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MEMORANDUM

Department of the City Attorney

To: Honorable Mayor and Members of the City Council

CC: Charles Lawson, Interim City Manager

From: Richard D. Pio Roda, Assistant City Attorney

Subject: Implementation Timelines for Open Government Ordinance

Date: February 23, 2005

Introduction and Background

At the February 15, 2005 meeting, the Council heard and discussed Vice-Mayor Gomez's proposed Open Government Ordinance. At the hearing, timelines for implementation of the proposed Open Government Ordinance were a major issue of the discussion among the Council and staff. That evening, specific timelines for certain provisions were proposed as edits to the proposed ordinance. The Ordinance has been edited to reflect the agreed upon changes. They are currently:

1. An index of records for all City councilmember and City department files will be created within six months of the passage of the proposed Open Government Ordinance. Such an index shall be coordinated, developed and maintained by the City Clerk. The index shall include as many references to old and current documents of City departments as possible, as well as all of the new document requirements (agendas, meeting minutes, etc.) of the proposed Open Government Ordinance. (Section I-310-3.130)
2. Implementation of department websites as a repository of old (going back three years), current and the enhanced document requirements in the proposed ordinance, allowing increased public access, must also be functional within six months of the passage of the proposed Open Government Ordinance. (Section I-310-3.150)

The City Attorney's Office requested staff provide more feedback on the implementation of these two provisions, as well as any other provisions of the proposed Open Government Ordinance staff considered could require more time to implement.

Discussion

The City Attorney's Office compiled staff's responses regarding implementation timelines for the proposed Ordinance. Many departments found that assisting in the creation of the master public records index while working back, reviewing and identifying what records and documents each had in their files and archives would be a much longer and more involved task requiring a re-balancing of workloads and current personnel. This includes the requirements of Section I-310-3.150 -- which itself provides that new documents required by the proposed ordinance, enhanced access to current documents and older documents as far back as three years, shall be made available on the

departments' websites -- would also include a longer implementation timeline. Staff and the Information Technology Department also need to coordinate as much technology integration into the development process as possible to make the management and maintenance, as well as public access to the documents through the website as efficient and seamless as possible. This requires further planning and integration among staff and IT, which would require greater than six months to implement. Staff estimates that the public records index and the posting of documents on department websites will require greater than six months to implement; staff estimates the number of months to implementation at 10 to 12.

Information Services Department's response

- Recording of meetings

To meet the immediate need, IS will purchase 3 portable cassette recorders with external microphones. These will be given to the City Clerk to be used by the staff liaisons for the various Commissions and Boards. The liaisons will return the recorders and tapes to the Clerks Office. Total cost is estimated to be less than $600 for the recorders and can be funded from the IS Departmental budget. Tapes would be supplied and retained by the Clerks' Office.

Additionally, IS has solicited quotes for integrated audio or audio/video recording in the Committee Room and the Executive Session Room. This option would replace the portable recorders for these meeting rooms. Staff impact would be limited to the management of the installation of the equipment and is estimated at 10 hours per room. On-going maintenance and support would be minimal.

- E-mail Retention

IS understands that the e-mail of the City Council and City Manager is to be archived and retained. Currently there is an SOP for the deletion of all e-mail after 60 days. If the SOP were to remain in place, IS would propose setting up an archive function that would make a copy of all e-mail to and from the City Manager and Council Members. These copies would be stored "outside" the normal e-mail system. Staff impact is estimated at 1-2 hours per month.

- Council & City Manager Calendar

From IS' previous work with the City Attorney and City Clerk's offices, IS has developed a prototype application to capture calendar information through the Internet. It is estimated that an additional 10 hours of staff time would be required to implement the application. On-going support would be minimal.

- Index of Documents

This particular item requires further definition. An index of documents could range from a simple listing of the types of documents retained by each department to a complete listing of each individual document retained. The index could take many forms as well; from a "static" document to an on-line application. Additionally, the index could include electronic as well as hardcopy documents. Once the requirements are more defined, IS can estimate the staff impact and timeline to implement and support the index.

- On-line Document Access

On-line access to documents is part of an on-going CIP project. To date, over 3 million pages of documents have been converted to electronic images. A prototype application has been developed to

search and retrieve documents via the Internet. This project could be combined with the Document Index item above, in that the imaged documents have been indexed.

ORDINANCE NO. 262.1

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS (1) repealing chapter 310 of the Municipal Code; (2) repealing chapter 320 of the Municipal Code; and (3) adding Chapter 310 to Title I of the Milpitas Municipal Code establishing regulations governing access to public meetings and public records, designating city employee salary information by title as a public record, regulating lobbyists' activities and solicitation of donations by public officials and establishing an Open Government Commission ("Milpitas Open Government Ordinance").

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of March 1, 2005, upon motion by _____ and was adopted (second reading) by the City Council at its meeting of_____, upon motion by Councilmember _____. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

_____

Gail Blalock, City Clerk

APPROVED:

_____

Jose Esteves, Mayor

APPROVED AS TO FORM:

_____

Steven T. Mattas, City Attorney

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

(1).

Chapter 310 of Title I of the Milpitas Municipal Code, "Open Government and Disclosure of Interests of Public Officials," is hereby repealed in its entirety.

(2).

Chapter 320 of Title I of the Milpitas Municipal Code, "Designating City Employee Salary Information by Title as a Public Record," is hereby repealed in its entirety.

(3).

A new Chapter 310 of Title I to be titled "City of Milpitas Open Government Ordinance," is hereby added to the Milpitas Municipal Code, to read as follows:

Chapter 310

MILPITAS OPEN GOVERNMENT ORDINANCE

SECTION 1. FINDINGS AND PURPOSE

I-310-1.10 FINDINGS AND PURPOSE

The People of the City of Milpitas find and declare:

(a) Government's duty is to serve the public, reaching its decisions in full view of the public.

(b) Elected officials, commissions, boards, councils and other agencies of the City exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.

(c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.

(d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully

and narrowly defined to prevent public officials from abusing their authority.

(e) Public officials who attempt to conduct the public's business in secret should be held accountable for their actions. Only a strong open government and open government ordinance, enforced by a strong open government commission can protect the public's interest in open government.

(f) The people of Milpitas enact these amendments to assure that the people of the City remain in control of the government they have created.

(g) Private entities, individuals, employees and officials of Milpitas have rights to privacy that must be respected. However, when a person or entity is before a policy body, that person, and the public, has the right to an open and public process.

I-310-1.20 CITATION

This Chapter may be cited as the Milpitas Open Government Ordinance.

SECTION 2. PUBLIC ACCESS TO MEETINGS

I-310-2.10 DEFINITIONS

Whenever in this Chapter the following words or phrases are used, they shall have the following meanings:

(a) "City" shall mean the City of Milpitas.

(b) "Meeting" shall mean any of the following:

(1) A congregation of a majority of the members of a policy body at the same time and place to discuss or deliberate City business;

(2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or

(3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.

(4) "Meeting" shall not include any of the following:

(A) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;

(B) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community

concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City; or

(C) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of the policy body. A meal gathering of a policy body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.

(D) The attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of that body, provided that the members of the policy body who are not members of the standing committee attend only as observers.

(E) "Policy bodies" shall mean the City Council, Redevelopment Agency, standing subcommittees of the City Council, Redevelopment Agency or any Commissions, Panels or ad hoc committees of the City Council, Redevelopment Agency or any Commissions, City created task forces, and all City Commissions or Boards. Policy bodies shall not include a committee that consists solely of employees of the City of Milpitas.

I-310-2.20 MEETINGS TO BE OPEN AND PUBLIC; APPLICATION OF BROWN ACT

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this chapter. In case of inconsistent requirements under the Brown Act and this chapter, the requirement, which would result in greater or more expedited public access, shall apply.

I-310-2.30 AGENDA REQUIREMENTS; REGULAR MEETINGS

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet website at least 72 hours before a regular meeting.

(b) At least 8 calendar days before a regular City Council meeting, a preliminary agenda shall be posted containing a meaningful description of each item of business to be transacted or discussed at the meeting. These agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, the preliminary agenda shall be posted on the City's Internet website at least 8 calendar days before the regular City Council meeting. City staff shall make a good faith effort to make accompanying staff reports available at this time.

(c) A description is meaningful if it is sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any

explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.

(d) The agenda shall specify the time and location of the regular meeting and shall be posted at locations that are freely accessible to members of the public.

(e) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

(f) Notwithstanding subdivision (e), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

(1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.

(2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).

(3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.

(g) Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice:

> KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE
> Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION

(h) Each agenda of a policy body covered by this Open Government Ordinance shall include the address, area code and phone number, fax number, e-mail address, and contact person for the Open Government Commission. Information on how to obtain a free copy of the Open Government Ordinance shall be included on each agenda.

I-310-2.40 PUBLIC NOTICE REQUIREMENTS

(a) Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.

(b) The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.

(c) If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted.

I-310-2.50 ADDITIONAL PUBLIC STATEMENTS AND COMMENTS

When notice is given, as provided in this ordinance, by public policy or advisory bodies, members of the public may submit statements and/or comments regarding any item on those bodies' meeting agendas; those statements or comments shall become public record, regardless of whether their authors are present when the item at issue is discussed. Statements or comments shall be subject to review and consideration by those bodies if submitted before or during the hearing on the item. Statements or comments received within ten business days after the hearing shall go on the public record with a notation as to when it was received.

I-310-2.60 AGENDA DISCLOSURES: CLOSED SESSIONS

(a) In addition to the brief general description of items to be discussed or acted upon in open and public session, the agenda posted pursuant to Government Code Section 54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any call and notice delivered to the local media and posted pursuant to Government Code Section 54956 shall specify and disclose the nature of any closed sessions by providing all of the following information:

(1) With respect to a closed session held pursuant to Government Code Section 54956.7:

LICENSE/PERMIT DETERMINATION:
_____applicant(s)

The space shall be used to specify the number of persons whose applications are to be reviewed.

(2) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Property:

Person(s) negotiating:

Under negotiation:
Price: ___ Terms of payment: ___ Both:

The space under "Property" shall be used to list an address, including cross streets where applicable, or other description or name which permits a reasonably ready identification of each parcel or structure subject to negotiation. The space under "Person(s) negotiating" shall be used to identify the person or persons with whom negotiations concerning that property are in progress. The spaces under "Under negotiation" shall be checked off as applicable to indicate which issues are to be discussed.

(3) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.9, either:

CONFERENCE WITH LEGAL COUNSEL

Existing Litigation:

_____ Unspecified to protect service of process

_____ Unspecified to protect settlement posture

or:

Anticipated Litigation:

_____As defendant

_____As plaintiff

The space under "Existing Litigation" shall be used to specifically identify a case under discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the case name, court, and case number, unless the identification would jeopardize the City's ability to effectuate service of process upon one or more unserved parties, in which instance the space in the next succeeding line shall be checked, or unless the identification would jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in which instance the space in the next succeeding line shall be checked. If the closed session is called pursuant to subdivision (b) or (c) of Section 54956.9, the appropriate space shall be checked under "Anticipated litigation" to indicate the City's anticipated position as defendant or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As defendant" or "As plaintiff"

spaces or both as appropriate.

(4) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957, either:

THREAT TO PUBLIC SERVICES OR FACILITIES

Name, title and agency of law enforcement officer(s) to be conferred with:

or:

PUBLIC EMPLOYEE APPOINTMENT/HIRING

Title/description of position(s) to be filled:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Position and, in the case of a routine evaluation, name of employee(s) being evaluated:

or:

PUBLIC EMPLOYEE DISMISSAL

Number of employees affected:

(5) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6, either:

CONFERENCE WITH NEGOTIATOR—COLLECTIVE BARGAINING

Name and title of City's negotiator:

Organization(s) representing:
____ Milpitas Police Officer Association
____ International Association of Fire Firefighters
____ PROTECH
____ LIUNA
____ Milpitas Supervisors Association
____ Milpitas Employees Association
_____ Other (specify)

Anticipated issue(s) under negotiation
____ Wages
____ Hours
____ Benefits

____ Working Conditions
_____ Other (specify if known)
_____ All

Where renegotiating a memorandum of understanding or negotiating a successor memorandum of understanding, the name of the memorandum of understanding.

In case of multiple items of business under the same category, lines may be added and the location of information may be reformatted to eliminate unnecessary duplication and space, so long as the relationship of information concerning the same item is reasonably clear to the reader. As an alternative to the inclusion of lengthy lists of names or other information in the agenda, or as a means of adding items to an earlier completed agenda, the agenda may incorporate by reference separately prepared documents containing the required information, so long as copies of those documents are posted adjacent to the agenda within the time periods required by Government Code Sections 54954.2 and 54956 and provided with any mailed or delivered notices required by Sections 54954.1 or 54956

I-310-2.70 ADDITIONAL REQUIREMENTS FOR CLOSED SESSIONS

(a) All closed sessions of any policy body covered by this Ordinance shall be either audio recorded or audio and video recorded in their entirety and all such recordings shall be retained for at least ten (10) years, or permanently where technologically and economically feasible. Closed session recordings shall be made available whenever all rationales for closing the session are no longer applicable. Recordings of closed sessions of a policy body covered by this Ordinance, wherein the justification for the closed session is due to "anticipated litigation" shall be released to the public in accordance with any of the following provisions: two (2) years after the meeting if no litigation is filed; Upon expiration of the statute of limitations for the anticipated litigation if no litigation is filed; as soon as the controversy leading to anticipated litigation is settled or concluded. "Anticipated Litigation" considering personnel issues will be exempt from these disclosure requirements.

(b) Each agenda item for a policy body covered by this ordinance that involves existing litigation shall identify the court, case number, and date the case was filed on the written agenda. For each agenda item for a group covered by this ordinance that involves anticipated litigation, the City Attorney's Office or the policy body shall disclose at any time requested and to any member of the public whether such anticipated litigation developed into litigation and shall identify the court, case number, and date the case was filed.

I-310-2.80 AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS

(a) Agendas of meetings, meeting packets, and any other documents on file with the clerk of the policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public for inspection and copying at the office of the policy body before the hearing and be available to the public in sufficient quantities at the hearing commensurate with the anticipated number of people attending the hearing. To the extent possible, such documents shall also be made available through the policy body's internet website. However, this disclosure need not include any material exempt from public disclosure under this ordinance.

(b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such

meeting, whether or not actually distributed to or received by the body at the time of the request. Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.

(c) Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(d) A policy body may charge a duplication fee of one cent per page for a copy of a public record prepared for consideration at a public meeting, unless a special fee has been established. Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body.

I-310-2.90 CLOSED SESSIONS: PERMITTED TOPICS

A policy body may, but is not required to, hold closed sessions on items within the subject matter jurisdiction of the policy body:

(a) With the chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities.

(b) To consider the appointment, employment, evaluation of performance, or dismissal of a City employee, if the policy body has the authority to appoint, employ, or dismiss the employee, or to hear complaints or charges brought against the employee by another person or employee unless the employee complained of requests a public hearing. The body may exclude from any such public meeting, and shall exclude from any such closed meeting, during the comments of a complainant, any or all other complainants in the matter.

(c) Based on advice of its legal counsel, and on a motion and vote in open session to assert the attorney-client privilege, to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would likely and unavoidably prejudice the position of the City in that litigation. Litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the City is a party, has been initiated formally; or,

(2) A point has been reached where, in the opinion of the policy body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the City, or the body is meeting only to decide whether a closed session is authorized pursuant to that advice or, based on those facts and circumstances, the body has decided to initiate or is deciding whether to initiate litigation.

(3) A closed session may not be held under this section to consider the qualifications or engagement of an independent contract attorney or law firm, for litigation services or otherwise.

(d) With the City's designated representatives regarding matters within the scope of collective bargaining or meeting and conferring with public employee organizations when a

policy body has authority over such matters. The salary and benefits of members of the City Council, the City Manager, and the unrepresented employees will be discussed and acted upon separately by the City Council in open session.

(1) Such closed sessions shall be for the purpose of reviewing the City's position and instructing its designated representatives and may take place solely prior to and during active consultations and discussions between the City's designated representatives and the representatives of employee organizations or the unrepresented employees. A policy body shall not discuss compensation or other contractual matters in closed session with one or more employees directly interested in the outcome of the negotiations.

(2) In addition to the closed sessions authorized by subsection I-310-2.90(d)(l), a policy body subject to Government Code Section 3501 may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Section 3504.

I-310-2.100 STATEMENT OF REASONS FOR CLOSED SESSIONS

Prior to any closed session, a policy body shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the policy body may consider only those matters covered in its statement. In the case of regular and special meetings, the statement shall be made in the form of the agenda disclosures and specifications required by Section I-310-2.60 of this chapter. In the case of adjourned and continued meetings, the statement shall be made with the same disclosures and specifications required by Section I-310-2.60 of this chapter, as part of the notice provided for the meeting.

In the case of an item added to the agenda as a matter of urgent necessity, the statement shall be made prior to the determination of urgency and with the same disclosures and specifications as if the item had been included in the agenda pursuant to Section I-310-2.60 of this chapter. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

I-310-2.110 DISCLOSURE OF CLOSED SESSION DISCUSSIONS AND ACTIONS

(a) After every closed session, a policy body may in its discretion and in the public interest, disclose to the public any portion of its discussion that is not confidential under federal or state law, any other law, or non-waiveable privilege. The body shall, by motion and vote in open session, elect either to disclose no information or to disclose the information that a majority deems to be in the public interest. The disclosure shall be made through the presiding officer of the body or such other person, present in the closed session, which he or she designates to convey the information.

(b) A policy body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:

(1) Real Property Negotiations: Approval given to a policy body's negotiator concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with another party to the negotiations, the body shall disclose the fact of that approval, the substance of the agreement and the body's vote or

votes thereon upon inquiry by any person, as soon as the other party or its agent has informed the body of its approval. If, notwithstanding the final approval, there are conditions precedent to the final consummation of the transaction, or there are multiple contiguous or closely located properties that are being considered for acquisition, the document referred to in subdivision (b) of this section need not be disclosed until the condition has been satisfied or the agreement has been reached with respect to all the properties, or both.

(2) Litigation: Direction or approval given to the body's legal counsel to prosecute, defend, or seek, or refrain from seeking appellate review or relief or to otherwise enter as a party, intervener or amicus curiae in any form of litigation as the result of a consultation pursuant to Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the City's intentions would be contrary to the public interest. The report shall identify the adverse party or parties, any co-parties with the City, any existing claim or order to be defended against or any factual circumstances or contractual dispute giving rise to the City's complaint, petition or other litigation initiative.

(3) Settlement: A policy body shall neither solicit nor agree to any term in a settlement which would preclude the release of the text of the settlement itself and any related documentation communicated to or received from the adverse party or parties. Any written settlement agreement and any documents attached to or referenced in the settlement agreement shall be made publicly available at least 10 calendar days before the meeting of the policy body at which the settlement is to be approved to the extent that the settlement would commit the City or a department thereof to adopting, modifying, or discontinuing an existing policy, practice or program or otherwise acting other than to pay an amount of money less than $50,000. The agenda for any meeting in which a settlement subject to this section is discussed shall identify the names of the parties, the case number, the court, and the material terms of the settlement. Where the disclosure of documents in a litigation matter that has been settled could be detrimental to the city's interests in pending litigation arising from the same facts or incident and involving a party not a party to or otherwise aware of the settlement, the documents required to be disclosed by subdivision (b) of this section need not be disclosed until the other case is settled or otherwise finally concluded.

(4) Employee Actions: Action taken to appoint, employ, dismiss, transfer or accept the resignation of a public employee in closed session pursuant to Government Code Section 54957 shall be reported immediately in a manner that names the employee, the action taken and position affected and, in the case of dismissal for a violation of law or of the policy of the City, the reason for dismissal. "Dismissal" within the meaning of this ordinance includes any termination of employment at the will of the employer rather than of the employee, however characterized. The proposed terms of any separation agreement shall be immediately disclosed as soon as presented to the body, and its final terms shall be immediately disclosed upon approval by the body.

(5) Collective Bargaining: Any collectively bargained agreement shall be made publicly available at least 15 calendar days before the meeting of the policy body to which the agreement is to be reported.

(c) Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed immediately shall be provided to any person who has made a written request regarding that item following the posting of the agenda, or who has made a

standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956.

(d) A written summary of the information required to be immediately reported pursuant to this section, or documents embodying that information, shall be posted by the close of business on the next business day following the meeting, in the place where the meeting agendas of the body are posted.

I-310-2.120 BARRIERS TO ATTENDANCE PROHIBITED

(a) No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the City Council, a board or commission, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or passageway, unless such supplementary speakers would disrupt the operation of a City office.

(b) Each policy body that meets in City Hall and televises its meetings on the Milpitas Government Cable Channel, shall provide for participation by members of the public via telephone "bridge lines" for public comment on each item in the same manner as if the member of the public were in actual physical attendance at the meeting. Each policy body subject to this provision may develop reasonable procedures for its implementation.

I-310-2.130 TAPE RECORDING, FILMING AND STILL PHOTOGRAPHY

(a) Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.

(b) All policy bodies shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The audio and/or video record shall be kept indefinitely or as current technology allows. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City. Audio records of audio taped meetings shall be provided upon request and payment for the actual cost of the recording. Requests shall be made through the City Clerk.

I-310-2.140 PUBLIC TESTIMONY AND COUNCIL ANNOUNCEMENTS

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on any item, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section I-310-2.30(e) of this chapter.

(b) Every agenda for meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning

that item prior to action thereupon.

(c) Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for a maximum of three minutes. However, the Chair of the meeting has discretion to reduce the speaking time in situations where there are a large number of persons who wish to speak on a particular agenda item. Time limits shall be applied uniformly to members of the public wishing to testify. The Chair of the policy body shall accept public testimony in a fair and evenhanded way, without manipulation in the order of speakers.

(d) A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision (c) of this section.

(e) To facilitate public input, any agenda changes or continuances shall be announced by the presiding officer of a policy body at the beginning of a meeting, or as soon thereafter as the change or continuance becomes known to such presiding officer.

(f) The Mayor and Councilmembers during the Councilmember announcement session of the agenda shall be limited to the same amount of speaking time as members of the public during open forum. The City Clerk shall be responsible for enforcing this provision.

I-310-2.150 MINUTES

a) The clerk or secretary of policy bodies shall record the minutes for each regular and special meeting of those bodies.

b) The draft minutes of each meeting shall be posted on the policy body's website if any and be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted.

I-310-2.160 PUBLIC COMMENT BY MEMBERS OF POLICY BODIES

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of state or federal law or of this ordinance. The release of specific factual information made confidential by state or federal law including, but not limited to, the privilege for confidential attorney-client communications, may be the basis for a request for injunctive or declaratory relief, seeking an accusation of misconduct, or both.

I-310-2.170 ROLE OF CITY ATTORNEY ON ITEMS BEFORE COUNCIL

The Milpitas Municipal Code and state law do not explicitly bar the City Attorney from offering unsolicited legal advice either verbally or in writing on matters before the Council. This ordinance should be interpreted such that the City Attorney, in addition to regular duties, should be outspoken in giving advice on the validity of legal compliance on all matters.

I-310-2.180 CONFLICT DISCLOSURES REQUIRED AT CITY COUNCIL MEETINGS

At the beginning of each City Council meeting or upon the arrival of the Mayor or Councilmember, the City Attorney shall ask the Mayor and each member of the City Council to disclose any financial or personal conflict with any item on the City Council's agenda. Pursuant to Government Code section 87105, if the Mayor or a Councilmember discloses that such a personal financial interest is present, he or she shall publicly identify the conflict or potential conflict in detail sufficient to be understood by the public, and shall recuse him or herself from taking action on the item if required to do so by law and leave the meeting room.

I-310-2.190 SENIOR STAFF MEETINGS OPEN TO THE PUBLIC

One senior City staff meeting per month shall be publicly noticed, made open and available to the public. Such meeting shall occur during regular business hours.

SECTION 3. PUBLIC INFORMATION AND PUBLIC RECORDS

I-310-3.10 DEFINITIONS

Whenever in this chapter the following words or phrases are used, they shall mean:

(a) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City of Milpitas as defined in the California Public Records Act (Government Code Section 6254.9).

(b) "Lobbyist" means a person or business entity that received $250 or more in a calendar year for communicating, by any means or device, with City officials or employees to influence current or future city legislation, or administrative decisions, or City Council elections or local initiative measures.

I-310-3.20 PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a *custodian of a public record*) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

(b) A *custodian of a public record* shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or email. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

(c) A *custodian of a public record* shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the *supervisor of records* for a determination whether the record requested is public. The *supervisor of records* shall inform the petitioner, as soon as possible and within 10 days, 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 by the *supervisor of records* that the record is public, the *supervisor of records* shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the *supervisor of records* shall notify the City Attorney who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted upon by the *supervisor of public records*, the person making the request may petition the Open Government Commission for a determination whether the record requested is public. The Open Government Commission shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days 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 Open Government Commission 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 Open Government Commission to fulfill its duties under this provision. Where requested by the petition, the Open Government Commission 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 Open Government Commission for its determination according to this paragraph.

(f) The administrative remedy provided under this chapter shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, any California Superior Court shall have jurisdiction to order compliance.

(g) In any court proceeding pursuant to this chapter there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.

(h) At least once a year, and as otherwise requested by the Open Government Commission, the *supervisor of public records* shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the *supervisor of public records*, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions related to any petitions during that period. At the request of the Open Government Commission, the report shall also include copies of all rulings made by the *supervisor of public records* and all opinions issued.

(i) The Milpitas City Attorney's office shall act to protect and secure the rights of the people of Milpitas to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney or his designee will monitor the handling of public records when any elected public official or any department head leaves office and moves materials from the office. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or other information is or is not a public record. All communications with the City Attorney's Office with regard to this ordinance, including petitions, requests for opinions, and opinions shall be public records.

(j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by California Law.

(k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) to the extent not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.

(1) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and inseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law.

I-310-3.40 POLICY REGARDING USE OF COMPUTER SYSTEMS

It is the policy of the City of Milpitas to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design such systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks, including but not limited to the Internet.

I-310-3.50 RELEASE OF ORAL PUBLIC INFORMATION

Release of oral public information shall be accomplished as follows:

(a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility.

(b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.

(c) If it would take an employee more than fifteen minutes to obtain the information responsive to an inquiry or inquiries from a member of the public, the employee shall notify the requestor of the procedures for obtaining records under sections I-310-3.70 and I-310-3.80 of this Ordinance.

(d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee's performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee's interests in expressing that opinion. In adopting this subdivision, the City Council intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.

(e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline.

I-310-3.60 PUBLIC REVIEW FILE - POLICY BODY COMMUNICATIONS

(a) The City Clerk shall maintain a file, accessible to any person during normal office hours, containing a copy of any letter, memorandum or other communication which the clerk has distributed to or received from a quorum of the policy body concerning a matter calendared by the body within the previous 30 days or likely to be calendared within the next 30 days, irrespective of subject matter, origin or recipient, except commercial solicitations, periodical publications or communications exempt from disclosure under the California Public Records Act (Government Code Section 6250 et seq.) and not deemed disclosable under Section I-310-3.70 of this chapter.

(b) Communications, as described in subsection (a), sent or received in the last three business days shall be maintained in chronological order in the office of the department head or

at a place nearby, clearly designated to the public. After documents have been on file for two full days, they may be removed, and, in the discretion of the Council, board or commission, placed in a monthly chronological file.

(c) Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the file so long as the letter or memorandum of transmittal is included.

I-310-3.70 PUBLIC INFORMATION THAT MUST BE DISCLOSED

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

(a) Drafts and Memoranda.

No preliminary draft or memorandum shall be exempt from disclosure under Government Code section 6254, subdivision (a) if it is normally kept on file. Preliminary drafts and memoranda concerning contracts, memoranda of understanding, or other matters subject to negotiation or pending Council approval shall not be subject to disclosure to this provision until final action has been taken.

(b) Litigation Material.

(1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:

(i) A pre-litigation claim against the City;

(ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;

(iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any Milpitas governmental ethics code, or this Ordinance.

(2) Unless otherwise privileged under California law, when litigation is adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure; including the text and terms of any settlement.

(c) Contracts, Bids and Proposals

(1) All initial City Requests for Proposals ("RFP's") shall be kept in a central repository and shall be made available for public inspection. In addition, RFP's shall be placed on the City's website for a period from the date the RFP was issued to the date that the RFP is due.

(2) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision

requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a RFP has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

(3) During the course of negotiations for:

(i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;

(ii) leases or permits having total anticipated revenue or expense to the City;

(iii) any franchise agreements, all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the City Attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying.

(iv) Not later than July 15th annually, each City department shall provide to the City Council a list of all sole source contracts entered into or renewed during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Section.

(d) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.

(e) Appraisals, offers and counteroffers relating to the City's purchase of real property are exempt until an agreement is executed. If an agreement for purchase is not submitted to the Council for approval then this exemption expires 1 year after negotiations are terminated.

(f) Neither the City nor any officer, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.

(g) Neither the City nor any officer, employee, or agent thereof may assert an

exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(h) Neither the City, nor any officer, employee, nor agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholding of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by the California Public Records Act that is not forbidden by this ordinance.

I-310-3.80 IMMEDIACY OF RESPONSE

Notwithstanding the 10 day period for response to a request permitted in Government Code section 6256, a request for a public record described in any nonexempt category which is received by a department head shall be satisfied no later than the close of business on the day following the request unless the department head advises the requestor in writing that the request will be answered by a specific future date. The statutory deadlines are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request. If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with legal counsel warrants an extension of 10 days as provided in Government Code section 6256.1, the requestor shall be noticed as required within three business days of the request.

I-310-3.90 WITHHOLDING KEPT TO A MINIMUM

Information that is exempt from disclosure shall be masked, deleted or otherwise segregated so that the nonexempt portion of a requested record may be released and keyed by footnote or other clear reference to the appropriate justification for withholding required by this ordinance in section I-310-3.100.

I-310-3.100 JUSTIFICATION OF WITHHOLDING

Any withholding of information shall be justified, in writing, as follows:

(a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.

(b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.

(c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency's litigation experience, supporting that position.

(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Section, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available.

I-310-3.110 PUBLIC RECORDS THAT MUST BE DISCLOSED

The following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and access:

(a) Notwithstanding 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 gross earnings by job title, including base salaries and other compensation. Other compensation shall include allowances, overtime, and deferred compensation, leave cash-out payments and the percentage of base salaries that the city pays as the employer's CalPERS contribution.

(2) The City Manager shall prepare and distribute a weekly report of City affairs for distribution to the City Council. This report shall be a public record subject to inspection at the Office of the City Clerk during normal business hours.

I-310-3.120 FEES FOR DUPLICATION

(a) No fee shall be charged for making public records available for review.

(b) For documents routinely produced in multiple copies for distribution, e.g. meeting agendas and related materials, unless a special fee has been established pursuant to subdivision (d) of this section, a fee not to exceed one cent per page may be charged, plus any postage costs with the approval of the Open Government Commission.

(c) For documents assembled and copied to the order of the requester, unless a special fee has been established pursuant to subdivision (d) of this section, a fee of 10 cents per page shall be charged, plus any postage.

(d) A department may establish and charge a higher fee than the one cent presumptive fee in subdivision (b) and the 10 cent presumptive fee in subdivision (c) if it prepares and posts an itemized cost analysis establishing that its cost per page impression exceeds the amounts listed above, as the case may be. The cost per page impression shall include the following costs: one sheet of paper; one duplication cycle of the copying machine in terms of toner and other specifically identified operation or maintenance factors, excluding electrical power. Any such cost analysis shall identify the manufacturer, model, vendor and maintenance contractor, if any, of the copying machine or machines referred to. The above fee increases must have approval from both the Open Government Commission and the City Council prior to taking effect.

(e) Video copies of video recorded meetings shall be provided to the public upon request for the actual cost of materials (i.e. videotape) per meeting. Audio tapes of audio taped meetings shall be provided upon public request for the actual cost of the tape by the policy body whose meeting was recorded. The Open Government Commission shall determine these costs.

I-310-3.130 INDEX TO RECORDS

The City shall prepare, within six months of the passage of this ordinance, a public records index that identifies the types of information and documents maintained by the City and its departments, agencies, boards, commissions, and elected officers. The index shall be for the use of City officials, staff and the general public, and shall be organized to permit a general understanding of the types of information maintained, by which officials and departments, for

which purposes and for what periods of retention, and under what manner of organization for accessing, e.g. by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction or other event, but shall clearly indicate where and how records of that type are kept. Any such master index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or policy body responsible for the indexed records. The City Clerk shall be responsible for the preparation of this records index. The City Clerk shall report on the progress of the index to the Open Government Commission on at least a semi-annual basis until the index is completed. Each department, agency, commission and public official shall cooperate with the City Clerk to identify the types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests that are regularly received. Each department, agency, commission and public official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each department, agency, commission or public official of the City. The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any changes in the department, agency, commission or public official's practices or procedures affecting the accuracy of the information provided to the City Clerk shall be recorded by the City Clerk on a periodic basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City's website and made available at the Milpitas Library.

I-310-3.140 RECORDS SURVIVE TRANSITION OF OFFICIALS

All documents prepared, received, or maintained by any elected City official, and by the head of any Department are the property of the City of Milpitas. The originals of these documents shall be maintained consistent with the records retention policies of the City of Milpitas. The City Attorney or his designee shall monitor the transition of the above public officials to ensure that public documents are not unlawfully removed or destroyed during the transition.

I-310-3.150 INTERNET ACCESS/WORLD WIDE WEB MINIMUM STANDARDS

Each department of the City of Milpitas shall maintain on a World Wide Web site, or on a comparable, readily accessible location on the Internet, information that it is required to make publicly available. Each department is encouraged to make publicly available through its World Wide Web site as much information and as many documents as possible concerning its activities. These include but are not limited to campaign report forms, statements of economic interest, operating and capital budgets, meeting agendas, meeting minutes, public notices and, when feasible, staff meeting reports. Within six months after enactment of this provision, each department shall post on its World Wide Web site all meeting notices required under this ordinance, all agendas and the minutes of all previous meetings of its policy bodies for the last three years. Notices and agendas shall be posted no later than the time that the department otherwise distributes this information to the public, allowing reasonable time for posting. Minutes of meetings shall be posted as soon as possible, but in any event within 48 hours after they have been approved. The City shall make reasonable efforts to ensure that its World Wide Web site is regularly reviewed for timeliness and updated on at least a weekly basis. The City shall also make available on its World Wide Web site, or on a comparable, readily accessible location on the Internet, a current copy of the Municipal Code.

The City shall also webcast all City Council and Planning Commission meetings

and archive the webcasts of such meetings for at least three years.

I-310-3.160 LOBBYISTS

(a) LOBBYISTS ON BEHALF OF THE CITY

(1) Any lobbyist who contracts for economic consideration with the City of Milpitas to represent the City in matters before any local, regional, state, or federal administrative or legislative body shall file a public records report of their activities on a quarterly basis with the City Clerk's office. This report shall be maintained by the City Clerk's office and not be exempt from disclosure. Each quarterly report shall identify all financial expenditures by the lobbyist, the individual or entity to which each expenditure was made, the date the expenditure was made, and specifically identify the local, state, regional or national legislative or administrative action the lobbyist supported or opposed in making the expenditure. The failure to file a quarterly report with the required disclosures shall be a violation of this ordinance.

(2) No person shall be deemed a lobbyist on behalf of the City under section (a), unless that person receives or becomes entitled to receive at least $250 total compensation in any month for influencing legislative or administrative action on behalf of the City of Milpitas. No business or organization shall be deemed as a lobbyist under section (a) unless it compensates its employees or members for their lobbying activities on behalf of the City of Milpitas, and the compensated employees or members have at least 25 separate contacts with local, state, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. "Total compensation" shall be calculated by combining all compensation received from the City of Milpitas during a month of lobbying activities on matters at the local, state, regional or national level. "Total number of contacts" shall be calculated by combining all contacts made during a two-month period on behalf of the City of Milpitas for all lobbying activities on matters at the local, state, regional or national level.

(3) Funds of the City of Milpitas shall not be used to support any lobbying efforts to restrict public access to records, information, or meetings, except where such effort is solely for the purpose of protecting the identity and privacy rights of private citizens.

(b) REGULATIONS GOVERNING LOBBYISTS AND CONTACTS WITH ELECTED OFFICIALS

(1) Lobbyists shall file a report with the City Clerk specifying the general nature of the issues they are trying to influence, compensation ranges received from their clients, all campaign contributions to elected City officials, all fundraising activities conducted on behalf of elected City officials, all contributions to political campaigns or charities made at the behest of City officials, all payments received for services as a consultant to the City or Redevelopment Agency, and any compensated work performed as a campaign consultant for any elected City official. The City may institute a registration fee established by the Open Government Commission.

(2) No person who qualifies as a lobbyist shall contact any elected official of the City, and no person who qualifies as a lobbyist shall make payments to influence local legislative or administrative action, without first registering with the City Clerk and complying with the disclosure requirements of this chapter.

I-310-3.170 CALENDARS OF OFFICIALS

Members of both the City Council (including the Mayor), City Manager and Planning

Commission shall maintain a monthly City Calendar form which includes all City-related appointments, meetings, including regular and special City Council and Planning Commission meetings, public events or speaking engagements, meetings with developers, meetings with consultants, meetings with lobbyists, regional meetings, and meetings of subcommittees or task forces. The description shall include the meeting's duration, and shall include a listing of all principal individuals present at meetings with developers, meetings with consultants, and meetings with lobbyists. The Mayor, City Council, City Manager and Planning Commission members shall submit the updated calendar forms for the prior month to the City Clerk during the first week of every month, and the schedule shall be a public record subject to inspection during normal business hours at the office of the City Clerk and additionally available in electronic format on the City's official website. Councilmember shall be trained in the operation and procedure for entering or re-entering data into an automated calendaring system.

I-310-3.180 CORRESPONDENCE AND RECORDS SHALL BE MAINTAINED

(a) The Mayor, City Council and City Manager shall for a reasonable period maintain, preserve, and archive documents and correspondence, including but not limited to letters, e-mails, drafts, memoranda, invoices, reports and proposals that pertain to or are within the subject matter jurisdiction of the official's duties (as defined by the Open Government Commission) and shall disclose all such records in accordance with this ordinance.

(b) Any e-mail that is created or received in connection with the transaction of public business and which (1) the department or office retains as evidence of its activities, or (2) relates to the legal or financial rights of the City or of persons directly affected by the activities of the City is a public record. The standard for determining if e-mail is a public record that must be retained is identical to the standard that applies to any document. See California Government Code § 6252(e). If an e-mail must be retained, it should be printed out and the hard copy retained in the appropriate file unless the department or office can reliably retain and retrieve all e-mail in electronic format.

I-310-3.190 SOLICITATION OF DONATIONS BY ELECTED OFFICIALS

Solicitation of donations by elected officials for charitable purposes and third party political campaigns is permitted. Contributions over $100 made at the behest of an elected official must be reported to the City Clerk quarterly by the elected official making such requests. Such report is a public record.

Reports must contain the following information:

1. Name of payer
2. Address of payer
3. Amount of payment
4. Date or dates the payment or payments were made.
5. Name and address of the payee.
6. A brief description of the goods or services provided or purchased, if any.
7. A description of the specific purposes or event for which the payment or

payments were made.

I-300-3.200 RESTRICTION AND PROHIBITION ON CERTAIN ACTIVITIES OF FORMER ELECTED AND FORMER APPOINTED OFFICIALS

For a period of two years following the expiration of their term, the Mayor and all members of the City Council and Planning Commission shall be prohibited from using the experience or contacts arising from their former office to assist any applicant through the permitting process. This provision is intended to supplement additional restrictions contained in Chapter 300, "Regulations of Certain Activities of Former City Officials."

I-300-3.210 REVIEW OF FORM 700, STATEMENT OF ECONOMIC INTERESTS

(a) Once annually, in the first two weeks of April, the City Attorney shall review all completed Form 700s (the statement of economic interests required by Government Code 85700 of certain enumerated local officials) submitted by the City Manager, the Mayor, members of staff required to file Form 700 and all members of the City Council and Planning Commission. The City Manager shall review the Form 700 submitted by the City Attorney. Staff liaisons shall review Form 700s for their respective commissions and commissioners.

(b) Not later than April 15th of each year the City Clerk shall scan the Form 700s and copy them into the City's official website. The City Clerk shall also scan all prior Form 700s of sitting City Councilmembers, the Mayor, the City Manager, and the City Attorney and members of the Planning Commission retroactive to the beginning of their continuous term so that these required disclosures are readily available to the public for inspection.

SECTION 4. OPEN GOVERNMENT COMMISSION

I-310-4.10 THE OPEN GOVERNMENT COMMISSION

(a) There is hereby established a task force to be known as the "Open Government Commission" consisting of five members appointed by the City Council. All members must have demonstrated interest in the issues of citizen access and participation in local government. The City Attorney shall serve as legal advisor to the Commission. The Commission shall, at its request, have assigned an attorney from within the City Attorney's Office, who is experienced in public-access law matters. This attorney shall serve as the legal advisor to the Commission and an ethical wall shall be maintained between the work of this attorney on behalf of the Commission and any person or office that the Commission determines may have a conflict of interest with regard to the matters being handled by the attorney.

(b) The term of each appointive member shall be two years unless earlier removed by the City Council. In the event of such removal or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The Commission shall elect a chair from among its appointive members. The term of office as chair shall be one year. Members of the Commission shall serve without compensation.

(c) The Commission shall advise the City Council and provide information to other City departments on appropriate ways in which to implement this chapter. The Commission shall develop appropriate goals to ensure practical and timely implementation of this ordinance.

The Commission shall propose to the City Council amendments to this chapter. The Commission shall report to the City Council at least once annually on any practical or policy problems encountered in the administration of this ordinance. The Commission shall receive and review regular quarterly reports on requests for public information. Such reports shall not identify the requestor or any information confidential by law.

(d) The Open Government Commission shall recommend to the City Council an administrative process for the review and enforcement of this ordinance. No such administrative process shall preclude, delay or in any way limit a person's remedies under the Brown Act or the California Public Records Act.

(e) In addition to the powers specified above, the Commission shall possess such powers as the City Council may confer upon it by ordinance or as the people of Milpitas shall confer upon it by initiative.

I-310-4.20 RESPONSIBILITY FOR ADMINISTRATION

The City Manager shall administer and coordinate the implementation of the provisions of this chapter. The City Clerk shall provide and perform administrative duties for the Commission and assist any person in gaining access to public meetings or public information. The City Manager shall provide the Commission's staff person with whatever facilities and equipment are necessary to perform said duties.

I-310-4.30 PROVISION OF SERVICES TO OTHER AGENCIES; OPEN GOVERNMENT REQUIRED

(a) It is the policy of the City of Milpitas to ensure opportunities for informed civic participation embodied in this ordinance to all local, state, regional and federal agencies and institutions with which it maintains continuing legal and political relationships or partnerships. The Open Government Commission shall continually, consistently and assertively work to seek commitments to enact open meetings, public information and citizen comment policies by these agencies and institutions.

(b) To the extent not expressly prohibited by law, any meeting of the governing body of any such agency and institution at which City officers, agents or representatives are present in their official capacities shall be open to the public, and this provision cannot be waived by any City officer, agent or representative.

(c) Private entities which receive a grant of financial support or property pursuant to action by the City Council and are governed by a multi-member body, which includes one or more members of the City Council, shall be governed by the provisions of the Ralph M. Brown Acct and the California Public Records Act.

I-310-4.40 DEPARTMENT HEAD DECLARATION AND TRAINING

All City department heads and all City management employees and all employees or officials who are required to sign an affidavit of financial interest with the City Clerk shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Open Government Ordinance and have attended or will attend when next offered, a training session on the Open Government Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the City Clerk and shall be available as a public record. Annual training shall be provided by the City Attorney's Office. Attendance at the Open Government Ordinance Training Sessions is required of all City Councilmembers, Boardmembers and Commissioners

serving the City.

I-310-4.50 WILLFUL FAILURE SHALL BE OFFICIAL MISCONDUCT

The willful failure of any elected official, department head, or other managerial City employee to discharge any duties imposed by the Open Government Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct.

I-310-4.60 ENFORCEMENT PROVISIONS

(a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this ordinance or to enforce his or her right to attend any meeting required under this ordinance to be open, or to compel such meeting to be open.

(b) A court shall award costs and reasonable attorneys' fees to the plaintiff who is the prevailing party in an action brought to enforce this ordinance.

(c) If a court finds that an action filed pursuant to this section is frivolous, the City may assert its rights to be paid its reasonable attorneys' fees and costs.

(d) Any person may institute proceedings for enforcement and penalties under this ordinance in any court of competent jurisdiction if enforcement action is not taken by a City or state official 40 days after a complaint is filed.

I-310-4.70 OPEN GOVERNMENT ORDINANCE SUPERSEDES OTHER LOCAL LAWS; APPLIES TO ALL ORDINANCES WITH OPEN GOVERNMENT APPLICATION

The provisions of this Open Government Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply. The provisions of this Open Government Ordinance shall apply to all applicable and relevant provisions of the Milpitas Municipal Code.

I-310-4.80 SEVERABILITY

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances.

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