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Letters to the Editor

SB 231 Question

At the recent Town Council meeting, an opponent of Moraga's storm drain fee stated that the election currently being conducted by the Town is unnecessary. He stated that such fees are exempted from the election requirement by 2017 legislation commonly referred to as "SB231." As an experienced municipal finance attorney, I wish to set the record straight as to why the Council's decision to conduct the election was absolutely correct.

The election requirement is imposed by Section 6(c) of Article XIID, added to the State Constitution in 1996 by Prop. 218. It applies to any property-related fee EXCEPT those for sewer, water and refuse collection. In the case of storm drain fees, the question is: does the term "sewer" include storm drains. Unfortunately, the drafters of Prop. 218 did not provide a definition of the term "sewer."

California law presently has two conflicting answers to that question: (1) the decision of a State Appellate Court in Howard Jarvis Taxpayers Association vs. City of Salinas (2002), in which the Court ruled that the term "sewer" does NOT include storm drains, and (2) Section 53750(k) of the California Government Code, which was added in 2017 by the State Legislature as part of SB231. It defines "sewer" to INCLUDE storm drains. In essence, the Legislature has sought to overrule the Court on this matter of interpreting the State Constitution.

In deciding whether to conduct the election, the Town had to decide which of these two conflicting sources to rely on. Wisely, it chose the Court decision. The Court's interpretation of "sewer," as used in the State Constitution, has legal precedence over the conflicting Legislative enactment in SB231. Only a further court decision upholding the definition in SB231 would enable the Council to responsibly impose storm drain fees without an election.

If the Council were to impose the storm drain fees now without an election, it would be inviting an almost-certain lawsuit. Win-lose-or-draw on the lawsuit, the legal cost of defending it would exceed the election cost many times over. The Moraga Town Council made the right decision.

Sam Sperry
Moraga

Storm Drain Fee

Most of Moraga's storm drains are 50+ years old ... many at risk of imminent failure. Cost to repair the Rheem pipe before failure would have been \$1.7 million compared to the \$3 million repair cost after failure. Neither the cost of the Rheem Sinkhole to businesses nor the disruption to daily life caused can be calculated. Yes, the aging Storm Drainage system should have been better maintained in the past, but we cannot re-write history and we cannot risk more catastrophic Storm Drain failures.

The fee will be \$120/year for the average homeowner, less than the cost of one movie a month. The fee (which is not a tax) will be used for long-overdue maintenance/replacement of the storm drain utility; funds from the fees can be used ONLY for expenditures on the storm drain program. Schools and churches cannot legally be exempted and will pay fees under this program, since they shed water into the Town storm drainage system (Although some have suggested that storm runoff from Joaquin Moraga directly enters the adjacent stream, the vast majority of their storm water does, in fact, first enter the storm drains). The Moraga School District fee is calculated to be \$21,400/year, which equates to 0.1% of their annual \$23 Million budget (not \$37,000 as reported elsewhere). The fee will also provide for installation of debris collection from storm water before it enters our drinking water source (San Leandro Reservoir).

Some have suggested voting against the Fee to "send a message to Town Council"; it would be a mistake to protest the fee program to voice dissatisfaction with past or present Town Council. We cannot afford to kick this can further down the road; if you would like to change our local representatives, you can do so in November 2018 and November 2020.

The Storm Drain Fee is a small price to pay to avoid future sinkholes/disruptions/road and bridge failures, maintain our quality of life, and ensure safe drinking water. Please vote "Yes" for this very important measure.

Respectfully,
Bobbie Preston
Moraga

Moraga deserves your support! Vote yes for our storm drains.

Let's talk documented facts rather than disingenuous numbers and spurious claims.

Some would have you believe that, over the years, Moraga has been profligate and/or wasteful with your tax dollars. As a consequence of past poor judgment we now need this new revenue stream to fix what we should have been fixing all along.

Fact: Moraga has never had enough revenue to be wasteful let alone enough to address the things we admittedly knew would ultimately need addressing.

Fact: Moraga's per capita cost to operate our town is \$481 - the lowest in the county by a significant margin!

Fact: When you pay your annual real estate tax to Martinez, the county sends back only 5.32% to Moraga - the lowest return in the county. Thus, a \$10,000 tax bill generates only \$532 for Moraga.

Our immediate neighbors are very similar to us demographically and geographically. They have similar overall financial needs, and yet Lafayette gets back 6.66% and Orinda gets a generous 7.39%.

What does that mean? For FY2016-2017, based on the assessed value of our Moraga real estate, the county returned \$3,888,623 to Moraga. At Lafayette's rate our return would be \$4,868,087 (+\$979,464). If we were lucky enough to enjoy Orinda's rate we would have received \$5,405,186 (+\$1,516,563).

It is obvious that even if our return was only equivalent to Lafayette's, those additional dollars would more than cover our storm drain needs plus several hundreds of thousand dollars more for other infrastructure needs each year.

Sadly, the unpleasant reality is that we are stuck with that 5.32% rate of return and must look to ourselves for the revenue needed to maintain our infrastructure.

The user fees are modest and affordable. Additionally, they have been fairly allocated for all of us - including our schools. (It amounts to only \$12 per student per year.)

Please vote yes for our storm drains. It seems to this property owner that it is the reasonable and financially responsible thing to do.

Carrol Foxall
Moraga

More on Storm Drains

I support the Storm Drain Parcel Fee proposal. After listening to both sides on this issue I am convinced the parcel fee is the right solution. Everyone agrees we need to maintain the Storm Drain system in Moraga. One of my original concerns was that the fees be equitably spread among all the property owners in the Town of Moraga. After meeting with the town engineer and staff I was told that 100% of the fees could only be used for storm drain maintenance and or if needed replacement. This proposal is endorsed by the Moraga Chamber of Commerce and the owner of the Rheem Center. I want to compliment our Mayor and the Town Council along with Town Staff with developing this solution. I urge everyone to vote YES on the Storm Drain Ballot.

Barry Behr
Moraga

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