



**UNION SANITARY DISTRICT
PROCEDURAL GUIDELINES
Prop 218 Fee Process (Timely Written Protest)
AB 2257 Procedures (Timely Written Objection)**

These Procedural Guidelines for Imposing New or Increased Sewer Service Fees (“**Guidelines**”) establish the procedures that will be followed by the Union Sanitary District (“**District**”) when considering any proposed increase in sewer service fees.

Background

The District provides wastewater collection, treatment, disposal, and sewer services to property owners and customers within a service area including the cities of Fremont, Newark, and Union City. To provide this service, the District operates a wastewater treatment system that includes a 33-acre wastewater treatment facility in Union City and the pipelines and facilities needed to convey wastewater from the service area to the treatment facility.

State law authorizes the District to charge a fee to its customers for the proportionate cost of providing these services in accordance with the procedural and substantive requirements of the voter-approved ballot measure known as “**Prop 218**” (California Constitution Article XIII D; as it is implemented by the Legislature in the Proposition 218 Omnibus Implementation Act set forth at Government Code Sections 53750 – 53759.2; and as it has been judicially interpreted by appellate court decisions).

Under Prop 218, the District’s sewer service fees are considered to be a “fee” for a “property-related service” (also referred to as a “property-related fee,” and may also be referred to in these Guidelines as a “charge” or “rate”), subject to the particular requirements of Constitution Article XIII D, Section 6. A property-related fee is one imposed upon any parcel or person as an incident of property ownership. In general, the District may only increase its existing sewer service fees if the District:

1. Calculates the fee in accordance with Prop 218
2. Conducts a public hearing, as described in these Guidelines
3. A “**timely written protest**” is not submitted by property owners representing a majority of the parcels served by the District (50% +1)

Under Government Code Sections 53759.1 and 53759.2, the District may establish a supplemental process, also described in these Guidelines, by which the District will provide a written response to any **“timely written objection.”** Any timely written objection will also be counted by the District as a timely written protest. However, under this process, only an owner who submits a timely written objection will have a right to challenge a proposed increase in sewer service charges through a legal proceeding.

Notice of Public Hearing

- 1) Prior to approving or imposing any new or increased fee for sewer services, the District will conduct a public hearing and provide prior written notice of the hearing as described in these Guidelines.
- 2) The contents of the hearing notice will include:
 - (1) Compliance with Prop 218 to include:
 - (a) the amount of the fee imposed on each parcel
 - (b) the basis upon which the amount of the proposed fee was calculated
 - (c) the reason for the fee, and
 - (d) the date, time, and location of the public hearing
 - (e) The notice will also identify:
 - The location to which owners must submit written protests or written objections via mail, email, fax, or personal delivery; and
 - how members of the public may obtain additional information regarding the proposed new or increased fee, including a link to information that is available on the District’s website or by requesting a mailed copy.
 - (2) If the District chooses to follow the process for responding to timely written objections, the District will identify that process on the hearing notice specified in these Guidelines and in accordance with Government Code Section 53759.1. In general, that will include (A) a link to the District’s internet website which will describe the process (as summarized in these Guidelines) as well as the basis for the proposed new or increased fee; and (B) a prominent identification that includes:
 - (a) All procedural requirements, including:
 - The deadline by which any “timely written objection” must be received by the District. The deadline will be no earlier than 45 days after the District mails to property owners the notice of the public hearing.
 - The location to which written objections must be submitted to the District via mail, email, fax, or personal delivery.

- (b) All substantive requirements for submitting a written objection. The owner must specify the grounds on which the owner alleges the proposed new or increased fee does not comply with Prop 218.
 - (c) Any person’s failure to submit a timely written objection bars any right of that person to challenge the proposed new or increased fee through a legal proceeding.
- 3) The District will mail the public hearing notice to each owner of a parcel that is subject to payment of the new or increased fee.
 - (1) There is a rebuttable presumption that the most recent equalized secured property tax assessment roll of the Alameda County Recorder is sufficient evidence of the owner of each parcel. A person may rebut the presumption by providing written proof of ownership.
 - (2) The Board Clerk, or designee, may certify by affidavit the proper mailing of notices described in these Guidelines, 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) Concurrently with publishing and mailing the public hearing notice, the District will post on its website relevant information regarding the proposed new or increased fee including a copy of the cost-of-service analysis (which may be referred to as a “COSA” or “Fee Study” or “Rate Study”) which provides documentation of compliance with all substantive requirements of Prop 218 regarding the calculation of the amount of the proposed new or increased fee.
- 5) Timeline for the notice of public hearing. The District will mail the notice of public hearing (described above) to each owner of property subject to the proposed new or increased fee no later than 45 days prior to the public hearing.

Requirements for Submitting Timely Written Objection

To submit a timely written objection, it must:

- 1) Be received by the District at the location identified on the public hearing notice, no later than the deadline identified on the public hearing notice. The deadline may be no earlier than 45 days after the District mails to property owners the notice of public hearing.
- 2) Be in writing (1) identifying the name of the property owner, and the street address or assessor’s parcel number (or other clear identification) of the property subject to the rates; and (2) signed by the property owner unless sent by the property owner via email (subject to verification by the District that the email was sent by the property owner).

- 3) Specify the grounds for alleging the proposed rates do not comply with Prop 218. For any proposed new or increased property-related service (such as fees for sewer service), the relevant substantive requirements of Prop 218 include:
 - a) Revenues derived from the fee shall not exceed the funds required to provide the property related service.
 - b) Revenues derived from the fee shall not be used for any purpose other than that for which the fee or charge was imposed.
 - c) The amount of the fee shall not exceed the proportional cost of the service attributable to the parcel.
 - d) No fee may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted.
 - e) No fee may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.

Requirements for Submitting Timely Written Protests

The District will consider each timely written objection to also serve as a timely written protest that is received prior to the close of the Written Objection period. Upon close of the Written Objection period. Responses will only be prepared for Written Objections received prior to the close of the Written Objection period. Additionally, any separately submitted timely written protest must:

- 1) Be received by the District at the location identified on the public hearing notice, no later than the close of the public testimony portion of the public hearing.
- 2) Be in writing (1) identifying the name of the property owner, and the street address or assessor's parcel number (or other clear identification) of the property subject to the rates; and (2) signed by the property owner unless sent by the property owner via email (subject to verification by the District that the email was sent by the property owner).
- 3) Must clearly identify that the property owner opposes the proposed new or increased fees that are the subject of the hearing.
- 4) Will only be counted as one protest per parcel. That means if any one or more 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.
- 5) Owners of multiple parcels within the District may file one protest for each parcel owned within the District's service area.
- 6) An owner may withdraw a written protest only if the withdrawal is submitted in writing by the owner clearly indicating an intent to withdraw for an identified property, and it is received by the District at the location (and no later than the time) for submitting written protests.

After a written protest is withdrawn, an owner may submit a new or replacement written protest in accordance with the requirements of these Guidelines. No other modification to a timely written protest may be made.

- 7) The Board Clerk shall take custody of all submitted written protests.
 - a) In order to protect the integrity of the written protest process, all written protests shall remain confidential until after the close of the public testimony portion of the public hearing.
 - b) As an exception to paragraph titled “Conducting the Public Hearing” below, any submitted written objection shall be a public record, subject to the District’s determination that the public interest served by not disclosing clearly outweighs the public interest served by disclosure under Government Code section 7922.000. As a general rule, the District finds there is a substantial public interest in not disclosing written objections to protect the integrity of the written protest process during the time that: (A) written protests are still being submitted and (B) prior to the time that the Brown Act meeting agenda is posted (e.g., at least 72 hours before a regular meeting under Government Code section 54954.2). However, Written Objections and the corresponding responses will be available when the agenda for the regularly scheduled Board meeting of January 27, 2025 is published.

District’s Response to Timely Written Objections

- 1) The District will consider each timely written objection and present a written response to the District Board prior to the close of the public hearing.
- 2) The District’s written response will include:
 - a) the grounds for which the objection is not resulting in amendments to the proposed new or increased fees, and
 - b) an explanation of the substantive basis for retaining or altering the proposed new or increased fees.

Conducting the Public Hearing

- 1) After opening the public hearing, the District will present an overview of the proposed new or increased fee for sewer service. This presentation will include a presentation of all timely written objections and written responses.
- 2) The District will open the public testimony portion of the hearing and invite any member of the public to address the Board regarding the proposed new or increased fee. This may include comments from the public regarding any written objection or written response, as well as the procedural or substantive requirements of the proposed new or increased fee under Prop 218.

- a) At the close of the public testimony portion of the hearing, the time for submitting written protests ends, and no additional written protests may be submitted to the District for consideration by the Board.
- 3) The District Board will consider each timely written objection and written response, and determine (exercising its legislative discretion) any of the following:
 - a) Whether the written objections and the District's responses warrant clarifications to the proposed rates.
 - b) Whether to reduce the proposed rates.
 - c) Whether to further review information presented during the hearing (including a potential continuance of the hearing) before making a determination on whether a clarification or reduction to the proposed rates is needed.
 - d) Whether to proceed with the hearing to consider any timely written protests under Prop 218. In determining whether to proceed with the hearing, the Board will consider that an inadequate written response does not create an independent cause of action to challenge the updated rate; rather, an inadequate written response is weighed as a part of all evidence in support of (or opposed to) the rate.
- 4) If, following review of timely written objections and written responses, the Board decides to proceed with consideration of the proposed new or increased fee for sewer service, the Board will first request a report from the Board Clerk to identify the number of timely written protests compared to the total number of parcels subject to the new or increased fees.
 - a) A majority protest exists only if the number of timely written protests exceeds one-half of the parcels served by the District.
 - b) If the Board Clerk determines that the number of timely written protests is either clearly greater or clearly less than one-half of the parcels subject to the new or increased fee, the Board Clerk shall report that as a part of the record of the public hearing.
 - c) If the Board Clerk determines that additional time is needed to tabulate timely written protests, the Board shall continue the public hearing to provide sufficient time for the Board Clerk to complete the tabulation.
 - d) If the Board Clerk determines that there is a majority protest, the District shall not impose the new or increased fee.
 - e) If the Board Clerk determines that there is not a majority protest, the Board shall continue its deliberations and take action on the proposed new or increased fee.
 - f) The Board Clerk's determinations under these Guidelines shall be final determination of the District subject to appropriate judicial review. This shall include the Board Clerk's determinations that: (a) a written protest meets the requirements for a timely written protest in accordance with these Guidelines; or (b) a majority protest has (or has not) been submitted for the proposed rates.

- g) At the close of public testimony, any written protest shall be subject to public disclosure only to the extent necessary to support the determination by the Board Clerk that a majority protest was, or was not, submitted.