

RESOLUTION NO. 4-2009

RESOLUTION OF THE CITY OF BURLINGAME CALLING A MAIL BALLOT ELECTION FOR MAY 5, 2009, FOR THE SUBMITTAL OF A PROPOSED ANNUAL STORM DRAINAGE FEE AND ADOPTING PROCEDURES FOR THE CONDUCT OF THE ELECTION

RESOLVED by the CITY COUNCIL OF THE CITY OF BURLINGAME that:

WHEREAS, Article XIIIID of the California Constitution (Proposition 218) requires the City to follow certain procedural and substantive requirements relating to the imposition of property-related fees and charges, such as the proposed Storm Drainage Fee; and

WHEREAS, the City has determined that the Fee is a property-related fee, subject to Proposition 218; and

WHEREAS, the City Council has held the required protest hearing and has not received a majority protest; and

WHEREAS, pursuant to ordinance the City Council has authorized the use of a mail ballot election for any election or assessment ballot proceeding required or authorized by Article XIIIIC or XIIIID of the California Constitution;

WHEREAS, in its current condition Burlingame's 80-year old storm drain system presents pollution to San Francisco Bay from polluted runoff and flooding; and

WHEREAS, the City does not currently have the funds needed for storm drain improvements, is not able to keep pace with regular maintenance needs, and has had to use one time fund transfers to address a few of the most critical repairs each year; and

WHEREAS, it will never be any less expensive to repair the City's storm drain system, and our needs will only become more severe and the repairs more expensive to complete; and

WHEREAS, during these economic times, it is more important than ever to improve our storm drains to help protect property values and help reduce insurance rates; and

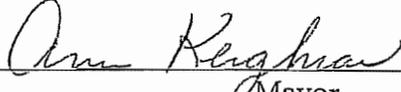
WHEREAS, a local storm drain fee would directly address Burlingame's storm drain needs and ensure local control over all funds because the money will remain stay in our community and cannot be taken by the State;

NOW, THEREFORE, IT IS HEREBY DETERMINED and ORDERED that:

1. The City Council has:

- (a) reviewed and confirmed the written report containing a list of all parcels to which the Fee is proposed to apply and the Fee for each property;

9. The City Council finds that this activity is not a project and therefore is not subject to the California Environmental Quality Act pursuant to CEQA Guidelines Section 15060(c)(3).



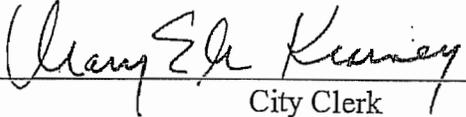
Mayor

I, MARY ELLEN KEARNEY, City Clerk of the City of Burlingame, do hereby certify that the foregoing resolution was adopted at a regular meeting of the City Council held on the 20th day of January, 2009, by the following vote:

AYES: COUNCILMEMBERS: **BAYLOCK, DEAL, KEIGHRAN, NAGEL, O'MAHONY**

NOES: COUNCILMEMBERS: **NONE**

ABSENT: COUNCILMEMBERS: **NONE**



City Clerk

4. Ballots shall be mailed to the record owners on the master list by depositing the ballots in the U.S. Mail, first class, postage prepaid, not before the twenty-ninth day nor later than the tenth day prior to the date set for the election.
5. The ballot shall be nonforwardable. Any ballot that is returned to the City Clerk shall not be forwarded by the City Clerk.
6. The City Clerk shall certify the proper mailing of ballots by an affidavit under penalty of perjury, which shall constitute conclusive proof of mailing in the absence of fraud.
7. Whenever the City Clerk is required to mail a ballot to any address outside the territorial limits of the United States, the City Clerk shall mail the ballot by airmail and, if under any law of the United States, election ballots may be mailed without the payment of postage, the City Clerk shall so mail the ballot.

C. Eligibility to Vote

1. The master list shall be presumptive evidence of ownership of an identified parcel for voting purposes.
2. If the owner of any identified parcel is not shown on the master list, such owner may receive and vote a ballot for such parcel by filing with the City Clerk evidence of ownership satisfactory to the City Attorney. Any such evidence must be received by the City Clerk by 8:00 P.M. on May 5, 2009. The ballot provided to such owner shall be marked to identify it as a duplicate ballot.
3. In order to be counted, a ballot must be signed by the owner of an identified parcel or the authorized representative of the owner as attested to pursuant to the declaration under penalty of perjury on the ballot.
4. In the event an identified parcel is owned by multiple owners or is owned by a corporation, partnership, as community property, in joint tenancy, or as a tenancy in common, only one vote will be counted for each identified parcel. In the event that multiple owners are shown on the assessment roll and multiple ballots are mailed, each returned ballot shall be proportionate to the ownership which shall be presumed to be equal ownership percentages absent other evidence submitted to the City Clerk. In the event of multiple ownership that is not shown on the assessment roll, multiple owners may request duplicate ballots from the City Clerk upon the submission of evidence of ownership; votes will be tabulated as stated in the preceding sentence. In no event shall the votes of multiple owners be counted to total more than one vote per parcel.

D. Form of Ballots

1. The form of the ballot shall be as follows:

envelopes of the unopened ballots in the Return Box and transfer the unopened, date-stamped envelopes to the Lock Box.

5. No ballot shall be removed from its return envelope before 8:01 p.m. on May 5, 2009.
6. Only ballots, including duplicate ballots that are received by the City Clerk by 8:00 p.m. on May 5, 2009 will be counted. Regardless of when the mailed ballot is postmarked, it must be received by the City Clerk by 8:00 p.m. on May 5, 2009 to be counted.

F. Lost, Duplicate, Withdrawn Ballots and Other Special Circumstances

1. The City Clerk shall, upon request by an eligible voter that is part of a language minority group as that term is defined by the Voting Rights Act of 1965, provide a ballot and ballot materials translated in that person's primary language. In addition, the City Clerk shall, upon request by an eligible voter, take such affirmative steps as are necessary to facilitate voting by qualified individuals with disabilities.
2. The City Clerk shall only issue replacement ballots in the seven days prior to ballot proceeding day to voters who pick up ballots in person at the Clerk's office; no replacement ballots shall be mailed during the seven day period prior to ballot proceeding day.
3. The City Clerk shall keep a record of all ballots sent and received and shall verify, prior to counting the ballots, that only one vote has been cast for each parcel to which the proposed fee increase will apply. If the Clerk determines that a voter has attempted to vote twice, or that more than one vote has been attempted for the same parcel, both ballots shall be void.
4. If a ballot is lost, destroyed or never received, the City Clerk will mail or otherwise provide a duplicate ballot to the owner upon receipt of a request in writing from the owner, satisfactory to the City Clerk, received by the City Clerk prior to 8:00 p.m. on May 5, 2009. The City Clerk or the City Clerk's designee will mark the duplicate ballot to identify it as a duplicate ballot.
5. After submitting a ballot, the person who signed the ballot may request the City Clerk to withdraw the ballot by submitting a written statement to the City Clerk, satisfactory to the City Clerk, directing the City Clerk to withdraw the ballot, provided the request is received by the City Clerk prior to 8:00 p.m. on May 5, 2009. Only one request for withdrawal per parcel will be honored by the City Clerk.
6. A person who has withdrawn a ballot may request a duplicate ballot from the City Clerk. The City Clerk or the City Clerk's designee will mark the duplicate ballot to identify it as a duplicate ballot.
7. When ballots are tabulated, the City Clerk will segregate withdrawn ballots from all other returned ballots. The City Clerk will retain all withdrawn ballots along with the written request for withdrawal and will indicate on the face of such withdrawn ballots that they have been withdrawn. Withdrawn ballots will not be counted.

1. Not later than 30 days after the ballot proceeding, the City Clerk shall transmit to the Council a written notification as to the results of the ballot proceeding.
2. The City Council shall adopt a resolution declaring the results of the election on or before the fourth Friday after the election.
3. If the ballot proceeding results indicate that a majority of the voters voting upon the fee increase voted in favor of the increase, the City Council may adopt the fee increase.

(1) An annual storm drainage fee is levied upon each parcel of property that drains into the City's storm drain system. The rate per square foot of impervious area shall be determined by Resolution of the City Council upon consideration of a report of the City Engineer but in no event shall the rate exceed that authorized by required voter approval.

(2) The amount of the storm drainage fee for each individual parcel shall be computed as follows: Parcel square footage shall be multiplied by the percentage of impervious area on the parcel. The resulting number shall be multiplied by the per square foot impervious area rate in order to calculate the dollar fee for the fiscal year. Said rate shall not exceed the maximum rate established by the voters, i.e. 4.192 cents per square foot of impervious area. When the impervious area of a parcel is increased or decreased, the annual fee for the parcel shall be adjusted for the fiscal year next succeeding the change in impervious area.

(3) The term impervious area shall have the following meaning: the non-natural state or surface of a parcel, viewed and measured in plan, which acts as a barrier that prevents the majority of storm water from infiltrating into the ground below, including as examples but not limited to concrete, asphalt pavement or concrete paver walkways, patios or driveways; playing surfaces such as tennis courts or basketball courts; pools and pool decks; roof tops; tool sheds; carports; and/or patio covers.

(3) The fee for each condominium shall be based on the individual condominium's percentage of ownership interest as shown on the assessor's roll; and if not shown are deemed to be equal ownership percentages, unless proof is submitted otherwise.

(4) Vacant, unimproved parcels are still in their natural states and do not contribute any additional runoff to burden the City's storm drain system. Therefore, the storm drain user fee is not applicable to these parcels. When a vacant parcel that is not subject to this ordinance adds impervious area, it shall be required to pay a storm drainage fee based on its impervious area.

(5) Streets and highways, channels, and canals are exempt from the storm drainage fee as part of the storm system.

4.30.030 Setting the Fee.

(1) Commencing with fiscal year 2010-2011, the City Council, following a public hearing, shall determine the storm drainage fee. In no event shall the square footage rate for impervious area be increased beyond that rate approved by a majority vote of the property owners subject to the storm drainage fee without further approval by a majority vote of the property owners subject to the storm drainage fee; provided, however, that, without approval by a majority vote of the property owners subject to the storm drainage fee, the maximum per square foot rate for impervious area, commencing Fiscal Year 2010-2011, may be increased by an amount equal to the change in the Consumer Price Index for all Urban Consumers for the area including San Mateo County (the "CPI"),

appeal must be made in writing and filed with the City Clerk not later than ten calendar days from the date of mailing of the Public Works Department decision. The City Clerk shall fix a time and place for hearing the appeal and shall give notice in writing to the appellant. The City Council's determination on the appeal shall be final.

(4) If an appeal is granted by Public Works Department or the City Council that does not permit inclusion for the following fiscal year's property tax roll submittal, a reimbursement will be provided to the property owner by the City.

(5) Any action brought against the City pursuant to this section shall be subject to the provisions of Government Code Sections 945.6 and 946. Compliance with these provisions shall be a prerequisite to a suit thereon.

(6) The City Council may establish appeal fees.

(7) To appeal the fee for Fiscal Year 2009-2010 a property owner must file an appeal not later than 20 days after the City Council certifies the election results.

4.30.060 Collection of the Fee.

Commencing with fiscal year 2009-2010, the storm drainage fee shall be collected on the San Mateo 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 City; provided, however, in any year the City Council may, by resolution, provide for an alternative procedure for collection of the storm drainage fee. For any fiscal year in which the storm drainage fee is authorized but not collected on the tax roll, the City may collect all or a portion of the fee for such year on the tax roll in the following fiscal year or years.

4.30.070 Deposit In The Special Storm Drainage Fund.

Upon receipt of moneys representing storm drainage fees, the City Finance Director shall deposit the moneys in the City treasury to the storm drainage fund and the moneys shall be subject to annual independent audit and funds shall only be expended for storm drainage improvements approved by the City Council and for the operation and maintenance of those improvements.

4.30.080 Various Actions.

Without a vote of the property owners, in any year the City Council may do any and all of the following: (a) discontinue the storm drainage fee; (b) reduce the maximum square footage rate for impervious area; or (c) increase the rate per square foot up to or below the maximum voter-authorized square footage rate for impervious area if it has been previously set below such rate. In no event shall the City Council increase the rate in excess of the maximum square footage rate approved by a majority vote of the property