



DATE: May 01, 2023

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

VIA: Stefan Chatwin, City/District Manager
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FROM: Sofia Mangalam, Community Development Director
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DEPARTMENT: Community Development

SUBJECT: WATER NEUTRALITY GROWTH ORDINANCE

RECOMMENDATION

It is recommended that the Board of Directors of the Estero Municipal Improvement District (EMID) introduce by title only and waive further reading of an Ordinance adding a new Chapter 8.90, Water Neutrality Growth within Title 8, Water and Sewer Service of the EMID Code and finding the approval of the Ordinance exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15307.

EXECUTIVE SUMMARY

On March 20, 2023, EMID Board approved Resolution No. 3713 directing staff to prepare an Ordinance implementing a Water Neutrality Growth Policy framework, as a long-term water demand management measure ([see Staff Report for March 20 meeting](#)). The Ordinance is necessary 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. The proposed Ordinance would apply to any new development(s), redevelopment(s), or change in use that will require a new water service from EMID or will increase water demand.

The City of Foster City prepared a [Water Capacity Study \(WCS\)](#) to inform the development of a draft Water Supply Assessment (WSA) for the 6th Cycle (2023-31) Housing Element Update to accommodate 1,896 housing units, including a buffer, Safety Element Update and associated General Plan and zoning amendments. The WCS concluded that EMID's water supplies are, or will be, insufficient during single-dry and multiple dry water years to meet the future housing units planned for in the 6th Cycle Housing Element Update. Per Water Code Section 10911, EMID must consider this projected water supply insufficiency and provide the City with its plans to acquire and develop additional water supplies when it considers the Housing Element. 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.

EMID has and will continue to implement water demand management measures to address supply shortfalls by reducing existing potable demand and exploring opportunities to use recycled water. In order to reduce the future demand for water from new growth or expanded redevelopment projects, the Draft Environmental Impact Report (EIR) prepared for the Housing and Safety Element identified a Water Neutrality Growth Policy as a mitigation measure ([see Page 29 of Draft EIR](#)).

BACKGROUND

The City has been working on a Program EIR for the 6th Cycle Housing Element Update in accordance with California Environmental Quality Act (CEQA), implementing the CEQA Guidelines, relevant case law, and City procedures. Per Water Code Section 10912, a WSA is required for a proposed residential development of more than 500 dwelling units.

The City prepared the WCS to inform the development of WSA, which concluded that there is not "sufficient water supply" (per Government Code 66473.7 (a)(2)) available to meet the demands of the 2023-2031 Housing Element, in addition to the existing and planned future uses evaluated in this WCS, during single-dry and multiple dry water years within a 20-year projection (per Senate Bill (SB) 610, the WSA should include a 20-year projection).

EMID is coordinating with the City of San Mateo, San Francisco Public Utilities Commission (SFPUC), and Bay Area Water Supply & Conservation Agency (BAWSCA) to assess potential options for producing and using recycled water in the future to assist with offsetting future potable water demand from new developments and/or redevelopment of existing sites. Recently, EMID updated its Water Shortage Contingency Plan (WSCP) and will continue to invest in and implement ongoing and long-term demand management measures. A long-term demand management measure for EMID identified in DEIR is a Water Neutrality Growth Policy for all new development(s), redevelopment, or changes in use that increase water demand 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.

ANALYSIS

At the March 20, 2023, meeting, staff noted to the EMID Board that the estimated net water demand from the 6th Cycle Housing Element Update and the net demand from the existing and planned future uses evaluated in the WCS would exacerbate EMID's existing projected water supply shortfall during single and multiple dry years. Even though EMID has recently updated its WSCP along with the 2020 Urban Water Management Plan (UWMP) update, which will further reduce demand during dry years, additional measures such as the "Water Neutrality Growth" will be required to offset future water demands from eligible projects.

EMID Board, via Resolution No. 3713 (Attachment 2), directed staff to prepare an Ordinance implementing a Water Neutrality Growth Policy framework. At the meeting, the EMID Board directed including Accessory Dwelling Units ADUs in the policy framework and to consider not penalizing the property owners/development(s) who are undertaking water conservation efforts at their project sites to achieve water neutrality.

Subsequent to the March 20, 2023, meeting, staff worked with Maddaus Water Management, Inc. (Maddaus) to develop the Ordinance based on the approved policy framework requiring proposed new development(s), redevelopment(s), or change in use projects to be water-neutral (from the City-delivered water system) through any combination of on-site and/or off-site water offset measures within the EMID service area boundary (consists of Foster City and a portion of the City of San Mateo immediately adjacent to the west, referred to as the Mariners Island area).

The proposed Ordinance (Attachment 1) requires water neutrality to be demonstrated through quantitative water analysis of the project based on the following calculations:

1. Request the baseline water demand from EMID (5-year average).
2. Calculate indoor and outdoor water allocations for the project site based on occupancy. If the project site's water demand/usage is less than the allocations, the applicant will get a water conservation credit toward new water demand.
3. Calculate projected water demand.
4. Apply water conservation credit as applicable.
5. Establish new water demand/water offset requirements using the formula below.

$$\textbf{New Water Demand} = \textbf{Projected Water Demand} - (\textbf{Baseline Water Demand} + \textbf{Water Conservation Credit})$$

The new water demand would establish the water offset requirement for the project. The applicant is required to offset the new water demand using on-site and/or off-site measures within the EMID service area boundary. While the formula may appear straightforward, there is significant administrative overhead involved in reviewing projects and the quantitative water analysis information to determine the level of effort for these projects to offset water demand either onsite or offsite.

As directed by the EMID Board, the proposed Ordinance gives water conservation credit to a project site which utilizes water below their indoor and outdoor water allocations. The conservation credit, if applicable, would lower the water offset requirement for that project site. These calculations would be part of the quantitative analysis that is discussed above.

The proposed Ordinance does provide certain exceptions, including projects with executed Development Agreements, projects for single family residential dwelling units, projects for single family ADUs, projects for which planning entitlements have already been approved 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. With regards to the exception for ADUs, Government Code section 65852, subdivision (e) provides for a statewide exemption for ADUs up to 800 square feet in single-family homes. Based on the average number of ADUs permitted in the City over the last 3 years, the Draft Housing Element includes a projection of 24 ADUs over the course of the 8-year planning period from 2023-2031. Given the nominal increase in projected ADUs, the ministerial approval process, expedited timelines for review, the administrative overhead (as discussed above) and State laws, staff is recommending that single family ADUs (regardless of the size) should be exempt from the Ordinance. However, in response to the direction provided by the EMID Board to take ADUs into consideration, the requirements of the Ordinance would apply to multi-family ADUs. Multi-family ADUs are typically proposed in underutilized spaces at existing apartment developments. Staff believes that there could be opportunities for water conservation measures at these sites and therefore, recommends including multi-family ADUs in the Water Neutrality Ordinance.

In addition, the proposed Ordinance includes provisions for compliance, verification at certain permitting stages, monitoring of five (5) years after issuance of the Final Certificate of Occupancy permit, and enforcement. The administering and implementing of the Ordinance would require staff time, and the Ordinance includes a potential future administrative fee. However, no fee amount has been set, and any new future fees would be brought to the EMID Board and City Council for consideration prior to formal adoption.

After the adoption of the Ordinance, staff would work on a technical guide based on the provisions of the proposed Ordinance for the applicants to include instructions on calculations, implementation, and monitoring requirements (i.e., submittal criteria, responsible authority, etc.).

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.

FISCAL IMPACT

Any costs associated with water demand offset measures required as a result of this Ordinance would be borne by the applicant. There will be staff time spent on providing historic average annual water demand and verifying the calculations provided by the applicant to demonstrate neutral water demand. Staff has included in the Ordinance language regarding assessing an administrative fee to cover the cost related to staff time. The fee will be brought for EMID's consideration and approval at a future meeting.

CITY COUNCIL VISION, MISSION, AND VALUE/PRIORITY AREA

Smart Planning, Development, and the Local Economy

ATTACHMENTS:

Attachment 1 – EMID Ordinance

Attachment 2 – Resolution 3713, Water Neutrality Growth Policy Framework