



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of City Council
FROM: Daniel Gho, Public Works Superintendent
MEETING DATE: July 15, 2015
SUBJECT: Proposed Sewer Rate Increase
CEQA: This action does not constitute a project under California Environmental Quality Act (CEQA) Guidelines Section 15378 (b)(2).

RECOMMENDATION

1. Consider all protests pursuant to Proposition 218 requirements, and determine that less than 3,051 valid protests were received.
2. Approve a Resolution to adopt the 10-year schedule of sewer rate increases consistent with Proposition 218.
3. Increase Sewer Fund (Fund 76) revenues by \$815,500 for Fiscal Year 2015/16.

BACKGROUND

The City provides sewer collection services for residences and commercial businesses over an area of approximately 1,414 acres serving approximately 15,040 residents, 750 businesses, and innumerable tourists. The City's collection and conveyance system comprises approximately 57 miles of gravity pipelines, which vary in diameter from 4-inch to 18-inch, and one mile of force mains. Access to the sewers is provided by 904 manholes and a large number of other structures, including clean outs and inspection holes. There are nine sewer lift stations located in the City's service area, seven owned by the City, and two owned by Monterey Regional Water Pollution Control Agency (MRWPCA). MRWPCA operates and maintains all nine lift stations. Collected sewage is conveyed via an interceptor pipeline to MRWPCA's regional sewer treatment plant located north of the City of Marina.

The City's sewer collection service is a self-sufficient enterprise fund; revenues and expenditures are segregated from other City governmental activities, and tracked and reported separately. Revenues are generated from sewer rates, which fund the total cost of service on an annual basis. These rates are included in the bi-monthly bills issued by the Monterey Regional Pollution Control Agency (PCA). There are two portions of each bill: the portion that goes to the City to maintain and improve the collection system, and a second portion that goes to the PCA in order to treat the effluent to federally mandated standards. The current (FY 2014-15) City sewer rate equals 173% of the MRWPCA rate. For residential users, this equates to \$25.69 per month.

Until approximately one decade ago, the sewer system enterprise was underfunded. The system design had numerous flaws, maintenance was inadequate, and the system was failing to meet acceptable standards. Blockages and overflows were common; many put sewage on the streets, which then allowed sewage to flow into storm drains and the Bay. The City signed a consent decree and committed to take the necessary steps to upgrade the system and maintain it in a fully professional manner. The City embarked on an aggressive capital improvement program and upgraded maintenance standards. These efforts necessarily required increases in sewer fees.

Within the last two years, two major advancements have occurred. First, the City successfully completed the ten years of compliance with the consent decree. The City has committed to continuing to meet or exceed the standards accomplished as a result of those ten years of efforts. And, second, the City contracted with a highly respected outside engineering firm, the Wallace Group based in San Luis Obispo, to conduct a full assessment of the current system and practices, recommend all needed maintenance efforts and asset replacements or upgrades over the next ten years, and determine the costs that would be incurred over that ten-year period in order to ensure the system continues to operate consistent with best practices.

In collaboration with staff, the Wagner Group presented its results to the Council; after considerable study, the Council accepted the recommendations and ten-year plan. Costs for necessary capital projects during the ten years of the Master Plan total \$13,937,000. Current rates, if not increased, would provide insufficient revenue for necessary operations, maintenance and capital improvements, and thus the City would not be able to fund corrections to all identified system deficiencies.

The Wagner Group then sub-contracted with David Taussig and Associates to conduct a full financial analysis and develop alternative funding plans for the ten years. The financial analysis concluded that two rate options appeared most favorable; one that would increase rates steadily throughout the ten years in order to pay for all necessary activities, and one that would increase rates by a slightly higher percentage in the early years in order to fund some large projects, and then increase rates more slowly in the outyears. This second option, which was approved by Council, would actually require lower rates at the end of the ten years than the other option. (The Sewer System Master Plan and the financial plan and rate study have been included in several prior Council packets and are available at the Library or on the City’s website.)

The second option, as presented to City Council and adopted by the Council at its December 17, 2014 meeting, projects the following rates per equivalent dwelling unit (EDU):

Financial Model A
10 Year City Rates Shown Bimonthly

	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023	2023-2024	2024-2025
Rate per month per EDU	\$53.96	\$56.64	\$58.12	\$59.64	\$61.20	\$62.82	\$64.46	\$66.14	\$67.88	\$69.66

Annual Change in Rate	5.00%	5.00%	2.62%	2.62%	2.62%	2.62%	2.62%	2.62%	2.62%	2.62%
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The rate structure adopted by Council has a second advantage: it for the first time sets the Pacific Grove portion of the sewer bills independently of the PCA's portion. The prior approach, in which the City's rates were set as a percentage of the PCA's rates, led to problems. The most severe problem occurred over the last few years, when the City's portion of the bill was increased without Council authorization, leading to the collection of approximately \$600,000 over and above what was needed. Those additional collections have been accrued in the City's sewer enterprise fund.

The Council has examined two options for dealing with that collection overage. The first option would return the overage to the owners or renters of the 6,000+ parcels in the City who paid the rates. This would amount to an average of approximately \$100 per parcel, and would cost the sewer fund approximately \$5 per parcel to administer. The second option, which the Council selected after both a legal and financial analysis, would commit those funds to the capital projects needed to upgrade the system during the early years of the ten-year plan, thereby reducing the rate increases otherwise necessary.

Questions have been posed surrounding the MRWPCA practice whereby sewer surcharges were collected on behalf of the City of Pacific Grove as a party to the MRWPCA joint powers agreement. An inquiry was made as to whether collection of the surcharge may have violated Proposition 218. The City and MRWPCA jointly retained special counsel, Michael G. Colantuono, to address this concern. In an opinion previously distributed to Council, Mr. Colantuono advised the previously collected surcharge did not violate Proposition 218. Although collected surcharges exceeded costs of service, Proposition 218 does not require rates to perfectly correspond to costs. It does require estimates of costs and revenues to be prospectively reasonable. Also, surplus collections must redound to the benefit of ratepayers. Rates proposed for adoption dedicate all collected surplus for sewer system improvements, and thus are incorporated into the rates and expenditure plan supporting the proposed rates.

As there seems to be some confusion on these last points, they bear emphasizing:

- ❖ The collection overage has been retained and invested appropriately.
- ❖ The proposed 10-year rate schedule is based, in part, on the collection and retention of those funds.
- ❖ The overage will be used to fund necessary capital improvements already approved to occur at the beginning of the ten-year planning period.
- ❖ As a result of the retention of the overage, the rates in the proposed rate schedule are lower than they otherwise would be.
- ❖ Paying the overage back would cost the ratepayers a portion of the overage, and the rates would then have to be increased by an equivalent amount in the early years of the plan in order to fund the same system improvements.
- ❖ The total cost to ratepayers is no greater as a result of the past overage, since future payments will be less, than if the overage had never occurred.

The Council has already expressed its regrets that the overage occurred, and has adopted a course of action that mitigates all impacts and prevents any future overages:

- ❖ Rates will now be set by the Council based on the financial analysis, not as a percentage of the PCA's rates.
- ❖ The same 10-year pro forma prepared by David Taussig & Associates will be updated each year and presented to Council, to allow the Council to track revenues and expenditures, in comparison with the progress of completed, underway, and planned capital upgrades, as well as ongoing maintenance.

There is no advantage to returning the overage and collecting it again.

A separate concern has also been voiced whether proposed charges proposed for unoccupied structures might constitute a "standby charge" or a "ready to serve charge." A memo from the City Attorney (Attachment 3) clarifies that proposed charges for unoccupied structures do not constitute standby charges because the charges reflect costs of operating and maintaining sewer services for properties actively connected to the sewer system. As such, these charges constitute permissible base service charges, and are allowable under Proposition 218.

DISCUSSION

At the March 4, 2015 City Council Meeting, the Council approved City staff to proceed with the procedural requirements of the Proposition 218 Process (Cal. Const., art. XIII D, § 6, subds. (b)(1), (3)). Specific procedures are mandated by Proposition 218, as outlined below.

1. Notice: The City must provide notice of the proposed rate increase to affected property owners or customers. The notice must specify the basis of the fee, the reason for the fee, and the date/time/location of a public protest hearing at which the proposed rate will be considered/adopted (Attachment 2).
2. Public Hearing: The City must hold a public protest hearing prior to adopting the proposed rate increase. The public hearing must be held not less than 45 days after the required notices are mailed, and was scheduled for July 15, 2015 at 6:00 pm in the City Council Chambers.
3. Majority Protest: At the public hearing, the proposed rate increase is subject to majority protest. If more than 50% of the affected property owners submit written protests against the proposed rate increase, the increase cannot be adopted. 6,100 parcels of property exist whose owners are eligible to submit a protest. A majority protest will exist if 3,051 protests are received from eligible property owners.

All written protests must be received by the close of public comment period during the public hearing. Protests will be tabulated by the conclusion of the public hearing, including those received prior to the close of public comment during the hearing, and the results will be reported to City Council. If the total number of protests received is clearly insufficient to constitute a majority protest, the City Clerk may determine the absence of a majority protest without validating the protests received.

If at the conclusion of the public hearing, the City Clerk determines additional time is needed to tabulate protests, the City Council shall continue the public hearing to allow tabulation to be completed on another day or days. If so, the City Council shall declare the tabulation will occur the day preceding the continued public hearing. The tabulation shall be conducted in a place

where interested members of the public may observe the tabulation. Thereafter, the City Council shall receive the results of the tabulation at the continued hearing, which may occur either at the next scheduled City Council Meeting, or at a special council meeting.

Since meeting revenue requirements projected over the next ten years requires increases to sewer rates, the Council directed staff to initiate the Proposition 218 process. Staff formally initiated the Proposition 218 process on May 22, 2015, by mailing notification to those persons on the MRWPCA billing mailing list.

At the May 6, 2015 Council meeting, City staff had identified, based on Wallace Group data, that 6,168 parcels were affected by the protest hearing. Staff has independently tabulated the number of parcels, and has determined that a more conservative number (6,100) should be used for protest calculation purposes. The City chose to use the MRWPCA list of service connections for the purpose of mailed notice as it represented the most accurate and complete list based on the 5,607 accounts in the current MRWPCA's database. In addition, the City published notice of public hearing in the Monterey Herald, posting the ad in legal and public notices section on June 26, 2015. Notice of the protest hearing has also been posted on the City Website, under the environmental programs page, and hard copies of the notification of public hearing have been available in the City Clerk's office and also at the Pacific Grove Municipal Library. Private parties also mailed and published independent notices of the protest hearing.

To qualify as a protest on the proposed Sewer Rate increase, each protest must contain the following information: 1) identification of the property by address or assessor parcel number; 2) be submitted by the property owner of record, 3) include an original signature, and 4) provide an unequivocal statement that submission is a protest against the Proposed Rate Increase. Written protests cannot be submitted by email or fax. Verbal protests cannot be counted. If the person signing the protest was not the owner of the property as of the County of Monterey's last tax roll, the protest must include written confirmation the person signing the protest presently owns the property.

A majority protest occurs when valid written and signed protests are timely received from a majority (50%, plus 1) of the owners of real property. Protests by non-owners (e.g., system rate payers or tenants lacking property ownership) do not qualify as protests under the Proposition 218 process. The number of qualified protests to negate the proposed sewer rate increase is 3,051.

FISCAL IMPACT

A majority protest would have significant fiscal impacts to the Sewer Fund. Most likely, the Council would need to commission a second financial analysis and examination of options. The entire Prop. 218 process would need to be repeated, based on whatever revised option the Council adopted. Needed sewer system improvements and repairs would likely be delayed, risking additional maintenance costs, overflows, and the attendant costs of responding to and remediating those overflows.

The Sewer Fund is an Enterprise Fund separate from the General Fund. Neither adoption of the proposed rate schedule nor a majority protest would be likely to have a direct impact on the

General Fund (or any City fund other than the Sewer Fund). Approval of the proposed rate structure would increase Sewer Fund (Fund 76) revenues for FY 2015-16 by \$815,500 from \$2,100,000 to \$2,915,500. Proposed and approved projects would also proceed; a majority protest would necessitate delaying or cancelling at least some of those projects.

ATTACHMENTS

1. Resolution
2. Notice of Public Hearing
3. City Attorney Memo re Standby Charges
4. Master Plan Link

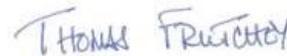
<http://www.cityofpacificgrove.org/modules/showdocument.aspx?documentid=11926>

RESPECTFULLY SUBMITTED:



Daniel Gho
Public Works Superintendent

REVIEWED BY:



Thomas Frutchey
City Manager

RESOLUTION NO. 15-xxx
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
ADOPTING A 10 YEAR SEWER RATE INCREASE THAT HAD BEEN INITIATED
THROUGHT THE PROPOSITION 218 PROCESS

FINDINGS

1. The City of Pacific Grove owns and operates the sewer collection system that consists of approximately 58 miles of pipelines, 900 manholes, and seven pump stations.
2. The City of Pacific Grove's Public Works Department is responsible for maintenance and operation of the sanitary sewer collection system.
3. The City Council received the draft Sewer Collection System Master Plan on May 21, 2014, noting 9 projects that need to be completed over a ten year span to eliminate deficiencies, capacity issues, age and slope. Projects proposed to be undertaken are fully described in the Sewer Collection System Master Plan, adopted by the City Council
4. Associated with the Master Plan are proposed increases in the City's Sewer Collection System User Fees (the "Sewer Rates"). Sewer Rate revenues are used to pay for sewer collection system operations and maintenance and capital improvement projects required to meet federal, state, and City standards.
5. Sewer Rates charged by the City are changing as a result of changes in the cost allocation methodology and the City's need to upgrade facilities.
6. Change in Methodology: Historically, sewer rates charged by the City have been based on the charges for collection and treatment by the Monterey Regional Water Pollution Control Agency. Treatment costs vary, in part, based on the nature of the flow. Treating wastewater from an industrial plant, for example, is more expensive than treating residential waste water. The City believes that it is more appropriate to base City rates, which cover costs for collection, but not treatment, on flow volume only. Therefore, the City has developed an updated cost allocation methodology, based on average sewage flow for each land use class.
7. Upgraded Facilities: The Sewer Collection System Master Plan recommends the City's sewer collection facilities be upgraded to meet current federal, state, and City standards. Capital improvement projects address deficiencies in the existing sewer collection system. In addition to capital projects, the Sewer Collection System Master Plan identifies costs to operate and maintain the City's sewer collection system efficiently and responsibly.
8. Questions have previously been posed surrounding the MRWPCA practice whereby sewer surcharges were collected on behalf of the City of Pacific Grove as a party to the MRWPCA joint powers agreement. An inquiry was made as to whether collection of the surcharge may have violated Proposition 218. The City and MRWPCA jointly retained special counsel, Michael G. Colantuono, to address this concern. In an opinion distributed to Council, Mr. Colantuono advised the previously collected surcharge did not violate Proposition 218.

Although collected surcharges exceeded costs of service, Proposition 218 does not require rates to perfectly correspond to costs. It does require estimates of costs and revenues to be prospectively reasonable. Also, surplus collections must redound to the benefit of ratepayers. Rates proposed for adoption dedicate all collected surplus for sewer system improvements, and thus are incorporated into the rates and expenditure plan supporting the proposed rates.

9. Article XIII D, Section 6 of the California Constitution (Proposition 218), requires notification be provided customers and/or owners of identified parcels affected by any increases in Sewer Rates proposed for adoption. The City used the MRWPCA list of service connections to mail notice to sewer customers. In addition, the City published notice in the Monterey Herald legal and public notices section on June 26, 2015. Notice was also posted on the City Website, and hard copies have been posted at City Hall and the Pacific Grove Municipal Library. Private parties also mailed and published independent notices of the protest hearing.
10. The City Council, on March 4, 2015, authorized City Staff to proceed with the procedural requirements of the Proposition 218 Process.
11. At the May 6, 2015 Council meeting, City staff had identified, based on Wallace Group data, that 6,168 parcels were affected by the protest hearing. Staff has independently tabulated the number of parcels, and determined that a more conservative number (6,100) should be used for protest calculation purposes.
12. To qualify as a protest on the proposed Sewer Rate increase, each protest was required to contain the following information: 1) identification of the property by address or assessor parcel number; 2) be submitted by the property owner of record, 3) include an original signature, and 4) provide an unequivocal statement that submission is a protest against the Proposed Rate Increase. Written protests submitted by email or fax, and verbal protests shall not be counted. If the person signing the protest was not the owner of the property as of the County of Monterey's last tax roll, the protest must include written confirmation the person signing the protest presently owns the property. Only one protest per parcel, submitted by the owner of the parcel, was counted.
13. A majority protest required valid, timely written and signed protests received from a majority (50%, plus 1) of the owners of real property. Protests by non-owners (e.g., system rate payers or tenants lacking property ownership) did not qualify as protests. The number of qualified protests (a majority protest) to negate the proposed sewer rate increase was 3,051. If a majority of affected property owners had submitted valid, written protests against the proposed rate increase, the increase cannot be adopted.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE:

1. The Council determines that each of the Findings set forth above is true and correct, and by this reference incorporates those Findings as an integral part of this Resolution.

2. The City had provided legal and effective notice to all owners of parcels within the City of Pacific Grove of the proposed rate increase, and the City held a Public Hearing on the proposed rate increase not less than 45 days after required notice was given.
3. Any record owner subject to proposed sewer charges had until the close of public comment during the Public Hearing to submit a written protest.
4. The number of qualified protests (a majority protest) to negate the proposed sewer rate increase was 3,051. The Council determines that fewer than 3050 protests were received.
5. A majority protest did not occur.
6. Council approves and adopts the 10 year sewer rate increases described and referenced in the Proposition 218 process, based on Financial Model A, as amended and referenced in the Agenda Report presented to Council on July 15, 2015. Rates shall take effect on August 1, 2015.
7. This Resolution shall take immediate effect following passage and adoption thereof.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE
this 15 day of July, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

WILLIAM KAMPE, Mayor

ATTEST:

Sandra Kandell, Deputy City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney

Notice of Public Hearing

In connection with the proposed sewer collection system rate increase

Public Hearing: July 15, 2015 at 6:00 pm

City of Pacific Grove Pacific Grove City Council Chambers
300 Forest Avenue
Pacific Grove, CA 93950

The City of Pacific Grove's Public Works Department Superintendent ("City") has filed with the State Clearinghouse a Sewer Collection System Master Plan that describes the capital improvement program. Associated with the Master Plan are proposed increases in the City's Sewer Collection System User Fees (the "Sewer Rates"). Sewer Rate revenues are used to pay for sewer collection system operations and maintenance and capital improvement projects required to meet federal, state, and City standards. The projects to be undertaken are more fully described in the Sewer Collection System Master Plan, adopted by the City Council on May 21, 2014. The proposed Sewer Rates per month are shown on Exhibit A. As indicated on Exhibit A the proposed Sewer Rates will go into effect on August 1, 2015 and increase on July 1 every year through June 30, 2025.

Public Notice Requirement to Property Owners

Article XIII D, Section 6 of the California Constitution (Proposition 218), requires a notification be sent to the sewer customer and/or owner of each identified parcel, upon which any increases in Sewer Rates are being proposed for adoption by the City Council, at least 45 days in advance of the public hearing.

As customer of record and/or owner of real property within the City limits subject to the Sewer Rate, you are hereby advised that at 6:00 p.m. on July 15, 2015 a public hearing will be held by the City Council Chambers at the City of Pacific Grove's City Hall located at 300 Forest Avenue, Pacific Grove, CA 93950 to consider adoption of a resolution modifying the Sewer Rates for residential and non-residential customers. At the conclusion of the public hearing, the City Council shall make its determination on the amount of the Sewer Rate.

To Protest the Proposed Rate Increases, You Must Submit a Written Letter of Protest

If you oppose the proposed Sewer Rate increase, your protest must be submitted in writing to be considered, even if you plan to attend the public hearing. Your written protest must be received by the City prior to the close of the public comment period at the July 15, 2015 public hearing. You have the right to withdraw a written protest that you previously submitted prior to the conclusion of the public hearing.

You may use the written protest form included as Exhibit B if you wish to protest the proposed Sewer Rate increase. All protests must contain the following information: 1) identification of the property by address and assessor parcel number; 2) that you are the property owner of record, 3) each protest must include an original signature, and 4) an unequivocal statement that submission is a protest against the Proposed Rate Increase. Written protests will not be accepted by email or fax. Verbal protests will not be counted. Please note that if you were not the owner of the property as of the County of Monterey's last tax roll, you must include written confirmation that you presently own the property.

The City Council will consider all written and complete protests against the proposed Sewer Rate increase submitted before the conclusion of the public hearing. Only one protest per parcel, submitted by the owner of the parcel, will be counted. If written protests against the proposed increase are presented by the majority of property owners, the City Council will not impose the increase. If there is no majority protest and should the City Council adopt the proposed Sewer Rates, such Sewer Rates shall become effective on August 1, 2015.

Basis For Changed Sewer Rates

The Sewer Rates charged by the City are changing as a result of the change in the cost allocation methodology and the City's need for upgraded facilities as described in further detail below:

- **Change in Methodology:** Historically, the sewer rates charged by the City have been based on the charges for collection and treatment by the Monterey Regional Water Pollution Control Agency. Treatment costs vary, in part, based on the nature of the flow. Treating wastewater from an industrial plant, for example, is more expensive than treating residential waste water. The City believes that it is more appropriate to base the City's rates, which cover costs for collection, but not treatment, on the volume of flow only. Therefore, the City has developed an updated cost allocation methodology, based on average sewage flow for each land use class.
- **Upgraded Facilities:** Per the Sewer Collection System Master Plan adopted by the City Council on May 21, 2014, the City's sewer collection facilities are recommended to be upgraded to meet current federal, state, and City standards. These capital improvement projects address deficiencies in the existing sewer collection system. In addition to the capital improvement projects, the Sewer Collection System Master Plan identifies costs to operate and maintain the City's sewer collection system efficiently and responsibly.

The City of Pacific Grove's Public Works Department is responsible for the maintenance and operation of the sanitary sewer collection system.

Please contact Mr. Daniel Gho, City of Pacific Grove's Public Works Superintendent, at dgho@cityofpacificgrove.org or (831) 648-5722 if you have any questions. For more information regarding the Sewer Collection System Master Plan and the Collection System Financial Plan and Rate Study please visit the City of Pacific Grove's Website at the following link: <http://www.cityofpacificgrove.org/wastewater>

**Exhibit A
Proposed Pacific Grove Sewer Rates**

Description		Units		Sewer Rate Bimonthly City of Pacific Grove Portion ONLY (effective dates)									
				8/1/2015	7/1/2016	7/1/2017	7/1/2018	7/1/2019	7/1/2020	7/1/2021	7/1/2022	7/1/2023	7/1/2024
Business/Govt	Location/Each Business	\$41.64	\$43.72	\$44.86	\$46.04	\$47.26	\$48.48	\$49.76	\$51.06	\$52.40	\$53.78		
Residential-Vacant	Each Living Unit	\$17.98	\$18.88	\$19.37	\$19.88	\$20.40	\$20.94	\$21.49	\$22.05	\$22.63	\$23.22		
Residential	Each Living Unit	\$53.94	\$56.64	\$58.12	\$59.64	\$61.20	\$62.82	\$64.46	\$66.14	\$67.88	\$69.66		
Residential/Apartments	Each Living Unit	\$53.94	\$56.64	\$58.12	\$59.64	\$61.20	\$62.82	\$64.46	\$66.14	\$67.88	\$69.66		
Residential/Apartments-Vacant	Each Living Unit	\$17.98	\$18.88	\$19.37	\$19.88	\$20.40	\$20.94	\$21.49	\$22.05	\$22.63	\$23.22		
Condominium	Each Living Unit	\$53.94	\$56.64	\$58.12	\$59.64	\$61.20	\$62.82	\$64.46	\$66.14	\$67.88	\$69.66		
Condo/Retirement	Each Living Unit	\$53.94	\$56.64	\$58.12	\$59.64	\$61.20	\$62.82	\$64.46	\$66.14	\$67.88	\$69.66		
Minimum/Vacancy	Location/Each Business	\$17.98	\$18.88	\$19.37	\$19.88	\$20.40	\$20.94	\$21.49	\$22.05	\$22.63	\$23.22		
Motel/Hotel	Each Room	\$23.40	\$24.58	\$25.22	\$25.88	\$26.56	\$27.26	\$27.96	\$28.70	\$29.46	\$30.22		
Bed & Breakfast Inn	Each Room	\$15.42	\$16.20	\$16.62	\$17.06	\$17.50	\$17.96	\$18.42	\$18.92	\$19.40	\$19.92		
Supermarkets	Location	\$227.50	\$238.88	\$245.14	\$251.56	\$258.14	\$264.90	\$271.84	\$278.98	\$286.28	\$293.78		
Medical Office	Each Licensed Physician	\$55.66	\$58.46	\$59.98	\$61.56	\$63.16	\$64.82	\$66.52	\$68.26	\$70.06	\$71.88		
Dental Office	Each Licensed Dentist	\$76.76	\$80.60	\$82.72	\$84.88	\$87.10	\$89.38	\$91.72	\$94.14	\$96.60	\$99.12		
Rest Home/Convalescent	Each Bed of Licensed Capacity	\$15.42	\$16.20	\$16.62	\$17.06	\$17.50	\$17.96	\$18.42	\$18.92	\$19.40	\$19.92		
General Hospital	Each Bed of Licensed Capacity	\$91.32	\$95.90	\$98.40	\$100.98	\$103.64	\$106.34	\$109.14	\$112.00	\$114.92	\$117.94		
Animal Hospital	Location/Each Licensed Business	\$101.64	\$106.72	\$109.52	\$112.38	\$115.32	\$118.34	\$121.44	\$124.62	\$127.90	\$131.24		
Restaurant 1 meal/day	Each Restaurant Seat	\$1.98	\$2.08	\$2.14	\$2.20	\$2.26	\$2.32	\$2.38	\$2.44	\$2.50	\$2.56		
Restaurant 2 meals/day	Each Restaurant Seat	\$3.12	\$3.28	\$3.36	\$3.44	\$3.54	\$3.64	\$3.72	\$3.82	\$3.92	\$4.04		
Restaurant 3 meals/day	Each Restaurant Seat	\$5.98	\$6.28	\$6.44	\$6.62	\$6.78	\$6.96	\$7.14	\$7.34	\$7.52	\$7.72		
Restaurant with Bar	Each Restaurant Seat	\$5.98	\$6.28	\$6.44	\$6.62	\$6.78	\$6.96	\$7.14	\$7.34	\$7.52	\$7.72		
Bar	Location/Each Business	\$90.46	\$94.98	\$97.48	\$100.04	\$102.66	\$105.34	\$108.10	\$110.94	\$113.84	\$116.82		
Nightclub	Location/Each Business	\$271.14	\$284.70	\$292.16	\$299.82	\$307.68	\$315.74	\$324.00	\$332.50	\$341.20	\$350.14		
Takeout Food - Small	Location/Each Business	\$101.04	\$106.10	\$108.88	\$111.72	\$114.66	\$117.66	\$120.74	\$123.90	\$127.14	\$130.48		
Takeout Food - Medium	Location/Each Business	\$248.60	\$261.02	\$267.86	\$274.88	\$282.08	\$289.48	\$297.06	\$304.84	\$312.82	\$321.02		
Takeout Food - Large	Location/Each Business	\$453.28	\$475.94	\$488.42	\$501.20	\$514.34	\$527.82	\$541.64	\$555.84	\$570.40	\$585.34		
Bakery	Location/Each Business	\$81.94	\$86.04	\$88.30	\$90.60	\$92.98	\$95.42	\$97.92	\$100.48	\$103.12	\$105.82		
Theater	Per Screen @ Each Location	\$134.44	\$141.16	\$144.86	\$148.64	\$152.54	\$156.54	\$160.64	\$164.86	\$169.18	\$173.60		
Bowling Center	Location/Each Business	\$409.04	\$429.50	\$440.74	\$452.30	\$464.14	\$476.30	\$488.78	\$501.58	\$514.74	\$528.22		
Gym	Per 500 members	\$41.64	\$43.72	\$44.86	\$46.04	\$47.26	\$48.48	\$49.76	\$51.06	\$52.40	\$53.78		
Mortuary	Location/Each Business	\$110.48	\$116.00	\$119.04	\$122.16	\$125.36	\$128.64	\$132.02	\$135.48	\$139.02	\$142.68		
School (Minimum)	Student Population	\$41.64	\$43.72	\$44.86	\$46.04	\$47.26	\$48.48	\$49.76	\$51.06	\$52.40	\$53.78		
School (Grades 0-6)	Student Population	\$0.58	\$0.62	\$0.62	\$0.64	\$0.66	\$0.68	\$0.70	\$0.72	\$0.74	\$0.76		
School (7-College)	Student Population	\$1.12	\$1.18	\$1.22	\$1.24	\$1.28	\$1.30	\$1.34	\$1.38	\$1.42	\$1.46		
Boarding School	Student Population	\$11.42	\$12.00	\$12.32	\$12.64	\$12.96	\$13.30	\$13.66	\$14.02	\$14.38	\$14.76		
Instructional Facility	Student Population	\$41.64	\$43.72	\$44.86	\$46.04	\$47.26	\$48.48	\$49.76	\$51.06	\$52.40	\$53.78		
Church	Per 100 members	\$41.64	\$43.72	\$44.86	\$46.04	\$47.26	\$48.48	\$49.76	\$51.06	\$52.40	\$53.78		
Photo / Laboratory / Printer	Per 10 employees	\$41.64	\$43.72	\$44.86	\$46.04	\$47.26	\$48.48	\$49.76	\$51.06	\$52.40	\$53.78		
Service Station/Garage	Location/Each Business	\$39.96	\$41.96	\$43.06	\$44.20	\$45.36	\$46.54	\$47.76	\$49.02	\$50.30	\$51.62		
Paint and Body Shops	Per 10 employees	\$41.64	\$43.72	\$44.86	\$46.04	\$47.26	\$48.48	\$49.76	\$51.06	\$52.40	\$53.78		
Dry Cleaner	Location/Each Business	\$137.88	\$144.78	\$148.58	\$152.46	\$156.46	\$160.56	\$164.76	\$169.08	\$173.52	\$178.06		
Laundromat	Each Washing Machine	\$36.24	\$38.06	\$39.06	\$40.08	\$41.12	\$42.20	\$43.32	\$44.44	\$45.62	\$46.80		
Special User [2]	Individual Determination	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA		

[1] Special User means any establishment, which cannot be classified in any other category, based on their individual flow. The rate for special users are determined based on estimated flow rates.

**City of Pacific Grove Public Works
Wastewater Department
July 15, 2015 Public Hearing
Written Protest**

I, _____, protest the proposed increase to the sewer collection system user fees.

Property Address and/or Assessor's Parcel Number:

_____, California 939_____
(Insert Property Address)

(Insert Assessor's Parcel Number)

Signature: _____

Print Name: _____ Date: _____
(Signature must be for the property owner and/or sewer customer for this address)

Written protests must be received at Pacific Grove City Hall, 300 Forest Avenue, Pacific Grove 93950 no later than the close of the public comment period during the public hearing scheduled to begin at 6:00 p.m. on July 15, 2015. Please address written protests to:

City of Pacific Grove, City Hall
Attention: City Clerk
300 Forest Avenue
Pacific Grove, CA 93950



CITY OF PACIFIC GROVE

OFFICE OF THE CITY ATTORNEY
606 FOREST AVENUE
PACIFIC GROVE, CALIFORNIA 93950
TELEPHONE (831) 646-1502
FAX (831) 646-0377
dave@laredolaw.net

To: Mayor Kampe, Council Members and City Manager Frutchetey
From: David C. Laredo, City Attorney
Subject: "Standby Charges" and Proposed Sewer Rates
Date: July 10, 2015

Overview

A concern has been raised whether sewer charges proposed for unoccupied structures connected to the sewer system constitute a "Standby Charge" or a "Ready to Serve Charge." Charges proposed for unoccupied structures do not constitute a Standby Charge because the charges reflect costs of operating and maintaining sewer services for properties actively connected to the sewer system. As such, these charges constitute a service charge (or base charge) and are permissible fees for service under Proposition 218.

Analysis

Prop 218, was adopted by California's voters in 1996 and amended the California Constitution to govern imposition of taxes, assessments. It established a new class of fees and charges known as "property related fees and charges." Property related charges imposed by local government for water, sewer, and similar services have since been subject to the processes required by Article XIII D, § 6 (commonly referred to as Prop 218).¹

The California Constitution addresses "Standby Charges" and classifies these as assessments which cannot be imposed without compliance with Article XIII D, § 6 (b) (4).² Prop 218 does not,

¹ Article XIII D, § 6 requires a majority protest hearing. If a majority protest is not made on the fees, the fees may be imposed without a vote of the electorate or of property owners. Article XIII D, § 6 (a), (c).

² Article XIII D, § 6(b) (4) provides "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. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or

itself, define “Standby Charges” or availability charges, but the court in *Kennedy v. City of Ukiah* (1977) 69 Cal. App. 3d 545 stated that “Standby and availability charges are fees exacted for the benefit which accrues to property by virtue of having water available to it, even though the water might not actually be used at the present time.” Water Code §389 defines “Water Standby Charges” and “Water Availability Charges” with the same meaning.

A Standby Charge is essentially an assessment charged upon *unimproved property* to ensure adequate water or sewer services will be available for that parcel when needed *after* development. Connected properties do not pay Standby Charges.³ Rather, connected properties pay a “Readiness to Serve Charge.” A Readiness to Serve Charge, or Base Charge, is a fixed charge independent of the amount of water used. The base charge recovers the cost of business expenses for customer service billing, collections, meter reading and meter maintenance.

Whether a sewer charge is a Standby Charge or Base Charge was considered by the First District Court of Appeal in *Paland v. Brooktrails Township Community Services District Board of Directors* 179 Cal.App.4th 1358 (2009). In *Paland*, the court found that:

“[W]ater and sewer base rates imposed on parcels with water or sewer connections regardless of whether they are active or inactive, and whether or not the property owner uses the services, is a fee subject to the provisions of article XIII D, section 6, not an assessment subject to the requirements of article XIII D, section 4.

In *Paland*, Brooktrails Community Services District imposed a water rate structure which combined a minimum monthly fee for active accounts with a volumetric charge based on the amount of water consumed in a billing period. Paland’s challenge to the fee was unfounded as the court stated “Article XIII D, § 6 (b) authorizes agencies to impose fees to cover the cost of providing immediately available water service, which necessarily includes maintenance and operating costs.” The Court concluded the key issue is property-owner control over service delivery:

“We conclude the “immediately available” requirement is logically focused on the agency’s conduct, not the property owner’s. As long as the agency has provided the necessary service connections at the charged parcel and it is only the unilateral act of the property owner (either in requesting termination of service or failing to pay for service) that causes the service not to be actually used, the service is “immediately available” and a charge for the service is a fee rather than an assessment (assuming the other substantive requirements of a fee are satisfied).”

The City of Pacific Grove proposes to impose a discrete Sewer Base Charge upon improved properties that are connected to the sewer system during the time these structures may be temporarily unoccupied. The Unoccupied Use fee is imposed to defray the costs of actual and present sewer service. The fees are not imposed for unrelated revenue purposes. The fees do not

assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.” Emphasis added.

³ *Paland v. Brooktrails Township Community Services District Board of Directors*, 179 Cal.App.4th 1358 (2009). The Court concluded, “As long as the agency has provided the necessary service connections at the charged parcel ... the service is “immediately available” and a charge for the service is a fee rather than an assessment.”

exceed the cost of providing service. As such, the Base Charge is a fee subject to Article XIII D, §6, not an assessment subject to the requirements of Article XIII D, §4.

Base Charges are included in Exhibit A of the Proposed Pacific Grove Sewer Rates under “Residential-Vacant,” “Residential/ Apartments-Vacant,” and “Minimum/Vacancy.” These proposed charges are references at \$17.98, starting August 1, 2015. These are illustrated in the corrected Exhibit A, as distributed to City Council and the public during the May 6, 2015 meeting. The Base Charge reflects actual costs to operate and maintain sewer services. Because unoccupied Structures discharge no or negligible effluent flow into the sewer, these connections thus require the Sewer System to incur less expense for variable operations and maintenance, for instance resulting in savings for power and chemicals, during the period the structures are vacant.

Nonetheless, the Base Charge requires unoccupied structures connected to the Sewer System to share a pro-rata cost for sewer services for non-variable expenses. Examples of these expenses include:

- Capital expenses – property, facilities and equipment; and
- Non-Variable O&M – maintenance, repair and planning; and
- Compliance expenses – monitoring, reporting and permitting; and
- Allocable Overhead – administration, finance and personnel.

The Base Charge is clearly permitted by Article XIII D, §6 as it is for service is actually used by and immediately available to the connected property.

Another separate concern has been voiced pertaining to the proposed “Special User” rate. The “Special User” category is just that – describing any use that is unique. This category does not refer to unoccupied, vacant or undeveloped parcels; it is not a Standby Charge; it is not a Ready to Serve charge. The “Special User” category applies to sewer system users whose use cannot properly be classified together with any other use. In each occasion, the unique use described as a “Special User” is connected to the sewer system, and actively discharges effluent into that system. The “Special User” category allows the fee to be determined based on actual flow rates.⁴ This, too, is a permissible fee category subject to Article XIII D, §6 as the fee is required to fairly the costs of actual and present sewer service. The fee is not imposed for unrelated revenue purposes, and the fee is intended to not exceed the cost of providing service.

Conclusion

Proposed Sewer Rates for unoccupied structures are Base Charges, not Standby Charges. These charges reflect costs of operating and maintaining sewer services. As such, the charges are permissible fees, not assessments, and are comply with the Constitutional limits set by Prop 218.

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⁴ This billing process is similar to special use fees imposed by the Monterey Regional Water Pollution Control Agency (MRWPCA). MRWPCA determines the special user charge by applying a specific formula codified by ordinance. See MRWPCA Ordinance 2014-01 (<http://www.mrwPCA.org/docs/ordinances/Codified%20Ordinance%202014-01.pdf>).