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

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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
Prop. 218 Protest Process

Lynn France
Program Manager

CITY OF CHULA VISTA
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.
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
<table>
<thead>
<tr>
<th>Event</th>
<th>Tasks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Clock starts with contract agreement and acceptance by attorneys</td>
<td>Take to Council for approval</td>
</tr>
<tr>
<td></td>
<td>Prepare Council agenda statement and reso</td>
</tr>
<tr>
<td></td>
<td>Council Meeting Approval</td>
</tr>
<tr>
<td>2. Council Approval of Contract and Franchise Fee adjustment instructs staff to start Prop 218 Protest Process</td>
<td>Prop 218 process</td>
</tr>
<tr>
<td></td>
<td>Draft mailer, design and printing. Arrange for mailing</td>
</tr>
<tr>
<td></td>
<td>Mail Public Notice</td>
</tr>
<tr>
<td></td>
<td>45 day written protest period</td>
</tr>
<tr>
<td></td>
<td>Public Hearing on Protest Results</td>
</tr>
<tr>
<td></td>
<td>If approved begin implementation</td>
</tr>
<tr>
<td></td>
<td>adjusts rates</td>
</tr>
</tbody>
</table>

Beginning the Protest Process
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
Documents

- Public Notice mailer
- City Policy
- Council Agenda statement
- Council Resolution
Lynn France
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Contact Information
QUESTIONS & ANSWERS
Join us for our next recycling webinar on December 2\textsuperscript{nd}!

The Future of Recycling Programs: Sustainable Funding Sources

Register here:

http://www.ca-ilg.org/webinar/future-recycling-programs-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