



DATE: August 5, 2024

TO: President and Members of the Estero Municipal Improvement District (EMID) Board of Directors

VIA: Stefan Chatwin, District Manager  
Marlene Subhashini, Assistant District Manager

FROM: Andrew Brozyna, Public Works Director

DEPARTMENT: Public Works

SUBJECT: AMENDMENTS TO WATER NEUTRALITY GROWTH ORDINANCE

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### RECOMMENDATION

It is recommended that the Board of Directors of the Estero Municipal Improvement District (EMID) open the public hearing and receive comments, and introduce by title only, waive further reading, and adopt an Ordinance amending Chapter 8.90, Water Neutrality Growth within Title 8, Water and Sewer Service of the EMID Code to make amendments relating to water conservation offset credit to allow applicants to receive credit for water conservation measures undertaken prior to project application submission and other various clarifying revisions and finding the approval of the Ordinance exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15307.

### EXECUTIVE SUMMARY

On May 1, 2023, EMID Board approved Ordinance No. 138 adding Chapter 8.90, Water Neutrality Growth within Title 8, Water and Sewer Service of the EMID Code, to manage EMID's potable water supply in the short and long term and minimize the effects of drought and water shortage within the EMID service area.

The proposed amendment adds provisions that will encourage developers to complete water conservation measures as soon as possible, rather than waiting until they are ready

to submit an application for a project. Additional amended language clarifies and further defines other aspects of the ordinance.

## **BACKGROUND**

The City of Foster City prepared a [Water Capacity Study \(WCS\)](#) as part of the 2023-31 Housing Element Update. The WCS concluded that EMID's water supplies will be insufficient during single-dry and multiple dry water years to meet the future housing units planned for in the Housing Element Update. Per Water Code Section 10911, EMID reviewed this projected water supply insufficiency and considered the adoption of the Water Neutrality Ordinance to help ensure that new water demand is not created as a result of new development or redevelopment.

At the March 20, 2023 meeting, the EMID Board of Directors reviewed the draft Water Neutrality Growth framework and provided direction to staff to consider not penalizing the property owners/development(s) who are undertaking water conservation efforts at their project sites to achieve water neutrality. The direction was applied in the final ordinance, which was adopted on May 1, 2023, and went into effect July 1, 2023.

The Ordinance requires water neutrality to be demonstrated through quantitative water analysis of the project based on the following methodology:

1. Applicant requests the baseline water demand (i.e. water used by the project site, calculated as a 5 -year average) from EMID.
2. Calculate indoor and outdoor water allocations for the existing project site based on occupancy type. A project site with a 5-year average water demand less than the allocation will receive water conservation credit toward new water demand.
3. Calculate projected water demand for the proposed project.
4. Establish new water demand/water offset requirements using the following formula:  $\text{New Water Demand} = \text{Projected Water Demand} - (\text{Baseline Water Demand} + \text{Water Conservation Credit})$ .

The new water demand establishes the water offset requirement for the project. The applicant is required to offset the new water demand using on-site and/or off-site water conservation measures within the EMID service area (Foster City and the Mariners Island area of the City of San Mateo.)

The Ordinance provides certain exceptions, including projects with executed Development Agreements that identify a mandatory allocated water supply from EMID, projects for single family residential dwelling units, projects for single family ADUs (accessory dwelling units), and certain Tenant Improvements such as those that do not result in construction of new square footage or change in use that requires Planning Commission and/or City Council discretionary actions.

## ANALYSIS

As the ordinance has been implemented over the last year, several recommended amendments and clarifications were noted to be necessary by staff as outlined below.

### **Expand Water Offset Credit to Include Measures Performed Off Site Prior to Project Application (8.90.080 C)**

The EMID Board provided direction to consider not penalizing property owners/developer(s) who are undertaking water conservation efforts at their project sites to achieve water neutrality. This direction was implemented via the inclusion of a water conservation credit to be applied to a project site if its 5- year average water demand is less than what is expected of a site of similar size and use.

Currently, if an owner/developer performs a water conservation measure at a different site within the EMID service area prior to submitting an application for a project, they would not receive an offset credit. However, the ordinance allows offset credits for measures performed anywhere within the EMID service area when performed as part of the project application. The unintended consequence of this language may be that an owner/developer does not complete water conservation measures or waits to complete water conservation measures until the credit from the measure can be applied to a specific project, instead of completing the measures as soon as possible so water savings can be realized as soon as possible.

The proposed amendment to section 8.90.080 amends the requirements for identifying the water offset measures to consider conservation measures enacted after the Ordinance went into effect on July 1, 2023 and up to 5 years prior to the submission of a project application, whichever is most recent. It would further the concept of not penalizing the property owner/developer(s) who wish to undertake conservation efforts by encouraging conservation measures to be completed on or off site as soon as possible, and allowing owners/developers to use water offset credits from those measures for future projects.

For example, a property owner/developer could perform water conservation measures on Site A today and decrease the water use in the EMID service area. If they decide to redevelop Site B within 5 years, they can apply the savings from Site A to offset the new water demand used in Site B.

### **Various Administrative Clarifications**

*Redefining “Active Meter” 8.90.050 A, “Inactive Meter” 8.90.050 H, and adding a Definition for “Partially Active Meter” 8.90.050*

The baseline water demand for a project site is provided by EMID using meter information for the site. This change is intended to clarify the difference between active and inactive meters. The original definition allowed for the possibility that a site that had 12 months of water use, but also 12 months of no water use in the last five years could be both active and inactive, and it was not clear which definition to use in that case. The proposed

definition clarifies that an active meter registers quantifiable volume for each month of the five years prior to the project application, and an inactive meter registers no water in any month of the five years prior to the project application. This change also adds a definition for partially active meter. A partially active meter addresses the potential for those project sites that are vacant, but still registers a nominal volume of water use, for example, janitorial use or landscaping, and for sites that were inactive for a portion of the 5 year water demand period. The clarification of the three meter definitions allows for more clear application of the ordinance to potential meter situations for which EMID will provide the baseline demand.

*Clarifying “New Water Demand” 8.90.050 K*

This is a clarification of the formula *Projected water demand – (baseline water demand + water conservation credit) = new water demand*, as the narrative explanation inadvertently reversed the formula.

*Clarifying “Water Conservation Credit” 8.90.050 U*

This change is intended to clarify that the water conservation credit, as used in the formula to determine whether a site can get credit for efficient use, can only be applied to the actual project site use only. “Water Conservation Credit” refers to credit for the water conservation effort made on the site by comparing actual project site use to the water allocation for the project site.

*Clarifying “Baseline Water Demand” 8.90.070 A.2*

The current definition states that if there is no EMID meter serving the project site, then then no baseline water demand will be provided. This change is intended to clarify that if there is no EMID water meter serving the site, the baseline water demand will be zero.

*Clarifying “Establish New Water Demand and Water Offset Requirement” 8.90.070 D.2*

This change is intended to clarify that if the project site does not have an offset requirement per the calculations, the site will be monitored similarly to sites that do have an offset requirement to ensure no new water demand is created.

*Clarifying “Penalties and Enforcement” 8.90.130 C*

This change is intended to clarify that EMID will monitor the site to determine if the project exceeded the projected water demand or baseline demand if the new water demand is zero, and/or that the project did not meet the water offset amount. The current language addresses monitoring the projected water demand only. The additional clarification allows for a mechanism and flexibility for monitoring off set measures performed off site as well as on site, and monitoring a site that is not expected to have a new water demand.

EMID has been and will continue to coordinate with the San Francisco Public Utilities Commission (SFPUC), and Bay Area Water Supply & Conservation Agency (BAWSCA) to implement water demand management measures to address supply shortfalls by reducing existing potable demand and exploring opportunities to create water sources. EMID will update its Urban Water Management Plan and Water Shortage Contingency

Plan in 2025, and will continue to evaluate water resource planning strategies and to invest in and implement ongoing and long-term demand management measures.

### CEQA

This Ordinance is not subject to review under CEQA pursuant to Public Resources Code Section 21000, et seq. and the CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et. seq.), Section 15307 (Class 7), because this is an action by a regulatory agency authorized by state law to assure the protection of natural resources to ensure that efforts are taken to address the shortage at a project level as the City continues to explore ways to maintain and increase supply.

### FISCAL IMPACT

A fee has been adopted and included in the FY 2024-2025 Master Fees and Service Charges Schedule to cover the costs of administering and implementing Chapter 8.90.

### CITY COUNCIL VISION, MISSION, AND VALUE/PRIORITY AREA

Smart Planning, Development, and the Local Economy

### ATTACHMENTS:

Attachment 1 – EMID Ordinance

Attachment 2 – Estero Municipal Improvement District Code Chapter 8.90 Redline