



PUBLIC WORKS DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: June 1, 2021

Subject

Consider Approval of the Renewal with no Increase of the 1992 Storm Drain Fee and the 2019 Clean Water and Storm Protection Fee and an Increase in the Allowable Rebate Amount for Installation of Pervious Pavement Projects at Single-Family Residences and Duplexes.

Recommended Action

Consider Adoption and Approval of:

1. Resolution No. 21-XXX (Attachment A) Approving the Renewal and Collection of the 1992 Storm Drain Fee with No Increase in Rates for Fiscal Year (FY) 2021-2022;
2. Resolution No. 21-XXX (Attachment B) Approving the Renewal and Collection of the 2019 Clean Water and Storm Protection Fee with No Increase in Rates for FY 2021-2022; and
3. The increase to an Allowable Rebate Amount for Installation of Pervious Pavement Projects at Single-Family Residences and Duplexes from \$3 Per Square Foot with a \$900 Maximum to \$3 Per Square Foot with a Maximum of \$1,800.

Discussion

Stormwater Pollution Prevention Program

The City'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 of Cupertino 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 (PCB), (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, 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 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 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) is currently in development by the Regional Water Board with an expected effective date of July 1, 2022. 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. Therefore, the City pursued an additional fee as described in the next section.

Renewal of the Fee is recommended in FY21-22 at the current rates with no change.

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 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 3 percent in any single year.

The annual CPI change as of December 2020 was a 2 percent increase. 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 in excess of revenues. Expenses associated with the Nonpoint Source Program are projected to exceed revenue for FY20-21 and FY21-22. However, there will be a sufficient balance in Fund 230 to cover the anticipated expenses for FY 21-22 given the current balance and anticipated fee revenue. The current 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 COVID. For those reasons, no increase in the Clean Water and Storm Protection fee for 2021-2022 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.

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 2-car driveway is 300 sf. While the measure generated some early inquiries, no applications for the rebate have yet been received, despite outreach. More outreach is planned, but the rebate could be adjusted to increase the incentive. The City of Palo Alto is the only jurisdiction nearby with a similar rebate program and Palo Alto has also seen very low participation. Their program provides \$1.50 per square foot up to \$1000 (about 665 sf). Of the five approved Palo Alto rebate projects in 2019 and 2020, four were over 300 square feet and two were over 600 square feet, which suggests that incentivizing larger projects may increase participation. Following consideration of various options for our program, staff is recommending that for FY21/22 the per square foot amount at \$3 remain, and to adjust the maximum rebate to \$1800 (600 sf). If authorized, additional outreach would occur and participation would continue to be evaluated.

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. One rain garden and one rain barrel earned rebates in 2020 and 2021. 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, 1565 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 APN fee and is shown at the reduced rate on the property tax bill. No additional requests for participation in the cost-share program have been received so far in fiscal year 2020-2021. Of the residents who successfully applied for Cupertino's cost-share program, the majority had medium parcels charged \$44.42/year with the 20% cost-share reimbursement amount at \$8.88. There is currently an annual budget of \$13,162 for this program, which would allow over 1400 additional people to receive a rebate. The City will conduct new 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 FY19-20 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; however, that analysis has not been completed yet for year 2020. The City anticipates that AUP audits of both calendar year 2020 and 2021 will be completed and reviewed by the Audit Committee ahead of the next time these fees are brought to Council for renewal in 2022.

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. Green Stormwater Infrastructure uses engineered features to mimic natural processes that allow stormwater to infiltrate instead of entering the storm drain system, enhancing climate change resilience.

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 will generate approximately \$1,472,447 for FY20-21. Projected expenses by the end of the fiscal year are approximately \$1,552,623, which is 14 percent under budget but exceeds revenues by approximately \$80,000.

The proposed budget for FY21-22 anticipates the cost of the Nonpoint Source Program to be \$1,994,609, 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 \$1,543,100, expense beyond revenue is projected at \$451,509.

Expenses beyond revenues for both FY20-21 and FY21-22 can be funded with the available balance in Fund 230, which is anticipated to be approximately \$686,000 after consideration of the FY21-22 proposed budget with no impact to the General Fund.

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Reviewed by: Roger Lee, Director of Public Works

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A – Draft Resolution Including Engineer’s Report, Assessment of Fees for Storm Drainage
Purposes Nonpoint Source Pollution Program (Exhibit A)

B – Draft 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