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**TO: Cupertino City Council**

**FROM: Chris Jensen, City Attorney**

**DATE: October 10, 2024**

**SUBJECT: Absence of Councilmember Hung Wei**

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### **Question Presented**

Has Councilmember Hung Wei's absence from City Council meetings for medical reasons disqualified her from serving on the City Council?

### **Short Answer**

No. Councilmember Wei continues to serve as a Councilmember.

### **Discussion**

Councilmember Hung Wei has not attended City Council meetings since Council returned from its annual recess, due to medical reasons. The City Attorney's Office has been asked to opine as to whether Councilmember Wei may continue to hold her seat. As explained below, the City Attorney's Office concludes that Councilmember Wei's seat has not been vacated and she remains a member of the City Council.

- 1. Councilmen Wei's seat is not vacated due to the fact that she has been unable to attend City Council meetings.**

Government Code section 35613(a) provides: "If a city councilmember is absent without permission from all regular city council meetings for 60 days consecutively from the last regular meeting he or she attended, his or her office becomes vacant and shall be filled as any other vacancy." The City Council returned from recess (an excused absence) on

September 4, 2024. 60 days has not elapsed since September 4. Accordingly, Councilmember Wei's seat is not vacant at this time.

Councilmember Wei has advised the Clerk's Office that she has been absent for health-related reasons. The City Council has no policy as to whether health-related absences are excused. Under section 35613(a), Council can take action to confirm that health-related reasons are a valid reason to be absent from Council meetings and that an absence to seek treatment for a medical condition does not result in the vacation of a Councilmember's seat.

**2. Councilmember Wei continues to reside in the City of Cupertino.**

Government Code section 35612(a) states: "A person is not eligible to hold office as councilmember . . . unless he or she is at the time of assuming the office an elector of the city, and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code. If, during his or her term of office, he or she moves his or her place of residence outside of the city limits or ceases to be an elector of the city, his or her office shall immediately become vacant." "Place of residence" in section 35612 refers to "legal residence or domicile." (72 Ops. Atty. Gen. 63 (1989).) "The test for determining a person's domicile is physical presence plus an intention to make that place his permanent home." (*Fenton v. Board of Directors* (1984) 156 Cal.App.3d 1107, 1116.) Councilmember Wei has publicly stated she intends to return to her home in Cupertino. Based on available evidence, Councilmember Wei's place of residence remains in the City of Cupertino. Thus, she remains qualified to serve as a Councilmember under Government Code section 35612.