TO: HONORABLE CITY COUNCIL
FROM: CITY MANAGER DEPARTMENT: PUBLIC WORKS
DATE: MARCH 7, 2005 CMR:163:05

SUBJECT: STORM DRAINAGE FEE PROTEST HEARING AND APPROVAL OF A RESOLUTION CALLING A SPECIAL MAIL BALLOT PROCEEDING FOR APRIL 26, 2005, TO SUBMIT A STORM DRAINAGE FEE INCREASE TO OWNERS OF PARCELS OF REAL PROPERTY SUBJECT TO THE FEE

RECOMMENDATION
Staff recommends that:

1. Council hold a public hearing and accept written and oral testimony on the matter of the proposed Storm Drainage Fee increase. At the close of the public testimony portion of the public hearing, the City Clerk will count the written protests received on the matter, and will announce to the Council whether written protests have been received from a majority of owners of parcels subject to the fee increase.

2. If a majority protest does not occur, the Council adopt a resolution calling a special mail ballot proceeding for Tuesday, April 26, 2005 to allow owners of parcels subject to the Storm Drainage Fee increase to vote on whether the fee should be increased.

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 for a single-family residential parcel, 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. Proposition 218 limits the authority of local governments to impose or increase taxes and property-related assessments, fees or charges and imposes procedural rules for the levy of new or increased fees. The provisions of Proposition 218 require that a proposed fee increase must be submitted to property owners for approval or rejection, after proper notice and public hearing. A public protest hearing must be held not less than 45 days after a mailed notice. If written protests are received from a majority of property owners before the close of the hearing, the proposed fee increase cannot be levied. If a majority protest does not occur, the local government may refer the matter to property owners for a vote. Any new or increased property-related fees can be imposed only if a majority of property owners casting ballots vote to approve the fee increase.
On December 6, 2004, Council approved a resolution proposing an increase in the monthly Storm Drainage Fee from $4.25 to $10.00 per Equivalent Residential Unit (ERU) and a resolution establishing the procedures and timeline for a protest hearing and ballot proceeding for the Storm Drainage Fee increase (CMR:508:04). On January 19, notices were mailed to all property owners subject to the fee. The notices contained information on the public hearing, property-specific information on the amount of the proposed fee increase, a description of how the fee was calculated and how the proceeds from the fee would be spent, and instructions for filing a formal protest to the fee increase (Attachment A). Staff has also developed a web site containing detailed information on the proposed fee increase, (www.cityofpaloalto.org/stormdrain) and established a dedicated phone line (617-3183) to field questions on the matter. In addition, staff has attended meetings of various community groups and neighborhood associations to discuss the proposed Storm Drainage Fee increase with their members.

DISCUSSION
To comply with the provisions of Proposition 218, detailed procedures were adopted by Council for the public hearing and mail ballot proceeding. The protest hearing is the next step in the process. Property owners have the opportunity to appear before Council to register their concerns and protest the proposed fee increase. The proceedings will be governed by the Council-approved guidelines, which are highlighted below:

- Written protests must be legibly signed by an eligible property owner (as determined by a “master list”), identify relevant parcel(s), and state grounds for protest. Council may waive irregularities, as it deems fit.
- The City Clerk must endorse each written protest to verify the date of its filing. No protests received after the close of the public hearing on March 7, 2000 will be accepted.
- At the hearing, Council will hear all objections and take and receive documentary evidence pertaining to the proposed fee increase.
- At the end of the hearing the City Clerk will report the number of valid written protests so that the Council can determine whether a majority protest has been received.

If Council determines, at the close of the public testimony portion of the public hearing, that written protests have been received from property owners representing a majority of the parcels subject to the proposed fee increase, the Mayor shall declare the proceedings closed, and the fee increase shall not be approved. If Council determines that less than a majority of property owners have submitted written protest, the Council may adopt a resolution calling for the mailing of ballots to eligible property owners (Attachment B).

Assuming that Council calls for a mail ballot proceeding, the ballots will be mailed to property owners on April 4, 2005. Ballots for the Storm Drainage Fee ballot proceeding will consist of a single question that requires a checkmark either for or against the proposed fee increase. The ballots will be supplemented with a summary of the balloting procedures and a description of the proposed fee and storm drain spending plan (Attachment C). Ballots must be received by the City Clerk no later than 8 p.m. on April 26, 2005. Ballots received after 8 p.m. will not be included in the vote tabulation. A postage-paid return envelope included with the ballot will ensure accurate counts and facilitate the balloting process for voters. Council will certify the results of the mail-in ballot vote on May 9, 2005.
RESOURCE IMPACT
Property owner approval of the proposed fee increase 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.
• The General Fund’s current $800,000 direct subsidy to the Storm Drainage Fund would be eliminated, and the City would prepay approximately $3 million of the fees for City-owned properties. This 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 the IR in the 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.
• Council would need to identify new non-storm drain 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.

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 D 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: Public Notice of proposed Storm Drainage Fee increase
Attachment B: Resolution calling a special mail ballot proceeding for April 26, 2005, to submit a Storm Drainage Fee increase to owners of parcels of real property subject to the fee
Attachment C: Storm Drainage Fee increase ballot and supplemental information
Attachment D: Timeline for protest hearing and storm drain mail ballot proceeding