



**PUBLIC WORKS DEPARTMENT**  
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## **CITY COUNCIL STAFF REPORT**

Meeting: March 5, 2019

### SUBJECT

Consider approving the 2019 Clean Water and Storm Protection Fee Report; discussion and consideration of a Resolution declaring the intention to initiate a proceeding to obtain approval of the City's proposed 2019 Clean Water and Storm Protection Fee, which is a property-related fee, approving a fee report, and calling a hearing to consider all protests; discussion and consideration of a Resolution adopting ballot procedures for the 2019 City's Clean Water and Storm Protection Fee.

### Recommended Action

1. Receive and approve the Fee Report for the 2019 Clean Water and Storm Protection Fee; and
2. Adopt Resolution No. 19-XXX Initiating a Proceeding to Obtain Approval of the City of Cupertino's 2019 Clean Water and Storm Protection Fee, a property-related fee conforming to Article XIII D, Section 6 of the State Constitution; and
3. Adopt Resolution No. 19-XXX Adopting Ballot Procedures for the City of Cupertino 2019 Clean Water and Storm Protection Fee; and
4. Call for a Public Hearing, tentatively scheduled for May 7, 2019, to receive input from the public about the proposed 2019 Clean Water and Storm Protection Fee, and to determine whether there is a majority protest to the proposed fee.

### Background

On June 5, 2018 a study session on potential revenue measures related to business license tax and storm drain charges was conducted. The business license fee was subsequently discussed by Council separately from storm drain charges, and Council directed staff to report back with recommendations as soon as practicable to increase storm water charges to achieve full cost recovery for the program. At this study session, current property related storm fees of \$12 per residential parcel and \$144 per acre for apartments/commercial/industrial that have not changed since 1992 were described as funding about one-half of storm water pollution prevention costs (referred to as Non-Point Source (NPS) program costs in the budget and as Clean Water in this proposed property-related fee). Clean water costs are incurred to comply with State storm water pollution prevention requirements. In FY 18/19, these costs are estimated to be \$727,000

with property related storm fees generating only \$372,000. The balance of approximately \$355,000 is subsidized by the general fund. Other storm water related expenses are also subsidized by the general fund.

Total general fund subsidy of all storm water related expenses includes clean water costs plus operation and maintenance (O&M) costs plus capital costs. These cumulative costs have ranged from \$713,000 in FY 14/15 to a projected \$3.5M in FY 23/24.

At the June 5, 2018 study session, Council indicated a willingness to review a process to double the storm protection charge for residential premises from \$12 to \$24 per residential dwelling. Doubling of commercial and other premises was discussed as well. This was in part due to a survey completed by Voxloca that showed 62% of resident's surveyed expressed support for a storm protection service charge increase and that 57% of those surveyed supported the charge increasing to \$24 or more. A doubling of our storm water fee will not get to full cost recovery for all storm water programs. Additionally, the City currently has no funding mechanism in place to address the projects identified in the 2018 Storm Drain Master Plan. For full cost recovery and to have a dedicated source of funding for clean water and storm protection program that does not rely on the City's General Fund, it is likely that storm protection charges would need to increase to a charge similar to our neighbors in San Jose and Palo Alto.

At the Council meeting of August 21, 2018, staff presented a report titled the "Storm Water Management Fee Study and Ballot Initiative" with several recommended actions that had the potential to increase property related storm water fees in FY 19/20. These actions included the funding and completion of:

- A statistically valid survey to determine the level of support and priorities by the public for a funding measure to fund the clean storm water and storm protection program;

And upon receiving favorable results and future Council direction, funding and completion of:

- Storm water management fee report (Fee Report) that would determine equitable charges to various property uses as required by Proposition 218; and
- Outreach and community education for a citywide balloting process by June 30, 2019

Staff had asked for up to \$225,000 to complete these actions but instead received direction to only complete the survey for an amount not to exceed \$20,000. The remaining

recommended actions were not funded, and staff was directed to report back to Council with survey results and recommended next steps.

The City entered into an agreement with SCI Consulting Group (SCI) to conduct a survey and on January 15, 2019 the survey results were presented to the Council. Upon hearing the survey results, Council approved the funding for the remaining steps in the process and directed the completion of the Fee Report with SCI. The Fee Report has now been completed (Attachment A).

### Fee Report Summary

Based on the results of the public opinion survey and discussion at the January 15, 2019 City Council meeting, SCI has included all operations and maintenance of the Clean Water and Storm Protection program, including NPDES requirements, in the Fee Report. It did not include the Capital Improvement Program in the 2018 Storm Drain Master Plan, which will need to be funded through other means.

These elements form the basis for the annual revenue requirement of \$1,097,787 for fiscal year 2019-20 (the first year for which revenues would be collected). This has resulted in a median single-family residential rate of \$44.42 per year. The Fee Report also recommends a 25% reduced fee for multi-residential (condominium or apartment) or commercial properties that implement low impact development (LID). LID includes facilities such as rain gardens or capture-and-reuse features that reduce runoff into the storm drainage system, filters pollutants, and recharges the groundwater basins.

The Fee Report includes an annual adjustment for inflation equal to the Bay Area Consumer Price Index ("CPI-U"). Although it is capped at 3% for any year, any excess CPI-U may be held in "reserve" to be used in future years when the CPI-U is less than 3%.

All proceeds from the fee would be required to be deposited into a separate account or fund separate from the City's general fund. However, these could be co-located or co-mingled with the existing Storm Drainage Service Charge account, because its restrictions align fully with the Clean Water and Storm Protection Fee services.

In addition to the Fee Report, SCI has recommended that the City adopt a fee ordinance in May that includes the fees as described along with other vital fiscal controls and accountability:

- a. An appeals procedure to allow any property owner who disagrees with the calculation of his or her 2019 Clean Water and Storm Protection Fee to appeal the fee calculation.

- b. All proceeds from the fee can only be used for Clean Water and Storm Protection services as defined in the Fee Report and the attached Resolutions.
- c. Annual audits would be performed. As a separate account or fund, it would be identified in the City's annual audit process.
- d. A provision for citizens' oversight. This task could be added to an existing committee that already oversees the revenues and expenditures for the City, such as the Audit Committee.

Each year that the fee is to be collected, the City would need to review the program's revenue needs and make a recommendation regarding any change in the fee for the coming year, with any proposed increase limited by the maximum rated allowed based on the annual CPI-U adjustment, as described above. Any such changes would be approved by resolution of the Council each year before the fee data is submitted to the County in August for collection on the annual property tax bills.

There is no sunset clause for this fee, since maintenance and operations and NPDES elements of the Clean Water and Storm Drainage Program will continue for as long as the City continues to be responsible for its storm drainage system. There is no end foreseen for these obligations, so the fee structure to support them also should not end.

#### Process Requirements

The Stormwater Fee is a property-related fee. Property-related fees are governed by Articles XIIC and D of the State Constitution, which was approved by voters in 1996 through Proposition 218, as well as the Proposition 218 Omnibus Implementation Act (Government Code Sections 53750 – 53758). In particular, Article XIID, Section 6 describes the procedures for a property-related fee. Once a proposed fee has been proposed, approval requires the following steps:

- The City must mail a Notice of Public Hearing of the proposed fee to all property owners subject to the fee at least 45 days before a public hearing on the matter. At that hearing, the City shall consider all protests against the fee. If written protests are presented by owners representing a majority of parcels, the City shall not seek voter approval of the fee. If a majority protest is not formed, the City may proceed to the next step.
- No property-related fee, with certain exceptions,<sup>1</sup> shall be imposed until it is submitted and approved by a majority vote of the property owners of the properties subject to the fee. This election, or ballot proceeding, shall not be

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<sup>1</sup> The exceptions to the voter approval requirement for new or increased fees and charges in Article XIID, Section 6(c) are "fees or charges for sewer, water, and refuse collection services."

conducted less than 45 days after the public hearing. If no majority protest is formed by the time of the public hearing, the City Council may order the ballots to be mailed.

### Options and Next Steps

Any action taken on the Fee Report is done through the two attached resolutions (Attachment B and C). The first resolution initiates the proceedings, states the Fee Report is deemed sufficient and approved, states the annual amount of funds to be collected, and contains detailed descriptions of the services, procedures, and other features of the Clean Water and Storm Protection Fee. The second resolution establishes procedures for conducting the ballot proceeding in accordance with Proposition 218. This is common for local jurisdictions because neither Proposition 218 nor the statute Omnibus Implementation Act include detailed procedures.

Attachment D is a draft of the Notice of Public Hearing that will be sent to affected property owners. This contains critical information about the Clean Water and Storm Protection Fee, the Public Hearing, the protest procedures, and information about funding needs, and the projects that will be built with the revenues.

In adopting the two resolutions, the City Council will set in motion a proceeding that will run through July 2019. The next step would be to print and mail the Notice of Public Hearing, which is expected to be mailed by March 22, 2019.

Staff, with the support of SCI, plan to conduct three community meetings and several presentations to local community groups in March and April 2019 to inform the public about the proposed fee and to answer as many of their questions as possible prior to the public hearing in May. The dates of the community meetings will be included in the Notice of Public Hearing.

If the Council does not approve of the Fee Report, it may either direct the Fee Report to be amended, thereby postponing the adoption of the attached Resolutions and the subsequent processes necessary to approve the fee, or the Council may elect not to continue with this process at all.

### Future Dates and Milestones

If the City Council directs staff to proceed with a proposed property-related fee for clean storm water and storm protection, the future steps are tentatively scheduled as follows:

- Week of March 18: Public Hearing notices mailed to the public
- April: Staff conducts informational community meetings

- May 7: Public Hearing and announcement of whether there is a majority protest
- May 7: If there is no majority protest, City Council considers a resolution documenting no majority protest and authorizes ballots to be mailed
- May 17: Ballots are mailed
- July 5: Close of balloting period
- July 8-12: Tabulation of ballots
- July 16: City Council certifies ballot results and, if the measure passes, considers a resolution ordering the fee to be included on the 2019-20 tax bills

### Sustainability

There are no negative effects from this action. Proper funding of storm water pollution prevention programs and improving existing storm water infrastructure will improve the water quality of storm runoff entering the Bay and reduce the likelihood of property loss due to flooding.

### Fiscal Impact

The storm water program is currently underfunded, and the prospect of additional inflationary adjustment revenue from the new fees will help reduce funding deficits related to O&M needs. Continued general fund subsidized funding of storm water programs and improvements results in a reduction in service in other critical areas. The Council has already approved the funds to pay for the Fee Report, Notice, and Balloting process.

If the funding measure passes, it is estimated that the fee will generate revenue of approximately \$1.1 million per year. Program costs, due to proposed enhanced services, will increase \$150,000 per year and an additional estimated amount of \$100,000 of program costs will occur due to storm water related cost transfers from the Resource Recovery Fund.

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Prepared by: Roger Lee, Acting Director of Public Works  
Approved for Submission by: Timm Borden, Interim City Manager

### Attachments:

- A - Fee Report-2019 Clean Water and Storm Protection Fee
- B - Draft Resolution No. 19-XXX Initiating a Proceeding to Obtain Approval of the City of Cupertino's Clean Water and Storm Protection Fee, a Property-Related Fee Conforming to Article XIII D, Section 6 of the State Constitution

C – Draft Resolution No. 19-XXX Adopting Ballot Procedures for the City of Cupertino  
Clean Water and Storm Protection Fee, a Property-Related Fee Conforming to  
Article XIII D, Section 6 of the State Constitution

D – Draft of the Notice of Public Hearing

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