



**PUBLIC WORKS DEPARTMENT**

CITY HALL

10300 TORRE AVENUE • CUPERTINO, CA 95014-3255

TELEPHONE: (408) 777-3354 [www.cupertino.org](http://www.cupertino.org)

**CITY COUNCIL STAFF REPORT**

Meeting: May 7, 2019

Subject

Conduct a public hearing and consider public comments on and written protests of the proposed 2019 Clean Water and Storm Protection Fee; tabulate protests and consider adopting a Resolution stating whether a majority protest exists and, if not, direct a property owner ballot proceeding for the proposed 2019 Clean Water and Storm Protection Fee, a property related fee conforming to Article XIII D, Section 6 of the California Constitution.

Recommended Action

1. Conduct a public hearing and receive input and consider all protests of property owners related to the proposed 2019 Clean Water and Storm Protection Fee; and
2. Tabulate protests to determine if a majority protest exists; and
3. If a majority protest is found not to exist, adopt Resolution No. 19-XXX stating that a majority protest does not exist and directing the City to conduct a ballot proceeding for the proposed 2019 Clean Water and Storm Protection Fee, a property-related fee conforming to Article XIII D, Section 6 of the California Constitution; and
4. Conduct the first reading of Ordinance No. 19-XXX : "An Ordinance of the City Council of the City of Cupertino Adding Chapter 3.38 of the Municipal Code to Establish the Clean Water and Storm Protection Fee," an ordinance that is subject to property owner approval through a ballot proceeding; and
5. Direct staff to place on a future Council agenda an amendment of the Joint Use Agreement with Cupertino Unified School District to establish cost sharing of the new Clean Water fees for applicable schools at which the City maintains joint use sport fields if the ballot measure is affirmed on July 16<sup>th</sup>.

Background

On June 5, 2018, the City Council held a study session on potential revenue measures related to business license tax and storm drain charges. The business license fee was subsequently discussed by Council separately from the 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. Costs include clean water costs along with operation and maintenance costs. Clean water costs are incurred to comply with Federal Clean Water Act and State storm water pollution prevention requirements.

In FY 18/19, clean water costs are estimated to be \$727,000 while property related storm fees are estimated to generate only \$372,000. The balance of approximately \$355,000 is subsidized by the general fund along with an additional \$477,000 in operation and maintenance expenses. For FY 19/20, an estimated \$1.1M of general fund subsidy will be needed for the clean water and operation/maintenance elements of the storm water program.

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 to increase property related storm water fees in FY 19/20. These actions included a statistically valid survey to determine the level of support and priorities of the public for new funding of a Clean Water and Storm Protection program. Because Council supported this recommendation, 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. After hearing the survey results, Council approved the funding for the remaining steps in the process and directed the completion of a Fee Report with SCI. The purpose of the Fee Report was to calculate clean storm water and operation/maintenance costs for different types of parcels and then to calculate the appropriate fee needed for each of the parcel types so that costs and revenues balance. The overall benefit that a parcel receives from the programs as well as the amount of impervious surface were considered within the Fee Report.

At the recommendation of staff, Council took several actions on March 5, 2019 to initiate a Proposition 218 proceeding to establish a new property related fee to fund the clean water and operation/maintenance elements of the storm water program. These actions were:

- Approval of the Fee Report by SCI, which recommended a fee structure based on a \$44.42 annual fee for an average single-family home; and
- Adoption of Resolution No. 19-022 formally initiating the Proposition 218 process by approving the Fee Report, setting a public hearing for May 7, 2019, and directing mailing of a notice to all affected property owners about the hearing and their right for protest; and
- Adoption of Resolution No. 19-023 establishing procedures for conducting a Proposition 218 ballot proceeding.

Notices of the Fee proposal and tonight's public hearing were mailed 45 days in advance to approximately 15,448 property owners. The notice (included as Attachment A) informed property owners of the subject of the hearing and also invited them to attend four community meetings to learn more about the proposed fee and to hear their comments. Those meetings were held on the following dates and locations:

- March 28, 2019 at the Quinlan Community Center
- April 9, 2019 at the Cupertino Senior Center
- April 13, 2019 at the City Hall
- April 30, 2019 at the Cupertino Senior Center

Attendees of these meetings received a presentation by staff followed by a questions, answers and general discussion.

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

A new Fee Ordinance will be required if the ballot measure is affirmed on July 16<sup>th</sup>. Recommended features of the Fee Ordinance include:

- a. If additional program costs are incurred, an annual adjustment for inflation equal to the Bay Area Consumer Price Index ("CPI-U") capped at up to 3% for any year.
- b. The fee can only be used for Clean Water and Storm Protection programs (not for other programs).
- c. No sunset clause for the fee.
- d. A 25% reduced fee for multi-family residential (condominium or apartment) or commercial properties that implement low impact development storm water improvements (281 parcels currently qualify for this reduction).
- e. Fiscal controls and accountability such as:
  - An appeals procedure to allow any property owner who disagrees with the calculation of the 2019 Clean Water and Storm Protection Fee to appeal.
  - Requirement of annual audits.
  - Citizens' oversight.
  - All revenues deposited into an account that is separate from the general fund.
  - Annual review of revenue needs.
- f. Annual public hearing regarding the collection of fees on the annual property tax bill.

#### Other Potential Fee Mitigation Measures

Proposition 218 precludes incorporating subsidies into the rate calculations if it causes the rates for other property owners to be higher. Accordingly, any rebates or subsidies need to be funded from non-rate revenues such as the general fund. Three subsidy measures that staff recommend are:

- a. One-time rebates for residential properties that implement features such as pervious driveways, rain barrels, or rain gardens. Up to \$25,000 annually would be available for these rebates (this is similar to the Palo Alto program); and
- b. Establish cost sharing of proposed new fees with Cupertino Union School District for applicable schools at which the City maintains joint use sport fields.

If the ballot measure is affirmed on July 16<sup>th</sup> and Council directs these measures to be implemented, staff would return to Council with recommended actions in August.

### Next Steps

If a majority protest occurs with at least 8,302 parcel owners submitting written protests, then no further action can be taken by the City. Valid protests and comments received at the writing of this report are included in Attachments B and C, respectively, and will be included in the tabulation with any written protests that may be received during the hearing. If no majority protest exists, Council may then:

- Adopt the draft Resolution (Attachment D) confirming that no majority protest exists and ordering the ballot proceeding; and
- Introduce the Fee Ordinance (Attachment E)

In adopting the Resolution and introducing the Fee Ordinance, Council will direct the final steps in the balloting proceeding that will include:

- Ballots being mailed (May 20, 2019)
- Balloting period closing (July 5, 2019)
- Tabulation of ballots by City Clerk in publicly accessible location (July 8-12, 2019)
- Recommendation that Council certify ballot results and, if a majority of property owners vote to approve, adopt a resolution to include fee on the 2019-20 property tax bills, and conduct second reading of ordinance (July 16, 2019)

Attachment F contains the draft ballot, ballot guide and envelopes. Depending on actions taken by Council with this report, updates to the ballot guide may be needed.

### 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 Clean Water and Storm Protection program is currently underfunded. The proposed fee, with the provision of additional inflationary adjustment revenue not to exceed the actual increase in costs, will reduce funding deficits. If the proposed fee is approved, it will generate an estimated revenue of approximately \$1.1 million per year. If the proposed fee is not approved, the general fund will need to continue to provide a subsidy and, consequently, cause a reduction of the availability of funding for other important programs.

If the funding measure is approved, there will be an enhancement of services. These would include more efficient street sweeping, more frequent cleaning of storm drain inlets, and increased environmental education programs. As a result of these enhancements, program costs will increase \$150,000 per year. Included in this cost is funding to convert an existing part-time position to a full-time position in the Public Works Storm Drain Maintenance Division.

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Prepared by: Roger Lee, Acting Director of Public Works

Cheri Donnelly, Environmental Programs Manager

Approved for Submission by: Timm Borden, Interim City Manager

Attachments:

- A. Notice of the Fee Proposal
- B. Valid Protest Letters received as of 4-25-19
- C. Public comments received as of 4-25-19
- D. Draft Resolution No. 19-XXX stating that a majority protest does not exist and directing a property related ballot proceeding for the City's 2019 Clean Water and Storm Protection Fee
- E. Draft Ordinance No. 19-XXX : "An Ordinance of the City Council of the City of Cupertino Establishing Chapter 3.38 of the Municipal Code to Adopt the Clean Water and Storm Protection Fee," (inclusive of Fee Report)
- F. Drafts of the ballot packet documents (inclusive of ballot, notice and ballot guide and outgoing and return envelopes)
- G. Chamber Support Letter 5-1-2019