

BEFORE THE TOWN COUNCIL OF THE TOWN OF MORAGA

In the Matter of

**Adding Chapter 3.24, Stormwater Fee,)
to Title 3 of the Town of Moraga)
Municipal Code)**

ORDINANCE NO. _____

WHEREAS, the Town of Moraga (“Town”) oversees and manages a municipal separate storm sewer system (“MS4”), which includes making capital improvements, overseeing maintenance and operations, and conducting activities to ensure compliance with all state and federal regulations associated with the National Pollutant Discharge Elimination System (“NPDES”); and

WHEREAS, the Town’s MS4 is made up of a comprehensive drainage infrastructure system that includes man-made drainage elements such as curbs and gutters, ditches, culverts, pipelines, manholes, catch basins (inlets), and outfall structures in addition to the Town’s natural creek system, which serves as an integral part of the overall MS4; and

WHEREAS, the Town, through its MS4, provides stormwater services (“Services”) that include, but are not limited to, collecting, conveying, protecting, treating, and managing stormwater runoff from improved parcels within the Town; and

WHEREAS, in 2015, the Town adopted a Storm Drain Master Plan (“SDMP”) to study the condition and capacity of this critical infrastructure of the MS4, and the SDMP concluded that the Town had capital improvements needs of as much as \$26 million and annual maintenance and operations costs of \$240,000; and

WHEREAS, the Contra Costa County Clean Water Program, a joint effort of the municipalities within Contra Costa County to meet the NPDES permit mandates, estimated in 2011 that the Town of Moraga NPDES compliance program required additional funding to meet then-current requirements to address stormwater runoff pollution of the nation’s waters in an amount equal to \$155,000 annually, as calculated in 2017 dollars; and

WHEREAS, the Town does not currently have adequate funding to fully finance the system needs of its MS4, and in order to finance the infrastructure, maintenance, and regulatory oversight of the MS4 and the provision of Services, the Town Council has determined that there is a need to enact a stormwater fee (“Stormwater Fee”), in compliance with Article XIID of the California Constitution (Proposition 218), to cover the costs associated with capital improvements, operations and maintenance, and regulatory compliance needs of the MS4; and

WHEREAS, the Stormwater Fee is a property-related fee, that requires the following two-step process for approval: 1) the Town must provide a Notice of Public Hearing and opportunity to protest to all property owners subject to the fee; and 2) if no majority written protest is received, then the Town may proceed with a ballot proceeding where the Stormwater Fee must be approved by a majority of ballots received by property owners subject to the Stormwater Fee; and

WHEREAS, on January 24, 2018, the Town Council approved a Stormwater Fee Report (“Fee Report”) that sets forth the basis and the amount of the stormwater fees on various parcels of land in order to finance, in compliance with Article XIID of the Constitution, the high-priority capital improvement program, the operations and maintenance needs, and the NPDES compliance needs; and

WHEREAS, the Town Council on January 24, 2018 adopted Resolution No. 4-2018 initiating proceedings in accordance with Article XIID of the Constitution, and setting the date of March 14, 2018 for a public hearing and directing the mailing of a notice to the owners of real property affected by the proposed Stormwater Fee, which included a description of the proposed Stormwater Fee, the amount to be charged, the total amount to be collected, and the right of property owners to protest the Stormwater Fee; and

WHEREAS, the Town Council on January 24, 2018 adopted Resolution No. 5-2018 establishing procedures for conducting a ballot proceeding in accordance with Article XIID of the Constitution; and

WHEREAS, the Town conducted a public hearing on March 14, 2018 and heard testimony from residents and property owners regarding the proposed stormwater fee, and a majority protest was not formed; and

WHEREAS, the Town Council introduced this Ordinance on March 14, 2018, after a duly noticed public hearing; and

WHEREAS, Article XIID of the Constitution requires that the property-related fees defined in the Fee Report and included in this Ordinance shall not be imposed unless and until that fee is submitted and approved by a majority vote of the property owners of the property subject to the Stormwater Fee; and

WHEREAS, upon introduction of this Ordinance, the Town Council will direct that it be submitted to the affected property owners in a mail ballot proceeding in accordance with Article XIID of the Constitution, Section 53755.5 of the Government Code, and Town of Moraga Resolution No. 5-2018.

THE TOWN COUNCIL OF THE TOWN OF MORAGA DOES HEREBY ORDAIN AS FOLLOWS:

1. The Town Council hereby finds as follows:
 - A. The Town is faced with increasing costs for the operation, maintenance, and improvement of its MS4.
 - B. The Town is required to undertake an extensive program to improve the water quality of its runoff in the near future under the NPDES permitting process.
 - C. An improperly maintained storm drainage system can create problems such as increased risk of flooding, personal injury, and property damage.
 - D. All developed real property benefits from the existence of the Town's MS4 because these categories of property contribute storm and surface water runoff to the Town's storm drainage system as a result of the impervious and semi-impervious nature of the property.
 - E. In order to provide for the safety of the residents of the Town and protect property in the Town from the damage associated with flooding and to meet the water quality requirements of the NPDES permit issued to the Town by the California State Water Quality Control Board, it is necessary to design, construct, operate, maintain, improve and replace storm drainage facilities which collect storm and surface water runoff and convey and treat such runoff in a safe manner to an acceptable point of discharge. In order to properly fund such facilities and activities, the Town Council has determined that it is necessary to impose a property-related Stormwater Fee.
 - F. Municipalities are authorized to establish property-related fees and charges for funding storm drainage improvements and the operation and maintenance thereof pursuant to Government Code section 53750, et seq., and Health and Safety Code section 5471.
 - G. No property-related fee or charge can be imposed unless and until voter approval required by Section 6 of Article XIID of the California Constitution has been obtained.
 - H. A need exists for additional funding for the storm and surface water management program of the MS4 and the establishment of a Stormwater Fee is the most sustainable and equitable method of providing this funding.
 - I. The Fee Report approved by the Town Council on January 24, 2018, which sets forth the rate structure and methodology of apportionment of the fee to various categories of parcels, shall be the basis for the fee.
 - J. The amount of the proposed Stormwater Fee shall not exceed the reasonable cost of providing the Services or facilities for which the fee is charged.

2. Chapter 3.24, Stormwater Fee, is hereby added to Title 3, Revenue and Finance, of the Moraga Municipal Code, as set forth in Exhibit 1, attached hereto and incorporated herein by this reference.
3. Effective Date. The provisions of this Ordinance shall take effect thirty (30) days after the date that the Town Council adopts this Ordinance.
4. Publication. In accordance with Government Code section 36933, the Town Clerk shall either: (a) have this Ordinance published once within fifteen (15) days after adoption in a newspaper of general circulation; or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again fifteen (15) days after adoption.
5. Severability. If any provision of the Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or applications of the Ordinance. To this end, the provisions of this Ordinance are severable. This Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.
6. Compliance with CEQA. The Town Council finds that the adoption of this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000, *et seq.*) pursuant to Public Resources Code section 21080(b)(8), and CEQA Guideline section 15273(a).
7. This Ordinance was introduced at a regular meeting of the Town Council of the Town of Moraga, California, held on March 14, 2018, and this Ordinance was adopted after the Town Council certified the election results on _____ by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

AFFIRMED:

 David Trotter, Mayor

ATTEST:

 Marty C. McInturf, Town Clerk

EXHIBIT 1

3.24.010 – Establishment of a Stormwater Fee.

Pursuant to Article XIID of the California Constitution, Government Code section 53750, *et seq.*, and Health and Safety Code section 5471, there is established a Stormwater Fee for all Parcels of real property in the Town of Moraga that utilize, or are served by, the Town's Storm Drain System, which includes pipes, inlets, outlets, and natural drainage courses. No fee shall be imposed unless and until the voter approval required by Constitution Article XIID, Section 6 (Proposition 218) has been obtained.

3.24.020 – Definitions.

The following definitions shall apply to this chapter 3.24:

- A. "Developed Parcel" shall mean any lot or parcel of land, which has been altered from its natural state by the construction, creation, or addition of Impervious Area, except public streets and highways.
- B. "Fee Report" shall refer to the report approved by the Town Council on January 24, 2018, prepared by SCI Consulting Group and dated January 2018. The Fee Report sets forth the rate structure and methodology of apportionment of the fee to various categories of Parcels and shall be the basis for the Stormwater Fee.
- C. "Impervious Area" shall mean any part of any Parcel that has been modified by the action of any person in a manner which reduces the land's natural ability to absorb and hold storm and surface water. This includes, but is not limited to, activities such as: grading of property, the creation of any hard surface area which either prevents or retards the entry of water into the soil mantle, or the hardening of an existing surface which causes water to flow at an increased rate. Common Impervious Areas include, but are not limited to, roof tops, walk-ways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, or any cleared, graded, paved, graveled, or compacted surface or paved earthen materials used for vehicular travel, or areas covered with surfaces which similarly impede the natural infiltration of surface water into soil mantle. Impervious Area can be expressed as a percentage of a Parcel's total size.
- D. "Parcel" means the smallest separately segregated lot, unit, or plot of land having an identified owner, boundaries, and surface area which is documented for property tax purposes and given an Assessors' parcel number by the Contra Costa County Assessor.
- E. "Rate Category" refers to Parcels that are grouped into categories of similar imperviousness characteristics. Single-Family Residential Parcels are categorized by size; Non-Single-Family Parcels are categorized by pervious percentage ranges.

- F. “Rate Zone” – The Town is divided into two rate zones. Parcels in Zone A rely wholly on the Town’s Storm Drain System for drainage away from their Parcel. Parcels in Zone B rely in part on the Town’s Storm Drain System and in part on a privately maintained and funded Storm Drain System for drainage away from their Parcel. Because Zone B Parcels have additional storm drainage funding obligations (typically through a homeowners association), they are charged at 82.3% the Zone A rate. The Rate Zone map is included in the Fee Report.

- G. “Storm Drain System” shall mean the Storm and Surface Water drainage systems comprised of Storm and Surface Water Control Facilities and any other natural features which store, control, treat, and/or convey Storm and Surface Water. Stormwater Facilities shall include all natural and man-made elements used to convey stormwater from the first point of impact with the surface of the earth to a suitable receiving body of water or location internal or external to the boundaries of the Town. Stormwater Facilities include all pipes, appurtenant features, culverts, streets, curbs, gutters, pumping stations, channels, creeks, streams, ditches, wetlands, detention/retention basins, ponds, and other Storm and Surface Water conveyance and treatment facilities, whether public or private.

- H. “Stormwater Fee” shall mean the property-related fee charged on all Developed Parcels in the Town to fund the Stormwater Services.

- I. “Stormwater Fee Fund” shall mean the fund set up pursuant to Section 3.24.070 of this Ordinance.

- J. “Stormwater Services” means all activities dealing with the collection, conveyance, protection, treatment, and overall management of stormwater runoff and the Storm Drain System, including, without limitation, operations and maintenance, capital improvements, and regulatory activities.

3.24.030 – Stormwater Fee for Fiscal Year 2018-19.

Rates shall be applicable to all Parcels on or after July 1, 2018. The Stormwater Fee is based on the relative amount of Impervious Area on each property or category of properties and is structured as follows: Two Rate Zones; two classes of property; and multiple categories within each class. The tables below illustrate the fee structure and include the fees for fiscal year 2018-19.

A. Single-Family Residential Class - Zone A

Category	Parcel Size (sq. ft.)	Annual Fee per Parcel
Small	Under 10,000	\$82.13

Medium	10,000 to 22,000	\$120.38
Large	22,000 to 31,000	\$145.48
Extra Large	Over 31,000	\$150.31
Condominium	Na	\$82.13

B. Single-Family Residential Class - Zone B

Category	Parcel Size (sq. ft.)	Annual Fee per Parcel
Small	Under 10,000	\$67.59
Medium	10,000 to 22,000	\$99.07
Large	22,000 to 31,000	\$119.73
Extra Large	Over 31,000	\$123.70
Condominium	n/a	\$67.59

C. Non-Single-Family Residential Class – Zone A¹

Category ²	Annual Fee per Acre of Parcel Size ³
Multi-Family (Apartments 5 or more units)	\$715.76
Commercial / Retail / Industrial	\$940.88
Office	\$685.94
Institutional / School / Church	\$409.31
Park / Golf Course	\$29.91
Vacant (developed)	\$50.22

Rate Structure Notes:

1. Any Non-Single-Family Parcels located in Zone B will be charged at 82.3% of the Zone A rate shown.
2. The Rate Category for any Non-Single-Samily Parcel shall be assigned by the description of the land use of the Parcel. In the event that the land use description is ambiguous, the rate shall be assigned to a category with the nearest percent Impervious Area in accordance with Table 5 of the Fee Report.
3. Per-acre charges are calculated in 0.1-acre increments. For example, an apartment building is charged at \$71.576 for each tenth of an acre or portion thereof.

3.24.040 – Setting the Stormwater Fee.

Commencing with Fiscal Year 2019-20, the Town Council shall, by resolution, annually determine the Stormwater Fee in accordance with the following:

- A. In no event shall the rate for any category of property be increased beyond the rate approved by a majority vote of property owners subject to the Stormwater Fee. Commencing in Fiscal Year 2019-20, the Stormwater Fee rates may be increased by an amount equal to the change in the Consumer Price Index for all Urban Consumers for the area including Contra Costa County (the “CPI”), including all items as published by the U.S. Bureau of Labor Statistics as of December of each succeeding year, not to exceed a maximum increase of three percent (3%) per year. Any change in the CPI in excess of 3% shall be cumulatively reserved as the “Unused CPI” and shall be used to increase the maximum authorized rate in years in which the CPI is less than 3%. The maximum authorized rate is equal to the maximum rate in Fiscal Year 2018-19 adjusted annually by the lower of either 3% or the change in the CPI plus any Unused CPI as described above.
- B. The Stormwater Fee shall not be deemed to be increased in the event the actual fee upon a Parcel in any given year is higher due to a change in use of the subject Parcel or an increase in the amount of the Impervious Area of the subject Parcel.
- C. In any year in which the Town Council does not change the Stormwater Fee rate, pursuant to the voter-approved CPI allowable annual increase, the previously adopted Fee shall continue in full force and effect for the next fiscal year.
- D. The Town Council shall not be required to enact a CPI increase each year, but the Town Council may accumulate the inflationary increases and impose the cumulative amount in accordance with Section 3.24.040.A.

3.24.050 – Appeals by Property Owners.

- A. If a property owner disagrees with the setting of his or her Stormwater Fee, the property owner may appeal the calculation to the Public Works Director in accordance with the procedures set forth herein. The property owner must provide a written explanation describing the basis of the appeal. This documentation must include the Assessor's Parcel Number (APN) of the property in question and the name, telephone number, mailing address, and email address, if available, of the property owner. The Public Works Director may request additional information or documentation from the property owner to consider the appeal. The Public Works Director shall make a determination regarding the appeal and notify the property owner, in writing, of the decision.
- B. A property owner may appeal the decision of the Public Works Director to the Town Manager. The appeal must be made in writing and filed with the Town Manager not later than ten (10) calendar days from the date of mailing of the Public Works Director's decision. The Town Manager shall fix a time and place for hearing the appeal and shall give notice in writing to the appellant. The Town Manager's determination on the appeal shall be final.
- C. In the event that an appeal is granted by the Public Works Director or the Town Manager and the Town is unable to include a refund for inclusion in the following fiscal year's property tax roll submittal, a reimbursement will be provided to the property owner by the Town.
- D. The Town Council is authorized to establish fees for processing appeals.

3.24.060 – Collection of the Stormwater Fee.

The Stormwater Fee shall be collected on the Contra Costa County tax roll in the same manner, by the same persons, and at the same time as, together with and not separately from, the general taxes of the Town; provided, however, in any year the Town Council may, by resolution, provide for an alternative procedure for collection of the Stormwater Fee. For any fiscal year in which the Stormwater Fee is authorized but not collected on the tax roll, the Town may collect all or a portion of the fee for such year on the tax roll in the following fiscal year or years.

3.24.070 – Stormwater Fee Fund.

Upon receipt of Stormwater Fee revenues, the Town shall deposit those fees in the Town treasury in an account depicted as the Stormwater Fee Fund. The moneys in the Stormwater Fee Fund shall be subject to an annual independent audit and shall only be expended for Stormwater Services. The Town is authorized to incur indebtedness in the form of bonds, notes, contractual obligations or other evidences of indebtedness authorized by law to finance or refinance the costs of providing Stormwater Services and to pay any and all costs of issuing or incurring such indebtedness.

3.24.080 – Various Actions.

Without a vote of the property owners, in any year the Town Council may do any and all of the following: (a) discontinue the stormwater fee; (b) reduce the rate for all Parcel categories; or (c) increase the rate up to or below the maximum voter-authorized rate if it has been previously set below such rate.

3.24.090 – Oversight, Annual Audit and Public Report.

A. The Town shall retain an independent auditor to conduct an annual audit of the Stormwater Fee and Stormwater Fee Fund. The auditor shall include an accounting of the revenue received from the fee and expenditures thereof in the audited financial statements. The auditor's report shall be presented to the Town Council and made available to the public. Additionally, the Director of Administrative Services shall annually prepare and present to the Town Council a report in conjunction with the audit that reviews the status and performance of the programs, services and projects funded wholly or partially with proceeds of the Stormwater Fee.

B. The Town Council shall either select a citizen's oversight committee or assign oversight duties to a pre-existing oversight committee to review and report annually on the receipt of revenue and expenditure of funds from the Stormwater Fee Fund authorized by this chapter.

3.24.100 – Severability.

Should any provision or clause of this chapter or application thereof to any person or circumstance be held invalid or unconstitutional that invalidity or unconstitutionality shall not affect other provisions or applications thereof which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are declared severable. By adopting this Ordinance, the Town Council declares that it would have adopted this Ordinance without that provision or provisions.