

# Financing Recycling Programs: Applying Existing California Law

**ILG Webinar**

**November 4, 2014**

**10:00am – 11:00am**

## **Speakers**

Michael Colantuono, Colantuono, Highsmith & Whatley

Lynn France, Environmental Services Program Manager,  
Department of Public Works, City of Chula Vista

## **Moderator**

Jennifer Armer, Program Coordinator,  
Sustainability Program, Institute for Local Government

## **Sponsor**

Howard Levenson, Deputy Director, CalRecycle

# How to ask a question during the webinar

- Please type your questions into the question box at any time during the webinar.
- We will read your questions during the question period at the end of the webinar.



# ILG Mission



- Promoting good government at the local level
- Practical, impartial and easy-to-use materials



Local Government Basics

Ethics & Transparency

Public Engagement

Sustainable Communities

Collaboration & Partnerships



## Webinar – Financing Recycling Programs

Is your community exploring options to finance recycling programs? Propositions 26 and 218 impact how cities and counties can finance these programs. This webinar will focus on these impacts and the options available to local governments to implement recycling programs.

»

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KEYWORD SEARCH



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Resources and case stories to support the use of public engagement to address budget issues.

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#### BEACON AWARD

A statewide program to assist and recognize California cities and counties that are working to reduce greenhouse gas emissions, save energy and adopt policies and programs that promote sustainability.

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Leaders can increase the effectiveness of public meetings with thoughtful advance planning and by taking a few simple steps.

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### FEATURED PUBLICATIONS



UNDERSTANDING THE  
BASICS OF PUBLIC  
SERVICE ETHICS LAWS

# Polling Question

- Which of the following best describes you?

# **Solid Waste & Recycling Rate-Making Under Props. 218 & 26**

MICHAEL G.  
COLANTUONO

Colantuono, Highsmith &  
Whatley, PC



# Prop. 218 & Property Related Fees

- Property related fees are fees on a parcel (i.e., collected on the property tax roll) or on a person because they own property or for a property related service (13D, §2(e), (g), (h).)
- Property related services include water, sanitary sewer and refuse removal & recycling (13D, §2(e), §6(c).)



# Prop. 218's Procedural Requirements

- 45 days' mailed notice to all property owners or customers (13D, §6(a).)
- Majority protest hearing in which silence equals consent (13D, §6(a).)
- If no majority protests, fees can be adopted under other rate-making authority (HSC 5471, local ordinance, Revenue Bond law of 1941, etc.)

# Prop. 218's Substantive Requirements

- Fees can't exceed cost in toto (13D, §6(b)(1).)
- Fee proceeds cannot be used for other purposes (b)(2)
- Fees cannot exceed proportional cost of serving each customer (b)(3)
- Fees cannot be imposed for future services (i.e., stand-by fees) (b)(4)
- Fees cannot be imposed for general governmental services (b)(5)

# Prop. 218 Election

- Fees for services other than water, sanitary sewer and trash also require an election (13D, §6(c).)
- 2/3 of registered voters or 50% of property owners (13D, §6(c).)

# Prop. 218 vs. Prop. 26

- For basic service fees that everyone pays every billing period, Prop. 218 applies
- Fees that are charged because a customer requests supplemental service, are subject to Prop. 26
  - Can replacement fees, large loads, extra pick-ups
  - Tipping fees at landfill?
  - Fines & penalties

# “Voluntary Fees”

- Props. 218 and 26 only apply to fees that are “imposed” – i.e., mandatory fees that government requires people to pay
- Thus, fees that sophisticated parties negotiate or choose to pay in light of other feasible alternatives are not subject to 218 or 26 or a cost limit
- Tipping fees?

# Prop. 26's Definition of "Tax"

- Every local government funding source is a tax requiring voter approval unless 1 of 7 exceptions applies (13C, §1(e)(1)–(7).)

# Prop. 26 Exemptions

- Fees for privileges (franchise fees)
- Fees for services (recycling & solid waste)
- Fees for regulation
- Fees for use of government property – not limited to cost
- Fines and penalties – not limited to cost
- Development fees
- Prop. 218 fees

# Service Fees Under Prop. 26

- For Non-Property Related Service Fees
  - Charge imposed for specific government service
  - Provided directly to payor
  - Not provided to non-payors (no free-riders)
  - Not in excess of reasonable cost to provide service
- Art. XIII C, § 1(e)(2)



# Practice Tips

- Start with a good cost study
- Adopt a resolution spelling out how you will handle protests
- Write a helpful notice that is understandable at a 6<sup>th</sup> grade reading level
- Educate your public before and during the majority protest process

# More Practice Tips

- Make a good record of the cost justification for your fee and any distinctions you make among fee payors
- If the Council or Board doesn't want to adopt the rates staff proposed, make sure your record supports the rates they do adopt
- Legal review of the cost study, resolutions, ordinances and notices is a good idea

# MICHAEL G. COLANTUONO

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# Prop. 218 Protest Process

Lynn France  
Program Manager



CITY OF  
**CHULA VISTA**

Public Works Department   
Environmental Services Section

California Constitution Article XIID, Section 6(a) requires consideration of written protests to certain proposed increases to utility charges - sewer, water, wastewater, and refuse services

# Californian Constitution

Does not provide specific guidance as to-

- ⌘ Who is allowed to submit protests?
- ⌘ How the written protests must be submitted?
- ⌘ How the City is to tabulate the protests?

# California Constitution

## Defines –

- ∞ Parcel
- ∞ Customer of Record
- ∞ Parcel or Record Owner
- ∞ Fee Protest Proceeding

# Chula Vista City Policy




**Projected Time Table for Franchise Fee Increase / Implementation**

Event	Tasks																					
	WK 1	WK 2	WK 3	WK 4	WK 5	WK 6	WK 7	WK 8	WK 9	WK 10	WK 11	WK 12	WK 13	WK 14	WK 15	WK 16	WK 17	WK 18	WK 19			
1. Clock starts with contract agreement and acceptance by attorneys																						
	Take to Council for approval																					
	Prepare Council agenda statement and reso																					
				Council Meeting Approval																		
2. Council Approval of Contract and Franchise Fee adjustment instructs staff to start Prop 218 Protest Process																						
	Prop 218 process																					
				Draft mailer, design and printing. Arrange for mailing																		
							Mail Public Notice															
											45 day written protest period											
																	Public Hearing on Protest Results					
																			If approved begin implementation			
																					adjusts rates	

# Beginning the Protest Process



A flyer for a public hearing. It features a black header with the City of Chula Vista logo and the text "NOTICE OF PUBLIC HEARING". Below the header, the text reads "ON SOLID WASTE GENERAL SERVICES RATE ADJUSTMENTS", followed by the date and time "September 9, 2014 • 2 p.m.", the location "Council Chambers", and the address "Chula Vista City Hall • 276 Fourth Avenue, Chula Vista, CA 91910".

  
CITY OF  
CHULA VISTA

**NOTICE OF  
PUBLIC HEARING**

**ON SOLID WASTE  
GENERAL SERVICES RATE ADJUSTMENTS**

September 9, 2014 • 2 p.m.  
Council Chambers  
Chula Vista City Hall • 276 Fourth Avenue, Chula Vista, CA 91910

Send public notice to all owners and customers of record via U.S. mail

45 days or more prior to the public hearing

Any record owner or customer of record may submit a written protest to the City Clerk by –

- ∞ Delivering to the Clerk's Office during business hours
- ∞ Mailing to the Clerk
- ∞ Or personally submitting a written protest at the public hearing
- ∞ No faxes or emails accepted

# Protest Submittals

- ⌘ A statement that it is a protest against the proposed charge
- ⌘ Name of the owner or customer of record
- ⌘ Identified by street address or utility account number of the parcel
- ⌘ Original signature and legibly printed name of the owner or customer of record

# Written Protest Requirements

- ⌘ Transparency and Confidentiality
- ⌘ Once opened it becomes a disclosable public record
- ⌘ Clerk validates the protest submittals
- ⌘ Majority protests exists when 50% plus one written protests are validated

# Public Hearing - Tabulation

- & Public Notice mailer
- & City Policy
- & Council Agenda statement
- & Council Resolution

# Documents



Lynn France

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# Contact Information

# QUESTIONS & ANSWERS

# Join us for our next recycling webinar on December 2<sup>nd</sup>!

The Future of Recycling Programs: Sustainable  
Funding Sources

Register here:

<http://www.ca-ilg.org/webinar/future-recycling-programs-sustainable-funding-sources>



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# Thank You!

**And thank you to CalRecycle  
for being our sponsor.**

**The webinar recording and PowerPoint slides  
will be available on ILG's website shortly.**

If you have additional questions please contact  
Melissa at [mkuehne@ca-ilg.org](mailto:mkuehne@ca-ilg.org)