

RESOLUTION NO. 24-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 2024-2025

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 June 1, 2024; and

WHEREAS, notice of the proposed rates was published in a local newspaper on 5/22/2024 and 5/28/2024; 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.

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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.

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- 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 4th day of June, 2024, by the following vote:

Members of the City Council

AYES:

NOES:

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ABSENT:

ABSTAIN:

<p>SIGNED:</p> <p>_____</p> <p>Sheila Mohan, 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

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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 2092 drain inlets and 90 miles of storm drainage pipes. Of the drain inlets 181 are fitted with full trash capture devices and 283 have curb screens. An additional 19 full trash capture devices will be added during FY 23-24. 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 23-24, an equivalent total of 5.87 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 increase from the previous fiscal year because in 2023 the Environmental Programs Division absorbed the Sustainability Division, which triggered a reorganization resulting in shifts to funding allocations. Most notably, 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 has been eliminated, and other minor shifts in funding allocations will take effect in FY 24-25. One maintenance worker is covered at 100%, and the remaining positions are allocated at between 2% - 60%.

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C. Estimated Expenditures

The total amended budget to implement the required programs described above for FY 23-24 was approximately \$2,554,669.

The breakdown of past actuals, current actuals as of Q3, and budgeted expenses for FY 24-25 are as follows:

	FY 22-23 Actuals	FY 23-24 Q3 7/1/2023 – 3/31/2024	FY 24-25 Requested Budget
Staffing	\$880,287	\$575,108	\$805,035
Materials	\$67,561	\$52,604	\$76,021
Contract Services	\$313,347	\$303,909	\$415,570
Allocations	\$332,864	\$259,607	\$598,995
Cost Share & Rebate Programs	\$9,159	\$12,290	\$10,707
Special Projects	\$12,161		
Fixed Asset Acquisition		\$128,895	
Total Expenses	\$1,615,378	\$1,332,415	\$1,906,328
Expected Final		\$2,228,113	

Activities undertaken within the Nonpoint Source program for permit compliance:

Countywide Program

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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

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

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

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

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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. As assessed on the 2023-2024 tax roll and direct billed, the revenue from the two fees will total approximately \$1,500,500.

FY 23-24 Assessed Actuals

1992 Storm Drain Fee	\$375,583.28
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2019 Clean Water and Storm Protection Fee	\$1,124,917.20
Total Assessed	\$1,500,500.48

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 fee assessed on the 2023-2024 tax roll totaled \$375,583.28. Those fees were applied to 16,616 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.

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The fees assessed on the 2023-2024 tax rolls totaled \$1,031,331.30. Those fees were applied to 16,597 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) totaled \$93,585.90 applied to 71 parcels.

The total revenue from the Clean Water and Storm Protection fee for 2023-2024 is \$1,124,917.20.

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.

The expenses attributed to the Nonpoint Source Program through third quarter of FY23-24 are \$1,207,482 and are projected to reach \$2,228,113 by the end of the fiscal year. That expected total is about \$326,586 below the approved budget for FY23-24; however, it is above expected revenue by approximately \$729,912. Available balance in Fund 230 is sufficient to make up the difference for FY22-23.

The intention of the fee assessments is only to cover costs and not accrue a balance, however several factors resulted in fund balance accruing. In 2019, before the Clean Water and Storm Protection Fee ballot measure passed, a General Fund subsidy had already been budgeted and transferred that was ultimately not needed. In FY19-20 the

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program came in under budget largely because true staffing cost allocations had not yet been applied, something that was corrected for FY20-21. In FY20-21 a storm drain video and repair project was anticipated at \$248,436, but no acceptable bids were received for that project and then it was not conducted in FY21-22 either. An outfall survey is being conducted in FY 23-24 to inform needed repair planning, but at less than the full budgeted amount. In FY 23-24 a rover camera was acquired for \$128,895 that will avoid contract expenses in future for drain video services. The fund 230 balance was \$ 1,220,134 at the beginning of FY23-24. After covering the shortfall from the projected expenditures from FY23-24, the remaining balance in Fund 230 at the end of the fiscal year is expected to be approximately \$492,521 heading into FY 24-25. The requested budget for FY 24-25 totals \$1,906,328. With anticipated revenue at \$ 1,500,500, that indicates a projected shortfall of an estimated \$429,089. That shortfall will not exhaust the remaining fund balance in Fund 230, however there are expected increased costs to street sweeping under a new agreement and anticipated outfall repairs, meaning that an increase to the Clean Water and Storm Protection fee is now recommended to reduce the draw upon the General Fund to cover the difference. A 2.62% increase to the 2019 Clean Water and Storm Protection fee would mean an increase of \$1.20 per year for residents in the most common size of residential property. The increase would generate approximately \$29,473 per year additional revenue for the program..

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. 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, which will be completed for calendar year 2022 and 2023 with no expected exceptions noted. The final AUP reports will be available to the public late June. 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