

**RESOLUTION NO. 19-XXX**

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL**

ACCEPTING THE TABULATION RESULTS FOR THE CITY'S 2019 CLEAN WATER AND STORM PROTECTION FEE, A PROPERTY-RELATED FEE CONFORMING TO ARTICLE XIII D, SECTION 6 OF THE CALIFORNIA CONSTITUTION, AND ORDERING THE LEVY OF THE FFE FOR FISCAL YEAR 2019-20

**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 new 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; approving the Fee Report for the 2019 Clean Water and Storm Protection Fee ("Fee Report," dated February 2019); and setting a public hearing before the City Council on May 7, 2019 in the City Council Chambers at 10350 Torre Avenue, Cupertino, CA 95014 at 6:45 pm to consider all property owner protests to the proposed fee; and

**WHEREAS**, on March 5, 2019, the City Council of the City of Cupertino adopted Resolution 19-023 adopting ballot procedures applicable to the proposed fee pursuant to Article XIII D, Section 6(c) of the California Constitution; and

**WHEREAS**, pursuant to the provisions of Article XIII D of the California Constitution, the City provided 45-day written mailed notice to each record owner of parcels of real property subject to the 2019 Clean Water and Storm Protection Fee of a public hearing, which was held at a regular meeting of the City Council on May 7, 2019 at 6:45 pm in the City Council Chambers on the issue of whether the proposed property related fee should be levied and collected as proposed in the Fee Report for Fiscal Year 2019-20; and

**WHEREAS**, on May 7, 2019 the City Council adopted Resolution 19-041 finding that a majority protest did not exist and directing a property owner ballot proceeding for the 2019 Clean Water and Storm Protection Fee; and

**WHEREAS**, on May 20, 2019 a ballot and information guide were mailed to every owner of property that would be subject to the proposed 2019 Clean Water and Storm Protection Fee; and

**WHEREAS**, the balloting period for the proposed 2019 Clean Water and Storm Protection Fee closed on July 5 at 5:00 p.m.; and

**WHEREAS**, the tabulation of the ballots is complete;

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby  
**SECTION 1. Tabulation of the Ballots.** The canvass of the fee ballots submitted by property owners is complete and certified by the City Clerk, and the votes cast are as follows:

Total Number of Valid Ballots Processed:	<u>4,714</u>
Total Number of "Yes" Votes Processed:	<u>2,577</u>
Total Percentage of "Yes" Votes Processed:	<u>51.15%</u>
Total Number of "No" Votes Processed:	<u>2,461</u>
Total Percentage of "No" Votes Processed:	<u>48.85%</u>
Total Number of "Invalid" Ballots Processed:	<u>34</u>

**SECTION 2. Invalid Ballots.** 4,751 fee ballots were returned and received prior to the close of the balloting period on July 5, 2019. This represents a 30.78% ballot return rate on the 15,435 ballots mailed. Of the fee ballots returned, 34 ballots were declared invalid, in that they were either not marked with a "Yes" or "No", were marked with both a "Yes" and a "No," were not signed, or the property ownership and barcode information was illegible.

**SECTION 2. Ballots Results.** As determined by ballots cast, 51.15% of the votes cast by property owners were in support of the measure. Since a majority protest, as defined by Article XIII D of the California Constitution, did not exist, this Council thereby acquired jurisdiction to order the levy of the 2019 Clean Water and Storm Protection Fee, and the Ordinance adding Chapter 3.38 of the Municipal Code to establish the Clean Water and Storm Protection Fee is hereby adopted.

**SECTION 3. Findings.** The City Council finds that the 2019 Clean Water and Storm Protection Fee is being implemented in compliance with the requirements of Proposition 218, as codified in Article XIII D of the California Constitution. Based on the oral and documentary evidence, including the 2019 Clean Water and Storm Protection Fee Report, received by the Council, the Council expressly finds and

determines that it is in the best interest of the City and the public to order the fee to be levied.

**SECTION 4. Ordering of the Levies.** The Council hereby orders the fees for fiscal year 2019-20 shall be levied at the rates specified in the 2019 Clean Water and Storm Protection Fee Report.

**SECTION 5. CPI.** 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. 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. The City Council is not required to enact a CPI increase each year.

**SECTION 6. Filing this Resolution.** Shortly after the adoption of this Resolution, but in no event later than August 10 following such adoption, the City Clerk shall file a certified copy of this Resolution and a fee levy roll with the Auditor of Santa Clara County ("County Auditor"). Upon such filing, the County Auditor shall enter on the County assessment roll opposite each lot or parcel of land the amount of fee thereupon as shown in the levy roll. The fees shall be collected at the same time and in the same manner as County taxes are collected and all laws providing for the collection and enforcement of County taxes shall apply to the collection and enforcement of the fees. After collection by the County, the net amount of the fees, after deduction of any compensation due the County for collection, shall be paid to the City of Cupertino.

**SECTION 7. Corrections.** The 2019 Clean Water and Storm Protection Fee, as it applies to any parcel, may be corrected, cancelled or a refund granted as appropriate, by order of the City Council or its designee, by a determination from the City Council or its designee that the fee for that parcel should be revised to be consistent with the fee method established in the Fee Report. Any such corrections, cancellations or refunds shall be limited to the current fiscal year in which the correction, cancellation or refund was requested.

BE IT FURTHER RESOLVED that this Resolution is not a project under the requirements of the California Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment. In the event that this Resolution is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that the action approved may have a significant effect on the environment. CEQA applies only to actions which have the potential for resulting in a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, levying the Clean Water and Storm Protection Fee would have no or only a de minimis effect on the environment because the funds collected would be used solely for ongoing operations and maintenance expenditures. The foregoing determination is made by the City Council in its independent judgment.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 16<sup>th</sup> day of July, 2019, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Steven Scharf, Mayor City of Cupertino	_____ Date
ATTEST: _____ Grace Schmidt, City Clerk	_____ Date