CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

01/17/2012
Agenda Item No. 5

ATTACHMENTS AND/OR ADDITIONAL MATERIALS RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION

January 17, 2012

Honorable Mayor Jose Esteves & Council
City of Milpitas
455 East Calaveras Blvd.
Milpitas, CA 95035

RE: 17 January 2012 Council Agenda Item #5,
Retail "Black Friday" Sales Shopping Days

Dear Mayor Esteves,

The San Jose Silicon Valley Chamber of Commerce opposes the development of an ordinance amending zoning code requirements for commercial businesses over 30,000 square feet by requiring Special Event permits for Black Friday (or otherwise identified) shopping days and/or promotional shopping events. No other city in the Silicon Valley region or state of California is considering such an arduous ordinance targeting major retail sales tax opportunities.

Additionally, there are a number of sound economic development business reasons why the council and city administration should abandon any thoughts of regulating sale or shopping days by local retailers:

- The Great Mall is currently the city's largest generator of sales tax revenue.
- The Great Mall currently has an agreement with the city addressing security, police services and compensation.
- An ordinance to regulate retail sales may have serious unintended consequences for the city of Milpitas that would ultimately discourage the collection of sales taxes, reduce employment in retail sales and potentially generate an anti-business perception within the retail and business community.

The SJSV Chamber of Commerce is opposed to any additional regulatory reform measures that make it more difficult for retail businesses to *do their business*; particularly during these challenging economic times. The preferred course of action would be to work with your businesses, the Milpitas Chamber of Commerce and other stakeholders with the objective of overcoming any current issues while enabling your local business community to maximize retail sales opportunities, ultimately generating the revenues necessary to provide essential services throughout the city.

In closing, let me say that the SJSV Chamber takes the regulation of local business very seriously and will continue to observe how the council, administration and business community hopefully work to resolve any current concerns through collaboration vs. regulation.

Sincerely,

Matthew R. Mahood, President & CEO
SJSV Chamber of Commerce

Cc: Thomas Williams, City Manager
Diana Barnhart, Director Economic Development

101 West Santa Clara Street, San Jose, California 95113
ph: 408/291-5250 • fax: 408/286-5019 • **sjchamber.com**

CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
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01/17/2012
Agenda Item No. 9

ATTACHMENTS AND/OR ADDITIONAL MATERIALS RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION

PLEASE NOTE:

This copy of Ordinance No. 243.6 is a "redlined" version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

REGULAR

NUMBER: **243.6**

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 _____, 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:

_____
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, ~~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 such person to such candidate for City Councilmember or Mayor or to his or her controlled committee,~~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 two ~~three~~ hundred fifty dollars ($2~~3~~50) 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.

BELL, McANDREWS & HILTACHK, LLP
Attorneys and Counselors at Law

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September 20, 2011

BY ELECTRONIC MAIL (addressees below)

Mayor and Members of the City Council
& City Attorney
City of Milpitas
455 East Calaveras Boulevard
Milpitas, California 95035

Re: Proposed Ordinance 243.4 – Meeting of September 20, 2011

Dear Mayor and Members of the City Council:

The undersigned represents residents of Milpitas who are concerned that at a time the United States Supreme Court's and the lower courts' rulings are rejecting restrictions on free speech, the City of Milpitas is moving to restrict speech.

This law firm has represented clients on campaign speech matters in the United States Supreme Court, the California Supreme Court and intermediate federal and state appellate courts. Most recently, we successfully represented the Long Beach Area Chamber of Commerce and its political action committees in convincing the United States Court of Appeals for the Ninth Circuit to invalidate the City of Long Beach's limits on contributions to committees that make independent expenditures. (*Long Beach Chamber of Commerce v. City of Long Beach,* 603 F.3d 684 (9th Cir. 2010), *cert. den.* 131 S.Ct. 392 (2010).) We believe your proposed ordinance flatly violates the freedom of speech guarantee of the federal Constitution and the California Constitution's privacy protections. A portion of it also is preempted by the California Political Reform Act. Below, we also outline some of the problems and raise questions that need clarification about definitions, and the lack of definitions in the proposed ordinance.

1. Limit on Contributions to Independent Expenditure Committees - I-210-3.10

The language of the proposed "prohibition" of this section is virtually identical to the language of the City of Long Beach's ordinance limiting contributions to independent expenditure committees in the City of Long Beach that this firm litigated. In that case, we obtained a permanent injunction blocking enforcement of the ordinance as a violation of the First Amendment to the United States Constitution. The language of the prohibition is also nearly identical to a similar ordinance of the City of San Diego that the Ninth Circuit also invalidated in *Thalheimer v. City of San Diego*, 645 F.3d 1109, 1118 (2011). Another similar ordinance was the subject of the Silicon Valley Chamber of Commerce's successful lawsuit a few years ago that led to a court order requiring the City of San Jose to pay over $400,000 in attorneys' fees to the successful challengers.

The language not only limits contributions to committees that make contributions to Milpitas candidates but also limits contributions to independent expenditure committees. The Supreme Court and the Ninth Circuit have made clear that such contributions are not subject to limitation because there is no anti-corruption potential involved with independent expenditures. *Citizens United v. Federal Election Commission*, 130 S.Ct. 896, 908, 913 (2010).

Therefore, this element of the proposed ordinance is clearly unconstitutional, and if implemented would subject the City to constitutional attack on the provision with a likely exposure to substantial attorneys' fee awards.

2. I-210-5.20 Disclosure by Independent Expenditure Committees

Milpitas, as a general law city, is subject to the prohibitions and limitations on adopting its own campaign finance regulations set forth in the California Political Reform Act (Proposition 9), Government Code 81000 et seq. Several provisions of the Political Reform Act specifically limit local regulation of campaign finance, Government Code §§ 81013, 81009.5 and 85703 in particular. Government Code §81013 allows local jurisdictions to impose additional requirements to those provided for in the Political Reform Act "if the requirements do not prevent the person from complying with [the Political Reform Act.]" Government Code 81009.5 contains some very specific limitations. Put in less legalese, this statute allows local jurisdictions to regulate (a) local candidates and ballot measure committees, (b) their committees and (c) other committees that are active only in the local jurisdiction or

are primarily formed to support or oppose such local candidates and committees. The local jurisdiction can impose "additional or different filing requirements" than those imposed statewide on all local jurisdictions, only as to elections held in the local jurisdictions.

The proposed Milpitas ordinance attempts to regulate state general purpose committees -- committees that are active in state and county elections as well as locally -- and it may not do so under Government Code § 81009.5. In particular, proposed Ordinance 243.4, section I-210-5.20 purports to apply to any committee that receives contributions to make independent expenditures or which makes independent expenditures where the committee is an "active participant" in a Milpitas election, which is defined as making an expenditure of $100 or more related to a Milpitas candidate or ballot measure." This proposed disclosure would apply to "general purpose committees," "major donor committees," or "political action committees."

While Milpitas may regulate "city general purpose committees" and "city major donor committees," it may not regulate state or county general purpose committees, major donors and PACs. The State Fair Political Practices Commission, in its 2001 opinion, *In re Olson*, 15 FPPC Ops. 13, O-01-112, made this perfectly clear, in analyzing a particular requirement the City of Los Angeles, a charter city, applied to state general purpose committees, including the state political parties and county central committees.

This proposed provision has *several* defects: (1) As noted, the ordinance requires these committees to file Form 461 reports in the City for $100 expenditures, which the Political Reform Act does not give authority for Milpitas to require of state or county filer committees.[1] (2) The ordinance also would require recipient committees to file FPPC Form 461 reports, which state law does not require such committees to file. Recipient committees file FPPC Form 460 reports. The City has no power to require them to file those reports locally either. (3) The proposed ordinance refers inconsistently to filing reports for $100 or more in expenditures, but then refers to filing reports within "10 days of the date the communication is broadcast, mailed, delivered or otherwise disseminated to the public...." There is no mention of making the expenditure within 10 days of contributing or spending $100, which

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[1] State law requires general purpose committees or others that make independent expenditures are required to file an FPPC Form 465 in the local jurisdiction identifying independent expenditures of $1,000 or more at the time they file their regularly-required state campaign reports at the state level. (Gov. Code, § 84203.5.)

as noted above would illegally conflict with state law in any event.

Milpitas may regulate "city committees," i.e., those of candidates or committee principally operates within the city—see, e.g., Gov. Code, § 84200.5(l)) but not state or county general purpose committees. This matter is preempted by state law, the California Political Reform Act, which the ordinance purports to follow (I-210-7.10), except where they conflict. Your proposed ordinance in this respect "conflicts" with that state law.

3. Proposed Chapter 220 (I-220-1.10;- I-220-4.10) Regulation of Campaign Consultants

Proposed new Chapter 220 of the Municipal Code purports to define the term "campaign consultant" and requires that a campaign consultant disclose his or her name, business address and phone number, client names and any elected City offices "at issue."

The proposal purports to apply to persons or entities (I-220-2.10) "whether formally declared or not" (unnumbered section 3) "working in" or "affecting campaigns for elected public office in the city of Milpitas." Section 4 (I-220-4.10) however uses slightly different language," in campaigns for or relating to elected public office in the City of Milpitas."

These regulations are vague and overbroad. What does "affecting campaigns for elected public office" mean? Many political activities indirectly could "affect" a campaign for public office in Milpitas, including activity not actually occurring within or otherwise reportable under the City's and the state's campaign reporting requirements, as properly applied. The use of vague terms like this leave persons potentially subject to the ordinance unaware of its impact and the possibility they could be subject to criminal prosecution (as an infraction) for its violation.

What if a potential consultant doesn't "work in" Milpitas? What difference if any exists between "affecting campaigns" and engaging in activity "relating to public office," two similar but not identical terms?

We understand from our Milpitas clients that an individual working for Mayor Esteves was represented to be a "volunteer" during the campaign (who presumably would not come within the

$250/month threshold) and that this individual later was paid both fees and expenses of $5,000. (See campaign disclosure reports transmitted by separate email document and press reports.) Would such payments have required the consultant to disclose under the proposed ordinance?

Finally, the proposed ordinance appears to require a covered consultant to disclose all clients, not just those who are candidates in the City. Such coverage would be totally unrelated to the purpose of disclosing Milpitas-related campaign consulting activity. The only justification for such a broad scope of disclosure would be to use the information about a consultant's other (non-Milpitas, non-campaign) clients for guilting by association and attempts to punish the consultant, the consultant's other clients, or both. This provision in its overbreadth violates the privacy interests protected by the California Constitution. *City of Carmel-by-the Sea v. Young*, 2 Cal.3d 259 (1970). In that case, our Supreme Court said:

> The governmental purpose of the statute here at issue is declared in section 3600. Briefly, it is to assure the people to the fullest extent possible that the private financial dealings of public officials and of candidates for public office 'present no conflict of interest between the public trust and private gain.' Obviously the elimination and prevention of conflict of interest is a proper state purpose, but that alone does not justify 'means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.
>
> (2 Cal. 3d at pp. 268-69.)

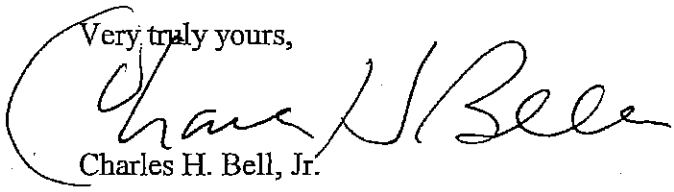
4. Voluntary Expenditure Limits – I-2.10-6.10-6.40

The proposed ordinance provides for an annual $60,000 expenditure limit for candidates. The proposal appears to require the candidate to spend that amount each year or it will be lost. In other words, this is not a per-election type limit where the candidate would have the discretion to spend the aggregate amount for the election period. The proposal also allows a candidate who breaks the limit to pay the fine associated with an infraction, without any other penalty. There is no provision that would prohibit violation within a specified time prior to an election, or waive the contribution limit for the violator candidate's opponents above the $500 per election provided in the measure. Thus, the proposal is toothless and affords an injured candidate no effective recourse. This needs to be re-thought.

CONCLUSIONS

The proposed ordinance has both constitutional flaws (limits on contributions to independent expenditure committees), state preemption issues (attempt to require state general purpose committees to file special local reports), vagueness issues (overbroad reach of consultant disclosures) and "toothlessness" issues (with respect to the ineffectual "voluntary spending limit" provisions). We encourage the City Council to reject the proposals.

Very truly yours,



Charles H. Bell, Jr.

CHB: sd

Enclosures

Mayor Jose Esteves: jesteves@ci.milpitas.ca.gov
Vice Mayor Pete McHugh: pmchugh@ci.milpitas.ca.gov
Councilmember Debbie Giordano: dgiordano@ci.milpitas.ca.gov
Councilmember Armando Gomez: agomez@ci.milpitas.ca.gov
Councilmember Althea Polanski: apolanski@ci.milpitas.ca.gov
City Manager Tom Williams: twilliams@ci.milpitas.ca.gov
City Attorney Mike Ogaz: mogaz@ci.milpitas.ca.gov
City Clerk Mary Lavelle: mlavelle@ci.milpitas.ca.gov

Newly appoint Arthur Sana as the alternate member to a term that expires in June 2012.
Appoint Mila Garcia (current alternate member) as a regular member to a term that expires in June 2012.

Recycling and Source Reduction Advisory Commission
Re-appoint Ed Blake, Jr. to a term that expires in October 2014.
Re-appoint Christopher Salian to a term that expires in October 2014.
Re-appoint Echo Arthur to a term that expires in October 2013.

Youth Advisory Commission
Appoint Sahil Sandhu (current Alternate No. 2) as a regular member to a term that expires in September 2012.
Newly appoint Cindy S. Wang as Alternate No. 1 to term that expires in September 2012.

Copies of two Commission applications for new appointments are included in the Council agenda packets, along with additional applications from those not recommended at this time.

Recommendation: Consider the recommendations from Mayor Esteves, and move to approve appointments and re-appointments to two Milpitas Commissions and one Board.

3. **Hear Report from Councilmember Giordano on Issues Related to the Youth Advisory Commission (Contact: Councilmember Giordano, 586-3032)**

Background: Councilmember Giordano is the Council's liaison to the Milpitas Youth Advisory Commission. At the Rules Subcommittee meeting on September 12, she requested to make a report at the Council meeting on issues related to the Commission.

Recommendation: Hear report of Councilmember Giordano.

4. **Hear Report from Campaign Finance Task Force Chair Councilmember Polanski and Consider Action on Draft Ordinance No. 243.4 to Amend the Campaign Finance and Disclosure Requirements for City Elections (Contact: Councilmember Polanski, 586-3024)**

Background: At the direction of the City Council, the Campaign Finance Task Force, consisting of Councilmembers Polanski and Gomez, convened regular meetings starting in March 2011 to review and recommend possible revisions to the local campaign and election laws of the City of Milpitas.

The Task Force extensively reviewed existing City ordinances on the conduct and financing of local elections. It also reviewed the legal prohibitions and restrictions on campaign regulations imposed by state and federal constitutions. After careful consideration, the Task Force recommended changes in the following areas:

Contribution Amount. Since 1996 campaign contributions from any one person in support of or in opposition to any candidate for elected City office has been limited to $350 per election. This amount, if adjusted into 2011 dollars to reflect changes in the Consumer Price Index, would equate to $498.49 as determined by the Federal Bureau of Labor Statistics. The Task Force therefore recommends that the limitations amount be raised to $500 per election to reflect the increased costs of inflation. (*See proposed changes to MMC I-210-3.10(a)*.)

Aggregation. Current Milpitas campaign regulations limit the amount of money that any "person" may contribute to a candidate for elected office in Milpitas. The term "person" is not clearly defined in the current Municipal Code for purposes of election law. The Task Force recommends that the City define the term "person" as an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert. Furthermore, the Task Force recommends that any monies contributed by an individual

be "aggregated" or combined with any monies contributed by any corporation, committee, partnership, or other organization controlled by that individual. (*See proposed changes to MMC I-210-3.10(e).*)

Independent Expenditure Committees. An "independent expenditure committee" is sometimes defined as any person or combination of persons that expends $1,000 or more in a calendar year to independently support or oppose any candidate or ballot measure. Under state law, independent expenditure committees must file a Form 461. However, depending upon the nature of the expenditures, independent expenditure committees may not be required to inform local communities and city officials of their activities. This gap reduces transparency in the electoral process. The Task Force recommends that in addition to state law filing requirements, independent expenditure committees that spend $100 or more in a Milpitas election should also be required to file a copy of their Form 461 with the City Clerk within 10 days of the advertisement for or against a local candidate or ballot measure. (*See proposed changes to MMC I-210-5.20.*)

Voluntary Campaign Expenditures. Current law prohibits cities from setting mandatory limits on the amounts that a candidate may spend on a campaign. However, candidates are free to accept voluntary spending limits. The Task Force therefore recommends the adoption of a voluntary campaign expenditure ceiling of $60,000, to be adjusted every two years to reflect changes in the Consumer Price Index. (*See proposed changes to MMC I-210-6*)

Campaign Consultants. "Campaign consultants" are persons who are paid to formulate campaign strategy or manage an effort to defeat, elect, or recall a candidate for elected City office. The Task Force recommends that such persons be required to register with the City Clerk and disclose business contact information and clients in order to increase transparency in the electoral process and ensure public confidence in elections. (*See proposed new chapter MMC I-220)*

City Council Meeting Disclosures. The Open Government Ordinance and state law do not classify campaign contributions to candidates for Mayor or City Council as "financial interests" that create conflicts of interest. The Task Force recommends that the Open Government Ordinance be revised so as to encourage elected officials to disclose the receipt of any campaign contributions in the preceding twelve months from persons or companies appearing before the City Council at the Council meeting in which the donor appears. Mandatory recusal or disqualification merely for receiving such campaign contributions is, however, prohibited by the federal and state constitutions. (*See proposed changes to MMC I-310-2.180.*)

Fiscal Impact: None.

Recommendations:

1. Hear report of Councilmember Polanski.
2. Following a reading of the title, move to waive the first reading beyond the title of Ordinance No. 243.4, amending the campaign finance and disclosure requirements for City elections.
3. Move to introduce Ordinance No. 243.4.

XVI. NEW BUSINESS

5. Receive the Monthly Economic Development Report (Staff Contact: Diana Barnhart, 586-3059)

Background: In mid-August the State Employment Development Department's Labor Market Information Division (LMID) website offered new short-term statewide industry and occupational projections. This information includes ranked lists such as occupations with the most openings can be found at www.labormarketinfo.edd.ca.gov/?pageid=145.

California highlights for the third quarter of 2010 to the third quarter of 2012 follow.

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October 13, 2011

BY ELECTRONIC MAIL (addressees below)

Mayor and Members of the City Council
& City Attorney
City of Milpitas
455 East Calaveras Boulevard
Milpitas, California 95035

Re: Proposed Ordinance 243.4 – Meeting of October 18, 2011

Dear Mayor and Members of the City Council:

The undersigned represents residents of Milpitas who are concerned that at a time the United States Supreme Court's and the lower courts' rulings are rejecting restrictions on free speech, the City of Milpitas is moving to restrict speech.

This law firm has represented clients on campaign speech matters in the United States Supreme Court, the California Supreme Court and intermediate federal and state appellate courts. Most recently, we successfully represented the Long Beach Area Chamber of Commerce and its political action committees in convincing the United States Court of Appeals for the Ninth Circuit to invalidate the City of Long Beach's limits on contributions to committees that make independent expenditures. (*Long Beach Chamber of Commerce v. City of Long Beach,* 603 F.3d 684 (9th Cir. 2010), *cert. den.* 131 S.Ct. 392 (2010).) We believe your proposed ordinance flatly violates the freedom of speech guarantee of the federal Constitution and the California Constitution's privacy protections. A portion of it also is preempted by the California Political Reform Act. Below, we also outline some of the problems and raise questions that need clarification about definitions, and the lack of definitions in the proposed ordinance.

1. Limit on Contributions to Independent Expenditure Committees - I-210-3.10

The revised draft eliminated the application of the section that had limited contributions to independent expenditure committees in the City of Milpitas, in accordance with our previous letter of September 20, 2011 that pointed out such a provision was clearly unconstitutional, and if implemented would subject the City to constitutional attack on the provision with a likely exposure to substantial attorneys' fee awards.

2. I-210-5.20 Disclosure by Independent Expenditure Committees

The revised draft partially but not completely addressed the state preemption defect of the original draft. As we noted, Milpitas, as a general law city, is subject to the prohibitions and limitations on adopting its own campaign finance regulations set forth in the California Political Reform Act (Proposition 9), Government Code 81000 et seq. Several provisions of the Political Reform Act specifically limit local regulation of campaign finance, Government Code §§ 81013, 81009.5 and 85703 in particular. Government Code §81013 allows local jurisdictions to impose additional requirements to those provided for in the Political Reform Act "if the requirements do not prevent the person from complying with [the Political Reform Act.]"

Government Code 81009.5 contains some very specific limitations. Put in less legalese, this statute allows local jurisdictions to regulate (a) local candidates and ballot measure committees, (b) their committees and (c) other committees that are active only in the local jurisdiction or are primarily formed to support or oppose such local candidates and committees. The local jurisdiction can impose "additional or different filing requirements" than those imposed statewide on all local jurisdictions, only as to elections held in the local jurisdictions.

The proposed Milpitas ordinance still attempts to regulate state general purpose committees – committees that are active in state and county elections by requiring them to verbally notify the Milpitas City Clerk that they had filed required campaign reports concerning Milpitas activity at the $100 level. As noted in the City Attorney's report on the revised measure, this provision still is preempted. Your modified ordinance in this respect still "conflicts" with that state law.

3. Proposed Chapter 220 (I-220-1.10- I-220-4.10) Regulation of Campaign Consultants

Proposed new Chapter 220 of the Municipal Code purports to define the term "campaign consultant" and requires that a campaign consultant disclose his or her name, business address and phone number, client names and the names of a campaign consultant's present Milpitas campaign clients and also previous clients that had matters before the City Planning Commission or City Council.

The proposal modifies the definitions and its application to persons or entities (I-220-2.10) "working for" "candidates for elected public office and ballot measures in the city of Milpitas." (I-220-3.10.) The revision applies to "campaign consultants" as defined, but excludes "campaign managers, employees of a campaign consultant, attorneys and other professionals such as treasurers who provide purely legal or compliance assistance to City candidates and ballot measures."

The measure continues to apply to volunteer activity by a campaign consultant of 10 or more hours per month or to a volunteer campaign consultant who received $10,000 or more from "any source" for developing campaign strategy. There appears to be no definition of when the period covered by the volunteer activity begins, the date from which the $10,000 "look back" receipts are to be measured, or whether the source must be a candidate, committee or other entity within or without the City of Milpitas. The measure also applies to campaign consultants that receive or become entitled to receive compensation of $250 a month for working on a Milpitas candidate or ballot measure campaign.

A covered campaign consultant would be required to disclose "clients" who are candidates or ballot measure committees of the City of Milpitas, and also those who had an economic interest in projects approved or have a project pending before the City Planning Commission or the City Council "within the past two years." Again, no "start date" is provided in the measure to apply to such disclosure.

These regulations remain unconstitutionally vague and overbroad. The use of vague terms like this leave persons potentially subject to the ordinance unaware of its impact and the possibility they could be subject to criminal prosecution (as and infraction) for its violation.

More significantly, although the purposes of the proposed ordinance are defined as "to increase transparency and public confidence in elections," paid consultants of a Milpitas candidate or ballot measure who receive $100 or more already are required to be disclosed on public campaign reports under the Political Reform Act. However, volunteer activity by any person on behalf of a candidate or committee is not reportable (see e.g., Government Code § 82015(a).) No state campaign law or local campaign law of which I am aware requires volunteers to track their activity, whatever they may do for a campaign.

Most significantly, the ordinance appears to single out volunteer campaign consultants' campaign –related activity. By singling out such activity, the proposed ordinance is clearly targeted solely at restricting their political speech and association. As the Supreme Court recently reiterated,

> Prohibited, too, are restrictions distinguishing among different speakers, allowing speech by some but not others. . . . Quite apart from the purpose or effect of regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each.

Citizens United v. Fed. Election Com'n, 130 S.Ct. 876, 889 (2010).

The federal District Court in Arizona recently struck down, on First Amendment grounds, a state statute which regulated donations to unions for political purposes while not regulating donations to similar organizations. *United Food and Commercial Workers Local 99 v. Brewer*, 2011 WL 4434043 (D.Ariz. Sep 23, 2011) (NO. CV-11-921-PHX-GMS). As the Court explained, limitations on political speech must be "even handed" in order to be upheld. Moreover, the targeting of a particular group's speech and associational activities faces severe equal protection problems under the First and Fourteenth Amendments to the U. S. Constitution. *Dallman v. Ritter*, 225 P.3d 610 (Col. S. Ct. 2010).

In order to justify this dissimilar treatment of similarly situated individuals, the proposed

ordinance must pass a vigorous test called strict scrutiny: "the Equal Protection Clause mandates that the legislation be finely tailored to serve substantial state interests, and the justifications offered for any distinctions it draws must be carefully scrutinized." *Carey v. Brown,* 447 U.S. 455, 461-62 (1980). The proposed Ordinance does not, and cannot, meet this high standard. The only justification provided for the targeting of volunteer as well as paid campaign consultants is the threat of an appearance of a conflict of interest related to their past paid activity (which is adequately disclosed on campaign reports) or their "working" for a "client" who previously has had a matter before the City Planning Commission or City Counsel within the "past two years."

Yet the Colorado Supreme Court in a different context rejected just such a rationale, holding that "[c]ertainly the threat of impropriety inherent in [the collective bargaining] process is insufficient to merit additional prohibitions on ... speech." *Dallman*, 225 P.3d at 635. Further, the proposed ordinance is not narrowly tailored. The alleged threat of impropriety also exists in contributions from other entities who "volunteer" on campaigns, yet the influence of these organizations is untouched. Thus, the targeting of volunteer and paid campaign consultants by the ordinance could not withstand the strict scrutiny required by the equal protection clause and would violate the United States Constitution. Moreover, Milpitas already has a lobbying registration and disclosure ordinance that requires lobbyists for persons and entities with matters before the City of Milpitas to register and report their clients, contributions to Milpitas candidates, and even fundraising at the behest of Milpitas candidates. This broad disclosure regime covers the lobbying disclosure waterfront and strongly suggests that the proposed campaign consultant disclosure provisions would not meet the narrow tailoring and governmental interest requirements to withstand constitutional scrutiny.

Finally, limiting the restrictions to volunteer and paid campaign consultants, while ignoring other similar organizations, is a blatant attempt to silence them and affect their opportunity to volunteer or provide paid services to Milpitas candidates and measures, by exposing their "clients" to harassment for having hired or accepted volunteer personal services from campaign consultants that the politicians appear to dislike. The government is not free to impose restrictions in order to discourage or suppress the expression of viewpoints it disagrees with. *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 806, 811-812 (1985); *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 46, 49 (1983); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001).

The threat of criminal prosecution for failure to register or disclose the information required by this proposed ordinance likely will subject the City of Milpitas, and the city councilmembers themselves, to lawsuit and personal exposure under 42 USC, § 1983 if the ordinance is enacted and challenged.

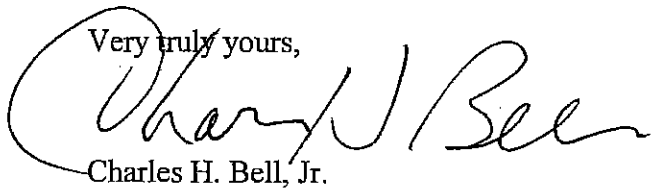
4. Voluntary Expenditure Limits – I-2.10-6.10-6.40

The proposed ordinance modified the voluntary expenditure limits to be clear that it was a $60,000 "per election" rather than per calendar year expenditure limit for candidates. The proposal continues to allow a candidate who breaks the limit to pay the fine associated with an infraction, without any other penalty. There is no provision that would prohibit violation within a specified time prior to an election, or waive the contribution limit for the violator candidate's opponents above the $500 per election provided in the measure.

CONCLUSIONS

The proposed ordinance has both constitutional flaws (potential criminal penalties for non-registration and disclosures directed to volunteer and paid campaign consultants), state preemption issues (attempt to require state general purpose committees to file special local reports), and vagueness issues (overbroad reach of consultant disclosures). We encourage the City Council to reject these revised proposals.

Very truly yours,



Charles H. Bell, Jr.

CHB: sd

Enclosures

CC:
Mayor Jose Esteves: jesteves@ci.milpitas.ca.gov
Vice Mayor Pete McHugh: pmchugh@ci.milpitas.ca.gov
Councilmember Debbie Giordano: dgiordano@ci.milpitas.ca.gov
Councilmember Armando Gomez: agomez@ci.milpitas.ca.gov
Councilmember Althea Polanski: apolanski@ci.milpitas.ca.gov
City Manager Tom Williams: twilliams@ci.milpitas.ca.gov
City Attorney Mike Ogaz: mogaz@ci.milpitas.ca.gov
City Clerk Mary Lavelle: mlavelle@ci.milpitas.ca.gov

Background: For over 17 years, Alcoholics Anonymous has hosted its annual *Unity Day* at the Milpitas Community Center. This event, scheduled on Sunday, August 19, 2012, is open to all and designed to inform members of the service opportunities in Alcoholics Anonymous, to encourage their participation and to focus attention on reaching and serving the still-suffering alcoholic. The organization, Intergroup Central Office of Santa Clara County, Inc. is a California non-profit corporation and is fully supported by financial contributions from their members. The group's primary focus and purpose is to maintain sobriety and help others find sobriety.

James Cheek, representing Alcoholics Anonymous, requests that City Council approve the waiver of facility rental fees for a total of $891.50, which would reduce fee revenues collected by the City by that amount.

Fiscal Impact: Loss of $891.50 in rental fee revenue collected.

Recommendation: Approve the Alcoholics Anonymous request for fee waiver totaling $891.50 for the August 19, 2012 annual *Unity Day* event at the Milpitas Community Center.

*** 14. Consideration of the City Council Meeting Schedule in 2012 (Staff Contact: Mary Lavelle, 586-3001)**

Background: The Milpitas Mayor and City Council are requested to consider and adopt their meeting schedule for 2012. Regarding the City Council's summer time meeting dates, it has been recent tradition to cancel both of the July regular Milpitas City Council meetings.

City staff has begun to prepare year-long calendars for next year and have inquired of the City Council as to what schedule will be followed in 2012. Staff requests that the City Council act on an affirmative meeting schedule for 2012 for its regular business meetings.

Recommendation: Move to approve the 2012 regular City Council meeting schedule, including the cancellation of the July 2012 City Council meetings.

XX. ORDINANCE

15. Waive the Second Reading and Adopt Ordinance No. 243.4, Amending the Campaign Finance and Disclosure Requirements for City Elections (Staff Contact: Michael Ogaz, 586-3040)

Background: The Campaign Finance Reform Ordinance brought before the Council at its meeting of September 20, 2011, has been revised in order to implement the instructions of Council made at that meeting, which have been included in the version now proposed at this second reading of the Ordinance. In addition, a number of public comments were submitted via correspondence on the proposed Ordinance. While the first draft complied with all legal requirements, staff proposes certain language refinements to avoid any confusion that might have arisen as to the intent and application of the Ordinance. A discussion of each of the changes to the original ordinance follows.

Analysis: There were five major topic areas in the original proposed Ordinance. They are:

Contribution Amount. Originally this section increased the campaign contribution limit from $350 to $500. This provision remains unchanged from the original proposal of the Campaign Finance Reform Task Force.

Aggregation. This provision adds language defining "person" as that term is used in the contribution limits ordinance. It provides that for determining the contribution limit, the contributions of a person (which includes corporation, partnership, etc.) shall be aggregated with

any entity primarily controlled by that individual. To better match a similar provision within the State Political Reform Act, staff recommends in this second reading version to change the language to aggregate the contributions of those entities who are "directed and controlled" by that person. In addition, in order to eliminate any confusion that the campaign contribution limits of the City Ordinance were intended to apply to Independent Expenditure Committees (which do not make contributions directly to candidates), IECs have been specifically excluded in this latest version.

Independent Expenditure Committees. Upon the motion of Councilmember Gomez, the Council directed that the requirement to file disclosures with the City Clerk within 10 days of disseminating advocacy information to the public, be eliminated. This has been done in this second reading version. As such, there are no additional filing requirements for IECs in the proposal now before the Council.

If IECs actively participate in a Milpitas election by expending over $100 in support or opposition to a candidate, the new proposed language requires only that they verbally notify the City Clerk at such time as they are otherwise required by law to file any campaign statement, such as FPPC Form 460 or 461. As this does not require IECs to file any additional or different documents than they are already required by State law, it is not inimical to provisions of the Political Reform Act that purport to be pre-emptive. It is not clear, however, whether the courts will agree. A court could conclude that Milpitas is not even allowed to require verbal notification with regard to IECs who must file their reports outside the City of Milpitas. Staff could find no court decision on this precise point. If the Council wishes to be more conservative, a notification provision applying only to IECs operating solely within the City of Milpitas may be substituted.

Voluntary Campaign Expenditures. This provision provides expenditure limits for Milpitas candidates that are voluntary. Court cases have held that mandatory limits on expenditures violate First Amendment rights. Criticism of the original draft Ordinance centered mainly on the lack of significant penalty for failure to comply and concerned whether the $60,000 limit was the appropriate amount. The penalty for non-compliance is punishable as an infraction (a fine of $100, $200 or $500). Any greater punishment would increase the risk that the Ordinance might be challenged. As such, this section has not been changed from the original version proposed.

Campaign Consultants. The original version of this provision required campaign consultants to register with the City Clerk when working on Milpitas campaigns and also to identify all their other clients. The Council, upon the motion of Councilmember Gomez, directed that the ordinance be modified to list only those clients involved in Milpitas projects or elections. In addition, Council directed that all consultant contacts with City staff regarding City policy be added to the disclosure requirements. Objections to the ordinance had been made upon claims that the ordinance was vague and overbroad.

While staff believes the changes directed by Council should ameliorate these concerns, it is concluded that identification of staff contacts regarding City policy is too broad a requirement and does not provide consultants with clear notification as to what must be reported. As such, it creates too great a risk of successful legal challenge and therefore, has not been included in this new version of the ordinance. The current version is sufficiently succinct to avoid claims of vagueness. In addition, restricting disclosure of clients to those involved in Milpitas projects or elections is sufficiently narrow to avoid the claim of overbreadth.

Another objection to this provision was that requiring client identification violated privacy rights guaranteed by the Constitution. Research indicates that there is no absolute barrier to requiring disclosure of this information. U.S. Supreme Court recently noted that disclosure requirements, unlike expenditure ceilings, do not prevent anyone from speaking and do not violate free speech rights. Only if it is reasonably probable that disclosure would expose others to threats,

harassment or reprisal, should it be limited. Disclosure requirements must be balanced against the very important right of the public to full and complete information regarding elections.

Finally, the Council directed that the definition of Campaign Consultant be amended to include not only those who receive $200 or more in compensation, but also those who volunteered 10 or more hours to a campaign and received $10,000 or more in any year from any source as a campaign consultant. Suitable language has been added to implement this direction.

City Council Meeting Disclosures. In the original version presented at the first reading of this Ordinance, language had been added to the Open Government announcement read by the City Attorney at all Council meetings regarding declaration of conflicts of interest on the agenda. The added language indicated encouragement to also disclose campaign contributions received from persons who had an interest in any agenda item different from that of the general public. At Council direction, language has been added to limit the disclosure. Staff recommends that disclosure be encouraged only on items that involve a public hearing or involve the making of a contract in excess of $50,000.

Fiscal Impact: None.

Recommendations:
1. Waive the second reading of Ordinance No. 243.4.
2. Adopt Ordinance No. 243.4, as revised since the first reading on September 20.

XXI. BIDS AND CONTRACTS

*** 16. Authorize the City Manager to Execute Amendment No. 1 to the Agreement with Camp, Dresser & McKee for Professional Engineering Services Supporting the Solid Waste Program (Staff Contact: Kathleen Phalen, 586-3345)**

Background: The City has Camp Dresser & McKee (CDM) under contract to review Allied Waste's annual reimbursement request to the City for extraordinary regulatory costs, which are costs not included in the base rate of its contract with the City. Subtitle D of the Federal Resource Conservation and Recovery Act, enacted after the contract base rate was established, requires landfill operators to monitor landfill safety, provide proper capture and treatment of wastewater leachate, and monitor wildlife control and facility design. Allied is ready to submit its 2009 regulatory costs for the Newby Island landfill, at which time staff will require CDM's technical expertise to review and verify the accuracy of the claims. The evaluation process includes a review of Allied's documentation, project meetings with City and Allied staff, and a report of findings. Validated extraordinary expenses will be incorporated into a future rate increase. Staff negotiated an agreement amendment with CDM in an amount not to exceed $10,030, which is consistent with previous Subtitle D review work.

Fiscal Impact: None. Funds are available in the FY 2011-12 solid waste budget.

Recommendation: Authorize the City Manager to execute amendment No. 1 to the agreement with Camp, Dresser & McKee for Professional Engineering Services supporting the Solid Waste Program.

*** 17. Approve and Authorize the City Manager to Execute a Joint Use Agreement with the Santa Clara Valley Water District for Recreational Use of Coyote Creek Trail Reach 1 (Staff Contact: Fernando Bravo, 586-3328)**

Background: Staff has negotiated a joint use agreement with the Santa Clara Valley Water District (District) to allow for the extension and maintenance of an existing hiking and bicycling public trail along the Coyote Creek levee in Milpitas. The development of this trail is set forth in the City's General Plan.

The Claremont Institute

Center for Constitutional Jurisprudence

December 30, 2011

Re: Milpitas Proposed Campaign Finance Ordinance

To Whom It May Concern:

I am a constitutional law professor and former Dean at the Chapman University School of Law in southern California. I am also the founding director of the Center for Constitutional Jurisprudence, a public interest law whose mission is to enforce, through strategic litigation, the principles of our constitutional system of government. In that latter capacity, I have successfully litigated a number of constitutional challenges to campaign finance restriction ordinances that were quite similar to the one that has been proposed by the City of Milpitas. That the First Amendment of the U.S. Constitution protects the ability of citizens to participate fully in the political process by making expenditures in support of their preferred candidates or causes, is a proposition too well established to be disputed. And yet, the Milpitas proposal seeks to undermine those First Amendment rights.

Most egregiously, Subsection 3 of Section 2 of the original proposal sought to restrict contributions to independent expenditure committees in a way that clearly violated the constitution. Ever since the U.S. Supreme Court's landmark decision in *Buckley v. Valeo*, 424 U.S. 1 (1976), reasonable restrictions on contributions *to candidates* have been upheld because of the legitimate governmental concern about quid pro quo corruption, but restrictions on expenditures have uniformly been held to be unconstitutional. This is particularly true with respect to limitations on expenditures by independent expenditure committees, which by definition do not coordinate with candidates, alleviating any concern with quid pro quo corruption. *Fed. Election Comm'n v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985). Prior efforts by cities across California to limit such expenditures by limiting contributions to independent expenditure committees, using language virtually identical to that proposed by Milpitas, have uniformly failed. In *Lincoln Club of Orange County v. City of Irvine*, 292 F.3d 934 (2001), for example, the Ninth Circuit held that such ordinances are strict scrutiny, and on remand to the district court, the City entered into a stipulated judgment that its ordinance was unconstitutional under that standard. Similarly, the City of Long Beach just recently had its ordinance invalidated by the Ninth Circuit as an unconstitutional infringement of First Amendment freedoms. *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684 (9th Cir. 2010). I know, because I have litigated those cases through my Center for Constitutional Jurisprudence. We have successfully challenged nearly identical ordinances in

c/o Chapman University School of Law * One University Drive * Orange, California 92866 * (714) 628-2500

several other cities as well, and will continue to do so, given the central importance of First Amendment protections to the political process.

Although the revised version of the proposal expressly excludes independent expenditure committees from its restrictions, the proposal still prohibits any "person" from making "any contribution in support of or in opposition to a candidate for elective office" in aggregate excess of $500. "Contribution" is defined in Section 82015 of the California Government Code to include a "payment" for any communication that expressly advocates for the election or defeat of a candidate or that merely contains references to a candidate. The current proposal thus unconstitutionally restricts independent expenditures by individuals.

The provision suffers from unconstitutional vagueness problems as well. Subsection 3 of Section 2 prevents any "person" from making a contribution (defined to include payments for communicates that merely reference a candidate) in support of any candidate. But Subsection 2 of Section 2 provides that the campaign contribution limit "applies to all candidates, whether formerly declared or not." Everyone in the City is potentially a candidate, so a payment for a communication that references any such individual (a newsletter touting the Girl or Boy Scout leader of the year, for example) would apparently run afoul of the proposed ordinance once the payments exceed the $500 threshold. The ordinance makes no effort to provide a narrowing definition of "undeclared candidate" that might save it from being unconstitutionally vague, and provides no notice to the unwary of what would trigger that classification. The Supreme Court's void-for-vagueness doctrine requires that a statute define the prohibited conduct with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). The vague definition of "candidate" contained in this proposed ordinance suffers from that fatal flaw.

The "Voluntary Campaign Expenditure Limits" contained in Subsection 6 of Section 2 of the proposal are also constitutionally suspect. The Supreme Court has repeatedly held that restrictions on expenditures are unconstitutional, most recently in *Citizens United v. Federal Election Com'n.*, 130 S.Ct. 876 (2010). Here, the City has not restricted expenditures directly, but only purports to do so by encouraging candidates to voluntarily accept such restrictions. The issue, then, is whether the mechanism that the City of Milpitas has proposed to encourage such "voluntary" expenditure limitations is constitutional. Existing case law strongly suggests that it is not, for at least two reasons.

First, Subsection 1 expressly describes that the purpose of the expenditure limit is "to create an even playing field." That is an illegitimate purpose. The Supreme Court has repeatedly rejected the claim that the government has a legitimate interest in leveling the playing field in political campaigns, finding that "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." *Buckley v. Valeo*, 424 U.S. at 48-49.

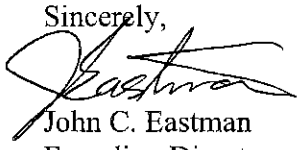
Second, the sanction that the City seeks to impose on candidates who do not "voluntarily" accept expenditure limitations closely resembles "scarlet letter"-type of political regulations that have previously been found to be unconstitutional. Proposed Section I-2.10-6.20 provides that "the City Clerk shall provide notification to the voters on the City website that the candidate has accepted or rejected the voluntary expenditure ceiling established herein." In *Cook v. Gralike*,

531 U.S. 510 (2001), the Supreme Court held unconstitutional a provision of the Missouri Constitution which required that elected officials and candidates who did not support term limits be so identified on the ballot with the phrases, "Disregarded Voters' Instructions on Term Limits," or "Declined to Pledge to Support Term Limits." Because the City's proposed provision is quite clearly designed to induce candidates indirectly to accept limits on their campaign expenditures that the City could not constitutionally require directly, it is susceptible to constitutional challenge under *Gralike*.

The proposals targeting campaign consultants for special regulation are also constitutionally problematic. Stunningly overbroad, Subsection 2 of Section 3 of the proposal defines "campaign consultant" to include anyone (family members and friends included!) who devotes 10 hours or more to a campaign, even as a volunteer, developing or contributing to a campaign strategy. It then imposes on these "consultants" registration and client disclosure requirements that it does not apply to anyone else. As the Supreme Court has repeatedly held, "the First Amendment protects political association as well as political expression." *Buckley v. Valeo*, 424 U.S. at 14. The proposed act intrudes on that constitutionally protected freedom in two ways. First, it imposes a burden on consultants' freedom of association with candidates that it does not impose on anyone else. Second, it requires consultants to disclose their clients—"candidates for elected public office in Milpitas or who have an economic interest in projects approved . . . within the past two calendar years or for which an application has been filed and approval is pending"—beyond what is warranted by existing conflict of interest rules. Moreover, the statute does not apply to those involved in other occupations who would appear to have nearly identical interests in the City—lawyers and accountants advising clients with recent projects before the City, for example. Because the freedom of association is a constitutionally-protected fundamental right, that disparate treatment would subject the ordinance to strict scrutiny under the federal Constitution's Equal Protection clause, rendering the ordinance unconstitutional unless the City could demonstrate that it was narrowly tailored to further a compelling governmental interest. Even assuming that the mere recitation of an integrity-protecting purpose in the ordinance's preamble qualifies as a compelling interest, a dubious proposition, the proposed ordinance is clearly not narrowly tailored to further it. It is both over- and under-inclusive. It reaches consultants whose services to clients have done nothing to undermine the integrity and public faith in Milpitas' local elections, and it does not apply to others who have.

In sum, Milpitas would be opening itself to several strong constitutional challenges were it to proceed with the adoption of this ordinance . Those challenges will most likely be brought under Section 1983 of Title 42 of the United States Code, for deprivation of constitutionally-protected rights. Prevailing plaintiffs in Section 1983 litigation are typically entitled to attorneys fees in addition to any damages they have suffered as the result of the deprivation of their constitutional rights. It is never appropriate for elected officials to take actions that they know will infringe on the constitutionally-protected rights of their citizens, but in this time of budget austerity, it would seem particularly irresponsible to take actions that are so very likely to result in a large financial judgment against the City.

Sincerely,



John C. Eastman
Founding Director

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CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

01/17/2012
Agenda Item No. RA4

ATTACHMENTS AND/OR ADDITIONAL MATERIALS RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION

Name of Redevelopment Agency: Milpitas Redevelopment Agency

Project Area(s) Project Area No. 1

Exhibit "A"

AMENDED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE

Per AB 26 - Section 34167 and 34169(*)

Schedule 1

	Project Name / Debt Obligation	Payee	Description	Total Outstanding Debt or Obligation	Source of Payment	Total Due During Fiscal Year	Payments by Month			
							Aug 11	Sept 11	Oct 11	Nov 11
1)	2003 Tax Allocation Bonds	US Bank	Bonds issue to fund redelopment projects	264,575,084.38	tax increments (TI)	23,231,988.14		9,548,779.38		
2)	City Loan entered into on 9/7/2004	City of Milpitas	Loan for Purchase of properties	24,418,456.88	TI	24,418,456.88				
3)	Agreement of Purchase and Sale	County of Santa Clara	Land Purchase	93,000,000.00	TI	4,000,000.00				
4)	Agreement of Purchase and Sale	Mission West Properties	Land Purchase	21,780,000.00	TI	6,000,000.00				
5)	Cooperation Agreement dd 5/18/76	Employees of Agency	Payroll and benefits for employees	7,484,866.00	TI	7,484,866.00	623,738.83	623,738.83	623,738.83	623,738.83
6)	Housing Fund Loan	RDA Housing Fund	Loan for Purchase of properties	8,924,678.08	TI	0.00				
7)	Contract for consulting services	Arbitrage Compliance Specialists	Calculation of bond arbitrage	88,000.00	TI	4,000.00			1,500.00	
8)	Contract for consulting services	US Bank	Adm fees for debt services	86,900.00	TI	3,950.00			800.00	3,150.00
9)	Contract for consulting services	Willdan Financial Services	Bond continued disclosure report	132,000.00	TI	6,000.00				
10)	Contract for consulting services	Milpitas Chamber of Commerce	Business Outreach	80,000.00	TI	60,000.00	20,000.00			
11)	Contract for consulting services	Maze & Associates	Financial Statement Audit fees	387,420.00	TI	17,610.00				
12)	Contract for consulting services	MuniServices LLC	Property Tax audit fee	150,000.00	TI	100,000.00				
13)	Contract for consulting services	Murphy & Associates	Redevelopment legal services	149,040.00	TI	149,040.00			49,306.12	
14)	Contract for consulting services	Jarvis Fay Doporto & Gibson	Redevelopment legal services	7,392.00	TI	7,392.00				
15)	Contract for consulting services	Nicolay Consulting Group	GASB 45 Actuary Study	1,580.00	TI	1,580.00	1,580.00			
16)	Contract for construction	Access Communications Inc	Communication systems upgrade	15,396.00	TI	15,396.00				
17)	Contract for consulting services	Biggs Cardosa Associates Inc	Design services for various public imp projects	24,741.00	TI	24,741.00		3,135.00		1,990.00
18)	Contract for services	Prince Charles Reprographics	Graphic reproduction services	4,639.00	TI	4,639.00				
19)	Contract for services	Consolidated Engin Lab	Public project inspection services	28,232.00	TI	28,232.00		752.00		870.00
20)	Contract for consulting services	RTS Systems & Design	Design services for parking garage screen	4,500.00	TI	4,500.00				
21)	Contract for construction	Green Earth Engineering	Installation of parking garage screen	127,497.00	TI	127,497.00		94,497.00		
22)	Contract for consulting services	Schaaf & Wheeler Engineers	Design services for flood plain in the Midtown	114,779.00	TI	114,779.00		800.00		
23)	Contract for construction	Environmental Systems Inc	Installation of HVAC at Library	29,756.00	TI	29,756.00		16,283.00	2,568.00	
24)	Contract for consulting services	Noll & Tam Architects	Design of Senior Center	24,509.00	TI	24,509.00				
25)	Contract for consulting services	Advanced Design Consultants	Design of Sports Center Lighting	25,082.00	TI	25,082.00		4,787.00		9,325.00
26)	Contract for construction	Ashron Construction	Construction of Soundwall	59,000.00	TI	59,000.00	59,000.00			
27)	Contract for construction	Cal-West	Construction of Street Light Poles	98,780.00	TI	98,780.00				
28)	Contract for consulting services	Pacific Municipal Consulting	Consultant for Climate Action Plan	41,411.00	TI	41,411.00	2,201.00	6,969.00	2,438.00	245.00
29)	Contract for construction	Hometown Construction Inc	Installation of HVAC at Comm Ctr	404,906.00	TI	404,906.00	268,515.00	130,667.00		
30)	Contract for construction	DRT Grading & Paving Inc	N. Main St parking lot resurfacing	64,946.00	TI	64,946.00		62,336.00		
	Totals - Schedule 1			$ 422,333,591.34		$ 66,553,057.02	$ 975,034.83	$ 10,492,744.21	$ 680,350.95	$ 639,318.83
	Totals - Schedule 2			$ 100,802,941.73		$ 3,086,377.19	$ 46,646.12	$ 8,460.87	$ 40,502.98	$ 24,245.39
	Totals - Schedule 3			$ -		$ -	$ -	$ -	$ -	$ -
	Totals - Schedule 4			$ -		$ -	$ -	$ -	$ -	$ -
	Totals - Other Obligations			$ 74,974,459.01		$ 1,641,794.11	$ -	$ -	$ -	$ -
	Totals - All Pages			$ 598,110,992.08		$ 71,281,228.32	$ 1,021,680.95	$ 10,501,205.08	$ 720,853.93	$ 663,564.22

Name of Redevelopment Agency: Milpitas Redevelopment Agency

Project Area(s) Project Area No. 1

	Project Name / Debt Obligation	Payee	Payments by Month							
			Dec 11	Jan 12	Feb 12	Mar 12	Apr 12	May 12	Jun 12	Total
1)	2003 Tax Allocation Bonds	US Bank				4,044,104.38			9,639,104.38	$ 23,231,988.14
2)	City Loan entered into on 9/7/2004	City of Milpitas		24,418,456.88						$ 24,418,456.88
3)	Agreement of Purchase and Sale	County of Santa Clara							4,000,000.00	$ 4,000,000.00
4)	Agreement of Purchase and Sale	Mission West Properties		3,000,000.00	3,000,000.00					$ 6,000,000.00
5)	Cooperation Agreement dd 5/18/76	Employees of Agency	623,738.83	623,738.83	623,738.83	623,738.83	623,738.83	623,738.83	623,738.87	$ 7,484,866.00
6)	Housing Fund Loan	RDA Housing Fund								$ -
7)	Contract for consulting services	Arbitrage Compliance Specialists					2,500.00			$ 4,000.00
8)	Contract for consulting services	US Bank								$ 3,950.00
9)	Contract for consulting services	Willdan Financial Services				6,000.00				$ 6,000.00
10)	Contract for consulting services	Milpitas Chamber of Commerce				20,000.00			20,000.00	$ 60,000.00
11)	Contract for consulting services	Maze & Associates							17,610.00	$ 17,610.00
12)	Contract for consulting services	MuniServices LLC	76,234.00						23,766.00	$ 100,000.00
13)	Contract for consulting services	Murphy & Associates	20,986.94			39,373.47			39,373.47	$ 149,040.00
14)	Contract for consulting services	Jarvis Fay Doporto & Gibson					7,392.00			$ 7,392.00
15)	Contract for consulting services	Nicolay Consulting Group								$ 1,580.00
16)	Contract for construction	Access Communications Inc						15,396.00		$ 15,396.00
17)	Contract for consulting services	Biggs Cardosa Associates Inc			3,923.00	3,923.00	3,923.00	3,923.00	3,924.00	$ 24,741.00
18)	Contract for services	Prince Charles Reprographics					4,639.00			$ 4,639.00
19)	Contract for services	Consolidated Engin Lab			5,322.00	5,322.00	5,322.00	5,322.00	5,322.00	$ 28,232.00
20)	Contract for consulting services	RTS Systems & Design		750.00	750.00	750.00	750.00	750.00	750.00	$ 4,500.00
21)	Contract for construction	Green Earth Engineering	33,000.00							$ 127,497.00
22)	Contract for consulting services	Schaaf & Wheeler Engineers				56,989.00		56,990.00		$ 114,779.00
23)	Contract for construction	Environmental Systems Inc					10,905.00			$ 29,756.00
24)	Contract for consulting services	Noll & Tam Architects		4,084.83	4,084.83	4,084.83	4,084.83	4,084.83	4,084.85	$ 24,509.00
25)	Contract for consulting services	Advanced Design Consultants				5,485.00			5,485.00	$ 25,082.00
26)	Contract for construction	Ashron Construction								$ 59,000.00
27)	Contract for construction	Cal-West			49,390.00			49,390.00		$ 98,780.00
28)	Contract for consulting services	Pacific Municipal Consulting	409.00	4,858.17	4,858.17	4,858.17	4,858.17	4,858.17	4,858.15	$ 41,411.00
29)	Contract for construction	Hometown Construction Inc							5,724.00	$ 404,906.00
30)	Contract for construction	DRT Grading & Paving Inc							2,610.00	$ 64,946.00
										$ -
										$ -
	Totals - Schedule 1		$ 754,368.77	$ 28,051,888.71	$ 3,692,066.83	$ 4,814,628.68	$ 668,112.83	$ 764,452.83	$ 14,396,350.72	$ 66,553,057.02
	Totals - Schedule 2		$ 3,934.96	$ 732,497.67	$ 418,524.27	$ 397,680.27	$ 397,680.27	$ 418,524.27	$ 597,680.12	$ 3,086,377.19
	Totals - Schedule 3		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
	Totals - Schedule 4		$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -
	Totals - Other Obligations		$ 820,897.06	$ -	$ -	$ -	$ -	$ -	$ 820,897.06	$ 1,641,794.12
	Totals - All Pages		$ 1,579,200.79	$ 28,784,386.38	$ 4,110,591.10	$ 5,212,308.95	$ 1,065,793.10	$ 1,182,977.10	$ 15,814,927.90	$ 71,281,228.33

Name of Redevelopment Agency: Milpitas Redevelopment Agency

Project Area(s) Project Area No. 1

AMENDED ENFORCEABLE OBLIGATION PAYMENT SCHEDULE

Per AB 26 - Section 34167 and 34169(*)

Schedule 2

	Project Name / Debt Obligation	Payee	Description	Total Outstanding Debt or Obligation	Source of Payment	Total Due During Fiscal Year	Payments by Month			
							Aug 11	Sept 11	Oct 11	Nov 11
1)	Contract for Services	ABAG PLAN	liability insurance	42,892.00	tax increments (TI)	42,892.00		789.00	415.00	
2)	Contract for Services	various vendors	Copier lease, printing, storage, office equip	50,000.00	TI	50,000.00	2,631.00	3,430.00	637.03	
3)	Contract for Services	PG&E	utility costs	178,000.00	TI	178,000.00	16,914.00	1,106.00	32,199.00	16,001.00
4)	Contract for Services	ABAG POWER	utility costs	5,000.00	TI	5,000.00	574.00	287.00	287.00	211.00
5)	Contract for Services	City of Milpitas	utility costs	14,500.00	TI	14,500.00	1,993.00	836.00	1,317.00	1,179.00
6)	Homeowner Assoc Dues	Parc Metro Comm. Assoc	HOA dues for 5 affordable units	14,435.00	TI	14,435.00	3,315.00		1,105.00	2,210.00
7)	Homeowner Assoc Dues	Terra Serena HOA	HOA Dues for 1 affordable unit	3,847.00	TI	3,847.00	472.00			
8)	Homeowner Assoc Dues	Merit Property Mgmt	HOA Dues for 2 affordable units	7,042.20	TI	7,042.20	630.00		1,998.61	765.18
9)	Homeowner Assoc Dues	Luna HOA	HOA Dues for 2 affordable units	19,486.88	TI	19,486.88	2,405.88	785.71	785.71	785.71
10)	Contract for Services	Note World	Billing & collection of home loan program	34,000.00	TI	7,197.46	711.24	663.56	467.58	509.50
11)	Contract for Services	CRA, NAIOP etc.	membership dues	21,438.65	TI	21,438.65	17,000.00	563.60	1,291.05	2,584.00
12)	Financing Agreement	SunPower Corporation	Assistance per CRL 33444.6	1,500,000.00	TI	900,000.00				
13)	Successor Agency adm fee	City of Milpitas	Adm fee due to dissolution of RDA	49,912,300.00	TI	1,822,538.00				
14)	Successor Agency adm fee	City of Milpitas	oversight board support costs	to be determined	TI					
15)	DDA dated 8/18/09	South Main Manor LLC	Financial Assistance	7,700,000.00	TI					
16)	OPA dated 8/3/10	Integral Communities	Financial Assistance	41,300,000.00	TI					
17)	Possible contribution to County PERS levy, if ordered by Superior Court in case of *County of Santa Clara v. All Persons Interested in the Matter of the Sixth Amendemnt to the Great Mall Redevelopment Project*	County of Santa Clara	legal liability	to be determined	TI					
18)										
19)										
20)										
21)										
22)										
23)										
24)										
25)										
26)										
27)										
28)										
29)										
30)										
	Totals - This Page			$ 100,802,941.73		$ 3,086,377.19	$ 46,646.12	$ 8,460.87	$ 40,502.98	$ 24,245.39

Name of Redevelopment Agency: Milpitas Redevelopment Agency

Project Area(s) Project Area No. 1

	Project Name / Debt Obligation	Payee	Payments by Month							
			Dec 11	Jan 12	Feb 12	Mar 12	Apr 12	May 12	Jun 12	Total
1)	Contract for Services	ABAG PLAN			20,844.00			20,844.00		$ 42,892.00
2)	Contract for Services	various vendors		7,217.00	7,217.00	7,217.00	7,217.00	7,217.00	7,216.97	$ 50,000.00
3)	Contract for Services	PG&E	26.00	18,625.67	18,625.67	18,625.67	18,625.67	18,625.67	18,625.65	$ 178,000.00
4)	Contract for Services	ABAG POWER		606.84	606.84	606.84	606.84	606.84	606.80	$ 5,000.00
5)	Contract for Services	City of Milpitas		1,529.17	1,529.17	1,529.17	1,529.17	1,529.17	1,529.15	$ 14,500.00
6)	Homeowner Assoc Dues	Parc Metro Comm. Assoc	1,115.00	1,115.00	1,115.00	1,115.00	1,115.00	1,115.00	1,115.00	$ 14,435.00
7)	Homeowner Assoc Dues	Terra Serena HOA			675.00	675.00	675.00	675.00	675.00	$ 3,847.00
8)	Homeowner Assoc Dues	Merit Property Mgmt	344.97	550.58	550.58	550.58	550.58	550.58	550.54	$ 7,042.20
9)	Homeowner Assoc Dues	Luna HOA	2,103.41	2,103.41	2,103.41	2,103.41	2,103.41	2,103.41	2,103.41	$ 19,486.88
10)	Contract for Services	Note World	345.58	750.00	750.00	750.00	750.00	750.00	750.00	$ 7,197.46
11)	Contract for Services	CRA, NAIOP etc.								$ 21,438.65
12)	Financing Agreement	SunPower Corporation		700,000.00					200,000.00	$ 900,000.00
13)	Successor Agency adm fee	City of Milpitas			364,507.60	364,507.60	364,507.60	364,507.60	364,507.60	$ 1,822,538.00
14)	Successor Agency adm fee	City of Milpitas								
15)	DDA dated 8/18/09	South Main Manor LLC								$ -
16)	OPA dated 8/3/10	Integral Communities								$ -
17)	Possible contribution to County PERS levy, if ordered by Superior Court in case of *County of Santa Clara v. All Persons Interested in the Matter of the Sixth Amendemnt to the Great Mall Redevelopment Project*	County of Santa Clara								$ -
18)										$ -
19)										$ -
20)										$ -
21)										$ -
22)										$ -
23)										$ -
24)										$ -
25)										$ -
26)										$ -
27)										$ -
28)										$ -
29)										$ -
30)										$ -
	Totals - This Page		$ 3,934.96	$ 732,497.67	$ 418,524.27	$ 397,680.27	$ 397,680.27	$ 418,524.27	$ 597,680.12	$ 3,086,377.19

Name of Redevelopment Agenc: Milpitas Redevelopment Agency

Project Area(s) Project Area No. 1

AMENDED OTHER OBLIGATION PAYMENT SCHEDULE

Per AB 26 - Section 34167 and 34169(*)

	Project Name / Debt Obligation	Payee	Description	Total Outstanding Debt or Obligation	Source of Payment	Total Due During Fiscal Year	Payments by Month			
							Aug 11	Sept 11	Oct 11	Nov 11
)	Statutory Payments	County General	Payments per CRL 33607.5 and .7	16,774,643.70	tax increments (TI)	367,331.91				
1)	Statutory Payments	County Library	Payments per CRL 33607.5 and .7	3,014,603.30	TI	66,013.92				
2)	Statutory Payments	City of Milpitas	Payments per CRL 33607.5 and .7	13,383,557.49	TI	293,073.75				
3)	Statutory Payments	Milpitas Unified	Payments per CRL 33607.5 and .7	28,192,267.74	TI	617,355.56				
4)	Statutory Payments	San Jose Comm College	Payments per CRL 33607.5 and .7	4,571,271.00	TI	100,101.90				
5)	Statutory Payments	County School Service	Payments per CRL 33607.5 and .7	2,224,894.46	TI	48,720.84				
6)	Statutory Payments	County Office of Education	Payments per CRL 33607.5 and .7	0.00	TI	0.00				
7)	Statutory Payments	SCV Water Dist East 1	Payments per CRL 33607.5 and .7	1,280,985.10	TI	28,051.07				
8)	Statutory Payments	SCV Water Dist	Payments per CRL 33607.5 and .7	125,026.23	TI	2,737.83				
9)	Statutory Payments	Bay Area Air Quality Mgmt	Payments per CRL 33607.5 and .7	129,556.31	TI	2,837.03				
10)	Statutory Payments	SCV Water Dist St Wtr Pro	Payments per CRL 33607.5 and .7	372,050.56	TI	8,147.18				
11)	Statutory Payments	SCVWD Zone W-4	Payments per CRL 33607.5 and .7	95,897.60	TI	2,099.97				
12)	Statutory Payments	County Retirement	Payments per CRL 33607.5 and .7	3,909,498.24	TI	85,610.37				
13)	Statutory Payments	Co Library Retirement	Payments per CRL 33607.5 and .7	242,139.88	TI	5,302.39				
14)	Statutory Payments	SCVWD St Project	Payments per CRL 33607.5 and .7	647,571.49	TI	14,180.55				
15)	Statutory Payments	SCVWD Zone 1	Payments per CRL 33607.5 and .7	10,495.91	TI	229.84				
16)										
17)										
18)										
19)										
20)										
21)										
22)										
23)										
24)										
25)										
26)										
27)										
	Totals - Other Obligations			**$ 74,974,459.01**		**$ 1,641,794.11**		**$ -**	**$ -**	**$ -**

CITY OF MILPITAS

455 EAST CALAVERAS BOULEVARD, MILPITAS, CALIFORNIA 95035-5479
GENERAL INFORMATION: 408-586-3000, www.ci.milpitas.ca.gov

01/17/2012
Agenda Item No. RA6

ATTACHMENTS AND/OR ADDITIONAL MATERIALS RELATED TO AGENDA ITEM AFTER AGENDA PACKET DISTRIBUTION

Resale Restriction Agreement and Option to Purchase, Promissory Note and Subordinate Deeds of Trust with the City of Milpitas Redevelopment Agency

PROJECT: PARC PLACE

Property Owners	**Addresses**	**Agency Loan**
Truc Le & Loan Le	68 Parc Place Drive	Yes
Hanh Hoang & Tu Le	40 Parc Place Drive	Yes
Bimalkumar & Sangnya Bhaguat	57 Parc Place Drive	Yes
Thomas Chacko	105 Parc Place Drive	Yes
Carmelita & Edward Aldana	47 Parc Place Drive	Yes
Ester & Leon Concepcion	45 Parc Place Drive	Yes
David Matheson	244 Parc Place Drive	Yes
Samul Haque & Sayeda Sultana	215 E. Curtis Ave	Yes
Ronnie Baluyot	236 Parc Place Drive	Yes
Michael Quintana	173 Parc Place Drive	Yes
Hui Chag	127 Parc Place Drive	Yes
Jonathan Law	39 E. Curtis Ave	Yes
Sandy Lu	188 Parc Place Drive	Yes
Fanping Zhang &Haimig Liu	120 Parc Place Drive	Yes
Rakesh & Paya Shah	256 Parc PlaceDrive	No
Michele Ynegas	118 Parc Place Drive	Yes
Michael and Amel Vieyra	42 Parc Place Drive	Yes
Jennifer Wadahana	70 Parc Place Drive	Yes
Tom Wang &Khin Wiu	770 Hammond Way	Yes
Hui Zhang & Yue Soong	37 E. Curtis Ave	No
Maro Boghos	126 Parc Place Drive	Yes
Peter & Michele Sales	198 Parc Place Drive	Yes
Susan & Rita Velasquez	128 Parc Place Drive	Yes
Nicholas Pham	268 Parc Place Drive	Yes
Henry Nguyen	266 Parc Place Drive	Yes
Muoi Tang & Hung Lam	107 Parc Place Drive	Yes
Rose Sedillo	57 Parc Place Drive	Yes
Yik-Mien Ng	772 Hammond Way	No
Wilson Vu &Thuong Huynh	223 Parc Place	No
Guang Huang	220 Parc Place Drive	No
Serena Lin	153 Parc Place Drive	No
Voutha Hor	204 Parc Place Drive	No
Freddie Yu & Wai Li-Yu	95 Parc Place Drive	No
Ben Chi Yu &Feng Li	163 Parc Place Drive	No
Kwong and May Wong	219 E. Curtis Avenue	No
Jesus and Rida Casuga	86 Parc Place Drive	No
Kimchi Tran	212 Parc Place Drive	No
Minhphog Tran & Cassia Kim	182 Parc Place Drive	No
Hong Tran & Tran Dag	253 Parc Place Drive	No
Joseph Urienza	129 Curtis Avenue	No
Bao Pham	77 Parc Place Drive	No
Mary Pak	269 Parc Place Drive	No
Rajan & Christine Marwha	231 Parc Place Drive	No
Jesse Hong & Tina Wang	79 Parc Place Drive	No

Note:

All properties have Resale Restriction Agreements and Option to Purchase
All properties with loans have Promissory Notes and Subordinate Deeds of Trust

Resale Restriction Agreement and Option to Purchase, Promissory Note and Subordinate Deeds of Trust with the City of Milpitas Redevelopment Agency

PROJECT: TOWN CENTER

Property Owners	**Addresses**	**Agency Loan**
C. Nguyen & D. Le	400 Belshaw Drive	Yes
Douglas Hatran	502 Belshaw Drive	Yes
C. & F Casenas	356 Belshaw Drive	Yes
C. Souvannavong	380 Belshaw Drive	Yes
Mahvish Bari	382 Belshaw Drive	Yes
Jonna Chao Kim	340 Belshaw Drive	Yes
J & J Barbhaiya	306 Shaughnessy Drive	Yes
Sarang Alamooti	302 Shaughnessy Drive	Yes
Robert Vrscaj	305 Shaughnessy Drive	Yes
Alexander Zabyshny	303 Shaughnessy Drive	Yes
Wilson Ta	309 Shaughnessy Drive	Yes
David & Lid Huynh	323 Shaughnessy Drive	Yes
Vinh & Trm Hao	530 Belshaw Drive	Yes
Y Nguyen & K Le	532 Belshaw Drive	Yes
Siew K. Chung	526 Belshaw Drive	Yes
Rashad Ferguson	528 Belshaw Drive	Yes

Note:

All properties have Resale Restriction Agreements and Option to Purchase
All properties with loans have Promissory Notes and Subordinate Deeds of Trust

Resale Restriction Agreement and Option to Purchase, Promissory Note and Subordinate Deeds of Trust with the City of Milpitas Redevelopment Agency

PROJECT: PARAGON

Property Owners	**Addresses**	**Agency Loan**
K. Anukulsuplert	33 Ede Lane	Yes
Jose & Loma Montoya	51 Ede Lane	Yes
Paul Chang	85 Ede Lane	Yes
Rich Lichyun Young	49 Ede Lane	Yes
F & M Yue	31 Ede Lane	Yes
Pey Hwa Young	67 Ede Lane	Yes
Michael Gabriel	107 Ede Lane	Yes
Joann Chang Tu	137 Ede Lane	Yes
Sabrina Wen Lee	131 Ede Lane	Yes

Note:

All properties have Resale Restriction Agreements and Option to Purchase
All properties with loans have Promissory Notes and Subordinate Deeds of Trust

Resale Restriction Agreement and Option to Purchase, Promissory Note and Subordinate Deeds of Trust with the City of Milpitas Redevelopment Agency

PROJECT: PARC METRO

Property Owners	**Addresses**	**Agency Loan**
Victoria & Carlos Uy	350 Imagination Place	Yes
Hein Nguyen & Chau Huynh	347 Imagination Place	Yes
Jack Lee & Shirley Lin	345 Celebration Drive	Yes
Helconida and Roque Umali	326 Imagination Place	Yes
Hung Tran & Hui Le	356 Imagination Place	Yes
Stacey Vidal	351 Celebration Drive	Yes
Felipe and Grace Villanueva	371 Imagination Place	Yes
Perry and Fanny Davallou	364 Celebration Drive	Yes
Elroy Wong & Canmil Leung	352 Celebration Drive	Yes
David and Illiana Clift	340 Celebration Drive	Yes
H Ding & Chen	351 Celebration Drive	Yes
Kaushal & Alpa Shah	37 Rain Walk	No
Sinh Sen & Minh Cam Thi Duong	43 Rain Walk	No
Binh Vo	48 Rain Walk	No
Jo Lim & Nit Van Lai	54 Rain Walk	No
Vinod and Menjo Chaudhary	31 Shadow Dance	No
Julio & Edith Martinez	42 Shadow Dance	No
Richard Huynh & Connie Hoang	26 Sun Song	No
Wei Long & Wen Li Yu	44 Sun Song	No
Shay Jan Huang	22 Wind Song	No
Millind and Rashmi Bilaskar	35 Wind Song	No
Sudhir & Asha Gondi	46 Wind Song	No
Quincy ly & Tammy Le	53 Wind Song	No
Chris Henriques	51 Cloud Walk	No
Tom & Mitthira Mahatdejkul	28 Moon Shadow	No
Sylvia & Ray Van	32 Moon Shadow	No

Note:

All properties have Resale Restriction Agreements and Option to Purchase
All properties with loans have Promissory Notes and Subordinate Deeds of Trust

Resale Restriction Agreement and Option to Purchase, Promissory Note and Subordinate Deeds of Trust with the City of Milpitas Redevelopment Agency

PROJECT: KB HOMES (Condo's)

Property Owners	Addresses	Agency Loan
R & I Banzon	700 S. Abel Street #325	Yes
Khang Tran	700 S. Abel Street #220	No
Matthew Seeberger	700 S. Abel Street #226	Yes
A & L Richards	700 S. Abel Street #201	Yes
Y Liu & B Chin	700 S. Abel Street #224	Yes
Adelaida Sibal	700 S. Abel Street #202	Yes
Joel De Vera	700 S. Abel Street #305	Yes
Chen-fen Tung	700 S. Abel Street #408	Yes
David Earl Greathouse	700 S. Abel Street #212	Yes
Ya Hui Tsai	700 S. Abel Street #321	Yes
Julie A. Sutton	700 S. Abel Street #427	Yes
Azin Arefi Anbarani	700 S. Abel Street #323	Yes
J. & M. Madarazo	700 S. Abel Street #313	Yes
Shuqing Gong	700 S. Abel Street #309	Yes
Sharwan Uberoi	700 S. Abel Street #204	Yes
Y. Tsang & K Wu	600 S. Abel Street #202	Yes
G. Campos & J Barillas	600 S. Abel Street #306	Yes
M. Ear & T Chua	600 S. Abel Street #222	Yes
M. Subramanian	700 S. Abel Street #307	Yes
Kesley Lee	600 S. Abel Street #201	Yes
Sarah Chang	700 S. Abel Street #312	Yes
Douglas Kwok	600 S. Abel Street #210	Yes
Simeng Wu	700 S. Abel Street #319	Yes
Ragni Panikar	600 S. Abel Street #204	Yes
C & J Meyers	700 S. Abel Street #206	Yes
S Drequito & Yamat	700 S. Abel Street #304	Yes
Erica De La Pena	600 S. Abel Street #308	Yes
Paula Araya	600 S. Abel Street #310	Yes
Samuel Wong	700 S. Abel Street #210	Yes
Marina Birman	700 S. Abel Street #208	Yes
Jessica X F Liang	800 S. Abel Street #210	Yes
Jordan Queensbury	800 S. Abel Street #208	Yes
Michael M K Chan	800 S. Abel Street #310	Yes
Diane Maez	800 S. Abel Street #308	Yes
Chi-Yu & Tammy Yang	700 S. Abel Street #327	Yes
Jose & Salvimae Moncada	700 S. Abel Street #220	Yes

Resale Restriction Agreement and Option to Purchase, Promissory Note and Subordinate Deeds of Trust with the City of Milpitas Redevelopment Agency

PROJECT: KB HOMES (Townhomes)

Property Owners	**Addresses**	**Agency Loan**
Kimanh Nhien & Nam Nguyen	624 Claridid Loop	Yes
Katherine Hoang	350 Alvarez Common	No
Richard and Manny Nono	334 Alvarez Common	No
Twelde & Amha Teklemicael	390 Alvarez Commom	No
Hemal and Pallani Shah	660 Vida Larga Loop	No
Rodolfo & Jossey Babida	669 Vida Larga Loop	No
Alesadro Santos	690 Ternura Loop	No
Apurva Meher	754 Claridid Loop	No
Patrick Clark	695 Claridid Loop	No
Hanh Dang & Huan Nguyen	953 Mente Linda Loop	No
Minh & Thanh Nguyen	649 Mente Linda Loop	No
Lawerence Seeberger	887 Claridid Loop	No
Yu Chang Lise Lee & Kam Chun Mnhn Ng	1007 Vida Larga Loop	No
Darwina & J-Anna Elizarde	1167 Vida Larga Loop	No
Tuan Nguyen &Tuyetanh Tran	1097 Mente Linda Loop	No
Howard and Anna-Jia Lou	1077 Luz Del Sol Loop	No
Anthony & Gibson-Jean	752 Luz Del Sol Loop	No
Mebrat Kahsai Dahle	976 Vida Larga Loop	N0
Harish Sharma/Anita Sharma/Dipika Nagan	1184 Luz Del Sol Loop	No
Melanie & Jordan Forteza	960 Luz Del Sol Loop	No
Mohamad & Raza Azim	524 Alvarez Common	No
Willy Tai & Wang Ting Nu	486 Alvarez Common	No
Allen S. Huang	757 Luz Del Sol Loop	No
Jihyun & Jisun Lee	657 Luz Del Sol Loop	No
Pullandiran Ready & Dhan Swamy	1086 Luz Del Sol Loop	No

Note:

All properties have Resale Restriction Agreements and Option to Purchase
All properties with loans have Promissory Notes and Subordinate Deeds of Trust

Resale Restriction Agreement and Option to Purchase, Promissory Note and Subordinate Deeds of Trust with the City of Milpitas Redevelopment Agency

PROJECT: CENTRIA

Property Owners	**Addresses**	**Agency Loan**
Hao Zheg	1101 S. Main St #426	No
Hoang Bao	1101 S. Main St #406	No
Karla Ruiz	1101 S. Main St #413	No
Melinda Gadduang	1101 S. Main St #412	No
Wynne Kim	1101 S. Main St. #327	Yes
Yung Chan	1101 S. Main St #326	Yes
Wing Lau	1101 S. Main St. #313	No
Rozina Kapadia	1101 S. Main St. #221	Yes
Yuxiang Hung/Dongping Liu	1101 S. Main St. #134	No
Shanter Hernandez	1101 S. Main St #126	Yes
Wei Zhao	1101 S. Main St. #113	Yes
Arshad & Ada Khan	1101 S. Main St. #112	No
Lodina Banawa	1101 S. Main St. #107	Yes
William Gong	1101 S. Main St. #106	Yes
Zhigang Chen	1101 S. Main St. #221	No
Albert Hadiprodjo	1101 S. Main St. #227	Yes
Yi Ding	1101 S. Main St. #226	Yes
Chris Liu & Marie Mock	1101 S. Main St. #212	No
Jennery Wang	1101 S. Main St. #213	Yes
Sufen Sheng	1101 S. Main St. #206	Yes
Johathan Nguyen	1101 S. Main St. #202	Yes

Note:

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All properties with loans have Promissory Notes and Subordinate Deeds of Trust