



PUBLIC WORKS DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: June 4, 2024

Subject

Approve the renewal (with no increase) of the 1992 Storm Drain Fee and renewal of the 2019 Clean Water and Storm Protection Fee with a 2.62% increase.

Recommended Action

Adopt:

1. Resolution No. 24-XXX (Attachment A) approving the renewal and collection of the 1992 Storm Drain Fee with no increase in rates for Fiscal Year (FY) 2024-25.
2. Resolution No. 24-XXX (Attachment B) approving the renewal and collection of the 2019 Clean Water and Storm Protection Fee with a 2.62% increase in rates for FY 2024-25.

Reasons for Recommendation

City of Cupertino's Stormwater Pollution Prevention Program

The City's Stormwater Pollution Prevention Program (also known as the Nonpoint Source Program) is mandated by the State of California (State) and United States Environmental Protection Agency (EPA) regulations implementing the Federal Clean Water Act. Regulations by the EPA and the State require cities to take specific actions to eliminate or control pollutants in water that belongs to the State. These regulations are implemented locally by the California Regional Water Quality Control Board - San Francisco Bay Region (Water Board) through the Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit, commonly referred to as the Municipal Regional Permit (MRP.) Additional details of the City's compliance activities are provided in the Engineer's Report (Exhibit A to each of the resolutions located in Attachments A and B).

Information about the City's stormwater pollution prevention program is also available at www.cupertino.org/cleanwater, which includes links to a variety of resources and guidance including an interactive creek map, a link to the City's most recent annual report submitted as required to the Water Board, information for developers and contractors, and education on less toxic pest control.

Two property-based fees have been established to help cover the costs of compliance:

1992 Storm Drainage Service Charge Fee (1992 Fee)

In 1992, the City established the 1992 Fee to help cover the cost of complying with stormwater pollution prevention requirements that were then in effect. The 1992 Fee is applied to each property in the City, with exceptions for those owned by certain entities, such as properties owned by the government, utility agencies, and schools, which were exempt under the laws at the time the fee was approved. The fee is collected by the Santa Clara County Tax Collector on behalf of the City and is subject to annual review by the City Council. The Fee consisted of three rates, which were based on type of land use of each parcel as follows: 1) \$12 for residential parcels; 2) \$144/acre for apartments, commercial and industrial parcels; and 3) \$36/acre for unimproved and recreational parcels.

The Fee has no mechanism to enable an annual increase. As such, the revenue collected from the 1992 Fee has not increased since it was established and has remained at approximately \$375,000 per year. However, regulatory requirements, stormwater system maintenance expenses, wages, and permit fees have not remained static since 1992, and the cost of compliance has risen over the years. When the first MRP was approved and implemented in 2009, and again when the second permit was adopted in 2015, permit requirements increased significantly. The third reissuance of the Municipal Regional Permit (MRP 3.0) was adopted on May 11, 2022, with an effective date of July 1, 2022, further increasing requirements. Certain requirements within MRP 3.0 become effective July 1, 2023, and the City made edits to the Cupertino Municipal Code (CMC) to reflect those changes. While existing language in the CMC already states that “All requirements in the Municipal Regional Permit are required and enforceable by the City,” staff performed additional code cleanup to clarify and streamline CMC section 9.15. Those edits became effective July 6, 2023. By 2019 the cost of compliance exceeded the revenues from the 1992 fee and was creating a significant draw upon the City’s General Fund by over \$600,000 per year. Renewal of the 1992 Fee is recommended in FY 2024-25.

2019 Clean Water and Storm Protection Fee (Clean Water Fee)

The Clean Water Fee, a property-related fee subject to Proposition 218, was approved by Cupertino property owners in 2019 and was authorized by Council on July 17, 2019, for inclusion on the 2019-2020 Property Tax bills. The 2019 Clean Water Fee and Storm Protection (2019 Fee) was calculated starting from the average acreage of a median single-family residential parcel and a benchmark amount of impervious surface. Details of the rate structure analysis can be found in the Fee Report attached to the 2019 Fee Ordinance (Attachment C.) Proposition 218 requires that all property owners pay in proportion to the benefit received; therefore, exceptions provided under the 1992 Fee (which predates the adoption of Proposition 218) for parcels owned by certain public entities, such as government, utilities, and schools, are not permissible.

The Clean Water Fee may be increased annually by Council to meet expenses of the Nonpoint Source Program. The potential increase is tied to the annual change in Consumer Price Index (CPI) as of December each year, up to a maximum of 3% in any single year. The CPI change for the period December 2022 to December 2023 was 2.62%. Staff recommends increasing the fee for FY 2024-2025, which will generate an additional \$29,473.

This increase equates to approximately \$1.20/year for the most common (medium) sized single-family parcel. Current rates and the proposed increased rates are shown in the tables below.

Current Annual Rates:

Land Use Category		Fee	
Single-Family Residential *			
Small	(Under 0.13 acre)	\$ 37.68	per parcel
Medium	(0.13 to 0.22 acre)	\$ 45.75	per parcel
Large	0.23 to 0.40 acre)	\$ 57.25	per parcel
Extra Large	(over 0.40 acre)	\$ 109.61	per parcel
Condominium 1	(1 story)	\$ 37.68	per parcel
Condominium 2+	(2+ stories)	\$ 12.34	per parcel
Non-Single-Family Residential **			
Multi-Family Residential		\$ 31.81	per 0.1 acre
Commercial / Retail / Industrial		\$ 41.59	per 0.1 acre
Office		\$ 31.81	per 0.1 acre
Church / Institutional		\$ 26.91	per 0.1 acre
School (w/playfield)		\$ 19.57	per 0.1 acre
Park		\$ 7.34	per 0.1 acre
Vacant (developed)		\$ 2.45	per 0.1 acre
Open Space / Agricultural		no charge	
Low Impact Development Adjustment ***		25% Fee Reduction	

* Single-Family Residential category also includes du- tri- and four-plex units

** Non-SFR parcels are charge per the tenth of an acre or portion thereof

*** Low Impact Development Adjustment only applies to condominium and non-single-

Annual Rates With 2.62% Increase:

Land Use Category		Fee	
Single-Family Residential *			
Small	(Under 0.13 acre)	\$ 38.67	per parcel
Medium	(0.13 to 0.22 acre)	\$ 46.95	per parcel
Large	0.23 to 0.40 acre)	\$ 58.75	per parcel
Extra Large	(over 0.40 acre)	\$ 112.49	per parcel
Condominium 1	(1 story)	\$ 38.67	per parcel
Condominium 2+	(2+ stories)	\$ 12.67	per parcel
Non-Single-Family Residential **			
Multi-Family Residential		\$ 32.64	per 0.1 acre
Commercial / Retail / Industrial		\$ 42.68	per 0.1 acre
Office		\$ 32.64	per 0.1 acre
Church / Institutional		\$ 27.62	per 0.1 acre
School (w/playfield)		\$ 20.08	per 0.1 acre
Park		\$ 7.54	per 0.1 acre
Vacant (developed)		\$ 2.52	per 0.1 acre
Open Space / Agricultural		no charge	
Low Impact Development Adjustment ***		25% Fee Reduction	

* Single-Family Residential category also includes du- tri- and four-plex units

** Non-SFR parcels are charge per the tenth of an acre or portion thereof

*** Low Impact Development Adjustment only applies to condominium and non-single-family properties.

2019 Clean Water and Storm Protection Fee Incentive Programs

The City continues to offer the cost-share program for low-income residents. Eligible residents will receive a 20% reduction in their annual fee. The cost-share program is funded by the General Fund because revenues from the 2019 Fee are restricted from being used for a cost-share (e.g., funding a reduced rate for others property owners). An online application form is available¹ and applicants are also welcome to call 408-777-3236 or email staff for assistance at environmental@cupertino.gov.

Fee Reduction for Commercial and Multi-family Low Impact Design Features

As allowed by the 2019 Fee Ordinance, 267 commercial and multi-family properties that had already installed low-impact design (LID) elements such as bioswales, capture basins, and bioretention facilities, were assigned a 25% fee reduction, consistent with the fee schedule, after the fee was adopted. Installation of new LID features under the requirements of C.3 in the MRP (stormwater treatment measures in new development and redevelopment projects) qualifies additional properties for the same reduction. There is no change to this fee reduction for qualifying properties.

¹ Cupertino.org/watercostshare

Audit Committee Review of Programs

Pursuant to the 2019 Fee Ordinance, expenses and revenues are audited annually by an independent auditor. The City's annual external audit for FY2022-23 is tentatively scheduled to be completed and reviewed by the Audit Committee in June 2024, and no issues have been raised about the Nonpoint Source Program transactions. An additional Agreed-Upon Procedures (AUP) Audit, specific to the Nonpoint Source Program, was developed to further assess this program using a calendar year cycle, which will be completed for calendar year 2022 and 2023 with no expected exceptions noted. The final AUP reports will be available to the public late June. Council may approve the recommended actions independent of the AUPs being finalized.

Sustainability Impact

The 1992 Fee and 2019 Fee support water pollution prevention and water conservation (NPDES) activities. Significant sustainability benefits include the reduction or elimination of pollutant discharges, which could degrade local creeks and threaten the supply of clean water, as well as the capture of rainwater, which can be used as a resource. Green Stormwater Infrastructure uses engineered features to mimic natural processes that allow stormwater to infiltrate the groundwater system instead of entering the storm drain system, enhancing climate change resilience.

Fiscal Impact

The combined revenues from the 1992 Storm Drainage Service Charge and 2019 Clean Water and Storm Protection Fee will generate approximately \$1,500,500 for FY 2023-24, received into Fund 230 Environmental Management/Clean Creek/Storm Drain. Projected expenses by the end of the fiscal year are approximately \$2,228,113, which is 13% under the approved budget, but which exceed the revenues generated by the 1992 Fee and the 2019 Fee by approximately \$727,613.

The proposed budget for FY 2024-25, with the proposed 2.62% increase of the 2019 Fee, anticipates the cost of the Nonpoint Source Program to be \$1,906,328, which reflects full staffing, adjusted staffing allocations, maintenance projects on aging infrastructure for storm protection, installation of drain inlet treatments, and the other activities that ensure compliance with the MRP. Without an increase, the expected revenues from the two fees are approximately \$1,500,500. The projected expense for the Nonpoint Source Program for FY 24-25 is \$429,089 beyond the expected revenue from the fees.

In recent years, the shortfall between the APN fee revenues and the program expenses has been covered by the balance in Fund 230 330-301. The available balance of Fund 230 after considering the estimated actuals for FY 2023-24 is projected to be \$492,521. The projected shortfall for FY 24-25 as noted in the previous paragraph is approximately \$429,089, which will leave an expected balance in Fund 230. However, a new street sweeping contract is currently being pursued with an expected cost increase and an

outfall assessment project is currently underway that will result in identifying needed repairs. As such, the 2.62% increase is still recommended.

This annual renewal process concerns only budget and activities related to Fund 230 Environmental Management/Clean Creek/Storm Drain, which is for activities related to operating the Non-Point Source Pollution Program. It is distinct from Fund 215 Storm Drain AB1600², which is revenue from development impact fees as a result of impacts to the storm drainage system and ongoing maintenance and improvements necessary to ensure proper drainage from development projects. It is also distinct from Fund 210 Storm Drain Improvement, which is for the construction and maintenance of storm drain facilities through projects funded by the Capital Reserve.

Nonpoint Source Program Revenue and Expenses (estimated)

	FY 2023-24	FY 2024-25 (proposed)
Fund Balance (previous FY)	\$1,220,134	\$492,521
Revenue 1992 Fee	\$ 375,583	\$ 375,583
Revenue 2019 Fee	\$ 1,124,917	\$ 1,154,390
2.62% increase to 2019 Fee	\$ -	\$ 29,473
General Fund	\$ -	
Total Program Funding	\$2,720,634	\$2,051,967
Program Expenses (projected)	\$2,228,113	\$1,906,328
Remaining Fund Balance at end of FY	\$ 492,521	\$ 145,369

The following operational reductions that were implemented in FY23-24 continue to be included in the proposed FY24-25 budget:

- As part of the annual compliance required by the MRP, the annual stormwater inspection has been conducted by a third-party consultant. Going forward, such inspection will be conducted by city staff. Annual cost savings will be \$3,200.
- Discontinue the agreement with Grassroots Ecology for citizen science fieldtrips to do water sampling in Stevens Creek. While the program is popular among the community, the collected data is beyond the testing required by the MRP and outreach and education are already occurring regionally through SCVURPPP-funded projects and through the City's third grade creek education field trips at McClellan Ranch Preserver. Cost savings will be \$20,460.
- Discontinue providing transportation service to CUSD to McClellan Ranch Preserve for annual third-grader fieldtrips. CUSD has confirmed that the schools would be able to continue the fieldtrip and CUSD can supply the transportation. This would be an annual cost savings of \$14,900.

² See Page 8 of the Development Impact Fee Report:

cupertino.org/home/showpublisheddocument/34094/638356545261130000

- Purchase of a remote-controlled rover with a camera now provides the City with a more cost-effective evaluation of storm drain system pipes. Purchasing the remote camera system has enabled the storm drain inspection operations team to perform activities that were previously cost the City approximately \$160,000 per year.
- Elimination of matching rebates for the Valley Water program for landscape conversion and rainwater capture for a savings of \$12,500 per year.

California Environmental Quality Act (CEQA)

Not applicable.

Prepared by: Ursula Syrova, Environmental Programs and Sustainability Manager

Reviewed by: Chad Mosley, Director of Public Works

Reviewed by: Matt Morley, Assistant City Manager

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A – Draft Resolution 1992 Fee

B – Draft Resolution 2019 Fee

C - Clean Water and Storm Protection Fee Ordinance with Fee Report