

## RESOLUTION NO. XXXX

### **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK ESTABLISHING UTILITY RATE SETTING PROCEDURES FOR WATER RATES UNDER PROPOSITION 218 AND ASSEMBLY BILL 2257 (GOVERNMENT CODE SECTIONS 53750 – 53759.2)**

WHEREAS, the City of Menlo Park (City) provides utility services for water service to property owners (who may also be referred to as “owners”) within the relevant City service area, and establishes the amount of water rates to be charged customers in accordance with Menlo Park Municipal Code (Municipal Code) Chapter 2.48 and applicable law; and

WHEREAS, California law authorizes the City to charge a fee to the property owners or property owners’ “tenants” (who may be collectively referred to as “ratepayers” or “customers”) for the proportionate cost of providing water services to each customer in accordance with the procedural and substantive requirements of the voter-approved ballot measure known as “Proposition 218” (California Constitution Article XIII D; as it is implemented by the Legislature at Government Code Sections 53750 – 53759.2; and as it has been judicially interpreted by appellate court decisions). The City refers to those fees as water rates (which may be referenced herein as “water rates” or “rates”); and

WHEREAS, under Proposition 218, the City’s water rates are considered to be a “fee” for a “property-related service” (also referred to as a “property-related fee”), subject to the particular requirements of Constitution Article XIII D, Section 6. A property-related fee is one imposed upon any parcel or person as an incident of property ownership. In general, the City may only increase its existing rates if the City (1) calculates the rates in accordance with Proposition 218, (2) conducts a public hearing before the City Council, as described in this resolution, and (3) a “timely written protest” is not submitted by property owners representing a majority of the parcels served by the City; and

WHEREAS, under Government Code Sections 53759.1 and 53759.2 (“AB 2257”; Chapter 561, Statutes of 2024), the City may establish a supplemental process for objecting property owners to exhaust administrative remedies, also described in this resolution, by which the City will take specified actions in response to any “timely written objection.” Any timely written objection will also be counted by the City as a timely written protest. However, under this process, only an owner who submits a timely written objection will have a right to challenge a proposed increase in water service charges through a legal proceeding. (These supplemental processes were authorized by Assembly Bill No. 2257, Chapter 561, Statutes of 2024, effective Jan. 1, 2025.); and

WHEREAS, the purpose of this resolution is to provide a meaningful opportunity for a property owner to submit a written objection to proposed new or increased rates before resorting to litigation after the new or increased rates are approved by the City Council; and

WHEREAS, this resolution is intended to provide a procedure for property owners to submit a written objection regarding proposed new or increased rates to the City’s attention early in the rate consideration process, and to provide an opportunity for the City to address or resolve any objections before the City Council makes a final decision on whether to adopt a proposed rate pursuant to Proposition 218; and

WHEREAS, this resolution will identify the process the City will follow in order to implement the administrative remedies to be exhausted by property owners under Government Code Section 53759.1. In general, the City will make available the proposed rates, post the written basis for the proposed rates on its website, provide 45 days for a property owner to review the proposed rates and timely submit to the City a written objection to the rates that specifies the grounds for alleging noncompliance with Proposition 218, and require the City to consider and respond in writing to timely submitted objections before the close of the public hearing described in these recitals; and

WHEREAS, for any rates approved by the City implementing the procedures described in this resolution, a person or entity shall be prohibited from bringing a judicial action or proceeding alleging noncompliance with Article XIII D of the California Constitution for those rates, unless that person or entity has timely submitted to the City a written objection to that rate that specifies the grounds for alleging noncompliance with Proposition 218; and

WHEREAS, the City Council hereby intends to adopt the exhaustion of administrative remedies procedure as outlined in Government Code Section 53759.1, and the administrative record principles contained in Government Code Section 53759.2.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Menlo Park as follows:

- A. The City Council hereby adopts the utility rate setting procedures attached hereto as Exhibit "A," and incorporated herein by reference ("Utility Rate Setting Procedures"). The Utility Rate Setting Procedures explicitly incorporate and implement the requirements contained in Proposition 218 and the procedures by which property owners are required to exhaust administrative remedies as set forth in Government Code Section 53759.1, subdivision (c).
- B. For any rate adopted or approved by the City implementing the procedures described in this resolution, a person or entity shall be prohibited from bringing a judicial action or proceeding alleging noncompliance with Article XIII D of the California Constitution for those rates, unless that person or entity has timely submitted to the City a written objection to those rates in accordance with this resolution that specifies the grounds for alleging noncompliance with Proposition 218.
- C. The City Council hereby adopts the administrative record principles contained in Government Code Section 53759.2.
- D. This resolution will take effect immediately upon adoption by City Council and will apply to any proposed new or increased rates of which notice is provided in accordance with this resolution.
- E. The City Council authorizes the city manager to take such other and additional actions as may be reasonably necessary to implement the purpose of this resolution and implement the exhaustion of administrative remedies procedure adopted herein.
- F. To the extent any past resolution or procedure is inconsistent with this resolution, this resolution hereby takes precedent.

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I, Judi A. Herren, City Clerk of Menlo Park, do hereby certify that the above and foregoing City Council Resolution was duly and regularly passed and adopted at a meeting by said City Council on the tenth day of March, 2026, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City on this \_\_ day of \_\_, 2026.

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Judi A. Herren, City Clerk

Exhibits:

A. Utility Rate Setting Procedures

## Utility Rate Setting Procedures

These “Utility Rate Setting Procedures” (“Procedures”) describe the processes that will be followed by the City of **Menlo Park** (“City”) in establishing any new or increased water rates, as summarized in the Resolution identified in the header of this Exhibit “A.” The Utility Rate Setting Procedures include compliance with Proposition 218 as well as the procedures for exhausting administrative remedies under Government Code Section 53759.1 (known as “AB 2257”).

### 1. Overview of Exhaustion Procedure (AB 2257)

The City will follow the “exhaustion procedure” set forth herein, to be conducted concurrently with the Proposition 218 process, for the City Council’s consideration of any proposed new or increased water rates. This exhaustion procedure shall be conducted in accordance with “Proposition 218” (California Constitution Article XIII D; as it is implemented by the Legislature at Government Code Sections 53750 – 53759.2; and as it has been judicially interpreted by appellate court decisions), and the particular procedures set forth in Government Code Section 53759.1. The exhaustion procedure provides an opportunity for record owners to submit a “timely written objection” to identify substantive bases for asserting proposed water rates do not comply with Proposition 218.

**NOTE that a “record owner” may be referred to in these Procedures as the “owner” or “property owner”; and a “record owner” shall include a tenant who is directly liable to pay the rates.** The processes described herein may be referred to as “these Procedures.” As used in these procedures, the term “rates” may be used to refer to a proposed update to the City’s water rates.

- a. City staff will post on its website a notice of the exhaustion procedure, and this notice will be prominently incorporated in the Proposition 218 public hearing notice mailed to each record owner.
- b. The notice will identify the date and time by which timely written objections must be submitted to the City, and the date will be no less than 45 calendar days after the notice is mailed to record owners.
- c. City staff will review timely written objections and draft written responses providing the substantive basis for retaining or altering the proposed rates in response to the written objections. City staff will present its written responses to the City Council prior to the close of the public hearing for the Proposition 218 protest hearing, and the City Council will review to determine whether action is needed in response to the written objections or written responses.
- d. Following the City Council’s review and response to timely written objections and written responses, it is within the discretion of the City Council to proceed with the Proposition 218 protest hearing process, as described herein, to consider approval of the proposed rates.
- e. **ate Challenger Must Exhaust Administrative Remedies.** No claim, suit for damages, suit for injunctive relief, petition for writ of mandamus, or administrative or judicial proceeding shall be brought against the City (including the City Council, or its employees, officers, or designees) regarding a challenge to proposed new or increased rates unless the challenging party first exhausts its administrative remedies by complying with these Procedures and submitting to the City a timely written objection.

### 2. Notice of Proposition 218 Public Hearing and Initiating Exhaustion Procedure

Prior to approving or imposing any proposed new or increased rates, the City will conduct a public hearing and provide prior written notice to each record owner of the hearing and the exhaustion procedure as described in these Procedures. To the extent the City sends a regular billing statement for water service provided to a “customer” (e.g., a “tenant” or other “ratepayer”)

who is not the record owner, the City will also mail the written notice to the customer at the address for the billing statement. The City will mail the public hearing notice to each record owner no later than 45 days prior to the public hearing. The contents of the hearing notice will include:

- a. Compliance with Proposition 218:
  - 1) The date, time, and location of the public hearing.
  - 2) The amount of the rates imposed on each parcel.
  - 3) The basis upon which the amount of the proposed rates were calculated.
  - 4) The reason for the rates.
  - 5) The location to which owners must submit written protests via mail, or personal delivery.
  - 6) If required by Government Code Section 54354.5, the notice will identify the opportunity for record owners to be heard as to whether the proposed rates are not in compliance with any requirements of the Revenue Bond Law of 1941 (Government Code Sections 53000 – 55821), including: (a) are discriminatory or excessive, or (b) will not be sufficient under the provisions of any outstanding revenue bonds (including Government Code Section 54515).
  - 7) How members of the public may obtain additional information regarding the proposed new or increased fee, including a link to information that is available on the City's website or by requesting a mailed copy. This may include a copy of the resolution or ordinance by which the proposed new or increased rates are proposed to be adopted.
- b. Compliance with the Exhaustion Procedure for Written Objections. If the City chooses to follow the exhaustion procedure for written objections, concurrently with mailing the public hearing notice, the City will post on its internet website the written basis for the proposed rates and a link to the Proposition 218 public hearing notice which will be supplemented with the following prominently displayed information:
  - 1) The "deadline" (date and time) by which a "timely written objection" must be submitted to the City. The deadline will be no earlier than 45 days after the City mails to property owners the notice of the public hearing.
  - 2) The location to which written objections must be submitted to the City via mail, email, or personal delivery.
  - 3) All substantive requirements for submitting a written objection. The record owner must comply with the requirements set forth in Procedures Section 3, below, including specifying the grounds on which the owner alleges the proposed new or increased rates does not comply with Proposition 218.
  - 4) Notice that: (a) any person's failure to submit a timely written objection bars any right of that person to challenge the proposed new or increased fee through a legal proceeding; and (b) there is a 120-day statute of limitations for challenging the proposed new or increased rates (in accordance with Government Code Section 53759).
- c. The City will mail the public hearing notice to each record owner of a parcel that is subject to payment of the new or increased fee. The notice shall be mailed to owner's address shown on the last equalized property tax assessment roll.
  - 1) There is a rebuttable presumption that the most recent equalized property tax assessment roll of the San Mateo County Clerk-Recorder is sufficient evidence of the record owner of each parcel. A person may rebut the presumption by providing to the City written proof of ownership.
  - 2) The city clerk, or designee, may certify by affidavit the proper mailing of notices described in these Procedures, and any such affidavit shall constitute conclusive proof of mailing in the absence of fraud.
  - 3) Failure of any person to receive notice shall not invalidate the hearing or its results.
  - 4) The City will also provide supplemental notices to the address where the City customarily mails the billing statement for rates.

- d. Concurrently with publishing and mailing the public hearing notice, the City will post on its website relevant information regarding the proposed new or increased fee including a copy of the cost of service analysis (which may be referred to as a “rate study”) which provides documentation of compliance with all substantive requirements of Prop 218 regarding the calculation of the amount of the proposed new or increased fee.

### **3. Requirements for Submitting Timely Written Objections (AB 2257)**

For the purpose of considering written objections, **the City will consider the term “record owner” to include tenancies of real property where tenants are directly liable to pay the rates to the City** (consistent with Proposition 218; California Constitution Article XIII D, Section 2(g)).

In order for a record owner to submit a timely written objection, it must:

- a. Be received by the City at the location identified on the public hearing notice, no later than the deadline identified on the public hearing notice. The deadline may be no earlier than 45 days after the City mails to record owners the notice of public hearing.
- b. Be in writing (1) identifying the name of the record owner, and the street address or assessor’s parcel number (or other clear identification) of the property subject to the rates; and (2) signed by the record owner.
- c. Specify the grounds for alleging the proposed rates do not comply with Proposition 218. The grounds must identify (i) the substantive requirement of Proposition 218, and (ii) the reason the proposed rates do not comply with that requirement. For any proposed new or increased “fee” for a property-related service (such as water rates), relevant substantive requirements of Proposition 218 include:
  - 1) Revenues derived from the rates shall not exceed the funds required to provide the property related service (water service).
  - 2) Revenues derived from the rates shall not be used for any purpose other than that for which the fee or charge was imposed.
  - 3) The amount of the rates shall not exceed the proportional cost of the service attributable to the parcel.
  - 4) No rates may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Rates based on potential or future use of a service are not permitted.
  - 5) No rates may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.

### **4. Requirements for Submitting Timely Written Protests (Proposition 218)**

For the purpose of considering and counting written protests, **the City will consider the term “record owner” to include tenancies of real property where tenants are directly liable to pay the rates to the City** (consistent with Proposition 218; California Constitution Article XIII D, Section 2(g)).

In order for a record owner to submit a timely written protest, to be considered as a part of the Proposition 218 protest hearing described in Section 6, below, it must:

- a. Be received by the City at the location identified on the public hearing notice, no later than the close of the public testimony portion of the public hearing.
- b. Be in writing (1) identifying the name of the record owner, and the street address or assessor’s parcel number (or other clear identification) of the property subject to the rates; and (2) signed by the record owner. A written protest must be submitted in paper form. Any

protest will not satisfy this requirement if it is submitted in any non-paper format such as: email, facsimile, or oral protest via telephone or in person.

- c. Must clearly identify that the record owner opposes the proposed new or increased rates that are the subject of the hearing.
- d. Will only be counted as one protest per parcel. That means if any one or more record owners of a parcel submits a timely written protest (or timely written objection) for the same parcel, it will be counted as one timely written protest.
- e. Record owners of multiple parcels within the City may file one protest for each parcel owned within the City's service area.
- f. A record owner may withdraw a written protest only if the withdrawal is submitted in writing by the record owner clearly indicating an intent to withdraw for an identified property, and it is received by the City at the location (and no later than the time) for submitting written protests. After a written protest is withdrawn, a record owner may submit a new or replacement written protest in accordance with the requirements of these Procedures. No other modification to a timely written protest may be made.
- g. The city clerk shall take custody of all submitted written objections and written protests.
  - 1) In order to protect the integrity of the procedures for considering written objections and written protests as described in these Procedures, all written objections and written protests shall remain confidential until the city manager (or designee) has determined they may be published in accordance with the criteria in paragraph 4(g)(2).
  - 2) Any submitted written objection and written protest shall be a public record; however, the City may withhold disclosure if the City determines that the public interest served by not disclosing clearly outweighs the public interest served by disclosure under Government Code Section 7922.000. As a general rule, the City finds there is a substantial public interest in not disclosing written objections and written protests to protect the integrity of the process described herein during the time that: (A) written objections are still being submitted and (B) prior to the time that the Brown Act meeting agenda is posted (e.g., at least 72 hours before a regular meeting under Government Code Section 54954.2).

##### **5. City's Response to Timely Written Objections (AB 2257)**

At the close of the written objection period, City staff shall review timely written objections (as defined in Section 3, above) and shall draft written responses to the written objections. The City's written response will include: (i) the grounds on which the objection is (or is not) resulting in amendments to the proposed new or increased rates; and (ii) an explanation of the substantive basis for retaining or altering the proposed new or increased rates.

City staff shall present the written responses to the City Council at the public meeting that was specified in the public hearing notice described in Section 2, above.

- a. In accordance with the Brown Act, the public will be provided an opportunity to address the City Council before the City Council's action related to the timely written objections and written responses. (See Government Code Section 54954.3(a).)
- b. In accordance with Government Code Section 53759.1(d), the City Council, in exercising its legislative discretion in considering timely written objections and written responses, shall determine for the proposed new or increased rates whether further review, clarification, or reduction is needed, and whether to proceed to the Proposition 218 protest hearing.

##### **6. Conducting the Proposition 218 Protest Public Hearing**

If the City Council determines to proceed to the Proposition 218 protest public hearing for proposed new or increased rates (as previously noticed in accordance with Section 2, above), the public hearing shall be conducted consistent with the following:

- a. The City Council will open the public hearing and consider all evidence presented during the hearing including the public hearing notice and all documents referenced therein

(particularly including the Rate Study), all written objections, written responses, written protests, and any testimony, documents, or information presented during the public hearing.

- b. Before closing the public hearing, the City Council will request if there are any additional written protests to be submitted to (or withdrawn from) the City.
- c. The City Council will then close the public hearing and request a report from the city clerk to identify the number of timely written protests compared to the total number of parcels subject to the proposed new or increased fees. The city clerk shall determine the number of written protests that meet the requirements of these Procedures and shall seek legal advice from the city attorney if there are any questions regarding the counting of timely written protests that meet the requirements of these Procedures.
  - 1) A majority protest exists only if the number of timely written protests exceeds one-half of the parcels served by the City.
  - 2) If the city clerk determines that additional time is needed to tabulate timely written protests, the City Council shall recess or continue the public meeting to provide sufficient time for the city clerk to complete the tabulation.
  - 3) If the city clerk determines that there is a majority protest, the City shall not impose the new or increased rates.
  - 4) If the city clerk determines that there is not a majority protest, the City Council shall continue its deliberations and take action on the proposed new or increased rates.
  - 5) The city clerk's determinations under these Procedures shall be the final determination of the City subject to appropriate judicial review. This shall include the city clerk's determinations that:
    - a) a written protest meets the requirements for a timely written protest in accordance with these Procedures; or
    - b) a majority protest has (or has not) been submitted for the proposed new or increased rates.