

## ANALYSIS

This ordinance amends the Los Angeles County Flood Control District Code by adding Chapter 16 establishing the Los Angeles Region, Safe, Clean Water Program and imposing a special parcel tax within the Los Angeles County Flood Control District to provide for increased stormwater and urban runoff capture and reduced stormwater and urban runoff pollution, as authorized by Section 2, subsections 8a-8c of the Los Angeles County Flood Control Act, as amended by Assembly Bill 1180 (2017). The ordinance will become effective only after approval by two-thirds (2/3) of the qualified voters voting in an election on the issue.

MARY C. WICKHAM  
County Counsel

By 

MARK T. YANAI  
Principal Deputy County Counsel  
Public Works Division

MTY:lt

Requested: 06/01/18  
Revised: 07/11/18

**ORDINANCE NO. \_\_\_\_\_**

An ordinance amending the Los Angeles County Flood Control District Code by adding Chapter 16 establishing the Los Angeles Region, Safe, Clean Water Program and imposing a special parcel tax within the Los Angeles County Flood Control District to provide for increased stormwater and urban runoff capture and reduced stormwater and urban runoff pollution in the Los Angeles County Flood Control District.

The Board of Supervisors of the County of Los Angeles, acting as the governing body of the Los Angeles County Flood Control District, ordains as follows:

**SECTION 1.** Chapter 16 is hereby added to read as follows:

**CHAPTER 16**

**LOS ANGELES REGION SAFE, CLEAN WATER PROGRAM AND SPECIAL  
PARCEL TAX TO PROVIDE FOR STORMWATER AND URBAN RUNOFF CAPTURE  
AND REDUCED STORMWATER AND URBAN RUNOFF POLLUTION**

**SECTIONS:**

**16.01 – TITLE.**

**16.02 – PURPOSE.**

**16.03 – DEFINITIONS.**

**16.04 – EXPENDITURE PLAN.**

**16.05 – PROGRAM ELEMENTS.**

**16.06 – SPECIAL ACCOUNT.**

**16.07 – INDEPENDENT AUDIT.**

**16.08 – SPECIAL PARCEL TAX RATE.**

**16.09 – EXEMPTIONS.**

**16.10 – CREDIT AND INCENTIVE PROGRAM.**

**16.11 – LAPSED FUNDS.**

**16.12 – REPORTING REQUIREMENTS.**

**16.13 – AUDIT RECORDKEEPING.**

**16.14 – INDEMNIFICATION.**

**16.15 – AMENDMENT OF ORDINANCE.**

**16.16 – DIRECTION TO BOARD.**

**16.17 – SEVERABILITY.**

**16.18 – EFFECTIVE DATE.**

**16.19 – STATUTE OF LIMITATIONS.**

**16.20 – EXECUTION.**

**16.01 Title.**

This Chapter shall be known as the "The Los Angeles Region Safe, Clean Water Program" ordinance.

**16.02 Purpose.**

This ordinance is adopted to achieve the following purposes and directs that the provisions hereof be interpreted in order to:

- A. Impose a Special Parcel Tax upon Parcels of property within the boundaries of the District at the rate of two and one-half (2.5) cents per square foot of Impermeable Area, except as exempted, to be used for the purposes set forth herein.

B. Provide funding for Programs and Projects to increase Stormwater and Urban Runoff capture and reduce Stormwater and Urban Runoff pollution in the District, including Projects and Programs providing a Water Supply Benefit, Water Quality Benefit, and Community Investment Benefit.

**16.03 Definitions.**

As used in this Chapter, the following terms mean:

- A. "Assessor" means the County of Los Angeles Office of the Assessor.
- B. "Auditor-Controller" means the Auditor-Controller of the County of Los Angeles.
- C. "Board" means the Los Angeles County Board of Supervisors, acting as the governing body of the Los Angeles County Flood Control District.
- D. "Census Block Group" means, as defined by the United States Census Bureau, a statistical division of census tracts, which are generally defined to contain between six hundred (600) and three thousand (3,000) people, and are used to present data and control block numbering. A Census Block Group consists of clusters of blocks within the same census tract. Each census tract contains at least one (1) Census Block Group and each Census Block is uniquely numbered within the census tract.
- E. "Chief Engineer" means the Chief Engineer of the District or their authorized deputy, agent, or representative.
- F. "Community Investment Benefit" means a benefit created in conjunction with a Project or Program, such as, but not limited to: improved flood management, flood conveyance, or flood risk mitigation; creation, enhancement or restoration of

parks, habitat or wetlands; improved public access to waterways; enhanced or new recreational opportunities; and greening of schools. A Community Investment Benefit may also include a benefit to the community derived from a Project or Program that improves public health by reducing heat island effect, and increasing shade or planting of trees and other vegetation that increase carbon reduction/sequestration, and improve air quality.

G. "County" means the County of Los Angeles.

H. "Disadvantaged Community" ("DAC") means a Census Block Group that has an annual median household income of less than eighty percent (80%) of the Statewide annual median household income (as defined in Water Code section 79505.5).

I. "Disadvantaged Community (DAC) Benefit" means a Water Quality Benefit, Water Supply Benefit, and/or Community Investment Benefit located in a DAC or providing benefits directly to a DAC population.

J. "District" means the Los Angeles County Flood Control District.

K. "District Program" means that part of the SCW Program described in Section 16.05.B. of this Chapter.

L. "Feasibility Study" means a detailed technical investigation and report that is conducted to determine the feasibility of a proposed Project.

M. "Impermeable Area" means a Parcel area covered by materials or constructed surfaces such as buildings, roofs, paved roadways, sidewalks, driveways, parking lots, brick, asphalt, concrete, pavers, covers, slabs, sheds, pools, and other

constructed surfaces or hardscape features. Impermeable Areas do not include permeable surfaces such as vegetated areas, grasses, bushes, shrubs, lawns, bare soil, tree canopy, natural water bodies, wetland areas, gravel, gardens and planters on bare soil, rocky shores, and other natural areas.

N. "Infrastructure Program Project Applicant" means any individual, group, business or governmental entity, including, but not limited to, a Municipality, public utility, special district, school, community-based organization, non-governmental organization, non-profit organization, federally-recognized Indian tribe, State Indian tribe listed on the Native American Heritage Commission's California Tribal Consultation List, or mutual water company, that submits a proposed Project or Feasibility Study for consideration for funding by the SCW Program.

O. "Infrastructure Program Project Developer" means the individual, group or entity that carries out or causes to be carried out part or all of the actions necessary to complete a Project.

P. "Multi-Benefit Project" means a Project that has: (1) a Water Quality Benefit, and (2) a Water Supply Benefit or a Community Investment Benefit, or both.

Q. "Municipal Program" means that part of the SCW Program described in Section 16.05.C. of this Chapter.

R. "Municipality" means a city within the District, or the County, pertaining to unincorporated areas within the District.

S. "Nature-Based Solution" means a Project that utilizes natural processes that slow, detain, infiltrate or filter Stormwater or Urban Runoff. These methods may

include relying predominantly on soils and vegetation; increasing the permeability of Impermeable Areas; protecting undeveloped mountains and floodplains; creating and restoring riparian habitat and wetlands; creating rain gardens, bioswales, and parkway basins; and enhancing soil through composting, mulching, and planting trees and vegetation, with preference for native species. Nature-Based Solutions may also be designed to provide additional benefits such as sequestering carbon, supporting biodiversity, providing shade, and improving quality of life for surrounding communities. Nature-Based Solutions include Projects that mimic natural processes, such as green streets, spreading grounds and planted areas with water storage capacity.

T. "Parcel" means a parcel of real property situated within the District, as shown on the latest equalized assessment roll of the County and identified by its Assessor's Parcel Number, and that is tributary to a receiving water identified in the Water Quality Control Plan for the Los Angeles Region in effect as of January 1, 2018. Parcel shall not include a possessory interest based on a private, beneficial use of government-owned real property.

U. "Program" means a planned, coordinated group of activities related to increasing Stormwater or Urban Runoff capture or reducing Stormwater or Urban Runoff pollution in the District.

V. "Project" means the development (including design, preparation of environmental documents, obtaining applicable regulatory permits, construction, inspection, and similar activities), operation and maintenance, of a physical structure or

facility that increases Stormwater or Urban Runoff capture or reduces Stormwater or Urban Runoff pollution in the District.

W. "Regional Oversight Committee (ROC)" means a body created by the Board whose responsibilities include, but are not limited to, assessing whether the SCW Program purposes are being achieved.

X. "Regional Program" means that part of the SCW Program described in Section 16.05.D. of this Chapter.

Y. "Safe, Clean Water (SCW) Program" means the program established by this ordinance, including the administration of revenues from the Special Parcel Tax levied pursuant to this ordinance, and the criteria and procedures for selecting and implementing Projects and Programs and allocating revenues among the Municipal, Regional, and District Programs.

Z. "Special Parcel Tax" means the tax described in Section 16.08 of this Chapter.

AA. "Stakeholder" means a person; Municipality; citizens' group; homeowner or other property owner; business; non-governmental organization; social justice group; health advocate; local park representative; school board member; environmental group; labor union; academic institution; neighborhood council; town council; community group; water resources agency, such as a groundwater pumper or manager, or private or public water agency; other governmental agency; or other interested party that has a direct or indirect stake in the SCW Program.



BB. "Stormwater" means water that originates from atmospheric moisture (rainfall or snowmelt) and falls onto land, water or other surfaces.

CC. "Surface Water" means water that flows or collects on the surface of the ground.

DD. "Treasurer" means the Treasurer and Tax Collector of the County of Los Angeles.

EE. "Urban Runoff" means Surface Water flow that may contain, but is not composed entirely of, Stormwater, such as flow from residential, commercial, or industrial activities.

FF. "Water Quality Benefit" means a reduction in Stormwater or Urban Runoff pollution, such as improvements in the chemical, physical, and biological characteristics of Stormwater or Urban Runoff in the District. Activities resulting in this benefit include, but are not limited to: infiltration or treatment of Stormwater or Urban Runoff, non-point source pollution control, and diversion of Stormwater or Urban Runoff to a sanitary sewer system.

GG. "Water Supply Benefit" means an increase in the amount of locally available water supply, provided there is a nexus to Stormwater or Urban Runoff capture. Activities resulting in this benefit include, but are not limited to, the following: reuse and conservation practices, diversion of Stormwater or Urban Runoff to a sanitary sewer system for direct or indirect water recycling, increased groundwater replenishment or available yield, or offset of potable water use.

HH. "Watershed Area" means the regional hydrologic boundaries as depicted on maps maintained by the District for the SCW Program, that are established in consideration of topographic conditions and other factors.

II. "Watershed Area Steering Committee" means a body created by the Board, one for each Watershed Area, whose responsibilities include programming funding for the Regional Program.

#### **16.04 Expenditure Plan.**

The District shall expend all Special Parcel Tax revenues consistent with the expenditure plan contained in this section.

A. The District shall use the Special Parcel Tax revenues to pay the costs and expenses of carrying out Projects and Programs to increase Stormwater or Urban Runoff capture or reduce Stormwater or Urban Runoff pollution in the District in accordance with criteria and procedures established in this Chapter. Projects and Programs funded by the revenues from the Special Parcel Tax may provide a Water Supply Benefit, Water Quality Benefit, and Community Investment Benefit. The District shall allocate the revenues derived from the Special Parcel Tax as follows:

1. Ten percent (10%) shall be allocated to the District for implementation and administration of Projects and Programs, and for the payment of the costs incurred in connection with the levy and collection of the Special Parcel Tax and the distribution of the funds generated by imposition of the Special Parcel Tax in accordance with the criteria and procedures established in this Chapter.

2. Forty percent (40%) shall be allocated to Municipalities within the District, in the same proportion as the amount of revenues collected within each Municipality, to be expended by those cities within the cities' respective jurisdictions and by the County within the unincorporated areas that are within the boundaries of the District, for the implementation, operation and maintenance, and administration of Projects and Programs, in accordance with the criteria and procedures established in this Chapter.

3. Fifty percent (50%) shall be allocated to pay for the implementation, operation and maintenance, and the administration of Projects and Programs implemented through the Regional Program, including Projects and Programs identified in approved regional plans such as stormwater resource plans developed in accordance with Part 2.3 (commencing with section 10560) of Division 6 of the Water Code, watershed management programs developed pursuant to waste discharge requirements for municipal separate storm sewer system (MS4) discharges within the coastal watersheds of the County, issued by the Los Angeles Regional Water Quality Control Board, and other regional water management plans, as appropriate, in accordance with the criteria and procedures established in this Chapter.

B. The District, and Municipalities within the boundaries of the District, may use the funds from the Special Parcel Tax to finance bonds issued by the District or Municipalities so long as the bond proceeds are used for Projects and Programs that are eligible for funding under the SCW Program.

## **16.05 Program Elements.**

### **A. General Requirements.**

1. SCW Program funds shall be transferred to Municipalities, Infrastructure Program Project Developers and the District in advance of eligible expenditures taking place. Prior to their receipt of SCW Program funds, Municipalities and Infrastructure Program Project Developers must enter into an agreement with the District to transfer SCW Program funds.

2. Expenditures eligible for SCW Program funds include, but are not limited to, the following:

a. Infrastructure development tasks including design and planning, preparation of environmental documents, obtaining permits, construction, operations and maintenance, and inspection;

b. Real property acquisition, including fee title, leases, easements and right of entry permits, necessary to implement Projects selected for funding under the SCW Program;

c. Scientific and technical studies, and Stormwater or Urban Runoff modeling and monitoring;

d. Water quality or regional water resilience planning;

e. Stormwater or Urban Runoff residential and/or commercial retrofits;

f. Projects or studies to pilot or investigate new technologies or methodologies to increase or improve Stormwater or Urban Runoff capture or reduce

Stormwater or Urban Runoff pollution for improving water quality, increasing local water supplies, or improving the quality of life for communities;

g. The development of Feasibility Studies to enable Infrastructure Program Project Applicants to submit Projects for consideration for SCW Program funds;

h. The modification, upgrade, retrofit, or expansion of an existing Project to incorporate new elements to increase Stormwater or Urban Runoff capture and reduce Stormwater or Urban Runoff pollution to provide an additional Water Quality Benefit, Water Supply Benefit, or Community Investment Benefit;

i. Debt financing, should the District or a Municipality determine that bonds or loans are prudent and necessary to implement Projects or Programs;

j. Stormwater or Urban Runoff Programs such as, but not limited to, school education and curriculum, public education, watershed coordination efforts, regional water quality planning and coordination, and local workforce job training;

k. Administration and implementation of the SCW Program;  
and

l. Payments pursuant to an incentive program, as may be established by the Board.

3. Ineligible expenditures for SCW Program funds include, but are not limited to, the following:

- a. Payment of fines imposed by any State, federal, or local regulatory agency;
- b. Expenditures related to the investigation, defense, litigation, or judgment associated with any regulatory permit violations, notices of violation, or allegations of noncompliance with regulations brought forth by any State, federal, or local regulatory agency, or a third party unrelated to Projects and Programs selected for funding under the SCW Program;
- c. Expenditures for the investigation or litigation of any claim or action against the District, County, or their officers, employees or agents alleging improper allocation, withholding or reassignment of SCW Program funds;
- d. Costs associated with any litigation, including investigation, defense, or attorneys' fees, related to the design and implementation of Projects or Programs selected for funding under the SCW Program; and
- e. Payment of any settlement or judgment related to any claim or lawsuit arising from the negligence or wrongdoing of a Municipality or Infrastructure Program Project Developer or their respective agents in connection with any Project or Program funded under the SCW Program.

B. District Program.

Ten percent (10%) of the revenue from the annual Special Parcel Tax shall be allocated for the District Program. The District shall perform the following functions as part of the District Program:

1. Administer the SCW Program, including collection of the Special Parcel Tax and distribution of funds, tax and payment administration, including administration of credit and incentive programs, review budgets and reports, and conduct audits.
2. Plan, implement, and maintain District Projects.
3. Administer the Regional Program.
4. Provide technical assistance, including the hiring of watershed coordinators.
5. Oversee regional water quality planning and coordination, scientific studies, and water quality modeling.
6. The District will administer the Programs described below. Not less than twenty percent (20%) of District Program funds shall be allocated for these Programs over a revolving five (5) year period. These Programs will be implemented throughout the District with special attention to the needs of DACs. The District will partner with Stakeholders to collaboratively implement these Programs. Programs shall include, but are not limited to:
  - a. Public education Programs;
  - b. Local workforce job training, which will provide certification classes and vocational training at the community level for the design, construction, inspection, operation and maintenance of Stormwater or Urban Runoff management and Multi-Benefit Projects; and
  - c. Schools education and curriculum Programs.

C. Municipal Program.

Forty percent (40%) of the revenue from the annual Special Parcel Tax shall be allocated for the Municipal Program. Each Municipality shall receive a proportional share of these Municipal Program funds based on the Special Parcel Tax revenues collected within each Municipality.

Projects implemented through the Municipal Program shall include a Water Quality Benefit. Multi-Benefit Projects and Nature-Based Solutions are strongly encouraged. The responsibilities of each Municipality receiving Municipal Program funding from the SCW Program shall include, but not be limited to:

1. Preparation of a progress/expenditure report that details a program-level summary of expenditures and a description of Water Quality Benefits, Water Supply Benefits, Nature-Based Solutions, and Community Investment Benefits realized through use of Municipal Program funds.
2. Compliance with all SCW Program fund transfer, reporting, and audit requirements.
3. Engagement with Stakeholders in the planning process for use of the Municipal Program funds during the planning and implementation of Projects and Programs.

D. Regional Program.

Fifty percent (50%) of the annual revenues from the Special Parcel Tax shall be allocated to the Regional Program. Watershed Areas shall be established to facilitate implementation of the Regional Program. Each Watershed Area shall be overseen by a



Watershed Area Steering Committee that includes Municipalities, agencies, and other Stakeholders. Members of the Watershed Area Steering Committees shall be governed by and comply with State conflict of interest laws (e.g., Government Code sections 1090 et seq. and 87000 et seq.) and the County's conflict of interest policies. The Regional Program shall include an "Infrastructure Program", a "Technical Resources Program", and a "Scientific Studies Program".

1. Infrastructure Program.

This program shall implement Multi-Benefit watershed-based Projects that have a Water Quality Benefit, as well as, either a Water Supply Benefit or Community Investment Benefit, or both. Infrastructure Program funds:

- a. Shall be spent on activities performed after the Feasibility Study phase, to implement Projects and Programs;
- b. Shall be allocated proportional to the revenues generated in each Watershed Area;
- c. Shall be programmed by Watershed Area Steering Committees for respective Watershed Areas;
- d. Shall be allocated such that funding for Projects that provide a DAC Benefit is not less than one hundred ten percent (110%) of the ratio of the DAC population to the total population in each Watershed Area;
- e. Shall be programmed, to the extent feasible, such that each Municipality receives benefits in proportion to the funds generated within their

jurisdiction, after accounting for allocation of the one hundred ten percent (110%) return to DACs;

f. Shall be programmed, to the extent feasible, such that a spectrum of project types and sizes are implemented throughout the region;

g. Shall be programmed, to the extent feasible, such that Nature-Based Solutions are prioritized; and

h. Shall be disbursed to a non-municipal Infrastructure Program Project Applicant only after the Infrastructure Program Project Applicant has secured a letter of support from the Municipality in which the Project is located.

2. Technical Resources Program.

This program shall provide technical resources for the development of Feasibility Studies through support from teams and coordinators providing technical assistance, outreach, and education.

3. Scientific Studies Program.

This program shall provide funding for eligible scientific and other activities, such as, but not limited to: scientific studies, technical studies, monitoring, modeling, and other similar activities. The District will administer this program and will seek to utilize independent research institutions or academic institutions to carry out or help design and peer review activities carried out by other entities. All activities implemented through this program shall be conducted in accordance with accepted scientific protocols.

E. **Regional Oversight Committee.**

The Regional Oversight Committee ("ROC") is an independent body that ensures SCW Program goals are met. The ROC shall consist of subject matter experts, with knowledge in Water Quality Benefits, Water Supply Benefits, Nature-Based Solutions, Community Investment Benefits, public health, sustainability, and other pertinent subject matter. The ROC shall prepare SCW Program progress reports and submit recommendations to the Board. ROC members shall be governed by and comply with State conflict of interest laws (e.g., Government Code sections 1090 et seq. and 87000 et seq.) and the County's conflict of interest policies.

**16.06 Special Account.**

The Auditor-Controller shall create a new account into which the revenues from the Special Parcel Tax authorized by this ordinance shall be deposited.

**16.07 Independent Audit.**

A. The Board shall cause independent financial audits to be conducted for the purpose of determining compliance with the terms of this ordinance. The audits shall be posted on the District's publicly-accessible website.

B. Municipalities shall be subject to an independent audit of their use of SCW Program funds not less than once every three (3) years. Audits of Municipalities shall be funded with Municipal Program funds.

C. Infrastructure Program Project Developers shall be subject to an independent audit upon completion of the Project. Additional interim audits may be

conducted by the District. Audits of Infrastructure Program Project Developers shall be funded with Regional Program funds.

D. The District shall be subject to an independent audit of their use of SCW Program funds not less than once every three (3) years. District audits shall be funded with District Program funds.

**16.08 Special Parcel Tax Rate.**

A. Commencing the fiscal year 2019-20, an annual special parcel tax in the amount of two and one-half (2.5) cents per square foot of Parcel Impermeable Area, is hereby imposed upon all Parcels located within the District, except as provided in Section 16.09 of this Chapter. All revenues from the Special Parcel Tax shall be used to fund Projects and Programs consistent with the expenditure plan as set forth in Section 16.04 of this Chapter, and to fund the costs incurred in connection with the levy and collection of the tax and distribution of the funds.

B. All laws and procedures regarding exemptions, due dates, installment payments, corrections, cancellations, refunds, late payments, liens and collections for the secured roll ad valorem property taxes shall be applicable to the collection of the Special Parcel Tax. The secured roll tax bills shall be the only notices required for the levying of the Special Parcel Tax. The Auditor-Controller shall place the Special Parcel Tax on the secured tax roll for the initial fiscal year 2019-20, and for subsequent fiscal years. The Treasurer shall collect the Special Parcel Tax for the initial Fiscal Year 2019-20, and for subsequent fiscal years, on the tax roll at the same time and in the same manner, and subject to the same penalties as the ad valorem property taxes fixed

and collected by or on behalf of the County. The County shall be entitled to deduct its reasonable costs incurred in collecting the Special Parcel Tax before such tax is remitted to the District, including all costs incurred in connection with the levy and collection of the tax and distribution of the funds.

C. The District shall establish and administer an appeals process to address and correct errors in the levy of the Special Parcel Tax. Parcel owners or any other person or entity subject to the Special Parcel Tax may seek review of the amount of their tax on the following grounds:

1. Mathematical error in the calculation of the tax; or
2. Significant discrepancy between the assessed and the actual

Impermeable Area.

D. The Auditor-Controller shall file a report with the Board by no later than January 1, 2021, and by January 1 of each year thereafter, stating the amount of funds collected pursuant to this ordinance. The report may relate to the calendar year, fiscal year, or other appropriate annual period, as the Auditor-Controller may determine, and may be incorporated into or filed with the annual budget, audit, or other appropriate routine report to the Board.

E. Nothing in this ordinance shall limit a Parcel owner's ability to pass through the Special Parcel Tax to a tenant, subject to all applicable rent control ordinances, contractual provisions in the specific lease, federal subsidized housing requirements, and other applicable laws.

#### **16.09 Exemptions.**

The following Parcels shall be subject to exemption from the Special Parcel Tax specified in Section 16.08 of this Chapter:

A. All Parcels exempt from ad valorem property taxes to the same extent partially or fully exempt as determined by the Assessor, including, but not limited to, government Parcels and Parcels owned by non-profit organizations satisfying the requirements of Revenue and Taxation Code Section 214.

B. Upon application, low-income senior-owned Parcels.

**16.10 Credit, Incentive and Credit Trading Program.**

The Board shall adopt an ordinance, not later than August 1, 2019, establishing criteria and procedures consistent with the following provisions:

A. Credit program. The credit program shall provide a credit to Parcel owners (including Parcel owners in developments served by a centralized Stormwater or Urban Runoff system) for qualifying improvements that capture or treat Stormwater or Urban Runoff or reduce Stormwater or Urban Runoff pollution in the District.

1. Unless otherwise approved by the District, water quality credit shall be calculated based on the extent to which a Parcel(s) has complied with (1) an applicable Low Impact Development (LID) ordinance, (2) Standard Urban Stormwater Mitigation Plan (SUSMP) requirements, (3) an Industrial General Permit (IGP), (4) another Los Angeles Regional Water Quality Control Board-approved permit governing the discharge of Stormwater or Urban Runoff (RWQCB Stormwater Permit), or (5) some combination of Stormwater or Urban Runoff discharge requirements for the

Parcel. Credit shall also be available for improvements or projects that result in Water Supply Benefits or Community Investment Benefits.

2. The maximum credit under the credit program shall be one hundred percent (100%) of each Parcel's specific Special Parcel Tax amount.

3. The credit program shall include provisions allowing for aggregating Parcels under common ownership and applying the credit in developments served by centralized Stormwater or Urban Runoff improvements.

B. Incentive Program. The District may establish an incentive program to recognize and reward efforts that advance the goals of the SCW Program.

C. Credit trading program. The District shall establish a credit trading program that would allow Parcel owners to purchase and sell credits to satisfy Special Parcel Tax obligations.

D. Low-income credit. The District may establish a credit for qualifying Parcel owners who are low-income.

#### **16.11 Lapsed Funds.**

A. Municipalities and Infrastructure Program Project Developers shall be able to carry over uncommitted Special Parcel Tax funds for up to five (5) years from the end of the fiscal year in which those funds are transferred from the District to the Municipality or Infrastructure Program Project Developer. Additional requirements may be included in the transfer agreement.

B. Municipalities and Infrastructure Program Project Developers who are unable to expend their approved funding as described in their budgets shall be subject

to lapsing funds procedures. Lapsing funds are funds that were committed and approved but were not able to be spent per the approved schedule. Unspent funds are considered lapsed five (5) years after the transfer agreement execution date.

C. Lapsed funds shall be reprogrammed by the Watershed Area Steering Committee of the respective Watershed Area to a new Project with benefit to that Municipality or Watershed Area.

#### **16.12 Reporting Requirements.**

A. Each Municipality shall prepare a progress/expenditure report describing their use of Municipal Program funds. The report shall include details that summarize the expenditures and describe the Water Quality Benefits, Water Supply Benefits, Nature-Based Solutions, and Community Investment Benefits realized through use of Municipal Program funds.

B. Each Infrastructure Program Project Developer shall prepare progress/expenditure reports describing its use of Regional Program funds. The reports shall include details that summarize the expenditures and describe the Water Quality Benefits, Water Supply Benefits, Nature-Based Solutions, and Community Investment Benefits realized through use of Regional Program funds.

#### **16.13 Audit Recordkeeping.**

The following recordkeeping and audit requirements shall apply:

A. SCW Program funds distributed to the District, Municipalities, and Infrastructure Program Project Developers shall be held in separate interest-bearing accounts and shall not be combined with other funds. Interest earned from each



account shall be used by the account holder only for eligible expenditures consistent with the requirements of the SCW Program.

B. Municipalities, Infrastructure Program Project Developers, and the District shall retain, for a period of seven (7) years after Project completion, all records necessary in accordance with Generally Accepted Accounting Principles to determine the amounts expended, and eligibility of Projects and Programs implemented using SCW Program funds. Municipalities and Infrastructure Program Project Developers, upon demand by authorized representatives of the District, shall make such records available for examination and review or audit by the District or its authorized representatives. Records shall include: accounting records, written policies and procedures, contract files, original estimates, correspondence, change order files, including documentation covering negotiated settlements, invoices, and any other supporting evidence deemed necessary to substantiate charges related to SCW Program funds and expenditures.

C. At all reasonable times, Municipalities and Infrastructure Program Project Developers shall permit the Chief Engineer, or their authorized representative, to examine all Projects and Programs that were erected, constructed, implemented, operated, or maintained, in whole or part, using SCW Program funds. Municipalities and Watershed Area Steering Committees shall permit the authorized District representative, including the Auditor-Controller, to examine, review or audit, and transcribe any and all audit reports, other reports, books, accounts, papers, maps, and other records that relate to Projects funded by the SCW Program.

**16.14 Indemnification.**

The District shall not be required to accept ownership or responsibility for any Project developed, implemented or constructed by a Municipality or an Infrastructure Program Project Developer with SCW Program funds. Unless the District enters into an express agreement with an Infrastructure Program Project Developer or Municipality to the contrary, neither the District, nor the County to the extent that it is acting on behalf of the District, their officers, employees, agents or volunteers ("District Indemnitees") shall be liable in connection with errors, defects, injuries, or property damage caused by or attributed to any Project that is funded in whole or in part with SCW Program funds, and each Municipality and Infrastructure Program Project Developer shall indemnify the District Indemnitees and hold them harmless for claims, liability, and expenses, including attorneys' fees, incurred by any District Indemnitees as a result of any Project developed, implemented, or constructed by the Municipality or Infrastructure Program Project Developer that is funded, in whole or in part, with the SCW Program funds, except for claims, liability, and expenses, resulting from the sole negligence or willful misconduct of District Indemnitees.

**16.15 Amendment of Ordinance.**

A. Except for amendments that would increase the Special Parcel Tax rate, impose the Special Parcel Tax on exempt properties, change the purpose and use of the Special Parcel Tax, violate State law or conflict with the purposes of this ordinance, the Board is hereby authorized to amend this ordinance as may be convenient or

necessary to comply with the intent of this ordinance or as otherwise required by law, without submitting the amendment to the voters for approval.

B. After a period of thirty (30) years, the Board shall evaluate the need for the SCW Program and make a determination of whether the Special Parcel Tax should be reduced or repealed.

**16.16. Direction to Board.**

The Board shall adopt an ordinance or ordinances implementing the following provisions:

A. Criteria and procedures consistent with Section 16.05 to implement the purposes of this ordinance.

B. An exemption from the Special Parcel Tax for low-income senior-owned Parcels who apply for such exemption consistent with Section 16.09.B.

**16.17 Severability.**

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provisions or applications, and, to this end, the provisions of this ordinance are declared to be severable. The Board and the electorate, should it approve the Special Parcel Tax, do hereby declare that they would have adopted and approved this ordinance and the Special Parcel Tax and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, parts or portions thereof, be declared invalid or unconstitutional. In case any provision

of this ordinance is held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this ordinance shall not in any way be affected or impaired thereby.

**16.18 Effective Date.**

This ordinance shall take effect immediately upon approval by two-thirds (2/3) of the electorate voting in an election on this ordinance.

**16.19 Statute of Limitations.**

Pursuant to Government Code section 50077.5 and Code of Civil Procedure section 860, any judicial action or proceeding to attack, review, set aside, or annul this Special Parcel Tax, if approved by the voters, shall be commenced within sixty (60) days of the effective date of this ordinance.

**16.20 Execution.**

The Chair of the Board is authorized to attest to the adoption of this ordinance by the voters of the District.

[FCDCHAPTER16MYCC]