

## **RESOLUTION NO. 21-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 2021-2022**

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 percent 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

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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 percent 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

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Clean Water and Storm Protection Program. The Fee charged to each parcel will not be increased for Fiscal Year 2021-2022.

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

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.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 1st day of June, 2021, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date

**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

2.0) 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 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 included 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 2020-2021 was approximately \$1,851,253. Actual expenses for all of fiscal year 20-21 are anticipated to be approximately \$1,552,623. The main reason for coming in under budget is that a large anticipated storm drain system scoping and maintenance project received only one unsatisfactory bid and the project will be re-bid in fiscal year 21-22.

The breakdown of past actuals, current actuals as of Q3, and budgeted expenses for FY 21-22 are as follows:

	<b>FY 19-20 Actuals</b>	<b>FY 20-21 Q3 7/1/2020 – 3/31/2021</b>	<b>FY 21-22 Requested Budget</b>
Staffing	\$564,050	\$597,789	\$872,261
Materials	\$33,941	\$39,025	\$55,435
Contract Services	\$487,171	\$218,348	\$614,373
Allocations	\$118,029	\$171,409	\$405,672
Cost Share & Rebate Programs	\$838	\$1000	\$46,868
<b>Total Expenses</b>	<b>\$ 1,204,029</b>	<b>\$1,027,571</b>	<b>\$1,994,609</b>
<b>Expected Final</b>		<b>\$1,552,623</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

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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

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 2020-2021 tax roll and direct-billed, the revenue from the two fees will total approximately \$1,472,447.

#### **FY 20-21 Assessed Actuals**

1992 Storm Drain Fee	\$375,883.44
Clean Water and Storm Protection Fee	\$1,096,563.78
<b>Total Assessed</b>	<b>\$1,472,447.22</b>

#### 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 2020-2021 tax roll totals \$375,883.44. Those fees were applied to 15,938 single-family residential parcels, 485 commercial parcels, and 129 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 \$997,669.50. Those fees were applied to 15,935 single-family residential parcels, 480 commercial parcels, and 108 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 \$98,894.28 applied to 87 parcels.

The total revenue from the Clean Water and Storm Protection fee for 2020-2021 is \$1,096,563.78.

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

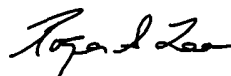
The Clean Water and Storm Protection Fee included annual review requirements beginning with fiscal year 2020-2021 as described in ordinance

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 through third quarter of FY20-21 are \$1,027,571 and are projected to reach \$1,552,623 by the end of the fiscal year. Projected expenses for FY21-22 are above expected revenue by \$451,509 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 two years have resulted in one. 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 it will be re-bid in FY21-22. After considering the proposed FY21-22 budget, the remaining balance in Fund 230 is expected to be approximately \$686,000. This confluence of events is not expected to occur again, and 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 FY21-22.

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, however that analysis has not been completed yet for year 2020. The City anticipates that AUP audits of both calendar year 2020 and 2021 will be completed and reviewed by the Audit Committee ahead of the next time these fees are brought to Council for renewal in 2022.



Roger Lee  
Director of Public Works