



Town of Moraga	Agenda Item
O/R/A	10-A

Meeting Date: April 10, 2024

TOWN OF MORAGA

STAFF REPORT

To: Honorable Mayor and Councilmembers
From: Shawn Knapp, Public Works Director/Town Engineer
Subject: Revised Street Rehabilitation Cost Sharing Policy

Recommendation

1. Adopt a resolution revising the Town of Moraga's Street Rehabilitation Cost Sharing Policy to allow for the use of the Town's Measure K Sales Tax funds to pay for sidewalk area repairs which are part of Town street rehabilitation projects, while retaining private property owner obligations set forth in the Moraga Municipal Code pertaining to the public right-of-way.
2. Introduce an ordinance amending the Moraga Municipal Code Title 12, Chapter 12.04, Sidewalks, to incorporate the Revised Street Rehabilitation Cost Sharing Policy and other conforming amendments.
3. Approve that this action is exempt from review under the California Environmental Quality Act (CEQA).

Background

Town Street Pavement Management Program Overview

The Town is responsible for the maintenance and repair of 58.59 centerline miles of paved public streets. This includes 13.8 miles of arterial streets, 15.8 miles of collector streets, 26.3 miles of residential streets, and 2.6 miles of bike paths or service roads. The Town's streets are almost exclusively paved with asphalt concrete. This network is defined as a complete inventory of all streets and other pavement facilities in which the Town has jurisdiction and maintenance responsibilities. To facilitate effective management of public streets, these streets are subdivided into management sections identified as a street segment, which is homogeneous in geometry, function, and general condition.

The estimated pavement replacement cost to reconstruct all 58.59 miles of the Town's streets with three inches of new pavement is \$87,463,000, based on \$9.11 per square yard. Based on data from 2003, total gutters and curbs located in the public right-of-way

are estimated to total 539,233 in linear feet with a value of \$26,961,650 (\$50 per linear foot). With respect to the total sidewalks in the public right-of-way, they are estimated to total 1,920,555 in square feet with a value of \$57,616,650 (\$30 per square foot).

The Town of Moraga does not typically construct and then maintain sidewalk area improvements (gutters, curbs, sidewalks, aprons, pathways, trees, landscaping, and/or related improvements located within the area fronting a street from the roadway edge to the private property line). This area is considered to be part of the public right-of-way (ROW) and is typically funded and initially constructed by the developer of the overall property. The subsequent recurring maintenance, repair, and future replacement of this infrastructure is the financial responsibility of the private property owner. While this policy varies throughout the State of California, the approach in Moraga is generally consistent with older semi-rural Contra Costa jurisdictions, including with the cities of Lafayette and Orinda.

Historical Street Rehabilitation Cost Sharing Policies and Events (1974 to 2024)

From the date of incorporation in November 1974 to the present, the Town's Street Rehabilitation Cost Sharing Policy has changed on several occasions. Please refer to Attachment C for a detailed overview of these policies and events. The following provides a chronology of the changes:

- Continuation of Contra Costa County policy whereby private property owners are responsible for maintaining the sidewalk area (November 1974 to September 1977).
- Town Curb and Gutter Committee "no change" recommendation (1977).
- Policy shift for the Town to be responsible for maintenance of gutters and curbs when determined to be a public hazard and the responsible party is not identified (August 27, 1977 to September 7, 1977).
- Policy shift to allow for "limited Town sidewalk area responsibility" whereby the Town pays for the maintenance of gutters and curbs, unless they are damaged by others (1977 to 1990).
- Policy shift back to private property owners are responsible for maintaining the sidewalk area (via adoption of Ordinance No. 132 in 1990).
- Continued deterioration of the Town's streets and infrastructure (1990 to 2012).
- Voter approval of a local 1% Sales Tax Revenue Measure (Measure K), a general tax, to help improve and maintain the community's failing street network and other Town needs (November 2012).
- Town funds certain sidewalk area repairs that are part of street rehabilitation projects (2013 to 2022).

- Clarification of private property owner sidewalk area maintenance and repair responsibilities (2020 to 2022).
- Implementation of “Worst First Residential Streets” Approach (2020 to 2024).
- Private property owners are held responsible for sidewalk area repairs that are part of street rehabilitation projects (FY 2022-23).

Implementing the 2022 Street Rehabilitation Project during FY 2022-23 included increased sidewalk area repair costs to private property owners

Prior to implementation of the 2022 Street Rehabilitation Project (which was scheduled to take place during FY 2022-23), staff identified \$361,645 in estimated private property owner-maintained sidewalk area repairs. Due to the more expansive sidewalk area repair work than in the past, Town staff recommended, and Town Council approved, proceeding with the project in a manner that was consistent with the Town’s policy requiring that sidewalk area deficiencies identified by Town staff will need to be repaired by private property owners.

In response, staff provided each property owner with the option to either reimburse the Town for the sidewalk area repair work, or to complete the work on their own. Property owners were provided with the ability to appeal the notice of violation sent by the Town that identified any sidewalk area deficiencies, which were deemed a public nuisance. Those property owners that wanted the Town to do the work entered into a reimbursement agreement with the Town. By May 24, 2023, the Town entered into 116 reimbursement agreements with property owners for sidewalk area repair work.

These agreements provided that property owners will reimburse the Town for the specific sidewalk area repair work adjacent to their property and that they will continue to be responsible for recurring maintenance and liability. These agreements totaled \$349,015 in repair costs. To date, the Town has collected \$132,100 as part of these agreements. Outside of these agreements, another \$12,630 in sidewalk area repair work was funded and completed separately by each property owner.

While construction of the 2022 Street Rehabilitation Project was underway, property owners started to raise objections to the sidewalk area notices of violation they received. In response to property owner objections to complying with the Town’s Street Rehabilitation Cost Sharing Policy, and having to pay for the cost of sidewalk area repairs on their property, Town staff stopped collecting the remaining \$216,915 owed (\$349,015 minus \$132,100). Future street rehabilitation projects were also put on hold to allow for additional policy research. Staff has completed this research and developed a revised policy recommendation for Town Council consideration.

Discussion

Proposed revised Street Rehabilitation Cost Sharing Policy

After conducting a thorough review of options, staff is recommending that the Town Council revise the existing Street Rehabilitation Cost Sharing Policy to allow for the Town to fund sidewalk area repairs that are within the area of a Town funded street rehabilitation project which is funded via a variety of local funding sources, including Measure K funds. Staff also recommends reimbursing private property owners who paid for sidewalk area repairs as part of the 2022 Street Rehabilitation Project during FY 2022-2023.

In order to implement this proposed revised policy, the following steps need to take place:

- The Municipal Code needs to be amended to allow for use of public funding (including Measure K funds) to pay for eligible sidewalk area repairs that are normally the obligation of private property owner when there is a Town funded street rehabilitation project.
- Reimburse private property owners for sidewalk area repair payments made in FY 2022-2023 as part of the 2022 Street Rehabilitation Project (estimated to be up to \$144,730).
- Enter into agreements with each private property owner to clarify that they will continue to retain financial and liability responsibility to maintain these sidewalk area repairs into the future.

Estimated Recurring Savings:

For the 2022-23 Street Rehabilitation Project, approximately \$92,000 in staff time (including Town Attorney time) was expended to do the following:

- Identify deficiencies and necessary repairs for private property owners and to notify property owners of the deficiencies.
- Develop individual project letters articulating property owner responsibilities.
- Develop the Reimbursement Agreement template and apply it to individual property owner cost responsibilities for the concrete repairs and documentation.
- Follow up and in-person meetings with each property owner going over their questions and concerns; and then make adjustments to site repair quantities and documents for the property owner requests.
- Issue payment requests.
- Track payments and follow-up to obtain uncollected payments.

By revising the current policy to provide that the Town will fund sidewalk area repairs that are within the area of a Town funded street rehabilitation project using Measure K funds, this will eliminate the need for Town Staff to identify deficiencies and the use of reimbursement agreements with each property owner. This will allow the Town to realize future recurring cost savings ranging from \$100,000 to \$150,000 per year. This proposed policy shift will allow staff to redirect their time to be spent on actual capital improvement projects, including street rehabilitation projects.

Estimated Future Costs & Savings (FY 2023-24 and FY 2024-25):

If Town Council agrees with staff's recommendation to revise the existing policy, the estimated cost of sidewalk area repair work as part of the FY 2023-24 and FY 2024-25 street rehabilitation projects will be approximately \$458,500 per year. Of this amount, approximately \$228,250 (50%) will be spent on curb and gutter repairs, with the remaining \$228,250 (50%) to be spent on sidewalk repairs.

In subtracting out the estimated \$100,000 to \$150,000 in anticipated recurring staff cost savings (due to not having to manage cost sharing agreements), the anticipated annual net cost of the proposed revised policy drops to \$308,500 to \$358,500 per year. This cost range equates to 11.8% to 13.8% of the FY 2023-2024 Measure K Fund sales tax revenue estimate of \$2,605,000.

It is important to note that the anticipated cost of sidewalk area repairs over the next two years represents a significant increase from previous years. This is due to the Town's shift to tackling the worst residential streets. As a reminder, significant street repairs (including sidewalk area repairs) over the years have been avoided because of the high cost to reconstruct them. Future annual costs for sidewalk area repairs associated with street rehabilitation projects are anticipated to level off and then decline after FY 2024-25.

Under this approach, the Town will continue to use Measure K revenues (along with federal ADA grants/funding, State Gas Tax revenues, State "Safe Routes to Schools" grants, and other funding sources) to fund public street rehabilitation projects and adjacent sidewalk area repairs. The Town will continue to coordinate construction projects and private property owners will retain ongoing maintenance, repair, and liability responsibility.

Proposed Street Rehabilitation Cost Sharing Policy Resolution

Please refer to Attachment A for a copy of the proposed Street Rehabilitation Cost Sharing Policy Resolution which is necessary to document the details of how the policy will be implemented.

Proposed Moraga Municipal Code Section 12.04.010 Amendment

Please refer to Attachment B for a copy of the proposed Municipal Code Amendment that is necessary to achieve the following:

- Officially allow for the use of public funding for sidewalk area repairs as part of Town funded street rehabilitation projects.
- Ensure concurrent liability with the private property owner, even though the Town may perform certain sidewalk area repairs as part of a broader street rehabilitation project.
- A variety of other clean-up items.

CEQA Compliance

The recommended actions included in this staff report are not subject to review under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21000, et seq. and the CEQA Guidelines (14 Cal. Code Regs. 15000 et. seq.), including without limitation, Public Resources Code Section 21080 as this is not a "project" and is exempt under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that this action may have a significant effect on the environment. Furthermore, any possible actions that may result from the adoption of this action would be exempt under the California Environmental Quality Act (CEQA) Guidelines Section 15301(c)(Class 1) and 15302(c) (Class 2).

Fiscal Impact

As explained in the above Background Section, prior to May 24, 2023, the Town entered into sidewalk area repair cost sharing agreements with 116 property owners totaling approximately \$349,015. Of this amount, \$132,100 has been collected to date by the Town. Another \$12,630 was paid directly by private property owners. If Town Council supports staff's recommendation to use public funds to repay these payments, the Town will need to amend the existing agreements to allow for the refunding of up to a total of \$144,730 (\$132,100 plus \$12,630) to eligible private parties.

The estimated cost of sidewalk area repairs as part of the FY 2023-24 and FY 2024-25 street rehabilitation projects will be approximately \$458,500 per year. Of this amount, approximately \$228,250 (50%) will be spent on curb and gutter repairs and the other \$228,250 (50%) will be spent on sidewalk repairs.

By subtracting out the estimated \$100,000 to \$150,000 in anticipated recurring staff cost savings (due to not having to manage cost sharing agreements), the anticipated annual net cost of the proposed revised policy drops to \$308,500 to \$358,500 per year. Future annual costs for sidewalk area repairs associated with Town funded street rehabilitation projects are anticipated to level off and then decline after FY 2024-25.

Sufficient funding exists in the adopted FY 2023-2024 and FY 2024-2025 Biennial Budget to cover the cost of the proposed revised policy. Under this approach, the Town will continue to use Measure K revenues (along with federal ADA grants/funding, State Gas Tax revenues, State "Safe Routes to Schools" grants, and other funding sources) to fund public street rehabilitation projects and adjacent private sidewalk area repairs. The Town will continue to coordinate street construction projects, and private property owners will retain ongoing maintenance, repair, and liability responsibility for the sidewalk area on their property.

The FY 2024-25 Measure K Fund Budget will need to be amended at a future Council meeting to allow for private property owner repayments (up to \$144,730) starting after July 1, 2024.

Alternatives

1. Proceed with the proposed Street Rehabilitation Cost Sharing Policy.
2. Revise the proposed Street Rehabilitation Cost Sharing Policy.
3. Do not proceed with the proposed Street Rehabilitation Cost Sharing Policy and direct staff to pursue an alternative approach.

Next Steps

If Town Council approves staff's recommend revised policy, the next step will be for Town Council to consider the following actions at its regular meeting on April 24, 2024:

- Adopt the amended ordinance.
- Amend the FY 2024-25 Measure K Fund Budget by \$144,730 to repay private property owners for eligible sidewalk area repair payments which were made as part of existing street rehabilitation cost sharing agreements.
- Authorize staff to prepare the necessary agreements with private property owners to commence with eligible repayments.

After the amended ordinance is adopted by Town Council on April 24, 2024, it will go into effect 30 days later (by late May 2024). Staff will then process private property reimbursement payments (which will likely be disbursed during the summer months).

Construction bids for the FY 2023-24 and FY 2024-25 street rehabilitation construction projects are anticipated to be reviewed and awarded by Town Council at its April 24, 2024 meeting. Actual street construction work is anticipated to start in June 2024.

Attachments

- A. DRAFT Resolution – Revising Town’s Street Rehabilitation Cost Sharing Policy; and Exhibit A – Town’s Street Rehabilitation Cost Sharing Policy.
- B. DRAFT Ordinance - Amendment to Moraga Municipal Code Title 12, Chapter 12.04, Sidewalks, to incorporate the revised Street Rehabilitation Cost Sharing Policy and other conforming amendments.
- C. Chronology of Street Rehabilitation Cost Sharing Policies and Events (1974 to 2024).

**Report reviewed by: Scott Mitnick, Town Manager
Denise Bazzano, Assistant Town Attorney**

ATTACHMENT A

DRAFT Resolution - Resolution Street Rehabilitation Policy

**TOWN OF MORAGA
TOWN COUNCIL**

RESOLUTION NO. ____-2024

REVISING THE TOWN OF MORAGA STREET REHABILITATION COST SHARING POLICY TO ALLOW FOR THE USE OF THE TOWN'S MEASURE K SALES TAX FUNDS TO PAY FOR SIDEWALK AREA REPAIRS WITHIN ANNUAL STREET REHABILITATION PROJECTS WHILE PRIVATE PROPERTY OWNERS RETAIN OBLIGATIONS SET FORTH IN MORAGA MUNICIPAL CODE PERTAINING TO THE PUBLIC RIGHT-OF-WAY

WHEREAS, the Town of Moraga does not maintain sidewalk area improvements (gutters, curbs, sidewalks, aprons, pathways, trees, landscaping, and/or related improvements) located within the area fronting a street from the roadway edge to the private property line, which is considered to be part of the public right-of-way (ROW), as established by Town Ordinance No. 132 on April 24, 1990, known as the Moraga Street Rehabilitation Cost Sharing Policy;

WHEREAS, this policy is consistent with other local jurisdictions, including Contra Costa County and the Cities of Lafayette and Orinda and is consistent with California Streets and Highways Code Section 5610, which provides that the owners of lots fronting on any portion of a public street or place shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience;

WHEREAS, in some cases, private property owners do not fully understand their maintenance responsibilities and obligations related to sidewalk area improvements located within the ROW, which can lead to unanticipated costs for the property owners and unrealistic expectations of Town services;

WHEREAS, on November 6, 2012, Moraga voters approved Measure K Sales Tax (1%) as a "general purpose" local revenue source to support a variety of general purposes, including the repair of failing streets and storm drains. This sales tax is scheduled to sunset after 20 years (in 2032), unless extended by local voters; and,

WHEREAS, the Town has used Measure K Funds, federal and state ADA grants/funding, State Gas Tax revenues, Safe Routes to Schools grants, and other funding sources to fund public street projects and sidewalk area repairs within the public right-of-way. However, at the same time, private property owners have retained maintenance, repair, and liability responsibility for sidewalk area improvements located on their property.

NOW, THEREFORE, BE IT RESOLVED that the Town Council of the Town of Moraga revises the Town of Moraga Street Rehabilitation Cost Sharing Policy to allow for the use of Measure K funding to pay for Sidewalk Area repairs within Annual Street Rehabilitation projects while the private property owners retain obligations set forth in the Moraga Municipal Code pertaining to the public right-of-way maintenance, repair and liability responsibilities, as set forth in the policy attached hereto and hereinafter incorporated as Exhibit A.

BE IT FURTHER RESOLVED, that nothing stated herein shall bind the Town Council to any particular future use of Measure K funds, and the Town Council retains full discretion to determine any and all appropriate uses of Measure K funds.

DRAFT

ATTACHMENT A – Exhibit A

Street Rehabilitation Policy



TOWN OF MORAGA TOWN POLICY

APRIL 10, 2024

Subject: Street Rehabilitation Cost Sharing Policy

I. Purpose

To provide guidelines with respect to the use of the Town's Measure K funds for the repair and replacement of sidewalk area improvements (gutters, curbs, sidewalks, aprons, pathways, trees, landscaping, and/or related improvements) located within the area fronting a street from the roadway edge to the private property line in conjunction with an annual Town funded street rehabilitation project. This policy is intended to be a practical application guide to ensure compliance with Moraga Municipal Code Title 12 and in no way binds the Town Council to a continued or ongoing use of Measure K funds.

II. Policy

- A. Moraga Municipal Code (MMC) Title 12 – Streets, Sidewalks and Public Places provides that the owner of a parcel of real property is under a duty to members of the public to keep the portion of the sidewalk area in a safe condition.
- B. On November 6, 2012, Moraga voters approved Measure K Sales Tax (1%) as a "general purpose" local revenue source to support a variety of general purposes, including the repair of failing streets and storm drains.
- C. The Town's Measure K funds may be used for cost sharing participation for eligible sidewalk area repairs, when the abutting property is within project limits of an annual Town funded street pavement rehabilitation project.
- D. The use of Measure K funds for cost sharing participation is limited to available revenues within the designated project.
- E. Street improvement projects associated with new infrastructure construction and/or non-Measure K funded projects are not subject to this policy.

- F. Town of Moraga staff is responsible for determining which sidewalk area repairs are needed and to ensure that the Town approved construction standards are followed. The Town Engineer will make the final eligibility determination and construction rehabilitation method if conflicts arise.
- G. Moraga property owners that benefit from the Town's Measure K cost sharing participation will be asked to sign an acknowledgement document that specifies that each property owner will still be obligated to maintain the sidewalk area repair as set forth in the Moraga Municipal Code pertaining to the public right-of-way maintenance, repair, and liability responsibilities.
- H. In recognition that the Town's Measure K funds are limited, each annual street rehabilitation project may not receive a sufficient Measure K funding allocation and the Town Council may use Measure K funds for any other general purpose. If Measure K funds are allocated to an annual street rehabilitation project, and when the project specified Measure K funding for a sidewalk area repair is exhausted, no additional Town Measure K funded cost sharing will be available. Property owners continue to retain their responsibilities and liabilities per the Moraga Municipal Code.
- I. Sidewalk area repair locations outside the annual street rehabilitation project limits are not eligible for use of Measure K funds or cost sharing agreements.
- J. The Town Manager, in consultation with the Town Attorney, is authorized to approve administrative updates to this policy to ensure compliance with changes in federal, State, and local laws and requirements (including the Moraga Municipal Code), along with other Town Council directives and resolutions.

III. Definitions

- A. Annual street rehabilitation projects consist of the rehabilitation and preventative maintenance of Town public streets (within the public right-of-way). The primary objective is the maintenance or repair of the existing asphalt pavement. Auxiliary improvements which may include sidewalk area improvements in the public right-of-way may need to be repaired or replaced to facilitate maintenance of the asphalt pavement or may be required to comply with federal and/or State codes.
 - i. Preventive maintenance of streets is required on a regular basis to extend the life of streets and to provide a quality riding surface for all modes of travel. Preventive maintenance is less costly than street pavement rehabilitation up 18 to 1 cost factor.

- ii. Rehabilitation of streets is required when the road surface condition becomes poor or defective, or when rehabilitation or resurfacing work is needed to restore the pavement surface to the required level of service. Pavement may become worn or damaged over time due to ageing, weathering, and the impact of road traffic.

B. Tripping Hazard is defined as:

1. Lifts or depression equal to or greater than $\frac{1}{2}$ - inch.
2. Cracks greater than $\frac{1}{2}$ inch
3. Scarring/Spalling over 25% of the surface.
4. Chipped edges over 4 inches.
5. Any sidewalk defects determined by the Town Engineer to be a hazard to safe pedestrian travel, including overriding above minimal standards.

C. Abutting Property Owner is defined as:

The owner of a parcel of real property which abuts any portion of a sidewalk area between the property line of the parcel and the street line, including a parking strip and curb.

C. Public Right-of-Way is defined as:

The area in, upon, above, beneath, or across any land or interest which by deed, conveyance, agreement, easement, dedication, usage, or process of law is reserved for or dedicated to the use of the general public for travel, and includes any public street, road, highway, freeway, bridge, lane, court, alley, boulevard, sidewalk, median, parkway, or emergency vehicle easement.

D. Sidewalk Area is defined as:

Gutters, curbs, sidewalks, aprons, pathways, trees, landscaping, and/or related improvements located within the area fronting a street from the roadway edge to the private property line.

IV. Procedures

- A. Town staff shall be responsible for determining which sidewalk area infrastructure is to be repaired or replaced for each annual street rehabilitation project using Town approved construction standards. The Town Engineer will make the final determination on eligibility and construction rehabilitation method, if conflicts arise.

Appeals of Town Engineer's determination may be appealed to the Town Manager. Town Manager's determinations are final with no higher appeal possible.

- B. Abutting properties must be within the incorporated limits of the Town of Moraga.
- C. Property owner requests for repairs or replacement must be submitted prior to the start of a street rehabilitation project during the project design phase and before going out to public bid.
- D. The repairs and/or replacement must involve sidewalk area improvements.
- E. Requests for new sidewalk or pathway extensions and/or gap closures along with the replacement of non-defective sidewalks are not eligible.
- F. Defective curbs, gutters, pathways, and sidewalks have to be identified by the Town as trip hazards or misaligned to pavement surfaces and are within the Town's public right-of-way.
- G. Property owners must sign an agreement to acknowledge repair and maintenance responsibilities per the Town's Municipal Code.
- H. Repair and replacement work must be completed in accordance with Town approved standards.
- I. Town Measure K funds are not eligible for reimbursements of property owner-initiated sidewalk area repairs after April 24, 2024.

V. Additional Information

Please refer to:

- A. Ordinance No. 132, dated April 24, 1990, Amending Title 9 by Adding Chapter 2 "Maintenance and Repair of Sidewalks", subsequently renumber to MMC Chapter 12.
- B. Ordinance No. 289, dated June 10, 2020, Amending Title 12, Trees, Shrubs, Hedges and Other Landscaping in the Public Right-of-Way.
- C. Ordinance No. 301, dated October 12, 2022, Amending MMC Title 12, Trees, Shrubs, Hedges and Other Landscaping in the Public Right-of-Way, Sections 12.10.020, 12.10.030 and 12.10.040.

ATTACHMENT B

Draft Ordinance. - Chapter 12 - Sidewalks

**TOWN OF MORAGA
TOWN COUNCIL**

ORDINANCE NO. ____-2024

**ORDINANCE AMENDING MORAGA MUNICIPAL CODE CHAPTER 12.04,
"SIDEWALKS" TO INCORPORATE THE REVISED STREET REHABILITATION COST
SHARING POLICY AND OTHER CONFORMING AMENDMENTS**

WHEREAS, the Town of Moraga does not maintain sidewalk area improvements (gutters, curbs, sidewalks, aprons, pathways, trees, landscaping and/or related improvements) located within the area fronting a street from the roadway edge to the private property line, which is considered to be part of the public right-of-way (ROW); and

WHEREAS, this policy is consistent with other local jurisdictions, including Contra Costa County and the Cities of Lafayette and Orinda and is consistent with California Streets and Highways Code Section 5610, which provides that the owners of lots fronting on any portion of a public street or place shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience; and

WHEREAS, in some cases, private property owners do not understand their maintenance responsibilities and obligations related to sidewalk area improvements located within the ROW, which can lead to unanticipated costs for the property owners and unrealistic expectations of Town services; and

WHEREAS, the Town has used Measure K Funds, federal and state ADA grants/funding, State Gas Tax revenues, Safe Routes to Schools grants, and other funding sources to fund public street rehabilitation projects and the repair of adjacent sidewalk area repairs. However, private property owners retained maintenance, repair, and liability responsibility for such sidewalk area improvements located on their property; and

WHEREAS, the Town may, pursuant to its police power under California Constitution Article XI, § 7, make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws; and

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF MORAGA
DOES HEREBY ORDAIN AS FOLLOWS:**

SECTION 1. This ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21000, et seq. and the CEQA Guidelines (14 Cal. Code Regs. 15000 et. seq.), including without limitation, Public Resources Code Section 21080 as this is not a "project" and is exempt under Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility that this action may have a significant effect on the environment.

Furthermore, any possible actions that may result from the adoption of this action would be exempt under the California Environmental Quality Act (CEQA) Guidelines Section 15301(cd)(Class 1) and 15302(c) (Class 2).

SECTION 2. The Town Council hereby amends Chapter 12.04, "Sidewalks" by repealing Chapter 12.04, "Sidewalks" in its entirety and replacing Chapter 12.04, "Sidewalks" to add a new Section 12.04.10 – Purpose, a new Section 12.04.020 - Definitions, and a new Section 12.04.30 - Property owner responsibility to repair and maintain sidewalk area improvements within Title 12, "Streets, Sidewalks and Public Places" of the Moraga Municipal Code to read in its entirety as follows:

"Chapter 12.04 – SIDEWALKS

12.10.010 - Purpose.

The public right-of-way is a unique public resource held in trust for the benefit of the public. Damaged and deteriorated gutters, curbs, sidewalks, aprons, pathways, trees, landscaping and/or related improvements within the sidewalk area located within the public right-of-way needs to be maintained in order to provide public access, to provide for the safety of the public, reduce fuel for fires, and protect and enhance the character and quality of the Town of Moraga.

12.10.020 – Definitions.

For purposes of this Chapter, the following definitions shall apply:

"Abutting Property Owner" means the owner of a parcel of real property which abuts any portion of a sidewalk area between the property line of the parcel and the street line, including a parking strip and curb.

"Public Right-of-Way" means the area in, upon, above, beneath, or across any land or interest which by deed, conveyance, agreement, easement, dedication, usage, or process of law is reserved for or dedicated to the use of the general public for travel, and includes any public street, road, highway, freeway, bridge, lane, court, alley, boulevard, sidewalk, median, parkway, or emergency vehicle easement.

"Sidewalk Area" means the area between the property line of the parcel and the street line, which may include landscaping, such as shrubs, bushes and trees, mailboxes and other items, and improvements, such as a gutter, curb, sidewalk, apron, pathway, parking strip, etc.

12.04.030 - Property owner responsibility to repair and maintain sidewalk area.

- A. The owner of a parcel of real property which fronts on any portion of a sidewalk area between the property line of the parcel and the street line, including a parking strip and curb, is responsible for the repair and maintenance of the sidewalk area and shall pay the cost and expense of repair and maintenance.
- B. The owner of a parcel of real property is under the duty to members of the public to keep the portion of any sidewalk area described in subsection A of this section in a safe condition. If the owner makes an alteration to the sidewalk area, the owner must use ordinary care in making the alteration and in keeping the altered portion of the sidewalk area in a safe condition.
- C. The failure of an owner to fulfill the duties imposed by subsections A and B of this section is negligence and the owner is liable to hurt members of the public injured because of that negligence.
- D. If the owner of the parcel of real property is not the person in possession, then the responsibilities and duties imposed by subsections A and B of this section are also imposed on the person in possession of the property.
- E. Notwithstanding the duties imposed by subdivisions A, B, and D above, the Town may from time-to-time repair sidewalk areas as part of a street rehabilitation project. This action by the Town shall in no way eliminate the property owner's financial and liability obligations set forth in this Section.”

SECTION 3. Effective Date. This Ordinance becomes effective thirty (30) days after its final passage and adoption.

SECTION 4. This Ordinance shall be published and posted according to law and shall take effect and be in force from and after 30 days after its passage and adoption.

SECTION 5. Severability. If any provision of the Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance, which can be given effect without the invalid provisions or applications of the Ordinance. To this end, the provisions of this Ordinance are severable. This Town Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

ATTACHMENT C

Chronology of Moraga Street Rehabilitation Cost Sharing

Attachment C

Chronology of Moraga Street Rehabilitation Cost Sharing Policies and Events (1974 to 2024)

Continuation of Contra Costa County Policy (private property owner responsibility to maintain sidewalk area improvements) upon incorporation (November 1974)

When the Town of Moraga incorporated in 1974, it assumed Contra Costa County's Street Rehabilitation Cost Sharing Policy which required private property owners to be financially responsible for the maintenance and replacement of gutters, curbs, aprons, and sidewalks located within the public right-of-way affronting their property. When such infrastructure is on or affronting public property, the applicable governmental entity continues to be responsible for its maintenance and replacement.

Town Curb and Gutter Committee "no change" recommendation (1977)

In 1977, the Town Council formed a "Curb and Gutter Committee" to investigate the repair of gutters, curbs, aprons, and sidewalks. On August 17, 1977, Town Council discussed the Committee's findings and recommendations. At that time, the number of sidewalks was limited. Sidewalks were installed primarily as a requirement in neighborhoods close to schools. A few private property owners installed sidewalks on their own.

The Committee recommended that the Town continue with the existing policy, requiring private property owners to maintain and repair such infrastructure. The Committee wanted to ensure that private property owners remained financially and legally responsible for the maintenance and repair of gutters, curbs, aprons, and sidewalks located on private property. The Committee based its recommendation on the following five premises:

1. *A Town policy that places repair responsibility of gutters, curbs, aprons, and sidewalks upon the Town would have unknown and possible significant future financial impacts.*
2. *The Town taking on responsibility for repairs would encourage citizens to seek additional service demands upon a Town that was set up for minimum service governance and funded accordingly.*
3. *The public use of gutters, curbs, aprons, and sidewalks provides general and specific benefits to property owners. Therefore, it is equitable that property owners should assume the associated service costs.*
4. *It is difficult in practice to separate repair responsibilities between gutters, curbs, aprons, and sidewalks. In many cases, gutters, curbs, aprons, and sidewalks are monolithic (one piece) and difficult to repair separately without impacting the other or leaving the other in a hazardous condition.*
5. *The Town was set up as a minimal service government and does not have the funding to add new services or additional infrastructure responsibilities.*

Policy shift for the Town to be responsible for maintenance of gutters and curbs when determined to be a public hazard and the responsible party is not identified (August 27, 1977 to September 7, 1977).

On August 27, 1977, the Town Council voted 3-2 for the Town to be responsible for the maintenance of gutters and curbs affronting private property when they become a public hazard as determined by the Public Works Director. Town Council determined that before repairs commenced, an attempt will be made by the Town to identify the responsible party for damage (property owner, utility company, Town, etc.), and the responsible party would be assessed for the cost of repairs. Town Council directed staff to draft a formal Town policy regarding the repair of gutters, curbs, aprons, and sidewalks.

Policy Shift to allow for limited Town sidewalk area responsibility (1977 to 1990)

On September 7, 1977, Town Council voted 4-0-1 to adopt Resolution No. 44-77 which established the "Town Policy Concerning Repairs to Curbs, Gutters, and Sidewalks." This policy specified that property owners would be responsible for the maintenance of aprons and sidewalks, while the Town would be responsible for maintenance of gutters and curbs, unless damage was caused by others.

Policy shift back to private property owner responsibility to maintain sidewalk area improvements (1990)

In 1990, in response to potential liability for injuries stemming from sidewalk issues, Town Council adopted Ordinance No. 132 (Moraga Municipal Code Section 12.04.010) to clarify who is responsible for maintenance, repair, and liability. The assignment of responsibility for maintenance of the sidewalk area to the adjacent property owner found in Ordinance No. 132 is generally derived from California Streets and Highways Code Section 5610, which provides that the owners of lots fronting on any portion of a public street or place shall maintain any sidewalk in such condition that the sidewalk will not endanger persons or property and maintain it in a condition which will not interfere with the public convenience.

Similar to Streets and Highways Code Section 5610, Town Ordinance No. 132 provides that the owner of a parcel which fronts on any portion of a sidewalk area between the property line of the parcel and the street line, including a parking strip and curb, is responsible for the repair and maintenance of the sidewalk area and must pay the cost and expense of recurring maintenance and needed repairs. The sidewalk area may include various improvements, but not limited to: gutters, curbs, aprons, landscaping, and sidewalks. MMC Section 12.04.010 also provides that the owner of a parcel of real property is under a duty to members of the public to keep the portion of the sidewalk area in a safe condition. Ordinance No. 132, and Resolution No. 44-77, are collectively referred to in this memo as the Town's "Street Rehabilitation Cost Sharing Policy" or "policy."

Continued deterioration of the Town's streets and infrastructure (1990 to 2012)

Over the subsequent decades, the Town's streets and infrastructure continued to deteriorate and suffer from long-term neglect. Over time, Town staff began to document and inventory the declining state of the Town's overall public infrastructure system.

Throughout the Town's first four decades, public streets were poorly maintained due to lack of funding.

In 2009, Metropolitan Transportation Commission's (MTC) StreetSaver software-based pavement reports rated Moraga's streets 93rd out of 109 local governments in the Bay Area region. In other words, 85% of the Bay Area had better street conditions than Moraga. Most of Moraga's streets and roads were deteriorated, neglected, and classified as "at-risk." The average neighborhood residential street was classified as "poor" and rated in the bottom 15% in the Bay Area. At the time, 75% of the Town's streets and roads were projected to transition to "very poor" or "failed" condition within ten years. This would trigger the need to completely reconstruct most of these streets, which would cause the cost of repairs to triple.

In response, the StreetSaver report recommended the use of a "Best-First and Balanced Approach" which revolved around the principle of maximizing increases in the Town's overall PCI. The Best First and Balanced Approach focuses on improving the greatest amount of street segments and minimizes the repair of the very worst street segments because of the extremely high reconstruction costs for minimal systemwide street benefit.

Voter approval of Measure K – Local 1% Sales Tax Revenue Measure (Nov. 2012)

To obtain community-based support to better maintain and construct new improvements to Moraga's aging and deteriorating infrastructure, a citizen-based grassroots effort focused on improving public streets through a local sales tax revenue measure (Measure K). With the approval of Measure K on November 6, 2012, the Town was able to begin the multi-year process of improving and maintaining the Townwide failing street system. Measure K was approved as a "general purpose" local revenue source to support a variety of general purposes, including the repair of failing streets and storm drains. This sales tax is scheduled to sunset after 20 years (in 2032), unless extended by local voters.

Policy shift to allow for Town funded sidewalk area repairs that are part of street rehabilitation projects (2013 to 2022)

Over the course of the first decade since the passage of Measure K, the Town used Measure K Funds, federal ADA grants/funding, State Gas Tax revenues, State "Safe Routes to Schools" grants, and other funding sources to fund public street projects, along with the repair of adjacent gutters, curbs, aprons, and sidewalks within the public right-of-way. However, private property owners retained maintenance, repair, and liability responsibility for the gutters, curbs, aprons, and sidewalks located on their property.

Clarification of private property owner sidewalk area maintenance and repair responsibilities (2020 to 2022)

As time evolved, so did concerns over property owner responsibilities. In response, several reports and actions took place from 2020 to 2022, including the following:

- On May 27, 2020, a staff report was prepared which detailed the need to strengthen the Municipal Code to protect the community from hazards, including falling branches, walkway tripping, and fire risk by clarifying the private property owner responsibilities.
- On June 10, 2020, Town Council approved Ordinance No. 289, "Chapter 12.10 – Trees, Shrubs, Hedges and Other Landscaping in the Public Right-of-Way," clarifying that the maintenance responsibility for sidewalk areas rests with the property owner that fronts the sidewalk.
- On October 12, 2022, Town Council approved Ordinance No. 301, "Chapter 12.10 – Trees, Shrubs, Hedges and Other Landscaping in the Public Right-of-Way," to further clarify that responsibility for sidewalk areas rests with private property owners.

"Worst First Residential Streets" Approach (2020 to 2024)

As time passed, the StreetSaver "Best-First and Balanced Approach" recommendation to improve the overall PCI network before repairing low volume residential streets that may have a lower PCI score started to create implementation challenges. Limited funding restricted the ability of the Town to simultaneously reconstruct all the "very poor" and "poor" low traffic volume residential streets and adhere to the StreetSaver "Best-First and Balanced Approach." As a result, there were several failing residential streets with low traffic volumes that would likely not be repaired within the 20-year Measure K timeframe.

To better channel funding and attention to the worst streets, no matter what their traffic volumes are, Town Council, in 2020, approved the "Worst First Residential Streets Program," or "WFRS Program," approach to address rehabilitation of those residential streets that fall within either the "very poor" (0 to 25 PCI) or "poor" (26 – 50 PCI). At the time, 3.2% of Moraga's streets were within the "very poor" category and 10.9% were within the "poor" category. It was noted, at the time, that a number of these streets would not be repaired over the next ten years (prior to the sunset of Measure K) based on funding levels and recommendations of the StreetSaver "Best-First and Balanced Approach" to maximize (increase) the PCI network.

Town Council's direction to implement the WFRS Program resulted in an increase of the average PCI network from 74 in 2020 to 76 in 2024. This is the highest PCI recorded for Moraga since the data started to be gathered. Today, Moraga's streets rank in the top 20% for PCI among all Bay Area local governments. The Town's streets in "very poor" category have decreased from 3.2% in 2020 to 1.8% in 2024. The Town's streets in the "poor" category have decreased from 10.9% in 2020 to 4.0% in 2024. The Town's current goal is to eliminate all "very poor" and "poor" residential streets by the end of 2025.