

12-13-2023 - Reno City Council Meeting - Item # E.2 Stormwater Utility Business Impact Statement

[illegible]



Public Comment <publiccomment@reno.gov>

12.13.23 City Council - Agenda Items E1-E4 Public Comment Submission2 messages

Jodi L Fraser <jodif@unr.edu>

Tue, Dec 12, 2023 at 3:52 PM

To: "publiccomment@reno.gov" <publiccomment@reno.gov>

Cc: "thornleyd@reno.gov" <thornleyd@reno.gov>, Andrew Clinger <aclinger@unr.edu>

Good afternoon.

Attached, please find an opposition letter from Vice President Andrew Clinger regarding the 12.13.23 City Council Meeting Agenda Items E1-E4 and the previously submitted letter, January 31, 2023, referenced. This is for written comment only.

The University is Ward 5.

Address is: 1664 N. Virginia St., Reno, 89557

Phone number is: (775) 784-4031

By checking the "Yes" below, you understand, acknowledge, and expressly agree that: (1) all information submitted by you will be entered into the public record, made available for public inspection, and freely disseminated without restriction; and, (2) any contact, personal, financial, or medical information intentionally or inadvertently submitted by you will not be maintained in a confidential manner, or subsequently exempted from public inspection.*

Yes

By checking the "Yes" below, you agree that all the information above is true and accurate. For additional information, please refer to the agenda for today's meeting.*

Yes

Thank you,

Jodi

Jodi Fraser MPA

Manager,
Administration
1664 N. Virginia St.
MS0003

Reno, NV 89557

Work-phone: (775) 784-4031

Email: jodif@unr.edu

<https://www.unr.edu/vpaf>



University of Nevada, Reno



2 attachments



Storm Water City of Reno 12.12.23.pdf
88K



Storm Water City of Reno attachment 01.31.23.pdf
56K

Public Comment <publiccomment@reno.gov>
To: Jodi L Fraser <jodif@unr.edu>

Tue, Dec 12, 2023 at 4:00 PM

Hi Jodi,

Thank you for your comments. They will be sent to the Reno City Council for review and will be part of the official record.

Take care!

City Clerk's Office
City Clerk (775) 334-2030
1 East First Street, 2nd Floor Reno, NV 89501
cityclerk@reno.gov
Take care,

[Quoted text hidden]



University of Nevada, Reno

January 31, 2023

**UNR's Public Comment regarding Proposed
Stormwater Utility Ordinance (Chapter 12.17)**

Dear City of Reno:

The University of Nevada, Reno writes concerning the City's proposed ordinance in Municipal Code Chapter 12.17, which seems to operate as a tax upon certain property owners in Reno in connection with stormwater drainage.

Through its creation by the Legislature as a public land-grant university, UNR's mission of education requires substantial property holdings in Reno. UNR is therefore concerned about the legality of the proposed ordinance and requests that the City consider an exemption to Section 12.17.120(b) for state entities.

As the City knows, NRS 361.005 exempts all land and property owned by the State from taxation. While the proposed ordinance is styled as a fee, its stated purpose seems to be to generate revenue for a general stormwater fund rather than compensating the City for a specific service. See *DeKalb County, Georgia v. United States*, 108 Fed. Cl. 681, 710 (Fed. Cl. 2013) (holding that a county ordinance imposing a stormwater charge was a tax and not a fee). In this regard, the City might not yet be aware of the very recent decision in *Borough of West Chester v. Pennsylvania State System of Higher Education*, which held that the Pennsylvania State System of Higher Education's property was immune from a similar local stormwater assessment because that assessment constituted the taxation of state property. 2023 WL 27942 (Pa. Commw. Ct.).

While UNR is often eager to come to the table and discuss and often assist the City in addressing its needs, we ask that the City work with UNR in crafting an equitable and legal approach to the stormwater issue.

Sincerely,

Troy Miller
Assistant Vice President
Office of Community and Real Estate Management
University of Nevada, Reno



University of Nevada, Reno

December 12, 2023

**UNIVERSITY's Public Comment regarding Proposed
Stormwater Utility Ordinance (Chapter 12.17)**

Dear City of Reno:

The University of Nevada, Reno "UNIVERSITY" writes concerning the City's proposed ordinance in Municipal Code Chapter 12.17, which proposes assessing a Stormwater Utility Fee upon certain property owners in Reno in connection with stormwater drainage. In our previous letter dated January 31, 2023, the UNIVERSITY questioned if this was a tax from which the UNIVERSITY would be exempt. We did not see that that question was ever addressed. Please find that letter attached, along with some of that letter also referenced within.

Through its creation by the Legislature as a public land-grant university, The UNIVERSITY's mission of education requires substantial property holdings in Reno. The UNIVERSITY is therefore concerned about the legality of the proposed ordinance and requests that the City consider an exemption to Section 12.17.120(b) for state entities.

As the City knows, NRS 361.005 exempts all land and property the State owns from taxation. While the proposed ordinance is styled as a fee, its stated purpose seems to be to generate revenue for a general stormwater fund rather than compensating the City for a specific service. *See DeKalb County, Georgia v. United States*, 108 Fed. Cl. 681, 710 (Fed. Cl. 2013) (holding that a county ordinance imposing a stormwater charge was a tax and not a fee). In this regard, the City might not yet be aware of the very recent decision in *Borough of West Chester v. Pennsylvania State System of Higher Education*, which held that the Pennsylvania State System of Higher Education's property was immune from a similar local stormwater assessment because that assessment constituted the taxation of state property. 2023 WL 27942 (Pa. Commw. Ct.).

We understand this is a concerning issue for the community and offer this compromise. We have learned that the City of Reno has worked with Washoe County School District "WCSD" to provide a 60% discount on the current stormwater fee proposed by the City of Reno. If the proposed ordinance is approved, we propose a similar arrangement for the UNIVERSITY, recognizing our shared role as educational institutions within the community. We also have concerns with an automatic CPI annual increase each year and wonder if there would be an opportunity to discuss alternatives.

Office of the Vice President of Administration & Finance
1664 N. Virginia St.
University of Nevada, Reno/0003
Reno, NV 89557-0003
(775) 784-4031 office
(775) 784-1774 fax

Please let us know as soon as possible. I understand this will be discussed at the City of Reno Council Meeting on December 13, 2023. The UNIVERSITY plans to attend the City Council meeting on December 13, 2023. Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read 'A. Clinger', with a stylized, flowing script.

Andrew Clinger
Vice President
Administration and Finance
University of Nevada, Reno

(no subject)

1 message

Joe Panicaro <joepanicaro@gmail.com>
To: publiccomment@reno.gov

Tue, Dec 12, 2023 at 3:45 PM

Proposed Stormwater Utility Fee, Agenda items E1-E4.

My name is Joe Panicaro. I am a longtime activist and lifelong resident of Reno, Nevada, having worked in the legal profession the last three decades. I am unable to appear at City Council on December 13th to speak on the proposed Stormwater Utility. Thus, I'm submitting this written response.

On November 6 and 7, 2023, I had my 54 page Stormwater Utility Opposition emailed to all City Council members, the City Manager and Chief Engineer Jon Simpson. To date, I have not received a response from any of the individuals.

As I detailed in my Opposition, the proposed Stormwater Utility Fee (essentially a tax) appears ill conceived and likely to result in class action litigation, as acknowledged by the legal community. (Just because you call a dog a cat, this doesn't mean it's a cat. Fees are discretionary whereas taxes are mandatory). The proposed Stormwater tax is apparently duplicative as it seeks funding for items ALREADY FUNDED BY OTHER SOURCES. The Stormwater tax appears discriminatory and violative of Article 10, Section 1 of the Nevada Constitution which requires taxation to be uniform, just and equal. The tax appears violative of both the Equal Protection and Due Process Clauses of the 14th Amendment of the U.S. Constitution. Its method of calculation appears erroneous and the tax unjustified, lacking a reasonable basis. Records obtained from the City show the Tennessee consulting firm Raftelis was paid \$857,670.89 to advise on initiating a Stormwater Utility tax.

Raftelis advised mailing postcards to ALL City of Reno property owners at two different intervals to inform them of the proposed Stormwater tax. Instead, City staff states they provided an informational mailer in sewer bills directing property owners to a website. This apparently violated the notice requirements of Due Process as many property owners have septic systems, not sewer hookups, and were never given notice.

Many businesses, including those practicing law, were not provided with notice of the proposed Stormwater tax. NRS 237.030 requires local government to provide notice of a proposed rule to owners and officers of businesses likely to be affected by the proposed rule so they may submit data and arguments to the government. WHEN THIS IS NOT DONE, NRS 237.140 MAKES THE ADOPTION OF THE RULE VOID.

Raftelis confirms in its report that the items to be funded with the proposed Stormwater tax ARE ALREADY BEING FUNDED THROUGH OTHER SOURCES SUCH AS SEWER AND STREET FUNDS. RAFTELIS FURTHER CONFIRMS THAT GROUPS ARE ALREADY PAYING FOR STORMWATER MANAGEMENT THROUGH THEIR PROPERTY TAXES. THUS, THERE'S NO NEED FOR ANOTHER DUPLICATIVE TAX.

Raftelis points out that in 2018, voters turned down an increase in taxes to further fund flood control and may view the Stormwater tax as a way to circumvent that vote. THAT CERTAINLY SEEMS WHAT'S HAPPENING HERE. IF NOT, WHY DOESN'T THE CITY PUT THE STORMWATER TAX ON THE BALLOT?

The Stormwater Utility tax is to be used for City of Reno bridge replacement. YET, ACCORDING TO DAN DOENGES AT RTC, VEHICULAR BRIDGES ARE TYPICALLY PROJECTS OF RTC FOR WHICH FEDERAL FUNDING IS OBTAINED. IN FACT, DOENGES SAID RTC ALREADY SECURED FEDERAL FUNDING FOR REPLACEMENT OF THE TWO ARLINGTON AVENUE BRIDGES, SLATED FOR CONSTRUCTION IN 2025. IN REGARD TO THE HUGE INFRASTRUCTURE BILL CONGRESS PASSED IN 2022, DOENGES SAID RTC WOULD DEFINITELY SEEK THOSE FUNDS AS WELL. WHY HASN'T THE CITY OF RENO SOUGHT THOSE FUNDS?

Making only Reno property owners responsible for replacement of vehicular bridges that others use would apparently be discriminatory and violative of Article 10, Section 1 of the Nevada Constitution.

Under the proposed Stormwater tax, the two pedestrian bridges at Winfield Park are slated for replacement at a cost of \$1,133,977. Yet, when I asked for records showing their need for replacement, the City provided me with park inspector reports which had the box "ok" check marked for both. Also slated for replacement are two Wells Avenue pedestrian bridges. When I asked for records showing their need for replacement, the City did not provide me with any.

Also included in the Stormwater funding package is a \$5,000,000 amount for "Partial Solutions" for Swan Lake/Silver Lake flooding. The City was previously warned by the engineering firm Quad Knopf in 2007 that continued development in the area would lead to increased Stormwater volumes in Swan Lake, resulting in flooding. The warning was ignored and Swan Lake flooded. Consequently, the City was sued, resulting in a \$4.5 million settlement.

According to Raftelis, an additional \$1,263,000 annually would be needed just to hire new employees to implement the Stormwater Utility.

The Stormwater tax is apparently based on an erroneous method calculation. The basis for the tax is to make a property owner responsible for their contribution to stormwater flowing into the City's collection system. YET, THE METHOD OF CALCULATION USED EMPLOYS A PROPERTY'S IMPERVIOUS AREA ONLY AND DOES NOT TAKE INTO ACCOUNT THE PROPERTY'S PERVIOUS AREA WHICH CAN ABSORB STORMWATER BEFORE IT RUNS OFF THE PROPERTY AND INTO THE STREET. RAFTELIS PROVIDES A PERFECT EXAMPLE OF THIS FLAWED CALCULATION WHEN COMPARING THE TARGET SHOPPING CENTER WITH RENO HIGH SCHOOL. WHILE TARGET HAS VIRTUALLY NO PERVIOUS LAND AREA TO ABSORB STORMWATER, RENO HIGH HAS COPIOUS AMOUNTS, NEARLY AS MUCH PERVIOUS AREA AS IT HAS IMPERVIOUS AREA. YET, BECAUSE RENO HIGH HAS SLIGHTLY LESS IMPERVIOUS LAND THAN TARGET, ITS STORMWATER BILL WILL BE SLIGHTLY LESS THAN TARGET'S. YET, RENO HIGH'S CONTRIBUTION TO THE CITY'S STORMWATER SYSTEM IS IMMENSELY LESS.

I implore you to read my 54 page Opposition prior to taking any vote on the proposed Stormwater tax. People are furious over this proposal and there's even talk of a recall. Further funding of flood control was soundly rejected by the voters. Now, they feel the City is thumbing its nose at them and shoving this down their throats.

RENO CITY COUNCIL

PUBLIC COMMENT CARD

Thank you for participating. We know your time is valuable and we look forward to hearing your comments, ideas and questions. The Mayor and City Council request that all comments are expressed in a courteous manner. Public comment is limited to three minutes each. Comments should be addressed to the council as a whole, not an individual member.

NAME: Lindsay Anderson

ADDRESS: _____

CONTACT PHONE: 775 233 1539

E-MAIL: LAnderson@renoairport.com

If you are representing someone, other than yourself, please indicate whom:

Reno Tahoe Airport Authority

☐ WARD 1

☐ WARD 2

☒ WARD 3

☒ WARD 4

☐ WARD 5

☐ OTHER _____

DO YOU WISH TO SPEAK? YES ☒ NO ☐

AGENDA ITEM E2

E-2

☐ IN FAVOR

☐ IN OPPOSITION

☒ NO POSITION STATED - CONCERNED

COMMENTS: _____

☐ PLEASE SIGN ME UP TO RECEIVE IMPORTANT NEWS AND INFORMATION ABOUT THE CITY OF RENO BY E-MAIL.

WHEN COMPLETED, PLEASE RETURN TO THE CITY OF RENO CITY CLERK

THANK YOU FOR YOUR COOPERATION AND PARTICIPATION

