

16.10 – PROCEDURES FOR CONDUCTING PROPOSITION 218 PROPERTY RELATED FEES AND CHARGES PROCEEDING

16.10.1 - Statement of Legislative Intent. It is the Board's intent to adopt procedures for property related fees and charges proceedings which are consistent and in compliance with Articles XIIC and XIID of the California Constitution and, with the Proposition 218 Omnibus Implementation Act (Government Code sections 53750 through 53754). It is not the intent of the Board to vary in any way from the requirements of Articles XIIC and XIID or the Proposition 218 Omnibus Implementation Act.

16.10.2 - Procedures for new or Increased Property Related Fees and Charges. The District shall apply the following procedures for the establishment of new or increased property related fees or charges, such as, for example, increases to water use rates or, changes in the water use rate structures. Said procedures follow the requirements of Article XIID, section 6 of the California Constitution:

- A. The District shall identify each parcel upon which new or increased property related fees or charges are proposed for imposition.
- B. The District shall calculate the amount of any proposed property related fees or charges.
- C. The District shall provide written notice by mail of any proposed property related fees or charges to:
 1. the record owner(s) of each identified parcel upon which the fees or charges are proposed for imposition and
 2. the property mailing address of record for each identified parcel upon which the fees or charges are proposed for imposition,
- D. Such written notice shall contain, as a minimum,
 1. the amount of the proposed property related fees or charges to be imposed upon each parcel, and
 2. the basis upon which the amount of the proposed property related fees or charges were calculated, and
 3. the reason for the proposed property related fees or charges, and
 4. the date, time and location for a public hearing on the proposed property related fees or charges.

16.10.3 Notice of Proposed Property Related Fees or Charges. The District shall apply the following procedures to provide property owner(s) with a notice of proposed property related fees or charges.

- A. The record owner(s) and property mailing address of record of each parcel upon which new or increased property related fees or charges are proposed shall be determined from the last equalized secured property tax assessment roll. If the property tax roll indicates more than one owner, each owner shall receive notice.
- B. Said notice shall be mailed at least forty-five (45) calendar days prior to the date set for a public hearing on the proposed property related fees or charges.
- C. The notice provided by this section and in accordance with Article XIID, section 6 of the California Constitution shall supersede and be in lieu of any other statute requiring notice relative to the imposition or increase of any property related fees or charges, including but not limited to the notices required by California Government Code sections 53753(d) and 54954.6.

- D. Failure of any person to receive notice shall not invalidate the proceedings.
- E. The cost of providing notice may be included as a cost of the property related fees and charges.

16.10.4 Public Hearing. The District shall apply the following procedures pursuant to a public hearing for proposed property related fees or charges:

- A. The Board shall conduct a public hearing relative to any new or increased of property related fees or charges.
- B. Said public hearing shall be conducted not less than forty-five (45) calendar days after mailing the notice of proposed property related fees or charges to the record owner(s) of each identified parcel upon which the fees or charges are proposed for imposition.
- C. At the public hearing, the Board shall hear and consider all public testimony regarding the proposed property related fees or charges and, shall accept written protests against the proposed property related fees or charges from the record owner(s) of each identified parcel upon which the fees or charges are proposed for imposition until the close of the public testimony portion of the public hearing.
- D. The Board may impose reasonable time limits on both the length of the entire hearing and the length of each speaker's testimony.

16.10.5 Property Related Fees and Charges Requiring a Protest Vote (NO vote only). The District shall apply the following procedures to protest pursuant to property related fees or charges requiring a protest vote.

- A. Upon establishing the date for a public hearing, the Board will appoint an individual or group to act as an impartial arbiter to present the final protest tabulation to the Board, determine acceptability of received protests and determine the lawful tenancy of any protests received. No sitting Board Member may be appointed arbiter.
- B. At the conclusion of the public testimony portion of the public hearing, the arbiter shall finalize tabulation of the written protests received, including those received during the public hearing.
- C. If it is not possible to tabulate the written protests on the day of the public hearing, or if additional time is necessary for public testimony, the Board may continue the public hearing to a later date to receive additional testimony, or to finish tabulating the written protests.
- D. The arbiter shall provide the Board with a final tabulation of written protests.
- E. Upon final tabulation of written protests, if written protests against the proposed property related fees or charges are presented by a majority of the properties upon which the fee or charge would be imposed (50% + 1), the Board shall not impose the property related fees or charges.
- F. All protests must be in writing and returned by mail or hand delivered to the District at the address indicated on the Notice of Proposed Property Related Fees or Charges, or hand delivery to the arbiter at the public hearing. Protests must be received by the District not later than the close of the public testimony portion of the public hearing on the proposed property related fees or charges.

- G. All written protests must be dated, contain a description of the property such as physical address and/or Assessor's Parcel Number, and be signed by the owner or account holder of record.
- H. An account holder of record includes lawful tenants occupying the property and holding an account in good standing with the District for the property in question. The District reserves the right to require that the account holder of record provide proof of lawful tenancy of the property in question. Said proof may include a copy of a legal rental contract or a utility bill other than water or sewer. Other proof of lawful tenancy may be allowed, at the arbiter's discretion. In these proceedings the arbiter's decision regarding lawful tenancy is final.
- I. Protest ballots may be made using the template provided by the District. As long as the protest ballot contains all of the specified information it does not need to be on the District-provided template.
- J. Only one (1) written protest shall be counted for each individual parcel.
- K. All written protest are a "public record" as that phrase is defined by the California Public Records Act (Government Code, §6252) and shall be open to public inspection after final tabulation of the written protest.

16.10.6 Property Related Fees or Charges Requiring a Ballot Proceeding (YES or NO vote).

16.10.6.1 - Procedures Pursuant to Article XIID, section 6 (c), of the California Constitution, whenever proposed property related fees or charges are required to be submitted and approved by ballot proceedings, the District shall apply the following procedures:

- A. The District shall conduct a ballot proceeding when required by Article XIID, section 6(c), of the California Constitution.
- B. Ballots shall be mailed to all property owners of record of each identified parcel upon which property related fees or charges are proposed for imposition at least forty-five (45) calendar days prior to the date for a public hearing on the ballot proceedings. The ballot shall comply with California Government Code Section 53753(c). The mailing address of record owner(s) shall be determined from the last equalized secured property tax assessment roll.
- C. The Board shall conduct a public hearing on the ballot proceedings. The public hearing shall be conducted not less than forty-five (45) calendar days after mailing the ballots to record owner(s) of each identified parcel upon which the fees or charges are proposed for imposition. At the public hearing, the District shall consider public testimony and tabulate the written ballots.
- D. The District shall not impose property related fees or charges if there is a majority protest. A majority protest exists if, upon the conclusion of the public hearing, written ballots submitted and not withdrawn, in opposition to the property related fees or charges exceeds the written ballots submitted, and not withdrawn, in favor of the property fees or charges.
- E. All ballots must be returned by mail to the District at the address indicated on the ballot, or hand delivered to the District Secretary at the ballot proceedings public hearing. Ballots must be received by the District not later than the close of the public testimony portion of the public hearing on the ballot proceedings. Ballots must be sealed in the envelope provided by the District.
- F. Each ballot must be signed by the owner of record under penalty of perjury.

- G. A tenant of real property shall not, solely by virtue of such tenancy, have the power or authority to submit a ballot.
- H. If a parcel has multiple owners, any owner may request a proportional ballot. If the ownership interest of the owner is not shown on the last secured property tax assessment roll, such request must include evidence satisfactory to the arbiter, of the owner's proportional rights to the parcel. The District will provide the proportional ballot to the owner at the address shown on the last equalized secured property tax assessment roll. Any request for a ballot to be mailed to another location must be made in writing and, must include evidence satisfactory to the arbiter, of the identity of the person requesting the ballot. Each proportional ballot will be marked to show the date on which the ballot was issued, to identify it as a proportional ballot, and to indicate the owner's proportional rights in the parcel. The District will keep a record of each proportional ballot provided to an owner.
- I. The District will accept only official ballots with original signatures. Photocopies will not be accepted.
- J. Upon receipt of a written request, signed by the owner and delivered to the District, the District may issue a duplicate ballot to any property owner whose original ballot was last, withdrawn, destroyed, or never received. The duplicate ballot will be marked to show the date on which it was issued, and to identify it as a duplicate ballot or a duplicate proportional ballot. The above procedure also applies to duplicate ballots or duplicate proportional ballots that are lost, withdrawn, destroyed or never received.
- K. A ballot proceeding relative to property related fees or charges is not an election.
- L. All ballots are a "public record" as that phrase is identified by the California Public Records Act (Government Code, §6252) and shall be open to public inspection after final tabulation of the ballots.
- M. To complete a ballot, a person must:
 - a. Mark the appropriate box supporting or opposing the proposed property related fees or charges; and
 - b. Sign, under penalty of perjury, the statement on the ballot that the person completing the ballot is the owner of the parcel or the owner's authorized representative.

Only one box may be stamped or marked on each ballot. All incomplete or improperly marked ballots shall be disqualified from balloting. The District shall retain all disqualified ballots.

- N. After submitting a ballot to the District the person who signed the ballot may withdraw the ballot by submitting a written statement to the District directing the District to withdraw the ballot. Such statement must be received by the District prior to close of the public testimony portion at the ballot proceedings public hearing. When ballots for the proposed property related fees or charges are tabulated, the District shall segregate withdrawn ballots from all other submitted ballots. The District shall retain all withdrawn ballots and shall indicate on the face of such withdrawn ballots that they have been withdrawn.
- O. In order to change the contents of a ballot that has been submitted, the person who submitted the ballot must:

- a. Request that such ballot be withdrawn; and
- b. Request that a duplicate ballot be issued and return the duplicate ballot fully completed.

Each of these steps must be completed according to the procedures set forth herein.

16.10.6.2 Tabulating Ballots. Pursuant to Article XIID, section 6(c), of the California Constitution, whenever proposed property related fees or chargers are required to be submitted and approved by ballot proceedings, the District shall apply the following procedures:

- A. The Board will appoint an individual or group to act as an impartial arbiter to present the final ballot tabulation to the Board, determine acceptability of received ballots and settle disputes regarding ballots received. No sitting Board Member may be appointed arbiter.
- B. The arbiter shall determine the validity of all ballots. All ballots submitted, and not withdrawn, shall be accepted as valid except those in the following categories:
 1. A photocopy of a ballot;
 2. A ballot that does not contain an original signature;
 3. A letter or other form of a ballot that is not an official ballot provided by the District;
 4. An unsigned ballot, or ballot signed by an unauthorized individual;
 5. A ballot that lacks an identifiable mark in the box of a "yes" or "no" vote or, with more than one box marked;
 6. A ballot not sealed in the envelope provided by the District.
 7. A ballot received after the close of the balloting time period;
 8. A ballot that appears tampered with or otherwise invalid based upon its appearance or method of delivery or other circumstances.

The decision of the arbiter, after consultation with legal counsel, that a ballot is invalid shall be final and may not be appealed to the Board.

- C. In the event of a dispute regarding whether the signer of a ballot is the owner of the parcel to which the ballot applies the arbiter will make such determination from the last equalized secured property tax assessment roll and any evidence of ownership submitted to the District prior to the close of the public testimony portion of the ballot proceeding public hearing. The arbiter will be under no duty to obtain or consider any other evidence as to ownership of the property. Determination of ownership by the arbiter will be final and conclusive.
- D. In the event of a dispute regarding whether the signer of a ballot is an authorized representative of the owner of the parcel, the arbiter may rely on the statement on the ballot signed under penalty of perjury that the person completing the ballot is the owner's authorized representative and any evidence submitted to the District prior to close of the public testimony portion of the ballot proceedings public hearing. The arbiter will be under no duty to obtain or consider any other evidence as to whether the signer of the ballot is an authorized representative of the owner(s). Determination of an authorized representation by the arbiter will be final and conclusive.
- E. For properties with more than one owner of record, ballots will be accepted from each owner of record. In the event that more than one of the record owners of a parcel submits a ballot, each ballot shall be tabulated in proportion to the respective record of ownership,

established to the satisfaction of the District, by documentation provided by those record owners. If only one owner of record votes, that vote shall be tabulated on behalf of the entire parcel.

- F. A property owner's failure to receive a ballot shall not invalidate the ballot proceedings conducted pursuant to this resolution and Article XIID, section 6(c) of the California Constitution.