TO: HONORABLE CITY COUNCIL
FROM: CITY MANAGER DEPARTMENT: PUBLIC WORKS
DATE: DECEMBER 6, 2004 CMR:508:04
SUBJECT: APPROVAL OF A RESOLUTION PROPOSING AN INCREASE IN THE MONTHLY STORM DRAINAGE FEE FROM $4.25 TO $10.00 PER EQUIVALENT RESIDENTIAL UNIT (ERU) AND APPROVAL OF A RELATED RESOLUTION ESTABLISHING PROCEDURES FOR A PROTEST HEARING AND BALLOT PROCEEDING FOR A STORM DRAINAGE FEE INCREASE

RECOMMENDATION
Staff recommends that Council:

1. Adopt a resolution adopting the amount of the proposed Storm Drainage Fee increase, describing the storm drain capital improvements and program enhancements on which the proposed fee increase will be spent if approved, and adopting a schedule for the protest hearing and mail ballot proceeding.
2. Adopt a resolution establishing procedures for the protest hearing and mail ballot proceeding relative to the proposed increase in the Storm Drainage Fee.

BACKGROUND
The City’s storm drain capital improvement, maintenance and water quality protection programs are funded through the Storm Drainage Fund, an enterprise fund established by Council in 1989. Revenue is generated by a Storm Drainage Fee, which is collected through monthly City utility bills. The fee, $4.25 per month per equivalent residential unit (ERU), has not been increased since 1994 and is insufficient to cover the program’s operating costs. The Storm Drainage Fee is a property-related fee subject to the provisions of Proposition 218, and cannot be increased without the approval of a majority of property owners subject to the fee increase.

On September 13, 2004, staff presented and endorsed an enhanced storm drain program and associated funding plan recommended by the City Manager-appointed Storm Drain Blue Ribbon Committee (CMR:393:04). The program includes a set of high-priority storm drain system capital improvements totaling $17 million, and also allocates $500 thousand per year for storm drain system repairs, additional funding for storm drain maintenance, and annual funding for innovative projects to reduce storm water runoff. The plan would be funded via an increase in the Storm Drainage Fee to $10.00 per month per equivalent residential unit (ERU), with provision for annual inflation adjustments and a fee “sunset” after completion of the capital improvements in 12 years. The funding proposal also establishes three separate rate classes for
single-family residential properties, based on parcel size, and includes the creation of an independent oversight committee to review annual storm drain expenditures. Staff and the Storm Drain Committee recommended that the City initiate the steps required by Proposition 218 to obtain property owner approval of the proposed fee increase during the 2004-05 rainy season.

On November 8, 2004, Council directed staff to return to secure Council authorization to begin the process, as specified by Proposition 218, to seek property owner approval of an increase in the monthly Storm Drainage Fee to $10.00 per Equivalent Residential Unit (ERU) to fund the proposed enhanced storm drain program.

**DISCUSSION**

The specific elements of the enhanced storm drain program and the associated funding plan were presented to Council in the September 13, 2004 staff report. A detailed description of the proposal is contained in the resolution and associated exhibits attached to this report (Attachment A).

Proposition 218 requires public agencies to secure approval for increases in property-related fees through either 1) a mail ballot proceeding requiring approval by a simple majority of property owners returning ballots, or 2) a general election requiring approval by a two-thirds majority. Staff and the Storm Drain Committee advocate the mail ballot proceeding alternative due to the lower approval threshold and the expense of a general election. The City used the property owner mail ballot option for the storm drain ballot proceeding conducted in 2000. Council approved an ordinance in June 2000 that authorizes the City to conduct mail ballot proceedings for property-related fees, special taxes, or assessments. The ordinance requires Council to adopt individual resolutions authorizing specific mail ballot proceedings.

The process for submitting the proposed Storm Drainage Fee increase to property owners for approval is governed by Proposition 218 and has two distinct phases – a public protest hearing and a mail ballot proceeding. First, the City will mail a notice to all property owners subject to the Storm Drainage Fee, informing them of a public protest hearing to be held on February 14, 2005. Property owners will have the right to file a written protest opposing the fee increase at any time prior to the close of the public hearing. If a majority of property owners file a written protest, Council may not proceed to the next phase, and the fee increase approval process is terminated. If a majority protest does not occur, the Council may elect to call for a property owner mail ballot proceeding. Staff would mail ballots to the owners of all properties subject to the Storm Drainage Fee, with a prepaid return envelope. Property owners would be directed to mail or hand-deliver their ballots to the City Clerk’s office for tabulation. The fee increase would be approved if a majority of owners returning ballots vote to accept the increase. The ballot proceeding has been scheduled to take place between March 14 and April 5, 2005.

The City Attorney’s Office has developed detailed procedures to govern the protest hearing and mail ballot proceeding because Proposition 218 does not provide detailed guidelines. The procedures define the protest and ballot proceeding process by specifying voter eligibility requirements, describing the notice and protest requirements, and providing details for conducting the ballot proceeding and vote tabulation. The protest hearing and mail ballot proceeding procedures and the associated Council resolution are attached to this report.
The procedures recommended by the City Attorney’s Office streamline staff’s work tasks and simplify the process for property owners to document changes in ownership.

**RESOURCE IMPACT**
Implementation of staff’s recommendations (following property owner approval) would have the following financial impacts:

- The monthly Storm Drainage Fee for developed properties would increase from $4.25 to $10.00 per Equivalent Residential Unit. Even with the proposed increase, the Storm Drainage Fee represents a very small percentage (four percent) of the typical single-family residential monthly utility bill.
- The General Fund’s current $800,000 direct subsidy to the Storm Drainage Fund would be eliminated.
- Council would need to identify new funding source(s) for City contributions to the San Francisquito Creek Joint Powers Authority and the San Francisquito Watershed Council and would need to consider whether or not to fund curb and gutter repairs.
- Prepayment of fees would reduce the Budget Stabilization Reserve (BSR) and affect the potential surplus contribution to the Infrastructure Reserve (IR). Since BSR policy is to maintain itself at 18.5 percent of operating expenses, a contribution to IR in year of prepayment may not be likely. This should be offset in future years as the General Fund would experience a reduction in costs and a potential surplus due to prepayment of fees.
- There is a potential opportunity cost for the prepayment. Should the City’s return on its portfolio exceed the rate of inflation on the fee increase, the General Fund may forego interest income. This amount depends on the rate of inflation and interest rates. Staff believes the importance of beginning an enhanced storm drain program outweighs this potential opportunity cost.

**POLICY IMPLICATIONS**
Staff’s recommendations are consistent with the Comprehensive Plan: Policy N-24 states that the City should “improve storm drainage performance by constructing new system improvements where necessary and replacing undersized or otherwise inadequate lines with larger lines or parallel lines.” Program N-36 further states that the City should “complete improvements to the storm drainage system consistent with the priorities outlined in the City’s 1993 Storm Drainage Master Plan, provided that an appropriate funding mechanism is identified and approved by the City Council.”

**TIMELINE**
The timeline for the protest hearing and storm drain mail ballot proceeding is outlined in Attachment C to this report.

**ENVIRONMENTAL REVIEW**
Consideration of financing options for storm drainage program operational enhancements and capital improvements does not require additional California Environmental Quality Act (CEQA) review. Individual storm drain infrastructure improvement projects will be subject to additional environmental review as they are developed.
ATTACHMENTS
Attachment A: Resolution Adopting the Amount of the Proposed Storm Drainage Fee Increase, Describing the Storm Drain Capital Improvements and Program Enhancements on which the Proposed Fee Increase Will Be Spent if Approved, and Adopting a Schedule for the Protest Hearing and Mail Ballot Proceeding
Attachment B: Resolution Establishing Procedures for the Storm Drainage Fee Protest Hearing and Mail Ballot Proceeding (including Exhibit A: Procedures for the Conduct of a Protest Hearing and Mail Ballot Proceeding Relating to a Proposed Storm Drainage Fee Increase)
Attachment C: Timeline for protest hearing and storm drain mail ballot proceeding

c: Storm Drain Committee
    Palo Alto Chamber of Commerce