

**ORDINANCE NO. 1836**

**ORDINANCE OF THE CITY OF BURLINGAME  
ADDING CHAPTER 4.30 TO THE BURLINGAME MUNICIPAL CODE  
TO ADMINISTER A STORM DRAINAGE FEE**

The CITY COUNCIL of the CITY OF BURLINGAME ordains as follows:

Section 1. Pursuant to the authority set forth in Article XIID of the California Constitution, Government Code Sections 53750 and following, and Health and Safety Code Section 5471, as well as the general authority residing in the City to establish fees and charges, the City Council enacts an ordinance to establish an storm drainage fee in order to improve, upgrade, and maintain the storm drainage system, to further reduce pollutants flowing into Burlingame's creeks and San Francisco Bay, to prevent street flooding that impedes residents and police/fire emergency access, to improve local drainage, and better assure that the system serves the needs of Burlingame real property and the community.

Section 2. Chapter 4.30 is added to read as follows:

Chapter 4.30 STORM DRAINAGE FEE ORDINANCE

Section 4.30.010	Establishment of Storm Drainage Fee
Section 4.30.020	Computing the Fee
Section 4.30.030	Setting the Fee
Section 4.30.040	The Fee in Fiscal year 2009-2010
Section 4.30.050	Appeals by Property Owners
Section 4.30.060	Collection of the Fee
Section 4.30.070	Deposit Into Special Storm Drainage Fund
Section 4.30.080	Various Actions
Section 4.30.090	Expiration of Fee
Section 4.30.100	Citizens Oversight Committee
Section 4.30.110	Severability

4.30.010 Establishment of Storm Drainage Fee.

There is established a storm drainage fee for all parcels of real property in the City that drain into City storm drainage system, including, pipes, inlets, outlets, and natural drainage courses. No fee shall be imposed unless and until the voter approval required by Constitution Article XIII D, Section 6 (Proposition 218) has been obtained.

4.30.020 Computing the Fee.

(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"),

including all items as published by the U.S. Bureau of Labor Statistics as of March 1 of each year, not to exceed a maximum increase of two percent (2%) per year.

(2) The storm drainage 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 an increase in the amount of the impervious area of the subject parcel.

(3) In any year in which the City Council does not change the rate per square foot of impervious area, the previously adopted fee shall continue in full force and effect for the next fiscal year. Property owners whose storm drainage is increased/decreased as a result a change in impervious area have appeal rights under Section 4.30.040.

(4) The City Council shall not be required to enact an inflation increase in each year but may accumulate the inflationary increases and enact the cumulative amount.

#### 4.30.040 The Fee In Fiscal Year 2009-2010.

Subject to the appeal rights set forth below, the fee for fiscal year 2009-2010 shall be that parcel fee specified in the notice of protest hearing sent to the property owner.

#### 4.30.050 Appeals by Property Owners.

(1) If a property owner disagrees with the calculation of his or her storm drainage fee, the property owner may appeal the calculation within 20 calendar days after the property owner receives notice that the fee will be increased/decreased:

(a) The property owner must provide written documentation explaining the reason why the storm drain fee is not correct. This documentation must include:

- i. The name, telephone number, mailing address, and email address, if available, of the property owner;
- ii. The Assessor's Parcel Number (APN) of the property in question;
- iii. To-scale drawings of the property in question and the impervious areas located on it with accompanying calculations. The to-scale drawings shall include the square footage and labels for each impervious area (i.e., house, garage, driveway, patio, tool shed, carport, etc.).

(2) If additional documentation is required or insufficient documentation was submitted, the Public Works Department will notify the property owner.

(3) Once the Public Works Department has determined that sufficient documentation has been submitted, it will analyze the appeal. The property owner will be notified in writing within three weeks after sufficient documentation has been submitted whether or not the fee will be changed.

(a) Any new fee will be documented in the City's fee database.

(b) The property owner can appeal the decision of Public Works to the City Council if the amount remaining in dispute after the Public Works decision exceeds \$100 annually. The

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

owners subject to the storm drainage fee for impervious area without approval by a majority vote of the property owners subject to the storm drainage fee.

4.30.090 Expiration of Fee.

The storm drainage fee established by this Chapter shall remain in effect until 2038.

4.30.100 Citizens Oversight Committee.

The City Council shall appoint a citizens committee to assure that the fees are used for storm drain purposes. The committee shall also review and then provide advisory input to the Public Works Director in the preparation of the budget expenditures, and any amendments thereto, from the storm drainage fund, including project priorities.

4.30.110 Severability.

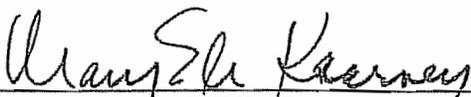
Should any provision or clause of this ordinance or application thereof to any person or circumstance be held invalid or unconstitutional that invalidity or unconstitutionality shall not affect other provisions or applications thereof which can be given effect without the invalid provision or application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

Section 3. This ordinance shall be published as required by law and shall take effect thirty days after adoption. 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 ordinance was introduced at a regular meeting of the City Council held on the 1st day of December, 2008, and was adopted on January 20, 2009 by the following vote:

AYES: COUNCILMEMBERS: **BAYLOCK, DEAL, KEIGHRAN, NAGEL, O'MAHONY**  
NOES: COUNCILMEMBERS: **NONE**  
ABSENT: COUNCILMEMBERS: **NONE**

  
CITY CLERK