



PUBLIC WORKS DEPARTMENT

CITY HALL
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255
TELEPHONE: (408) 777-3354 • FAX: (408) 777-3333
CUPERTINO.ORG

CITY COUNCIL STAFF REPORT

Meeting: June 7, 2022

Subject

Consider approval of the renewal (with no increase) of the 1992 Storm Drain Fee and the 2019 Clean Water and Storm Protection Fee.

Recommended Action

Consider adoption and approval of:

1. Resolution No. 22-XXX (Attachment A) approving the renewal and collection of the 1992 Storm Drain Fee with no increase in rates for Fiscal Year (FY) 2022-23; and
2. Resolution No. 22-XXX (Attachment B) approving the renewal and collection of the 2019 Clean Water and Storm Protection Fee with no increase in rates for FY 2022-23.

Background

Stormwater Pollution Prevention Program

The City of Cupertino's Nonpoint Source Program is mandated by the State of California (State) and United States (US) 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.) The MRP was issued to 76 agencies whose stormwater systems and creeks drain to San Francisco Bay. To assist with compliance, the agencies under this MRP have assembled into more localized groups. The City and 14 other co-permittees in Santa Clara County (County) are members of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP,) which works collaboratively to maintain compliance with State and Federal requirements. The SCVURPPP provides technical and administrative guidance to permittees, interfaces with the Water Board on permittees' behalf, and coordinates compliance activities that

benefit all, such as far-reaching outreach and education activities, water quality assessments, and watershed monitoring.

The City complies with MRP requirements through a variety of activities, including:

- Mandatory inspections and data tracking to prevent illegal connections and discharges to the City's storm drain system
- Review of planned development and construction activities
- Development of a Green Stormwater Infrastructure Plan
- Tracking pesticide use
- Enforcing Polychlorinated Biphenyls (PCBs,) (a class of organic compound that does not degrade easily) screening requirements
- Litter reduction measures
- Installation of screens and trash capture devices in drain inlets
- Cleaning and maintenance of drain inlets and installed devices
- Maintenance and repair of the storm drain system
- Street sweeping
- Local outreach and education
- Support of third-grade Creek Education Program provided at McClellan Ranch Preserve
- Participation in SCVURPPP-led work groups and committees

1992 Storm Drain Fee

To cover stormwater pollution prevention compliance activity costs, in 1992, the City established a Storm Drainage Service Charge (Fee.) The 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 automatic annual increase. As such, the revenue collected from the Fee has not increased since it was established and has remained at approximately \$370,000 per year. However, regulatory requirements, stormwater system maintenance expenses, wages, and permit fees have not remained static, and the cost of compliance has risen over the years. When the first MRP was approved in 2009, and again when the second permit was adopted in 2015, permit requirements increased significantly. The second reissuance of the Municipal Regional Permit (MRP 3.0) was adopted on May 11, 2022, with an effective date of July 1. While revenues from the Fee at one point covered expenses related to compliance with the MRP, by 2019 the cost of compliance exceeded the fee and was creating a significant draw upon the City's General Fund. Renewal of the Fee is recommended in FY 2022-23.

2019 Clean Water and Storm Protection Fee

The Clean Water and Storm Protection Fee, a property-related fee subject to Proposition 218, was approved by Cupertino parcel owners in 2019 and was authorized by Council on July 17, 2019, for inclusion on the 2019-2020 Property Tax bills. The 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 Clean Water and Storm Protection 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 2019 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 three percent in any single year.

The CPI change for the period December 2020 to December 2021 was 4.24%. Pursuant to the Clean Water and Storm Protection Ordinance, fees can only be increased if actual program expenditures increase, and the Clean Water and Storm Protection Fund 230 balance is insufficient to cover expenditures more than revenues. Expenses associated with the Nonpoint Source Program are projected to exceed revenue for FY 2021-22; however, there is sufficient balance in Fund 230 to cover the difference. Balance in Fund 230 accrued due to a transitional subsidy from the General Fund in 2019, delayed staffing allocation adjustments, and lower expenditures due to the COVID-19 pandemic. For those reasons, no increase in the Clean Water and Storm Protection fee for 2022-23 is recommended. Current rates are shown in the table below.

Clean Water and Storm Protection Fee Rates

Land Use Category		Fee	
Single-Family Residential *			
Small	(Under 0.13 acre)	\$ 36.58	per parcel
Medium	(0.13 to 0.22 acre)	\$ 44.42	per parcel
Large	0.23 to 0.40 acre)	\$ 55.58	per parcel
Extra Large	(over 0.40 acre)	\$ 106.42	per parcel
Condominium 1	(1 story)	\$ 36.58	per parcel
Condominium 2+	(2+ stories)	\$ 11.99	per parcel
Non-Single-Family Residential **			
Multi-Family Residential		\$ 30.88	per 0.1 acre
Commercial / Retail / Industrial		\$ 40.38	per 0.1 acre
Office		\$ 30.88	per 0.1 acre
Church / Institutional		\$ 26.13	per 0.1 acre
School (w/playfield)		\$ 19.00	per 0.1 acre
Park		\$ 7.13	per 0.1 acre
Vacant (developed)		\$ 2.38	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.

Discussion

2019 Clean Water and Storm Protection Fee Rebate Programs

Permeable Pavement Project Rebate Program

On August 20, 2019, Council approved rebates for permeable pavement installations at single-family homes and duplexes at a rate of \$3/sf with a \$900 (300 sf) maximum. An average two-car driveway is 300 square feet (sf.) While the measure generated some early inquiries, no applications for the rebate were received, despite outreach. In 2021, following consideration of various options for the program, City Council approved increasing the maximum rebate to \$1,800 (600 sf.) To date one driveway project has been submitted and approved for the rebate in the amount of \$1,434.

Rain Garden and Rain Barrel Installation Rebate Programs

On August 20, 2019, Council allocated funds to support rebates to supplement Valley Water programs for installation of rain barrels, cisterns, or rain gardens, all of which assist in preventing runoff from properties and preventing pollution. Three rain gardens and two rain barrels have earned rebates so far in FY 2021-22, for a total rebate amount of \$1,061.30. The rebates are promoted through Valley Water's outreach materials as well as

through Cupertino's Climate Victory Garden pilot program. Additional outreach is planned to boost awareness and participation. Staff is not recommending a change to this program.

2019 Clean Water and Storm Protection Fee Incentive Programs

Cost-Share Program for Low-Income Residents - Update

While there are no exemptions for property owners, City Council did authorize a 20% cost-share program for low-income residents. During the 2019 Clean Water and Storm Protection ballot process, 1,565 residents qualified as extremely low or very low-income based on the Comprehensive Housing Affordability Strategy (CHAS) data released by the US Department of Housing and Urban Development (HUD) in June 2018. During 2019-2020, 100 residents took part in that program, which was promoted via direct mail, articles in the Cupertino Scene and 50+ Scene, and on the City's website. Once eligibility is determined, it is automatically factored in for the following year's Assessor Parcel Number (APN) fee and is shown at the reduced rate on the property tax bill. Outreach continued, and to date 231 residents have received a cost-share refund and have lower rates on their property tax bills. Of the residents who successfully applied for the City's cost-share program, the majority had medium parcels charged \$44.42/year with the 20% cost-share reimbursement amount at \$8.88. The City will continue to conduct outreach to attempt to boost enrollment in the program. The cost-share program is funded by the General Fund because revenues from the Clean Water and Storm Protection Fee are restricted from being used for a cost-share.

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

As allowed by the Clean Water and Storm Protection 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.

Audit Committee Review of Programs

Pursuant to the Clean Water and Storm Protection Fee Ordinance, expenses and revenues are audited annually by an independent auditor. The City's annual external audit for FY2020-21 has been completed and reviewed by the Audit Committee and no issues were 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 was completed for calendar year 2020 with no exceptions noted. The final AUP report is included as Attachment D. The City is requesting that the AUP process be completed for each prior calendar year ahead of this annual fee renewal process so that Council may have the most recent year's AUP report to review. As such, the City anticipates that the AUP audits of calendar years

2021 and 2022 will be completed and reviewed by the Audit Committee before these fees are brought to Council for renewal in 2023.

Sustainability Impact

The Storm Drainage Fee supports 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.

California Environmental Quality Act (CEQA)

The recommended action does not constitute a project under CEQA. Continuing to collect the Storm Drainage Service Charge and Clean Water and Storm Protection Fee does not qualify as a project under the requirements of CEQA because there is no potential for resulting in a physical change in the environment. In addition, collection of the Storm Drainage Service Charge and Clean Water and Storm Protection Fee is subject to the exemption in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that continued collection of existing charges and fees, with no change in use of the charges and fees, may have a significant effect on the environment.

Fiscal Impact

The combined revenues from the 1992 Storm Drainage Service Charge and 2019 Clean Water and Storm Protection Fee will generate approximately \$1,467,386 for FY 2021-22. Projected expenses by the end of the fiscal year are approximately \$1,849,806, which is 13 percent under budget but exceeds revenues by approximately \$382,420.

The proposed budget for FY 2022-23 anticipates the cost of the Nonpoint Source Program to be \$2,030,424, 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. With expected revenues at approximately \$1,474,948, expense beyond revenue is projected at \$555,476.

Expenses beyond revenues for both FY 2021-22 and FY 2022-23 can be funded with the available balance in Fund 230 330-301, which is anticipated to be approximately \$714,424 after FY 2021-22 and \$158,948 after consideration of the FY 2022-23 Proposed Budget. The only impact to the General Fund will be for amounts budgeted to cover the cost-share programs, which are not allowed to be funded by the collected fee revenues. For FY 2022-23, \$16,706 is budgeted to cover the low-income cost-share program and the cost-share agreement with Cupertino Union School District which is part of their shared-use field agreement with the City.

Prepared by: Ursula Syrova, Environmental Programs Manager

Reviewed by: Matt Morley, Director of Public Works

Reviewed by: Dianne Thompson, Assistant City Manager

Approved for Submission by: Jim Throop, City Manager

Attachments:

A – Draft Resolution 1992 Fee

B – Draft Resolution 2019 Fee

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

D – Calendar Year 2020 Storm Drain AUP Report