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6 Plaintiff in propria persona  
7

8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SANTA CLARA

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13 ROBERT S. MEANS )

14 )

15 Plaintiff ) No. 16CV301785

16 )

17 vs. ) COMPLAINT

18 )

19 CITY OF MILPITAS, )

20 )

21 Defendants )

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25 This complaint is filed and these proceedings are instituted under section 411.10 of the Code of  
26 Civil Procedure (CCP) to redress injuries sustained by Plaintiff as a result of an action taken by  
27 Defendant City of Milpitas charged with responsibilities under Section 9215 of the Election Code  
28 (ELEC).

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30 The Plaintiff in this action is Robert S. Means, an individual and registered voter in the City of  
31 Milpitas, County of Santa Clara, who has been denied the opportunity to vote on a new set of water

1 rates. Furthermore, Mr. Means claims standing as one of the 2,421 signatories to the petition  
2 described below.

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4 The Defendant is City of Milpitas whose mailing address is 455 E. Calaveras Boulevard, Milpitas,  
5 CA 95035.

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7 As an action brought against a public officer, this court has jurisdiction under sections 393(b) and  
8 402(a)(1) of the Code of Civil Procedure.

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10 At the center of this controversy lies the responsibility of members of the Milpitas City Council  
11 under Section 9215 of the Election Code (ELEC). Specifically, Defendant City of Milpitas, violated  
12 ELEC 9215 by failing to put a certified petition to the voters.

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14 The petition arose in response to a City Council decision to change the water rate schedule for  
15 Milpitas residents and businesses. Three community activists (Shiqun/Jennifer Strohfus, Robert  
16 Marini, and Martin Skelson) drafted, circulated, and filed an initiative petition that proposed an  
17 alternative water rate schedule. In response, the Registrar of Voters (Shannon Bushey) issued a  
18 Certificate verifying that sufficient signatures were submitted. Council minutes of June 21, 2016  
19 offer further background.

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21 On January 27, 2016, the City received a Notice of Intent to Circulate a Petition and  
22 proposed initiative measure (“Measure”) from Milpitas residents/proponents. The Measure  
23 would repeal the most recent City Council-approved flat water rate schedule (effective  
24 January 1, 2016), and return the City to its prior tiered water rate schedule. By doing so, the  
25 Measure titled “Initiative Measure Regarding the City of Milpitas Water Rates and Charges”  
26 would also repeal the capital surcharge entirely.

27

28 In accordance with the California Elections Code, the City Attorney’s office prepared and  
29 sent a ballot title and summary of the Measure to the proponents. The proponents then had  
30 180 days to gather enough signatures to qualify the Measure for the ballot. On May 20,  
31 2016, the proponents submitted a signed petition to the City Clerk’s office.

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On June 2, 2016, the City Clerk (in conjunction with the Santa Clara Registrar of Voters) verified that the Petition contained 2,421 valid signatures to qualify the Measure for the ballot. The Elections Code normally requires the signatures of at least 10 percent of the City’s registered voters. However, because this concerns the repeal of a local property-related fee (water rates), California Proposition 218 applies and it significantly reduces the signature requirement - only five percent of Milpitas voters who voted for any gubernatorial candidate at the last election (November 4, 2014). The City Clerk confirmed that 13,386 Milpitas voters voted for a candidate at the last gubernatorial election, and therefore, only 669 valid signatures were required.

The City Clerk’s certificate of petition sufficiency is included in the agenda packet and staff is requesting that the City Council receive, file and accept the certificate as valid in all respects.

Since the Measure has obtained the required number of voter signatures, the City Council’s options under the Elections Code are as follows:

- a. Adopt the Measure as an ordinance, without alteration, or within 10 days thereafter;
- b. Submit the Measure to the voters at the next regular municipal election. A “regular election” is one where Councilmembers are elected so that would be November 8, 2016;
- c. Submit the Measure to the voters at a special election between 88 and 103 days after the Council calls the election (between September 17, 2016 and October 2, 2016); or
- d. Order staff to prepare a report analyzing the impact of the Measure on the City’s finances, ability to provide public services, etc. Staff must present the report not later than 30 days after it is ordered by the Council (at a July special City Council meeting). Once the 30 day report is presented to the City Council, the City Council should select one of options a. through c. above.

1 Certification from the City Clerk of Milpitas (Mary Lavelle) to the Milpitas City Council is posted  
2 on-line at [http://www.ci.milpitas.ca.gov/pdfs/council/2016/062116/item\\_16.pdf](http://www.ci.milpitas.ca.gov/pdfs/council/2016/062116/item_16.pdf)

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4 In accordance with Elections Code Section 9215(c), Council chose option “d” above which made  
5 necessary the July 18, 2016 Special Meeting of the City Council. Due to the absence of one Council  
6 member (Garry Barbadillo), an evenly split vote (2-2) again stalled the effort. However, it should be  
7 noted that the Minutes (<http://www.ci.milpitas.ca.gov/pdfs/council/2016/071816/Minutes.pdf> ,  
8 page 3) for that meeting say:

9 “Councilmember Grilli believed this proposal was not in compliance with Proposition 218,  
10 that the rates were not covering the known costs for the service. But the Elections Code said  
11 to put it on the ballot. She’d rather do that and then ask a judge for declaratory relief. “

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13 For the August 2, 2016 meeting of the City Council, the City Attorney had prepared the necessary  
14 ordinance wording to place the measure on the ballot as shown at  
15 [http://www.ci.milpitas.ca.gov/pdfs/council/2016/080216/item\\_05.pdf](http://www.ci.milpitas.ca.gov/pdfs/council/2016/080216/item_05.pdf)

16 Submission of Ordinance. The City Council hereby orders the Ordinance attached hereto as  
17 Exhibit “A” be submitted to the qualified voters of the City at the general municipal election  
18 on Tuesday, November 8, 2016. The Ordinance shall be adopted if the majority of the  
19 municipal election votes is “YES.” The proposed Ordinance shall be in the form attached  
20 hereto as Exhibit “A” to this Resolution and is incorporated by this reference as if fully set  
21 forth herein.

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23 Unfortunately, City staff gave the impression that a tiered water usage rate (as proposed in the  
24 petition) was illegal due to *Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano*. They  
25 did this by ignoring a full paragraph in the decision which specifically says that a tiered rate is legal  
26 if the people vote for it. The people must vote on it because a tiered rate is a tax, while a flat rate is a  
27 fee (under Prop. 218).

28  
29 During public input, Robert Means pointed out to the Council that the water rates proposed in the  
30 petition were not a standard water fee. Instead, they would more accurately be described as a tax.

1 See <https://www.youtube.com/watch?v=2SZKxTK3mUI> . That distinction was clearly made when  
2 he read this paragraph from the Capistrano court opinion:

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4 “The way Proposition 218 operates, water rates that exceed the cost of service operate as a  
5 tax, similar to the way a 'carbon tax' might be imposed on use of energy. But, we should  
6 emphasize: Just because such above-cost rates are a tax does not mean they cannot be  
7 imposed--they just have to be submitted to the relevant electorate and approved by the  
8 people in a vote. There is no reason, for example, why a water district or local government  
9 cannot, consistent with Proposition 218, seek the approval of the voters to impose a tax on  
10 water over a given level of usage--as we indicated earlier, that might be a good idea.”

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12 Seeking approval of the voters is exactly what proponents of a tiered water rate want, and what the  
13 subsequent Council decision prevented. Despite 1) the City Attorney’s preparation, 2) a public  
14 reading from the Capistrano decision, and 3) clear direction from the Elections Code,  
15 Councilmember Giordano made the motion to “note receipt and file the staff report from the City  
16 Attorney and vote to take no action at this time.” After a second by Councilmember Grilli and  
17 further discussion, Mayor Jose Esteves joined Giordano and Grilli in creating a new way of dealing  
18 with the matter that is not in accordance with the Elections Code. See page 10 of Council Minutes  
19 for Aug. 2, 2016 at [http://www.ci.milpitas.ca.gov/\\_pdfs/council/2016/080216/Minutes.pdf](http://www.ci.milpitas.ca.gov/_pdfs/council/2016/080216/Minutes.pdf)

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21 Denying access to the ballot of a certified petition by Milpitas City Council is not one of the options  
22 specified in the Elections Code, and is therefore a violation of the law. Such denial also violates the  
23 civil rights of the Plaintiff by denying to them the proper functioning of the process designed to  
24 enable people “to petition the Government for a redress of grievances.”

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26 WHEREFORE Plaintiff prays:

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28 A. That judgments be entered in favor of the Plaintiff and against Defendant City of Milpitas, and  
29 that the Court order an injunction that the certified petition be placed before the voters in a special  
30 election to be held in 2017. A special election accomplishes two desirable results: 1) it speeds the  
31 remedy of allowing the voters to vote on the matter, and 2) due to the extra cost of a special

1 election, it both imposes a financial penalty upon the City and sends a warning to others who might  
2 be tempted to impinge the rights of citizens that accountability will be enforced.

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4 B. That Plaintiff recover the costs of litigation including a reasonable fee for counsel.

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6 C. That Plaintiff have such other and further relief as the Court may deem necessary or proper under  
7 the circumstances.

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#### VERIFICATION

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16 I, Robert S. Means, am the Plaintiff in the above-entitled action. I have read the foregoing complaint  
17 and know the contents thereof. The same is true of my own knowledge, except as to those matters  
18 which are therein alleged on information and belief, and as to those matters, I believe it to be true.

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20 I declare under penalty of perjury that the foregoing is true and correct and that this declaration was  
21 executed on October 27, 2016 in the County of Santa Clara.

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Robert S. Means