



## OFFICE OF THE CITY CLERK

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### CITY COUNCIL STAFF REPORT

Meeting: June 2, 2020

#### Subject

Resolution rescinding City Manager designation as City employee/official to attend closed sessions of the City Council and keep closed session minutes and reaffirming the City Clerk as the designated closed session minute keeper; Municipal Code Amendment to Cupertino Municipal Code Section 2.20.010 (Recordkeeping Duties-Closed Sessions) of Chapter 2.20 (City Clerk) To Title 2 (Administration and Personnel) to clarify limited access to closed session minutes.

#### Recommended Action

1. Adopt Resolution No. 20-\_\_\_ rescinding Resolution No. 20-014 thereby removing the designation of the City Manager as the City employee/officer to attend City Council closed sessions and keep minutes and confirming the City Clerk as the Designated employee/officer to attend city council closed sessions and keep minutes.
2. Conduct the first reading of Ordinance No. 20-\_\_\_: "An Ordinance of the City Council of the City of Cupertino Amending City Code Section 2.20.010 (Recordkeeping Duties-Closed Sessions) of Chapter 2.20 (City Clerk) To Title 2 (Administration and Personnel) to Clarify Limited Access to Closed Session Minutes."

#### Background

The Brown Act, contained in California Government Code Section 54950 et seq., authorizes a City Council to go into closed session to discuss certain sensitive matters, including personnel, salary negotiations, real property transactions, and litigation. Government Code Section 54957.2 authorizes a City Council to designate by ordinance or resolution an officer or employee to attend closed sessions and keep a minute book with a record of the topics discussed and decisions made in closed session. Under the Government Code, the minute book is confidential.

Cupertino Municipal Code Section 2.20.010 discusses recordkeeping duties for the City Clerk, including for closed sessions. It states that the City Clerk shall attend all closed sessions and keep and enter a minute book as a record of topics discussed and decisions made. It also states that with respect to any particular closed session, the Council may order that minutes be kept by another officer or employee of the City. In addition, it provides that any minutes taken by a person other than the City Clerk shall be retained in a minute book by the City Attorney.

### Discussion

On February 4, 2020, the City Council accepted the staff report recommendation (Attachment C) and adopted Resolution No. 20-014 (Attachment D) designating the City Manager as the City employee/officer to attend City Council closed sessions and keep minutes. Council also conducted the first reading of an Ordinance to amend Municipal Code Section 2.20.010 to remove the City Clerk's duty to attend each closed session of the City Council and keep closed session minutes.

At the Council meeting of February 18, 2020, Council decided to retain the Municipal Code Section 2.20.010 provision designating the City Clerk as the employee to attend closed sessions and keep minutes and therefore did not conduct the second reading of the proposed ordinance. The City Council directed that staff bring back a resolution to rescind adopted Resolution No. 20-014 to conform to the Municipal Code. The Draft Resolution (Attachment A) will remove the designation of the City Manager as the individual to attend closed sessions and keep minutes, thereby confirming the City Clerk as the designated city employee/officer to attend closed sessions and take minutes.

At the February 18, 2020 meeting, Council also expressed an interest in clarifying who has access to the closed session minute book. The Draft Ordinance (Attachment B) would make clarifying amendments to conform to state law and provide a process for limited access by the City Manager and the City Attorney as follows:

- The City Council may authorize the City Manager and/or the City Attorney to view the minute book for specific entries related to the City Manager's and City Attorney's respective duties.
- Consistent with FPPC regulations, 2 C.C.R section 18707, councilmembers who recused themselves from specific closed session meetings may not access the minutes for those meetings.
- Consistent with Gov Code section 54957.2, access is allowed to members of the City Council and to a court of general jurisdiction wherein the City lies.

### Sustainability Impact

None

### Fiscal Impact

None

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Prepared by: Kirsten Squarcia, City Clerk

Reviewed by: Heather Minner, City Attorney

Approved for Submission by: Dianne Thompson, Assistant City Manager

Attachments:

A – Draft Resolution  
B – Draft Ordinance  
C – February 4, 2020 Staff Report  
D – Adopted Resolution No. 20-014