

**RESOLUTION NO.20-XXX**

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL APPROVING THE  
RENEWAL AND COLLECTION OF THE EXISTING 2019 CLEAN WATER  
AND STORM PROTECTION FEE FOR FISCAL YEAR 2020-2021**

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 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, and approved the Fee Report for the Water Quality and Flood Protection Fee (“Fee Report”) which sets forth the basis and the amount of the 2019 Clean Water and Storm Protection Fee on various parcels of land in order to finance, in compliance with Article XIID of the Constitution, the costs of the City’s Clean Water and Storm Protection Program; and

WHEREAS, on March 18, 2019, a notice of public hearing was mailed to all property owners whose property would be subject to the Fee, in accordance with California Health and Safety Code Section 5473.1; and

WHEREAS, on May 7, 2019, the City Council adopted Resolution 19-041 finding that a majority protest does not exist and ordering a mailed ballot proceeding for the proposed Fee proceeding in accordance with Article XIII of the Constitution, Section 53755.5 of the Government Code; and

WHEREAS, on May 7, 2019, the City Council introduced Ordinance No. 19-2183 establishing Chapter 3.38 of the Municipal Code to establish the Clean Water and Storm Protection Fee; and

WHEREAS, on May 17, 2019, ballots were mailed to all property owners whose property would be subject to the Fee; and

WHEREAS, on July 17, 2019, by its Resolution 19-096 the City Council adopted Ordinance No. 19-2183 establishing Chapter 3.38 of the Municipal Code, found that the Fee was approved by 51.15% of the returned ballots from property owners of the property subject to the Fee and thereby ordered that the Fee for fiscal year 2019-20 be levied at the rates specified in the Fee Report; and

WHEREAS, Sections 3.38.040 through 3.38.070 of the Ordinance establishing the 2019 Clean Water and Storm Protection Fee allow the City Council to review the

Fee annually and apply a rate increase based on the change in the Consumer Price Index ("CPI") up to a maximum increase of 3% in any single year, and to collect the Fee on the property tax roll in the same manner, by the same persons, and at the same time as, the general taxes; and

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

1. There is a need in the City to continue collecting the Clean Water and Storm Protection Fee to cover the costs of the Clean Water and Storm Protection Program; and
2. 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 the Fee. These relationships or nexus are described in more detail in the above referenced Fee Report; and
3. The amounts of the Fee for each category of property, as set forth below in the Schedule of Charges, are reasonable amounts, because the amounts are based on the methodology established in the Fee 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 Clean Water Act and Storm Protection Fee would have no effect on the environment because it does not involve any change in an existing City program.

2. Charges. The 2019 Clean Water and Storm Protection Fee shall continue to be charged to each parcel within the City to contribute to the costs of the City's Clean Water and Storm Protection Program. The Fee charged to each parcel will not be increased for Fiscal Year 2020-2021.

3. Use of Revenue. The revenue derived from said Fee shall be used in connection with implementing and enforcing Chapters 3.38 of the Cupertino Municipal Code titled "Clean Water and Storm Protection Fee" 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:

Land Use Category		Fee
<b>Single Family Residential*</b>		
	Small ( <i>under 0.13 acre</i> )	\$ 36.58 per parcel
	Medium ( <i>0.13 - 0.22 acre</i> )	\$ 44.42 per parcel
	Large ( <i>0.23 - 0.40 acre</i> )	\$ 55.58 per parcel
	Extra Large ( <i>over 0.40 acre</i> )	\$ 106.42 per parcel
	Condo 1 (1 story)	\$ 36.58 per parcel
	Condo 2 (2+ stories)	\$ 11.99 per parcel
<b>Non-Single-Family Residential**</b>		
	Multi-Family Residential	\$ 30.88 per 0.1 acre
	Commercial/Retail/Industrial	\$ 40.38 per 0.1 acre
	Office	\$ 30.88 per 0.1 acre
	Church/Institutional	\$ 26.13 per 0.1 acre
	School (w/playfield)	\$ 19.00 per 0.1 acre
	Park	\$ 7.13 per 0.1 acre
	Vacant	\$ 2.38 per 0.1 acre
	Open Space/Agricultural	no charge
<b>Low Impact Development Adjustment***</b>		<b>25% Fee Reduction</b>

\*Single-Family Residential (SFR) category also includes du-tri-and four-plex units

\*\*Non-SFR parcels are charged per the tenth of an acre or portion thereof

\*\*\*Low Impact Development Adjustment only applies to condominium and non-SFR

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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 July, 2020, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

<div>SIGNED:</div> <div>_____</div> <div>Steven Scharf, 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 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 works 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.

In fiscal year 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 2020-2021 includes those ongoing enhancements along with increased allocations of staff time to more accurately reflect time spent on stormwater pollution prevention tasks.

## B. Estimated Expenditures

The total estimated (amended) budget to implement the required programs described above for fiscal year 2019-2020 was approximately \$1,714,869.

The breakdown of budgeted expenses and actual expenses for the partial fiscal year are estimated as follows:

	FY 19-20 Amended Budget	FY 19-20 Actuals 7/1/2019 - 6/17/2020
Staffing	\$ 535,826.00	\$ 528,196.85
Materials	\$ 42,696.00	\$ 32,248.97
Contract Services	\$ 944,217.00	\$ 468,730.28
Allocations & Contingencies	\$ 144,424.00	\$ 88,521.75
Cost Share Programs	\$ 47,706.00	\$ 828.72
<b>Total</b>	<b>\$ 1,714,869.00</b>	<b>\$ 1,118,526.57</b>

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.<sup>1</sup>)
- State NPDES<sup>2</sup> 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
- 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
- Ordinance Revisions
- Database Maintenance
- Illegal Discharge Complaint Investigation and Enforcement
- Industrial/Commercial Discharger Inspection Program

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<sup>1</sup> 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](http://www.eoainc.com)

<sup>2</sup> NPDES: National Pollutant Discharge Elimination System

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  
Contingencies and 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 2019-2020 tax roll and direct-billed, the revenue from the two fees will total \$1,477,387.

#### 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 2019-2020 tax roll totals \$372,741. Those fees were applied to 15,911 single-family residential parcels, 378 commercial parcels, and 236 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 % 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 2019-2020 tax rolls totalled \$1,005,692.84. Those fees were applied to 15,911 single-family residential parcels, 492 commercial parcels, and 115 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 \$98,952.98 applied to 88 parcels.

The total revenue from the Clean Water and Storm Protection fee for 2019-2020 is \$1,104,646.

#### **D. Annual Review**

The Clean Water and Storm Protection Fee included annual review requirements beginning with fiscal year 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 during the partial year since the new fee was adopted were less than budgeted and it is anticipated that by the end of fiscal year 2019-2020, expenses will not have exceeded revenues and no increase is recommended. Several factors contributed to coming in under budget and below the revenue amount that are not reflective of the ongoing cost of the program. Most significantly, staffing allocations needed to be adjusted to accurately reflect the workload, and those allocations will go into effect in fiscal year 2020-2021. Additionally, the program was understaffed for a portion of the year, creek education field trips that were planned for the spring were cancelled due to COVID-19 so busing expense moneys went unspent, and a project to enhance the creek education curriculum was delayed due to COVID-19 as well. The adopted

budget for fiscal year 2020-2021 anticipates full staffing and full use of funds that will exceed projected revenues, coming in at \$1,815,092, so any fund balance realized in the current fiscal year will be needed to meet expenses in the next.

A full year of expenses and revenues for the Nonpoint Source Program will be examined by external auditors and reviewed by the City's Audit Committee in advance of the 2021-2022 fee renewal process.

*Roger S. Lee*

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Roger Lee  
Director of Public Works






# Reso Clean Water Storm Protection Fee

Final Audit Report

2020-06-29

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