

Preliminary DRAFT

ORDINANCE NO. 153

**AN ORDINANCE OF THE BOARD OF DIRECTORS
OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
EXTENDING THE DEADLINE FOR EXISTING NON-RESIDENTIAL RETROFITS
PURSUANT TO RULE 143 AND INCREASING THE REBATE FOR CISTERNS**

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, sets 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 shall lessen 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. The Monterey Peninsula Water Management District has determined that the water conservation and efficiency standards and requirements benefit the public good by increasing the supply of Potable water available for use and by reducing existing demand for Potable water. The reduction in demand will reduce production impacts upon the environment.

5. The Monterey Peninsula Water Management District approved a Rebate Program when it adopted the Action Plan for Water Supply Alternatives in February 1996. The Action Plan addressed the need for water supply projects to meet the water supply needs of the Monterey Peninsula following voter rejection of District financing for the New Los Padres Water Supply Project in November 1995.
6. California State Water Resource Control Board (SWRCB) Order No. WR 95-10, issued in July 1995, ruled that California American Water did not have a legal right to take approximately 69 percent of the water supplied to California American Water users at that time. The SWRCB has set specific goals to reduce water diversions from the Carmel River Basin.
7. Under SWRCB Order No. WR 95-10, California American Water was ordered to reduce its historical diversion from the Carmel River Basin by 20 percent beginning with Water Year 1997 and in each subsequent year. Further cutbacks were ordered beginning in 2010.
8. *California American Water v. City of Seaside, et al*, Case No. M66343, resulted in a decision which determined the initial Operating Safe Yield for the Seaside Basin is 5,600 Acre-Feet (Coastal Subarea is 4,611 Acre-Feet and 989 Acre-Feet for the Laguna Seca Subarea). "Operating Safe Yield" is the maximum amount of Groundwater resulting from Natural Replenishment which can be produced from each Subarea for a finite period of years as these terms are defined in the decision. Water conservation is a component to achieving Operating Safe Yield and will require reductions in use in the future.
9. A Cease and Desist Order (CDO) against California American Water was issued in October 2009 by the SWRCB as Order No. WR 2009-0060. The CDO prescribes a series of significant cutbacks to California American Water's pumping from the Carmel River from 2010 through December 2016. Cal-Am customers may be subject to water rationing, a moratorium on Water Permits for new construction and remodels, and fines if pumping limits are exceeded.
10. To achieve greater water savings in an area of the community that had not been subject to mandatory retrofits in the past, the Board adopted Ordinance No. 141 on November 16, 2009. This ordinance implemented new water conservation/efficiency requirements for new and existing water Users, including requirements for water efficiency toilets, clothes washers and ice machines.
11. As requested by the Water Demand Committee on September 29, 2011, this ordinance increases the Cistern Rebate incentive by adding a higher rebate tier for the first 500 gallons of storage capacity. Due to limited funding, this ordinance restricts Cistern

Rebates to Sites supplied with water from the Monterey Peninsula Water Resource System.

12. Due to inadequate funding in the 2009-2011 Rebate Program, the delay in approval of the Rebate Program funding by the California Public Utilities Commission (CPUC), which was anticipated in January 2012, and the subsequent delay in notification to affected water Users, this ordinance extends the implementation date for retrofit requirements for twelve months to December 31, 2013.
13. The extension of the retrofit requirement will result in an unknown reduction in water savings for up to one year. However, the community continues to achieve water savings sufficient to maintain compliance with the CDO and the delay in implementing the retrofit requirement should not result in non-compliance.
14. This ordinance is subject to the California Environmental Quality Act (CEQA). An Initial Study and Notice of Intent to Adopt a Negative Declaration was prepared and filed with the Monterey County Clerk on May 14, 2012. A Negative Declaration will be considered by the Board upon second reading and consideration of adoption.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This ordinance shall be known as the **Non-Residential Retrofit Requirement Extension Ordinance** of the Monterey Peninsula Water Management District.

Section Two: Statement of Purpose

The Monterey Peninsula Water Management District enacts this ordinance to extend the deadline for mandatory retrofits of existing Non-Residential water Users required pursuant to District Rule 143 due to lack of Rebate funding before the December 31, 2012 deadline.

Section Three: Definitions

Rule 11, Definitions, shall be amended as shown in bold italics (*bold italics*) and strikethrough (~~strikethrough~~).

RECYCLED WATER – “Recycled Water” shall mean water that originates from a Sub-potable Source of Supply such as wastewater treated to the tertiary level. ~~or captured rainwater~~

SHOWERHEAD - “Showerhead” shall mean a fixture in which water is sprayed *or flows* on the bather ~~in fine streams from a Showerhead, usually secured overhead.~~

SHOWER, EACH ADDITIONAL FIXTURE - “Shower, Each Additional Fixture” shall mean the second and any additional Showerhead, Rain Bar, or Body Spray Nozzles, ~~installed above a bathtub or in a Shower, Separate Stall~~ *with the exception of one hand-held Showerhead that operates on a diverter that shifts no less than 100 percent of the flow to the hand-held Showerhead when the diverter is engaged.*

ULTRA HIGH EFFICIENCY TOILET – “Ultra High Efficiency Toilet” *or “UHET”* shall mean a toilet that is designed *and manufactured* to flush with ~~less than 1.0 a~~ *maximum of 0.8* gallon of water and that is labeled by the U.S. Environmental Protection Agency’s WaterSense program. ~~An Ultra High Efficiency Toilet shall have a maximum average flush of less than 1.0 gallon.~~

URINAL - “Urinal” shall mean a fixture, typically attached upright to a wall, used by men for urinating. *Urinal shall refer to both the bowl and the valve.*

Section Four: **Amendment of Rule 141, Water Conservation Rebates**

Rule 141-B-9 shall be amended as shown in bold italics (*bold italics*) and strikethrough (~~strikethrough~~).

The Rebate for Cistern water tanks *installed on Sites supplied with water from the Monterey Peninsula Water Resource System* shall be *\$50 per 100 gallons for the first 500 gallons and* \$25 per 100 gallons of water storage capacity to a maximum storage capacity of 25,000 gallons per Qualifying Property.

Section Five: **Amendment of Rule 143, Water Efficiency Standards for Existing Non-Residential Uses**

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

All Visitor-Serving Facilities shall, by December 31, ~~2012~~**2013**, be retrofitted exclusively with High Efficiency Urinals, High Efficiency Clothes Washers, and Water Efficient Ice Machines. There shall be an exception to this Rule when the Clothes Washer meets Energy Star specifications and was purchased and installed between January 1, 2007 and January 1, 2010: These appliances must comply with this provision by January 1, 2020.

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

All Non-Residential structures shall be retrofitted exclusively with High Efficiency Toilets by December 31, ~~2012~~**2013**, except as provided by Rule 146 (Discretionary Exemptions).

1. All Visitor-Serving Facilities that retrofit to 1.6 gallons-per-flush toilets pursuant to Rule 143-B shall be exempt from this requirement until January 1, 2020.
2. All Non-Residential uses with Ultra Low Flush Toilets installed prior to January 1, 2010, shall be exempt from this requirement until January 1, 2020.

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

All Non-Residential Clothes Washers shall meet the definition of High Efficiency Clothes Washer rated with a Water Factor of 5.0 or below by December 31, ~~2012~~**2013**. There shall be an exception to this Rule when the existing appliance was purchased between January 1, ~~2006~~**2007**, and January 1, 2010, and rates a Water Factor of 5.1-6.0: These appliances must comply with this provision by January 1, 2020.

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

Non-Residential Car Washes. By December 31, ~~2012~~**2013**, all Non-Residential car wash facilities shall recycle and reuse a minimum of 50 percent of the water used in the wash and rinse cycles.

Section Six: **Publication and Application**

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

Section Seven: **Effective Date and Sunset**

This ordinance shall take effect at 12:01 a.m. on the 30th day following adoption.

This Ordinance shall not have a sunset date.

Section Eight: **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 _____, 2012, 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 _____, 2012.

Witness my hand and seal of the Board of Directors this _____ day of _____, 2012.

David J. Stoldt, Secretary to the Board

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