

Attachment 3

MARIN MUNICIPAL WATER DISTRICT

RESOLUTION NO.

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE MARIN MUNICIPAL WATER DISTRICT
UPDATING THE DISTRICT'S WATER CAPACITY CHARGES**

WHEREAS, pursuant to California Government Code section 66013, the Marin Municipal Water District (the "District") is authorized to impose water capacity charges for public facilities in existence at the time the charge is imposed or for new facilities to be acquired or constructed in the future that are of proportional benefit to the person or property being charged, including supply or capacity contracts for rights or entitlements, real property interests, and entitlements and other rights of the District; and

WHEREAS, the District Board of Directors last updated the District's water capacity charges by adopting Ordinance No. 440 and Resolution No. 8512 on September 25, 2018; and

WHEREAS, the existing water capacity charges for single family residences and duplexes are based on the annual water demand of approximately 300 zones or areas, multi-family charges are based on an annual water demand factor of 0.14 AF per living unit, and other customer classes are assigned water entitlements based upon landscape plan reviews or water use estimates for the type and kind of business or facility; and

WHEREAS, the District's capacity charges are imposed on any property requesting a new, additional, or larger connection to the District's water system (for the purposes of this Resolution, each is referred to herein as a "new water service connection"); and

WHEREAS, following a review of the District's water system, capital improvement plan, and the nature and type of proposed new development within the District (which is predominantly infill and increased densification), it was determined the District's water capacity charge should be based on the system buy-in methodology in accordance with Government Code Section 66013(f), as the District's water system is substantively built out and has existing capacity to support projected growth through 2045 as detailed in the District's Updated 2020 Urban Water Management Plan, which approach would alleviate the requirement for the District to maintain a more detailed accounting of capacity charges received by the District; and

WHEREAS, an analysis of the capacity charges needed to serve new water service connections was prepared by Bartle Wells Associates, dated February 28, 2025 and entitled "Marin Municipal Water District 2025 Capacity Charge Study" ("Study"), a copy of which is on file in the Office of the Board Secretary located at 220 Nellen Avenue, Corte Madera, CA 94925 and available on the District website at

<https://www.marinwater.org/2025CapacityChargeStudy>), and is incorporated by this reference; and

WHEREAS, the capacity charges contained in the Study utilize Meter Equivalent Units (MEUs), or hydraulic capacity ratios, established by the American Water Works Association, to proportionally allocate the cost of the District's water system and capacity rather than utilizing the complex formulas used to calculate the District's existing capacity charges (currently referred to as connection fees); and

WHEREAS, the use of MEUs was determined to be a reasonable and equitable methodology to appropriately allocate capacity charge costs because the District is required to meet the capacity requirements of all customers' peak demands, which is determined by the maximum flow relative to the service meter size, regardless of their actual water use, and this methodology ensures that each customer class is charged the same capacity charges based upon their water meter size and the associated number of MEUs, which is indicative of the potential demand that the customer may place on the District's water system; and

WHEREAS, due to current plumbing code standards, many single family and duplex customers are required to install fire sprinklers, which requires at least a one inch water meter, when constructing a new structure or remodeling an existing one, even though most of these structures could be served with a 5/8 inch water meter and are anticipated to have similar demands to other single family and duplex residences with 5/8 inch water meters. Thus, in order to avoid disproportionately charging these residential services for the rare, if ever utilized, fire flow capacity and to ensure that these customers are only charged capacity charges for their normal maximum demand on the system, these customer classes (single-family residential and duplexes) will be charged the 5/8 inch water meter capacity charge for all water meters 1 inch and smaller. Single family and duplex water meters larger than 1 inch will be required to pay the standard capacity charge for the corresponding water meter size; and

WHEREAS, in accordance with Government Code Sections 66013, 66016, and 66016.6, the Study evaluates and establishes that the amount of the capacity charges do not exceed the reasonable costs of the District services being provided, and that the manner in which those costs are allocated to a capacity charge payor bear a reasonable relationship to the payor's burdens on, or benefits received from, the District's services; and

WHEREAS, the capacity charge is not a "tax" as defined in Section 1, paragraph (e) of Article XIII C of the California Constitution (commonly referred to as "Proposition 26") because such fee is imposed for a specific government service provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the District of providing the service; and

WHEREAS, the water capacity charge adopted by this Resolution is not subject to the requirements of Article XIII D of the California Constitution (commonly referred to as

“Proposition 218”) concerning property-related assessments and fees pursuant to *Richmond v. Shasta Community Services District*, 32 Cal. 4th 409 (2004). Furthermore, the charges set forth in this Resolution and the Study will not impact any customers’ water rates, nor will the adoption of Ordinance No. 469; and

WHEREAS, in accordance with Government Code Section 50076, fees and charges that do not exceed the reasonable cost of providing the service or regulatory activity for which the fees are charged and which are not levied for general revenue purposes are not special taxes as defined in Article 3.5 of the Government Code; and

WHEREAS, in accordance with Government Code Section 66016, at least fourteen (14) days prior to the public meeting at which this Resolution was adopted, it was determined that notice of the time and place of the meeting was not required to be mailed to eligible interested parties since no parties filed timely written requests with the District for mailed notice of meetings on new or increased capacity charges, and at least ten (10) days prior to the public meeting, the District made available public data indicating the amount of costs, or estimated costs, required to provide the water service for which the capacity charge is levied and the revenue sources anticipated to provide the service, including General Fund revenues, in that the notice of the meeting and a copy of the Study were posted on the District’s website on March 4, 2025; and

WHEREAS, in accordance with Government Code Section 66016.6, the Study evaluating the amount of the capacity charges was available at the Office of the Board Secretary and on the District’s website for public inspection, review, and comment on March 4, 2025, for fourteen (14) days prior to the public meeting at which the District considered the adoption of the water capacity charges; and

WHEREAS, on March 18, 2025, the District Board of directors adopted Ordinance No. 469 which amends provisions of the District Code governing District capacity charges.

FINDINGS

WHEREAS, the District Board of Directors finds as follows:

- A. The forgoing Recitals are true and correct and are hereby incorporated as part of these findings.
- B. After evaluating the Study, the testimony received at the noticed public meeting on March 18, 2025, at which this Resolution was adopted, the accompanying staff report and the Study along with appendices, and all correspondence received at or prior to the public meeting (the “Record”), the Board finds that the Study and the proposed capacity charges set forth therein do not exceed the estimated reasonable amount required to provide the service for which the charge is being levied and are of proportional benefit to the person or property

being charged and therefore do not constitute taxes as defined by Proposition 26.

- C. Pursuant to Government Code Section 66016(b), the District is authorized to approve the capacity charges set forth in this Resolution by resolution.
- D. In adopting the water capacity charges via this Resolution, the District Board of Directors is exercising its powers under Government Code Sections 66013 and 66016.
- E. In compliance with California Government Code Section 66324, the non-imposition of capacity charges on qualifying Junior Accessory Dwelling Units (JADUs) and Accessory Dwelling Units (ADUs) and removal of the requirement for the applicant to install a new or separate water service between a qualifying JADU or ADU and the water utility was developed and adopted and is set forth in Sections 11.56.040(h)(1-2) of the District Code.
- F. To further support housing development and promote affordability, with the adoption of Ordinance No. 446, the Board of Directors authorized the waiver of capacity charges for additional ADUs described in Section 11.56.040(h)(3) of the District Code.
- G. Pursuant to Government Code Section 66007, the District will allow delayed payment of capacity charges, until final inspection, for qualifying affordable housing developments.
- H. The District provides an annual accounting of capacity charge revenues and expenditures in its Comprehensive Annual Financial Report (CAFR). However, the District is not required to comply with the provisions of subdivisions (c) and (d) of Government Code Section 66013 since the capacity charges collected by the District are received to (a) construct public facilities pursuant to a contract between the District and a person or entity, including but not limited to, a reimbursement agreement pursuant to Section 66003, or (2) pay existing debt service and reimburse the District for funds under a reimbursement agreement or contract for facilities in existence at the time the charges are collected.
- I. The District currently provides water facilities and supplies water to the community and the water capacity charge set forth in this Resolution shall be used to maintain current service levels and reimburse the District for prior capital expenditures and existing debt service. As such, the Board's adoption of the water capacity charge, as it relates to new water service connections within the District, is exempt from the provisions of the California Environmental Quality Act (CEQA) because the action consists entirely of the

establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges necessary to (1) purchase or lease supplies, equipment or materials, (2) meet financial reserve needs and requirements, and (3) obtain funds for capital projects necessary to maintain service within the District’s existing service area. (Public Resources Code § 21080(b)(8); 14 CCR §15273). The Board's adoption of these capacity charges is also exempt from the requirements of CEQA because there is no possibility that their adoption will have a significant effect on the environment. (14 CCR § 15061(b)(3).

ADOPTION OF FEE NOW,

THEREFORE, BE IT RESOLVED:

1. Water Capacity Charge Being Imposed.

Below the water capacity charges being imposed are set forth by meter size, and customer class and type, where applicable.

<u>Connection Type</u>	<u>Proposed Capacity Charges</u>
Single Family & Duplex up to 1" [1]	\$16,740
<i>Single Family or Duplex connections with meter size up to 1"</i>	
Accessory Dwelling Units (ADU) [2]	\$507
<i>Charge per plumbing drainage fixture unit (when applicable)</i>	
All Other Connections by Meter Size	
<i>Meter Size</i>	
5/8"	\$16,740
3/4"	\$25,110
1"	\$41,850
1 1/2"	\$83,700
2"	\$133,920
3"	\$334,800
4"	\$669,600
6"	\$1,171,800
8"	\$2,259,900
10"	\$3,348,000

1) Single Family and Duplex customers with a meter size greater than 1" shall be assessed a capacity charge based on the corresponding meter size set forth in "All Other Connections" above
 2) ADU capacity charge applies pursuant to Government Code and District Code, when applicable

2. Annual Adjustment.

On July 1st of each year, commencing on July 1, 2026, the water capacity charge described herein shall be adjusted to account for increases or decreases in the index set forth below. The water capacity charge shall be adjusted as follows:

- i. Annual Economic Adjustment to Water Capacity Charge. The water capacity charge shall be adjusted in accordance with the following formula:

$$\text{NCF} = \text{OCF} + ((\text{OCF}) \times (\text{ENR Annual Change}))$$

Wherein,

“NCF” is the new or adjusted water capacity charge for the upcoming fiscal year;

“OCF” is the water capacity charge in effect during the current fiscal year; and

“ENR Annual Change” is the percentage change in the Engineering News Record Construction Cost Index for the San Francisco area from December for the second prior calendar year to December for the prior calendar year.

3. The capacity charges collected shall continue to be used solely to fund public facilities in existence at the time capacity charges are imposed or for new public facilities to be acquired or constructed in the future that are of proportional benefit to the person or property being charged a capacity charge, including supply or capacity contracts for rights or entitlements, real property interests, and entitlements and other rights of the District involving capital expense relating to its use of existing or new public facilities.
4. This Resolution shall take effect immediately upon its adoption. The capacity charges imposed herein shall become effective on July 1, 2025. District staff is hereby directed to begin applying the capacity charges set forth in this Resolution to all new and pending water service applications not completed prior to July 1, 2025.
5. Since adoption of the capacity charge methodology set forth in this Resolution will eliminate the existing water entitlement system, to ensure no changes to customer water rates occur due to the adoption of this Resolution, the Board of Directors directs District staff to continue providing non-residential customers bimonthly allotments of water (water budget) based on their defined water needs and billing those customers based upon their individual baselines as specified in Section 11.08.035 and 11.24.050 of the District Code.
6. If any section, subsection, clause or phrase in this Resolution or the application thereof to any person or circumstances is for any reason held invalid, the validity of the remainder of this Resolution or the application of such provisions to other persons or circumstances shall not be affected thereby. The Board hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases or the application thereof to any person or circumstance be held invalid.

PASSED AND ADOPTED this 18th day of March, 2025 by the following vote of the Board of Directors.

AYES:

NOES:

ABSENT:

Matt Samson
President, Board of Directors

ATTEST:

Terrie Gillen
Board Secretary