



Agenda Report

19-048

Agenda Date: 1/15/2019

REPORT TO COUNCIL AND STADIUM AUTHORITY BOARD

SUBJECT

Action to Adopt Resolutions Agreeing to Confidentiality Requirements and Delegating Authority to City Manager/Executive Director and City Attorney/Stadium Authority Counsel to Sign New Mandatory Mediation Disclosure Statement Pursuant to SB 954

BACKGROUND

On January 1, 2019, SB 954 went into effect. The new law modifies the existing requirements relating to confidentiality of discussions occurring in the context of mediation of claims and litigation, and creates a new requirement for “informed consent” by a client prior to participating in mediation. Under the new law, 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. While the failure to comply with this new requirement would not invalidate a settlement reached at mediation, it may result in the non-confidentiality of discussions held at the mediation, which could negatively affect the City’s position in the case it proceeds to trial.

DISCUSSION

For many reasons - including judicial economy/efficiency and democratic values of self-determination - voluntary resolution of disputes is the favored policy in California. Disputes are most often voluntarily resolved through the mediation process, which generally involves the parties and their legal counsel meeting with a neutral mediator who fosters discussion of disputed issues in a constructive manner, with the common goal of reaching a resolution that is in the best interests of all the involved parties. Such discussion often includes candid statements and fact-sharing on sensitive topics. For example, updates on medical treatments and prognosis are often provided in mediation of a personal injury or worker’s compensation case. This information-sharing is necessary in order to reach an informed and accurate valuation of the case for the purposes of settlement, but would most certainly *not* be shared if it was to be made public after the mediation concluded. Therefore, in order to foster this necessary candid discussion, and promote settlement of cases, the state legislature enacted a number of Evidence Code sections that render these discussions confidential and prohibit the use of information shared in mediation later on in trial if the case does not settle. The new law adds to this existing framework a requirement that a client provide informed consent to its attorney relating to mediation confidentiality *prior to* the mediation. 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 the City Attorney/Stadium Authority Counsel and City Manager/Executive Director to sign mediation confidentiality disclosures.

The City is represented in claims and litigation matters by the City Attorney’s Office, or by outside counsel, or both, depending upon the substance, nature, and venue of the case. Almost all claims and litigation matters go through some form of pre-trial dispute resolution process, most often

mediation. Many of the City's cases are resolved through the mediation process. The City Council/Stadium Authority Board does not and cannot attend mediations because, under the Brown Act and the opinions following it, the presence of a majority of the body at a mediation would constitute a meeting, requiring noticing and public access/participation; this would obviously negate the confidentiality that is integral to the process.

The City Attorney and City Manager are granted settlement authority up to \$50,000 in claims and litigation cases, and up to \$250,000 in worker's compensation cases, under City Code § 1.15.090. The vast majority of the City's claims are settled within these thresholds, and often in the context of mediation. Based upon the settlement authority statute, these cases do not come before the City Council in either closed or open sessions. Thus, for the purpose of signing a mediation confidentiality acknowledgement, either the City Attorney's Office or the City Manager's Office would be the appropriate signatory for the document in these cases.

In the event that the settlement exceeds the statutory thresholds, City Council/Authority Board approval or rejection of the claimant's settlement demand is sought confidentially in closed session. Generally, the settlement demand is presented by a claimant in the context of mediation and following extensive settlement discussions between City Attorney's Office staff, the City's outside counsel, and the claimant's legal representatives. Thus, the Council/Board's consideration of the settlement proposal generally would not occur until *after* the mediation and, again, the Council/Board would not be present at the mediation. Therefore, even in the cases where the settlement exceeds statutory thresholds, the stated staff members would be the appropriate signatories to the mediation confidentiality disclosure.

Requiring the City Attorney/Stadium Authority Counsel to bring each and every litigation matter to closed session first prior to the mediation for signature by a majority of Council/Board on a confidentiality disclosure form (including those cases that will be resolved within SCCC 1.15.090 thresholds, and therefore would never come before Council), and then again after the mediation for approval/rejection of the settlement demand if it exceeds the authority threshold, is entirely inefficient.

The proposed Resolutions take the following actions: (1) State the Council/Board's acknowledgement and agreement to the terms of mediation confidentiality set forth in state law, including an agreement to uphold confidentiality of mediation information that is reported by staff in closed session, and (2) Delegate signature authority to the City Manager/Executive Director and City Attorney/Stadium Authority Counsel for the newly required Mediation Disclosure Notification and Acknowledgement form.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(5) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

FISCAL IMPACT

There is no cost to the City other than administrative staff time and expense.

COORDINATION

This Report has been coordinated with the City Manager's Office.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email clerk@santaclaraca.gov <<mailto:clerk@santaclaraca.gov>> or at the public information desk at any City of Santa Clara public library.

RECOMMENDATION

Adopt Resolutions agreeing to confidentiality requirements and delegating authority to City Manager/Executive Director and City Attorney/Stadium Authority Counsel, as applicable, to sign new mandatory mediation disclosure statement in a form substantially similar to the attached Mediation Disclosure Notification and Acknowledgement.

Approved by: Brian Doyle, City Attorney/Stadium Authority Counsel

Approved by: Deanna Santana, City Manager/Executive Director

ATTACHMENTS

1. Mediation Disclosure Notification and Acknowledgement
2. City Council Resolution 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
3. Stadium Authority Resolution agreeing to confidentiality requirements and delegating authority to Executive Director and Stadium Authority Counsel to sign new mandatory mediation disclosure statement in accordance with SB 954