

RESOLUTION NO. 2026-_____

**A RESOLUTION ESTABLISHING
THE ADMINISTRATIVE REMEDIES
PROCEDURE FOR CHALLENGES
TO FEES, CHARGES, AND
ASSESSMENTS**

WHEREAS, under Government Code sections 53759.1 and 53759.2 (known as Assembly Bill No. 2257, Chapter 561, Statutes of 2024, effective January 1, 2025, “AB 2257”), the City of Merced (“City”) may establish a supplemental process for objecting property owners to exhaust administrative remedies by which the City will take specified actions in response to any timely written objection. Under this process, only an owner who submits a timely written objection will have a right to challenge a proposed increase in fees, charges, or assessments through a legal proceeding; and

WHEREAS, the purpose of this Resolution is to document the processes the City will follow in considering proposed new or increased fees, charges, and assessments, as it relates to the exhaustion of administrative procedures under AB 2257. These procedures supplement the City’s compliance with Article XIII D of the California Constitution (“Proposition 218”). The processes described in this Resolution provide a meaningful opportunity for a property owner to submit a written objection to proposed new or increased fees, rates, or assessments early in the rate consideration process, and to provide an opportunity for the City to address or resolve any objections before the City Council makes a final decision on whether to adopt a proposed rate, charge, or assessment; and

WHEREAS, this Resolution identifies the process the must be followed, consistent with Government Code section 53759.1, prior to a property owner initiating litigation to challenge a proposed rate, charge, or assessment. In general, at least 45 days before a public hearing to consider a proposed new or increased, or extended rate, charge, or assessment, the City will make available the proposed rate, charge, or assessment and post the written basis for the proposed rate, charge, or assessment on its internet website. The City will provide at least 45 days for any property owner to review the proposed rate, charge, or assessment and timely submit to the City a written objection to the rate, charge, or assessment that

specifies the grounds for alleging noncompliance with Proposition 218. The City will consider and provide a substantive written response to each timely written objection submitted; and

WHEREAS, for any rate, charge, or assessment approved by the City in accordance with the procedures described in this Resolution, a person or entity shall be prohibited from bringing a judicial action or proceeding alleging noncompliance with Proposition 218 for those rates, charges, or assessments, unless that person or entity has timely submitted to the City a written objection to those rates that specifies the grounds for alleging noncompliance with Proposition 218; and

WHEREAS, the City Council hereby intends to adopt the exhaustion of administrative remedies procedure as outlined in Government Code section 53759.1 and the administrative record principles contained in Government Code section 53759.2.

THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. That this Resolution is authorized by the City of Merced's authority under California Constitution, article XI, Section 5 (charter cities), Section 7 (police power), and section 9 (utility power) as well as Government Code sections 53759.1 and 53739.2.

SECTION 2. That the administrative record principles contained in Government Code section 53759.2 are adopted and apply to any challenge to fees, charges, and assessments on real property levied by the City of Merced.

SECTION 2. That the exhaustion of administrative remedies procedure for challenges to fees, charges, and assessments on real property attached hereto as "Exhibit A," and incorporated herein by reference, are adopted by the City of Merced.

SECTION 3. That the City Manager and the City Attorney are hereby authorized to take such other additional actions as may be reasonably necessary to implement the purpose and the intent of this Resolution including, but not limited to, updating and revising the exhaustion of administrative remedies procedures established herein. The City Manager and the City Attorney are hereby further authorized to implement the exhaustion of administrative remedies procedures established herein.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ day of _____ 202_, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:
MATTHEW SERRATTO, MAYOR

Mayor

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

 1/16/2026

City Attorney Date

**EXHAUSTION OF ADMINISTRATIVE REMEDIES PROCEDURE
FOR CHALLENGES TO FEES, RATES, AND ASSESSMENTS ON REAL PROPERTY**

These Procedures (“Procedures”) describe the process that will be followed by the City of Merced (“City”) in establishing any new or increased fees, rates, and assessments on real property compliance with Proposition 218 (collectively “Rates”) as well as the procedures for exhausting administrative remedies under Government Code section 53759.1.

1. Applicability of Exhaustion Procedure

The duty to exhaust administrative remedies applies to:

- a. The proposed adoption by City Council of any new, increased, or extended fee or charge for a property related service for water or sewer services that are subject to California Constitution Article XIII D, Sec. 6; and
- b. The proposed adoption by City Council of any new, increased, or extended assessment on real property that is subject to California Constitution Article XIII D, Sec. 4.

2. Duty to Exhaust

No person may bring a judicial action or other proceeding alleging noncompliance with the California Constitution or other applicable law for any new, increased, or extended fee, charge, or assessment that is within the scope of section 1, above, and is levied by the City, unless that person submitted to the City Clerk a timely written objection to that fee, charge, or assessment. Each timely written objection must specify the grounds for alleging noncompliance and comply with the requirements of this Procedure, in accordance with Government Code section 53759.1. The issues raised in any such action or proceeding shall be limited to those raised in such objection unless a court finds the issue could not have been raised in such an objection by those exercising reasonable diligence.

3. Notice of Proposition 218 Public Hearing and Initiating Exhaustion Procedure

Prior to approving or imposing any new or increased Rates, the City will conduct a public hearing and provide prior written notice to each record owner of the hearing and the exhaustion procedure as described in these Procedures. The City will mail the public hearing notice to each record owner no later than 45 days prior to the public hearing. The contents of the hearing notice will include:

- a. Compliance with Proposition 218:
 - (1) The date, time, and location of the public hearing.
 - (2) The amount of the Rates imposed on each parcel.
 - (3) The basis upon which the amount of the proposed Rates were calculated.
 - (4) The reason for the Rates.
 - (5) The location to which owners must submit written protests via mail, or personal delivery.
 - (6) If required by Government Code section 54354.5, the notice will identify the opportunity for record owners to be heard as to whether the proposed Rates are not in compliance with any requirements of the Revenue Bond Law of 1941 (Government Code

Sections 53000 – 55821), including: (i) are discriminatory or excessive, or (ii) will not be sufficient under the provisions of any outstanding revenue bonds (including Government Code section 54515).

(7) How members of the public may obtain additional information regarding the proposed new or increased Rates, including a link to information that is available on the City's website or by requesting a mailed copy.

b. Compliance with the Exhaustion Procedure for Written Objections. If the City chooses to follow the exhaustion procedure for written objections, concurrently with mailing the public hearing notice, the City will post on its internet website the written basis for the proposed Rates and a link to the Proposition 218 public hearing notice which will be supplemented with the following prominently displayed information:

(1) The "deadline" (date and time) by which a "timely written objection" must be submitted to the City. The deadline will be no earlier than 45 days after the City mails to property owners the notice of the public hearing.

(2) The location to which written objections must be submitted to the City via mail, email, or personal delivery.

(3) All substantive requirements for submitting a written objection. The record owner must comply with the requirements set forth in Section 4, below, including specifying the grounds on which the owner alleges the proposed new or increased Rates do not comply with Proposition 218.

(4) Notice that: (i) any person's failure to submit a timely written objection bars any right of that person to challenge the proposed new or increased Rates through a legal proceeding; and (ii) there is a 120-day statute of limitations for challenging the proposed new or increased Rates (in accordance with Government Code section 53759).

c. The City will mail the public hearing notice to each record owner of a parcel that is subject to payment of the new or increased Rates. The notice shall be mailed to owner's address shown on the last equalized property tax assessment roll.

(1) There is a rebuttable presumption that the most recent equalized property tax assessment roll of the Merced County Recorder is sufficient evidence of the record owner of each parcel. A person may rebut the presumption by providing to the City written proof of ownership.

(2) The City Clerk, or designee, may certify by affidavit the proper mailing of notices described in these Procedures, and any such affidavit shall constitute conclusive proof of mailing in the absence of fraud.

(3) Failure of any person to receive notice shall not invalidate the hearing or its results.

(4) The City may also provide supplemental notices to the address where the City customarily mails the billing statement for Rates.

d. Concurrently with publishing and mailing the public hearing notice, the City will post on its website relevant information regarding the proposed new or increased Rates including a copy of the cost of service analysis (which may be referred to as a “Rate Study”) which provides documentation of compliance with all substantive requirements of Proposition 218 regarding the calculation of the amount of the proposed new or increased Rates.

4. Requirements for Submitting Timely Written Objections

In order for a record owner to submit a timely written objection, it must:

- a. Be received by the City at the location identified on the public hearing notice, no later than the deadline identified on the public hearing notice.
- b. Be (i) in writing; (ii) identify the name of the record owner, and the street address or assessor’s parcel number (or other clear identification) of the property subject to the Rates; and (iii) signed by the record owner.
- c. Specify the grounds for alleging the proposed Rates do not comply with Proposition 218. The grounds must identify (i) the substantive requirement of Proposition 218, and (ii) the reason the proposed Rates do not comply with that requirement.

5. Requirements for Submitting Timely Written Protests

For the purpose of considering and counting written protests, the City will consider the term “record owner” to include tenancies of real property where tenants are directly liable to pay the Rates to the City (consistent with Proposition 218; California Constitution Article XIII D, Section 2(g)).

In order for a record owner to submit a timely written protest, to be considered as a part of the Proposition 218 protest hearing described in Section 7, below, it must:

- a. Be received by the City at the location identified on the public hearing notice, no later than the close of the public testimony portion of the public hearing.
- b. Be in writing (i) identifying the name of the record owner, and the street address or assessor’s parcel number (or other clear identification) of the property subject to the Rates; and (ii) signed by the record owner.
- c. Must clearly identify that the record owner opposes the proposed new or increased Rates that are the subject of the hearing.
- d. Will only be counted as one protest per parcel. That means if any one or more record owners of a parcel submits a timely written protest (or timely written objection) for the same parcel, it will be counted as one timely written protest.
- e. A record owner may withdraw a written protest only if the withdrawal is submitted in writing by the record owner clearly indicating an intent to withdraw for an identified property, and it is received by the City at the location (and no later than the time) for submitting written protests. After a written protest is withdrawn, a record owner may submit a new or replacement written

protest in accordance with the requirements of these Procedures. No other modification to a timely written protest may be made.

f. The City Clerk shall take custody of all submitted written objections and written protests.

6. City's Response to Timely Written Objections

At the close of the written objection period, City staff shall review timely written objections and shall draft written responses to the written objections. The City's written response will include: (i) the grounds on which the objection is (or is not) resulting in amendments to the proposed new or increased Rates; and (ii) an explanation of the substantive basis for retaining or altering the proposed new or increased Rates.

City staff shall present the written responses to the City Council at the public meeting that was specified in the public hearing notice described in Section 3, above.

a. In accordance with the Brown Act, the public will be provided an opportunity to address the City Council prior to the Council's action related to the timely written objections and written responses. (See Government Code section 54954.3(a).)

b. In accordance with Government Code section 53759.1(d), the City Council, in exercising its legislative discretion in considering timely written objections and written responses, shall determine for the proposed new or increased Rates whether further review, clarification, or reduction is needed, and whether to proceed to the Proposition 218 protest hearing.

7. City Council Determinations

The City Council in exercising its legislative discretion, shall determine whether: (i) the written objections and the City's responses warrant clarifications to the proposed Rates; (ii) to reduce the proposed Rates; (iii) to further review the proposed Rates before determining whether clarification or reduction is needed; or (iv) proceed with the public hearing and adopt the Rates.