RESOLUTION NO. 2019-033

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ATASCADERO, CALIFORNIA, ESTABLISHING PROCEDURES FOR THE SUBMISSION AND TABULATION OF PROTESTS IN CONNECTION WITH RATE HEARINGS CONDUCTED PURSUANT TO THE REQUIREMENTS OF PROPOSITION 218

WHEREAS, Article XIIIID, Section 6 of the California Constitution requires the City Council to consider written protests to certain proposed increases to rates (fees or charges) for utility services; and

WHEREAS, Article XIIIID, Section 6 of the California Constitution does not offer specific guidance as to who may submit protests, how written protests are to be submitted, or how the City is to tabulate protests; and

WHEREAS, the City Council anticipates that there will be potential future impositions of fees or increases in utility rates. Adopting the policies and procedures set forth in this Resolution will help implement the requirements set forth in Article XIIIID of the California Constitution and help ensure that the rights of those persons that are authorized to protest service charges are preserved; and

WHEREAS, the City Council wishes to provide the City Clerk the flexibility to begin counting of the protest earlier than the close of the Public Hearing, if warranted; and

WHEREAS, a fee protest proceeding is not an election, but the City Clerk will maintain the confidentiality of protests as provided below and will maintain the security and integrity of protests at all times; and

WHEREAS, adopting this Resolution is in the public interest for the reasons set forth above and as further stated within Article XIIIID, Proposition 218 and state legislation relating to the implementation of Proposition 218.

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Atascadero:

SECTION 1: Recitals. The above recitals are true and correct and are hereby incorporated by reference.

SECTION 2: Adoption.

A. The City Council adopts the procedures set forth in this Resolution for conducting all proceedings required by California Constitution Article XIIIID for utility fee (as defined below) increases. Where no specific procedures are imposed by Article XIIIID or the Proposition 218 Omnibus Implementation Act (Government Code §§ 53750, et seq.), the procedures set forth in this Resolution apply. This Resolution may be referred to as the Proposition 218 Protest Proceedings Resolution."
B. Upon adoption of this Resolution, any and all resolutions, or rules or regulations of the City of Atascadero in conflict with it, shall have no further force or effect to the extent of the conflict. This Resolution supersedes all prior resolutions of the City to the extent that such resolutions established guidelines for the submission and tabulation of protests in connection with rate hearings conducted by the City pursuant to Article XIIIID, Section 6 of the California Constitution.

SECTION 3: Definitions. Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this Resolution. Words and phrases not defined by this chapter will have the meaning set forth in California Constitution Article XIIIID or the Proposition 218 Omnibus Implementation Act.

A. "Act" means the Proposition 218 Omnibus Implementation Act found at Government Code §§ 53750, et seq.;

B. "Article 13D" means California Constitution Article XIIIID, Section 6.

C. "Manager" means the City Manager or designee.

D. “Parcel” means a San Luis Obispo County (County) Assessor's parcel the record owner or occupant of which is subject to the proposed rate that is the subject of the hearing.

E. "Property owner" or "parcel owner" has the same meaning set forth in Article 13D and means the person or persons whose name or names, appear on the County Assessor's latest equalized assessment roll as the owner of a parcel.

F. "Protest" means a written protest filed with the City Clerk in accordance with Article XIIIID, the Act, and this Resolution as described in Article XIIIID, Section 6(a)(2).

G. "Rate" means a fee or charge imposed for utility services provided to customers in accordance with the Atascadero Municipal Code ("AMC"), and other applicable law, by the City of Atascadero.

H. “Record customer” and “customer of record” mean the person or persons whose name or names appear on the City records as the person who is obligated to pay for utility services.

I. “Utility Services” means water, wasterwater or solid waste services.

SECTION 4. Administration of Proceedings. The City Manager, or designee, is authorized to implement this Resolution in a manner consistent with the California Constitution and other applicable law.

SECTION 5. Notice. Notice of a proposed rate increase is provided as follows:

A. In general, the City will identify the record property owner(s) of each parcel to which the rate would be applied from the latest equalized tax roll produced by San Luis Obispo County. The equalized tax roll is presumptive evidence of ownership of the land for rate protest purposes.
B. If more than one property owner has an interest in a parcel, all property owners (each property owner) must receive notice at the address for the property owner. All property owners and parties directly liable for paying the fee will be provided notice.

C. The notice must be sent by U.S. mail at least forty-five (45) days before the date set for the public hearing on the proposed rate.

D. The form of the notice of hearing will be on file with the City Clerk.

E. The notice provided by these procedures, in accordance with Article 13D, supersedes and is in lieu of notice required by any other statutes to levy or increase a rate.

F. The City Clerk, or designee, may certify the proper mailing of notices by an affidavit which constitutes conclusive proof of mailing in the absence of fraud.

G. The City will post the notice of proposed rates and public hearing at its official posting sites no less than 45 days before the public hearing upon the proposed rate.

H. Failure of any person to receive notice does not invalidate the proceedings.

SECTION 6. Protests against Rate Increases.

A. Each property owner or record customer of a parcel served by the City may submit a protest. This includes instances where a parcel is owned by more than one property owner or more than one name appears on the City’s records as the record customer for a parcel.

B. If the owner(s) of the property desire to designate a particular owner as the person authorized to cast the protest for such parcel, they must file with the City Clerk, at any time before the commencement of the public hearing or the date of the election, as the case may be, a written authorization of such designation, signed by all the owners of record, and acknowledged in the manner that deeds of real property are required to be acknowledged to entitle such deeds to be recorded in the San Luis Obispo County Recorder’s Office.

C. Executors, administrators, and guardians may cast a protest on behalf of the estate represented by them. If such representatives are shown on the latest assessment roll as paying taxes and assessments on behalf of the property owner(s), that fact establishes the right of such representative(s) to cast a protest. If such representatives are not shown on the latest assessment roll, the representatives may file with the City Clerk, at any time before the commencement of the public hearing, or the date of the election, as the case may be, certified copies of the written documentation establishing the legal representation.

D. The protest of any public or quasi-public corporation, private corporation, or unincorporated association may be signed by any person so authorized in writing by the board of directors or trustees or other managing body thereof. Such authorization must be filed with the City Clerk, at any time before the commencement of the public hearing or the date of the election,
E. The Manager is designated as the voting representative with respect to City-owned property.

F. In any case where the documentation provided to the City Clerk in is ambiguous or unclear, the City Attorney will determine whether the documentation is adequate for the purpose provided.

SECTION 7. Protest Submittal.

A. Any eligible property owner or record customer who is subject to the proposed rate that is the subject of the hearing who wants to protest the rate must submit a written protest to the City Clerk by:

1. Delivery to the City Clerk's Office at 6500 Palma Avenue, Atascadero, CA 93422 during published business hours,
2. Mail to the City Clerk at 6500 Palma Avenue, Atascadero, CA 93422, or
3. Personally submitting to the City Clerk at the public hearing for the rate increase.

B. The protest must be in writing and must be submitted before the close of the public testimony portion of the public hearing for the rate increase.

C. Only protests that are properly submitted and signed by an eligible property owner or record customer will be counted as a valid protest. Only one protest shall be counted for each parcel of property regardless of the number of protests filed by property owners and/or record customers for the parcel.

D. If more than one protest is delivered, mailed or submitted in one envelope or at one time, then at least one of the protests contained in that envelope or concurrently delivered, mailed or submitted shall be signed by the person delivering, mailing or submitting those protests.

E. The City Clerk must stamp each written protest the date and time it is filed with the City Clerk for purposes of establishing whether the protest was filed before the close of the public testimony portion of the public hearing. Each protest must be received by the end of the public hearing, including those mailed to the City. No postmarks will be accepted for proof of meeting the submission deadline. No protest received after the close of the public testimony portion of the public hearing will be counted in determining the amount of protest, but the Council may, in its discretion, consider such protests in making its decision. Written protests may be withdrawn in writing at any time before the conclusion of the public testimony portion of the public hearing.

F. Because an original, wet signature is required, emailed, faxed and photocopied protests shall not be counted.

G. Although oral comments at the public hearing will not qualify as a formal protest, unless accompanied by a written protest, the City Council welcomes input from the community during the public hearing on the proposed rate.
SECTION 8: Protest Requirements.

A. A protest must be submitted in writing and must include:

1. A statement it is a protest against the proposed rate that is the subject of the hearing.
2. Name of the property owner or record customer who is submitting the protest.
3. Identification of assessor's parcel number and/or street address of the parcel with respect to which the protest is made.
4. Original, wet signature and legibly printed name of the property owner or record customer who is submitting the protest.
5. Date the protest was signed.
6. A certification, by the named property owner affirming the contents of the protest are true and correct.

B. To be sure all pertinent information is provided and considered prior to a protest being filed, no protest shall be signed before the City has issued the formal notice that commences the 45-day protest period.

C. A protest shall not be counted if any of the required elements of this Section are omitted.

D. Only one protest will be counted per parcel as provided by Government Code Section 53755(b).

SECTION 9: Protest Withdrawal or Change.

A. Withdrawal of Protest. Any person who submits a protest may withdraw it by submitting to the City Clerk a written request that the protest be withdrawn. The withdrawal of a protest shall contain sufficient information to identify the affected parcel and the name of the property owner or record customer who submitted both the protest and the request it be withdrawn.

B. Change to Protest. Any person who submits a protest may change it by submitting to the City Clerk a written request the protest be changed, and then submit a new written protest that includes all the information required by this Resolution with the changes desired. The changed protest shall contain sufficient information to identify the affected parcel and the name of the property owner or record customer who submitted both the protest and the request it be changed.


A. At the time and place fixed for the hearing, or at any time to which the hearing is adjourned, the Council must:

1. Hear all persons interested in the matter of the proposed fee increase;
2. Hear all objections, protests or other written communications from any owner of property subject to the proposed utility fee; and
3. Take and receive oral and documentary evidence pertaining to the proposed fee increase.
B. The hearing may be continued from time to time, as the Council determines necessary to complete its consideration of the proposed fee increase.

C. If the Council determines, after the close of the public testimony portion of the public hearing, that votes were received from property owners representing a majority of the parcels subject to the proposed rate increase, the Council shall adopt a resolution setting forth the results of the protest process and the proceedings shall then be closed and the rate cannot be approved by the City Council.

D. If the Council determines at the close of the public testimony portion of the public hearing that written protests were not received from property owners representing a majority of the parcels subject to the proposed rate, the Council shall adopt a resolution setting forth the results of the protest process and then may by resolution (in accordance with legal requirements) change the rate so long as it is in an amount that does not exceed the amount and methodology set forth in the public notices sent to the property owners.

SECTION 11: City Clerk.

A. The City Clerk may begin counting protests before the close of the public hearing without further Council Action, if warranted. The Council may direct that the protests not be opened in the event that (i) there have not been enough unopened protests received to constitute a majority protest, (ii) there have been substantially more protests received than the number that would constitute a majority protest; or (iii) the Council determines that it does not wish to proceed to implement with the proposed fee increase.

B. The City Clerk shall not accept as valid any protest if she/he determines any of the following is true:

1. The protest does not conform to any of the requirements of this Resolution such as:
   a. The protest does not state its opposition to the proposed change(s).
   b. The protest does not name the property owner or record customer of the parcel identified in the protest as of the date of the public hearing.
   c. The protest does not identify a parcel served by the City that is subject to the proposed change.

2. The protest does not bear an original, wet signature of the named property owner or record customer with respect to the parcel identified on the protest. Whether a signature is valid shall be entrusted to the reasonable judgment of the City Clerk, who may consult signatures on file with County Officials or other appropriate public agencies.

3. The protest was altered in a way that raises a fair question as to whether the protest actually expresses the intent of a record owner or a customer of record to protest the rates.

4. The protest was not received by the City Clerk before the close of the public hearing on the proposed rates.

5. A request to withdraw or change the protest, pursuant to Section 9 above, was received prior to the close of the public hearing on the proposed rates.

C. The City Clerk's decision a protest is not valid shall constitute a final action of the City and shall not be subject to any internal appeal.
SECTION 12: Majority Protest.

A. A majority protest exists if written protests that comply with the requirements herein are timely submitted, and not withdrawn or changed, by the property owners of a majority (50% plus one) of the parcels subject to the proposed charge.

B. While the City may inform the public of the number of parcels served by the City when a notice of proposed rates is mailed, the number of parcels served by the City on the date of the hearing shall control in determining whether a majority protest exists.

SECTION 13: Tabulation of Protests. At the conclusion of the public hearing, the City Clerk shall tabulate all valid protests received, including those received prior to the conclusion of the public hearing, and shall report the result to the City Council. If the number of protests received is insufficient to constitute a majority protest, then the City Clerk may determine the absence of a majority protest without validating the protests received, but may instead deem them all valid without further examination. Further, if the number of protests received is obviously substantially fewer than the number required to constitute a majority protest, then the City Clerk may determine the absence of a majority protest without opening the envelopes which contain the protests.

SECTION 14: Report of Tabulation. If, at the conclusion of the public hearing, the City Clerk determines she/he will require additional time to validate and tabulate the protests because she/he has not made the determination described in Section 13, above, then she/he shall so advise the City Council, which may continue the related portion of the meeting to allow the validation and tabulation to be completed on another day or days. If so, then the City Council shall declare the time and place of tabulation, which shall be conducted in a place where interested members of the public may observe the tabulation, and the City Council shall declare the time at which the meeting shall be continued to receive and act on the tabulation report of the City Clerk.

SECTION 15. Environmental Review. This Resolution is exempt from review under the California Environmental Quality Act (California Public Resources Code §§ 21000, et seq., "CEQA") and CEQA regulations (14 California Code of Regulations §§ 15000, et seq.) because it establishes rules and procedures to implement government funding mechanisms; does not involve any commitment to a specific project which could result in a potentially significant physical impact on the environment; and constitutes an organizational or administrative activity that will not result in direct or indirect physical changes in the environment. Accordingly, this Resolution does not constitute a "project" that requires environmental review (see specifically 14 CCR § 15378(b)(4-5)).

SECTION 16. Effect of Invalidation. If any part of this Resolution or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Resolution are severable.
PASSED AND ADOPTED at a regular meeting of the City Council held on the 14th day of May, 2019.

On motion by Council Member Funk and seconded by Mayor Pro Tem Bourbeau, the foregoing Resolution is hereby adopted in its entirety on the following roll call vote:

AYES: Council Members Bourbeau, Fonzi, Funk, Newsom and Mayor Moreno
NOES: None
ABSENT: None
ABSTAIN: None

CITY OF ATASCADERO

Heather Moreno, Mayor

ATTEST:

Lara K. Christensen, City Clerk

APPROVED AS TO FORM:

Brian A. Pierik, City Attorney