

## **Council Agenda Item re: ADA process**

### **Background**

Prior to August 2019, one or more City Council members apparently made a request for Reasonable Accommodation under the Federal Americans with Disabilities Act (ADA) and/or California Fair Employment and Housing Act (FEHA). Staff subsequently engaged Shaw HR Consulting to work with the city on this issue.

At the Council meeting of August 27, 2019, Rachel Shaw, principal of Shaw HR consulting, presented the legal framework and process by which she works with clients.

At the Council meeting of September 10, 2019, Mayor Lee Eng asked to put the matter on a future agenda. Following brief discussion, Mr. Jordan said he would pose certain questions to Shaw HR Consulting.

In a letter to the Council dated September 18, Ms. Shaw replied to three questions, as framed by Mr. Jordan:

- “1. The scope, process, and schedule/timeline for the contracted work with Shaw HRC.
2. What the council’s involvement is in any of these steps
3. How public needs factor into this process, and when”

At the Council meeting of September 24, Mayor Lee Eng and Councilmember Enander asked to have the matter placed on the agenda for the next regular Council meeting (October 22, 2019) for further discussion regarding the information in the September 18 letter. Councilmember Enander was tasked to draft a note for the agenda.

### **Discussion**

In Ms. Shaw’s presentation on August 27, she presented the “4 door” process used by Shaw HR Consulting in working with employers on ADA/FEHA accommodation requests. Doors 1 and 2 deal with identification and medical verification of the condition and need for accommodation requested. Door 3 is to bring together the “Right People Involved in Decisions” for making “Long-Term decisions” of accommodation. Other materials regarding FEHA provided by Shaw HR Consulting explain that a “reasonable accommodation” may not unreasonable interfere with the organization’s work.

Ms. Shaw has acknowledged that the situation with an elected official making a request for accommodation presents some unusual challenges. In a business or other government setting where an employee makes a request, there is a manager or executive who takes the final decision on whether an accommodation request is “reasonable” and can be implemented without posing an “undue hardship” (ADA) on the organization.

In Los Altos, the City Manager has taken the decision to relocate the City Council meetings from Council chambers to LAYC, apparently in response to at least one request for accommodation. That action, in turn, has presented a number of issues regarding public access, difficulties of communication, etc. for both the public and Council.

### **Issues**

The issues for Council to address:

1. Who determined “a third-party combination of an HR Consultant and Attorney will identify reasonable accommodation options to be implemented” as stated in the September 18 letter from Ms. Shaw? Is that legal and acceptable to Council?
2. What role should Council play in moving through this process to completion, including consideration of public participation and access?
3. What role and responsibility does Council have in implementation and follow-up?

In having such a discussion, it is important to respect that neither Council members nor the public have any right to the identities of the individuals who have made requests for accommodation or to medical information about their disabling condition(s).