



SB23-178
RECOMMENDED POLICY ON XERISCAPING AND
OTHER WATER-WISE LANDSCAPING REQUIREMENTS

On May 17, 2023, Governor Polis signed [SB23-178](#). The new law revises C.R.S. §38-33.3-106.5 of [CCIOA](#), part of which addresses the use of xeriscape and drought-tolerant landscaping. Highlights of the new bill are explained below.

SB23-178 requires associations of *detached* single family home communities to allow the following:

- The use of xeriscape, nonvegetative turf grass (“artificial turf”), and drought-tolerant or nonvegetative landscape on property for which the owner is responsible. This includes the following areas: (i) limited common elements, (ii) right-of ways, and (iii) tree lawns, assuming the owner is responsible for maintaining such areas.
- Vegetable gardens in the front, back, or side yard of an owner’s property.

Associations of detached single family home communities may still adopt design or aesthetic guidelines that apply to: (i) drought-tolerant vegetative or nonvegetative landscapes, or to (ii) vegetable gardens, or that: (iii) regulate the type, number, and placement of drought-tolerant plantings and hardscapes, but such guidelines must:

- Not prohibit artificial turf in the backyard;
- Not unreasonably require the use of hardscape on more than 20% of the landscaping areas of an owner’s property;
- Allow an owner an option that consists of at least 80% drought-tolerant plantings; and
- Not prohibit vegetable gardens in the front, back, or side yard of an owner’s property.

In addition, associations of detached single family home communities must adopt at least three pre-approved water-wise garden designs for installation in the front yards. Associations may select from the Colorado State University Extension Plant Select organization’s “downloadable designs” list, or from a municipality, utility or other entity that creates such garden designs.

Associations of *attached* single family home communities, while not subject to the above, must still allow the use of xeriscape, artificial turf (in the backyard only), and drought-tolerant or nonvegetative landscape on property for which the owner is responsible pursuant to C.R.S. §38-33.6-106.5(1)(i)(I)(A) of CCIOA, which has not changed under SB23-178. And, such associations may still adopt design or aesthetic guidelines similar to those discussed above.

SB23-178 also revises C.R.S. [§37-60-126](#), which concerns water conservation and drought mitigation in general. The changes in C.R.S. §37-60-126 are similar to the ones made to CCIOA above.

The new law will go into effect on August 9, 2023. We recommend you draft a new xeriscaping policy to reflect the new law, as it applies to detached and attached single family home communities. We can also assist with updating any rules, regulations, or design guidelines to ensure they don't conflict with the new law, on an hourly basis.

Please contact any of our attorneys at hoalaw@altitude.law or 303-432-9999 if you wish assistance with the above recommended policy update.