#### ORDINANCE NO. 2013-21

# AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA CRUZ AMENDING CHAPTER 16.03 OF THE SANTA CRUZ MUNICIPAL CODE PERTAINING TO PLUMBING FIXTURE RETROFIT REGULATIONS

BE IT ORDAINED by the City of Santa Cruz as follows:

<u>Section 1.</u> Chapter 16.03 of the Santa Cruz Municipal Code is hereby amended to read as follows:

## "Chapter 16.03 PLUMBING FIXTURE RETROFIT REGULATIONS

#### Sections:

16.03.010 Purpose.

16.03.020 Application of regulations.

16.03.030 Definitions.

16.03.040 Retrofit requirements upon sale of real property.

16.03.050 Exemptions.

16.03.060 Verification of compliance.

16.03.070 Persons authorized to perform plumbing fixture inspections.

16.03.080 Option to transfer responsibility for retrofitting.

16.03.090 Penalties for violation – Enforcement.

16.03.100 Civil remedy.

#### 16.03.010 PURPOSE.

The purpose of this chapter is to reduce long-term demand for potable water within the city water service area in order to ensure a reliable and adequate public water supply by establishing water efficiency standards for interior plumbing fixtures when changes in ownership of real property occur.

(Ord. 2003-23 § 1 (part), 2003: Ord. 2002-46 § 1 (part), 2002).

#### 16.03.020 APPLICATION OF REGULATIONS.

The provisions of this chapter shall apply to all residential, commercial, and industrial buildings served by the City of Santa Cruz Water Department that use water in showers, toilets, and urinals whenever the title to real property is conveyed from the seller to the buyer, for consideration, by means of a grant deed.

(Ord. 2003-23 § 1 (part), 2003: Ord. 2002-46 § 1 (part), 2002).

#### 16.03.030 DEFINITIONS.

For the purpose of this chapter, the following words shall have the meanings set forth below:

- (a) "Buyer" means the person, persons, or entity to whom the title to real property is conveyed.
- (b) "Director" is the director of the water department of the city of Santa Cruz, or his or her designated representative.

- (c) "High efficiency plumbing fixtures" means any fixture that is designated as an USEPA WaterSense fixture; or any showerhead rated to use a maximum of 2.0 gallons of water per minute, any high efficiency toilet rated to use a maximum of 1.28 gallons of water per flush, and any urinal and associated flush valve rated to use a maximum of 0.5 gallons of water per flush. (d) "Retrofit" means the replacement of conventional plumbing fixtures with high efficiency plumbing fixtures. Pre-existing toilets that use not more than 1.6 gallons per flush shall be considered to meet the requirements of this code.
- (e) "Seller" means the owner of real property prior to the time of sale.
- (f) "Time of sale" means the date of the recording of the deed transferring legal title to real property to implement the sale of the property.
- (g) "Transfer of responsibility to retrofit form" means a form provided by the city that certifies that the seller and buyer mutually agree that the responsibility for compliance with the retrofit requirements in this chapter is assumed by the buyer.
- (h) "Water conservation certificate" means a form provided by the city certifying compliance with the plumbing fixture requirements specified by this chapter.

(Ord. 2003-23 § 1 (part), 2003: Ord. 2003-04 § 2, 2003: Ord. 2002-46 § 1 (part), 2002).

#### 16.03.040 RETROFIT REQUIREMENTS UPON SALE OF REAL PROPERTY.

- (a) When Required. All existing residential, commercial, and industrial buildings, shall, at the time of sale, be retrofitted, if not already so, exclusively with high efficiency plumbing fixtures.
- (b) Responsibilities of Seller. The seller shall be responsible for complying with the requirements of this chapter and for obtaining a water conservation certificate in accordance with Section 16.03.060 before the time of sale.
- (c) Disclosure of Retrofit Requirement. The seller and/or the seller's real estate agent or broker shall give a written statement to the prospective buyer of the requirements of this chapter as soon as practicable prior to the transfer of title. The statement shall be either included in the receipt for deposit in a real estate transaction, an addendum to the real estate transfer disclosure statement, or a separate document. A signed copy of the water conservation certificate and the statement of retrofit requirements shall be included in the transfer documentation.

(Ord. 2003-23 § 1 (part), 2003: Ord. 2002-46 § 1 (part), 2002).

#### 16.03.050 EXEMPTIONS.

The water director may grant an exemption to the provisions of this chapter to any person if the water director determines that the unique configuration of a building drainage system or portions of a public sewer, or both, are incompatible with high efficiency toilet specifications and require a greater quantity of water to flush the system in a manner that is consistent with public health.

Structures which are considered architecturally significant and which are listed as such in a recognized federal, state, or local historic registry or in the city's General Plan are exempt from the requirements of this chapter when both of the following circumstances exist: authentic

historic plumbing fixtures are presently in place in the structure; and the plumbing fixtures cannot be replaced by matching high efficiency fixtures.

The director shall require sufficient evidence or proof be submitted to substantiate any exemption.

(Ord. 2003-23 § 1 (part), 2003: Ord. 2002-46 § 1 (part), 2002).

#### 16.03.060 VERIFICATION OF COMPLIANCE.

- (a) Upon retrofitting with high efficiency plumbing fixtures, prior to time of sale, the seller shall verify compliance by one of the following methods:
  - 1. Physical inspection of the building by city staff or other person authorized by the city to perform an on-site property inspection and to certify that the plumbing fixture requirements specified in this chapter have been satisfied;
  - 2. Participation in the city toilet rebate program, where documentation of an inspection demonstrates that the retrofit requirements of this chapter have been satisfied;
  - 3. Documentation that all structures that include plumbing fixtures on the property changing ownership were constructed or renovated in 1994 or later.
- (b) Once compliance with the requirements of this chapter has been verified, a water conservation certificate will be issued to the seller within two business days.
- (c) The director may waive re-inspection and/or further proof of retrofit when a property already certified undergoes a subsequent sale. Water conservation certificates shall be maintained on file at the department in order to provide future verification that high efficiency plumbing fixtures have been installed.

(Ord. 2003-23 § 1 (part), 2003: Ord. 2002-46 § 1 (part), 2002).

16.03.070 PERSONS AUTHORIZED TO PERFORM PLUMBING FIXTURE INSPECTIONS. The following persons shall be authorized to perform an inspection of plumbing fixtures for the purpose of verifying compliance with the provisions of this chapter:

- (a) Employees of the city assigned by the director.
- (b) A plumbing contractor who holds a valid contractor's license issued by the state of California.
- (c) Other persons approved by the director to perform plumbing fixture inspections.

(Ord. 2003-23 § 1 (part), 2003: Ord. 2002-46 § 1 (part), 2002).

#### 16.03.080 OPTION TO TRANSFER RESPONSIBILITY FOR RETROFITTING.

Before the time of sale, the seller and buyer of any property may mutually agree to transfer responsibility for compliance with this chapter to the buyer. In the event the buyer agrees to assume responsibility for retrofitting, the buyer shall complete the retrofit within ninety calendar

days from the date of the sale. Before the time of sale, the seller and buyer shall complete the following procedures:

- (a) The seller shall request from the department a transfer of responsibility to retrofit form. Both the seller and buyer shall sign the form certifying that the buyer has assumed responsibility for the retrofit.
- (b) The seller shall file the signed transfer of responsibility to retrofit form with the department and include it in the real estate transfer documentation in lieu of the water conservation certificate.
- (c) Upon completing the retrofit, the buyer shall contact the department to verify compliance. A water conservation certificate shall be issued to the buyer upon verification of compliance in accordance with Section 16.03.060.

(Ord. 2003-23 § 1 (part), 2003: Ord. 2002-46 § 1 (part), 2002).

#### 16.03.090 PENALTIES FOR VIOLATION – ENFORCEMENT.

- (a) Violation. It is unlawful for any person, firm, partnership, association, or corporation to fail to comply with the retrofit requirements of this chapter, or to alter or replace high efficiency plumbing fixtures required by the chapter with other than high efficiency plumbing fixtures. Violation of the provisions of this chapter shall constitute an infraction.
- (b) Notice of Correction. Whenever the director determines that there is a property where high efficiency plumbing fixtures have not been installed as required by this chapter or where such fixtures have been removed since initial installation and replaced with other than high efficiency plumbing fixtures, the director may serve a notice of correction on the owner(s) of the property on which the violation is situated and any other person responsible for the violation. The owner of record shall have ninety days to take corrective action.
- (c) Administrative Enforcement. In addition to any other remedy provided by the Santa Cruz Municipal Code, any provision of this ordinance may be enforced by an administrative order issued pursuant to any one of the administrative processes set forth in Title 4 of the Santa Cruz Municipal Code. The water commission shall serve as the administrative enforcement hearing officer for the purpose of considering appeals.
- (d) Persons Liable. No liability shall arise, nor shall any action be brought or maintained against, any agent of any party to a transfer of title, including any person or entity acting in the capacity of escrow officer, for any error, inaccuracy, or omission relating to compliance with this chapter. However, this section does not apply to a licensee, as defined in Section 10011 of the California Business and Professions Code, where the licensee participates in the making of the disclosure required to be made pursuant to this chapter with actual knowledge of the falsity of the disclosure. Except as otherwise provided in this chapter, this section shall not be deemed to create or imply a duty upon a licensee, as defined in Section 10011 of the California Business and Professions Code, or upon any agent of any party to a transfer of title, including any person or entity acting in the capacity of an escrow officer, to monitor or ensure compliance with this chapter, or to notify any person of requirements to comply with this chapter.

(e) A transfer of title is not invalidated on the basis of failure to comply with this chapter.

(Ord. 2003-23 § 1 (part), 2003: Ord. 2002-46 § 1 (part), 2002).

#### 16.03.100 CIVIL REMEDY.

If the seller fails to comply with the retrofit requirements, the buyer shall install the high efficiency plumbing fixtures and verify compliance in accordance with Section 16.03.060 within ninety days from the notice of correction. Any seller who fails to comply with the requirements of this chapter is liable to the buyer in the amount of two hundred and fifty dollars for each fixture that does not comply with this chapter at the time of sale, or the actual costs of the buyer to comply with this chapter, whichever amounts are greater.

(Ord. 2003-23 § 1 (part), 2003: Ord. 2002-46 § 1 (part), 2002)."

Section 2. This ordinance shall take effect and be in force thirty (30) days after its final adoption.

PASSED FOR PUBLICATION this 22<sup>nd</sup> day of October, 2013, by the following vote:

AYES: Councilmembers Comstock, Lane, Mathews, Posner; Vice Mayor Robinson,

Mayor Bryant.

NOES: None.

ABSENT: Councilmember Terrazas.

DISQUALIFIED: None.

APPROVED: ss/Hilary Bryant, Mayor

ATTEST: ss/Bren Lehr, City Clerk Administrator

### ORDINANCE NO. 2013-21

PASSED FOR FINAL ADOPTION this vote:	s day of	_, 2013, by the following
AYES:		
NOES:		
ABSENT:		
DISQUALIFIED:		
ATTEST: City Clerk Administrator	APPROVED: _	Mayor
This is to certify that the above and foregoing document is the original of Ordinance No. 2013 and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.		
City Clerk Administrator		