

STAFF REPORT

City Council Business Item

DATE: May 1, 2023

TO: Honorable Mayor and Council Members

FROM: Merritt Perry, City Manager

SUBJECT: **Public Hearing: Second Reading and Adoption to Amend the Fortuna Municipal Code Regarding Public Hearing to Consider Amendment of Title 15—Buildings and Construction of the Fortuna Municipal Code by Adding Chapter 15.49—Model Water Efficient Landscape Ordinance. *Ordinance 2023-759***

STAFF RECOMMENDATION:

Adopt the proposed amendments of Title 15—Buildings and Construction of the Fortuna Municipal Code by Adding Chapter 15.49, which adopts the State Model Water Efficient Landscape Ordinance by reference, by adopting *Ordinance 2023-759*.

DISCUSSION:

The Model Water Efficient Landscape Ordinance (MWELO) is a California state regulation which has become part of the Building Code, and is designed to prevent water from being wasted on irrigated landscapes. The MWELO establishes a structure for planning, designing, installing, maintaining, and managing water efficient landscapes in new construction and rehabilitated landscaping. Overall, the MWELO seeks to ensure that landscapes promote water efficiency, soil health, storm water management, and erosion control. MWELO applies to any landscaping project greater than 500 square feet that requires a building permit, plan check or design review. It also applies to existing landscape rehabilitation projects with a total landscaped area greater than 2,500 square feet.

The MWELO was enacted in 1993 from the 1990 Water Conservation and Landscaping Act and was updated in 2015 at the height of the drought. Under Government Code section 65596.5, the Department is required to update the MWELO every three years, or else make a finding that an update is not useful or effective. Cities and counties are required to adopt the State MWELO, or a locally modified ordinance at least as effective in conserving water as the MWELO. For those local agencies that did not adopt the MWELO or a local equivalent by January 1, 2010, the state MWELO applied by default, until April 1, 2015, when standards were added to apply the rules to single family residential projects, reduce the exemption from 2,500 square feet to 500 feet of irrigated area, and required reporting on the implementation and enforcement activities of local jurisdictions. The Fortuna Planning and Building Divisions have been implementing and reporting on the MWELO since 2015 under the authority of the State code.

In addition, the California Department of Resources Recycling and Recovery are implementing SB 1383, with require adoption of local ordinances, and added regulations relating to soil amendments, mulch, and compost, beginning January 1, 2022.

Proposed Ordinance:

The attached ordinance amends section 15.49, Buildings and Construction, of the Fortuna Municipal Code by adopting the MWELO by reference, which will incorporate the State’s MWELO in its entirety, as required by State law, and which specify enforcement codes. The Ordinance ensures ongoing compliance with State standards and will automatically incorporate any future changes when changes are made by the State. The Ordinance would also comply with the SB 1383 regulations that require jurisdictions to adopt the MWELO ordinance.

MWELO Implementation:

The following sections provide further information on how projects will comply with MWELO requirements and required documentation to be provided during the building permit process. These required sections are directly from the State’s MWELO, including the forms. Staff will provide informational material on the website and at City Hall to assist residents, property owners and developers with complying with these regulations.

Residential projects with less than 500 square feet of landscaping are exempt from MWELO requirements. For anything larger than this, the landscaping project would be required to go through the MWELO review and compliance. For projects with landscaping between 500 and 2,500 square feet, the prescriptive standards apply. The prescriptive approach is intended for small scale, single-family and light commercial projects, and typically they are able to conform to requirements by limiting the use of irrigation, and using native or drought tolerant plants. For projects with landscaping 2,500 square feet and greater, the performance standards are applied, with more detailed requirements for planting, irrigation, and grading, as well as calculations for estimated total water use, irrigation efficiency, maximum water allowance, and design measures that reduce evapotranspiration rates to a specific standard.

When projects are complete, have been inspected by staff, and ready for a final certificate of occupancy from the building department, they would be issued an MWELO Certification of Completion.

The MWELO Ordinance does not apply to:

- Registered local, state or federal historical sites;
- Ecological restoration projects that do not require a permanent irrigation system;
- Mined-land reclamation projects that do not require a permanent irrigation system; or
- Existing plant collections, as part of botanical gardens and arboretums open to the public.

ENVIRONMENTAL ASSESSMENT:

The Ordinance is exempt from CEQA pursuant to Government Code section 15061(b)(3), where it can be seen with certainty that there is no possibility that the approval of a project under CEQA will have a significant effect on the environment. The MWELO Ordinance does not impose any physical changes to any development projects, and will monitor and potentially result in a decrease in the amount of water usage, and is therefore exempt from CEQA.

FISCAL IMPACT:

There is no immediate fiscal impact as a result of adopting the MWELO ordinance. Additional staff time to review landscape plans are expected as part of building permit application or land use entitlement review, but not to a level that would require additional staffing.

RECOMMENDED COUNCIL ACTION:

1. Receive staff presentation and review questions with staff
2. Open public comment
3. Close public comment
4. Motion to hold the second reading, read by title only, and adopt Ordinance 2023-759. Roll call vote.

ATTACHMENTS:

- Attachment 1— *Ordinance 2023-759, An Ordinance of the City Council of the City of Fortuna Adding Chapter 15.49 to Title 15 of the Fortuna Municipal Code—Model Water Efficient Landscape Ordinance*
- MWELO Flowchart and Forms
- MWELO—CCR Title 23, Div. 2, Ch. 2.7

ORDINANCE NO. 2023-759

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORTUNA ADDING
CHAPTER 15.49 TO TITLE 15 OF THE FORTUNA MUNICIPAL CODE– MODEL
WATER EFFICIENT LANDSCAPE ORDINANCE**

WHEREAS, on April 1, 2015, Governor Brown issued Executive Order B-29-15 that, among other things, directed the Department of Water Resources (DWR) to update the State Model Water Efficient Landscape Ordinance (“Model Ordinance”) through expedited regulation.

WHEREAS, the purpose of the updated Model Ordinance is to increase water efficiency standards for new and existing landscapes through, among other things, more efficient irrigation systems, greywater usage, onsite storm water capture, and by limiting the portion of landscapes that can be covered by turf.

WHEREAS, on July 15, 2015, the California Water Commission, acting on behalf of the DWR, approved the 2015 update to the Model Ordinance.

WHEREAS, the California Department of Resources Recycling and Recover promulgated regulations as directed in SB 1383 (Chapter 395, Statutes of 2016) in Chapter 12 (Short-Lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations that require the City to adopt an ordinance for compliance with certain sections of the MWELO related to soil amendments, mulch, and compost, beginning January 1, 2022; and

WHEREAS, the City Council is adopting by reference the Model Ordinance approved by the California Water Commission in order to promote the efficient use of water within the City and to comply with Government Code Section 15595; and

WHEREAS, under this Ordinance, the City will impose water efficient landscape requirements on all new and rehabilitated landscaping for public agency projects and private development projects that require a permit, as well as all developer-installed landscaping, and the City shall apply all of the applicable MWELO performance standards as required by the State ; and

NOW, THEREFORE, the City Council of the City of Fortuna, State of California, does ordain as follows:

SECTION 1. Code Amendment. Chapter 15.49 of the Fortuna Municipal Code is hereby added in its entirety to read as follows:

**Chapter 15.49
Model Water Efficient Landscaping Ordinance**

15.49.010 Short Title

This Chapter may be referred to as the “MWELO”.

15.49.020 Adoption of Model Water Efficient Landscaping Ordinance

Except as amended or modified by other provisions of this Code, the Fortuna City Council hereby adopts, by reference and makes effective within the City, the Model Water Efficient Landscaping Ordinance, codified as Sections 490 through 495 of Chapter 2.7, Division 2, Title 23 of the

California Code of Regulations, as promulgated by the California Department of Water Resources, and as may be amended from time to time.

15.49.030 City to Maintain Copy of Current MWELO.

A copy of the current MWELO will be maintained in the Planning Department and will be made available for public inspection during regular business hours.

15.49.040 Enforcement and Penalties

The City may enforce this Chapter in any manner allowed by law, including pursuant to Section 15.10.015(F) of Chapter 15.10 of Title 15 of this Code. In addition, the Director may deny any project subject to this Chapter until the certificate of completion has been submitted, reviewed and approved by the City.

SECTION 2. CEQA. The City Council finds that the adoption of this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14, Chapter 3, CCR, Section 15061(b)(3), in that it can be seen with certainty that there is no possibility that the adoption of this ordinance will have a significant effect on the environment. The ordinance adopts standard codes in effect pursuant to state law and sets requirements for compliance. The adoption of this ordinance does not entitle new development or any changes to the physical environment.

SECTION 3. Severability. If any provision of this Ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this resolution are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

SECTION 4. Conflicts. All ordinances and parts of ordinances or resolutions, in conflict herewith, are hereby repealed to the extent of such conflicts and no further.

SECTION 5. Effective Date. The effective date of this ordinance is thirty (30) days after its adoption by the City Council.

INTRODUCED and FIRST READING CONDUCTED at a regular meeting of the City Council of the City of Fortuna, California, on this 17th day of April, 2023 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Tami Trent, Mayor

ATTEST:

Siana Emmons, City Clerk

SECOND READING CONDUCTED, PASSED, and ADOPTED at a regular meeting of the City Council of the City of Fortuna, California, on this 1st day of May 2023 by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

Tami Trent, Mayor

ATTEST:

Siana L. Emmons, City Clerk