

RESOLUTION NO. 2008 – 04

**A RESOLUTION OF THE
CITY COUNCIL OF THE CITY OF SAN JUAN BAUTISTA
ADOPTING PROPOSITION 218
PROCEDURES FOR ASSESSMENT BALLOT PROCEEDINGS**

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

WHEREAS, Article 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 judicial interpretation or legislative implementation; and

WHEREAS, this Council believes it to be in the best interest of the community to record its direction regarding implementation of the provisions of Proposition 218 relating to assessments and to provide the community with a guide to that direction and how it has been made;

NOW, THEREFORE, the City Council of the City of San Juan Bautista does hereby resolve as follows:

SECTION 1. Statement of Legislative Intent. It is the Council's intent in adopting this resolution to adopt assessment ballot proceedings that are consistent and in compliance with articles XIIC and XIID of the California Constitution and with the Proposition 218 Omnibus Implementation Act and the provisions of other statutes authorizing the levy of assessments. It is not the intent of this Council 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 any 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 that 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. City of San Juan Bautista Assessments. The City of San Juan Bautista currently imposes the following assessment. The purpose of this assessment is controlled by the engineer's report that was adopted when the assessment was imposed.

- A. Valle Vista Lighting and Landscape Maintenance District No. 1

SECTION 4. **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 the improvement or service. The amount shall be proportional to and no greater than the special 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 as 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.** This 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 identify the improvement or service to be funded by the assessment; its estimated cost, including all planning, administrative, and ancillary costs authorized by law to be funded by the assessment; the entire special benefit attributable to the improvement or service, which benefit shall be separated from the general benefit, if any. Each parcel assessed shall be specially benefited by the improvement or service. The engineer's report shall also provide the evidence upon which this Council may find that a special benefit exists. The engineer's report shall apportion the assessment to each parcel in the district according to its respective special benefit.

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 City 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 4(D) hereof.
4. The envelopes shall be “security envelopes” which conceal the contents therein provided by the City. The envelopes shall denote the property to which the ballot applies.
5. 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. If more than one owner of record votes, the city clerk shall apportion the voting rights between the owners based upon the respective record interests as the city clerk deems correct, proper, and appropriate. However, if only one owner

of record votes, the city clerk shall tabulate that vote on behalf of the entire parcel.

6. Because assessments are levied on property and tenants are not directly liable to the city for payment of assessments, a tenant of real property shall not have the power or authority to submit an assessment ballot.

7. Only ballots with original signatures, not photocopies, will be accepted. Ballots will not be accepted via e-mail. Ballots not submitted in the security envelope provided by the City shall not be counted.

8. The City 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 city 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.

9. An assessment ballot proceeding is not an election.

10. Assessment ballots shall remain sealed until the tabulation of ballots commences at the conclusion of the public hearing. An assessment ballot may be submitted, or changed, or withdrawn by the person who submitted the ballot prior to the conclusion of the public testimony on the proposed assessment at the public hearing.

11.

a. During and after the tabulation, the assessment ballots shall be treated as disclosable public records, as defined in Government Code section 6252, and equally available for inspection (e.g., by the proponents or the opponents of the proposed assessment), pursuant to Government Code section 53750(e)(1).

b. Prior to the public hearing, neither the assessment ballot nor the envelope in which it is submitted shall be treated as a public record, pursuant to Government Code section 6254(c) and any other applicable law, in order to prevent potential unwarranted invasions of the submitter's privacy and to protect the integrity of the balloting process.

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

1. The City Clerk shall determine the validity of all ballots. The City 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 to be tampered with or otherwise invalid based upon its appearance or method of delivery or other circumstances;
- e) A ballot which is submitted on a form which is different than the form of ballot provided by the City;
- f) A ballot submitted to the City via e-mail.
- g) A ballot not returned in a city issued “security envelope.”

The City Clerk’s decision, after consultation with the city attorney that a ballot is invalid, shall be final and may not be appealed to the City Council.

2. An impartial person designated by the governing board who does not have a vested interest in the outcome of the proposed assessment shall tabulate the assessment ballots submitted, and not withdrawn, in support or opposition to the proposed assessment, the impartial person may include the city clerk. During and after the tabulation, the assessment ballots shall be treated as disclosable public records, as defined in the Public Records Act, and equally available for inspection by the proponents and the opponents of the proposed assessment.

3. A property owner who has submitted an assessment ballot may withdraw the ballot and submit a new or changed ballot at any time 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 City Council shall hear all public testimony regarding the proposed assessment and accept ballots until the close of the public hearing, which hearing may be continued from time to time.

2. The City Council 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 City Clerk shall complete tabulation of the ballots, including those received during the public hearing.

4. If it is not possible to tabulate the ballots on the same day as the public hearing, or if additional time is necessary for public testimony, the City Council may continue the public hearing to a later date to receive additional testimony, information or to finish tabulating the ballots; or may close the public hearing and continue the item to a future meeting 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 each affected property, a “majority protest” exists and the city council shall not impose or increase the assessment.

THE FOREGOING RESOLUTION WAS PASSED AND ADOPTED on the 18th day of February, 2008 by the following vote:

AYES: Dias, Edge, Hill, Laverone

NOES: None

ABSTAIN: None

ABSENT: Paradice

George Dias III, Mayor

ATTEST:

Acting City Clerk, Trish Paetz