

DRAFT RESOLUTION NO. 19-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
ADOPTING BALLOT PROCEDURES FOR THE CITY'S 2019 CLEAN WATER AND
STORM PROTECTION FEE

WHEREAS, Proposition 218 was adopted on November 6, 1996, adding Articles XIII C and XIII D to the California Constitution; and

WHEREAS, Article XIII D of the California Constitution imposes certain procedural and substantive requirements relating to property-related fees; and

WHEREAS, barring a protest by a majority of affected property owners, the City of Cupertino ("City") intends to conduct a ballot proceeding to obtain approval of a proposed property-related fee, called the "2019 Clean Water and Storm Protection Fee" consistent with the procedures established in Article XIII D of the California Constitution. If approved, the 2019 Clean Water and Storm Protection Fee would raise revenue to pay for services provided by the City that are necessary to repair, operate and maintain pipes and other infrastructure to prevent system failure and sinkholes, protect clean drinking water, comply with mandated clean water standards, and protect the City against future flooding; and

WHEREAS, the City is initiating the process necessary to adopt the 2019 Clean Water and Storm Protection Fee.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Cupertino as follows:

SECTION 1. Statement of Legislative Intent. In adopting this resolution, it is the Council's intent to adopt property-related fee ballot proceedings for adoption of a proposed 2019 Clean Water and Storm Protection Fee that are consistent and in compliance with Article XIII D of the California Constitution.

SECTION 2. Definition of Property-Related Fee. Article XIII D, section 2(e), of the California Constitution defines "fee" as "any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user, or charge for a property related service."

SECTION 3. Property-Related Fee Ballot Proceeding. Article XIII D, section 6(c), of the California Constitution states "[a]n agency may adopt procedures similar to those for

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increases in assessments in the conduct of elections” for a property-related fee. The following procedures shall be used to conduct a ballot proceeding to seek property owner approval of the proposed 2019 Clean Water and Storm Protection Fee:

A. **Property-Related Fee Ballots:** The following guidelines shall apply to the property-related fee ballots:

1. The record owner(s) of each parcel to be subject to the 2019 Clean Water and Storm Protection Fee shall be determined from the last equalized property tax roll.
2. The ballot shall be designed in such a way that, once sealed, its contents are concealed.
3. The ballot and/or ballot guide provided by this section shall contain the following information:
 - a. The total amount to be charged to parcels City-wide;
 - b. The amount to be charged to the owner’s particular parcel(s);
 - c. The duration of Fee payments;
 - d. The reason for the proposed Fee;
 - e. The basis upon which the amount of the proposed Fee was calculated;
 - f. A summary of the procedures for the completion, return and tabulation of the ballots;
 - g. A statement that the failure to receive a majority of ballots in support of the proposed Fee will result in the Fee not being imposed;
 - h. On the face of the envelope in which the notice of election and ballot are mailed, there shall appear in substantially the following form in no smaller than 16-point bold type: “OFFICIAL BALLOT ENCLOSED”; and
 - i. The ballot shall include the City’s address for return of the ballot, the date and location where the ballots will be tabulated, and a place where the person returning it may indicate his or her name, a reasonable identification of the parcel, and his or her support or opposition to the proposed Fee.

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4. Failure of any person to receive a ballot(s) shall not invalidate the proceedings.
5. All ballots must be returned either by mail or by hand delivery and received by the City not later than the date and time for return of ballots stated on the ballot described in this section. Mailed ballots must be returned to the City Clerk at the address shown on the ballot and pre-printed on the ballot return envelope. Hand delivered ballots must be returned to the City Clerk at 10300 Torre Avenue, Cupertino, California 95014.
6. Each ballot must be signed under penalty of perjury.
7. Only one vote will be counted per parcel. If more than one vote per parcel is submitted, then only the ballot with the most recent date will be counted and any previous votes submitted for the same parcel will not be accepted or counted. If more than one vote per parcel is submitted and the ballots for that parcel are not dated, the replacement ballot will be counted and any other votes for the same parcel will not be accepted or counted.
8. The City will only accept official ballots issued by the City.
9. If a 2019 Clean Water and Storm Protection Fee ballot is lost, withdrawn, destroyed or never received, the City will mail or otherwise provide a replacement ballot to the owner upon receipt of a request delivered to the City. The replacement ballot will be marked to identify it as a replacement ballot. Any request for a replacement ballot to be mailed to another location must include evidence, satisfactory to the City, of the identity of the person requesting the ballot. The same procedure applies to replacement ballots which are lost, withdrawn, destroyed, or never received.
10. If a 2019 Clean Water and Storm Protection Fee ballot is returned by the United States Post Office as undeliverable, the City may mail a redelivered ballot to the current property owner, if updated ownership and/or owner mailing address can be determined. The redelivered ballot will be marked to identify it as a replacement ballot.
11. A property-related fee ballot is a disclosable “public record” as that phrase is defined by Government Code section 6252 during and after tabulation of the ballots.

12. To complete a 2019 Clean Water and Storm Protection Fee ballot, the owner of the parcel or his or her authorized representative must (1) mark the appropriate box supporting or opposing the proposed 2019 Clean Water and Storm Protection Fee, and (2) sign, under penalty of perjury, the statement on the ballot that the person completing the ballot is the owner of the parcel or the owner's authorized representative. Only one box may be stamped or marked on each ballot. All substantially incomplete or improperly marked ballots shall be disqualified from the tabulation. The Tabulator will retain all such invalid ballots.
 13. After returning a 2019 Clean Water and Storm Protection Fee ballot to the City Clerk, the person who signed the ballot may withdraw the ballot by submitting a written statement to the City directing the City to withdraw the ballot. Such statement must be received by the City prior to the close of the balloting period. When ballots for the 2019 Clean Water and Storm Protection Fee are tabulated, the City Clerk will segregate withdrawn ballots from all other returned ballots. The City will retain all withdrawn ballots and will indicate on the face of such withdrawn ballots that they have been withdrawn.
 14. In order to change the contents of a ballot that has been submitted, the person who has signed that ballot may (1) request that such ballot be withdrawn, (2) request that a replacement ballot be issued, and (3) return the replacement ballot fully completed. Each of these steps must be completed according to the procedures set forth above.
- B. **Tabulating Ballots.** The following guidelines shall apply to tabulating 2019 Clean Water and Storm Protection Fee ballots:
1. 2019 Clean Water and Storm Protection Fee ballots shall remain sealed until tabulation commences after the conclusion of the balloting period.

2. The ballots shall be tabulated in a location accessible to the public.
3. The City Clerk shall oversee the tabulation of the 2019 Clean Water and Storm Protection Fee ballots, and may be assisted by technical staff from a third party. The City Clerk shall follow the rules and procedures of the laws of the State of California, this resolution and any other rules and procedures of the Council or the City. All ballots shall be accepted as valid and shall be counted except those in the following categories:
 - a. A photocopy of a ballot, a letter or other form of a ballot that is not an official ballot issued by the City or on behalf of the City;
 - b. An unsigned ballot, or ballot signed by an unauthorized individual;
 - c. A ballot which lacks an identifiable mark in the box for a “yes” or “no” vote or with more than one box marked;
 - d. A ballot which appears tampered with or otherwise invalid based upon its appearance or method of delivery or other circumstances;
 - e. A ballot for which the parcel number is damaged or obstructed, unless the parcel number or property ownership information is legible and allows the Tabulator to clearly determine the property(s) identified on the ballot;
 - f. A ballot received by the City Clerk after the close of the balloting time period; and
 - g. A ballot which has been withdrawn, or a ballot for a parcel for which a later (or replacement) ballot has been counted.
4. The City Clerk’s decision shall be final and may not be appealed to the City.
5. In the event of a dispute regarding whether the signer of a ballot is the owner of the parcel to which the ballot applies, the City will make such determination from the official County Assessor records and any evidence of ownership submitted to the City prior to the conclusion of the balloting period. The City will be under no duty to obtain or consider any other evidence as to ownership of property and its determination of ownership will be final and conclusive.

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6. In the event of a dispute regarding whether the signer of a ballot is an authorized representative of the owner of the parcel, the City may rely on the statement on the ballot signed under penalty of perjury that the person completing the ballot is the owner's authorized representative, and any evidence submitted to the City prior to the conclusion of the balloting period. The City will be under no duty to obtain or consider any other evidence as to whether the signer of the ballot is an authorized representative of the owner and its determination will be final and conclusive.
7. A property owner who has submitted a 2019 Clean Water and Storm Protection Fee ballot may withdraw the ballot and submit a new or changed ballot up until the conclusion of the balloting period.
8. A property owner's failure to receive a 2019 Clean Water and Storm Protection Fee ballot shall not invalidate the proceedings conducted under this section and Article XIII D, Section 6 of the California Constitution.
9. The City shall retain all 2019 Clean Water and Storm Protection Fee ballots for a period of two (2) years from the date of the close of the balloting period.
10. The period of time in which ballots may be submitted (balloting period) shall end at 5:00 p.m. on the closing date of the balloting. All 2019 Clean Water and Storm Protection Fee ballots must be received by this date and time to be tabulated.
11. After the conclusion of the balloting period, the Tabulator shall tabulate the ballots at the direction of the City Council.
12. The ballot tabulation may be continued to a different time or different location accessible to the public, provided that the time and location are announced at the location at which the tabulation commenced and posted by the City in a location accessible to the public. The City Clerk may use technological methods to tabulate the ballots, including, but not limited to, punch card or optically readable (bar-coded) ballots.
13. Each ballot shall count for as many votes as there are parcels with a fee greater than zero listed on that ballot. If, according to the final tabulation of the ballots, votes submitted against the 2019 Clean Water and Storm Protection Fee exceed the votes submitted in favor of the 2019 Clean Water and Storm Protection Fee, the City Council shall not impose the 2019 Clean Water and Storm Protection Fee.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 5th day of March by the following vote:

Vote Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

/s/

/s/

Grace Schmidt, City Clerk

Steven Scharf, Mayor

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