



AGENDA REPORT

City Attorney's Office

DATE:	November 26, 2024
TO:	Mayor Martinez and Members of the City Council
FROM:	Dave Aleshire, City Attorney Christopher Dykzeul, Assistant City Attorney
Subject:	Adopt ordinance containing procedures for issuing notice and receiving public comment for water, sewer, and related assessments under Proposition 218.
FINANCIAL IMPACT:	None
PREVIOUS COUNCIL ACTION:	None
STATEMENT OF THE ISSUE:	Adopt ordinance in accordance with Assembly Bill 2257 for notice, comment, and exhaustion of administrative remedies related to proposed water or sewer rates or assessments.
RECOMMENDED ACTION:	ADOPT an ordinance (second reading) adding Section 13.08.090 to the Richmond Municipal Code to establish clear procedures for the submittal and consideration of public comments regarding proposed water or sewer rates or assessments and for the exhaustion of administrative remedies of such assessments under Proposition 218 – City Attorney’s Office (Christopher Dykzeul/Dave Aleshire 510-620-6509).

DISCUSSION:

Assembly Bill (AB) 2257 authorizes the City to adopt procedures for the submittal and consideration of public comments regarding proposed water or sewer rates or assessments. If the City elects to adopt exhaustion procedures, a person would be required to timely submit written comments that specify the grounds for alleging that the fees do not comply with Proposition 218 in order to challenge the fees in court. AB 2257 places new obligations on public agencies during the ratemaking process, by requiring agencies who adopt these procedures to provide written responses to all comments received before acting on the proposed fees.

Proposition 218, the Right to Vote on Taxes Act, enacted by the voters in 1996 (gen. elec., (Nov. 5, 1996).) provides for, among other things, procedural and substantive requirements for the imposition of property-related fees. (Cal. Const. art. XIID § 6(a), (b).) To impose a new fee, a local agency must identify parcels subject to the fee, calculate the amount, and provide notice by mail to affected property owners of the proposed fee. (*Id.* at § 6(a)(1).) The local agency must conduct a public hearing and consider all written protests filed by the affected property owners. (*Id.* at § 6(a)(2).) If a majority of the property owners present written protests against the fee, the fee may not be imposed. (*Id.*) These are generally understood to be procedural requirements. (*Planiter v. Ramona Municipal Water Dist.* (2019) 7 Cal5th 372, 381.)

AB 2257 builds upon Proposition 218's existing procedural requirements by creating a clear and robust mechanism for customers to raise questions, concerns, comments, and criticisms of a proposed rate structure. The agency's governing body would have the benefit of hearing the evidence, which would include objections and the agency's responses, and apply its reasoned discretion and expertise. This is especially valuable in ratemaking cases in which evidence and policies are highly technical. The process would serve to foster better-informed administrative decisions, which benefit the objector, the public agency, and ratepayers that the agency serves. It also helps agencies develop more defensible rates and build rapport and trust with their ratepayers.

As a general rule, the courts have held that a party is required to exhaust administrative remedies before pursuing an action in the courts. (*Planiter* at 382-83.) An administrative remedy has been exhausted once all available and distinctive administrative review procedures have been concluded. (*Id.* at 383.) This rule is not a matter of judicial discretion but a fundamental rule of procedure grounded on policy concerns related to administrative autonomy and judicial efficiency. The courts also point to the fact that requiring an administrative remedy to be pursued allows for a factual record to be created for the court's consideration.

AB 2257 authorizes public agencies to adopt procedures adequate for the exhaustion of administrative remedies by establishing processes for the submittal and consideration of public comments regarding proposed water or sewer rates or assessments under Proposition 218.

The City Attorney's Office therefore recommends City Council to introduce (first reading) of an ordinance to add Section 13.08.090 to Richmond's Municipal Code to establish clear procedures for the submittal and consideration of public comments regarding assessments under Proposition 218.

DOCUMENTS ATTACHED:

Attachment 1 – Ordinance (proposed)