

## EXHIBIT 11-A

### ORDINANCE NO. 176 SECOND READING

#### AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT AMENDING RULES 11, 21, 24, 25.5, 60, 64, 141, 142, 143, AND 143

#### FINDINGS

1. The Monterey Peninsula Water Management District was created to address ground and surface water resources in the Monterey Peninsula area, which the Legislature found required integrated management, and was endowed with the powers set forth in the Monterey Peninsula Water Management District Law (Chapter 527 of the Statutes of 1977, found at West's Water Code, Appendix, Section 118-1, et seq.).
2. The Monterey Peninsula Water Management District has adopted and regularly implements water conservation and efficiency measures which, inter alia, set standards for the installation of plumbing fixtures in New Construction, and requires retrofit or replacement of existing plumbing fixtures upon Change of Ownership, Change of Use, and Expansion of Use, and for existing Non-Residential uses. The Monterey Peninsula 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 Monterey Peninsula Water Management District has found and determined that it is in the best interests of the Monterey Peninsula Water Management District and its inhabitants to define, implement and enforce water efficient plumbing standards and requirements for the conservation of Potable water supplies. Retrofit or replacement of existing plumbing fixtures lessens consumption of the limited water resources available on the Monterey Peninsula. Installation of water efficient plumbing fixtures reduces the burden of new, expanded or modified uses on the water resources.
4. Rule 11, Definitions, is amended to add definitions for "Accredited Institution of Higher Education Site" and "Jurisdiction Site" and to amend the definitions for "Parcel" and "Site."
5. Rule 21-B, Application for Permit to Connect to or Modify a Connection to a Water

Distribution System, is amended to clarify that an amended Water Permit is required when there are changes to the fixture count or Water Use Capacity of an active permit.

6. Rule 24, Table 2: Non-Residential Water Use Factors, is amended to require additional Water Use Capacity for the installation of multiple Showerheads in Visitor-Serving Facilities.
7. Rule 25.5, Water Use Credits and On-Site Water Credits, is amended to correct a mislabeled reference to Rule 25.5-H and to clarify that eight years of water records shall be submitted to document historic consumption. The current Rule is contradictory and contains reference to both eight years and ten years of water records.
8. Rule 25.5, Water Use Credits and On-Site Water Credits, is amended to allow recorded documentation of a Water Use Credit or Water Credit on a Parcel when new Assessor's Parcel Numbers are assigned to the Site and the previous Assessor's Parcel Number becomes inactive.
9. Rule 60-M, Refunds of Fees and Charges, is amended to specify how a refund is issued when the party who initially paid a fee is unknown.
10. Rule 64, Water Distribution System User Fees, is amended to reflect the current process based on prior ordinances.
11. Rule 141, Water Conservation Rebates, is amended to add a Rebate for removal of a whirlpool (or jetted water system) bathtub in a Visitor-Serving Facility. Removal of whirlpool bathtubs is encouraged due to the high water use associated with cleaning the whirlpool pipes of soaps and oils.
12. Rule 141, Water Conservation Rebates, is amended to establish a process for consideration of Non-Residential Rebates for water saving technology not listed in Rule 141.
13. Rule 143, Water Efficiency Standards for Existing Non-Residential Uses, is amended to set a standard for Non-Residential Clothes Washers that are unable to comply with the 5.0 Water Factor.
14. Rule 144-C, Retrofit Exemptions, is deleted as the exemption in the rule will no longer be applicable.

15. This Ordinance is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000 et seq.). Pursuant to State CEQA Guidelines section 15307 (14 Cal. Code Regs., § 15307), this Ordinance is covered by the CEQA Categorical Exemption for actions taken to assure the maintenance, restoration, enhancement, or protection of a natural resource where the regulatory process involves procedures for protection of the environment.

**NOW THEREFORE** be it ordained as follows:

## ORDINANCE

### Section One: Short Title

This ordinance shall be known as the 2016 Rule Amendment Ordinance II of the Monterey Peninsula Water Management District.

### Section Two: Purpose

The Monterey Peninsula Water Management District enacts this ordinance to amend and clarify certain actions necessary to process and issue Water Permits and Water Distribution System Permits, and to clarify permitting and conservation requirements. This ordinance also updates the User fee rule and adds Rebates for Non-Residential new technology and the removal of whirlpool bathtubs in Visitor-Serving Facilities.

### Section Three: Amendment of Rule 11, Definitions

The following definitions in Rule 11 shall be amended as shown in bold italics (*bold italics*) and strikeout (~~strike through~~). Numbering is provided for reference only.

1. ***ACCREDITED INSTITUTION OF HIGHER EDUCATION SITE*** - ***“Accredited Institution of Higher Education Site” shall mean all facilities and properties owned by a single regional, national faith-related, national career-related or programmatic accreditor that is or has been recognized by the Council for Higher Education Accreditation (CHEA) or the U.S. Department of Education (USDE) or both that is located within the MPWMD and that is supplied water by California American Water.***
2. ***JURISDICTION SITE*** - ***“Jurisdiction Site” shall mean all facilities and properties owned by a single Jurisdiction that are located within the MPWMD and that are supplied water by California American Water.***
3. PARCEL – “Parcel” shall mean any unit of land which qualifies as a Parcel ~~or lot~~ under the Subdivision Map Act, and shall include all units of land: (1) which are contiguous to any other Parcel (or are separated only by a road or easement), and (2) which have identical owners, and (3) ~~which~~ have an identical present use; ***or (4) are an Accredited Institution of Higher Education Site, a Jurisdiction Site, or a Public School District Site.*** The term “Parcel” shall be given the same meaning as the term “Site”.

4. SITE -- “Site” shall mean any unit of land which qualifies as a Parcel ~~or lot~~ under the Subdivision Map Act, and shall include all units of land: (1) which are contiguous to any other Parcel (or are separated only by a road or easement), and (2) which have identical owners, and (3) ~~which~~ have an identical present use; *or (4) are an Accredited Institution of Higher Education Site, a Jurisdiction Site, or a Public School District Site.* The term “Site” shall be given the same meaning as the term “Parcel.”

**Section Four: Amendments to Rule 21-B, Application for Permit to Connect to or Modify a Connection to a Water Distribution System**

Rule 21-B-1 and 21-B-2 shall be amended as shown in bold italics (*bold italics*) and strikethrough (~~strikethrough~~) to clarify credit assignment upon subdivision/sale.

B. APPLICATION FOR PERMIT TO CONNECT TO OR MODIFY A CONNECTION TO A WATER DISTRIBUTION SYSTEM

Each application for a Water Permit shall follow the process set forth in Rule 23. A proper Applicant for a Water Permit may be the prospective User of the proposed or existing Connection as the real party in interest, the property owner, or any agent thereof. The application for a Water Permit to Connect to or modify a water use Connection shall be deemed complete when the Applicant submits all of the following:

1. A Water Release Form pertaining to the Site on which the water use shall occur shall be signed by the authorized official of the applicable Jurisdiction. When the completed ~~P~~project has fewer fixture units than the number permitted (Residential Water Permits), or has a smaller Water Use Capacity than permitted (Non-Residential Water Permits), the Applicant shall not be required to secure the signature of the authorized official of the applicable Jurisdiction on the Water Release Form *to amend the Water Permit*. It shall be the responsibility of the Jurisdiction to complete any applicable Environmental Review on a Project prior to authorizing a Water Permit release via the Water Release Form.
2. Complete Construction Plans that reflect water use pursuant to Tables 1 or 2 of Rule 24. *The Applicant shall apply for and receive an amended Water Permit to reflect* ~~together with~~ any amendment, addition, or

modification ~~of~~ *to the water fixtures and/or Water Use Capacity* these plans which may be made prior to use or occupancy of the ~~P~~project, ~~and any plans which may be submitted to the Jurisdiction for land use or building approvals.~~

**Section Five: Amendments to Rule 24, Table 2: Non-Residential Water Use Factors**

- A. Rule 24, Table 2: Non-Residential Water Use Factors (Attachment 1), shall be amended as shown in bold italics (*bold italics*) and strikethrough (~~strikethrough~~) to add a factor for multiple Showerheads in Visitor-Serving Facilities.

**Section Six: Amendments to Rule 25.5, Water Use Credits and On-Site Water Credits**

- A. Rule 25.5-A shall be amended as shown in bold italics (*bold italics*) and strikethrough (~~strikethrough~~) to clarify credit assignment upon subdivision/sale.
- A. Except where a Water Permit has been abandoned, expired, Revoked, Suspended, or canceled under these Rules, a Person may receive a Water Use Credit for the permanent abandonment of some or all of the prior water use on that Site by one of the methods set forth in this Rule. Water Use Credits shall be documented by written correspondence between the District and the property owner, and shall remain valid unless prohibited by this Rule. Water Use Credits shall not be documented by notice on a property title, except as specified in Rule 25.5-~~GH~~. Except as allowed by Rule 28, Water Use Credits shall not be transferable to any other Site.
- B. References to submitting ten (10) years of water records to document previous consumption in Rule 25.5-F-2, 25.5-F-4-d (1) and (2) shall be changed to eight (8) years. The Rule currently is inconsistent and lists both eight and ten years.
- C. Rule 25.5-H shall be amended as shown in bold italics (*bold italics*) and strikethrough (~~strikethrough~~) to clarify credit assignment upon subdivision/sale.
- H. When a Water Use Credit on a Site results from demolition of a building that straddled a lot line, the property owner shall specify in writing the quantity of water credit assigned to each of the lots formerly occupied by that building. *When a Site with a valid documented Water Use Credit is assigned new Assessor's Parcel Numbers and the original Assessor's Parcel Number becomes inactive, the Site owner shall specify in writing the quantity of Water Use Credit assigned*

*to each of the Parcels.* ~~This~~ *Such* designation shall be recorded upon the title of each ~~of the lots~~ *Parcel*.

## **Section Seven: Amendments to Rule 60-M, Refunds of Fees and Charges**

Rule 60-M shall be amended as shown in bold italics (*bold italics*) and strikethrough (~~strikethrough~~) for consistency with Rule 24-F, Capacity Fee Refunds.

### M. REFUNDS OF FEES AND CHARGES

Fees and charges pursuant to Regulation VI are paid to or due the District in consideration of, and as reimbursement for, District incurred costs and expenses relating to the administration and processing of applications, Permits, variances, appeals, notices, investigations, and District enforcement activities. These include, but are not limited to, costs and expenses incurred by the District in planning for, acquiring, reserving, protecting, and maintaining Capacity in present or future water distribution facilities, water resources, and conservation activities. At the conclusion of any activity (e.g. issuance or cancellation of a Permit, conclusion of an enforcement action, or any other final action on a matter) the General Manager may refund remaining fees or charges paid by the Applicant to the extent the remainder exceeds costs or expenses incurred by the District for that matter. Requests for refunds shall be in writing, include a clear reference to the Water Permit number or otherwise identify the matter, and state clearly the reason a refund has been requested. This provision authorizes the General Manager to calculate and issue a refund to the extent that the remainder exceeds costs or expenses incurred by the District for that matter, but shall not confer a right upon any Applicant to receive a refund. Any refund shall be determined as a delegated exercise of the General Manager's discretion. Any refund shall be made solely to the party who initially paid the fee or charge *when that party's current address is known, or the refund shall be made to the current title holder of the Site.*

## Section Eight: Amendment of Rule 64, Water Distribution System User Fees

Rule 64 (Ordinance No. 22) shall be amended as shown in bold italics (*bold italics*) and strikethrough (~~strikethrough~~). Rule 64 has been superseded by numerous ordinances.

~~Water Distribution System User fees shall be administered pursuant to this regulation.~~

A. Each Water Distribution System which possesses 50 or more Connections and derives all or a part of its Potable water supply from the Carmel River watershed, or from Carmel Valley aquifers shall be subject to a Water Distribution System user fee *as established by the Board from time to time through Ordinance or Resolution*. The Owner or Operator of each Water Distribution System shall pay the fee specified herein.

~~B. CALCULATION OF Water Distribution System USER FEES~~

~~1. The Board of Directors shall determine annually the amount of Water Distribution System User fee to be collected pursuant to this regulation after receiving the recommendation of the Carmel River Advisory Committee (CRAC). The maximum basic fee to be collected to fund programs undertaken pursuant to Regulation XII of these Rules and Regulations shall not exceed a District wide aggregate of \$117,000 per fiscal year, provided, however that such maximum basic fee shall increase or decrease each year by the consumer price index (CPI) inflator as determined by the County of Monterey for its budget setting purposes, provided, however, that the total District wide aggregate basic User fee shall not exceed \$234,000 for any reason. In addition to the basic fee collected pursuant to this rule, the Board of Directors may establish an additional surcharge upon the basic fee to fund estimated administrative overhead and noncollectible fees which may necessarily result from the imposition of the basic fee upon District Water Distribution Systems. No User fee shall be made pursuant to this rule which will fund programs undertaken pursuant to Regulation XII of these Rules and Regulations on or after July 1, 1993.~~

~~2. The basic User fee for fiscal year 1983/1984 shall be a District wide aggregate of \$117,000, and the surcharge shall be 10% of that basic fee (\$11,700), the proportionate share of which shall be charged against each applicable Water Distribution System according to the following formula:~~

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~~basic fee + number of Users in the User fee chargeable to each surcharge  
x Water Distribution System  
= Water Distribution System  
total number of Users all Water Distribution Systems subject to User fees~~

**3B.** Prior to setting the User fee and surcharge to be collected for *each* fiscal year 1984/1985, and for each subsequent year, the District Board shall first conduct a public hearing regarding ~~river management~~ *District* needs; ~~Water Distribution System services utility user, and Water Distribution System concerns~~ *which provide a benefit and/or service to existing water Users for which the fee shall be collected.* ~~, and seek the advice of the Carmel River Advisory Committee.~~ At the close of such hearing, the Board shall determine by resolution:

- a1.** ~~T~~*the amount of money needed to fund general river management District activities which provide a benefit and/or service to existing water Users for which the fee shall be collected.* pursuant to Regulation XII;
- ~~b. the estimated amount of assessments which will fund specific river management works;~~
- e2.** ~~T~~*the total amount of basic User fee rate, as a percentage, to be collected on the Water Distribution System monthly bill* ~~collected~~ pursuant to this Rule 64;
- ~~d. the total amount of additional surcharge to be collected pursuant to this Rule 64;~~
- ~~e. the total amount of any other User fee to be charged;~~
- ~~f. the total amount of general funds, if any, to be used to fund river management activities pursuant to Regulation XII; and~~
- ~~g. an estimate of the number of User Connections in each Water Distribution System subject to the User fee, effective July 1st of each year.~~

**4C.** Water Distribution System User fees established by the Board shall be collected ~~annually~~ from each applicable Water Distribution System ~~following the formula set forth above in this Rule 64.~~ Each Water Distribution System ~~may elect to~~ *shall*

pay its User fee to the District in *monthly* installments during the following fiscal year. ~~Each Water Distribution System may elect to pay future User fees to the District in quarterly installments, provided that full payment is tendered during that fiscal year.~~ Water Distribution Systems are required by this Rule 64 to tender payment of User fees for fiscal years 1983/1984 on or before June 30, 1985 *within thirty (30) days of the monthly Water Distribution System billing cycle. An alternate collection and remittance cycle may be established by agreement between the District and the Water Distribution System.*

~~5. In the event that the California Public Utilities Commission, following an application for approval submitted by a regulated utility, should fail to allow that utility to collect from its customers the User fees imposed pursuant to this Rule 64, the User fees enacted herein shall have no further force or effect.~~

## **Section Nine: Amendments to Rule 141, Water Conservation Rebates**

Rule 141, Water Conservation Rebates, shall be amended as shown in bold italics (*bold italics*) and strikethrough (~~strikethrough~~).

A. Rule 141-A, Qualifying Devices, shall be amended to add:

*26. Removal of whirlpool (or jetted water system) bathtub in Visitor-Serving Facility.*

*27. Non-Residential Rebates for technology not listed in Rule 141 shall be considered on a case-by-case basis by the Water Demand Committee. The Water Demand Committee shall make a recommendation to the Board.*

B. Rule 141-B, Table XIV-1, Rebate Amounts, shall be amended to add:

*Non-Residential Rebates for technology not shown on Table XIV-1 shall be considered on a case-by-case basis by the Board.*

C. Rule 141-B, Table XIV-1, Rebate Amounts, shall be amended to add:

*Removal of whirlpool (or jetted water system) bathtub in Visitor-Serving Facility - \$250.*

**Section Ten: Amendments to Rule 143-F, Water Efficiency Standards for Existing Non-Residential Uses**

Rule 143-F, Water Efficiency Standards for Existing Non-Residential Uses, shall be amended as shown in bold italics (*bold italics*) and strikethrough (~~strikethrough~~).

- F. All Clothes Washers installed in Non-Residential uses within the District shall meet the definition of High Efficiency Clothes Washer rated with a Water Factor of 5.0 ~~or below by December 31, 2013.~~ *Washer/extractors that do not comply with the 5.0 Water Factor shall be programmed by a manufacturer/vendor technician to only function on the low water setting (non-user selected setting). A written statement shall be provided to MPWMD by the manufacturer/vendor's technician stating that the machines have been programmed to only use the low water setting and that there is no way to manipulate the water usage via a user setting. This statement shall be maintained by MPWMD.* There shall be an exception to this Rule when the existing appliance was purchased between December 31, 2005 and December 31, 2012, and rates a Water Factor of 5.1-6.0.

**Section Eleven: Amendments to Rule 144-C, Retrofit Exemptions**

Rule 144-C, Retrofit Exemptions, shall be deleted as shown in strikethrough (~~strikethrough~~) as the exemption has expired.

- C. ~~RETROFIT EXEMPTIONS When a Site has ULF toilets that were installed prior to December 31, 2012, those toilets shall be exempt from this rule until December 31, 2016. This exemption shall not apply to toilets required to be replaced with lower flush volume fixtures as a condition of a Water Permit or other District action.~~

**Section Twelve: Publication and Application**

The provisions of this ordinance shall cause the amendment and republication of Rules 11, 21, 24, 25.5, 60, 64, 141, 143, and 144 of the permanent Rules and Regulations of the Monterey Peninsula Water Management District.

**Section Thirteen: Effective Date and Sunset**

This ordinance shall take effect at 12:01 a.m. 30 days after second reading.

This Ordinance shall not have a sunset date.

**Section Fourteen: Severability**

If any subdivision, 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 or unenforceability 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 of Director \_\_\_\_\_, and second by Director \_\_\_\_\_, the foregoing ordinance is adopted upon this \_\_\_\_ day of \_\_\_\_\_, 2016, by the following vote:

AYES:

NAYS:

ABSENT:

I, David J. Stoldt, 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 \_\_\_\_ day of \_\_\_\_\_, 2016.

Witness my hand and seal of the Board of Directors this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
David J. Stoldt, Secretary to the Board