



COUNTY OF MARIPOSA

P.O. Box 784, Mariposa, CA 95338 (209) 966-3222

GARRY R. PARKER, CHAIRMAN
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MARIPOSA COUNTY BOARD OF SUPERVISORS

MINUTE ORDER

TO: JEFF GREEN, County Counsel
FROM: MARGIE WILLIAMS, Clerk of the Board *MW*
SUBJECT: Adopt Resolution Establishing Procedures for Assessment Ballot Proceedings
Resolution 00-332

THE BOARD OF SUPERVISORS OF MARIPOSA COUNTY, CALIFORNIA,

ADOPTED THIS Order on September 19, 2000

ACTION AND VOTE:

Adopt Resolution Establishing Procedures for Assessment Ballot Proceedings (County Counsel)

BOARD ACTION: Discussion was held, and Jeff Green/County Counsel, clarified that each parcel would only have one vote; however, each owner would sign the ballot. (M)Pickard, (S)Balmain, Res. 00-332 adopted, with the option for the ballots to remain confidential/Ayes: Unanimous.

cc: Don Phillips, County Clerk
Jim Petropulos, Public Works Director
Policy Binder
File

THIS RESOLUTION
HAS BEEN
RESCINDED BY
RES 01-255
(9-11-01)

**MARIPOSA COUNTY
BOARD OF SUPERVISORS**

**AGENDA
ACTION FORM**

DATE: 9/12/00
AGENDA ITEM NO.: 7

DEPARTMENT: County Counsel

BY: Jeffrey G. Green

PHONE: 966-3222

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes ___ No)

Adopt resolution establishing procedures for assessment ballot proceedings. See attached memo for additional information.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

COSTS: () Not Applicable
A. Budgeted current FY \$ _____
B. Total anticipated costs \$ _____
C. Required additional funding \$ _____
D. Internal transfers \$ _____

SOURCE: () 4/5ths Vote Required
A. Unanticipated revenues \$ _____
B. Reserve for contingencies \$ _____
C. Source description: _____
Balance in Reserve for Contingencies, if approved: \$ _____

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:

memo to Board
Resolution
Exhibit "A"
Exhibit "B"

CLERK'S USE ONLY:
Res. No.: 00-332 Ord. No. _____
Vote - Ayes: _____ Noes: _____
Absent: _____ Abstained: _____
 Approved Denied
 Minute Order Attached No Action Necessary

The foregoing instrument is a correct copy of the original on file in this office.
Date: _____
ATTEST: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California
By: _____
Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:
This item on agenda as:

Recommended
 Not Recommended
 For Policy Determination
 Submitted with Comment
 Returned for Further Action

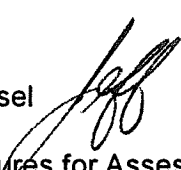
Comment: _____

A.O. Initials:



OFFICE OF THE
COUNTY COUNSEL

M E M O R A N D U M

DATE: August 24, 2000
TO: Board of Supervisors
FROM: Jeffrey G. Green, County Counsel 
RE: Resolution Establishing Procedures for Assessment Ballot Proceedings

As you know, Proposition 218 requires balloting proceedings when an assessment is proposed. Proposition 218 is somewhat deficient in giving direction to governmental entities in terms of the ballot proceedings. However, prior to initiating any assessment ballot proceedings a policy must be adopted by the Board of Supervisors regarding the ballot proceeding procedure.

Attached is a suggested resolution that has been prepared in major part by the League of California Cities for governmental entities. The Public Works Department is in the process of preparing a proposed assessment for a zone of benefit and it is necessary that we have a Board resolution to guide the Public Works Department in the assessment proceedings. Therefore, staff recommends that the Board adopt the recommended resolution together with Exhibits "A" and "B" which consist of the form of notice and form of assessment ballot.

As you will note in Section 3, E., 9, there are two alternatives to choose from. The first alternative would make the ballot a public record after the vote has been tabulated. The second alternative would keep the ballot confidential even after the vote has been tallied. The Board should pick one of the two alternatives.

cc: Jim Petropulos
Bruce Atkinson

rs

Mariposa County Board of Supervisors Resolution No. 00-332

**A Resolution Adopting Proposition 218
Assessment Ballot Proceedings Procedures**

WHEREAS, Proposition 218 was adopted on November 6, 1996, adding Articles XIIC and XIID to the California Constitution; and

WHEREAS, Articles XIIC and XIID of the California Constitution impose certain procedural and substantive requirements relating to assessments; and

WHEREAS, Mariposa County has been complying with these new requirements of the California Constitution; and

WHEREAS, some of the requirements of Proposition 218 are unclear and require judicial interpretation or legislative implementation; and

WHEREAS, the Board of Supervisors believes it to be in the best interest of the community to record its decisions regarding implementation of the provisions of Proposition 218 relating to assessments to provide the community with a guide to those decisions and how they have been made;

NOW, THEREFORE, the Board of Supervisors of Mariposa County does hereby resolve as follows:

SECTION 1. Statement of Legislative Intent. It is the Board of Supervisors intent in adopting this resolution, to adopt assessment ballot proceedings, which are consistent, and in compliance with, Articles XIIC and XIID of the California Constitution and with the Proposition 218 Omnibus Implementation Act. It is not the intent of the Board of Supervisors to vary in any way from the requirements of Articles XIIC and XIID or the Proposition 218 Omnibus Implementation Act.

SECTION 2. Definition of Assessment. Proposition 218 defines "assessment" as any levy or charge upon real property by an agency for a special benefit conferred upon the real property. "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment" and "special assessment tax." This means that an assessment which is not a charge upon real property for a special benefit conferred upon the real property is not an "assessment" for purposes of Article XIID, Section 2(b) of the California Constitution.

SECTION 3. Assessment Ballot Proceeding. The following procedures shall be used in an assessment ballot proceeding required by Article XIID, Section 4 of the California Constitution:

- A. **Amount of Assessment.** Only special benefits are assessable. The amount of each assessment shall be each identified parcel's proportionate share of the public improvement or property-related service based upon that parcel's special benefit from

- improvement or service. The amount shall be proportional to and no greater than the benefits conferred on the property.
- B. Special Benefit.** For purposes of determining the amount of the assessment:
1. Special benefit means a particular and distinct benefit over and above general benefits conferred on real property located in the assessment district or to the public at large;
 2. Special benefits are those which the property assessed receives, due to the improvement or service, in excess of the general public benefit;
 3. The fact that the other property within the city or within the area will be, to a greater or lesser extent specially benefited by the improvement or service, will not have the effect of depriving assessed property of its character of specially benefited property;
 4. Special benefit is immediate and of such a character as can be seen and traced. General benefits are remote and sometimes contingent.
- C. Engineer's Report.** The Board of Supervisors shall direct the filing of an engineer's report which shall comply with the applicable state statute authorizing the assessment and with Article XIID, Section 4 of the California Constitution. The engineer's report shall explain the special benefit, as defined in Section 3B of this resolution, conferred by the improvement or property-related service. The engineer's report shall also provide the evidence upon which the Board of Supervisors may find that a special benefit exists. If the improvement or service confers a general benefit, the engineer's report shall describe the general benefit and explain how it will be funded.
- D. Notice.** The following guidelines shall apply to giving notice of an assessment.
1. The record owner(s) of each parcel to be assessed shall be determined from the last equalized property tax roll. If the property tax roll indicates more than one owner, each owner shall receive notice. Only property owners shall receive notice.
 2. The form of notice is attached to this resolution as Exhibit "A".
 3. The notice shall be sent at least forty-five (45) days prior to the date set for the public hearing on the assessment.
 4. The notice provided by this Section and in accordance with Article XIID, Section 4 of the California Constitution, shall supersede and be in lieu of any other statutes requiring notice to levy or increase an assessment, including but not limited to the notice required by the state statute authorizing the assessment and Government Code Section 54954.6.
 5. Failure of any person to receive notice shall not invalidate the proceedings.
 6. The cost of providing notice shall be included as a cost of the assessment district.
- E. Assessment Ballot.** The following guidelines shall apply to the assessment ballot:
1. The ballot required by Article XIID, Section 4(d) of the California Constitution shall be mailed to all property owners of record within the assessment district at least forty-five (45) days prior to the date of the public hearing on the proposed assessment.
 2. The form of the ballot is attached to this resolution as Exhibit "B".
 3. All ballots must be returned to the County Clerk by mail or in person, sealed in the envelope provided not later than the date for return of ballots stated on the notice described in Section 3(D).

4. A ballot must be signed under penalty of perjury. For properties with more than one owner of record, ballots will be accepted from each owner of record. Each owner of record is entitled to vote. The County Clerk shall apportion the voting rights between the owners based upon the respective record interest as the County Clerk deems correct, proper, and appropriate. However, if only one owner of record votes, the County Clerk shall tabulate that vote on behalf of the entire parcel.
5. A tenant of real property shall not have the power or authority to submit an assessment ballot.
6. Only ballots with original signatures, not photocopies, will be accepted.
7. The County Clerk may issue a duplicate ballot to any property owner whose original ballot was lost or destroyed. Such ballots shall be clearly marked as duplicate ballots and shall be accompanied by sufficient information for the County Clerk to verify the location and ownership of the property in question and the identity of the individual casting the ballot in order to verify its authenticity.
8. An assessment ballot proceedings is not an election.
9. To protect the privacy of the choices of property owners who participate in the proceedings to protect the integrity of the balloting process, ballots shall not be open to public inspection at any time. The County Clerk shall establish appropriate and reasonable administrative, technical, and physical safeguards to ensure the security and confidentiality of assessment ballots.

F. Tabulating Ballots. The following guidelines shall apply to tabulating assessment ballots:

1. The County Clerk shall determine the validity of all ballots. The County Clerk shall accept as valid all ballots except those in the following categories:
 - a) A photocopy of a ballot which does not contain an original signature;
 - b) An unsigned ballot;
 - c) A ballot which lacks an identifiable "yes" or "no" vote;
 - d) A ballot which appears tampered with or otherwise invalid based upon its appearance or method of delivery or other circumstances.

The County Clerk's decision, after consultation with County Counsel that a ballot is invalid, shall be final and may not be appealed to the Board of Supervisors.

2. The County Clerk may begin tabulating the ballots prior to the date set for the public hearing.
3. A property owner who has submitted an assessment ballot may withdraw the ballot and submit a new or changed ballot up until the conclusion of the public hearing on the assessment.
4. A property owner's failure to receive an assessment ballot shall not invalidate the proceedings conducted under this Section and Section 4, Article XIID of the California Constitution.

G. Public Hearing.

1. At the public hearing, the Board of Supervisors shall hear all public testimony regarding the proposed assessment and accept ballots until the close of the public hearing.
2. The Board of Supervisors may impose reasonable time limits on both the length of the entire hearing and the length of each speaker's testimony.
3. At the conclusion of the hearing, the County Clerk shall complete tabulation of the ballots, including those received during the public hearing.
4. If it is not possible to tabulate the ballots that evening, or if additional time is necessary for public testimony, the Board of Supervisors may continue the public hearing to a later date to receive additional testimony, information or to finish tabulating the ballots.
5. If according to the final tabulation of the ballots, ballots submitted against the assessment exceed the ballots submitted in favor of the assessment, weighted according to the proportional financial obligation of the affected property, a "majority protest" exists and the Board of Supervisors shall not impose or increase the assessment.

PASSED AND ADOPTED this 19th day of September, 2000 by the following vote:

AYES: Reilly, Balmain, Stewart, Parker, Pickard

NOES: None

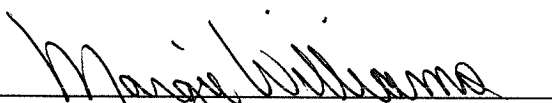
ABSTAIN: None

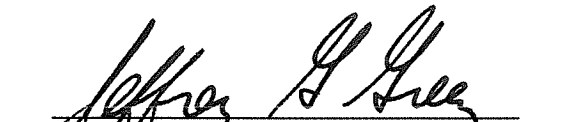
ABSENT: None


GARRY R. PARKER, Chairman

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


MARGIE WILLIAMS, Clerk of the Board


JEFFREY G. GREEN, County Counsel

Sample Notice of Public Hearing

TO: Property Owner of Record
Assessor's Parcel No.

FROM: Director, Public Works Department
County of Mariposa

DATE:

SUBJECT: Assessment Ballot Proceeding

The purpose of this notice is to provide you with information about the assessment ballot proceeding being conducted by the Mariposa County Board of Supervisors and its effect on real property that you own. This notice is being sent to you in accordance with Mariposa County Board of Supervisors Resolution No. ~~CC-332~~, Section 53753 of the California Government Code, and Section 4(c), Article XIII D of the California Constitution.

Please be advised of the following:

- The hearing will be on the following day at the following time: *[insert day, date and time of hearing on the proposed assessment; note that notice by mail must be given at least 45 days prior to the date of the public hearing on the proposed assessment]*
- The address of the hearing is: *[describe location of hearing]*
- The reason(s) for the assessment are: *[explain reasons]*
- Proposed fiscal year *[insert date]* assessment for your parcel: *[insert amount]*
- The total amount chargeable to entire assessment district: *[insert total amount of assessment]*
- Assessment duration: *[insert duration of assessment payments]*
- How the assessment was calculated: *[explain basis upon which the amount of the proposed assessment was calculated]*

Enclosed with this notice, you will find an assessment ballot. Please follow the directions on the assessment ballot to express your view on the proposed assessment.

1. You may mail or deliver only your own ballot to the County Clerk at the location shown on the ballot. Ballots not submitted by mail or hand delivery by the person who signed the ballot will not be accepted. Each person with a record ownership interest in this property must complete a separate ballot.
2. Ballots may be sent or delivered to the County Clerk at any time, but MUST be received not later than the conclusion of the public hearing on *[insert date of hearing]* at *[insert time of hearing]* p.m. to be held at the Mariposa County Government Center, 5100 Bullion Street, Mariposa, California. Any time prior to the conclusion of the public hearing, you may

withdraw your ballot and submit a changed or new ballot in place of the ballot previously submitted.

3. Only ballots with original signatures – not photocopies of signatures- will be accepted.
4. The County Clerk will not accept nor tabulate a ballot:
 - which is a photocopy without an original signature;
 - which is unsigned;
 - which lacks an identifiable “yes” or “no” vote; or
 - which appears to have been tampered with or otherwise be invalid based upon its appearance or method of delivery.
5. The assessment ballot is a public record which will not be open for public inspection at any time.
6. The County Clerk will begin tabulating ballots prior to the public hearing. At the conclusion of the public hearing the County Clerk will complete tabulation of the ballots, including those received during the public hearing. If the number of ballots received at the hearing is such that it is not feasible to accurately tabulate the ballots that evening, the Board of Supervisors may continue the meeting to a later date for the sole purpose of obtaining the final tabulation.
7. The Board of Supervisors will not impose the assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. Ballots shall be weighted according to the proportional financial obligation of the affected property.

Should you have any questions, please call or write to: Public Works Director, 4639 Ben Hur Road, Mariposa, CA 95338, 209/966-3222.

Sample Official Ballot
[Name of Assessment District]

Assessor's Parcel Number: _____

Property Owner's Name: _____

Property Owner's Address: _____

Proposed Assessment for this Parcel Beginning *[insert relevant year]* Fiscal Year: _____

Proposed Range or Inflation Adjustment Formula: _____ *[if used]*

Instructions for Completing and Delivering this Ballot

- To express your view on the proposed assessment and the proposed range or inflation adjustment, check the square before the word "YES" or "NO," then sign and date the ballot. Each person with an ownership interest in this property must complete a separate ballot.
- After completing your ballot, mail or deliver this entire ballot to the County Clerk of Mariposa County at P.O. Box 247, Mariposa, California 95338.
- Ballots may be sent or delivered to the County Clerk at any time, but MUST be received not later than the conclusion of the public hearing on the proposed assessment and assessment range set for *[date, time and place of public hearing]*.

PLEASE EXPRESS YOUR VIEW BY MARKING AND SIGNING BELOW

[Option 1: Use for approval of flat assessment only; use option 2 if the agency is asking approval of both an assessment and an inflation rate or range of assessments]

_____ Yes, I approve the proposed assessment described above for the parcel identified in this ballot.

_____ No, I do not approve the proposed assessment described above for the parcel identified in this ballot.

I hereby declare under penalty of perjury that I am a record owner of the parcel listed above.

Signature of Record Owner

Date

*[Option 2: Use for approval of both an assessment
and an inflation rate or range of assessments]*

Question 1. Do you approve the proposed assessment described above for the parcel identified in this ballot:

_____ **Yes**, I approve the proposed assessment described above for the parcel identified in this ballot.

_____ **No**, I do not approve the proposed assessment described above for the parcel identified in this ballot.

Question 2. Do you approve of the proposed *[insert range of assessment or inflation adjustment limit, as applicable]* described above for the parcel identified in this ballot?

_____ **Yes**, I approve of the proposed *[insert range of assessment or inflation adjustment limit, as applicable]* described above for the parcel identified in this ballot.

_____ **No**, I do not approve of the proposed *[insert range of assessment or inflation adjustment limit, as applicable]* described above for the parcel identified in this ballot.

I hereby declare under penalty of perjury that I am a record owner of the parcel listed above.

Signature of Record Owner

Date