

**REGULAR**

**NUMBER: 278**

**TITLE: AN UNCODIFIED 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 \_\_\_\_\_. 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

**RECITALS AND FINDINGS:**

**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, and also had a second reading on January 20, 2009; and

**WHEREAS**, the City Council now wishes to remove any possible question of procedural ambiguity and therefore wishes to have this second reading again on this date.

**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 by reference into this uncodified Ordinance.

**SECTION 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.

**SECTION 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, and 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.

**SECTION 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.

#### **SECTION 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.

#### **SECTION 6. 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.