

**ORDINANCE NO. 2018-445**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS ESTABLISHING THE RATES OF THE SEWER SERVICE CHARGE FOR FISCAL YEAR 2018-19 AND SUBSEQUENT FISCAL YEARS AND AMENDING SECTION 10.12.110 AND 10.12.130 OF, AND ADDING SECTION 10.12.137 TO, ARTICLE 3 OF CHAPTER 10.12 OF THE LOS ALTOS MUNICIPAL CODE**

**WHEREAS**, pursuant to Article 3 of Chapter 10.12 of the Los Altos Municipal Code, the City of Los Altos imposes a Sewer Service Charge upon parcels connected to the sewer system; and

**WHEREAS**, the purpose of the Sewer Service Charge is to fund costs associated with providing sewer service; and

**WHEREAS**, the City engaged NBS (the “Rate Consultant”) to prepare a rate study recommending a revision to the Sewer Service Charge that would fairly and equitably spread the costs of sewer system operation across parcels using sewer service and would meet the requirements of California law; and

**WHEREAS**, the Rate Consultant has prepared a rate study entitled “Sewer Rate Study” dated February 7, 2018 (the “Study”) which is on file in the Office of the City Clerk, available for public inspection, and incorporated herein by reference; and

**WHEREAS**, the Study proposed new rates for the Sewer Service Charges, to become effective over a five year period (collectively, the “Rate Structure”); and

**WHEREAS**, on March 13, 2018, the City Council approved the Sewer Rate Study Report prepared by NBS. The report recommended continuing to use the existing sewer rate calculation methodology for the five-year period from fiscal year (“FY”) 2018/19 through FY 2022/23; and

**WHEREAS**, the City caused notice of the proposed rates for the Sewer Service Charges and a Public Hearing at which the rates would be considered to be mailed to the record owner of each parcel upon which the Sewer Service Charges were proposed to be imposed; and

**WHEREAS**, such notice was given pursuant to section 6 of article XIII D of the California Constitution (“Proposition 218”), the Proposition 218 Omnibus Implementation Act (Section 53750 *et seq.* of the California Government Code) (the “Act”), and applicable law; and

**WHEREAS**, on June 26, 2018, at 7:00 PM, in the City Council Chambers located at One North San Antonio Road, Los Altos, California, 94022, the City Council held the Public Hearing at which the City Council heard all oral testimony and received all written comments with respect to the proposed rates for the Sewer Service Charges and considered all written protests against the proposed rates for the Sewer Service Charges; and

**WHEREAS**, the City Council has determined that written protests against the proposed rates for the Sewer Service Charges have not been presented by a majority the record owners of the parcels upon which the Sewer Service Charges are proposed to be imposed; and

**WHEREAS**, the City Council desires to implement the rates for the Sewer Service Charges consistent with the recommendation of the Study and as set forth in Section 4 of this Ordinance; and

**WHEREAS**, the City is also proposing to amend the Municipal Code to allow future rate increases in the City's Sewer Service Charges to be adopted by a resolution of the City Council pursuant to the authority granted in Health and Safety Code section 5471 et seq., and to allow the owners of two or more condominium units that are connected to and served by the same single master water meter and are collectively billed for their water use by the California Water Service Company (or its successor), to request to be billed based on sub-metered water usage for their sewer use charges; and

**WHEREAS**, this Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

**NOW THEREFORE**, the City Council of the City of Los Altos does hereby ordain as follows:

**SECTION 1. AFFIRMATION OF RECITALS.** Each of the recitals set forth above is true and correct in all respects and are incorporated herein as findings and determinations of the City Council.

**SECTION 2. APPROVAL OF RATE STUDY.** The Study is hereby approved by the City Council in the form on file in the Office of the City Clerk and available for public inspection.

**SECTION 4. RATES.** The maximum rates of the Sewer Service Charges imposed pursuant to Section 10.12.120 of the Municipal Code and the effective dates are set forth in the table below are hereby adopted.

|        | August 10, 2018 | July 1, 2019 | July 1, 2020 | July 1, 2021 | July 1, 2023 |
|--------|-----------------|--------------|--------------|--------------|--------------|
| \$/EDU | \$267.69        | \$275.72     | \$283.99     | \$292.51     | \$301.29     |
| \$/HCF | \$2.15          | \$2.21       | \$2.28       | \$2.35       | \$2.42       |

No further action need be taken by the City Council to cause the rates established by this Section to become effective. However, the City Council may, pursuant to Section 10.12.130, as amended by this Ordinance, adopt a resolution that delays the effective date of a scheduled rate adjustment, eliminates such adjustment, or implements increases in the rates of the Sewer Service Charges that are less than the authorized maximum rates set forth above.

**SECTION 5. RATE ADJUSTMENTS.** The Sewer Service Charge rate adjustment schedule set forth in Section 4 of this Ordinance was approved by the City Council following a public hearing that was noticed and conducted pursuant to Proposition 218 and the Act. Consequently, so long as revised rates established in the future by the City Council do not exceed the maximum rates set forth in Section 4, such revision shall not constitute an “increase” of the applicable Sewer Service Charge rates for purposes of the Proposition 218 or the Act. Such rate revisions shall not, therefore, require additional compliance with the procedural requirements of the Proposition 218 or of the Act. The City Council hereby authorizes and directs the City Manager to implement and take all actions necessary to effectuate the rates for the Sewer Service Charges set forth herein.

**SECTION 6. PRIOR SEWER SERVICE CHARGES.** Notwithstanding the provisions of this Ordinance, Sewer Service Charges levied for fiscal years prior to Fiscal Year 2018-19 shall remain governed by the provisions of Chapter 10.12 of the Municipal Code as they existed prior to the effective date of this Ordinance and remain in effect until otherwise modified in accordance with this Ordinance.

**SECTION 7. FINDINGS.** The City Council, based upon the Study and upon such other testimony provided to it at the Hearing finds as follows:

- (a) Revenues derived from the Sewer Service Charges, as imposed pursuant to this Ordinance, will not exceed the funds required to provide sewer service to the parcels subject to the Sewer Service Charges.
- (b) Revenues derived from the Sewer Service Charges cannot, pursuant to Section 10.12.220 of the Municipal Code, be used for any purpose other than that for which the Sewer Service Charges are imposed.
- (c) The amount of the Sewer Service Charges imposed upon each parcel do not exceed the proportional cost of sewer service attributable to that parcel.
- (d) The Sewer Service Charges are only imposed upon parcels that are actually connected to the sewer system, and which therefore either use, or have immediate ability to use, the sewer services.
- (E) Sewer services are not a general governmental services as that term is used in California Constitution article XIII D, section 6(b)(5).

**SECTION 8. AMENDMENTS TO LOS ALTOS MUNICIPAL CODE.**

(a) Subdivision A of Section 10.12.110 of Article 3 of Chapter 10.12 of the Los Altos Municipal Code is hereby amended to read as follows:

A. “Actual water consumption,” with respect to a parcel, shall mean the water consumption indicated for that parcel on the records of the California Water Service Company (or its successor) or such other water utility as serves the parcel. Provided,

however, with respect to a condominium unit that has an assigned County assessor's parcel number, a water sub-meter, and the owner of the property has requested and been authorized by the City to be billed based on sub-metered water usage, "actual water consumption" shall be determined in accordance with Section 10.12.137 of this article.

(b) Section 10.12.130 of Article 3 of Chapter 10.12 of the Los Altos Municipal Code is hereby amended to read as follows:

**10.12.130. Rates.**

The rates of the sewer service charges shall be stated as a rate per equivalent dwelling unit, plus a rate per unit of estimated sewer use, and shall be established by a resolution adopted by the City Council pursuant to Section 5471 of the California Health and Safety Code.

(c) Section 10.12.137 is hereby added to Article 3 of Chapter 10.12 of the Municipal Code to read as follows:

**10.12.137. Billing of Master Metered Condominium Units with Water Sub-Meters.**

Notwithstanding any other provision of this article, and except as provided herein, the owners of two or more condominium units that are connected to and served by the same single master water meter and are collectively billed for their water use by the California Water Service Company (or its successor), may request to be billed based on sub-metered water usage for their sewer use charges, provided that: (i) each of the condominium units has an assigned County assessor's parcel number; (ii) each of the condominium units has a separate water sub-meter; and (iii) all of the owners of the condominium units that are connected to the same single master water meter agree in writing to be billed separately for sewer service.

Actual water consumption for each condominium unit shall mean each condominium unit's sub-metered water consumption for the entire prior calendar year.

The owner of each condominium unit authorized to be billed based on sub-metered water usage for sewer service pursuant to this section 10.12.137 shall, at his or her sole expense, cause his or her sub-meter to be read monthly by a licensed professional in accordance with the California Division of Measurement Standards and to cause such professional to submit to the City the sub-metered water consumption data of his or her condominium for each month of the calendar year. The total calendar year water consumption data of all of the owners of the condominium units shall equal the total metered water consumption of the single master meter for the condominium units reported by the California Water Service Company (or its successor) for the same period. The City shall not be responsible for reconciling the total sub-metered water consumption data reported by the condominium unit owners with the metered water consumption data reported by the California Water Service Company (or its successor). If the water consumption data reported by the condominium owners cannot be reconciled with the metered water consumption data reported by the California Water Service Company (or its successor), then the sewer use of such condominium owners shall be calculated in accordance with the provisions of section 10.12.140 of this article.

At his/her sole expense, each condominium owner authorized to be billed for sewer service pursuant to this section 10.12.137 shall annually cause his or her sub-meter to be inspected, tested, and verified by a licensed professional in accordance with the California Division of Measurement Standards. No later than March 15 of each year, each condominium owner shall submit to the City Public Works Department the results of the inspection, testing, and verification of his or sub-meter.

For the purposes of this section 10.12.137 and section 10.12.140 of this article, the sewer use for each condominium unit upon which a sewer service charge for that parcel shall be calculated for a fiscal year shall be estimated by multiplying by twelve (12) the average actual monthly water consumption for each condominium unit during the three (3) wet season months for the prior calendar year. One (1) unit of sewer use shall be assigned for each one hundred (100) cubic feet of water use. Provided, however, that if any owner of a condominium unit authorized to be billed for sewer service pursuant to this section 10.12.137 fails to comply with any of the requirements of this section 10.12.137, then the sewer use of all condominium owners within the same condominium complex shall be calculated in accordance with the provisions of section 10.12.140 of this article.

All other provisions of this article governing sewer service charges not in conflict with this section 10.12.137 shall apply to each owner of a condominium unit authorized to be billed for sewer service in accordance with this section 10.12.137.

**SECTION 9. PUBLICATION.** This ordinance shall be published as provided in Government Code section 36933.

**SECTION 10. SEVERABILITY.** If any section, subsection, subdivision, sentence, clause, or phrase in this Ordinance or any part thereof is for any reason held to be unconstitutional or invalid, ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council declares that it would have adopted each section irrespective of the fact that any one or more subsections, subdivisions, sentences, clauses, or phrases be declared unconstitutional, invalid, or ineffective.

**SECTION 12. EFFECTIVE DATE.** This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on June 26, 2018 and was thereafter, at a regular meeting held on July 10, 2018 passed and adopted by the following vote:

AYES: LEE ENG, MORDO, PEPPER, PROCHNOW  
NOES: NONE  
ABSENT: BRUINS  
ABSTAIN: NONE

*Jean Mordo*

Jean Mordo, MAYOR

Attest:

*Jon Maginot*  
Jon Maginot, CMC, CITY CLERK



STATE OF CALIFORNIA )  
COUNTY OF SANTA CLARA ) CERTIFIED COPY OF ORDINANCE  
CITY OF LOS ALTOS ) SECOND READING/ADOPTION

I, Jon Maginot, City Clerk for the City of Los Altos in said County of Santa Clara, and State of California, do hereby certify that the attached is a true and correct copy of Ordinance No. 2018-445, adopted by the Los Altos City Council on July 10, 2018 by the following vote:

AYES: LEE ENG, MORDO, PEPPER, PROCHNOW  
NOES: NONE  
ABSTAIN: NONE  
ABSENT: BRUINS

I hereby further certify that a summary of the ordinance was published in accordance with Government Code Section 36933 on the following dates: July 11, 2018 and July 25, 2018. Said ordinance shall be effective August 10, 2018.

Dated this 22 day of August, 2018.

*Jon Maginot*  
Jon Maginot, CMC  
City Clerk