Drafting Property-Related Fee Notices

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Notes:

Preparing Proposition 218 Notices
for Property-Related Fees

By

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I. Introduction

Each year, cities and public agencies throughout California conduct proceedings pursuant to Article XIII D, Section 6(a)[1] of the California Constitution with respect to their fees for water service, sewer service, refuse collection, and other property-related services. Article XIII D, Section 6(a) is a portion of Proposition 218[2], which was adopted by the voters in 1996.

The purpose of this paper is to discuss considerations in drafting the mailed notices associated with such proceedings. These notices are important because they are among the most widely distributed documents disseminated by local governments. A single notice, often only a page long, must simultaneously address a variety of audiences:

(i) *Busy Ratepayers* who want to be able to quickly glance at the notice, and be able to get a general idea of what is proposed;

(ii) *Attentive Ratepayers* who want to understand every detail of what is proposed;

(iii) *Fee Opponents* who will be angered if they perceive that the notice overstates the case for the fee or understates the right to protest;

(iv) *Elected Officials*, who generally want the notice to make the best possible case for the necessity of the fee (and describe what has been done to keep the fee as low as possible) and typically want to stress the amount of public input involved in the process; and

(v) *Judges*, who, in the event of a challenge, will want to see that the notice clearly states all of the information required by Proposition 218 and does not contain false or misleading statements.

Of course, many—perhaps most—of the recipients of these notices likely throw the notice in the recycling bin without giving the notices more than a passing glace. However, given the visibility of notices, and the expense of mailing them, it is generally worth making sure that each notice not only

[1] All further references to "Article" and the associated "Section" are to the California Constitution unless otherwise stated.
[2] Cal.Const. arts. XIII C & XIII D.

meets the legal requirements of Proposition 218, but also provides enough information, in a sufficiently clear manner, to satisfy the needs of all audiences.

II. Does Article XIIID, Section 6(a) Apply?

This paper discusses the notices required pursuant to Article XIII D, Section 6(a) of the Constitution with respect to "fees or charges for property related services" that must comply with the requirements of Article XIII D, Section 6 . Such fees and charges are commonly referred to as "property-related fees."[3]

Article XIII D, Section 3(a) , added to the Constitution by Proposition 218, includes a general prohibition against taxes, assessments, fees, and charges "assessed by any agency upon any parcel of property or upon any person as an incident of property ownership." Properly adopted property-related fees are exempt from this general prohibition. [4]

However, before commencing the Article XIII D, Section 6(a) process with respect to a fee, it is important to resolve three questions:

(i) Does some other exemption in Article XIII D, Section 3(a) (or elsewhere) apply to the "fee"?
(ii) Is the fee "Property-Related?"
(iii) Can the fee satisfy the substantive requirements of Article XIII D, Section 6(b)?

It is beyond the scope of this paper to analyze in detail how these three questions resolve for every possible fee permutation. However, this Section II of this paper is intended to provide a starting point for such analysis.

A. Does some other exemption apply to the fee?

Aside from "property-related fees," Proposition 218 includes the following exceptions to the Article XIII D, Section 3(a) prohibition against property-related taxes, assessments, fees, and charges:

1. *Ad Valorem Taxes*[5]: These are taxes based on the value of property, including the basic 1% property-tax levied throughout the state and override taxes levied by local jurisdictions. Such taxes are governed by Articles XIII and XIII A of the California Constitution. In general, new ad valorem taxes may be levied only to fund debt service on bonded indebtedness approved by a super-majority vote.[6]

[3] The applicable law does not make a distinction between "fees" and "charges", and whether a particular levy is called a "fee", a "charge" or a "rate" is typically a matter of local history and practice, rather than a representation of the legal status of the levy. For simplicity, this paper will refer to all such levies as "fees" or, if subject to Article XIII D, Section 6, "property-related fees."
[4] Cal.Const. art. XIII D, § 3(a)(4).
[5] Cal.Const. art. XIII D, § 3(a)(1).
[6] Cal.Const. art. XIII A, § 1(b).

2. *Special Taxes*[7]: These are taxes "imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund."[8] Such taxes require two-thirds voter approval.[9]

3. *Real Property Assessments*[10]: These include "any levy or charge upon real property by an agency for a special benefit conferred upon the real property."[11] Proposition 218 defines assessments to include, but not be limited to "special assessments," "benefit assessments," "maintenance assessments" and "special assessment taxes."[12] Assessments are governed by Sections 4 and 5 of Article XIII D of the California Constitution. In general, new assessments are subject to a property-owner mail ballot proceeding and may fund only "special benefits" of capital cost of a public improvement, the maintenance and operation expenses of public improvements, or the cost of a property related service.[13]

4. *Fees for Electrical and Gas Service*: Proposition 218 provides that "fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership."[14]

5. *Development Fees*: Proposition 218 provides that its provisions do not "affect existing laws relating to the imposition of fees or charges as a condition of property development."[15]

6. *Timber Yields*: Proposition 218 provides that its provisions do not "affect existing laws relating to the imposition of timber yield taxes."[16]

If a purported fee falls into one of these six categories, then there is no need to follow the Article XIIID, Section 6 process. Note, however, that other laws and constitutional provisions do apply to each of these categories.

B. Is the fee "Property-Related?"

Article XIII D, Section 3(a) only applies to taxes, assessments, fees, and charges "assessed by any agency upon any parcel of property or upon any person as an incident of property ownership." Proposition 218 provides that:

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[7] Cal.Const. art. XIII D, § 3(a)(2).
[8] Cal.Const. art. XIII C, § 1(d).
[9] Cal.Const. art. XIII C, § 4; Cal.Const. art. XIII C, § 2(d).
[10] Cal.Const. art. XIII D, § 3(a)(3).
[11] Cal.Const. art. XIII D, § 1(b).
[12] *Ibid*.
[13] Cal.Const. art. XIII D, § 4(a).
[14] Cal.Const. art. XIII D, § 3(b).
[15] Cal.Const. art. XIII D, § 1(b).
[16] Cal.Const. art. XIII D, § 1(c).

> "Fee" or "charge" means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.[17]

A "property-related service" is "a public service having a direct relationship to property ownership."[18]

In *Richmond v. Shasta Community Services District,* the California Supreme Court held that "the implication is strong that fees for water, sewer, and refuse collection services" are property-related fees.[19] Specifically, the Court held that:

> A fee for ongoing water service through an existing connection is imposed "as an incident of property ownership" because it requires nothing other than normal ownership and use of property.[20]

In *Bighorn-Desert View Water Agency v. Virjil*, the California Supreme Court held that:

> [O]nce a property owner or resident has paid the connection charges and has become a customer of a public water agency, all charges for water delivery incurred thereafter are charges for a property-related service, whether the charge is calculated on the basis of consumption or is imposed as a fixed monthly fee. [21]

By the logic of this decision, it is likely that most (and possibly all) ongoing charges by a local agency for sewer and refuse collection services, especially if imposed for mandatory service, are property-related fees.

The only other types of fees that have been considered by appellate decisions to be property-related fees are certain storm drain fees[22] and groundwater augmentation charges.[23] Other property-related fees, though uncommon, are certainly possible. Proposition 218 provides:

> Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article.[24]

Fees triggered by more than mere use or ownership of property are less likely to be deemed property-related fees, though the boundaries of "mere use and ownership" are not well-defined. Examples of fees that are not property-related fees are utility connection charges (imposed incident to "voluntary decisions to request water service")[25] and inspection charges for rental housing (imposed on landlords

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[17] Cal.Const. art. XIII D, § 2(e).
[18] Cal.Const. art. XIII D, § 2(h).
[19] (2004) 32 Cal.4th 409, 427.
[20] *Ibid*.
[21] (2006) 39 Cal.4th 205, 217.
[22] *See Howard Jarvis Taxpayers Ass'n v. City of Salinas* (2002) 98 Cal.App.4th 1351.
[23] *See Pajaro Valley Water Management Agency v. Amrhein* (2007) 150 Cal.App.4th 1364.
[24] Cal.Const. art. XIII D, § 6(b)(5).
[25] *See Richmond, supra*, 32 Cal.4th at 426.

incident to operation of parcel as a rental business).[26] Such fees, though not subject to Article XIII D, Section 6, should be analyzed for compliance with the requirements of Proposition 26.[27]

C. Can the fee satisfy the substantive requirements of Article XIII D, Section 6(b)?

Article XIII D, Section 6(b) of the Constitution sets forth substantive requirements for property-related fees. Specifically, Section 6(b) provides that:

> A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:
>
> (1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.
>
> (2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.
>
> (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.
>
> (4) No fee or charge 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. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.
>
> (5) No fee or charge 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….

Proposition 218 provides that "in any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article."[28] As a practical matter, this means that the agency should, by the time it holds its public hearing on a property-related fee, develop and enter into the record evidence supporting compliance with the five substantive requirements.

Agencies generally hire outside consultants to perform a rate analysis to determine rates that comply with these substantive requirements. The rate analysis serves as evidentiary support of substantive compliance. However, unlike the requirement of Proposition 218 that benefit assessments "be supported by a detailed engineers report prepared by a registered professional engineer certified by the State of California,"[29] in the context of property-related fees there is no specific requirement as to what

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[26] *See Apartment Ass'n of Los Angeles County v. City of Los Angeles* (2001) 24 Cal.4th 830.
[27] Cal.Const. art. XIII C, § 1(e).
[28] Cal.Const. art. XIII D, § 6(b)(5).
[29] Cal.Const. art. XIII D, § 4(b).

type of report or study needs to be prepared; the level of detail of the report or study; the qualifications for the person preparing the report or study; or whether a formal report or study need be prepared at all. This is a case where "more" is probably "better"—so long as the report is logical, internally consistent, and based on sound and relevant data.

A complete discussion of these requirements is beyond the scope of this paper. Note that only one published appellate decision, *City of Palmdale v. Palmdale Water District,*[30] has directly interpreted the Section 6(b) substantive requirements, and that decision considered a fee that, as described by the court, was particularly extreme and arbitrary in the rate differentiation made between classes of users.

If a proposed property-related fee cannot meet the Section 6(b) requirements, or if there is concern that the proposed fee may have an unacceptable legal risk of noncompliance, most fees can be restructured as special taxes. Special taxes are not subject to the substantive (or procedural) requirements for property-related fees. They do, however, require voter approval by a two-thirds super-majority.[31]

III. The Section 6(a) Process.

The Article XIII D, Section 6(a) process for imposing a new property-related fee or increasing the rate of an existing property-related fee has three formally required components: (i) notice, (ii) hearing and (iii) protest.[32] It is often a good idea to precede these steps with an additional step, which I refer to as the "intention" step.

A. Notice.

Notice is governed by Article XIII D, Section 6(a)(1), which requires that "the agency shall provide written notice by mail of the proposed fee or charge to the record owner of each…parcel upon which the fee or charge is proposed for imposition."

Where a property-related fee is charged on the property tax bill, it is fairly clear that notice should be given to the record owner of each parcel of property subject to the fee.[33]

Where a property-related fee is charged by direct billing, Section 53755 of the Government Code ("Section 53755") authorizes (but does not require) that notice may instead be included "in the agency's regular billing statement for the fee or charge or by any other mailing by the agency to the address to

[30] (2011) 198 Cal.App.4th 926.
[31] Cal.Const. art. XIII C, § 4; Cal.Const. art. XIII C, § 2(d).
[32] Although not specifically stated in Art. XIII D, Sec. 6, it seems extremely likely that these procedures also apply to the extension of an existing fee beyond its sunset date. Oddly, however, the notion of "extension" is not mentioned in Art. XIII D, Sec. 6(a), though it is mentioned in Art. XIII D, Sec. 6(a), relating to substantive requirements.
[33] Proposition 218 does not define "record owner." However, the Proposition 218 Omnibus Implementation Act (Gov't Code § 53750 *et seq.*), adopted through the normal legislative process to assist in the implementation of Proposition 218, defines "record owner" to mean "the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll, or in the case of any public entity, the State of California, or the United States, means the representative of that public entity at the address of that entity known to the agency." (Gov't Code § 53750(j)).

which the agency customarily mails the billing statement for the fee or charge." This is, thus, a statutory authorization for notice to be mailed to *customers,* rather than to *property owners,* when it is the customers who are billed for a service.

Even if notice is mailed to customers pursuant to Section 53755, it must also be sent to record property owners "if the agency desires to preserve any authority it may have to record or enforce a lien."[34] Many agencies choose to send property-owner notice in addition to customer notice even if the agency does not record or enforce liens. They do so either in the interest of public outreach or out of concern that Proposition 218 (a constitutional provision) requires that notices be sent to property-owners in all circumstances, and the notice permitted by Section 53755 is thus insufficient.

B. Hearing.

Not less than 45 days after the notices are mailed, the legislative body must hold a public hearing on the new or increased fee.[35] Any report or study should be entered into the record of this hearing, as should any written communications and written protests received from property owners, customers, or members of the public. Written protests should be accepted by the clerk through the end of the public testimony portion of the public hearing.

A typical procedure for the public hearing is as follows:

1. Mayor (or Chair) announces hearing.
2. Staff gives report.
3. Clerk (or staff) announces both the number of "writings purporting to be protests" that have so far been received as well as the threshold at which a majority protest exists.
4. Public testimony
5. Mayor (or Chair) does a "last call" for protests and closes public testimony.
6. Clerk announces the final number of protests and whether a majority protest exists.
7. Legislative body discusses item.
8. If there is no majority protest, the legislative body may (but is not required to) adopt the fee.

The order of these steps varies from jurisdiction to jurisdiction and, strictly speaking, all that is legally required is that the public be permitted to provide oral and written testimony and that the legislative body not act until it has an opportunity to consider the written protests.

Where it is clear that the number of protests received is substantially less than the threshold for a majority protest, it is a common practice for the Clerk to proceed as if all protests are valid, announce the number of protests received, and announce that there is no majority protest without determining the validity of the protests. If the tabulation of protests is complicated either by the sheer number of protests, the need to check the validity of protests, or (where the agency has not been opening protests as they come in) the need to open the protests, it is common for agencies to continue consideration of

[34] Gov't Code § 53755(a)(3).
[35] Cal.Const. art. XIII D, § 6(a)(2).

the matter to a later date after closing public testimony. Such a continuance gives the Clerk an opportunity to tabulate protests after the meeting (preferably in an announced public location).

C. Protest.

Proposition 218 provides that:

> At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

Note that only written protests count in these proceedings and, unlike for benefit assessments, protests are counted on a one protest per parcel basis. This is clarified by Section 53755(d) of the Government Code, which provides that:

> One written protest per parcel, filed by an owner or tenant of the parcel, shall be counted in calculating a majority protest to a proposed new or increased fee or charge subject to the requirements of Section 6 of Article XIII D of the California Constitution.

Protests by certain tenants appear to be authorized by Article XIII D, Section 2(g), which provides that "'property ownership' shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question." This would likely include, at a minimum, tenants shown as customers on the records of the local agency.

D. Intention.

It is a useful, though not legally required, practice for the legislative body to adopt a "resolution of intention" prior to mailing the hearing notice. The typical resolution of intention (i) proposes (and sets forth the details of) the new or increased rate structure, (ii) sets the date and time for the public hearing, (iii) directs staff to mail notice of the public hearing, and (iv) adopts procedures for the tabulation and acceptance of protests. Some legislative bodies also like to see the form of notice that will be sent.

Although there is no constitutional requirement that any of these matters be acted on by the legislative bodies (rather than be done by staff on its own authority), the consideration of a resolution of intention gives the legislative body a chance to consider a proposed new or increased fee before notice of the proposal is mailed to essentially all of their constituents. This reduces the possibility that members of the legislative body will be surprised when constituents start receiving notices. It also ensures that notice will not be sent of a proposal that lacks support of the legislative body. Formally establishing protest procedures helps to avoid the appearance that the agency is "making up the rules as it goes along."

E. Protest Procedures.

It is typically a good idea to adopt procedures for the tabulation and acceptance of protests. Such procedures typically address the following issues:

- The location at which protests will be accepted prior to the hearing.
- What information should be included on a protest (generally, a printed name, a parcel address or APN, a signature, and an indication that the document is a protest).
- How a protest will be accepted (generally by mail or personal delivery, but not fax or email).
- Who may submit a protest.
- Whether protests will be opened prior to the hearing.
- How protests may be withdrawn.
- The contact information for questions about the process.
- How protests will be tabulated (ie one protest per parcel rule and the practice of treating all protests as valid if it is manifestly clear that there are insufficient protests to constitute a majority protest).
- That protests will be disclosable public records once opened.

IV. Section 6(c) Elections.

After completing protest proceedings under Article XIII D, Section 6(a), an agency must also hold an election to approve a the property-related fee unless the fee is for sewer, water, or refuse collection service. The rules for the conduct of such an election are set forth in Article XIII D, Section 6(c), and have been interpreted by *Greene v. Marin County Flood Control and Water Conservation District*.[36] This paper does not discuss the procedures for conducting such an election. Note that fees for storm drainage services are not considered to be for "water, sewer, or refuse collection" and therefore require an election.[37]

V. The Section 6(a) Notice—Required Information

Article XIII D, Section 6(a) includes the following requirements for the mailed notice with respect to a property-related fee:

> The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

This Section V of this paper discusses each of these requirements.

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[36] (2010) 49 Cal.4th 277.

[37] *Howard Jarvis Taxpayers Ass'n v. City of Salinas, supra*, 98 Cal.App.4th 1351.

A. "The amount of the fee or charge proposed to be imposed upon each"

The typical method for providing this requirement is to include a complete description of the rate structure for the fee. Often, doing so can be somewhat complicated, as fees often consist of more than one component. Where this is the case, it is a good practice to indicate the relationship between the different components. For example:

> Each customer's water bill is composed of two separate rate components: (i) a monthly charge based on the customer's meter size and (ii) a volumetric charge based on the volume of water actually consumed by the customer. The proposed rates for these components are shown in the tables below.

Or:

> Rate per 100 cubic feet of est. water consumption $_____
>
> Minimum annual rate $_____
>
> The City calculates water consumption data for each sewer service customer using the procedure set forth in Section X-X.XXX of the Municipal Code, which is reprinted on the back of this notice. The formula used by the City is designed to exclude water consumption that is used for landscape purposes and therefore does not involve the sewer system. Certain non-residential sewer users, such as restaurants, laundromats and car washes, are subject to a "strength multiplier." These multipliers are listed on the back of this notice.

This discussion should include the complete rate tables, so the recipient of the notice will be able to determine what they will be charged.

Some agencies attempt to create customized mailings that show the exact amount that the parcel will be charged, in addition to the proposed rate schedule. For many fees, it is clearly impossible to do this, as, for example, a household's water consumption and sewer use will generally vary greatly from billing period to billing period. Agencies that attempt to create such customized mailings are well-advised to carefully indicate whether the amounts shown are the exact amounts that will be charged in the upcoming billing period, or are merely estimates based on past usage.

Gov't Code Section 53756 permits the proposal of a schedule of rates that phase in over time or include adjustments for inflation or passed-through wholesale water costs. If such automatic future increases are proposed, the formula and frequency of such adjustments should be clearly stated in the notice. If specific rates are proposed to phase in on specific future dates, they are generally specified in the form of a rate table with one column for each phase-in date. Note that Section 53756 specifically limits the types of adjustments permissible and the period (no more than five years) over which adjustments can be applied without conducting new Section 6(a) proceedings.

B. "The basis upon which the amount of the proposed fee or charge was calculated."

This requirement is a bit ambiguous. Some agencies attempt to fulfill this requirement with a statement such as "the amount of the fee is calculated based on each customer's metered water consumption and water meter size." Others provide more of a statement about the methodology used to calculate the fee formula (i.e. "The proposed sewer service charges were calculated by the City in order to evenly spread applicable costs amongst sewer users according to the cost of providing service to that user"). Still others include substantial detail about the enterprise budget and the method of dividing that budget amongst customers and/or reference to any rate study supporting the fee. Some agencies choose to include all of these approaches in their notices.

C. "The reason for the fee or charge."

This should include a clear statement of what the fee will be used for. For example:

> The City charges these rates to its water customers in order to fund the costs of providing safe and reliable water service.

Or:

> The City imposes its sewer service charges in order to fund the City's costs of operating and maintaining the sewer and sewage treatment system, as well as to pay off the costs of constructing that system.

D. "The date, time, and location of a public hearing on the proposed fee or charge."

This is self-explanatory. Usually, the hearing information is given at the top of the notice, directly beneath a title of the notice.

VI. The Section 6(a) Notice—Other Information

There are a number of other pieces of information that are often included in these notices.

A. A Title.

Typically the title of a notice includes the name of the agency holding the hearing followed by a phrase such as :

Notice of Public Hearing
Proposed Increase of Sewer Rates

B. Information About Why the Recipient is Getting Notice.

Typically, a notice will begin with a statement such as:

> The City of _____ is currently considering revisions to its sewer charges. You are receiving this notice because you are the owner of real property that receives sewer service from the City and that is subject to the City's sewer charge.

Or:

> You are receiving this notice because our records indicate that you are a water customer of the City of _____. The City is currently considering an increase to its water rates. This notice describes the proposed increase and explains how you can participate in the ratesetting process.

Or:

> The City of _____ is currently considering an increase to its water rates. Article XIII D, Section 6 of the California Constitution, adopted by the electorate in 1996 as part of Proposition 218, requires that the City conduct a noticed public hearing with respect to the proposed water rate increase. The purpose of this notice is to give you, as the owner of a parcel subject to the water rates, information about the hearing and the proposed rates.

While not required, such a statement is helpful to let recipients understand why they are receiving the notice.

C. Rate Histories and Increase Percentages.

Many agencies like to include in their rate tables the current amounts of the rates and an indication of the proposed increases for each rate expressed as a percentage. This can be useful information so long as the structure of the rate schedule isn't changing drastically (for example from a fixed rate to a partially volumetric rate). Agencies often like to describe how long it has been since their last rate increase, especially if it has been a long time.

D. Budget Information.

Some agencies like to include information about their enterprise budgets, especially where changes are occurring in their budgets, such as changes in commodity costs, labor costs, maintenance costs of aging infrastructure, or capital costs associated with the construction or rehabilitation of infrastructure. Some agencies also like to include information about efforts that have been made to control costs.

E. Protest Information.

While Proposition 218 does not require that the notice mention the right to protest, agencies often choose to include such information. If procedures for the tabulation and acceptance of protests have been adopted, the web address at which the procedures may be found is often referenced on the notice or the procedures are mailed along with the notice. Examples of protest information include:

At the hearing, the Council will consider all oral and written testimony regarding the proposal. You may also submit a formal written protest against the rate increase proposal (which includes the automatic adjustments). Written protests must be signed by a customer or property owner, and must include the assessor's parcel number or street address of the property for which the protest is submitted. Written protests may be delivered to the City Clerk at the public hearing or mailed or delivered to the City Clerk at _____. Protests which are mailed or delivered to the City Clerk's Office must arrive at City Hall by the date and time of the hearing to be considered. At the conclusion of the public hearing, if written protests against the rate increase proposal have been filed (and not withdrawn) with respect to a majority of the parcels subject to the proposed increase, the City Council will not adopt the increase. Protests will be accepted and tabulated according to the City's adopted Policy Governing the Acceptance and Tabulation of Utility Rate Protest, which are available online at: [website].

Or, more briefly:

At the public hearing, the District's Board will accept oral and written testimony, as well as written protests, regarding the proposed fees. Written testimony, including protests, will also be accepted at [address]. Items mailed to the District must be received prior to the hearing in order to be considered by the Board.

F. Contact Information.

Agencies often include information about where a recipient can get more information about the proposed fee.

G. Miscellaneous Information.

Agencies often include information about when the proposed fee will go into effect, how often the fee is billed, and how the fee is collected (especially if the fee is collected on the tax roll).

VII. Drafting Tips.

1. Be on the lookout for technical terms that aren't widely understood. For example, abbreviations such as "hcf" (hundred cubic feet), "ss" (suspended solids) and "fy" (fiscal year) should be spelled out and (where useful) explained. For example "An acre-foot is approximately 326,000 gallons of water— roughly the amount used by two families in a typical year."

2. Rate tables provided by staff often include items with names that don't make much sense without reference to existing practices. It is helpful to explain items like "hard-to-serve fee" rather than just listing them.

3. It is often helpful to include information such as “most single family homes in the City are served with ____ inch meters” or:

   > The typical single family home consumes approximately _____ hcf per month of water in the wet season and ___ hcf in the dry season—however, every household’s consumption is different, and consumption within may vary greatly from month to month.

   Care should be taken that any such generalization is factually correct and not misleading.

4. It may be helpful to indicate where customers can get information about their historical water use, their meter size, or other criteria factors that go into calculation of the amount they will be charged. Customers might be referred to look at past bills, call the agency, or (for meter size) look at the information stamped on their water meter.

5. Lookout for needless formalism. Phrases like “notice is hereby given” are redundant.