

RESOLUTION NO. 1360

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDMONDS,
WASHINGTON, REPEALING RESOLUTION 853, WHICH DIRECTED
THAT “MINUTES” BE TAKEN DURING EXECUTIVE SESSIONS.

WHEREAS, the city council adopted Resolution 853 in 1996, which directed that “minutes” be taken during executive sessions; and

WHEREAS, “minutes” is not an appropriate description of what takes place pursuant to Resolution 853, because the notes that are taken are never reviewed and approved by the city council in open session or otherwise; and

WHEREAS, because they are not reviewed and approved, they cannot be relied upon with the same certainty that one would rely upon city council meeting minutes that have been reviewed and approved; and

WHEREAS, the city has had to release some of the executive session notes that are not protected by the attorney-client privilege; and

WHEREAS, if the city continues the practice of note taking, the possibility of release of the non-privileged notes could discourage councilmembers from speaking candidly on important matters that properly could be discussed in executive session; and

WHEREAS, some have suggested that Resolution 853, and comments made during the deliberations on Resolution 853, expressed an intent that the city council would review these executive session notes, upon request, and then determine whether to waive the attorney-client privilege to allow their disclosure; and

WHEREAS, The problem with the language used in Resolution 853 for describing when disclosure might occur – “if and when the reason for the executive session expires” – is that the attorney-client privilege does not expire and a large number of the city council’s executive session notes are protected by the attorney-client privilege; and

WHEREAS, some have suggested that the city council should review privileged notes on a case by case basis, pursuant to public records requests, to determine whether the city council should waive the attorney-client privilege and allow the notes to be disclosed publicly; and

WHEREAS, Rule 502 of the Washington Rules of Evidence states that when a waiver results from a *deliberate* disclosure (as would be the case if the city council voted to waive the privilege), the waiver extends to the actual materials disclosed, plus any other materials relating to the same subject matter that ought, in fairness, be considered together with the disclosed materials; and

WHEREAS, the extent of privilege waiver in cases of deliberate disclosure is inherently unpredictable and cannot be known at the time of disclosure; and

WHEREAS, the city council does not want to place the city at risk by initiating a deliberate disclosure without being able to control the extent of the resulting privilege waiver; and

WHEREAS, the city council and city staff are not aware of any other cities that take and maintain detailed notes of what is said during executive session; and

WHEREAS, the city council believes that the current process of taking executive session notes places a burden on the city clerk's office without sufficient corresponding public benefit to justify continuation of the practice initiated by Resolution 853; now therefore,

THE CITY COUNCIL OF THE CITY OF EDMONDS, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. REPEALER. Resolution 853 is hereby repealed.

RESOLVED this 7th day of June, 2016.

CITY OF EDMONDS


MAYOR, DAVE EARLING

ATTEST:


CITY CLERK, SCOTT PASSEY

FILED WITH THE CITY CLERK:	June 3, 2016
PASSED BY THE CITY COUNCIL:	June 7, 2016
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