



Common Questions and Tips for Implementing the New Water-Wise Landscaping Requirements of Senate Bill 178

The following are some common questions regarding the new SB23-178 that was signed into law by Governor Polis on May 17, 2023. The law is effective August 7, 2023.

- **Does the new law affect condominium, townhome, and detached single-family communities?**

No. The new law primarily affects detached single-family communities. Water-wise landscaping requirements for condominium and townhome communities are primarily governed by previous changes to the law made in 2013 (SB13-183), 2019 (HB19-1050), and 2021 (SB21-1229).

- **Is our detached single-family community required to make changes to its landscaping requirements?**

Yes. All detached single-family community associations are required to select and preapprove 3 water-wise garden designs in front yards for owners to choose from. Associations may select from designs already created by Colorado State University (<https://plantselect.org/>) or another entity that creates such designs. Alternatively, associations may create their own designs that comply with principles of water-wise landscaping.

- **Other than selecting preapproved water-wise garden designs, how else does the new law affect our community?**

- Vegetable gardens must be allowed in the front, back, and side yards.
- Owners must have a landscaping option that is at least 80% drought-tolerant plantings.
- Nonvegetative turf grass (i.e. artificial turf) is allowed in backyards.
- Owners are not required to use hardscape on more than 20% of the yard.

- **May associations still adopt design and aesthetic guidelines consistent with these new requirements?**

Yes. While not required, associations may still adopt reasonable guidelines addressing design and bona fide safety considerations, including but not limited to fire buffers, defensible space, grading, and other structural elements.

- **Are there potential penalties to associations for noncompliance?**

Yes. If an association knowingly violates these requirements, an owner may sue the association for \$500 or actual damages, whichever is greater. The owner must first give the association written notice and an opportunity to cure.

- **What next steps should our association consider?**

Associations should consider (1) how they will update their landscaping approval process and documents to incorporate the new requirements, and (2) how they will select preapproved water-wise garden designs.

New Water-Wise Landscaping Requirements of Senate Bill 178 – Solutions and Options

To assist our communities in navigating the recent legislation (SB23-178), we offer two options.

Option No. 1 – Policy Only

Cost: \$300.00 flat fee.

Services Provided: Preparation of a Xeriscape and Drought-Tolerant Vegetative Landscapes Policy.

Conditions: This Policy will originate from our office and will not be a revision to your existing design guidelines with “redlines.” The 3 pre-approved designs must be chosen by the Board, as the flat fee does not include assistance with reviewing and choosing the designs. This does not include any additional services outside of preparation of the written Policy for the association. The \$300.00 flat-fee rate will be billed upon delivery of the Policy. Additional support requested will be billed at the prevailing hourly attorney rate. This additional support includes but is not limited to how to implement the Policy and general questions related to the new legislation.

Option No. 2 – Design Guidelines Water-Wise Review and Revision

Cost: \$600.00 flat fee.

Services provided: We will review and revise the association’s design guidelines to integrate the water-wise requirements of Colorado law. The benefit of Option No. 2 is that the water-wise requirements will be integrated into the association’s design guidelines, as opposed to being in a separate stand-alone Policy.

Conditions: The \$600.00 flat-fee rate will be billed upon delivery of the revised design guidelines. The review and revision of the design guidelines does not include subjects other than water-wise requirements. The 3 pre-approved designs must be chosen by the Board as the flat fee does not include assistance with reviewing and choosing the designs. If you are unable to provide the existing design guidelines in Word format, there may be additional charges for our staff to type up the portion of the guidelines pertaining to water-wise requirements. Over the last couple of years there have been other changes in Colorado law related to landscaping and other subjects often addressed in design guidelines and rules for associations. We are happy to provide a more thorough review of the design guidelines and your rules in relation to these other changes in the law upon request or provide additional support including how to implement the revised design guidelines and general questions related to the new legislation. Reviewing the guidelines for these other changes and providing any additional support requested will be billed at the prevailing hourly attorney rate.