



Monterey County

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

Board Report

Legistar File Number: ORD 19-018

June 18, 2019

Introduced: 6/6/2019

Current Status: Agenda Ready

Version: 1

Matter Type: Ordinance

- a. Consider adoption of an ordinance of the County of Monterey, State of California, amending Chapter 15.04 of the Monterey County Code and adding Chapter 15.06 to the Monterey County Code relating to point-of-use and point-of-entry water treatment systems; and
- b. Direct staff to return to the Board for review of the ordinance after eighteen (18) months.

Proposed CEQA action: Categorically exempt under sections 15301, 15302, 15303, 15308, and 15330 of the California Environmental Quality Act (CEQA) Guidelines.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Adopt an ordinance of the County of Monterey, State of California, amending Chapter 15.04 of the Monterey County Code and adding Chapter 15.06 to the Monterey County Code relating to point-of-use and point-of-entry water treatment systems; and
- b. Direct staff to return to the Board for review of the ordinance after eighteen (18) months.

Proposed CEQA action: The ordinance includes a finding that the ordinance is categorically exempt from environmental review under sections 15301, 15302, 15303, 15308, and 15330 of the California Environmental Quality Act (CEQA) Guidelines.

SUMMARY:

The Monterey County Health Department-Environmental Health Bureau regulates small water systems, including local small water systems with two to four service connections and state small water systems with five to fourteen service connections. Of these 970 systems, approximately 235 systems are out of compliance with primary drinking water standards due to excessive levels of nitrite, arsenic, and fluoride. This contaminated water poses a health risk to the public. The proposed ordinance provides the option under certain circumstances of point of use or point of entry treatment to meet primary drinking water standards, as described further below. The ordinance was introduced and heard by the Board on April 30, 2019. In light of public testimony and Board direction to return with input from constituents and the working group, staff held several public meetings. Staff is not recommending revisions to the ordinance. However, per the Board direction to treat the ordinance as a pilot program, staff is recommending that the Board direct staff to return to the Board after 18 months for evaluation of the ordinance, at which time staff would seek Board direction to retain, repeal, or modify the provisions of the ordinance.

DISCUSSION:

The state declared the importance of meeting safe drinking water standards as identified with the passage of Assembly Bill (AB) 685, 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. On December 4, 2018, the Monterey County Board of Supervisors recognized this human right to water. (Board of Supervisors’ Resolution. No. 18-385.)

Current options for a local small or state small water system 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 a nearby compliant water system is not 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. A cost analysis survey of bottled water use is included with this report as Attachment 3.

The ordinance proposes point of use or point of entry as an alternative method to achieve uncontaminated water, following the lead of the state. The state legislature passed legislation to allow public water systems (15 or more service connections) to use point of use (POU) and point of entry (POE) treatment temporarily under certain circumstances and to authorize the State Water Resources Control Board (“SWRCB”) to establish POU/POE regulations. The SWRCB has since developed regulations to overcome challenges with individual POE and POU treatment systems.

The subject ordinance would amend Chapter 15.04 of the Monterey County Code to enable a water system of 15 to 199 connections to utilize POU or POE in conformity with the recent changes to state law and regulation. This ordinance requires the operator of such water systems to obtain a water system permit amendment, renewable annually, under Monterey County Code Section 15.04.070, which permit is issued by the Environmental Health Bureau.

The ordinance also adds Chapter 15.06 to the Monterey County Code to provide the choice of POU/POE treatment for domestic water systems with two to fourteen service connections. The ordinance sets standards for treatment, operations and maintenance, system monitoring, recordkeeping and compliance for water systems of two to fourteen connections who choose POE/POU treatment to become compliant with applicable primary drinking water standards. Compliance with these standards is enforced through inspection by the Environmental Health Bureau and the enforcement provisions of the Monterey County Code. Additionally, the ordinance also provides an option for POU/POE treatment for owners of existing lots of record who are seeking approval of new development but whose water from an onsite private well or existing water system does not meet drinking water standards required for issuance of a construction permit.

Public information sessions were held in July and August of 2018 throughout the County to inform stakeholders of the earlier proposed ordinance and allow a platform for their questions to be presented and concerns to be addressed. On September 18, 2018, the prior version of the ordinance was introduced for consideration by the Board of Supervisors who directed staff to continue to review and revise the ordinance based on public feedback and subsequently submit the amended ordinance to key community stakeholders before returning to the Board of Supervisors for consideration and

adoption. Staff met again with community stakeholders on October 2nd, 4th, 16th and 18th, 2018. Having taken into consideration the concerns and suggestions identified by stakeholders and after a thorough systems analysis, staff revised the ordinance. On April 9, 2019, the draft amended ordinance was distributed to stakeholders to inform them of these amendments. The Health Department's Environmental Health website also has a page dedicated to the proposed ordinance as well as frequently asked questions and facts for public viewing.

The ordinance was introduced and presented for the Board's consideration at its meeting on April 30, 2019. The Board directed staff to seek additional input from constituents and the working group for review and consideration prior to bringing the ordinance back on June 18, 2019 for the Board to consider adoption. Public meetings, which were also open to the working group, were held on May 14th, 15th, 16th and 18th, and emails from stakeholders and constituents were received May 14th, 16th, 17th, 20th, 21st, 22nd and 27th. Concerns regarding the ordinance are summarized into six categories: individual homes vs. water systems, bottled water, pilot program, permit requirement, compliance options and easier templates. Staff has provided responses to these concerns in Attachment 4. After review and analysis of the concerns presented, the ordinance is presented for adoption.

Per the Board direction to treat the ordinance as a pilot program, staff is proposing to return to the Board after eighteen (18) months for evaluation of the ordinance. At that time, staff would seek Board's direction to continue implementation of the ordinance as is, repeal the provisions of the ordinance, or modify provisions of the ordinance.

CEQA

The ordinance includes a finding that the ordinance is categorically exempt from environmental review under sections 15301, 15302, 15303, 15308, and 15330 of the California Environmental Quality Act (CEQA) Guidelines. Consistent with Section 15301, 15302, and 15303 of the CEQA Guidelines, a permitting process for point-of-use ("POU") and point-of-entry ("POE") treatment systems will result in minor alterations to existing facilities involving negligible or no expansion of use. It is exempt under section 15308 because it puts in place procedures for protection of the environment and public health. It is exempt under section 15330 because it creates a permitting process for water systems to use to treat impacted water.

A member of the public has contended that the ordinance would potentially result in a significant amount of development on vacant lots. Regarding this concern, to the extent the ordinance would allow individual lots not within water systems to install POU/POE treatment, the ordinance memorializes in regulation existing practice, so does not result in a direct or indirect physical impact. Moreover, this practice has resulted in development of only a few additional lots. Since 2017, according to Environmental Health Bureau analysis, six construction permit applications were approved for vacant lots with the understanding that an EHB-approved water treatment system would be installed and tested, with a corresponding deed restriction to notify of the water treatment system and ongoing maintenance requirements recorded to the property. Two of the private wells were proposed to serve unregulated, domestic (family-only) water systems. Regarding the potential for development of vacant lots within impacted water systems, it is speculative to assume that the ordinance would result in a significant amount of development. Out of the non-compliant systems

(approximately 235 out of 970), not all have vacant lots. EHB's rough estimate is that there may be about 125 vacant lots among the non-compliant water systems, but there is no evidence of the number of vacant lots that would seek development, or, if they were to seek development, that they would seek to install POU/POE treatment or that they would be able to obtain the other required permits for development. Accordingly, staff finds that the ordinance comes within the referenced categorical exemptions and that there is no substantial evidence of an unusual circumstance showing that the ordinance will have a significant environmental effect that would render the categorical exemptions inapplicable.

This work supports the Monterey County Health Department 2018-2022 Strategic Plan Initiative 2. to enhance community health and safety through prevention. It also supports one or more of the ten essential public health services, specifically, number 2. diagnose and investigate health problems and health hazards in the community, number 3. inform, educate and empower people about health issues and number 5. develop policies and plans that support individual and community health efforts.

OTHER AGENCY INVOLVEMENT:

The State Water Resources Agency Board, and Monterey County Water Resources Agency. County Counsel has approved the 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.

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Approved by: Elsa Jimenez, Director of Health, 4621

Attachments:

1. Draft ordinance (final) on file with the Clerk of the Board
2. Draft ordinance (redlined against existing County Code) on file with the Clerk of the Board
3. Bottled Water Cost Analysis on file with the Clerk of the Board
4. Public Comment/Concerns on file with the Clerk of the Board