

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
I. DEFINITIONS (Content from Milpitas Ordinance, Section 3. I-310.3.10)	
(a) Definition of Public Record “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 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 6254.9).	<p>San Francisco: Identical language to Milpitas Ordinance. (<u>Article III, Sec. 67.20</u>)</p> <p>Oakland Contra Costa, Benicia: Similar to Milpitas Ordinance, however the ordinances do not include the sentence related to computer software. (<u>Article III, Section 2.20.180; Chapter 25-4.202; and Chapter 4.04.050H.</u>)</p>
(b) Definition of Department: No similar provision in Milpitas Ordinance.	<p>San Francisco: "Department" shall mean a department of the City and County of San Francisco. (<u>Article III, Sec 67.20a</u>)</p> <p>Oakland: Identical to S.F. Ordinance.; it also includes the Port Department and defines “Agency” to include any Agency in the City of Oakland. (<u>Article III, Section 2.20.180, (B).</u>)</p> <p>Contra Costa and Benicia: No similar provision in the ordinances.</p>
(c) “Supervisor of Records” No similar provision in Milpitas Ordinance.	<p>San Francisco: “Supervisor of Records” shall mean the City Attorney. (Added by Ord. 265-93, App. 8118193; amended by Ord. 375, App.</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
	<p>9130196; Proposition G, 1112199) (<u>Article III, Sec 67.20c</u>)</p> <p>Oakland, Contra Costa, Benicia: No similar provision in the respective jurisdictions' ordinances.</p>
II. PUBLIC RECORDS	
A. Process for Gaining Access to Public Records; Administrative Appeals (Contents from Milpitas Ordinance, Section 3, I-310-3.20)	
<p>(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.</p>	<p>San Francisco: Identical to Milpitas Ordinance. (<u>Article III, Sec. 67.21a</u>)</p> <p>Oakland: No provision relating to allowing inspection during business hours, but California Public Records Act (CPRA) would require this process for gaining access to public records. Fees are to be charged consistent with the City of Oakland's fee schedule (<u>Government Code §6253; Article III; Sec. 2.20.260</u>)</p> <p>Contra Costa: No provision relating to allowing inspection during business hours, but CPRA would require this process for gaining access to public records (<u>Govt.Code § 6253</u>).</p> <p>Benicia: No provision relating to allowing inspection during business</p>

Sunshine Reform Task Force - Public Records Provisions
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Draft 11/15/06

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	hours, but CPRA would require this process for gaining access to public records. Fees are to be charged consistent with Section 4.12.090 of the Benicia Open Government Ordinance related to fee schedule. No fees charged to inspect documents nor to obtain a single copy of a current meeting agenda. (Govt. Code §6253; Chapter 4.04.040)
(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 e-mail. 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.	<p>San Francisco: Identical to Milpitas Ordinance. (<u>Article III, Sec. 67.21b</u>)</p> <p>Oakland: With respect to public records previously disclosed to the public (e.g. past meetings and agenda related items), the request for records needs to be satisfied in three days, advise of the need for an extension within three days, advise of need for extension in writing within seven days, and a maximum extension of 14 days from written determination of extension .No provision relating to response time for other public records request, but CPRA would require response within 10 with possible 14 day extension if justified. (<u>Article III; Sec. 2.20.230; Govt. Code § 6253</u>)</p> <p>Contra Costa: Provides that nonexempt records shall be satisfied no later than the close of business on the day following the request unless the department head advises the requester in writing that the request will be answered by a specific future date. If the request is voluminous, in a remote storage facility, or requires consultation with counsel, an extension under CPRA Section 6253 would be warranted provided a written</p>

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Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
	<p>notice is given within 3 days of the request. (<u>Chapter 25-4.604</u>)</p> <p>Benicia: Requests for public records shall be satisfied within 5 business days unless the requestor is advised in writing within 1 business day that an extension of a maximum of 10 days is needed because of the volume, location, or consultation with legal counsel is required. (<u>Section 4.12.050</u>)</p>
<p>(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.</p>	<p>San Francisco: Identical to Milpitas Ordinance. (<u>Article III, Sec. 67.21c</u>)</p> <p>Oakland: Similar to Milpitas Ordinance as to the duty of a custodian of records to assist in providing records in a timely manner. Consistent with the CPRA, which requires a written response within 10 days of receiving the request on whether there are disclosable public records in the possession of the agency. In unusual circumstances, the time limit may be extended by written notice setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. (<u>Article III; Sec. 2.20.200(B); Section 2.20.230; Govt. Code § 6253</u>)</p> <p>Contra Costa:</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	<u>Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances</u>
	<p>Consistent with the CPRA. (<u>Chapter 25-4.204(a); Govt. Code § 6253.1</u>)</p> <p>Benicia: Consistent with the CPRA. (<u>Section 4.12.020.B; Govt. Code § 6253.1</u>)</p>
<p>(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 <i>supervisor of records</i> for a determination whether the record requested is public. The <i>supervisor of records</i> 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 <i>supervisor of records</i> that the record is public, the <i>supervisor of records</i> 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 <i>supervisor of records</i> 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.</p> <p>[THESE PROVISIONS RELATE TO ENFORCEMENT OF PUBLIC RECORDS LAWS AND MAY BE MORE</p>	<p>San Francisco: Similar to Milpitas Ordinance. The difference in the S.F. Ordinance is that the supervisor of records is the City Attorney. Another difference is that if, within 5 days, the custodian of record refuses to comply with an order from the City Attorney to disclose, the City Attorney is required to notify the District Attorney or Attorney General. (<u>Article III, Sec. 67.21d</u>)</p> <p>Oakland: Authorizes the Public Ethics Commission to implement an administrative process involving mediation. (<u>Article IV, Sec. 2.20.270</u>)</p> <p>Contra Costa: Provides that the Better Government Task Force shall recommend an administrative process of review and enforcement of Chapter 25 by the use of a volunteer ombudsman whose role is to mediate and resolve disputes, disagreements and conflicts that occur as a result of the local requirements. (<u>Chapter 25-6.204(d)(e).</u>)</p>

**Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06**

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APPROPRIATELY ADDRESSED UNDER ENFORCEMENT.]	<p>Benicia: Provides that the Open Government Commission shall develop and implement an administrative review process to determine violations of the Open Government Ordinance. The requestor can appeal a denial of records to the city manager who will make a decision within 7 days of the appeal. The city manager's decision can be appealed to either the commission or a 3-member panel of city attorneys. This decision can be appealed to the city council. <u>(Chapter 4.20.Sec. 4.020; Govt. Code § 6258)</u></p>
<p>(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</p>	<p>San Francisco: Similar to Milpitas Ordinance. S.F. differs in that the Sunshine Task Force advises the Board of Supervisors as to whether the record should be public and may order the custodian of the public record to comply with the person's request. If custodian refuses or fails to comply with such order within 5 days, the STF shall notify the district attorney or the attorney general who may take action to enforce. <u>(Article III, Sec. 67.21e)</u></p> <p>Oakland: Authorizes the Public Ethics Commission to implement an administrative process involving mediation. <u>(Article IV, Sec. 2.20.270)</u></p> <p>Contra Costa: Provides that the Better Government Task Force shall recommend an administrative process of review and</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

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<p>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.</p> <p>[THESE PROVISIONS RELATE TO ENFORCEMENT OF PUBLIC RECORDS LAWS AND MAY BE MORE APPROPRIATELY ADDRESSED UNDER ENFORCEMENT.]</p>	<p>enforcement of Chapter 25 by the use of a volunteer ombudsman whose role is to mediate and resolve disputes, disagreements and conflicts that occur as a result of the local requirements. (<u>Chapter 25-6.204(d)(e).</u>)</p> <p>Benicia: Provides that the Open Government Commission shall develop and implement an administrative review process to determine violations of the Open Government Ordinance. The requestor can appeal a denial of records to the city manager who will make a decision within 7 days of the appeal. The city manager's decision can be appealed to either the commission or a 3-member panel of city attorneys. This decision can be appealed to the city council. (<u>Chapter 4.20, Sec. 4.20.020; Govt. Code § 6258</u>)</p>
<p>(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</p>	<p>San Francisco: Identical to Milpitas Ordinance. (<u>Article III, Sec. 67.21(f).</u>)</p> <p>Oakland: The administrative review process does not preclude enforcement of the sunshine ordinance through the court under the CPRA. If requester prevails in court, he/she is entitled to court cost and reasonable attorneys' fees. (<u>Article IV, Sec. 2.20.270</u>)</p> <p>Contra Costa: The administrative review process does not preclude</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	<u>Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances</u>
jurisdiction to order compliance.	enforcement in any court. (<u>Chapter 25-6.204(d)(e).</u>) Benicia: The administrative review process does not preclude mediation or enforcement in any court. (<u>Chapter 4.20, Sec. 4.20.020; Govt. Code § 6258</u>)
(g) In any court proceeding pursuant to this article 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.	San Francisco: Identical to Milpitas Ordinance. (<u>Article III, Sec. 67.21(g).</u>) Oakland, Contra Costa, Benicia: CPRA has been interpreted to place the burden of proving an exemption under § 6254 on the public agency.
(h) At least once a year, and as otherwise requested by the Open Government Commission, the <i>supervisor of public records</i> 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 <i>supervisor of public records</i> , 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 during that period regarding petitions the Supervisor has decided. At the request of the Open Government Commission, the report shall also include copies of all rulings made by the <i>supervisor of public records</i> and all opinions issued.	San Francisco: Similar to Milpitas Ordinance. The difference in S.F. is that the supervisor of records is the City Attorney. (<u>Article III, Sec. 67.21(h).</u>) Oakland: The Public Ethics Commission reports to the City Council on any practical or policy problems encountered in the administration of the sunshine ordinance. (<u>Article IV, Sec. 2.20.270(A)(5).</u>) Contra Costa: The Better Government Taskforce may report to the Board of Supervisors on any practical or policy problems encountered in the administration of sunshine ordinance.

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

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[THESE PROVISIONS RELATE TO ENFORCEMENT OF PUBLIC RECORDS LAWS AND MAY BE MORE APPROPRIATELY ADDRESSED UNDER ENFORCEMENT.]	<p>(Chapter 25-6.204(c).)</p> <p>Benicia: Provides an annual report on implementation and compliance with this title. (Chapter 4.20, Sec. 4.20.010.D)</p>
(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.	<p>San Francisco: Similar to Milpitas Ordinance. Provisions concerning the handling of public records when an elected official or any department head leaves office under a separate section entitled "Records Survive Transition of Officials." S.F. does not specify that the City Attorney would monitor the handling of public records. (Article III, Sec. 67.21(i).)</p> <p>Oakland, Contra Costa, Benicia: No similar provision in the respective jurisdictions' ordinances</p>
(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 the City Charter or California Law.	<p>San Francisco: Identical to Milpitas Ordinance. (Article III, Sec. 67.21(i).)</p> <p>Oakland, Contra Costa, Benicia: No similar provision in the respective jurisdictions' ordinances.</p>
(k) Release of documentary public information, whether	San Francisco:

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
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.	Nearly identical with Milpitas Ordinance. (<u>Article III, Sec. 67.21(k).</u>) Oakland, Contra Costa, Benicia: No substantive difference with the respective jurisdictions' ordinances.
(l) 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 unseparably 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. [THE HIGHLIGHTED PORTION IS ADDRESSED UNDER "WITHHOLDING KEPT TO A MINIMUM" LATER IN THIS MATRIX.]	San Francisco: Identical language to Milpitas Ordinance (<u>Article III, Sec. 67.21(l)</u>) Oakland, Contra Costa, Benicia: No provision in the ordinance, however, CPRA would have the same requirements as stated in the Milpitas Ordinance. (<u>Govt. Code § 6253.9</u>)
<i>B. Public Information that Must be Disclosed</i> <i>(Content from Milpitas Ordinance, Section 3; I-310—</i>	

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

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3.70)	
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:	
<p>(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.</p>	<p>San Francisco:</p> <p>(1) Except as provided in subparagraph (2), no preliminary draft or department memorandum whether in printed or electronic form shall be exempt from disclosure under Govt. Code § 6254, subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.</p> <p>(2) Draft versions of an agreement being negotiated by representatives of the city with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that the policy body as used in this subdivision does not include committees.</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

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	<p>In the case of negotiations for a contract, lease, or other business agreement in which an agency of the city is offering to provide facilities or services in direct competition with other private or public entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval. (<u>Article III; Sec. 67.24(a).</u>)</p> <p>Oakland: No substantive difference from Milpitas Ordinance. (<u>Article III; Sec. 2.20.220(A).</u>)</p> <p>Contra Costa: No substantive difference from Milpitas. (Division 25-4.404(a).)</p> <p>Benicia: Similar to Milpitas Ordinance but also extends the last sentence to include documents that are “included as part of the public agenda packet for the body, whichever is first” (<u>Chapter 4.12, Sec. 4.12.040(a).</u>)</p>
<p>(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</p>	<p>San Francisco: Identical to Milpitas Ordinance. (<u>Article III; Sec. 67.24b</u>)</p> <p>Oakland: Differs from Milpitas in that “unless otherwise privileged or</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
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<p>department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;</p> <p>(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.</p> <p>(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.</p>	<p>made confidential by law, records of all communications between a local body's representatives and the adverse party shall be subject to public inspection and copying, including the text and terms of any settlement agreement, once the pending litigation has been settled or finally adjudicated. Consistent with CPRA. (<u>Article III; Sec.2.20.220b; Govt. Code § 6254(b).</u>)</p> <p>Contra Costa: Consistent with CPRA except Contra Costa expressly provides for the disclosure of pre-litigation claims against the county and that the county shall not agree to any confidentiality provision. (<u>Chapter 25-4.404(b); Govt. Code § 6254(b).</u>)</p> <p>Benicia: Consistent with CPRA. (<u>Chapter 4.12, Sec. 4.12.040.B</u>)</p>
<p>(Content from Milpitas Ordinance, Section 3, I-310.3.110)</p> <p>(c) Personnel Information</p> <p>The following policies shall govern types of documents and shall provide enhanced rights of public access to information and access:</p> <p>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:</p>	<p>San Francisco: S.F. Ordinance requires the disclosure of additional information including:</p> <p>(1) job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following info. As to each successful job applicant:</p> <ul style="list-style-type: none"> a. Sex, age and ethnic group b. Years of graduate and undergraduate study; degree(s) and major or discipline; c. Years of employment in private and/or public

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

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<p>(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.</p>	<p>sector;</p> <p>d. Whether currently employed in the same position for another agency.</p> <p>e. Other non-identifying particulars as to experience, credentials, attitudes, training or education entered in or attached to a standard employment application form used for the position in question.</p> <p>(2) The professional biography or curriculum vitae of any employee redacted for personal information</p> <p>(3) The job description of every employment classification.</p> <p>(4) The exact gross salary and City-paid benefits available to every employee.</p> <p>(5) Any memorandum of understanding between the City or department and a recognized employee organization.</p> <p>(6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is provided.</p> <p>(7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct. (<u>Article III; Sec. 67.24c</u>)</p> <p>Oakland:</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
	<p>Similar to S.F. ordinance but does not include provisions (6) or (7) of the S. F. Ordinance. (<u>Article III; Sec.2.20.220c</u>)</p> <p>Contra Costa: Similar to S.F. Ordinance but does not include provision (6) of the S.F. Ordinance. (<u>Chapter 25, Sec. 25-4.404(c).</u>)</p> <p>Benicia: Similar to S.F. Ordinance but does not include provisions (4), (6), and (7) of the S.F. Ordinance. (<u>Chapter 4.12, Sec. 4.12.040.C</u>)</p>
<p>d. Law Enforcement Information No provision in the Milpitas Ordinance but the CPRA exemption under Govt. Code § 6254(f) would apply.</p>	<p>San Francisco: The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable state law or judicial decision. Records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
	<p>withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:</p> <ul style="list-style-type: none"> (1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed); (2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy; (3) The identity of a confidential source; (4) Secret investigative techniques or procedures; (5) Information whose disclosure would endanger law enforcement personnel; or (6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite. <p>This subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare. (<u>Article III; Sec. 67.24d</u>)</p> <p>Oakland: Substantially similar to S.F. Ordinance except Oakland requires the redaction of the names of juvenile witnesses <u>and suspects and does not require that the juvenile be identified by a letter or number</u>; information whose</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
	<p>disclosure would endanger law enforcement personnel <u>and a witness or party to the investigation</u>; information whose disclosure would endanger the successful completion of an investigation where the prospect of <u>enforcement proceeding is likely</u>. Further the Oakland Ordinance requires the Oakland Police Service shall maintain a record, public record, separate from personnel records of the agency, which reports the number of citizen complaints against law enforcement agencies or officers, including the number and types of cases in which discipline is imposed and the nature of the discipline imposed. The names and other identifying information of officers is not disclosed directly or indirectly. (<u>Article III; Sec.2.20.220(D).</u>)</p> <p>Contra Costa: Similar to S.F. Ordinance except does not have a provision relating to record of a concluded inspection or enforcement action by an agency responsible for enforcing health, and safety regulations. (<u>Chapter 25, Sec. 25-4.404(d).</u>)</p> <p>Benicia: Similar to Oakland Ordinance except the Benicia Ordinance requires that the final decision for disclosure shall be made by the city council, and the vote and reasoning of each councilmember shall be made public on all nondisclosures. (<u>Chapter 4.12, Sec. 4.12.040.D</u>)</p>
(Content from Milpitas Ordinance, Section 3, I-310-	San Francisco:

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	<u>Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances</u>
<p>3.70) (e) 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 require 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 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 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:</p>	<p>Similar to Milpitas Ordinance but does not require keeping all initial RFPs in a central repository or the posting of RFP's on the city's website. Under item (3) (ii) of this section, S.F. <u>limits disclosure to lease or permits having total anticipated revenue or expense to the City and County of \$500,000 or more or having a term of ten years or more.</u> S.F. Ordinance also does not require disclosure of private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit <u>until and unless that person or organization is awarded the contract or benefit.</u> Differs from other city ordinances in that S.F. Ordinance requires the disclosure of health care contracts which is not within the jurisdiction of cities. (<u>Article III; Sec. 67.24(e).</u>)</p> <p>Oakland: Differs from the Milpitas Ordinance in that Oakland's Ordinance does not require that RFPs be kept in a central repository or posting online, disclosure of a person's net worth or proprietary financial data unless that person is awarded the contract, and does not require disclosure of other agreements such as personal/professional or other contractual services not subject to a competitive process, leases or permit, and franchise agreements. Further the Oakland Ordinance does not require disclosure of the names of scorer, graders or evaluators along with their comments, ratings, and score sheets for RFPs. Oakland's Ordinance states:</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	<u>Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances</u>
<p>(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;</p> <p>(ii) leases or permits having total anticipated revenue or expense to the City;</p> <p>(iii) any franchise agreements,</p> <p>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</p>	<p>Contracts, contract bids, responses to RFPs and all other records of communications between the City, Redevelopment Agency, and Board of Port Commissioners and individuals or business entities seeking contracts shall be open to inspection and copying following the contract award or acceptance of a contract offer. Nothing in this provision requires the disclosure of a person's net worth or other proprietary financial information submitted for qualification for a contract until and unless that person is awarded the contract. All bidders and contractors shall be advised that information covered by this subdivision will be made available to the public upon request. (<u>Article III; Sec.2.20.220.E</u>)</p> <p>Contra Costa: Similar to Oakland except Contra Costa does not have a provision requiring the disclosure of a person's net worth or other proprietary financial information submitted for qualification for a contract until and unless that person is awarded the contract. (<u>Article 25, Sec. 25-4.404(f.)</u>)</p> <p>Benicia: Similar to Oakland Ordinance. (<u>Chapter 4.12, Sec. 4.12.040.E</u>)</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
<p>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.</p> <p>(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.</p>	
<p>(f) 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.</p>	<p>San Francisco: Identical to Milpitas Ordinance. (<u>Article III; Sec. 67.24(f)</u>)</p> <p>Oakland: Similar to Milpitas Ordinance, except the Oakland Ordinance expressly names the Redevelopment Agency, the Port Department, and standing committee's proposed or adopted budget. (<u>Article III; Sec. 2.20.220(F).</u>)</p> <p>Contra Costa: Similar to Milpitas Ordinance, except the Contra Costa Ordinance expressly identifies forensic services as a public record. (<u>Chapter 25, Sec. 25-4.404(g).</u>)</p> <p>Benicia:</p>

**Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06**

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
	Similar to Milpitas Ordinance. (<u>Section 4.12.040.F</u>)
<p>(g) 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.</p> <p>[THIS SECTION IS SIMILAR TO SUBSECTIONS “(h)” and “(i)” BELOW.]</p>	<p>San Francisco: Identical to Milpitas Ordinance. (<u>Article III; Sec. 67.24(g).</u>)</p> <p>Oakland: The Oakland Ordinance refers to this provision in general terms under “Release of Documentary Public Information.” However the CPRA would apply which provides that the agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of [CPRA] or on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (<u>Article III; Section 2.20.190; Govt. Code § 6255(a).</u>)</p> <p>Contra Costa: Similar to Milpitas Ordinance. The Contra Costa Ordinance further provides whenever a county officer asserts, as a justification for nondisclosure of a public record, the exemptions in CPRA, the officer shall cooperate with the requester’s efforts to communicate with the subject of the record consistent with a process set forth in the Ordinance. The exemptions would be based on personal privacy, names and addresses of crime victims, taxpayer information, confidentiality or privilege statute, personal financial data, or any other exemption based on personal or proprietary interest of a person or entity. (<u>Chapter 25, Sec. 25-4.608</u>)</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
	<p>Benicia: The Benicia Ordinance refers to this provision in general terms under "Goal," however the CPRA would apply. (Section 4.12.010; Govt. Code § 6255)</p>
<p>(h) 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.</p> <p>[THIS SECTION IS SIMILAR TO SUBSECTIONS "(g)" ABOVE and "(i)" BELOW.]</p>	<p>San Francisco: Similar to Milpitas Ordinance. (Article III; Sec. 67.24(h))</p> <p>Oakland: The Oakland Ordinance refers to this provision in general terms under "Release of Documentary Information," however the CPRA would apply. (<u>Article III; Section 2.20.190; Govt. Code § 6255</u>)</p> <p>Contra Costa: Similar to Milpitas Ordinance except Contra Costa does not expressly specify the "deliberative process" exemption arising out of Govt. Code § 6255. (<u>Chapter 25, Sec. 25-4.608</u>)</p> <p>Benicia: The Benicia Ordinance refers to this provision in general terms under "Goal," however the CPRA would apply. (Section 4.12.010; Govt. Code § 6255)</p>
<p>(i) 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.</p>	<p>San Francisco: Identical to Milpitas Ordinance. (<u>Article III; Sec. 67.24(g).</u>)</p> <p>Oakland: The Oakland Ordinance refers to this provision in general</p>

**Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06**

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
<p>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.</p> <p>[THIS SECTION IS SIMILAR TO SUBSECTION “(g)” AND “(h)” ABOVE.]</p>	<p>terms under “Release of Documentary Public Information,” however, the CPRA would apply which provides that the agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of [CPRA] or on the facts of the particular case, and the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (<u>Article III; Section 2.20.190; Govt. Code § 6255(a).</u>)</p> <p>Contra Costa: Similar to Milpitas Ordinance. The Contra Costa Ordinance further provides whenever a county officer asserts, as a justification for nondisclosure of a public record, the exemptions in CPRA, the officer shall cooperate with the requester’s efforts to communicate with the subject of the record consistent with a process set forth in the Ordinance. The exemptions would be based on personal privacy, names and addresses of crime victims, taxpayer information, confidentiality or privilege statute, personal financial data, or any other exemption based on personal or proprietary interest of a person or entity. (<u>Chapter 25, Sec. 25-4.608</u>)</p> <p>Benicia: The Benicia Ordinance refers to this provision in general terms under “Goal,” however the CPRA would apply. (<u>Chapter 4.12, Sec. 4.12.010; Govt. Code § 6255</u>)</p>

**Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06**

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
<p>C. Immediacy of Response <i>(Content from Milpitas Ordinance, Section 3; I-310—3.80)</i></p>	
<p>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.</p>	<p>San Francisco: Similar to the Milpitas Ordinance, but in order for a request to be satisfied no later than the close of business on the day following the day of the request, the S.F. Ordinance requires that written requests with the words “Immediate Disclosure Request” be placed on top of the request and on the envelope, subject line or cover sheet.</p> <p>The ordinance further stipulates that the person making the request need not state his or her reason for making the request or the use to which the information will be put. Where a record being requested, most of which is exempt under the CPRA and this ordinance, the City Attorney or custodian may provide non-exempt information and inquire as to requestor’s purposed for seeking information in order to suggest alternative sources for the information which may involve less redaction or to prepare a response to the request.</p> <p>Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
	<p>business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article. (Added by Ord. 265-93, App. 8118/93; amended by Proposition G, 11/2/99) (<u>Article III; Sec 67.25</u>)</p> <p>Oakland: Oakland Ordinance specifies that public records requests shall be satisfied no later than <u>three (3) business days</u> unless the requestor is advised within three business days that additional time is needed.</p> <p>The ordinance also specifies reasons a request may warrant additional time, and further states that all determinations shall be communicated in writing to the requestor within seven (7) days of the date of the request. In no event shall any disclosable records be provided for inspection or copying any later than fourteen (14) days after the written determination of need for additional time is sent to the requestor.</p> <p>The requirement to produce documents within three business days applies when the requestor makes a written request stating "Immediate Disclosure Request" and the request is <u>only</u> for public records previously distributed to the public e.g. meeting agendas and</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
	<p>memos. (<u>Article III; Sec.2.20.230</u>)</p> <p>Contra Costa: Identical to Milpitas Ordinance. (<u>Chapter 25, Sec.25-4.604</u>)</p> <p>Benicia: Requires a response to the request within 5 business days unless requestor is informed in writing within 1 business day that additional time is needed to determine whether the material is disclosable, or to locate the records. Such a determination is to be communicated in writing to the requester within 5 business days. Records shall be produced within 10 days of the written determination.</p> <p>Provides an “Immediate Disclosure Request” provision similar to Oakland except Benicia requires a response within 2 business days. (<u>Chapter 4.12, Sec. 4.12.060</u>)</p>
<p><i>D. Justification of Withholding</i> <i>(Content from Milpitas Ordinance, Section 3; I-310—3.100)</i></p>	
<p>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</p>	<p>San Francisco: Identical to Milpitas Ordinance. (Added by Ord. 265-93, App. 8118/93; amended by Proposition G, 11/2/99) (<u>Article III; Sec. 67.27</u>)</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
<p>this ordinance, shall cite that authority.</p> <p>(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.</p> <p>(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.</p> <p>(d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, 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.</p>	<p>Oakland: Similar to Milpitas Ordinance to the extent that it requires the justification for withholding public records to be in writing. However, the exemptions that could be cited for withholding a public record would differ from the Milpitas Ordinance based on the exemptions allowed under the Oakland Ordinance. Oakland would apply the CPRA which requires the custodian to assist the requestor to identify alternative sources. (<u>Article III, Sec. 2.20.250; Govt. Code § 6253.1</u>)</p> <p>Contra Costa: Similar to Milpitas Ordinance. Contra Costa would apply the CPRA which requires the custodian to assist the requestor to identify alternative sources. (<u>Chapter 25, Sec. 25-4.608; Chapter 25-4.204(a); Govt. Code § 6253.1</u>)</p> <p>Benicia: Similar to Milpitas, except Benicia provides for the final decision for withholding information shall be made by the city council. Each councilmember's vote and general reason shall be given and recorded in public. Detail reasons need not be provided when such disclosure would compromise privacy or confidential matters or would subject the city to litigation. (<u>Chapter 4.12, Sec. 4.12.080</u>)</p>
<p><i>E. Withholding Kept to a Minimum</i> <i>(Content from Milpitas Ordinance, Section 3; I-310—</i></p>	

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
<p>3.90) 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.</p>	<p>San Francisco: Similar to Milpitas Ordinance, except it provides redaction shall be done personally by the attorney or other staff conducting the exemption review. Additionally, the ordinance states that responding to a PRA request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover personnel costs of responding to a PRA request. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99) (<u>Article III; Sec. 67.26</u>)</p> <p>Oakland: Similar to Milpitas Ordinance, except the Oakland Ordinance provides redaction shall be done personally by the attorney or other staff conducting the exemption review. (<u>Article III; Sec.2.20.240</u>)</p> <p>Contra Costa: Identical to Milpitas Ordinance. (<u>Chapter 24, Sec.25-4.606</u>)</p> <p>Benicia: Similar to Milpitas Ordinance, except the Benicia Ordinance provides redaction, deletion, or segregation shall be done personally by the attorney or other staff conducting the exemption review. (<u>Chapter 4.12, Sec.</u></p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
	<u>4.12.070)</u>
<i>F. Fees for Duplication</i> <i>(Content from Milpitas Ordinance, Section 3; I-310—3.120)</i>	
<p>(a) No fee shall be charged for making public records available for review.</p> <p>(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.</p> <p>(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 not to exceed 10 cents per page may be charged, plus any postage.</p> <p>(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 10 cents or one cent, 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</p>	<p>San Francisco: Similar to Milpitas Ordinance, except S.F. identifies a \$10.00 fee for copies of video recorded meetings. (Added by Ord. 265-93, App. 8118/93; amended by Proposition G, 11/2/99) (<u>Article III; Sec. 67.28</u>)</p> <p>Oakland: Substantially similar to Milpitas Ordinance, but Oakland provides no fee shall be charged for a copy of the current agenda but a fee can be charged for past agendas or records for a specific request. Further the agency, department or the City may, rather than making the copies itself, contract at market rate to have a commercial copier produce the duplicates and charge the cost directly to the requester.</p> <p>No charge shall be made for a single copy of a draft or final Environmental Impact Report and Environmental Impact Statement. (<u>Article III; Sec.2.20.260</u>)</p> <p>Contra Costa: Substantially similar to Milpitas Ordinance, except the Contra Costa Ordinance provides that no fee shall be</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
<p>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.</p> <p>(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.</p>	<p>charged for meeting agendas and related materials 20 or less pages, and 1 cent shall be charged for same if more than 20 pages. Further the agency, department or the City may, rather than making the copies itself, contract at market rate to have a commercial copier produce the duplicates and charge the cost directly to the requester. (<u>Chapter 25, Sec. 25-4.610</u>)</p> <p>Benicia: Substantially similar to Milpitas Ordinance, but the Benicia Ordinance does provide all drafts or Final Environmental Impact Reports and Statements shall be posted either on the city’s website or the consultant’s website. Further, Benicia shall provide for free the first 20 copies of same report if of widespread public interest. All fees are to be determined and specified in the Benicia Master Fee Schedule. (<u>Chapter 4.12, Sec. 4.12.090</u>)</p>
<p>G. Index to Records (<i>Content from Milpitas Ordinance, Section 3; I-310—3.130</i>)</p>	
<p>The City shall prepare, within 12 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</p>	<p>San Francisco: Similar I to Milpitas Ordinance. (<u>Article III; Sec. 67.29</u>)</p> <p>Oakland: No similar provision.</p> <p>Contra Costa:</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
<p>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</p>	<p>Ordinance provides that the county shall cooperate with any voluntary effort by an interested and competent individual or organization to compile a database of non-confidential records including the records created and received by the county in the ordinary course of business. The database is to be organized so the public understands what types of records are maintained and the retention period for the record but the database should not be in such detail as to identify files or records concerning specific persons, transactions or other event. Unlike the Milpitas Ordinance, the Contra Costa Ordinance does not require that the index be maintained online and at the public library. (<u>Chapter 25, Sec. 25-6.202</u>)</p> <p>Benicia: No similar provision.</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
<p>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.</p>	
<p><i>H. Records Survive Transition of Officials (Content from Milpitas Ordinance, Section 3; I-310—3.140)</i></p>	
<p>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.</p>	<p>San Francisco: Similar to Milpitas Ordinance except the S.F. Ordinance does not require the City Attorney to monitor transition of public officials. (Added by Ord. 265-93, App. 8118/93; amended by Proposition G, 11/2/99) (<u>Article III; Sec. 67.29.1</u>)</p> <p>Oakland, Contra Costa, Benicia: No similar provision.</p>

Sunshine Reform Task Force - Public Records Provisions
Comparison of the City of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Provisions
Draft 11/15/06

<u>Provisions</u>	Comparison of Milpitas, San Francisco, Oakland, Contra Costa, and Benicia Sunshine/Open Government Ordinances
<p><i>I. Correspondence and Records Shall be Maintained</i> <i>(Content from Milpitas Ordinance, Section 3; I-310—3.180)</i></p>	
<p>(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.</p> <p>(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.</p>	<p>San Francisco: Similar to Milpitas Ordinance except the S.F. does not limit the obligation to maintain and preserve only documents that “pertain to or are within the subject matter jurisdiction of the official’s duties.”</p> <p>Unlike the Milpitas Ordinance, the S.F. Ordinance would require the Mayor and all Department Heads to preserve all documents and correspondence even if it was not created or received in connection with the transaction of public business as highlighted in the Milpitas Ordinance.</p> <p>“The Department of Elections shall keep and preserve all records and invoices relating to the design and printing of ballots and other election materials and shall keep and preserve records documenting who had custody of ballots from the time ballots are cast until ballots are received and certified by the Department of Elections.”</p> <p>”In any contract, agreement or permit between the City and any outside entity that authorizes that entity to demand any funds or fees from citizens, the City shall ensure that accurate records of each transaction are maintained in a professional and businesslike manner and are available to</p>

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	<p>the public as public records under the provisions of this ordinance. Failure of an entity to comply with these provisions shall be grounds for terminating the contract or for imposing a financial penalty equal to one-half of the fees derived under the agreement or permit during the period of time when the failure was in effect. Failure of any Department Head under this provision shall be a violation of this ordinance. This paragraph shall apply to any agreement allowing an entity to tow or impound vehicles in the City and shall apply to any agreement allowing an entity to collect any fee from any persons in any pretrial diversion program.” (Added by Ord. 265-93, App. 8118/93; amended by Proposition G, 11/2/99) (<u>Article III; Sec. 67.29.7</u>)</p> <p>Oakland: No similar provision.</p> <p>Contra Costa: Every policy body supported by County staff shall maintain a file, accessible to any member of the public during office hours, containing a copy of any letter, memorandum or other communication sent to or received from a quorum of a policy body irrespective of subject matter, origin or recipient, within the last 30 days except commercial solicitations, periodical publications or communications exempt from disclosure under state or federal law. (<u>Chapter 25, Sec. 25-4.402(a).</u>)</p>

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	Benicia: No similar provision.
J. Blank -----Advertising Space	
Not addressed in Milpitas Ordinance.	<p>San Francisco: Any future agreements between the city and an advertising space provider shall be public records and shall include as a basis for the termination of the contract any action by, or permitted by, the space provider to remove or deface or otherwise interfere with an advertisement without first notifying the advertiser and the city and obtaining the advertiser's consent. In the event advertisements are defaced or vandalized, the space provider shall provide written notice to the city and the advertiser and shall allow the advertiser the option of replacing the defaced or vandalized material. Any request by any city official or by any space provider to remove or alter any advertising must be in writing and shall be a public record. (<u>Article III; Section 67.29-3</u>)</p> <p>Oakland, Contra Costa, Benicia: No similar provision.</p>
K. Sources of Outside Funding Disclosed	
	<p>San Francisco: No official or employee or agent of the city shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth more than one hundred dollars in aggregate, for the purpose of carrying out or</p>

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	<p>assisting any City function unless the amount and source of all such funds is disclosed as a public record and made available on the website for the department to which the funds are directed. When such funds are provided or managed by an entity, and not an individual, that entity must agree in writing to abide by this ordinance. The disclosure shall include the names of all individuals or organizations contributing such money and a statement as to any financial interest the contributor has involving the City. (Added by Proposition G, 1112199) (<u>Article III, Sec. 67.29.6</u>)</p> <p>Oakland, Contra Costa, Benicia: No similar provision.</p>



Public Records
Reform Proposals
Submitted by Councilmembers and Members of the Public

I. Definitions

No proposals received.

II. Process for Gaining Access to Public Records; Administrative Appeals

1. Make broader disclosures of what the Council does in closed session. (*Reed, March 13, 2006*)
2. Where its provisions are stronger, the sunshine ordinance should clearly state its supremacy over the California Public Records Act. (*Sanjeev Bery, ACLU of Northern California, August 30, 2006*)
3. Members of the public should be able to challenge, in court, City decisions to withhold records. If the City loses, it should be required to pay court fees and attorney fees to the plaintiff. (*Sanjeev Bery, ACLU of Northern California, August 30, 2006*)

III. Public Information that Must be Disclosed

1. Disclose the salaries of all city employees by position. (*Councilmember Reed, March 13, 2006*)
2. Disclose records of city employee disciplinary actions to the extent allowed by state law. (*Councilmember Reed, March 13, 2006*)
3. Disclose real estate appraisals used in the purchase or condemnation of property to prevent city government from attempting to take a citizen's property without fair compensation. (*Councilmember Cortese, June 13, 2006*)
4. SJPD incident reports, use of force reports, and other documents should be explicitly classified as public records. (*Sanjeev Bery, ACLU of Northern California, August 30, 2006*)
5. Personnel Information. None of the following shall be exempt from disclosure under any provision of California law that does not expressly prohibit disclosure:
 - i. The record of any confirmed misconduct of a City official or employee, and of any sanction or discipline imposed for such misconduct. To the extent California law holds such information confidential for certain City employees, City shall disclose as much information as possible in summary form, only withholding information as necessary if required by state law. (*Sanjeev Bery, ACLU of Northern California, August 30, 2006*)
6. Law Enforcement Information
 - i. The San Jose Police Department shall make available to any person, upon request, any document routinely generated by police department personnel

including police reports, arrest reports, use of force reports, incident reports, 911 call tapes and transcripts, and CAD tapes and transcript. However, unless the report is requested by a person entitled to the following information under state or federal law, the following information shall be removed from the report before it is released:[...]. (*Sanjeev Bery, ACLU of Northern California, August 30, 2006*)

- ii. All other records pertaining to any investigation, arrest or other law enforcement activity shall be disclosed to the public once the Police Department, the District Attorney or a court determines that a prosecution will not be sought against the subject involved, once a final judgment of conviction or acquittal has been entered, or once the statute of limitations for filing charges has expired, whichever occurs first [...].(*Sanjeev Bery, ACLU of Northern California, August 30, 2006*)
- iii. The San Jose Police Department shall maintain a record, which shall be a public record and which shall be separate from the personnel records of the Police Department, which reports the number and substance of citizen complaints against the Police Department or its officers, the number and types of cases in which discipline is imposed, and the nature of the discipline imposed. The document shall contain summary information about the underlying facts and contain as much information as possible under state law. [...](*Sanjeev Bery, ACLU of Northern California, August 30, 2006*)

IV. Immediacy of Response

No proposals received.

V. Justification of Withholding

No proposals received.

VI. Withholding Kept to a Minimum

No proposals received.

VII. Fees for Duplication

No proposals received.

VIII. Index to Records

No proposals received.

IX. Records Survive Transition of Officials

The Mayor, City Attorney, Members of the City Council, the City Administrator and all department heads shall maintain and, preserve consistent with City records retention policies, all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports, ordinances, resolutions, and motions and shall disclose all such records upon request, which such items are not confidential as required by law. (*Dave Parker, August 31, 2006*)

X. Correspondence and Records Shall be Maintained

No proposals received.

XI. Blank -----Advertising Space

No proposals received.