



CITY OF MILPITAS

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Holding elected office in the State of California is a privilege that carries great responsibilities. Chief among them is to uphold and honor the state constitution and the letter of the law. To do otherwise would be a dereliction of duties and a violation of the public trust.

That, in a nutshell, is the reason Milpitas City Council opted to take no action this summer when presented with a citizens petition to put the water rate issue on the fall ballot. The ballot initiative, as written, would have forced the city to restore a water-rate system that the state Supreme Court had recently ruled unconstitutional. Had the initiative passed, the city would have been in violation of the law.

Nonetheless, supporters of the ballot initiative continue to pursue their goals. Last week, resident Rob Means filed a lawsuit challenging the City Council decision to let the citizens petition die by taking no action. Mr. Means claims the city's inaction is a violation of the election code that requires a yes or no vote once petitions are submitted with the proper number of valid signatures.

It's a misguided and ill-timed effort, coming weeks after the deadline to place initiatives on the ballot.

It's also shortsighted. For years, Milpitas used a tiered-water rate system that called for large water users to pay more per gallon than small water users. The system was designed to encourage people to use less water and conserve. Many cities across the state used a similar system, including San Juan Capistrano.

But in April 2015, California's 4th District Court of Appeal ruled against San Juan Capistrano and declared tiered rate systems to be unconstitutional because they forced one group of ratepayers to subsidize another group. The court found the tiered system to be in violation of Proposition 218, which limits municipal fees to the cost of providing the service. The State Supreme Court later upheld the ruling.

Milpitas consulted with outside rate experts and opted to move into a uniformed rate system that eliminated the four tiers and charged each customer the same amount per gallon usage. The switch resulted in average bills increasing for customers who were in

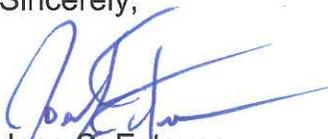
tiers one and two – the majority of single-family homeowners -- and a drop in billing for larger customers and businesses.

In addition, after years of absorbing additional outside costs without charging users, Milpitas needed to cover sharp cost-of-service increases from its water wholesalers – the San Francisco Public Utilities Commission and the Santa Clara Valley Water District. Additional rate increases would be put toward a \$42 million capital improvement plan to upgrade and replace hundreds of miles of aging pipes in the city. These are essential improvements needed to prevent a water disaster in the event of a seismic catastrophe.

The citizens' petition arose as a result of the rate hikes. The election code leaves it up to council to decide whether to place a submitted initiative on the ballot after seeking the advice of the city attorney. This is similar to when petitions for state ballot initiatives are submitted and reviewed by the Attorney General to ensure they don't represent a violation of state or federal law. In this case, our city attorney made clear the San Juan Capistrano case took precedence and that the tiered system called for in the petition is no longer allowed.

By opting to take no action on the petition, council avoided violating state election law governing ballot procedures. But more importantly, in so doing council members honored their sworn oath of office – to uphold the state constitution and not violate the law.

Sincerely,



Jose S. Esteves

Mayor

City of Milpitas

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