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

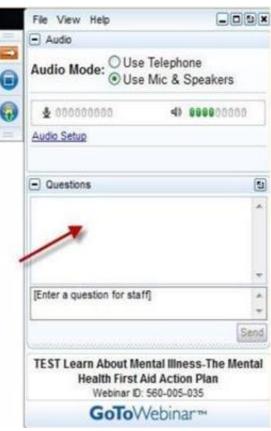
Sponsor

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





Promoting Good Government at the Local Level

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ILG is the research and education affiliate of the California State Association of Counties and the League of California Cities.

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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.











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 6th 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

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Prop. 218 Protest Process





Public Works Department Environmental Services Section



California Constitution Article XIIID, 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-

California Constitution

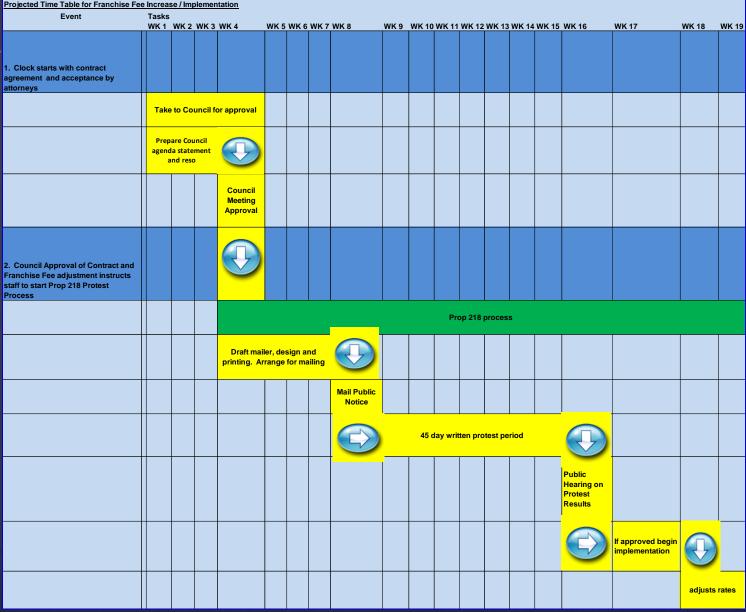


Defines –

- ø Parcel
- প্ল Customer of Record
- g Parcel or Record Owner
- Fee Protest Proceeding

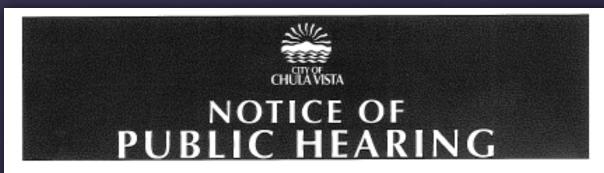
Chula Vista City Policy





Beginning the Protest Process





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 –

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

Protest Submittals



- & Name of the owner or customer of record
- 尽 Original signature and legibly printed name of the owner or customer of record

Written Protest Requirements



- & Clerk validates the protest submittals
- Majority protests exists when 50% plus one written protests are validated

Public Hearing - Tabulation



- & Council Agenda statement

Documents



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Contact Information

QUESTIONS & ANSWERS



Join us for our next recycling webinar on December 2nd!

The Future of Recycling Programs: Sustainable Funding Sources

Register here:

http://www.ca-ilg.org/webinar/future-recyclingprograms-sustainable-funding-sources



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

