



PUBLIC WORKS DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: July 7, 2020

Subject

Approve renewal of the following fees:

1. Continue to charge existing (1992) Storm Drainage Service Charge, to be collected on the property tax bills for each parcel, at the following rates which include no increase in rates for FY 2020-2021: \$12/single family parcel, \$144/acre for commercial/apartments/industrial parcels, \$36/acre for unimproved parcels; and
2. Continue to charge the 2019 Clean Water and Storm Protection Fee calculated for each parcel and collected on property tax bills or billed directly for any parcels that cannot be collected on County tax bills, for FY 2020-2021 at the rates shown in the table below with no increase in rates.

Land Use Category	Fee
Single Family Residential*	
Small (<i>under 0.13 acre</i>)	\$ 36.58 per parcel
Medium (<i>0.13 - 0.22 acre</i>)	\$ 44.42 per parcel
Large (<i>0.23 - 0.40 acre</i>)	\$ 55.58 per parcel
Extra Large (<i>over 0.40 acre</i>)	\$ 106.42 per parcel
Condo 1 (1 story)	\$ 36.58 per parcel
Condo 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	\$ 2.38 per 0.1 acre
Open Space/Agricultural	no charge
Low Impact Development Adjustment***	25% Fee Reduction

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

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

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

Recommended Action

Recommended actions are as follows:

1. Adopt Resolution No. 20-XXX (Attachment A) approving the renewal and collection of the 1992 storm drain fee with no increase in rates for fiscal year 2020-2021; and
2. Adopt Resolution No. 20-XXX (Attachment B) approving the renewal and collection of the 2019 Clean Water and Storm Protection Fee with no increase in rates for fiscal year 2020-2021; and
3. Assign the Audit Committee the task of reviewing externally audited findings regarding the Nonpoint Source Program on an annual basis.

Discussion

Stormwater Pollution Prevention Program

The City's Nonpoint Source Program is mandated by the State of California and United States Environmental Protection Agency regulations implementing the federal Clean Water Act. Regulations by the EPA and the State of California require cities to take specific actions to eliminate or control pollutants in waters of the State. These regulations are implemented locally by the California Regional Water Quality Control Board (Water Board) San Francisco Bay Region 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 of Cupertino and 14 other co-permittees in Santa Clara 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. 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 PCBs 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

In order to cover stormwater pollution prevention compliance activities costs, in 1992 the City established a storm drainage service charge (“fee”), which is applied to each property in the City with exceptions for those owned by certain entities, such as government, utilities, and schools that 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 and approval by the City Council. The 1992 fee has three rates based on type of land use of each parcel (\$12 for residential parcels, \$144/acre for apartments, commercial and industrial parcels, and \$36/acre for unimproved and recreational parcels).

The revenue collected from the 1992 fee has not increased since the time it was established and has remained at approximately \$370,000 per year. 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. While revenues from the 1992 fee once covered expenses related to compliance, by 2019 the cost of compliance was creating a significant draw upon the City's general fund. In fiscal year 2018-2019, compliance expenses exceeded revenues by over \$500,000.

No change in the 1992 fee are allowed or recommended in FY20-21.

2019 Clean Water and Storm Protection Fee

The Clean Water and Storm Protection fee, a property-related fee subject to Proposition 218, was voted on by Cupertino parcel owners in 2019. It received a 51.15% approval 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 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 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 annual CPI change as of December 2019 was 2.45%. For tax year 2020-2021, Council may authorize the fee to be unchanged (no increase) or increased up to the 2.45% as shown in the chart below. Pursuant to the Clean Water and Storm Protection Ordinance, however, fees can only be increased if actual program expenditures increase. Although the program expenditures are expected to increase, because the costs of the Nonpoint Source Program are not expected to exceed revenues during the time period available for review, an increase in the Clean Water and Storm Protection fee for 2020-2021 is not recommended.

	Current Fee	With 2.45% CPI increase	Per Unit Increase
Single Family Residential (per parcel)			
Small (<i>under 0.13 acre</i>)	\$ 36.58	\$ 37.48	\$ 0.90
Medium (<i>0.13 - 0.22 acre</i>)	\$ 44.42	\$ 45.51	\$ 1.09
Large (<i>0.23 - 0.40 acre</i>)	\$ 55.58	\$ 56.94	\$ 1.36
Extra Large (<i>over 0.40 acre</i>)	\$ 106.42	\$ 109.03	\$ 2.61
Condo 1 (<i>1 story</i>)	\$ 36.58	\$ 37.48	\$ 0.90
Condo 2 (<i>2+ stories</i>)	\$ 11.99	\$ 12.28	\$ 0.29
Non-Single-Family Residential (per 0.1 acre)			
Multi-Family Residential	\$ 30.88	\$ 31.64	\$ 0.76
Commercial/Retail/Industrial	\$ 40.38	\$ 41.37	\$ 0.99
Office	\$ 30.88	\$ 31.64	\$ 0.76
Church/Institutional	\$ 26.13	\$ 26.77	\$ 0.64
School (w/playfield)	\$ 19.00	\$ 19.47	\$ 0.47
Park	\$ 7.13	\$ 7.30	\$ 0.17
Vacant	\$ 2.38	\$ 2.44	\$ 0.06
Open Space/Agricultural	no charge		
Low Impact Development Adjustment	25% Fee Reduction		

2019 Clean Water and Storm Protection Fee Incentive Programs

While there are no exemptions for property owners, the 2019 fee does include provisions for a 20% Cost-Share Program available to low income residents. 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. Rebates for permeable pavement installations at single-family homes were also approved. While the measure generated some inquiries, no applications for the rebate have yet been received, despite outreach. Money was also allocated 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. The 267 commercial and multi-family properties that had already installed low-impact design elements, such as bioswales, capture basins, and bioretention facilities, were assigned a 25% fee reduction, per the fee schedule.

Audit Committee Review of Programs

Pursuant to the Clean Water and Storm Protection Fee ordinance, expenses and revenues will be audited annually by an independent auditor, with oversight duties assigned to a

citizen's oversight committee or to a pre-existing oversight committee. It is recommended that the review of revenue and expenditure of funds relating to the Nonpoint Source Program be conducted by an independent internal auditor. It is further recommended that Council assign the Audit Committee the task of reviewing those findings. Such review is within the scope of work and capabilities of the Audit Committee per Cupertino Municipal Code § 2.88.100 Duties-Powers-Responsibilities.

Fiscal year 2019-2020, the first complete year since the new fee was established, will be subjected to the internal audit process during the City's usual audit schedule with results issued around December 2020. After that, it is proposed that a new schedule of internal auditing specific to the Nonpoint Source Program be conducted by auditors in the March – February time span with results ready for the Audit Committee to review at their usual meeting at the end of April. This schedule will allow staff to bring a full year of audited expenses and revenues before Council in time to meet the County deadlines for submitting special assessments for the tax rolls.

The internal audit function was first established by City Council as part of the FY 2019-2020 City Council Work Program and Adopted Budget. The Internal Audit charter will be brought before City Council in July 2020 for final approval. The Nonpoint Source Program will become an annual component of the Internal Auditor's Work Plan and any findings and recommendations shall be brought before the Audit Committee and City Council on an annual basis.

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 and capture of rainwater to be used as a resource.

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 the California Environmental Quality Act (CEQA) Guidelines 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 generate approximately \$1,477,387 annually. The amended Nonpoint Source Program budget for FY 2019-2020 was approximately \$1,714,869. For the partial fiscal year (July 2019 – June 17, 2020), actual expenses were

\$1,118,527. It is expected that even when the remainder of the fiscal year is tallied, the program will still come in under the adopted budget and not exceed revenues. This low expenditure is not reflective of the true cost of the program. During this partial year there have been a number of circumstances that led to less expenditures, including being understaffed for a portion of the year, creek education fieldtrips and enhancements that did not happen because of COVID-19, and staffing allocations that will be adjusted for accuracy in fiscal year 2020-2021.

The adopted budget for 2020-2021 anticipates the cost of the Nonpoint Source Program to be \$1,815,092, 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.

Prepared by: Ursula Syrova, Environmental Programs Manager

Reviewed by: Roger Lee, Director of Public Works

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A - Resolution including Engineer's Report, Assessment of Fees for Storm Drainage Purposes Nonpoint Source Pollution Program (Exhibit A)

B - Resolution including Engineer's Report, Assessment of Fees for Clean Water and Storm Protection Purposes Nonpoint Source Pollution Program (Exhibit B)

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