

ORDINANCE NO. 2008- ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GILROY ESTABLISHING REGULATIONS GOVERNING ACCESS TO PUBLIC MEETINGS AND PUBLIC RECORDS, AND ESTABLISHING AN OPEN GOVERNMENT COMMISSION (“GILROY OPEN GOVERNMENT ORDINANCE”)

THE CITY COUNCIL OF THE CITY OF GILROY DOES HEREBY ORDAIN AS FOLLOWS:

A new Chapter 17A to be titled “Public Meetings and Public Records” is hereby added to the Gilroy City Code, to read as follows:

ARTICLE I

Sec. 17A.1 Purpose and Intent

On behalf of the people of the City of Gilroy, the City Council declares:

- (a) Whereas, transparency in decision making is a cornerstone of democracy.
- (b) Whereas, elected officials, commissions, boards, task forces, and other agencies of the City undertake the people’s business and in so doing commit themselves to the highest principles of transparency so that every citizen can know and participate in democracy at the local level.
- (c) Whereas, California has a long tradition of laws designed to protect the public’s access to the workings of government, and each generation of elected officials and municipal employees should commit themselves to the principles of transparency and seek to implement new approaches that keep the public informed about policy decisions. Experience teaches that as government evolves, so must the laws designed to ensure that the workings of local government remain visible to all.
- (d) Whereas, transparency in governmental policy decisions is paramount and only in rare and unusual circumstances should decisions made on behalf of the people take place out of public view. Those circumstances should be carefully and narrowly defined.
- (e) Whereas, public accountability for all decisions made on behalf of the people will protect the public’s interest in open government.

(f) The City Council enacts this Chapter to assure that the people of the City remain in control of the government they have created.

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

Sec. 17A.2 Citation

This Chapter may be cited as “the Gilroy Open Government Ordinance.”

Article II

Sec. 17A.3 Definitions

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

- (a) "City" shall mean the City of Gilroy.
- (b) "Meeting" shall mean any of the following:
 - (1) A congregation of a majority of the members of a policy body at the same time and place to discuss or deliberate City business (whether a “collective concurrence” is reached or not, as that term is used in *Wolfe v City of Fremont* (2006) 144 Cal. App.4th 533).
 - (2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings (whether a “collective concurrence” is reached or not, as that term is used in *Wolfe v City of Fremont* (2006) 144 Cal. App.4th 533); or,
 - (3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon (whether a “collective concurrence” is reached or not, as that term is used in *Wolfe v City of Fremont* (2006) 144 Cal. App.4th 533).
 - (4) "Meeting" shall not include any of the following:
 - (A) Individual contacts or conversations between a member of a policy body and another person that do not convey to the

member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;

- (B) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City; or
- (C) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of the policy body.
- (D) The attendance of a majority of the members of a policy body at an open and noticed meeting of a standing committee of that body, provided that the members of the policy body who are not members of the standing committee attend only as observers.
- (E) “Policy bodies” shall mean the City Council, appointed subcommittees of the City Council except for *ad hoc* subcommittees appointed for a single purpose on a temporary basis, Commissions, Boards, and City created task forces. Policy bodies shall not include a committee that consists solely of employees of the City of Gilroy.
- (F) Electronic mail exchanged between members of a policy body and/or city staff, exclusively through the use of those members’ city email addresses, so long as such electronic mail is subject to inspection under subsection 17A.20(k) of this act. Notwithstanding the foregoing sentence, such email exchanges shall not violate the Ralph M. Brown Act.

Sec. 17A.4 Meetings to be Open and Public; Application of Brown Act

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

Sec. 17A.5 Agenda Requirements; Regular Meetings

- (a) At least seventy-two (72) hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on the City's Internet website at least seventy-two (72) hours before a regular meeting.
- (b) At least seven (7) calendar days before a regular City Council meeting, a preliminary agenda shall be posted containing a meaningful description of each item of business anticipated at the time of posting the preliminary agenda to be transacted or discussed at the meeting. These agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, the preliminary agenda shall be posted on the City's Internet website at least seven (7) calendar days before the regular City Council meeting. Staff reports prepared and ready at the time of posting of the preliminary agenda may also be posted to the website.
- (c) A description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports. Such documents shall be made available for public inspection and copying at a location indicated on the agenda during normal office hours.
- (d) The agenda shall specify the time and location of the regular meeting and shall be posted at locations that are freely accessible to members of the public.
- (e) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.
- (f) Notwithstanding subdivision (e), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:

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

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

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

(4) Upon a determination by a majority vote that staff has demonstrated good cause to present documentation at a meeting that was not made available 72 hours in advance on the City website in accordance with subsection 17A.10(c) of this Chapter

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

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE. Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, task forces, councils and other agencies of the City exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE, CONTACT THE OPEN GOVERNMENT COMMISSION

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

Sec. 17A.6 Public Notice Requirements

(a) Any public notice that is mailed, posted or published by a City department, task force, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their

property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.

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

Sec. 17A.7 Additional Public Statements and Comments

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

Sec. 17A.8 Agenda Disclosures: Closed Sessions

- (a) In addition to the brief general description of items to be discussed or acted upon in open and public session, the agenda posted pursuant to Government Code Section 54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any call and notice delivered to the local media and posted pursuant to Government Code Section 54956 shall specify and disclose the nature of any closed sessions by providing all of the following information:
 - (1) With respect to a closed session held pursuant to Government Code Section 54956.7:

LICENSE/PERMIT DETERMINATION

_____ applicant(s)

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

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

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Property:
Person(s) negotiating:
Under negotiation:
Price: ___ Terms of payment: ___ Both: ___

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

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

CONFERENCE WITH LEGAL COUNSEL

Existing Litigation:
Case Name _____
Court _____
Case Number _____

_____ Unspecified to protect service of process
_____ Unspecified to protect settlement posture

or:

Anticipated Litigation:
_____ As defendant
_____ As plaintiff

The space under "Existing Litigation" shall be used to specifically identify a case under discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the case name, court, and case number, unless the identification would jeopardize the City's ability to effectuate service of process upon one or more unserved parties, in which instance the space in the next

succeeding line shall be checked, or unless the identification would jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in which instance the space in the next succeeding line shall be checked. If the closed session is called pursuant to subdivision (b) or (c) of Section 54956.9, the appropriate space shall be checked under "Anticipated litigation" to indicate the City's anticipated position as defendant or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As defendant" or "As plaintiff" spaces or both as appropriate.

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

THREAT TO PUBLIC SERVICES OR FACILITIES

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

PUBLIC EMPLOYEE APPOINTMENT/HIRING

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

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

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

or:

PUBLIC EMPLOYEE DISMISSAL/DISCIPLINE/RELEASE

Number of employees affected:

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

CONFERENCE WITH NEGOTIATOR—COLLECTIVE BARGAINING

Name and title of City's negotiator:

Organization(s) representing: _____

Anticipated issue(s) under negotiation

___ Wages

___ Hours

___ Benefits

___ Working Conditions

___ Other (specify if known)

___ All

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

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

Sec. 17A.9 Additional Requirements for Closed Sessions

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

Sec. 17A.10 Agendas and Related Materials: Public Record

(a) Agendas of meetings, meeting packets, and any other documents on file with the clerk of the policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public for inspection and copying at the office of the policy body before the hearing and be available to the public in sufficient quantities at the hearing commensurate with the anticipated needed number of copies that will be requested by people attending the hearing. However, this disclosure need not include any material exempt from public disclosure under this Chapter.

(b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.

(c) At the same time any regular meeting agenda is posted, City staff shall also post on its Internet website a complete set of all documents provided to the policy body in anticipation of such regular meeting. However, this disclosure need not include any material exempt from public disclosure under this Chapter. City staff shall not provide any non-exempt documents to a policy body at a regular meeting unless those documents were posted to the City's website at least 72 hours earlier, unless a majority of

the members of the policy body specifically approves the submission of such belatedly provided documents following a showing by staff of good cause at the regular meeting that justifies waiving of this Internet posting requirement. Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion. Records which are subject to disclosure under subdivision (a) and which are distributed during or following their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.

(d) A policy body may charge a duplication fee as may be set from time to time by the City Council for a copy of a public record prepared for consideration at a public meeting. Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public's right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body.

Sec. 17A.11 Closed Sessions

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

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

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

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

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

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

(d) With the City's designated representatives regarding matters within the scope of collective bargaining or meeting and conferring with public employee organizations when a policy body has authority over such matters. The salary and benefits of members of the City Council, the City Administrator, and the unrepresented employees will be discussed and acted upon separately by the City Council in open session.

- (1) Such closed sessions shall be for the purpose of reviewing the City's position and instructing its designated representatives and may take place solely prior to and during active consultations and discussions between the City's designated representatives and the representatives of employee organizations or the unrepresented employees. Except for consultations with designated representatives, a policy body shall not discuss compensation or other contractual matters in closed session with one or more employees directly interested in the outcome of the negotiations.
- (2) In addition to the closed sessions authorized by subsection 17A.11(d)(1), a policy body subject to Government Code Section 3501 may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Section 3504.

- (e) Immediately upon entering into any closed session, the City Council and any other persons properly present shall discuss only whether the matter on the agenda for discussion in closed session should proceed in open session instead of closed session. A roll call vote on this question shall then be held. If a majority of the Council vote to hear and decide the matter in open session, the Council shall return to open session immediately without further discussion and report the vote in open session. If a majority of the Council vote to hear and decide the matter in closed session, the Council shall do so and later report the vote on this question at the first opportunity after returning to open session.

Sec. 17A.12 Statements of Reasons for Closed Sessions

Prior to any closed session, a policy body shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section

and subdivision, or other legal authority under which the session is being held. In the closed session, the policy body may consider only those matters covered in its statement. In the case of regular and special meetings, the statement shall be made in the form of the agenda disclosures and specifications required by Section 17A.8 of this Chapter. In the case of adjourned and continued meetings, the statement shall be made with the same disclosures and specifications required by Section 17A.8 of this Chapter, as part of the notice provided for the meeting. In the case of an item added to the agenda as a matter of urgent necessity, the statement shall be made prior to the determination of urgency and with the same disclosures and specifications as if the item had been included in the agenda pursuant to Section 17A.8 of this Chapter. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law.

Sec. 17A.13 Disclosure of Closed Session Discussions and Actions

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

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

- (1) Real Property Negotiations: Approval given to a policy body's negotiator concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with another party to the negotiations, the body shall disclose the fact of that approval, the substance of the agreement and the body's vote or votes thereon upon inquiry by any person, as soon as the other party or its agent has informed the body of its approval. If, notwithstanding the final approval, there are conditions precedent to the final consummation of the transaction, or there are multiple contiguous or closely located properties that are being considered for acquisition, the document referred to in subdivision (b) of this section need not be disclosed until the condition has been satisfied or the agreement has been reached with respect to all the properties, or both.
- (2) Litigation: Direction or approval given to the body's legal counsel to prosecute, defend, or seek, or refrain from seeking appellate

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

- (3) Settlement: A policy body shall neither solicit nor agree to any term in a settlement which would preclude the release of the text of the settlement itself and any related documentation communicated to or received from the adverse party or parties. Any written settlement agreement and any documents attached to or referenced in the settlement agreement shall be made publicly available at least ten (10) calendar days before the meeting of the policy body at which the settlement is to be approved to the extent that the settlement would commit the City or a department thereof to adopting, modifying, or discontinuing an existing policy, practice or program, or otherwise acting other than to pay an amount of money less than \$50,000. The agenda for any meeting in which a settlement subject to this section is discussed shall identify the names of the parties, the case number, the court, and the material terms of the settlement. Where the disclosure of documents in a litigation matter that has been settled could be detrimental to the City's interests in pending litigation arising from the same facts or incident and involving a party not a party to or otherwise aware of the settlement, the documents required to be disclosed by subsection (b) of this section need not be disclosed until the other case is settled or otherwise finally concluded.
- (4) Employee Actions: Action taken by the City Council to appoint, employ, dismiss, transfer or accept the resignation of a public employee in closed session pursuant to Government Code Section 54957 shall be reported immediately in a manner that identifies the action taken and position affected and, in the case of dismissal for a violation of law or of the policy of the City, the reason for dismissal. Such report shall be consistent with Government Code sections 3300 and 54957, as well as applicable federal and state law. "Dismissal" within the meaning of this Chapter includes any termination of employment at the will of the employer rather than of the employee, however characterized. The proposed terms of any separation agreement shall be immediately disclosed as soon

as presented to the body, and its final terms shall be immediately disclosed upon approval by the body.

- (5) **Collective Bargaining:** Any collectively bargained agreement shall be made publicly available at least ten (10) calendar days before the meeting of the policy body to which the agreement is to be reported.

(c) Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed immediately shall be provided to any person who has made a written request regarding that item following the posting of the agenda, or who has made a standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956.

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

Sec. 17A.14 Barriers to Attendance Prohibited

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

Sec. 17A.15 Tape Recording, Filming and Still Photography

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

(b) The City Council and Planning Commission shall video record each meeting. All other commissions, boards and task forces shall audio record each meeting.

Each such video recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The video recording of all regular meetings of the City Council and Planning Commission shall within one week of the meeting be made available by webcast on the City's website and shall remain on the City's website for a period of at least ten (10) years from the meeting. The audio and/or video record of all meetings under this subdivision shall be kept for at least twenty (20) years. Audio records of audio taped meetings shall be provided upon request and payment for the actual cost of the recording. Requests shall be made through the City Clerk.

Sec. 17A.16 Public Testimony and Council Announcements

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on any item, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subsection 17A.5(f) of this Chapter.

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

(c) Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard. However, the Chair of the meeting has discretion to adjust the speaking time. Time limits shall be applied uniformly to members of the public wishing to testify. The Chair of the policy body shall accept public testimony in a fair and evenhanded way, without manipulation in the order of speakers.

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

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

Sec. 17A.17 Minutes

(a) The Clerk or Secretary of each policy body shall record the written minutes of all regular meetings of the policy body.

(b) The draft minutes of each meeting shall be posted on the City's website and be available for inspection and copying upon request no later than ten (10) working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. All votes, including voice votes, shall be properly recorded.

Sec. 17A.18 Public Comment By Members of Policy Bodies

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

ARTICLE III.

Sec. 17A.19 Definitions

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

(a) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication.

(b) "Public Information" shall not include "computer software" developed by the City of Gilroy as defined in the California Public Records Act (Government Code Section 6254.9).

Sec. 17A.20 Process for Gaining Access to Public Records; Administrative Appeals

(a) Every department head whose has custody of any public record or public information as defined herein or who manages, directly or indirectly, subordinate employees within that department that have custody of any public record or public information as defined herein, or that department head's designated representative under subsection 17A.22(a) below (hereinafter referred to as "a Department Head") 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 as may be set from time to time by the City Council.

(b) A Department Head shall, as soon as possible and within ten (10) calendar 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 Department Head by the requester orally or in writing by fax, postal delivery, or email. If the Department Head believes the record or information requested is not a public record or is exempt, the Department Head shall justify withholding any record by demonstrating, in writing as soon as possible and within ten (10) calendar days following receipt of a request, that the record in question is exempt under express provisions of this Chapter.

(c) A Department Head 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 Department Head, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven (7) calendar 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 Department Head, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.

(d) If the Department Head refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the City Administrator in writing, and in the form required by the Open Government Commission, for a determination whether the record requested is public. The City Administrator shall inform the petitioner, as soon as possible and within ten (10) calendar 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 City Administrator that the record is public, the City Administrator shall immediately order the Department Head to comply with the person's request. If the Department Head refuses or fails to comply with any such order within five (5) days, the City Administrator shall notify the City Attorney who shall take whatever measures deemed necessary and appropriate to insure compliance with the provisions of this Chapter.

(e) If the Department Head 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 City Administrator, 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 two (2) days after its next meeting but in no case later than forty-five (45) days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Open Government Commission shall advise the City Council as

to whether the record should be public. The City Council and the City Attorney's office shall provide sufficient resources to allow the Open Government Commission to fulfill its duties under this provision. Where requested by the petition, the Open Government Commission may conduct a public hearing concerning the records request denial. An authorized representative of the Department Head shall attend any hearing and explain the basis for its decision to withhold the record requested. Petitions for City Councilmember records shall be made directly to the Open Government Commission for its determination according to this paragraph.

(f) The administrative remedy provided under this Chapter shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or task force; 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 Department Head 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, the Superior Court of California shall retain jurisdiction to order compliance.

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

(h) At least once a year, and as otherwise requested by the Open Government Commission, the City Administrator 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 Department Head of those records, the ruling of the City Administrator, whether any ruling was overturned by a court and whether orders given to Department Heads of public records were followed. The report shall also summarize any court actions related to any petitions during that period. At the request of the Open Government Commission, the report shall also include copies of all rulings made by the City Administrator and all opinions issued.

(i) The Gilroy City Attorney's office shall act to protect and secure the rights of the people of Gilroy to access public information and public meetings. The City Attorney or its designee will monitor the handling of public records when any elected public official or the City Administrator leaves office and moves materials from the office. All elected officials and the City Administrator shall surrender all public records in their possession to the City Attorney or its designee at the time of leaving office.

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

(k) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any

form requested which is available to or easily generated by the department, its officers or employees, including disk, tape, printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and inseparably intertwined with information not subject to disclosure under this Chapter. 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.

(l) Nothing in this section shall prohibit the requestor and Department Head or his/her designee from agreeing to a longer time than provided for herein for the provision of requested records. Any such mutual agreement shall be in writing and signed by the requestor.

Sec. 17A.21 Policy Regarding Use of Computer Systems

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

Sec. 17A.22 Release of Oral Public Information

Release of oral public information shall be accomplished as follows:

(a) Every department head shall designate a person or persons knowledgeable about the affairs of the department, to provide information, including oral information, to the public about the department's operations, plans, policies and positions (referred to herein as "a Department Head"). The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate or alternates be available for this function during the absence or unavailability of the person assigned primary responsibility. A list of every city department and every designated and alternate Department Head for public record inspection purposes, along with those employees' business addresses, telephone numbers and email addresses, shall be available for inspection and copying at the Office of the City Clerk and shall be kept and regularly maintained on the City's website.

(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 the employee's operational duties and confined to accurate information not confidential by law.

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

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

(e) Notwithstanding any other provisions of this Chapter, 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.

Sec. 17A.23 Public Review File – Policy Body Communications

The City Clerk or the designated secretary of a particular policy body 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 thirty (30) days or likely to be calendared within the next thirty (30) days, irrespective of subject matter, origin or recipient, except commercial solicitations, periodical publications or communications exempt from disclosure under the California Public Records Act (Government Code Section 6250 et seq.) and not deemed disclosable under Section 17A.24 of this Chapter.

Sec. 17A.24 Public Information That Must Be Disclosed

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

(a) Drafts and Memoranda. No preliminary draft or memorandum shall be exempt from disclosure under Government Code section 6254, subdivision (a) if it is kept in the normal course of business. For purpose of this Chapter, "normal course of business" means in the inherent nature of the city's business in question, and in the method systematically employed for the conduct of the task in question. 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 pursuant to this provision until final action has been taken.

(b) Litigation Material. Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Chapter:

- (1) A pre-litigation claim against the City (excluding any investigative reports);
- (2) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged or attorney-work product when it was previously received or created;

(c) Contracts, Bids and Proposals

- (1) All initial City Requests for Proposals ("RFP's") shall be kept in a central repository and shall be made available for public inspection. In addition, RFP's shall be placed on the City's website for a period from the date the RFP was issued to the date that the RFP is due.
- (2) Contracts, contractors' bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a RFP has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.

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

(e) Appraisals, offers and counteroffers relating to the City's purchase of real property are exempt until an agreement is executed.

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

(g) Neither the City nor any officer, employee, or agent thereof may assert an exemption for withholding for any document or information based on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(h) Neither the City, nor any officer, employee, nor agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholding of documents or information must be based on an express provision of this Chapter 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 Chapter.

Sec. 17A.25 Immediacy of Response

Notwithstanding the ten (10) calendar day period for response to a request permitted in Government Code section 6253 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 ten (10) calendar days as provided in Government Code section 6256.1, the requestor shall be noticed as required within three (3) business days of the request. Nothing in this section shall prohibit the requestor and Department Head or his/her designee from agreeing to a longer time than provided for herein for the provision of requested records. Any such mutual agreement shall be in writing and signed by the requestor.

Sec. 17A.26 Withholding Kept to a Minimum

Information that is exempt from disclosure shall be masked, deleted or otherwise segregated so that the nonexempt portion of a requested record may be released and keyed by footnote or other clear reference to the appropriate justification for withholding required by this Chapter in Section 17A.27.

Sec. 17A.27 Justification of Withholding

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

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

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

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

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

Sec. 17A.28 Public Records That Must Be Disclosed

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

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

Sec. 17A.29 Fees for Duplication

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

(b) For documents routinely produced in multiple copies for distribution, e.g. meeting agendas and related materials, a fee as may be set from time to time by the City Council may be charged, plus any postage costs.

(c) For documents assembled and copied to the order of the requester, a fee as may be set from time to time by the City Council may be charged, plus any postage.

(d) 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 City Council shall from time to time approve a fee schedule determining these costs.

Sec. 17A.30 Index to Records

The City shall prepare, within twenty-four (24) months of the passage of this Chapter, a public records index that identifies the types of information and documents maintained by the City and its departments, agencies, task forces, commissions, and elected officers. The index shall be for the use of City officials, staff and the general public, and shall be organized to permit a general understanding of the types of information maintained, by which officials and departments, for which purposes and for what periods of retention, and under what manner of organization for accessing, e.g. by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction or other event, but shall clearly indicate where and how records of that type are kept. Any such master index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or policy body responsible for the indexed records. The City Clerk shall be responsible for the preparation of this records index. The City Clerk shall report on the progress of the index to the Open Government Commission on at least a semi-annual basis until the index is completed. Each department, agency, commission and public official shall cooperate with the City Clerk to identify the types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests that are regularly received. Each department, agency, commission and public official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each department, agency, commission or public official of the City. The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any changes in the department, agency, commission or public official's practices or procedures affecting the accuracy of the information provided to the City Clerk shall be recorded by the City Clerk on a periodic basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City's website and made available at the Gilroy Library.

Sec. 17A.31 Records Survive Transition of Officials

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

Sec. 17A.32 Internet Access/World Wide Web Minimum Standards

The City of Gilroy 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 the City's web site as much information and as many documents as possible concerning its activities. These include but are not limited to campaign report forms, statements of economic interest, operating and capital budgets, meeting agenda, meeting minutes, public notices and, when feasible, staff meeting reports. Within twelve (12) months after enactment of this provision, each department shall post on the City's web site all meeting notices required under this Chapter, all agendas and the minutes of all previous meetings of its policy bodies from that point in time forward. Notices and agendas shall be posted no later than the time that the department otherwise distributes this information to the public, allowing reasonable time for posting.

Minutes of meetings shall be posted as soon as possible, but in any event within one week after they have been approved. The City shall make reasonable efforts to ensure that its web site is regularly reviewed for timeliness and updated on at least a weekly basis. The City shall also make available on its web site, or on a comparable, readily accessible location on the Internet, a current copy of the City Code.

The City shall also webcast all City Council and Planning Commission meetings and archive the webcasts of such meetings for at least ten (10) years.

Sec. 17A.33 Correspondence and Records Shall be Maintained

(a) The City Administrator 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 Chapter.

(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.

Sec. 17A.34 Review of Form 700, Statement of Economic Interests

(a) Once annually, in the first two weeks of April, the City Clerk shall conduct a prima facie review of all completed Form 700s (the statement of economic interests required by Government Code 85700 of certain enumerated local officials) submitted by the City Administrator, the Mayor, members of staff required to file Form 700 and all members of the City Council and Planning Commission. The City Administrator shall review the Form 700 submitted by the City Clerk. The City Clerk shall review Form 700s of boardmembers and commissioners.

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

ARTICLE IV.

Sec. 17A.35 The Open Government Commission

(a) There is hereby established a task force to be known as the "Open Government Commission" consisting of three City Council members appointed by the City Council. The City Attorney shall serve as legal advisor to the Commission.

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

(c) The Commission shall advise the City Council and provide information to other City departments on appropriate ways in which to implement this Chapter. The Commission shall develop appropriate goals to ensure practical and timely implementation of this Chapter. The Commission shall propose to the City Council amendments to this Chapter. The Commission shall report to the City Council at least once annually on any practical or policy problems encountered in the administration of this Chapter. The Commission shall receive and review regular quarterly reports on

requests for public information. Such reports shall not identify the requestor or any information confidential by law.

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

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

Sec. 17A.36 Responsibility for Administration

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

Sec. 17A.37 Department Head Declaration and Training

All City department heads and all City management employees and all employees or officials who are required to sign a Form 700 (the statement of economic interests required by Government Code 85700) shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Open Government Ordinance and have attended or will attend when next offered, a training session on the Open Government Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the City Clerk and shall be available as a public record. Annual training shall be provided by the City Attorney's Office. Attendance at the Open Government Ordinance Training Sessions is required of all City Council Members and Commissioners serving the City.

Sec. 17A.38 Willful Refusal Shall Be Official Misconduct

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

Sec. 17A.39 Enforcement Provisions

(a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce that person's right to inspect or to receive a copy of any public record or class of public records under

this Chapter or to enforce that person's right to attend any meeting required under this Chapter to be open, or to compel such meeting to be open.

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

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

(d) Any person may institute proceedings for enforcement and penalties under this Chapter in any court of competent jurisdiction if enforcement action is not taken by a City or state official 50 days after a complaint is filed.

Sec. 17A.40 Open Government Ordinance Supersedes Other Local Laws; Applies to All Ordinances with Open Government Application

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

Sec. 17A.41 Severability

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

This Ordinance shall be in full force and effect thirty (30) days after the date of its passage and adoption.

PASSED AND ADOPTED this _____ day of _____, 2008, by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

APPROVED:

Albert Pinheiro, Mayor

ATTEST:

Shawna Freels, City Clerk