

**SANTA CRUZ COUNTY
BOARD OF SUPERVISORS INDEX SHEET**

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Resolution(s): 145-2008

Ordinance(s):

Contract(s):

Continue Date(s):

Index: --Letter of the County Counsel
--Resolution

Item: 69. CONSIDERED resolution adopting revised rules for conducting balloting proceedings for assessments under Article XIID, Section 4 of the California State Constitution;
(1) adopted RESOLUTION NO. 145-2008 Adopting Revised Rules for Conducting Balloting Proceedings for Assessments Under Article XIID, Section 4 of the Constitution



COUNTY OF SANTA CRUZ

OFFICE OF THE COUNTY COUNSEL

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Samuel Torres, Jr.

June 3, 2008

Agenda: June 10, 2008

APPROVED AND FILED
BOARD OF SUPERVISORS
DATE: June 10, 2008
COUNTY OF SANTA CRUZ
SUSAN A. MAURIELLO
EX-OFFICIO CLERK OF THE BOARD
BY Sharon Mitchell DEPUTY

Board of Supervisors
County of Santa Cruz
701 Ocean Street, Room 500
Santa Cruz, CA 95060

Re: Resolution Adopting Revised Rules for Conducting Balloting Proceedings for Assessments

Dear Members of the Board:

On October 23, 2007, your Board asked this office to review the County's rules for conducting balloting proceedings for assessments. Your Board had not considered revisions to the rules since 1997, approximately one year after Proposition 218 was passed by the voters and significantly changed the requirements for adoption of assessments in California.

Your Board is not required to adopt rules for conducting balloting procedures for assessments. Your Board chose to do so because Proposition 218 left unanswered some questions regarding these proceedings, such as whether the completed ballot would be treated as a public record. The rules adopted by your Board, and the revisions before you today, are designed to fill in the blanks left by Proposition 218, not to restate the law the County must follow when conducting these proceedings.

The revised rules before you today are the work of several interested members of the public and staff from this office, the County Administrative Office, the Elections Department, the General Services Department, the Public Works Department, and Supervisor Beautz, who presided over two separate

meetings of this group as we worked through the various issues. The group did not agree on everything. However, consensus was achieved and is reflected in the revised rules before you today.


Also in your packet is a revised page from a procedures manual that addresses assessment proceedings prepared by the Public Works Department. The group agreed that several of the issues needing clarification are more appropriate for a procedures manual than for your Board's resolution.

IT IS THEREFORE RECOMMENDED that your Board approve the Resolution Adopting Revised Rules for Conducting Balloting Proceedings for Assessments Under Article XIID, Section 4 of the Constitution.

Very truly yours,

By 
DANA McRAE, County Counsel

RECOMMENDED:


SUSAN A. MAURIELLO
County Administrative Officer

- cc: County Counsel
- County Administrative Office
- Auditor-Controller
- Elections
- General Services
- Public Works
- Clerk of the Board

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO. 145-2008

On the motion of Supervisor Stone
Duly seconded by Supervisor Beaut z
The following resolution is adopted

**RESOLUTION ADOPTING REVISED RULES FOR CONDUCTING
BALLOTING PROCEEDINGS FOR ASSESSMENTS UNDER
ARTICLE XIID, SECTION 4 OF THE CONSTITUTION**

WHEREAS, the adoption of Proposition 218, which adds Article XIID to the Constitution, imposes certain procedural requirements upon public agencies as a condition to levying assessments;

WHEREAS, these procedural requirements contained in Section 4 of Article XIID require a public agency to conduct a property owner balloting proceeding;

WHEREAS, the State Legislature has adopted the Proposition 218 Omnibus Implementation Act (Chapter 38 of the 1997 Statutes) to clarify the procedures and parameters for local jurisdictions in complying with Proposition 218;

WHEREAS, this Board in the exercise of police power conferred upon it by Article XI, Section 7 of the Constitution and in order to carry out its duties under Article XIID desires to adopt procedural rules that are consistent with the provisions of Article XIID and with the Proposition 218 Omnibus Implementation Act to assist in its implementation; and

WHEREAS, this Board finds the adoption of procedural rules to be in the public interest of the County and its property owners and inhabitants.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of Santa Cruz that the following procedural rules are adopted for the conduct of assessment proceedings by the County of Santa Cruz under Article XIID, Section 4 of the California Constitution:

PROCEDURAL RULES FOR THE IMPLEMENTATION OF
SECTION 4 OF ARTICLE XIID OF THE CONSTITUTION.

Section 1. Scope.

A. No New Authority. Just as Article XIID confers no new authority to impose assessments, these rules confer no such authority. These rules are intended to implement Section 4 of Article XIID while exercising assessment authority conferred by another enactment.

B. Modifications. Neither these Rules nor Article XIID limit the authority otherwise conferred by law to make changes in the boundaries of a proposed area of assessment, in any improvements ordered to be made or acquired, in the extent of the services to be provided, or in the amount of the assessment (including the amounts of any individual assessments) provided, however, the assessment area shall not be expanded nor any assessment increased beyond that specified in this notice without new notice and proceedings in compliance with all laws.

Section 2. Nature of Proceedings. The assessment ballot proceedings under Article XIID, Section 4 are an expanded form of the property owner protest provision traditionally forming a part of assessment proceedings. These proceedings do not constitute an election. They are not governed by the laws that govern elections.

A. Ballots Initially Sealed. Ballots shall remain sealed in the envelopes in which they are submitted and shall not become public documents until opened for tabulation after the close of the time set for submission of ballots.

B. Jurisdiction. Proceedings are taken under Article XIID, Section 4 for the purpose of creating jurisdiction to levy assessments. No jurisdiction to do so exists until it is determined that there is not a majority protest.

C. Withdrawal. 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 testimony portion of the public hearing on the proposed assessment. If more than one ballot is submitted by the same person for the same parcel, the latest ballot only shall be tabulated. All earlier ballots submitted by the same person for the same parcel shall be deemed withdrawn.

Section 3. Notice. The notice by mail of the proposed assessment and other matters required by Article XIID, Section 4(c) may be given by first class mail, postage prepaid. Only one

notice and/or ballot need be mailed for any one parcel. A ballot return envelope without prepaid postage shall be provided with the notice, ballot information, and the ballot.

Section 4. Persons Entitled to Ballot.

A. Record Owners. The record owner of each parcel is as set forth on the Assessor's current master property tax record on the date the mailing list for the assessment is generated. In accordance with Article XIID, notice of the assessment ballot proceedings shall be mailed to the record owner of each parcel as shown on the Assessor's master property tax record. Publicly owned property not appearing on the Assessor's master property tax record shall be manually added to the mailing list for the assessment.

B. Tenants. A tenant who holds a tenancy of real property and whose lease or other rental agreement expressly requires that the tenant directly pay assessments may submit a ballot for the parcel. (As used in these rules, "tenant" refers to a tenant in a landlord-tenant relationship as provided in Article XIID, Section 2, and shall not refer to forms of co-ownership of property, i.e. those that are sometimes referred to as, e.g. "joint tenants".) The ballot of a tenant eligible to vote shall be counted in place of any ballot submitted by the owner. There is, however, no duty to seek out or give special notice to tenants.

C. Multiple Ballots. In the event that more than one of the record owners or tenants entitled to vote submit assessment ballots for an identical parcel, the amount of the proposed assessment to be imposed upon the identified 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 agency by documentation provided by those record owners within five days of written request for such documentation. In the event of a change of ownership or tenancy between the date the mailing list for the assessment is generated and the date of the public hearing on the proposed assessment, the current owners or tenants as of the date of the public hearing on the proposed assessment who are otherwise eligible to vote shall be entitled to vote on the assessment. If multiple ballots are submitted on the same parcel by both the current owners or tenants as well as by the previous owners or tenants on the date the mailing list is generated, only the ballots voted by the current owners or tenants shall be counted.

Section 5. Form of Ballots. Ballots shall contain the following:

A. Contents. The ballot and the ballot return envelope shall set forth the parcel number for which it is submitted. The ballot shall also set forth the name and address of the record owners, and the amount of the proposed assessment for the parcel.

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B. Declaration. The ballot shall contain a declaration under penalty of perjury signed by the person submitting it that the person is authorized to vote the ballot.

1. When a person cannot write, the person's mark witnessed by two persons who subscribe their names as witnesses in accordance with California Civil Code Section 14 will be accepted.

2. A person holding a general power of attorney, or a special power of attorney that authorizes the person to vote the assessment ballot, which complies with California Probate Code sections 4120-4122, may vote on behalf of the principal, provided that the person signs as attorney-in-fact for the principal and attaches a copy of the power of attorney to the ballot.

Section 6. Responsibility for Administering; the Assessment Ballot Procedure. The governing board shall designate the department responsible for the administration of the balloting process, including but not limited to mailing the ballots with the notice of hearing, providing additional copies thereof as requested and maintaining a record of such matters, and for receiving and filing the ballots on a daily basis, maintaining their security in sealed envelopes until the conclusion of the public hearing, tabulation of the ballots and reporting the results thereof, and retaining the ballots in a secure manner thereafter. The governing board may also appoint persons to assist the administration of the balloting process, including but not limited to the tabulation of the ballots and the observation and monitoring thereof.

For assessment proceedings with 4000 or more ballots, completed ballots will be returned to the Elections Department. Completed ballots will be present at the public hearing, and opened and tabulated at the conclusion of the public hearing under the supervision of the Elections Official or his or her designee.

Section 7. Submission. Ballots may be submitted by mail or personally delivered to the designated department or submitted at the public hearing by any person authorized to do so by the property owner at any time before the close of the time set for submission. Only official ballots enclosed in an envelope will be accepted for counting.

Section 8. Receipt. Ballots shall not be opened until the time of tabulation.

Section 9. Tabulation. There shall be both unofficial and official tabulations. They shall be conducted as follows:

A. Unofficial Tabulation. The unofficial tabulation shall count all ballots, except those for which questions of authority and standing to vote may exist, those for which

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questions of withdrawals or instances of multiple ballots may exist, and those in which any other circumstances may call into question the validity or effectiveness of a ballot.

B. Official Tabulation. The official tabulation shall count all ballots after resolving any identified questions of irregularity, authority and standing to vote, withdrawals or instances of multiple ballots, and other circumstances calling into question the validity or effectiveness of a ballot.

C. Public Hearing. The governing body may adjourn the public hearing until completion of the tabulation of ballots. The tabulators shall certify the official tabulation to the governing body.

D. Disqualification. The tabulators shall disqualify any ballots that are not properly signed and dated.

E. Certification. The certification of the official tabulation shall contain the following:

1. The tabulators received all the ballots submitted.
2. Where more than one ballot was submitted by the same person, the tabulators determined the order of submission and counted only the last submission.
3. The tabulators disqualified any ballot not accompanied by a completed declaration under penalty of perjury signed by the person submitting it that the person is authorized to vote the ballot.
4. The tabulators counted each ballot submitted by an owner or tenant, respectively, authorized to vote the ballot.
5. The tabulators totaled both the "yes" and "no" ballots and certified the count of each weighted by the amount of the proposed assessment of each parcel for which ballots were submitted, and whenever more than one of the current record owners or tenants of an identified parcel submitted an assessment ballot, the amount of the proposed assessment was allocated to each ballot submitted in proportion to the respective ownership interests of those voting the ballots.

F. Public Record. An assessment ballot is a "public record" as that phrase is defined by the Public Records Act but, to prevent harassment and intimidation of property owners, shall not be open to public inspection until after the conclusion of the public hearing on the proposed assessment.

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Section 10. Controversies.

A. Determination. The governing body conducting the proceedings shall hear and determine all controversies concerning the regularity of the balloting. The determination of the governing body shall be final.

B. Invalidity. No action or inaction by any public agency, its governing body, or any of its officials on any matter in any proceedings conducted pursuant to these rules shall be held invalid or set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect, omission (hereafter error) unless the court finds that the error was prejudicial and that the party complaining suffered substantial injury from that error and that a different result would have been probable if the error had not occurred. There shall be no presumption that error is prejudicial or that injury was done if error is shown.

Section 11. Retention of Ballots. Upon completion of the official tabulation of the ballots, the designated department shall retain custody of the ballots for at least six months following the certification of the official tabulation. For those assessment proceedings with 4000 or more ballots, the Elections Department, upon completion of the official tabulation of the ballots, shall deposit the ballots with the Clerk of the Board, who shall retain the ballots for at least six months following the certification of the official tabulation. If any litigation is commenced before the ballots are destroyed or recycled, the ballots shall be retained until the litigation has ended.

BE IT FURTHER RESOLVED AND ORDERED that this Resolution clarifies and supersedes Resolution Nos. 104-97, 141-97 and 346-97.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this 10th day of June, 2008, by the following vote:

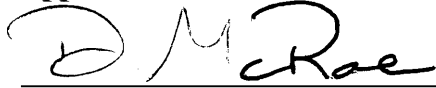
AYES:	SUPERVISORS	<i>Beatuz, Coonerty, Campos, Stone and Pirie</i>
NOES:	SUPERVISORS	None
ABSENT:	SUPERVISORS	None
ABSTAIN:	SUPERVISORS	None

Chair of the
Board of Supervisors

ATTEST: _____
Clerk of the Board

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Approved as to form:



DANA McRAE
County Counsel

Distribution:

- County Counsel
- Public Works Department
- Auditor-Controller
- Elections
- General Services Department
- Clerk of the Board

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CRUZ, STATE OF CALIFORNIA

RESOLUTION NO. _____

On the motion of Supervisor
Duly seconded by Supervisor
The following resolution is adopted

**RESOLUTION ADOPTING REVISED RULES FOR CONDUCTING
BALLOTING PROCEEDINGS FOR ASSESSMENTS UNDER
ARTICLE XIID, SECTION 4 OF THE CONSTITUTION**

WHEREAS, the adoption of Proposition 218, which adds Article XIID to the Constitution, imposes certain procedural requirements upon public agencies as a condition to levying assessments;

WHEREAS, these procedural requirements contained in Section 4 of Article XIID require a public agency to conduct a property owner balloting proceeding;

WHEREAS, the State Legislature has adopted the Proposition 218 Omnibus Implementation Act (Chapter 38 of the 1997 Statutes) to clarify the procedures and parameters for local jurisdictions in complying with Proposition 218;

WHEREAS, this Board in the exercise of police power conferred upon it by Article XI, Section 7 of the Constitution and in order to carry out its duties under Article XIID desires to adopt procedural rules that are consistent with the provisions of Article XIID and with the Proposition 218 Omnibus Implementation Act to assist in its implementation; and

WHEREAS, this Board finds the adoption of procedural rules to be in the public interest of the County and its property owners and inhabitants.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of Santa Cruz that the following procedural rules are adopted for the conduct of assessment proceedings by the County of Santa Cruz under Article XIID, Section 4 of the California Constitution:

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B. Modifications. Neither these Rules nor Article XIID limit the authority otherwise conferred by law to make changes in the boundaries of a proposed area of assessment, in any improvements ordered to be made or acquired, in the extent of the services to be provided, or in the amount of the assessment (including the amounts of any individual assessments) provided, however, the assessment area shall not be expanded nor any assessment increased beyond that specified in this notice without new notice and proceedings in compliance with all laws.

Section 2. Nature of Proceedings. The assessment ballot proceedings under Article XIID, Section 4 are an expanded form of the property owner protest provision traditionally forming a part of assessment proceedings. These proceedings do not constitute an election. They are not governed by the laws that govern elections.

A. Ballots Initially Sealed. Ballots shall remain sealed in the envelopes in which they are submitted and shall not become public documents until opened for tabulation after the close of the time set for submission of ballots.

B. Jurisdiction. Proceedings are taken under Article XIID, Section 4 for the purpose of creating jurisdiction to levy assessments. No jurisdiction to do so exists until it is determined that there is not a majority protest.

C. Withdrawal. A ballot may be changed or withdrawn by the person submitting it, but only prior to the conclusion of the public testimony on the proposed assessment. If more than one ballot is submitted by the same person for the same parcel, the latest ballot only shall be tabulated. All earlier ballots submitted by the same person for the same parcel shall be deemed withdrawn.

Section 3. Notice. The notice by mail of the proposed assessment and other matters required by Article XIID, Section 4(c) may be given by first class mail, postage prepaid. Only one

notice and/or ballot need be mailed for any one parcel. A ballot return envelope without prepaid postage shall be provided with the notice, ballot information, and the ballot.

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B. Tenants. A tenant who holds a tenancy of real property and whose lease or other rental agreement expressly requires that the tenant directly pay assessments may submit a ballot for the parcel. (As used in these rules, "tenant" refers to a tenant in a landlord-tenant relationship as provided in Article XIID, Section 2, and shall not refer to forms of co-ownership of property, i.e. those that are sometimes referred to as, e.g. "joint tenants".) The ballot of a tenant eligible to vote shall be counted in place of any ballot submitted by the owner. There is, however, no duty to seek out or give special notice to tenants.

C. Multiple Ballots- In the event that more than one of the record owners or tenants entitled to vote submit assessment ballots for an identical parcel, the amount of the proposed assessment to be imposed upon the identified 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 agency by documentation provided by those record owners within five days of written request for such documentation. In the event of a change of ownership or tenancy between the date the mailing list for the assessment is generated and the date of the public hearing on the proposed assessment, the current owners or tenants as of the date of the public hearing on the proposed assessment who are otherwise eligible to vote shall be entitled to vote on the assessment. If multiple ballots are submitted on the same parcel by both the current owners or tenants as well as by the previous owners or tenants on the date the mailing list is generated, only the ballots voted by the current owners or tenants shall be counted.

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A. Contents. The ballot ~~and/or~~ the ballot return envelope shall set forth the parcel number for which it is submitted, The ballot shall also set forth-the name and address of the record owners, and the amount of the proposed assessment for the parcel.

B. Declaration. The ballot shall contain a declaration under penalty of perjury signed by the person submitting it that the person is authorized to vote the ballot.

1. When a person cannot write, the person's mark witnessed by two persons who subscribe their names as witnesses in accordance with California Civil Code Section 17 will be accepted.

2. A person holding a general power of attorney, or a special power of attorney that authorizes the person to vote the assessment ballot, which complies with California Probate code Sections 4120-4122, may vote on behalf of the principal, provided that the person signs as attorney-in-fact for the principal and attaches a copy of the power of attorney to the ballot.

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<u>t no limit</u>	<u>t the tabulation of the ballots and</u>	<u>the observation and</u>	<u>onitorin</u>	<u>thereof.</u>

For assessment proceedings with 4000 or more ballots, completed ballots will be returned to the Elections Department. Completed ballots will be present at the public hearing, and opened and tabulated at the conclusion of the public hearing under the supervision of the Elections Official or his or her designee.

Section 7. Submission. Ballots may be submitted by mail or personally delivered to the Elections Department designated department or submitted at the public hearing by any person authorized to do so by the property owner at any time before the close of the time set for submission. Only official ballots enclosed in the Ballot Return En envelopes will be accepted for counting.

Section 8. Receipt. Ballots shall not be opened until the time of tabulation.

those for which questions of authority and standing to vote may exist, those for which questions of withdrawals or instances of multiple ballots may exist, and those in which any other circumstances may call into question the validity or effectiveness of a ballot.

B. Official Tabulation. The official tabulation shall count all ballots after resolving any identified questions of irregularity, authority and standing to vote, withdrawals or instances of multiple ballots, and other circumstances calling into question the validity or effectiveness of a ballot.

C. Public Hearing. The governing body may adjourn the public hearing until completion of the tabulation of ballots. The tabulators shall certify the official tabulation to the governing body.

D. Disqualification. The tabulators shall disqualify any ballots that are not properly completed, signed and delivered dated.

E. Certification. The certification of the official tabulation shall contain the following:

1. The tabulators received all the ballots submitted.
2. Where more than one ballot was submitted by the same person, the tabulators determined the order of submission and counted only the last submission.
3. The tabulators disqualified any ballot not accompanied by a completed declaration under penalty of perjury signed by the person submitting it that the person is authorized to vote the ballot.
4. The tabulators counted each ballot submitted by an owner or tenant, respectively, authorized to vote the ballot.
5. The tabulators totaled both the "yes" and "no" ballots and certified the count of each weighted by the amount of the proposed assessment of each parcel for which ballots were submitted, and whenever more than one of the current record owners or tenants of an identified parcel submitted an assessment ballot, the amount of the proposed assessment was allocated to each ballot submitted in proportion to the respective ownership interests of those voting the ballots.

F. Public Record. An assessment ballot is a "public record" as that phrase is defined by the Public Records Act but, to prevent harassment and intimidation of property owners, shall not be open to public inspection until after the conclusion of the public hearing on the proposed assessment.

Section 10. Controversies.

A. Determination. The governing body conducting the proceedings shall hear and determine all controversies concerning the regularity of the balloting. The determination of the governing body shall be final.

B. Invalidity. No action or inaction by any public agency, its governing body, or any of its officials on any matter in any proceedings conducted pursuant to these rules shall be held invalid or set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect, omission (hereafter error) unless the court finds that the error was prejudicial and that the party complaining suffered substantial injury from that error and that a different result would have been probable if the error had not occurred. There shall be no presumption that error is prejudicial or that injury was done if error is shown.

Section 11. Retention of Ballots. Upon completion of the official tabulation of the ballots, the ~~Elections Department~~ designated department shall ~~transfer~~retain custody of the ballots ~~to the Clerk of the Board of Supervisors~~ for at least six months following the certification of the official tabulation. For those assessment proceedings with 4000 or more ballots, the Elections Department, upon completion of the official tabulation of the ballots, shall deposit the ballots with the Clerk of the Board, who shall retain the ballots for at least six months following the certification of the official tabulation. If any litigation is commenced before the ballots are destroyed or recycled, they ballots shall be retained until the litigation has ended.

BE IT FURTHER RESOLVED AND ORDERED that this Resolution clarifies and supersedes Resolution Nos. 104-97, 141-97 and 346-97.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Cruz, State of California, this _____ day of _____, 2008, by the following vote:

- AYES: SUPERVISORS
- NOES: SUPERVISORS
- ABSENT: SUPERVISORS
- ABSTAIN: SUPERVISORS

Chair of the Board of Supervisors

ATTEST: _____
Clerk of the Board

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Approved as to form:

DANA McRAE
County Counsel

Distribution:
County Counsel
Public Works Department
Auditor-Controller
Elections
General Services Department
Clerk of the Board

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BALLOTING PROCEDURES

After the Board adopts a Resolution of Intention to Authorize and Levy an Assessment, a Notice of Public Hearing, ballot procedure, ballots and ballot return envelope (without postage) must be mailed to record owner of each parcel within the CSA at least 45 days prior to the public hearing date. For Public Works, the list of property owners is created by running job 460-31 which reads the Assessor's current ("working") master property records. As public parcels do not have an assessed value attached to the Assessor's record, a separate list of these parcels must be run and the assessment either manually entered on the tax-roll or manually billed. These lists will be available upon request. Any literature developed by the County regarding a proposed assessment and/or assessment proceedings must be reviewed by County Counsel prior to mailing to ensure it is educational and not advocacy in nature.

The ballots contain the following information: APN number, property owner name and mailing address, proposed assessment amount, ballot declaration and signature line. CPI wording may be added to the ballot. The public agency should be reminded to take the appropriate action before completing and signing the ballot; i.e. agency may have to take an official action to authorize who signs the ballot on behalf of the agency.

The ballot return envelope should list the APN number on the outside of the envelope along with a notice that the ballots are not to be opened by the Department but must remain sealed until after the close of the public hearing. If a ballot envelope is opened prior to the hearing date it is considered spoiled. Destroy the spoiled ballot and send a new blank ballot with instructions to the property owner. The new ballot should include a self-addressed stamped envelope along with a notice that the ballot must remain sealed until after the close of the public hearing. If a ballot envelope is returned undeliverable, all attempts should be made to determine the correct address of the property owner to re-mail the ballot instructions and ballot.

A property owner may request withdrawal of a submitted ballot. If requested a new ballot and ballot return envelope should be given to the property owner to be returned for counting prior to the public hearing date. Only the latest ballot will be counted.

Ballots are to be presented to the Board by the Department conducting the balloting at the public hearing. Once the ballots have been submitted the Board may close the public testimony portion of the hearing and continue the hearing to allow the Department to tabulate and certify votes on the proposed assessment with the ballots being weighted in accordance with the amount of the proposed assessment on each ballot. The result shall then be presented to the Board and certified by the tabulators. After certification of the tabulation, the ballots become public documents and shall be retained for a period of at least 6 months. The Department may ask the Board to designate an impartial observer as needed. Interested members of the public should always be allowed to observe the ballot tabulation.

Assessment proceedings with 4,000 or more ballots will be administered by the Elections Department in accordance with the 2008 Resolution Adopting Revised Rules for Conducting Balloting Proceedings for Assessments under Article XIID, Section 4 of the Constitution.

305 Second Street
Watsonville, CA 95076

June 9, 2008

Santa Cruz County Supervisors
701 Ocean Street
Santa Cruz, CA 95060

re: Agenda item # 69--Revised Rules for Balloting Procedures for Assessments.

Dear Supervisors:

My purpose for putting my name, home address, and home phone in 30 Size Font is to make it harder for County Staff to say that they did not see my contact information on the previous letters I have submitted to your Board and Staff in regards to last year's CSA 48 Assessment proposal and the issue of Revising Rules for Assessments.

Despite my attending, speaking, and submitting letters to your Board at several of your meetings that dealt with CSA 48 and the following meetings that addressed potential rule changes for such balloting procedures; at NO TIME...I repeat...at NO TIME, did anyone from County staff ~~ask~~ me to participate or give me an update on the proceedings for revising the balloting procedures for such assessment proposals.

Borrowing and amending a quote from the movie "Cool Hand Luke":

"What we've got here is failure to communicate. Some bureaucrats you just can't reach, so we get what we got here which is the way the bureaucracy wants it. Well, the bureaucracy gets it. And I don't like it any more than the people do."

This is exactly what it is wrong with this County...a failure to communicate.

Unforgettably yours,



Nick Bulaich
(831) 728-5640

cc: Register-Pajaronian
Santa Cruz Sentinel

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CBD BOSMAIL

From: CBD BOSMAIL
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Subject: Agenda Comments

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Item Number : 69

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Comments :

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June 9, 2008

Board of Supervisors
County of Santa Cruz
701 Ocean Street
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AGENDA: June 10, 2008 - ITEMS # 61, #63 and balloting#69.

Members of the Board,

Items #61, #63 propose the adoption of illegal charges or fees and/or assessments and Item # 69 proposes balloting procedures for the approval of these illegal service charges, fees and assessments.

First of all, the supporting materials for these levies identify them as service charges. But, Government Code § 25210.1 et seq. allows only "special taxes" and/or "apportioned service charges based upon the benefits conferred upon each parcel". As you can plainly see, these proposed "service charges" are flat fees, which are illegal.

I have previously attached the California Attorney General's Opinion (81 Ops. Atty. Gen. 356) which states: "A county service area established for the purposes of road maintenance is required to assess landowners on a proportional rather than uniform basis when it imposes a charge for maintenance." Since CSA 9A is for road maintenance then it clearly falls with the scope of this Attorney General Opinion and since the Countywide Septic System Maintenance CSA 12 service charge is also a flat fee, then it is also an "illegal parcel tax". Article XIID § 6 (b) (5) prohibits charges or fees for general governmental services. Since these "Countywide Septic System Maintenance" flat fees are for general governmental services then the fees or service charges levied for them are prohibited by the State Constitution and these charges are illegal.

These levies are also not assessments because Article XIID § 4 (a) states, among other things, that: An agency identify all parcels which have a special benefits conferred upon them and upon which will have an assessment imposed upon them. . Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred upon the parcel.

There have been a host of these "service charges" or "assessments" proposed by Public Works this spring

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and all of those "engineer reports" have proposed flat fees. No "engineer reports" have separated the general benefits from special benefits conferred upon each parcel. Therefore, whether identified as charges for county services or identified as assessments these levies are illegal.

In *Dare v. Lakeport City Council* (1970) 12 Cal.App.3d 864 at page 868 the court stated:

"The imposition and collection of fees for the use of the Lakeport Municipal Sewer District No. 1 must reasonably be considered a taxation function. 'Taxes' are defined as burdens imposed by legislative power on persons or property to raise money for public purposes. (*Yosemite Lbr. Co. v. Industrial Acc. Com.* 187 Cal. 774 [citations]) And it has been expressly held that a monthly sewer rate imposed by a municipal ordinance for the construction and use of sewers is a tax, impost and toll. (*City of Madera v. Black* 181 Cal. 306 [citations].) And both assessment, i.e., 'the process of ascertaining and adjusting the shares respectively to be contributed by several persons toward a common beneficial object according to the benefit received' (*Black's Dictionary* 4th ed.), p. 149), and collection, are included in the 'the operation called levying the tax. The words are so used in the [C]onstitution.' (*City of San Luis Obispo v. Pettit* 87 Cal. 499, 503 [citation].)

Since these "service charges" are for general government services and are levied by flat rates and because these "CSA assessments" are not really assessments, then they fall within the definition of the word taxes but they are "special taxes" because they are levied for a specific purposes. There is no doubt that the charges for road maintenance and septic maintenance are "special taxes" which need a two-thirds majority voter approval at an election on the issue.

Item #69 proposes balloting procedures for voting on assessments. But as I have explained above, before voter approval an assessment the agency must separate benefits unto general and special benefits conferred upon each parcel and then only special benefits are assessable. Charges or fees for general government services are not allowed. Voter approval of illegal assessments or illegal service charges to not legalize those levies.

These flat rate service charges or fees, unapportioned service charges and/or flat rate assessments are illegal because they are prohibited by the State Constitution's Article XIII D. Since it is the duty of this Board of Supervisors to uphold the constitution and the laws of the state, then you have a legal duty to reject these votes, reports and balloting procedures which intend to adopt illegal levies against property or persons.

Sincerely,

Harold Griffith

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