

RESOLUTION NO. 22-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 2022-2023**

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, 2022; and

WHEREAS, notice of the proposed rates was published in a local newspaper on 5/20/2022 and 5/27/2022; 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. The City Council exercises its independent judgment and finds that this Resolution does not constitute a project under the requirements of the California Quality Act of 1970 and the State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment, either directly or indirectly. In the event that this Resolution is found to be a project under CEQA, it is subject to the exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility that continued collection of an existing fee, with no change in use of the fee, may have a significant effect on the environment. In this circumstance, the Resolution continuing to charge the storm drain fee would have no effect on the environment because it does not involve any change in an existing City program.

2. 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.

3. 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."

4. 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

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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 7th day of June, 2022, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<div>SIGNED:</div> <div>_____</div> <div>Darcy Paul, Mayor City of Cupertino</div>	<div>_____</div> <div>Date</div>
<div>ATTEST:</div> <div>_____</div> <div>Kirsten Squarcia, City Clerk</div>	<div>_____</div> <div>Date</div>

**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; 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 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. MRP 2.0 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 2.0. 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. A further update and reissuance of the Municipal Regional Permit (MRP 3.0) is currently in development by the Regional Water Quality Control Board, and is anticipated to go into effect on July 1, 2022.

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 more than 2000 drain inlets, 146 of which are fitted with full trash capture devices, and 90 miles of storm drainage pipes. Maintenance of these assets includes twice per year cleaning of inlets and trash capture devices and protects the city from flooding while preventing stormwater pollution. The budget for FY 20-21 included those ongoing enhancements along with increased allocations of staff time to more accurately reflect time spent on stormwater pollution prevention tasks. The budget for FY 21-22 maintained those adjustments and no significant changes in those areas are expected for FY 22-23.

B. Estimated Expenditures

The total estimated (amended) budget to implement the required programs described above for FY 21-22 was approximately \$2,131,092. Actual expenses for all of FY 21-22 are anticipated to be approximately \$1,849,806. The main reason for coming in under budget is that a large anticipated storm drain system scoping and maintenance project was anticipated to be re-bid in FY 21-22, but has not been re-bid or completed.

The breakdown of past actuals, current actuals as of Q3, and budgeted expenses for FY 22-23 are as follows:

	FY 20-21 Actuals	FY 21-22 Q3 7/1/2021 – 3/31/2022	FY 22-23 Requested Budget
Staffing	\$794,374	\$630,877	\$913,468
Materials	\$41,286	\$47,717	\$63,924
Contract Services	\$300,633	\$247,458	\$678,462
Allocations	\$228,545	\$306,854	\$332,864
Cost Share & Rebate Programs	\$9,828	\$3,606	\$41,706
Total Expenses	\$1,374,665	\$1,236,511	\$2,030,424
Expected Final		\$1,849,806	

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

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 (weekly in commercial areas)

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

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

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 permeable pavement 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

C. 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 2021-2022 tax roll and direct-billed, the revenue from the two fees will total approximately \$1,467,386.

FY 21-22 Assessed Actuals

1992 Storm Drain Fee	\$370,508
Clean Water and Storm Protection Fee	\$1,096,879
Total Assessed	\$1,467,386

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 2021-2022 tax roll totals \$370,508. Those fees were applied to 15,944 single-family residential parcels, 485 commercial parcels, and 126 parcels in other categories (office, institutional, school park, vacant, etc.).

Each parcel was identified and a fee established in a separate report submitted to the County entitled Certification of Special Assessment Annual Enrollment.

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 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 Clean Water and Storm Protection fee is subject to treatment under prop 218 and as such all parcels are assessed the fees without exemptions.

The fees assessed on the 2021-2022 tax rolls totaled \$998,393. Those fees were applied to 15,942 single-family residential parcels, 481 commercial parcels, and 111 parcels in other categories (office, institutional, school park, vacant, etc.). Fees billed directly to parcel-owners that do not receive property tax bills (such as schools and government) totaled \$98,486 applied to 96 parcels.

The total revenue from the Clean Water and Storm Protection fee for 2021-2022 is \$1,096,879.

D. Annual Review

The 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 FY21-22 are \$1,236,511 and are projected to reach \$1,849,806 by the end of the fiscal year. Projected expenses for FY22-23 are above expected revenue by \$555,476 but there is available balance in Fund 230 to make up the difference.

The intention of the fee assessments is only to cover costs and not accrue a balance, however several factors over the past three years have resulted in fund balance. 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 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 RFP is currently under development to conduct an initial outfall survey to inform needed repair planning that would likely happen in FY 22-23. After considering the expected expenditures from FY21-22, the remaining balance in Fund 230 is expected to be approximately \$714,424. It is recommended that Fund 230 be used to cover the anticipated shortfall with no impact to the General Fund and no increase in the assessed fees for FY22-23.

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 year 2020 (Attachment D) and no exceptions were noted. The City anticipates that the AUP audits of calendar years 2021 and 2022 will be completed and reviewed by the Audit Committee ahead of the next time these fees are brought to Council for renewal in 2023.

Chad Mosley
Assistant Director of Public Works/City
Engineer