

**REGULAR**

**NUMBER: 278**

**TITLE: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS LEVYING AND APPORTIONING THE SPECIAL TAX IN COMMUNITY FACILITIES DISTRICT NO. 2008-1 (PUBLIC SERVICES)**

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of January 6, 2009, upon motion by Councilmember Polanski and was adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, upon motion by Councilmember \_\_\_\_\_. Said 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

\_\_\_\_\_  
Robert Livengood, Mayor

APPROVED AS TO FORM:

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

**AN ORDINANCE OF  
THE CITY COUNCIL OF THE CITY OF MILPITAS  
LEVYING AND APPORTIONING THE SPECIAL TAX IN  
COMMUNITY FACILITIES DISTRICT NO. 2008-1 (PUBLIC SERVICES)**

**WHEREAS**, City Council has established Community Facilities District No. 2008-1 (Public Services) (the “District”) pursuant to Resolution No. 7815 (the “Resolution of Formation”), duly adopted on January 6, 2009, for the purpose of providing for the financing of certain public services in and for the City; and

**WHEREAS**, at an election held in the District on January 6, 2009, the qualified electors of the District authorized the levy of the special tax described in the Resolution of Formation; and

**WHEREAS**, the City Council reintroduced Ordinance No. 278, entitled “An Ordinance of the City Council of the City of Milpitas Levying and Apportioning the Special Tax in Community Facilities District No. 2008-1 (Public Services)”, which was previously presented at a meeting held on December 16, 2008.

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

- 1. Recitals.** The foregoing recitals are true and correct.
- 2. Levy of Special Tax.** Pursuant to Section 53340 of the California Government Code, the special tax is hereby levied at the maximum rates and apportioned in the manner specified in the Resolution of Formation.
- 3. Collection of Special Tax.** Pursuant to Section 53340 of the California Government Code and the Resolution of Formation, the special tax shall be collected in the same manner as ordinary *ad valorem* property taxes are collected and shall be subject to the same procedure, sale, and lien priority in case of delinquency as is provided for *ad valorem* taxes; provided, however, that the City may directly bill the special tax, may collect special taxes at a different time or in a different manner if necessary to meet the financial obligations of the District or as otherwise determined appropriate by the City.
- 4. Claims for Refund.** Claims for refund of the tax shall comply with the following and any additional procedures as established by the City Council:
  - (a) All claims shall be filed, in writing, with the City Finance Director during the Fiscal Year in which the error is believed to have occurred. The claimant shall file the claim within this time period and the claim shall be finally acted upon by the City Council as a prerequisite to bringing suit thereon.
  - (b) Pursuant to Government Code section 935(b), the claim shall be subject to the provisions of Government Code sections 945.6 and 946.
  - (c) The City Council shall act on a timely claim within the time period required by Government Code section 912.4.
  - (d) The procedure described in this Ordinance, and any additional procedures established by the City Council, shall be the exclusive claims procedure for claimants seeking a refund of the tax. The decision of the City Council shall be final.
- 5. No Mandatory Duty of Care.** This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a

mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

**6. Severability.** If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

**7. Effective Date and Publication.** This Ordinance shall take effect thirty (30) days after adoption, and thereafter the same shall be in full force and effect. Prior to the expiration of 15 days from the passage thereof, this Ordinance shall be published at least once in a newspaper of general circulation, published and circulated in the City of Milpitas, County of Santa Clara. At the election of the City, this Ordinance may be published in summary form if prior to adoption the complete text is posted in the City Clerk's Office pursuant to Government Code Section 36933(c).