



Town of Yountville
"The Heart of the Napa Valley"

M E M O R A N D U M

TO: Mayor Dunbar and Members of the Town Council

FROM: Michael R. Cobden, Town Attorney
Jon R. di Cristina, Assistant Town Attorney

SUBJECT: Applicability of Proposition 218 to Town Solid Waste Service

DATE: May 18, 2015

CC: Steven Rogers, Town Manager

Chapter 13.80 of the Town of Yountville Municipal Code makes solid waste hauling service and fees mandatory for certain properties unless a property owner applies and qualifies for an exemption. The Upper Valley Waste Authority (UVA) has expressed concern that the ordinance creates risk under Proposition 218. The Town is currently considering an ordinance to clarify Chapter 13.80's exemptions. As you requested, we write to opine on UVA's concerns. On a related issue, if UVA is interested in minimizing its exposure to Proposition 218 risk on all fronts, we identified one issue it may wish to address in the franchise it administers on the Town's behalf.

FACTUAL BACKGROUND

Based on the documents we have reviewed, we understand the essential facts to be as follows. If these facts are incorrect or materially incomplete, please let us know, as different facts may require us to alter our advice to you.

In 1992, the Town, the Cities of St. Helena and Calistoga and Napa County formed the UVA pursuant to the Joint Exercise of Powers Act. UVA administers a solid waste franchise with Upper Valley Disposal & Recycling Services (UVDS) on behalf of its members. The franchise agreement allows UVDS to propose solid waste service rates, but these rates must fall

within detailed parameters stated in the agreement, and they are subject to UVA's approval.¹ Indeed, the franchise agreement identifies UVA as "the Rate Setting Agency."²

In response to an increase in residential waste in park refuse bins, residents' complaints about neighbors using their bins without permission, and complaints from businesses about illegal dumping, the Town recently adopted Ordinance 15-431. Under the Ordinance, properties are subject to "the minimum charge for solid waste service" if they are within the Town's limits and are "occupied" or have an active water service account.

The Town Manager may grant an exemption to the service and the minimum charge if the property owner demonstrates (1) that he has made other arrangements for service,³ (2) that "the premises are unoccupied" and water service is "used exclusively for irrigation purposes," or (3) the owner "has arranged for shared solid waste disposal with the owner or occupant of another structure receiving solid waste collection service from [UVDS], and such shared service does not involve an undue accumulation or improper storage of solid waste."⁴

In addition, a property owner may claim an exemption from solid waste service if he or she can demonstrate (4) that he or she "does not generate sufficient solid waste to require service and timely and appropriately transports his or her solid waste to a permitted disposal facility at least every seven days."⁵ This exemption is logically in line with those described above and, indeed, could be considered a sub-set of the first exemption. However, under this last exemption, a property owner must still pay the minimum fee for solid waste service.⁶ As noted above, the Town is currently considering amendments to clarify and expand the exceptions to required solid waste service.

We draw two important points from these facts. First, relative to other public entities that administer utility franchises, UVA exerts more control over the rates property owners pay for solid waste service, both through the detailed rate-setting parameters in the franchise agreement and through its power to approve rates. Second, while the Town's new Ordinance provides broad exemptions that allow property owners to avoid mandatory solid waste service and its associated charges, one of these exemptions as currently written requires that the property owner pay the minimum fee for that service.

PROPOSITION 218

Proposition 218 establishes procedural and substantive requirements for "property related" fees "imposed" by local government agencies "as an incident of property ownership."⁷ Solid waste service is probably "property related" because, like water service, it is indispensable

¹ UVA Agr. No. 95-09 (Sep. 25, 1995), p. 2; Fourth Amend. to Agr. No. 95-09 (Apr. 21, 2008), Exh. B.

² Fourth Amendment to Agreement No. 95-09 (Apr. 21, 2008), p. B-2.

³ Yountville Municipal Code ("YCM") § 13.80.010 (D).

⁴ Yountville Municipal Code ("YMC") § 13.80.010 (D); § 13.80.020(F)(2) & (3)

⁵ YMC § 13.80.020(F)(1)

⁶ YMC §§ 13.80.010 (A), 13.080.060 (B).

⁷ Cal. Const., art. XIII D, § 2, subd. (e), § 6.

for most uses of property. When evaluating whether Proposition 218 applies to a particular solid waste service fee, the important questions are therefore (1) whether the fee is “imposed” by a government and (2) whether it applies “as an incident of property ownership.”

1. Is the Solid Waste Service Fee “imposed”?

Because Proposition 218 only applies to fees “imposed” by governments, it is open to question whether Proposition 218 applies to solid waste fees established by private, for-profit, franchised haulers like UVDS. No published court decision reaches this question, although trial court rulings have applied Proposition 218, at least to franchise fees and fees to fund compliance with AB 939’s waste reduction mandates. The argument for an exemption is that the franchisee “imposes” the fee at issue and government merely regulates those rates. Whether that claim is persuasive turns on these facts: How much authority does government retain to set and collect rates? Second, can customers avoid the service fee without selling the property?

To mitigate any risk that a customer might argue that the UVDS’s rates are “imposed,” the Town has already introduced on first reading a series of amendments to the Code which will clarify and expand the exceptions to mandatory solid waste service, including a provision for self-hauling and several for shared service. Property owners who qualify for these exceptions will not be required to pay for service. The exceptions themselves establish that customers can indeed avoid the fee without selling their property. However, as noted above, UVA’s rate regulation provides it more control over UVDS’s rates than many other similarly situated public entities that administer franchises. Thus, while the Town can mitigate risk under Proposition 218 by expanding and clarifying exceptions to its own Code, UVA can further reduce risk by altering its franchise agreement to reduce its own control over setting rates.

2. Is the Solid Waste Service Fee imposed “as an incident of property ownership”?

A fee is imposed “as an incident of property ownership” if it is related to normal residential use of property as opposed to voluntary use for other purposes. For example, the California Supreme Court held a fee collected on the property tax roll from landlords to fund Housing Code enforcement was not imposed “as an incident of property ownership” because the fee applied to landlords as such and only while they choose to be in the rental housing business.⁸ Put differently, landlords did not have to sell their property to avoid the fee; they simply had to change the way they voluntarily chose to use their property.

Chapter 13.80 does not require property owners to sell their property to avoid UVDS’s solid waste service and fees. It is true that, under the Ordinance, water service alone triggers the presumption that a property owner must receive UVDS’s service and pay its fees, and land cannot be used for residential purposes without water service — meaning essentially all property owners begin from the position of presumptively paying these fees. However, the Ordinance’s broad exemptions also allow all property owners to apply for an exemption. Accordingly, all property owners subject to the Ordinance may avoid the fees it imposes simply by making other

⁸ *Apartment Ass’n of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830.

arrangements for solid waste service; they do not have to sell their property. The amendments to the Ordinance currently pending before the Council both expand and clarify these exceptions, in effect providing every property owner with a viable alternative to solid waste service and its attendant fees.

Any remaining risk that UVDS's service and fees are subject to Proposition 218 can only be remedied by amending the franchise administered by UVA. For example, the franchise agreement could simply describe the Board's role as regulating UVDS's rates to protect customers from its monopoly pricing powers and to fulfill the Board's regulatory obligations under the Integrated Waste Management Act, and then set an overall rate ceiling. Thus UVDS would set rates, not UVA, and the resulting rates would not be subject to Proposition 218 because they would be established by a private entity, not a government agency.

CONCLUSION

We conclude the existing exceptions to the Town's solid waste ordinance, as clarified and expanded in the pending ordinance, effectively take Chapter 13.80 out of the ambit of Proposition 218. The only way to further reduce risk under Proposition 218 is to amend the franchise agreement, which will require action and approval by the other members of the UVA JPA. Thank you for the opportunity to assist.