

# City of Calistoga

## Staff Report

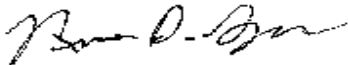
**TO:** Honorable Mayor and City Council  
**FROM:** Richard Spitler, City Manager  
**DATE:** September 3, 2013

**SUBJECT:** Consideration of a Resolution adopting Procedures for Establishing and Increasing Fees and Charges under Proposition 218

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APPROVAL FOR FORWARDING:



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Richard D. Spitler, City Manager

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1 **ISSUE:** Consideration of a Resolution adopting Procedures for Establishing and  
2 Increasing Fees and Charges under Proposition 218

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4 **RECOMMENDATION:** Adopt Resolution.

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6 **BACKGROUND/DISCUSSION:** The City is considering an increase in the water and  
7 wastewater rates. Under state law the City must adhere to Proposition 218 public  
8 noticing requirements. The City Attorney has prepared the attached resolution that  
9 clarifies procedural matters related to the required public hearing and notification  
10 requirements to ensure compliance with this state law.

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12 **FISCAL IMPACT:**

13 There is no fiscal impact associated with adoption of this resolution.

14  
15 **ATTACHMENTS:**

- 16  
17 1. Draft Resolution  
18

**Resolution No. 2013- XXX**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA ADOPTING PROCEDURES FOR ESTABLISHING AND INCREASING FEES AND CHARGES UNDER PROPOSITION 218**

**WHEREAS**, Proposition 218 (Articles XIIC and XIID of the California Constitution) requires the City to comply with the substantive and procedural requirements set forth in section 6 of Article XIID of the California Constitution prior to imposing or increasing a fee or charge upon any parcel of property or upon any person as an incident of property ownership; and

**WHEREAS**, Proposition 218 requires that the “record owner” of the parcel upon which the fee or charge is proposed for imposition or increase be notified of the amount of the fee, the basis upon which the amount of the fee was calculated, the reason for the fee, and the date, time, and location of a public hearing on the fee; and

**WHEREAS**, Proposition 218 requires that all protests against the fee or charge be considered at that public hearing; and

**WHEREAS**, Proposition 218 does not clearly set forth the meaning of “record owner” for purposes of the notice required by section 6 of Article XIID; and

**WHEREAS**, Proposition 218 does not clearly set forth who is allowed to submit protests, the procedure for submitting protests, or how the protests are to be tabulated; and

**WHEREAS**, the City Council wishes to set forth procedures for these two issues in this resolution which are intended to be consistent with both Proposition 218 and with the Proposition 218 Omnibus Implementation Act.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Calistoga, that the following procedures shall be used when imposing or increasing a fee or charge subject to Article XIID of the California Constitution:

**Section One. Fee or Charge.** For the purposes of this resolution, “fee or charge” means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property-related service.

**Section Two. Property-related Service.** For purposes of this resolution, “property-related service” means a public service having a direct relationship to property ownership.

**Section Three. Notice.** Prior to imposing a fee or charge, each parcel upon which the fee or charge is proposed for imposition shall be identified. The City Clerk shall mail written notice at least forty-five days prior to the date of the public hearing on the fee or charge to: (a) all owners whose names and addresses appear on the last equalized secured property tax assessment roll (as provided in Government Code § 53750(j)) at the address shown on the roll; and (b) all persons who have signed up to receive the service for which the fee or charge is imposed as reflected in the billing records of the City at the time the notice is given at the mailing address shown in the billing records of the City.

41 In addition to the persons identified in this section, the City Clerk shall also mail written notice  
42 to anyone who has submitted a request to receive notice of the imposition or increase of a fee or  
43 charge.

44 **Section Four. Protest Procedure.**

45 **A.** Any owners whose names and addresses appear on the last equalized secured  
46 property tax assessment roll and any persons who have signed up to receive the property-related  
47 service for which the fee or charge may submit a written protest against the proposed fee or  
48 charge at the noticed public hearing or to the City Clerk. Protests submitted by e-mail and verbal  
49 protests will not be considered by the City Council to determine whether a majority of the  
50 owners of the identified parcels have submitted protests. All members of the public are entitled  
51 to make comments at the public hearing whether or not they choose to submit a written protest.

52 **B.** All written protests must be submitted before the conclusion of the noticed public  
53 hearing. The City Clerk shall not accept or consider any protest that is received after the  
54 conclusion of the public hearing even if postmarked prior to that time.

55 **C.** Written protests must identify the affected property (by assessor's parcel number of  
56 street address) and must include the original signature of the person submitting the protest. The  
57 person signing the protest shall identify him or herself as either the owner of the parcel as shown  
58 on the last equalized security property tax assessment roll or as the person who signed up to  
59 receive the property-related service for which the fee or charge is imposed.

60 **D.** One written protest per parcel, submitted by the owner of the parcel whose name  
61 appears on the last equalized property tax assessment roll or submitted by the person who signed  
62 up to receive the property-related service for which the fee or charge is imposed, shall be  
63 counted. If either the owner of the parcel whose name appears on the last equalized property tax  
64 assessment roll or the person who signed up to receive the property-related service for which the  
65 fee or charge is imposed submits a written protest, that protest shall be included in the  
66 calculation of whether there is a majority protest against the fee or charge. If more than one  
67 person or entity owns the parcel, if one of the owners submits a written protest, that protest shall  
68 be included in the calculation of whether there is a majority protest against the fee or charge.  
69 Under all circumstances, only one protest per parcel shall be counted.

70 **E.** Any person who submits a written protest may withdraw it by submitting a written  
71 request that the protest be withdrawn in person at the public hearing or to the City Clerk at City  
72 Hall located at 1232 Washington Street, Calistoga before the conclusion of the public hearing.  
73 The written withdrawal of a protest shall identify the parcel and the name of either the owner  
74 whose name appears on the last equalized secured property tax assessment roll or the person who  
75 signed up to receive the property-related service for which the fee or charge is imposed and  
76 include a request that the protest be withdrawn. The withdrawal of a protest shall only be valid if  
77 it is submitted by the same person who submitted the protest.

78 **F.** Written protests shall remain sealed until the conclusion of the public hearing. From  
79 and after the time they are opened after the conclusion of the public hearing, the written protests  
80 shall constitute "public records" (as defined in Government Code § 6254). The City Clerk shall  
81 establish appropriate safeguards to ensure that the protests are not opened prior to the conclusion  
82 of the public hearing.

83 **Section 5. Tabulation of Written Protests.** The following procedures are hereby adopted for  
84 calculating whether a majority protest against a fee or charge has been received:

85 **A.** The City Clerk shall determine the validity of all protests. The City Clerk shall not  
86 accept as valid any protest if the City Clerk determines that any of the following:

87 i. The protest does not identify a parcel which receives the property-related service  
88 for which the fee or charge is imposed

89 ii. The protest does not bear an original signature of the person submitting the protest.

90 iii. The protest does not state its opposition to the proposed fee which is the subject of  
91 the protest proceeding.

92 iv. The protest was not received by the City Clerk before the close of the public  
93 hearing on the proposed fee.

94 v. A request to withdraw the protest is received prior to the close of the public hearing  
95 on the proposed fee.

96 **B.** The City Clerk's decision regarding the validity of a protest shall constitute a final  
97 action of the City and shall not be subject to appeal to the City Council or to any other board or  
98 employee of the City.

99 **C.** The City Clerk shall begin tabulating written protests within twenty-four business  
100 hours following the close of the public hearing. The City Manager may retain a private firm with  
101 demonstrated experience in tabulating written protests to assist the City Clerk. If, at the  
102 conclusion of the public hearing, cursory review of the protests received demonstrates that the  
103 number received is manifestly less than one-half of the parcels served by the City with respect to  
104 the fee which is the subject of the protest, then the City Clerk may advise the City Council of the  
105 absence of a majority protest without tabulating the protests.

106 **D.** A majority protest exists if, with respect to a majority of the parcels subject to the  
107 proposed fee, written protests which comply with each of the requirements of this resolution are  
108 timely submitted and not withdrawn.

109 **BE IT FURTHER RESOLVED**, that this activity is not a project and therefore is not subject to  
110 the California Environmental Quality Act pursuant to CEQA Guidelines section 15060(c)(3).

111  
112 **PASSED, APPROVED AND ADOPTED** by the City Council of the City of Calistoga at a  
113 regular meeting held this \_\_\_ day of \_\_\_\_\_, 2013.

114  
115 **AYES:**

116 **NOES:**

117 **ABSTAIN/ABSENT:**

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119 \_\_\_\_\_  
**Chris Canning, Mayor**

120 **ATTEST:**  
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122 \_\_\_\_\_  
123 **AMANDA DAVIS, Deputy City Clerk**