

**MARIPOSA COUNTY  
BOARD OF SUPERVISORS**

**AGENDA  
ACTION FORM**

**DATE:** September 4, 2001  
**AGENDA ITEM NO.:** #4

**DEPARTMENT:** County Counsel

**BY:** Jeffrey G. Green

**PHONE:** 966-3222

**RECOMMENDED ACTION AND JUSTIFICATION:** (Policy Item: Yes\_\_\_ No\_\_\_)

Resolution amending Resolution Number 00-332 adopting Proposition 218 Assessment entitled Ballot Proceedings Procedures.

Following adoption of Resolution No. 00-332 Government Code Section 53753 was amended to require that the ballots be tabulated after close of the public hearing and not began prior to the close of the public hearing thereby necessitating an amendment to Resolution No. 00-332.

**BACKGROUND AND HISTORY OF BOARD ACTIONS:**

The Board adopted Resolution No. 00-332 in September of 2000.

**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:

1. Memo to the Board of Supervisors

2. Copy of Government Code Section 65753

\_\_\_\_\_

\_\_\_\_\_

**CLERK'S USE ONLY:**

Res. No.: 01-255 Ord. No. \_\_\_\_\_

Vote - Ayes: 5 Noes: \_\_\_\_\_

Absent: \_\_\_\_\_ Abstained: \_\_\_\_\_

Approved \_\_\_\_\_ Denied \_\_\_\_\_

Minute Order Attached ( ) No Action Necessary

**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: JG

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

**Mariposa County Board of Supervisors Resolution No. 01-255**

**Resolution Amending Resolution No. 00-332 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 XIIIID, 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 XIIIID, 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 XIIIID, 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. During and after the tabulation of the ballots by the County Clerk, the assessment ballots shall be treated as disclosable public records, as defined in Government Code Section 6252, and shall be equally available for inspection by the proponents and the opponents of the proposed assessment. (California Government Code Section 53753(e)(1))

**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. At the conclusion of the public hearing conducted pursuant to the notice as above described, the County Clerk shall tabulate the assessment ballots submitted, and not withdrawn, in support of or opposition to the proposed assessment. The County Clerk may use technological methods of tabulating the assessment ballots, including but not limited to, punch card or optically readable (bar coded assessment ballots). (California Government Code Section 53753(e)(1))
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 tabulate 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 4th day of September, 2001 by the following vote:

AYES: Balmain, Parker, Reilly, Stewart, Pickard

NOES: None

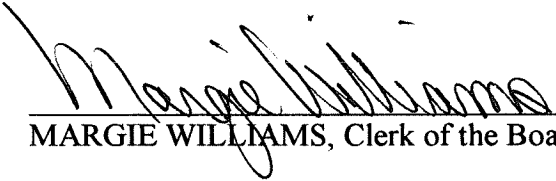
ABSTAIN: None

ABSENT: None

  
\_\_\_\_\_  
DOUG BALMAIN, Chairman

ATTEST:

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
MARGIE WILLIAMS, Clerk of the Board

  
\_\_\_\_\_  
JEFFREY G. GREEN, County Counsel