

## **EXHIBIT 3-A**

### **DRAFT ORDINANCE NO. 164**

#### **AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE MONTEREY PENINSULA WATER MANAGEMENT DISTRICT ESTABLISHING WATER PERMIT REQUIREMENTS FOR OUTDOOR SEATING AT RESTAURANTS**

#### **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.
1. 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.
2. Downtown revitalization programs in the cities of Monterey and Pacific Grove have focused attention on the growing popularity of al fresco dining as a means to attract more patrons to restaurants.
3. MPWMD's administrative practice has been to not require a Water Permit for Exterior Restaurant Seating. This practice has been in place since the 1980's.
4. Board action in November 1990 (appeal of staff decision to not allow credit for an outdoor seating area for Rappa's Seafood Restaurant) supported the administrative practice to disallow credit for outdoor seating. As a result, District Water Permit administration practices continued to affirm that outdoor seating has no measurable Water Use Capacity.
5. The District Non-Residential Water Use Factor for Restaurant is 0.02 AF per indoor seat.
6. A & N Technical Services conducted a *Technical Analysis of Non-Residential Water Use Factors for the Monterey Peninsula Water Management District (MPWMD)*<sup>1</sup>. The MPWMD factor for Full Serve Restaurants was found to be statistically sound, although

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<sup>1</sup> October 10, 2011, Technical Memorandum.

slightly higher than the A & N finding.

7. It has been asserted that overall water consumption on the Monterey Peninsula is not impacted as a result of Exterior Restaurant Seating. The overall demand for restaurant dining within the District is not affected by outdoor seating unless a statistically significant number of new visitors to the region are attracted to the region due to outdoor dining. This has not been documented. Rather, al fresco dining creates competition between restaurants for an existing customer's demand.
8. Fire codes dictate the number of Interior Restaurant Seats that are allowed within a specified area. Locally, that number is one seat per 15 square-feet<sup>2</sup>.
9. Many restaurants operate below Capacity. That is, the restaurant is not turning a table continuously for the duration of the businesses operating hours. In addition, the hours of operation vary significantly from one restaurant to another and are subject to change. For these reasons, the location of the diner (indoors or out) has de minimis impact on potential consumption.
10. The Water Demand Committee recommended the Board allow fifty percent of the interior seat count as a standard exterior seating allowance. That is, up to fifty percent of the number of interior seats could be used outdoors without a measurable impact to Capacity.
11. There are a number of days each year when weather and climate affect the use of Exterior Restaurant Seats, making outdoor dining undesirable. Therefore, Exterior Restaurant Seating in excess of the "standard Exterior Restaurant Seat allowance" has a lower potential Water Use Capacity than Interior Restaurant Seats.
12. This ordinance defines a "Temporary Structure" to provide clarification during the Water Permit process.
13. Table 2: Non-Residential Water Use Factors is amended to delete an exemption for unenclosed structures, as there are factors related to permitted uses that could occur in such a structure.
14. CEQA Finding..... [TO BE PROVIDED PRIOR TO FIRST READING]
15. This ordinance shall amend and republish the Rules and Regulations of the Water Management District.

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<sup>2</sup> City of Monterey, Todd Bennett, Associate Planner, February 3, 2015

NOW THEREFORE be it ordained as follows:

## ORDINANCE

### **Section One:**        **Short Title**

This ordinance shall be known as the ***2015 Exterior Restaurant Seating Ordinance*** of the Monterey Peninsula Water Management District.

### **Section Two:**        **Purpose**

This ordinance codifies Water Permit requirements for exterior seating at Restaurant establishments. This ordinance also defines a category for “Wine Tasting Room” for purposes of issuing a Water Permit, and clarifies the definition of “Temporary Structures” related to occupancy that requires a Water Permit.

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

Rule 11, Definitions, shall be amended as follows, with added language shown in ***bold italic*** type face and deleted language shown in ~~strikeout~~ type face.

***CONDITIONED SPACE<sup>3</sup> – “Conditioned Space” shall mean an enclosed space within a building where there is intentional control of the space thermal conditions within defined limits using natural, electrical, or mechanical means. Spaces that do not have heating or cooling systems but rely on natural or mechanical flow of thermal energy from adjacent spaces to maintain thermal conditions within defined limits are considered conditioned spaces. Examples include restrooms that use exhaust fans to draw in conditioned air to maintain thermal conditions and atria that rely on natural convection flow to maintain thermal conditions.***

***EXTERIOR RESTAURANT SEAT – “Exterior Restaurant Seat” shall mean a dining/bar seat used by a Restaurant that is located an area that is in or into the open air outside the Restaurant building or structure.***

***FAST FOOD RESTAURANT – “Fast-Food Restaurant” shall mean a restaurant that prepares and provides food quickly through a drive-through system or while you wait at the counter. Menu choices typically focus on hand-held food offerings prepared in***

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<sup>3</sup> National Renewable Energy Laboratory definition

*quantity by a standard method, where a significant amount of the food is intended to be consumed off-site and is served in disposable packaging.*

**INTERIOR RESTAURANT SEAT** – *“Interior Restaurant Seat” shall mean a dining/bar seat used by a Restaurant that is located inside a building or that is in a conditioned space.*

**RESTAURANT** – *“Restaurant” shall mean premises where patrons order, sit, and eat a meal that is prepared and served and that is not a private residence. The defining characteristic of full-service Restaurants as categorized by the District as a “Group III Restaurant” is the use of china, glassware, or other reusable materials to serve the food/beverage(s). This definition of Group III Restaurant use shall also apply to cafeterias and Restaurants at institutional facilities that serve on china, glassware, or other reusable materials.*

**TEMPORARY STRUCTURE** – *“Temporary Structure” shall mean a structure that is erected to be temporary in nature, usually without a permanent foundation or permanent plumbing.*

**WINE TASTING ROOM** – *“Wine Tasting Room” shall mean a location intended for use in association with an Alcoholic Beverage Control (ABC) Type 02 License with or without an ABC Type 20 License; or a location intended for use in association with an ABC Type 20 License with an ABC Type 41 License. A Wine Tasting Room may offer “limited food preparation” as defined by California Health and Safety Code Section 113818, but is neither a Restaurant nor a bar/brew pub because the primary use of the site is for tasting, consumption and retail sale of wine.*

#### **Section Four:**      **Amendment to Rule 20-B**

Rule 20-B-5, shall be amended as follows, with added language shown in ***bold italic*** type face and deleted language shown in ~~strikeout~~ type face.

Any Change of Use and any expansion of a Non-Residential use to a more intensive use as shown on Table 2 (Rule 24), except when the Change of Use or expansion modifies (1) an unenclosed structure that has no plumbing ***and that does not result in an Intensification of Use as the result of added Restaurant seats or other Group III or Group IV factors that increase Water Use Capacity***; or (2) a ~~Temporary~~ ***Structure*** ~~(i.e., a structure without permanent occupancy and without a permanent foundation and that has no plumbing)~~ ***that is not occupied for longer than thirty (30) consecutive days.***

**Section Five:**            **Amendment to Rule 24-B-1**

Rule 24-B-1, shall be amended as follows, with added language shown in ***bold italic*** type face and deleted language shown in ~~strikeout~~ type face.

- i.     ***Restaurant Water Use Capacity shall be determined by the maximum Interior Restaurant Seat count authorized by the Jurisdiction and District. Exterior Restaurant Seats may be maintained for al fresco dining without a requirement for a new or amended Water Permit provided the maximum number of Exterior Restaurant Seats does not exceed one-half the number of authorized Interior Restaurant Seats (the “standard Exterior Seat allowance”.) Exterior Restaurant Seating not in compliance with this paragraph shall require a new or amended Water Permit.***

**Section Six:**            **Amendment to Rule 24, Table 2: Non-Residential Water Use Factors**

Rule 24, Table 2: Non-Residential Water Use Factors, shall be amended as shown on **Attachment 1**, with added language shown in ***bold italic*** type face and deleted language shown in ~~strikeout~~ type face.

**Section Seven:**        **Amendment to Rule 25.5-E**

Rule 25.5-E, shall be amended as follows, with added language shown in ***bold italic*** type face and deleted language shown in ~~strikeout~~ type face.

- E.     The following types of Permanent Abandonment of Capacity shall qualify for a Water Use Credit under this Rule:
  - 1.     Demolition of a building or use that has been recognized by the District as being a lawful water use;
  - 2.     ***Demolition or removal of Exterior Restaurant Seats specifically permitted by debiting Water Use Capacity from an Allocation, Entitlement, or Water Credit shall qualify for a Water Credit.***

**Section Eight:**        **Interior and Exterior Restaurant Seating Existing as of the Effective Date of this Ordinance**

1. Interior and Exterior Restaurant Seats in use as of the effective date of this ordinance, and Exterior Restaurant Seats that have the Jurisdictional permit(s) approved as of August 1, 2015, shall be exempt from this ordinance, provided each such Restaurant/Bar with Exterior Restaurant Seats that exceed the fifty percent (50%) of the Interior Restaurant Seat count shall, on or before August 1, 2015, obtain a Water Permit from the District to document the existing conditions. No fee shall be assessed and no Water Release Form shall be required for the District to issue a Water Permit pursuant to this paragraph. Seats documented under this paragraph shall not qualify for a Water Credit upon demolition or removal.
2. After August 1, 2015, the District shall no longer issue Water Permit documentation under Paragraph 1 of this Section for Exterior Restaurant Seats that existed prior to the effective date of this Ordinance.

**Section Nine:**            **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.

**Section Ten:**            **Effective Date and Sunset**

This ordinance shall take effect at 12:01 a.m. on the 30th day after it has been enacted on second reading.

This Ordinance shall not have a sunset date.

**Section Eleven:**        **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 \_\_\_\_\_, and second by Director \_\_\_\_\_, the foregoing ordinance is adopted upon this \_\_\_\_ day of \_\_\_\_\_, 2015 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 \_\_\_\_\_ 2015.

Witness my hand and seal of the Board of Directors this \_\_\_\_ day of \_\_\_\_ 2015.

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David J. Stoldt, Secretary to the Board

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