

PLEASE NOTE:

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This copy of Ordinance No. 243.7 is a “redlined” version for your convenience. Text additions are designated by an underline and text deletions are designated with a strikethrough.

**REGULAR**

**NUMBER:** 243.7

**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS, CALIFORNIA AMENDING CHAPTER 210, TITLE I OF THE MILPITAS MUNICIPAL CODE RELATING TO CAMPAIGN CONTRIBUTION LIMITS

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of December 3, 2013, upon motion by Vice Mayor Polanski and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_ upon motion by \_\_\_\_\_. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

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

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

APPROVED AS TO FORM:

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

**RECITALS AND FINDINGS:**

**WHEREAS**, monetary contributions to political campaigns are a legitimate form of participation in the political process, but the financial strength of certain individuals or organizations should not permit the exercise of a disproportionate or controlling influence on the election of candidates; and

**WHEREAS**, the rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger amounts of money received from individuals and interest groups with a specific financial stake in matters before the City Council and this has caused a public perception that votes are being improperly influenced by monetary contributions, undermining the credibility and integrity of the governmental process; and

**WHEREAS**, large campaign contributions can overshadow the impact of a candidate who collects less money through small contributions and, for purposes of evening the playing field, the City has enacted a campaign contribution limitation of \$250 per person, countering public impression that the small contributor has an insignificant role to play in political campaigns; and

**WHEREAS**, the infusion of large amounts of cash from former campaign accounts, some of which may have been created through laws allowing individual contributions in amounts far greater than the \$250 dollar limitation found in the Milpitas ordinance, creates an unfair playing field advantage over competing candidates, undermines the integrity of the election process and erodes the public trust in Milpitas elections; and

**WHEREAS**, the integrity of the governmental process, the competitiveness of campaigns and public confidence in local officials are all diminishing and the passage of this Ordinance will serve to halt the erosion of that process and of public confidence; and

**WHEREAS**, the City Council finds that, with the adoption of the following amendments, the Regulation of Campaign Contributions Ordinance remains internally consistent and it is hereby being amended with the sole intent of creating consistency and fairness amongst candidates for Milpitas elective office with regard to the acceptance of campaign contributions.

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

**SECTION 1. RECORD AND BASIS FOR ACTION**

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

**SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE**

Chapter 210 (Regulation of Campaign Contributions) of Title I (Administration) of the Milpitas Municipal Code is amended to include the following revisions:

- A. Section I-210-1.10, Chapter 210, of Title I of the Milpitas Municipal Code is amended to read as follows:

**I-210-1.10 Purpose**

~~In order to diminish improper influence, whether real or perceived, and the appearance of impropriety, the City Council finds that it is necessary to place limits on the amount of money that may be contributed to a candidate for elected public office in the City of Milpitas.~~

In order to maintain the integrity of the local elections process, the City Council finds that it is necessary to place limits on the amount of monetary or equivalent contributions that a Candidate may accept for elected public office in the City of Milpitas. The purpose(s) of this Chapter are as follows:

- (a) To insure that Persons in Milpitas have a fair and equal opportunity to participate in municipal elective and governmental processes.
- (b) To reduce the influence of large Contributors with a specific financial stake in matters before the City Council, thus countering the perception that decisions are influenced more by the size of contributions than the best interests of the people of the City.
- (c) To create a fair playing field over competing Candidates and uphold the integrity of the election process.
- (d) To diminish improper influence, whether real or perceived, and to help restore public trust in local governmental and electoral institutions.

B. Section I-210-2.10, Chapter 210 of Title I of the Milpitas Municipal Code is amended to read as follows:

**I-210-2.10 Applicability**

This Chapter applies to all Candidates, whether formally declared or not, for elected public office in the City of Milpitas. The regulations in this Chapter are not intended to supersede the provisions of the Political Reform Act, but are intended to place stricter requirements on contributions the amount of monetary or equivalent contributions a Candidate may accept for City of Milpitas elections and to require greater disclosure of such contributions than found in the Act.

C. Section I-210-3.10, Chapter 210, of Title I of the Milpitas Municipal Code is amended to be replaced in its entirety by a new Section 210-3.10 Definitions, as follows:

**I-210-3.10 Definitions**

For purpose of this Chapter, the following words and phrases shall have the meanings set forth as follows unless the contrary is stated or clearly appears from the content:

"Applicant" shall mean any Person named on the Planning or Zoning Project Application form as Project Owner or Project Contact.

"Candidate" shall mean an individual who:

- (a) Is listed on the ballot for City of Milpitas elected office; or
- (b) Has qualified to have write-in votes on his or her behalf counted by election officials for nomination or election to any elective City of Milpitas office; or
- (c) Has receive a contribution or given his or her consent for any other Person to receive a contribution or make an expenditure with the intention of bringing about his or her nomination for or election to any elective City of Milpitas office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy; or
- (d) Has filed a form "statement of intention" to be a Candidate with the Milpitas City Clerk.

"Contract" shall mean any agreement submitted to the City Council for approval.

"Contributor" shall mean any Person who donates money or provides services of value or forgives any debt of value or donates goods of value to a Milpitas Candidate, or candidate for other elected office in California, as a campaign contribution. A Candidate and his or her spouse are not Contributors.

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**Deleted: I-210-3.10 Prohibitions**

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

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

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

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

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

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

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

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

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

"Contracting Party" shall mean any Person who is a party to a Contract submitted to the City Council for approval.

"Development Project" shall mean any land use approval including tentative map approval, site development permit approval, conditional use permit approval, variance approval, Development Agreement approval, zoning change approval, General Plan amendment approval, Planned Unit Development approval or similar land use approval.

"Entity" 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.

"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.

"Person" shall mean any individual, Entity, corporation, partnership, association, organization, candidate controlled committee, political action committee, or otherwise, including but not limited to contributions financed, maintained or controlled by any corporation, labor organization, association, political party or any other person or committee, including any parent, subsidiary, branch, division, department or local unit of the corporation, labor organization, association or political party.

D. Section I-210-4.10, Chapter 210, of Title I of the Milpitas Municipal Code is amended by addition of a new Section I-210-4.10 Prohibitions, to read as follows:

**I-210-4.10 Prohibitions**

- (a) Except as allowed under Section I-210-4.10(c) and (e), the amount of any contribution received from any Person that is made to a Candidate or controlled committee of a Candidate in excess of two hundred fifty dollars (\$250) shall be immediately returned to the Contributor.
- (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 Milpitas Candidate or Milpitas elective officer's campaign committee from a committee controlled by any candidate where the transfer of funds would result in a transfer from one candidate to another.
- (e) A Candidate for a City of Milpitas elected office or his or her controlled committee may accept amounts exceeding the limits set forth in section I-210-4.10(a) transferred from another controlled committee of that same Candidate or individual, provided the transfer does not result in exceeding the \$250 limitation imposed by Section I-210-4.10, including aggregation, for any Contributor. The intent of this provision is to impose an absolute limit of two hundred fifty dollars (\$250) from any Contributor including from the transfer of funds between controlled committees of the same Candidate.
- (f) 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 Person shall be aggregated with contributions made by that Person and any other Entity whose contributions are directed and controlled by the same Person;
- (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.
- (4) For any individual maintaining multiple campaign accounts, any contribution made by a Contributor transferred under Section I-210-4.10(f) from one candidate controlled committee to a Milpitas Candidate controlled committee shall be aggregated for purposes of compliance with Section I-210-4.10(a) with any amounts contributed directly to the Milpitas Candidate controlled committee of the same individual.

E. Section I-210-5 of Title I of the Milpitas Municipal Code is amended to read as follows:

**I-210-5.10 Disclosure**

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

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**I-210-5.20 Disclosure of Developer and Contractor Contributions**

- (a) At such time as a Development Project or Contract comes before the City Council for approval, each Council Person and the Mayor shall identify any contribution received from the Development Project Applicant or Contracting Party in the prior 12-month period aggregating \$100.00 or more.
- (b) Disclosure shall be made in response to a request by the City Attorney to disclose all contributions required under section (a). The City Attorney shall make such request immediately after the agenda item is announced and before the staff presentation, if any.

~~For purposes of this Section, "Development Project" shall mean any land use approval including tentative map approval, site development permit approval, conditional use permit approval, variance approval, Development Agreement approval, zoning change approval, General Plan amendment approval, Planned Unit Development approval or similar land use approval. For purposes of this Section, "Contract" shall mean any Contract submitted to the City Council for approval.~~

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~~For purposes of this Section, "Applicant" shall mean any individual named on the Planning and Zoning Project Application form as Project Owner or Project Contact. For purposes of this Section, "Contracting Party" shall mean any person or entity who is a party to a Contract submitted to the City Council for approval.~~

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(e)(c) If a partnership or corporation is listed as Applicant or Contracting Party, Applicant or Contracting Party includes any employee or officer of the partnership or corporation.

(f)(d) In determining the aggregate amount of contributions in the 12-month reporting period, the provisions of Section I-210-4.10(e) shall govern.

**SECTION 3. 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 4. 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.

PLEASE NOTE:

This copy of Ordinance No. 243.7 is a final version for your convenience.

**REGULAR**

**NUMBER:** 243.7

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APPROVED:

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

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

APPROVED AS TO FORM:

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

**RECITALS AND FINDINGS:**

**WHEREAS**, monetary contributions to political campaigns are a legitimate form of participation in the political process, but the financial strength of certain individuals or organizations should not permit the exercise of a disproportionate or controlling influence on the election of candidates; and

**WHEREAS**, the rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger amounts of money received from individuals and interest groups with a specific financial stake in matters before the City Council and this has caused a public perception that votes are being improperly influenced by monetary contributions, undermining the credibility and integrity of the governmental process; and

**WHEREAS**, large campaign contributions can overshadow the impact of a candidate who collects less money through small contributions and, for purposes of evening the playing field, the City has enacted a campaign contribution limitation of \$250 per person, countering public impression that the small contributor has an insignificant role to play in political campaigns; and

**WHEREAS**, the infusion of large amounts of cash from former campaign accounts, some of which may have been created through laws allowing individual contributions in amounts far greater than the \$250 dollar limitation found in the Milpitas ordinance, creates an unfair playing field advantage over competing candidates, undermines the integrity of the election process and erodes the public trust in Milpitas elections; and

**WHEREAS**, the integrity of the governmental process, the competitiveness of campaigns and public confidence in local officials are all diminishing and the passage of this Ordinance will serve to halt the erosion of that process and of public confidence; and

**WHEREAS**, the City Council finds that, with the adoption of the following amendments, the Regulation of Campaign Contributions Ordinance remains internally consistent and it is hereby being amended with the sole intent of creating consistency and fairness amongst candidates for Milpitas elective office with regard to the acceptance of campaign contributions.

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**SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE**

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- A.** Section I-210-1.10, Chapter 210, of Title I of the Milpitas Municipal Code is amended to read as follows:

**I-210-1.10 Purpose**

In order to maintain the integrity of the local elections process, the City Council finds that it is necessary to place limits on the amount of monetary or equivalent contributions that a Candidate may accept for elected public office in the City of Milpitas. The purpose(s) of this Chapter are as follows:

- (a) To insure that Persons in Milpitas have a fair and equal opportunity to participate in municipal elective and governmental processes.

- (b) To reduce the influence of large Contributors with a specific financial stake in matters before the City Council, thus countering the perception that decisions are influenced more by the size of contributions than the best interests of the people of the City.
- (c) To create a fair playing field over competing Candidates and uphold the integrity of the election process.
- (d) To diminish improper influence, whether real or perceived, and to help restore public trust in local governmental and electoral institutions.

**B.** Section I-210-2.10, Chapter 210 of Title I of the Milpitas Municipal Code is amended to read as follows:

**I-210-2.10 Applicability**

This Chapter applies to all Candidates, whether formally declared or not, for elected public office in the City of Milpitas. The regulations in this Chapter are not intended to supersede the provisions of the Political Reform Act, but are intended to place stricter requirements on the amount of monetary or equivalent contributions a Candidate may accept for City of Milpitas elections and to require greater disclosure of such contributions than found in the Act.

**C.** Section I-210-3.10, Chapter 210, of Title I of the Milpitas Municipal Code is amended to be replaced in its entirety by a new Section 210-3.10 Definitions, to read as follows:

**I-210-3.10 Definitions**

For purpose of this Chapter, the following words and phrases shall have the meanings set forth as follows unless the contrary is stated or clearly appears from the content:

"*Applicant*" shall mean any Person named on the Planning or Zoning Project Application form as Project Owner or Project Contact.

"*Candidate*" shall mean an individual who:

- (a) Is listed on the ballot for City of Milpitas elected office; or
- (b) Has qualified to have write-in votes on his or her behalf counted by election officials for nomination or election to any elective City of Milpitas office; or
- (c) Has receive a contribution or given his or her consent for any other Person to receive a contribution or make an expenditure with the intention of bringing about his or her nomination for or election to any elective City of Milpitas office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy; or
- (d) Has filed a form "statement of intention" to be a Candidate with the Milpitas City Clerk.

"*Contract*" shall mean any agreement submitted to the City Council for approval.

"*Contributor*" shall mean any Person who donates money or provides services of value or forgives any debt of value or donates goods of value to a Milpitas Candidate, or candidate for other elected office in California, as a campaign contribution. A Candidate and his or her spouse are not Contributors.

"**Contracting Party**" shall mean any Person who is a party to a Contract submitted to the City Council for approval.

"**Development Project**" shall mean any land use approval including tentative map approval, site development permit approval, conditional use permit approval, variance approval, Development Agreement approval, zoning change approval, General Plan amendment approval, Planned Unit Development approval or similar land use approval.

"**Entity**" 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.

"**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.

"**Person**" shall mean any individual, Entity, corporation, partnership, association, organization, candidate controlled committee, political action committee, or otherwise, including but not limited to contributions financed, maintained or controlled by any corporation, labor organization, association, political party or any other person or committee, including any parent, subsidiary, branch, division, department or local unit of the corporation, labor organization, association or political party.

**D.** Section I-210-4.10, Chapter 210, of Title I of the Milpitas Municipal Code is amended by addition of a new Section I-210-4.10 Prohibitions, to read as follows:

**I-210-4.10 Prohibitions**

- (a) Except as allowed under Section I-210-4.10(c) and (e), the amount of any contribution received from any Person that is made to a Candidate or controlled committee of a Candidate in excess of two hundred fifty dollars (\$250) shall be immediately returned to the Contributor.
- (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 Milpitas Candidate or Milpitas elective officer's campaign committee from a committee controlled by any candidate where the transfer of funds would result in a transfer from one candidate to another.
- (e) A Candidate for a City of Milpitas elected office or his or her controlled committee may accept amounts exceeding the limits set forth in section I-210-4.10(a) transferred from another controlled committee of that same Candidate or individual, provided the transfer does not result in exceeding the \$250 limitation imposed by Section I-210-4.10, including aggregation, for any Contributor. The intent of this provision is to impose an absolute limit of two hundred fifty dollars (\$250) from any Contributor including from the transfer of funds between controlled committees of the same Candidate.
- (f) 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 Person shall be aggregated with contributions made by that Person and any other Entity whose contributions are directed and controlled by the same Person;
- (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.
- (4) For any individual maintaining multiple campaign accounts, any contribution made by a Contributor transferred under Section I-210-4.10(f) from one candidate controlled committee to a Milpitas Candidate controlled committee shall be aggregated for purposes of compliance with Section I-210-4.10(a) with any amounts contributed directly to the Milpitas Candidate controlled committee of the same individual.

E. Section I-210-5 of Title I of the Milpitas Municipal Code is amended to read as follows:

**I-210-5.10 Disclosure**

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

**I-210-5.20 Disclosure of Developer and Contractor Contributions**

- (a) At such time as a Development Project or Contract comes before the City Council for approval, each Council Person and the Mayor shall identify any contribution received from the Development Project Applicant or Contracting Party in the prior 12-month period aggregating \$100.00 or more.
- (b) Disclosure shall be made in response to a request by the City Attorney to disclose all contributions required under section (a). The City Attorney shall make such request immediately after the agenda item is announced and before the staff presentation, if any.
- (c) If a partnership or corporation is listed as Applicant or Contracting Party, Applicant or Contracting Party includes any employee or officer of the partnership or corporation.
- (d) In determining the aggregate amount of contributions in the 12-month reporting period, the provisions of Section I-210-4.10(e) shall govern.

**SECTION 3. 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 4. 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.