



Legislation Details (With Text)

**File #:** 24-195      **Version:** 1      **Name:** PH Stormwater Fee - Protest Findings, Directing Balloting & City-owned Parcels

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**On agenda:** 5/20/2024      **In control:** City Council

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**Enactment #:** Reso 2024-001 PA & Reso 2024-044

**Title:** Adopt Two Resolutions 1) Finding that a Majority Protest Does Not Exist, Directing a Property Owner Ballot Proceeding for the City’s Stormwater Fee Amendment and Directing the City Manager to Vote “Yes” for City of San Leandro Owned Parcels and 2) Directing the City Manager to Vote “Yes” for San Leandro Parking Authority Owned Parcels

**Indexes:**

**Code sections:**

**Attachments:** 1. A - Reso Directing Prop 218 Balloting Proceedings, 2. B - Reso Parking Authority Voting, 3. C - City Owned Properties, 4. D - Parking Authority Owned Parcel, 5. E - Protests Received (Redacted), 6. F - Invalid Protest (EBMUD) (Redacted), 7. G - Presentation Prop 218 Public Hearing

Date	Ver.	Action By	Action	Result
5/20/2024	1	City Council	Accepted as Submitted	Pass

**..title**

Adopt Two Resolutions 1) Finding that a Majority Protest Does Not Exist, Directing a Property Owner Ballot Proceeding for the City’s Stormwater Fee Amendment and Directing the City Manager to Vote “Yes” for City of San Leandro Owned Parcels and 2) Directing the City Manager to Vote “Yes” for San Leandro Parking Authority Owned Parcels

**COUNCIL PRIORITY**

- Infrastructure

**SUMMARY AND RECOMMENDATION**

The City of San Leandro’s (City) Stormwater Fund is failing to keep up with the significant operations, capital, and regulatory requirements of the stormwater system. The City’s risk in maintaining an out-of-date stormwater system is only compounded by rising sea levels and more frequent, intense storms.

The City’s existing Stormwater Fee has remained flat for more than thirty years. As a result, the Stormwater Fund has been incurring annual deficit spending.

On April 2, 2024, the City Council took the first of two legally required steps to have property owners decide whether to amend the Stormwater Fee. The City Council directed staff to mail a notice to all recorded owners of affected parcels notifying them of a May 20, 2024 public hearing on a proposed 2024 Stormwater Fee Amendment. The proposed fee for a residence on a medium sized parcel, which is the most common type of property owned in the City, would be \$49.97 annually, an increase of \$23.64 from the current rate of \$26.33 per year.

At the close of the public hearing, the City Council will determine whether a majority protest against

the proposed fee amendment exists. If no majority protest exists, staff recommends that the City Council adopt a resolution finding no majority protest, direct a property owner ballot proceeding, and direct the City Manager to vote “yes” on the ballot for City-owned parcels.

## **BACKGROUND AND ANALYSIS**

The City operates and maintains a stormwater system, which provides vital services to safeguard neighborhoods from flooding and protects local waterways from pollution. The system consists of complex infrastructure including surface drains, underground pipes and conduits, pump stations, creeks and channels, which captures the City’s drainage before it enters San Francisco Bay. The City’s stormwater system requires long-overdue improvements to address flood control limitations and aging infrastructure.

A Stormwater Fee was adopted by the City Council in 1993. The fee generates approximately \$1.1 million annually, has not been increased in 30 years, and has therefore lost significant value. The revenue is short of the estimated \$4.8 million annual cost to manage the stormwater system. The Storm Water Enterprise Fund has been operating at an annual deficit and projections show a negative \$2.5 million fund balance by June 30, 2024.

The Public Works Department began working with Schaaf & Wheeler and HF&H Consultants, LLC to develop a financial analysis of the City’s stormwater activities and to understand the funding needs and options for revenue generation. Staff presented the Storm Drain Master Plan to the City of San Leandro Facilities and Transportation Committee on February 7, 2024. The draft Stormwater Fee Report was presented to the City Council on March 4, 2024. At that meeting, Council directed staff to proceed with the next steps necessary to implement a potential Stormwater Fee Amendment.

On April 2, 2024, the City Council adopted two resolutions. The first resolution memorialized the City’s intent to initiate the Proposition 218 process for a Stormwater Fee Amendment and to approve the Stormwater Fee Report. The second resolution adopted balloting procedures for the proposed Stormwater Fee Amendment.

Subsequent to the City Council’s action, a notice of public hearing was mailed to all recorded property owners with notification of the May 20, 2024 public hearing and additional information about the proposed Stormwater Fee Amendment and the stormwater system. The notice further informed property owners of the process to submit a written protest. Per State law, if the owners of a majority of affected parcels file such a protest, the City may not consider the proposed fee. If there is no majority protest, the City Council may initiate a property owner ballot proceeding by which the fee could be approved if a simple majority of votes cast are in support.

As of the date when this staff report was published, the City has received 46 unvalidated protests to the proposed Stormwater Fee Amendment and 1 letter addressed to East Bay Municipal Utility District. 12,490 validated protests would need to be received to successfully protest the proposed Stormwater Fee Amendment. At the conclusion of tonight’s public hearing, the City Clerk will share whether a majority of property owners have submitted a written protest. If a majority of written protests have not been received, the City Council may adopt a resolution finding no majority protest, directing a property owner ballot proceeding, and directing the City Manager to vote “yes” for City-owned parcels.

## **Stormwater Fee Amendment Ballots**

With the City Council's approval of the resolution, staff will then prepare and mail a ballot packet to all recorded property owners of affected parcels by May 24, 2024.

Property owners will receive a ballot packet that includes the following:

- A ballot guide which explains the funding needs, current and proposed rates, instructions on how to cast a ballot, the ballot due date (included in multiple locations), and information on the public ballot counting procedures which shall be held in a location accessible to the public.
- The ballot guide shall be primarily in English with translation of key aspects translated in Spanish and Simple Chinese.
- The ballot guide will include the address to the City's Stormwater Fee Amendment website which includes FAQs, the Stormwater Master Plan, and the Stormwater Fee Report.
- An official ballot which identifies all parcels owned by the property owner receiving the ballot (as each parcel is counted as 1 vote), check boxes for voting "Yes" or "No" on the proposed Stormwater Fee Amendment, and a signature line to authenticate the vote.
- The packet envelope shall state "OFFICIAL BALLOT ENCLOSED".
- A return envelope addressed to the City Clerk's Office.

For the purposes of this vote, each parcel subject to the Stormwater Fee Amendment equals one vote, and of those ballots cast, a 50% majority approval is required for the Stormwater Fee Amendment to pass. Ballots not returned do not count for or against the proposed fees. Ballots will be due to the City Clerk by 5:00 p.m. on July 8, 2024. Every parcel owner receives one ballot per parcel and is entitled to one vote per parcel, (i.e., an owner of three parcels can submit three votes). The ballot tabulation, led by the City Clerk with support from HF&H, will be held between 9:00 am and 5:00 p.m. on July 9, 2024 in the City Manager's Office Conference Room on the second floor of City Hall and will be open to the public. The results will be shared with the City Council at the July 15, 2024 City Council meeting. The Stormwater Fee Amendment can be adopted by the Council if it is approved by a simple majority of votes cast.

#### City and Parking Authority Owned Properties Stormwater Fee Amendment Ballots

The Proposition 218 process requires that the proposed Stormwater Fee Amendment applies to all properties that impact the City's stormwater system based on their fair share contribution. This includes the parcels owned by the City of San Leandro and the San Leandro Parking Authority. As a result, the City will receive ballots for the 162 parcels it owns which would be subject to the proposed Stormwater Fee Amendment. The annual cost for the City's properties would be \$44,198.77 for FY 2024-2025. The annual cost for the Parking Authority parcel is \$2,734.18 for FY 2024-2025. See Attachments C and D for the list of City-owned and Parking Authority owned parcels respectively and the proposed fee per parcel. Staff requests direction from the City Council regarding how to respond to the 2024 Stormwater Fee Amendment ballots the City receives for the City and Parking Authority owned parcels. Following are the three choices:

- Direct the City Manager not to mark, sign and return the ballots, so they are not included in the ballot tabulation;
- Direct the City Manager to vote Yes on the ballots, sign and date them, and return them to the City Clerk for tabulation;
- Direct the City Manager to vote No on the ballots, sign and date them, and return them to the City Clerk for tabulation.

According to HF&H, although on occasion some public agencies choose not to vote on their ballots, most do choose to exercise their rights as a property owner subject to the proposed fee to vote on

their ballots. In the unlikely event that the City votes Yes on its ballots and the ballot measure passes by such a slim majority that it would not have passed had the City not voted, the City Council can take that into consideration when the ballot tabulation results are announced and the Council decides on whether to impose the new Stormwater Fee Amendment for Fiscal Year 2024-2025. Staff recommends that the Council direct the City Manager to vote Yes on the City and Parking Authority ballots, sign and date them, and return them to the City Clerk prior to the ballot deadline.

### **PUBLIC OUTREACH**

In advance of the actions proposed as part of this staff report, the City engaged in robust outreach efforts to share information and details regarding this proposed initiative with the public and with property owners subject to the fee. Examples of such outreach efforts include:

- Creation of and ongoing updates to a dedicated website ([www.sanleandro.org/stormwaterfee](http://www.sanleandro.org/stormwaterfee) <<http://www.sanleandro.org/stormwaterfee>>);
- Social media posts;
- Video message to the community from the Mayor;
- Individual briefing meetings including with large property owners and other stakeholder groups;
- Individual briefing meetings with the San Leandro and San Lorenzo Unified School Districts;
- Distribution of information at the San Leandro City Services Open House on April 13, 2024;
- Distribution of an informational notice to all property owners;
- Responding to emails and phone calls from property owners.

### **FINANCIAL IMPACTS**

Sufficient appropriations to fund the costs of the survey, rate study, and ballot proceeding are included in the FY 2023-2024 authorized Citywide budget. If the Stormwater Fee Amendment is approved by property owners and adopted by the City Council, the City's stormwater system maintenance program will realize an approximate \$2.1 million increase in revenue annually.

The proposed fee, if approved by voters, will be annually adjusted by the Consumer Price Index for the San Francisco Bay Area using December index of each succeeding year (CPI), with a maximum annual adjustment not to exceed 3%.

The FY 2024-2025 charges for the City and Parking Authority parcels are estimated at \$46,932.95.

### **ENVIRONMENTAL REVIEW**

This activity is not a project and is exempt from the California Environmental Quality Act (CEQA) pursuant to section 15378 (b)(4) of the CEQA Guidelines, because it involves governmental fiscal activities (approving funding mechanisms), which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.

### **CLIMATE IMPACTS**

To meet the challenge of sea level rise and more frequent and intense storms, the City's funding of its stormwater pumps, pump stations, and pipes must be commensurate with its maintenance, operations, and capital needs. By increasing revenue to get closer to the stormwater system's current and projected needs, this action is one of the most important, near-term actions recommended in the

City's draft Climate Action and Resiliency Plan.

### **RECOMMENDATION**

Hold a public hearing on the proposed 2024 Stormwater Fee Amendment; adopt a resolution finding [no] majority protest, direct a property owner ballot proceeding, direct the City Manager to vote "Yes" for City-owned parcels.

### **ATTACHMENTS**

- A. Resolution Finding that a Majority Protest Does Not Exist, Directing a Property Owner Ballot Proceeding for the City's Stormwater Fee Amendment and Directing the City Manager to Vote "Yes" for City of San Leandro Owned Parcels
- B. Resolution Directing the City Manager to Vote "Yes" for the San Leandro Parking Authority Owned Parcel
- C. City of San Leandro Owned Parcels
- D. San Leandro Parking Authority Owned Parcel
- E. Protest Letters Received by May 14, 2024
- F. Invalid Protest Letters Received by May 14, 2024
- G. Presentation

### **PREPARED BY**

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