

**Sunshine Reform Task Force – Public Information Provisions**  
**Comparison of the City of Milpitas Provisions with Public Records Act, and Other Local “Sunshine” Ordinances**  
**10/17/06 - Draft**

<u>Provisions</u>	Public Records Act and Comparison of other Ordinances
<b>A. Definition of Public Information</b> (Content from Milpitas Ord., Sec. 3, I-310-3.10)	
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 as defined in the California Public Records Act (Government Code Section 6254.9).	<p>The Public Records Act defines "public records" to include "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." (Government Code Section 6252(e).) A "writing" means "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." The Public Records Act does not include a separate definition of "public information."</p> <p><b>San Francisco:</b>                      Identical to Milpitas definition. (Article III, Sec 67.20b)</p> <p><b>Oakland:</b>                      Similar definition; however does not include reference to "computer software." (Article III. Public Information, Section 2.20.180 Definitions.)</p>
<b>B. Release of Oral Public Information</b> (Content from Milpitas Ord., Sec. 3, I-310-3.50)	
<p>Release of oral public information shall be accomplished as follows:</p> <p>(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</p>	<p>The Public Records Act requires that the public agency, in response to a request for a public record from a member of the public, to the extent reasonable under the circumstances, (1) assist the member of the public to identify records and information that respond to the request, (2) describe the information technology and physical location in which the records exist, and (3) provide suggestions for overcoming any practical</p>

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available for this function during the absence of the person assigned primary responsibility.	<p>basis for denying access to the records or information sought. (Government Code Section 6253.1.)</p> <p><b>San Francisco:</b> Identical language to Milpitas but also includes the following sentence at end of paragraph: If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information. (Article III; Sec. 67.22a)</p> <p><b>Oakland:</b> Similar language to Milpitas and San Francisco Ordinances. In addition, requires the designated person’s name be filed with the Clerk and posted online. (Article III; Sec. 2.20.200)</p>
(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.	<p><b>San Francisco:</b> Identical language to Milpitas Ordinance. (Article III; Sec. 67.22b)</p> <p><b>Oakland:</b> Similar to S.F. and Milpitas Ordinances but includes the following: It shall also be the duty of the person or persons so designated to assist members of the public in identifying those public records they wish to obtain pursuant to Government Code Section 6253.1. (Sec. 2.20.200(b))</p>
(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 1-310-3.70 and 1-310-3.80 of this Ordinance.	<p>There is no specific provision to this effect in the Public Records Act.</p> <p><b>San Francisco:</b> The ordinance states, “No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.” (Article III; Sec. 67.22c)</p>

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	<p><b>Oakland:</b> Not addressed.</p>
<p>(d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern <u>while on duty</u>, 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.</p>	<p>There is no specific provision to this effect in the Public Records Act.</p> <p><b>San Francisco:</b> Similar to Milpitas Ordinance but not as clear. S.F. also uses “while not on duty” instead of “while on duty” (see underlined to the left). (Article III; Sec. 67.22d)</p> <p><b>Oakland:</b> Similar language to Milpitas, although Milpitas more expansive. (Section 2.20.200 (c))</p>
<p>(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.</p>	<p>The Public Records Act does not address this issue</p> <p><b>San Francisco:</b> Identical language to Milpitas Ordinance. (Article III; Sec. 67.22e)</p> <p><b>Oakland:</b> Not addressed.</p>
<p><b>C. Public Review File – Policy Body Communications</b> (Content from Milpitas Ord., Sec. 3, I-310-3.60)</p>	
<p>(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</p>	<p>These documents are public records pursuant to the Public Records Act.</p> <p><b>San Francisco:</b> Identical language to Milpitas Ordinance. (Article III; Sec. 67.23a)</p>

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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 1-310-3.70 of this Chapter.	<b>Oakland:</b> Similar to Milpitas and S.F. Ordinances. (Article III; Sec. 2.20.210)
(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	<b>San Francisco:</b> Identical language to Milpitas Ordinance. (Article III; Sec. 67.23b)  <b>Oakland:</b> Not addressed.
(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	<b>San Francisco:</b> Identical language to Milpitas Ordinance. (Article III; Sec. 67.23c)  <b>Oakland:</b> Similar to Milpitas and S.F. Ordinances. (Article III; Sec. 2.20.210)
<b>D. Internet Access/World Wide Web Minimum Standards</b> (Content from Milpitas Ord., Sec. 3, I-310-3.150)	
Each department of the City 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. <u>These include but are not limited to campaign report forms, statements of economic interest, operating and capital budgets, meeting agenda, meeting minutes, public notices and, when feasible, staff meeting reports.</u> Within 12 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	State law does not impose requirements on maintenance of a website by local public agencies.  <b>San Francisco:</b> San Francisco Ordinance does not include the underlined sentence (see to the left) specifying certain documents. This ordinance further states that, six months following enactment of the ordinance, the departments must post the meeting notices required under this ordinance. The ordinance also specifies that departments – as opposed to the City - shall make every reasonable effort to review and update the website. The ordinance does not address webcasting or archiving (3 years) of City Council and Planning

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<p>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.</p> <p>The City shall also webcast all City Council and Planning Commission meetings and archive the webcasts of such meetings for at least three years. (1-310-3.150)</p>	<p>Commission meetings. (Article III; Sec. 67.29-2)</p> <p><b>Oakland:</b> Not addressed.</p>
<p><b>E. Calendars of Certain Officials</b> (Content from Milpitas Ord., Sec. 3, I-310-3.170)</p>	
<p>Members of the City Council (including the Mayor), Planning Commission and the City Manager 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. Councilmembers shall be trained in the operation and procedures for entering or re-entering data into an automated calendaring system maintained on the City's website.</p>	<p>There is no state statute that requires maintenance of a public calendar by officials.</p> <p><b>San Francisco:</b> The Ordinance specifies that the Mayor, the City Attorney, and every Department Head shall keep or cause to be kept a daily (as opposed to a monthly calendar as in the Milpitas Ordinance.) Also provides that calendars shall be public records and shall be available to any requester <u>three business days subsequent to the calendar entry date.</u> (Article III; Sec. 67.29-5)</p> <p><b>Oakland:</b> Not addressed</p>
<p><b>F. Lobbyist on Behalf of the City</b> (Content from Milpitas Ord., Sec. 3; I-310—3.160)</p>	
<p>(1) Any lobbyist who contracts for economic consideration with the City of</p>	<p>The Political Reform Act of 1974 requires lobbyist, lobbyist</p>

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<p>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.</p> <p>(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 <u>\$250</u> 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.</p> <p>(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.</p>	<p>employers and lobbying firms to be registered and to file lobbying disclosure of financial activities reports including financial activities statement with the Secretary of State's Office. Lobbyists, employers of lobbyists and lobbying firms are required to file quarterly reports with the Political Reform Division. The lobbying disclosure statements must be filed every quarter for the two-year lobbying cycle (corresponding to each two-year legislative session). Deadline dates for filing these disclosure statements are one month after the end dates of each quarter. Different documentation is required to be filed depending on whether one is a lobbying firm, registered lobbyist or lobbyist employer.</p> <p><b>San Francisco:</b> Similar to Milpitas Ordinance; however, S.F. requires \$300 in total compensation in any month, rather than \$250, to qualify as a lobbyist. (Article III; Sec. 67.29-4)</p> <p><b>Oakland:</b> Not addressed</p>