

ORDINANCE NO. _____

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
AMENDING CHAPTER 10.72 OF THE MONTEREY COUNTY CODE TO REMOVE
THE PROHIBITION ON PRIVATE OWNERSHIP OR OPERATION OF A
DESALINIZATION FACILITY**

County Counsel Summary

This ordinance amends Chapter 10.72 of the Monterey County Code to remove the prohibition on private ownership or operation of a desalinization treatment facility as set forth in Monterey County Code section 10.72.030(B).

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. FINDINGS AND DECLARATIONS.

A. Monterey County Code Chapter 10.72 outlines the requirements for obtaining permits to construct and operate water desalinization treatment facilities within Monterey County (“County”) (also commonly referred to as desalination facilities).

B. Chapter 10.72 was adopted by the Board of Supervisors in 1989.

C. Chapter 10.72 defines a desalinization treatment facility as “a facility which removes or reduces salts from water to a level that meets drinking water standards and/or irrigation purposes.”

D. Chapter 10.72 requires that any public or private person or entity seeking to construct or operate a desalinization facility obtain both a construction permit and an operation permit.

E. Section 10.72.030(B) of Chapter 10.72 requires that an applicant for a permit to operate a desalinization facility “provide assurances that each facility will be owned and operated by a public entity,” thus prohibiting the ownership or operation of such a facility by private interests, unless the prohibition is preempted by federal or state law or regulation. This prohibition applies to large desalinization facilities serving many customers, and smaller facilities that could desalinate water from groundwater wells serving domestic households or farms.

F. The prohibition on private ownership or operation does not apply to a current proposed desalinization facility, to be owned and operated by California American Water Company, pursuant to a California Public Utilities Commission determination in that matter.

G. The 180/400-foot aquifer subbasin of the Salinas Valley Groundwater Basin, adjacent to the coast of Monterey Bay, is currently in a state of “critical overdraft” as found by the State of California, and is experiencing significant levels of seawater intrusion, making many

groundwater wells in the aquifer unable to produce potable water for domestic or farming purposes. The condition of the aquifer makes it imperative that solutions to the availability of potable water be found.

H. Removing the private ownership or operation prohibition in Chapter 10.72 will make it possible for domestic and farm groundwater well owners to desalinate water produced from their wells for their own purposes, and will make it possible for private capital, rather than public debt, to fund the construction of desalinization facilities of all sizes and capacities.

I. Removing the private ownership or operation prohibition in Chapter 10.72 will not eliminate the need for public or private interests to obtain the necessary permits under Chapter 10.72, nor eliminate requirements for land use entitlements under the Monterey County Code. Specific projects will thus be subject to rigorous environmental review pursuant to the California Environmental Quality Act (“CEQA”), as well as possible review and permitting by other state agencies (such as the Public Utilities Commission, the Coastal Commission, and the State Water Resources Control Board), and even federal agencies.

SECTION 2. ENVIRONMENTAL REVIEW – Adoption of a Negative Declaration based upon the findings and evidence as follows:

A. Pursuant to Public Resources Code section 21083, and CEQA Guidelines sections 15063(a) and 15063(b)(2), the Lead Agency shall conduct environmental review in the form of an Initial Study to determine if the project may have a significant effect on the environment and shall prepare a Negative Declaration if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.

B. The County of Monterey as Lead Agency, through Housing & Community Development (“HCD”) – Planning, prepared an Initial Study (“IS”) pursuant to CEQA to consider removing the private ownership or operation prohibition in Chapter 10.72. The Draft Negative Declaration (“ND”) was prepared in accordance with CEQA and circulated for public review from March 7, 2022 through April 6, 2022 (SCH #2022030201). Staff identified no significant impacts from this ordinance, and therefore, found that no mitigation is required. Specifically, staff found that this ordinance: (1) will not have the potential to significantly degrade the quality of the environment; (2) will have no significant impact on long-term environmental goals; (3) will have no significant cumulative effect on the environment; and (4) will not cause substantial adverse effects on human beings, either directly or indirectly.

C. Two comments were received during the public review period. In response to comments, staff has prepared a response to comments. These responses do not result in revisions to the environmental documentation that would warrant require recirculation of the IS/ND pursuant to Section 15073.5 of the CEQA Guidelines.

D. Evidence that has been received and considered includes: this ordinance, the IS/ND, comments received during the public review process, staff’s response to comments, technical studies/reports, staff reports that reflect the County’s independent judgment, and

information and testimony presented during public meetings. These documents are on file in HCD-Planning and are hereby incorporated herein by reference.

E. The Monterey County Board of Supervisors considered the Draft Negative Declaration and all other pertinent evidence listed above. On the basis of the whole record before the Monterey County Board of Supervisors, the Board finds there is no substantial evidence that adoption of this ordinance will have a significant effect on the environment, and the Negative Declaration reflects the independent judgment and analysis of the County.

F. HCD-Planning, located at 1441 Schilling Place, 2nd Floor, Salinas, California, 93901, is the custodian of documents and other materials that constitute the record of proceedings upon which the decision to adopt the Negative Declaration is based.

SECTION 3. Section 10.72.030 of the Monterey County Code is amended to read as follows:

All applicants for an operation permit as required by Section 10.72.010 shall:

A. Provide proof of financial capability and commitment to the operation, continuing maintenance replacement, repairs, periodic noise studies and sound analyses, and emergency contingencies of said facility. Such proof shall be in the form approved by County Counsel, such as a bond, a letter of credit, or other suitable security including stream of income. For regional desalinization projects undertaken by any public agency, such proof shall be consistent with financial market requirements for similar capital projects.

~~B. Provide assurances that each facility will be owned and operated by a public entity.~~

~~B.~~ Provide a detailed monitoring and testing program in a manner and form as prescribed by the Director of Environmental Health.

~~C.~~ Submit a maintenance and operating plan in a form and matter prescribed by the Director of Environmental Health.

~~D.~~ All operators of a desalinization treatment plant shall notify the Director of Environmental Health of any change in capacity, number of connections, type or purpose of use, change in technology, change in reliance upon existing potable water systems or sources, or change in ownership or transfer of control of the facility not less than ten (10) days prior to said transfer.

SECTION 4. SEVERABILITY. If any subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, which shall remain in full force and effect. The Board of Supervisors hereby declares that it would have adopted this Ordinance and each and every subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional, without regard to whether any portion of

the article would be subsequently declared invalid or unconstitutional. The courts are hereby authorized to reform the provisions of this Chapter in order to preserve the maximum permissible effect of each subsection herein.

SECTION 5. EFFECTIVE DATE. This ordinance shall take effect on the thirty-first day following its adoption.

PASSED AND ADOPTED this ____ day of _____ 2022, by the following vote:

AYES:

NOES:

ABSENT:

Mary Adams, Chair
Monterey County Board of Supervisors

A T T E S T:

VALERIE RALPH
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM

Kelly L. Donlon
Assistant County Counsel