



ADMINISTRATIVE REPORT

Date: October 17, 2013
Agenda Item No.: 8
Meeting Date: October 23, 2013

To: VENTURA WATER RATE CITIZEN ADVISORY COMMITTEE
From: SHANA EPSTEIN, GENERAL MANAGER 
Subject: WATER AND WASTEWATER ENTERPRISE FUND CONTRIBUTION TO THE PUBLIC ART FUND

RECOMMENDATION

Staff recommends that the Committee form a subcommittee to vet alternatives and then present to the full Committee at the November meeting for a formal vote on a recommendation to the City Council.

SUMMARY

On October 9, 2013, the Water Rate Citizen Advisory Committee, the Public Art Commission and the Cultural Affairs Commission participated in a workshop on the subject of the Water and Wastewater Enterprise funds contributions to the Public Art Fund. The discussion included a frank discussion on the value of public art and potential options for the Water and Wastewater Enterprise funds to continue contributing to the future of public art in Ventura.

DISCUSSION

At the workshop, the three bodies identified shared values in moving forward: public art, transparency and defensibility. Public Art does provide a value to the vitality of Ventura in that it provides a sense of place to attract tourists, businesses and new neighbors. All Ventura customers should know what they are paying for when they pay a water and wastewater bill and that should be explained on the bill. Finally, the three bodies agree the water and wastewater rates should follow legal requirements in order to be defensible. Stating this last value, there are still disagreement amongst the members of how defensible the Public Art obligation associated with Water and Wastewater construction costs are in today's legal environment.

As a follow-up to the request for more transparency of the Public Art obligation on the bill, staff will be able to implement disseminating information through Ventura Water's e-Newsletter, Pipeline, Facebook page and other outreach materials related to utility rates. Regarding a line item on the bill, it is difficult to set up an algorithm for a cost that is charged to us in arrears, but we can include an explanation that the average residential customer is paying a defined amount on every bill towards Public Art to communicate the value of water.

The three bodies asked for additional information regarding a legal case involving the City of Roseville, California and the total dollars associated with the Public Art Fund. Attached is a summary of the Roseville Case.

ALTERNATIVE

Instead of forming a subcommittee, the Committee could vote on a recommendation during the meeting. One committee member recommended the following in order to have the Committee's voice be positive and fiscally prudent at the same time:

The Committee recommends that the City Council continue the suspension/moratorium of public art appropriations assessed on new water and wastewater capital improvement projects until the later of the following:

1. The WAV Loan from the Ventura Water Public Art Program Fund has been repaid in full; or
2. Specific public art projects designated for water and/or waste water facilities capital improvement projects have been either completed or contracted for with aggregate expenditures not less than \$1,800,000 (derived as the total Project Cash Balance of \$2,081,050.18 (as of 6/30/2013) less a \$200,000 reserve for future planning.

ATTACHMENT

"In-Lieu Franchise Fee" Invalidated for Lack of Connection to Costs

ATTACHMENT TO ITEM NO. 8

'In-Lieu Franchise Fee' Invalidated for Lack of Connection to Costs

1 June 2002 - 12:00am

Legal Digest
other

Vol. 17 No. 06 Jun 2002

Flat-rate "franchise fees" that the City of Roseville charges customers of its municipal water, sewer and refuse collections systems are in violation of Proposition 218, the Third District Court of Appeal has ruled.

The in-lieu franchise fees are illegal because they are not directly related to the cost of providing service to property owners, the court held. If the fees were tied to the cost of services, the city could levy the charges, the court ruled.

The court ruling could affect numerous local governments that provide utility services to property owners and transfer a portion of the revenues to the general fund.

In 1992, the northeastern Sacramento suburb of Roseville began charging a 4% in-lieu franchise fee on the budgets of the city's water, sewer and garbage utilities. City officials said the fee was compensation, or rent, paid to the general fund by the municipal utilities for use of streets, alleys and rights-of-way — all of which are supported by the general fund. The city also said the 4% fee was a reasonable economic return to the general fund.

Several years later, the Howard Jarvis Taxpayers Association, two other groups and two ratepayers sued the city. They claimed that the fees violated Proposition 218, the Right to Vote on Taxes Act, which voters added to the state constitution in 1996. Placer County Superior Court Judge Frances Kearney ruled for the taxpayers, and Roseville appealed.

On appeal, the Third District considered two questions: First, does Proposition 218 apply to the in-lieu franchise fee? And, second, does the fee violate Proposition 218? The unanimous three-judge appellate panel answered yes to both questions, upholding the lower court's decision.

Proposition 218 applies to fees "imposed by an agency upon a parcel or upon a person as an incident of property ownership," the court ruled, citing Article XIII D, § 2 of the state constitution. The city argued the fee was not "an incident of property ownership" and, therefore, was not subject to Proposition 218. But the court disagreed, pointing to Roseville municipal ordinances that direct the provision of water, sewer and refuse services to property.

"These services are first necessarily delivered to property, and then, and only then, to those living or working on that property," Justice Rodney Davis wrote for the court. "This recognized dichotomy discounts any argument that water, sewer and refuse services delivered to a tenant are not property-related."

Moreover, Proposition 218 stated, "'Property ownership' shall be deemed to include tenancies of real property where tenants are directly liable to pay."

As to whether the fees violated Proposition 218, the court ruled the answer is yes because the proposition requires fees to be reasonably related to the cost of service.

"Roseville may charge its water, sewer and refuse utilities for the street, alley and right-of-way costs attributed to the utilities," Davis wrote. "[A]nd Roseville may transfer these revenues to its general fund to pay for such costs (the general fund supports or pays for Roseville's streets, alleys and rights of way). Here, however, there has been no showing that the in-lieu fee reasonably represents these costs."

A consultant prepared a report for the city that provides a "theoretical foundation" for imposing the fees, but the report failed to identify what the costs supported by the general fund actually were.

"The in-lieu fee is the same percentage applied to each [utilities'] budget, regardless of varying uses of streets, alleys and rights-of-way by the individual utilities," Davis wrote. "It cannot be said that this flat fee on budgets coincides with these costs."

Furthermore, Proposition 218 requires the fees to be pledged for specific purposes. But Roseville simply placed the revenue in its general fund for general governmental services, which was a further violation, the court ruled.

The city argued that Measures U and K, approved by Roseville voters in November 2000, legalized the fees. Measure U amended the city charter to require each city utility to be financially self-sufficient and to fully compensate the general fund "for all goods, services, real property and rights to use or operate on or in city-owned real property." Measure K permitted the city to levy an in-lieu franchise fee of up to 4% to pay for police, fire protection, parks, recreation and libraries.

However, the court ruled those measures did not save the city's case because — again — the ballot measures did not demonstrate what the actual costs were.

The Case:

Howard Jarvis Taxpayers Association v. City of Roseville, No. C036295, 02 C.D.O.S. 3160, 2002 DJDAR 3870. Filed April 12, 2002.

The Lawyers:

For Jarvis: Jonathan Coupal, (916) 444-9950.

For the city: Mark Doane, city attorney's office, (916) 774-5325.