ORDINANCE NO. 8.16

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE XII OF THE MOUNTAIN VIEW CITY CODE, RELATED TO CAMPAIGN FINANCE REQUIREMENTS AND THE VOLUNTARY EXPENDITURE LIMIT PROGRAM

THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 2, Article XII of the Mountain View City Code is hereby amended to read as follows:

"ARTICLE XII.
CAMPAIGN FINANCE.

SEC. 2.100. Purpose.

This article requires greater disclosure in local elections and is aimed at eliminating the possibility of corruption or the appearance of corruption; lessen the potentially corrupting pressures on candidates, office holders and committees for fundraising; and to improve the disclosure of contribution sources in reasonable and effective ways and to help restore public trust in governmental electoral institutions.

SEC. 2.101. Implementation.

The city council by resolution may adopt guidelines or take other actions to implement the provision of this Article, including, but not limited to, variations to the length of the candidate statement, the amount and/or terms of the subsidy.

The city clerk may promulgate written guidelines, interpretations and regulations implementing this Article.

DIVISION 1. CAMPAIGN DISCLOSURE.

SEC. 2.102. Campaign disclosure reports.

a. All candidates, office holders and candidate-controlled committees or committees primarily formed to support or oppose a candidate(s) for the city council or the qualification or passage of a local ballot measure(s) participating in municipal elections that are required to file campaign disclosure reports under the Political Reform Act, Government Code 81000, *et seq.*, shall also file said disclosure reports with the city clerk's office on the same date the filing is required by State law. Hard copies of all campaign disclosure reports shall be available for review in the city clerk's office, Monday through Friday, during regular business hours. The name of candidates and committees with a direct link to the campaign reports submitted by each candidate or committee shall be available on the city's website within five (5) business days from the date of receipt of the reports by the city clerk. A final disclosure report shall be filed as required by Sec. 2.104(b).

b. Noncandidate groups, individuals and candidate-controlled committees or committees primarily formed to support or oppose a candidate(s) for the city council or the qualification or passage of a local ballot measure(s) participating in municipal election that are required to file campaign disclosure forms pursuant to State law shall also file all forms required by this division. Participation in the election shall occur on the date the noncandidate group, individual or committee accepts contributions, makes

expenditures or contracts to make an expenditure in an amount(s) which requires the filing of campaign statements under State law.

SEC. 2.103. Campaign disclosure threshold.

All candidates, office holders and candidate-controlled committees or committees primarily formed to support or oppose a candidate(s) for the city council or the qualification or passage of a local ballot measure(s) participating in a municipal election that are required to file campaign disclosure reports under the Political Reform Act, Government Code 81000, *et seq.*, shall disclose all contributions of one hundred dollars ($100) or more on all campaign disclosure reports filed with the city clerk.

SEC. 2.104. Contribution cut-off—Final disclosure report.

a. No candidate, including the candidate's controlled committee, and no committee primarily formed to support or oppose a candidate(s) for the city council, shall accept any contributions after 5:00 p.m. on the Tuesday prior to the election. The candidate or councilmember-elect can accept contributions beginning the Wednesday after the election, provided the checks are drawn and dated from that date forward.

b. Each candidate, including the candidate's controlled committee and a committee formed primarily to support or oppose a candidate(s) for the city council, shall file a final disclosure report disclosing all contributions of one hundred dollars ($100) or greater for the period ending the Tuesday prior to the election with the city clerk on or before 5:00 p.m. on the Thursday before the election. The candidate can choose to file the Mountain View campaign statement form or the FPPC form for the third preelection statement as required by this section.

DIVISION 2. DISCLOSURE IN ADVERTISEMENTS.

SEC. 2.105. Definitions.

The definitions set forth in the Political Reform Act of 1974 as amended (Government Code Section 82000 *et seq.*) shall govern the interpretation of this division, unless otherwise specified herein.

"Advertisement" means any general or public communication which is authorized and paid for by a committee for the purpose of supporting or opposing a candidate(s) for municipal elective office or a municipal ballot measure(s). Advertisement excludes communications paid for by a candidate or candidate-controlled committee established for elective office for the controlling candidate and communications from an organization to its members other than a communication from a political party to its members. Advertisement includes print and written advertisements, including mass mailings (as defined in Government Code Section 82041.5 and includes e-mail), newspaper ads, and flyers. This division does not apply to small promotional items such as pens, pencils, mugs, clothing, skywriting or other items where the required disclosures are impracticable or cannot be reasonably printed or displayed in an easily legible typeface. This division does not apply to video or audio advertisements.

"Committee" means the same as set forth by California Government Code Section 82013, and as may be amended from time to time.

"Contribution" means the same as set forth by California Government Code Section 82015, and in addition includes an enforceable promise to make a payment by a donor to a committee placing an advertisement when made subject to a condition, agreement or understanding with the committee that all or a portion would be used to pay for the advertisement.

"Earmarked funds" means any of the following: (1) the contributor solicited and received the funds from donors for the purpose of making a contribution to the committee paying for the advertisement; (2) the funds were given to the contributor subject to a condition, agreement or understanding with the donor that all or a portion would be used to make a contribution to the committee paying for the advertisement, including the identification of the committee as a potential recipient; (3) the contributor had existing funds from a donor and a subsequent agreement or understanding was reached with the donor that all or a portion of the funds would be used to contribute to the committee paying for the advertisement, including the identification of the committee as a potential recipient; (4) the funds were promised, subject to an enforceable promise, to the contributor subject to a condition, agreement or understanding with the donor that all or a portion would be used to make a contribution to the committee paying for the advertisement, including the identification of the committee as a potential recipient.

"Top contributors" means the five (5) largest cumulative contributors of two thousand five hundred dollars ($2,500) or more to the committee who is paying for an advertisement made within six (6) months of the expenditure. If two (2) or more contributors of identical amounts qualify, the most recent contributor of that amount shall be listed as the top contributor in any disclosure required by this article. If a contributor appears to qualify as a top contributor but received earmarked funds to make the contribution, the person, entity or committee that earmarked the funds and gave the funds to the contributor shall instead be disclosed as the top contributor. The person, entity or committee that transferred earmarked funds shall disclose the true source of the funds to the committee receiving the earmarked funds at the time the funds are promised or transferred.

SEC. 2.106. Disclosure on advertisements, generally.

a. In addition to required disclosures under the Political Reform Act, an advertisement paid for by a committee must disclose the top contributors. Any advertisement paid for by a committee, following the identification of the committee as required under the Political Reform Act, shall disclose the names of the top contributors to the committee paying for the advertisement. If fewer than five (5) contributors qualify as top contributors, only those contributors that qualify shall be disclosed pursuant to this section. If no contributors qualify as top contributors, this disclosure is not required. The disclosure shall read: "Major funding by (name and occupation or business interest)" identifying the top contributors to the committee paying for the advertisement.

b. Notwithstanding Government Code Section 84505, if a top contributor is a committee, the top three (3) contributors to that contributing committee must also be disclosed.

c. A copy of the advertisement shall be provided to the city clerk.

SEC. 2.107. Disclosures on print advertisements.

a. For purposes of this section, print advertisement shall mean print and written advertisements. A print advertisement shall include the disclosures required in this division, displayed as follows:

(1) The disclosure area shall have a solid white background and shall be in a printed or drawn box on the bottom of at least one (1) page that is set apart from any other printed matter. All text in the disclosure area shall be in contrasting color.

(2) The text shall be in an Arial equivalent type that is easily legible to an average reader or viewer, with a type size of at least ten (10) point for print advertisements designed to be individually distributed, including, but not limited to, mailers, flyers and door hangers.

(3) The top contributors, if any, shall each be disclosed on a separate horizontal line, in descending order, beginning with the top contributor who made the largest cumulative contributions on the first line. The name of each of the top contributors shall be centered horizontally in the disclosure area.

b. Notwithstanding paragraph (2) of subsection (a), a print advertisement that is larger than those designed to be individually distributed, including, but not limited to, yard signs or billboards, shall include disclosures in Arial equivalent type with a type size of at least ten percent (10%) of the height of the advertisement, and printed on a solid background with sufficient contrast that is easily readable by the average person.

c. Notwithstanding the definition of "top contributors," print advertisements in newspapers, magazines and other similar publications that are twenty (20) square inches or less shall be required to disclose only the top three (3) contributors of two thousand five hundred dollars ($2,500) or more.

SEC. 2.108. Updates to and requirement to update the top contributors list.

If the order of top contributors required to be disclosed pursuant to this division changes or a new contributor qualifies as a top contributor, the disclosure in the advertisement shall be updated to reflect the new top contributors within five (5) business days unless the advertisement cannot be updated except by a subsequent order for production or printing, in which case the disclosure shall be updated prior to placing a new or modified order for additional printing of the advertisement.

SEC. 2.109. Criminal enforcement.

Any person who knowingly, willfully or negligently violates any provisions of this division is guilty of a misdemeanor. Any person who causes any other person to violate any provision of this division, or who aids and abets any other person in the violation of any provision of this division, shall be liable under the provisions of this division. Prosecution for violation of any provision of this division must be commenced within two (2) years after the date on which the violation occurred. Any monetary penalty for such a violation shall be the maximum amount permitted by law.

SEC. 2.110. Civil enforcement.

a. Any person who intentionally or negligently violates any provision of this division shall be liable in a civil action brought by the city attorney. Where no specific civil penalty is provided, a person may be liable for an amount up to ten thousand dollars ($10,000) for each violation. Upon collection, said sum shall be deposited into the general fund of the city.

b. Injunctive relief. The city attorney, or a person residing within the city, may bring an action for injunction relief to enjoin violations or to compel compliance with the provision of this division if the city attorney declines to file such an action.

c. A person other than the city attorney may bring a civil action for violations under this division if the city attorney declines to file a civil action. If a judgment is entered against the defendant(s) in an action, a private plaintiff shall receive fifty percent (50%) of the amount recovered. The remaining fifty percent (50%) shall be deposited into the city's general fund.

d. If two (2) or more persons are responsible for any violation, they shall be jointly and severally liable.

e. In determining the amount of liability under this subsection, the court may take into account any mitigating factors and any aggravating factors.

f. No civil action alleging a violation of this division shall commence more than two (2) years after the date of the election for which the funds at issue were contributed or expended.

DIVISION 3. VOLUNTARY EXPENDITURE LIMIT.

SEC. 2.150. Voluntary expenditure limit.

a. **Purpose.** In the year 2000, the city council adopted a voluntary expenditure limit (VEL) believing that if candidates knew that other candidates were willing to limit their expenditures, it may attract additional qualified candidates and allow all candidates and officeholders to spend a lesser proportion of their time on fund-raising and a greater proportion of their time communicating issues of importance to voters and constituents. In that action, adopted by resolution, the council set a voluntary expenditure limit in the year 2000 of fifteen thousand dollars ($15,000). This expenditure limit is indexed to keep pace with changes in the cost of living and running campaigns. For the 2016 general municipal election, consistent with this index, the voluntary expenditure limit is twenty-four thousand seventy-three dollars ($24,073).

b. The voluntary expenditure limit is established in year 2000 at fifteen thousand dollars ($15,000) and shall be increased at the rate of three (3) percent per year to keep pace with the changes in the cost of living and conducting a campaign (the adjusted VEL). For the 2016 general municipal election, consistent with this index, the voluntary expenditure limit is twenty-four thousand seventy-three dollars ($24,073). Each candidate for office, at the time of filing his/her nomination papers with the city clerk, shall be advised by the city clerk of the applicable VEL for that year and file a statement of acceptance or rejection of the voluntary expenditure limit ceiling.

c. No candidate for the city's elective office who accepts the voluntary expenditure limit, and no controlled campaign committee of such candidate shall make campaign expenditures in excess of the voluntary expenditure limit established in this section.

d. In-kind contributions, including goods or services that are required to be reported under the Political Reform Act, received by a candidate for municipal office which are used, or intended by the donor or recipient to be used, for the candidate's campaign, shall count toward the VEL and shall be valued at fair market value.

e. The following shall not count toward the VEL:

(i) Cost of the candidate statement, whether paid by the candidate or the city;

(ii) Contributions returned by the candidate within thirty (30) days of receipt.

f. The city clerk shall maintain appropriate records of expenditures which shall be available for inspection in the city clerk's office during regular business hours.

SEC. 2.151. Public subsidy of cost of campaign statements.

a. As part of the city elective process, candidates have the opportunity to publish a two hundred (200) word statement in the voter pamphlet published by the county registrar of voters. The cost of publishing that statement for each candidate has risen dramatically over the last number of years in order to enable the registrar to publish the pamphlet in the languages that are spoken by significant portions of the voters in the county.

b. The city has adopted a program whereby a candidate who, at the time of filing nomination papers, elects to be bound by the voluntary expenditure limit, is eligible for the city to pay a portion of their cost of a candidate's statement, should they elect to prepare and submit one. Upon the candidate paying five hundred dollars ($500) toward the statement, at the time of filing nomination papers, the city will cover the cost of the balance of the two hundred (200) word statement.

c. In each election cycle, the furnishing of this program by the city is contingent upon a budget appropriation made as part of the election year budget process. The city clerk is required to advise candidates whether or not the program is available at the time they pull their nomination papers and whether the program is available in whole or in part. As part of the budget process, the city council shall direct the city clerk relative to the level of support that will be offered, up to the maximum of the entire cost of the candidate's two hundred (200) word statement, minus five hundred dollars ($500).

SEC. 2.152. Penalties/Reimbursement.

a. Any violation of the voluntary expenditure limit shall, within seventy-two (72) hours of the city's knowledge of the violation, be:

1. Forwarded to a newspaper of general circulation for publication;

2. Posted on the city's website; and

3. Posted at a reasonably accessible location at city hall.

b. If the city contributed public funds to offset the costs of a candidate's candidate statement fee or the candidate violates the voluntary expenditure limit which they previously elected, the candidate or councilmember-elect shall repay to the city the entire city contribution as required by this section.

1. **Partial repayment.** If a candidate exceeds the voluntary expenditure limit by no more than five hundred dollars ($500), the candidate shall repay to the city twenty-five (25) percent of the amount the city paid toward the candidate statement fee.

2. **Full repayment.** If the candidate exceeds the voluntary expenditure limit by more than five hundred dollars ($500), the candidate shall repay to the city the entire amount of the city contribution.

c. In all cases where the candidate has accepted a partial city contribution to the cost of the candidate statement fee, it is up to the applicant to determine compliance with this section, and if repayment is required by this section, the repayment is due and payable to the city within thirty (30) days of the expenditure that placed the candidate over the voluntary expenditure limit. The obligation to repay is not contingent on the receipt of an invoice from the city. For each month the candidate remains delinquent in the repayment past the initial thirty (30) day period, interest shall accrue on any delinquency at the rate of ten percent (10%) per annum.

d. **Methods of collection.** In addition to all other remedies available to the city at law, the city auditor is directed to deduct any delinquent amounts on a month-to-month basis until paid in full from any councilmember-elect's city paycheck until the delinquency is paid in full. In the event of an unsuccessful candidate, the city clerk is directed not to accept nomination papers for a future election until any delinquency from a prior election is paid in full, including interest."

Section 2. The provisions of this ordinance shall be effective thirty (30) days from and after the date of its adoption.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 4. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 5. This ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) (the activity will not result in a direct or reasonable foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378 of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly).

The foregoing ordinance was regularly introduced at the Regular Meeting of the City Council of the City of Mountain View, duly held on the 24th day of May 2016, and thereafter adopted at the Regular Meeting of said Council, duly held on the 14th day of June 2016, by the following roll call vote:

AYES:	Councilmembers Clark, Kasperzak, McAlister, Siegel, Vice Mayor Rosenberg, and Mayor Showalter
NOES:	Councilmember Inks
ABSENT:	None
NOT VOTING:	None

ATTEST:

LORRIE BREWER, MMC
CITY CLERK

APPROVED:

PATRICIA SHOWALTER
MAYOR

I do hereby certify that the foregoing ordinance was passed and adopted by the City Council of the City of Mountain View at a Regular Meeting held on the 14th day of June 2016, by the foregoing vote, and was published in the *San Jose Post Record* by reference on the 10th day of June 2016, and posted in three prominent places in said City.

City Clerk
City of Mountain View

KB/2/ORD
012-05-24-16o-E