



PUBLIC HEARING

Agenda Item # 11

AGENDA REPORT SUMMARY

Meeting Date: April 23, 2019

Subject: Ordinance No. 2019-457: Storm Drainage Fee

Prepared by: Aida Fairman, Interim Engineering Services Director

Approved by: Chris Jordan, City Manager

Attachment(s):

1. Ordinance No. 2019-457

Initiated by:

City Council

Previous Council Consideration:

April 26, 2018; May 22, 2018 and October 9, 2018

Fiscal Impact:

There is no direct fiscal impact associated with the requested actions. Conduct a public hearing and receive written protests for the proposed Storm Drainage Fee; if no majority protest is formed consider waiving first reading and introducing by title an Ordinance adding Chapter 3.52, Storm Drainage Fee, to Title 3, Revenue and Finance, of the City of Los Altos Municipal Code, and directing the City Clerk to submit the Storm Drainage Fee to the affected property owners in a mail ballot proceeding in accordance with Article XIII-D of the State Constitution, Section 53755.5 of the Government Code and City of Los Altos Resolution No. 2018-40. If no majority protest is formed and the ballot proceeding results in a majority support for the Storm Drainage Fee, there will be new revenues of approximately \$1.133 million for the City's storm drainage services.

Environmental Review:

Stormwater fee is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to CEQA Guideline 15378 as the adoption of any fee does not meet the definition of a "project" because it serves as the creation of new government funding mechanism or constitutes other government fiscal activities that does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. Further, any fee adoption would also be exempt under CEQA Guideline 15273(a)(4) as rates or charges to obtain funds for capital projects.

Policy Question(s) for Council Consideration:

- Does the Council wish to request and community vote on the establishment of a stormwater fee, and direct staff to proceed to the ballot proceeding?

Reviewed By:

City Manager

CJ

City Attorney

CD

Finance Director

SE



Subject: Ordinance No. 2019-457: Storm Drainage Fee

Summary:

- Council adopted a Stormwater Master Plan in 2016 and expressed interest to explore options to develop a dedicated revenue source to fund the Stormwater Program
- A Citywide clean water and storm drainage opinion polling was conducted in April 2018
- The survey found that Los Altos property owners strongly desire increased investment in storm drainage infrastructure, and are willing to pay for it especially at a rate less than \$100 per year per parcel
- Based on the survey, Council directed staff to move forward with developing a property-related fee for the Stormwater Program which requires property owners' approval
- On October 9, 2018, Council:
 - Approved a Stormwater Fee Report;
 - Adopted a resolution initiating proceeding in accordance with Article XIID of the Constitution and setting the date for the public hearing, and directing the mailing of a notice to the owners of real property affected by the proposed Storm Drainage Fee and
 - Adopted Resolution No. 2018-40 establishing procedures for conducting a ballot proceeding in accordance with Article XIID of the Constitution

Staff Recommendation:

Conduct a public hearing and receive written protests for the proposed Storm Drainage Fee; if no majority protest is formed, move to introduce and waive further reading of Ordinance No. 2019-xxx adding Chapter 3.52, Storm Drainage Fee, to Title 3, Revenue and Finance, of the City of Los Altos Municipal Code, and directing the City Clerk to submit the Storm Drainage Fee to the affected property owners in a mail ballot proceeding in accordance with Article XIII-D of the State Constitution, Section 53755.5 of the Government Code and City of Los Altos Resolution No. 2018-40



Subject: Ordinance No. 2019-457: Storm Drainage Fee

Purpose

Conduct a public hearing and receive written protests for the proposed Storm Drainage Fee; if no majority protest is formed consider waiving first reading and introducing by title an Ordinance adding Chapter 3.52, Storm Drainage Fee, to Title 3, Revenue and Finance, of the City of Los Altos Municipal Code, and directing the City Clerk to submit the Storm Drainage Fee to the affected property owners in a mail ballot proceeding in accordance with Article XIII-D of the State Constitution, Section 53755.5 of the Government Code and City of Los Altos Resolution No. 2018-40.

Background

The City owns a network of stormwater conveyance facilities that deliver stormwater runoff to the four creeks in Los Altos which terminate at the San Francisco Bay. The estimated replacement value of the stormwater conveyance network is approximately \$170 million in current dollars.

In addition to operation and maintenance responsibilities, the City is required to comply with the Municipal Regional Permit (MRP) under the National Pollutant Discharge Elimination System (NPDES) permit issued by USEPA through the San Francisco Regional Water Quality Control Board (Water Board). The program aims to improve stormwater runoff quality and protect local creeks, channels and the San Francisco Bay. Compliance with the MRP requires a significant level of City resources.

The stormwater program is currently funded by the General Fund with annual allocation of approximately \$470,000 for operation, maintenance, and regulatory compliance and \$300,000 for capital improvements. On April 26, 2016, the City Council adopted the Stormwater Master Plan which determined the appropriate service levels for operation and maintenance as well as identified and prioritized capital improvement needs. As part of adopting the Master Plan, the Council expressed interest to explore options to develop a dedicated revenue source to fully or partially fund the stormwater program.

In April 2018, the City conducted a community opinion survey to gauge support for a new fee for the stormwater program. The survey found that Los Altos property owners strongly desire increased investment in storm drainage infrastructure and are willing to pay for it especially at a rate less than \$100 per year per parcel. Other key findings from the survey include:

1. Both operation and maintenance and capital improvements of the storm drainage system are desired.
2. Support is strong for all three major goals of the stormwater program, including effective infrastructure, prevention of local flooding, and improved water quality.
3. Property owners desire more information, especially detailed information that is quantitative and describes specific services.
4. Strong fiscal controls and accountability are key provisions.



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5. A strong, effective, and comprehensive information outreach effort would be required.

Based on the findings from the survey, on May 22, 2018, Council directed staff to move forward with developing a property-related fee for stormwater systems at a rate less than \$100 per year per parcel.

On October 9, 2018, Council approved a Stormwater Fee Report, adopted a resolution initiating a process to obtain approval of the Storm Drainage Fee, and a resolution establishing procedures for conducting a ballot proceeding in accordance with Article XIID of the Constitution. On March 7, 2019, Notice of Public Hearing was mailed to affected property owners in the City of Los Altos.

Discussion/Analysis

Property-related fees are subject to the requirements of Articles XIIC and D of the State Constitution, which were approved by voters in 1996 through Proposition 218, as well as the Proposition 218 Omnibus Implementation Act (Government Code Sections 53750 – 53758). The Stormwater Fee Report approved by the Council last October contains a description of the stormwater services, the basis of the stormwater fee was calculated, the parcels upon which the storm drainage fee is proposed, the proportional cost of the services attributable to each parcel, and the amount of stormwater fee proposed for each parcel. The Stormwater Fee Report relies mainly on the 2016 Stormwater Master Plan for estimating the fiscal needs of the Capital Improvement Plan (“CIP”) and Operations and Maintenance (“O&M”) needs.

Annual Revenue Requirement

The Fee Report modeled a financial program that provides for stable user rates while funding O&M, CIP and operating reserves at the most efficient and understandable level. The combined High/Moderate CIP is estimated in 2018 dollars to cost \$15,810,000. That translates into an initial annual revenue requirement of \$611,000. The initial annual revenue requirement for O&M (including NPDES permit compliance costs) is \$522,000. The total revenue requirement for Fiscal Year 2018-19 is \$1,133,000.

Rate Schedule

The Fee Report uses the amount of impervious surface for each property as the basis for apportioning costs equitably among the affected parcels. Residential properties are broken into four size categories and are charged “per parcel.” Non-residential properties are broken into seven categories based on typical percentage of impermeable surface and are charged “per acre.” All rates are shown as annual rates.



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Land Use Category	Proposed Fee FY 2019-20
Single-Family Residential Parcel *	
Small (Under 9,000 sf)	\$ 72.00 per parcel
Medium (9,000 to 14,500 sf)	\$ 88.00 per parcel
Large (14,500 to 20,000 sf)	\$ 100.32 per parcel
Extra Large (over 20,000 sf)	\$ 117.59 per parcel
Condominium	\$ 72.00 per parcel
Non-Single-Family Residential Parcel **	
Multi-Family Residential	\$ 57.24 per tenth of acre
Commercial / Retail / Industrial	\$ 65.69 per tenth of acre
Office	\$ 57.24 per tenth of acre
Church / Institutional	\$ 44.57 per tenth of acre
School	\$ 36.73 per tenth of acre
Park	\$ 3.71 per tenth of acre
Vacant (developed)	\$ 3.71 per tenth of acre
Open Space / Agricultural	exempt

* Single-Family Residential category also includes du-tri- and four-plex units which are charged per parcel based on square feet.

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

Proposed Ordinance

The proposed ordinance, if approved by a majority in the ballot proceeding, would codify the fee structure. In accordance with Article XIID of the Constitution, the revenue would be deposited into a separate, restricted fund (enterprise fund) that could only be used for storm water purposes. Other rate ordinance features would include the following:

- Fiscal controls and accountability:
 - Annual audit
 - Annual review by citizen oversight committee and City Council
- Annual cost indexing:
 - Tied to Consumer Price Index
 - Capped at 3%
 - To be reviewed and determined annually by City Council
- Appeals procedure.
- Allowance for a future fee reduction for on-site green infrastructure measures.



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Although not explicit in the ordinance, each subsequent year that the fee is levied the City Council would need to hold a public hearing and adopt a resolution to establish the inflationary index amount, set the rates for the coming year and comply with other statutory requirements. This may occur concurrently with the annual budget process when the financial needs of the Storm Drainage System will be reviewed.

Community Outreach

City staff with support from the consultant held a series of four community meetings; two meetings on March 20, 2019 and two meetings on April 3, 2019 (both dates had an afternoon meeting and an evening meeting). The meetings were well attended with challenging questions and lively dialogue that appeared to inform the residents about the fee structure and the process. In addition, staff met with several other individuals and organizations during the past several months to gain additional insight into community concerns and to fine tune the proposed program and ordinance.

Next Steps

Article XIID requires a public hearing to be conducted as well as a protest process. Any property owner affected by the proposed Storm Drainage Fee may submit a written protest before or during the public hearing. If protests are received from property owners representing a majority of the affected parcels, the Storm Drain Fee cannot be established. A total of 11,234 parcels are affected by this proposed fee, so a majority would be formed by protests from owners of 5,618 parcels.

Assuming a majority protest is not formed, and the Council introduces the Storm Drainage Fee Ordinance, the next step would be to print and mail the ballots to all affected property owners. Attached are drafts of the ballot, information guide, and outgoing and return envelopes (Attachment B). This process usually takes approximately two weeks, so ballots would be arriving in mail boxes in early May. Ballots are due back to the City Clerk's office by 5:00 p.m. on June 18, 2019 (postmarks will not be accepted).

Ballots will not be opened until the tabulation process commences at 9:00 a.m. on June 19, 2019 in the City Hall Offices at One San Antonio, Community Meeting Chambers. The tabulation process will be open to the public and will be done under the direction of the City Clerk. Once the tabulation is complete, the results will be brought before the Council for certification. If the measure passes, the Council may at that time take action to implement the fees beginning July 1, 2019.

Options

- 1) Conduct a public hearing and, if a majority protest is not formed, introduce the accompanying ordinance, and direct staff to proceed to the ballot proceeding



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Advantages: Initiating balloting for establishing a property-related fee to fund the Storm Drainage Program

Disadvantages: Property owners will pay for a new fee if approved by voters

2) Do not direct the City Clerk to submit the Storm Drainage Fee to the affected property owners in a mail ballot proceeding

Advantages: No new property-related fee

Disadvantages: No sustainable and dedicated funding for the Stormwater Program

Recommendation

The staff recommends Option 1.

ORDINANCE NO. 2019-457

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
LOS ALTOS ADDING CHAPTER 3.52 OF THE CITY OF LOS
ALTOS MUNICIPAL CODE REGARDING ESTABLISHMENT OF
A STORM DRAINAGE FEE**

WHEREAS, the City of Los Altos (“City”) oversees and manages a municipal separate storm sewer system (“MS4”), which includes making capital improvements, overseeing maintenance and operations, and conducting activities to ensure compliance with all state and federal regulations associated with the National Pollutant Discharge Elimination System (“NPDES”); and

WHEREAS, the City’s MS4 is made up of a comprehensive drainage infrastructure system that includes man-made drainage elements such as curbs and gutters, ditches, culverts, pipelines, manholes, catch basins (inlets), dry wells and outfall structures; and

WHEREAS, the City, through its MS4, provides Storm Drainage services (“Services”) that include, but are not limited to, collecting, conveying, protecting, treating, and managing stormwater runoff from improved parcels within the City; and

WHEREAS, in 2016, the City adopted a Storm Drain Master Plan (“SDMP”) to study the condition and capacity of this critical infrastructure of the MS4, and the SDMP concluded that the City had capital improvements needs of as much as \$29 million and annual maintenance and operations costs of \$490,000; and

WHEREAS, the City does not currently have adequate funding to fully finance the system needs of its MS4, and in order to finance the infrastructure, maintenance, and regulatory oversight of the MS4 and the provision of Services, the City Council has determined that there is a need to enact a storm drainage fee (“Storm Drainage Fee”), in compliance with Article XIID of the California Constitution (Proposition 218), to cover the costs associated with capital improvements, operations and maintenance, and regulatory compliance needs of the MS4; and

WHEREAS, the Storm Drainage Fee is a property-related fee, that requires the following two-step process for approval: 1) the City must provide a Notice of Public Hearing and opportunity to protest to all property owners subject to the fee; and 2) if no majority written protest is received, then the City may proceed with a ballot proceeding where the Storm Drainage Fee must be approved by a majority of ballots received from property owners subject to the Storm Drainage Fee; and

WHEREAS, on October 9, 2018, the City Council approved a Storm Drainage Fee Report (“Fee Report”) that sets forth the basis and the amount of the Storm Drainage fees on various parcels of land in order to finance, in compliance with Article XIID of the Constitution, the high-priority and moderate-priority capital improvement program, the operations and maintenance needs, and the NPDES compliance needs; and

WHEREAS, the City Council on October 9, 2018 adopted Resolution No. 2018-39 initiating proceedings in accordance with Article XIID of the Constitution, and setting the date of April 23, 2019 for a public hearing and directing the mailing of a notice to the owners of real property affected by the proposed Storm Drainage Fee, which included a description of the proposed Storm Drainage Fee, the amount to be charged, the total amount to be collected, and the right of property owners to protest the Storm Drainage Fee; and

WHEREAS, the City Council on October 9, 2018 adopted Resolution No. 2018-40 establishing procedures for conducting a ballot proceeding in accordance with Article XIID of the Constitution; and

WHEREAS, the City conducted a public hearing on April 23, 2019 and heard testimony from residents and property owners regarding the proposed Storm Drainage fee, and a majority protest was not formed; and

WHEREAS, the City Council introduced this Ordinance on April 23, 2019, after a duly noticed public hearing; and

WHEREAS, Article XIID of the Constitution requires that the property-related fees defined in the Fee Report and included in this Ordinance shall not be imposed unless and until that fee is submitted and approved by a majority vote of the property owners of the property subject to the Storm Drainage Fee; and

WHEREAS, upon introduction of this Ordinance, the City Council will direct that it be submitted to the affected property owners in a mail ballot proceeding in accordance with Article XIID of the Constitution, Section 53755.5 of the Government Code, and City of Los Altos Resolution No. 2018-40.

NOW THEREFORE, the City Council of the City of Los Altos does hereby ordain as follows:

SECTION 1.

1. The City Council hereby finds as follows:
 - A. The City is faced with increasing costs for the operation, maintenance, and improvement of its MS4.
 - B. The City is required to undertake an extensive program to improve the water quality of its runoff in the near future under the NPDES permitting process.
 - C. An improperly maintained storm drainage system can create problems such as increased risk of flooding, personal injury, and property damage.
 - D. All developed real property benefits from the existence of the City's MS4 because these categories of property contribute storm and surface water runoff to the City's storm drainage system as a result of the impervious and semi-impervious nature of the property.
 - E. In order to provide for the safety of the residents of the City and protect property in the City from the damage associated with flooding and to meet

the water quality requirements of the NPDES permit issued to the City by the California State Water Quality Control Board, it is necessary to design, construct, operate, maintain, improve and replace storm drainage facilities which collect storm and surface water runoff and convey and treat such runoff in a safe manner to an acceptable point of discharge. In order to properly fund such facilities and activities, the City Council has determined that it is necessary to impose a property-related Storm Drainage Fee.

- F. Municipalities are authorized to establish property-related fees and charges for funding storm drainage improvements and the operation and maintenance thereof pursuant to Government Code section 53750, et seq., and Health and Safety Code section 5471.
- G. No property-related fee or charge subject to Article XIII D, Section 6(c) of the California Constitution, can be imposed unless and until voter approval required by Section 6 of Article XIID of the California Constitution has been obtained.
- H. A need exists for additional funding for the storm and surface water management program of the MS4 and the establishment of a Storm Drainage Fee is the most sustainable and equitable method of providing this funding.
- I. The Fee Report approved by the City Council on October 9, 2018, which sets forth the rate structure and methodology of apportionment of the fee to various categories of parcels, shall be the basis for the fee.
- J. The amount of the proposed Storm Drainage Fee shall not exceed the reasonable cost of providing the Services or facilities for which the fee is charged.
- K. Revenues derived from the Storm Drainage Fee shall not be used for general governmental services, and shall only be used for the purposes for which the Storm Drainage Fee is imposed.
- L. The Storm Drainage Fee does not exceed the proportional cost of service attributable to the parcels upon which it is imposed.
- M. The Storm Drainage Fee will finance services that are actually used by, and immediately available to, the owners of the parcels upon which the Storm Drainage Fee shall be imposed.
- N. The City conducted a public hearing on April 23, 2019, in accordance with Article XIII D, Section 6(a) of the California Constitution, and no majority protest was filed. The City conducted an election in accordance with Article XIII D, Section 6(c) on _____, and _____ votes were cast in favor of adopting the Storm Drainage Fee, which constitutes ____% approval of the property owners voting on the measure.

SECTION 2. AMENDMENT OF CODE:

Chapter 3.52, Storm Drainage Fee, is hereby added to Title 3, Revenue and Finance, of the Los Altos Municipal Code, as set forth in Exhibit 1, attached hereto and incorporated herein by this reference. The City Council hereby adopts the Storm Drainage Fee in the amounts set forth in Chapter 3.52 and Exhibit A hereto, effective July 1, 2019. The City Council authorizes and directs staff to take all actions necessary to implement the Storm Drainage Fee and Chapter 3.52. To the extent the Storm Drainage Fee is later found to be

inconsistent with any other previously adopted or imposed fee or charge, it is the intent of the City Council that the Storm Drainage Fee, and the provisions in Chapter 3.52 relating thereto, shall control.

SECTION 3. CONSTITUTIONALITY. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 4. PUBLICATION. In accordance with Government Code section 36933, the City Clerk shall either: (a) have this Ordinance published once within fifteen (15) days after adoption in a newspaper of general circulation; or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again fifteen (15) days after adoption.

SECTION 5. EFFECTIVE DATE. This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

SECTION 6. SEVERABILITY. If any provision of the Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provisions or applications of the Ordinance. To this end, the provisions of this Ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 7. COMPLIANCE WITH CEQA. The City Council finds that the adoption of this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000, *et seq.*) pursuant to Public Resources Code section 21080(b)(8), and CEQA Guideline section 15273(a).

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on _____, 2019 and was thereafter, at a regular meeting held on _____, 2019 passed and adopted by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Lynette Lee Eng, MAYOR

Attest:

Jon Maginot, CMC, CITY CLERK

EXHIBIT 1

3.52.010 – Establishment of a Storm Drainage Fee.

Pursuant to Article XIID, section 6 of the California Constitution, Government Code section 53750, *et seq.*, and Health and Safety Code section 5471, there is established a Storm Drainage Fee. The Storm Drainage Fee shall be imposed on all Developed Parcels of real property in the City of Los Altos that utilize, or contribute stormwater or surface water runoff to, or are served by, the City's Storm Drain System, which includes pipes, inlets, outlets, and natural drainage courses.

3.52.020 – Definitions.

The following definitions shall apply to this chapter 3.52:

- A. "Developed Parcel" shall mean any lot or parcel of land, which has been altered from its natural state by the construction, creation, or addition of Impervious Area, except public streets, highways, and rights-of-way.
- B. "Fee Report" shall refer to the report approved by the City Council on October 9, 2018, prepared by SCI Consulting Group and dated September 2018. The Fee Report sets forth the rate structure and methodology of apportionment of the fee to various categories of Developed Parcels and shall be the basis for the Storm Drainage Fee imposed on Developed Parcels.
- C. "Impervious Area" shall mean any part of any Developed Parcel that has been modified by the action of any person in a manner which reduces the land's natural ability to absorb and hold storm and surface water. This includes, but is not limited to, activities such as: grading of property, the creation of any hard surface area which either prevents or retards the entry of water into the soil mantle, or the hardening of an existing surface which causes water to flow at an increased rate. Common Impervious Areas include, but are not limited to, roof tops, walk-ways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, or any cleared, graded, paved, graveled, or compacted surface or paved earthen materials used for vehicular travel, or areas covered with surfaces which similarly impede the natural infiltration of surface water into soil mantle. Impervious Area can be expressed as a percentage of a Developed Parcel's total size.
- D. "Parcel" shall mean the smallest separately segregated lot, unit, or plot of land having an identified owner, boundaries, and surface area which is documented for property tax purposes and given an Assessors' parcel number by the Santa Clara County Assessor.
- E. "Rate Category" shall mean Developed Parcels that are grouped into categories of similar imperviousness characteristics. Single-Family Residential Parcels are categorized by size; Non-Single-Family Parcels are categorized by pervious percentage ranges.
- F. "Storm Drain System" shall mean the Storm and Surface Water drainage systems comprised of Storm and Surface Water Control Facilities and any other natural features which store, control, treat, and/or convey Storm and Surface Water. Storm Drainage Facilities shall include all natural and man-made elements used to convey Storm Drainage from the first point of impact

with the surface of the earth to a suitable receiving body of water or location internal or external to the boundaries of the Town. Storm Drainage Facilities include all pipes, appurtenant features, culverts, streets, curbs, gutters, pumping stations, channels, creeks, streams, ditches, wetlands, detention/retention basins, dry wells, ponds, and other Storm and Surface Water conveyance and treatment facilities, whether public or private.

- G. “Storm Drainage Fee” shall mean the property-related fee charged on all Developed Parcels in the City to fund the Storm Drainage Services and authorized in this Chapter 3.52.
- H. “Storm Drainage Fee Fund” shall mean the fund set up pursuant to Section 3.52.070 of this Ordinance.
- I. “Storm Drainage Services” shall mean all activities dealing with the collection, conveyance, protection, treatment, and overall management of stormwater runoff and the Storm Drain System, including, without limitation, operations and maintenance, capital improvements, and regulatory activities.

3.52.030 – Storm Drainage Fee for Fiscal Year 2019-20.

The rates for the annual Stormwater Drainage Fee set forth in this Section 3.52.030 shall be in effect and imposed all Developed Parcels on or after July 1, 2019. After July 1, 2019, the rates set forth in this Section 3.52.030 are authorized to be adjusted annually in accordance with Section 3.52.040. The Stormwater Fee rate structure is based on the relative amount of Impervious Area of each Developed Parcel or category of Developed Parcels and is comprised of two classes of Developed Parcels—single-family residential and non-single-family residential. Within each category of Developed Property, the rate structure includes multiple sub-categories of Developed Parcels. The tables below set forth the rates and rate structure of the Storm Drainage Fees for fiscal year 2018-19.

A. Single-Family Residential Class

<u>Parcel Type</u>	<u>Parcel Size</u>	<u>Annual Fee for FY 2019-20</u>	
<u>Small</u>	<u>under 9,000 sf</u>	<u>\$72.00</u>	<u>per parcel</u>
<u>Medium</u>	<u>9,000 – 14,500 sf</u>	<u>\$88.00</u>	<u>per parcel</u>
<u>Large</u>	<u>14,500 – 20,000 sf</u>	<u>\$100.32</u>	<u>per parcel</u>
<u>Extra Large</u>	<u>over 20,000 sf</u>	<u>\$117.59</u>	<u>per parcel</u>
<u>Condominium</u>	<u>all sizes</u>	<u>\$72.00</u>	<u>per parcel</u>

B. Non-Single-Family Residential Class

<u>Parcel Type</u>	<u>Annual Fee for FY 2019-20</u>	
<u>Multi-Family Residential</u>	<u>\$57.24</u>	<u>per tenth acre</u>
<u>Commercial / Retail / Industrial</u>	<u>\$65.69</u>	<u>per tenth acre</u>
<u>Office</u>	<u>\$57.24</u>	<u>per tenth acre</u>
<u>Church / Institutional</u>	<u>\$44.57</u>	<u>per tenth acre</u>
<u>School</u>	<u>\$36.73</u>	<u>per tenth acre</u>
<u>Park</u>	<u>\$3.71</u>	<u>per tenth acre</u>
<u>Vacant (developed)</u>	<u>\$3.71</u>	<u>per tenth acre</u>
<u>Open Space / Agricultural</u>	<u>no fee</u>	

Rate Structure Notes:

1. The Rate Category for any Non-Single-Family Parcel shall be assigned by the description of the land use of the Developed Parcel. In the event that the land use description is ambiguous, the rate shall be assigned to a category with the nearest percent of Impervious Area in accordance with Table 5 of the Fee Report.

3.52.040 – Setting the Annual Storm Drainage Fee and Annual Adjustments.

The City Council may, by resolution, annually adjust the rates of the Storm Drainage Fee then in effect in accordance with the following:

- A. The annual rates of the Storm Drainage Fee then in effect may be increased annually by an amount equal to the change in the Consumer Price Index-U for the San Francisco, Oakland, Hayward Area as of December (the “CPI”); provided , however, that (1) the rates of the Storm Drainage Fee then in effect shall not be increased by more than three percent (3%) in any single year; and (2) the rates of the Storm Drainage Fee shall not be increased by an amount that exceeds the costs of providing Storm Drainage Services. .
- B. The rates of the Storm Drainage Fee shall not be deemed to be increased in the event the actual fee imposed upon a Developed Parcel in any given year is higher due to a change in use of the subject Parcel or Developed Parcel or an increase in the amount of the Impervious Area of the subject Developed Parcel.
- C. In any year in which the City Council does not change the Storm Drainage Fee rates, pursuant to the provisions of this section 3.52.040, the previously adopted annual rates of the Storm Drainage Fee shall continue in full force and effect for the next fiscal year.
- D. The City Council must consider any proposed annual increase in the rates of the Storm Drainage Fee each year at a meeting open to the public prior to implementation. The City Council shall not be required to enact a CPI increase each year.

3.52.050 – Appeals by Property Owners.

- J. If a property owner disagrees with the amount of annual Storm Drainage Fee authorized to be imposed on his or her property, the property owner may appeal the calculation to the Public Works Director in accordance with the procedures set forth herein. The property owner must provide a written explanation describing the basis of the appeal. This documentation must include the Assessor’s Parcel Number (APN) of the property in question and the name, telephone number, mailing address, and email address, if available, of the property owner. The Public Works Director may request additional information or documentation from the property owner to consider the appeal. The Public Works Director shall make a determination regarding the appeal and notify the property owner, in writing, of the decision.
- K. A property owner may appeal the decision of the Public Works Director to the City Manager. The appeal must be made in writing and filed with the City Manager not later than ten (10) calendar days from the date of the

mailing of the Public Works Director's decision. The City Manager shall fix a time and place for hearing the appeal and shall give notice in writing to the property owner. The City Manager's determination on the appeal shall be final.

- L. In the event that an appeal is granted by the Public Works Director or the City Manager, and the City is unable to include a refund for inclusion in the following fiscal year's property tax roll submittal, a reimbursement will be provided to the property owner by the City.
- M. The City Council is authorized to establish fees for processing appeals.

3.52.060 – Collection of the Storm Drainage Fee.

The annual Storm Drainage Fee may be collected on the Santa Clara County tax roll in the same manner, by the same persons, and at the same time as, together with and not separately from, the general taxes of the City. The City Council may, by resolution, provide for an alternative procedure for collection of the Storm Drainage Fee. For any fiscal year in which the Storm Drainage Fee is authorized to be collected but is not collected on the tax roll, the City may collect all or a portion of the fee for such year on the tax roll in the following fiscal year or years.

3.52.070 – Storm Drainage Fund.

The City shall deposit the revenues from all Storm Drainage Fees in the City treasury in a separate account designated as the Storm Drainage Fund. The moneys in the Storm Drainage Fund shall be subject to an annual independent audit and shall only be expended for Storm Drainage Services. The City is authorized to incur indebtedness in the form of bonds, notes, contractual obligations or other evidences of indebtedness authorized by law to finance or refinance the costs of providing Storm Drainage Services and to pay any and all costs of issuing or incurring such indebtedness and to pay for any such indebtedness with moneys deposited into the Storm Drainage Fund.

3.52.080 – Various Actions.

Without a vote of the property owners, in any year the City Council may do any and all of the following: (a) discontinue the Storm Drainage Fee; (b) reduce the rates for all Developed Parcel categories; (c) increase the rates up to or below the maximum voter-authorized rates if it has been previously set below such rates; or (d) establish a reduced rate for the Storm Drainage Fee for certain Developed Parcels that institute on-site measures to reduce the Developed Parcel's impact on and/or contribution of stormwater and surface water to the Storm Drainage System.

3.52.090 – Oversight, Annual Audit and Public Report.

A. The City shall retain an independent auditor to conduct an annual audit of the Storm Drainage Fee and Storm Drainage Fund. The auditor shall include an accounting of the revenue received from the Storm Drainage Fee and expenditures thereof in the audited financial statements. The auditor's report shall be presented to the City Council and made available to the public. Additionally, the Director of Administrative Services shall annually prepare and present to the City Council a report in conjunction with the audit that reviews the status and performance of the programs, services and projects funded wholly or partially with proceeds of the Storm Drainage Fee.

B. The City Council shall either select a citizen's oversight committee or assign oversight duties to a pre-existing oversight committee to review and report annually on the receipt of revenue and expenditure of funds from the Storm Drainage Fund authorized by this chapter.

3.52.100 – Severability.

Should any provision or clause of this chapter or application thereof to any person or circumstance be held invalid or unconstitutional, that invalidity or unconstitutionality shall not affect other provisions or applications thereof which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are declared severable. By adopting this Ordinance, the City Council declares that it would have adopted this Ordinance without that provision or provisions.