

EXHIBIT 12-B

FINAL ORDINANCE NO. 114

AN ORDINANCE OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT AMENDING DISTRICT RULE 24 TO CLARIFY SPECIAL FIXTURE UNIT ACCOUNTING FOR SECOND BATHROOMS

FINDINGS

1. The Water Management District is charged under the Monterey Peninsula Water Management District Law with the integrated management of the ground and surface water resources in the Monterey Peninsula area.
2. The Water Management District has general and specific power to cause and implement water conservation activities as set forth in Sections 325 and 328 of the Monterey Peninsula Water Management District Law.
3. The terms defined in this ordinance clarify operations of the existing water permit process.
4. This ordinance amends Rule 24 to explain administrative changes that were brought about to clarify an apparent conflict between Ordinance No. 98 that allows the second bathroom in a single-family residential dwelling and the master bathroom fixture accounting added by Ordinance No. 80.
5. This ordinance specifies the date a property must have met the definition of a Single-Family Dwelling on a Single-Family Residential Site to qualify for the special fixture unit accounting to add a second bathroom under Rule 24 with diminimus increase in water use.
6. This ordinance adds the provision that a valid Water Use Credit for the permanent abandonment of a one bathroom single-family dwelling unit that had a final building permit as of May 16, 2001 shall be regarded as an existing dwelling unit and shall allow the reconstruction of a single-family dwelling unit with the addition of the water fixtures allowed by this ordinance. This practice was adopted as Finding No. 8 of Ordinance No. 98 and has been administratively practiced. This ordinance codifies that practice.
7. This ordinance clarifies the fixtures allowed by the special fixture unit accounting.
8. This ordinance clarifies that the special fixture unit accounting is elective and therefore, limiting. The addition of multiple bathrooms requires the full permitting of the bathroom allowed by the special fixture unit accounting, including water from a jurisdiction's allocation or water from on-site credits.

9. This ordinance allows a limited number of permit applicants, who had applied for a water permit to add second bathroom between May 16, 1999 and May 16, 2001, and who would have qualified for a second bathroom under the special fixture unit accounting, to upgrade toilets from one-half gallon-per-flush to the current standard of 1.6 gallons-per-flush.
10. This ordinance clarifies the location of the second bathroom allowed by the special fixture unit accounting to allow the second bathroom to be used only for convenience within the existing dwelling unit.
11. This ordinance shall revise, amend and republish Rule 24 of the Rules and Regulations of the Water Management District.
12. This ordinance shall be reviewed and approved under CEQA (California Environmental Quality Act) based upon a Negative Declaration.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This ordinance shall be known as the MPWMD 2004 Second Bathroom Clarification Ordinance.

Section Two: Purpose

This ordinance clarifies the provisions of Rule 24 that specify the special fixture unit accounting for a second bathroom added by Ordinance No. 98.

Section Three: Amendment of Rule 24: Water Permit Process

- A. Rule 24-C shall be revised as shown in bold italics (***bold italics***) and strikethrough (~~strikethrough~~):

C. RESIDENTIAL EXPANSIONS

1. **Determination of Fixture Unit Component for Each Dwelling Unit**

- a. Each expansion/extension permit application for residential use will be assessed a connection charge and water shall be debited from the applicable jurisdiction's water allocation for each added fixture unit in accord with Table 1 below. This table shall be revised periodically and

approved by ordinance. The applicant shall provide complete and final construction plans to the District for evaluation of the fixture unit component of any new construction, remodel or addition that involves water fixtures. The General Manager or his/her designee shall review the project and determine the fixture units count to be used in the formula set forth in this rule. Fixtures which deviate from those categories listed on Table 1 shall be characterized by the General Manager as "other", and assigned a fixture unit value which has a positive correlation to the anticipated water use facilitated by that fixture.

b. Portable water fixtures, fountains, ponds, hot tub/spas, drinking fountains, pot fillers, darkroom sinks, outdoor showers, outdoor sinks, pet/livestock wash racks and water troughs, and multiple utility sinks (more than one per site) shall be exempt from the connection charge and shall have no fixture unit value. The General Manager may waive the limitations set by this paragraph upon credible evidence that the fixtures had been legally installed. The General Manager's determination shall be subject to appeal pursuant to Rule 70.

c. **Special Fixture Unit Accounting.**

(1) Special fixture unit accounting shall apply to any expansion application that proposes to add a second bathroom to an existing ~~single family dwelling unit~~ **Single-Family Dwelling Unit** on a ~~single family residential site~~ **Single-Family Residential Site** that, prior to the application, has only one bathroom.

(2) This accounting protocol shall be limited, and shall apply only to the following water appliances if these are installed in a new second bathroom as an expansion of an existing ~~single family dwelling unit~~ **Single-Family Dwelling Unit**: (a) a single water closet, and (b) a single standard tub, or single shower stall, or a single standard tub-shower combination, and (c) one or two wash basins. This special fixture unit accounting shall further apply on a pro rata basis to any expansion application that proposes to add one or more of the referenced water appliances to an existing second bathroom that lacks that same appliance within an existing ~~single family residential site~~ **Single-Family Residential Site** that, prior to the application, has less than two full bathrooms.

(3) The special fixture unit accounting referenced above shall not apply to any ~~multi family dwelling~~ **Multi-Family Dwelling** or ~~multi family residential site~~ **Multi-Family Residential Site**.

- (4) This special fixture unit accounting shall apply only to a single-family *Single-Family Dwelling Unit* units on a *Single-Family Residential Site* that *had* have a final building permit as of May 16, 2001 ~~the effective date of this ordinance.~~
 - (5) *A valid Water Use Credit for the permanent abandonment of a one bathroom Single-Family Dwelling Unit on a Single-Family Residential Site issued prior to May 16, 2001 shall be regarded as an existing Dwelling Unit and shall allow the reconstruction of Single-Family Dwelling Unit with the addition of the water fixtures allowed by this provision.*
 - (6) *Water fixtures installed pursuant to this provision must be installed within the existing Dwelling Unit.*
 - (7) Under this second bathroom ~~special accounting~~ *Special Fixture Unit Accounting* protocol, the General Manager shall not debit the municipal allocation for the installation of select water fixtures in the second bathroom addition or remodel.
 - (8) Connection charges shall nonetheless be collected for the addition of these fixture units to the second bathroom addition.
 - (9) No on-site, off-site or transfer of credit shall be granted for removal or retrofit of any fixture added pursuant to this second bathroom accounting protocol.
 - (10) *Use of the special fixture unit accounting protocol is voluntary. Any property installing a second bathroom pursuant to this provision shall be limited to two bathrooms unless the second bathroom is permitted by debit to a jurisdiction's water allocation.*
 - (11) The provisions of this special fixture unit accounting protocol shall take precedence and supersede any contrary provision of the Water Management District Rules and Regulations.
- d. The District shall grant a Water Use Credit for the permanent removal of water using fixtures providing that the fixture was properly and lawfully installed. Credit for fixtures listed in ~~Section~~ *Rule 24 C (1) (b)* shall only receive credit upon evidence of a water permit showing a debit to a jurisdiction's allocation and payment of related connection charges. However, the District shall not provide a water use credit of greater than four (4) fixture units for the complete removal of any shower or bathtub.

e. **Master Bathroom Fixture Unit Accounting.**

- (1) All fixtures utilizing a Master Bathroom fixture unit value *as shown in Table 1. Residential Fixture Unit Count* must occur in the same bathroom, and that bathroom shall be designated as the "Master Bathroom." Each dwelling unit shall have no more than one Master Bathroom.
- (2) *The Master Bathroom fixture unit value shall not apply to applications proposing to utilize the Special Fixture Unit Accounting allowed by Rule 24 C (1) (c). The sole exception shall be those applications that proposed the Master Bathroom fixture unit value in the second bathroom and where fees were paid for a planning or building permit application for that project before October 23, 2003. Permits issued under this provision shall require installation of low water use plumbing fixtures to the maximum extent practical to offset one additional fixture unit. This exception shall expire on December 31, 2004.*

Section Four: **Amendment of Water Permits Issued Between May 16, 1999 and May 16, 2001**

All water permits issued between May 16, 1999 and May 16, 2001 (the effective date of Ordinance No. 98) that utilized half-gallon (2-liter) per flush toilets to add a second bathroom shall be eligible to replace the existing half-gallon toilets with toilets using a maximum of 1.6 gallons-per-flush, as allowed by this ordinance. All applications to upgrade toilets from half-gallon per flush shall be approved only when the property meets the provisions of the special fixture unit accounting shown in Rule 24 at the time of application to upgrade.

Section Five: **Publication and Application**

The provisions of this ordinance shall cause the republication and amendment of the permanent Rules and Regulations of the Monterey Peninsula Water Management District.

This ordinance shall be read in conjunction with and complimentary to Ordinance No. 98.

Section Six: **Effective Date and Sunset**

This ordinance shall take effect at 12:01 a.m. on July 1, 2004.

This Ordinance shall not have a sunset date.

Section Seven: **Severability**

If any subdivision, paragraph, sentence, clause or phrase of this ordinance is, for any reason, held

to be invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or enforcement of the remaining portions of this ordinance, or of any other provisions of the Monterey Peninsula Water Management District Rules and Regulations. It is the District's express intent that each remaining portion would have been adopted irrespective of the fact that one or more subdivisions, paragraphs, sentences, clauses, or phrases be declared invalid or unenforceable.

On motion by Director Knight, and second by Director Lehman, the foregoing ordinance is adopted upon this 17th day of May 2004, by the following vote:

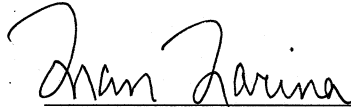
AYES: Directors Edwards, Foy, Knight, Lehman, Markey, Pendergrass, and Potter

NAYS: None.

ABSENT: None.

I, Fran Farina, Secretary to the Board of Directors of the Monterey Peninsula Water Management District, hereby certify the foregoing is a full, true and correct copy of an ordinance duly adopted on the 17th day of May 2004.

Witness my hand and seal of the Board of Directors this 24th day of May 2004.



Fran Farina, Secretary to the Board