



## **CITY COUNCIL STAFF REPORT**

**From: City Manager**

**Report Type: Consent**

**Lead Department: City Attorney's Office**

**Meeting Date: February 13, 2023**

### **TITLE**

Adoption of a Resolution Adopting Updated Guidelines for the Submission and Tabulation of Protests in Connection with Rate Hearings Conducted Pursuant to Article XIID, Section 6 of the California Constitution and Repealing and Replacing Resolution 8815; CEQA status—not a project.

### **RECOMMENDATION**

Staff recommends that Council adopt a resolution adopting updated guidelines for accepting signed, written protests via email in connection with Utility rate hearings conducted pursuant to Article XIID, Section 6 of the California Constitution, repealing and replacing Resolution 8815.

### **EXECUTIVE SUMMARY**

The California Constitution requires local governments to provide notice and a hearing before increasing or imposing certain types of utility rates, and ratepayers may protest the proposed rates until the close of the hearing. The relevant constitutional provisions also require protests to be signed. In 2008 the City Council adopted guidelines for the submission and tabulation of these protests, which did not permit protests to be emailed. The City Attorney's office recommends that Council adopt updated guidelines to permit ratepayers to submit signed protests via email, as well as by mail and in person.

### **ANALYSIS**

The California Constitution requires local governments to provide a special form of mailed notice and hold a public hearing before imposing or increasing property related fees, including many types of utility rates. This constitutional provision, adopted by voters in 1996 as Proposition 218, also permits ratepayers to submit signed protests with respect to proposed fee increases. If a majority of ratepayers protest the proposed fee, it may not be adopted.

California courts have interpreted the term “property related fee” to include fees that have a direct relationship to property ownership, such as water, wastewater and refuse rates. The constitutional provisions covering the applicable notice and protest process for these fees are relatively brief, and do not make it absolutely clear how local agencies should conduct the hearings and tabulate the signed protests they receive. Consequently, in 2008, the City Council adopted guidelines ([CMR 232:08<sup>1</sup>](#)) governing how the City provides notice and conducts protest proceedings for property-related rate changes.

The original guidelines required signed protests to be submitted by mail or in person. Section 3 and 4 of the attached revised guidelines permit signed protests to be emailed as well, either on a document that has been signed and scanned as a PDF file, or via an electronically signed document. Both options are constitutionally compliant.

The revised guidelines are found in Exhibit A to this report’s Attachment A.

#### **FISCAL/RESOURCE IMPACT**

No additional staff resources are required to accept emailed protests, conduct hearings and tabulate results as required by Article XIID, Section 6 of the California Constitution.

#### **STAKEHOLDER ENGAGEMENT**

While no direct stakeholder engagement was conducted prior to this guideline revision process, updating the City’s procedures to permit the acceptance of signed protests submitted via email is likely to facilitate greater public participation in future rate hearings.

#### **ENVIRONMENTAL REVIEW**

Adoption of this resolution is not a project under California Environmental Quality Act (CEQA) as defined in CEQA Guidelines, section 15378, because it has no potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment.

#### **ATTACHMENTS**

Attachment A: Resolution Adopting Updated Guidelines for the Submission and Tabulation of Protests in Connection With Rate Hearings Conducted Pursuant to Article XIID, Section 6 of the California Constitution; Repealing and Replacing Resolution 8815

#### **APPROVED BY:**

Molly Stump, City Attorney

Report #: 2211-0377

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<sup>1</sup> City Council, May 12, 2008 Item #6:  
<https://www.cityofpaloalto.org/files/assets/public/agendas-minutes-reports/reports/city-manager-reports-cmr/year-archive/2008/cmr-232-08.pdf>