

URGENCY

NUMBER: 262.7

TITLE: AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING MUNICIPAL CODE SECTION I-3.10-370 TO REMOVE THE BARRIER TO APPLICATION OF THE “BALANCING TEST” UNDER THE PUBLIC RECORDS ACT

HISTORY: This Ordinance was introduced by the City Council at its meeting of _____, upon motion by _____ and was adopted immediately as an urgency ordinance pursuant to the provisions of California Government Code Sections 36934 and 36937. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS:

WHEREAS, Government Code Sections 36934 and 36937 allow a city to adopt an urgency ordinance for the immediate preservation of the public peace, health or safety; and

WHEREAS, State transparent government laws allow local governments to withhold records from disclosure in cases where the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record; and

WHEREAS, current provisions of Municipal Code Section I-3.10-370 prevent the City of Milpitas from utilizing the previously described balancing test or weighing of interests; and

WHEREAS, as a result, the public peace, health and safety are threatened by the potential release of drawings, plans, schedules, operational materials, and other records relating to high pressure pipelines, conveyances and storage facilities of explosive, hazardous and/or volatile chemicals and materials, pump stations, potable water facilities, and other potential targets of terrorist attack; and

WHEREAS, as a result, the public peace, health and safety are threatened by the potential release of confidential police and firefighter procedures and investigation manuals and documents and emergency response plans, thereby threatening the lives and personal safety of both first responders and the community that they serve; and

WHEREAS, as a result, the public peace, health and safety are threatened by the potential release of investigative reports of the police department or security files that contain data sensitive to the security of staff and public buildings, thereby threatening the personal safety and security of both visitors and government employees at City buildings and public places; and

WHEREAS, in light of such threats and dangers, the Council must take such action to be effective immediately and to do so requires an urgency ordinance.

NOW THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD, BASIS FOR ACTION AND FINDINGS

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above and the findings and justifications in the supporting staff report for this Ordinance are found to be true and correct and are incorporated herein by reference and adopted as the findings of this City Council.

SECTION 2. REPEAL OF SELECT PROVISIONS OF THE MUNICIPAL CODE WITH RETROACTIVE EFFECT

The City Council hereby repeals Sections I-3.10-370(f) and (h) of the Municipal Code in their entirety. This repeal shall be made retroactive to February 7, 2012. Public records requests received prior to that date shall be subject to the prior regulatory scheme. Public records requests received on or after February 7, 2012, shall be subject to the Municipal Code with the amendments set forth herein.

SECTION 3. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 4. EFFECTIVE DATE AND POSTING

In accordance with Government Code Sections 36934 and 36937 this Ordinance is effective immediately as an urgency ordinance and shall be in full force and effect retroactive to February 7, 2012. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.