

REGULAR

NUMBER: 262.5

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS (1) AMENDING SECTION 3.110 OF CHAPTER 310, TITLE I OF THE MILPITAS MUNICIPAL CODE TO COMPORT WITH RECENT CASE LAW ON THE DISCLOSURE OF PUBLIC RECORDS; (2) AMENDING SECTION 4.40 OF CHAPTER 310, TITLE I TO CHANGE COMPLIANCE TRAINING REQUIREMENTS FOR CERTAIN EMPLOYEES AND OFFICIALS; AND (3) AMENDING SECTION 3.20 OF CHAPTER 310, TITLE I TO REDUCE THE TIMEFRAME TO REQUEST ADMINISTRATIVE REVIEW

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of _____, 2007, upon motion by Councilmember _____ and was adopted (second reading) by the City Council at its meeting of _____, 2007 upon motion by Councilmember _____. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael Ogaz, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals and Findings

- A. In August of 2007, the California Supreme Court issued its opinions in two new California Public Records Act cases that changed disclosure requirements for public records requests concerning individual public employee gross salary information, including peace officer employee gross salary information, and peace officer personnel information.
- B. Milpitas Municipal Code Title I, Chapter 310, Section 3.110 must be updated to comport with these two recent California Supreme Court decisions.
- C. In addition to the legally mandated amendment detailed above, the City Council Open Government Subcommittee further recommended the following amendments to the Open Government Ordinance for introduction and adoption by the City Council:
 - a. All new employees shall be trained in Open Government Ordinance compliance upon the commencement, or as soon thereafter, of their employment.
 - b. All elected and appointed officials and department heads shall be trained in Open Government Ordinance compliance upon commencement of their term and employment.
 - c. After the initial training, subsequent trainings shall be reduced in frequency to once every three years.
 - d. The time period for administrative review of a public records act response should be reduced from forty-five days to ten days.

SECTION 2.

Section I-310-3.110, subdivision (a)(1) of the Milpitas Municipal Code is hereby amended to read as follows:

I-310-3.110 Public Records that Must be Disclosed.

(a) Notwithstanding California Government Code Section 6254, subdivision (c), the following information shall be considered a public record and shall be made available for review upon request by any person, business or association:

(1) A listing of employee names, job titles and gross salaries, including base salaries and other compensation. Other compensation shall include allowances, overtime, deferred compensation, leave cash-out payments and the percentage of base salaries that the City pays as the employer's CalPERS contribution, except where certain employees' safety and effectiveness may require non-disclosure, such as undercover peace officer employees.

SECTION 3.

Section I-310-4.40 of the Milpitas Municipal Code is hereby amended to read as follows:

I-310-4.40 Department Head Declaration and Training; Employee Training.

(a) All City department heads, management employees, board members, commissioners, and all employees or public officials who are required to sign an affidavit of financial interest with the City Clerk shall attend a training session on the Open Government Ordinance upon the commencement, or as soon thereafter, of their term or employment. The affidavit or declaration shall be maintained by the City Clerk and shall be available as a public record. Training shall be provided by the City Attorney's Office.

(b) All new employees shall receive Open Government Ordinance training upon the commencement, or as soon thereafter, of their employment.

(c) After an employee or public official's initial training, Open Government Ordinance training is required every three years.

SECTION 4.

Section I-310-3.20(e) of the Milpitas Municipal Code is hereby amended to read as follows:

I-310-3.20 Process for Gaining Access to Public Records; Administrative Appeals

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in subsection (b) of this section or if a petition is denied or not acted upon by the supervisor of public records, the person making the request may petition the City Council Open Government Subcommittee for a determination whether the record requested is public. The City Council Open Government Subcommittee shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 10 days or as soon thereafter as possible from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the City Council Open Government Subcommittee shall advise the City Council as to whether the record should be public. The City Council and the City Attorney's office shall provide sufficient resources to allow the City Council Open Government Subcommittee to fulfill its duties under this provision. Where requested by the petition, the City Council Open Government Subcommittee may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested. Petitions for City Councilmember records shall be made directly to the City Council Open Government Subcommittee for its determination according to this paragraph.

SECTION 5. SEVERABILITY

In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

SECTION 6. PUBLICATION AND EFFECTIVE DATE

This Ordinance shall take effect thirty (30) days after adoption, and prior to the expiration of 15 days from the passage thereof shall be published at least once in a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara, thenceforth and thereafter the same shall be in full force and effect.