

RESOLUTION NO. 44-18

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA,
APPROVING GUIDELINES FOR THE SUBMISSION AND TABULATION OF
PROTESTS IN CONNECTION WITH RATE HEARINGS CONDUCTED PURSUANT TO
ARTICLE XIID, SECTION 6 OF THE CALIFORNIA CONSTITUTION**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, Article XIID, Section 6 of the California Constitution requires the City Council to consider written protests to certain proposed increases to rates (fees or charges) for sewer (wastewater), water or refuse collection services; and

WHEREAS, that constitutional provision does not offer specific guidance as to who may submit protests, how written protests are to be submitted, or how the City is to tabulate protests.

WHEREAS, upon adoption of this resolution, any and all resolutions, rules or regulations of the City in conflict with it, shall be rescinded and of no further force or effect. This resolution supersedes all prior resolutions, rules or regulations of the City to the extent any or all of them established guidelines for the submission and tabulation of protests in connection with rate hearings conducted by the City pursuant to Article XIID, Section 6 of the California Constitution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Morro Bay, California, as follows:

SECTION 1: Definitions.

Unless the context plainly indicates another meaning was intended, the following definitions shall apply in construction of these guidelines.

- A. "Parcel" means a San Luis Obispo County (County) Assessor's parcel the record owner or occupant of which is subject to the proposed rate that is the subject of the hearing.
- B. "Record customer" and "customer of record" mean the person or persons whose name or names appear on the City records as the customer who has contracted for, or is obligated to pay for, wastewater, water or refuse collection services to a particular utility account.
- C. "Record owner" or "parcel owner" means the person or persons whose name or names appear on the County Assessor's latest equalized assessment roll as the owner of a parcel.
- D. "Rate" means a fee or charge as understood by Article XIID, Section 6 of the California Constitution.

- E. A "rate protest proceeding" is not an election, but the City Clerk will maintain the confidentiality of protests as provided below and will maintain the security and integrity of protests at all times.

SECTION 2: Notice.

Notice of proposed rates and public hearing shall be as follows:

A. Notice Content.

1. Amount of rate proposed to be imposed on each parcel.
2. Basis upon which the amount of the proposed rate was calculated.
3. Reason for the rate.
4. The date, time, and location of a public hearing on the proposed rate.
5. If a combined public hearing is held for more than one proposed rate, then a combined notice for the combined public hearing must indicate an explanation any statement and protest shall clearly indicate which proposed change(s) is/are being protested.

B. Notice Delivery and Posting.

1. The City shall give notice of proposed rates via U.S. mail to all record owners and customers of record served by the City no less than 45 days before the public hearing upon the proposed rate.
2. The City will post the notice of proposed rates and public hearing at its official posting sites no less than 45 days before the public hearing upon the proposed rate.

SECTION 3: Protest Submittal.

- A. Any record owner or customer of record who is subject to the proposed utility rate that is the subject of the hearing who wants to protest the rate must submit a written protest to the City Clerk, by:

1. Delivery, to the City Clerk's Office at 595 Harbor Street, Morro Bay, CA 93442, during published business hours,
2. Mail to the City Clerk at 595 Harbor Street, Morro Bay, CA 93442, or
3. Submittal to the City Clerk at the public hearing for the rate increase.

- B. If more than one protest is delivered, mailed or submitted in one envelope or at one time, then at least one of the protests contained in that envelope or concurrently delivered, mailed or submitted shall be signed by the person delivering, mailing or submitting those protests.

- C. Each protest must be received by the end of the public hearing, including those mailed to the City. No postmarks will be accepted for proof of meeting the submission deadline; therefore, any protest not physically received by the close of the hearing, whether or not mailed prior to the hearing, shall not be counted.
- D. Because an original signature is required, emailed, faxed and photocopied protests shall not be counted.
- E. Although oral comments at the public hearing will not qualify as a formal protest, unless accompanied by a written protest, the City Council welcomes input from the community during the public hearing on the proposed rate.

SECTION 4: Protest Requirements.

- A. A written protest must include all the information described in subparagraphs 1. through 6., below.
 - 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.
- B. A protest shall not be counted if any of the required elements of this Section 4 are omitted.
- C. A protest must either be submitted on the ballot included with the notice of the protest period, or a ballot that includes all the information required by this Resolution.

SECTION 5: Protest Withdrawal or Change.

- A. **Withdrawal of Protest.** Any person who submits a protest may withdraw it by submitting to the City Clerk a written request the protest be withdrawn. The withdrawal of a protest shall contain sufficient information to identify the affected parcel and the name of the record owner or customer of record who submitted both the protest and the request it be withdrawn.

- B. Change to Protest. Any person who submits a protest may change it by submitting to the City Clerk a written request the protest be changed, and then either request another protest ballot and return the new protest ballot pursuant to the procedures provided herein, or submit a protest ballot that includes all the information required by this Resolution with the changes desired. The changed protest shall contain sufficient information to identify the affected parcel and the name of the record owner or customer of record who submitted both the protest and the request it be changed.

SECTION 6: Multiple Record Owners or Customers of Record.

- A. Each record owner or customer of record of a parcel served by the City may submit a protest. That includes when:
1. The fee interest in a parcel is owned by more than one record owner,
 2. More than one name appears on the City's records as the customer of record for a parcel,
 3. A customer of record is not the record owner,
 4. A parcel includes more than one customer of record, or
 5. Multiple parcels are served via a single utility account, as master-metered common interest developments.
- B. Only one protest will be counted per parcel as provided by Government Code subdivision 53755(b).

SECTION 7: Transparency, Confidentiality, and Disclosure.

- A. To ensure transparency and accountability in the fee protest tabulation, while protecting the privacy rights of record owners and customers of record, protests will be maintained in confidence until tabulation begins following the close of the public hearing.
- B. Once a protest is opened during the tabulation, it becomes a disclosable public record, as required by state law; and each original protest (or electronic copy) will be maintained in City files for two years.

SECTION 8: City Clerk.

The City Clerk shall not accept as valid any protest if she/he determines any of the following is true:

- A. The protest does not conform to any of the requirements of this Resolution or:
1. The protest does not bear original signatures of the named record owner of, or customer of record with respect to, the parcel identified on the protest. Whether a signature is valid shall be entrusted to the reasonable judgment of the City Clerk, who may consult signatures on file with County Officials or other appropriate public agencies,

2. The protest was altered in a way that raises a fair question as to whether the protest actually expresses the intent of a record owner or a customer of record to protest the rates or
 3. The protest was not received by the City Clerk before the close of the public hearing on the proposed rates.
- B. A request to withdraw or change the protest, pursuant to Section 5, above, was received prior to the close of the public hearing on the proposed rates.

SECTION 9: City Clerk's Decisions Final.

The City Clerk's decision a protest is not valid shall constitute a final action of the City and shall not be subject to any internal appeal.

SECTION 10: Majority Protest.

- A. A majority protest exists if written protests that comply with the requirements herein are timely submitted, and not withdrawn or changed, by the record owners of, or by the customers of record with respect to, a majority (50% plus one) of the parcels subject to the proposed charge.
- B. While the City may inform the public of the number of parcels and customers of record served by the City when a notice of proposed rates is mailed, the number of parcels with active customer accounts served by the City on the date of the hearing shall control in determining whether a majority protest exists.

SECTION 11: Tabulation of Protests.

At the conclusion of the public hearing, the City Clerk shall tabulate all valid protests received, including those received prior to the conclusion of the public hearing, and shall report the result to the City Council. If the number of protests received is insufficient to constitute a majority protest, then the City Clerk may determine the absence of a majority protest without validating the protests received, but may instead deem them all valid without further examination. Further, if the number of protests received is obviously substantially fewer than the number required to constitute a majority protest, then the City Clerk may determine the absence of a majority protest without opening the envelopes which contain the protests.

SECTION 12: Report of Tabulation.

If, at the conclusion of the public hearing, the City Clerk determines she/he will require additional time to validate and tabulate the protests because she/he has not made the determination described in Section 11, above, then she/he shall so advise the City Council, which may continue the related portion of the meeting to allow the validation and tabulation to be completed on another day or days. If so, then the City Council shall declare the time and place of tabulation, which shall be conducted in a place where interested members of the public may observe the tabulation, and the City Council shall

declare the time at which the meeting shall be continued to receive and act on the tabulation report of the City Clerk.

SECTION 13: This resolution will become effective immediately upon adoption.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a special meeting thereof held on the 13th day of June, 2018 on the following vote:

AYES: Irons, Davis, Headding, Makowetski, McPherson
NOES: None
ABSENT: None



Jamie L. Irons, Mayor

ATTEST:



Lori M. Kudzma, Deputy City Clerk