

RESOLUTION NO. 25-XXX

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL APPROVING THE
RENEWAL AND COLLECTION OF THE EXISTING STORM DRAIN FEE
WITH NO INCREASE IN RATES FOR FISCAL YEAR 2025-2026**

WHEREAS, the City Council of the City of Cupertino enacted Municipal Code Chapter 3.36 to meet the requirements of the federally mandated Stormwater Pollution Prevention and Management Program, federal regulations, and the City's National Pollution Discharge Elimination System (NPDES) permit and establishing the authority for imposing and charging a storm drainage service charge ("storm drain fee" or "fee"); and

WHEREAS, Municipal Code Chapter 9.18 provides regulations and gives legal effect to the Municipal Regional Permit issued to the City and assures ongoing compliance with the most recent version of the City's NPDES permit regarding the effect of urban stormwater runoff on the ability of the City's storm drain system to comply with federal and state laws; and

WHEREAS, in 1992 the City adopted a storm drain fee based on the City's Master Storm Drain Study runoff coefficients and average area of impervious surface per acre based on the type of land use of each parcel; and

WHEREAS, a written report titled "Engineer's Report, Assessment of Fees for Storm Drainage Purposes Nonpoint Source Pollution Program" ("report"), concerning the method of assessing fees to fund the City's Stormwater Management Program, was prepared by the Director of Public Works pursuant to Section 3.36.080(B) of the City's Municipal Code and filed with the City Clerk on May 28, 2025; and

WHEREAS, notice of the proposed rates was published in a local newspaper on May 16, 2025 and May 23, 2025; and

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

1. After considering the "Engineer's Report, Assessment of Fees for Storm Drainage Purposes Nonpoint Source Pollution Program," attached hereto as Exhibit A and incorporated herein, and the testimony received at this public hearing, the City Council hereby approves the report.

2. There is a need in the City to continue collecting a storm drain fee to cover the costs of federal and state requirements, as heretofore described, in that properties within the City will not otherwise contribute a portion of costs toward this program and without the availability of such storm drain fee, the City's general fund will further be negatively impacted in such a manner as to jeopardize other essential services.

3. 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 that are to be charged this fee. These relationships or nexus are described in more detail in the above-referenced Engineer's Report.

4. The amounts of the fee for each category of property, as set forth below, are reasonable amounts, because the fee is based on the percent of impervious area established in the Master Plan, City of Cupertino Storm Drainage System and are below the amount needed to recover the cost of storm drainage services.

5. It is further determined that each and every parcel of land to which the fee applies will, and has received, a benefit of flood control from the storm drainage system and that the fees imposed herein on each such parcel are in conformity with, and in fact lower than, the benefits that such parcel has received as further described in the report.

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

1. Charge. The storm drain fee shall continue to be charged to each parcel within the City, unless exempt, to contribute to the costs of the City's federal and state requirements for Nonpoint Source Control and a Stormwater Management Program.

2. Use of Revenue. The revenue derived from said fee shall be used in connection with implementing and enforcing Chapters 3.36 of the Cupertino Municipal Code titled "Storm Drainage Service Charge" 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:

Residential premises	\$ 12.00/parcel
Apartment premises	\$144.00/acre
Commercial/Industrial premises	\$144.00/acre
Unimproved/Recreational	\$ 36.00/acre

- b. The following public properties are exempt from, and shall not be assessed the environmental fee:

Cupertino Sanitary District
Santa Clara County
Santa Clara Valley Water District
Southern Pacific Transportation Company
State of California
The Santa Clara County Fire Department
The City of Cupertino
The Cupertino Union School District
The Foothill-De Anza Community College District
The Fremont Union High School District
The MidPeninsula Regional Open Space District
United States of America

5. 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 3rd day of June, 2025, by the following vote:

Members of the City Council

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AYES:

NOES:

ABSENT:

ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Liang Chao, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>

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 2173 drain inlets and 90 miles of storm drainage pipes. Of the drain inlets, 200 are fitted with full trash capture devices and 271 have curb screens. 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 24-25, an equivalent total of 4.32 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 decrease from the previous fiscal year due to the City's financial challenges. The year before that, the Environmental Programs Division absorbed the Sustainability Division, which triggered a reorganization resulting in shifts to funding allocations as well. Most notably, in FY 23-24 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 was eliminated. One maintenance worker was covered at 100%, but that was shifted to 35% during the response to the financial crisis. Remaining positions are allocated at between 0.02% - 50%.

C. Estimated Expenditures

The total amended budget to implement the required programs described above for FY 24-25 is shown in the table below along with a breakdown of past actuals, current actuals as of Q3, and budgeted expenses for FY 25-26:

	FY 23-24 Actuals	FY 24-25 Budgeted	FY 24-25 Q3 7/1/2024- 3/31/2025	FY 25-26 Requested Budget
Staffing	\$811,310	\$805,035	\$575,218	\$781,734
Materials	\$60,243	\$76,021	\$40,488	\$112,193
Contract Services	\$433,395	\$1,097,278	\$284,869	\$443,007
Allocations	\$346,142	\$598,995	\$449,246	\$773,020
Cost Share & Rebate Programs	\$19,558	\$39,914	\$24,307	\$10,914
Special Projects	\$12,161	\$—	\$—	\$—
Outfall Repair (as carryover)				\$465,788
Total Expenses	\$1,682,809	\$2,616,243	\$1,374,128	\$2,586,656
Expected Final			\$1,886,705	

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

- 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
- Assessment and repair of storm drain infrastructure

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 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. Revenue from the two fees as assessed on the 2024-2025 tax roll and direct-billed are shown below:

FY 24-25 Assessed Actuals

		Number of Parcels
1992 Storm Drain Fee	\$375,262.68	16,641
2019 Clean Water and Storm Protection Fee	\$1,156,002.21	16,624
Total Assessed	\$1,531,264.89	

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 1992 fees assessed on the 2024-2025 tax roll were applied to 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 2024-2025 tax rolls were applied to 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) applied to 78 parcels.

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.

Expenses attributed to the Nonpoint Source Program from the previous fiscal year through to next fiscal year's projections are shown in the table in section C above.

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. The AUP was performed on calendar years 2022, 2023, and 2024 (Attachment D to the staff report) and no exceptions were noted. The City requests 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