

ORDINANCE NO. _____

AN ORDINANCE OF THE ESTERO MUNICIPAL IMPROVEMENT BOARD OF DIRECTORS TO ADD A NEW CHAPTER 8.90, WATER NEUTRALITY GROWTH, WITHIN TITLE 8, WATER AND SEWER SERVICE, OF THE ESTERO MUNICIPAL IMPROVEMENT DISTRICT CODE AND FINDING THE APPROVAL OF THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO GUIDELINE SECTION 15307

ESTERO MUNICIPAL IMPROVEMENT DISTRICT

WHEREAS, a reliable minimum supply of potable water is essential to the public health, safety and welfare of the people and economy of the Estero Municipal Improvement District (EMID); and

WHEREAS, EMID contracts for water from the San Francisco Public Utility Commission (SFPUC) Regional Water System (RWS) as a contractual member of the Bay Area Water Supply and Conservation Agency (BAWSCA); and

WHEREAS, the City of Foster City, is preparing a Program Environmental Impact Report (EIR) for the 2023-31 Housing Element Update in accordance with California Environmental Quality Act (CEQA), implementing the CEQA Guidelines, relevant case law, and City procedures to plan for 1,896 housing units in the 2023-31 including a buffer and a Water Capacity Study (WCS) and Water Supply Assessment (WSA) has been completed as part of that EIR process; and

WHEREAS, the WSA and associated reports found there is not sufficient water supplies (per Government Code 664737.7(a)(2)) available to serve the 2023-31 Housing Element on one dry year and multiple dry years within a 20-year projection for the full built out of the capacity identified in the Housing Element Update 2023-1 project; and

WHEREAS, the State's mandate that the City plan for its fair share of the regional housing needs over the next eight (8) years as part of the RHNA Cycle 6 and the inadequate water supply to support housing is a burdensome challenge; and

WHEREAS, the City's Draft EIR (DEIR) for the Housing Element 2023-31 and Safety Element identified the adoption of a Water Neutrality Growth Policy as a mitigation measure to manage EMID's potable water supply in the short and long term and to avoid or minimize the effects of drought and shortage within the EMID service area; and

WHEREAS, on March 20, 2023, EMID Board of Directors directed staff to prepare an ordinance that sets forth regulations that offset the new water demand with water efficiency measures to create a neutral (or net zero) impact on the overall site (or account) water use demand in accordance with Water Code section; and

WHEREAS, the implementation of this framework requires the addition of a new Chapter within the EMID Code; and

WHEREAS, a Notice of Public Hearing was duly posted, published, and mailed for consideration at the EMID Board of Directors meeting on May 1, 2023, including as required by Government Code Sections 65856 and 65090, the Notice contained the information required by Government Code Section 65094, and was published in compliance with Government Code Section 6061 on April 19, 2023 and April 26, 2023 in the Foster City Islander, a newspaper of general circulation with the City of Foster City; and, on said date, the Public Hearing was opened, held and closed; and

WHEREAS, the EMID Board of Directors carefully reviewed and considered the staff report and all attachments thereto presented as part of the agenda for the public hearing regarding the proposed ordinance to add Chapter 8.90 to the EMID Code and all timely submitted correspondence, all information submitted at or prior to the public hearing, and all public comment and testimony presented at the public hearing (collectively, the “**Record**”).

NOW THEREFORE, THE EMID BOARD OF DIRECTORS DOES ORDAIN AS FOLLOWS:

Section 1. Amendment. Chapter 8.90 of the EMID Code is hereby added to Title 8, Water and Sewer Service, to read in its entirety as follows:

“Chapter 8.90

WATER NEUTRALITY GROWTH ORDINANCE

8.90.010 Title.

The ordinance codified in this Chapter shall be known and may be cited as the “Estero Municipal Improvement District (EMID) Water Neutrality Growth Ordinance.”

8.90.020 Purpose.

This Chapter is adopted in light of the following facts and circumstances, which are hereby found and declared by the District Board:

- A. A reliable minimum supply of potable water is essential to the public health, safety and welfare of the people and economy of the Estero Municipal Improvement District (EMID).
- B. EMID contracts for water from the San Francisco Public Utility Commission

(SFPUC) Regional Water System (RWS) as a contractual member of the Bay Area Water Supply and Conservation Agency (BAWSCA). This contracted supply of water has been documented in the Estero Municipal Improvement District's 2020 Urban Water Management Plan (UWMP) as insufficient to meet the additional demands of new development without offset during drought years.

- C. Supply sufficiency is required to continue to add new development that exceeds existing water demand. Any new development under these conditions that would increase the demand on EMID's water supply increases risk to the public health, safety, and general welfare should water use exceed the existing historical water demand.
- D. In order to ensure the availability of water for residential, commercial, and other purposes, for present as well as for future use, it is necessary that the increase in water usage in the areas defined herein be managed to the most efficient extent practicable.
- E. The adoption and enforcement of this Chapter is necessary to manage the EMID's potable water supply in the short and long term and to avoid or minimize the effects of drought and shortage within the EMID service area.
- F. EMID has the power to perform all acts necessary to carry out fully the provisions of Water Code Section 31001, may establish rules and regulations for the distribution and use of water supplies (Water Code Section 31024), may adopt and enforce a comprehensive water conservation program to reduce potable water consumption and conserve supplies (Water Code Section 375), and may require as a condition of new service that reasonable water-saving devices and water reclamation devices be installed to reduce water use (Water Code Section 31035).

8.90.030 Applicability.

- A. The provisions of this Chapter shall apply to projects submitted on or after July 1, 2023 within the EMID service area that will require a new water service from EMID or will increase water demand on the project site above the baseline water demand.

8.90.040 Exemptions.

- A. The provisions of this Chapter shall not apply to:
 - 1. Projects with executed Development Agreements as of the effective date of this ordinance that identify a mandatory allocated water supply from EMID.
 - 2. Projects for Single family residential dwelling units.
 - 3. Projects for Single family accessory dwelling units (ADU).
 - 4. Projects for which planning entitlements were Approved by the City of Foster City prior to the effective date of this ordinance.
 - 5. Tenant improvements that are not a project or do not result in construction of new square footage or change in use that requires City of Foster City Planning

Commission and/or City Council discretionary permits.

8.90.050 Definitions.

- A. "Active meter" – When water has been supplied through an EMID water meter serving the project site for at least 12 consecutive months within the 5 years prior to the date the first application is filed, the baseline water demand will be equivalent to the average annual water use over the previous 5 years from the date the project is submitted.
- B. "Applicant" – The person making application for a project defined under this Chapter.
- C. "Baseline Water Demand" – The historic five-year average annual water demand of the project site in Acre Feet per Year (AFY) or Gallons per Year (GPY) as determined by whether the project site has been served by an active or inactive EMID water meter.
- D. "Change in use" – New proposed building or land uses that replace the existing uses on the project site.
- E. "Customer" – Any person receiving services from and therefore obligated to make payments to the EMID for those services.
- F. "Development" – New structure(s) or building(s) with indoor plumbing fixtures.
- G. "Director" - The EMID Public Works Director or their designee(s).
- H. "Inactive meter" – When water supply through an EMID water meter is available to serve the project site, however, no water has registered from the water meter serving the project site for 12 consecutive months in the 5 years prior to the date the first application is filed for the proposed project, the baseline water demand will be the 5-year annual average water use of properties in the same customer class as the project site's existing use or previously existing use with the same water meter size, or as alternatively defined in the EMID technical guidance.
- I. "Indoor water allocation" – The indoor water allocation for existing residential developments on the project site will be calculated by multiplying the person per unit occupancy value and the gallons per capita per day (GPCD) provided by EMID. For the basis of indoor use for existing non-residential developments on the project site, the applicant will adhere to the Director's approved technical implementation guide or other applicable application guidelines that address the unique, site-specific characteristics of the existing project site.
- J. "Manager" the EMID Manager or their designee(s).
- K. "New water demand" – The net increase in annual water demand, in AFY or GPY, for a proposed project calculated by subtracting the proposed project's projected

water demand from the baseline water demand plus any water conservation credit.

- L. "Offset credit" – The amount of potable water, in AFY or GPY, that will be saved by an approved water offset measure.
- M. "Outdoor water allocation" – The outdoor water allocation for existing landscape areas on the project site will be calculated using the maximum applied water allowance (MAWA) formula listed in EMID Code 8.80.090.F.
- N. "Owner" – The person owning the fee, or the person in whose name the legal title to the property appears, by deed duly recorded in the county recorder's office, or the person in possession of the property or buildings under claim of, or exercising acts of ownership over same for himself/herself, or as executor, administrator, guardian or trustee of the owner, or the record holder of a leasehold interest whose term extends for twenty years or more from its date of commencement.
- O. "Potable water" – Water sold by the Estero Municipal Improvement District intended for human consumption that meets all public health and safety regulations.
- P. "Project" – New development, redevelopment, or change in use as defined by this Chapter.
- Q. "Project site" – All lot(s) or parcels(s), including the building(s) and structure(s) on those lot(s) or parcel(s), as part of the project application.
- R. "Projected water demand" – The total amount of projected potable water demand, in AFY or GPY, for a proposed project once construction is completed and excluding temporary demands such as for the establishment of new landscaping.
- S. "Redevelopment" – Any development that constructs new buildings, structures, with indoor plumbing features on the project site where previous or current building or structures exist.
- T. "Water conservation credit" – The difference between the baseline water demand and the sum of the indoor and outdoor water allocations, in Acre Feet per Year (AFY) or Gallons per Year (GPY).
- U. "Water neutral development" - Offsetting the projected water demand of proposed projects with on-site and off-site water offset measures to create no additional demand on overall service area demands.
- V. "Water offset measures" – Strategies and/or measures that can be implemented and/or installed on the project site or within the EMID service area.

8.90.060 Water neutrality growth ordinance requirements.

- A. Any project within the EMID service area that will require new water service from

EMID or will increase water demand on the project site above the baseline water demand shall offset the new or increased water demand with water offset measures to neutralize and/or reduce the impact on overall service area demands as amended in the current or any future revised versions of the BAWSCA Drought Regional Implementation Plan (which determines the SFPUC contract allocations under water shortage conditions as applicable to EMID) in a manner consistent with this chapter.

8.90.070 Determining the offset amount.

The Director shall determine the water offset measures by doing the following:

A. Baseline water demand.

1. EMID will provide the applicant with the baseline water demand for the project site based on whether the project site has been served by an active or inactive EMID water meter.
2. If there is no EMID meter serving the project site, then no baseline water demand will be provided.

B. Calculate water conservation credit based on EMID technical guidance.

1. Calculate and sum the indoor and outdoor water allocations for the project site.
2. If the project site's baseline water demand is less than the sum of the indoor and outdoor water allocations, the applicant shall be given a water conservation credit when calculating the project's new water demand.
3. If the project site's baseline water demand exceeds the sum of the indoor and outdoor water allocations, the applicant shall be given no water conservation credit.

C. Calculate projected water demand based on EMID technical guidance.

1. Projected water demand shall be calculated by the applicant or a qualified professional for the proposed project using the technical guidance provided by EMID.
2. The Director shall review the applicant's projected water demand and may approve the projection if found to be accurate.
3. If the Director finds the applicant's projection to be incomplete, inaccurate, or otherwise erroneous, the application shall be denied and returned to the applicant with an explanation of the denial.

D. Establish new water demand and water offset requirement.

1. New water demand for the proposed project shall be calculated using the

following formula:

- a. Projected water demand – (baseline water demand + water conservation credit) = new water demand.
2. If the Director determines that the proposed project will not result in a new water demand, the Director shall provide a notice to the applicant of their determination and no further action will be necessary.

8.90.080 Identifying the water offset measures.

- A. The applicant shall identify water offset measures to offset the new water demand determined by the Director using the formula in Section 8.90.070.D.
- B. The water offset measures must be implemented on the project site and/or within the EMID service area.
- C. The offset credits for water offset measures shall be calculated by a licensed engineer or landscape architect using the methods and factors provided in EMID's technical guidance.
- D. The Director shall deny any application where they determine that the applicant has not identified water offset measures that will offset their new water demand in accordance with this Chapter and any administrative regulations and/or technical guide that may be adopted or amended from time to time.

8.90.090 Implementing regulations.

- A. The Director shall adopt written administrative regulations and/or a publicly available technical guide that are consistent with and that further the terms and requirements set forth in this Chapter.

8.90.100 Compliance.

- A. All water offset measures necessary to meet the new water demand determined by the Director per section 8.90.070.D must be installed and demonstrated to be operational per product specifications prior to occupancy unless an alternative completion time is approved by the Director prior to the deadline.

8.90.110 Verification.

- A. Upon completion of all water offset measures necessary to meet the new water demand, the applicant shall submit the appropriate verification documentation to the Director.
- B. The Director has the authority to verify that water offset measures were completed.

Inspections may occur before, during, and after the implementation of water offset measures.

8.90.120 Monitoring.

EMID shall monitor and record the water usage of the project site annually for 5 years after issuance of the final certificate of occupancy.

8.90.130 Penalties and enforcement.

- A. EMID may establish and administer penalties to the applicant for noncompliance with this Chapter to the extent permitted by law.
- B. It is unlawful for any EMID customers and/or owner(s) of properties subject to the requirements of this Chapter to fail to comply or to alter or replace the water offset measures required by this Chapter with other noncompliant water offset measures after the completion of construction. Whenever the Director determines that a violation of this Chapter has occurred, the Director may serve a notice of correction on the owner(s) of the property on which the violation is situated. The owner(s) of record shall have ninety days to take corrective action.
- C. If the water usage monitoring required by section 8.90.120 reveals that the project exceeded the projected water demand, the Director shall send a warning to the EMID customer and/or property owner and take appropriate administrative action as necessary. Routine monitoring will be used to determine whether water usage by the project has been sufficiently reduced.

8.90.140 Modifications.

- A. If, due to special circumstances, imposing a requirement of this Chapter would constitute an undue hardship, the applicant may request that the requirement be modified or waived. A request for a modification or waiver must be submitted in writing during the pendency of the application for the Project. . In the request, the applicant shall provide the factual and/or legal basis for the request, including all supporting technical documentation.
- B. The Director shall review the request at the same time as the application and grant, conditionally grant, or deny the request for a modification or waiver. The Director shall provide prompt written notice of the decision to the applicant. The Director's decision is appealable pursuant to Section 8.90.150.

8.90.150 Appeals.

- A. The applicant may appeal the numerical calculations used in accordance with this Chapter, including the amount of any offset required to the Manager.

- B. All appeals shall be in writing and filed with the Manager within ten (10) days of the decision. The Manager shall review the appeal and provide prompt written notice of the decision, which may include a modification, to the appellant and those who have requested notice. The decision of the Manager may be appealed to the EMID Board of Directors within ten (10) days of the decision. If no appeal is filed within ten (10) days, the decision of the Manager will be final and shall be promptly provided in writing to the appellant and those who have requested notice.

8.90.160 Administrative fee.

- A. An administrative fee shall be assessed and paid to EMID by the applicant at the time of the application is filed. The administrative fee shall be imposed to cover the cost of administering and implementing the water offset requirements of this Chapter and shall be set by EMID Board of Directors resolution and may be amended from time to time.”

Section 2. 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.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The District Board does hereby declare that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4. Taking Effect. This Ordinance shall take effect and be in force thirty (30) days from and after its adoption.

Section 5. Posting. Within fifteen (15) days after the adoption of this Ordinance, the City District Secretary shall have it posted in three (3) public places designated by the District Board.

This Ordinance was introduced, read, passed and adopted on the 1st day of May, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JON FROOMIN, PRESIDENT

ATTEST:

PRISCILLA SCHAUS, DISTRICT SECRETARY