

RESOLUTION NO. _____ (N.C.S.)

**RESOLUTION DIRECTING CITY MANAGER TO EXECUTE MEDIATION
DISCLOSURE AND ACKNOWLEDGMENT**

WHEREAS, from time to time, when appropriate, the City should engage in resolution of legal disputes by means other than litigation. One such form of alternative dispute resolution that the City wishes to participate in, from time to time, is mediation of legal disputes; and

WHEREAS, 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; and

WHEREAS, all communications between the City, the City's staff, the City's elected officials and the City's 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 the City later decide to sue its attorney for malpractice because of something that happens during the mediation; and

WHEREAS, the Council understands that, unless all participants agree otherwise, no oral or written communication made during a mediation, or in preparation for a mediation, including communications between the City, the City's staff, the City's elected officials and the City's attorney, can be used as evidence in any subsequent noncriminal legal action including an action against the City's attorney for malpractice or an ethical violation; and

WHEREAS, this resolution does not limit the City's attorney's potential liability to the City for professional malpractice, or prevent the City 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; and

WHEREAS, an attorney representing a client participating in a mediation or a mediation consultation shall, as soon as reasonably possible before the client agrees to participate in the mediation or mediation consultation, provide that client with a printed disclosure containing the confidentiality restrictions described in Section 1119 and obtain a printed acknowledgment signed by that client stating that he or she has read and understands the confidentiality restrictions; and

WHEREAS, such disclosure has been made to the City Council by the Office of the City Attorney and the Council wishes to execute the required printed acknowledgment.

NOW, THEREFORE, BE IT RESOLVED that the Salinas City Council directs the City Manager to execute the Mediation Disclosure Notification and Acknowledgment.

PASSED AND APPROVED this 8th day of January, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Joe Gunter, Mayor

ATTEST:

Patricia M. Barajas, City Clerk