



Washoe County School District

425 East Ninth Street * P.O. Box 30425 * Reno, NV 89520-3425
Phone (775) 348-0200 * Fax (775) 348-0304 * www.washoeschools.net

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January 31, 2023

City of Reno
Utility Services Dept
c/o Jon Simpson
P.O. Box 1900
Reno, NV 89505

Re: Stormwater Utility – Business Impact Statement

Dear Mr. Simpson,

The Washoe County School District (WCSD or the District) received the request for comment regarding the Business Impact Statement related to the proposed City of Reno (City) Stormwater Utility Fee and related ordinance that will be considered by the City Council. This letter is intended to express the nature of the proposed impact to WCSD, various concerns, as well as requested revisions to the proposed utility fee, ordinance, and crediting program.

Fiscal Impact to the Washoe County School District

WCSD operates 54 facilities or “Properties” (comprised of many more individual parcels) within the City limits, which would be subject to this proposed new fee. These Properties contain a total of approximately 12.4 million square feet of impervious surfaces across all buildings and site improvements. At the proposed rate of \$13.46 per Equivalent Residential Unit (ERU) that translates into 3,543 ERU’s or a monthly bill of \$47,688 to WCSD; nearly \$575,000 per year, or the annual salary of approximately 10 schoolteachers.

Within Section 12.17.160, the base ERU Rate is subject to an automatic annual increase by an amount equal to the increase of the Consumer Price Index – All Urban Consumer (CPI-U). Based on the currently proposed ordinance and anticipated increases to the base ERU Rate associated with this Section and the CPI-U, WCSD estimates that this new proposed stormwater fee will cost WCSD approximately \$6.3 million dollars over the first 10 years of its implementation.

Legal Concerns - The Proposed Ordinance is a Tax

In a case literally decided four weeks ago, Borough of West Chester v. Pennsylvania State System of Education (PSSE), 2023 WL 27942 (Comm. Ct. Pa. 2023), the court considered this exact issue. In that case, similar to the proposed ordinance being considered by the City, the local municipality sought to collect “fees” from all landowners with improved properties based off of their impervious surface area. Also, similar to this proposed ordinance, the funds were collected by the municipality and placed into a separate “Stormwater Management Fund” for implementation, management, construction, operation, and debt service of the stormwater utility. The municipality levied this “fee” against the PSSE, a tax-exempt entity, who filed suit. The Court reasoned that because the municipality did not base the “fee” on a direct or discreet benefit to the property owner, e.g., lateral hook up to water or sewer, and instead, the purpose was to



provide a general government service for the community the stormwater utility “fee” was indeed a tax. *See DeKalb County, Georgia v. United States*, 108 Fed. Cl. 681 (Fed Cl. 2013) (Held that a county ordinance imposing a stormwater charge calculated according to impervious surface area of developed properties constituted a tax.) Similar to PSSE, WCSD is a tax-exempt entity, and the City may not even charge WCSD this alleged “fee” because it is a tax.

Proposed Revisions to the Ordinance – Section 12.17.120. Jurisdiction

The currently proposed Ordinance exempts a number of properties and agencies for various reasons. WCSD is a governmental agency which is mandated by the Nevada State Constitution to provide a service to the citizens of Nevada including the City. To provide this service, the District constructs buildings and roads and sidewalks which are permitted through the City and subject to all manner of building code and land use requirements related to surface improvements and stormwater infrastructure. WCSD then manages and maintains all of these Properties with a taxpayer funded public works department in the same manner as the City.

- **Washoe County School District hereby requests that the following addition be made to Section 12.17.120 to exempt certain portions of WCSD property:**

(7) Real property owned by the Washoe County School District constituting the drainage system, including sidewalks, and paved roadways, excluding parking stalls, which provide drainage service and are accessible to the public outside of regular school hours.

Proposed Revisions to the Ordinance – Section 12.17.160. Consumer Price Index (CPI) Increases

Washoe County School District receives 98% of its General Fund Revenues from the State of Nevada. Historically, the funding provided by the legislature to WCSD fails to keep pace with inflation, nor CPI. For example, in FY23 the per-pupil revenues from the State were increased by 1.3%, while the most current measure of CPI-U for the period ending December 2022 was +6.2%. Additionally, while our revenues are tied to a per-pupil funding formula, in FY23 WCSD also had some 1,000 fewer students enrolled and correspondingly received a reduction in funding of over \$8 million. However, in such a scenario, WCSD has little to no ability to reduce our liability with respect to this stormwater impact fee. Unlike some other public entities, the District cannot increase or impose new fees to pass along the increased cost of stormwater fees, since we must provide public education free to students. Thus, the imposition of a new annual cost of \$575,000 will unequivocally reduce the resources we have to provide education to students in Washoe County.

WCSD also questions whether a broad CPI index is a proper reflection of the City's costs in this area, as CPI covers items like food that does not come into play for stormwater services and capital construction.

The City has studied the structure of a stormwater utility for several years. As recently as Fall of 2021, the possible ERU rates being considered were as low as \$8.50 / ERU / month. In late 2022,

the City presented new possible ERU rates which had increased by some 40% with little more explanation than the City’s consultant had updated their financial model. During the City Council’s December 14, 2022 meeting, the highest end of the proposed fees was chosen to incorporate into this Ordinance at \$13.46/ERU/month, a nearly 60% increase to what was presented publicly as recently as Fall 2021. This dramatically inflated rate now the least this fee will ever be, and is slated to increase automatically, annually, and without public input or council oversight, indefinitely.

Due largely to the fact that WCSD has little to no ability to increase its revenues, nor reduce its liability relative to this stormwater fee, nor pass along these costs to its customers;

- **The Washoe County School District hereby request that Section 12.17.160 be deleted from the proposed ordinance.**

Proposed Revisions to the Crediting Program – Section 12.17.120. Jurisdiction

The City also published a proposed Stormwater Utility Fee Credit Policy Manual which provides for various means the District might pursue reductions to annual liability. These proposed credits are generous and can be achieved and applied cumulatively. However, the WCSD believes that the scale of the District and the institutional nature of its infrastructure management and curriculum delivery should afford a more streamlined approach toward applying and achieving such credits. In summary, the District believes that a one-time certification of infrastructure status in terms of the ‘Quality’ and ‘Quantity’ credit should be sufficient, given the district’s taxpayer-funded, formally-structured, internal public works department, with hundreds of full-time maintenance personnel employed specifically at these Properties.

WCSD also believes that a one-time certification of curriculum content and delivery in terms of the ‘K-12 Education’ credit should be sufficient. WCSD instructs science based on the Nevada Academic Content Standards, as required by the Nevada Department of Education. These standards include “Performance Expectations” and unsurprisingly, already teach students from Kindergarten to High School robust content related to stormwater quality and the impacts of water in our region. The District’s curriculum and successful delivery thereof is already subject to a significant amount of formal and informal monitoring and scrutiny, the outcomes of which are public and transparent, literally governed by a body of elected officials.

- **The Washoe County School District hereby requests that the Stormwater Utility Fee Credit Policy Manual be modified to afford one-time certification by the City of Reno on each of the ‘Quality’, ‘Quantity’, and ‘K12 Education’ categories, at the rates proposed, to be applied cumulatively toward all District Properties.**

The Washoe County School District is supportive of the City of Reno’s pursuit of a healthy public works program, inclusive of the stormwater infrastructure needs of our growing community and the District desires to support the City in all efforts to that end. The District feels

that the above-detailed modifications to the currently proposed stormwater ordinance are in alignment with the Ordinance's current framework, and WCSD looks forward to further discussion with the city regarding this stormwater utility ordinance, while continuing to operate a successful organization for our community as well.

Sincerely,

Adam T. Searcy, P.E.
Chief Operating Officer
Washoe County School District

cc:
City of Reno, City Manager, Doug Thornley
City of Reno, Asst. City Manager Jackie Bryant
City of Reno, Utility Services Director, Trina Magoon
Washoe County School District, Superintendent, Dr. Susan Enfield
Washoe County School District, Chief General Counsel, Neil Rombardo