or "anti-drain valve" means a valve located under a sprinkler head, or other location in the irrigation system, to hold water in the system to prevent drainage from sprinkler heads when the sprinkler is off.
 8. "Common interest developments" means community apartment projects, condominium projects, planned developments, and stock cooperatives per Civil Code Section 1351.
 9. "Compost" means the safe and stable product of controlled biologic decomposition of organic materials that is beneficial to plant growth.
 10. "Conversion factor (0.62)" means the number that converts acre-inches per acre per year to gallons per square foot per year.
 11. "Distribution uniformity" means the measure of the uniformity of irrigation water over a defined area.

12. "Drip irrigation" means any non-spray low volume irrigation system utilizing emission devices with a flow rate measured in gallons per hour. Low volume irrigation systems are specifically designed to apply small volumes of water slowly at or near the root zone of plants.
13. "Ecological restoration project" means a project where the site is intentionally altered to establish a defined, indigenous, historic ecosystem.
14. "Effective precipitation" or "usable rainfall" (Eppt) means the portion of total precipitation which becomes available for plant growth.
15. "Emitter" means a drip irrigation emission device that delivers water slowly from the system to the soil.
16. "Established landscape" means the point at which plants in the landscape have developed significant root growth into the soil. Typically, most plants are established after one or two years of growth.
17. "Establishment period of the plants" means the first year after installing the plant in the landscape or the first two years if irrigation will be terminated after establishment. Typically, most plants are established after one or two years of growth. Native habitat mitigation areas and trees may need three to five years for establishment.
18. "Estimated total water use" (ETWU) means the total water used for the landscape as described in Section 18.148.080.
19. "ET adjustment factor" (ETAF) means a factor of 0.55 for residential areas and 0.45 for non-residential areas, that, when applied to reference evapotranspiration, adjusts for plant factors and irrigation efficiency, two major influences upon the amount of water that needs to be applied to the landscape. The ETAF for new and existing (non-rehabilitated) special landscape areas shall not exceed 1.0. The ETAF for existing non-rehabilitated landscapes is 0.8.
20. "Evapotranspiration rate" means the quantity of water evaporated from adjacent soil and other surfaces and transpired by plants during a specified time.
21. "Flow rate" means the rate at which water flows through pipes, valves and emission devices, measured in gallons per minute, gallons per hour, or cubic feet per second.
22. "Flow sensor" means an inline device installed at the supply point of the irrigation system that produces a repeatable signal proportional to flow rate. Flow sensors must be connected to an automatic irrigation controller, or flow monitor capable of receiving flow signals and operating master valves. This combination flow sensor/controller may also function as a landscape water meter or submeter.

23. "Friable" means a soil condition that is easily crumbled or loosely compacted down to a minimum depth per planting material requirements, whereby the root structure of newly planted material will be allowed to spread unimpeded.
24. "Fuel modification plan guideline" means guidelines from a local fire authority to assist residents and businesses that are developing land or building structures in a fire hazard severity zone.
25. "Graywater" means untreated wastewater that has not been contaminated by any toilet discharge, has not been affected by infectious, contaminated, or unhealthy bodily wastes, and does not present a threat from contamination by unhealthful processing, manufacturing, or operating wastes. "Graywater" includes, but is not limited to, wastewater from bathtubs, showers, bathroom washbasins, clothes washing machines, and laundry tubs, but does not include wastewater from kitchen sinks or dishwashers. Health and Safety Code Section 17922.12.
26. "Hardscapes" means any durable material (pervious and non-pervious).
27. "Hydrozone" means a portion of the landscaped area having plants with similar water needs and rooting depth. A hydrozone may be irrigated or non-irrigated.
28. "Infiltration rate" means the rate of water entry into the soil expressed as a depth of water per unit of time (e.g., inches per hour).
29. "Invasive plant species" means species of plants not historically found in California that spread outside cultivated areas and can damage environmental or economic resources. Invasive species may be regulated by county agricultural agencies as noxious species. Lists of invasive plants are maintained at the California Invasive Plant Inventory and USDA invasive and noxious weeds database.
30. "Irrigation audit" means an in-depth evaluation of the performance of an irrigation system conducted by a certified landscape irrigation auditor. An irrigation audit includes, but is not limited to: inspection, system tune-up, system test with distribution uniformity or emission uniformity, reporting overspray or runoff that causes overland flow, and preparation of an irrigation schedule. The audit must be conducted in a manner consistent with the Irrigation Association's Landscape Irrigation Auditor Certification program or other U.S. Environmental Protection Agency "Watersense" labeled auditing program.
31. "Irrigation efficiency" (IE) 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 ordinance are 0.75 for overhead spray devices and 0.81 for drip systems.

32. "Irrigation survey" means an evaluation of an irrigation system that is less detailed than an irrigation audit. An irrigation survey includes, but is not limited to: inspection, system test, and written recommendations to improve performance of the irrigation system.
33. "Irrigation water use analysis" means an analysis of water use data based on meter readings and billing data.
34. "Landscape architect" means a person who holds a license to practice landscape architecture in the state of California Business and Professions Code, Section 5615.
35. "Landscape area" means all the planting areas, turf areas, and water features in a landscape design plan subject to the maximum applied water allowance calculation. The landscape 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).
36. "Landscape contractor" means a person licensed by the state of California to construct, maintain, repair, install, or subcontract the development of landscape systems.
37. "Landscape documentation package" means the documents required under Section 18.148.040.
38. "Landscape project" means total area of landscape in a project as defined in "landscape area" for the purposes of this chapter, meeting requirements under Section 18.148.020.
39. "Landscape water meter" means an inline device installed at the irrigation supply point that measures the flow of water into the irrigation system and is connected to a totalizer to record water use.
40. "Lateral line" means the water delivery pipeline that supplies water to the emitters or sprinklers from the valve.
41. "Local agency" means a city or county, including a charter city or charter county, that is responsible for adopting and implementing the ordinance. The local agency is also responsible for the enforcement of this ordinance, including but not limited to, approval of a permit and plan check or design review of a project.
42. "Local water purveyor" means any entity, including a public agency, city, county, or private water company that provides retail water service.
43. "Low volume irrigation" means the application of irrigation water at low pressure through a system of tubing or lateral lines and low-volume emitters such as drip, drip

lines, and bubblers. Low volume irrigation systems are specifically designed to apply small volumes of water slowly at or near the root zone of plants.

44. "Low water use plant" means a plant species whose water needs are compatible with local climate and soil conditions. Species classified as "very low water use" and "low water use" by WUCOLS, having a regionally adjusted plant factor of 0.0 through 0.3, shall be considered low water use plants.
45. "Main line" means the pressurized pipeline that delivers water from the water source to the valve or outlet.
46. "Master shut-off valve" is an automatic valve installed at the irrigation supply point which controls water flow into the irrigation system. When this valve is closed water will not be supplied to the irrigation system. A master valve will greatly reduce any water loss due to a leaky station valve.
47. "Maximum applied water allowance" (MAWA) means the upper limit of annual applied water for the established landscaped area as specified in Section 18.148.090. It is based upon the area's reference evapotranspiration, the ET adjustment factor, and the size of the landscape area. The estimated total water use shall not exceed the maximum applied water allowance. Special landscape areas, including recreation areas, areas permanently and solely dedicated to edible plants such as orchards and vegetable gardens, and areas irrigated with recycled water are subject to the MAWA with an ETAF not to exceed 1.0. $MAWA = (ET_o) (0.62) [(ETAF \times LA) + ((1-ETAF) \times SLA)]$
48. "Median" is an area between opposing lanes of traffic that may be unplanted or planted with trees, shrubs, perennials, and ornamental grasses.
49. "Microclimate" means the climate of a small, specific area that may contrast with the climate of the overall landscape area due to factors such as wind, sun exposure, plant density, or proximity to reflective surfaces.
50. "Microspray" means a microirrigation emission device with one or more orifices to convert irrigation water pressure to water discharge with a flow rate not to exceed thirty gallons per hour at the largest area of coverage available for the nozzle series when operated at thirty psi. Microsprays are inclusive of microbubblers, microspinners, and microspray jets.
51. "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.
52. "Mulch" means any organic material such as leaves, bark, straw, compost, or inorganic mineral materials such as rocks, gravel, or decomposed granite left loose

and applied to the soil surface for the beneficial purposes of reducing evaporation, suppressing weeds, moderating soil temperature, and preventing soil erosion.

53. "Native plant" means a plant indigenous to a specific area of consideration. For the purposes of these guidelines, the term shall refer to plants indigenous to the coastal ranges of Central and Northern California, and more specifically to such plants that are suited to the ecology of the present or historic natural community(ies) of the project's vicinity.
54. "New construction" means, for the purposes of this ordinance, a new building with a landscape or other new landscape, such as a park, playground, or greenbelt without an associated building.
55. "Non-residential landscape" means landscapes in commercial, institutional, industrial and public settings that may have areas designated for recreation or public assembly. It also includes portions of common areas of common interest developments with designated recreational areas and multifamily homes where landscaping is managed by a homeowners association or other common interest development.
56. "No-water using plant" means a plant species with water needs that are compatible with local climate and soil conditions such that regular supplemental irrigation is not required to sustain the plant after it has become established.
57. "Operating pressure" means the pressure at which the parts of an irrigation system are designed by the manufacturer to operate.
58. "Overhead sprinkler irrigation systems" or "overhead spray irrigation systems" means systems that deliver water through the air (e.g., spray heads and rotors).
59. "Overspray" means the irrigation water which is delivered beyond the target area.
60. "Parkway" means the area between a sidewalk and the curb or traffic lane. It may be planted or unplanted, and with or without pedestrian egress.
61. "Permit" means an authorizing document issued by local agencies for new construction or rehabilitated landscapes.
62. "Pervious" means any surface or material that allows the passage of water through the material and into the underlying soil.
63. "Plant factor" or "plant water use factor" is a factor, when multiplied by ETo , estimates the amount of water needed by plants. For purposes of this 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 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).

64. "Project applicant" means the individual or entity submitting a landscape documentation package required under Section 18.148.040, to request a permit, plan check, or design review from the local agency. A project applicant may be the property owner or his or her designee.
65. "Rain sensor" or "rain sensing shutoff device" means a component which automatically suspends an irrigation event when it rains.
66. "Record drawing" or "as-builts" means a set of reproducible drawings which show significant changes in the work made during construction and which are usually based on drawings marked up in the field and other data furnished by the contractor.
67. "Recreational area" means areas, excluding private single family residential areas, designated for active play, recreation or public assembly in parks, sports fields, picnic grounds, amphitheaters or golf course tees, fairways, roughs, surrounds and greens.
68. "Recycled water," "reclaimed water," or "treated sewage effluent water" means treated or recycled waste water or reused water of a quality suitable for nonpotable uses such as landscape irrigation and water features. This water is not intended for human consumption.
69. "Reference evapotranspiration" or "ET_o" means a standard measurement of environmental parameters which affect the water use of plants. ET_o is expressed in inches per day, month, or year as represented in Appendix A, 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 so that regional differences in climate can be accommodated.
70. "Regional water efficient landscape ordinance" means a local ordinance adopted by two or more local agencies, water suppliers and other stakeholders for implementing a consistent set of landscape provisions throughout a geographical region. Regional ordinances are strongly encouraged to provide a consistent framework for the landscape industry and applicants to adhere to.
71. "Rehabilitated landscape" means any relandscaping project that requires a permit, plan check, or design review, meets the requirements of Section 490.1, and the modified landscape area is equal to or greater than two thousand five hundred square feet.
72. "Residential landscape" means landscapes surrounding single family homes or multifamily homes where landscapes are managed by individual homeowners.

73. "Run off" means water which is not absorbed by the soil or landscape to which it is applied and flows from the landscape area. For example, run off may result from water that is applied at too great a rate (application rate exceeds infiltration rate) or when there is a slope.
74. "Soil moisture sensing device" or "soil moisture sensor" means a device that measures the amount of water in the soil. The device may also suspend or initiate an irrigation event.
75. "Soil texture" means the classification of soil based on its percentage of sand, silt, and clay.
76. "Special landscape area" (SLA) means an area of the landscape dedicated solely to edible plants, recreational areas, areas irrigated with recycled water, or water features using recycled water.
77. "Sprinkler head" or "spray head" means a device which delivers water through a nozzle.
78. "Static water pressure" means the pipeline or municipal water supply pressure when water is not flowing.
79. "Station" means an area served by one valve or by a set of valves that operate simultaneously.
80. "Swimming pool" means any structure intended for swimming, recreational bathing or wading that contains water over twenty-four inches (six hundred ten millimeters) deep. This includes in-ground, above ground, and on-ground pools; hot tubs; spa and fixed in place wading pools.
81. "Swing joint" means an irrigation component that provides a flexible, leak-free connection between the emission device and lateral pipeline to allow movement in any direction and to prevent equipment damage.
82. "Submeter" means a metering device to measure water applied to the landscape that is installed after the primary utility water meter.
83. "Turf" means a ground cover surface of mowed grass. Annual bluegrass, Kentucky bluegrass, perennial ryegrass, red fescue, and tall fescue are cool-season grasses. Bermuda grass, kikuyu grass, seashore paspalum, St. Augustine grass, zoysia grass, and buffalo grass are warm-season grasses.
84. "Valve" means a device used to control the flow of water in the irrigation system.
85. "Water conserving plant species" means a plant species identified as having a very low or low plant factor.
86. "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 landscape area. Constructed wetlands used for on-site wastewater treatment or stormwater best management practices that are not irrigated and used solely for water treatment or stormwater retention are not water features and, therefore, are not subject to the water budget calculation.

87. "Watering window" means the time of day irrigation is allowed.
88. "WUCOLS" means the current version of the Water Use Classification of Landscape Species current edition published by the University of California Cooperative Extension and the Department of Water Resources, available at: http://ucanr.edu/sites/WUCOLS/Download_WUCOLS_IV_List/

18.148.040 – Water Conservation in Landscaping Ordinance Requirements

- A. All owners of new construction and rehabilitated landscapes of applicable sizes shall: (1) complete the landscape project application and documentation package (Section 18.148.060) and (2) comply with the landscape and irrigation maintenance schedule (Section 18.148.150) requirements of this chapter.
- B. All owners of existing landscapes over one acre in size, even if installed before enactment of this chapter, shall: (1) comply with local agency programs that may be instituted relating to irrigation audits, surveys and water use analysis, and (2) shall maintain landscape irrigation facilities to prevent water waste and runoff.

18.148.050 – Compliance with Chapter

- A. The local agency shall:
1. Provide the project applicant with the ordinance and landscape project application and documentation package requirements and the procedures for permits, plan checks, design reviews, or new or expanded water service;
 2. Review the landscape project application submitted by the project applicant;
 3. Approve or deny the project applicant's landscape project application submittal;
 4. Issue or approve a permit, plan check or design review that complies with the approved landscape project application or approve a new or expanded water service application that complies with the approved landscape project application;
 5. Submit a copy of the complete landscape project application to the local water purveyor or land use authority, as the case may be.
- B. The project applicant shall:

1. Prior to construction, submit all portions of the landscape project application, except the landscape audit report, to the local agency; and
2. Upon approval of the landscape project application by the local agency:
 - a. Receive a permit or approval of the plan check or design review and record the date of the permit in the certificate of completion;
 - b. Submit a copy of the approved landscape documentation package along with the record drawings, and any other information to the property owner or his/her designee; and
 - c. Submit a copy of the water efficient landscape worksheet to the local water purveyor.

18.148.060 – Landscape Project Application and Documentation Package

- A. The elements of a landscape must be designed to achieve water efficiency and will comply with the criteria described in this chapter. In completing the landscape project application, project applicants may choose one of two options to demonstrate that the landscape meets the ordinance's water efficiency goals. Regardless of which option is selected, the applicant must complete and comply with all other elements of the ordinance. The options include:
 1. Planting restrictions:
 - a. The landscape areas may include no turf or high-water using plants; and
 - b. At least eighty percent of the plants in landscape areas shall be native plants, low-water using plants, or no-water using plants; or the
 2. Water budget calculation option (Section 18.148.080).
- B. The landscape project application shall include the following elements:
 1. Project information:
 - a. Date;
 - b. Project applicant;
 - c. Project address (if available, parcel and/or lot numbers);
 - d. Project type (e.g., new, rehabilitated, public, private, cemetery, homeowner-installed);
 - e. Total landscape area (square feet);
 - f. Water supply type (e.g., potable, recycled, well) and identify the local retail water purveyor if the applicant is not served by a private well;

- g. Checklist of all documents in landscape documentation package;
 - h. Project contacts to include contact information for the project applicant and property owner;
 - i. Applicant signature and date with statement, "I agree to comply with the requirements of the water efficient landscape ordinance and submit a complete landscape documentation package."
2. Water budget calculations, if applicant selects to use a water budget approach rather than comply with the turf area limitations or specified plant type restrictions (Section 18.148.080);
 3. Soil management report or soil management survey (Section 18.148.080);
 4. Landscape design plans (Section 18.148.090);
 5. Irrigation system design plans (Section 18.148.100);
 6. Landscape audit report (Section 18.148.130); and
 7. Grading design plan or grading design survey (Section 18.148.110).

18.148.070 – Soil Management Report

- A. In order to reduce runoff and encourage healthy plant growth, a soil management report shall be completed by the project applicant, or his/her designee, or the applicant shall complete a soil management survey (Appendix E). The soil management report shall be completed as follows:
 1. Submit soil samples to a laboratory for analysis and recommendations.
 - a. Soil sampling shall be conducted in accordance with laboratory protocol, including protocols regarding adequate sampling depth for the intended plants.
 - b. The soil analysis shall include:
 - (1) soil texture;
 - (2) infiltration rate determined by laboratory test or soil texture infiltration rate table;
 - (3) pH;
 - (4) total soluble salts;
 - (5) sodium
 - (6) percent organic matter; and
 - (7) recommendations.
 - c. In projects with multiple landscape installations (i.e. production home developments) a soil sampling rate of one in seven lots or approximately fifteen

percent will satisfy this requirement. Large landscape projects shall sample at a rate equivalent to one in seven lots.

2. The project applicant, or his/her designee, shall comply with one of the following:
 - a. If significant mass grading is not planned, the soil analysis report shall be submitted to the local agency as part of the landscape documentation package; or
 - b. If significant mass grading is planned, the soil analysis report shall be submitted to the local agency as part of the certificate of completion.
3. The soil analysis report shall be made available, in a timely manner, to the professionals preparing the landscape design plans and irrigation design plans to make any necessary adjustments to the design plans.
4. The project applicant, or his/her designee, shall submit documentation verifying implementation of soil analysis report recommendations to the local agency with certificate of completion.

18.148.080 – Water Budget Calculations

Project applicant may elect to complete a water budget calculation for the landscape project using the water efficient landscape worksheet in Appendix B. Water budget calculations, if prepared, shall adhere to the following requirements:

- A. The plant factor used shall be from WUCOLS or from horticultural researchers with academic institutions or professional associations as approved by the California Department of Water Resources (DWR). The plant factor ranges from 0 to 0.1 for very low water using plants, 0.1 to 0.3 for low water use plants, from 0.4 to 0.6 for moderate water use plants, and from 0.7 to 1.0 for high water use plants.
- B. All water features shall be included in the high water use hydrozone and temporarily irrigated areas shall be included in the low water use hydrozone.
- C. All special landscape areas (SLA) shall be identified and their water use included in the water budget calculations.
- D. The reference evapotranspiration adjustment factor (ETAF) for SLA shall not exceed 1.0. The ETAF for all other landscaped areas shall not exceed 0.55 for residential areas and 0.45 for non-residential areas.
- E. ETo values from the reference evapotranspiration table in Appendix A shall be used in calculating the maximum applied water allowance (MAWA) and estimated total water use (ETWU). For geographic areas not covered in Appendix A, use data from other cities located nearby in the same reference evapotranspiration zone, as found in the CIMIS Reference Evapotranspiration Zones Map, Department of Water Resources, 1999. For

the purpose of determining estimated total water use, average irrigation efficiency is assumed to be 0.75 for overhead spray devices and 0.81 for drip system devices.

F. MAWA shall be calculated using the equation below:

$$\text{MAWA} = (\text{ETo}) (0.62) [(0.55 \times \text{LA}) + (0.45 \times \text{SLA})] \text{ for residential areas}$$

$$\text{MAWA} = (\text{ETo}) (0.62) [(0.45 \times \text{LA}) + (0.55 \times \text{SLA})] \text{ for non-residential areas}$$

Where:

MAWA = maximum applied water allowance (gallons per year)

ETo = reference evapotranspiration (inches per year)

0.62 = conversion factor (to gallons)

0.55 = reference evapotranspiration adjustment factor (ETAF) for residential areas

0.45 = reference evapotranspiration adjustment factor (ETAF) for non-residential areas

LA = landscape area including SLA (square feet)

0.45 = additional water allowance for SLA in residential areas

0.55 = additional water allowance for SLA in non-residential areas

SLA = special landscape area (square feet)

G. A local agency or project applicant may consider Effective Precipitation (Twenty-five percent of annual precipitation) in tracking water use and may use the following equation to calculate the MAWA:

$$\text{MAWA} = (\text{ETo} - \text{Eppt}) (0.62) [(0.55 \times \text{LA}) + (0.45 \times \text{SLA})] \text{ for residential areas.}$$

$$\text{MAWA} = (\text{ETo} - \text{EPPT}) (0.62) [(0.45 \times \text{LA}) + (0.55 \times \text{SLA})] \text{ for non-residential areas.}$$

H. Estimated total water use (ETWU) will be calculated using the equation below. The sum of the ETWU calculated for all hydrozones will not exceed the MAWA.

$$\text{ETWU} = (\text{ETo})(0.62) \left(\frac{\text{PF} \times \text{HA}}{\text{IE}} + \text{SLA} \right)$$

Where:

ETWU = estimated total water use per year (gallons)

ETo = reference evapotranspiration (inches)

PF = plant factor from WUCOLS (see Section 491)

HA = hydrozone area [high, medium, and low water use areas] (square feet)

0.75 = irrigation efficiency (IE) for overhead spray devices

0.81 = irrigation efficiency (IE) for drip system devices

SLA = special landscape area (square feet)

0.62 = conversion factor

18.148.090 – Landscape Design Plan

- A. For the efficient use of water, a landscape shall be carefully designed and planned for the intended function of the project. A landscape design plan meeting the following design criteria shall be submitted as part of the landscape documentation package.
1. **Plant Material.**
 - a. Any plant may be selected for the landscape, providing the estimated total water use in the landscape area does not exceed the maximum applied water allowance. Methods to achieve water efficiency shall include one or more of the following:
 - (1) Protection and preservation of native species and natural vegetation;
 - (2) Selection of water-conserving plant, tree and turf species, especially local native plants;
 - (3) Selection of plants based on local climate suitability, disease and pest resistance;
 - (4) Selection of trees based on applicable local tree ordinances or tree shading guidelines, and size at maturity as appropriate for the planting area; and
 - (5) Selection of plants from local and regional landscape program plant lists.
 - (6) Selection of plants from local fuel modification plan guidelines.
 - b. Each hydrozone shall have plant materials with similar water use, with the exception of hydrozones with plants of mixed water use, as specified in Section 18.148.100.A.2.d.
 - c. Plants shall be selected and planted appropriately based upon their adaptability to the climatic, geologic, and topographical conditions of the project site. Methods to achieve water efficiency shall include one or more of the following:
 - (1) Use the Sunset Western Climate Zone System which takes into account temperature, humidity, elevation, terrain, latitude, and varying degrees of continental and marine influence on local climate;
 - (2) Recognize the horticultural attributes of plants (i.e., mature plant size, invasive surface roots) to minimize damage to property or infrastructure [e.g., buildings, sidewalks, power lines]; allow for adequate soil volume for healthy root growth;
 - (3) Consider the solar orientation for plant placement to maximize summer shade and winter solar gain.
 - d. Turf is not allowed on slopes greater than twenty-five percent where the toe of the slope is adjacent to an impermeable hardscape and where twenty-five percent means one foot of vertical elevation change for every four feet of horizontal length (rise divided by run times one hundred = slope percent).
 - e. High water use plants, characterized by a plant factor of 0.7 to 1.0, are prohibited in street medians.

- f. A landscape design plan for projects in fire-prone areas shall address fire safety and prevention. A defensible space or zone around a building or structure is required per Public Resources Code Section 4291(a) and (b). Avoid fire-prone plant materials and highly flammable mulches. Refer to the local fuel modification plan guidelines.
- g. The use of invasive plant species, such as those listed by the California Invasive Plant Council, is strongly discouraged.
- h. The architectural guidelines of a common interest development, which include community apartment projects, condominiums, planned developments, and stock cooperatives, shall not prohibit or include conditions that have the effect of prohibiting the use of low-water use plants as a group.

2. Water features.

- a. Recirculating water systems shall be used for water features.
- b. Where available, recycled water shall be used as a source for decorative water features.
- c. Surface area of a water feature shall be included in the high water use hydrozone area of the water budget calculation.
- d. Pool and spa covers are required on any newly constructed pool or spa.

3. Soil preparation, mulch and amendments.

- a. Prior to the planting of any materials, compacted soils shall be transformed to a friable condition. On engineered slopes, only amended planting holes need meet this requirement.
- b. Soil amendments shall be incorporated according to recommendations of the soil report and what is appropriate for the plants selected (see Section 18.148.070).
- c. For landscape installations, compost at a rate of a minimum of four cubic yards per one thousand square feet of permeable area shall be incorporated to a depth of six inches into the soil. Soils with greater than six percent organic matter in the top six inches of soil are exempt from adding compost and tilling.
- d. A minimum three-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 of the landscape area may be left without mulch. Designated insect habitat must be included in the landscape design plan as such.

- e. Stabilizing mulching products shall be used on slopes that meet current engineering standards.
 - f. The mulching portion of the seed/mulch slurry in hydro-seeded applications shall meet the mulching requirement.
 - g. Organic mulch materials made from recycled or post-consumer 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.
- B. The landscape design plan, at a minimum, shall:
- 1. Delineate and label each hydrozone by number, letter, or other method;
 - 2. Identify each hydrozone as low, moderate, high water, or mixed water use. Temporarily irrigated areas of the landscape shall be included in the low water use hydrozone for the water budget calculation;
 - 3. Identify recreational areas;
 - 4. Identify areas permanently and solely dedicated to edible plants;
 - 5. Identify areas irrigated with recycled water;
 - 6. Identify type of mulch and application depth;
 - 7. Identify soil amendments, type, and quantity;
 - 8. Identify type and surface area of water features;
 - 9. Identify hardscapes (pervious and non-pervious);
 - 10. Identify location, installation details, and twenty-four-hour retention or infiltration capacity of any applicable stormwater best management practices that encourage on-site retention and infiltration of stormwater. Project applicants shall refer to the local agency or regional water quality control board for information on any applicable stormwater technical requirements. Stormwater best management practices are encouraged in the landscape design plan and examples are provided in Section 18.148.160.
 - 11. Identify any applicable rain harvesting or catchment technologies as discussed in Section 18.148.160 and their twenty-four-hour retention or infiltration capacity;
 - 12. Identify any applicable graywater discharge piping, system components and area(s) of distribution;
 - 13. Contain the following statement: "I have complied with the criteria of the ordinance and applied them for the efficient use of water in the landscape design plan"; and

14. Bear the signature of a licensed landscape architect, licensed landscape contractor, or any other person authorized to design a landscape. (See Sections 5500.1, 5615, 5641, 5641.1, 5641.2, 5641.3, 5641.4, 5641.5, 5641.6, 6701, 7027.5 of the Business and Professions Code, Section 832.27 of Title 16 of the California Code of Regulations, and Section 6721 of the Food and Agriculture Code.).

18.148.100 – Irrigation Design Plan

- A. This section applies to landscaped areas requiring permanent irrigation, not areas that require temporary irrigation solely for the plant establishment period. For the efficient use of water, an irrigation system shall meet all the requirements listed in this section and the manufacturers' recommendations. The irrigation system and its related components shall be planned and designed to allow for proper installation, management, and maintenance. An irrigation design plan meeting the following design criteria shall be submitted as part of the landscape documentation package.

1. **System.**

- a. Landscape water meters, defined as either a dedicated water service meter or private submeter, shall be installed for all non-residential irrigated landscapes of one thousand square feet but not more than five thousand square feet (the level at which Water Code 535 applies) and residential irrigated landscapes of five thousand square feet or greater. A landscape water meter may be either:
 - (1) A customer service meter dedicated to landscape use provided by the local water purveyor; or
 - (2) A privately owned meter or submeter.
- b. Automatic irrigation controllers utilizing either evapotranspiration or soil moisture sensor data utilizing non-volatile memory shall be required for irrigation scheduling in all irrigation systems.
- c. If the water pressure is below or exceeds the recommended pressure of the specified irrigation devices, the installation of a pressure regulating device is required to ensure that the dynamic pressure at each emission device is within the manufacturer's recommended pressure range for optimal performance.
 - (1) If the static pressure is above or below the required dynamic pressure of the irrigation system, pressure-regulating devices such as inline pressure regulators, booster pumps, or other devices shall be installed to meet the required dynamic pressure of the irrigation system.
 - (2) Static water pressure, dynamic or operating pressure, and flow reading of the water supply shall be measured at the point of connection. These pressure and flow measurements shall be conducted at the design stage. If the measurements are not available at the design stage, the measurements shall be conducted at installation.

- d. Sensors (rain, freeze, wind, etc.), either integral or auxiliary, that suspend or alter irrigation operation during unfavorable weather conditions shall be required on all irrigation systems, as appropriate for local climatic conditions. Irrigation should be avoided during windy or freezing weather or during rain.
- e. Manual shut-off valves (such as a gate valve, ball valve, or butterfly valve) shall be required, as close as possible to the point of connection of the water supply, to minimize water loss in case of an emergency (such as a main line break) or routine repair.
- f. Backflow prevention devices shall be required to protect the water supply from contamination by the irrigation system. A project applicant shall refer to the applicable local agency code (i.e., public health) for additional backflow prevention requirements.
- g. Flow sensors that detect high flow conditions created by system damage or malfunction are required for all on non-residential landscapes and residential landscapes of five thousand square feet or larger.
- h. Master shut-off valves are required on all projects except landscapes that make use of technologies that allow for the individual control of sprinklers that are individually pressurized in a system equipped with low pressure shut down features.
- i. The irrigation system shall be designed to prevent runoff, low head drainage, overspray, or other similar conditions where irrigation water flows onto non-targeted areas, such as adjacent property, non-irrigated areas, hardscapes, roadways, or structures.
- j. Relevant information from the soil management plan, such as soil type and infiltration rate, shall be utilized when designing irrigation systems.
- k. The design of the irrigation system shall conform to the hydrozones of the landscape design plan.
- l. The irrigation system must be designed and installed to meet, at a minimum, the irrigation efficiency criteria as described in Section 18.148.080 regarding the maximum applied water allowance.
- m. All irrigation emission devices must meet the requirements set in the American National Standards Institute (ANSI) standard, American Society of Agricultural and Biological Engineers'/International Code Council's (ASABE/ICC) 802-2014 "Landscape Irrigation Sprinkler and Emitter Standard." All sprinkler heads installed in the landscape must document a distribution uniformity low quarter of 0.65 or higher using the protocol defined in ASABE/ICC 802-2014.

- n. It is highly recommended that the project applicant or local agency inquire with the local water purveyor about peak water operating demands (on the water supply system) or water restrictions that may impact the effectiveness of the irrigation system.
- o. In mulched planting areas, the use of low volume irrigation is required to maximize water infiltration into the root zone.
- p. Sprinkler heads and other emission devices shall have matched precipitation rates, unless otherwise directed by the manufacturer's recommendations.
- q. Head to head coverage is recommended. However, sprinkler spacing shall be designed to achieve the highest possible distribution uniformity using the manufacturer's recommendations.
- r. Swing joints or other riser-protection components are required on all risers subject to damage that are adjacent to hardscapes or in high traffic areas of turf grass.
- s. Check valves or anti-drain valves are required on all sprinkler heads where low point drainage could occur.
- t. Areas less than ten feet in width in any direction shall be irrigated with subsurface irrigation or other means that produces no runoff or overspray.
- u. Overhead irrigation shall not be permitted within twenty-four inches of any non-permeable surface. Allowable irrigation within the setback from non-permeable surfaces may include drip, drip line, or other low flow non-spray technology. The setback area may be planted or unplanted. The surfacing of the setback may be mulch, gravel, or other porous material. These restrictions may be modified if:
 - (1) The landscape area is adjacent to permeable surfacing and no runoff occurs; or
 - (2) The adjacent non-permeable surfaces are designed and constructed to drain entirely to landscaping; or
 - (3) The irrigation designer specifies an alternative design or technology, as part of the landscape documentation package and clearly demonstrates strict adherence to irrigation system design criteria in Section 18.148.100A.1. Prevention of overspray and runoff must be confirmed during the irrigation audit.
- v. Slopes greater than twenty-five percent shall not be irrigated with an irrigation system with an application rate exceeding 0.75 inches per hour. This restriction may be modified if the landscape designer specifies an alternative design or technology, as part of the landscape documentation package, and clearly

demonstrates no runoff or erosion will occur. Prevention of runoff and erosion must be confirmed during the irrigation audit.

2. Hydrozone.

- a. Each valve shall irrigate a hydrozone with similar site, slope, sun exposure, soil conditions, and plant materials with similar water use.
 - b. Sprinkler heads and other emission devices shall be selected based on what is appropriate for the plant type within that hydrozone.
 - c. Where feasible, trees shall be placed on separate valves from shrubs, groundcovers, and turf to facilitate the appropriate irrigation of trees. The mature size and extent of the root zone shall be considered when designing irrigation for the tree.
 - d. Individual hydrozones that mix plants of moderate and low water use, or moderate and high water use, may be allowed if:
 - (1) Plant factor calculation is based on the proportions of the respective plant water uses and their plant factor; or
 - (2) The plant factor of the higher water using plant is used for calculations.
 - e. Individual hydrozones that mix high and low water use plants shall not be permitted.
 - f. On the landscape design plan and irrigation design plan, hydrozone areas shall be designated by number, letter, or other designation. On the irrigation design plan, designate the areas irrigated by each valve, and assign a number to each valve. Use this valve number in the Hydrozone information table (see Appendix B, Section A). This table can also assist with the irrigation audit and programming the controller.
- B. The irrigation design plan, at a minimum, shall contain:
1. Location and size of separate water meters for landscape;
 2. Location, type and size of all components of the irrigation system, including controllers, main and lateral lines, valves, sprinkler heads, moisture sensing devices, rain switches, quick couplers, pressure regulators, and backflow prevention devices;
 3. Static water pressure at the point of connection to the public water supply;
 4. Flow rate (gallons per minute), application rate (inches per hour), and design operating pressure (pressure per square inch) for each station;
 5. Recycled water irrigation systems as specified in Section 18.148.170;

6. The following statement: "I have complied with the criteria of the ordinance and applied them accordingly for the efficient use of water in the irrigation design plan"; and
7. The signature of a licensed landscape architect, certified irrigation designer, licensed landscape contractor, or any other person authorized to design an irrigation system. (See Sections 5500.1, 5615, 5641, 5641.1, 5641.2, 5641.3, 5641.4, 5641.5, 5641.6, 6701, 7027.5 of the Business and Professions Code, Section 832.27 of Title 16 of the California Code of Regulations, and Section 6721 of the Food and Agricultural Code.)

18.148.110 – Grading Design Plan

- A. For the efficient use of water, grading of a project site shall be designed to minimize soil erosion, runoff, and water waste. A grading plan or completed grading design survey (Appendix E) shall be submitted as part of the landscape documentation package. A comprehensive grading plan prepared by a civil engineer for other local agency permits satisfies this requirement.
 1. The project applicant shall submit a landscape grading plan that indicates finished configurations and elevations of the landscape area including:
 - a. Height of graded slopes;
 - b. Drainage patterns;
 - c. Pad elevations;
 - d. Finish grade; and
 - e. Stormwater retention improvements, if applicable
 2. To prevent excessive erosion and runoff, it is highly recommended that project applicants:
 - a. Grade so that all irrigation and normal rainfall remains within property lines and does not drain on to non-permeable hardscapes;
 - b. Avoid disruption of natural drainage patterns and undisturbed soil; and
 - c. Avoid soil compaction in landscape areas.

18.148.120 – Certificate of Completion

- A. The certificate of completion (see Appendix C for a sample certificate) shall include the following six elements:
 1. Project information sheet that contains:

- a. Date;
 - b. Project name;
 - c. Project applicant name, telephone, and mailing address;
 - d. Project address and location; and
 - e. Property owner name, telephone, and mailing address.
2. Certification by either the signer of the landscape design plan, the signer of the irrigation design plan, or the licensed landscape contractor that the landscape project has been installed per the approved landscape documentation package;
 - a. Where there have been significant changes made in the field during construction, these "as-built" or record drawings shall be included with the certification;
 - b. A diagram of the irrigation plan showing hydrozones shall be kept with the irrigation controller for subsequent management purposes.
 3. Irrigation scheduling parameters used to set the controller (see Section 18.148.140);
 4. Landscape and irrigation maintenance schedule (see Section 18.148.150);
 5. Irrigation audit report (see Section 18.148.130); and
 6. Soil analysis report or soil management survey, if not submitted with landscape documentation package, and documentation verifying implementation of soil report recommendations (see Section 18.148.070).
- B. The project applicant shall:
1. Submit the signed certificate of completion to the local agency for review;
 2. Ensure that copies of the approved certificate of completion are submitted to the local water purveyor and property owner or his or her designee.
- C. The local agency shall:
1. Receive the signed certificate of completion from the project applicant;
 2. Approve or deny the certificate of completion. If the certificate of completion is denied, the local agency shall provide information to the project applicant regarding reapplication, appeal, or other assistance.

18.148.130 – Landscape Audit Report

- A. The landscape audit report shall include, but is not limited to: inspection to confirm that the landscaping and irrigation system were installed as specified in the landscape and

irrigation design plan, system tune-up, system test with distribution uniformity, reporting overspray or runoff that causes overland flow, and preparation of an irrigation schedule.

- B. The landscape audit report shall include the following statement: "The landscape and irrigation system has been installed as specified in the landscape and irrigation design plan and complies with the criteria of the Ordinance and the permit".
- C. Local agency shall administer on-going programs that may include, but not be limited to, post-installation landscape inspection, irrigation water use analysis, irrigation audits, irrigation surveys and water budget calculations to evaluate compliance with the MAWA.

18.148.140 – Irrigation Scheduling

- A. For the efficient use of water, all irrigation schedules shall be developed, managed, and evaluated to utilize the minimum amount of water required to maintain plant health. Irrigation schedules shall meet the following criteria:
 - 1. Irrigation scheduling shall be regulated by automatic irrigation controllers.
 - 2. Overhead irrigation shall be scheduled between eight p.m. and ten a.m. unless weather conditions prevent it. If allowable hours of irrigation differ from the local water purveyor, the stricter of the two shall apply. Operation of the irrigation system outside the normal watering window is allowed for auditing and system maintenance.
 - 3. For implementation of the irrigation schedule, particular attention must be paid to irrigation run times, emission device, flow rate, and current reference evapotranspiration, so that applied water meets the estimated total water use. Total annual applied water shall be less than or equal to maximum applied water allowance (MAWA). Actual irrigation schedules shall be regulated by automatic irrigation controllers using current reference evapotranspiration data (e.g., CIMIS) or soil moisture sensor data.
 - 4. Parameters used to set the automatic controller shall be developed and submitted for each of the following:
 - a. The plant establishment period;
 - b. The established landscape; and
 - c. Temporarily irrigated areas
 - 5. Each irrigation schedule shall consider for each station all of the following that apply:
 - a. Irrigation interval (days between irrigation);
 - b. Irrigation run times (hours or minutes per irrigation event to avoid runoff);
 - c. Number of cycle starts required for each irrigation event to avoid runoff;
 - d. Amount of applied water scheduled to be applied on a monthly basis;

- e. Application rate setting;
- f. Root depth setting;
- g. Plant type setting;
- h. Soil type;
- i. Slope factor setting;
- j. Shade factor setting; and
- k. Irrigation uniformity or efficiency setting.

18.148.150 – Landscape and Irrigation Maintenance Schedule

- A. Landscapes shall be maintained to ensure water use efficiency. A regular maintenance schedule shall be submitted with the certificate of completion.
- B. A regular maintenance schedule shall include, but not be limited to, routine inspection; auditing; adjustment and repair of the irrigation system and its components; aerating and dethatching turf areas; topdressing with compost; replenishing mulch; fertilizing; pruning; weeding in all landscape areas; and removing obstructions to emission devices. Operation of the irrigation system outside the normal watering window is allowed for auditing and system maintenance.
- C. Repair of all irrigation equipment shall be done with the originally installed components or their equivalents or with components with greater efficiency.
- D. A project applicant is encouraged to implement established landscape industry sustainable best practices for all landscape maintenance activities.

18.148.160 – Stormwater Management and Rainwater Retention

- A. Stormwater management practices minimize runoff and increase infiltration which recharges groundwater and improves water quality. Implementing stormwater best management practices into the landscape and grading design plans to minimize runoff and to increase on-site rainwater retention and infiltration are encouraged.
- B. Project applicants shall refer to the local agency or regional water quality control board for information on any applicable stormwater technical requirements.
- C. All planted landscape areas are required to have friable soil to maximize water retention and infiltration. Refer to Section 18.148.090.A.3.
- D. It is strongly recommended that landscape areas be designed for capture and infiltration capacity that is sufficient to prevent runoff from impervious surfaces (i.e. roof and paved areas) from either: the one inch, 24-hour rain event or (2) the 85th percentile, 24-hour

rain event, and/or additional capacity as required by any applicable local, regional, state or federal regulation.

- E. It is recommended that stormwater projects incorporate any of the following elements to improve on-site stormwater and dry weather runoff capture and use:
1. Grade impervious surfaces, such as driveways, during construction to drain to vegetated areas.
 2. Minimize the area of impervious surfaces such as paved areas, roof and concrete driveways.
 3. Incorporate pervious or porous surfaces (e.g., gravel, permeable pavers or blocks, pervious or porous concrete) that minimize runoff.
 4. Direct runoff from paved surfaces and roof areas into planting beds or landscaped areas to maximize site water capture and reuse.
 5. Incorporate rain gardens, cisterns, and other rain harvesting or catchment systems.
 6. Incorporate infiltration beds, swales, basins and drywells to capture stormwater and dry weather runoff and increase percolation into the soil.
 7. Consider constructed wetlands and ponds that retain water, equalize excess flow, and filter pollutants.

18.148.170 – Recycled Water

- A. The installation of recycled water irrigation systems shall allow for the current and future use of recycled water.
- B. All recycled water irrigation systems shall be designed and operated in accordance with all applicable local and state laws.
- C. Landscapes using recycled water are considered special landscape areas. The ET adjustment factor for new and existing (non-rehabilitated) special landscape areas shall not exceed 1.0.

18.148.180 – Graywater Systems

- A. Graywater systems promote the efficient use of water and are encouraged to assist in on-site landscape irrigation. All graywater systems shall conform to the California Plumbing Code (Title 24, Part 5, Chapter 16) and any applicable local ordinance standards. Refer to Section 18.148.020.B. for the applicability of this ordinance to landscape areas less than 2,500 square feet with the estimated total water use met entirely by graywater.

18.148.190 – Environmental Review

The local agency must comply with the California Environmental Quality Act (CEQA), as appropriate.

18.148.200 – Provisions for Existing Landscapes

A local agency may by mutual agreement, designate another agency, such as a water purveyor, to implement some or all of the requirements contained in this ordinance. Local agencies may collaborate with water purveyors to define each entity's specific responsibilities relating to this ordinance.

18.148.210 – Provisions for Existing Landscapes over One Acre in Size

This section shall apply to all existing landscapes that were installed before [February 17, 2016] and are over one acre in size.

A. Irrigation Audit, Irrigation Survey, and Irrigation Water Use Analysis.

1. For landscapes that have a water meter, the local agency shall administer programs that may include, but not be limited to, irrigation water use analyses, irrigation surveys, and irrigation audits to evaluate water use and provide recommendations as necessary to reduce landscape water use to a level that does not exceed the MAWA for existing landscapes. The MAWA for existing landscapes shall be calculated as:

$$\text{MAWA} = (0.8) (\text{ET}_o)(\text{LA})(0.62).$$

2. For landscapes that do not have a meter, the local agency shall administer programs that may include, but not be limited to, irrigation surveys and irrigation audits to evaluate water use and provide recommendations as necessary in order to prevent water waste.
3. All landscape irrigation audits for existing landscapes that are greater than one acre in size shall be conducted by a certified landscape irrigation auditor.

B. Water Waste Prevention.

1. Local agencies shall prevent water waste resulting from inefficient landscape irrigation by prohibiting runoff from leaving the target landscape due to low head drainage, overspray, or other similar conditions where water flows onto adjacent property, non-irrigated areas, walks, roadways, parking lots, or structures.
2. Restrictions regarding overspray and runoff may be modified if:
 - a. The landscape area is adjacent to permeable surfacing and no runoff occurs; or
 - b. The adjacent non-permeable surfaces are designed and constructed to drain entirely to landscaping.

18.148.220 – Penalties

Any person violating any provision of this chapter shall be deemed guilty of an infraction and shall be punished in accordance with Section 1.24.010.B. of this code. As an alternative to all other available remedies, including penalties available pursuant to this section, any person violating any provision of this chapter shall be subject to administrative penalties and fines pursuant to the authorities and procedures set forth in Chapter 1.19.

Chapter 18.152 – AGRICULTURAL MITIGATION

Sections:

- 18.152.010 – Agricultural Lands Preservation Program
- 18.152.020 – Purpose
- 18.152.030 – Definitions
- 18.152.040 – Applicability
- 18.152.050 – Mitigation Ratio
- 18.152.060 – "Stay Ahead" Provision
- 18.152.070 – Measurement of Affected Area
- 18.152.080 – Mitigation Mechanism
- 18.152.090 – Eligible Mitigation Lands
- 18.152.100 – Ineligible Mitigation Lands
- 18.152.110 – Agricultural Priority Area
- 18.152.120 – Responsibility for Easement Acquisition
- 18.152.130 – Management and Monitoring Fee
- 18.152.140 – Implementing Entity
- 18.152.150 – Mitigation Timing and Implementation
- 18.152.160 – Planned Developments/Development Agreements
- 18.152.170 – Funding for Easements
- 18.152.180 – Clustering of Development

18.152.010 – Agricultural Lands Preservation Program

The ordinance codified in this chapter shall be known and may be cited as the "Agricultural Lands Preservation Program" of the City of Morgan Hill.

18.152.020 – Purpose

- A. The City of Morgan Hill has determined that small-scale agriculture is viable in the Morgan Hill sphere of influence (SOI) if land use tools are used effectively to protect an adequate agricultural land use supply. Establishing land use policies and an implementation program to preserve agricultural lands will help to preserve open space, provide access to locally grown foods, promote sustainable food production, contribute to a unique cultural environment within Morgan Hill, and address regional land use planning policy objectives. For Morgan Hill, an effective agricultural preservation program will need to focus upon the use of agricultural land use easements supported by agricultural preservation land use policies.
- B. The Morgan Hill agricultural lands preservation program is intended to promote continued and viable agricultural activities in and around Morgan Hill through a

comprehensive set of land use policies and implementation activities that together accomplish the following:

1. Preserve open space agricultural lands and agricultural activity within the Morgan Hill sphere of influence.
2. Promote the viability of small-scale agriculture through the preservation of agricultural land and the implementation of supporting general plan policies.
3. Identify the combination of tools, techniques, mechanisms, and funding sources that form the best agricultural/open space land preservation program for the City of Morgan Hill.
4. Establish CEQA mitigation procedures to mitigate the loss of agricultural lands.
5. Focus land preservation in the city's southeast quadrant

18.152.030 – Definitions

The following terms when used in this chapter shall have the following respective meanings:

- A. **Agricultural Land.** For "agricultural land" that requires off-setting preservation/mitigation under this agricultural lands preservation program, agricultural land is defined as land that is depicted on the 2010 map of the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance and that was not subsequently developed for non-agricultural use prior to August 1, 2014 or subsequently developed per the provisions of this ordinance. Lands identified as grazing land are not subject to the offsetting preservation/mitigation requirements set forth in this policy.
- B. **Agricultural Conservation Easement.** An agricultural conservation easement is a specific type of easement whose purpose is to enable the encumbered property to remain in productive agricultural use by preventing any use or activity that would diminish or impair the agriculturally productive capacity. Therefore, the terms of an agricultural-conservation easement restrict the use of the encumbered property to agriculture, while prohibiting development, subdivision, and commercial use of the property other than as agriculture. Agricultural conservation easements are perpetual, running with the land so that their terms are binding on all future fee-title owners of the property.
- C. **Agricultural Mitigation Land.** Agricultural land (as defined above) that is encumbered by an agricultural conservation easement or other farmland conservation mechanism acceptable to the city. If the agricultural land is also being used to meet open agricultural land preservation goals, the easement or other mechanism must ensure that at least ninety percent of any property being used as agricultural mitigation land remain as open space free of structures or other impervious surfaces so that it retains its value as agricultural

land under the FMMP criteria. Uses allowed on agricultural mitigation land shall be consistent with the agricultural use described below and pertaining land use regulations, and as further defined in the applicable agricultural conservation easement or other farmland conservation mechanism.

- D. **Agricultural Priority Area.** The agricultural priority area is an area within the SEQ that has been identified within the Agricultural Lands Preservation Program as a priority location to preserve and encourage the long-term viability of agriculture and open agricultural lands, recognizing both the vital contributions agriculture makes to the economy and quality of life within the county and the community preference for maintenance of open space areas. By designating this area, the program identifies those lands within the Morgan Hill SOI most suitable for agricultural production and related uses. Designating the agricultural priority area provides stability for ongoing agricultural operations and supports new uses necessary to support a viable local agriculture industry. The agricultural priority area is also intended to retain in open space uses any lands that are not being actively farmed until agricultural activities resume on those lands.
- E. **Agricultural Use.** Agricultural use is defined as the use of the land for agricultural purposes, including crops, or crop trees, including floriculture, horticulture, viticulture, crops grown within greenhouses or other buildings, vineyards, crop harvesting, raising of animals (including apiaries, aviaries, dairying, pasturage, and fish farms), and grazing, and including necessary accessory uses for packing, processing, treating or storing of produce, and consistent with the governing jurisdiction's pertaining land use regulations. Qualifying agricultural use activities may include:
1. **Agricultural processing:** Processing facilities for the handling, processing, packing, packaging, storing and shipping of agricultural commodities grown primarily in Santa Clara County. Does not include processing of meat, poultry, or animal products (butcheries), nor timber or wood processing. Does not include routine harvesting and handling activities incidental to agriculture.
 2. **Agriculturally related entertainment and commercial uses:** Visitor-oriented services, sales and attractions with an agricultural theme that are conducted in conjunction with on-site agricultural uses. Such uses include but are not limited to food and retail sales, tasting rooms, reception facilities, outdoor entertainment areas.
 3. **Agricultural research:** Establishments for experimental greenhouse and field growing of agricultural commodities, landscaping and seeds, including experimental use of herbicides, pesticides and other agricultural practices. Agricultural research excludes experiments involving livestock and other animals.
 4. **Dairy:** Establishments where cows or goats are maintained for the production of milk or other dairy products for commercial distribution or sale.

5. Feed lot: Establishments primarily engaged in the fattening of livestock in a confined area.
6. Field research: Research activities, field studies and educational activities (e.g., student field research) that are dependent on a natural, open setting. Examples include biological, geological or atmospheric studies.
7. Mushroom farm: Establishments primarily used for the cultivation and subsequent distribution and sale of mushrooms.
8. Nursery: an area where agricultural products are grown for transplanting, for use of stock for building and grafting, or for sale on the premises. Nurseries may include sale and cultivation of ornamental trees, shrubs, and plants, and incidental sale or rental of garden and landscape materials and equipment.
9. Poultry and egg farms: Establishments where fowl are raised or kept in confined areas or facilities for the purpose of commercial distribution or sale of birds or eggs.
10. Wildlife refuge: undeveloped land kept as natural habitat for the purpose of supporting a species or multiple species of wildlife.
11. Wineries: Facilities for the production of wine from fruit or fruit juices through fermentation that are subject to type 02 licenses by the California Department of Alcoholic Beverage Control. Wineries shall be entitled to all uses and activities provided under the type 02 license. Wineries may also include related storage, blending and bottling activities, as well as administrative offices, marketing, tours, public tasting, wholesale and retail sales of wine, and ancillary distilling of wine to produce brandy or similar distilled spirits. Wineries may include outdoor areas for picnics, gatherings and other activities incidental to wine-tasting. Incidental sale of marketing products and accessories related to the winery's brand identity, wine drinking, food pairing, local agriculture and local history is also permitted.
12. Ancillary uses: Uses conducted subordinate to the primary agricultural use being conducted upon a property and which do not occupy in total more than ten percent of the property, including:
 - a. Direct sales of locally produced agricultural products.
 - b. One dwelling of persons regularly employed on the premises for farming or domestic duties;
 - c. Ancillary private garages and other structures for parking and storage of equipment, private stables, and other accessory buildings;
 - d. Quarters, accommodations or areas for transient labor, such as labor cabins or camps.

- F. Agricultural Preservation In-lieu Fee. A fee paid to the City of Morgan Hill which will be credited to the city's open space fund or other city fund created for the purpose of acquiring agricultural mitigation land or transferred to a qualifying entity and used by either agency solely for the purpose of acquiring agricultural conservation easements. The program provides for an in-lieu fee in order to allow the utilization of funding from multiple sources and to maximize the city's ability to preserve open space agricultural lands within the agricultural priority area.
- G. Agricultural Lands Preservation Program Surcharge Fee. A fee paid to the City of Morgan Hill which will be credited to the city's open space fund or other city fund created for the purpose of acquiring agricultural mitigation land or transferred to a qualifying entity and used by either agency for the purpose of administering the agricultural lands preservation program and/or to cover ongoing management and monitoring of the easements. The surcharge fee is either incorporated into the overall in-lieu fee for projects that make use of this option, or charged directly to projects which independently establish an agricultural conservation easement.
- H. Open Agricultural Land. Open agricultural land is defined as agricultural land that is at least ninety percent free of buildings, structures or other impervious surface and therefore available for planting of outdoor crops, grazing, or other agricultural use. The city may make use of open space funding sources to acquire agricultural conservation easements where that easement specifies that the encumbered property be maintained as open agricultural land.

18.152.040 – Applicability

The provisions of this chapter shall apply to all new development/activities under the jurisdiction of the City of Morgan Hill, including both private development and public development projects that directly result in the conversion of agricultural land (as defined above) will be required to mitigate loss of agricultural land per the provisions of this policy. This includes projects within the existing city boundaries as well as projects that propose annexation into Morgan Hill. Projects which have received discretionary land use approval prior to the adoption August 1, 2014, including completion of the CEQA process, are not subject to this policy unless specifically required as mitigation or a condition of project approval.

18.152.050 – Mitigation Ratio

A minimum of one acre of agricultural land (1:1 mitigation ratio) shall be preserved for each acre of agricultural land changed to a non-agricultural use. The required acreage of area to be protected through an agricultural conservation easement or agricultural preservation in-lieu fee will depend on the measurement of affected area as defined below.

18.152.060 – "Stay Ahead" Provision

Conservation easements will be established at least at a 1:1 mitigation ratio in advance of the development of agricultural lands. Development occurs with either the issuance of grading permit or building permits that would result in the loss of agricultural land. To meet this provision the city may utilize existing open space funding to establish agricultural conservation easements, or individual projects may establish such easements in advance of development activity.

18.152.070 – Measurement of Affected Area

Areas subject to agricultural mitigation requirements will be the developed footprint for properties with a general plan land use designation of open space, public facilities, or sports recreation/leisure. Areas proposed to be so reserved shall have an aggregated area of at least ten acres in size to qualify for exclusion from the developed footprint calculation. For the remaining land use designations of residential, commercial, and industrial, the entire site will be used for calculating the required mitigation. Disturbed footprint will include irrigated fields for proposed sports fields or facilities.

18.152.080 – Mitigation Mechanism

Conversion of agricultural land will require off-setting acquisition and/or dedication of agricultural conservation easements over approved agricultural mitigation land, or payment to the city of the agricultural preservation in-lieu fee, to support agricultural preservation. In addition to land acquisition/dedication, or payment of the agricultural preservation in-lieu fee, in either case developers are also required to pay an agricultural lands preservation program surcharge fee (on a per acre basis) to cover administrative costs and ongoing management and monitoring of the easements.

18.152.090 – Eligible Mitigation Lands

In order to meet the goals of this chapter, lands proposed to be used as agricultural mitigation shall conform to the above definitions for agricultural mitigation land and/or open agricultural land and shall meet the following criteria:

- A. Agricultural conservation easements resulting from this program shall be acquired from willing sellers only; eminent domain will not be used to acquire lands for conservation;
- B. The property is of adequate size, configuration and location to be viable for continued agricultural use;
- C. The land shall have access to an adequate water supply to maintain the purposes of the easement, i.e., to irrigate farmland if the converted farmland is irrigated or capable of irrigation. The water supply shall be sufficient to support ongoing agricultural uses, and

the water rights on the agricultural mitigation land shall be protected in the agricultural conservation easement;

- D. Other considerations for appropriate conserved agricultural lands include: soil type, parcel size, existing irrigation supplies, strong agricultural production history, proximity to agricultural infrastructure, proximity to the first point of processing, uses on surrounding lands, and proximity to urban areas now and into the foreseeable future;
- E. The mitigation land shall be located within Santa Clara County; and
- F. The mitigation land may not overlap with land being acquired as habitat mitigation by the Santa Clara Valley Habitat Agency.

18.152.100 – Ineligible Mitigation Lands

A property is ineligible to serve as agricultural mitigation if any of the circumstances below apply:

- A. The property is currently encumbered by a conservation, flood, or other type of easement or deed restriction that legally or practicably prevents converting the property to a nonagricultural use; or
- B. The property is currently under public ownership and will remain so in the future, except to the extent it is included within a mitigation bank that may subsequently be established by the city or other public agency; or
- C. The property is subject to conditions that practicably prevent utilizing the property for a viable agricultural use.

18.152.110 – Agricultural Priority Area

Dedications inside the Morgan Hill sphere of influence (SOI) will be strongly encouraged within the southeast quadrant (SEQ) as the first priority. The city has identified an agricultural priority area within the SEQ as the city's first priority for conservation. The city's secondary priority is the preservation of other rural county agricultural lands within the Morgan Hill SOI. Dedications outside the SOI are less desirable and must be inside Santa Clara County as described under 'eligible mitigation lands' above. The agricultural priority area encompasses approximately six hundred fifty acres of land.

18.152.120 – Responsibility for Easement Acquisition

- A. In cases where the mitigation fee is paid, the City of Morgan Hill will either take on responsibility for acquiring the easement or transfer the in-lieu fee and accompanying responsibility to a qualifying entity.

- B. Developments requiring less than ten acres of agricultural mitigation are required to pay the agricultural preservation in-lieu fee on a per acre basis except that acquisition of agricultural conservation easements of less than ten acres may be allowed when located immediately adjacent to an existing agricultural conservation easement area that when combined, exceeds ten acres in size.
- C. Developers may independently establish an agricultural conservation easement on eligible mitigation lands within the county. In such cases, the developer will be required to pay all acquisition costs, the costs of establishing the easement, and the agricultural lands preservation program surcharge fee.

18.152.130 – Management and Monitoring Fee

The developer shall pay a one-time per acre fee (agricultural lands preservation program surcharge fee) to cover the average cost administration of the program.

18.152.140 – Implementing Entity

The city will hold the easements and collect management and monitoring fees until an alternative implementing entity (qualifying entity), such as a nonprofit conservation organization or agricultural consultant, has been identified.

18.152.150 – Mitigation Timing and Implementation

Agricultural mitigation will be required prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or grading permit that results in physical development involving the conversion of agricultural lands, whichever occurs first.

18.152.160 – Planned Developments/Development Agreements

Developers may provide agricultural mitigation through a planned development project that consolidates existing development rights onto a portion of the property so that the remaining undeveloped portion is then reserved for agricultural use. Such an approach may be used within the SEQ or within other areas of the city's SOI in which agricultural lands are present. Such a project must be governed by a development agreement. This method of mitigation will only be considered if it results in an equal or greater agricultural benefit as would have resulted from the mitigation measures described above. Factors that may be considered include, but are not limited to: (1) the number, size, and location of permissible clustered home sites; (2) the amount of land dedicated for agricultural conservation; (3) the location of agricultural land in relation to the agricultural priority area and contiguity with existing and already conserved agricultural land; and (4) commitments to actively farm agricultural land within the development agreement area. The developer will be required to enter into a development

agreement with the city specifying the terms of the agreement and the extraordinary benefits accruing to the city.

18.152.170 – Funding for Easements

Given the city's policy objective of agricultural land preservation within the Morgan Hill sphere of influence and within the southeast quadrant in particular, it is anticipated that the city will need to use multiple funding sources to support the acquisition of easements within the desired area. In addition to use of money obtain through grants and other contributions, the city will use open space funds collected through administration of its residential development control system (RDCS) to supplement the acquisition of conservation easements.

18.152.180 – Clustering of Development

The city may work with land owners or developers through the land use entitlement process to preserve agricultural lands by allowing a clustering of existing development rights onto a portion of a site so that a large portion of the site may be preserved for agricultural use. The city should allow such alternate methods of agricultural mitigation through planned development zoning and/or a development agreement so that it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an agricultural conservation easement shall be recorded over the agricultural mitigation lands subject to the planned development zoning and/or development agreement.