



CITY COUNCIL STAFF REPORT

ITEM NO. 6.2

DATE: June 9, 2025

TO: Honorable Mayor and City Council

FROM: Judy Erlandson, Acting Public Works Director

SUBJECT: Hearing to approve the May 2025 Wastewater Cost of Service Study, review received objections and the City's responses to the objections, review and tabulate protests received in accordance with Proposition 218 to determine if a majority protest exists, consider proposed updated wastewater service charges, and approve a resolution adopting the updated charges if no majority exists.

RECOMMENDED ACTION

Staff recommends the City Council conduct a public hearing to approve the May 2025 Wastewater Cost of Service Study, review the objections received and the City's responses to the objections, review and tabulate protests received in accordance with Proposition 218 to determine if a majority public protest exists, consider updated proposed wastewater service charges, as set forth in the May 2025 Wastewater Rate Study, and approve a resolution adopting the updated charges if no majority protest exists.

SUMMARY

The City of Livermore provides wastewater collection, treatment, and disposal services as a single municipal enterprise that is fully funded by customer service charges. NBS Government Finance Group ("NBS") completed the March 2025 Wastewater Rate Study, which evaluated the Wastewater Enterprise's financial needs and proportionately allocated costs of service to each wastewater customer class. The study recommended an increase to the current wastewater service charges. Ratepayers were advised of this public hearing to consider the proposed rates and their opportunity to protest the proposed rates by mailed notice, in compliance with Article XIII D, section 6 of the California Constitution ("Proposition 218"). After the notices were sent out, the City discovered errors in the estimated cost of service included in the March 2025 Rate Study. NBS corrected those errors and issued the May 2025 Wastewater Rate Study, which sets forth rates that are lower than those calculated in the March 2025 Wastewater Rate Study and set forth in the Proposition 218 notice. Staff recommends that, if the City does not receive written protests from a majority of parcels receiving wastewater services, the City Council adopt the revised rates set forth in the May 2025 Wastewater Rate Study.

DISCUSSION

The City of Livermore provides wastewater collection, treatment, and disposal services as a single municipal enterprise that is fully funded by customer service charges. No property or sales taxes are used to support the Wastewater Enterprise Fund. Sufficient revenue must be collected to cover the costs of operation, maintenance, construction, and improvement of the facilities used for the collection, treatment, and disposal of wastewater, and meet the City's minimum reserve requirement for the Wastewater Enterprise Fund.

State voters approved Proposition 218 which requires that total wastewater revenues cannot exceed the cost of providing wastewater service, and that charges for any customer class cannot exceed the proportional cost of providing service to that customer class. Therefore, no subsidies between customer classes are allowed under Proposition 218.

In addition to restrictions on the amount of service charges which can be imposed, the City must comply with Proposition 218's procedural requirements when adopting rates.

The Proposition 218 Majority Process:

- Ratepayers and property owners may submit written protests against the proposed rates up until the close of the public hearing to consider the rates.
- The Council holds a public hearing and determines if a majority protest exists (50% + 1 of all ratepayers).
- If no majority protest exists, the Council may adopt the proposed rates.

The City complies with Government Code sections 53759.1 and 53759.2 (Assembly Bill 2257 (2024)) which require the following:

1. Advance notice of the proposed service charges by mail at least 45 days prior to holding a public hearing to consider extending, imposing, or increasing wastewater service charges.
2. Council consideration of timely written objections to the proposed revised wastewater service charges, as well as the City's written response to timely objections.
3. Inclusion of the following information in the mailed notice:
 - a. The amount of the proposed services charges and the basis on which the charges are calculated;
 - b. A link to the Wastewater Cost of Service Study on the City's website;
 - c. The reason for the rate change;
 - d. The date, time, and place of a public hearing to consider adoption of the revised charges;
 - e. Instructions on the procedures and deadlines to submit written objections; and
 - f. A prominently displayed statement informing ratepayers that failing to object in a timely manner bars any right to challenge the wastewater service rates through a legal proceeding and that such action may be limited to issues identified in the challenger's objection.

The New Objection Process per State Law (Gov. Code sections 53759.1 (AB 2257 (2024)):

- Allows ratepayers to submit written objections to the proposed rates by a deadline set forth in the mailed notice;
- Limits future legal challenges to issues raised in valid, written objections during the rate adoption process;
- Requires the City to respond, in writing, to all timely submitted and valid objections; and
- Requires the City Council to consider the objections and the written responses and determine whether to (1) clarify the proposed rates; (2) reduce the proposed rates; (3) further review the

proposed rates; or (4) overrule the objections and proceed with the protest hearing to consider whether to adopt the proposed rates.

The procedural timelines are as follows:

- March 10, 2025: Council established the process for submission of objections and protests and directs staff to issue the public notice.
- May 12, 2025: Objections were due. Staff reviewed and responded to each objection and the responses are a part of the Council packet.
- June 9, 2025: Protests are due. Council will hold a public hearing. Council will determine if a majority protest exists, and if not, may adopt the proposed rates via resolution pursuant to City Ordinance 2169 approved by the Council on February 24, 2025, effective March 26, 2025.
- July 1, 2025, the new rates are implemented.

The annual wastewater operating budget for FY2025-26 through FY2029-30 is projected to be approximately \$25.2 million to \$28.2 million. The City's adopted reserve policy for the Wastewater Enterprise Fund requires a minimum reserve that is equal to 120 days of operating expenses, or approximately \$9.5 million in FY 2024-25. Most of the City's revenue for the Wastewater Enterprise is collected on the county tax roll, therefore the revenue is only realized twice per year. The operating reserve helps ensure that there are sufficient funds available for operating expenses throughout the fiscal year.

In addition to operational costs and meeting the minimum operating reserve target, the City also maintains a capital rehabilitation and replacement reserve that is equal to the annual average of the 5-year Capital Improvement Program (CIP), which is approximately \$8.7 million in FY2024-25. The balance in the capital rehabilitation and replacement reserve will fluctuate due to the cyclical nature of capital improvements and the need to save revenues to fund future improvements to the City's wastewater enterprise. During the upcoming five-year rate period, the capital reserve will be higher than average in order to build up funding for a \$30 million project to comply with new nutrient permit requirements that were imposed by the San Francisco Regional Water Quality Control Board in October 2024. Staff anticipates that the majority of the costs incurred for this project will occur in the next five-year rate period (2031-2036). The City of Livermore has chosen to use a "pay as you go" method to finance this project to avoid the significant additional cost of debt financing.

NBS calculated the revenues needed to cover wastewater operations and capital expenses and proportionately allocated those revenue needs to each customer class to develop the proposed rates, which were set forth in the March 2025 Wastewater Rate Study. The rates set forth in the March 2025 Wastewater Rate Study were included in the notice mailed to property owners and customers of record pursuant to the requirements of Proposition 218. However, after notices were sent, staff determined it was necessary to correct projected expenses for specific personnel costs in the laboratory budget, administrative software costs, and overtime costs in the wastewater billing budget. Application of these adjustments to the rate model resulted in lower rates than the maximum proposed rates shared publicly in the Proposition 218 notice mailed to property owners and customers in March 2025. These projected expenses were corrected in the rate model and NBS issued the May 2025 Wastewater Rate Study. The May 2025 Wastewater Rate Study calculates annual revenue increases of 4% beginning in FY2025-26 through FY2029-30. Staff recommends that the Council adopt the revised and reduced wastewater service rates set forth in the May 2025 Wastewater Rate Study.

Objections Received

The City received 12 objections by the May 12, 2025, deadline for written objections set forth in the Proposition 218 notice. The objections and the City's written responses to the objections are attached (attachments 4 and 5). If the City adopts the proposed sewer rates in compliance with the requirements of Government Code section 53759.1, no person may bring a judicial action or proceeding alleging that the sewer rates do not comply with the California Constitution or other applicable law, unless that person submitted to the City Clerk a timely, written objection to the sewer rates specifying the grounds for alleging noncompliance. The issues raised in any such action or proceeding shall be limited to those raised in such an objection unless a court finds the issue could not have been raised in such an objection by those exercising reasonable diligence.

Protests Received

Ratepayers may also submit a protest against the Council's adoption of the proposed rates. Protests may be submitted by property owners or customers, but only one protest is counted per served parcel. Protests count towards the Proposition 218 majority protest requirement of 14,169. To be considered valid Protests must include:

- Statement of protest
- Name of protestor
- Address or APN of service address
- Original signature of protestor

Prior to the public hearing, the City received communications from the public in both electronic and hardcopy forms. The comments asserted in these communications generally fell into the following categories:

1) Affordability:

Ratepayers expressed concern about affordability due to increases in other utility rates and rising inflation and other costs.

The City's response is that the wastewater utility is an enterprise fund, and as such, should be self-sustaining. The proposed wastewater service rates are limited to the City's actual documented costs of service, as demonstrated by the May 2025 Wastewater Rate Study. The May 2025 Wastewater Rate Study spreads the costs of increases over a five-year period to minimize annual rate increases, while ensuring that the wastewater enterprise fund remains solvent, and that the City can responsibly plan and save for future capital expenses. Moreover, the regional monthly sewer bill comparison, included in the May 2025 Wastewater Rate Study (Figure 10), demonstrates that, even if the proposed rates are adopted, the City's rate will continue to be on the lower end of those charged by nearby comparable jurisdictions.

2) Lack of justification for increase:

Ratepayers expressed frustration over a perceived lack of transparency and accountability for the wastewater rate calculations.

The Proposition 218 notice included a link to the March 2025 Wastewater Rate Study, which sets forth

the City's projected wastewater expenses and proportionately allocates those expenses among the various customer classes. The notice also states that the City would mail the study to any person upon request. The May 2025 Wastewater Rate Study revised and lowered the rates in the March 2025 Study and is attached hereto for public review.

3) Rates of single-family customers vs. multi-family customers:

Rate payers questioned why the rates for single family customers were higher than those for multi-family customers.

As demonstrated by the May 2025 Wastewater Rate Study, on average, multi-family units in the City generate less wastewater discharge. Since the City is required by Proposition 218 to charge rates that are proportionate to costs of service, the proposed rates for multi-family customers is less than the rates for single family customers.

4) Increased Costs Should be paid by New Development:

Ratepayers expressed concern that they would be paying the costs to serve new growth and construction.

The City's response is that developers are charged connection fees, which pay for the sewer infrastructure necessary to provide sewer capacity to new development. The City is not legally allowed to charge developers or new growth more than the costs of the sewer facilities that are of proportional benefit to new development. Moreover, the costs of ongoing maintenance, ongoing operations, and improvements to the existing system to meet new standards must be borne by ratepayers.

5) Increases in rates are more than inflation:

Ratepayers asserted that the proposed rate increases for the next five years are greater than the projected inflation for the same period.

The City has two responses. First, increases in construction costs, which are most relevant to sewer operations, have surpassed general inflation. Second, the City needs to save for future capital expenditures including an estimated \$30 million project to comply with new nutrient permit regulations.

6) No volumetric rates or needs-based pricing:

Ratepayers suggested that the rates for single family homes should be based on usage, rather than a uniform rate, and questioned whether the City should include discounts for low income or fixed income residents.

This issue is more thoroughly addressed in the City's response to Objection 1-I. As explained in the City's response, wastewater discharge does not vary significantly from one single family customer to another, and as such, the City determined that a uniform rate is the most accurate and efficient way to bill single family customers. Moreover, while individual single family ratepayers are not being charged for their specific wastewater generation, the rates paid by the single family customer class reflect the total wastewater volume generated by single family customers and the corresponding costs of service. Thus, even though single family customers all pay one uniform rate, they are paying only for the collective

costs of the wastewater they generate.

Additionally, under Proposition 218, the City must charge rates that are proportionate to the costs of service. Therefore, the City cannot charge a lower rate to one group of ratepayers, such a low-income ratepayer, unless it funds that discount with non-rate revenues.

7) City should explore grant opportunities:

Ratepayers expressed frustration that the City is not pursuing state and federal grants and other funding sources to fund the wastewater enterprise, rather than relying predominately on rate revenues.

The City's response is that there are very few grant opportunities to fund ongoing wastewater services and capital replacement. When available and appropriate, City staff investigate and pursue grant opportunities. The City evaluated its likelihood of receiving grant funding for any the projects or costs included in the rate updated and determined that it was unlikely that the City would receive grant funding for any of these expenses.

8) The increase on single-family customers is greater than the increase on nonresidential customers:

Ratepayers expressed concern that single-family ratepayers may be subsidizing other customers because the single-family rate is more than double the nonresidential rate, and more than the multi-family rate.

The City's response is that the rate study conducted by NBS appropriately allocates the total cost of service for residential customers. Only the costs attributed to residential customers are paid for by residential customers. All customers, regardless of classification, pay for the same account fee, which shows up as the monthly fixed fee for non-residential customers. All customers pay for their usage, but residential customers pay for their class average usage rather than their individual usage. The per unit rates for non-residential customers vary by customer class based on the estimated strength (most residential wastewater is similar in strength).

FISCAL AND ADMINISTRATIVE IMPACTS

If tabulation of the public protest determines that a majority protest does not exist, and the proposed revised wastewater services charges are adopted, the new rates will go into effect July 1, 2025. If adopted, the proposed rates will generate 4% additional revenue for the wastewater enterprise fund each year from FY 2025-26 through FY 2029-30. A public hearing will be held on July 28, 2025 recommending Council to authorize collection of the wastewater service charges on the county tax roll.

COMMUNITY PILLAR

1: A Safe Community That Thrives

GOAL

11: Operate and maintain municipal water systems that provide safe, efficient delivery of potable and recycled water, collect and treat wastewater, and comply with federal, state, and local regulations.

ATTACHMENTS

1. Public Hearing Notification - Wastewater Service Rates 2025
2. Wastewater Cost of Service Study March 2025
3. Memo - Proposition 218 Notice Mail Out Process
4. Written Objections Received
5. Staff Response to Written Objections
6. HF&H Study
7. CAPS Study
8. Resolution
9. Exhibit A - Wastewater Cost of Service Study - Revised May 2025
10. Exhibit B - Wastewater Rates 2025 through 2030

Prepared by: Laura Mayate-DeAndreis
Management Analyst II

Approved by:



Marianna A. Burch
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director