



City of Arts & Innovation

# City Council Memorandum

**TO: HONORABLE MAYOR AND CITY COUNCIL      DATE: SEPTEMBER 7, 2021**

**FROM: CITY ATTORNEY'S OFFICE      WARDS: ALL**

**SUBJECT: CALIFORNIA STATE LEGISLATION UPDATE: SB 954 (AMENDING EVIDENCE CODE SECTION 1129) REGARDING RULES OF CONFIDENTIALITY THAT APPLY TO MEDIATIONS**

## **ISSUE:**

Senate Bill No. 954 amended California Evidence Code Section 1129 requiring attorneys to obtain written acknowledgments from their clients regarding the rules of confidentiality that apply to mediation.

## **RECOMMENDATION:**

That the City Council receive and file this report and authorize the Mayor Pro Tempore to sign the attached written acknowledgment (Attachment 1) regarding mediation confidentiality on behalf of City Council that will apply for all future mediations for the fiscal year 2021/2022.

## **BACKGROUND:**

Mediation is an alternative form of dispute resolution whereby litigants try to find a way to resolve cases without having to proceed to trial. It is an informal process where an impartial third-party assists parties in resolving disputes. The Legislature enacted Senate Bill No. 954, effective January 1, 2019, amending Evidence Code Section 1129 (Attachment 2) to promote and protect candid off-the-record settlement discussions from being disclosed in later trials. On September 15, 2020, the City Council received a report on this matter and the Mayor Pro Tempore was authorized to sign the written acknowledgment. This is now up for annual renewal for fiscal year 2021/2022.

## **DISCUSSION:**

This new law is intended to ensure clients understand the implications of excluding mediation communications from later proceedings, including any subsequent litigation against attorneys for malpractice. In *Cassel v. Superior Court*, 51 Cal. 4th 113, 123 (2011), the California Supreme Court explained that the mediation privilege "is to encourage the use of mediation by promoting a candid and informal exchange regarding events in the past. This frank exchange is achieved only if the participants know that what is said in the mediation will not be used to their detriment through later court proceedings and other adjudicatory processes."

Evidence Code Section 1129 does not change the City's protocols for obtaining settlement authority for mediations. It merely requires the City Attorney's Office to advise City Council in

writing of the rules of confidentiality that apply to mediations. In order to streamline the process, the City Attorney's Office would like City Council to authorize the Mayor Pro Tempore to execute the attached written acknowledgment to apply for all future mediations during the fiscal year 2021/2022.

**FISCAL IMPACT:**

There is no fiscal impact associated with this report.

Prepared by: Rebecca McKee, Assistant City Attorney  
Approved as to form: Phaedra A. Norton, City Attorney

**Attachments:**

1. Mediation Disclosure Notification & Acknowledgment
2. Evidence Code Section 1129