

EXHIBIT 13-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)*¹. The MPWMD factor for Full Serve Restaurants was found to be statistically sound, although

¹ 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-feet².
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. This ordinance shall amend and republish the Rules and Regulations of the Water Management District.

² 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 SPACE³ – “*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 in an area that is in or exposed to 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

³ 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 bars/brew pubs, and to cafeterias and Restaurants at institutional facilities that serve on china, glassware, or other reusable materials.*

TEMPORARY EXTERIOR RESTAURANT SEAT – *“Temporary Exterior Restaurant Seat” shall mean a dining/bar seat that is located in an area that is in or exposed to the open air outside the Restaurant building or structure and that is temporary in nature (i.e., for a single event or temporary use).*

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, Permits to Connect to or Modify a Connection to a Water Distribution System, shall be amended as follows, with added language shown in ***bold italic*** type face and deleted language shown in ~~strikeout~~ type face.

The following action requires a Water Permit:

5. Any Change of Use ~~and~~ *or* any expansion of a Non-Residential use to a more intensive use as shown on Table 2 (~~determined by~~ *determined by* Rule 24), *with the exception of* when the Change of Use or expansion modifies (1) an unenclosed structure that has no plumbing or (2) a ~~Temporary~~ *Structures and Temporary Exterior Restaurant Seats* (i.e., a structure without permanent occupancy and without a permanent foundation and that has no plumbing) *that are not occupied or in use for longer than thirty (30) consecutive days.*

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

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

B. NON-RESIDENTIAL CALCULATION OF WATER USE CAPACITY

Non-Residential Water Use Capacity shall be calculated using Table 2: Non-Residential Water Use Factors. Each Non-Residential use shall be assigned a factor that when multiplied by a specified measurement shown on Table 2 (i.e., square-footage, number of rooms/seats, etc.) results in an estimate of the approximate annual Water Use Capacity in Acre-Feet. Non-Residential applications shall be reviewed to determine if there is an increase in water demand as a result of the proposed Project. Amendments to Table 2 henceforth shall be made by Resolution of the Board of Directors.

1. Methodology for Determining Water Use Capacity

The following process shall be used to determine if there is an increase in Water Use Capacity:

- a. The General Manager shall estimate Water Use Capacity of the proposed Project using the Water Use Factors from Table 2: Non-Residential Water Use Factors.

- (1) New Construction: When the Non-Residential Water Use Factor is based on a square-footage factor, the entire square-footage shall be applied to the factor for construction of a new building.

(2) Tenant Improvements: When the Non-Residential Water Use Factor is based on a square-footage for a Tenant Improvement, the usable square-footage shall be applied to the factor.

b. When a Non-Residential Project proposes two or more of the uses set forth in Table 2, each proposed use shall be subject to a separate calculation. By way of example, a motel/restaurant would be subject to both the motel use by unit and the restaurant use by seat calculation. Similarly, a gas station with a retail facility would be subject to both the gas station use by pump and the retail use by square-footage. Where a proposed use may be designated as more than one category, the category which most accurately depicts projected water use shall be selected or the uses shall be calculated based on the square-footage or other factor for each area in which the use occurs. When the proposed use appears to fall into more than one category, the higher intensity use category shall be chosen.

c. For New Construction on Vacant Lots, the General Manager shall add the quantity of water determined to be the exterior water demand based on the ETWU to the total Estimated Annual Water Use Capacity determined in 24-B-2.

d. If the application includes a Non-Residential use that is not identical to or similar to those uses shown on Table 2: Non-Residential Water Use Factors, the General Manager shall research the projected annual consumption of the use and shall recommend a value to the Board that corresponds to the Estimated Annual Water Use Capacity.

e. The General Manager shall compare the pre-Project Estimated Annual Water Use Capacity against the Estimated Annual Water Use Capacity shown on the Construction Plans submitted with the Water Release Form and Water Permit application. Pre-Project Estimated Annual Water Use Capacity may be verified by inspection.

- f. The General Manager shall reduce the Estimated Annual Water Use Capacity by any verified Water Use Credit or On-Site Water Credit applicable to the application as shown on the Water Release Form and Water Permit application and shall determine the Adjusted Water Use Capacity of the proposed project.
- g. Based upon the review conducted in 24-B-1-f, the General Manager shall determine if the Project will result in a positive, neutral or reduced Water Use Capacity on the Site.
- (1) An increase in Capacity (Intensification of Use) shall cause the calculation and collection of a Capacity Fee prior to issuance of a Water Permit.
 - (2) No Capacity Fee shall be assessed when there is no increase in Water Use Capacity.
 - (3) A reduction in Water Use Capacity shall result in a Water Credit upon verification that the former use has been abandoned. This credit shall be established in conformance with Rule 25.5.
- h. Projects at Public School District Sites shall be considered to have a zero Adjusted Water Use Capacity when the entire Public School District Site meets or exceeds Rule 143 Water Efficiency Standards for Existing Non-Residential Uses.
- i. A Restaurant's 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.*

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 September 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 September 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 September 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.

David J. Stoldt, Secretary to the Board