CITY OF SALINAS
COUNCIL STAFF REPORT

DATE: **JUNE 17, 2025**

DEPARTMENT: **CITY ATTORNEY'S OFFICE**

FROM: **CHRISTOPHER A. CALLIHAN, CITY ATTORNEY**

TITLE: **ADMINISTRATIVE REMEDIES PROCEDURE FOR CHALLENGES TO RATE SETTING PROCEDURES (PROPOSITION 218 AND ASSEMBLY BILL 2257)**

RECOMMENDED MOTION:

A motion to approve a resolution establishing a procedure for property owner objections to rate setting procedures in compliance with Proposition 218 and Assembly Bill 2257.

EXECUTIVE SUMMARY:

Assembly Bill 2257 ("AB 2257") became effective on January 1, 2025, and added sections 53759.1 and 53759.2 to the Government Code. This legislation allows local agencies to implement optional procedures that will limit litigated challenges to proposed rate increases. Under AB 2257, the City will need to prepare written responses to any written objections submitted by a property owner subject to the proposed updated rates. Only a person who submitted a timely written objection may file litigation to challenge the updated rates, and the evidence to be considered during litigation will be limited to a record of proceeding for the rate-setting public hearing. Through AB 2257, there is now an administrative remedy that must be exhausted by a challenger prior to filing suit to challenge the updated rates, and it also provides the corresponding encouragement for the submission of comments as a part of the public hearing process at which local agencies will have an opportunity to address concerns prior to adopting updated rates.

BACKGROUND:

Under existing law, local agencies must comply with the requirements of Proposition 218 when establishing updated (new, increased, or extended) property related fees (such as water and sewer rates) and assessments. Generally, for water and sewer rates, this includes preparing a cost of service study to confirm the rates does not exceed the proportionate cost of providing the service to the customer, mailing. 45-day prior notice to each record owner of a public hearing to consider the update rate, and not approving the updated rate if written protests are submitted by owners of a majority of the properties receiving the service.

Under AB 2257, as a supplement to the Proposition 218 requirements, prior to approving any updated rate for water or sewer service or any assessment, the local agency would (1) post a separate notice on the local agency's website, (2) supplement the mailed Proposition 218 notice to

identify the new process, (3) prepare written responses to any written objections, and (4) prior to approving the updated rates, the local agency's governing body must make specified determinations. If approved by Council, pursuant to the procedures, property owners will also have an opportunity to submit a "written objection" (in addition to the "written protest") within 45-days after the public hearing notice is mailed. Unlike a written protest (for which the property owner need only identify an opposition to the rates), a written objection must document a substantive provision under Proposition 218 that the proposed rates are claimed to violate, with facts to support the claim, and the City has an obligation to provide a substantive written response to each timely written objection. The benefit to the City in adopting the supplemental procedures under AB 2257 is that any person who intends to legally challenged the proposed rates in court would be required to first submit a timely written objection, and the City will have an opportunity to consider and respond to the objection (including a potential modification to the proposed rates) prior to approving the rates.

A proposed resolution establishing rate setting procedures which implements AB 2257 is attached for the City Council's consideration.

CEQA CONSIDERATION:

Not a Project. The City of Salinas has determined that the proposed action is not a project as defined by the California Environmental Quality Act (CEQA) pursuant to sections 15378 and 15061(b)(3) of the CEQA Guidelines.

CALIFORNIA GOVERNMENT CODE §84308 APPLIES:

No.

STRATEGIC PLAN INITIATIVE:

Implementing the proposed rate setting procedures supports the City Council's goal of Fiscal Responsibility.

DEPARTMENTAL COORDINATION:

The City Attorney's Office coordinated with the City Manager on this Report and the proposed rate setting procedures.

FISCAL AND SUSTAINABILITY IMPACT:

There is no direct fiscal impact associated with this Report.

Fund	Appropriation	Appropriation Name	Total Appropriation	Amount for recommendation	FY 24-25 Operating Budget Page	Last Budget Action (Date, Resolution)
n/a	n/a	n/a	n/a	n/a	n/a	n/a

ATTACHMENTS:

Resolution
AB 2257

RESOLUTION NO. _____ (N.C.S.)

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

WHEREAS, under Government Code sections 53759.1 and 53759.2 (known as AB 2257), the 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. (These supplemental processes were authorized by Assembly Bill No. 2257, Chapter 561, Statutes of 2024, effective January 1, 2025); 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 Proposition 218 (Article XIII D of the California Constitution). 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 will identify the process the City will follow in order to implement the administrative remedies to be exhausted by property owner under Government Code section 53759.1 prior to an 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 prior to the close of the public hearing; and

WHEREAS, for any rate, charge, or assessment approved by the City implementing the procedures described in this resolution, a person or entity shall be prohibited from bringing a judicial action or proceeding alleging noncompliance with Article XIII D of the California Constitution 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.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF SALINAS AS FOLLOWS:

Section 1. This Resolution is authorized by the City'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 section 53759.1.

Section 2. The City Council hereby adopts the administrative record principles contained in Government Code section 53759.2.

Section 3. The City Council hereby adopts the exhaustion of administrative remedies procedure for challenges to fees, charges, and assessments on real property attached hereto as "Attachment A," and incorporated herein by reference.

Section 4. The City Council hereby authorizes the City Manager and the City Attorney 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 Council hereby further authorizes the City Manager and the City Attorney to implement the exhaustion of administrative remedies procedures established herein.

Section 4. CEQA FINDINGS. The City Council finds that adoption of this Ordinance is exempt from CEQA because: (i) it is not a project within the meaning of Public Resources Code, section 21065 because it has no potential to alter the physical environment; (ii) and pursuant to CEQA Guidelines section 15061(b)(3), the so-called "common sense" exemption, for this same reason.

PASSED AND APPROVED this 17th day of June, 2025, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

_____
Dennis Donohue, Mayor

ATTEST:

_____
Patricia M. Barajas, City Clerk

Attachments: Attachment A

ATTACHMENT A

EXHAUSTION OFADMINISTRATIVE REMEDIES PROCEDURE FOR CHALLENGES TO FEES, RATES, AND ASSESSMENTS ON REAL PROPERTY

1. Scope. The duty to exhaust administrative remedies extends 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 is subject to section 6 of article XIIID of the California Constitution; and
    B. the proposed adoption by City Council of any new, increased, or extended assessment on real property that is subject to section 4 of article XIIID of the California Constitution.

2. "Hearing" as used herein means the hearing references in section 5, below.

3. Duty to Exhaust Issues. 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. Any such 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.

4. Procedures. The City shall:

    A. No less than 45 days before the deadline for the ratepayer or assessed property owner to submit an objection pursuant to paragraph 4 of this subsection D:

        (i) Make available to the public any proposed fee, charge, or assessment to which this section is to apply; and
        (ii) Post on the City's internet website a written basis for the fee, charge, or assessment, such as a cost of service analysis or an engineer's report, and include a link to the internet website in the written notice of the Hearing, including, but not limited to, a notice mailed to property owners pursuant to subdivision (c) of Section 4 or paragraph (1) of subdivision (a) of Section 6 of Article XIIID of the California Constitution.

    B. Mail the written basis described in paragraph (ii) of subsection A to a ratepayer or property owner on request.

    C. Identify on the mailed notice of Hearing (described in paragraph (ii) of subsection A) a deadline date and time, at least 45 days after the mailed notice, for a ratepayer or assessed

property owner to review the proposed fee or assessment and to timely submit to the City Clerk a written objection to that fee, charge, or assessment that specifies the grounds for alleging noncompliance. Any objection shall be received by the City no later than the deadline date identified in the mailed notice.

D. Include in a written notice of the Hearing, a statement in bold-faced type of 12 points or larger that:

(i) All written objections must be received by the City Clerk by deadline specified under subsection C. A failure to timely object in writing bars any right to challenge that fee, charge, or assessment in court and that any such action will be limited to issues identified in such objections.

(ii) All substantive and procedural requirements for submitting an objection to the proposed fee, charge, or assessment such as those specified for a property-related fee under California Constitution, article XIIID, section 6(a) or for an assessment on real property under California Constitution, article XIIID, section 4(e).

5. Council Consideration; City Responses. The City Council shall conduct a noticed public hearing ("Hearing") to consider approval of the proposed fee, charge, or assessment. Before or during the Hearing, the City Council shall consider and the City shall respond in writing to, any timely written objections. The City Council may adjourn the Hearing to another date if necessary to respond to comments received after the agenda is posted for the meeting at which the Hearing occurs. The City's responses shall explain the substantive basis for retaining or altering the proposed fee, charge, or assessment in response to written objections, including any reasons to reject the requested amendments.

6. City Council Determinations. The City Council, in exercising it legislative discretion, shall determine whether:

A. The written objections and the City's responses warrant clarifications to the proposed fee, charge, or assessment.

B. To reduce the proposed fee, charge, or assessment.

C. To further review the proposed fee, charge, or assessment before determining whether clarification or reduction is needed.

D. To proceed with the Hearing, to continue it, or to abandon the proposal.