



County of Monterey

Item No.

Board Report

Board of Supervisors
Chambers

168 W. Alisal St., 1st Floor
Salinas, CA 93901

Legistar File Number: ORD 23-019

November 07, 2023

Introduced: 10/30/2023

Current Status: Agenda Ready

Version: 1

Matter Type: Ordinance

Introduce, waive first reading, and set November 28, 2023, at 10:30 a.m., as the date and time to consider adoption of an ordinance restating portions of Chapter 15.04 of the Monterey County Code, and restating and amending Chapter 15.06 of the Monterey County Code relating to point-of-use and point-of-entry water treatment systems; and provide direction to staff as appropriate.

Proposed California Environmental Quality Act (CEQA) Action: Consider finding that the adoption of this ordinance is categorically exempt per Section 15301 (minor alternations of private structures) and 15303 (construction of new, small facilities or structures) of the CEQA Guidelines, and there are no exceptions pursuant to Section 15300.2.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Find that the adoption of this ordinance is categorically exempt per Section 15301 (minor alternations of private structures) and 15303 (construction of new, small facilities or structures) of the CEQA Guidelines, and there are no exceptions pursuant to Section 15300.2.
- b. Introduce, waive first reading, and set November 28, 2023, at 10:30 a.m., as the date and time to consider adoption of an ordinance restating portions of Chapter 15.04 of the Monterey County Code, and restating and amending Chapter 15.06 of the Monterey County Code relating to point-of-use and point-of-entry water treatment systems; and
- c. Provide direction to staff as appropriate.

SUMMARY/DISCUSSION:

The Health Department-Environmental Health Bureau regulates small water systems with 2-14 connections. Of these 970 systems, approximately 235 systems are out of compliance due to excessive levels of nitrite, arsenic, and fluoride. This contaminated water poses a health risk to the public.

The state declared the importance of meeting safe drinking water standards as identified with the passage of Assembly Bill ("AB") 685 in 2012, making California the first state in the nation to legislatively recognize the human right to water. California Water Code section 106.3 statutorily recognizes that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." The human right to water extends to all Californians, including disadvantaged individuals and groups and communities in rural and urban areas.

AB 685 paved the way for the State Water Resources Control Board ("SWRCB") to adopt

point-of-use and point-of-entry (“POU/POE”) regulations to allow for a less expensive centralized water treatment option. On January 22, 2019, the SWRCB adopted regulations that allow the permitted use of POE and POU treatment by public water systems in lieu of centralized treatment by making modifications to Title 22 of the California Code of Regulations, beginning with Section 64417. On March 22, 2019, the state regulations were signed by the Secretary of State and became effective. The state law applies to public water systems of 15 service connections or more and limits the use of POE and POU treatment to public water systems of fewer than 200 service connections and limits the period of use to three years or until funding for centralized treatment is available, whichever occurs first.

In Monterey County, current options to comply with providing uncontaminated water include consolidation with a neighboring compliant water system, drilling a new well, or installation of a centralized treatment system on an existing well. The problems encountered with these options include not having a nearby compliant water system available, a new well might not be successful, and centralized treatment systems can be very costly, and complex to install and maintain. These options are expensive and often result with the public relying on bottled water or unsafe tap water.

On June 18, 2019, the Board of Supervisors adopted Ordinance No. 5310 which amended sections of Chapter 15.04 of the Monterey County Code and added a new Chapter 15.06 to the Monterey County Code to authorize and regulate POU and POE water treatment by local small, state small, and small public water systems that would otherwise not meet primary drinking water standards. For water systems of 15 to 199 service connections, Ordinance No. 5310 updated Chapter 15.04 to allow POU or POE treatment under certain circumstances in accordance with the recently adopted state standards. Ordinance No. 5310 also established standards for domestic water systems with two to fourteen water connections to utilize POU and POE treatment as a means of compliance with primary water quality standards. Ordinance No. 5310 required the water system to renew annually the authorization to use a POU or POE treatment, and if grant funding becomes available, renewal is contingent on the water system pursuing funding for long term solutions such as but not limited to centralized water treatment, a new well, or consolidation. Ordinance No. 5310 also provided that if an individual property owner is seeking new construction on an existing legal lot with water that does not meet primary water quality standards, the owner may install POU or POE treatment as a means of satisfying water quality standards necessary for a construction permit for development.

On July 26, 2019, litigation was served on the County challenging the validity of Ordinance No. 5310 on a variety of grounds including the California Environmental Quality Act (“CEQA”). In response to the litigation, on August 27, 2019, the Board adopted Ordinance No. 5316 which suspended the operation of Sections 3 and 6 and a portion of Section 5 of Ordinance No. 5310 until December 11, 2019. The suspended sections pertain to utilization of POU or POE treatment by local small water systems, state small water systems, individual lot owners within local small water systems and state small water systems, and individual lots on private wells (“Suspended Sections”). On December 10, 2019, Ordinance No. 5322 further extended the suspension until further action of the Board.

The proposed draft ordinance (**Attachments A and B**) restates certain sections of Chapter 15.04 of the Monterey County Code and restates and amends Chapter 15.06 to the Monterey County Code to authorize and POU and POE water treatment for active service connections by

local small and state small water systems that would otherwise not meet primary drinking water standards. The ordinance requires an amendment to the water system permit to allow these water systems to utilize POU or POE treatment. The ordinance requires the water system to renew annually the authorization to use a POU or POE treatment, and if grant funding becomes available, renewal is contingent on the water system pursuing funding for long term solutions such as but not limited to centralized water treatment, a new well, or consolidation. The ordinance applies in the unincorporated area of the County of Monterey.

The proposed draft ordinance was introduced to the Board of Supervisors at its October 24, 2023 meeting. After discussion, the Board directed staff to make changes to the ordinance and return on November 7, 2023 for reintroduction of the ordinance. The ordinance has been slightly modified for better clarification as follows:

- Added an option for a water system to receive a permit for POU/POE even if not all connections participate, although the system would not be able to be deemed fully compliant. This opportunity would allow the connections on a water system that have complied with the requirements to be recognized and have oversight provided by the Environmental Health Bureau. It would also provide a pathway for a system to work towards full compliance with 100% participation.
- Clarified that a mutual water system may delegate authority for installation, operation, maintenance, and sampling to each property owner. Each property owner would need to agree to be responsible for their own device and follow treatment strategy and operation and maintenance program for the device.

Additionally, the Environmental Health Bureau will provide templates and help guide the water systems through the process of device selection, pilot testing, determining device locations and oversight, maintenance schedule, testing schedule, consumer education program, and preparing notification documents. The oversight program helps ensure that each connection is aware of how to operate and maintain the device and any precautions that need to be taken so they can have a reliable and safe supply of water.

Staff returns today to introduce the ordinance, waive first reading and ask that November 28, 2023, at 10:30 a.m. be set as the date to consider adoption the ordinance.

ENVIRONMENTAL REVIEW

Per a settlement agreement from the above-mentioned litigation, the County hired a consultant to prepare an initial study to analyze the environmental impacts, if any, from this ordinance. Based on the findings of the Initial Study (**Attachment C**), the County finds the ordinance qualifies for both Class 1 and Class 3 categorical exemptions pursuant to California Environmental Quality Act (“CEQA”) Guidelines Articles 19 Section 15301 and 15303, and there are no exceptions pursuant to Section 15300.2. Specifically, the Class 1 exemption applies to the operation, permitting, or minor alternation of existing public or private structures. The Class 3 exemption applies to construction of new, small facilities or structures. This ordinance qualifies for Class 1 and Class 3 because it establishes regulations for the installation of point of use and/or point of entry water treatment devices for impacted water systems in only existing residential dwelling or commercial units. The devices are

small, similar to a household water softener system, and will most likely be installed under a kitchen sink, within existing garages, or other areas adjacent to buildings substantially visible to the public, with the system hooked up to the existing plumbing system. No grading or ground disturbance is required. There are no exceptions pursuant to Section 15300.2, because the POU and POE systems would not impact an environmental resource; successive installation of POU or POE systems would not contribute to a significant cumulative impact; there are no unusual circumstances regarding this project that would cause a significant impact to the environment; and the installation of POU or POE systems would not result in damages to scenic resources, would not be located on or near any hazardous waste sites, and would not cause a substantial adverse change in the significance of a historical resource.

This work supports the Monterey County Health Department 2018-2022 Strategic Plan Goal to empower the community to improve health and it also supports the ten essential public health services, specifically, 5. to develop policies and plans that support individual and community health efforts and 6. to enforce laws and regulations that protect health and ensure safety.

OTHER AGENCY INVOLVEMENT:

Office of the County Counsel has reviewed this report and proposed ordinance as to form.

FINANCING:

There is no financial impact with the acceptance of this report.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Check the related Board of Supervisors Strategic Initiatives:

☐ Economic Development:

- Through collaboration, strengthen economic development to ensure a diversified and healthy economy.

☐ Administration:

- Promote an organization that practices efficient and effective resource management and is recognized for responsiveness, strong customer orientation, accountability and transparency.

☒ Health & Human Services:

- Improve health and quality of life through County supported policies, programs, and services; promoting access to equitable opportunities for healthy choices and healthy environments in collaboration with communities.

☐ Infrastructure:

- Plan and develop a sustainable, physical infrastructure that improves the quality of life for County residents and supports economic development results.

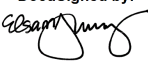
☐ Public Safety:

- Create a safe environment for people to achieve their potential, leading businesses and communities to thrive and grow by reducing violent crimes as well as crimes in general.

Prepared by: Robin Kimball, Management Analyst III, 796-1297

Legistar File Number: ORD 23-019

Approved by:

DocuSigned by:

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Date 10/31/2023 | 3:37 PM PDT

Elsa Mendoza Jimenez, Director of Health Services, 755-4621

Attachments:

- A. Draft Ordinance (redline)
- B. Draft Ordinance (clean-signed)
- C. Point of Use/Point of Entry Ordinance Initial Study