

ITEM: PUBLIC HEARING

8. CONSIDER FIRST READING OF ORDINANCE NO. 185 - AMENDING DISTRICT RULE 24 TO ALLOW SPECIAL FIXTURE UNIT ACCOUNTING FOR SECOND BATHROOMS IN EXISTING DWELLING UNITS AND TO PERMANENTLY ADOPT SUB-METERING REQUIREMENTS AND EXEMPTIONS FOR ACCESSORY DWELLING UNITS

Meeting Date:	April 20, 2020	Budgeted:	N/A
From:	David J. Stoldt, General Manager	Program/ Line Item No.:	N/A N/A
Prepared By:	Stephanie Locke	Cost Estimate:	N/A

General Counsel Review: Completed.

CEQA Compliance: An Initial Study and proposed Negative Declaration were circulated for comment. A Negative Declaration will be considered upon second reading.

SUMMARY: Rule 24-A-3, Second Bathroom Addition, was adopted to facilitate a full second Bathroom in a Single-Family Residence that has less than two full Bathrooms without requiring a debit to an Allocation, Entitlement, or credit. The protocol was predicated on the CEQA finding that the second Bathroom does not increase water use. As stated in the Ordinance No. 98 findings: “The addition of a second Bathroom to an existing residence is primarily for the purpose of convenience.” To prevent the second bathroom from being added in a new Accessory Dwelling Unit (ADU), the rule specifies that the second Bathroom must be added within an existing Dwelling Unit that was constructed by May 2001 (the date the protocol was adopted). The definition of “Dwelling Unit” has been amended to reflect the California Building Code definition.

The following is a summary of Draft Ordinance No. 185:

1. The ordinance expands the second Bathroom protocol to all Dwelling Units with less than two Bathrooms that existed when the protocol was adopted in May 2001. It is, however, limited to Sites that have less than four Dwelling Units to avoid apartments from using the protocol.
2. The second Bathroom must be added within an existing Dwelling Unit. The second Bathroom cannot be installed to create a new Accessory Dwelling Unit. If the protocol is used, that Dwelling Unit is restricted to no more than two Bathrooms unless the second Bathroom is permitted by a debit to an Allocation, Entitlement, or offset by a credit.
3. The rule currently restricts the Site (the entire property) to no more than two Bathrooms. The amendment would allow additional Bathrooms to be added elsewhere on the Site (e.g. in a new ADU) when water from a Jurisdiction’s Allocation or Entitlement (or on-Site credit) is available for those fixtures.
4. The ordinance permanently codifies two Rule 23 amendments made by Urgency Ordinance No. 184 in August 2019: (1) ADUs in existing structures are exempt from the requirement to

sub-meter; and (2) permanent sub-metering is allowed for one newly constructed detached ADU. Sub-meters are meters in the water line between the main house and the ADU, and they are not monitored by the water supplier. In-line metering is encouraged to provide accountability for individual water use.

California Environmental Quality Act (CEQA) Review

An Initial Study and proposed Negative Declaration were filed with the County and circulated among interested parties on March 16, 2020, for a period of 20 days. No comments were received.

Based on this Initial Study, there is an absence of substantial evidence from which a fair argument can be made that adoption of Ordinance No. 185 has measurable and meaningful actual or potential adverse environmental consequences. Staff will present a negative declaration regarding Ordinance No. 185 for approval prior to consideration of adoption.

RECOMMENDATION: The Water Demand Committee reviewed this item at its April 2, 2020, meeting and supports the ordinance. Staff recommends the Board approve the first reading of Ordinance No. 185.

EXHIBIT

8-A Ordinance 185

EXHIBIT 8-A
ORDINANCE NO. 185

**AN ORDINANCE OF THE
MONTEREY PENINSULA WATER MANAGEMENT DISTRICT
AMENDING DISTRICT RULE 24 TO ALLOW SPECIAL FIXTURE UNIT
ACCOUNTING FOR SECOND BATHROOMS IN EXISTING DWELLING UNITS
AND TO AMEND RULE 23 TO PERMANENTLY ADOPT SUB-METERING
REQUIREMENTS AND EXEMPTIONS FOR ACCESSORY DWELLING UNITS**

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. This ordinance refines the definition of Dwelling Unit to more closely match the California Building Code.
4. This ordinance expands the second bathroom eligibility to Dwelling Units that existed on May 2001, the date of adoption of the second Bathroom addition.
5. This ordinance allows a second Bathroom for convenience on Sites with less than four Dwelling Units. It does not allow second Bathrooms in apartment buildings.
6. This ordinance continues to recognize the findings adopted in Ordinance No. 98 and Ordinance No. 114 that the addition of a second Bathroom within a Dwelling Unit is for convenience and has a de minimis increase in water use.
7. By eliminating the limitation that a second Bathroom addition under Rule 24-A-3 is available only to Single Family Residences on Single Family Residential Sites (as defined by MPWMD Rule 11), this ordinance will facilitate new ADUs on Sites where the second Bathroom protocol has been used. Presently, the Site is restricted to no more than two Bathrooms. The second

Bathroom must be permitted by a debit to an Allocation or Entitlement before an ADU can be built.

8. The change to “Dwelling Unit” from “Single Family Dwelling Unit on a Single Family Residential Site” facilitates the ADU by allowing the second Bathroom in the original Dwelling Unit to remain without an additional permit requirement.
9. Removal or retrofitting of the any fixture added pursuant to the second Bathroom protocol does not result in a Water Credit.
10. The District requires separate Water Meters for each User to promote accountability for water use and to enforce water rationing when needed.
11. The Board has previously adopted by urgency ordinance Rule 23-A-1-i-(6) that allows permanent sub-metering of one ADU on a Site, rather than requiring a separate Water Meter by the Water Distribution System Operator. Because this Rule was adopted with urgency in Ordinance No. 184, it will expire after one year unless it is codified through a non-urgency ordinance adopted by the Board of Directors.
12. The requirement for sub-metering an ADU becomes a hardship when an ADU is created within an existing structure where plumbing is not designed to sub-meter hot and cold water. A hardship occurs when the ADU is contained within the existing space of a single-family residence or accessory structure, including, but not limited to, a studio, pool house, or other similar structure. (Finding from Urgency Ordinance No. 184)
13. Allowing a limited exemption from the sub-metering requirements for ADUs would not have an adverse effect on enforcement of water rationing. Rule 165 states: “Where two or more Households are served by a Master Meter, it shall be the responsibility of the Water Users to divide the Water Rations among the Water Users.” (Finding from Urgency Ordinance No. 184)
14. Allowing this exemption from the metering requirements encourages additional affordable rental housing stock, a priority of the State of California. (Finding from Urgency Ordinance No. 184)
15. 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 2020 Second Bathroom and Accessory Dwelling Unit Sub-Metering Clarification Ordinance.”

Section Two: **Purpose**

This ordinance amends the provisions of Rule 24 to allow a second Bathroom for convenience in any Dwelling Unit on Sites with less than four Dwelling Units that existed as of the date the protocol was adopted in 2001. The ordinance clarifies that the second Bathroom protocol is not allowed to be used by a new Accessory Dwelling Unit. This ordinance also permanently amends Rule 23 as adopted by Urgency Ordinance No. 184 to exempt existing Residential space or structures that can be converted to Accessory Dwelling Units from the requirement for permanent sub-metering and grandfathers existing active construction of ADUs from the requirement.

Ordinance No. 185 also codifies the Board’s adoption of Ordinance No. 184 by urgency in August 2019. The codified action clarifies water submetering requirements for Accessory Dwelling Units (“ADUs”). The ordinance allows permanent submetering of one detached ADU on a Site and exempts from submetering ADUs located within an existing structure.

Section Three: **Amendment of Rule 24: Water Permit Process**

Rule 11 shall be revised as shown in bold italics (*bold italics*) and ~~strikeout (strikethrough)~~:

DWELLING UNIT - “Dwelling Unit” shall mean a *single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation*, ~~single or multiple residences suitable for single household occupancy~~ but shall not refer to non-permanent student or transient housing, the occupancy of which is projected to average 24 months or less.

Section Four: **Amendment of Rule 24-A-3, Second Bathroom Addition**

Rule 24-A-3 shall be revised as shown in bold italics (*bold italics*) and ~~strikeout (strikethrough)~~:

3. Second Bathroom Addition

A distinctive Water Permit protocol shall apply to any Residential application that proposes to add a second Bathroom to ~~an existing Single Family~~ **a Dwelling Unit built before May 2001** ~~on a single family Residential Site~~ that, prior to the application, has less than two Bathrooms.

- a. The second Bathroom protocol shall be limited, and shall apply only to the following water appliances if they are installed in a new second Bathroom as an expansion of an existing ~~Single Family Dwelling Unit~~: (a) a single toilet, and (b) a single Standard Bathtub, or single Shower Stall, or a single standard tub-shower combination, and (c) one or two Washbasins.
- b. The second Bathroom protocol shall further apply ~~on a pro-rata basis~~ to any Residential application that proposes to add one or more of the ~~referenced water fixtures appliances~~ **referenced above** to an existing second Bathroom which lacks ~~that same appliance~~ **a fixture** within an existing ~~single family Residential Site Dwelling Unit~~ and, prior to the application, has less than two full Bathrooms.
- c. The second Bathroom protocol shall apply only to a ~~Single Family Dwelling Unit that has less than two Bathrooms and~~ ~~on a single family Residential Site~~ that had a final building permit as of May 16, 2001.
- d. The second Bathroom protocol shall not apply to any Multi-Family Dwelling or Multi-Family Residential Site **with four or more units** as defined by these Rules and Regulations.
- ~~e. A valid Water Use Credit for the permanent abandonment of a one Bathroom Single Family Dwelling on a single family Residential Site issued prior to May 16, 2001 shall be regarded as an existing Single Family Dwelling for 120 months following demolition and shall allow the reconstruction of a single family Dwelling with the addition of the water fixtures allowed by this provision as long as the credit is valid.~~
- ~~f.~~ Water fixtures installed pursuant to this provision shall be installed within the existing ~~Single Family Dwelling Unit~~. **The second Bathroom protocol shall not be used to create a new Accessory Dwelling Unit. This includes the addition of a second Bathroom elsewhere in the Dwelling Unit that would allow the first Bathroom to be used by an Accessory Dwelling Unit.**

The protocol was adopted to recognize that a second Bathroom is for convenience. It is not intended to support a new User.

- gf.* Under this second Bathroom protocol, the General Manager shall not debit the Jurisdiction’s Allocation for the installation of ~~select~~ **the** water fixtures in the second Bathroom.
- hg.* Capacity Fees shall nonetheless be collected for the addition of fixture units in the second Bathroom.
- ih.* 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 protocol.
- ji.* Use of the second Bathroom protocol is voluntary. Any ~~property~~ **Dwelling Unit** 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 Allocation, **an Entitlement, or offset by a credit**. A Notice **and Deed Restriction Regarding The Limitation Of on Use Of Water On Aa Property** shall be recorded on the real property as a condition of the Water Permit.
- kj.* All Water Permits issued pursuant to this Rule shall include a Notice and Deed Restriction titled “Provide Public Access to Water Use Data” pursuant to Rule 23. In addition, permits utilizing the second Bathroom protocol shall authorize access to water records for the sixty (60) months prior to the date the Water Permit is issued. There shall be no additional charge for this deed restriction.
- lk.* The provisions of this second Bathroom protocol shall take precedence and supersede any contrary provision of the Water Management District Rules and Regulations.

Section Five: Amendment of Rule 23-A-1-i-(6)

Rule 23-A-1-(i)-(6) shall be amended as shown below, with added language as shown in **bold italic** type face, and deleted language shown in ~~strikeout~~ type face. The remaining provisions of Rule 23 shall remain unchanged by this ordinance. This amendment was temporarily approved by adoption of Urgency Ordinance No. 184, the 2019 Accessory Dwelling Unit Ordinance. Adoption

of this ordinance will make the changes permanent.

- (6) The General Manager shall allow permanent sub-metering of all water use into one Accessory Dwelling Unit, ~~including hot and cold water supply. The application for sub-metering an~~ *An Accessory Dwelling Unit contained within the existing space of a single-family residence or accessory structure (e.g., studio, pool house, or other similar structure) shall be exempt from the sub-metering requirement. Sub-metering is, however, encouraged as a conservation tool that promotes the efficient use of water. The sub-metering requirement or sub-metering exemption will be considered by the General Manager when the Jurisdiction confirms there is no potential that the sub-metered User could be located on a separate Site through subdivision or transfer of ownership of a portion of the Site.*

Section Six: **Accessory Dwelling Units Under Construction**

Active Water Permits that require sub-metering of ADUs in existing structures shall be eligible for the exemption adopted by this ordinance. An amended Water Permit shall not be required; however, an amendment is required to remove the requirement from any Limitation on Use (Form 1.1) deed restriction.

Section Seven: **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 Eight: **Effective Date and Sunset**

This ordinance shall take effect at 12:01 a.m. thirty days after adoption.

This Ordinance shall not have a sunset date.

Section Nine: **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 _____ 2020, 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 _____ 2020.

Witness my hand and seal of the Board of Directors this _____ day of _____ 2020.

David J. Stoldt, Secretary to the Board