

**PLEASE NOTE:**

This copy of Ordinance No. 243.4 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

**REGULAR**

**NUMBER: 243.4**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE CAMPAIGN FINANCE AND DISCLOSURE REQUIREMENTS FOR CITY ELECTIONS**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_ and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

## RECITALS AND FINDINGS:

**WHEREAS**, certain revisions and updates to the City’s local campaign finance and elections requirements are needed to ensure the transparency of the local electoral process and public confidence in local elections; and

**WHEREAS**, the City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this 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. AMENDMENT OF CHAPTER 210 OF TITLE I OF THE MILPITAS MUNICIPAL CODE

Chapter 210 of Title I is hereby amended and replaced in its entirety to read as follows:

#### Chapter 210 - REGULATION OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

##### Section 1 – Purpose

###### I-210-1.10 - Purpose

In order to diminish improper influence, whether real or perceived, and the appearance of impropriety, the City Council finds that it is necessary to place limits on the amount of money that may be contributed to a candidate for elected public office in the City of Milpitas from a single source with respect to any single election campaign. In addition, in the spirit of fair and prudent competition for elected office, the City Council proposes voluntary expenditure limits with the intent to create an even playing field, minimize the overall cost of municipal elections and allow candidates to spend less of their time on fundraising and more of their time discussing substantive issues with their constituents. Finally, in the spirit of full and fair disclosure, added disclosure requirements will enhance the public’s ability to ascertain the sources of campaign funding.

##### Section 2 – Applicability

###### I-210-2.10 - Applicability

This cChapter applies to all candidates, whether formally declared or not, for elected public office in the City of Milpitas. The regulations in this cChapter are not intended to supersede the provisions of the Political Reform Act, but are intended to place stricter requirements on contributions for elections and disclosure of such contributions than those found in the Act.

##### Section 3 – Prohibitions

###### I-210-3.10 - Prohibitions

(a) No person shall make, solicit or accept from any person, candidate or committee, any contribution in support of or in opposition to a candidate for elective office in the City which will cause the total amount contributed by any person in support of or in opposition to such candidate and to any and all committees in support of or in opposition to such candidate to exceed five~~three~~ hundred hundred~~fifty~~ dollars (\$3500) 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) When calculating the total amount contributed under subsection (a) by a "person," any amount contributed for or against the same candidate for elective office by a corporation, committee, partnership or other formal or informal organization primarily controlled by that "person" shall be aggregated with contributions from the "person" as an individual to determine compliance with the contribution limit. For purposes of this chapter, person is defined in Government Code Section 82047.

#### **Section 4 - Excess Funds**

I-210-4.10 - Repealed by Ord. 243.1, 2/5/02

I-210-4.20 - Repealed by Ord. 243.2, 6/3/03

#### **Section 5 – Disclosure**

##### **I-210-5.10 - Disclosure**

The name of any person contributing one hundred dollars (\$100.00) or more in support of or in opposition to any candidate for elective office in the City will be published once by the City Clerk in a newspaper of general circulation in the City.

##### **I-210-5.20 Disclosure by Independent Expenditure Committees**

Any Independent Expenditure Committee, as that term is defined in Government Code Section 82031, required to file a Campaign Statement (Form 461) in any City, County or with the State of California as an Independent Expenditure Committee, shall also file Form 461, and any other required disclosure statements required by law, with the City Clerk for the City of Milpitas so long as the committee has been an active participant in any Milpitas election or ballot measure. Active participation is defined as an expenditure of \$100 or more related to a Milpitas election or ballot measure. Any expenditure of \$100 or more shall be identified as required on Form 461 which shall be filed with the City Clerk within 10 days of the date the communication is broadcast, mailed, delivered or otherwise disseminated to the public, in addition to the requirement of identifying it on the Semi-Annual Statements.

#### **Section 6 – Voluntary Campaign Expenditure Limits**

##### **I-210-6.10 - Voluntary campaign expenditure limits.**

The City of Milpitas hereby adopts voluntary expenditure limits for each election for candidates for City of Milpitas offices as follows:

(a) For all elected offices of the City of Milpitas, the voluntary campaign expenditures ceiling shall be \$60,000.

(b) The expenditure limits contained herein shall be adjusted in January of every even numbered year, beginning in the year 2014, to reflect any increase or decrease in the California Consumer Price Index for the preceding two years rounded to the nearest one thousand dollars.

(c) For the purposes of this Ordinance, an expenditure limit for each election shall mean that a candidate may spend up to the ceiling amount for an election for a particular office for a particular year, and spend another amount up to the ceiling for that or a different office for a different election year.

**I-2.10-6.20 - Filing of acceptance or rejection of limits.**

Prior to accepting any contributions, each candidate for City elective office shall file with the City Clerk, on a form provided by the Clerk, a statement of acceptance or rejection of the voluntary expenditure ceiling established herein. In addition, as to each such candidate, the City Clerk shall provide notification to voters on the City website that the candidate has accepted or rejected the voluntary expenditure ceiling established herein.

**I-2.10-6.30 - Spending exceeding accepted ceiling prohibited.**

No candidate for City elective office who accepts the voluntary expenditure ceiling established herein and no controlled campaign committee of such a candidate shall make campaign expenditures in excess of the voluntary expenditure ceiling established herein. Violation of this Ordinance shall be punishable as an infraction as provided in Municipal Code Section I-1-4.09-1.

**I-2.10-6.40 - Rescission of expenditure limit for candidates accepting spending ceiling.**

Each candidate who accepts the voluntary expenditure ceiling established by this Chapter may rescind that acceptance in writing if, after his or her acceptance of the expenditure ceiling, an opposing candidate refuses to accept the voluntary expenditure limit or, after accepting it, exceeds it. Except as provided herein, acceptance of the voluntary expenditure limit is binding for that election.

**Section 7 – Application and Severability**

**I-2.10-7.10 - Applicability of state law.**

Except as provided herein, the provisions of the California Political Reform Act of 1974, the California Political Reform Act of 1996, Government Code Section 81000 et seq., and applicable regulations adopted pursuant to such Acts, as the same may be hereafter amended, shall govern the interpretation and application of this chapter.

**I-2.10-7.20 - Severability and automatic repeal.**

If any part of this chapter is for any reason deemed to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this Ordinance. The City Council hereby declares that it would have passed this chapter and every part thereof, irrespective that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional or invalid. This chapter shall automatically be repealed in the event a final and binding decision of an appellate court rules that a local jurisdiction's ability to adopt voluntary expenditure ceilings or contribution limits is invalid.

**SECTION 3. ADOPTION OF NEW CHAPTER 220 OF TITLE I OF THE MILPITAS MUNICIPAL CODE**

A new Chapter 220 (Regulation of Campaign Consultants) of Title I is hereby adopted to read as follows:

**Chapter 220 - REGULATION OF CAMPAIGN CONSULTANTS**

**Section 1 - Purpose**

**I-220-1.10 – Purpose**

The City has a vital interest in protecting the integrity of and public faith in local government elections. The purpose of this Chapter is to impose reasonable registration and disclosure requirements on campaign consultants. The required registration and disclosure of information by campaign consultants will increase transparency and ensure public confidence in elections.

**Section 2 - Definitions**

**I-220-2.10 – Definitions**

"Campaign consultant" means any person or entity that receives or is promised economic consideration equaling \$250 or more per month for developing campaign strategy or managing an effort to elect, defeat, retain

or recall a candidate for elected City office. The term "campaign consultant" does not include persons who are employees of a campaign consultant, attorneys who provide only legal services, accountants who provide only accounting services, pollsters who provide only polling services, and treasurers who provide only those services which are required of treasurers by the Political Reform Act, California Government Code Section 81000, et seq.

### **Section 3 - Applicability**

#### **Section 3 - Applicability**

This Chapter applies to all campaign consultants, whether formally declared or not, working in or affecting campaigns for elected public office in the City of Milpitas. The regulations in this Chapter are not intended to supersede or prevent compliance with the provisions of the Political Reform Act, but are instead intended to place stricter requirements on the conduct of campaigns and disclosure of such efforts than those found in the Political Reform Act.

### **Section 4 – Required Disclosures**

#### **I-220-4.10 – Disclosure Reports**

It shall be unlawful for any person or entity to act as a campaign consultant in campaigns for or relating to elected public office in the City of Milpitas without registering with the City Clerk within thirty (30) days of the commencement of campaign consultant activities. In such a registration, the campaign consultant shall report the name, business address and business phone number of the campaign consultant, client names, and any elected City offices at issue. The City Clerk is authorized to prepare registration forms to facilitate compliance with disclosure requirements. The City may collect a registration fee established by the City Council Rules Subcommittee or, if one is not functioning, by the City Council. The registration fee shall be updated from time to time to reflect changes in administrative costs. All disclosure reports shall constitute public records and shall be subject to disclosure.

## **SECTION 4. AMENDMENT OF CHAPTER 310 OF TITLE I OF THE MILPITAS MUNICIPAL CODE**

Section I-310-2.180 of the Milpitas Municipal Code is hereby amended and replaced in its entirety to read as follows:

### **I-310-2.180 Conflict Disclosures Required at City Council Meetings**

At the beginning of each City Council meeting or upon the arrival of the Mayor or Councilmember, the City Attorney shall ask the Mayor and each member of the City Council to disclose any financial or personal conflict with any item on the City Council's agenda. Pursuant to Government Code section 87105, if the Mayor or a Councilmember discloses that such a personal financial interest is present, he or she shall publicly identify the conflict or potential conflict in detail sufficient to be understood by the public, and shall recuse him or herself from taking action on the item if required to do so by law and leave the meeting room. In addition to the forgoing, the City Attorney shall also inform the Mayor and each member of the City Council that the Council encourages each of its elected officials to disclose any campaign contribution received within the preceding twelve (12) months from persons or entities that have an interest in any of the items on the City Council agenda that is different from that of members of the general public.

## **SECTION 5. 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 6. 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.