



CITY OF FORT BRAGG

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COUNCIL COMMITTEE ITEM SUMMARY REPORT

MEETING DATE: April 11, 2018
TO: Public Works and Facilities Committee
FROM: Tom Varga
AGENDA ITEM TITLE: **DISCUSSION REGARDING ADDING STORM DRAIN FEES TO UTILITY BILLS**

ISSUE:

Expenses for storm drain management and operations are steadily increasing as regulatory and maintenance costs go up. They represent a unique set of expenses that can be treated as a separate cost center similar to water or wastewater expenses. As such, it may be desirable to add a separate charge for storm drainage services on utility bills in the future.

SUMMARY:

More and more, local government agencies are treating storm drainage costs as a distinct category of expenses with costs being separately tracked and special revenues created to fund these expenses. The City already has a place in its Annual Budget for storm drainage expenses, (Department #4522 within the General Fund). It provides for: professional services, licenses/permits, general supplies, and small repair projects. There is also an account to allocate fleet services expenses. However, all the funding comes from the General Fund. A dedicated revenue stream could potentially be created for storm drainage purposes. This would reduce the burden on the General Fund and create a more direct link between costs and revenues.

Prior to 2008, the City operated its storm drain system as part of the Wastewater Enterprise. After passage of Proposition 218 and subsequent court cases interpreting the statute, the City had to move its storm drainage expenses to the General Fund. The only revenues generated to offset storm drainage expenses are Storm Drainage Impact Fees that are assessed solely on new development. Impact fees are normally spent on storm drainage infrastructure. In 2011, the City retained the firm NBS, to perform a comprehensive rate study for water, waste water, and storm drainage. The water and wastewater recommendations were largely incorporated, but the storm drainage recommendations were set aside. During discussions of the report, it was determined that the matter of storm drainage fees, their proper amount, what they should cover, and how to calculate them needed additional consideration before acting further on them. Water and wastewater needs were pressing at the time and storm drainage services considered adequate.

There are three major areas of storm drainage expenses: regulatory, operations/maintenance, and capital improvements.

The City's storm drain system is under the regulatory oversight of the Regional Water Quality Control Board (RWQCB) for District 1 (North Coast). Their most important regulatory tool is Order No. 2013-0001-DWQ "Storm Water Dischargers from Small Municipal Separate Storm Systems" (MS4) Permit. This Order contains over 100 specific requirements placed on the City. Regulatory compliance costs are currently estimated at \$50,000 to \$60,000. This permit is in its last year and a new five-year permit will be developed soon. A greater regulatory burden can be expected.

Operational obligations include ongoing maintenance of the storm drain system as well as emergency response during rain events. Basic storm drainage operational costs are about \$50,000 to \$70,000 per year.

In an average year, the City spends \$20,000 to \$30,000 on small, non-emergency repair projects. By comparison, the City's current SD Master Plan identifies 19 larger capital projects with an estimated cost of \$5,200,000 as of 2004 (approximately \$8,500,000 in 2018 dollars). The projects were prioritized as high/medium/low, but no time frames were included. More than \$500,000 a year would be required to construct these improvements over a 20 to 30 year time period. Storm drainage fees collected each year between FY 2012/13 and FY 2015/16 ranged from \$1,600 to \$20,000. Thus, it can be seen that current storm drainage impact fees provide only a small portion of the total capital cost needs and a major adjustment to this fee would be needed to fund a significant part of the outstanding infrastructure needs.

The NBS study recommended the City establish a Storm Drainage Enterprise Fund, similar to the Water and Wastewater Enterprise Funds, and that a monthly charge be assessed to utility customers. The study proposed this as a possible revenue source for operational costs, regulatory, capital costs, and the creation of a reserve to provide for unexpected contingencies. While the study should be updated if the City pursues establishment of a Storm Drainage Enterprise, the 2013 NBS study estimated a fee (per utility customer per month) for FY 2017/18 of \$5.99. This would generate approximately \$200,000 per year to offset the City's costs for operation of the storm drainage system. Preliminary cost estimates, (regulatory compliance, operations/maintenance, and minor repair projects), noted above, range from \$120,000 to \$160,000. The additional funds could be used to anticipate more expensive regulations, and to increase expenditures for badly needed repair projects caused by deferred maintenance or fill small gaps in the storm drain system. A Storm Drainage Enterprise Fund is one way to comprehensively address the full range of funding for the City's storm drainage needs.

In general, fees for water and wastewater services are excluded from the voting requirements of Proposition 218 which are required for property related taxes. Unfortunately the exemption for water and wastewater did not explicitly include storm drainage and a 2002 court decision formally placed storm drainage fees outside of Prop 218 exemptions. In 2017, the State legislature passed SB 231 to modify the definition of the term "sewer" to include storm drainage. This was intended to fix the problem. However, a legislative reinterpretation of Prop 218 does not complete the process. Because Prop 218 is actually part of the State Constitution, a legal ruling on the constitutionality of SB 231 is the most direct way finishing the job. A test case is being created to accomplish this step. It is hoped that a decision can be rendered in a year or two. In the meantime, local agencies have been warned that any storm drain fees are subject to legal challenge under the existing interpretation of Prop 218.

With a modification to the legal definition of the term “sewer” to include storm drainage, there is now a reasonable logic that can be applied for adding a storm drainage surcharge to water bills in the same fashion as is already done for wastewater (sewer). Storm drain impacts and their costs are most easily calculated on a per square foot, area basis. It is highly unlikely that all of the regular storm drain expenses can be made an addition to utility bills. The costs are quite substantial. However, some portion of these costs could be considered for addition. In general, capital projects should be kept part of the Capital Improvement Program (CIP) and continue to be funded by grants, loans, and similar tools, but not from fees collected for storm drainage services.

RECOMMENDATION:

With the great uncertainty surrounding SB 231, staff recommends to let this legal process run its course. Additional changes to the interpretation of Prop 218 are possible or the SB 231 interpretation could even be struck down. The idea of creating a Storm Drain Enterprise Fund and creation of new storm drainage service fees should be deferred until there is more certainty on what is allowed. In the meantime, capital costs can remain with the CIP.

ATTACHMENTS:

None.