

RESOLUTION NO. 21-XXX

A RESOLUTION OF THE CUPERTINO CITY COUNCIL

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO
AUTHORIZING INITIATION OF THE PUBLIC UTILITIES CODE § 10061
PROCESS TO ADOPT A FUTURE LONG-TERM LEASE OF REAL PROPERTY
(WATER SYSTEM) THAT MAY BE EFFECTIVE AS EARLY AS OCTOBER 1,
2022**

WHEREAS, from about 1960 until 1997 the City provided water service to approximately 4,200 metered customers using a water system constructed and operated by the City (“Water System”); and

WHEREAS, the production, treatment, and distribution of potable water within the Water System area 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 provisions of the Municipal Code, in part, to satisfy applicable potable water safety and health requirements; and

WHEREAS, the City may lease property to private parties pursuant to California Constitution Article XI Section 9; Government Code Sections 37350, 37380 and 37395; and Public Utilities Code Sections 10003, 10004, and 10061; and

WHEREAS, pursuant to Public Utilities Code section 10061, the City Council adopted on September 2, 1997 by Council Resolution 9950 the original Agreement for Lease of Real Property (Water System) which leased the Water System to San Jose Water Company for a period of 25 years; and

WHEREAS, the City Council adopted on December 17, 2019 by Council Resolution 19-145 an Amended and Restated Agreement for Lease of Real Property (Water System) (“Amended Lease”) to clarify various operational matters; and

WHEREAS, pursuant to Amended Lease all operations of the Cupertino Municipal Water System are provided by a private water utility operator collector pursuant to the terms of the Amended Lease and Cupertino Municipal Code; and

WHEREAS, the City does not provide water system services, rather the private water utility has agreed to protect public health, safety and welfare and comply with applicable laws; and

WHEREAS, the Amended Lease will expire on September 30, 2022 and the City Council must consider how the customers of the Water System will receive service in the future including via a new long-term lease, sale of the Water System, or operation by the City itself; and

WHEREAS, a public hearing notice regarding the City Council's consideration of the continued operation of the Water System was posted on the City's website on July 9, 2021 and notices were published in the newspaper of the Cupertino Courier for general circulation; and

WHEREAS, all documentation to support consideration of the continued operation of the Water System as placed on file with the City Clerk for public inspection and review; and

WHEREAS, at its regular meeting on July 20, 2021, the City Council held a duly noticed public hearing to consider the lease, sale or City operation of the Water System; and

WHEREAS, at the public hearing, interested persons had the opportunity to testify regarding the potential lease, sale or City operation of the Water System; 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. In anticipation of the expiration of the Amended Lease on September 30, 2022, City staff should issue requests for proposals for a new long-term lease pursuant to the provisions of Public Utilities Code Section 10061.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Cupertino, does hereby:

1. Authorize the Director of Public Works to draft a request for proposals for a new long-term lease of the Water System and engage professionals to assist with the preparation and negotiation of the request for proposal and new lease, including special legal counsel and other professionals as may be needed, and take all action as may be reasonably necessary to effectuate the purposes of this Resolution; and
2. Upon receipt and analysis of proposals received, return for City Council consideration for the authorization of a new long-term lease that may be effective as early as October 1, 2022.

BE IT FURTHER RESOLVED that this Resolution is not a project under the requirements of the California Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Resolution is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it can be seen with certainty to have no possibility of a significant effect on the environment. CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, initiating the Public Utilities Code section 10061 process does not commit the City to a definite course of action as all proposals could be rejected. Further, if an award is made to enter a long-term lease, doing so merely provides for the continued operation of an existing Water System without an expansion in the physical improvements or increase in the level of service, so this is not an activity subject to CEQA. Environmental review will be conducted as necessary for any changes to the Water System that may be agreed upon in the future. The foregoing determination is made by the City Council in its independent judgment.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 20th day of July 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