

**RESOLUTION NO. 20-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
AUTHORIZING A THIRD AMENDMENT TO THE FRANCHISE AGREEMENT  
WITH RECOLOGY CUPERTINO FOR THE COLLECTION AND PROCESSING OF  
RECYCLABLE AND COMPOSTABLE MATERIAL, AND THE COLLECTION AND  
DISPOSAL OF GARBAGE, TO ADDRESS HOUSEHOLD HAZARDOUS WASTE AND  
ESTABLISH THE SCHEDULE OF APPROVED MAXIMUM RATES**

WHEREAS, the City of Cupertino, with the approval of the City Council, entered into a Franchise Agreement with Recology Cupertino (Recology) for the collection and processing of recyclable and compostable materials, and the collection and disposal of garbage; the agreement has been twice previously amended (as amended, the “Franchise Agreement”); and

WHEREAS, the City Council desires to amend the Franchise Agreement a third time to modify its terms to reflect the termination of the residential on-call, curbside Household Hazardous Waste (HHW) program, terminate collection of the HHW fee, refund fees collected since January 2019, and assess costs against Recology in an annual, not to exceed amount of \$93,535 in accordance with staff’s recommendations and the findings included in the Council report for this item; and

WHEREAS, the collection of solid waste, which includes garbage, non-organic recyclables, organic waste, is determined and declared to be a health, sanitary and safety measure necessary for the promotion, protection and preservation of the health, safety and general welfare of the people of the City of Cupertino; and

WHEREAS, the City Council of the City of Cupertino enacted Municipal Code Chapters 6.24 and 9.16, in part, to meet the City’s mandated collection of solid waste and to satisfy applicable California Integrated Waste Management Act AB 939 and Assembly Bill 1826 requirements; and

WHEREAS, pursuant to Municipal Code Section 6.24.120 and applicable statutory authority, the provision of solid waste collection services in Cupertino is provided by a private solid waste collector pursuant to the terms of an exclusive franchise; and

WHEREAS, the City does not provide solid waste collection services, rather it regulates the private solid waste collection industry to protect public health, safety and welfare and ensure compliance with applicable laws; and

WHEREAS, as part of its regulatory role, pursuant to Municipal Code Section 6.24.150, the City reserved the right to establish a schedule of approved maximum rates to avoid an abuse of the franchise rights granted; and

WHEREAS, the solid waste collector is solely responsible for setting and collecting such rates and charges at a level at or below the schedule of approved maximum rates; and

WHEREAS, the Franchise Agreement establishes a process for Recology to request an adjustment to the schedule of approved maximum rates if necessary to cover increased costs; and

WHEREAS, pursuant to the terms of the Franchise Agreement, on October 15, 2019 Recology submitted a written request and documentation in support of an adjustment to the schedule of approved maximum rates, which request was subsequently amended by Recology on January 28, 2020; and

WHEREAS, an independent auditor has evaluated the requested adjustment to the schedule of approved maximum rates and made written findings that the requested adjustment is necessary to cover increased costs of processing recyclable materials; and

WHEREAS, the City has determined that the amendment to the Franchise Agreement is exempt from environmental review pursuant to the exemption in 14 Cal. Code Regs. §15601(b)(3) in that it can be seen with certainty that there is no possibility that this action will have a significant effect on the environment; and

WHEREAS, the City Council, using its independent judgment, before taking action on this Resolution, determines that the action is exempt from CEQA as stated above; and

WHEREAS, a public hearing notice regarding the proposed adjustment to the schedule of approved maximum rates was published in a newspaper of general circulation; and

WHEREAS, all documentation to support this adjustment to the schedule of approved maximum rates was placed on file with the City Clerk for public inspection and review; and

WHEREAS, at its regular meeting on February 4, 2020, the City Council held a public hearing to consider the adjustment to the schedule of approved maximum rates; and

WHEREAS, at the public hearing, interested persons had the opportunity to testify regarding the adjustment to the schedule of approved maximum rates; and

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

1. The above recitals are true and correct and material to the adoption of this Resolution.

2. After considering the request and documentation from Recology, the report and findings of the City-directed audit, the public's written comments and testimony received at this public hearing, and the staff report and information presented at the hearing regarding the adjustment to the schedule of approved maximum rates, the City Council determines that the evidence supports that the adjustment is needed to cover increased costs, and therefore, it is appropriate to increase the schedule of approved maximum rates by \$2.24/month for single-family Service Recipients, and 3.93% for all other categories of Service Recipients.

3. The schedule of approved maximum rates for each service description, as set forth in the third Amendment as Exhibit B, which is incorporated by this reference, represents the schedule of approved maximum rates, effective January 1, 2020.

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby approves the third amendment to the Franchise Agreement in accordance with the terms of this Resolution and staff's recommendations included in the Council report to address HHW and establish the schedule of approved maximum rates; and

BE IT FURTHER RESOLVED, that the City Manager or her designee is authorized to execute the third amendment to the Franchise Agreement, and to take all steps necessary to complete negotiations and execute the contract documents.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 4th day of February, 2020, by the following vote:

Vote

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

Attachment A

SIGNED:  _____ Steven Scharf, Mayor City of Cupertino	  _____ Date
ATTEST:  _____  Kirsten Squarcia, City Clerk	  _____ Date