

**RESOLUTION NO. 19-8649**

**A RESOLUTION OF THE CITY OF SANTA CLARA, CALIFORNIA  
AGREEING TO CONFIDENTIALITY REQUIREMENTS AND  
DELEGATING AUTHORITY TO CITY MANAGER AND CITY  
ATTORNEY TO SIGN NEW MANDATORY MEDIATION  
DISCLOSURE STATEMENT IN ACCORDANCE WITH SB 954**

**BE IT RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

**WHEREAS**, pursuant to SB 954, which went into effect on January 1, 2019, an attorney must provide to his or her client a printed disclosure containing the confidentiality restrictions related to mediation, and the client must sign a printed acknowledgment stating that the client has read and understands the confidentiality restrictions, prior to a mediation occurring;

**WHEREAS**, due to Brown Act requirements, the City Council does not and cannot attend mediations, rather City Attorney's Office staff attends mediation and reports back to Council in closed session the amount of the settlement demand (in the event that settlement demand exceeds the authority granted to the City Attorney and City Manager under the City Code);

**WHEREAS**, City Code § 1.15.090 grants settlement authority to the City Attorney and City Manager up to \$50,000 in claims and litigation matters and up to \$250,000 in worker's compensation matters;

**WHEREAS**, due to the processes utilized by the City to litigate and resolve its claims, including codified delegation of settlement authority, it would be most effective and efficient to delegate authority to sign the new mandatory mediation confidentiality disclosures to the City Attorney and City Manager; and

**WHEREAS**, the City Council understands and recognizes the importance of fostering candid discussions of sensitive information during the mediation process, in furtherance of the parties' good faith efforts to resolve the dispute, and agrees to maintain the confidentiality of such information provided to Council by staff following mediation.

**NOW THEREFORE, BE IT FURTHER RESOLVED BY THE CITY OF SANTA CLARA AS FOLLOWS:**

1. That the City Council has read and understood the required Mediation Disclosure Notification and Acknowledgement form, attached as Exhibit A. The City Council acknowledges and agrees to abide by state law and keep confidential information received through the mediation process, including that information provided to Council by staff following mediation. The City Council understands and agrees that the information received through the mediation process cannot be used in later legal processes including in a malpractice claim brought by the City against its counsel of record.

2. That the City Council hereby grants to the City Manager, or her/his designee, the authority to execute a Mediation Disclosure Notification and Acknowledgement form, attached as Exhibit A, on behalf of the City as the "Client" as required by SB 954 in those cases in which the City Attorney's Office is acting as counsel of record for the City.

3. That the City Council hereby grants to the City Attorney, or her/his designee, the authority to execute a Mediation Disclosure Notification and Acknowledgement form, attached as Exhibit A, on behalf of the City as the "Client" as required by SB 954 in those cases in which the City has retained outside counsel to act as counsel of record for the City.

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4. Effective date. This resolution shall become effective immediately.

I HEREBY CERTIFY THE FOREGOING TO BE A TRUE COPY OF A RESOLUTION PASSED AND ADOPTED BY THE CITY OF SANTA CLARA, CALIFORNIA, AT A REGULAR MEETING THEREOF HELD ON THE 15<sup>TH</sup> DAY OF JANUARY, 2019, BY THE FOLLOWING VOTE:

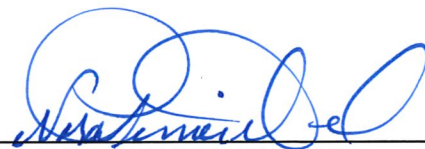
AYES: COUNCILORS: Chahal, Davis, Hardy, Mahan, O'Neill, and Watanabe and Mayor Gillmor

NOES: COUNCILORS: None

ABSENT: COUNCILORS: None

ABSTAINED: COUNCILORS: None

ATTEST: \_\_\_\_\_



NORA PIMENTEL, MMC  
ASSISTANT CITY CLERK  
CITY OF SANTA CLARA

Attachments incorporated by reference:

1. Mediation Disclosure Notification and Acknowledgement Form

## Mediation Disclosure Notification and Acknowledgment

To promote communication in mediation, California law generally makes mediation a confidential process. California's mediation confidentiality laws are laid out in Sections 703.5 and 1115 to 1129, inclusive, of the Evidence Code. Those laws establish the confidentiality of mediation and limit the disclosure, admissibility, and a court's consideration of communications, writings, and conduct in connection with a mediation. In general, those laws mean the following:

- All communications, negotiations, or settlement offers in the course of a mediation must remain confidential.
- Statements made and writings prepared in connection with a mediation are not admissible or subject to discovery or compelled disclosure in noncriminal proceedings.
- A mediator's report, opinion, recommendation, or finding about what occurred in a mediation may not be submitted to or considered by a court or another adjudicative body.
- A mediator cannot testify in any subsequent civil proceeding about any communication or conduct occurring at, or in connection with, a mediation.

This means that all communications between you and your attorney made in preparation for a mediation, or during a mediation, are confidential and cannot be disclosed or used (except in extremely limited circumstances), even if you later decide to sue your attorney for malpractice because of something that happens during the mediation.

I, \_\_\_\_\_ [Name of Client], understand that, unless all participants agree otherwise, no oral or written communication made during a mediation, or in preparation for a mediation, including communications between me and my attorney, can be used as evidence in any subsequent noncriminal legal action including an action against my attorney for malpractice or an ethical violation.

NOTE: This disclosure and signed acknowledgment does not limit your attorney's potential liability to you for professional malpractice, or prevent you from (1) reporting any professional misconduct by your attorney to the State Bar of California or (2) cooperating with any disciplinary investigation or criminal prosecution of your attorney.

[Name of Client] [Date signed]

[Name of Attorney] [Date signed]