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MEMORANDUM

ATTORNEY-CLIENT COMMUNICATION
PRIVILEGED & CONFIDENTIAL

DATE: March 8, 2018

TO: Mayor Jesus OlveraGarcia and Council Members
City of Greenfield

FROM: City Attorney's Office

RE: Personnel Matter and Role of Mayor, Council Members and City Manager

Honorable Mayor OlveraGarcia and Council Members,

It is our pleasure and duty as your City Attorney's Office to serve your needs as the primary advisory resource for the City Council and the City Manager. In light of recent events, we want to take this opportunity to address a significant issue concerning City personnel and again review the responsibilities and roles of the Mayor, Council and City Manager, which has been discussed during the ethics training and in previously issued memoranda. It is important that we bring this issue to your attention and that the Council review these roles to understand the specific responsibilities of the Mayor, Council and City Manager, and conversely, the limitations imposed on them. This is because operating outside of these designated roles, especially in light of recent events, could create significant potential liability for the City, as well as potential liability in your personal capacity.

It is come to our attention that Councilmembers have requested the performance of the Community Services Director be placed as a closed session item on the agenda. It has also come to our attention that a Councilmember has publicly stated that it is the Councilmember's "goal" to have the Community Service Director's job title changed to "Planning Director" because it is the Councilmember's opinion that the Community Services Director only does "planning." These actions are indicative of the Council attempting to evaluate the Community Service Director's performance, which is inappropriate and potentially unlawful. For the following reasons, we strongly recommend <u>against</u> both of these courses of action and against the Council taking any further action or making further statements regarding the performance evaluations of the Community Service Director, or any other Department Heads or City Staff.

The City uses a Council-Manager system, and the duties and responsibilities bestowed upon the City Manager by the Council are set forth in section 2.04.060 of the Municipal Code. One of the primary responsibilities of the City Manager is to serve as the administrative head of the government of the City and to ensure the efficient administration of the City's affairs. The City Manager is also specifically tasked with controlling, ordering and giving directions to all heads of departments and to subordinate officers and employees of the City. Council's role, on the other hand, is to set direction for the City, determine policy, and provide support to the City Manager and staff as they carry out the Council's direction, by majority action. Additionally, Municipal Code section 2.04.080 mandates that the Council and its members shall deal with the administration services of the City only through the City Manager and shall not give direction to City employees except through the City Manager.

In light of the powers, duties, and responsibilities delegated to the City Manager under the Municipal Code (and the limitation imposed upon Council with respect to personnel issues), the performance evaluation of a Department Head is ***outside*** the authority of Council. Therefore, Council may not legally hold a closed session to discuss the performance of a City Department Head, and Council should refrain from any conduct or statements that attempt to evaluate the performance, or are merely indicative of evaluating the performance of the Community Service Director, or any other Department Head or City Staff. This includes making statements about changing the Community Service Director's title, which can be construed as an attempt to evaluate the performance of that employee. Failure to adhere to Council's lawful role, including continued attempts to evaluate City Staff, can create legal liabilities for the City. Additionally, Councilmembers acting outside of the scope of their authority risk losing those protections and immunities, and puts their City and themselves at risk of significant liability. We bring this to your attention because Council's recent actions suggest that Council is attempting to evaluate the Community Service Director's performance, which is inappropriate, potentially unlawful, and may expose the City to significant risk of liability.

If Council has concerns regarding the performance of City Staff, the appropriate way to handle such concerns would be to communicate directly with the City Manager. However, performance evaluations of City Staff, including Department Heads, should be left solely and exclusively to the City Manager.

Lastly, we want to note that operating within the designated roles for the Council and City Manager helps provides clear direction for the staff and the community. Not only does stepping out of one's role and overlapping the responsibilities of another create potential liability, it may also result in ineffective management and inefficient operation of the City. Further, a lack of understanding regarding the role and function of the Council, Mayor and City Manager may result in confusion, misunderstanding, and friction among Council members, commissions, City Staff and the community.

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MEMORANDUM

ATTORNEY-CLIENT COMMUNICATION
PRIVILEGED & CONFIDENTIAL

DATE: December 4, 2017

CLIENT/MATTER: 1908/09

TO: Mayor Jesus OlveraGarcia and Council Members
City of Greenfield

FROM: Mary Lerner
City Attorney's Office

RE: Potential Litigation-Police Chief Applicants

Honorable Mayor OlveraGarcia and Council Members,

The following is in response to a communication the city manager received from a Council Member regarding the candidates for the Chief of Police position. In particular, the questions concerned potential lawsuits against one or both of the candidates and whether a certain candidate should be eliminated from the final applicant pool. The questions brought by a Council Member raises a number of concerns and issues.

As a reminder, the City Manager is solely responsible for hiring the Police Chief. The Council does not oversee the hiring process and is not required to be involved. As a courtesy to the Council and to obtain community input, the City Manager organized the citizen's committee (which included a representative appointed by each Council Member) to participate in interviews of the final candidates and share their comments and opinions with the City Manager for his consideration. However, neither the Council nor the public has any authority over the hiring process. To inform the City Manager that council will not advocate for a specific person to be the police chief or to state the decision to hire should be one candidate over another is improper and could be seen as coercion especially in light of earlier discussions regarding the need to do a City Manager evaluation. Such action can be implied as telling the City Manager what he should do with respect to hiring the Police Chief.

The interviews for the two police chief candidates were conducted on Thursday, November 30, 2017. The community panel was given confidential information regarding the candidates which information was not to be shared with anyone. Following the interviews, a Council Member contacted the City Manager with concerns regarding one or both of the final candidates of the Chief of Police position and alleged lawsuits concerning the applicants.

Lawsuits against public employees, especially those in law enforcement, are very common. Most, if not all, high-ranking law enforcement officers will have lawsuits filed against them during their career. These lawsuits should be considered only if there is an adverse outcome against the officer. Using lawsuits against a candidate as part of the hiring process that did not result in an adverse outcome against the officer could subject the City to significant liability, including claims of discrimination.

As a reminder, the hiring process is a confidential process and the information and identities of the candidates must remain confidential until a decision is made. Disclosure of confidential information during the hiring process could subject the City to civil liability. It also casts the City in a negative light and could keep highly qualified candidates from applying for future City positions. Further, California law gives specific protection to peace officers' personnel information, and in fact, it is a violation of the penal code to improperly disclose a peace officer's personnel information. Unauthorized disclosure could subject the City and individuals disclosing the information to liability.

All candidates were thoroughly screened during the hiring process, and the City is now conducting detailed background checks of both final candidates. The City would not hire a Police Chief without doing its due diligence, and it would be improper to have a knee-jerk reaction to prior lawsuits where there was no adverse outcome against the candidate.

It is our recommendation that if a Council Member is ever approached with confidential information that the Council Member not conduct independent research regarding the information or regarding any candidate and that the City Manager be notified immediately of the sharing of confidential information. It is further recommended that council refrain from text messages regarding such items as the above especially in light of the San Jose case we discussed at the council trainings.