

RESOLUTION NO.19-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
APPROVING THE RENEWAL AND COLLECTION OF THE EXISTING
STORM DRAIN FEES AT NO INCREASE IN RATES FOR FISCAL YEAR 2019-2020

WHEREAS, the City Council of the City of Cupertino enacted Municipal Code Chapter 3.36 in part to meet the City’s federally mandated Stormwater Pollution Prevention and Management Program and establishing the authority for imposing and charging a storm drainage service charge; and

WHEREAS, a report entitled “Engineer’s Report, Assessment of Fees for Storm Drainage Purposes Nonpoint Source Pollution Program (Exhibit A),” concerning the method of assessing an environmental fee to fund the City’s Stormwater Management Program was prepared by the Acting 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 23, 2019; and

WHEREAS, the report, filed with the City Clerk was available for public inspection and review twenty (20) days prior to this public hearing; and

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

1. After considering the report entitled “Engineer’s Report, Assessment of Fees for Storm Drainage Purposes Nonpoint Source Pollution Program” and the testimony received at this public hearing, the City Council hereby approves the report and herein incorporates it in the resolution.

2. There is a need in the City to continue collecting a storm drainage service charge to cover the costs of the federally mandated program 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 drainage service charge, 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, which are to be charged this fee. These relationships or nexuses 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, as such fees are based on percent impervious area established in the Master Storm Drain Study and are below the cost recovery.

5. It is further determined that each and every parcel of land contained in said report will, and has received a benefit of flood control from the storm drainage system and that the charges 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 of the City of Cupertino, that:

1. Charge. The storm drainage service charge shall continue to be charged to each parcel within the City 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 charge shall be used in connection with implementing and enforcing Chapters 3.36 of the Cupertino Municipal Code entitled "Storm Drainage Service Charge" and Chapter 9.18 entitled "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

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 18th day of June, 2019, by the following vote:

Vote Members of the City Council

AYES:
NOES:
ABSENT:
ABSTAIN:

ATTEST:

APPROVED:

Grace Schmidt, City Clerk

Steven Scharf, Mayor

EXHIBIT A

ENGINEER'S REPORT ASSESSMENT OF FEES FOR STORM DRAINAGE AND NONPOINT SOURCE POLLUTION PREVENTION 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; bi-weekly sweeping of residential streets and weekly sweeping of 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 State 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) with additional requirements that became effective on January 1, 2016. MRP 2 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 2. 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. MRP 2 includes several mandated requirements that are being phased in over the five-year permit term. The SCVURPPP has increased its co-permittee

membership assessments to help meet these requirements. With these and new MRP-related costs and requirements on the horizon, the City increased its NPS budget slightly to ensure its continued compliance. For FY 2017-2018, the fee provided revenue of approximately \$372,800, leaving approximately \$389,200 (\$762,000 in expenses less approximately \$372,800 in fee revenue) to be paid from the General Fund. It is important that the fees that have been in place since 1992 continue to be collected.

B. Estimated Expenditures

The total estimated budget to implement the required programs described above for fiscal year 2018-2019 was approximately \$861,000. The breakdown of costs is estimated as follows:

Countywide Program	\$170,000
SCVURPPP ¹ Program Assessment - Regional Permit Implementation	
Regional Watershed Monitoring (administered by EOA, Inc. ²)	
State NPDES ³ Permit Fees	
Countywide Public Education and Municipal Staff Training	
CA Stormwater Quality Association (CASQA) Participation	
Annual Parcel Stormwater Fee Assessment for County	
Policy Development	
Contingencies	
 Operations and Maintenance	 \$166,500
Catch Basin and Frequent Trash Capture Device Cleaning	
Street Sweeping (weekly in commercial areas)	
On-call Emergency Spill and Discharge Response	
Staff and Equipment to Implement City's Mandated Litter Reduction Plan	
 City Public Engagement and Education Awareness	 \$60,000
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	 \$464,500
Development, Administration, and Evaluation of Mandated Programs	
Environmental Impact and New and Redevelopment Review	

¹SCVURPPP: The Santa Clara Valley Urban Runoff Pollution Prevention Program is a collaborative of 15 municipalities and agencies in Santa Clara County of which Cupertino is a member and co-permittee.

²EOA, 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

³NPDES: National Pollutant Discharge Elimination System

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
 Other Staffing Costs

TOTAL COST TO MAINTAIN CITY'S COMPLIANCE \$861,000

C. Revenue and Assessment

Revenues generated to fund this program 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.

The following table represents the approximate revenue stream for different categories of development.

<u>Development Category</u>	<u>Factor</u>	<u>No. Parcels or Acre</u>	<u>Annual Cost/Unit</u>	<u>Fee Revenue Generated</u>
Residential	1	15,885 Pcls	\$ 12	\$ 190,620
Commercial/Industrial/ Apartments	12	1,046.96 Ac	\$ 144	\$ 150,759
Unimproved/Recreational	3	871.17 Ac	\$ 36	\$ 31,362
			TOTAL	<u>\$ 372,741</u>

Each parcel has been identified and a fee established in a separate report entitled **PARCEL ASSESSMENT REPORT**.

Roger Lee
 Acting Director of Public Works