

RESOLUTION NO. 15-043
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE
ADOPTING A 10 YEAR SEWER RATE INCREASE THAT HAD BEEN INITIATED
THROUGH 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: Mayor Kampe, Councilmembers Cuneo, Fischer, Huitt, Lucius, Miller and Peake

NOES: None.

ABSENT: None.

APPROVED:

BILL KAMPE, Mayor

ATTEST:

Sandra Kandell, Deputy City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney