

Resolution No. 9624

Resolution of the Council of the City of Palo Alto Proposing a Storm Water Management Fee To Replace The Storm Drainage Fee, Calling A Public Hearing For October 24, 2016 With Respect To Such Fee And Adopting Procedures Relating To The Conduct Of A Protest Hearing And Mail Ballot Election

RECITALS

- A. In 1989, the City established a storm drainage fee to fund costs associated with the City's storm drainage enterprise.
- B. In 1994, the City set the rate of the storm drainage fee at \$4.25 per month per equivalent residential unit ("ERU").
- C. In 1996, California voters adopted Proposition 218 which, among other things, required voter approval of certain property-related fees.
- D. In 2005, at a mail ballot election, Palo Alto property owners approved an increase of the City's storm drainage fee, along with an annual inflation adjustment formula for the increase.
- E. The City's storm drainage fee increase included a twelve-year sunset.
- F. The increase is scheduled to sunset on June 1, 2017.
- G. The current rate of the storm drainage fee, including the portion of the fee that is set to sunset, is \$13.03 per month per ERU.
- H. The City Council desires to propose that the existing storm drainage fee be replaced by a new Storm Water Management Fee (the "Proposed Fee").
- I. In order to conduct a fair process that complies with the provisions of Proposition 218, the City Council finds it appropriate to clearly describe the Proposed Fee and the procedure by which the City will conduct any protest hearings and mail ballot elections in connection with the Proposed Fee.

NOW, THEREFORE, the City Council does hereby resolve as follows:

SECTION 1. The City Council hereby declares that its intent in adopting this resolution is to provide the community with a guide to the protest and mail ballot election process for the Proposed Fee.

SECTION 2. The Council sets October 24, 2016, at 6:00 PM at the Council Chambers located at 250 Hamilton Avenue, Palo Alto, CA as the time and place for a public hearing on the Proposed Fee. The Proposed Fee is more completely described in Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 3. The Council hereby approves the "Procedures for the Conduct of Protest Hearing and Mail Ballot Election in Connection with Proposed Storm Water Management Fee" (the "Procedures"), as set forth in Exhibit "B," attached hereto and incorporated herein by reference.

SECTION 4. Staff is directed to give notice of the October 24, 2016 public hearing in the manner set forth in the Procedures. The public hearing will be conducted as a protest hearing pursuant to the Procedures.

SECTION 5. It is the intent of the Council that the \$4.25 per month per ERU base storm drainage fee levied since 1994 will continue unless the Proposed Fee is approved. If the Proposed Fee is approved by the property owners at a mail ballot election and imposed by the City Council, the existing base storm drainage fee will not be charged in any month during which the Proposed Fee is effective.

SECTION 6. The Council finds that this resolution, calling a public hearing and adopting protest hearing and election procedures is categorically exempt from California Environmental Quality Act review under CEQA Guidelines Section 15061(b)(3), because these actions do not have the potential for causing a significant effect on the environment. The Council's review and adoption of a funding mechanism for storm water management projects is not a project under CEQA Guidelines Section 15378(b)(4), because a "project" does not include the creation of government funding mechanisms which do not involve commitment to any specific project which may result in a potentially significant environmental impact. Thus, no environmental analysis is required at this time. Future CEQA review will occur based on the selection of storm

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drain capital improvement projects that may be funded by the proposed storm water management fees.

INTRODUCED AND PASSED: August 29, 2016

AYES: BERMAN, BURT, DUBOIS, FILSETH, HOLMAN, KNISS, SCHARFF, SCHMID, WOLBACH

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

DocuSigned by:
Beth Minor
45F95502DB71492...
City Clerk

DocuSigned by:
Patrick Burt
0B8A2FFEE5FA473...
Mayor

APPROVED AS TO FORM:

DocuSigned by:
Amy Bartell
D0B48F317E9342B...
Senior Deputy City Attorney

APPROVED:

DocuSigned by:
Jack Forge
39E7298FB2064DB...
City Manager

DocuSigned by:
J M Sartor
8007E5BC39BA4A1...
Director of Public Works

DocuSigned by:
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229154BC80A6476...
Director of Administrative Services

EXHIBIT "A"
DESCRIPTION OF THE PROPOSED STORM WATER MANAGEMENT FEE

A. Overview

The proposed Storm Water Management Fee would have two components:

- A Base Component
- A Projects and Infrastructure Component

B. Proposed Rates (Effective June 1, 2017)

The Proposed Rate for the Storm Water Management Fee effective June 1, 2017 is:

\$13.65 per ERU (Equivalent Residential Unit) per month.

This is comprised of:

- Base Component of \$7.48 per ERU per month; and
- Projects and Infrastructure Component of \$6.17 per ERU per month

C. Inflation Adjustment

In order to offset the effects of inflation on labor and material costs, the maximum rate for the Storm Water Management Fee (and each component of the Storm Water Management Fee) will be increased annually each July 1 (beginning July 1, 2018), by the lesser of (i) the percentage change in the Consumer Price Index [CPI] for the San Francisco-Oakland-San Jose CSMA, published by the United States Department of Labor, Bureau of Labor Statistics during the prior calendar year or (ii) 6%.

The City Council would have the authority to set the rate for the Storm Water Management Fee (and each component of the Storm Water Management Fee) at any rate that is less than or equal to the inflation adjusted maximum rate.

D. Duration

- 1) Base Component

The Base Component would be charged monthly, beginning June 1, 2017, until terminated by the City Council.

2) Projects and Infrastructure Component

The Projects and Infrastructure Component would be charged monthly, beginning June 1, 2017. Unless further extended by the voters, the Projects and Infrastructure Component would no longer be charged beginning June 1, 2032.

E. Method of Collection and Calculated

The Storm Water Management Fee would be collected and calculated in the manner set forth in City of Palo Alto Utilities Rule and Regulation No. 25, subject to the exemptions set forth in this Section E.

As a general rule, ERU's are assigned to each parcel subject to the fee on the following basis:

Single-Family Residential Parcels:

<u>Lot Size</u>	<u>ERU's</u>
<6,000 sq. ft.	0.8 ERU
6,000 - 11,000 sq. ft.	1.0 ERU
>11,000 sq. ft.	1.4 ERU

All Other Improved Parcels:

$$\text{Number of ERU} = \text{Impervious Area (Sq. Ft.)} / 2,500$$

Assigned ERU's are rounded to the nearest one-tenth of an ERU.

Unimproved parcels are not subject to the Storm Water Management Fee, and the fee will not be charged for developed parcels that (i) have their own maintained storm drainage facility or facilities, and which do not utilize City facilities or (ii) make no substantial contribution of storm or surface water to the City's storm drainage facilities.

For a more complete description of the manner of collection and calculation of the Storm Water Management Fee, reference is made City of Palo Alto Utilities Rule and Regulation No. 25.

F. Use of Funds

Proceeds of the Storm Water Management Fee would be available to the City exclusively to pay for:

- (A) Improving the quality of storm and surface water;
- (B) The operation, maintenance, improvement and replacement of existing City storm drainage facilities; and
- (C) The operation, maintenance, and replacement of future such facilities.

Permissible uses would include, but not be limited to, Green Storm Water Infrastructure programs (including financial incentives to property owners) intended to reduce the quantity of storm water entering the City's public storm water system or to improve the quality of storm water before it enters that system through measures including, but not limited to, rain gardens, rain barrels/cisterns, green roofs, tree wells, bioretention/infiltration basins and planters, and permeable pavement.

G. Oversight provision for proposed fee increase

The City Council would appoint an oversight committee to monitor and review expenditures for all storm water funding elements, including, but not limited to, Green Storm Water Infrastructure projects, storm water Capital Improvement Program projects, and Incentive Project funding and ensure that the money raised from the increased storm water management fee is spent in accordance with this resolution. The Committee would be empowered to consider and recommend consolidation of Green Storm Water Infrastructure and Incentive Project funding for particular projects. The City Council may choose to retain the members of the existing Council-appointed Storm Drain Oversight Committee to perform this oversight function. The oversight committee would report its findings to the City Council at least annually.

H. Pay-as-you-go funding of capital improvements

The storm drain capital improvements to be funded through the proposed Storm Water Management Fee would be paid for on a pay-as-you-go basis, without debt financing.

EXHIBIT "B"

PROCEDURES FOR THE CONDUCT OF PROTEST HEARING AND MAIL BALLOT ELECTION

IN CONNECTION WITH

PROPOSED STORM WATER MANAGEMENT FEE

2016

The following procedures have been adopted by the City Council of the City of Palo Alto for the purpose of conducting all proceedings required by Article XIII D of the California Constitution for consideration of the proposed Storm Water Management Fee. Where no specific procedures are imposed by Article XIII D, or the Proposition 218 Omnibus Implementation Act (Gov't Code Section 53750 *et seq.*), these procedures shall apply.

Part I
Introduction

In connection with consideration of its proposed Storm Water Management Fee, the City of Palo Alto will conduct two proceedings:

1. A Protest Hearing.
2. A Mail Ballot Election.

A Mail Ballot Election will only be held if (i) the City Council determines that, as of the close of the public input portion of the Protest Hearing, a majority protest does not exist and (ii) the City Council adopts a resolution calling a Mail Ballot Election.

All references in this document to the City Clerk shall, to the extent the reference requires that the City Clerk perform a function, be deemed to include any employee of the City who is designated by the City Clerk to perform that function.

The term "owner", when used in this document and not otherwise defined, includes any person who qualifies as an owner for purposes of Article XIII D, Section 6 of the California Constitution.

Part 2

Protest Hearing

A. Notice

1. Not less than 45 days prior to the date of the Protest Hearing, Notice of the Protest Hearing shall be mailed to the Record Owner of each parcel to which the Storm Water Management Fee is proposed to apply.
2. The Notice shall include all information required by Article XIII D, Section 6(a)(1) of the California Constitution and such other relevant information as staff may determine to include.
3. For purposes of this Subsection A, "Record Ownership" shall be determined by the name appearing on the last equalized secured property tax assessment roll. Notice shall be mailed to the Record Owner at the mailing address indicated on that roll.

B. Protests

1. Written Protests will be accepted by the City Clerk via US Mail or hand delivery at the Office of the City Clerk located at 250 Hamilton Avenue, Palo Alto, CA 94301 during regular business hours. Written Protests will also be accepted by the City Clerk at the Protest Hearing. All Written Protests must be received by the City Clerk prior to the close of the public input portion of the Public Hearing in order to be considered pursuant to these Procedures.
2. A Written Protest must (i) state that it is a protest against the proposed Storm Water Management Fee; (ii) identify the parcel with respect to which it is made (either by Assessor's Parcel Number or Street Address); (iii) identify the owner for whom the Written Protest is submitted; (iii) include the printed name of the natural person signing the Protest (if that person is not himself or herself the owner); and (iv) include the original wet signature of the owner or of a person legally authorized to execute documents on behalf of the owner.
3. If a Parcel served by the City is owned by a partnership, joint tenancy, or tenancy in common, any partner, joint tenant, or tenant in common may submit a Written Protest, but only one Protest will be counted per Parcel and any one Protest submitted in accordance with these rules will be sufficient to count as a Protest for that Parcel.
4. Where an owner of a Parcel is not a natural person, a Written Protest may be submitted by the owner and signed by any person authorized to execute documents on behalf of the owner.
5. In the event a person not shown on the last equalized secured property tax assessment roll assumes (or otherwise has) ownership of a Parcel, that person may submit a Written Protest with respect to that Parcel. Such protest must include all information otherwise required of a Written Protest and must also include either (i) proof of such ownership or (ii) a statement, submitted under penalty of perjury by the person submitting the Written Protest, that the person signing the Protest is an owner of the Parcel or is legally authorized to submit the Protest on behalf of the owner of the Parcel.

6. Anyone who submits a Written Protest may withdraw it by submitting to the City Clerk a signed written request that the protest be withdrawn. The request shall contain sufficient information to identify the affected Parcel and the name of the person who submitted both the Protest and the request that it be withdrawn.

7. To ensure transparency and accountability in the fee protest tabulation, Protests shall constitute disclosable public records from and after the time they are received.

C. Tabulation

1. The City Clerk or her designee shall determine the validity of all Protests. That person (the "Tabulator") shall not accept as valid any Protest if he or she determines that any of the following conditions exist:

- a. The Written Protest does not identify a Parcel subject to the Storm Water Management Fee.
- b. The Written Protest does not bear an original wet signature of (i) an owner of the identified Parcel or (ii) a person legally authorized to submit the Written Protest on behalf of the owner.
- c. The Written Protest does not state its opposition to the proposed fee.
- d. The Written Protest was not received before the close of the public input portion of the Public Hearing.
- e. A request to withdraw the Written Protest is received prior to the close of the public input portion of the Public Hearing.

3. The Tabulator's decision that a Written Protest is not valid shall constitute a final action of the City and shall not be subject to any internal appeal.

4. A majority protest exists if Written Protests are timely submitted and not withdrawn with respect to a majority of the parcels subject to the proposed fee. The City Council may not adopt a resolution calling a Mail Ballot Election if there is a majority protest.

5. At the conclusion of the public hearing, the Tabulator shall complete the tabulation of all Written Protests received, including those received during the Public Hearing and shall report the results of the tabulation to the City Council upon completion. If review of the Written Protests received demonstrates that the number received is manifestly less than one-half of the Parcels served by the City with respect to the fee which is the subject of the protest, then the Tabulator may advise the City Council of the absence of a majority protest without determining the validity of all Written Protests.

Part 3

Mail Ballot Election

A. Mailing of Ballot

1. Not less than 45 days prior to the date of the Mail Ballot Election, Election Materials shall be mailed to the Record Owner of each Parcel to which the Storm Water Management Fee is proposed to apply.
2. Election Materials shall include a Notice, a Ballot, and a Ballot Return Envelope.
3. The Notice shall include:
 - (i) The total amount of the Storm Water Management Fee chargeable to all Parcels in the City that are subject to the Storm Water Management Fee;
 - (ii) The amount chargeable to the owner's particular Parcel;
 - (iii) A description of the inflation adjustment formula applicable to the Storm Water Management Fee;
 - (iv) The duration of the Storm Water Management Fee;
 - (v) The reason for the Storm Water Management Fee and the basis upon which the amount of the proposed fee was calculated;
 - (vi) The date and time by which Ballots must be returned to the City Clerk and the address for return of Ballots;
 - (vii) The date, time and location where Ballots will be tabulated;
 - (viii) A summary of the procedures applicable to the completion, return, and tabulation of the Ballots;
 - (ix) A disclosure that the Fee will only be approved if the number of Ballots cast (and not withdrawn) in favor of the Storm Water Management Fee exceed the number of Ballots cast (and not withdrawn) in opposition to the Storm Water Management Fee; and
 - (x) Such other relevant information as staff may determine to include.
4. The Ballot shall include:
 - (i) The address for return of Ballots;
 - (ii) The name of the Record Owner;
 - (iii) An identification of the Parcel;

- (iv) A place where the person casting the Ballot may indicate support or opposition to the Storm Water Management Fee;
- (v) A place where the person submitting the Ballot may print his or her name and execute a statement under penalty of perjury that he or she is an owner of the Parcel identified on the Ballot or is a person legally entitled to submit a Ballot on behalf of an owner; and
- (vi) Such other relevant information as staff may determine to include.

5. The Ballot Return Envelope shall include prepaid postage and be preaddressed to the Office of the City Clerk. The City Clerk may establish a special Post Office Box address for the return of Ballots. If the City Clerk does so, that address shall be used on the Ballot Return Envelope. In order to ensure proper handling, the Ballot Return Envelope shall include on its face the words "Ballot Return Envelope—Do Not Open Until Close of [date] Election".

6. Any information required to be included on the Notice may instead be included on the Ballot.

7. For purposes of this Subsection A, "Record Ownership" shall be determined by the name appearing on the last equalized secured property tax assessment roll. Notice, a Ballot, and a Ballot Return Envelope shall be mailed to the Record Owner at the mailing address indicated on that roll.

B. Completion of Ballots

1. Who May Complete a Ballot

A Ballot may be completed by an owner of the parcel subject to the fee. If the owner of the Parcel is a partnership, joint tenancy, or tenancy in common, a Ballot may be completed by any of the general partners, joint tenants, or tenants in common. Except as set forth below, only one Ballot may be completed for each Parcel.

2. Proportional Ballots

If a Parcel has multiple owners, any owner may request a Proportional Ballot. If the ownership interest of the owner is not shown on the last equalized secured property tax assessment roll, such request must include evidence, satisfactory to the City Clerk, of the owner's Proportional rights in the Parcel. The City Clerk will provide the Proportional Ballot to the owner at the address shown on the assessment roll. Any request for a Ballot to be mailed to another location must be made in writing and must include evidence, satisfactory to the City Clerk, of the identity of the person requesting the Ballot. Each Proportional Ballot will be marked to show the date on which the Ballot was provided, to identify it as a Proportional Ballot and to indicate the owner's Proportional rights in the Parcel. The City Clerk will keep a record of each Proportional Ballot provided to an owner.

3. Duplicate Ballots

If a Ballot is lost, withdrawn, destroyed or never received, the City Clerk will mail or otherwise provide a Duplicate Ballot to the owner upon receipt of a request in writing delivered to the City Clerk. The Duplicate Ballot will be marked to show the date on which the Ballot was mailed or provided and to

identify it as a Duplicate Ballot or a Duplicate Proportional Ballot. The same procedure applies to Duplicate Ballots or Duplicate Proportional Ballots which are lost, withdrawn, destroyed, or never received.

If the ownership interest of the owner requesting the Duplicate Ballot is not shown on the last equalized secured property tax assessment roll (as, for example, when a Parcel has been acquired after the assessment roll is equalized), the Duplicate Ballot request must include evidence, satisfactory to the City Clerk, of the person's rights in the Parcel. In this case, the Duplicate Ballot shall indicate the name of the owner who has requested the Ballot.

The City Clerk will provide the Duplicate Ballot to the owner at the address shown on the assessment roll. Any request for a Ballot to be mailed to another location must be made in writing and must include evidence, satisfactory to the City Clerk, of the identity of the person requesting the Ballot.

Each Duplicate Ballot will be marked to show the date on which the Ballot was provided, to identify it as a Duplicate Ballot. The City Clerk will keep a record of each Duplicate Ballot provided to an owner.

4. Provisional Ballot

If a person requests a Duplicate Ballot, and that person does not provide the City Clerk with evidence to the City Clerk that is sufficient to demonstrate to the City Clerk that the person is the owner of a Parcel that will be subject to the Storm Water Management Fee, the City Clerk will issue that person a Provisional Ballot. Each Provisional Ballot shall be marked to show the date on which the Ballot was provided, to identify the person to whom it was issued, and to identify the Parcel for which the requesting person claims an ownership interest. The City Clerk will keep a record of each Provisional Ballot provided.

5. Marking and Signing the Ballot

To complete a Ballot, the owner of the Parcel must (1) mark the appropriate box supporting or opposing the proposed Storm Water Management Fee, and (2) sign, under penalty of perjury, the statement on the Ballot that the person completing the Ballot is an owner of the Parcel or a person legally authorized to execute documents on behalf of the owner. Ballots must be completed in ink and include the original wet signature of the signer.

6. Only Ballots Provided by the City Will Be Accepted

The City Clerk will only accept Ballots mailed or otherwise provided to owners by the City.

B. Return of Ballots

1. Where to Return Ballots

Ballots may be hand-delivered to the Office of the City Clerk located at 250 Hamilton Avenue, Palo Alto, CA 94301 during the normal business hours of that office. Ballots may also be returned to the Office of the City Clerk by mail. The mailing address for return of Ballots shall be the address printed on the

Ballot and Ballot Return Envelope, and may be the usual mailing address of the Office of the City Clerk or a special Post Office Box established for this purpose.

2. When to Return Ballots

All returned Ballots must be received by the City Clerk prior to the date and time set by the City Council in the resolution calling the election. The date shall be any Tuesday selected by the City Council (aside from the date of a statewide direct primary election or statewide general election).

3. Withdrawal of Ballots

Anyone who submits a Ballot may withdraw it by submitting to the City Clerk a signed written request that the Ballot be withdrawn. The request shall contain sufficient information to identify the affected Parcel and the name of the person who submitted both the Ballot and the request that it be withdrawn.

When Ballots are tabulated, the City Clerk will segregate withdrawn Ballots from all other returned Ballots. The City Clerk will retain all withdrawn Ballots and will indicate on the face of such withdrawn Ballots that they have been withdrawn.

If any Ballot has been withdrawn, the person withdrawing the Ballot may request a Duplicate Ballot.

4. Changes to Ballots

In order to change the contents of a Ballot that has been submitted, the person who has signed that Ballot must (1) request that such Ballot be withdrawn, (2) request that a Duplicate Ballot be issued, and (3) return the Duplicate Ballot fully completed. Each of these steps must be completed according to the procedures set forth above.

C. Tabulation of Ballots

1. Which Ballots Will Be Counted?

Only Ballots which are completed and returned in compliance with these procedures will be counted. Ballots received by the City Clerk after the close of the deadline for return of Ballots will not be counted. Ballots which are not signed by the owner will not be counted. Ballots with no boxes marked, or with more than one box marked, will not be counted. Ballots withdrawn in accordance with these procedures will not be counted.

The City will keep a record of each Proportional, Duplicate, or Provisional Ballot mailed or otherwise provided to an owner and will ensure that only one Ballot is tabulated for the Parcel (or for each owner in the case of Proportional Ballots).

Provisional Ballots shall not be counted unless, by the deadline for returning Ballots, the City Clerk has received sufficient evidence of ownership as would have been required for the issuance of a Duplicate Ballot. All Provisional Ballots that have been returned to the City Clerk shall be retained along with other Ballots so returned.

2. When and Where Ballots Will Be Tabulated

The City Clerk will count the Ballots in the City Council Chambers at a date and time scheduled for such purpose by the City Clerk. Tabulation will be performed in view of such members of the public who choose to observe such tabulation. Ballots will not be removed from their Return Envelopes until tabulation begins.

3. How Ballots Will Be Tabulated

Ballots may be counted by hand, by computer or by any other tabulating device.

Each Ballot, other than a Proportional Ballot, will count as one vote. Proportional Ballots will be counted as a fraction of a vote, weighted in accordance with the respective ownership interests of each Proportional Ballot submitted. If one or more Proportional Ballots are returned for a Parcel and a non-Proportional Ballot is returned for the Parcel, the non-Proportional Ballot will either be disregarded (if the same owner has returned a Proportional Ballot) or treated as a Proportional Ballot (if the same owner has not returned a Proportional Ballot).

4. Who Will Tabulate Ballots?

Ballots will be tabulated by the City Clerk or some other impartial person designated by the City Council who does not have a vested interest in the outcome of the Election. The City Clerk or other designated person may be assisted by any of the staff and consultants of the City.

5. Results of Tabulation

The property owners will be deemed to have approved the Storm Water Management Fee (including any associated inflation adjustment formula) if the number of votes cast in favor of the Storm Water Management Fee exceeds the number of votes cast in opposition to the Storm Water Management Fee.

6. Announcement of Tabulation

The results of the tabulation will be announced at a meeting of the City Council and will be certified by resolution of the City Council.

D. Resolution of Disputes

In the event a question arises regarding whether the signer of a Ballot (or person on whose behalf a Ballot has been submitted) is an owner of the Parcel to which the Ballot applies, the City Clerk will make such determination from the last equalized secured property tax assessment roll and any evidence of ownership submitted to the City Clerk prior to the closing of the election. The City Clerk will be under no duty to obtain or consider any other evidence as to ownership of property and her determination of ownership will be final and conclusive.

In the event a question arises regarding whether the signer of a Ballot is legally entitled to submit a Ballot on behalf of an owner, the City may rely on the statement on the Ballot signed under penalty of perjury and any evidence submitted to the City Clerk prior to the closing of the election. The City Clerk will be under no duty to obtain or consider any other evidence as to whether the signer of the Ballot is an authorized representative of the owner and its determination will be final and conclusive.

E. Confidentiality

The City considers the vote contained on a Ballot (i.e. whether the box in support is checked or the box in opposition is checked) to be confidential, and will not disclose that fact with respect to any specific voter unless ordered to do so by a court of competent jurisdiction.