

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF MILPITAS AT THE REGULAR MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION ON NOVEMBER 8, 2016, AN ORDINANCE OF THE CITY OF MILPITAS, PROPOSED BY A PETITION OF THE VOTERS, AMENDING MILPITAS MUNICIPAL CODE, TITLE VIII, CHAPTER 1, SECTION VIII-1-6.13, REGARDING THE CITY OF MILPITAS WATER RATES AND CHARGES**

**WHEREAS**, a Notice of Intent to Circulate Petition was filed with the City Elections Official on January 27, 2016, with the stated purpose “of placing a ballot initiative before the registered voters of the City of Milpitas that would keep the tiered rate system instead of flat rate in order to encourage and reward people who conserve water that will help the serious drought situation in California”; and

**WHEREAS**, the Notice of Intent to Circulate Petition included a statement of the reasons of the proposed action as contemplated in the petition as follows: (1) “the people of the city of Milpitas agree that the tier rate system encourages water consumption to conserve water in order to relieve California’s serious drought”; and (2) “the city of Milpitas will obtain a \$25.5 million bond to maintain the water infrastructure and is increasing the CIP from \$20 to \$42 million. Part of the bond is for obtaining ground water and other expenditures that will not be immediately available to the parcel owners and will not solve the water crises. Proposition 218 section 6 b (4) states that if the service not immediately available to the public you cannot charge for the service. The bond and CIP cost was not disclosed in the written notice to the public. Milpitas water service charge rate increases are 65%-97%, which is much higher than the water suppliers’ rate increases 20-28%”; and

**WHEREAS**, in accordance with Elections Code Section 9208, signatures upon the initiative petition were timely filed with the City Elections Official, and after examination of the petition by the City Elections Official in accordance with Elections Code Section 9211, the City Elections Official certified the results of the examination to the City Council at its regular meeting held on June 21, 2016; and

**WHEREAS**, pursuant to Elections Code Section 9215(b), at its regular meeting held on August 2, 2016, the City Council elected to submit the Ordinance proposed by voter-initiative petition, without alteration, to the voters at the November 8, 2016 election; and

**WHEREAS**, pursuant to Milpitas Municipal Code Section I-200-1.00 and the laws of the State of California, the City Council has adopted Resolution No. 8553, calling a general municipal election for the purpose of electing a Mayor and two members of the City Council, requesting that the general municipal election be consolidated with the Statewide general election to be held on Tuesday, November 8, 2016, and requesting that the Board of Supervisors of Santa Clara County direct the Registrar of Voters thereof to take any and all necessary steps to conduct the consolidated election; and

**WHEREAS**, the City Council desires to and requests that the County consolidate the election of the Ordinance with the General Municipal Election to be held on November 8, 2016.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. **Record; Recitals.** 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 it. Furthermore, the recitals set forth are found to be true and correct and are incorporated herein by reference.
2. **Submission of Ordinance.** The City Council hereby orders the Ordinance attached hereto as Exhibit “A” be submitted to the qualified voters of the City at the general municipal election on Tuesday, November 8, 2016. The Ordinance shall be adopted if the majority of the municipal election votes is “YES.” The proposed Ordinance shall be in the form attached hereto as Exhibit “A” to this Resolution and is incorporated by this reference as if fully set forth herein.

3. **Ballot Measure.** The City Council does hereby order that the ballot measure question shall be presented and printed upon the November 8, 2016 ballot and submitted to the qualified voters in substantially the following form:

Shall an ordinance amending Milpitas Municipal Code Section VIII-1-6.13 to create a tiered rate system instead of flat rate system applicable to water rates and charges based on quantity of use per hundred cubic feet, be adopted?	YES
	NO

4. **Election Procedures.**

- a. Consolidated Election. Per Elections Code Section 10403, the Board of Supervisors of the County of Santa Clara County is requested to consent to the consolidation of the election for the Ordinance with the statewide general election to be held on Tuesday, November 8, 2016, for the purpose of submitting the Ordinance to the voters of the City of Milpitas. The City acknowledges that the consolidated election will be held and conducted in the manner prescribed in Elections Code Section 10418.
- b. County Election Services. In accordance with Elections Code Section 10002, the City of Milpitas requests the services of the Board of Supervisors of the County of Santa Clara and the Registrar of Voters of the County of Santa Clara to render such election services to the City of Milpitas as may be requested by the City Clerk, and the County of Santa Clara is to be reimbursed in full for such services as are performed. The election services which the City of Milpitas requests the Registrar of Voters, or such other official as may be appropriate, to perform and which such officer is hereby authorized and directed to perform, if said Board of Supervisors consents, include: the preparation, printing and mailing of sample ballots and polling place cards; the establishment or appointment of precincts, polling places, and election officers, and making such publications as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for polling places; the canvassing of the returns of the election and the furnishing of the results of such canvassing to the City Clerk of the City of Milpitas; and the performance of such other election services as may be requested by the City Clerk.
- c. City Clerk Election Services. The City Clerk is authorized, instructed and directed to prepare any documents and take any additional actions that may be necessary in order to properly and lawfully conduct the election.
- d. Polls. The polls for the election shall be open at 7:00 a.m. (PST) on election day and shall remain open continuously from that time until 8:00 p.m. (PST) on the same day when the polls shall be closed.
- e. Notice. Notice of the time and place of holding the election shall be given by the City Clerk and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form, and manner as required by law.
- f. Ballot Procedure; Certification. The ballots to be used at the election shall be in the form and content as required by law. All ballots shall be tallied at a central counting place and not at the precincts. The Santa Clara Registrar of Voters is hereby authorized to canvas the returns of the election. The City Clerk of the City of Milpitas shall receive the canvass as it pertains to the election on the Ordinance, and shall certify the results to the City Council, as required by law.
- g. Conduct of Election. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections in the City.

5. **Impartial Analysis.** The City Clerk is directed to transmit a copy of the measure to the City Attorney, and directs the City Attorney to prepare an impartial analysis of the measure showing the effect of the measure on existing law and the operation of the measure. The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments, August 16, 2016. The City Council hereby directs the City Attorney to prepare an impartial analysis of the ballot measure not to exceed five hundred (500) words in accordance with Elections Code Section 9280. The impartial analysis shall include a statement indicating that the proposed ballot measure was placed on the ballot by a petition signed by the requisite number of voters. In the event the entire text of the Ordinance is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10 point font bold type, the following: “The above statement is an impartial analysis of Ordinance or Measure \_\_\_\_\_. If you desire a copy of the ordinance or measure, please call the election official’s office at (408-586-3001) and a copy will be mailed at no cost to you.”
  
6. **Arguments in Favor and Opposed.** Pursuant to Elections Code Sections 9282(a), the proponents of the initiative petition may file a written argument in favor of the Ordinance, and the City Council may submit an argument against the Ordinance, not to exceed three hundred (300) words in length. The City Council hereby designates Councilmembers \_\_\_\_\_ and \_\_\_\_\_ to prepare and file an argument opposed on behalf of the City Council. Such written arguments in favor of or opposed to the proposed measure may include up to five (5) signatures in accordance with Elections Code Section 9283.
  
7. **Arguments For and Against; Rebuttals.** The City Council hereby authorizes arguments for and against the ballot measure and rebuttal arguments to be filed in accordance with Elections Code Section 9282-9287 and establishes August 16, 2016, at 5:00 p.m. (PST) as the deadline to file arguments for and against the ballot measure, and August 23, 2016, at 5:00 p.m. (PST) as the deadline to file rebuttal arguments. The City Council hereby approves the submittal of rebuttal arguments in response to arguments for and against the ballot measure and authorizes any member or members of the City Council to author and submit a rebuttal, if any.
  
8. **Public Examination Periods.** The City Council hereby establishes August 17, 2016, through August 26, 2016, as the ten (10) calendar day examination period required by Elections Code Section 9295 with respect to arguments for and against the ballot measure and the impartial analysis. Voters may examine the ballot measure, the impartial analysis, the argument for the ballot measure and the argument against the ballot measure in the City Clerk’s office at 455 E. Calaveras Blvd, Third Floor, Milpitas, CA 95035, between the hours of 8:00 a.m. and 5:00 p.m. (PST), Monday through Friday during such period.  
  
The City Council hereby establishes August 24, 2016, through September 2, 2016, as the ten (10) calendar day examination period required by Elections Code Section 9295 with respect to any rebuttal arguments. Voters may examine the ballot measure, the impartial analysis, the arguments for the ballot measure, the arguments against the ballot measure, and any rebuttal arguments in the Office of the City Clerk at 455 E. Calaveras Blvd, Third Floor, Milpitas, CA 95035, between the hours of 8:00 a.m. and 5:00 p.m. (PST), Monday through Friday during such period.
  
9. **Placement on the Ballot.** A statement shall be printed in the ballot pursuant to Elections Code Section 9223 advising voters that they may obtain a copy of the Ordinance, at no cost, upon request made to the City Clerk, by calling 408-586-3001
  
10. **Delivery of Resolution to County.** The City Clerk is hereby directed to deliver certified copies of this Resolution to the Clerk of the Board of Supervisors of Santa Clara County and the Registrar of Voters of Santa Clara County promptly upon its adoption.
  
11. **Severability.** If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.
  
12. **Effective Date.** This Resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

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Mary Lavelle, City Clerk

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Jose S. Esteves, Mayor

APPROVED AS TO FORM:

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Christopher J. Diaz, City Attorney

**EXHIBIT "A"**

**ORDINANCE NO. \_\_\_\_\_**

**[Attached behind this cover page]**

**REGULAR**

**NUMBER:** \_\_\_\_\_

**TITLE:**     **AN ORDINANCE OF THE CITY OF MILPITAS, PROPOSED BY A  
PETITION OF THE VOTERS, AMENDING MILPITAS MUNICIPAL  
CODE, TITLE VIII, CHAPTER 1, SECTION VIII-1-6.13 REGARDING  
THE CITY OF MILPITAS WATER RATES AND CHARGES**

**HISTORY:**   This Ordinance was approved by the voters at the general election on November  
8, 2016.

**ATTEST:**

**APPROVED:**

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

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

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Christopher J. Diaz, City Attorney

**RECITALS:**

**WHEREAS**, the people of Milpitas wish to maintain the tier rate system that encourages water consumers to conserve water,

**NOW THEREFORE**, THE PEOPLE OF THE CITY OF MILPITAS DO ORDAIN AS FOLLOWS:

**SECTION ONE:**

<b>Fix Meter Bi-Monthly charges</b>		<b>Fire Meter Bi-Monthly Charges</b>		<b>Quantity Charge per HCF</b>	
Meter Size	Rate	Fire Service Line Size	Rate	Category	charge
5/8 inch	\$19.44	2 inch	\$31.10	Residential:0-10 HCF	\$3.35
3/4 inch	\$29.16	3 inch	\$58.32	Residential:11-20 HCF	\$4.45
1 inch	\$48.46	4 inch	\$97.20	Residential:21-30 HCF	\$6.00
1-1/2 inch	\$97.20	6 inch and above	\$194.00	Residential: >30 HCF	\$6.42
2 inch	\$155.22				
3 inch	\$291.60			Commercial, Industrial, Institutional, Construction	\$6.42
4 inch	\$486.00			Potable Irrigation	\$6.42
6 inch and above	\$972.00			Ed Levin Park	\$3.79
				City of Milpitas	\$6.43

**SECTION TWO. Severability.**

Should any part or provision of this ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this ordinance or the application of this ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

**SECTION THREE. Operative Date.**

This ordinance, including the Milpitas Municipal Code amendment, shall become operative according to the applicable law.