

# MEMORANDUM

Department of the City Attorney

---



To: Honorable Mayor and City Council

From: Michael Ogaz, City Attorney *M.O.*

Subject: Campaign Contribution Ordinance History

Date: February 12, 2008

---

**Background:** At your January 15, 2008 meeting the City Council asked that I prepare a brief memorandum outlining the history of the City's Campaign Contribution Ordinance.

**Discussion:** The following is the history of the City's campaign contribution ordinance:

**January 23, 1996:** The City Council schedules a February 6, 1996 public hearing to consider campaign finance reform.

**February 6, 1996:** The City Council held a public hearing and five public members spoke to the issues. The City Council voted 4 affirmatively and 1 absent to direct City staff to prepare an ordinance.

**February 20, 1996:** The City Council introduced Ordinance No. 243.

**March 5, 1996:** The City Council unanimously adopted ordinance No. 243 and also directed that it be reviewed a year after adoption. The adopted ordinance limited campaign contributions for candidates to elective office to \$350.00 per person. The limitation applied separately to each election and did not apply to a candidate's own funds or to those of named relatives. Transfers of funds between committees were prohibited. The time to accept contributions was limited to 9 months before and 3 months after an election. Funds that were not expended for campaign purposes within 90 days after the election could not be retained. The names of persons making a contribution of \$100.00 or more were to be published in the newspaper.

**January 15, 2002:** The City Council considered an ordinance to repeal the provisions that established time limits for receipt of campaign contributions. The repeal was based on advice of the City Attorney's Office concerning recent Federal District Court opinions disallowing time limits as unconstitutional.

**February 5, 2002:** The City Council unanimously voted to repeal the time limitation for making campaign contributions.

**May 20, 2003:** The City Council unanimously introduced Ordinance No. 243.2 to eliminate the existing ordinance's prohibition against intra-candidate transfers, i.e. transfers from a candidate to him/herself when running for a second elective office. The amendment was based on the opinion of the California Attorney General that a prohibition against intra-candidate accounts was unconstitutional but a prohibition on inter-candidate transfers between different candidates was permissible. The ordinance also deleted the provision of the existing City ordinance that addressed the use of surplus funds since surplus funds were governed by provisions of the California Government Code.

**June 3, 2003:** By vote of 4 affirmative, 1 absent the City Council adopted Ordinance No. 243.2.

**January 15, 2008:** The City Council unanimously introduced Ordinance No. 243.3 to narrow the exemption from campaign contribution limits to funds of the candidate and spouse and to delete the exemption for funds from other relatives.

**February 5, 2008:** The City Council adopted Ordinance No. 243.3 to be effective 30 days after its passage.

I hope this has been helpful. I can provide copies of the various Ordinance versions at your request.

cc: Tom Williams, City Manager  
Mary Lavelle, City Clerk

REGULAR

NUMBER: 243.3

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING THE MILPITAS MUNICIPAL CODE, TITLE I, BY AMENDING CHAPTER 210 REGULATING CAMPAIGN CONTRIBUTIONS

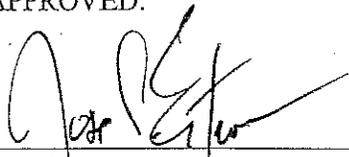
HISTORY: This Ordinance was introduced at a meeting of the City Council of the City of Milpitas on January 15, 2008, upon a motion by Councilmember Gomez, and was adopted (second reading) by the City Council at its meeting of February 5, 2008 upon a motion of Councilmember Polanski. The Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES: (5) Mayor Esteves, Vice Mayor Livengood, Councilmembers Giordano, Gomez and Polanski  
NOES: (0) None  
ABSENT: (0) None  
ABSTAIN: (0) None

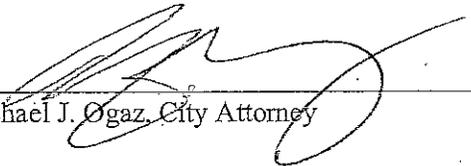
ATTEST:

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

APPROVED:

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

APPROVED AS TO FORM:

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

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

Chapter 210, Title I Section 3 is hereby amended to read:

### Section 3 Prohibitions

#### I-210-3.10 Prohibitions

- a. No person shall make, solicit or accept from any person, candidate or committee, any contribution in support of or in opposition to a candidate for elective office in the City which will cause the total amount contributed by any person in support of or in opposition to such candidate and to any and all committees in support of or in opposition to such candidate to exceed three hundred fifty dollars (\$350) 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.

REGULAR

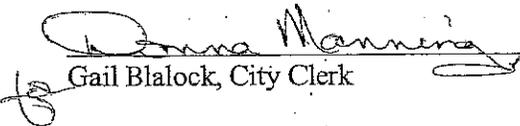
NUMBER: 243.2

TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 210 OF TITLE I OF THE MILPITAS MUNICIPAL CODE RELATED TO DISBURSEMENT OF EXCESS CAMPAIGN FUNDS

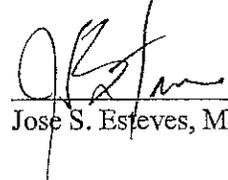
HISTORY: This Ordinance was introduced (first reading) by the City Council at its meeting of May 20, 2003, upon motion by Councilmember Livengood and was adopted (second reading) by the City Council at its meeting of June 3, 2003, upon motion by Councilmember Gomez. Said Ordinance was duly passed and ordered published in accordance with law by the following vote:

AYES: (4) Mayor Esteves and Councilmembers Dixon, Gomez, and Polanski  
NOES: (0) None  
ABSENT: (1) Councilmember Livengood  
ABSTAIN: (0) None

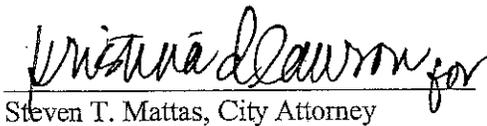
ATTEST:

  
Gail Blalock, City Clerk

APPROVED:

  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

  
Steven T. Mattas, City Attorney

WHEREAS, the City Council wishes to prevent the transfer of campaign contributions from one candidate to another candidate; and

WHEREAS, the City Council has determined that Chapter 210 of Title I of the Milpitas Municipal Code should be amended to comply with federal and state law regarding campaign contributions and expenditures; and

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

Section 1. Subsection (d) of Section I-210-3.10 is hereby deleted and a new subsections (d) is hereby added to Section I-210-3.10 as follows:

(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.

Section 2. Section I-210-4.20 is hereby deleted.

Section 3. **Severability.** If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of Milpitas hereby declares that it would have passed each section, subsection, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid or unenforceable.

Section 4. **Effective Date.** In accordance with California Government Code section 36937, this ordinance shall take effect and be in force on the thirty-first day after adoption.

Section 5. **Publication.** Within fifteen days after the passage of this ordinance the City Clerk shall cause this ordinance to be published once, with the names of those City Councilmembers voting for or against it, in a newspaper of general circulation in the City of Milpitas, as required by law.

REGULAR

NUMBER: 243.1

TITLE: AN ORDINANCE REPEALING SECTION 4.10, CHAPTER 210, TITLE I, OF THE MILPITAS MUNICIPAL CODE RELATED TO TIME LIMITS ON CAMPAIGN CONTRIBUTIONS

HISTORY: This ordinance was introduced at a meeting of the City Council of the City of Milpitas on January 15, 2002, by motion of Councilmember Lawson, and was finally adopted at a meeting of said Council on February 5, 2002, upon motion of Councilmember Lawson by the following vote:

AYES: (5) Mayor Manayan and Councilmembers Livengood, Dixon, Esteves and Lawson

NOES: (0) None

ABSTAIN: (0) None

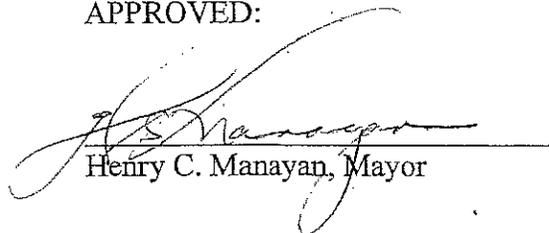
ABSENT: (0) None

ATTEST:



Gail Blalock, City Clerk

APPROVED:



Henry C. Manayan, Mayor

APPROVED AS TO FORM:



Steven T. Mattas, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

Section 1. Section 4.10, Chapter 210, Title 1 of the Milpitas Municipal Code entitled "Time Restrictions," is hereby repealed.

REGULAR

NUMBER: 243

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS AMENDING THE MILPITAS MUNICIPAL CODE, TITLE I, BY ADDING CHAPTER 210 REGULATING CAMPAIGN CONTRIBUTIONS.

HISTORY: This ordinance was introduced at a meeting of the City Council of the City of Milpitas on February 20, 1996 by motion of Councilmember Livengood, and was finally adopted at a meeting of said Council on March 5, 1996 upon motion of Councilmember Lawson by the following vote:

AYES: ( 5 ) Mayor McHugh, Councilmembers Lawson, Lee, Livengood and Manayan  
NOES: ( 0 ) None  
ABSENT: ( 0 ) None  
ABSTAIN: ( 0 ) None

ATTEST:

Gail Blalock  
Gail Blalock, City Clerk

APPROVED:

Peter A. McHugh  
Peter A. McHugh, Mayor

APPROVED AS TO FORM:

Dave Larsen  
Dave Larsen, City Attorney

ORDAINING CLAUSE

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:  
Chapter 210, Title I is hereby added to the Milpitas Municipal Code to read:

Chapter 210

REGULATION OF CAMPAIGN CONTRIBUTIONS

Sections:

- I-210-1 Purpose
- I-210-2 Applicability
- I-210-3 Prohibitions
- I-210-4 Time Restrictions and Excess Funds
- I-210-5 Disclosure

## Section 1 Purpose

### I-210-1.10 Purpose

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

## Section 2 Applicability

### 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 for elections and disclosure of such contributions than those found in the Act.

## Section 3 Prohibitions

### I-210-3.10 Prohibitions

- (a) No person shall make, solicit or accept from any person, candidate or committee, any contribution in support of or in opposition to a candidate for elective office in the City which will cause the total amount contributed by any person in support of or in opposition to such candidate and to any and all committees in support of or in opposition to such candidate to exceed three hundred fifty dollars (\$350) 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 relatives, defined to mean the following relationships by blood, marriage or adoption: spouse, child, parent, sibling, grandparent, grandchild, aunt, uncle, first cousin, corresponding step-relations and corresponding in-law relations.

- (d) Candidates for elective office may not transfer funds between committees for other elective offices or between non-elective office committees and elective office committees.

#### Section 4 Time Restrictions and Excess Funds

##### I-210-4.10 Time Restrictions

No person shall make, solicit, or accept a contribution for any election in the City more than nine (9) months prior to such election or more than three (3) months after such election. Any contributions received before or after the allowable time limit shall be refunded to the contributor within seventy-two (72) hours of receipt. Any contribution received before or after the allowable time limit and not refunded to the contributor within 72 hours of receipt shall be deposited into the City's general fund.

##### I-210-4.20 Excess Funds

Contributions not expended for campaign purposes within ninety (90) days following the election, shall be distributed in one or more of the following ways:

- 1) refunded to the contributors in proportion to their contributions; or
- 2) contributed to non-profit organizations providing services in the City of Milpitas; or
- 3) deposited into the City's general fund.

#### Section 5 Disclosure

##### I-210-5.10 Disclosure

The name of any person contributing one hundred dollars (\$100) 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.