



CITY OF MORRO BAY

CITY HALL
595 Harbor Street
Morro Bay, CA 93442

January 17, 2019

To: Honorable Mayor & City Council
Scott Collins, City Manager

From: Dana Swanson, City Clerk

Subject: Results of Verification and Tabulation of all Purported Proposition 218 Written Protests related to the 2018 WRF Water and Sewer Surcharge

At its November 29, 2018 Special Meeting, the Council voted 5-0 to direct staff to i) verify and tabulate 2,163 purported written protests and 5 written requests to withdraw the protests received prior to closing the September 11, 2018, Proposition 218 Public Hearing using all criteria established by Resolution No. 44-18, and ii) verify and tabulate ~1,000 purported written protests submitted during the public comment period of the September 11, 2018, Proposition 218 Public Hearing using all criteria established by Resolution No. 44-18, except the date requirement.

Staff invited two members of the public to observe the verification process, which was conducted December 17 – 20, 2018, and completed on January 10, 2019. We want to express our thanks to those community members who volunteered their valuable time to observe the process.

As directed, staff carefully reviewed the 2,163 purported written protests and five written requests to withdraw protests received prior to closing the September 11, 2018 Public Hearing using all the following criteria established by Resolution No. 44-18:

1. A statement it is a protest against the proposed rate that is the subject of the hearing. If a combined public hearing is held for more than one proposed change, then the statement and protest must clearly indicate which proposed change is being protested. The combined notice for the combined public hearing must indicate that as well. The protests for more than one proposed change from the same record owner or customer of record may be combined on one protest document,
2. Name of the record owner or customer of record who is submitting the protest,
3. Identification of assessor's parcel number, street address, or utility account number for the parcel with respect to which the protest is made,
4. Original signature of the named record owner or customer of record and date the protest was signed,
5. To be sure all pertinent information is provided and considered prior to a protest being filed, no protest shall be signed before the City has issued the formal notice that

commences the 45-day protest period and

6. A certification, by the named record owner or customer of record, as applicable, affirming the contents of the protest are true and correct.

Following completion of step 1 of the verification process, staff reviewed the ~1,000 purported protests identified as collected prior to the distribution of the Proposition 218 Notice on July 13, 2018. While they would be invalid for that reason alone, and most were lacking the other requirements noted above, in order to provide the community with an assessment of those purported protests, the review of each of those written protests was limited to determining whether it was a duplicate of a previously tallied written protest and submitted by a person with standing for a parcel subject to the water and sewer surcharge. In a formal validation process, further verification would be needed to determine if the person signing protests on behalf of a Trust had standing to do so. For purposes of this informal verification, the number of protests that would require further verification has been listed separately.

The results of the informal verification process are shown below:

SUMMARY:

From Protests received prior to/accepted during public hearing (net of withdrawals):

Valid protests	1560
Duplicates	260
Invalid (incomplete, no standing, unable to identify, property outside city limits, etc.)	292
Requiring Further Verification (Trusts)	73

From Purported ~1,000 protests identified as collected prior to distribution of 218 Notice (net of withdrawals):

New protests	272
Duplicates	665
Invalid (incomplete, no standing, unable to identify)	70
Requiring Further Verification (Trusts)	62

Without those purported protests that needed further verification the total number of verified purported protests submitted timely in accordance with Proposition 218 law and Resolution No. 44-18 was 1,560. If you add what were deemed “new” protests from the ~1,000 purported protests collected prior to the Proposition 218 notice, the total of 1,832 is less than the number that would have been needed (2,794) to prohibit the Council from approving the WRF surcharge. If those purported protests that require further verification from both categories were determined to be authorized and were not found to be duplicative, then the total number of verified purported protests submitted would be 1,967.

ATTACHMENT

November 29, 2018 Staff Report



AGENDA NO: V
MEETING DATE: November 29, 2018

Staff Report

TO: Honorable Mayor and City Council **DATE:** November 28, 2018

FROM: Scott Collins, City Manager
Dana Swanson, City Clerk

SUBJECT: Discussion and Direction regarding Verification and Tabulation of All Purported Proposition 218 Written Protests related to 2018 WRF Water and Sewer Surcharge

RECOMMENDATION

Staff recommends the City Council:

1. Direct staff to verify and tabulate 2,163 purported written protests and 5 written requests to withdraw the protests received prior to closing the September 11, 2018, Proposition 218 Public Hearing using all criteria established by Resolution No. 44-18, and
2. Additionally, verify and tabulate ~1,000 purported written protests submitted during the public comment period of the September 11, 2018, Proposition 218 Public Hearing using all criteria established by Resolution No. 44-18, except the date requirement.

ALTERNATIVES

The Council may direct staff to conduct the tabulation in some other manner.

BACKGROUND/DISCUSSION

On June 13, 2018, the City Council adopted Resolution No. 44-18 approving guidelines for the submission and tabulation of protests in connection with the Proposition 218 (218) process¹. The intent of that Resolution was to ensure all utility customers and property owners, as well as the general public, were aware of the process prior to it being initiated. As stated in the Resolution, to be considered valid, a written protest must include all of the following information: (i) a statement it is a protest against the proposed rate that is the subject of the hearing, (ii) the name of the record owner or customer of record, (iii) identification of a parcel served by the City that would be subject to the proposed rate increase, (iv) an original signature of the record owner of, or customer of record with respect to, the parcel identified on the protest, (v) to be sure all pertinent information is provided and considered prior to a protest being filed, no protest shall be signed before the City has issued the formal notice that commences the 45-day protest period, and (vi) a certification affirming the contents of the protest are true and correct.

At its September 11, 2018, meeting, the City Council approved Water Reclamation Facility (WRF) surcharges (rate increases) of \$41/month for typical single-family homes to go into effect July 2019, adopting Resolution No. 71-18 (attached). That approval followed the requisite 218 public hearing notice period of 45 days, with the City mailing notices to all owners of record for all effected Morro

¹ Proposition 218 and subsequent actions amended the California Constitution by adding Article XIIC and XIID.

Prepared By: SC/DS Dept Review: _____
City Manager Review: SC City Attorney Review: JWP

Bay properties, as well as all Morro Bay water and sewer rate payers who are not property owners in Morro Bay. The City received 2,163 protests and five written requests to withdraw protests during the period between WRF Surcharge notices being mailed out and the close of the public hearing on September 11. The City needed to receive 2,794 or more written protests (50% plus one of the total eligible parcels in Morro Bay) to trigger a legally-required validation process. An insufficient number of protests were received by the City during the 218 process period to necessitate a validation process which would determine if all pertinent information was included with the protests and remove any duplicate protests. Per 218, no matter how many protests are submitted for an individual parcel, only one of the protests will counts toward the 50%+1 needed to prevent the surcharge from being imposed.

During the September 11, 2018, Council meeting under public comment, a member of the public submitted a bundle of a purported 1,000 written protests and stated those purported protests had been collected prior to the convening of the 218 public notice period, and most were not dated. Through Resolution 44-18, City Council established clear and reasonable requirements to govern the 218 process, in conformance with the Constitution of the State of California. Chief among the requirements were for written protests to contain pertinent information including a date which was during the public notice period. By submitting a protest during the 218 public hearing process with a valid date, it is more likely the individual submitting the protest had the information necessary to make an informed decision - most importantly, the actual rate increase amount, compared to an individual submitting a protest before the rate increase amount had been established. As the purported 1,000 written protests submitted by the constituent were collected prior to the convening of the 218 process, Council determined they were not valid protests and therefore were not counted, pursuant to Subdivision 4. d. of Resolution No. 44-18. Since there was an insufficient number of protests included in the tally of protests to be counted to determine whether the protests may prevent the surcharges from being imposed, Resolution No. 71-18 was adopted approving the water and sewer rate surcharges. Staff has since confirmed the bundle included nearly 1,000 written protests, most of which either had no date or had a date that was prior to the convening of the 218 process.

Following the September 11, 2018, Council meeting, the City has received public record requests related to the 218 process, as well as questions about the true, non-duplicative number of protests submitted. Staff has not attempted to validate the 2,163 protests. However, in response to a public record request regarding the written protests, during a cursory review, the City identified over 170 of the 2,163 protests have missing information that is required by Resolution 44-18 and, thus, are not valid. In conducting that review of those protests, staff also observed there are likely a significant number of duplicates—meaning there are many times when more than one protest is submitted for the same parcel. Duplicates are likely the result of parcel owners and rate payers receiving numerous mailers and flyers prior to and during the 218 process requesting they submit protests, in addition to receiving the City's 218 notice and related mailers. The total number of duplications are unknown at this time.

As the question of the number of valid protests remains unanswered, during the November 27, 2018, Council meeting future agenda discussion, City Council, by consensus, directed staff to bring back an item for discussion about the written protests. Council made it clear during the November 27th meeting the 218 process is complete as of September 11, 2018.

In order to create a clear record, staff recommends the 2,163 written protests and 5 written requests to withdraw protests included in the formal count established by Resolution No. 71-18 be

tabulated and verified using the criteria established by Resolution No. 44-18. The number of valid protests would then be the base used to tabulate and verify the additional 1,000 written protests using all of the same criteria except the date requirement.

The intent of the suggested review process would not change the outcome of the 218 process that was legally concluded on September 11, 2018. It may, however, help resolve some of the community questions and concerns surrounding the 218 process.

CONCLUSION

Staff recommends the Council direct staff to conduct a validation of the 2,163 written protests and 5 written requests to withdraw protests, to determine the actual number of valid, non-duplicative protests. In addition, staff recommends the Council direct staff to review the 1,000 uncounted protests to determine how many would have been valid had they been submitted with a date that conformed with Resolution 44-18 and whether any are duplicative of other protests as to the parcels to which they relate. Staff will initiate this process on December 17, 2018, and will invite two community members to observe the process in its entirety. If more than two community members desire to view that count, then the names of all those interested will be placed in a container from which the Police Chief will pick two names. That entire process is suggested to solidify the City's commitment to transparency in this and all matters, while also providing a smooth and efficient review process. Following completion of the process, staff will prepare a report that will be made available to the public and City Council via the City's website.

ATTACHMENTS

1. Resolution No. 44-18
2. Resolution No. 71-18