

1 GENE TANAKA, Bar No. 101423  
gene.tanaka@bbklaw.com  
2 SCOTT W. DITFURTH, Bar No. 238127  
scott.ditfurth@bbklaw.com  
3 ALEXANDRA B. ANDREEN, Bar No. 306853  
alexandra.andreen@bbklaw.com  
4 BEST BEST & KRIEGER LLP  
2001 N. Main Street, Suite 390  
5 Walnut Creek, CA 94596  
Tel.: (925) 977-3300/Fax: (925) 977-1870  
6

EXEMPT FROM FILING FEES  
PER CAL. GOV'T CODE § 6103

7 Attorneys for Defendant  
CITY OF MILPITAS

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SANTA CLARA

10 ROBERT S. MEANS,  
11 Plaintiff,

Case No. 16CV301785  
Judge: Mary Arand

12  
13 v.

DEFENDANT CITY OF MILPITAS'  
WRITTEN STATEMENT FOR NEUTRAL  
EVALUATION

14  
15 CITY OF MILPITAS,  
16 Defendant.

Neutral Evaluator: Linda Hendrix McPharlin  
Date: April 3, 2017  
Time: 9:30 a.m.  
Place: 160 W. Santa Clara St., Ste 400  
San Jose, CA 95113

Action Filed: October 27, 2016  
Trial Date: Not Set



1 capital surcharge entirely. The Measure’s supporters explained in their filings that their purpose  
2 was to impose a “tiered” system that encourages water conservation.<sup>2</sup>

3  
4 On May 20, 2016, the opponents submitted the signed initiative petition to the City Clerk.  
5 In response, the City Clerk’s office verified that the Measure’s proponents obtained the requisite  
6 number of signatures on the petition, and therefore, successfully qualified the Measure for the  
7 ballot. As explained next, Milpitas followed clear precedent and refused to place the Measure on  
8 the ballot. This lawsuit followed.

9  
10 3. THE MEASURE IS ILLEGAL

11  
12 A. THE MEASURE EXCEEDS PROP. 218’S INITIATIVE POWERS

13  
14 Prop. 218 of the California Constitution explains the power of initiatives and provides that  
15 “the initiative power shall not be prohibited or otherwise limited in matters of reducing or  
16 repealing any local tax, assessment, fee or charge.” Cal. Const. art. XIII C, § 3 (emphasis added).  
17 By proposing to replace Milpitas’ Ordinance with the Measure, the initiative proponents were  
18 obligated to show how the Measure fit within Prop. 218’s initiative provision. In fact, the  
19 Measure does not fit within Prop. 218’s initiative provision because the Measure would introduce  
20 a new fee structure and would not reduce or repeal the existing flat fee.

21  
22 Nothing within the text of Prop. 218 authorizes the electorate to use the initiative process  
23 to introduce an entirely new rate structure because Prop. 218 has separate requirements for new  
24 rates. If the City Council wanted to introduce a new fee by changing Milpitas’ existing flat fee to  
25 a tiered rate fee structure, it would have to follow the procedural requirements for new fees  
26 contained Proposition 218. Cal. Const. art. XIII D, § 6. Prop. 218’s initiative powers do not  
27

28 <sup>2</sup> A copy of the Measure is attached as ex. B.

1 allow the electorate an end around those requirements described next.

2  
3 B. THE MEASURE VIOLATES PROP. 218'S NEW FEE TERMS

4  
5 All new fees and charges must comply with Prop. 218 of the California Constitution.  
6 Specifically, Prop. 218 imposes procedural and substantive requirements on a public agency.  
7 Procedurally, the agency must: (1) identify and provide notice to the parcel owners subject to the  
8 fee; and (2) hold a public hearing on the fee and withdraw the fee if a majority of the owners file  
9 written protests. Cal. Const. art. XIII D, § 6(a). Substantively, the agency must, in part, ensure  
10 that the fee “shall not exceed the proportional costs of the service attributable to the parcel.” Id.  
11 at § 6(b). Finally, the agency must hold a hearing allowing property owners to protest the fee. Id.  
12 at § 6(a). Under the mandates of Prop. 218, any new fees must meet all of the above  
13 requirements.

14  
15 Procedurally, the Measure did not require Milpitas to follow any of the above steps.  
16 Substantially, the Measure’s supporters intended to use tiered water rates to encourage water  
17 conservation. However, a very similar tiered rate structure was challenged in the City of San  
18 Juan Capistrano. In Capistrano Taxpayers Ass’n, Inc. v. City of San Juan Capistrano, 235 Cal.  
19 App. 4th 1493 (2015), the city council adopted a four-tier water rate structure, the higher tiers  
20 being set at more than the actual cost of providing water. Like the proposed Measure, the rate  
21 structure was designed to encourage water conservation. Id. at 1498-1500.

22  
23 However, the court of appeal held that while such a rate structure was certainly well-  
24 intentioned, it nonetheless violated Proposition 218 because “[n]othing in our record tells us why,  
25 for example, they could not figure out the costs of given usage levels that require City Water to  
26 tap more expensive supplies, and then bill users in those tiers accordingly.” Id. at 1497, 1516.  
27 Thus, the court held: “All of this leads us to the conclusion City Water’s pricing violates the  
28

1 constitutional requirement that ‘fees not exceed the proportional cost of the service attributable to  
2 the parcel.’” Id. at 1515 (quoting Prop. 218).

3  
4 As in Capistrano, the Measure contained a tiered rate structure, which increased the water  
5 rates based upon the total amount of water used. As in Capistrano, the water rate increases in the  
6 Measure sought to encourage conservation, but do not appear to be anchored to the cost of  
7 providing service. As in Capistrano, the Measure violates Prop. 218.

8  
9 C. THE MEASURE INTERFERES WITH MILPITAS’ FISCAL POWERS

10  
11 California courts have also held that initiative measures cannot impair “essential  
12 government functions through interference with the administration of the City’s fiscal  
13 powers.” City of Atascadero v. Daly, 135 Cal. App. 3d 466, 470 (1982). In Atascadero, the court  
14 upheld the city’s refusal to submit an initiative ordinance to the voters that required the city  
15 obtain voter approval for any revenue sharing measure. Id. at 468 – 469. Similarly, Myers v.  
16 City Council of Pismo Beach, 241 Cal.App.2d 237, 244 (1966), the Court found that a proposal  
17 initiative to repeal a City ordinance imposing a room occupancy tax was properly stricken from  
18 the ballot because it deprived the City of “the right and duty to exercise its discretionary power in  
19 a taxation matter . . . .”

20  
21 In this case, Bartle Wells Associates (“BWA”) prepared a memorandum for Milpitas,  
22 prior to its refusal to place the Measure on the ballot, which projected the revenue from the  
23 Measure and from the Ordinance. That study confirmed that Measure would require Milpitas to  
24 draw down its \$4.4 million operating fund in FY 2016/17, require it to incur a \$944,000 deficit in  
25 FY 2017/18 and result in a \$5.4 million deficit in FY 2018/19. Memo. from BWA to Director of  
26 Engineering/City Engineer Steven J. Machida (July 15, 2016) 5-6, t. 3 (“BWA Memo.”).<sup>3</sup> Not  
27

28 <sup>3</sup> A copy of the BWA Memo. is attached as ex. C.

1 only does the Measure illegally interfere with Milpitas' fiscal powers, it would jeopardize its  
2 ability to provide water service and threaten its financial stability.

3  
4 4. THE MEASURE IS NOT SUBJECT TO THE BALLOT

5  
6 If a Measure is illegal because it exceeds the electorate's power, to exercise, it should not  
7 be placed before the voters. The Court in Mission Springs Water Dist. v. Verjil, 218 Cal.App.4th  
8 892 (2013), decided: "It is clear a measure may be kept off the ballot if it represents an effort to  
9 exercise a power which the electorate does not possess." Id. at 918 (quoting City of San Diego  
10 v. Dunkl, 86 Cal.App.4th 384, 400 (2001)). In this case, the electorate does not have the  
11 authority to approve the Measure for three reasons.

12  
13 First, the California Constitution has defined the power of initiatives for local taxes,  
14 assessments, fees and charges to include reducing or repealing such taxes assessments, fees and  
15 charges. Cal. Const. art. XIII C, § 3. Because the Measure does not reduce or replace the  
16 Ordinance, it exceeds the initiative power.

17  
18 Second, if the local agency lacks the legislative power, then the electorate also lacks the  
19 power. In Mission Springs, the water district claimed that "the voters lack the power to enact the  
20 initiatives because the initiatives would set its water rates below its costs and thus would force it  
21 to default on its debts and put it out of business." Id. at 918. There, California Water Code  
22 Section 31007 required that county water district's rates be fixed high enough to cover certain  
23 specified costs. Id. at 919. In finding that the initiatives should not be presented to the voters, the  
24 court explained: "if the state Legislature has restricted the legislative power of the local  
25 governing body, that restriction applies equally to the local electorate's power of initiative." Id.  
26 at 921. Here, Prop. 218 requires that new water rates may only be levied after the public agency  
27 satisfies procedural requirements and must be based on actual costs. This requirement applies to  
28 both Milpitas and the electorate. Because Milpitas may not violate Prop. 218, the electorate also

1 may not violate Prop. 218 by approving the Measure. Had the voters approved the Measure and  
2 Milpitas adopted it, Milpitas would have been subject to a Prop. 218 lawsuit.

3  
4 Third, the voters cannot interfere with the taxation function of local agencies. In Dare v.  
5 Lakeport City Council, 12 Cal.App.4th 864, 868 (1970), the court concluded that the city's  
6 imposition and collection of sewer fees "must reasonably be considered a taxation function."  
7 Based on this finding, the court decided that "the initiative process is not available to amend that  
8 portion of a municipal ordinance which provides that the city council shall determine the manner  
9 of fixing charges for the connection and use of sewer facilities." Similarly, the Measure seeks to  
10 dictate the water fees charged by Milpitas, and is therefore, not subject to voter approval except  
11 pursuant to the requirements of Prop. 218.

12  
13 5. RESPONSE TO PLAINTIFF

14  
15 Plaintiff Robert Means presents several arguments in his letter to the Neutral Evaluator,  
16 none of which are correct.

17  
18 First, Plaintiff mistakenly believes that Milpitas did not respond to his allegations in his  
19 First Amended Complaint, page 5, paragraph 3. However, Milpitas responded to the allegations  
20 "on page 4, paragraph 5, and continuing to page 5." Defendant City of Milpitas' Answer to  
21 Amended Complaint, filed February 1, 2017 ("Answer"), 5. Milpitas denied the remaining two  
22 paragraphs on page 5 of the First Amended Complaint. Answer 5.

23  
24 Second, Plaintiff incorrectly claims that Milpitas did not timely file its Answer to the First  
25 Amended Complaint. However, on November 9, 2016, our office received the unsigned, unfiled  
26 version of the First Amended Complaint, with a proof of service of October 27, 2017. The  
27 Stipulation and Order was for an amendment to complaint, not an amended complaint. On  
28 February 1, 2017, Milpitas found out that the Court wanted Plaintiff to file an Amended

1 Complaint by obtaining a copy of the Court's hand written addition to the Order. Milpitas  
2 immediately filed its Answer on February 1, 2017.

3  
4 Third, Plaintiff argues Milpitas misunderstands Prop. 218 and San Juan Capistrano.  
5 Sections 3 and 4 explain that because of Prop 218, Milpitas correctly refused to put the Measure  
6 on the ballot.

7  
8 6. SETTLEMENT CONSIDERATIONS

9  
10 In her letter, dated March 20, 2017, the Neutral Evaluator asked the parties to discuss  
11 certain items with our clients. Some of those items may usefully be presented in this Statement:

- 12
- 13 • Although styled as a Complaint, this case seeks to overturn a decision by a public  
14 agency, which requires a writ of mandate. Therefore, the case will be decided on  
15 an administrative record without discovery, which greatly reduces the litigation  
16 costs. Cal. Civ. Proc. Code § 1094.5(e) (extra record evidence generally not  
17 admissible for administrative mandamus); Western States Petroleum Ass'n v.  
18 Superior Court, 9 Cal.4th 559, 575-576 (1995) (extra record evidence generally  
19 not admissible for traditional mandamus).
  - 20 • Mandamus matters are decided on a motion heard by a judge. Therefore, Milpitas'  
21 believes it is on firm ground because a judge will understand these legal  
22 arguments. Furthermore, the attorney's fees to resolve this case will only require  
23 opposition to the motion for writ of mandamus.
  - 24 • The consequences of the Measure are so severe, that it is difficult to see how  
25 Milpitas can agree to any compromise of its water rates.
- 26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- On the other hand, if Plaintiff does not prevail in this case, he will owe \$4,870.28 for the administrative record.

The City would like to avoid this litigation and staff is willing to recommend that the City waive costs and agree to a non-binding meeting with Mr. Means to hear his concerns and see if there are alternatives. In exchange, Plaintiff will need to dismiss his lawsuit with prejudice.

Dated: March <sup>28</sup> \_\_\_, 2017

BEST BEST & KRIEGER LLP

By: Gene Tanaka  
GENE TANAKA  
SCOTT DITFURTH  
ALEXANDRA ANDREEN  
Attorneys for Defendant  
CITY OF MILPITAS

# EXHIBIT A

**REGULAR**

**NUMBER:** 120.47

**TITLE:** AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILPITAS AMENDING CHAPTER 1 OF TITLE VIII OF THE MILPITAS MUNICIPAL CODE RELATING TO WATER SERVICE CHARGES

**HISTORY:** This Ordinance was introduced (first reading) by the City Council at its meeting of October 6, 2015, upon motion by Councilmember Giordano, 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

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

APPROVED AS TO FORM:

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

**RECITALS AND FINDINGS:**

**WHEREAS**, the provision of potable and recycled services by the City of Milpitas (“City”) require the City to incur capital, operating, maintenance, replacement, and other costs related to the provision of such services; and

**WHEREAS**, the City engaged Bartle Wells Associates to prepare a cost of service analysis and water rate study (the “Rate Study”); and

**WHEREAS**, as a result of the Rate Study, the City Council has determined that increases in the rates for its water service charges are in the best interests of the City and in keeping with sound business and financial management of the water enterprises; and

**WHEREAS**, the City Council hereby finds and determines the following with regard to the proposed rate increases to the water service charges:

1. The rate structure for the water service charges has two components: (a) a Water Meter Charge, which is a fixed bimonthly charge determined on the basis of the size of the water meter (in inches) serving a customer’s property and calculated to recover a portion of the City’s fixed costs in providing water service; and (b) a Volumetric Charge, which is a uniform rate imposed on the basis of the amount of water delivered to a customer in hundreds of cubic feet (“HCF”) and calculated to recover a portion of the City’s fixed and variable costs of providing water service; and
2. The rate structure also has a Fire Meter Charge which is: (a) imposed on certain properties requiring a large private fire suppression system, and upon the request of the customer or property owner for the delivery of water to the property for the purpose of fire service protection; and (b) established on the basis of the size of the fire service line (in inches) and calculated to recover the cost of providing water to such properties for private fire service protection; and
3. Beginning April 1, 2016, the rate structure will also include a Capital Surcharge, which will be imposed on the basis of the amount of water delivered to a customer in HCF and calculated to recover capital costs of the water system; and

**WHEREAS**, the City hereby finds and determines that in accordance with the provisions of California Constitution article XIII D, section 6 (“Article XIII D”):

1. The City identified the parcels upon which the water service charges are proposed to be imposed, and calculated the amount of the water service charges proposed to be imposed on each parcel; and
2. The City caused a written notice to be mailed to the record owners of property upon which the proposed water service charges will be imposed and the customers of each parcel upon which the proposed increases to the water service charges are proposed for imposition, which explained: (a) the amount of the water service charges; (b) the basis on which they were calculated; (c) the reason for the increases; and (d) the date, time, and location of the public hearing on the proposed increases; and
3. On December 15, 2015, (more than 45 days after mailing the notice), the City conducted a public hearing and considered all written protests against the proposed increases to the rates for the water service charges; and

4. At the conclusion of the public hearing, written protests against the proposed increases to the rates for the water service charges were not presented by a majority of property owners of record and customers subject to the proposed water service charges; and

**WHEREAS**, the adoption of the proposed increases to water service charges are statutorily exempt from the requirements of the California Environmental Quality Act under California Resources Code Section 21080(b)(8).

**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 Rate Study, 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 herein by reference.

**SECTION 2. AMENDMENT OF MILPITAS MUNICIPAL CODE VIII-1-6.13**

Section VIII-1-6.13 of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

**VIII-1-6.13 Quantity Charges**

The quantity charges include a volumetric charge and a capital surcharge. The uniform rates for the quantity charges are billed bimonthly and imposed per hundred cubic feet (“HCF”) for metered water service. The rates and effective dates for the quantity charges shall be those set forth below.

<b>RATES AND EFFECTIVE DATES FOR QUANTITY CHARGES (\$/HCF)</b>			
<b>Customer Class</b>	<b>Volumetric Charge 1/15/2016</b>	<b>Volumetric Charge 4/1/2016</b>	<b>Capital Surcharge 4/1/2016</b>
Residential:	\$4.75	\$5.13	\$1.30
Commercial / Industrial / Institutional / Construction Meter	\$4.75	\$5.13	\$1.30
Irrigation (potable)	\$4.75	\$5.13	\$1.30
City Accounts (potable)	\$4.75	\$5.13	\$1.30
Ed Levin Park	\$3.75	\$3.79*	NA
Recycled - Irrigation	\$2.42	\$2.78	NA
Recycled - Industrial / Dual Plumbed/ Construction Water	\$2.42	\$2.78	NA
City Accounts (recycled)	\$2.42	\$2.78	NA

The County of Santa Clara rate is established by contract to be equivalent to the San Francisco Public Utilities Commission (“SFPUC”) wholesale rate. The FY 2016-17 SFPUC rate is estimated to be \$3.79/HCF and staff will revise to actual rate once SFPUC adopts the FY 2016-17 wholesale rate.

FY = Fiscal Year

1 HCF = One Hundred Cubic Feet = 748 Gallons

**SECTION 3. AMENDMENT OF MILPITAS MUNICIPAL CODE VIII-1-6.14**

Section VIII-1-6.14 of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

**VIII-1-6.14 Bimonthly Water Meter Charges**

(a) Water Meter Charges: The rates and the effective dates for the bimonthly water meter charges, determined on the basis of the size of the water meter, shall be as follows:

<b>RATES AND EFFECTIVE DATES FOR WATER METER CHARGES (\$/METER SIZE)</b>		
<b>Water Meter Size</b>	<b>Charge 1/15/2016</b>	<b>Charge 4/1/2016</b>
5/8"	\$18.00	\$19.44
3/4"	\$27.00	\$29.16
1"	\$45.00	\$48.60
1-1/2"	\$90.00	\$97.20
2"	\$144.00	\$155.52
3"	\$270.00	\$291.60
4"	\$450.00	\$486.00
6" and above	\$900.00	\$972.00

(b) For Temporary Construction Meter Customers, the bimonthly water meter charges shall be equal to the bimonthly water meter charges for 3" water meters set forth in Section 6.14(a).

No adjustments shall be granted to any water account holder due to variation in the days of service for any bimonthly billing period. Acceptable days of service range from 50 to 69 days per bimonthly billing period.

**SECTION 4. AMENDMENT OF MILPITAS MUNICIPAL CODE VIII-1-6.15**

Section VIII-1-6.15 of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

**VIII-1-6.15 Fire Service Charges**

The rates and effective dates for the bimonthly fire service charges, determined on the basis of the size of the fire service, shall be as follows:

<b>RATES AND EFFECTIVE DATES FOR FIRE SERVICE CHARGE (\$/SIZE OF FIRE SERVICE LINE)</b>		
<b>Fire Service Line Size</b>	<b>Charge 1/15/2016</b>	<b>Charge 4/1/2016</b>
2"	\$28.80	\$31.10
3"	\$54.00	\$58.32
4"	\$90.00	\$97.20
6"and above	\$180.00	\$194.40

Water flowing through fire suppression systems shall be used solely for the purpose of fire protection and testing of such fire protection systems. In the event that water service provided through fire suppression systems is used for purposes other than for fire protection or the testing of such fire

protection systems, the quantity charges equal to the quantity charge rates (per HCF) for Commercial/ Industrial/ Institutional customers shall be imposed .

#### **SECTION 5. AMENDMENT OF MILPITAS MUNICIPAL CODE VIII-1-6.16**

Section VIII-1-6.16 of the Milpitas Municipal Code is hereby repealed in its entirety and replaced with the text below to read as follows:

##### **VIII-1-6.16 Billing and Effective Dates of Water Rates and Charges**

Billing. After the Ordinance adopting the charges set forth in this Section goes into effect, customers shall be subject to the water service charges at the rates and on the effective dates set forth in 6.13 (Quantity Charges), 6.14 (Bimonthly Water Meter Charges), and 6.15 (Fire Service Charges), for services provided on or after January 15, 2016, and April 1, 2016, respectively. In the absence of amendment of the rates set forth herein or adoption of a new rate ordinance, the rates in effect on April 1, 2016, and set forth herein shall remain in effect until amended or repealed.

#### **SECTION 6. SEVERABILITY**

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remainder of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional, provided, however, that if any decision of a court of competent jurisdiction invalidates the increase of the water service charges set forth in this Ordinance, then the water service charges in effect on the date of adoption shall continue in existence.

#### **SECTION 7. ORDINANCE PREVAILS**

To the extent that any other provision of local law relating to the establishment of water charges is inconsistent with this Ordinance, the provisions of this Ordinance shall prevail. This Ordinance shall supersede all other previous City Council resolutions and ordinances that may conflict with, or be contrary to, this Ordinance.

#### **SECTION 8. EFFECTIVE DATE AND POSTING**

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.

# EXHIBIT B

FEB 26 2016

**RECEIVED**

**INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS**

The City Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

**Title:** Initiative Measure Regarding the City of Milpitas Water Rates and Charges

**Impartial Summary:** This Measure would amend Milpitas Municipal Code, Title VIII, Chapter 1, Section VIII-1-6.13 with regard to water rates and charges based on quantity per hundred cubic feet or "HCF." On December 15, 2015, the City Council of the City of Milpitas adopted Ordinance No. 120.47 imposing new water rates and charges. Ordinance No. 120.47 amended Milpitas Municipal Code Section VIII-1-6.13 to impose new quantity charges per HCF to include both a volumetric charge and a capital surcharge, as follows:

<b>RATES AND EFFECTIVE DATES FOR QUANTITY CHARGES (\$/HCF)</b>			
<b>Customer Class</b>	<b>Volumetric Charge 1/15/2016</b>	<b>Volumetric Charge 4/1/2016</b>	<b>Capital Surcharge 4/1/2016</b>
Residential:	\$4.75	\$5.13	\$1.30
Commercial / Industrial / Institutional / Construction Meter	\$4.75	\$5.13	\$1.30
Irrigation (potable)	\$4.75	\$5.13	\$1.30
City Accounts (potable)	\$4.75	\$5.13	\$1.30
Ed Levin Park	\$3.75	\$3.79*	NA
Recycled - Irrigation	\$2.42	\$2.78	NA
Recycled - Industrial / Dual Plumbed/ Construction Water	\$2.42	\$2.78	NA
City Accounts (recycled)	\$2.42	\$2.78	NA

The Measure would replace the City of Milpitas' new quantity charges per HCF with the following:

<b>Quantity Charge per HCF</b>	
<b>Category</b>	<b>Charge</b>
Residential:0-10 HCF	\$3.35
Residential:11-20 HCF	\$4.45
Residential:21-30 HCF	\$6.00
Residential:>30 HCF	\$6.42
Commercial, Industrial, Institutional, Construction	\$6.42
Potable Irrigation	\$6.42
Ed Levin Park	\$3.79
City of Milpitas	\$6.43

- Keep the current rate of \$4.08 for Recycle Irrigation, Recycled Industrial, Dual plumbed, Construction at \$2.65, and Recycled City of Milpitas \$2.78

The Measure would impose a volumetric charge different from the City's volumetric charge and eliminate the capital surcharge. The legality of this proposed Measure is unknown at this time.

(This is 8.5 x 14 sized paper. Below this line is available for signatures.)

# EXHIBIT C



**BARTLE WELLS ASSOCIATES**  
INDEPENDENT PUBLIC FINANCE ADVISORS

1889 Alcatraz Avenue  
Berkeley, CA 94703  
T: 510-653-3399  
www.bartlewells.com

**To:** Steven J. Machida, Director of Engineering/City Engineer  
**Subject:** Fiscal Year 2016/17 Water Rate Initiative Report  
**Date:** 7.15.2016  
**From:** Douglas Dove, President; Michael DeGroot, Financial Analyst

---

## Background

Bartle Wells Associates (BWA) has been retained by the City of Milpitas to analyze the impact of a voter initiative to alter the City's Fiscal Year (FY) 2016/17 water rates. The initial water rate study was completed by BWA in December 2015 and recommended water rates for FY 2015/16 and FY 2016/17. The recommended water rates were adopted on December 15<sup>th</sup> 2015.

This memorandum was prepared based on the assumptions of key variables such as expenses, water purchase volumes, and water sales used in BWA's initial 2015 water rate study. Since the time the initial rate study was prepared, several key variables have changed which are not included in this analysis:

- San Francisco Public Utilities Commission (SFPUC) wholesale water rate increase of 9.3% from \$3.75/hundred cubic foot (hcf) (15-16) to \$4.10/hcf (16-17). BWA's study projected a rate of \$3.79/hcf for 16-17.
- Santa Clara Valley Water District (SCVWD) wholesale water rate increase of 18% from \$2.28/hcf (15/16) to \$2.69/hcf (16-17). BWA's study projected a rate of \$2.68/hcf for 16-17.

Key objectives of BWA's analysis include:

1. An analysis of the rates proposed in the Initiative Measure relative to the San Juan Capistrano decision and Proposition 218.
2. Whether the Initiative Measure will impair the City's financial ability to maintain the water system and whether enough revenue will be collected to adequately fund all operations, maintenance, capital infrastructure needs, water quality/safety, water supply functions and meet the City's 30% (90 day) water reserve fund policy.
3. Whether the Initiative Measure will provide enough revenue for the City to meet contractual obligations with San Francisco Public Utilities Commission (SFPUC) and the Santa Clara Valley Water District (SCVWD) to purchase water from both wholesalers.
4. An analysis if the Initiative Measure's tier 1 rate will collect enough revenue to comply with the cost for service.
5. Show how the initiative rates are not based on the cost of service.

**FY 2016/17 Initiative Measure & BWA Proposed Water Rates**

Table 1  
 City of Milpitas - Water Rate Initiative Report  
 FY 2016/17 Initiative Measure & BWA Proposed Water Rate Schedule

**Volumetric Charges (\$/HCF\*)**

Category	Initiative Measure proposed FY 16-17 rate per HCF	City Adopted BWA proposed FY 16-17 rate per HCF**
Residential		
0-10	\$3.35	\$6.43
11-20	\$4.45	\$6.43
21-30	\$6.00	\$6.43
>30	\$6.42	\$6.43
Commercial	\$6.42	\$6.43
Industrial, Institutional, Construction	\$6.42	\$6.43
Potable Irrigation	\$6.42	\$6.43
Ed Levin Park***	\$3.79	\$3.79
City of Milpitas	\$6.43	\$6.43
Recycled Irrigation	\$4.08	\$2.78
Recycled Industrial, Dual-plumbed, Construction	\$2.65	\$2.78
Recycled City of Milpitas	\$2.78	\$2.78

\*1 HCF = 748 gallons

\*\*Includes capital surcharge

\*\*\*County of Santa Clara rate is established by contract to be equivalent to the SFPUC wholesale rate

**Analysis of Initiative Measure Proposed Rates Legal Compliance**

BWA believes the Initiative Measure rates are similar to the tiered rates that were successfully challenged in the **Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano** case as not being in compliance with the requirements of California Proposition 218 because the tiered rates must be correlated to the actual cost of providing water at those tiered levels. The Initiative Measure residential tiered rates, which range from \$3.35 to \$6.42 per hcf, do not appear to be based on the cost of service, which was determined to be a flat \$6.43 per hcf under BWA FY 2016/17 proposed rates. The Initiative Measure rates amount to a rate discount for residential customers, however no alternative source of non-rate funding is identified to cover the cost of water service. The Initiative Measure discount for residential rates is estimated to be \$4.5 million in FY 2016/17 enterprise revenue.

Additionally, Initiative Measure recycled water rates effectively roll back to those charged in 2014/15 for certain customers (\$4.08 for recycled irrigation; \$2.65 for recycled industrial, dual plumbed and construction). The Initiative Measure recycled rates do not correlate to cost of service and collect an estimated \$500,000 over the

cost of providing recycled water, as calculated by BWA (\$2.78 per hcf for FY 2016/17). Rates which exceed the cost of providing service are not in compliance with Proposition 218.

The FY 2016/17 potable volumetric rate of \$6.43 per hcf is designed to recover the cost of potable water purchases, personnel services, administrative costs, and services and supplies. \$1.30 of the \$6.43 rate is identified separately as a “capital surcharge” and is intended to recover debt service costs and cash funded capital expenditures. The FY 2016/17 recycled water rate of \$2.78 per hcf includes a \$0.17 charge for capital costs.

### **Constitutional Rate Requirements**

The California Constitution includes two key articles that directly govern or impact the City’s water rates: Article 10 and Article 13D. The water rates developed in BWA’s 2015 water rate study were designed to comply with both of these constitutional mandates as well as various provisions of the California Water Code and Government Code that support and add further guidance for implementing these constitutional requirements. In accordance with the constitutional provisions, the proposed rates are designed to a) recover the City’s cost of providing water service; b) allocate costs in proportion to the cost for serving each customer class; and c) promote conservation and discourage waste.

### **Article 13D, Section 6**

Proposition 218 was adopted by California voters in 1996 and added Articles 13C and 13D to the California Constitution. Article 13D, Section 6 governs property-related charges, which the California Supreme Court subsequently ruled includes ongoing utility service charges such as water, sewer, and garbage rates. Article 13D, Section 6 establishes a) procedural requirements for imposing or increasing property-related charges, and b) substantive requirements for those charges. The substantive requirements of Article 13D, Section 6 require the City’s water rates to meet the following conditions:

1. Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.
2. Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.
3. The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.
4. No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question.
5. No fee or charge may be imposed for general governmental services, such as police or fire services, where the service is available to the public at large in substantially the same manner as it is to property owners.

**Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano**

The Court of Appeals of California clarified the requirements of Proposition 218 as it relates to tiered water in their written April 20<sup>th</sup>, 2015 Opinion as follows:

*“...the trial court did not err in ruling that Proposition 218 requires public water agencies to calculate the actual costs of providing water at various levels of usage...To comply with [Article XIII D, section 6] subdivision (b)(3), City Water [San Juan Capistrano] also had to correlate its tiered prices with the actual cost of providing water at those tiered levels. Since City Water did not try to calculate the actual costs of service for the various tiers, the trial court's ruling on tiered pricing must be upheld simply on the basis of the constitutional text.”*

**Financial Impact of Initiative Measure Rates**

Table 2 shows a comparison of rate revenue between the current fiscal year (2015/16), Initiative Measure rate revenue, and BWA proposed rates for FY 2016/17. If the Initiative Measure proposed rates are put in place by July 1, 2016, the City of Milpitas is estimated to under collect approximately \$4 million in revenue in FY 2016/17 alone compared to BWA proposed rates.

Table 2  
City of Milpitas - Water Rate Initiative Report  
Projected Water Service Revenues

Project Revenues	Prorated 2015/16 <sup>1</sup> Revenue	Projected		Deficiency
		Initiative Measure Rates 2016/17	City Adopted BWA Rates 2016/17	
Potable Capital Surcharge			\$3,911,700	\$3,911,700
Recycled Capital Surcharge			70,757	\$70,757
Potable Water Meter Charges	\$4,829,223	\$6,351,981	6,351,981	\$0
Recycled Water Meter Charges	253,489	425,503	425,503	\$0
Potable Water Volumetric Charges	12,444,524	14,793,366	15,446,056	\$652,690
Recycled Water Volumetric Charges	<u>1,570,465</u>	<u>1,652,922</u>	<u>1,086,329</u>	<u>(\$566,593)</u>
	\$19,097,701	\$23,223,773	\$27,292,327	\$4,068,554
<i>% Increase from Prior Fiscal Year</i>		<i>22%</i>	<i>43%</i>	

1 Includes 9 months of FY 14-15 rates and 3 months of adopted FY 15-16 rates

Table 3 shows cash flow for the water enterprise based on the Initiative Measure rates and the BWA rate study proposed overall increases of 8% FY 2017/18 and 5% in FY 2018/19. Under Initiative Measure rates, the water enterprise will not meet its 30% (90 days) of annual operating expenses fund reserve target (approximately \$7 million in FY 2016/17). BWA projects the water enterprise will draw down the Operating Fund to \$4.4 million in FY 2016/17, and will accrue a deficit of about -\$944,000 in FY 2017/18 and -\$5.4 million in FY 2018/19. Additionally, net revenues will not be adequate to meet debt coverage requirements on a projected \$25.5 million financing for capital improvements nor will it provide for capital improvement projects outlined in the 5 year CIP.

The graphical presentations below display projected impact of revenue, expenses, and fund balances under the Initiative Measure proposed rates under various scenarios:

**Figure 1:** Water enterprise revenue under Initiative rates, excluding bond revenue. Expenditures include bond funded project costs.

**Figure 2:** Water enterprise 30% operating reserve target versus reserves generated by Initiative rates based on Figure 1.

**Figure 3:** Comparison of water enterprise revenue under City adopted and Initiative rates, including bond revenue. Expenditures include bond funded project costs.

**Figure 4:** Water enterprise 30% operating reserve target versus reserves generated by Initiative rates based on Figure 3.

Table 3  
City of Milpitas - Water Rate Initiative Report  
Cash Flow Projection - Operating Fund (Initiative Measure Rates Implemented)

	Estimated		Projected		
	2014/15	Budget 2015/16	2016/17	2017/18	2018/19
<b>Beginning Fund Balance (Operating Fund)</b>					
Cash and Cash Equivalents		\$7,276,000	\$15,103,000	\$4,386,000	-\$944,000
<b>REVENUES</b>					
		Adopted 1/15/2016	Initiative	Projected	Projected
<b>Overall Rate Increases</b>		<b>Rate Restructure</b>	<b>Measure Rates</b>	<b>8.0%</b>	<b>5.0%</b>
<b>Operating Revenue<sup>1</sup></b>					
Potable Meter Charges	\$4,478,476	\$4,829,223	\$6,351,981	\$6,860,502	\$7,203,510
Recycled Meter Charges	206,657	253,489	425,503	459,543	482,518
Potable Volumetric Charges	15,966,897	12,444,524	14,793,366	15,975,456	16,778,391
Recycled Volumetric Charges	1,937,743	1,570,465	1,652,922	1,820,127	1,946,990
Other Operating Revenue	175,000	175,000	175,000	175,000	175,000
<i>Subtotal Operating Revenue</i>	22,764,773	19,272,701	23,398,773	25,290,629	26,586,408
<b>Non-Operating Revenue</b>					
<b>Bond (4.25% 30-Years)</b>		25,540,000			
Subventions and Grants	45,000	45,000	45,000	45,000	45,000
Interest Income	98,000	98,000	98,000	98,000	98,000
Developer Contributions	0	0	0	0	0
<i>Subtotal Non-Operating Revenue</i>	143,000	25,683,000	143,000	143,000	143,000
<b>TOTAL REVENUES</b>	<b>\$22,907,773</b>	<b>\$44,955,701</b>	<b>\$23,541,773</b>	<b>\$25,433,629</b>	<b>\$26,729,408</b>
<b>EXPENSES</b>					
<b>Operating Expenses</b>					
SFPUC Wholesale Water (Est.)	\$8,576,105	\$10,083,024	\$10,193,107	\$10,215,417	\$11,485,483
SCVWD Wholesale Water (Est.)	3,004,819	2,291,200	2,634,880	3,030,112	3,484,629
Recycled Water Expenses (Est.)	603,531	810,590	1,013,238	1,291,878	1,647,144
Personnel Services <sup>3</sup>	2,597,769	2,702,000	2,810,000	2,922,000	3,039,000
Transfers Out (General Fund Admin Cost Reimb.) <sup>3</sup>	2,366,459	2,461,000	2,559,000	2,661,000	2,767,000
Services and Supplies <sup>3</sup>	1,917,115	1,994,000	2,074,000	2,157,000	2,243,000
Additional Operating Expenses	-	1,422,275	1,125,600	1,186,024	1,233,265
<i>Subtotal Operating Expenses</i>	19,065,799	21,764,089	23,409,825	23,463,431	25,899,521
<b>Non-Operating Expenses</b>					
Ed Levin Rate Reduction		2,609	6,896	7,966	8,461
Capital Expenditures (Transfer Out)	3,225,000	15,362,000	9,320,000	5,770,000	3,795,000
<b>Bond Debt Service</b>			1,522,139	1,522,139	1,522,139
<i>Subtotal Non-Operating Expenses</i>	3,225,000	15,364,609	10,849,035	7,300,105	5,325,600
<b>TOTAL EXPENSES</b>	<b>\$22,290,799</b>	<b>\$37,128,698</b>	<b>\$34,258,860</b>	<b>\$30,763,536</b>	<b>\$31,225,121</b>
Net Revenues	\$616,974	\$7,827,003	(\$10,717,088)	(\$5,329,908)	(\$4,495,713)
<b>Ending Fund Balance (Operating Fund)</b>	<b>\$7,275,776</b>	<b>\$15,103,003</b>	<b>\$4,385,912</b>	<b>(\$943,908)</b>	<b>(\$5,439,713)</b>
<b>Debt Service Coverage (Currently No Debt)</b>					
Net Operating Revenues	3,698,974	(2,491,388)	(11,052)	1,827,198	686,888
Total Debt Service	0	0	1,522,139	1,522,139	1,522,139
<i>Coverage</i>	-	-	(0.0)	1.2	0.5
<b>Unrestricted Fund Reserve Target</b>					
30% Operating Expenses	\$5,719,740	\$6,529,227	\$7,022,947	\$7,039,029	\$7,769,856
<i>Target Met</i>	Yes	Yes	No	No	No
<b>Total Deficiency</b>	<b>\$1,556,036</b>	<b>\$8,573,777</b>	<b>(\$2,637,035)</b>	<b>(\$7,982,937)</b>	<b>(\$13,209,569)</b>

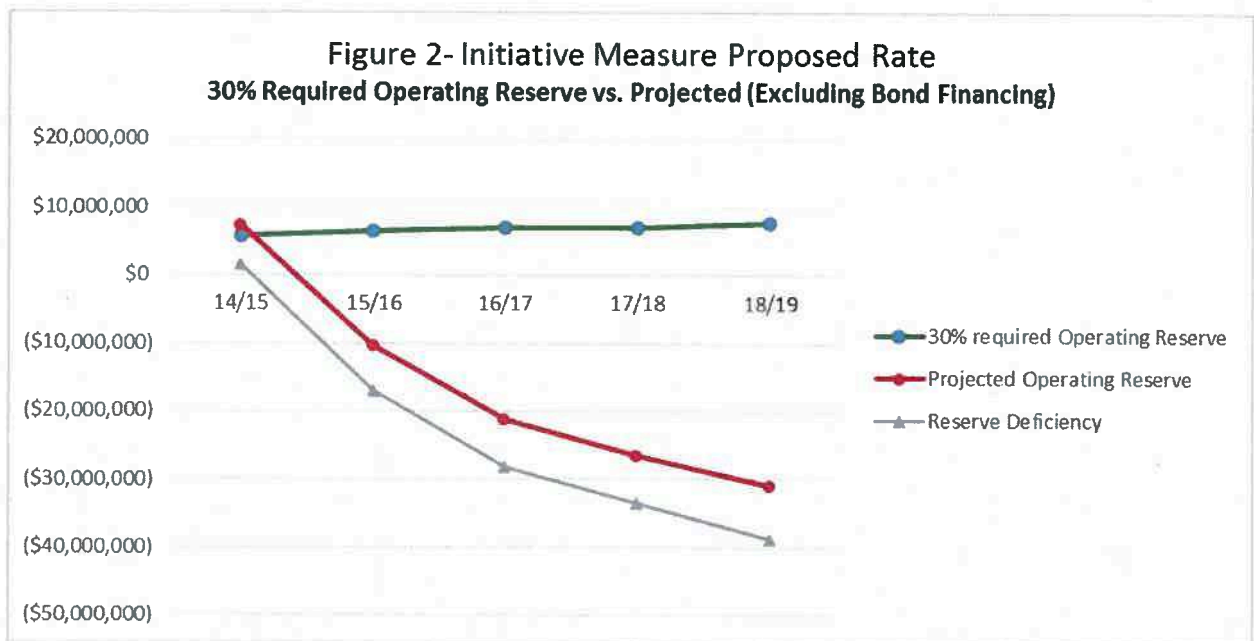
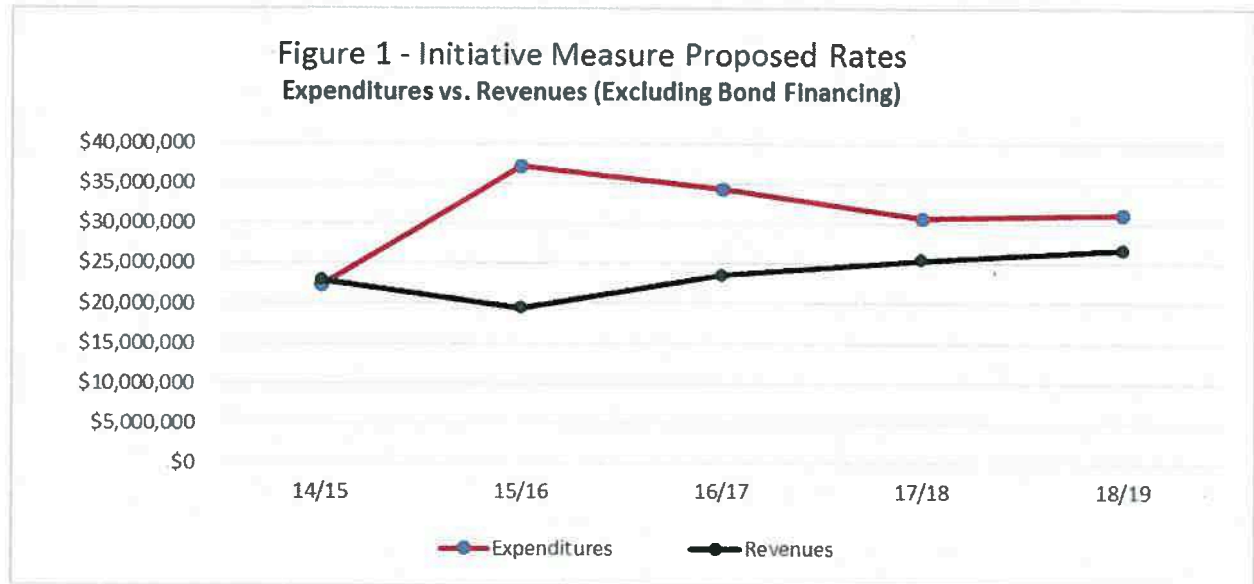
<sup>1</sup> Charges prorated to take into account 2015/16 proposed rates effective January 1st, 2016 rather than July 1st, 2015

<sup>2</sup> Equal to three years of capital expenses

<sup>3</sup> 2014/15 Actuals from Finance Department

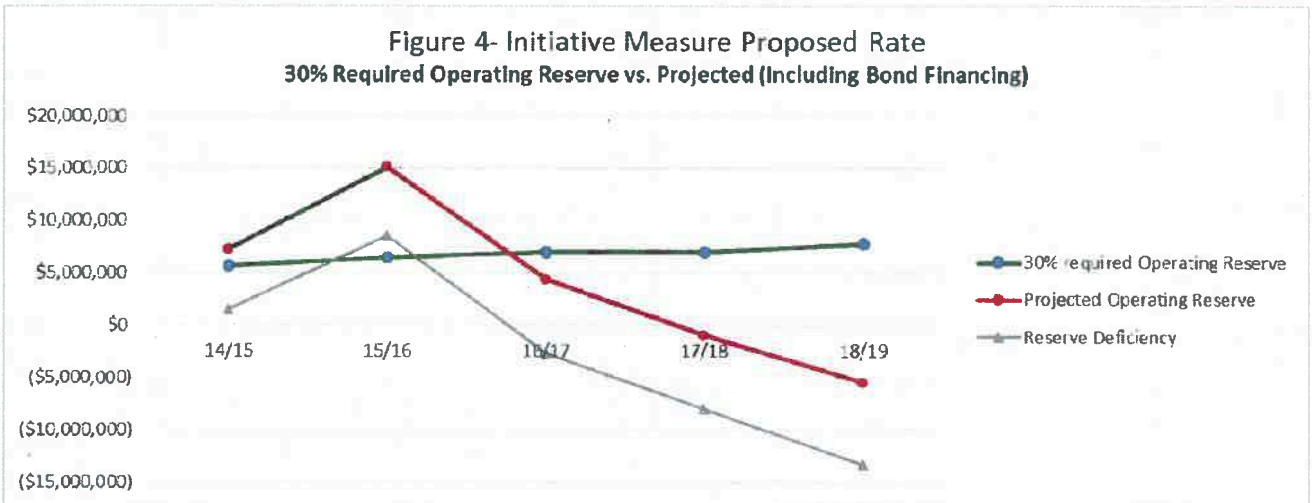
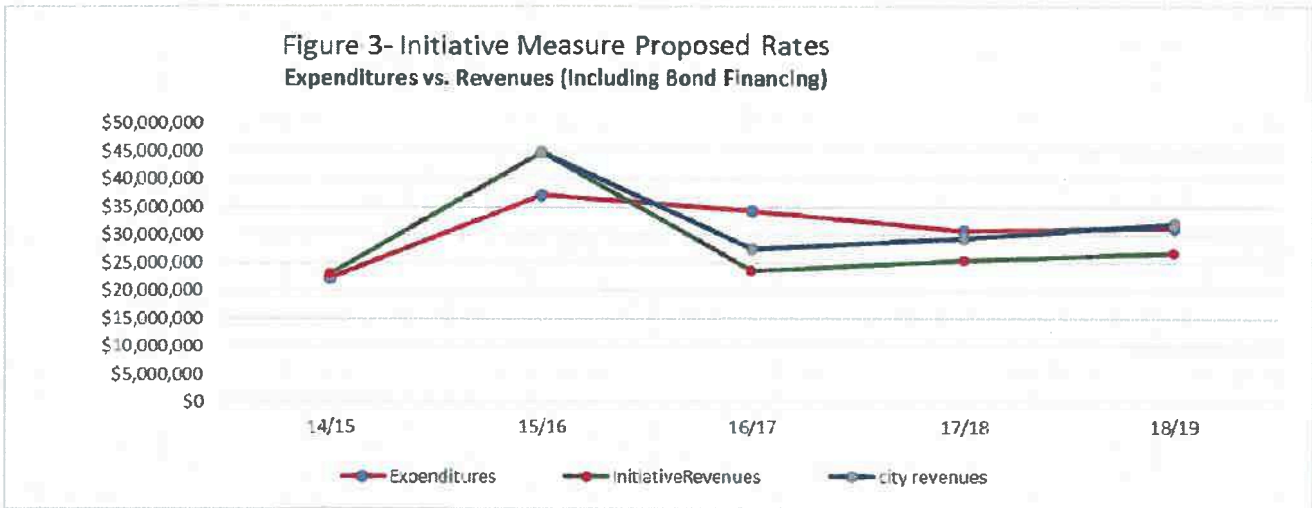
**Figure 1 & 2**

**Initiative revenues without bond revenue, expenditures include bond funded projects costs**



**Figure 3 & 4**

**Initiative & City revenues with bond revenue, expenditures include bond funded projects costs**



The impact of the revenue loss is that the City will not be able to fund all of its capital improvement program, shown in **Table 4**. Initiative Measure rates propose to eliminate the capital surcharge, which is intended to collect approximately \$4 million per year to fund potable and recycled water projects. Approximately \$1.5 million of surcharge revenue is projected to cover annual principal and interest costs associated with the \$25.5 million debt financing for capital projects. Funding projects with debt is important for ensuring costs benefitting future users are paid for by future users. The remaining capital projects are proposed to be cash funded.

Planned capital improvement projects are necessary for maintaining water supply reliability, offsetting demand for potable water, and an easing of the burden of reducing consumption on potable customers to meet State mandated cutback requirements. The existing City water rates are structured to recover the cost of potable water, personnel, administration, services, supplies and programmed capital improvements. Altering the timing, scheduling and function of the services on the water system will have a detrimental effect on the operations, maintenance and needed improvement to the City water system leading to system failure. Deferring or eliminating programmed water projects will lead to additional water main breaks, violations from State regulators, inability to deliver water, potential water contamination or water quality issues, impairment for fire suppression, increase system water loss and system pipeline corrosion.

**Appendix A – Water Distribution System Required Operations and Maintenance Activities:** details the required mandated activities to sustain a safe and reliable water system. Each activity and function requires the City to respond and address. With reduced funding, maintaining water quality and supply will be the highest priority, while routine activities such as valve exercising, pump station maintenance and record management will be curtailed. Over time, the backlog of work will impact the ability to provide safe water supply.

**Appendix B – Water Capital Program:** details the water system projects included in the City’s Five Year Capital Improvement Program that are funded by the capital surcharge. The table describes the purpose of the project and the long term consequences if the project is deferred or eliminated.

**Appendix C – Initiative Measure to be Submitted Directly to the Voters:** details the proposed water rates by the Initiative.

Table 4  
 City of Milpitas - Water Rate Initiative Report  
 5 Year Capital Program

Description	15-16	16-17	17-18	18-19	19-20	20-21	Total
Rate Study Plan Estimates (Includes Water Fund and bonds)	\$15,362,000	\$9,320,000	\$5,770,000	3,795,000	\$7,620,000	-	\$41,867,000
Adopted 5 Yr CIP Updated (Includes Grants, Developer, unfunded, etc)	-	\$13,790,000	\$7,670,000	\$12,600,000	\$17,190,000	\$12,995,000	\$51,250,000
<b>Total</b>	-	<b>\$23,110,000</b>	<b>\$13,440,000</b>	<b>\$16,395,000</b>	<b>\$24,810,000</b>	<b>\$12,995,000</b>	<b>\$90,750,000</b>

**Capital Projects Included Within the 5 Year CIP (Included in alphabetical order)**

- 2nd SCVWD Water Reservoir and Pump Station
- Abel Street Pipeline Extension
- Automated Water Meter Replacement
- BART Project - Water Improvements
- Cathodic Protection Improvements
- Construction Water
- Hydrant Replacement
- Los Coches Backbone
- Lower Berryessa Creek Water Line
- Minor Water Projects 2017 & 2018
- Minor Water Projects 2019-20
- Recycled Water Pipeline Infill Project
- Recycled Water Pipeline Segment 1
- Recycled Water Pipeline Segment 2
- Recycled Water Pipeline Segment 3
- Recycled Water Pipeline Segment 4
- Recycled Water Pipeline Segment 5
- SCVWD Second Water Supply Turnout
- Supervisory Control And Data Acquisition
- Water Conservation Program
- Water O&M Database Management
- Water System Replacement Study
- Water System Seismic Improvements
- Well Upgrade Project

**Table 5** shows a calculation of FY 2016/17 City adopted volumetric rates in comparison with Measure Initiative rates. The proposed residential Tier 1 of \$3.35 is below the estimated water purchase cost of \$3.63/hcf.

---

**Table 5**  
**City of Milpitas - Water Rate Initiative Report**  
**Residential Volumetric Rate**

---

City Approved FY 2016/17 Volumetric Unit Rate	\$6.43
Capital Surcharge (To Fund Improvements)	(\$1.30)
Subtotal non-capital	\$5.13
 Water Purchase = 2/3 SFPUC +1/3 SCVWD; (Weighted average of .67*\$4.10/hcf + .33x\$2.69/hcf)	 \$3.63
 Admin/Services & Delivery	 \$1.50

---

**INITIATIVE RESIDENTIAL WATER RATES**

**Quantity Charges (per hcf)**

Residential (bimonthly tiers)	
1 - 10 hcf bimonthly	\$3.35
11 - 20 hcf bimonthly	\$4.45
21 - 30	\$6.00
31+	\$6.42

---

## Appendix A

Table A-1 includes a list of water utility mandates to insure a safe water supply.

<b>Table A-1 Water Distribution System - Required Operations and Maintenance Activities</b>		
Activity	Purpose	Potential Consequences
Customer Service Requests	Investigate and respond to customer service inquiry, request, or concern	Water loss, water quality for customer, potential health and safety
Underground Service Alert Locate Requests	State mandated; protection of infrastructure; protect water quality	Water break, illicit use, cross connection
Water quality Sampling (Bacteriological, chemical, physical)	State mandated requirement; protect water quality	Potential Water contamination undetected
Repair Water Main Leaks and Customer Service Line Leaks	Prevent water loss; prevent interruption in water service to customer; prevent contamination; Ensure health and safety of water supply	Significant water waste, potential water contamination, impair water supply for fire suppression
Repair/Replaced Water Meters	Accurately measure water use; properly bill customer; prevent water waste	Increased system water loss, increased loss in revenue, increase water waste
Exercise/Repair Valves	Prevent inability to shut off or isolate water distribution system for repair, water quality issues, or fire suppression needs	Valves will not operate properly during emergencies
Water System Flushing including exercising blowoffs	Protect water quality, prevent water age	Maintain water quality within distribution system
Test and Repair Backflow Devices	State mandated; protect water quality	Potential Water contamination undetected
Service Fire Hydrants (including repair, replace, painting hydrants/curbs, set blue reflectors)	Necessary in order to provide for fire protection and insurance rating	Inoperable Fire Hydrants, risk to provide fire suppression during emergencies, impact to insurance rating
Potable Pump Station Maintenance	Ensure proper operation of all equipment, including pumps control, water quality monitoring equipment and alarms	System failures, inability to deliver water to customers, potential water contamination, water suppression unavailable or limited during fire event
Compliance and Regulatory Reporting	State and regional mandated requirements, protect water quality, proper training and certifications, documentation and reporting	Violations/fines from regulators, compromise health and safety of drinking water to consumers

## Appendix B

Table B-1 is a list of the water projects included in the City of Milpitas 16-21 Five Year Capital Improvement Program that are funded by the capital surcharge

<b>Table B-1 Water Capital Program</b>		
Project	Purpose	Potential Consequences
7076 Well Upgrade Project	Installs transfer switch, upgraded controls, and water quality treatment to Pinewood Well and completes Curtis Well	Transfer switch and controls improve well operations. Lack of water quality treatment reduces customer acceptance of Pinewood Well. Curtis Well is not a functional well
7100 Seismic Improvements	Install pipe to backbone standard which allows pipe to withstand ground movement	Significant ground movement will cause existing pipes to break
7115 Cathodic Protection Improvements	Measure and replenish sacrificial anodes that protect metallic pipe and fittings	Metallic pipes with consumed anodes are subject to failure due to corrosion
7121 Automated Water Meter Replacement	Replace aging infrastructure with new technology for meter reading	Aging meters tend to under-register; City collects less revenue; water loss increases
7125 BART Project	Upsize water pipe and install to backbone standard	Existing pipes have less capacity to move large volumes of water near proposed new water supply turnout. Work is nearly complete
7126 Water Conservation	Meet regulatory requirement to respond to complaints and enforce water conservation	Violations/fines from regulators
7127 Supervisory Control and Data Aquisition	Provides real-time water system data, such as tank levels, pump operational status, system pressure, and flow rates, to water operators. Operators use this information to identify operational problems, such as high velocities, low pressures, and pressure spikes, which are indicators of pipe breaks	Operators must visit facilities to determine cause of customer complaints, alarms, implement corrective actions, and to collect data
Minor Water Projects	Provide some funding for various minor projects, such as security enhancements	Delays to implement small projects
Recycled Water Pipeline Segment 1	Extends recycled water system to large irrigation users to convert to recycled water and save potable water for drinking	Large irrigation customers continue to use potable water. Eliminate reservoir or find another reservoir site
Water O&M Data Management	Integrates and expands the City's computerized water system databases	Continue with existing data bases; some are hard copy and difficult to search
Water System Replacement Study	Reviews pipe reaching its useful life to determine whether replacement is needed in the near future	Replace pipelines when they experinece catastrophic failures
Water valve replacement	Replace water valves which have a useful life of 20 years	Several water system valves are inoperable; delaying ability to shut down water lines and impacting greater number of customers

## Appendix C

### INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

The City Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

#### Initiative Measure Regarding the City of Milpitas Water Rates and Charges

This Measure would amend Milpitas Municipal Code, Title VIII, Chapter 1, Section VIII-1-6.13 with regard to water rates and charge based on quantity per hundred cubic feet or "HCF." On December 15, 2015, the City Council of the City of Milpitas adopted Ordinance No. 120.47 imposing new water rates and charges. Ordinance No. 120.47 amended Milpitas Municipal Code Section VIII-1-6.13 impose new quantity charges per HCF to include both a volumetric charge and a capital surcharge, as follows:

Customer Class	1/15/16	4/01/16	Capital Surcharge
Residential:	\$4.75	\$5.13	\$1.30
Commercial, Industrial, Institutional, Construction	\$4.75	\$5.13	\$1.30
Irrigation (potable)	\$4.75	\$5.13	\$1.30
City Accounts (potable)	\$3.75	\$3.79	NA
Ed Levin Park	\$2.42	\$2.78	NA
Recycled - Irrigation			
Recycled - Industrial/Dual			
Plumbed/Construction Water	\$2.42	\$2.78	NA
City Accounts (recycled)	\$2.42	\$2.78	NA

The Measure would impose a volumetric charge different from the city's volumetric charge and eliminate the capital surcharge. The legality of this proposed Measure is unknown at this time.

Quantity Charge per HCF		Charge
Residential: 0-10 HCF		\$3.35
Residential: 11-20 HCF		\$4.45
Residential: 21-30 HCF		\$6.00
Residential: >30 HCF		\$6.42
Commercial, Industrial, Institutional, Construction		\$6.42
Potable Irrigation		\$6.42
Ed Levin Park		\$3.79
City of Milpitas		\$6.43

The Measure would replace the City of Milpitas' new quantity charges per HCF with the following:  
 Keep the charge of \$4.00 for Recycle Irrigation, Recycled Industrial and Plumbed Construction at \$2.50, and Recycled City of Milpitas \$2.78

LAW OFFICES OF  
BEST, BEST & KRIEGER LLP  
2001 N. MAIN STREET, SUITE 390  
WALNUT CREEK, CA 94596

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I, Irene Islas, declare:

I am a citizen of the United States and employed in Contra Costa County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2001 N. Main Street, Suite 390, Walnut Creek, California 94596. On March 28, 2017, I served a copy of the within document(s):

**DEFENDANT CITY OF MILPITAS' WRITTEN STATEMENT FOR NEUTRAL EVALUATION**

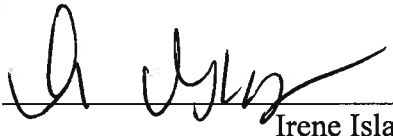
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Walnut Creek, California addressed as set forth below.
- by placing the document(s) listed above in a sealed \_\_\_\_\_ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a \_\_\_\_\_ agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Robert S. Means  
1421 Yellowstone Avenue  
Milpitas, CA 95035

Email: [Rob.Means@electric-bikes.com](mailto:Rob.Means@electric-bikes.com)

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 28, 2017, at Walnut Creek, California.

  
Irene Islas