

## **EMID Rate Setting Procedures**

### **Overview of Rate Setting Procedures**

These “Rate Setting Procedures” (“Procedures”) describe the processes that will be followed by the Estero Municipal Improvement District (“District”) in establishing any new or increased water rates and wastewater rates. These Procedures are based on the “Background Information and Defined Terms” set forth on Exhibit “A,” attached hereto. As used in these Procedures, the term “rate” or “rates” may be used to refer to the processes the District will follow for both water rates and wastewater rates.

The Rate Setting Procedures include compliance with Proposition 218 (including the consideration of “written protests” from record owners) as well as the procedures for exhausting administrative remedies under Government Code section 53759.1 (including the consideration of “written objections” from record owners). For the purpose of considering and counting written protests and written objections, the District will consider the term “record owner” to include tenancies of real property where tenants are directly liable to pay the rates to the District (consistent with Proposition 218; California Constitution Article XIII D, Section 2(g)).

At a special meeting of the District Board of Directors (“Board” or “District Board”) on March 24, 2025, the Board approved these Procedures which includes

A. For any water rates or wastewater rates adopted or approved by the Board that complies with these Procedures, 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, unless that person or entity has timely submitted to the District a written objection to those rates in accordance with these Procedures that specifies the grounds for alleging noncompliance with Proposition 218.B. The Board hereby adopts the administrative record principles contained in Government Code section 53759.2.

C. These Procedures will take effect upon approval on March 24, 2025, and will apply to any proposed new or increased water rates of which notice is provided in accordance with these procedures.

D. The District Board authorizes the District Manager to take such other and additional actions as may be reasonably necessary to implement the purpose of these procedures and implement the exhaustion of administrative remedies procedure adopted herein.

### **Rate Setting Procedures**

#### **1. Overview of Exhaustion Procedure (Government Code section 53759.1)**

If the District publishes a notice of public hearing identifying procedures for property owners to submit written objections (described in Section 2(b), below),<sup>1</sup> the District will follow the “exhaustion procedure” set forth herein, to be conducted concurrently with the Proposition 218 process, for the District Board’s consideration of any proposed new or increased water rates or wastewater rates. This exhaustion procedure shall be conducted in accordance with “Proposition 218” (California Constitution Article XIII D; as it is implemented by the Legislature at Government Code sections 53750 – 53759.2; and as it has been interpreted by judicial decisions), and the particular procedures set forth in Government Code section 53759.1. The exhaustion procedure provides an opportunity for record owners to submit a “timely written objection” to identify substantive bases for asserting proposed rates do not comply with Proposition 218. A “record owner” may be referred to in these Procedures as the “owner” or “property owner.” The processes described herein may be referred to as “these Procedures.”

- a. District staff will post on its internet website a notice of the exhaustion procedure, and this notice will be prominently incorporated in the Proposition 218 public hearing notice mailed to each record owner.
- b. The notice will identify the date and time by which timely written objections must be submitted to the District, and the date will be no less than 45 calendar days after the notice is mailed to record owners.
- c. District staff will review timely written objections and prepare written responses providing the substantive basis for retaining or altering the proposed rates in response to the written objections. District staff will present its written responses to the District Board prior to the close of the public hearing for the Proposition 218 protest hearing, and the District Board will review to determine whether action is needed in response to the written objections or written responses.
- d. Following the District Board’s review and response to timely written objections and written responses, it is within the discretion of the District Board to proceed with the Proposition 218 protest hearing process, as described herein, to consider approval of the proposed rates.
- e. **Rate Challenger Must Exhaust Administrative Remedies.** No claim, suit for damages, suit for injunctive relief, petition for writ of mandamus, or administrative or judicial proceeding shall be brought against the District (including the District Board, or its employees, officers, or designees) regarding a challenge to a proposed rate unless the challenging party first exhausts its administrative remedies by complying with these Procedures and submitting to the District a timely written objection.

## **2. Notice of Proposition 218 Public Hearing and Initiating Exhaustion Procedure**

Prior to approving or imposing any new or increased rates, the District will conduct a public hearing and provide prior written notice to each record owner of the hearing and the exhaustion procedure

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<sup>1</sup> If the District publishes a notice of public hearing that does not identify procedures for property owners to submit written objections, the District will conduct the public hearing in compliance with Proposition 218, and consider any written protests in accordance with these Procedures.

as described in these Procedures. To the extent the District sends a regular billing statement for water or wastewater service provided to a “customer” (e.g., a “tenant” or other “ratepayer”) who is not the record owner, the District will also mail the written notice to the customer at the address for the billing statement. The District 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. This may be satisfied by identifying the rate amounts for each customer type subject to the rates.
  - (3) The basis upon which the amount of the proposed rates were calculated.
  - (4) The reason for the rates.
  - (5) The location to which all owners must submit signed paper written protests to the District via mail or personal delivery.
  - (6) To the extent relevant to support bond covenants that rely on revenue from rates, pursuant to 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: (a) the rates are discriminatory or excessive, or (b) the rates 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 fee, including a link to information that is available on the District’s website or by requesting a mailed copy.
- b. Compliance with the Exhaustion Procedure for Written Objections. If the District chooses to follow the exhaustion procedure for written objections, concurrently with mailing the public hearing notice, the District 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 District. The deadline will be no earlier than 45 days after the District mails to property owners the notice of the public hearing.
  - (2) The location to which all owners must submit signed paper written objections to the District via mail, or personal delivery.
  - (3) All substantive requirements for submitting a written objection. The record owner must comply with the requirements set forth in Procedures section 3, below,

including specifying the grounds on which the owner alleges the proposed new or increased rates does not comply with Proposition 218.

(4) Notice that: (a) 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; and (b) 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 District will mail the public hearing notice to each record owner of a parcel that is subject to payment of the new or increased fee. 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 San Mateo County Recorder is sufficient evidence of the record owner of each parcel. A person may rebut the presumption by providing to the District written proof of ownership.

(2) The District Manager, or designee, will identify those persons authorized to provide proper mailing of any notice required by these Procedures, and an affidavit of the manner and timing of those mailings 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 District may also provide supplemental notices to the address where the District customarily mails the billing statement for rates.

d. 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 "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.

### **3. 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 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 record owners the notice of public hearing.

b. Be in writing (1) 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 (2) signed by the record owner, or otherwise identifying that the record owner submitted the written objection, subject to verification by the District.

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. For any proposed new or increased “fee” for a property-related service (such as water rates or wastewater rates), relevant substantive requirements of Proposition 218 include:

- (1) Revenues derived from the rates shall not exceed the funds required to provide the property related service.
- (2) Revenues derived from the rates shall not be used for any purpose other than that for which the fee or charge was imposed.
- (3) The amount of the rates shall not exceed the proportional cost of the service attributable to the parcel.
- (4) No rates may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Rates based on potential or future use of a service are not permitted.
- (5) No rates 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.

#### **4. Requirements for Submitting Timely Written Protests**

The District will consider each timely written objection to also serve as a timely written protest from a record owner.

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 6, below, it must:

- a. 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.
- b. Be in writing (1) 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 (2) signed by the record owner, or otherwise identifying that the record owner submitted the written objection, subject to verification by the District.
- 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. Record owners of multiple parcels within the District may file one protest for each parcel owned within the District's service area.

f. 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 District 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.

g. The District Clerk shall take custody of all submitted written objections and written protests.

(1) In order to protect the integrity of the procedures for considering written objections and written protests as described in these Procedures, all written objections and written protests shall remain confidential until the District Manager (or designee) has determined they may be published in accordance with the criteria in paragraph 4(g)(2).

(2) Any submitted written objection and written protest 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 and written protests to protect the integrity of the process described herein during the time that: (A) written objections 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).

## **5. District's Response to Timely Written Objections**

At the close of the written objection period, District staff shall review timely written objections and shall draft written responses to the written objections. The District'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.

District staff shall present the written responses to the District Board at the public meeting that was specified in the public hearing notice described in Section 2, above.

a. In accordance with the Brown Act, the public will be provided an opportunity to address the District Board 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 District Board, 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.

## **6. Conducting the Proposition 218 Protest Public Hearing**

If the District Board determines to proceed to the Proposition 218 protest public hearing for proposed new or increased rates (as previously noticed in accordance with Section 2, above), the public hearing shall be conducted consistent with the following:

- a. The District Board will open the public hearing and consider all evidence presented during the hearing including the public hearing notice and all documents referenced therein (particularly including the Rate Study), all written objections, written responses, written protests, and any testimony, documents, or information presented during the public hearing.
- b. Prior to closing the public hearing, the District Board will request if there are any additional written protests to be submitted to (or withdrawn from) the District.
- c. The District Board will then close the public hearing and request a report from the District Clerk to identify the number of timely written protests compared to the total number of parcels subject to the new or increased fees.
  - (1) A majority protest exists only if the number of timely written protests exceeds one-half of the parcels served by the District.
  - (2) If the District Clerk determines that additional time is needed to tabulate timely written protests, the District Board shall recess or continue the public meeting to provide sufficient time for the District Clerk to complete the tabulation.
  - (3) If the District Clerk determines that there is a majority protest, the District shall not impose the new or increased rates.
  - (4) If the District Clerk determines that there is not a majority protest, the District Board shall continue its deliberations and take action on the proposed new or increased rates.
  - (5) The District Clerk's determinations under these Procedures shall be the final determination of the District subject to appropriate judicial review. This shall include the District Clerk's determinations that: (a) a written protest meets the requirements for a timely written protest in accordance with these Procedures; or (b) a majority protest has (or has not) been submitted for the proposed rates.

## Exhibit A

### Background Information and Defined Terms

A. The Estero Municipal Improvement District (“District”) provides water and wastewater services to property owners (who may also be referred to as “owners”) within the District’s service area (as described in Exhibit B), and establishes the amount of water and wastewater rates to be charged customers in accordance with Estero Municipal Improvement District Code (“District Code”) and applicable law.

B. California law authorizes the District to charge a fee to the property owners or property owners’ “tenants” (who may be collectively referred to as “ratepayers” or “customers”) for the proportionate cost of providing water and wastewater services to each customer in accordance with the procedural and substantive requirements of the voter-approved ballot measure known as “**Proposition 218**” (California Constitution Article XIII D; as it is implemented by the Legislature at Government Code sections 53750 – 53759.2; and as it has been interpreted by judicial decisions). The phrase “**rate**” or “**rates**” may be used to refer to the processes the District will follow for both water rates and wastewater rates.

C. Under Proposition 218, the District’s rates are considered to be a “fee” for a “property-related service” (also referred to as a “property-related fee”), 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 rates if the District (1) calculates the rates in accordance with Proposition 218, (2) conducts a noticed public hearing before the District Board (“**District Board**”), as described in these procedures and (3) a “**timely written protest**” is not submitted by property owners representing a majority of the parcels served by the District.

D. Under Government Code sections 53759.1 and 53759.2 (known as “**AB 2257**”), the District may establish a supplemental process for objecting property owners to exhaust administrative remedies, also described in these procedures, by which the District will take specified actions in 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 water rates or wastewater rates through a legal proceeding. (These supplemental processes were authorized by Assembly Bill No. 2257, Chapter 561, Statutes of 2024, effective January 1, 2025.)

E. The purpose of these Procedures is to document the processes the District will follow in considering proposed new or increased rates, including compliance with Proposition 218 as well as the exhaustion of administrative procedures under AB 2257. The processes described in these Procedures provide a meaningful opportunity for a property owner to submit a written objection to proposed new or increased rates early in the rate consideration process, and to provide an opportunity for the District to address or resolve any objections before the District Board makes a final decision on whether to adopt proposed rates pursuant to Proposition 218.



F. These Procedures identify the process the District will follow in order to implement the administrative remedies to be exhausted by property owners under Government Code sections 53759.1 prior to an owner initiating litigation to challenge the rates. In general, at least 45 days before a public hearing to consider a proposed new or increased rates, the District will make available the proposed rates, and post the written basis for the proposed rates on its internet website. The District will provide at least 45 days for any property owner to review the proposed rates and timely submit to the District a written objection to the rates that specifies the grounds for alleging noncompliance with Proposition 218. The District will consider and provide a substantive written response to each timely written objection submitted prior to the close of the public hearing described in Section 1(C).

G. For any rates approved by the District implementing these Procedures, 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, unless that person or entity has timely submitted to the District a written objection to those rates that specifies the grounds for alleging noncompliance with Proposition 218.

H. The District Board 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.

## Exhibit B

### Estero Municipal Improvement District and City of Foster City Map

EMID provides water service in the City of Foster City and the Mariner's Island portion of San Mateo. EMID provides wastewater service in the City of Foster City.

## EMID Service Area

