

Draft

ORDINANCE NO. 148

**AN ORDINANCE OF THE BOARD OF DIRECTORS
OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
AMENDING THE REBATE PROGRAM**

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 Water Management District approved a toilet replacement 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.
4. 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.
5. 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.
6. *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.

7. The Rebate Program contributes to water savings throughout the jurisdiction of the MPWMD. It is estimated that as of April 30, 2010, the Rebate Program has resulted in savings of approximately 260 acre-feet of water per year.
8. California American Water is a co-sponsor of the Rebate Program. Funding for this program is made available through a water conservation surcharge approved by the California Public Utilities Commission (CPUC).
9. Retrofitting of properties located in the Monterey Peninsula Water Resource System benefits the Monterey Peninsula by reducing over-pumping of Groundwater that leads to environmental degradation.
10. Retrofitting of properties receiving water from the Seaside Groundwater Basin benefits the Monterey Peninsula by reducing over-pumping of Groundwater that leads to environmental degradation.
11. The Rebate Program supports the MPWMD's mission to manage, augment and protect water resources for the benefit of the community and the environment.
12. The Rebate Program supports the District's legislative function to conserve water.
13. Funding for Rebates is one component of a conservation plan and budget approved by the CPUC in 2009. The conservation goal is to save 400-800 acre-feet of water between 2009 and 2011. Future Rebate funding is currently under consideration by the CPUC for 2012-2014, but will not be available to retrofits that occur before January 1, 2012. Funding for the Rebate Program in areas of the MPWMD not supplied by California American Water is provided by MPWMD funds. Seaside Municipal Water District adds an additional Rebate amount to each Rebate to additionally incentivize retrofits within its service area. The Rebate Account for 2009-2011 for Sites within the California American Water service area is \$1,174,925. In addition, \$45,000 was allocated to Lawn removal under a separate CPUC budget item, "Cash for Grass." The successful Lawn removal Rebate program has continued through funding in the Rebate Account.
14. As of March 1, 2011, approximately \$139,000 remains in the Rebate Account. MPWMD

receives approximately 70 Rebate applications each week and Rebates approximately \$70,000 each month.

15. Presently, the Rebate Account is limited. MPWMD Staff estimates that the District may fund Rebates for approximately two more months.
16. This ordinance amends Regulation XIV, Rule 141, Water Conservation Rebates, to refine and amend the process for Lawn replacement Rebates. This action was directed by the MPWMD Board upon adoption of Resolution 2011-04 on February 24, 2011. Resolution 2011-04 adopted specific guidelines for the Lawn removal Rebate program.
17. This ordinance clarifies that a Site on which a Rebate is requested must be in compliance with District Rules prior to issuance of a Rebate.
18. This ordinance disqualifies Qualifying Devices that are mandated by local, State or Federal conservation programs. An example is the 2014 mandate for High Efficiency Toilets in the State of California: Upon the date of mandate (January 1, 2014), MPWMD will no longer offer a Rebate for that Qualifying Device.
19. This ordinance relocates language regarding Ultra High Efficiency Toilets from Rule 141-C-14 to Rule 141-C-4.
20. This ordinance deletes unnecessary language in Rule 141-D-6 regarding a District-generated list of Weather Based Irrigation Controllers maintained by the District. The master list of Qualifying Devices is available on the Irrigation Association website.
21. This ordinance clarifies a requirement that recipients of Rebates for Weather Based Irrigation Controllers shall agree to have a deed restriction recorded on the title of the property allowing public access to water use records prior to issuance of a Rebate. This same requirement is added to approval of Rebates for Lawn removal and to Rebates for Synthetic Turf. This action allows MPWMD to evaluate the success of its programs by reviewing actual consumption to verify water savings.
22. This ordinance clarifies that Lawn removal Rebate applications shall be completed within 120 days of prequalification notification.
23. This Ordinance brings the Rules and Regulations into conformity with the Guidelines for Lawn removal Rebates adopted by the Board of Directors on February 24, 2011.

24. The implementation of stricter Lawn removal processes is needed due to limited Rebate Account availability and to ensure measurable and permanent water savings.
25. This Ordinance clarifies that Rebate checks are dependent upon funding availability. In the event funding is not available, applications will be rejected.
26. The replacement of existing facilities is a categorical exemption under Class I, §15301 of the California Environmental Quality Act (CEQA). A Notice of Exemption has been filed in compliance with CEQA.

NOW THEREFORE be it ordained as follows:

ORDINANCE

Section One: Short Title

This ordinance shall be known as the **2011 Rebate Program Amendment Ordinance** of the Monterey Peninsula Water Management District.

Section Two: Statement of Purpose

The Monterey Peninsula Water Management District enacts this ordinance to amend Rule 141, Water Conservation Rebates, to implement new and additional policies related to Lawn removal Rebates adopted in Resolution 2011-04 and to amend Rule 141 to address unavailability of funds in the Rebate Account. This ordinance also amends portions of the Rebate Program to strengthen conditions of approval, clarify that Sites must comply with applicable District rules before Rebates are issued, disqualify Qualifying Devices mandated by local, State or Federal water conservation programs, reorder language related to Ultra High Efficiency Toilets in Rule 141-C, and delete reference to a list of Weather Based Irrigation Controllers maintained by the District. This ordinance also clarifies deed restriction requirements allowing access to water records for recipients of Weather Based Irrigation Controller Rebates, Lawn removal Rebates, and Synthetic Turf Rebates.

Section Three: Amendment of Rule 141 – Water Conservation Rebates

Rule 141 shall be amended as shown in bold italics (*bold italics*) and strikeout (~~strikethrough~~). No changes are proposed for Rules 141-A or 141-B.

RULE 141 – WATER CONSERVATION REBATES

C. REBATE ELIGIBILITY

1. Rebates shall be issued for Qualifying Devices installed on Sites located within the District that are served by Water Distribution Systems regulated by the District. *The Site shall be in compliance with District Rules prior to issuance of a Rebate.*
2. No Rebate shall be issued for installation of Qualifying Devices that are required to be installed and maintained by Regulation XIV of the District and no Rebate shall be issued for installation of Qualifying Devices that

have been used to obtain a Water Permit. Rebates shall be available for all retrofits until the date the retrofit becomes mandatory, such as the date a Change of Ownership or Change of Use occurs, a Water Permit is issued, or the date a Non-Residential retrofit is required pursuant to Regulation XIV. ***Rebates shall not be available for Qualifying Devices that become mandated by local, State, or Federal water conservation programs.***

3. Rebates shall be available only for the initial purchase of a Qualifying Device. Rebates shall not be issued for replacement of an existing Qualifying Device with the exception of Clothes Washers that have been removed from the Qualifying Property by a previous owner/tenant.

4. ***Ultra High Efficiency Toilets shall meet or exceed the EPA WaterSense labeling criteria and shall bear the WaterSense Label and be listed on the WaterSense website.***

45. Rebates shall be available for a maximum of twenty (20) toilets on all Non-Residential Qualifying Properties with the exception of Qualifying Properties owned and operated by a California Non-Profit Corporation.

6. ***Outdoor Water Use Rebates***

5a. Rebates for Cisterns shall ~~not be issued for more than~~ be limited to 25,000 ~~3,000~~ gallons of Cistern storage capacity on a Qualifying Property. All Cistern Rebate Sites shall have sufficient roof area to fill the capacity of the Cistern(s) after first flush during a "normal" Water Year and ~~may~~ ***shall*** require verification of usable roof area by Site inspection.

6. b. Rebates for Lawn removal and Synthetic Turf shall be available only to Qualifying Properties irrigated with water from the Monterey Peninsula Water Resource System.

c. 

d. ***To be eligible for any Rebate for Lawn Removal, Lawns must be green, regularly maintained at a low even height, irrigated regularly, and be well cared for at the time of application for a***

Rebate. Dead Lawns or Lawns that have been removed prior to issuance of a Lawn Rebate prequalification statement from the District shall not be eligible for a Rebate.

- e. A minimum of 250 square-feet of Lawn shall be removed to qualify for Rebate.***
- f. Eligibility for any Lawn Removal Rebate shall be determined upon receipt of a complete application as described in Rule 141-E. The District will notify the Applicant by written prequalification documentation that the proposed Lawn removal and replacement proposal has been "prequalified."***
- 7. g. Applicants for Rebates for Synthetic Turf should inquire about local codes with their Jurisdiction prior to purchase and installation.***
- 8. h. A Qualifying Property may qualify for both a Lawn Removal Rebate and a Synthetic Turf Rebate.***

7. Non-Residential Rebates

- 9 a. Water Efficient Ice Machines shall be listed as CEE Tier II.***
- 10 b. An X-ray film processor recirculation system shall be listed as a qualifying model by the California Urban Water Conservation Council Resource Center.***
- 11 c. Rebates for Dry Vacuum Pumps shall be available only when the Qualifying Device is replacing a water (liquid) ring pump.***
- 12 d. Rebates for retrofitting medical steam sterilizers with water tempering devices are limited to those sterilizers that use a continuous water flow to cool the steam discharge.***
- 13. ~~Ultra High Efficiency Toilets shall meet or exceed the EPA WaterSense labeling criteria and shall bear the WaterSense Label and be listed on the WaterSense website.~~***

D. CONDITIONS OF APPROVAL

1. Applications for *all* Rebates *with the exception of Lawn removal Rebates* shall be submitted within 120 days of purchase of Qualifying Devices.
2. Applicant ~~agrees to~~ *shall* install the fixture and/or appliance at the property listed on the application form.
3. Applicant shall certify under the penalty of perjury that the information on the application is true and complete.
4. Rebates shall only be granted for Qualifying Devices that meet the definitions as provided in Rule 11.
5. Applicant agrees that the District may conduct an inspection of the Rebate Site to verify installation of Qualifying Devices.
6. Rebates *for Weather Based Irrigation Controllers*
 - a. *Rebates* shall only be granted for *Smart Weather Based Irrigation* Controllers that meet minimum quality and dependability requirements as determined by product testing conducted by the Irrigation Association. ~~Smart Controllers that meet these criteria shall be named on a list of qualifying Smart Controllers on file at the District offices. A copy of this list shall be posted on the District's website and shall be updated as new Smart Controllers meet the Irrigation Association criteria.~~
7. ~~In addition to other requirements, Sites for Rebate for installation of Smart Controllers shall meet the following minimum requirements:~~
 - ab. Irrigation System shall be a fully operational ~~in-ground Irrigation System operated by an automatic sprinkler timer~~, and shall be efficiently designed, or modified if necessary, to include proper distribution uniformity, matched spray heads or emitters with similar precipitation rates, efficient hydrozoning, and proper spacing.
 - bc. Site shall include at least 1,500 square-feet of automatically irrigated Landscaping.

- ~~ed.~~ ~~Property owner agrees to release historical and future water usage data for statistical purposes.~~ ***Recipients of Rebates for Weather Based Irrigation Controllers shall agree to have a deed restriction recorded on the title of the property allowing public access to water use records prior to issuance of a Rebate. The application shall not be deemed complete until the deed restriction document has been notarized and returned to the District and has been successfully recorded. Rejected notarizations shall void the date of completion until the document has been recorded.***

~~Smart Controller must be installed and operational at the installation Site.~~

87. Rebates for Lawn removal and replacement with low water use plants or permeable surfaces and for Synthetic Turf installation.
- a. Lawn removal and replacement at a Qualifying Property shall be subject to annual visual verification by the District.
 - b. Determinations of eligibility for Lawn removal and replacement Rebates shall be at the discretion of the General Manager.
 - c. ~~Rebates for Lawn removal and replacement with low water use plants or permeable surfaces and for Synthetic Turf installation.~~ ***Applications for Lawn removal Rebates shall require a free inspection by the District to document existing conditions prequalification. The prequalification process is explained in Rule 141-F-2, Process.*** ~~before removal/installation and shall have a follow up inspection to document removal of Lawn and replacement with low water use plants or permeable surfaces and/or installation of Synthetic Turf. The follow up inspection verifying Lawn removal and replacement shall occur within six (6) months of the pre-inspection.~~
 - d. ***Lawn must be replaced with low water use plants or permeable surfaces (e.g., mulch, decomposed granite, Synthetic Turf, permeable pavers). Concrete and grouted pavers do not qualify.***
 - e. ***If converted area is irrigated, a Drip Irrigation System must be***

installed and maintained. Overhead irrigation shall not be installed.

- f. Planted areas must be mulched to a minimum depth of three inches from the plant to the drip line of the plant.*
- g. Lawn shall not be relocated to another area on the Site. The total Lawn area shall be listed on the deed restriction that restricts the changed landscaped area for fifteen (15) years.*

[REDACTED]

- i. Recipients of Rebates for Lawn removal and for Synthetic Turf shall agree to have a deed restriction recorded on the title of the property allowing public access to water use records prior to issuance of a Rebate. The application shall not be deemed complete until the deed restriction document has been notarized and returned to the District and has been successfully recorded. Rejected notarizations shall void the date of completion until the document has been recorded.*

- dh. Lawn removal and Synthetic Turf Rebates shall require recordation of a deed restriction on the title of the property prior to release of Rebate funds. ~~The deed restriction shall~~ *that specifies* that the property is restricted to the changed landscaped area for a period of fifteen (15) years. The deed restriction shall be rescinded upon repayment to the District of the full Rebate amount and any processing fee required pursuant to Regulation VI, Fees. *The application shall not be deemed complete until the deed restriction document has been notarized and returned to the District and has been successfully recorded. Rejected notarizations shall void the date of completion until the document has been recorded.**

- 8. Graywater Irrigation System Rebates shall be granted when the following conditions have been met:

- a. Applicant shall comply with the Monterey County Department of Health's Graywater Irrigation Systems Permitting Process and Design Criteria.
- b. Any necessary building/plumbing permits have been completed and copies provided with the Rebate application.
- c. MPWMD staff may verify Graywater Irrigation Systems by Site inspection or other means.

E. APPLICATION

1. A completed application for Rebate shall include the name and address of the Applicant, property owner's name, telephone numbers, address of property where the fixture and/or Qualifying Device is being installed, Assessor's Parcel Number, water company account number, date of retrofit, brand and model of Qualifying Device installed, name of installer and receipt for the purchase of the appliance. The application shall also request information about how the Applicant learned of the Rebate program.
2. *Lawn removal Rebate applications shall follow the process shown in Rule 141-F-2.*

- [REDACTED]
- [REDACTED]
- [REDACTED]
24. Applications for Rebate shall include either the original or a full copy of the receipt for purchase.
 35. Written authorization of the current property owner shall be required for Applicants who are not the owners of the property for which a Rebate is requested. The authorization must indicate the property owner's consent to the Applicant receiving a Rebate for installation of the Qualifying Devices. Applications submitted without owner approval will be denied.

F. PROCESS

1. Upon receipt of an application, the District shall verify completion and accuracy of information and shall verify the purchase of the Qualifying Device(s) by reviewing the purchase receipt(s).
2. ***Lawn removal Rebate application process.***
 - a. ***Prequalification: Applicants must complete and submit a Lawn Rebate Application form that includes the following documents:***
 - (1) ***Water records (either copies of bills or a printout from the Water Distribution System) for the two most recent years;***
 - (2) ***A drawn Site plan showing a detailed description (including measured areas) of the Lawn replacement project, including square-footage of Lawn to be removed, names and numbers of plants or other surfaces to be installed, and the irrigation plan.***
 - (3) ***Two to three current photographs of the Lawn to be removed. A minimum of 250 square-feet of Lawn shall be removed to qualify for Rebate.***
 - b. ***The Lawn Rebate Application shall be reviewed for completeness, and when removal of the Lawn will result in documentable water savings, the Applicant shall be contacted to arrange a Site inspection to verify the Lawn.***
 - c. ***Following a Site inspection, and when present funding is available in an amount sufficient to fund a Rebate for the Lawn removal, the District shall issue a Lawn Rebate prequalification letter. The Applicant shall have 120 days from the date of the prequalification letter to complete the project and submit receipts, arrange for a final inspection by the District, and successfully record deed restrictions. Applications not completed within 120 days of the date of the prequalification letter shall be denied.***
 - d. ***Rebates shall be subject to availability of funding.***

23. The District shall search its records ~~for~~ **and shall verify compliance with** previous retrofit requirements. If no ~~match~~ **violation** is found, a Rebate shall be processed if funds are available in the Rebate Account. ~~In the event that funds are not available, the application will be kept on file pending augmentation of the Rebate Account.~~
34. Information contained on the application ~~will~~ **shall** be added to the District's records for future use in assessing water savings achieved through the Rebate Program.
45. When funds are available in the District's Rebate Account, a Rebate check ~~will~~ **shall** be processed and mailed to the Applicant.

Section Four: **Applications in Process**

Lawn removal Rebate applications on file at the District as of March 21, 2011, that have been verified by the District to have a quantified Lawn area to be removed, shall complete the application by April 30, 2011, or be subject to Rule 141 as amended.

Section Five: **Publication and Application**

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

Section Six: **Effective Date and Sunset**

This ordinance shall take effect at 12:01 a.m. on the 1st day of May 2011.

This Ordinance shall not have a sunset date.

Section Seven: 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 _____, 2011, by the following vote:

AYES:

NAYS:

ABSENT:

I, Darby W. Fuerst, 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 _____, 2011.

Witness my hand and seal of the Board of Directors this _____ day of _____, 2011.

Darby W. Fuerst, Secretary to the Board

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