

ORDINANCE NO.

**AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING SECTION 12.21.430 OF CHAPTER 12.21 (COMPLAINTS REGARDING REQUESTS FOR PUBLIC RECORDS) OF THE SAN JOSE MUNICIPAL CODE TO CLARIFY THE APPEAL PROCESS FOR A PUBLIC RECORDS ACT REQUEST**

**WHEREAS**, on May 10, 2022, the City Council requested that the Municipal Code be amended to clarify that an appeal, for an exemption to a Public Records Act request based on the attorney client privilege, should only be heard by the City Council, as holder of the privilege;

**WHEREAS**, the Board of Fair Campaign and Political Practices requested that they be removed as a body for the appeal of an exemption to the Public Records Act request;

**WHEREAS**, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-010 (City Administrative Activities); and

**WHEREAS**, the City Council of the City of San José is the decision-making body for this Ordinance; and

**WHEREAS**, the City Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

**NOW, THEREFORE**, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 12.21.430 of Chapter 12.21 of Title 12 of the San José Municipal Code is amended to read as follows:

**12.21.430 Complaints-Appeal process regarding requests for public records requests.**

- A. Complaints alleging that records or some part of records are being withheld improperly under the Public Records Act, this chapter or the ~~e~~Consolidated ~~e~~Open ~~g~~Government and ~~e~~Ethics ~~r~~Resolution, may be appealed to the ~~e~~City's ~~e~~Open ~~g~~Government ~~m~~Manager, or the Rules and Open Government Committee.
- B. ~~If T~~the requestor is dissatisfied with the response from the City's Open Government Manager, they may appeal to the ~~r~~Rules and ~~e~~Open ~~g~~Government ~~e~~Committee ~~either before or after an appeal to the city's open government manager by submitting a complaint to the office of the city clerk.~~
- C. If the requestor is dissatisfied with the response from the ~~r~~Rules and ~~e~~Open ~~g~~Government ~~e~~Committee, ~~he or she~~they may appeal submit a complaint to the board of fair campaign and political practices or directly to the ~~e~~City ~~e~~Council ~~by submitting an appeal to the office of the city clerk.~~
- D. ~~If the response of the board of fair campaign and political practices is unacceptable to any party, the party may appeal to the city council by submitting an appeal to the office of the city clerk.~~
- E. Appeals to the Rules and Open Government Committee, or the City Council must be submitted to the Office of the City Clerk.
- E. Records being withheld on the basis of attorney client privilege can only be appealed to the City Council.

G. At any time, the requestor may file a complaint with the Santa Clara County Superior Court as set forth in the Public Records Act.

FH. Consistent with the Public Records Act, the superior court may award court costs and reasonable attorney fees to the complainant should the complainant prevail in litigation filed pursuant to this section. The costs and fees shall be paid by the city and shall not become a personal liability of any employee of the city responsible for making the decision to refuse disclosure. If the superior court finds that the complainant's case is clearly frivolous, it may award court costs and reasonable attorney fees to the city.

GH. The city's failure to follow these administrative procedures will not result in the invalidation of any action taken by the city.

PASSED FOR PUBLICATION of title this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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MATT MAHAN  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk