



CITY OF WHEATLAND

CITY COUNCIL MEETING STAFF REPORT

January 8, 2019

SUBJECT: Council discussion and consideration of adoption of Resolution No. 02-19 establishing Proposition 218 Protest Procedures

PREPARED BY: Jim Goodwin, City Manager

Recommendation

Staff recommends Council adopt Resolution No. 02-19 establishing Proposition 218 Protest Procedures

Background/Discussion

Article XIID, Section 6 of the California Constitution, established by Proposition 218 in 1996, requires the City to allow for a written protest of any proposed increase of water and/or sewer utility rates. However, the constitutional provision does not offer specific guidance as to who may submit protests, how protests are to be submitted, or how the city is to tabulate the protests.

Resolution No. 02-19 establishes local procedures for the submission and tabulation of written protests. These procedures have been reviewed by the City Attorney and are consistent with the intent of the constitutional provisions.

Alternatives

Failure to adopt procedures would leave the result of a written protest of a water or sewer rate action vulnerable to legal challenge.

Fiscal Impact

No fiscal impact.

Attachments

1. Resolution No. 02-19

RESOLUTION NO. 02-19

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
WHEATLAND ADOPTING GUIDELINES FOR THE SUBMISSION
AND TABULATION OF PROTESTS IN CONNECTION WITH RATE
HEARINGS CONDUCTED PURSUANT TO ARTICLE XIID,
SECTION 6 OF THE CALIFORNIA CONSTITUTION**

**BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY
OF WHEATLAND AS FOLLOWS:**

WHEREAS, Article XIID, Section 6 of the California Constitution requires the Council to consider written protests to certain proposed increases to utility rates; and

WHEREAS, this constitutional provision 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 the protests.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheatland that the City Council hereby adopts the guidelines for the submission and tabulation of protests attached hereto as Exhibit "A" and incorporated herein by reference.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Wheatland at a regular meeting held on the ____ day of _____ 2019.

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

Joseph Henderson, Mayor

ATTEST:

Lisa J. Thomason, City Clerk

Exhibit A

CITY OF WHEATLAND

GUIDELINES FOR THE SUBMISSION AND TABULATION OF PROTESTS

When notice of a public hearing with respect to a utility or other rate increase has been given by the City pursuant to Article XIID, Section 6 of the California Constitution, the following shall apply:

Submission of Protests

1. Any owner of property served by the water or sewer utility, or a tenant (who is the water and/or sewer utility customer responsible for payment of the account), may submit a protest on any original written document to the City Clerk, either by mail or delivery to the City Clerk's Office, 111 C Street, Wheatland CA 95692 or by submitting the protest at the public hearing. Protests must be received before the end of the public hearing. No protests postmarked the day of the public hearing will be accepted.
2. Each protest must identify the affected property (by assessor's parcel number or street address) and include the original signature of the record property owner, trustee or authorized agent of the record property owner, or tenant (who is the water and/or sewer utility customer responsible for payment of the account) and date of signature. The protest must identify if the signature is from the tenant, trustee of the property owner, or property owner. Email or facsimile protests cannot be accepted. 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 fees.
3. A protest by a property owner that is a trust must be signed by the trustee and identified as such with the signature (i.e., John Smith, Trustee for Smith Family Trust). Protests by property owners that are corporations, partnerships, or similar entities must be signed by a person authorized as agent to execute documents on behalf of the property owner.
4. If a parcel served by the City is owned by one or more record owners or has more than one tenant (who are each responsible for payment of the water and/or sewer utility account), each owner or tenant may submit a protest, but only one protest will be counted per parcel and any one protest submitted in accordance with these rules will be sufficient to count as a protest for that property.
5. In order to be valid, a protest must bear its date, designation of parcel address or parcel number, printed name, and original signature of the record owner, trustee or agent of the record owner, or tenant (who is the water and/or sewer utility customer responsible for payment of the account) with respect to the property identified on the protest. Except as set forth in paragraph 3, above, protests not bearing the original signature of a record owner, trustee or agent of the record owner, or tenant (who is the water and/or sewer utility customer responsible for payment of the account) shall not be counted. Protests which have been altered by someone other than the person who signed them shall not be

counted.

6. Any person who submits a protest may withdraw it by submitting to the City Clerk a dated written and signed 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 record owner, trustee or agent of the record owner, or tenant who submitted both the protest and the request that it be withdrawn.
7. A fee protest proceeding is not an election.
8. Records shall be maintained for three years and then may be destroyed. Records received by the City under these guidelines are public records and are subject to disclosure under the Public Records Act.

Tabulation of Protests

1. The City Clerk, or designee, shall determine the validity of all protests and requests for withdrawal of protests. The City Clerk shall not accept as valid any protest if/he determines that any of the following conditions exist:
 - a. The protest does not identify a property that will be subject to the proposed fees.
 - b. The protest does not bear an original signature of one of the following: (1) a record owner of the parcel identified on the protest, (2) a trustee or agent of a record owner of the parcel identified on the protest, or (3) a tenant (who is the water and/or sewer utility customer responsible for payment of the account) of that parcel.
 - c. The protest does not state its opposition to the proposed fees or is illegible.
 - d. The protest has been altered in any way by someone other than the person who signed it.
 - e. The protest was not received by the City Clerk before the close of the public hearing on the proposed fees.
 - f. A request to withdraw the protest was received by the City Clerk prior to the close of the public hearing on the proposed fees.
 - g. The protest is dated prior to the date of mailing of the notices of hearing on the proposed fees.
2. The City Clerk's decision that a protest is not valid shall constitute a final action of the City and shall not be subject to any internal appeal.
3. A majority protest exists if written protests are timely submitted and not withdrawn for a majority (50.0% plus one) of the properties (parcels) subject to the proposed fee.
4. At the conclusion of the public hearing, the City Clerk shall count all protests received, including those received during the public hearing, and shall report the

results to the City Council upon completion. If review of the protests received demonstrates that the number received is manifestly less than one-half of the parcels served by the City with respect to the fee that is the subject of the protest, then the City Clerk may advise the Council of the absence of a majority protest without determining the validity of all protests.

5. If, at the conclusion of the public hearing, the Clerk determines that she will require additional time to count the protests, she shall so advise the City Council, which may adjourn or continue the meeting to allow the count to be completed on another day or days. If so, the City Council shall declare the time and place of the count, and the Council shall declare the time at which its meeting shall be resumed to receive and act on the report of the Clerk.