

## 3E Utility Ordinance and Resolution

ORDINANCE NO. \_\_\_\_\_ C.S.

**ORDINANCE CREATING A NEW MONTEREY CITY CODE  
CHAPTER 31.5 ENTITLED "STORM WATER MANAGEMENT  
UTILITY" AND A NEW STORM AND SURFACE WATER  
MANAGEMENT ENTERPRISE AND UTILITY.**

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THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN AS FOLLOWS:

**SECTION 1.** The City Council is aware of the problems facing the City relating to storm and surface water runoff in terms of public safety, flooding, property damage, erosion, water quality, and potential pollution of Monterey Bay, and finds as follows:

1. All developed real property in the City contributes to increased storm and surface water runoff into the storm drainage system by virtue of increased runoff from impervious improvements to the property, thereby adding to the storm drainage problem; and
2. All developed real property in the City uses and benefits from an adequate, functioning, storm and surface drainage system; and
3. The City has studied the storm and surface water runoff and the existing and proposed storm and surface water management system and associated improvements, and determined that the storm and surface water management system should be operated, maintained, constructed, and reconstructed as an enterprise and utility of the city; and
4. The City currently maintains the ditches, pipes, culverts, streamways, and other portions of the storm and surface water management system through general fund expenditures; and
5. The City is faced with increased state and federal mandates to reduce deposits of toxic substances and pollutants into Monterey Bay from storm water runoff; and
6. A need exists for additional funding for the storm and surface water management program of the City, and creation of an enterprise and utility of the City for this purpose will best facilitate and control the funding and maintenance of this program.
7. The provisions of this Ordinance do not constitute a project under the provisions of the California Environmental Quality Act.

**SECTION 2.** A new Chapter 31.5 is hereby created to establish a Storm Water Management Utility to read as follows:

**"CHAPTER 31.5  
STORM WATER MANAGEMENT UTILITY**

- § 31.5-1 Utility created.
- § 31.5-2 Management of system.
- § 31.5-3 Fee; Collection.

**Sec. 31.5-1 Utility created.**

A Storm Water Management Utility is created as a City enterprise and utility to operate, maintain, and fund the City's storm and surface drainage system. The purpose of this utility includes, but is not limited to, permitting, maintenance, planning, design, construction, regulation, surveying, water quality testing, and inspection relating to storm and surface water management facilities.

**Sec. 31.5-2 Management of system.**

(a). The Public Works Director shall act as director of the Utility and shall be responsible for administering and managing the operations of the storm and surface water management system in accordance with the provisions of management programs adopted by the City Council.

(b). The City Council may adopt a storm and surface water management program or regulations to facilitate operation of the Utility.

**Sec. 31.5-3 Fees; Collection.**

(a). The City Council may establish a Storm Water Management Utility fee to be imposed upon users of the storm water drainage system, with the basis and amount of the fee to be established by Resolution. The purpose of the fee is to provide for the costs and expense of improving the water quality of storm and surface water control facilities, the costs of planning, permitting, designing, establishing, acquiring, developing, constructing, or improving storm and surface water management facilities or improvements, or to pay or secure the payment of any indebtedness incurred for such purpose.

(b). Collection. Any fee imposed pursuant to this Chapter shall be collected by the Finance Director in accordance with provisions set forth in the Resolution establishing the basis and amount of the fee. The fees may be collected directly from users, or the collection may be contracted to other public or private utilities for collection in conjunction with their utility bills."

SECTION 3. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 4. This ordinance shall be in full force and effect 30 days after its final passage and adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF  
MONTEREY this 6th day of July, 1993, by the following vote:

AYES: _____	COUNCILMEMBERS:
NOES: _____	COUNCILMEMBERS:
ABSENT: _____	COUNCILMEMBERS:

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APPROVED:

/s/ \_\_\_\_\_  
Mayor of said City

**ATTEST:**

/s/  
City Clerk thereof

**Date of Publication:**

**ATTACHMENT A**

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION AMENDING UTILITY FEE FOR STORM  
AND SURFACE WATER MANAGEMENT**

The Council of the City of Monterey does **RESOLVE** as follows:

**WHEREAS**, the City Council finds that the City is subject to damage from storm waters from existing water courses and drainage facilities such that existing storm and surface water drainage facilities require continuous operation, maintenance, renewal and replacement; and

**WHEREAS**, each owner and occupier of a lot or parcel of real property within the City, to the extent that such person and property makes use of, and is served by the City's storm and surface water runoff beyond that amount of storm and surface water which would occur if that real property were undeveloped in its natural state, should pay for the use and the availability for use of such facilities; and

**WHEREAS**, the City Council has adopted an ordinance which established the Storm and Surface Water Management System Enterprise and Utility; and

**WHEREAS**, the City Council intends to establish reasonable storm drainage fees computed on a basis of the use made of, and the need for, and the service provided by the storm drainage system of the City; and

**WHEREAS**, the purpose of the fees established herein is to provide a method for payment of all or any part of the cost and expense of improving the quality of storm and surface water runoff, maintaining and operating storm and surface water control facilities, all or any part of the cost and expense for of planning, designing, establishing, acquiring, developing, constructing and improving of such facilities, or to pay or secure the payment of all or any portion of any indebtedness incurred for such purpose.

**NOW, THEREFORE**, the Council of the City of Monterey does **RESOLVE** that this Resolution will establish rates and regulations for the storm and surface water management system as a City enterprise and utility. The Council hereby approves and adopts Utility Rate Schedule and Special Storm and Surface Water Management Utility Regulations attached hereto and incorporated herein by this reference to be effective as of January 1, 1996. Purposes for establishing such enterprise and utility include, but are not limited to, maintenance, planning, design, construction, regulation, surveying, and inspection relating to surface and storm water management facilities of the City.

**AND BE IT FURTHER RESOLVED** that, since larger floods from storm water runoff may occasionally occur which exceed the capacity of storm drainage facilities constructed and maintained by funds made available under this division, neither this Resolution nor the Rate

Schedule and Rule and Regulation adopted herewith imply that property liable for the fees and charges established herein will always be free from storm water flooding or flood damage. Nor shall this Resolution create a liability on the part of, or cause of action against, the City of any officer or employee thereof for any flood damage that may result from such storms or the runoff thereof. Nor does this Resolution purport to reduce the need or the necessity for obtaining flood insurance;

AND BE IT FURTHER RESOLVED that if any section, sentence, clause, or phrase of this resolution or the Rate and Regulation adopted herewith is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this resolution;

AND BE IT FURTHER RESOLVED that the Council finds that the provisions of the Resolution do not constitute a project under the provisions of the California Environmental Quality Act.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF Monterey this 17th day of October, 1997 by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

COUNCILMEMBERS:

COUNCILMEMBERS:

COUNCILMEMBERS:

Approved:

/s/Daniel Albert  
Mayor of said City

Attest:

/s/Cynthia Parham  
City Clerk thereof

**SPECIAL STORM AND SURFACE  
WATER MANAGEMENT UTILITY REGULATIONS**

**A. DEFINITIONS**

For the purposes of the attached Utility Rate Schedule and these Special Storm and Surface Water Management Utility Regulations, the following words and terms shall be defined as follows, unless the context in which they are used clearly indicates otherwise.

1. "Developed Parcel" shall mean any lot or parcel of land altered from its natural state by the construction, creation or addition of impervious area, except public streets and highways.
2. "Equivalent Residential Unit (ERU)" shall mean the basic unit for the computation of storm drainage fees. All single-family and duplex units are considered one (1) ERU based on data for City of Monterey, and are considered to have an average impervious area of 3,313 square feet. All other properties will have ERUs computed to the nearest 1/10 ERU using the following formula:

$$\text{No. of ERU} = \frac{\text{Impervious Area (Sq. Ft.)}}{3,313 \text{ Sq. Ft.}}$$

No property shall have an ERU less than 1.0.

3. "Impervious Area" shall mean any part of any developed parcel of land that has been modified by the action of persons to reduce the land's natural ability to absorb and hold rainfall. This includes any hard surface area which either prevents or retards the entry of water into the soil mantle as it entered under natural conditions pre-existent to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions pre-existent to development. By way of example, common impervious areas include, but are not limited to, roof tops, walkways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, or any cleared, graded, paved, graveled, or compacted surface or packed earthen materials, or

areas covered with structures of other surfaces which similarly impede the natural infiltration of surface water into the soil mantle.

4. "Non-Single-Family Residential Property" shall include all developed parcels zoned or used for multi-family, commercial, industrial retail, governmental, or other non-single family residential purposes and shall include all developed parcels in the City not defined as single-family residential property herein.
5. "Parcel" shall mean 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 a tax lot number by the Monterey County Assessor.
6. "Single-Family Residential Property" shall include all developed parcels with either one single-family detached housing units or one two-unit attached dwelling structures commonly known as "duplexes."
7. "Storm and Surface Water Control Facilities" shall mean all man-made structures or natural water courses facility improvement, development, property or interest therein, made, constructed or acquired for the conveyance of storm or surface water runoff for the purpose of improving the quality of, controlling, or protecting life or property from any storm, flood or surplus waters.
8. "Storm Drainage Facilities" shall mean the storm and surface water drainage systems comprised of storm water control facilities and any other natural features which store, control, treat and/or convey surface and storm water. The Storm Drainage Facilities shall include all natural and man-made elements used to convey storm water from the first point of impact with the surface of the earth to a suitable receiving body of water of location internal or external to the boundaries of the City. The storm drainage system includes all pipes, appurtenant features, culverts, streets, curbs, gutters, pumping stations,



channels, streams, ditches, wetlands, detention/retention basins, ponds, and other stormwater conveyance and treatment facilities whether public or private. Regardless of whether or not the City shall have recorded rights-of-way or easements, it is presumed that the City has a prescriptive right of access to all stormwater management facilities for operation, maintenance, rehabilitation, or replacement.

9. "Surface Water" shall mean water occurring on the surface of the land, from natural causes such as rainfall, whether falling on the land in question or flowing onto the land in question.
10. "Undeveloped Parcel" shall mean any parcel which has not been altered from its natural state by the construction, creation, or addition of impervious area.

**B. STORM DRAINAGE FEES:**

There is hereby imposed on each and every developed parcel of land within the City, and the owners and occupiers thereof, jointly and severally, a storm drainage fee. This fee is deemed reasonable and is necessary to pay for (1) improving the quality of storm and surface water runoff, (2) the operation, maintenance, improvement and replacement of the existing and future City storm drainage facilities, and (3) the planning, designing, establishing, acquiring, developing and construction of such facilities. All of the proceeds of these fees are deemed to be in payment for use of City storm drainage facilities by the developed parcels on, and with respect to, which the fee is imposed, and the owners and/or occupiers thereof.

The storm drainage fee shall be payable monthly and shall be paid to the City (or the collection may be contracted to other public or private utilities for collection in conjunction with their utility bills), as billed by the City, by the owner or occupier of each and every developed parcel in the City who shall be presumed to be the primary utility rate payer unless otherwise agreed in writing by the City. In any event, the parcel owner or occupier shall be responsible to pay all delinquent or unpaid storm drainage fees. If a developed parcel does

not have a utility account on the effective date of this Rule and Regulation, a new account shall be established for that parcel and billed to the owner as shown on the latest County Assessor's property tax rolls. When an undeveloped parcel is developed, a new account shall be established and billed to the owner of that parcel as shown on the latest property tax rolls of the Monterey County Assessor.

1. Basis for Calculation:

The storm drainage fee shall be based on the relative contribution of surface and storm water runoff from a given developed parcel to City storm drainage facilities. The relative contribution of surface and storm water runoff from each developed non-single family residential property parcel shall be based on the amount of impervious area on that parcel and shall determine that parcel's storm drainage fee. The extent of impervious area will be established to the nearest square foot by any of the following methods to be selected by the City Engineer:

a. Computation of the impervious area using on-site measurements of the apparent outside boundaries of the impervious area in or on such developed parcels made by the City or on its behalf; or

b. Computation of the impervious area using the dimensions of the impervious area in or on the developed parcels which are set forth and contained in the records of the office of the County Assessor.

c. Estimation, calculation and computation of the impervious area using aerial photography or photogrammetry, or using the information and data from on-site measurements of like or similar property or features or as contained in the records of the City or County.

d. The burden of reestablishing the extent of impervious area shall be on the parcel owner and to the satisfaction of the City Engineer under Administrative Review Procedures.

2. Calculation of Monthly Fee:

a. Single-Family Residential: Monthly fees for single family residential parcels shall be equal to the rate for 1 ERU as set forth in Utility Rate Schedule.

b. Non-Single-Family Residential: Monthly fees for non-single-family residential parcels shall be computed in accordance with the following formula:

Number of ERUs x Rate per ERU as set forth in Utility Rate Schedule

3. Application:

a. Developed Parcels: storm drainage fees shall apply to all developed parcels within the City, including those classified as non-profit or tax-exempt for ad valorem tax purposes. It shall apply to all government properties, to the full extent permitted by the constitutions of the United States and the State of California, including (some but not all) developed parcels of the City of Monterey, including (some but not all) City-owned buildings and parks, but excluding public streets and highways.

b. Undeveloped Parcels: Storm drainage fees shall not be levied against undeveloped parcels that have not been altered from their natural state as defined herein under "Impervious Area."

c. Proportional Reduction of Fees: Developed parcels that have their own maintained stormwater management facility or facilities that do not fully utilize City facilities or make no substantial or only a partial contribution of storm or surface water to the City's

storm drainage facilities shall be subject to the storm drainage fee only to the extent they do contribute storm or surface water runoff to City storm drainage facilities or utilize storm and surface water treatment services of the City. Developed parcels that have a portion of their impervious area within the City shall be charged only for that portion of impervious area which is in the City. The burden of establishing the reduced extent of contribution to the City's storm drainage facilities or utilization of City storm and surface water treatment services shall be on the parcel owner and to the satisfaction of the City Engineer under Administrative Review Procedures.

C. ADMINISTRATIVE REVIEW:

Any person who disputes the amount of any storm drainage fee made against their developed parcel or who requests a deferred payment schedule therefore may request a revision or modification of such fee from the City Engineer. The City Engineer may notify any owner or occupier in the event he considers the fee for any developed parcel to be inadequate or improper. The parcel owner shall make such request in writing to the City Engineer.

GENERAL STORM AND SURFACE WATER DRAINAGE  
UTILITY RATE SCHEDULE

APPLICABILITY:

This schedule applies to all storm and surface water drainage service, excepting only those users and to the extent that they are constitutionally exempt under the Constitution of the State of California or who are determined to be exempt pursuant to the Special Storm and Surface Water Management Utility Regulations.

TERRITORY:

Inside the incorporated limits of the City of Monterey and land owned or leased by the City.

RATES:

Per Month:

Storm Drainage Fee per Equivalent Residential  
Unit (ERU). . . . . \$2.09]

Special Notes:

1. An Equivalent Residential Unit (ERU) is the basic unit for computation of storm drainage fees for residential and non-residential customers. All single-family and duplex units are considered 1 ERU based on data for Monterey and are considered to have an average impervious area of 3,313 square feet. All other properties will have ERUs computed to the nearest 1/10 ERU using the following formula:

$$\text{No. of ERU} = \frac{\text{Impervious Area (S. Ft.)}}{3,313}$$

3,313 S. Ft.

2. For more details on the storm drainage fee, refer to the Special Storm and Surface Water Management Utility Regulations.

3. The fee does not exceed the reasonable cost of providing storm and surface water management.