TOWN OF MORAGA

To: Honorable Mayor and Councilmembers

From: Edric Kwan, Public Works Director / Town Engineer

Subject: Conduct a Public Hearing and Receive Written Protests for the Proposed Stormwater Fee, Consider Waiving First Reading and Introducing, by Title an Ordinance Adding Chapter 3.24, Stormwater Fee, to Title 3 of the Town of Moraga Municipal Code, and Directing the Town Clerk to Submit the Stormwater Fee to the Affected Property Owners in a Mail Ballot Proceeding in accordance with Article XIII-D of the State Constitution, Section 53755.5 of the Government Code and Town of Moraga Resolution No. 5-2018

Request

Conduct a public hearing and receive written protests for the proposed Stormwater Fee, consider waiving first reading and introducing by title an Ordinance adding Chapter 3.24, Stormwater Fee, to Title 3 of the Town of Moraga Municipal Code, and directing the Town Clerk to submit the Stormwater Fee to the affected property owners in a mail ballot proceeding in accordance with Article XIII-D of the State Constitution, Section 53755.5 of the Government Code and Town of Moraga Resolution No. 5-2018.

Background

A 2016 Town Council Goal was to “develop a sustainable funding strategy to ensure Town assets and infrastructure, such as buildings, storm drains, parks and other facilities, can be maintained in the future;” and a Town Council Goal for 2017 was to “Determine Revenue Measure(s) for a Future Ballot to Fund the Community’s Top Priorities.”

In support of these goals, the Town Council began a series of actions in November 2016 targeted at developing a sustainable funding source to support the Town’s storm drainage infrastructure and management services. SCI Consulting Group (SCI) was engaged to develop a feasibility and funding options report (phase 1, completed in April 2017), and Godbe Research was engaged to conduct a public opinion survey (phase 2, completed in October 2017) to measure community support for a ballot measure to fund storm drainage services as well as a separate measure to enhance general fund
revenues. The survey found adequate community support for funding storm drainage services, but there was inadequate support for a utility users tax for general purposes.

The findings from both consultants were presented to the Town Council on November 8, 2017. At that meeting, the Town Council authorized the Town Manager to enter into an agreement with SCI to develop a Stormwater Fee Report, initiate the ballot proceeding, and support the Town in community outreach (phase 3).

The Fee Report was presented to the Council on January 24, 2018, at which time two resolutions were approved. The first resolution (No. 4-2108) initiated the proceedings, stated the Fee Report was deemed sufficient and approved, stated the annual amount of funds to be collected, and contained detailed descriptions of the services, procedures, and other features of the proposed Stormwater Fee. The second resolution (No. 5-2018) established a set of procedures for conducting the ballot proceeding in accordance with Proposition 218.

The Stormwater Fee proceedings included scheduling a public hearing for March 14, 2018 and mailing notices to all affected property owners advising them of the proposed fee, the hearing time, date and place, their right to protest that fee, and other information about the fee and the services it would finance. The notices, which were mailed on January 26, 2018, also informed property owners of four community meetings scheduled to present the background of the Town’s storm drainage needs, how the fees were structured, and a preview of the ballot process the property owners could expect. The meetings were attended by approximately 40 people. Additionally, the Town has presented information on the Stormwater Fee at the request of the Moraga School District Governing Board Meeting, the Kiwanis Club of Moraga Valley, and the Rotary Club of Moraga.

Discussion

The next steps in the Stormwater Fee process include conducting a public hearing and considering a majority protest, introducing of a Stormwater Fee Ordinance (Attachment A), and authorizing a ballot proceeding. The public hearing is the culmination of a protest period that was initiated by the mailing of notices on January 26, 2018. One written notice per parcel, filed by an owner or tenant of the parcel, shall be counted in calculating a majority protest pursuant to State law. Protests may be filed prior to or during the public hearing. The Mayor will announce a time during the hearing to close the public comment and protest period, at which time the Town Clerk will be asked for a tally of protests. If written protests against the proposed Stormwater Fee are presented by a majority of owners of the parcels subject to the Fee, the Town shall not impose the Fee. If a majority protest is not achieved, the Council may proceed to the second step.

The second step would include introduction of the Stormwater Fee Ordinance. Based on the Fee Report, a Stormwater Fee Ordinance was drafted that includes all the elements identified in the Fee Report and provides additional structure and details. The Stormwater Fee structure includes the following:
1. **Stormwater Services, Revenue Requirements, and Rates.** The average single-family residence (10,000 to 22,000 SF parcels) will be assessed at a rate of $120.38 per year, with varying rates for other property types. The rates are calculated to:

   a. Address first the high-priority stormwater capital improvement projects identified in the 2015 Storm Drain Master Plan.
   b. Implement an adequate operations and maintenance program to routinely inspect the storm drain system and conduct minor repairs to extend the life of storm drain infrastructure, especially to stabilize conditions for moderate and low-priority projects.
   c. Comply with National Pollutant Discharge Elimination System (NPDES) cleanwater requirements by keeping pollutants out of the drinking water system because Moraga Creek flows into Upper San Leandro Reservoir, which EBMUD treats and distributes to the Bay Area.

These elements form the basis for the annual revenue requirement of $787,500 for Fiscal Year 2018-19 (the first year for which revenues would be collected).

2. **Reduced Rate for Properties with Private Storm Drains.** Approximately 22% of the pipes mapped in the 2015 Storm Drain Master Plan were on private properties and are funded through a home owners’ association. In recognition of the parallel financial obligation for those property owners, the Stormwater Fee is reduced by 17.7% for those properties.

3. **Annual Cost Indexing.** The Stormwater Fee includes an annual adjustment for inflation equal to the Bay Area Consumer Price Index (CPI). Although it is capped at 3% for any year, any excess CPI can be held in “reserve” to be used in future years when the CPI is less than 3%.

4. **Appeals Procedure.** 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. The property owner could then appeal the Public Works Director’s decision to the Town Manager, and the Town Manager’s decision would be final.

5. **Fiscal Controls and Accountability.** The Stormwater Fees would be subject to certain fiscal controls and accountability with the following key features:

   a. The Stormwater Fee will be collected on the Contra Costa County tax roll in the same manner as the property taxes instead of creating, administering, and funding a new bill collection process. This is common as illustrated by the sewer bills that Moragans pay on their tax bill.
   b. All proceeds from the Stormwater Fee would be required to be deposited into a separate account or fund.
   c. Annual audits shall be performed. It is the intention of these provisions that the separate account or fund be identified in the Town’s annual audit process.
d. A Citizens’ Oversight committee would review and report annually on the receipt of revenue and expenditure of funds from the Stormwater Fee Fund.

e. Pursuant to Article XIIIID of the California Constitution, all proceeds from the Stormwater Fee can only be used for Stormwater services as defined in the Fee Report and the Ordinance.

One important implication of the annual cost indexing is that the Town Council must take affirmative action each year to consider the CPI for that year and set the rates for the coming year. That, along with the activity of the citizen oversight committee, will afford the Council and community an opportunity each year to assess the status of the storm drainage system, the improvements and services needed, and take public comment on setting the course for another year.

Finally, 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 XIIIID of the Constitution, Section 53755.5 of the Government Code, and Town of Moraga Resolution No. 5-2018. The ballot proceeding for a property-related fee is unlike most ballot proceedings in that it is conducted solely by the Town (the County elections officials are not involved), and the ballot materials may look different than what most voters are accustomed to receiving. The ballot packet will include a ballot, a ballot information guide and a postage-paid return envelope. The Ballot will include the question with a place to indicate a “Yes” or “No” vote, a place for a signature, as well as some basic instructions on how to fill out the ballot and return it. The ballot information guide contains information similar to the notice of public hearing describing the background of the Town’s storm drainage needs, the rates and the projects and services to be funded. It also contains information about the ballot process.

**Next Steps**

Assuming a majority protest is not achieved, and the Council introduces the Stormwater Fee Ordinance, the next step would be to print and mail the ballots to all affected property owners. Attached are drafts of the ballot, information guide, and outgoing and return envelopes (Attachment B). This process usually takes approximately two weeks, so ballots would be arriving in mail boxes in late March or early April. Ballots are due back to the Town Clerk’s office by 5:00 p.m. on May 15, 2018 (postmarks will not be accepted).

Ballots will not be opened until the tabulation process commences at 9:00 a.m. on May 16, 2018 in the Moraga Town Offices at 329 Rheem Boulevard, Walnut Conference Room. The tabulation process will be open to the public and will be done under the direction of the Town Clerk. Once the tabulation is complete, the results will be brought before the Council for certification. If the measure passes, the Council may at that time take action to implement the fees beginning July 1, 2018.

**Fiscal Impact**
The master plan identifies $9 million of capital needs that require immediate attention and financing. The establishment of the Storm Water Program, stormwater fee and management plan would create a self-supporting storm water enterprise, much like a water or sewer utility, that will have the capacity and sole purpose to repair and/or maintain our storm water infrastructure. An established Storm Water maintenance program, with a dedicated revenue source would improve the fiscal sustainability of the Town’s General Fund by limiting the General Fund’s exposure to surprise emergency funding needs and providing the opportunity for a greater focus on basic general fund supported service delivery such as public Safety, Parks and Recreation, Public Works, Planning, Community Development and other community infrastructure needs. Establishment of this Stormwater Fee could ultimately produce $787,500 in annual revenue and a similar amount of expenditures for the projects and services described in the Fee Report. Passage of this stormwater fee would have a positive impact on the General Fund by protecting the fund from stormwater emergencies and related operational costs.

 Alternatives

 1. Conduct a public hearing and, lacking a majority protest, introduce the accompanying ordinance, and direct staff to proceed to the ballot proceeding; or
 2. Direct staff to make minor modifications to the Stormwater Fee Ordinance; or
 3. Provide alternate direction to staff.

 Recommendation

 Conduct a public hearing and receive written protests for the proposed Stormwater Fee, waive first reading and introduce an Ordinance adding Chapter 3.24, Stormwater Fee, to Title 3 of the Town or Moraga Municipal Code, and direct the Town Clerk to submit the Stormwater Fee to the affected property owners in a mail ballot proceeding in accordance with Article XIID of the State Constitution, Section 53755.5 of the Government Code and Town of Moraga Resolution No. 5-2018.

 Report reviewed by:  
 James Holgersson, Interim Town Manager  
 Michelle Kenyon, Town Attorney

 Attachments:
  
 A. Draft Stormwater Fee Ordinance
ATTACHMENT A

Draft Stormwater Fee Ordinance
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 XIIID 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 XIIID 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 XIIID 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 XIIID 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 XIIID 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 XIIID 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 XIIID 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

Pursuant to Article XIIIID 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 XIIIID, Section 6 (Proposition 218) has been obtained.


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.


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

<table>
<thead>
<tr>
<th>Category</th>
<th>Parcel Size (sq. ft.)</th>
<th>Annual Fee per Parcel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small</td>
<td>Under 10,000</td>
<td>$82.13</td>
</tr>
<tr>
<td>Category</td>
<td>Parcel Size (sq. ft.)</td>
<td>Annual Fee per Parcel</td>
</tr>
<tr>
<td>---------------</td>
<td>-----------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>Medium</td>
<td>10,000 to 22,000</td>
<td>$120.38</td>
</tr>
<tr>
<td>Large</td>
<td>22,000 to 31,000</td>
<td>$145.48</td>
</tr>
<tr>
<td>Extra Large</td>
<td>Over 31,000</td>
<td>$150.31</td>
</tr>
<tr>
<td>Condominium</td>
<td>Na</td>
<td>$82.13</td>
</tr>
</tbody>
</table>

B. Single-Family Residential Class - Zone B

<table>
<thead>
<tr>
<th>Category</th>
<th>Parcel Size (sq. ft.)</th>
<th>Annual Fee per Parcel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Small</td>
<td>Under 10,000</td>
<td>$67.59</td>
</tr>
<tr>
<td>Medium</td>
<td>10,000 to 22,000</td>
<td>$99.07</td>
</tr>
<tr>
<td>Large</td>
<td>22,000 to 31,000</td>
<td>$119.73</td>
</tr>
<tr>
<td>Extra Large</td>
<td>Over 31,000</td>
<td>$123.70</td>
</tr>
<tr>
<td>Condominium</td>
<td>n/a</td>
<td>$67.59</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Category</th>
<th>Annual Fee per Acre of Parcel Size³</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multi-Family (Apartments 5 or more units)</td>
<td>$715.76</td>
</tr>
<tr>
<td>Commercial / Retail / Industrial</td>
<td>$940.88</td>
</tr>
<tr>
<td>Office</td>
<td>$685.94</td>
</tr>
<tr>
<td>Institutional / School / Church</td>
<td>$409.31</td>
</tr>
<tr>
<td>Park / Golf Course</td>
<td>$29.91</td>
</tr>
<tr>
<td>Vacant (developed)</td>
<td>$50.22</td>
</tr>
</tbody>
</table>
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.


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.

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.
ATTACHMENT B

Draft Stormwater Ballot Guide, Ballot Mock-Up, Outgoing Envelope, and Return Envelope
Method of Voting
To complete the enclosed ballot, mark the oval next to either “Yes” or “No”. Each ballot will count for as many votes as there are parcels listed on the ballot. Then sign the ballot, place it in the provided postage-paid return envelope and mail or hand deliver it to:

City Clerk’s Office
Town of Moraga
329 Rheem Boulevard
Moraga, CA 94556

Only official ballots that are signed and marked with the property owner’s support or opposition, and are received before 5:00 pm on Tuesday, May 15, 2018, will be counted. The fee shall not be imposed if votes submitted in opposition of the fee exceed the votes submitted in favor of the fee. If a majority of votes returned are in support, the fee may be levied beginning in fiscal year 2018-19 and continuing in future years, as authorized by the Town Council, to fund stormwater capital improvement projects, maintenance and operations and clean water and pollution control services.

If you lose your ballot, require a replacement ballot, or want to change your vote, call (925) 888-7026 for another ballot. See the enclosed ballot for additional instructions.

Ballot Tabulation
Ballots will be tabulated under the direction of the Town Clerk at a location accessible to the public. The tabulation will commence at 9:00 am on May 16, 2018 in the Walnut Conference Room in the Town Hall at 329 Rheem Blvd. and will commence at 9:00 am on May 16, 2018 in the Walnut Conference Room in the Town Hall at 329 Rheem Blvd. and continue between the hours of 9:00 am and 5:00 pm until the tabulation is complete. The tabulation is not expected to take more than one or two days. The tabulation may be performed by technological methods including, but not limited to, punch card or optically readable (bar-coded) ballots.

Public Accountability Safeguards
If approved by property owners, the proposed Stormwater Fee revenues will be collected and deposited into a separate account that can only be used for specified storm drainage services. The funds cannot be used for other purposes. The revenues and expenditures will be regularly audited by an independent auditor and the results presented annually at a public meeting.

In addition, the Town will appoint a citizen’s oversight committee tasked with reviewing the use of Stormwater Funds.

If a majority of votes returned are in support, the fee may be levied beginning in fiscal year 2018-19 and continuing in future years, as authorized by the Town Council, to fund stormwater capital improvement projects, maintenance and operations and clean water and pollution control services.

Why Did You Receive This Ballot?
The Town of Moraga operates and maintains a storm drainage system comprised of an integrated system of storm drainage inlets, drain pipes, culverts, ditches and creeks. Much of the Town’s storm drainage system is made up of pipes buried beneath our local streets, including some pipes that run under private properties. The state-of-the-industry life expectancy of a storm drain system is approximately 60 years. The majority of the Town’s storm drain pipes were installed approximately 50 years ago, and, hence, the system is approaching the end of its expected life. Moreover, some of the drainage system is undersized, and has inadequate capacity, which can result in local flooding.

Moraga has experienced a number of catastrophic storm drainage system “sinkhole” failures in the past several years which have disrupted the drainage system, caused traffic problems and negatively impacted the Town’s financial situation. In 2014, the Town engaged engineering consultant Schaaf and Wheeler, Inc. to evaluate the condition and capacity of the Town’s existing storm drainage infrastructure and develop a plan to address inadequacies. By resolution in 2015, the Town adopted the Moraga Storm Drain Master Plan (“SDMP”) which recommended $26 million in capital projects - with approximately $9 million identified as High Priority. The Plan also recommends an operations and maintenance program to help the Town avoid major failures and extend the life of many pipes. Based on these findings the Town is proposing a stormwater fee.

What This Fee Would Provide
If approved by property owners, the proposed Storm Drainage fee will provide funding for:

> **Capital Improvement Program - High Priority Projects**
> The 2015 Moraga Storm Drain Master Plan recommends 11 major High Priority projects, costing $378,100 annually for 30 years, in various parts of the Town that are needed to address deficiencies in three main categories: 1.) Inadequate pipe capacity (i.e., pipes too small to convey water generated by a major storm); 2.) Poor Condition (i.e., badly deteriorated pipes at risk of additional catastrophic failures) and 3.) Undersized Creek Culverts (i.e., culverts are too small to adequately allow major storm flows to pass under roadways).

> **Operations and Maintenance**
> The Storm Drain Master Plan specifies an annual program of performing repairs and replacements of system elements, system cleaning and inspections. This O&M program will ensure the drainage system provides the highest level of protection against flooding and pipeline failures. The estimated cost of the O&M program is $254,400 annually.

> **Ensure Safe, Clean and Healthy Water**
> The Town is committed to ensure that all the stormwater runoff meets strict State and Federal clean water quality standards. This activity is budgeted at $155,000, and will help ensure that the East Bay drinking water sources remain clean and healthy.

Please see the table and map on the following page for additional details.

A link to the 2015 Storm Drain Master Plan can be found on the [www.moraga.ca.us/StormDrainFunding](http://www.moraga.ca.us/StormDrainFunding) web page.

The Town’s Goals for our Local Infrastructure

- Invest in our local infrastructure
- Prevent local flooding and ensure safe, clean and healthy water
- Engage the public to address our Town’s critical issues in a substantive, transparent manner

All Ballots Must Be Received Before 5:00 pm May 15, 2018, To Be Counted

Please Complete Your Ballot and Mail It Back Promptly

All Ballots Must Be Received Before 5:00 pm May 15, 2018, To Be Counted
Official Ballot Information Guide
Town of Moraga Stormwater Fee

How Much is the Proposed Fee?
The total proposed fee for your property for fiscal year 2018-19 is printed on the Official Ballot included with this notice and information guide. The annual fee for a single-family home on a medium-sized parcel between 10,000 sqft (.23 acre) and 22,000 sqft (1/2 acre), which is the most common fee, would be $120.38. The total anticipated revenue to be collected by the proposed Stormwater Fee in Fiscal Year 2018-19 is $787,100. The entire schedule of proposed Stormwater Fee rates is shown in the table below.

Will the Fee Increase in the Future?
In order to offset the effects of inflation on labor and material costs, the proposed fee is subject to an annual increase based on the change in the Consumer Price Index (“CPI”), not to exceed 3 percent. The annual adjustment would be based on the US Department of Labor’s Consumer Price Index for Northern California (San Francisco Bay Area).

How was the Fee Determined?
Moraga provides a service directly to all properties in the Town by collecting, conveying and managing all rainfall (e.g., stormwater) and urban runoff. The proposed Stormwater Fee is based on the quantity of water runoff generated by each parcel or category of parcel, which is proportional to the impervious surfaces (such as roof tops and pavement) found on the property or category of parcel. In some cases, storm drainage services are also provided by homeowners’ associations, and a discount is provided in the Town’s fees in those cases (Zone B). A copy of the Stormwater Fee Ordinance and the Stormwater Fee Report can be found on the Town’s website at www.moraga.ca.us/StormDrainFunding.

<table>
<thead>
<tr>
<th>Land Use Category</th>
<th>Proposed Fee FY 2018-19</th>
<th>Unit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-Family Residential* - Zone A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Small (10,000 sqft to 22,000 sqft)</td>
<td>$82.13</td>
<td>parcel</td>
</tr>
<tr>
<td>Medium (22,001 sqft to 35,000 sqft)</td>
<td>$120.38</td>
<td>parcel</td>
</tr>
<tr>
<td>Large (35,001 sqft to 50,000 sqft)</td>
<td>$145.48</td>
<td>parcel</td>
</tr>
<tr>
<td>Extra Large (over 50,000 sqft)</td>
<td>$150.31</td>
<td>parcel</td>
</tr>
<tr>
<td>Condensed Residences</td>
<td>$82.13</td>
<td>parcel</td>
</tr>
<tr>
<td>Single-Family Residential* - Zone B (Medium)**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Small (10,000 sqft to 22,000 sqft)</td>
<td>$67.59</td>
<td>parcel</td>
</tr>
<tr>
<td>Medium (22,001 sqft to 35,000 sqft)</td>
<td>$99.07</td>
<td>parcel</td>
</tr>
<tr>
<td>Large (35,001 sqft to 50,000 sqft)</td>
<td>$119.73</td>
<td>parcel</td>
</tr>
<tr>
<td>Extra Large (over 50,000 sqft)</td>
<td>$123.70</td>
<td>parcel</td>
</tr>
<tr>
<td>Condensed Residences</td>
<td>$67.59</td>
<td>parcel</td>
</tr>
<tr>
<td>Non-Single-Family Residential</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Multi-Family Residential</td>
<td>$715.76</td>
<td>acre</td>
</tr>
<tr>
<td>Commercial / Retail / Industrial</td>
<td>$940.88</td>
<td>acre</td>
</tr>
<tr>
<td>Office</td>
<td>$885.94</td>
<td>acre</td>
</tr>
<tr>
<td>Institutional / School / Church</td>
<td>$409.31</td>
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<tr>
<td>Park / Golf Course</td>
<td>$29.93</td>
<td>acre</td>
</tr>
<tr>
<td>Vacant (Developed)</td>
<td>$56.22</td>
<td>acre</td>
</tr>
<tr>
<td>Open Space / Agricultural</td>
<td></td>
<td></td>
</tr>
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</table>

High Priority Capital improvement Projects and Costs

<table>
<thead>
<tr>
<th>Category and Name</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>C01</td>
<td>Paso Grande Project</td>
<td>Replace 1,634 feet of undersized pipe</td>
</tr>
<tr>
<td>C02</td>
<td>School Street</td>
<td>Install 1,562 feet of pipe to re-route water flowing on School St</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Category Subtotal</td>
</tr>
<tr>
<td>S106</td>
<td>Moraga Rd</td>
<td>Replace 108 ft of pipe</td>
</tr>
<tr>
<td>S11</td>
<td>Bolleter Canyon Rd</td>
<td>Replace 130 ft of pipe</td>
</tr>
<tr>
<td>S18</td>
<td>Rheem Blvd</td>
<td>Replace 399 ft of pipe</td>
</tr>
<tr>
<td>S21</td>
<td>Canyon Rd</td>
<td>Replace 114 ft of pipe</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Category Subtotal</td>
</tr>
<tr>
<td></td>
<td></td>
<td>20 locations</td>
</tr>
<tr>
<td>Creek Culvert</td>
<td>Increase size of existing culvert to greatly reduce the risk of creek flooding</td>
<td></td>
</tr>
<tr>
<td>CC01</td>
<td>Moraga Creek</td>
<td>Increase size from 22 x 8 to 22 x 10</td>
</tr>
<tr>
<td>CC02</td>
<td>South Moraga Creek</td>
<td>Increase size from 6.5 ft x 8 ft</td>
</tr>
<tr>
<td>CC03</td>
<td>Laguna Creek</td>
<td>Increase size from 3.5 ft x 7 ft</td>
</tr>
<tr>
<td>CC04</td>
<td>Laguna Creek</td>
<td>Increase size from 8 ft x 8 ft x 10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Category Subtotal</td>
</tr>
<tr>
<td></td>
<td></td>
<td>TOTAL COST</td>
</tr>
</tbody>
</table>

How Long will the Fee last?
There is no pre-determined end date for this fee. However, the Council must take action each year to review the Stormwater needs and the CPI before setting the rates for the following year.

Properties Subject to the Fee
All properties in the Town are subject to the fee except for parcels that do not include impervious surfaces (e.g., open space, agricultural, and undeveloped vacant).

Visit www.moraga.ca.us/StormDrainFunding For More Information
All Ballots Must Be Received Before 5:00 pm May 15, 2018 To Be Counted
The proposed fee amount is printed on the back of this ballot, which will count for as many votes as there are parcels listed. A full schedule of rates is included in the Ballot Guide.

An explanation of who may complete the ballot on behalf of the recorded property owner and additional instructions are provided on the other side of this Official Property Owner Ballot. To be tabulated, property owner ballots MUST be received by Tuesday, May 15, 2018 at 5:00 p.m. at the Town Clerk’s Office, 329 Rheem Boulevard, Moraga, CA 94556. The Ballots will be counted beginning 9:00 a.m. May 16, 2018 in the Walnut Conference Room at the Clerk’s Office.

You may return your fee ballot in the following ways: 1) Mail your fee ballot to the address shown on the enclosed return envelope so that it is received on or before May 15, 2018 by 5:00 p.m. 2) Deliver it in person to the Town Clerk’s Office at 329 Rheem Blvd, Moraga, CA 94556 by May 15, 2018 by 5:00 p.m.

FOLD SO THAT THIS SIDE IS ON THE INSIDE OF THE FOLD BEFORE PLACING THIS BALLOT IN THE RETURN ENVELOPE
Who May Complete This Official Property Owner Ballot

1. If the property is owned by an individual, the individual may sign.
2. If a property is held by more than one person, any one may sign for all.
3. If the property is owned by a corporation, the property owner ballot may be signed for the corporation by an officer or officers authorized to make contracts or by resolution of the corporation’s Board of Directors.
4. If the property is owned by another legal entity, the property owner ballot may be signed by any person authorized by law to make contracts for the entity.
5. If the property is owned by a public agency, the property owner ballot may be signed by any person authorized by law to make contracts for the agency or by resolution of the agency’s Governing Board.

Steps for Completing the Official Property Owner Ballot

1. Verify that the owner name, address, and parcel number(s) listed on the ballot are correct. If they are not correct, please call (925) 888-7026.
2. Fill in or clearly mark the oval next to the word “YES” or “NO” to approve or disapprove the proposed fee. You may use a pencil or pen.
3. Sign and date the property owner ballot. Only official property owner ballots which are signed and marked with the property owner’s support or opposition will be counted. After marking your vote, simply FOLD the property owner ballot so that your vote is on the inside of the fold. Then place the property owner ballot in the return envelope provided. No postage is necessary to mail back your property owner ballot.
4. If you make a mistake in completing your ballot or wish to change or withdraw your ballot, please call (925) 888-7026. (See enclosed notice for further information)

<table>
<thead>
<tr>
<th>Parcel</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>258-123-456-1</td>
<td>$120.38</td>
</tr>
<tr>
<td>258-123-457-9</td>
<td>$120.38</td>
</tr>
<tr>
<td>258-123-458-0</td>
<td>$82.13</td>
</tr>
<tr>
<td>258-123-459-3</td>
<td>$588.76</td>
</tr>
</tbody>
</table>

Please see other side to complete this property owner ballot.

DOE JOHN AND JANE
123 ELM ST
MORAGA, CA 94556
OFFICIAL BALLOT ENCLOSED

FOR PROPERTY OWNERS IN THE TOWN OF MORAGA
FOR A PROPOSED STORMWATER FEE

OFFICIAL MAIL

OFFICIAL PROPERTY OWNER BALLOT ENCLOSED

PLEASE OPEN IMMEDIATELY

MUST BE RECEIVED ON OR BEFORE MAY 15, 2018
OFFICIAL MAIL
TOWN OF MORAGA
STORMWATER FEE
PROPERTY OWNER BALLOT

Do Not Open Before May 15, 2018

BUSINESS REPLY MAIL
FIRST-CLASS MAIL PERMIT NO. 101 FAIRFIELD CA

POSTAGE WILL BE PAID BY ADDRESSEE

TOWN CLERK’S OFFICE
TOWN OF MORAGA
329 RHEEM BOULEVARD
MORAGA CA 94556-3109
Please complete, sign and return your ballot promptly. Ballots must be received on or before May 15, 2018.