

**ORDINANCE NO. 2019-05**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GILROY DELETING GILROY CITY CODE SECTIONS 17A.24 (6) and (8), WHICH CURRENTLY PROHIBIT RELIANCE ON GOVERNMENT CODE SECTION 6255**

WHEREAS, Senate Bill 1421 (“SB 1421”) was signed by the Governor Brown on September 30, 2019, effective January 1, 2019; and

WHEREAS, existing law, Penal Code sections 832.5 and 832.7, provided that requests for information contained in local agency peace officer personal files and records of citizen complaints were confidential and shall not be disclosed except by discovery through a *Pitchess* motion in compliance with the procedures set forth in Evidence Code sections 1043, 1045 and 1046; and

WHEREAS, SB 1421 amended Penal Code section 832.7 regarding local agency peace officer personnel records and now makes some of these records available in response to a Public Records Act request; and

WHEREAS, on February 2, 2019, the California Attorney General (“AG”) issued a “Position – DOJ’s Responsibilities Under SB 1421”; and

WHEREAS, the AG acknowledges that local agency peace officers have had a significant privacy right in their personnel records; and

WHEREAS, the AG states that there are several cases currently pending in the California superior courts that raise the issue whether SB 1421 requires the disclosure of records relating to conduct occurring before January 1, 2019 (effective date of SB 1421); and

WHEREAS, the AG has taken the position that, until the legal question of retroactive application of the statute is resolved by the courts, the public interest in accessing these records is clearly outweighed by the public’s interest in protecting privacy rights under Government Code section 6255; and

WHEREAS, the AG Position further determined that it will not disclose any records that pre-date January 1, 2019 at this time; and

WHEREAS, in November 2008 the City Council adopted the Open Government Ordinance (“OGO”) codified in Gilroy City Code Chapter 17A; and

WHEREAS, the OGO Sections 17A.24 (6) and (8), as adopted, currently prohibit reliance on Government Code section 6255; and

WHEREAS, the City Council wishes to adhere to the AG position and not disclose the City’s peace officer personnel records until the legal question of retroactive application of the statute is resolved by the courts; and

WHEREAS, the City Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA,” Public Resources Code sections 21000 *et seq.*), because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, and it does not have the potential to result in a physical change to the environment, directly or indirectly (Title 14, Chapter 3 of the California Code of Regulations “CEQA Guidelines,” sections 15060(c)(2) and (3)).

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GILROY DOES HEREBY ORDAIN AS FOLLOWS:**

### **SECTION I**

Chapter 17A, of the Gilroy City Code entitled the “Gilroy Open Government Ordinance” is hereby amended by repealing Sections 17A.24 (6) and (8) in their entirety. Except as provided herein, no other amendments, deletions or additions are made to the Chapter 17A.”

### **SECTION II**

If any section, subsection, sentence, clause or phrase of this Interim Urgency Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Gilroy hereby declares that it would have passed and adopted this ordinance, and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases may be declared invalid or unconstitutional.

### **SECTION III**

Pursuant to section 608 of the Charter of the City of Gilroy, this ordinance shall be in full force and effect thirty (30) days from and after the date it is adopted.

**PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF GILROY**  
this 25<sup>th</sup> day of February 2019, by the following vote:

**AYES: COUNCILMEMBERS: BLANKLEY, BRACCO, MARQUES,  
LEROE-MUÑOZ, TUCKER and VELASCO**

**NOES: COUNCILMEMBERS: TOVAR**

**ABSENT: COUNCILMEMBERS: NONE**

APPROVED:

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Roland Velasco, Mayor

ATTEST:

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Shawna Freels, City Clerk