



AGENDA REPORT

Meeting Date: November 17, 2009
Item Number: F-3
To: Honorable Mayor & City Council
From: City Attorney
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS REGARDING
WATER EFFICIENT LANDSCAPING AND PARKWAY SURFACES
AND AMENDING THE BEVERLY HILLS MUNICIPAL CODE
Attachments: 1. Ordinance

RECOMMENDATION

It is recommended that the proposed ordinance be adopted.

INTRODUCTION

Assembly Bill 1881, signed into law on September 28, 2006 requires cities to adopt a model landscape ordinance no later than January 1, 2010. This ordinance is a modified version of the state mandated model landscape ordinance, which needs to be in place prior to January 1, 2010.

DISCUSSION

The ordinance was introduced for first reading at the November 5, 2009 Council meeting.

FISCAL IMPACT

The Community Development Department has established fees to compensate for the work required to implement this ordinance.

Laurence S. Wiener, City Attorney

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
REGARDING WATER EFFICIENT LANDSCAPING AND
PARKWAY SURFACES AND AMENDING THE BEVERLY
HILLS MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY
ORDAINS AS FOLLOWS:

Section 1. Article 4 (Water Efficient Landscaping”) of Chapter 4 (Water Regulations) of Title 9 (Building and Property Health and Safety Regulations) is hereby amended in its entirety to read as follows:

“Article 4. Water Efficient Landscaping

9-4-401: PURPOSE: Water is a precious commodity of limited supply. In accordance with the Water Conservation in Landscaping Act (“Act”), the purpose and intent of this ordinance is to:

- A. Promote the values and benefits of landscapes while recognizing the need to invest water and other resources as efficiently as possible;
- B. Establish a structure for planning, designing, installing, and maintaining and managing water efficient landscapes in new residential or commercial development projects and when landscape areas are altered by more than 50 percent in total area;
- C. Promote water management practices and water waste prevention for existing landscapes; and
- D. Use water efficiently without waste by setting a Maximum Applied Water Allowance as an upper limit for water use and reduce water use to the lowest practical amount.

Accordingly, this ordinance is intended to be as effective in conserving water as is the Department of Water Resources State Model Landscaping Ordinance set forth in Government Code Section 65595 and shall be known as the “Water Efficient Landscaping Ordinance.”

9-4-402: APPLICABILITY:

Except as set forth in section 9-4-404, this article shall apply to all Landscaped Areas of new residential or commercial development projects, including City projects and facilities, all new installations of Landscaped Area irrigation systems, and all Altered Landscaped Areas, whether proposed as part of projects subject to plan reviews by any design or other reviewing body, or as part of projects not subject to review.

9-4-403: DEFINITIONS:

Unless the context otherwise requires, the following definitions shall govern the construction of this article:

ALTERED LANDSCAPED AREA: A Landscaped Area, including landscape areas of public property or facilities, that has been altered by more than fifty percent (50%) in total area.

CERTIFICATE OF COMPLETION: The document required under Section 9-4-411.

CERTIFIED LANDSCAPE IRRIGATION AUDITOR: A person certified to perform landscape irrigation audits by a recognized professional trade organization or other educational organization.

DEPARTMENT: The Department of Community Development.

DIRECTOR: The Director of the Department of Community Development or his/her designee.

ESTIMATED TOTAL WATER USE (“ETWU”): The total water used for the landscape subject to this Article determined pursuant to the formula set forth in the Landscape Regulations. The ETWU is based upon such factors as the local evapotranspiration rate, the size of the Landscaped Area, the types of plants and the efficiency of the irrigation system.

IRRIGATION AUDIT: 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.

LANDSCAPE DOCUMENTATION PACKAGE: The documents required under Section 9-4-405 required to be submitted to the Department of Community Development for review and approval.

LANDSCAPE REGULATIONS: Rules and regulations adopted by the Director of Community Development for the implementation and enforcement of provisions of this Article, and when duly promulgated, such rules and regulations shall be in full force and effect.

LANDSCAPED AREA: The entire lot, including, water features such as pools, spas, ponds, and fountains. “Landscaped Area” shall not include the building footprint, driveways, non-irrigated portions of parking lots, hardscapes such as decks and patios, and other nonporous areas.

MAXIMUM APPLIED WATER ALLOWANCE (“MAWA”): The upper limit of annual applied water for the established Landscaped Area or Altered Landscaped Area determined pursuant to the formula set forth in the Landscape Regulations. The MAWA is based upon the local reference evapotranspiration rate, the ET_0 Adjustment Factor and the size of the Landscaped Area or Altered Landscaped Area.

PROJECT APPLICANT: The person or entity submitting a Landscape Documentation Package. A Project Applicant may include the property owner and/or an agent of the owner.

SMART IRRIGATION CONTROLLER: A weather-based device that automatically controls an outdoor irrigation system by using weather, site or soil moisture data as a basis for determining an appropriate watering schedule or utilizing prevailing weather conditions, current and historic evapotranspiration, soil moisture levels, and other relevant factors to adapt water applications to meet the actual needs of the plants.

WATER EFFICIENT LANDSCAPE WORKSHEET: The document described in Section 9-4-410.

9-4-404: EXCEPTIONS:

This article shall not apply to:

- A. Projects which involve alterations or additions to, or retrofits of, existing residential, commercial or public structures or facilities, unless the Landscape Area is altered as defined in Section 9-4-403.
- B. Projects with a Landscaped Area of less than two thousand five hundred (2,500) square feet.
- C. Landscaping that is part of a property listed on any applicable local, state or national register of historic places.
- D. Plant collections as part of gardens and arboretums open to the public.

9-4-405: REVIEW AND APPROVAL REQUIREMENTS.

A. Prior to issuance of a building permit for any project that involves Landscaped Areas or Altered Landscaped Areas subject to this Article, the Project Applicant must submit a Landscape Documentation Package for review and approval by the Community Development Department (“Department”). The Landscape Documentation Package shall include the following:

- 1. Project information as required by the Landscape Regulations;
- 2. Landscape design plan as described in Section 9-4-406;
- 3. Irrigation design plan as described in Section 9-4-407;
- 4. Water Efficient Landscape Worksheet as described in Section 9-4-410
- 5. A soils management report as described in Section 9-4-409;
- 6. Grading design plan as described in Section 9-4-408; and
- 7. Payment of the fee as prescribed by City Council upon submittal of the Landscape Documentation Package.

If the Landscaped Area or Altered Landscaped Area subject to this Article is a stand-alone project or does not otherwise require a building permit or formal planning or other commission

approval or review, the Landscape Documentation Package shall be submitted to the Department for review and approval prior to the commencement of landscape improvements.

B. The documents listed in paragraph A shall be prepared and signed by a landscape architect, landscape designer, or irrigation designer, as appropriate, except that the soils report shall be prepared by a qualified soil and plant laboratory.

9-4-406: LANDSCAPE DESIGN PLAN:

A. Landscaped Areas or Altered Landscaped Areas subject to this Article shall be carefully designed and planned to ensure the efficient use of water. The Project Applicant shall submit to the Department a landscape design plan that meets the criteria set forth in this section and the criteria set forth in the Landscape Regulations.

B. The landscape design plan shall comply with or include the following:

1. A description of the plant material. Any plant may be selected for the landscape provided that the Estimated Applied Water Use in the Landscaped Area or Altered Landscaped Area does not exceed the Maximum Applied Water Allowance.

2. Landscape design plans for projects in the City's Very High Fire Hazard Severity Zones areas shall address fire safety and prevention. The Project Applicant shall ensure that the defensible space required by the Municipal Code is maintained and shall avoid fire-prone plant materials and mulches.

3. Invasive species of plants shall be prohibited near parks, buffers, greenbelts and open spaces and are generally discouraged for landscape use.

4. 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.

5. Turf is not allowed on slopes greater than 25% where the toe of the slope is adjacent to an impermeable hardscape and where 25% means 1 foot of vertical elevation change for every 4 feet of horizontal length (rise divided by run x 100 + slope percent).

6. Recirculating water systems shall be used as a source for water features.

7. The surface area of a water feature shall be included in the high water use hydrozone area of the water budget calculation.

8. Pool and spa covers are highly recommended.

9. A minimum two inch (2") 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.

10. Stabilizing mulching products shall be used on slopes.

11. The mulching portion of the seed/mulch slurry in hydro-seeded applications shall meet the mulching requirement.

12. Soil amendments shall be incorporated according to recommendations of the soil report, if any, and what is appropriate for the plants selected.

9-4-407: IRRIGATION DESIGN PLAN.

A. An irrigation system and its related components for Landscaped Areas and Altered Landscaped Areas subject to this Article shall be carefully designed and planned to allow for proper installation, management, and maintenance. The Project Applicant shall submit to the Department an irrigation design plan that meets the criteria set forth in this section and the criteria set forth in the Landscape Regulations.

B. An irrigation design plan shall comply with or include the following:

1. Smart Irrigation Controllers or other self-adjusting irrigation controllers, shall be required for all irrigation systems. The controller must be able to accommodate all aspects of the landscape and irrigation design plans.

2. All irrigation systems shall be designed to avoid excessive pressure. Water pressure regulators are required. Static water pressure, dynamic or operating pressure and flow reading of the water supply shall be measured at the time of day the system will operate. These pressure and flow measurements shall be conducted at the design stage, if available, or prior to installation, if not available at the design phase.

3. If the static pressure is above or below the required dynamic pressure of the irrigation system, pressure-regulators, or booster pumps, or other devices shall be installed to meet the required dynamic pressure of the irrigation system.

4. Sensor (rain, freeze, wind, etc.), either integral or auxiliary, that suspend irrigation operation during unfavorable weather conditions shall be required on all irrigation systems, as appropriate for local climatic conditions.

5. High-flow check valves, or other technology to interrupt operations in high-flow conditions created by irrigation system damage or malfunction, shall be required.

6. 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.

7. Relevant information from the soil management plan, such as soil type and infiltration rate, shall be utilized when designing irrigation systems.

8. The design of the irrigation system shall conform to the hydrozones of the landscape design plan.

9-4-408: GRADING DESIGN PLAN.

A. Grading of a project site that contains a Landscaped Area or Altered Landscaped Area subject to this Article, shall be designed to minimize soil erosion, runoff and water waste. The Project Applicant shall submit to the Department a grading design plan that meets the criteria set forth in this section and the criteria set forth in the Landscape Regulations.

B. The landscape grading plan shall indicate finished configurations and elevations of the landscape area including: (i) height of graded slopes; (ii) drainage patterns; (iii) pad elevations; (iv) finish grade; and (v) stormwater retention improvements, if applicable.

C. To prevent excessive erosion and runoff, grading shall avoid disturbing natural drainage patterns and avoid soil compaction in Landscaped Areas or Altered Landscaped Areas subject to this Article. All irrigation and normal rainfall should remain within the property lines so as not to drain onto non-permeable hardscapes.

D. A comprehensive grading plan prepared by a civil engineer for a project which includes Landscaped Areas or Altered Landscaped Areas subject to this Article, can satisfy this requirement.

9-4-409: SOIL MANAGEMENT REPORT.

The Project Applicant shall submit to the Department a soil management plan that meets the criteria set forth in the Landscape Regulations.

9-4-410: WATER EFFICIENT LANDSCAPE WORKSHEET.

A. The Project Applicant shall complete and submit to the Department a Water Efficient Landscape Worksheet that meets the criteria set forth in this section and the criteria set forth in the Landscape Regulations.

B. The Water Efficient Landscape Worksheet shall contain two sections; (i) a hydrozone information table and (ii) a water budget calculation for the Landscaped Areas or Altered Landscaped Areas subject to this Article. The water budget calculation shall include the Maximum Applied Water Allowance and the Estimated Total Water Use.

9-4-411: CERTIFICATION OF COMPLETION.

A. Upon completion of the installation of the Landscaped Areas or Altered Landscaped Area subject to this Article, the Project Applicant shall submit a Certificate of Completion, in the form provided by the City, for review and approval by the Director. The

Certificate of Completion shall be executed by either the licensed landscaped architect, licensed landscape contractor or the certified irrigation designer that signed any of the documents submitted as part of the Landscape Documentation Package.

B. The Certificate of Completion shall certify and/or include the following:

1. The Landscaped Areas or Altered Landscaped Areas subject to this Article has been installed in conformance with the Landscaped Documentation Package, the Water Efficient Landscaping Ordinance and the Landscape Regulations;

2. The automatic controller has been set according to the irrigation schedule described in Section 9-4-412;

3. Documentation that the soil management report recommendations, if any, have been implemented;

4. The Irrigation Audit Report; and

5. The landscape and irrigation maintenance schedule.

C. The Director shall approve the Certificate of Completion if it is determined the project conforms to the provisions of this Section. If the Director determines that the Certificate of Completion is incomplete or does not conform to the provisions of this Section, the Director shall:

1. Notify the Project Applicant in writing that the Certificate of Completion has been denied and include a statement of reasons; or

2. Notify the Project Applicant in writing that the Certificate of Completion is incomplete with an indication of additional information necessary. The Project Applicant may re-submit the Certificate of Completion for review by the Director.

D. The Project Applicant shall provide a copy of the approved Certificate of Completion to the property owner within 7 days of its approval.

9-4-412: IRRIGATION SCHEDULE

The Project Applicant shall prepare an irrigation schedule in accordance with the Landscape Regulations that evaluates and manages the amount of water required to maintain plant health.

9-4-413: LANDSCAPE AND IRRIGATION MAINTENANCE

The Project Applicant shall prepare a landscape and irrigation maintenance plan in accordance with the Landscape Regulations to ensure the efficiency of water use.

9-4-414: IRRIGATION AUDIT

A. For Landscaped Areas or Altered Landscaped Areas subject to this Article, the Project Applicant shall prepare an Irrigation Audit Report as set forth in the Landscape Regulations.

B. For all existing Landscaped Areas installed prior to January 1, 2010, irrigation audits shall be prepared as set forth in the Landscape Regulations.

9-4-415: IRRIGATION EFFICIENCY

A. New irrigation systems installed, whether or not part of a Landscaped Area or Altered Landscaped Areas subject to this Article, shall be designed, maintained and management to meet or exceed the average irrigation efficiency set forth in the Landscape Regulations.

B. New irrigation systems installed as stand-alone project shall comply with Section 9-4-407, 9-4-410, 9-4-411, 9-4-412, 9-4-413 and 9-4-414 of this Article.

9-4-416: ALTERNATIVE WATER-EFFICIENT USE

Alternative methods of using water efficiently such as the use of potable water, rain water or other alternative water systems are encouraged.

9-4-417: STORMWATER MANAGEMENT

A. Landscape and grading design plans shall be developed in accordance with the applicable provisions of the Stormwater and Urban Runoff Control provisions set forth in Article 5 of Chapter 4 of Title 9 of this Municipal Code.

B. Rain gardens, cisterns, and other landscape features and practices that increase rainwater capture and create opportunities for infiltration and/or onsite storage are encouraged.

9-4-418. WATER WASTE PREVENTION.

Water waste resulting from inefficient landscape irrigation, such as runoff, low head drainage, overspray or other similar conditions where water flows onto adjacent property, non-irrigated areas, walks, roadways, parking lots or structures is prohibited.

9-4-419. AUTHORITY TO PROMULGATE RULES AND REGULATIONS.

The Director of Community Development shall have the power and authority to promulgate rules and regulations for the implementation and enforcement of provisions of this Article, and when duly promulgated, such rules and regulations shall be in full force and effect.

9-4-420: ADMINISTRATION AND APPEAL PROCESS.

The Director shall have the duty and authority to administer and enforce this Article. The Project Applicant or property owner may appeal any other decision made by the Director pursuant to this Article by filing with the Director within 15 days of the date of written notification of the action at issue. The appeal shall be held pursuant to the applicable provisions of the Uniform Administrative Code set forth in Section 9-1-103 of this Code.

9-4-421. PENALTIES.

Violation of any provision of this Article shall be punishable as provided for in Chapter 3 of Title 1. In addition, the City Building Official may deny any project subject to this Article its certificate of occupancy or equivalent until the Certificate of Completion has been submitted, reviewed and approved by the City.

Section 2: Section 8-4-1 of Chapter 8 of Title 8 of the City of Beverly Hills Municipal

Code is hereby amended to read as follows:

“The abutting property owner shall plant and maintain the parkway with grass or other plant material that is maintained at no more than six inches in height as approved by the City’s Arborist with the following exception: the parkway area abutting commercially zoned property may be surfaced in concrete in lieu of grass.”

Section 3. The City Council has considered this Ordinance and finds that this project is exempt from the requirements of the California Environmental Quality Act (“CEQA”). The project is exempt pursuant to State CEQA Guidelines, 14 Cal. Code Regs. Sec. 15307 as an action taken to assure the maintenance, restoration, or enhancement of a natural resource, specifically water, where the regulatory process involves procedures for protection of the environment. This Ordinance does not contemplate any construction activities, and there is no evidence to suggest that the ordinance will result in a significant impact on the environment, including impacts due to unusual circumstances. The adoption of this Ordinance will result in the enhancement and protection of water resources in the City, and there is no evidence to suggest that the ordinance would in cumulative adverse environment impacts. Based on the foregoing and other substantial evidence in the record, the City Council hereby finds and determines that the Ordinance is exempt from the provisions of CEQA, pursuant to State CEQA Guidelines Section 15307. Further, as a separate and independent ground, the City Council finds that the Ordinance is covered by the general rule that CEQA applies only to projects that

have the potential for causing a significant effect on the environment. Because it can be seen with certainty that there is no possibility that the Ordinance will have a significant effect on the environment, the Ordinance is not subject to CEQA pursuant to State CEQA Guidelines Section 15061 (b)(3).

Section 4. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 5. The City Clerk is directed to forward a certified copy of his ordinance to the Department of Water Resources.

Section 6. This Ordinance shall go into effect and be in full force and effect on 12:01 a.m. on January 1, 2010.

PASSED, APPROVED and ADOPTED this ____ day of _____, 2009.

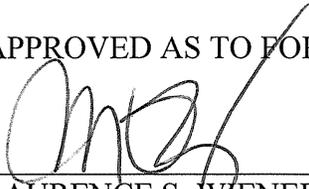
NANCY KRASNE
Mayor of the City of Beverly Hills,
California

ATTEST:

BYRON POPE
City Clerk

(SEAL)

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD, ICMA-CM
City Manager



for DAVID GUSTAVSON
Director of Public Works & Transportation



SUSAN HEALY KEENE, AICP
Director of Community Development