

NOTICE OF PROPOSED RULEMAKING

Title 23. Waters

Division 2. Department of Water Resources

Chapter 2.7. Model Water Efficient Landscape Ordinance

NOTICE IS HEREBY GIVEN that the Department of Water Resources, pursuant to the authority vested in it by Government Code (GC) §65596.5, proposes amendments to the Model Water Efficient Landscape Ordinance. The proposed amendments are updates to the ordinance that simplify and clarify the requirements of the ordinance to facilitate local implementation and improve compliance. A written comment period commences on November 17, 2023, and closes on January 16, 2024. All inquiries should be directed to the contact listed below.

NOTICE OF PUBLIC HEARING TO CONSIDER THE UPDATED Model Water Efficient Landscape Ordinance [Gov. Code, §65596.5(a)]

The Department of Water Resources, Water Use Efficiency Branch, will conduct a public hearing regarding the proposed amended regulation at the time and place noted below. The public hearing will provide a detailed overview of the amended regulation and timeline. At the hearing, any person may present comments orally or in writing relevant to the proposed action described in this notice. The public hearing will be preceded by a staff presentation summarizing updates to the ordinance, followed by an opportunity for the public to ask questions.

DATE: January 9, 2024

TIME: 9:00 a.m.

LOCATION: California Natural Resources Headquarters Building
Second Floor Conference Room 2-301
715 P Street
Sacramento, CA 95814
& Remote Participation

The hearing will be recorded and the registration link is: https://ca-water.gov.zoom.us/meeting/register/tZAvf--pqDoqH91kDRSICXE84UJ0_Ka2EEh3

Sections Affected: Proposed adoption of amendments to California Code of Regulations, Title 23, Chapter 2.7, sections 490 through 495, inclusive, and amended Appendices A, B, C, and D, inclusive.

The Department of Water Resources (Department) proposes to amend the Model Water Efficient Landscape Ordinance (MWELo) to reduce ambiguity, provide clarity, and improve MWELo's organization. The amendments will facilitate more consistent implementation of MWELo by making the ordinance easier to understand and follow.

The amendments incorporate two new statutory provisions adopted since the last ordinance update in 2015; Government Code (GC) §65596(n) amended in 2018, and GC §65596(e) amended in 2020. GC §65596(n) requires plants to be identifiable at the time of inspection and the Department proposes to implement this by requiring a plant legend, with photographs, to be developed for each project. GC §65596(e), as amended in 2020, directs the Department to reference local, state, and federal laws and regulations regarding standards for water-conserving irrigation equipment. The Department has included such a reference in these amendments. Overall, none of the changes will have a material impact on current MWELo implementation and none of the existing requirements of MWELo will change with the proposed amendments.

The hearing is for the public to provide comments on the proposed regulation. The Department will not take formal action at this public meeting. After consideration of all written and oral comments, the Department will bring the final regulatory language before the California Water Commission (anticipated in early 2024) where the California Water Commission will consider whether to approve the final regulations. If the Commission approves the final regulation, the director of the Department of Water Resources will adopt the regulations.

SPECIAL ACCOMMODATION REQUEST

To request special accommodation or language needs, please contact Julie Saare-Edmonds at 916-715-7289 or WELo@water.ca.gov as soon as possible, but no later than 10 business days before the scheduled hearing.

WRITTEN COMMENT PERIOD AND SUBMITTAL OF COMMENTS

Any interested member of the public may present comments orally or in writing at the hearing and may provide comments by postal mail or by electronic submittal before the hearing. The public comment period for this regulatory action will begin on November 17, 2023.

To be considered by the Department, written comments not physically submitted at the hearing, must be submitted on or after November 17, 2023, and received no later than 5:00 pm on January 16, 2024 and must be addressed to the following:

By mail: Department of Water Resources
Attn: MWELo Update
Water Use Efficiency Branch
P.O. Box 942836
Sacramento, CA 94236-0001

By email: WELo@water.ca.gov. The Department requests but does not require email transmission of comments to contain the subject line "Comment Letter – MWELo 2023 Update" to facilitate timely identification and review of the comment.

Hand-delivered to: Ryan Bailey or Shem Stygar
Department of Water Resources
715 P Street, 6th Floor
Sacramento, CA 95814

All comments, including email should include the author's name and U.S. Postal Service mailing address so that the Department can provide copies of any notices that may be required in the future.

Due to limitations of the email system, emails larger than 20 megabytes (MB) may be rejected and will not be delivered and received by the Department of Water Resources. Therefore, emails larger than 20 MB should be submitted under separate emails or via another form of delivery.

Please note that under the California Public Records Act (Government Code §6250 et seq.), written and oral comments, attachments, and associated contact information (e.g., address, phone, and email) become part of the public record and can be released to the public upon request.

The Department requests, but does not require, that written and email statements on this item be filed at least 10 days prior to the public hearing so that the Department has time to consider each comment. The Department encourages members of the public to bring to the attention of staff, in advance of the hearing, any suggestions for modification of the proposed regulatory action.

Additionally, the Department requests, but does not require, that persons who submit written comments reference the draft MWELo amendments in their comments to facilitate review.

AUTHORITY AND REFERENCE

[Gov. Code, §11345.5(a)(2)]

Authority Cited: Government Code Sections 65596 and 65596.5

References: Government Code Sections 65592, 65593, 65596, 65596.5, 65598. Civil Code Sections 1351 through 4100 and 4735. California Fire Code Title 24, Part 9,

Chapter 49. Public Resources Code Sections 4291, 21080, 21082. California Plumbing Code Title 24, Part 5, Chapters 15 and 16.

Summary of Existing Law and Regulations

[Gov. Code, §11346.5(a)(3)(A)]:

The Department adopted the existing regulations for the MWELO pursuant to Governor's Executive Order No. B-29-15 in 2015, and they implement Government Code Section 65596. The MWELO provides a standard for the design, installation, management, and maintenance of landscapes to use water efficiently without water waste.

Government Code §65596.5 requires that the Department on or before January 1, 2020, and at least every three years thereafter, after holding one or more public hearings to update or make a finding that an update to the model water-efficient landscape ordinance is not useful or effective. When the ordinance is updated, the Department is required to also submit the updated ordinance to the Building Standards Commission for consideration during the triennial revision process of the California Green Building Standards Code.

Effect of Proposed Rulemaking

[Gov. Code §11346.5(a)(3)(A)]

Local agencies (cities and counties) are required to implement MWELO or water-efficient landscape ordinances at least as efficient as MWELO. University of California, Davis performed a Survey on Barriers to MWELO Implementation in 2022 that described the challenges of local agency MWELO implementation including:

- Lack of clarity on the roles, responsibilities, and reporting requirements for both the local agency and the project applicant.
- Local agencies with limited resources and budgets have a difficult time implementing and enforcing MWELO due to its lack of clarity.

The proposed amendments simplify MWELO's organization and clarify the requirements so that project applicants and local agencies can more readily and consistently enforce the existing ordinance requirements. These regulations are updated to include new statutory requirements.

Comparable Federal Statute and Regulations

[Gov. Code §11346.5(a)(3)(B)]

There are no federal regulations or statutes that address the specific subject addressed by the proposed amendments.

Informative Digest/Policy Statement Overview

[Gov. Code §11346.5(a)(3)(C)]

Local agencies are responsible for adopting and enforcing the ordinance (Government Code §65595). Local agencies can adopt a locally modified water efficient landscape ordinance (WELO) that is at least as efficient as the MWELO.

The draft MWELO amendments include editorial changes to improve the clarity and understanding of existing requirements. The amendments do not add any new material requirements or make changes to any of the existing ordinance requirements.

For specific justification of the changes made, please reference the Initial Statement of Reasons in the Rulemaking Package. A general description of the draft MWELO amendments is:

- 1) The updated ordinance includes two new code requirements that have been adopted since the last update of the MWELO in 2015:
 - a. Government Code §65596(e) (amended in 2018), requires references to local, state and federal laws and regulations regarding standards for water-conserving irrigation equipment. The Department included new language referencing the existing standards for water-conserving irrigation equipment. The standards already exist and MWELO's reference adds no new requirement.
 - b. Government Code §65596(n) (amended in 2020), requires plants to be identifiable at the time of inspection. This direction is incorporated into MWELO through the requirement that plant legends be developed for each project. This is already a common practice and will only require the use of free and easily accessible photographs.
- 2) Regulatory language specific to Executive Order (EO) No. B-29-15 is corrected to update out-of-date references and one-time requirements specific to the EO.
- 3) As appropriate, MWELO requirements are amended to remove ambiguity and provide clarity and understanding to what is required:
 - a. Ambiguous requirements are clarified, often by incorporating language from similar and relevant requirements that are more clearly described in other existing sections of the MWELO.
 - b. Section references are added for simplicity and clarity.
 - c. Redundant language and requirements are deleted.
- 4) Consistent terminology is used throughout to describe MWELO's requirements, improve understanding, enforcement, and reporting.

- 5) Clarity is added to definitions by streamlining definitions, updating definitions to be consistent with definitions used in other California codes and regulations, and adding clarifying language as appropriate.
 - a. Nine definitions are replaced or deleted:
 - a) “Designer of Record” replaces the definitions for: “certified irrigation designer”, “landscape architect”, and “landscape contractor”.
 - b) “Emission device” replaces “emitter”.
 - c) “Dedicated irrigation meter” replaces “landscape water meter”.
 - d) “Drip irrigation” includes the definition for “low volume irrigation” and is included in the regulation text.
 - e) “Main line” is deleted, and the definition moved into regulation,
 - f) “Microclimate” is deleted because it is not used in the regulation.
 - g) Definitions for “single-family residential landscape” and “multifamily residential landscape” replace the definition of “residential landscape”.
 - b. Seventeen new definitions are added to improve clarity on the terms used:
 - a) “Aggregated landscape project”, “applicant signature”, “application rate”, “designee”, “designer of record”, “design review”, “dynamic pressure”, “emission device”, “estimated water use”, “low head drainage”, “matched precipitation rate”, “multifamily residential landscape”, “non-volatile memory”, “regular landscape area”, “riser”, “single-family residential landscape”, “water budget calculation”, and “water waste”.
- 6) Contents of MWELo are reorganized to describe as follows: the general requirements, roles and responsibilities, and requirements of the selected compliance option are reorganized to logically describe the process of designing and installing water efficient landscapes, and MWELo reporting.
 - a. 2015 MWELo: §490. Purpose; §491. Definitions; §492. Provisions for New Construction or Rehabilitated Landscapes; §493. Provisions for Existing Landscapes; §494. Effective Precipitation; §495. Reporting.
 - b. 2023 MWELo Amended: §490. Purpose; §490.1. General Provisions; §490.2. Definitions; §491. Applicability; §492. Prescriptive Compliance Option; §493. Performance Compliance Option; §494. Certificate of Completion Package; §495. Reporting.
- 7) Requirements applicable to all landscape projects and both compliance options are reorganized into a new General Provisions section (§490.1). The requirements within the section for general provisions are organized as follows:

- a. Water Waste Prevention; Recycled Water; Gray Water Systems; Stormwater Management and Rainwater Retention; Fire Safe Landscaping; Plant Selection; Environmental Review; Penalties; and Public Education.
- 8) §491. Applicability – clarifies the compliance responsibilities of the local agency and the project applicant and when each compliance options is allowed.
 - 9) §492. Prescriptive Compliance Option (previously Appendix D) – the compliance option is moved into the MWELO regulation to improve organization and understanding.
 - 10) §493. Performance Compliance Option – reorganizes primary requirements to logically describe the process of designing and installing water efficient landscapes. For example, the Landscape Design Plan (§493.2.) has been reorganized and includes renamed headings that better explain what the design plan includes: Plant Selection; Water Features; Soil Preparation; and Mulch and Amendments.
 - 11) §495. Reporting – clarity is improved with the reporting requirements by reorganizing, clarifying who reports, better defining the reporting period, and what is reported.
 - 12) Appendices are reorganized as follows:
 - a. Appendix A – Water Efficient Landscape Worksheet and now includes an instruction sheet. (previously named as Appendix B)
 - b. Appendix B – Certificate of Completion Package. (previously named as Appendix C).
 - c. Appendix C – Reference Evapotranspiration Table (previously named as Appendix A) are updated to span 2004-2021; (2015 MWELO – used a variety of evapotranspiration data). There are now 677 cities or locations included in Appendix C for better statewide representation of local reference evapotranspiration (ET_o); the previous Appendix A had 319 cities. Note: OAL does not allow the use of a website to provide values.
 - d. Appendix D - Prescriptive Compliance Option is moved into the draft regulation and renumbered as §492.

The proposed MWELO amendments simplify MWELO by reducing ambiguities, providing clarity, and improving MWELO's organization. The amendments will facilitate more consistent implementation of MWELO by making the ordinance easier to understand and follow. The proposed amendments are anticipated to have negligible to no impacts, fiscal or otherwise.

Evaluation of Inconsistency or Incompatibility with Existing State Regulations

[Gov. Code §11346.5(a)(3)(D)]

The Department reviewed existing general regulations and regulations specific to the model water efficient landscape ordinance to evaluate whether the regulation is inconsistent or incompatible with existing state regulations. The Department corrected language and references to the California Business and Professions Code, Civil Code, Fire Code, Food and Agriculture Code, Government Code, Health and Safety Code, Plumbing Code, Public Resources Code, and Water Code. After conducting this review, the department finds that the proposed regulations would not be inconsistent nor incompatible with existing state regulations.

Mandated by Federal Law or Regulations

[Gov. Code §11346.2(c)]

Adoption of these amendments are not mandated by federal law or regulations.

Other Statutory Requirements

[Gov. Code §11346.5(a)(4)]

These amendments must be approved by the California Water Commission pursuant to Water Code section 161, and then adopted by the Director of the Department of Water Resources. The final regulation will be submitted to the Building Standards Commission for consideration.

Local Mandate

[Gov. Code §11346.5](a)(5)]

The proposed amendments would not impose any new mandates on local agencies or school districts that requires state reimbursement.

Fiscal Impact

[Gov. Code se 11346.5(a)(6), (8), 11346.5(a)(9), tit. 1, sec. 4, CCR]

The proposed amendments would not impose any direct or indirect costs or benefits to local agencies because this is not a new program and does not change any existing requirements. There is likely to be very minor fiscal benefits to the State and Local Agencies from improved understanding of the existing requirements and better reporting on the requirements. The proposed amendments:

1. Impose no new mandates on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Will not result in any nondiscretionary costs or savings to local agencies.
4. Will not result in any costs or savings in federal funding to the state.

5. The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
6. The proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
7. The proposed regulations will not affect small business because the regulation is only being clarified. The existing requirements of the MWELO are not changing with this update.

Housing Costs

[Gov. Code §11346.5(a)(12)]

The Department does not expect the amendments will have an impact on housing costs.

Requirement for Business Report

[Gov. Code §11346.5(a)(11), §11346.3(d)]

Government Code Section 11346.3(d) requires that any administrative regulation adopted on or after January 1, 1993, that requires a report shall not apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for health, safety, or welfare of the people of the state that the regulation apply to businesses. To the extent that this regulation is requiring reporting of businesses, that reporting is necessary for health, safety, or welfare of the people of the state.

The proposed MWELO amendments simplify the MWELO by reducing ambiguities, providing clarity, and improving MWELO's organization. The amendments will facilitate more consistent implementation of MWELO by making the ordinance easier to understand and follow. These regulations are updated to include new statutory requirements and will have negligible to no impacts, fiscal or otherwise.

Results of the Economic Impact Assessment

The proposed regulation is not expected to affect the creation or elimination of jobs, creation or elimination of businesses, and the expansion of existing businesses.

The regulations will benefit the health and welfare of California residents by contributing to water supply reliability. The regulations will also affect the state's environment by increasing water efficiency. The proposed regulations are not expected to affect worker safety.

Standardized Regulatory Impact Analysis (SRIA)

[Gov. Code §11346.5(a)(10), §11346.3(c)]

The proposed amendments do not add any new material requirements. The amendments are made only to simplify and clarify the requirements of the ordinance. Because the economic impact of the new requirement and additional changes does not exceed \$50 million, a SRIA is not required.

Forms or Documents Incorporated by Reference

[Cal. Code Regs., Tit. 1, §20(c)(3)]

None.

Department Contact Persons

Requests for copies of the proposed regulatory text, the Initial Statement of Reasons, subsequent modifications of the proposed regulatory text, if any, or other inquiries concerning the proposed action may be directed to:

Shem Stygar
Senior Water Resources Engineer
Department of Water Resources
Water Use Efficiency Branch
Email address: Shem.Stygar@water.ca.gov

Julie Saare-Edmonds
Senior Environmental Scientist
Department of Water Resources
Water Use Efficiency Branch
Email address: Julie.Saare-Edmonds@water.ca.gov

CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATION AND THE RULEMAKING FILE

[Gov. Code, § 11346.5(a)(16)]

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulation, all the information upon which the proposed regulation is based, the text of the proposed regulation, and all other required forms, statements, and reports. In order to request that copies of these documents or alternative formats of these documents be mailed or emailed to you, please write to or email the Contact Persons. Upon specific request, these documents will be made available in Braille, large print, or CD.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

[Gov. Code, § 11346.5(a)(16)]

After holding the hearing and considering relevant comments received in a timely manner, the Department may adopt the proposed regulation substantially as described in this notice. If the Department makes modifications that are substantially related to the originally proposed text, the Department will make the modified text – with changes clearly indicated – available to the public for at least 15 days before the Department adopts the modified regulation. Any such modifications will also be posted on the Department web site. Please send requests for copies of any modified regulation to the attention of the contact persons provided above (“Contact Persons”). The Department will accept written comments on the modified regulation for 15 days after the date on which they were made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

[Gov. Code, § 11346.5(a)(19)]

The Department will prepare a final statement of reasons pursuant to Government Code §11346.9 after final adoption of the regulation, and when ready will make the final statement of reasons available. A copy of the Final Statement of Reasons may be obtained from the contact persons or the Department program webpage, listed in the next section.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

[Gov. Code, § 11346.4(a)(6); § 11346.5(a)(20)]

Copies of this Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulation may be found on the Department’s MWELo webpage:

<https://water.ca.gov/Programs/Water-Use-And-Efficiency/Urban-Water-Use-Efficiency/Model-Water-Efficient-Landscape-Ordinance>