

**ORDINANCE  
NO. 19- 2183**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
ADDING CHAPTER 3.38 OF THE MUNICIPAL CODE TO ESTABLISH THE  
CLEAN WATER AND STORM PROTECTION FEE**

**WHEREAS**, the City of Cupertino (“City”) oversees and manages a municipal separate storm sewer system (“MS4”), which includes making capital improvements, overseeing maintenance and operations, and conducting activities to ensure compliance with all state and federal regulations associated with the Clean Water Act and the City’s National Pollutant Discharge Elimination System (“NPDES”) permit; and

**WHEREAS**, the City’s MS4 is made up of a comprehensive drainage infrastructure system that includes man-made drainage elements such as curbs and gutters, ditches, culverts, pipelines, manholes, catch basins (inlets) and outfall structures; and

**WHEREAS**, the City, through its MS4, provides storm drainage services (“Services”) that include, but are not limited to, collecting, conveying, protecting, treating, and managing storm water runoff from improved parcels within the City; and

**WHEREAS**, in 1992, the City adopted a \$12 per residence storm drain service charge to conserve and protect the MS4 from the burden placed on it by the increasing flow of nonpoint source runoff and to otherwise meet the requirements of the Clean Water Act, EPA regulations and the City’s NPDES permits, which charge has not been increased since its inception; and

**WHEREAS**, the City does not currently have adequate funding to fully finance the system needs of its MS4, and in order to finance the infrastructure, maintenance, and regulatory oversight of the MS4 and the provision of services, the City Council has determined that there is a need to adopt an additional fee (“Clean Water and Storm Protection Fee”), in compliance with Article XIID of the California Constitution (Proposition 218), to cover the costs associated with capital improvements, operations and maintenance, and regulatory compliance needs of the MS4; and

**WHEREAS**, on March 5, 2019, the City Council approved the Fee Report for the 2019 Clean Water and Storm Protection Fee Report (“Fee Report”) that sets forth the basis and the amount of the Clean Water and Storm Protection Fees on various parcels of land in order to finance, in compliance with Article XIID of the Constitution, the clean water and storm protection program needs and is attached hereto as Exhibit A; and

**WHEREAS**, the City Council on March 5, 2019 adopted Resolution No. 19-022 initiating proceedings in accordance with Article XIID of the Constitution, approving the Fee Report, and setting the date of May 7, 2019 for a public hearing and directing the mailing of a notice to the owners of real property affected by the proposed Clean Water and Storm Protection Fee, which included a description of the proposed Clean Water and Storm Protection Fee, the amount to be charged, the total amount to be collected, and the right of property owners to protest the Clean Water and Storm Protection Fee; and

**WHEREAS**, the City Council on March 5, 2019 adopted Resolution No. 19-023 establishing procedures for conducting a ballot proceeding in accordance with Article XIID of the Constitution; and

**WHEREAS**, the Clean Water and Storm Protection Fee is a property-related fee, subject to Proposition 218.

**WHEREAS**, the City mailed notices of a public hearing on March 19, 2019 and conducted said public hearing on May 7, 2019 and heard testimony from residents and property owners regarding the proposed Clean Water and Storm Protection Fee, and a majority protest was found not to exist; and

**WHEREAS**, the City Council introduced this Ordinance on May 7, 2019, after a duly noticed public hearing; and

**WHEREAS**, Article XIID of the Constitution requires that the property-related fees defined in the Fee Report and included in this Ordinance shall not be imposed unless and until that fee is submitted and approved by a majority vote of the property owners of the property subject to the Clean Water and Storm Protection Fee; and

**WHEREAS**, upon introduction of this Ordinance, the City Council will direct that it be submitted to the affected property owners in a mail ballot proceeding in accordance with Article XIID of the Constitution, Section 53755.5 of the Government Code, and City of Cupertino Resolution No. 19-023.

**NOW, THEREFORE**, the Council of the City of Cupertino does ordain as follows:

**SECTION ONE** – Chapter 3.38 of the Cupertino Municipal Code is hereby established to read as follows:

**3.38.010 Purpose of the Fee–Limitation of Use.**

A. The purpose of the Clean Water and Storm Protection fee is to conserve and protect the City’s essential values of maintaining our aging storm drainage infrastructure, encouraging groundwater replenishment, and maintaining a sustainable environment in accordance with the Clean Water Act, EPA regulations and the City’s NPDES permits.

B. The specific purpose of the Clean Water and Storm Protection fee established pursuant to this chapter is to derive fee revenue, which shall only be used for the acquisition, construction, reconstruction, maintenance, and operation of the storm drainage system of the City or related green infrastructure or other activities required by the City’s NPDES permits, to repay principal and interest on any bonds which may hereafter be issued for said purposes, to repay loans or advances which may hereafter be made for said purposes, and for any other purpose set forth in Section 3.38.160.

C. The Clean Water and Storm Protection fee is imposed pursuant to Articles XIII C and D of the California Constitution, Government Code Sections 38900 – 38901 and 53755 – 53756, and Health and Safety Code Section 5471 – 5473.11.

D. Proceeds from the Clean Water and Storm Protection fee will be deposited in the “environmental management / clean creeks fund” created by Section 3.36.170 of Chapter 3.36 of the Municipal Code (Storm Drainage Service Charge) as the “storm drainage service charge fund” and subsequently renamed, and may be comingled with the revenues of the City’s storm drainage service charge because they are authorized to be used for the same purposes.

**3.38.020 Definitions.**

Except where the context otherwise requires, the following definitions in this section shall govern the construction of this chapter:

A. “City” means and includes all territory lying within the municipal boundaries of the City of Cupertino as presently existing plus all territory which may be added thereto during the effect term of the ordinance codified herein.

B. “Condominium” means a parcel that is an individually-owned single residential unit attached to an undivided or joint ownership of the remaining portion of the property. The “Condominium 1” category refers to a condominium complex where each residential unit has no other units above or below it. The “Condominium 2+” refers to a condominium complex where residential units are built above or below other residential units.

C. “Director of Public Works” means the Director of Public Works and his/her duly authorized agents and representatives.

D. “Fee Report” means the report prepared by SCI Consulting Group dated February 2019 which was approved by the City Council on March 5, 2019 in Section 2 of Resolution No. 19-022. The Fee Report sets forth the rate structure and methodology of apportionment of the fee to various categories of parcels and shall be the basis for the Clean Water and Storm Protection Fee.

E. “Director of Administrative Services” means the Director of Administrative Services of the City of Cupertino and his/her duly authorized agents and representatives.

F. “Impervious Area” means any part of any parcel that has been modified by the action of any person in a manner which reduces the land’s natural ability to absorb and hold storm and surface water. This includes, but is not limited to, activities such as: grading of property, the creation of any hard surface area which either prevents or retards the entry of water into the soil mantle, or the hardening of an existing surface which causes water to flow at an increased rate. Common impervious areas include, but are not limited to, roof tops, walk-ways, patios, driveways, parking lots or storage areas, concrete or asphalt paving, gravel roads, or any cleared, graded, paved, graveled, or compacted surface or paved earthen materials used for vehicular travel, or areas covered with surfaces which similarly impede the natural infiltration of surface water into soil mantle. Impervious area can be expressed as a percentage of a parcel’s total size.

G. “Maintenance and operation” means the administration, operation, maintenance and repair of any facility in the City’s storm drain system, including, but not limited to:

1. Items ordinarily recognized as capital items (e.g., acquisition of interests in land) when reasonably necessary to support operations;
2. Street sweeping, catch basin cleaning, and capture and removal of trash from the storm drain system;
3. Replacement of portions of existing facilities damaged or destroyed as a result of accident or natural disasters or found to be of inadequate size or condition;
4. Damages or settlements paid in the course of, or because of, threatened or actual legal actions related to the City’s storm drain system or non-point source program;
5. Regional monitoring, permit fees, public education and awareness programs regarding the City’s storm drain system and the City’s nonpoint source program;
6. Management of the City’s non-point source program including, but not limited to, BMP manuals, public outreach, printed materials, City staff and legal costs related thereto.

H. “Multi-Family Residential” means parcels improved or used for a residence for five or more families living independently of each other and doing their own cooking and which is not separately assessed by the county tax assessor for each such family dwelling. This term is synonymous with “apartment.”

I. “Open Space” means land that is substantially in a natural condition and includes agricultural or other lands that demonstrate storm water absorption equal to or greater than natural conditions.

J. “Parcel” means a unit of land which is designated by the tax assessor of Santa Clara County for property tax purposes.

K. “Rate Category” means a group of parcels that are of similar imperviousness characteristics and are charged the same rate. Single-Family Residential Parcels are categorized by size; Non-Single-Family Parcels are categorized by impervious percentage ranges.

L. “Single-Family Residential” means parcels, other than multi-family parcels, improved or used solely as a residence for one, two, three or four families living separately in separate dwelling units.

M. “Storm drainage system” means any pipe, conduit, or sewer of the City designed or used for the collection, conveyance and management of storm and surface waters and drainage including unpolluted cooling water and unpolluted industrial process water but excluding any community sanitary sewer system.

N. “Vacant (developed)” means a parcel which has been altered from its natural condition through grading or compaction activity or in another manner which reduces the land’s natural ability to absorb and hold storm and surface water without any structure existing upon it.

**3.38.030 Determination and Imposition of Fee for Fiscal Year 2019-20.**

For purposes specified in Section 3.38.010, the Clean Water and Storm Protection fees established pursuant to this chapter are hereby prescribed and imposed, and shall be paid to and collected by the City, for services and facilities furnished by the City in connection with its storm drainage system to or for each parcel which is benefited directly or indirectly by said storm drainage system or any part thereof, or from which any storm water is conveyed or discharged directly or indirectly into the storm drainage system. Said fee is imposed annually and will be assessed and collected as follows:

A. Single-Family Residential Class

Category	Parcel Size (acres)	Annual Fee per Parcel
Small	Under 0.13	\$36.58
Medium	0.13 to 0.22	\$44.42
Large	0.23 to 0.40	\$55.58
Extra Large	Over 0.40	\$106.42
Condominium 1	Na	\$36.58

Condominium 2+	Na	\$11.99
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B. Non-Single-Family Residential Class

Category <sup>1</sup>	Annual Fee per 0.10 Acre of Parcel Size <sup>2</sup>
Multi-Family	\$30.88
Commercial / Retail / Industrial	\$40.38
Office	\$30.88
Church / Institutional	\$26.13
School with play field	\$19.00
Park	\$7.13
Vacant (developed)	\$2.38

Rate Structure Notes:

1. The Rate Category for any Non-Single-Family parcel shall be assigned by the description of the land use of the parcel. For Non-Single-Family land uses that do not fit the descriptions in Table 5 of the Fee Report (for example, mixed use parcels), the rate with the nearest percent impervious area shown in Table 5 of the Fee Report shall be assigned to a parcel.
2. Non-Single-family fees are calculated in 0.1-acre increments. For example, an office parcel is charged at \$30.88 for each tenth of an acre or portion thereof.

C. Non-single-family parcels and condominium parcels that comply with the version of Provision C.3 (New Development and Redevelopment Requirements) of the City’s NPDES permit that is applicable at the time of building permit issuance shall have their fees reduced by 25% in recognition of the reduced impact on the City’s storm drainage system inherent in C.3 compliance, as documented in the Fee Report (Low Impact Development Rate Adjustment). Other single-family residential parcels do not qualify for this rate reduction. C.3 compliance will be determined on a case-by-case basis by the Director of Public Works, who may also establish procedures to verify and validate such compliance on a periodic basis.

D. For non-single-family residential parcels that have both improvements and significant open space areas (described in the Fee Report as “hybrid parcels”), the chargeable acreage shall be adjusted downward in recognition that the open space areas do not increase the need for the fee.

E. Open space and agricultural parcels are not subject to the Clean Water and Storm Protection fees.

**3.38.040 Annual Review of Fee.**

Commencing with Fiscal Year 2020-21, the City Council shall, by resolution, annually determine the Clean Water and Storm Protection Fee in accordance with the following:

A. In no event shall the rate for any category of property be increased beyond the rate approved by a majority vote of property owners subject to the Clean Water and Storm Protection fee. Commencing in Fiscal Year 2020-21, the amount of the Clean Water and Storm Protection Fee may be increased by an amount equal to the change in the Consumer Price Index for all Urban Consumers for the area including Santa Clara County (the "CPI"), including all items as published by the U.S. Bureau of Labor Statistics as of December of each succeeding year, not to exceed a maximum increase of three percent (3%) in any single year. Adjustments will only occur if actual additional costs are incurred.

B. The Clean Water and Storm Protection fee shall not be deemed to be increased in the event the actual fee upon a parcel in any given year is higher due to a change in use of the subject parcel or an increase in the amount of the impervious area of the subject parcel.

C. In any year in which the City Council does not change the Clean Water and Storm Protection fee rate, pursuant to the voter-approved CPI allowable annual increase, the previously adopted fee shall continue in full force and effect for the next fiscal year.

D. The City Council shall not be required to enact a CPI increase each year. 3.38.040.A.

**3.38.050 Various Actions.**

Without a vote of the property owners, in any year the City Council may do any and all of the following: (a) discontinue the Clean Water and Storm Protection fee; (b) reduce the rate for all parcel categories; or (c) increase the rate up to or below the maximum voter-authorized rate if it has been previously set below such rate.

**3.38.060 Effective Date of Fees.**

The Clean Water and Storm Protection fees shall become effective on July 1, 2019.

**3.38.070 Fees Collected with General Taxes.**

A. Subject to the exceptions hereinafter set forth, the City elects, as an alternative procedure for the collection of Clean Water and Storm Protection fees prescribed or imposed by the provisions of this chapter, to have all such Clean Water and Storm Protection fees for each fiscal year collected on the tax roll in the same manner, by the same persons and at the same time as, and together with and not separately from, its general taxes.

B. The Director of Public Works is hereby directed to prepare and file with the City Clerk, on or before the fifteenth day of June of each year, or such other date or dates as the City Council may specify by resolution, a written report containing a description of each and every parcel of real property receiving the benefit of the storm drainage system mentioned in this chapter, except for those parcels the fees for which are not to be collected on the tax roll, and the amount of the Clean Water and Storm Protection fees

for each parcel for the forthcoming fiscal year, computed in conformity with the fees prescribed by the provisions of this chapter.

C. The City Clerk shall cause notice of the filing of said report and of a time and place of hearing thereon to be published, prior to the date for hearing, in a newspaper of general circulation printed and published within the City. The publication of said notice shall be once a week for two consecutive weeks. Two publications in a newspaper published once a week or more often, with at least five days intervening between the respective publication dates, not counting such publication dates, are sufficient. The period of notice commences upon the first day publication and terminates at the end of the fourteenth day.

D. At the time stated in the above-mentioned notice, the City Council shall hear and consider all objections or protests, if any, to the report referred to in said notice, and may continue the hearing from time to time. If the Council finds that protest is made by owners of a majority of separate parcels of property described in the report, then the report shall not be adopted, and fees shall be collected separately from the tax roll and shall not constitute a lien against any parcel or parcels.

E. Upon the conclusion of the hearing, the City Council may adopt, revise, change, reduce, or modify any fee or overrule any or all objections and shall make its determination upon each fee as described in said report, which determination shall be final.

F. 1. On or before the first day of August of each year following such final determination, the City Clerk shall file with the Finance Director a copy of the report with a statement endorsed thereon over the City Clerk's signature that it has been finally adopted by the City Council.

2. The Finance Director shall thereupon cause said fees to be placed on the property tax roll and collected by the County for the City, as hereinafter provided. The County's tax collector shall enter the amounts of the fees against the respective parcels as they appear on the current assessment roll. If the property is not described on the roll, the County's tax collector may enter the description thereon, together with the amounts of the fees as shown in the report.

G. The amount of the fees shall constitute a lien against the parcel against which the fee has been imposed as of noon on the first Monday in March immediately preceding the date of the levy.

H. The tax collector shall include the amount of the fees on bills for taxes levied against the respective parcels. Thereafter the amount of the fees shall be collected at the same time and in the same manner and by the same persons as, together with and not separately from, the general taxes for the City, and shall be delinquent at the same time and thereafter be subject to the same delinquency penalties.

I. All laws applicable to the levy, collection and enforcement of general taxes of the City including, but not limited to, those pertaining to matters of delinquency, collection, cancellation, refund and redemption, are applicable to such fees.

J. The tax collector may, at the tax collector's discretion, issue separate bills for such fees and separate receipts for collection on account of such fees.

K. If any parcels receiving benefit from the storm drainage system are omitted from the abovementioned report or said tax roll, either because the fee therefor shall not have yet been ascertained by the City as of the date of said report, or for any other reason, the Clean Water and Storm Protection fee for such parcels shall be collected in the manner provided elsewhere in this chapter. If the fee for any parcels, as shown on said report for the forthcoming fiscal year, should be less than what should be the

fee therefor under the provisions of this chapter, the balance of such fee shall be collected in the manner provided elsewhere in this chapter. If, however, the fee for any parcels shown in the report and collected on the tax roll should exceed the correct fee for such parcels for the fiscal year, the Finance Director shall refund the excess amount so collected.

**3.38.080 Payment of Balance of Fee.**

A. If the fee for any parcels placed on the tax roll, or for any parcels collected based upon billing, was less than what should be the fee therefor under the provisions of this chapter due to error, the balance of said fee shall be collected by a bill or invoice based on a detailed statement showing the basis of the calculations, the location of the parcels and other relevant information, and prepared on or after January 1st for the preceding six months from July to December during which a discrepancy between the amount collected and the correct fee is discovered, and on or after July 1st for the preceding six months from January to June during which such a discrepancy is discovered. The Finance Director shall mail said bill or invoice to the person or persons listed as the owners of the parcels on the last equalized assessment roll of the County at the address shown on such assessment roll or to the successor in interest of such owner if the name and address of such successor in interest is known to the Finance Director. Failure to mail any such bill or invoice, or failure of any owner to receive any such bill or invoice shall not excuse the owner of any parcels from the obligation of paying the balance of any Clean Water and Storm Protection fee for any parcels owned by him or her.

B. The interested owner may, at any reasonable time, review the detailed statement prepared by the Finance Director.

C. The balance of the Clean Water and Storm Protection fee for such parcels shall be due and payable on the date the bill or invoice referred to in this section is mailed.

**3.38.090 Collection of Fees Omitted from Tax Roll–Billing.**

A. The Finance Director shall semi-annually, on or after July 1st, prepare or cause to be prepared a detailed statement containing the basis of the calculations, the location of the parcels and other relevant information, showing the total monthly fee for the preceding six months from January to June and on or after January 1st, for the preceding six months from July to December for any parcels the fee for which should be collected on the tax roll pursuant to Section 3.38.070A but was omitted from the report referred to in Section 3.38.070B, or parcels the fee for which is collected pursuant billing.

B. An invoice may be rendered for a period of less than six months if the commencement date of fees is other than July 1st or January 1st, as may be the case with new accounts.

C. On the basis of the statement, the Finance Director shall prepare a bill or invoice showing the total fee for such six months or less, and shall mail said bill or invoice to the person or persons listed as the owners of the parcels on the last equalized assessment roll of the County at the address shown on such assessment roll, or to the successor in interest of such owner if the name and address of such successor in interest is known to the Director. Failure to mail any such bill or invoice, or failure of any owner to receive any such bill or invoice shall not excuse the owner of any parcels from the obligation of paying any Clean Water and Storm Protection fee for any parcels owned by him or her.

D. The interested owner may, at any reasonable time, review the detailed statement prepared by the Finance Director.



E. The Clean Water and Storm Protection fee for such parcels shall be due and payable immediately upon receipt of the bill or invoice referred to in this section.

**3.38.100 Payment of Fees–Owner Responsibility.**

The owner of any parcel is and shall be responsible for payment of any and all Clean Water and Storm Protection fees applicable to parcels owned by him or her. It shall be and is hereby made the duty of each such owner to provide to the Finance Director information sufficient to calculate the land area of the parcels within thirty days after request of the Finance Director and ascertain from the Finance Director the amount and due date of any such fee applicable to parcels owned by such owner and to pay such fee when due and payable. It also shall be and is hereby made the duty of all owners of all parcels to inform the Finance Director immediately of all circumstances, and of any change or changes in any circumstances, which will in any way affect the applicability of any fee. In particular, but not by way of limitation, an owner of any parcel shall immediately inform the Finance Director of any sale or transfer of such parcel by or to such owner.

**3.38.110 Payment of Fees–Location.**

Except as otherwise provided elsewhere in this chapter, all Clean Water and Storm Protection fees shall be payable at the office of the Finance Director in the City Hall of the City.

**3.38.120 Payment of Fees–Delinquency Date.**

Except as otherwise provided elsewhere in this chapter, each Clean Water and Storm Protection fee shall be delinquent if not paid on or before the fortieth day immediately following the date upon which such Clean Water and Storm Protection fee became due and payable.

**3.38.130 Penalty for Delinquency.**

Except as otherwise provided elsewhere in this chapter, whenever any Clean Water and Storm Protection fee becomes delinquent, there shall be imposed a penalty equal to one hundred percent of the amount as set forth under Section 3.38.030.

**3.38.140 Disputed Fees.**

If any owner disputes the amount of the fee in any bill or invoice, the owner shall, within thirty days from and after the date such bill or invoice is mailed, and no later, file a claim with the Finance Director accompanied by detailed supporting factual data in support of the claim. It shall be the duty of each such owner to prove to the Finance Director, that such fee is in error and the correct amount thereof. If the Finance Director determines that the bill or invoice was in error, the Finance Director shall correct said bill. Failure to dispute the amount of the fee in accordance with this section shall be deemed acceptance of the correctness of the fee.

**3.38.150 Fiscal Accountability**

A. The City shall retain an independent auditor to conduct an annual audit of the Clean Water and Storm Protection Fee and environmental management / clean creeks fund as part of its comprehensive annual financial report. The auditor shall include an accounting of the revenue received from the fee and expenditures thereof in the audited financial statements. The auditor's report shall be presented to the City Council and made available to the public. The Director of Administrative Services or the Director of Public Works shall prepare and present to the City Council an annual report in conjunction with the

annual audit that reviews the status and performance of the programs, services and projects funded wholly or partially with proceeds of the Clean Water and Storm Protection Fee.

B. The City Council shall either select a citizen's oversight committee or assign oversight duties to a pre-existing oversight committee to review and report annually on the receipt of revenue and expenditure of funds from the storm drainage service charge fund authorized by this chapter.

### **3.38.160 Special Fund—Restricted Use of Revenues.**

A. All revenues collected pursuant to the provisions of this chapter shall be placed into a special fund, which is known as the "environmental management / clean creeks fund," created by Section 3.36.170 of Chapter 3.36 of the Municipal Code (Storm Drainage Service Charge). Such revenues may be used for the purpose specified in Section 3.38.010, and for no other purpose; provided, however, that moneys deposited in the fund may be used for direct and administrative costs of the City in collecting the Clean Water and Storm Protection fees imposed by this part and for direct and indirect overhead costs of the City in performing any tasks, including, but not limited to, calculation of the benefits received by properties from the storm drainage system.

B. As used in this section, "direct costs" means wages and salaries and costs of employee fringe benefits incurred by the City, and mileage reimbursement attributable to said collection activities. As used in this section, "administrative costs" includes, but is not limited to all costs for computer service, materials, postage, supplies and equipment.

C. Notwithstanding subsections 3.38.160A and 3.38.160B, interest on revenues in the environmental management / clean creeks fund may be credited to the general fund of the City or to any other fund in the discretion of the City Council.

### **3.38.170 Refunds.**

Whenever any refunds should become owing by virtue of any relief granted by the City Council pursuant to the provisions of Section 3.38.140 or by virtue of any error made in ascertaining the fee applicable to any parcels, the Finance Director is authorized to make such refunds and to expend for such purpose the moneys in the environmental management / clean creeks fund. Notwithstanding the provisions of Section 3.38.140, any claim for refund for fees collected under Section 3.38.070 must be made within one year after the date bills for taxes are received by the owner. The City shall not be liable for interest or any amount determined to be refundable.

### **3.38.180 Inspection of Parcels Authorized.**

The Director of Public Works, the Finance Director and their authorized representatives are hereby given power and authority to enter upon and within any parcels to ascertain the nature of such parcels; to inspect, observe, and review the benefit received from the storm drain system as may be allowed by law.

### **3.38.190 Payment of Delinquent Fees—City Enforcement Powers.**

A. Notwithstanding other remedies, in the event of the failure of any owner to pay when due any Clean Water and Storm Protection fees applicable to parcels owned by such owner, the City may enforce payment of such delinquent fees by instituting action in any court of competent jurisdiction to collect any fees which may be due and payable in the same manner as any other debts owing to the City may be collected.

B. Any and all delinquent payments may be placed on the tax roll, and collected with property taxes, as provided in Section 3.38.070.

C. Such other action may be taken as may be authorized by law and by the City Council.

D. Remedies under this section are in addition to and do not supersede or limit any and all other remedies, civil and criminal.

## **SECTION TWO – CEQA EXEMPTION**

The City Council finds, based on its own independent judgement, that the proposed amendments to the Cupertino Municipal Code are statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080(b)(8) and CEQA Guidelines 15273(a) – Rates, Tolls, Fares, and Charges and categorically exempt pursuant to CEQA Guidelines Section 15301. A Notice of Exemption will be filed with the County Clerk.

## **SECTION THREE – INCONSISTENCIES REPEALED**

This Ordinance is intended to be controlling on the authority to establish the Clean Water and Storm Protection fee, and shall supersede all prior ordinances, resolutions, rules or regulations that in conflict herewith. Any provision of the Cupertino Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith, are repealed only to the extent of such inconsistencies and no further.

## **SECTION FOUR – IMPLEMENTATION**

The City Manager is hereby authorized and directed to take any action and sign any documents necessary to implement this ordinance.

## **SECTION FIVE – SEVERABILITY**

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of the Ordinance. The Council of the City of Cupertino hereby declares that they would have passed this Ordinance and each section or subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

## **SECTION SIX – EFFECTIVE DATE; PUBLICATION.**

The City Clerk is directed to post and publish this ordinance in accordance with law in a newspaper of general circulation printed and published in the County of Santa Clara, or as otherwise required by law. This ordinance shall take effect as provided by Government Code Section 36937.

**INTRODUCED** at a regular meeting of the City Council of the City of  
 Cupertino on the 7<sup>th</sup> day of May 2019 and enacted at a regular meeting of the  
 City Council of the City of Cupertino after certification of the ballot results\_

\_\_\_\_\_.

Vote:

Members of the City Council:

Ayes:

Noes:

Absent:

Abstain:

<p>SIGNED:</p> <p>_____</p> <p>_____</p> <p>Steven Scharf, Mayor          City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Grace Schmidt, City Clerk</p>	<p>_____</p> <p>Date</p>
<p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Heather Minner, City Attorney</p>	<p>_____</p> <p>Date</p>

Exhibit A - Fee Report for the 2019 Clean Water and Storm Protection Fee Report