

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD ADOPTING PROCEDURES FOR PROPOSITION 218 ASSESSMENT BALLOT PROCEEDINGS FOR THE OLD HIGHLANDS AREA ROAD IMPROVEMENT ASSESSMENT DISTRICT

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 (as defined); and

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

WHEREAS, the City of Hayward (the "City") believes it to be in the best interest of the City and its property owners to confirm and memorialize the City's procedures and guidelines regarding implementation of the provisions of Proposition 218 and pertinent statutes relating to assessments.

NOW, THEREFORE, the City Council of the City of Hayward does hereby resolve as follows:

SECTION 1. Statement of Legislative Intent. In adopting this resolution, it is the Council's intent to adopt assessment ballot proceedings, which are consistent and in compliance with Articles XIIC and XIID of the California Constitution and with Government Code Sections 53750 through 53754. It is not the intent of the Council to vary in any way from the requirements of either the California Constitution or the laws of the State of California. If there is any inconsistency between a provision of this resolution and state law, state law will govern.

SECTION 2. Definition of Assessment. Proposition 218 defines "assessment" as "any levy or charge by an agency upon real property that is based upon the special benefit conferred upon the real property by a public improvement or services, that is imposed to pay the capital cost of the public improvement, the maintenance and operation expenses of the public improvement or the cost of the service being provided." "Assessment" includes, but is not limited to, "special assessment," "benefit assessment," "maintenance assessment," and "special assessment tax."

SECTION 3. **Assessment Ballot Proceeding.** The following procedures shall be used in an assessment ballot proceeding that follows the requirements of 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 cost of the additional drainage facilities and levee maintenance services based upon that parcel's special benefit from the Service. The amount shall be proportional to and no greater than the special benefits conferred on the property.
- B. **Engineer's Report.** The Council shall direct the filing of an engineer's report that 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 benefits conferred by the improvements and/or services funded by the assessments. The engineer's report shall also provide the evidence upon which the Council 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 an alternative funding source for any general benefits. The engineer's report shall be prepared by a registered professional engineer certified by the State of California, (the "Assessment Engineer"). The cost of preparing the engineer's report shall be included as a cost of the assessment.
- C. **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 notice shall be sent at least forty-five (45) days prior to the date set for the public hearing on the assessment;
 - 3. The notice provided by this section shall contain the following information:
 - a. The total amount to be assessed for the entire assessment district;
 - b. The amount to be assessed to the owner's particular parcel;
 - c. The duration of the payments;
 - d. The reason for the assessment;
 - e. The basis upon which the amount of the proposed assessment was calculated;
 - f. The date, time and location of the public hearing on the proposed assessment;
 - g. A summary of the procedures for the completion, return and tabulation of the assessment ballots;

- h. A disclosure statement that the existence of a majority protest will result in the assessment not being imposed; and
 - i. A ballot to be completed by the owner, as further described in section D of this resolution.
- 4. The notice provided by this section and in accordance with Government Code Sections 53753(b) and (c) 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.
- D. 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 subject to the proposed assessment at least forty-five (45) days prior to the date of the public hearing on the proposed assessment. This ballot shall comply with Government Code Sections 53753(b) and (c). The ballot shall be designed in such a way that, once sealed, its contents are concealed.
 - 2. All ballots must be returned either by mail or by hand delivery; not later than the date for return of ballots stated on the notice and ballot described in this section. Mailed ballots must be returned to: Office of the City Clerk, 777 B Street, 4th Floor, Hayward, CA 94541, Attn: Old Highlands Area Road Improvement Assessment District, or, if delivered at the time and location of the public hearing, to the City Clerk's Office drop box located on the 1st floor of City Hall, 777 B Street. Ballots must be returned either by mail or by hand delivery prior to the conclusion of the public input portion of the public hearing scheduled for 7:00 p.m. on February 2, 2021. The City Clerk, with the assistance of SCI Consulting Group shall tabulate the ballots (the "Tabulator").
 - 2. Each ballot must be signed under penalty of perjury. In the event that more than one of the record owners of a parcel submits an assessment ballot, the amount of the proposed assessment to be imposed upon the parcel shall be allocated to each ballot submitted in proportion to the respective record ownership interests or, if the ownership interests are not shown on the record, as established to the satisfaction of the Council or Assessment Engineer by documentation provided by the record owners. If two or more persons own a parcel subject to the assessment, any one owner may cast an assessment ballot for all owners.

3. If a parcel has multiple owners, any owner may request a proportional assessment ballot. If the ownership interest of the owner is not shown on the last equalized secured property tax assessment roll, such request must include evidence, satisfactory to the City, of the owner's proportional rights in the parcel. The Assessment Engineer will provide the proportional ballot to the owner at the address shown on the assessment roll. Any request for a ballot to be mailed to another location must include evidence, satisfactory to the City, of the identity of the person requesting the ballot. Each proportional ballot will be marked to identify it as a proportional ballot and to indicate the owner's proportional rights in the parcel. The Assessment Engineer will keep a record of each proportional ballot provided to an owner.
4. The City will only accept official ballots mailed or otherwise provided to owners by the Assessment Engineer.
5. If an assessment ballot is lost, withdrawn, destroyed or never received, the Assessment Engineer will mail or otherwise provide a replacement ballot to the owner upon receipt of a request delivered to the City or the Assessment Engineer. The replacement ballot will be marked to identify it as a replacement ballot or a replacement proportional ballot. Any request for a replacement or replacement proportional ballot to be mailed to another location must include evidence, satisfactory to the City or the Assessment Engineer, of the identity of the person requesting the ballot. The same procedure applies to replacement ballots or replacement proportional ballots, which are lost, withdrawn, destroyed, or never received.
6. If an assessment ballot is returned by the United States Post Office as undeliverable, the Assessment Engineer may mail a redelivered ballot to the current property owner, if updated ownership or owner mailing address can be determined. The redelivered ballot will be marked to identify it as a redelivered ballot.
7. An assessment ballot proceeding is not an election.
8. An assessment ballot is a disclosable "public record" as that phrase is defined by Government Code section 6252 during and after tabulation of the ballots.
9. The California Government Code requires that assessment ballots be signed by property owners. However, property owner names and corresponding votes will remain strictly confidential, except as necessary to count the votes or as may be required by California law.

10. To complete an assessment ballot, the owner of the parcel or his or her authorized representative must (1) mark the appropriate box (or circle) supporting or opposing the proposed assessment, and (2) 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 (or circle) may be stamped or marked on each ballot. All incomplete or improperly marked ballots shall be disqualified from balloting. The Tabulator will retain all such invalid ballots.
11. After returning an assessment ballot to the City, or the Tabulator on behalf of the City, the person who signed the ballot may withdraw the ballot by submitting a written statement to the City directing the City to withdraw the ballot. Such statement must be received by the City or the Tabulator prior to the close of the public input portion of the public hearing on the proposed assessment. When ballots for the assessment are tabulated, the Tabulator will segregate withdrawn ballots from all other returned ballots. The Tabulator will retain all withdrawn ballots and will indicate on the face of such withdrawn ballots that they have been withdrawn.
12. In order to change the contents of a ballot that has been submitted, the person who has signed that ballot may (1) request that such ballot be withdrawn, (2) request that a replacement ballot be issued, and (3) return the replacement ballot fully completed. Each of these steps must be completed according to the procedures set forth above.

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

1. Assessment ballots shall remain sealed until tabulation commences at the conclusion of the public input portion of the public hearing.
2. An impartial person shall tabulate the assessment ballots. An impartial person includes, but is not limited to, the City Clerk, City staff, and any independent third party engaged by the City for the purpose of tabulating assessment ballots. The Tabulator shall follow the rules and procedures of the laws of the State of California, this resolution and any other rules and procedures of the Council. If the Tabulator needs clarification, then they shall inquire of the Council, who is the final arbiter. All ballots shall be accepted as valid except those in the following categories:
 - a. A photocopy of a ballot, a letter or other form of a ballot that is not an official ballot provided by the City or the Assessment Engineer on behalf of the City;
 - b. An unsigned ballot, or ballot signed by an unauthorized individual;
 - c. A ballot which lacks an identifiable mark in the box for a "yes" or "no" vote or with more than one box marked;

- d. A ballot which appears tampered with or otherwise invalid based upon its appearance or method of delivery or other circumstances;
- e. A ballot for which the barcode representing the parcel number is damaged or obstructed, unless the parcel number or property ownership information is legible and allows the Tabulator to clearly determine the property(s) identified on the ballot;
- f. A ballot received after the close of the balloting time period.

The Tabulator's decision, after consultation with the Council's legal counsel that a ballot is invalid, shall be final and may not be appealed to the Council.

- 3. If more than one of the record owners of a parcel submits an assessment ballot, the amount of the proposed assessment to be imposed upon the parcel shall be allocated to each ballot in proportion to the respective record ownership interests, as shown on the record or as established to the City's satisfaction by documentation provided by the record owners.
- 4. 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 Council will make such determination from the official County Assessor records and any evidence of ownership submitted to the Council prior to the conclusion of the public hearing. The Council will be under no duty to obtain or consider any other evidence as to ownership of property and its determination of ownership will be final and conclusive.
- 5. In the event of a dispute regarding whether the signer of a ballot is an authorized representative of the owner of the parcel, the Council 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 Council prior to the conclusion of the public hearing. The Council 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 and its determination will be final and conclusive.
- 6. 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 input portion of the public hearing on the assessment. Assessment ballots may be withdrawn, and newer changed ballots submitted up until the conclusion of the public input portion of the public hearing on the assessment.
- 7. 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.
- 8. The City shall retain all ballots for a period of three (3) years from the date of the public hearing.

F. Public Hearing.

1. At the public hearing, the Council shall hear and consider all public testimony, objections and protests regarding the proposed assessment and accept ballots until the close of the public input portion of the public hearing.
2. Reasonable time limits may be imposed on both the length of the entire hearing and the length of each speaker’s testimony.
3. At the conclusion of the public input portion of the hearing, but prior to the conclusion of the public hearing, the Tabulator shall begin tabulation of the ballots at the direction of the Council, including those received during the public hearing.
4. If it is not possible to tabulate the ballots on the day of the public hearing, or if additional time is necessary for public testimony, the Council may continue the public hearing to a later date to receive additional testimony or 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 Council shall not impose the assessment.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2020

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
 MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
 City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward