

RESOLUTION NO. 24-XXX

A RESOLUTION OF THE CUPERTINO CITY COUNCIL APPROVING THE RENEWAL AND COLLECTION OF THE EXISTING 2019 CLEAN WATER AND STORM PROTECTION FEE FOR FISCAL YEAR 2024-2025

WHEREAS, on March 5, 2019, the City Council of the City of Cupertino adopted Resolution 19-022 initiating proceedings to obtain approval of the proposed 2019 Clean Water and Storm Protection Fee ("Fee"), which is a property related fee conforming to Article XIII D, Section 6 of the California Constitution, and approved the Fee Report for the Water Quality and Flood Protection Fee ("Fee Report") which sets forth the basis and the amount of the 2019 Clean Water and Storm Protection Fee on various parcels of land in order to finance, in compliance with Article XIID of the Constitution, the costs of the City's Clean Water and Storm Protection Program; and

WHEREAS, on March 18, 2019, a notice of public hearing was mailed to all property owners whose property would be subject to the Fee, in accordance with California Health and Safety Code Section 5473.1; and

WHEREAS, on May 7, 2019, the City Council adopted Resolution 19-041 finding that a majority protest does not exist and ordering a mailed ballot proceeding for the proposed Fee proceeding in accordance with Article XIII of the Constitution, Section 53755.5 of the Government Code; and

WHEREAS, on May 7, 2019, the City Council introduced Ordinance No. 19-2183 establishing Chapter 3.38 of the Municipal Code to establish the Clean Water and Storm Protection Fee; and

WHEREAS, on May 17, 2019, ballots were mailed to all property owners whose property would be subject to the Fee; and

WHEREAS, on July 17, 2019, by its Resolution 19-096 the City Council adopted Ordinance No. 19-2183 establishing Chapter 3.38 of the Municipal Code, found that the Fee was approved by 51.15% of the returned ballots from property owners of the property subject to the Fee and thereby ordered that the Fee for fiscal year 2019-20 be levied at the rates specified in the Fee Report; and

WHEREAS, Sections 3.38.040 through 3.38.070 of the Ordinance establishing the 2019 Clean Water and Storm Protection Fee allow the City Council

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to review the Fee annually and apply a rate increase based on the change in the Consumer Price Index ("CPI") up to a maximum increase of 3% in any single year, and to collect the Fee on the property tax roll in the same manner, by the same persons, and at the same time as, the general taxes; and

WHEREAS, the City Council of the City of Cupertino finds and determines as follows:

1. There is a need in the City to continue collecting the Clean Water and Storm Protection Fee to cover the costs of the Clean Water and Storm Protection Program; and
2. The facts and evidence presented establish that there is a reasonable relationship between the need for this Fee and the impacts for which this Fee shall be used, and that there is a reasonable relationship between the Fee's use and the properties, which are to be charged the Fee. These relationships or nexus are described in more detail in the above referenced Fee Report; and
3. The amounts of the Fee for each category of property, as set forth below in the Schedule of Charges, are reasonable amounts, because the amounts are based on the methodology established in the Fee Report.

NOW, THEREFORE, BE IT RESOLVED, by the City Council, that:

1. Charges. The 2019 Clean Water and Storm Protection Fee shall continue to be charged to each parcel within the City to contribute to the costs of the City's Clean Water and Storm Protection Program. The Fee charged will be increased by 2.62% for Fiscal Year 2024-2025.
2. Use of Revenue. The revenue derived from said Fee shall be used in connection with implementing and enforcing Chapters 3.38 of the Cupertino Municipal Code titled "Clean Water and Storm Protection Fee" and Chapter 9.18 titled "Stormwater Pollution Prevention and Watershed Protection."
3. Schedule of Charges.
 - a. Annual fees for each category of property will be assessed and collected as follows:

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Land Use Category		Fee	
Single-Family Residential *			
Small	(Under 0.13 acre)	\$ 38.67	per parcel
Medium	(0.13 to 0.22 acre)	\$ 46.95	per parcel
Large	0.23 to 0.40 acre)	\$ 58.75	per parcel
Extra Large	(over 0.40 acre)	\$ 112.49	per parcel
Condominium 1	(1 story)	\$ 38.67	per parcel
Condominium 2+	(2+ stories)	\$ 12.67	per parcel
Non-Single-Family Residential **			
Multi-Family Residential		\$ 32.64	per 0.1 acre
Commercial / Retail / Industrial		\$ 42.68	per 0.1 acre
Office		\$ 32.64	per 0.1 acre
Church / Institutional		\$ 27.62	per 0.1 acre
School (w/playfield)		\$ 20.08	per 0.1 acre
Park		\$ 7.54	per 0.1 acre
Vacant (developed)		\$ 2.52	per 0.1 acre
Open Space / Agricultural		no charge	
Low Impact Development Adjustment ***		25% Fee Reduction	

* Single-Family Residential category also includes du- tri- and four-plex units

** Non-SFR parcels are charge per the tenth of an acre or portion thereof

*** Low Impact Development Adjustment only applies to condominium and non-single-family properties.

4. Judicial Action to Challenge this Resolution. Any judicial action or proceeding to challenge, review, set aside, void, or annul this resolution shall be brought within 120 days from the date of its adoption.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 4th day of June, 2024, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

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SIGNED: _____ Sheila Mohan, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date

EXHIBIT A

**ENGINEER'S REPORT
ASSESSMENT OF FEES FOR STORM DRAINAGE PURPOSES
NONPOINT SOURCE POLLUTION PROGRAM**

A. Program Description and Purpose

The purpose of this assessment is to collect fees to fund the City of Cupertino's Nonpoint Source Pollution Prevention Program mandated by the Environmental Protection Agency (EPA) and the Clean Water Act. Regulations by the EPA and the State of California require cities to take specific actions to eliminate or control pollutants in waters of the State.

The term "nonpoint source pollution" represents a process whereby pollutants, debris, trash, sediment, and chemicals which accumulate on streets, in neighborhoods, at construction sites, in parking lots, and on other exposed surfaces are washed off by rainfall and carried away by stormwater runoff (via city drain inlets and pipes installed for flood control) into local creeks and the San Francisco Bay. Sources of these pollutants may include automobile exhaust and oil, pesticides, fertilizers, eroded soil, detergents, pet waste, paint, litter, and other material carried through the City's storm drainage system without treatment directly to the Bay. Many of these pollutants are hazardous to aquatic and human life.

The City of Cupertino has implemented several mandated and pro-active programs to mitigate this problem. Among other activities, these programs include an illegal storm drain discharge investigation and elimination complaint response program; scheduled proactive inspections of outdoor housekeeping practices at business sites within the City; sweeping of residential and commercial streets; installation of trash capture devices and curb drain inlet screens to prevent litter from entering the City's storm drainage system; inspection and cleaning of storm drain structures and trash capture devices; public education and engagement with teachers and students, educational activities offered at City events; and a popular, unique, and well established District-wide third-grade creek education & field trip program led by the City's naturalist at McClellan Ranch Preserve and Stevens Creek.

The San Francisco Bay Regional Water Quality Control Board (Water Board) approved the first Municipal Regional Permit (MRP) on October 14, 2009, and, on November 18, 2015, adopted the second regional permit (MRP 2.0) with additional requirements that became effective on January 1, 2016. A further update and reissuance (MRP 3.0) were adopted by the Regional Water Quality Control Board and became effective on July 1, 2022. The MRP was issued to the City of Cupertino and 75 agencies or co-permittees which discharge storm water through municipal drainage systems to local creeks and the San Francisco Bay. The City of Cupertino and 14 other co-permittees in Santa Clara County are members of the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP) which works collaboratively to maintain compliance with MRP 3.0. In addition to conducting local activities, City staff work closely with the other SCVURPPP jurisdictions to implement pollution prevention, source control, monitoring, and educational programs.

B. Recent Notable Activities

In FY 2019-2020, the Nonpoint Source budget was increased to accommodate a new street sweeping contract, enhanced assessment and maintenance of aging structures, and additional staff to clean and maintain the city's storm drain system. The City's storm drain system consists of 2092 drain inlets and 90 miles of storm drainage pipes. Of the drain inlets 181 are fitted with full trash capture devices and 283 have curb screens. An additional 19 full trash capture devices will be added during FY 23-24. Maintenance of these assets includes twice per year cleaning of inlets and trash capture devices which protects the city from flooding while preventing stormwater pollution. In FY 23-24, an equivalent total of 5.87 full time employees are included in the Nonpoint Source program budget distributed across 23 positions with varying allocations of each person's time. This represents a slight increase from the previous fiscal year because in 2023 the Environmental Programs Division absorbed the Sustainability Division, which triggered a reorganization resulting in shifts to funding allocations. Most notably, one part-time staff went through an internal recruitment process to become a full-time Environmental Compliance Technician to meet the increased demands of MRP compliance and to accommodate succession planning. The part-time position has been eliminated, and other minor shifts in funding allocations will take effect in FY 24-25. One maintenance worker is covered at 100%, and the remaining positions are allocated at between 2% - 60%.

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C. Estimated Expenditures

The total amended budget to implement the required programs described above for FY 23-24 was approximately \$2,554,669.

The breakdown of past actuals, current actuals as of Q3, and budgeted expenses for FY 24-25 are as follows:

	FY 22-23 Actuals	FY 23-24 Q3 7/1/2023 – 3/31/2024	FY 24-25 Requested Budget
Staffing	\$880,287	\$575,108	\$805,035
Materials	\$67,561	\$52,604	\$76,021
Contract Services	\$313,347	\$303,909	\$415,570
Allocations	\$332,864	\$259,607	\$598,995
Cost Share & Rebate Programs	\$9,159	\$12,290	\$10,707
Special Projects	\$12,161		
Fixed Asset Acquisition		\$128,895	
Total Expenses	\$1,615,378	\$1,332,415	\$1,906,328
Expected Final		\$2,228,113	

Activities undertaken within the Nonpoint Source program for permit compliance:

Countywide Program

SCVURPPP Program Assessment - Regional Permit Implementation
Regional Watershed Monitoring (administered by EOA, Inc.¹)
State NPDES² Permit Fees
Countywide Public Education and Municipal Staff Training
CA Stormwater Quality Association (CASQA) Participation
County Policy Development

Operations and Maintenance

¹ EOA, Inc. is the environmental engineering and regulatory consulting firm that manages the Santa Clara Valley Urban Runoff Pollution Prevention Program for the co-permittees www.eoainc.com.

² NPDES: National Pollutant Discharge Elimination System

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Catch Basin and Frequent Trash Capture Device Cleaning
Installation of Trash Capture and Retractable Screen Devices
On-call Emergency Spill and Discharge Response
Staff and Equipment to Implement City's Mandated Litter Reduction Plan
Street Sweeping

City Public Education Awareness

Public Outreach Materials & Events
Third-Grade Creek Education for Local Schools
Support High School Students' Watershed and Creek Education Support
De Anza College and Community Environmental Education
Community Engagement - Creek Cleanup & Watershed Monitoring
Events
Staff to Conduct Public Education, Training and Outreach
CA Product Stewardship Council membership (Extended Producer
Responsibility)

Local Programs

Development, Administration, and Evaluation of Mandated Programs
Environmental Impact and New and Redevelopment Review
Rain barrel, rain garden, and landscape conversion rebates
Ordinance Revisions
Database Maintenance
Illegal Discharge Complaint Investigation and Enforcement
Industrial/Commercial Discharger Inspection Program
Construction Site Inspection Program
Verification of Treatment Measure Maintenance by Private Property
Owners
Low Impact Development (LID) and Green Infrastructure Management
Litter Reduction Education and Enforcement
City's Participation in Multiple Countywide and Regional Programs
Annual Parcel Stormwater Fee Assessment
Other Staffing Costs
Cost Allocations

D. Revenue And Assessment

Revenues generated to fund this program come from two fees assessed on parcels in Cupertino. The Storm Drain Fee was established in 1992. Revenues

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from that fee are inadequate to meet the expenses associated with maintaining the storm drain system in Cupertino and ensuring compliance with the MRP, so the Clean Water and Storm Protection fee was established in 2019 and first appeared on 2019-2020 property tax bills. As assessed on the 2023-2024 tax roll and direct billed, the revenue from the two fees will total approximately \$1,500,500.

FY 23-24 Assessed Actuals

1992 Storm Drain Fee	\$375,583.28
2019 Clean Water and Storm Protection Fee	\$1,124,917.20
Total Assessed	\$1,500,500.48

1992 Storm Drain Fee

Fees are based on a factor calculated from the City's Master Storm Drain Study runoff coefficients and average area of impervious surface per acre based on type of land-use development. The factor for each category is based on a comparison to an average residential parcel assigned a factor of one. Certain parcel-owners such as schools and government entities were exempt from such fees in 1992 and as such are not assessed this fee.

The fee assessed on the 2023-2024 tax roll totaled \$375,583.28. Those fees were applied to 16,616 residential, commercial, and vacant or recreational use parcels.

2019 Clean Water and Storm Protection Fee

The Clean Water and Storm Protection Fee is imposed on properties that shed water, directly or indirectly, into the City's storm drainage system, and is calculated to be proportionate to the amount of stormwater runoff contributed by each parcel, which is in turn proportionate to the amount of impervious surface area. The details of the methodology are described in the Fee Report as prepared by SCI Consulting Group (SCI) in February of 2019 that is attached to the Clean Water and Storm Protection fee ordinance. The calculations are

informed by the City's 2018 Storm Drain Master Plan, which includes an analysis of the percentage of impervious area for Cupertino, and rates are further calculated by parcel size and land use category. Unlike the 1992 fee, the 2019 Clean Water and Storm Protection fee is subject to treatment under prop 218 and as such all parcels are assessed the fees without exemptions for parcel-owners such as schools and government entities.

The fees assessed on the 2023-2024 tax rolls totaled \$1,031,331.30. Those fees were applied to 16,597 parcels in fourteen categories including single-family residential parcels in four sizes, condominiums, and apartments, commercial, office, institutional, recreational, and vacant. Fees billed directly to parcel-owners that do not receive property tax bills (such as schools and government) totaled \$93,585.90 applied to 71 parcels.

The total revenue from the Clean Water and Storm Protection fee for 2023-2024 is \$1,124,917.20.

For both of the fees, in coordination with the City's contracted consultant for this purpose, each parcel was identified, and a fee established in a separate report submitted to the County entitled Certification of Special Assessment Annual Enrollment which lists the APN and associated fee. The consultant used by the City, SCI, prepares both forms and submits them to the County in accordance with the annual deadline in early August so that the fees can appear on the property tax bills. Additionally, SCI staff are available to answer questions via a phone number provided on the tax bill.

D. Annual Review

The 2019 Clean Water and Storm Protection Fee included annual review requirements beginning with FY 2020-2021 as described in ordinance 19-2183 (Chapter 3.38 of the Cupertino Municipal Code). Section 3.38.040 describes the review process and allows for an annual increase based on the change in CPI as of December each year, up to 3% maximum, if actual additional costs are incurred.

The expenses attributed to the Nonpoint Source Program through third quarter of FY23-24 are \$1,207,482 and are projected to reach \$2,228,113 by the end of the fiscal year. That expected total is about \$326,586 below the approved budget for FY23-24; however, it is above expected revenue by approximately

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\$729,912. Available balance in Fund 230 is sufficient to make up the difference for FY22-23.

The intention of the fee assessments is only to cover costs and not accrue a balance, however several factors resulted in fund balance accruing. In 2019, before the Clean Water and Storm Protection Fee ballot measure passed, a General Fund subsidy had already been budgeted and transferred that was ultimately not needed. In FY19-20 the program came in under budget largely because true staffing cost allocations had not yet been applied, something that was corrected for FY20-21. In FY20-21 a storm drain video and repair project was anticipated at \$248,436, but no acceptable bids were received for that project and then it was not conducted in FY21-22 either. An outfall survey is being conducted in FY 23-24 to inform needed repair planning, but at less than the full budgeted amount. In FY 23-24 a rover camera was acquired for \$128,895 that will avoid contract expenses in future for drain video services. The fund 230 balance was \$ 1,220,134 at the beginning of FY23-24. After covering the shortfall from the projected expenditures from FY23-24, the remaining balance in Fund 230 at the end of the fiscal year is expected to be approximately \$492,521 heading into FY 24-25. The requested budget for FY 24-25 totals \$1,906,328. With anticipated revenue at \$ 1,500,500, that indicates a projected shortfall of an estimated \$429,089. That shortfall will not exhaust the remaining fund balance in Fund 230, however there are expected increased costs to street sweeping under a new agreement and anticipated outfall repairs, meaning that an increase to the Clean Water and Storm Protection fee is now recommended to reduce the draw upon the General Fund to cover the difference. A 2.62% increase to the 2019 Clean Water and Storm Protection fee would mean an increase of \$1.20 per year for residents in the most common size of residential property. The increase would generate approximately \$29,473 per year additional revenue for the program.

A full year of expenses and revenues for the Nonpoint Source Program were audited under the City's annual external audit and reviewed by the City's Audit Committee. An additional Agreed-Upon Procedures (AUP) audit specific to the Nonpoint Source Program was developed to further assess this program using a calendar year cycle. An additional Agreed-Upon Procedures (AUP) Audit, specific to the Nonpoint Source Program, was developed to further assess this program using a calendar year cycle, which will be completed for calendar year 2022 and 2023 with no expected exceptions noted. The final AUP reports will be available to the public late June. The City requests

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preparation of calendar year AUPs for the stormwater program in order to provide more up to date findings to the City Council for review during this annual process, which must happen prior to the normal fiscal year cycle in order to meet County tax roll deadlines.

Chad Mosley
Director of Public Works/City Engineer