CERTIFICATION OF CITY CLERK

ORDINANCE NO. 243.6

I, Mary Lavelle, City Clerk of the City of Milpitas, do hereby certify that the attached Ordinance is a true and correct copy of Ordinance No. **243.6** of the City of Milpitas, that this Ordinance was duly enacted and adopted by the City Council of the City of Milpitas at a meeting of the City Council held on the 7TH day of February 2012, and that the Ordinance was published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of Milpitas, California, this 10TH day of February 2012.

Mary Lavelle

Mary Lavelle
City Clerk

REGULAR

NUMBER: **243.6**

TITLE: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE CAMPAIGN CONTRIBUTION LIMITATIONS FOR CITY ELECTIONS**

HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of January 17, 2012, upon motion by Councilmember Polanski and was adopted (second reading) by the City Council at its meeting of February 7, 2012, upon motion by Councilmember Polanski. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:	**(4)**	**Mayor Esteves, Vice Mayor McHugh, Councilmembers Gomez and Polanski**
NOES:	**(1)**	**Councilmember Giordano**
ABSENT:	**(0)**	**None**
ABSTAIN:	**(0)**	**None**

ATTEST:

Mary Lavelle

Mary Lavelle, City Clerk

APPROVED:

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

RECITALS:

WHEREAS, Ordinance No. 243.4 was subjected to a referendum petition before its effective date; and

WHEREAS, said referendum petition was certified by the City Clerk on January 3, 2012; and

WHEREAS, the City Council for the City of Milpitas by a unanimous vote on January 12, 2012, chose to repeal said Ordinance No. 243.4 in its entirety by passage on that date of Ordinance 243.5; and

WHEREAS, by this Ordinance No. 243.6, the City Council desires to adopt legislation that is substantially different than the original Ordinance No. 243.4, thereby satisfying the requirements of Elections Code Section 9241 which bars enactment by the Council of a new ordinance substantially similar to a prior one within one year of its repeal; and

WHEREAS, the City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this new Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment.

NOW, THEREFORE, the City Council of the City of Milpitas does ordain as follows:

SECTION 1. RECORD AND BASIS FOR ACTION

The City Council has duly considered the full record before it, which may include but is not limited to such things as the City staff report, testimony by staff and the public, and other materials and evidence submitted or provided to the City Council. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

SECTION 2. UNCODIFIED FINDINGS:

The City Council hereby makes the following uncodified findings:

A. It is the intent of the City Council to enact an ordinance regulating campaign contributions that is substantially different from Ordinance No. 243.4, thereby avoiding the one year prohibition of Elections Code Section 9241.

B. This Ordinance No. 243.6 is substantially different from Ordinance No. 243.4 in that the latter contained five primary areas of legislation, which were: (1) increasing the campaign contribution limit from $350 to $500 and adding aggregation provisions, (2) creating notification requirements for Independent Expenditure Committees, (3) creating disclosure requirements for Campaign Consultants, (4) creating voluntary campaign expenditure limitations, and (5) encouraging disclosure of campaign contributions received from persons with an interest in items appearing on the Council agenda. In contrast, this Ordinance No. 243.6 completely omits items (3) through (5) and with regard to item (1), takes the legislation in a completely different direction by decreasing the contribution amount to $250 rather than increasing it from $350 to $500. The Council finds the proposed ordinance includes differences which are profound and substantial in that important political and philosophical issues raised in the original ordinance are not addressed in the second, rendering the two pieces of legislation incomparable in most regards and with regard to the contribution amount, by decreasing rather than increasing the limit, the new ordinance espouses a policy direction exactly opposite to that of the original ordinance, thereby effecting a substantial difference.

C. The Council further finds that the differences between Ordinance No. 243.4 and No. 243.6 relate to matters of importance with regard to Milpitas elections in that with regard to item (1) described in

subsection B, above, decreasing the contribution amount will prevent political corruption and help ensure the integrity of the electoral process. Additionally, provisions (2) and (3) from subsection C, above, deal with the influence of Independent Expenditure Committees and Campaign Consultants on local Milpitas elections, such influence which the Council finds potentially troubling and not insignificant. Not including these provisions in Ordinance No. 243.6 is a significant difference between the two ordinances on matters important to Milpitas politics and policies. Similarly, the voluntary expenditure limits not included in the second ordinance will change the potential election landscape significantly from the first ordinance where the political discussion was likely to focus on meeting and agreeing to these limits, whereas under the second ordinance that discussion will not likely take place at all.

D. In enacting Ordinance No. 243.6, the Council is mindful of the objections made from various citizen groups representing the coalition of persons signing the referendum petition regarding Ordinance No. 243.4 and hereby enacts ordinance 243.6 and includes the variations discussed herein at least in part in reaction to those objections and concerns. It is noted that in comments from persons objecting to Ordinance No. 243.4 on the record at various Task Force meetings and City Council meetings and from the three letters from commentators included as attachments to this item on the Council meeting Agenda, a primary objection was that the increase of the campaign contribution amount would give an unfair advantage to incumbents. As noted previously, that prior intended increase in the contribution amount is now proposed as a decrease, thereby addressing this concern of the persons signing the petition. Similarly, various and sundry objections were made to the Independent Expenditure Committee, Campaign Consultant and Voluntary Expenditure provisions and these provisions have not been included in any way in Ordinance No. 243.6, indicating that the concerns of those signing the petition and other persons objecting to Ordinance No. 243.4 have been addressed and considered in the enactment of Ordinance No. 243.6.

SECTION 3. AMENDMENT OF CHAPTER 210 OF TITLE I OF THE MILPITAS MUNICIPAL CODE

Subsections (a) and (e) of Section I-210-3.10 are hereby amended as follows:

Section 3 – Prohibitions

I-210-3.10 - Prohibitions

(a) No person other than a candidate for City Councilmember or Mayor regarding his or her own candidacy shall make, and no candidate or treasurer of any controlled committee of any candidate for City Councilmember or Mayor shall solicit or accept, any contribution which will cause the total amount contributed by such person to such candidate for City Councilmember or Mayor or to his or her controlled committee, to exceed two hundred fifty dollars ($250) per election.

(b) The contribution limitations shall apply separately to each special, recall, primary, or general election, as well as to any proceeding to qualify and place upon the ballot a petition to recall a member of the City Council.

(c) The contribution limitation shall not apply to a candidate's personal funds or those of his or her spouse as defined by the Fair Political Practices Commission.

(d) Candidates for elective office may not transfer funds into a candidate or elective officer's campaign committee from any other committee controlled by a candidate where the transfer of funds would result in a transfer from one candidate to another.

(e) Contributions shall be aggregated together and considered to be contributions from one person under the following circumstances:

(1) The contributions of an entity whose contributions are directed and controlled by any individual shall be aggregated with contributions made by that individual and any other entity whose contributions are directed and controlled by the same individual;

(2) If two or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities shall be aggregated;

(3) Contributions made by entities that are majority owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority owned by that person, unless those entities act independently in their decision to make contributions.

The terms "entity" and "majority-owned" shall have the same meaning as in Title 9 of the California Government Code, in which the Political Reform Act of 1974 is codified, and as supplemented by the Regulations of the Fair Political Practices Commission as set forth in Title 2, Division 6 of the California Code of Regulations, as the same may be, from time to time, amended.

SECTION 4. SEVERABILITY

The provisions of this Ordinance are separable, and the invalidity of any phrase, clause, provision or part shall not affect the validity of the remainder.

SECTION 5. EFFECTIVE DATE AND POSTING

In accordance with Section 36937 of the Government Code of the State of California, this Ordinance shall take effect thirty (30) days from and after the date of its passage. The City Clerk of the City of Milpitas shall cause this Ordinance or a summary thereof to be published in accordance with Section 36933 of the Government Code of the State of California.