

**City of Milpitas
Reimbursement Guidelines
For
Mayor and City Council Members
February 5, 2013**

The following guidelines are proposed for reimbursements for the mayor and council members of the City of Milpitas:

1. No reimbursement for charitable contributions;
2. No reimbursement for gifts, donations, contributions, for any purpose;
3. No reimbursement for entrance fees for walk-a-thons, marathons, relays, or other events for charitable or non-charitable purposes and all other non-city events (cultural, social, etc.) unless the function requires the presence of an elected official;
4. No reimbursement without itemized receipts or copies of cancelled checks;
5. No reimbursement for mileage, parking, or tolls and other transportation costs and hotels within Santa Clara County;
6. No reimbursement for conferences or conventions not directly related to the elected office held;
7. No reimbursement for table sponsorships, hole in one sponsorships or other related events;
8. No reimbursement for tuition or any personal use;
9. No reimbursement for political contributions or PACs; and
10. No reimbursement for retirement dinners except those involving City of Milpitas employees or state/national elected officials (does not include any gift contribution).

Maximum total amount of allowable reimbursement per elected official per fiscal year: city council member-\$1,000.00 per fiscal year; mayor-\$1,500.00 per fiscal year (no aggregation of accounts).

Quarterly reporting of reimbursements; Council has authority to confirm/validate reimbursements made; can ask elected official to re-pay the City for non-legitimate reimbursements as determined by the Milpitas City Council.

If an elected official is uncertain about any reimbursable expenses, the elected official can have the item agendaized for Milpitas City Council pre-approval.

MEMORANDUM

Department of the City Attorney



To: Honorable Mayor and City Council

From: Michael Ogaz, City Attorney

M.O.

Subject: Officeholder Accounts

Date: October 29, 2007

Question: Council Person Armando Gomez has asked whether an elected official can maintain an officeholder account and, if allowed, has inquired about the laws regulating them.

Summary Answer: An elected official of a local entity such as the City of Milpitas can maintain one campaign contribution account. No separate officeholder account is permitted. Funds within the campaign account are held in trust for election expenses or for certain expenses of holding office. The general categories of allowable office expenditures made from a campaign account are expenses incurred for political, legislative, or governmental purposes. The rules and regulations governing contributions, including those regulating reporting, disclosure, and contribution limits apply to the one permissible campaign account; the ordinances of the City of Milpitas limiting contributions and requiring disclosures apply. In order to properly evaluate whether a proposed expenditure from a legal campaign account meets the allowable officeholder categories set out in the statutes, it is necessary to know the proposed expenditure. Depending upon the complexity and/or ambiguity of the proposed specific expenditure, it may be necessary to discuss the matter with the Fair Political Practices Commission (FPPC) staff.

Discussion: The Political Reform Act of the California Government Code regulates the right of a local elected official to maintain campaign and other accounts. Unlike the right of an elected State officer to maintain an "officeholder account" (Government Code Section 85316(b), FPPC Regulation 18531.62), there is no authority within the statute for a local

official to maintain a so-called officeholder account. There is authority, however, for a local official to maintain one campaign account. Government Code Section 85201. Funds within the campaign account are held "in trust for expenses associated with the election..or for expenses associated with holding office." Government Code Section 89510(b).

The Political Reform Act also sets forth a statutory scheme that specifies the use that an elected official can make of the campaign account. (Government Code Sections 89510-89522. See also FPPC Regulations 18524, 18525.) Campaign expenses expressly include the following: "payments for fundraising and campaign strategy..."; "payments for mass mailings, political advertising..."; payments for services and actual expenses of political consultants..."; vehicle expenses; property leases; etc. (See FPPC Regulation 18525; Government Code Sections 89516-89522.) Government Code Sections 89513-89522 also expressly limit the use of campaign funds for matters such as travel and travel accommodations, for payment of fines and penalties, for clothing, for entertainment tickets, etc. The above listing of permitted and prohibited/limited uses for campaign funds is not intended to be a complete list but acts only to illustrate some of those expenditures addressed by the statutes and regulations.

Allowable expenditures by a local elected official from the campaign account expressly include the following categories of expenses: "An expenditure associated with holding office is within the lawful execution of the trust imposed...if it is reasonably related to a legislative or governmental purpose. Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose." Government Code Section 89512, underlining added. The application of the concepts "political, legislative, and governmental purpose" are left generally undefined, anticipating no doubt that the unlimited myriad of proposed expenditures will be analyzed on a case-by-case basis for compliance with the designated general purposes.

A recent 2007 advice letter from the FPPC does give certain insight into how the FPPC analyzes the validity of officeholder expenditures. The advice letter (A-07-122, August 15, 2007, David Bauer) concerned expenditures by Bill Leonard, a member of the State Board of Equalization. Mr. Leonard had expenses for his cell phone, a website to communicate with his constituency, and certain computer supplies associated with a periodic electronic newsletter. The FPPC applied what it called a two-tiered approach to deciding the validity of the expenditures. It first evaluated whether the expenditures were associated with holding office and reasonably related to a political, legislative, or governmental purpose. As step two of its analysis, it then evaluated whether the expenditures were allowable within the personal use provisions of the Government Code. If the expenditure provided a personal benefit to the officeholder or family, it

must be directly—not merely reasonably—related to a political, legislative, or governmental purpose. Thus, a personal benefit expenditure is burdened with a higher, more restrictive test. The FPPC concluded that the phone, website, and supplies expenditures met both tests and thus were ok.

At this point I note that no specific expenditures have been referred to. I will await further inquiry if it is desired that a specific proposed expenditure be reviewed and analyzed.

Given that the officeholder account about which inquiry was made is really a campaign account at the local government level, the rules for filing reports that are applicable to campaign accounts will apply.

The Open Government Ordinance of the City of Milpitas is applicable to limit contributions to a campaign account (whether the contribution is used for campaign or office expenses) and to require disclosure. Specifically, Municipal Code Title 1, Chapter 210 "Regulation of Campaign Contributions" limits contributions to \$350.00 per election. Section 1-210-5.10 also requires disclosure of any contribution over \$100.00.

In preparing this memorandum telephone consultation was had with the Technical Advisory staff of the FPPC who confirmed the conclusions that are provided above concerning the prohibition on a local elected official maintaining a separate officeholder account and the limited general uses for campaign funds.

I hope this information is helpful to you. Please contact me if you should have any questions or wish to discuss.

Michael J. Ogaz
City Attorney
City of Milpitas
408-586-3040

cc: Tom Williams, City Manager

Date	Event	Amount	Reason
1/27/2005	Milpitas Chamber Breakfast	10.00	No receipt - paid cash
2/24/2005	Milpitas Chamber Breakfast	10.00	Nor receipt - paid cash
3/12/2005	Knights of Columbus Dinner	20.00	No receipt - paid cash
6/2/2005	Human Relations Awards Breakfast	25.00	Reimbursed \$50 and fair market value \$25
10/19/2005	CEWAER Convention/San Diego	858.46	Unrelated to city business - sessions on running for office, campaigning, etc.
10/21/2005	SJ Airport Parking for CEWAER	42.00	Reimbursed based on unrelated convention
4/7/2006	Silicon Valley Crime Stoppers	50.00	Submitted same check for reimbursement on 7/3/2006
8/9/2006	CEWAER Convention/Sacramento	577.35	Unrelated to city business - sessions on planning a campaign, how to ask for money, etc.
4/20/2007	City Year, San Jose	150.00	Contribution - separate ticket purchase for Silicon Valley's Starry Starry Night
10/26/2007	Retirement Dinner - Don Hall	35.00	No receipt - paid cash
6/26/2008	SCC Association of Realtors	15.00	2008 Membership Appreciation BBQ
3/29/2009	Medici Masked Ball	85.00	Italy Sister County Commission - total \$175 - \$85 tax deductible
5/8/2009	Milpitas Chamber/Piercey Toyota Hole In One	150.00	Entry Fee/Greens Fee
3/12/2010	Milpitas/Ayer High School Hall of Fame Dinner	10.00	Reimbursed \$45 and this amount was scholarship donation
3/14/2011	Milpitas/Ayer High School Hall of Fame Dinner	10.00	Reimbursed \$50 and this amount was scholarship donation
4/1/2011	Milpitas Chamber Golf Tournament	150.00	Unrelated to city business
10/27/2011	Women as Role Models Event	20.00	Honorees did not have to pay to be honored

Subtotal to be reimbursed \$2,217.81

11/17/2010	San Jose State Tuition	1,797.00	Paid 6-21-2011
2/1/2011	San Jose State Tuition	5,250.00	For 2006 through 2009
12/8/2011	San Jose State Tuition	2,094.00	Paid 1-4-2012
6/19/2012	San Jose State Tuition	2,277.00	

Subtotal to be reimbursed \$11,418.00

Total Reimbursement Requested \$13,635.81