

ORDINANCE NO. 2323, NEW SERIES

**AN ORDINANCE OF THE CITY OF MORGAN HILL
ADDING SECTION, 13.04.335 ("PLUMBING FIXTURE
RETROFIT REGULATIONS") OF CHAPTER 13.04
("WATER SYSTEM") OF TITLE 13 ("PUBLIC SERVICES"),
ESTABLISHING WATER EFFICIENCY STANDARDS FOR
INTERIOR PLUMBING FIXTURES WHEN CHANGES IN
OWNERSHIP OF REAL PROPERTY OCCUR**

**THE CITY COUNCIL OF THE CITY OF MORGAN HILL DOES HEREBY
ORDAIN AS FOLLOWS:**

Section 1. Section 13.04.335 (Plumbing Fixture Retrofit Regulations) of Chapter 13.04 (Water System) of Title 13 (Public Services) is hereby added in its entirety to read as follows:

13.04.335 Plumbing Fixture Retrofit Regulations

- A. Applicability. The provisions of this chapter shall apply to all residential (mobile homes included), commercial, and industrial buildings served by the City of Morgan Hill water utility within the City that use water in showers, toilets, and urinals whenever the title to real property is conveyed from a seller to a buyer, for consideration, by means of a grant deed.
- B. Definitions. For the purpose of this chapter, the following words shall have the meanings set forth below:
1. "Buyer" means the person, persons, or entity to whom the title to real property is conveyed.
 2. "High efficiency plumbing fixtures" means any fixture that is designated as an USEPA WaterSense fixture; or any showerhead rated to use a maximum of 1.8 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 0.125 gallons of water per flush.
 3. "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.
 4. "Seller" means the owner of real property prior to the time of sale.
 5. "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.
 6. "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.
 7. "Water Conservation Certificate" means a form provided by the City certifying compliance with the plumbing fixture requirements specified by this chapter.
- C. Retrofit Requirements Upon Sale of Real Property
1. When Required. All existing residential (mobile homes included), commercial, and industrial buildings shall, at the time of sale, be retrofitted, if not already so, exclusively with high efficiency plumbing fixtures. Pre-existing toilets that use 1.6 gallons or less per flush shall be considered to meet the requirements of this code.

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2. 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 13.04.335(E) before the time of sale.
3. 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 either be 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.

D. Exemptions

1. The City Manager or designee may grant an exemption to the provisions of this chapter to any person if the City Manager or designee 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.
2. Structures that 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.

E. Verification of Compliance

1. Upon retrofitting with high efficiency plumbing fixtures, prior to time of sale, the seller shall verify compliance by one of the following methods:
 - a. Physical inspection of the building by a licensed plumber to perform an on-site property inspection and to certify that the plumbing fixture requirements specified in this chapter have been satisfied;
 - b. Participation in the city toilet rebate program, where documentation of an inspection demonstrates that the retrofit requirements of this chapter have been satisfied;
 - c. Documentation that all structures that include plumbing fixtures on the property changing ownership were constructed or renovated in 1994 or later
2. 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.
3. The City Manager or designee 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.

F. 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:

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1. A plumbing contractor who holds a valid contractor's license issued by the state of California;
2. Other persons approved by the City Manager or designee to perform plumbing fixture inspections.

G. 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 one hundred eighty (180) calendar days from the date of the sale. Before the time of sale, the seller and buyer shall complete all of the following procedures:

1. 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;
2. 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;
3. 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 13.04.335(E).

H. Penalties for Violation – Enforcement

1. 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.
2. Notice of Correction. Whenever the City Manager or designee 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 or a Water Conservation Certificate is not on file, the City Manager or designee 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.
3. 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

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- officer, to monitor or ensure compliance with this chapter, or to notify any person of requirements to comply with this chapter.
4. A transfer of title is not invalidated on the basis of failure to comply with this chapter.
 5. Enforcement through water service installation;
 - a. In addition to the enforcement remedies provided in Title 1 of the Morgan Hill Municipal Code, the City Council finds and declares that instituting additional enforcement remedies specifically applicable to the inspection of retrofit fixtures and high efficiency plumbing fixtures are in the public's interest.
 - b. Water and sewer utility service may not be started at a property that has been sold and does not have a valid Water Conservation Certificate or an executed Transfer of Responsibility to Retrofit Form or is otherwise exempt per Section 13.20.070(H).
 - c. To the extent allowed by law, water and sewer utility service may be discontinued to any property at which service was initiated using a Transfer of Responsibility to Retrofit Form once one hundred eighty (180) days has elapsed since the start of service and a Water Conservation Certificate has not been obtained and verified.

I. 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 13.04.335(E) 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.

Section 2. CEQA Exemption

The city finds that this Ordinance and actions taken hereafter pursuant to this Ordinance are exempt from the California Environmental Quality Act per the California Environmental Quality Act Guidelines Section 15307 (protection and preservation of natural resources). The City Clerk is hereby authorized and directed to file a Notice of Exemption as soon as possible following adoption of this Ordinance.

Section 3. Severability

If any section, subsection, sentence, clause or phrase in this Ordinance is for any reason held invalid, the validity of the remainder of the Ordinance will not be affected. The city council hereby declares it would have passed this Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases or is declared invalid.

Section 4. Effective Date; Posting

This Ordinance shall take effect on January 1, 2022. The City Clerk is hereby directed to publish this Ordinance or a summary thereof pursuant to Government Code Section 36933.

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THE FOREGOING ORDINANCE WAS INTRODUCED AT A REGULAR MEETING OF THE CITY COUNCIL HELD ON THE 5th DAY OF MAY 2021, AND WAS FINALLY ADOPTED AT A MEETING OF THE CITY COUNCIL HELD ON THE 2ND DAY OF JUNE 2021, AND SAID ORDINANCE WAS DULY PASSED AND ADOPTED IN ACCORDANCE WITH LAW BY THE FOLLOWING VOTE:

AYES:	COUNCIL MEMBERS:	Gino Borgioli, Rich Constantine, Yvonne Martinez Beltran, John McKay, Rene Spring
NOES:	COUNCIL MEMBERS:	None
ABSTAIN:	COUNCIL MEMBERS:	None
ABSENT:	COUNCIL MEMBERS:	None

APPROVED:

DocuSigned by:
Rich Constantine
02FAE5B057884F7

RICH CONSTANTINE, Mayor

ATTEST:

DocuSigned by:
Michelle Bigelow
C0FCB7EABA7C4C8

MICHELLE BIGELOW, City Clerk

CERTIFICATE OF THE CITY CLERK

I, MICHELLE BIGELOW, CITY CLERK OF THE CITY OF MORGAN HILL, CALIFORNIA, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 2323, New Series, adopted by the City Council of the City of Morgan Hill, California at their regular meeting held on the 2nd day of June 2021.

WITNESS MY HAND AND THE SEAL OF THE CITY OF MORGAN HILL.

DATE: 6/7/2021

DocuSigned by:
Michelle Bigelow
C0FCB7EABA7C4C8

MICHELLE BIGELOW, City Clerk