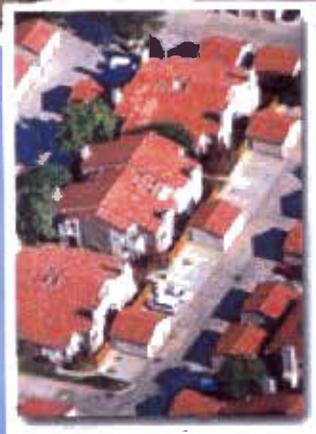
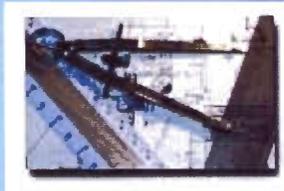
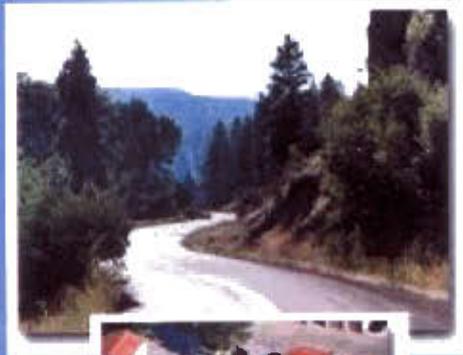


# A Guide to Proposition 218



David A. Prentice  
Carlyn M. Drivdahl  
David L. Herman

# **A Guide to Proposition 218**

**by**

**David A. Prentice  
Carlyn M. Drivdahl  
David L. Herman**

# A Guide to Proposition 218

Copyright © 2006 by  
The County of Madera



## NOTICE

This manual provides a general overview of the procedures required under Proposition 218 to assist public employees in complying with the law. This manual is NOT intended as legal advice and, in the event of a complicated Proposition 218 issue, you should contact legal counsel.

## TABLE OF CONTENTS

ACKNOWLEDGMENTS .....	i
PREFACE .....	ii
ABOUT THE AUTHORS .....	iii
INTRODUCTION .....	1
CHAPTER I	
Definitions .....	2
A. “Ad Valorem” .....	2
B. “Assessment” .....	2
C. “Capital cost” .....	2
D. “Extended” .....	2
E. “Fees and charges” .....	2
F. “Identified parcel” .....	3
G. “Increased” .....	3
H. “Local government” .....	4
I. “Maintenance and operation expenses” .....	4
J. “Property ownership” .....	4
K. “Property-related service” .....	4
L. “Record owner” .....	5
M. “Special benefit” .....	5
N. “Special district” .....	5
O. “Tax” .....	5
CHAPTER II	
Assessments .....	6
A. Overview .....	6
B. Distinguishing General and Special Benefit .....	6
C. Procedures for New Assessments .....	7
D. Assessment of Public Property .....	11

E.	Exemptions .....	11
F.	Case Law .....	13
CHAPTER III		
Property-Related Fees and Charges .....		14
A.	Overview .....	14
B.	Basic Analysis .....	14
C.	Kinds of Fees and Charges Affected; Fees and Charges Imposed as an Incident of Property Ownership .....	15
D.	Procedural Requirement .....	16
E.	Case Law .....	19
CHAPTER IV		
Taxes .....		20
A.	Overview .....	20
B.	Special vs. General Taxes .....	20
C.	Procedural Requirements for New or Increased Taxes .....	21
D.	Comparing General and Special Taxes .....	21
E.	Case Law .....	21
CHAPTER V		
Checklists .....		23
A.	Assessment Checklist. ....	23
B.	Property-Related Fees and Charges Checklist .....	24
CHAPTER VI		
Forms .....		26
A.	Assessment Forms .....	26
B.	Property-Related Fees and Charges Forms .....	38
APPENDIX		

## ACKNOWLEDGMENTS

This manual is the product of hours of discussion and consternation by many people. The authors would like to recognize the significant contribution of those individuals, without whom, this effort would not have succeeded.

First and foremost, the Board of Supervisors for the County of Madera must be recognized for their collective vision and commitment to the education of staff. The project would not have been possible without the support of the board, both with encouragement and funding. Each member, Supervisors Frank Bigelow, Ronn Dominici, Max Rodriquez, Vern Moss and Gary Gilbert, supported the project and provided the resources with which to make it a reality. The Board Chairman at the inception of the project, Gary Gilbert, deserves a special acknowledgment for keeping the pressure on and initiating the project in the first instance.

The authors also give a special thanks to David T. White and Sharon Glisson of the Madera County Counsel's Office. These two legal assistants were of paramount importance in editing, formatting and in providing input and ideas to make the project work for all staff members or attorneys who may use the manual. Sharon Glisson started the project with the law firm Best Best & Krieger and carried the project with her when she joined the Madera County staff.

Thank you is also necessary to the partners of Best Best & Krieger, where the writing initially commenced and to BB&K staff member Deserét Palmer who was instrumental in assisting Carlyn Drivdahl in the initial draft and concept.

## PREFACE

It is the intention of this manual to guide the reader through the process devised by Proposition 218 by providing clear and concise descriptions of both the text of enabling legislation and the various interpretations imposed by the courts. The chapter descriptions correlate to the different procedures established by the legislature to enact fees, charges, assessments and special or general taxes.

To aid the reader, each chapter contains reference boxes which are intended to add to the reader's general understanding of the background of the law itself or to explain text through examples of application or to provide words of caution in the application of the procedures. These three different types of reference boxes are denoted by the following symbols, which let the reader know the intention of the specific reference in question:



= **EXAMPLES OR IDEAS**



= **CAUTION**



= **INFORMATION OR EDUCATION**

For ease of reference, all material sections of the California Constitution, Government Code, Elections Code and pertinent administrative materials are included under the reference tab at the back of the manual. In addition, all cases and sections of the pertinent codes are fully cited in various portions of the text and included as endnotes.

The manual also contains a form section. These forms are generic and may be used as is, or modified for local use as necessary.

We hope that you find the manual easy to access, understand and use. To further aid you, the entire text of the manual is contained on the included CD ROM in a searchable format. Also, included on the CD are forms in a Word format so they may be completed on screen or saved to a file and modified for local use.

## ABOUT THE AUTHORS

### David A. Prentice

Mr. Prentice is County Counsel for the County of Madera, having assumed that appointment after four years as City Attorney of the City of Colfax. Mr. Prentice has also served as County Counsel for Alpine County.

Mr. Prentice is seasoned in advising policy boards on conducting public meetings and Robert's Rules of Order. He has years of experience as a public agency litigator as well as representing private businesses and individuals before state and federal courts. Mr. Prentice has litigated the full array of public agency issues including constitutional due process, equal protection, breach of contract, employment termination, and discrimination. In addition, he has litigated extensively on issues involving the California Environmental Quality Act (CEQA). Mr. Prentice was the principal on six published federal cases involving these issues.

Mr. Prentice routinely provides ongoing updates to clients on CEQA, the Brown Act, the Public Records Act and Proposition 218. He has published a brochure on contracting for dissemination to County of Madera department heads, subordinate supervisors and the Board of Supervisors.

Mr. Prentice taught classes in Legal Research and Writing, Advanced Litigation and Employment Law for the University of California at Riverside and MTI Western Business College in Sacramento.

Mr. Prentice is admitted to practice before all California State courts, the Eastern, Northern and Central Federal District Courts, the Ninth Circuit Court of Appeals, and the U.S. Supreme Court. He graduated Order of the Coif and with distinction from University of the Pacific, McGeorge School of Law, where he was granted AmJur awards for performance in evidence and contracts.

### Carlyn M. Drivdahl

Carlyn Drivdahl is an Associate in the Municipal Law Practice Group of Best Best & Krieger LLP's Sacramento office. Ms. Drivdahl serves as the Assistant City Attorney for the cities of Woodland, Galt, Clearlake, Escalon and Jackson. Ms. Drivdahl regularly advises the Planning Commissions of the cities of Galt and Clearlake.

Ms. Drivdahl handles a broad range of issues facing public agencies, including the Subdivision Map Act, special district formation and governance, Proposition 218, code enforcement, the Quimby Act, use of development fees, the Brown Act and CEQA. Ms. Drivdahl has drafted and reviewed professional services agreements, Proposition 218 notices, reimbursement agreements, ordinances and interagency agreements. Ms. Drivdahl has provided training on a variety of topics, including the role and function of planning commissions, the Quimby Act, the Subdivision Map Act and ethics and conflicts of interest.

Ms. Drivdahl received her Juris Doctorate degree from the University of California at Davis School of Law and was elected to the Order of the Coif, an international academic honor association. While at Davis, Ms. Drivdahl served as a Civil Procedure tutor. Prior to attending law school, Ms. Drivdahl worked on multiple campaigns at the local, state and federal levels. Ms. Drivdahl graduated from Duke University with a Bachelor of Arts degree in Political Science.

Ms. Drivdahl belongs to the State Bar of California, the Sacramento County Bar Association, the American Planning Association and the American Bar Association, in which she is a member of the Section of State and Local Government Law and the Section of Environment, Energy, and Resources.

#### David L. Herman

David L. Herman is a deputy county counsel with the Madera County Counsel's Office. Since 2003, Mr. Herman has represented agencies and individual offices and employees in all aspects of litigation and advises clients on CEQA, the Subdivision Map Act, zoning, water law, employment law, and various aspects of open government and public access to meetings and records. Prior to joining the County of Madera, Mr. Herman was a staff attorney with John A. Barker & Associates in Fresno, where he practiced criminal defense.

Mr. Herman received his Juris Doctorate degree from the University of California, Davis, where he served as coeditor in chief of *Environs*, an environmental law journal, and wrote two articles published by *Environs* and *Military Law Review*. Mr. Herman received a Bachelor of Arts in political science from the University of California, San Diego.

Mr. Herman is a member of the State Bar of California and is admitted to practice before the Ninth Circuit Court of Appeals and the United States District Courts for the Eastern, Central and Southern Districts of California.

## INTRODUCTION

The following manual is born out of profound frustration with the process of obtaining the required funds for financing public services. Staff at all levels of government in California attempt to provide necessary services to local citizens with ever dwindling monies.

Proposition 218 followed the enactment of Proposition 13 which forever changed the way government funds were collected. After Proposition 13 passed, local officials turned to assessments and fees to fund specific projects such as sewer, water, garbage collection, lighting, streets and roads and many other necessary services. However, the Howard Jarvis group responsible for Proposition 13 sought to close the assessment, fee and charge door through Proposition 218. They were successful.

Local government is now saddled with the responsibility to provide necessary services, yet the people demanding those services do not always want to pay for them. This reluctance is based upon a misunderstanding of the system, a mistrust of the government and a belief that general taxes should be sufficient to pay for all services. Thus, staff must endeavor to educate the public while at the same time ensuring that they are good stewards of the public purse.

It is hoped that this manual will aid staff in moving through the process of establishing and raising assessments, fees and charges. The better the process runs, the more amenable the citizens will be to the subject matter. Above all, cooperation among staff, elected officials and the citizenry is the requirement for public funding at the local level.

David A. Prentice  
County Counsel  
County of Madera

## CHAPTER I DEFINITIONS

### A. “Ad Valorem”

Proportional to the value of the thing taxed, rather than on its quantity or some other measure, such as property taxes.

### B. “Assessment”

An “assessment” is any levy or charge upon real property that is based upon the special benefit conferred upon the property by a public improvement or service 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.<sup>1</sup>

“Special assessment,” “benefit assessment,” “maintenance assessment” and “special assessment tax” are all considered assessments.<sup>2</sup> Standby charges are also considered assessments.<sup>3</sup>

### C. “Capital cost”

“Capital cost” means the cost of acquisition, installation, construction, reconstruction or replacement of a permanent public improvement by the entity (for example, a street, water treatment plant or a government building).<sup>4</sup>

### D. “Extended”

When applied to an existing tax, fee or charge, “extended” means a decision by the entity to extend the stated effective period for the tax, fee or charge.<sup>5</sup> For example, an existing tax would be considered to be extended if the entity amended or removed the tax’s expiration date.<sup>6</sup>

### E. “Fees and charges”

Fees and charges are monetary impositions for the use of a commodity or service. Fees and charges typically include rates. *A fee or charge is a tax if it exceeds the reasonable cost of the service for which it is imposed.*

---

<sup>1</sup> Cal.Const., art. XIII D § 2(b), Gov. Code § 53750(b)

<sup>2</sup> Gov. Code § 53750(b)

<sup>3</sup> Cal. Const., art. XIII D § 6(b)(4)

<sup>4</sup> Cal. Const., art. XIII D § 2(c)

<sup>5</sup> Gov. Code § 53750(e)

<sup>6</sup> Gov. Code § 53750(e)

Under Proposition 218, a “fee” or “charge” means any levy other than special tax or an assessment, which is imposed by the entity upon a parcel or upon a person *as an incident of property ownership*. This includes a user fee or charge for property-related services. Ad valorem taxes and fees for electrical or gas service are not considered property-related and therefore do not fall within the Proposition 218 process.<sup>7</sup>

#### **F. “Identified parcel”**

“Identified parcel” means a parcel of real property that the entity has identified as having a special benefit conferred upon it and upon which a proposed assessment is to be imposed, or a parcel of real property upon which a proposed property-related fee or charge is proposed to be imposed.<sup>8</sup>

#### **G. “Increased”**

When applied to an existing tax, assessment or property-related fee or charge, “increased” means a decision by the entity that does either of the following:

1. Increases any applicable rate used to calculate the tax, assessment, fee or charge.
2. Revises the methodology by which the tax, assessment, fee or charge is calculated, if that revision results in an increased amount being levied on any person or parcel.<sup>9</sup>

A tax, fee or charge is not deemed to be “increased” by an entity action that does either or both of the following:

3. Adjusts the amount of a tax or fee or charge in accordance with a schedule of adjustments, including a clearly defined formula for inflation adjustment, such as the Consumer Price Index, that was adopted by the entity prior to November 6, 1996.
4. Implements or collects a previously approved tax, fee or charge, so long as the rate is not increased beyond the level previously approved by the entity, and the methodology previously approved by the entity

---

<sup>7</sup> Cal. Const., art. XIII D § 2(e) § 3(b)

<sup>8</sup> Gov. Code § 53750(g)

<sup>9</sup> Gov. Code § 53750(h)(1)

is not revised so as to result in an increase in the amount being levied on any person or parcel.<sup>10</sup>

A tax, assessment, fee or charge is not deemed to be “increased” in the case in which the actual payments from a person or property are higher than would have resulted when the entity approved the tax, assessment, fee or charge, if those higher payments are attributable to events other than an increased rate or revised methodology, such as a change in population density, intensity of use or nature of the use of land (for example, a rezoning from an agricultural use to an industrial use).<sup>11</sup>

A “standby charge” is treated as an assessment under Proposition 218.

#### **H. “Local government”**

“Local government” means any county, city, city and county, including a charter city or county, any special district or any other local or regional governmental entity.<sup>12</sup>

#### **I. “Maintenance and operation expenses”**

“Maintenance and operation expenses” means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care and supervision necessary to properly operate and maintain a permanent public improvement.<sup>13</sup> For example, the cost of filling a pothole in a street is a maintenance and operation expense. Widening an existing street from two lanes to four lanes is not.

#### **J. “Property ownership”**

“Property ownership” includes tenancies of real property where tenants are directly liable to pay the assessment, fee or charge in question.<sup>14</sup>

#### **K. “Property-related service”**

“Property-related service” means a public service having a direct relationship to property ownership.<sup>15</sup>

---

<sup>10</sup> Gov. Code § 53750(h)(2)

<sup>11</sup> Gov. Code § 53750(h)(3)

<sup>12</sup> Cal. Const., art. XIII C § 1(b)

<sup>13</sup> Cal. Const., art. XIII D § 2(f)

<sup>14</sup> Cal. Const., art. XIII D § 2(g)

<sup>15</sup> Cal. Const., art. XIII D § 2(h)

## **L. “Record owner”**

“Record owner” means the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll.<sup>16</sup> In the case of property owned by a public entity, “record owner” means the representative of that public entity at the entity’s address as known to the assessing or fee-charging entity.<sup>17</sup>

## **M. “Special benefit”**

“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.<sup>18</sup> General enhancement of property value does not constitute a “special benefit.”<sup>19</sup>

## **N. “Special district”**

“Special district” means an agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.<sup>20</sup>

## **O. “Tax”**

A tax is a charge on an individual or business that pays for governmental services or facilities that benefit the public broadly.

### **1. “General Tax”**

A general tax is any tax imposed for general governmental purposes.<sup>21</sup>

### **2. “Special Tax”**

A special tax is any tax imposed for specific purposes, including a tax committed to specific purposes which is placed into a general fund.<sup>22</sup>

---

<sup>16</sup> Gov. Code § 53750(j)

<sup>17</sup> Gov. Code § 53750(j)

<sup>18</sup> Cal. Const., art. XIII D § 2(i)

<sup>19</sup> Cal. Const., art. XIII D § 2(i)

<sup>20</sup> Cal. Const., art. XIII C § 1(c)

<sup>21</sup> Cal. Const., art. XIII C § 1(a)

<sup>22</sup> Cal. Const., art. XIII C § 1(d)

## CHAPTER II ASSESSMENTS

### A. Overview

Proposition 218 affects most special assessments in five principal ways:

1. Establishes procedural requirements for the levy of assessments;
2. Requires the entity to separate the general benefits from the special benefits conferred on a parcel, and to only assess the special benefit;
3. Requires public agencies to be assessed in certain instances;
4. Authorizes the repeal or reduction of assessments by initiative; and
5. Alters the burden of proof in legal actions to contest the validity of an assessment.

A proposed assessment may state a range of rates or amounts. If a range of rates is approved, the entity may impose up to the maximum amount approved. A proposed assessment may also provide for inflationary adjustments to the rate or amount, unless the assessment is itself determined by using a percentage calculation.



**Assessments based upon usage or percentage of usage would be an example of a range of rates.**

### B. General and Special Benefits

Proposition 218 provides that only special benefits are assessable. A 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.<sup>23</sup> General enhancement of property value does not constitute a “special benefit.”<sup>24</sup> The costs associated with any general benefit will need to be paid from other entity resources.<sup>25</sup>

---

<sup>23</sup> Cal. Const., art. XIII D § 2(i)

<sup>24</sup> Cal. Const., art. XIII D § 2(i)

<sup>25</sup> Cal. Const., art. XIII D § 4(a)

 **Proposition 218 forbids the entity from imposing an assessment on property to raise funds to pay a court judgment against the entity unless the assessment specially benefits the parcels being assessed and is subject to voter approval.<sup>26</sup>**

**C. Procedures for New Assessments**

Proposition 218 establishes detailed requirements for the imposition by the entity of a “new or increased” special assessment. Proposition 218 requires all assessments to be supported by a detailed engineer’s report prepared by a registered professional engineer.<sup>27</sup> The entity should follow the following procedure to impose any new or increased special assessment:

- 1. Identification of parcels to receive special benefit.

The entity must identify all of the parcels, including property owned by federal, state or local governmental agencies, which will have a special benefit conferred upon them and upon which the assessment will be imposed.

- 2. Determination of proportionate special benefit.

Once the entity has identified all of the parcels, it must determine the *proportionate special benefit* to each property in relationship to the entirety of the cost of acquiring or constructing an improvement, of maintaining and operating such an improvement or of the property-related service being provided.<sup>28</sup> The assessment on a parcel may not exceed the reasonable cost of the proportionate special benefit conferred on such parcel.

 **A commercial operation needing large sewer capacity as opposed to a single family residence would have a higher proportionate special benefit from the expansion of a wastewater treatment facility.**

<sup>26</sup> *Ventura Group Ventures, Inc. v. Ventura Port Dist.* (2001) 24 Cal.4th 1089

<sup>27</sup> Cal. Const., art. XIII D § 4(b)

<sup>28</sup> Cal. Const., art. XIII D § 4(a)

### 3. Notice.

The entity must mail written notice of the proposed assessment to the record owner of each parcel at least forty-five (45) days prior to the public hearing. Notice is deemed given when deposited in the U.S. Postal Service, postage prepaid.<sup>29</sup> The notice must contain the following:

- 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 whereby the owner may indicate his or her name, reasonable identification of the parcel, his or her support or opposition to the proposed assessment and his or her signature. The ballot must include the entity's address for receipt of the ballot once completed. The ballot should be designed in such a way such that, once sealed, its contents are concealed.

### 4. Public Hearing.

Not less than forty-five (45) days after mailing the notice of the proposed assessment to the record owners of each identified parcel, the entity must conduct a public hearing. During the public hearing, the entity must consider all objections

---

<sup>29</sup> Gov. Code § 53750(i)

to, or protests against, the proposed assessment and *tabulate the ballots received before the conclusion of the public hearing.*

Assessment ballots must remain sealed until the tabulation commences at the conclusion of the hearing, provided that any assessment ballot may be submitted, changed or withdrawn by the person who submitted the ballot prior to the conclusion of the public hearing.<sup>30</sup> In tabulating the ballots, the ballots are weighted according to the proportional financial obligation of the affected properties. (*See* Proportional Special Benefit at Chapter II.C.2.)

In the event that more than one of the record owners of an identified parcel submits an assessment ballot, the amount of the proposed assessment to be imposed upon the identified parcel must 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 entity by documentation provided by those record owners.<sup>31</sup> During and after the tabulation, the assessment ballots are treated as disclosable public records and equally available for inspection by both the proponents and opponents of the proposed assessment. (*Id.*)



**The ballots are weighted in proportion to the amount of the assessment, usually dollar for dollar. As an example, an assessment of \$100,000 would be weighted at 100,000 votes, while an assessment of \$10,000 would be weighted at 10,000 votes.**

No assessment may be imposed if a *majority protest* exists. A majority protest does not include a tie.

---

<sup>30</sup> Gov. Code § 53753(c)

<sup>31</sup> Gov. Code § 53753(e)(1)

A majority protest exists if, upon the conclusion of the public hearing, ballots submitted in opposition to the proposed assessment exceed the ballots submitted in favor of the assessment. If there is no majority protest, the entity may make a determination upon the assessment as described in the engineer's report or as determined at the hearing, and then, by ordinance or resolution, adopt the proposed assessment.



**A “majority protest” is based upon the ballots actually cast, not those available to be cast. For example, a proposed assessment district consists of 20 parcels of equal value. Ten parcels cast ballots. Six parcels vote in favor of the assessment and four do not. Under Prop. 218 the assessment passes even though only 25% of the available ballots were cast in favor.**



**There is a majority protest procedure under Proposition 218 for fees and charges, however, the calculation of the protest is different. Double check to make sure you are using the correct majority protest formula.**

Proposition 218's notice, protest and hearing requirements supersede any statutory provisions affecting new or increased assessments that were in existence on July 1, 1997. Therefore, the entity need only comply with these requirements and not those contained in the specific statutory provisions under which the entity is levying the assessment. However, the entity must still comply with Streets & Highways Code section 3100 *et seq.*, where appropriate.



**Streets & Highways Code section 3100 *et seq.* deals with the creation of assessment district boundaries and map thereof, notice of assessment or tax lien and the recording thereof and notice of pendency of sale or foreclosure for failure to pay assessment.**

## D. Assessment of Public Property

Proposition 218 states that public property “shall not be exempt from assessment unless the agency being assessed can demonstrate by clear and convincing evidence that those publicly owned parcels in fact received no special benefit.”<sup>32</sup> As such, when determining the proportionate special benefit, the levying entity must include public property. Even so, property of the federal government is immune from assessment under the U.S. Constitution’s Supremacy Clause.<sup>33</sup> The Legislature has directed the Department of General Services to develop compliance standards in the State Administrative Manual to inform state agencies of their obligations with respect to assessments imposed on state property under Proposition 218.<sup>34</sup>

## E. Exemptions

1. Proposition 218 Exemptions. Assessments which existed on November 6, 1996, the effective date of Proposition 218, and which fall within one of the four exceptions are exempt from the procedures and approval processes of Proposition 218.<sup>35</sup> These four exceptions are as follows:

- a. Any assessment imposed exclusively to finance the capital cost or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. This exemption includes assessments for street lights.<sup>36</sup> It also encompasses a preexisting standby charge for the purchase of water, as the charge is “an assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for ... water.”<sup>37</sup>
- b. Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed.
- c. Any assessment the proceeds of which are exclusively used to pay bonded indebtedness of which the failure to pay would

---

<sup>32</sup> Cal. Const., art. XIII D § 4(a)

<sup>33</sup> U.S. Const., art. VI, § 2, cl. 2

<sup>34</sup> State Administrative Manual Management Memo, Number MM 05-17, June 23, 2005

<sup>35</sup> Cal. Const., art. XIII D § 5

<sup>36</sup> *Howard Jarvis Taxpayers Assn. v. City of Riverside* (1999) 73 Cal.App.4th 679

<sup>37</sup> *Keller v. Chowchilla Wat. Dist.* (2000) 80 Cal.App.4th 1006

violate the contract impairment clause of the United States Constitution.

- d. Any assessment which previously received a majority vote approval from the voters voting in an election on the issue of the assessment.



**Since the passage of time would dictate new assessments since 1996, or the raising of assessments which existed in 1996, very few of these categorical exemptions remain available for use by public entities.**

2. Other Exemptions.

- a. *Reassessment Pursuant to Streets and Highways Code.* Any reassessment that is approved and confirmed pursuant to Streets & Highway Code section 9525 is not an assessment within the meaning of Proposition 218, and may be ordered without compliance with Proposition 218's procedural requirements.<sup>38</sup>



**This is a very limited exemption in which bonds for street and road construction are refunded by the entity's governing body and replaced with reassessments on parcels.**

- b. *Non-Property-Based Assessments.* The provisions of Proposition 218 do not apply to assessments that are imposed on businesses rather than parcels of property.



**An assessment levied pursuant to the Parking and Business Improvement Area Law of 1989 is an example of a business assessment (construction of a parking garage) rather than a parcel assessment.**

---

<sup>38</sup> Sts. & Hy. Code § 9525(b)

In *Howard Jarvis Taxpayers Assn. v. City of San Diego*, (1999) 72 Cal.App.4th 230, the court held that Proposition 218 did not apply to a city's creation of a "business improvement district" funded by assessments upon businesses within the district's physical boundaries, because the assessment was not levied upon real property. Also, the business improvement district assessment was not a "special tax" subject to Proposition 218, as the tax burden was not borne by the general public.

- c. *The courts continue to struggle with the issue of non-property-related fees, charges and assessments. Any question regarding whether such an exemption applied must be referred to legal counsel. Such cases include *Richmond v. Shasta Community Services Dist.* and *Bighorn Desert View Wat. Agency v. Verjil*, discussed at Chapter III.E., Case Law.*

## **F. Case Law**

*Barratt American, Inc. v. City of San Diego* (2004) 117 Cal.App.4th 809: Proposition 218 and its implementing legislation does not alter the statute of limitations for challenging a resolution establishing an assessment for public improvements, which is thirty (30) days under Code of Civil Procedure section 329.5.

*Consolidated Fire Protection Dist. v. Howard Jarvis Taxpayers Assn.* (1998) 63 Cal.App.4th 211: A resolution that establishes an assessment against property for firefighting services is not a "contract" immune from Proposition 218 under the constitutional ban on impairment of contracts; moreover, no "contract" existed as the property owners had not agreed to the assessment by voting for it.

## **CHAPTER III**

### **PROPERTY-RELATED FEES AND CHARGES**

#### **A. Overview**

Proposition 218 creates substantive and procedural requirements for fees and charges for property-related services. The entity is prohibited from using fees or charges imposed as an incident of property ownership to fund general governmental services including, but not limited to, fees for police, fire, ambulance or library services, which are available to the public at large in substantially the same manner as they are to property owners.

#### **B. Basic Analysis**

Under Proposition 218, a property-related fee or charge cannot be extended, imposed or increased by the entity unless the fee or charge meets all of the following requirements:<sup>39</sup>

1. Revenues derived from the fee or charge do not exceed the funds required to provide the property-related service.
2. Revenues derived from the fee or charge cannot be used for any purpose other than that for which the fee or charge was imposed.
3. The amount of the fee or charge imposed upon any parcel or person as an incident of property ownership does not exceed the proportional cost of the service attributable to the parcel.
4. The fee or charge is not imposed for a service unless and until that service is actually used by, or immediately available to, the owner of the property in question. As such, fees or charges based on potential or future use of a service are not permitted. Standby charges are treated as assessments under Proposition 218. (*See Chapter II Assessments.*)
5. The fee or charge is not imposed for general governmental services where the service is available to the public at large in substantially the same manner as it is to property owners. Examples of general governmental services include police, fire, ambulance or library services.

---

<sup>39</sup> Cal. Const., art. XIII D § 6(b)

### C. Fees and Charges Affected; Fees and Charges Imposed as an Incident of Property Ownership

When determining whether a proposed fee or charge is “imposed as an incident of property ownership,” the following factors are considered:

1. Whether the entity relied on any parcel map, including an assessor’s parcel map.<sup>40</sup>
2. Whether the fee or charge is paid by a person simply as a result of property ownership.
3. Whether the property owner can avoid paying the fee or charge by declining services.
4. Whether the fee or charge automatically becomes a lien on the property.

Proposition 218 does not apply to the following kinds of fees:

5. Developer fees.<sup>41</sup>
6. Fees for the provision of electrical and gas service.<sup>42</sup>

 **Some examples of a fee that bears no relationship to property ownership are facility user fees for park admission or boat launching.**

### D. Case Law

*Bighorn-Desert View Wat. Agency v. Verjil* (2006) 39 Cal. 4th 205: Water, sewer and refuse collection fees are property-related fees subject to Proposition 218 whether they are based on individual consumption or imposed as a fixed monthly fee.

*Richmond v. Shasta Community Services Dist.* (2004) 32 Cal.4th 409: A district imposed a “capacity fee” and a “fire suppression fee” on all new connections to the district’s water system. The capacity fee was used to finance capital improvements

<sup>40</sup> Cal. Const. art. XIII D § 6(b)

<sup>41</sup> Cal. Const. art. XIII D § 1(b)

<sup>42</sup> Cal. Const. art. XIII D § 3(b)

to the water system, and the fire suppression fee paid for firefighting equipment. Held: the capacity fee was not an assessment subject to Proposition 218 and the fire suppression fee was not a property-related fee subject to Proposition 218, as both fees were imposed on individual persons who voluntarily chose to connect to the water system and were not imposed on the properties themselves. The court also noted that Proposition 218 applied to water service fees only when those fees were imposed as a condition of land ownership.

*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830: A city ordinance that imposed an inspection fee on residential rental properties did not violate Proposition 218, because the fee applied not to property ownership but to property use (as apartments).

*Howard Jarvis Taxpayers Assn. v. City of Salinas* (2002) 98 Cal.App.4th 1351: A city's storm-drainage fee imposed without voter approval violated Proposition 218, as storm drains and storm sewers do not constitute "water" or "sewer" services, and because the fee was property-related because it charged different rates for developed parcels as opposed to undeveloped parcels.

*Howard Jarvis Taxpayers Assn. v. City of Los Angeles* (2000) 85 Cal.App.4th 79: Water usage rates are exempt from Proposition 218, as they are based upon consumption and are not directly related to or incident to property ownership. This holding was expressly disapproved in *Bighorn, supra*, 39 Cal.4th at page 217, footnote 5.

*Mancini v. County of Santa Cruz*, (2005 Cal.App. unpub. LEXIS 11503) (Cal. 6<sup>th</sup> App. Dist., December 14, 2005, No. H028434): Local fee charged against telephone landline users (but not cell phone users) for "911" service is exempt from Proposition 218. The fee was not a "special tax" because it was reasonably related to the costs of the 911 system and the revenues raised did not exceed the cost of providing 911 service. The fee was also not a "property-related fee" because it was not an incident of land ownership, but was applied to those persons who voluntarily signed up for telephone landline service.

## **E. Procedural Requirements**

When the entity proposes to impose or increase any property-related fee or charge, it must adhere to the following procedure:

1. Identify the parcels upon which the fee or charge is proposed for imposition.

2. Calculate the amount of the fee or charge proposed to be imposed upon each identified parcel.



**Even though the statute doesn't require it for the imposition of a fee, the use of an assessment engineer is probably wise because it enhances the probability of success by convincing the voters of the necessity of enacting the fee in the amounts requested.**

3. Provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel. The notice must include:
  - a. The amount of the fee or charge proposed to be imposed.
  - b. The basis upon which the amount of the proposed fee or charge was calculated.
  - c. The reason for the fee or charge.
  - d. The date, time and location of a public hearing on the proposed fee or charge.
4. Not less than forty-five (45) days after mailing the notice, the entity must hold a public hearing on the proposed fee or charge.
  - a. At the public hearing, the entity must consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the entity cannot impose the fee or charge.



**For example, if there are 100 parcels affected and 10 vote in favor and 40 vote against there is no majority protest.**



**The majority protest for fees and charges is calculated differently than that for assessments.**

- b. This majority protest procedure is not considered to be an “election” or “voting” for purposes of the California Constitution or the Elections Code.<sup>43</sup> The Elections Code will control any post-majority protest review by the electorate.
5. For fees or charges for sewer, water and refuse collection services, the entity may impose the fee or charge upon a determination that there is no majority protest.<sup>44</sup>
  6. For all other fees and charges, after the determination that there is no majority protest, the fee or charge must receive voter approval.<sup>45</sup> An election must be conducted not less than forty-five (45) days after the public hearing. The entity has the following options for the election:
    - a. Hold an election in which only affected property owners vote. The fee or charge is approved if a majority of voting property owners vote in favor of the fee or charge; or
    - b. Hold an election in which the entire electorate residing in the affected area votes. The fee or charge is approved if two-thirds of the voting electorate votes in favor of the fee or charge.



**For instance, a fee or charge for roads or parks would require an election even if a majority protest did not exist at the public hearing. This election would be conducted by the elections official, not the Board Clerk.**

7. If an election is required, the entity may conduct the election entirely by mail pursuant to the following procedures:
  - a. The entity authorizes the use of mailed ballots for the election.
  - b. The election is set on one of the following established mailed ballot election dates:
    - (i) The first Tuesday after the first Monday in May of each year.

---

<sup>43</sup> Gov. Code § 53753(e)(4)

<sup>44</sup> Cal. Const., art. XIII D § 6(c)

<sup>45</sup> Cal. Const., art. XIII D § 6(c)

- (ii) The first Tuesday after the first Monday in March of each even-numbered year.
  - (iii) The last Tuesday in August of each year.<sup>46</sup>
- c. The County Clerk-Recorder can commence the mailing of the combined sample ballot and mail ballot after the 29th day before the election and must complete the mailing by the 10th day before the election.<sup>47</sup>
  - (i) The mailings may include a printed notice informing the voters that they may return the completed ballot by certified or registered mail.<sup>48</sup>
- d. Ballots must be returned to the County Clerk-Recorder no later than 8 p.m. on Election Day.<sup>49</sup>
- e. In all other respects, all mail ballots are handled and tallied in the same manner as absentee ballots.<sup>50</sup>

## **F. Case Law**

*Howard Jarvis Taxpayers Assn. v. City of Fresno* (2005) 127 Cal.App.4th 914: A city charged a fee in lieu of property taxes to property owned by the city's "municipal utilities" (including departments responsible for water, sewer, and refuse pickup), which was passed through to property owners' utility bills. The fee was invalid under Proposition 218 because the city did not reasonably determine the costs of the service and recover those costs through rates that were proportional to the cost. Rather, the fee was used as a general fund revenue raiser and was imposed on property as an incident of property ownership.

---

<sup>46</sup> Elec. Code § 1500

<sup>47</sup> Elec. Code § 4101

<sup>48</sup> Elec. Code § 4102

<sup>49</sup> Elec. Code § 4103

<sup>50</sup> Elec. Code § 4100

## CHAPTER IV TAXES

### A. Overview

In addition to affecting special assessments and fees, Proposition 218 affects local taxation powers in three ways:

1. Classifying local taxes as either “general” or “special” taxes.
2. Denying special districts or agencies, such as school districts or redevelopment agencies, the power to levy general taxes.
3. Specifying different electoral thresholds for approving different types of taxes.

### B. Special vs. General Taxes

#### 1. Special Taxes

A special tax is any tax imposed for specific purposes, including a tax committed to specific purposes which is placed into a general fund.

 **Examples of special taxes would include a tax to increase funding for the local zoo, a tax to pay for a new central library, a tax for a specific road project or any other tax dedicated to a specific purpose.**

#### 2. General Taxes

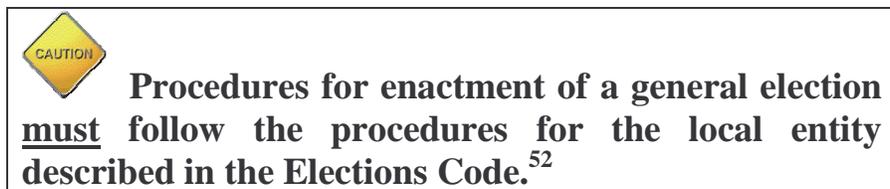
A general tax is any tax imposed for general governmental purposes.

 **A general tax raises money which may be placed into the general fund of the public entity that is not bound for a specific project or purpose but may be used for any purpose that the legislative body desires. General taxes may ultimately be used for special projects. While special taxes must be used for a special project, general taxes may be used for any project.**

## C. Procedural Requirements for New or Increased Taxes

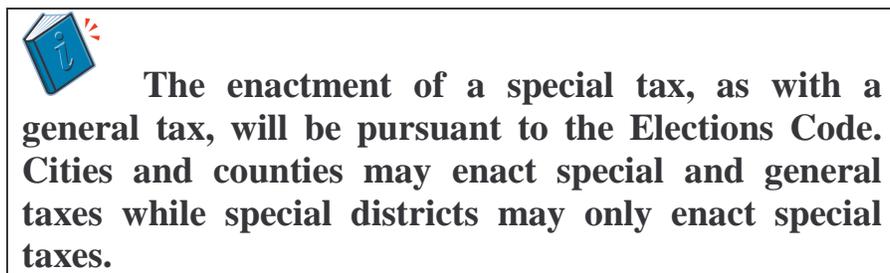
### 1. General Taxes.

The entity may not impose, extend or increase a general tax unless and until that tax is submitted to the electorate and approved by a majority vote.<sup>51</sup> Votes on general taxes must be submitted on the same ballot as the general election for the entity.



### 2. Special Taxes

The entity may not impose, extend or increase a special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote.<sup>53</sup>



## D. Comparing General and Special Taxes

General taxes, as noted earlier, are levied for general governmental purposes by cities and counties. Special taxes are levied for specific purposes by cities, counties and special districts, which operate within limited local geographic boundaries for specific task, i.e., school districts.

## E. Case Law

*Teyssier v. City of San Diego* (2000) 81 Cal.App.4th 685: City's rental unit business tax imposed upon residential rental landlords is an excise tax not governed by Article XIII D of the California Constitution, and is a valid general tax under Article XIII C.

<sup>51</sup> Cal. Const., art. XIII C, § 2(b)

<sup>52</sup> Elec. Code §§ 324 and 1000

<sup>53</sup> Cal. Const., art. XIII C § 2(d)

*Coleman v. County of Santa Clara*, (1998) 64 Cal.App. 4th 662: It is permissible for a public entity to seek an advisory vote for a general tax enactment without converting the general tax to a special tax inadvertently.

*Mancini v. County of Santa Cruz*, 2005 Cal.App. Unpub. LEXIS 11503 (December 14, 2005) Local fee charged against telephone landline users (but not cell phone users) for “911” service is exempt from Proposition 218. The fee was not a “special tax” because it was reasonably related to the costs of the 911 system and the revenues raised did not exceed the cost of providing 911 service.

**CHAPTER V**  
**CHECKLISTS**

**A. Assessment Checklist.**

Determine cost of acquiring or constructing the improvement, of maintaining and operating such an improvement or of the property-related service being provided.

Engage registered professional engineer (or use County engineer, if registered) to prepare a detailed assessment report covering:

\_\_\_\_\_ Identification of all parcels to receive special benefit.

\_\_\_\_\_ Determination of proportionate special benefit.

Mail written notice of the proposed assessment and assessment ballot to the record owner of each parcel **at least 45 days prior to the public hearing.**

Conduct public hearing.

\_\_\_\_\_ Consider all objections to, or protests against, the proposed assessment.

\_\_\_\_\_ Tabulate assessment ballots received before conclusion of the public hearing.

Determine if a majority protest exists.

\_\_\_\_\_ If a majority protest exists, no assessment may be imposed.

\_\_\_\_\_ If no majority protest exists, the (governing body) may make a determination upon the assessment as described in the engineer's report or as determined at the public hearing, and then, by ordinance or resolution, approve the proposed assessment.

**B. Property-Related Fees and Charges Checklist**

- Determine whether fee or charge to be imposed, increased or extended is “property-related.”
- Identify the parcels subject to the proposed fee or charge.
  - Calculate the amount of the fee or charge proposed to be imposed upon each identified parcel.
  - Provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel **at least 45 days before** the public hearing.
- Conduct a public hearing on the proposed fee or charge.
  - \_\_\_\_\_ Consider all objections to, or protests against, the proposed fee or charge.
- Determine if a majority protest exists.
- If a majority protest exists, the fee or charge may not be imposed.
  - For fees or charges for sewer, water and refuse collection services, the governing body may impose the fee or charge upon a determination that there is no majority protest.
  - For all other fees and charges for which there is no majority protest, the entity must conduct an election.
    - \_\_\_\_\_ Determine whether to submit the fee or charge to property owners or electorate in affected area.
    - \_\_\_\_\_ Determine whether to conduct the election entirely by mail.
    - \_\_\_\_\_ Adopt ordinance authorizing the use of mailed ballots, if not already in place.
    - \_\_\_\_\_ Adopt resolution authorizing a mail ballot election for the proposed fee or charge and setting the date of the election.
    - \_\_\_\_\_ Adopt resolution establishing drop-off centers for ballots.

- \_\_\_\_\_ Consider all objections to, or protests against, the proposed fee or charge.
- \_\_\_\_\_ Direct the County Counsel to draft impartial analysis along with a ballot title and summary, if necessary.
- \_\_\_\_\_ Direct the County Auditor to prepare a fiscal impact statement.
- \_\_\_\_\_ Direct the County Clerk-Recorder to commence the mailing of the combined sample ballot and mail ballot after the 29th day before the election and must complete the mailing by the 10th day before the election.
- \_\_\_\_\_ Tabulate voted ballots in the same manner as absentee ballots.
- \_\_\_\_\_ Property Owner Election – The fee or charge is approved if a majority of property owners voting vote in favor of the fee or charge.
- \_\_\_\_\_ Electorate of the Affected Area Election – The fee or charge is approved if two-thirds of the electorate of the affected area voting vote in favor of the fee or charge.

**CHAPTER VI**  
**FORMS**

**A. Assessment Forms**

1. Notice of Public Hearing and Assessment Ballot Procedure.
2. Assessment Ballot for Approval of Flat Assessment.
3. Assessment Ballot for Approval of Assessment and Assessment Range.
4. Assessment Ballot for Approval of Assessment and Inflation Adjustment Formula.
5. Certificate of Tabulation Official and Statement of Assessment Ballots Submitted.

NOTICE OF PUBLIC HEARING AND ASSESSMENT BALLOT PROCEDURE

**COUNTY OF \_\_\_\_\_**  
**[INSERT NAME OF ASSESSMENT DISTRICT]**

The purpose of this notice is to provide information to the record owners of property within the boundaries of the [INSERT NAME OF ASSESSMENT DISTRICT] (“Assessment District”) of the County of \_\_\_\_\_ (“County”) regarding the proceedings being undertaken by the County to consider the levy of assessments on properties within the Assessment District for the purpose specified below.

**Reason for the Assessment.**

Assessments are proposed to be levied within the Assessment District to fund:

[INSERT REASON FOR ASSESSMENT]

**The Total Assessment Proposed to be Charged to the Entire Assessment District.**

The amount of the assessments proposed to be charged to the entire Assessment District is \$\_\_\_\_.\_\_\_\_.

**Assessment Proposed to be Charged to Your Property.**

[INSERT AMOUNT TO BE ASSESSED TO PARTICULAR PARCEL]

**Duration of the Assessments.**

[INSERT DURATION OF PAYMENTS]

**Basis upon which the Proposed Assessments are Calculated.**

[INSERT BASIS UPON WHICH AMOUNT OF PROPOSED ASSESSMENT WAS CALCULATED]

**Public Hearing.**

Notice is hereby given that a public hearing on the proposed assessment will be held in the regular meeting place of the (entity’s name):

[INSERT ENTITY’S ADDRESS]  
[INSERT CITY], California

at the following date and at the following time:

**[INSERT DATE AND TIME OF PUBLIC HEARING]**

At that time the [INSERT ENTITY] will hold a public hearing on the proposed assessment. The [INSERT ENTITY] shall consider all objections and protests, if any, to the proposed assessment. **Any interested person shall be permitted to present written and/or oral testimony.** The [INSERT ENTITY] may impose reasonable time limits on both the length of the entire public hearing and the length of each interested person's oral testimony. The [INSERT ENTITY] may also continue the public hearing from time to time.

**Assessment Ballot Proceeding.**

**In addition to the right to participate in the public hearing described above, each record owner of property proposed to be assessed has the right under the provisions of the Article XIII D of the California Constitution ("Proposition 218") and the Proposition 218 Omnibus Implementation Act (Government Code section 53750 *et seq.*) to submit an assessment ballot in favor of or in opposition to the proposed assessment.**

An assessment ballot has been enclosed with this notice. Each record owner, or the legally authorized representative of such record owner, may complete the assessment ballot and thereby indicate such owner's support for or opposition to the proposed assessment. During the public hearing, the Board of Supervisors shall cause the assessment ballots received prior to the close of the public hearing to be tabulated by the County Clerk. The results will be announced at the close of the public hearing. **It is not necessary for the record owner to be a citizen of the United States or a resident of the County, the State of California or the United States in order to eligible to complete an assessment ballot.**

**If a majority protest exists, the [INSERT ENTITY] shall not impose the proposed assessment upon the Assessment District. For purposes of the assessment ballot procedure, a majority protest exists if, upon conclusion of the public hearing, assessment ballots submitted in opposition to the proposed assessments within the Assessment District exceed assessment ballots submitted in favor of such proposed assessments. In tabulating the assessment ballots, each assessment ballot shall be weighted by the amount of the proposed assessment to be imposed upon the parcel for which such assessment ballot was submitted.**

**THE INSTRUCTIONS FOR THE COMPLETION AND DELIVERY OF THE ASSESSMENT BALLOT ARE PRINTED ON THE ASSESSMENT**

**BALLOT.** These instructions also specify the deadline for receipt of assessment ballots. Please follow the instructions carefully and completely in filling out the assessment ballot to ensure that the assessment ballot will be tabulated. **TO BE ELIGIBLE TO BE TABULATED, ASSESSMENT BALLOTS MUST BE RECEIVED BY THE COUNTY CLERK NOT LATER THAN THE CLOSE OF THE PUBLIC HEARING.**

An assessment ballot will not be tabulated if:

- (1) The document received is a photocopy of an assessment ballot which does not contain an original signature;
- (2) The assessment ballot is not signed;
- (3) The assessment ballot is received by the County Clerk after the public hearing is closed;
- (4) The assessment ballot is not marked with an identifiable “yes” or “no”; or
- (5) The assessment ballot appears tampered with or otherwise invalid based upon its appearance, method of delivery or other circumstances known to the County Clerk.

### **Questions**

If you have questions regarding the instructions on the assessment ballot or your assessment ballot is lost or destroyed, please call the County Clerk between 8 am and 5 pm Monday through Friday at the following phone number:

County Clerk, County of \_\_\_\_\_  
\_\_\_\_\_(Phone)\_\_\_\_\_

### **Documents Available for Review**

The following document pertaining to the proposed improvements, the Assessment District and the proposed assessment is available for review Monday through Friday between 8 am and 5 pm in the County Clerk’s Office of the County of [INSERT COUNTY]:

- 1) [INSERT TITLE OF ENGINEER’S REPORT] Engineer’s Report containing a description of the improvements, a cost estimate for the project, a diagram showing the parcels within the Assessment District, the assessment proposed to

be levied against each parcel within the Assessment District that specially benefits from the improvements, and a description of the proposed rate and method of apportioning such costs.

The County Clerk's Office is located at the following address:

[INSERT ADDRESS]  
[INSERT CITY], CA [ZIP]

**Authority for Proceedings and Notice**

The proceedings of the entity to consider the levy of assessments on properties within the Assessment District are being undertaken and this notice is being given pursuant to and in accordance with the provisions of:

1. Article XIII D of the Constitution of the State of California,
2. [INSERT LAW & CITATION UNDER WHICH ASSESSMENT IS TO BE IMPOSED], and
3. Proposition 218 Omnibus Implementation Act (Government Code section 53750 *et seq.*).

To be used for approval of a flat assessment

**Official Assessment Ballot**  
**[INSERT NAME OF ASSESSMENT DISTRICT]**

Assessor's Parcel Number: \_\_\_\_\_

Record Owner's Name: \_\_\_\_\_

Record Owner's Address: \_\_\_\_\_

Proposed Assessment for This Parcel Beginning **[INSERT YEAR]** Fiscal Year: \_\_\_\_\_

**Instructions for Completing and Delivering This Ballot**

Article I. To express your view on the proposed assessment, check the square before the word "YES" or "NO," then sign and date the ballot. Each person with an ownership interest in this property should complete a separate ballot.

Article II. After completing your ballot, mail or deliver this entire ballot to the County Clerk at  [INSERT ADDRESS] , [INSERT CITY], California.

Article III. Ballots may be sent or delivered to the County Clerk at any time, but **MUST** be received not later than the conclusion of the public hearing on the proposed assessment set for **[INSERT DATE AND TIME OF PUBLIC HEARING]** in the regular meeting place of the [INSERT ENTITY], at  [INSERT ADDRESS] , [INSERT CITY], California.

PLEASE EXPRESS YOUR VIEW BY MARKING AND SIGNING BELOW

- |   |
|---|
| <p><input type="checkbox"/> <b>Yes</b>, I approve the proposed assessment described above for the parcel identified in this ballot.</p> <p><input type="checkbox"/> <b>No</b>, I do not approve the proposed assessment described above for the parcel identified in this ballot.</p> |
|---|

To be used for approval of a flat assessment

I hereby declare under penalty of perjury that I am a record owner of the parcel listed above.

\_\_\_\_\_  
Signature of Record Owner

\_\_\_\_\_  
Date

to be used for approval of both an assessment and an assessment range

**Official Assessment Ballot**  
**[INSERT NAME OF ASSESSMENT DISTRICT]**

Assessor's Parcel Number: \_\_\_\_\_

Record Owner's Name: \_\_\_\_\_

Record Owner's  
Address: \_\_\_\_\_

Proposed Assessment for This Parcel Beginning **[INSERT YEAR]** Fiscal  
Year: \_\_\_\_\_

Proposed Assessment Range: \_\_\_\_\_

**Instructions For Completing and Delivering This Ballot**

Article I. To express your view on the proposed assessment and the proposed assessment range, check the square before the word "YES" or "NO," then sign and date the ballot. Each person with an ownership interest in this property should complete a separate ballot.

Article II. After completing your ballot, mail or deliver this entire ballot to the County Clerk at  [INSERT ADDRESS] , [INSERT CITY], California.

Article III. Ballots may be sent or delivered to the County Clerk at any time, but **MUST** be received not later than the conclusion of the public hearing on the proposed assessment and assessment range set for **[INSERT DATE AND TIME OF PUBLIC HEARING]** in the regular meeting place of the [INSERT ENTITY], at  [INSERT ADDRESS] , [INSERT CITY], California.

PLEASE EXPRESS YOUR VIEW BY MARKING AND SIGNING BELOW

to be used for approval of both an assessment and an assessment range

**Question 1.** Do you approve the proposed assessment described above for the parcel identified in this ballot?

- Yes,** I approve the proposed assessment described above for the parcel identified in this ballot.
- No,** I do not approve the proposed assessment described above for the parcel identified in this ballot.

**Question 2.** Do you approve of the proposed assessment range described above for the parcel identified in this ballot?

- Yes,** I approve of the proposed assessment range described above for the parcel identified in this ballot.
- No,** I do not approve of the proposed assessment range described above for the parcel identified in this ballot.

I hereby declare under penalty of perjury that I am a record owner of the parcel listed above.

\_\_\_\_\_  
Signature of Record Owner

\_\_\_\_\_  
Date

To be used for approval of both an assessment and an inflation adjustment formula

**Official Assessment Ballot**  
**[INSERT NAME OF ASSESSMENT DISTRICT]**

Assessor's Parcel Number: \_\_\_\_\_

Record Owner's Name: \_\_\_\_\_

Record Owner's Address: \_\_\_\_\_

Proposed Assessment for This Parcel Beginning **[INSERT YEAR]** Fiscal Year:  
\_\_\_\_\_

Proposed Inflation Adjustment Formula: \_\_\_\_\_

**Instructions for Completing and Delivering This Ballot**

Article I. To express your view on the proposed assessment and the proposed inflation adjustment formula, check the square before the word "YES" or "NO," then sign and date the ballot. Each person with an ownership interest in this property should complete a separate ballot.

Article II. After completing your ballot, mail or deliver this entire ballot to the County Clerk at  [INSERT ADDRESS] , [INSERT CITY], California.

Article III. Ballots may be sent or delivered to the County Clerk at any time, but **MUST** be received not later than the conclusion of the public hearing on the proposed assessment and inflation adjustment formula set for **[INSERT DATE AND TIME OF PUBLIC HEARING]** in the regular meeting place of the [INSERT ENTITY] at  [INSERT ADDRESS] , [INSERT CITY], California.

PLEASE EXPRESS YOUR VIEW BY MARKING AND SIGNING BELOW

**Question 1.** Do you approve the proposed assessment described above for the parcel identified in this ballot?

- Yes**, I approve the proposed assessment described above for the parcel identified in this ballot.

To be used for approval of both an assessment and an inflation adjustment formula

- No**, I do not approve the proposed assessment described above for the parcel identified in this ballot.

**Question 2.** Do you approve of the proposed inflation adjustment formula described above for the parcel identified in this ballot?

- Yes**, I approve of the proposed inflation adjustment formula described above for the parcel identified in this ballot.
- No**, I do not approve of the proposed inflation adjustment formula described above for the parcel identified in this ballot.

I hereby declare under penalty of perjury that I am a record owner of the parcel listed above.

\_\_\_\_\_  
Signature of Record Owner

\_\_\_\_\_  
Date



**B. Property-Related Fees and Charges Forms**

1. Notice of Public Hearing
2. Ordinance Authorizing Use of Mail Ballot Elections
3. Resolution Calling a Proposition 218 Election – Property Owners
4. Resolution Calling a Proposition 218 Election – Electorate Residing in Affected Area
5. Resolution Establishing Drop-Off Centers

**COUNTY OF [INSERT COUNTY]  
PUBLIC NOTICE OF PROPOSED [INSERT FEE ACTION, E.G.,  
INCREASE IN SEWER SERVICES RATE]  
NOTICE OF PUBLIC HEARING**

**NOTICE IS HEREBY GIVEN** pursuant to Article XIII D of the California Constitution that the County of [INSERT COUNTY] is proposing to [INSERT FEE ACTION, e.g., increase its rate for sewer services]. The County's current service charge is [INSERT CURRENT CHARGE, if any]. The County is proposing to [INSERT FEE ACTION, e.g., increase, extend, etc.] this rate to \$\_\_\_\_\_, [INSERT CHANGE FROM CURRENT RATE, e.g., an increase of \$\_\_\_\_\_ per unit, per year]. The basis for this increase is [INSERT REASON FOR FEE ACTION]. Further details regarding this proposed increase are available at the County Office located at [INSERT ADDRESS], [INSERT CITY], California, and may be reviewed there by any interested person.

**NOTICE IS FURTHER GIVEN** that on \_\_\_\_\_ at \_\_\_\_\_ in the [INSERT PLACE OF MEETING] located at [INSERT ADDRESS], [INSERT CITY], California, , the [INSERT ENTITY] will conduct a public hearing on the proposed [INSERT FEE ACTION].

[FOR FEES OR CHARGES FOR SEWER, WATER AND REFUSE COLLECTION SERVICES, INSERT THE FOLLOWING:

At the time of the public hearing, the Board will hear and consider all protests and objections concerning these matters. If there is no majority protest, the Board will consider and may adopt the [INSERT FEE ACTION, e.g., increased] rate. A majority protest exists if written protests against the proposed fee are presented by a majority of owners of the identified parcels.]

[FOR ALL OTHER PROPERTYRELATED FEES, INSERT THE FOLLOWING:

At the time of the public hearing, the Board will hear and consider all protests and objections concerning these matters. If there is no majority protest, the Board will consider and may determine whether to submit the proposed [INSERT FEE ACTION, e.g., increased] rate to property owners or the electorate in the affected area. A majority protest exists if written protests against the proposed fee are presented by a majority of owners of the identified parcels.]

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
[INSERT ENTITY]  
County of [INSERT COUNTY]

An Ordinance of the  
[INSERT ENTITY] of the County of [INSERT COUNTY]  
Authorizing the Use of Mail Ballot Elections

**WHEREAS**, Elections Code section 4000 subdivision (c)(9) provides that any election or assessment ballot proceeding required or authorized by Article XIII section C or D of the California Constitution may be conducted wholly by mail;

**WHEREAS**, Elections Code section 4000 subdivision (a) requires the [INSERT ENTITY] to authorize the use of mailed ballots for such an election;

**WHEREAS**, the [INSERT ENTITY] wishes to achieve higher voter turnout by allowing for the use of mailed ballots for such an election; and

**WHEREAS**, the [INSERT ENTITY] wishes to reduce the cost of such an election through the use of mailed ballots.

**NOW, THEREFORE, BE IT HEREBY ORDAINED** by the [INSERT ENTITY] of the County of [INSERT COUNTY]:

**SECTION 1.** Mail Ballot Elections. The [INSERT ENTITY] of the County of [INSERT COUNTY] is hereby authorized to conduct elections wholly by mail ballot as set forth in section 2 of this Ordinance. The [INSERT ENTITY] shall determine whether an election will be conducted by mail at the time the election is called. Actions of the [INSERT ENTITY] pursuant to this section shall be set forth in a resolution approved at a regular or special meeting of the [INSERT ENTITY].

**SECTION 2.** Subjects Approved for All-Mail Elections. The following items may be the subject of an all-mail election:

- A. Any election to approve a special tax as required or authorized by Article XIII section C of the California Constitution.
- B. Any election to approve a property-related fee or charge as required or authorized by Article XIII section D of the California Constitution.
- C. Any assessment ballot proceeding required or authorized by Article XIII section D of the California Constitution; provided, however, that such a proceeding shall be denominated an “assessment ballot proceeding” rather than an election.

**SECTION 3.** Date of Elections. Elections authorized by this Ordinance shall not occur on the same date as a statewide direct primary election or statewide general election.

**SECTION 4.** Procedures for Conduct of All-Mail Elections. Elections authorized by this Ordinance shall be conducted in accordance with the provisions for mail ballot elections set forth in Elections Code section 4100 *et seq.*, and as hereafter amended.

**SECTION 5.** Enabling Authority. This Ordinance is adopted pursuant to the authority granted by Elections Code section 4000 subdivision (c)(9).

**SECTION 6.** Publication or Posting. This Ordinance shall take effect thirty (30) days after the date of its adoption, and prior to the expiration of seven (7) days from the passage thereof shall be published at least once in the [INSERT PUBLICATION], a newspaper of general circulation, published and circulated in the entity and thenceforth and thereafter the same shall be in full force and effect.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_  
by the following vote:

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

\_\_\_\_\_  
Chairperson, [INSERT ENTITY]

ATTEST:  
\_\_\_\_\_

Clerk, [INSERT ENTITY]

APPROVED AS TO FORM:

\_\_\_\_\_  
County Counsel

**Resolution Calling A Proposition 218 Election – Property Owners**

Resolution No. \_\_\_\_\_

A Resolution of the  
Board of Supervisors of the [INSERT ENTITY]  
Calling a Proposition 218 Election  
to Submit [INSERT FEE OR CHARGE] to Property Owners

**WHEREAS**, Proposition 218, Cal. Const. art. XIID section 6 subdivision (c), requires that all property-related fees or charges, except for fees or charges for water, sewer and refuse collection services, either be submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or be submitted and approved by a two-thirds vote of the electorate residing in the affected area;

**WHEREAS**, the [INSERT ENTITY] has determined to submit the proposed [INSERT FEE OR CHARGE] to the property owners of the property subject to the fee or charge;

**WHEREAS**, [INSERT ADDITIONAL INFORMATION ABOUT THE BALLOT MEASURE; FOR EXAMPLE, THE ENTITY’S FRANCHISE FEE WHICH HAS BEEN IMPOSED SINCE 1990 WILL SUNSET IN THE YEAR 2006. IT IS NECESSARY TO SUBMIT THE FEE FOR VOTER APPROVAL IN ORDER TO EXTEND IT BEYOND THE YEAR 2006]; and

**WHEREAS**, [INSERT REFERENCE TO COUNTY CODE SECTION OR ORDINANCE NUMBER WHICH AUTHORIZES AN ALL MAIL BALLOT ELECTION] authorizes the [INSERT ENTITY] to conduct an all mail ballot election under the terms and conditions set forth therein.

**NOW, THEREFORE**, the [INSERT ENTITY] of the County of [INSERT COUNTY] does hereby resolve, declare, determine and order as follows:

**SECTION 1.** A Proposition 218 all mail ballot election is hereby called on [INSERT DATE OF ELECTION].

**SECTION 2.** At the Proposition 218 all mail ballot election called pursuant to section 1 of this Resolution, the following question shall be submitted to the property owners of the property subject to the [INSERT FEE OR CHARGE] of the County of [INSERT COUNTY]:

[INSERT BALLOT MEASURE QUESTION AS IT WILL APPEAR ON THE BALLOT]

**SECTION 3.** The County Clerk-Recorder is hereby directed to transmit a copy of this resolution to the entity Auditor and to the County Counsel, who shall prepare an impartial analysis of the ballot measure. The County Auditor shall prepare a fiscal impact statement which estimates the amount of any increase or decrease in revenues or costs to the entity if the proposed measure is adopted. The County Counsel is authorized to prepare the ballot title and a summary of the measure, if a summary is necessary.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_  
by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Chairperson, [INSERT ENTITY]

ATTEST:

\_\_\_\_\_  
Clerk, [INSERT ENTITY]

**Resolution Calling A Proposition 218 Election – Electorate Residing in Affected Area**

Resolution No. \_\_\_\_\_

A Resolution of the  
[INSERT ENTITY] of the County of [INSERT COUNTY]  
Calling a Proposition 218 Election  
to Submit [INSERT FEE OR CHARGE] to Electorate Residing in Affected Area

**WHEREAS**, Proposition 218, California Constitution article XIID section 6(c), requires that all property-related fees or charges, except for fees or charges for water, sewer and refuse collection services, either be submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or be submitted and approved by a two-thirds vote of the electorate residing in the affected area;

**WHEREAS**, the [INSERT ENTITY] has determined to submit the proposed [INSERT FEE OR CHARGE] to the electorate residing in the area subject to the fee or charge;

**WHEREAS**, [INSERT ADDITIONAL INFORMATION ABOUT THE BALLOT MEASURE; FOR EXAMPLE, THE COUNTY’S FRANCHISE FEE WHICH HAS BEEN IMPOSED SINCE 1990 WILL SUNSET IN THE YEAR 2006. IT IS NECESSARY TO SUBMIT THE FEE FOR VOTER APPROVAL IN ORDER TO EXTEND IT BEYOND THE YEAR 2006]; and

**WHEREAS**, [INSERT REFERENCE TO COUNTY CODE SECTION OR ORDINANCE NUMBER WHICH AUTHORIZES AN ALL MAIL BALLOT ELECTION] authorizes the [INSERT ENTITY] to conduct an all mail ballot election under the terms and conditions set forth therein.

**NOW, THEREFORE**, the Board of Supervisors of the County of Madera does hereby resolve, declare, determine and order as follows:

**SECTION 1.** A Proposition 218 all mail ballot election is hereby called on [INSERT DATE OF ELECTION].

**SECTION 2.** At the Proposition 218 all mail ballot election called pursuant to section 1 of this Resolution, the following question shall be submitted to the electorate residing in the area subject to the [INSERT FEE OR CHARGE] of the County of [INSERT COUNTY]:

[INSERT BALLOT MEASURE QUESTION AS IT WILL APPEAR ON THE BALLOT]

**SECTION 3.** The County Clerk-Recorder is hereby directed to transmit a copy of this resolution to the County Auditor and to the County Counsel, who shall prepare an impartial analysis of the ballot measure. The County Auditor shall prepare a fiscal impact statement which estimates the amount of any increase or decrease in revenues or costs to the County if the proposed measure is adopted. The County Counsel is authorized to prepare the ballot title and a summary of the measure, if a summary is necessary.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
Chairperson, [INSERT ENTITY]

ATTEST:

\_\_\_\_\_  
Clerk, [INSERT ENTITY]

**Resolution Establishing Drop-Off Centers**

Resolution No. \_\_\_\_\_

A Resolution of the  
Board of Supervisors of the County of [INSERT COUNTY]  
Establishing Drop-Off Centers for the  
Mail Ballot Election called by Resolution No. \_\_\_\_\_

**WHEREAS**, on \_\_\_\_\_, 20\_\_, the [INSERT ENTITY] adopted Resolution No. \_\_\_\_\_ calling a Proposition 218 mail ballot election to be held on [INSERT DATE OF ELECTION]; and

**WHEREAS**, it is necessary to establish certain locations where a voter may return the ballot in person rather than returning the ballot by United States mail.

**NOW, THEREFORE**, the [INSERT ENTITY] of the County of [INSERT COUNTY] does hereby resolve, declare, determine and order as follows:

**SECTION 1.** For the purpose of holding the Proposition 218 mail ballot election called by Resolution No. \_\_\_\_\_, there is established the following drop-off centers:

Drop-Off Center No. 1

[INSERT COUNTY] County Clerk-Recorder’s Office  
Elections Division  
at [INSERT ADDRESS]  
[INSERT CITY], California,

Handicapped accessible?: [INSERT YES OR NO]

Drop-Off Center No. 2

[INSERT ADDRESS AND WHETHER HANDICAPPED ACCESSIBLE]

[CHOOSE NUMBER AND LOCATION OF DROP-OFF CENTERS AS APPROPRIATE FOR POPULATION, SIZE AND GEOGRAPHIC ENVIRONMENT OF THE COUNTY]

**SECTION 2.** The County Clerk-Recorder’s Office shall be available for voters to drop off voted ballots Monday-Friday, from 8 a.m. to 5 p.m.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_  
by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Chairperson, [INSERT ENTITY]

ATTEST:

---

Clerk, [INSERT ENTITY]

## **APPENDIX**

CONSTITUTION OF THE UNITED STATES OF AMERICA  
ARTICLE VI. MISCELLANEOUS PROVISIONS

USCS Const. Art. VI, Cl 2

Cl 2. Supreme law.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

CONSTITUTION OF THE STATE OF CALIFORNIA  
ARTICLE XIII C  
VOTER APPROVAL FOR LOCAL TAX LEVIES

Cal Const, Art XIII C § 1 (2006)

Section 1. Definitions.

As used in this article:

(a) “General tax” means any tax imposed for general governmental purposes.

(b) “Local government” means any county, city, city and county, including a charter city or county, any special district, or any other local or regional governmental entity.

(c) “Special district” means an agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries including, but not limited to, school districts and redevelopment agencies.

(d) “Special tax” means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

Section 2. Local Government Tax Limitation.

Notwithstanding any other provision of this Constitution:

(a) All taxes imposed by any local government shall be deemed to be either general taxes or special taxes. Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

(b) No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. A general tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The election required by this subdivision shall be consolidated with a regularly scheduled general election for

members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body.

(c) Any general tax imposed, extended, or increased, without voter approval, by any local government on or after January 1, 1995, and prior to the effective date of this article, shall continue to be imposed only if approved by a majority vote of the voters voting in an election on the issue of the imposition, which election shall be held within two years of the effective date of this article and in compliance with subdivision (b).

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved.

CONSTITUTION OF THE STATE OF CALIFORNIA  
ARTICLE XIII D  
ASSESSMENT AND PROPERTY RELATED FEE REFORM

Cal Const, Art XIII D § 1 (2006)

Section 1. Application of article.

Notwithstanding any other provision of law, the provisions of this article shall apply to all assessments, fees and charges, whether imposed pursuant to state statute or local government charter authority. Nothing in this article or Article XIII C shall be construed to:

- (a) Provide any new authority to any agency to impose a tax, assessment, fee, or charge.
- (b) Affect existing laws relating to the imposition of fees or charges as a condition of property development.
- (c) Affect existing laws relating to the imposition of timber yield taxes.

CONSTITUTION OF THE STATE OF CALIFORNIA  
ARTICLE XIII D  
ASSESSMENT AND PROPERTY RELATED FEE REFORM

Cal Const, Art XIII D § 2 (2006)

Section 2. Definitions.

As used in this article:

(a) “Agency” means any local government as defined in subdivision (b) of section 1 of Article XIII C.

(b) “Assessment” means 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.”

(c) “Capital cost” means the cost of acquisition, installation, construction, reconstruction, or replacement of a permanent public improvement by an agency.

(d) “District” means an area determined by an agency to contain all parcels which will receive a special benefit from a proposed public improvement or property-related service.

(e) “Fee” or “charge” means any levy other than an ad valorem tax, a special tax, or an assessment, imposed by an agency upon a parcel or upon a person as an incident of property ownership, including a user fee or charge for a property related service.

(f) “Maintenance and operation expenses” means the cost of rent, repair, replacement, rehabilitation, fuel, power, electrical current, care, and supervision necessary to properly operate and maintain a permanent public improvement.

(g) “Property ownership” shall be deemed to include tenancies of real property where tenants are directly liable to pay the assessment, fee, or charge in question.

(h) “Property-related service” means a public service having a direct relationship to property ownership.

(i) “Special benefit” means a particular and distinct benefit over and above general benefits conferred on real property located in the district or to the public at large. General enhancement of property value does not constitute “special benefit.”

CONSTITUTION OF THE STATE OF CALIFORNIA  
ARTICLE XIII D  
ASSESSMENT AND PROPERTY RELATED FEE REFORM

Cal Const, Art XIII D § 3 (2006)

Section 3. Limitation of property taxes, assessments, fees and charges.

(a) No tax, assessment, fee, or charge shall be assessed by any agency upon any parcel of property or upon any person as an incident of property ownership except:

(1) The ad valorem property tax imposed pursuant to Article XIII and Article XIII A.

(2) Any special tax receiving a two-thirds vote pursuant to section 4 of Article XIII A.

(3) Assessments as provided by this article.

(4) Fees or charges for property related services as provided by this article.

(b) For purposes of this article, fees for the provision of electrical or gas service shall not be deemed charges or fees imposed as an incident of property ownership.

CONSTITUTION OF THE STATE OF CALIFORNIA  
ARTICLE XIII D  
ASSESSMENT AND PROPERTY RELATED FEE REFORM

Cal Const, Art XIII D § 4 (2006)

Section 4. Procedures and requirements for assessments.

(a) An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit conferred upon them and upon which an assessment will be imposed. The proportionate special benefit derived by each identified parcel shall be determined in relationship to the entirety of the capital cost of a public improvement, the maintenance and operation expenses of a public improvement, or the cost of the property related service being provided. No assessment shall be imposed on any parcel which exceeds the reasonable cost of the proportional special benefit conferred on that parcel. Only special benefits are assessable, and an agency shall separate the general benefits from the special benefits conferred on a parcel. Parcels within a district that are owned or used by any agency, the State of California or the United States shall not be exempt from assessment unless the agency can demonstrate by clear and convincing evidence that those publicly owned parcels in fact receive no special benefit.

(b) All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.

(c) The amount of the proposed assessment for each identified parcel shall be calculated and the record owner of each parcel shall be given written notice by mail of the proposed assessment, the total amount thereof chargeable to the entire district, the amount chargeable to the owner's particular parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, together with the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures applicable to the completion, return, and tabulation of the ballots required pursuant to subdivision (d), including a disclosure statement that the existence of a majority protest, as defined in subdivision (e), will result in the assessment not being imposed.

(d) Each notice mailed to owners of identified parcels within the district pursuant to subdivision (c) shall contain a ballot which includes the agency's

address for receipt of the ballot once completed by any owner receiving the notice whereby the owner may indicate his or her name, reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.

(e) The agency shall conduct a public hearing upon the proposed assessment not less than 45 days after mailing the notice of the proposed assessment to record owners of each identified parcel. At the public hearing, the agency shall consider all protests against the proposed assessment and tabulate the ballots. The agency shall not impose an assessment if there is a majority protest. A majority protest exists if, upon the conclusion of the hearing, ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment. In tabulating the ballots, the ballots shall be weighted according to the proportional financial obligation of the affected property.

(f) In any legal action contesting the validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.

(g) Because only special benefits are assessable, electors residing within the district who do not own property within the district shall not be deemed under this Constitution to have been deprived of the right to vote for any assessment. If a court determines that the Constitution of the United States or other federal law requires otherwise, the assessment shall not be imposed unless approved by a two-thirds vote of the electorate in the district in addition to being approved by the property owners as required by subdivision (e).

CONSTITUTION OF THE STATE OF CALIFORNIA  
ARTICLE XIII D  
ASSESSMENT AND PROPERTY RELATED FEE REFORM

Cal Const, Art XIII D § 5(2006)

Section 5. Effective Date.

Pursuant to subdivision (a) of section 10 of Article II, the provisions of this article shall become effective the day after the election unless otherwise provided. Beginning July 1, 1997, all existing, new, or increased assessments shall comply with this article. Notwithstanding the foregoing, the following assessments existing on the effective date of this article shall be exempt from the procedures and approval process set forth in section 4:

(a) Any assessment imposed exclusively to finance the capital costs or maintenance and operation expenses for sidewalks, streets, sewers, water, flood control, drainage systems or vector control. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in Section 4.

(b) Any assessment imposed pursuant to a petition signed by the persons owning all of the parcels subject to the assessment at the time the assessment is initially imposed. Subsequent increases in such assessments shall be subject to the procedures and approval process set forth in section 4.

(c) Any assessment the proceeds of which are exclusively used to repay bonded indebtedness of which the failure to pay would violate the Contract Impairment Clause of the Constitution of the United States.

(d) Any assessment which previously received majority voter approval from the voters voting in an election on the issue of the assessment. Subsequent increases in those assessments shall be subject to the procedures and approval process set forth in section 4.

CONSTITUTION OF THE STATE OF CALIFORNIA  
ARTICLE XIII D  
ASSESSMENT AND PROPERTY RELATED FEE REFORM

Cal Const, Art XIII D § 6 (2006)

Section 6. Property related fees and charges.

(a) Procedures for New or Increased Fees and Charges. An agency shall follow the procedures pursuant to this section in imposing or increasing any fee or charge as defined pursuant to this article, including, but not limited to, the following:

(1) The parcels upon which a fee or charge is proposed for imposition shall be identified. The amount of the fee or charge proposed to be imposed upon each parcel shall be calculated. The agency shall provide written notice by mail of the proposed fee or charge to the record owner of each identified parcel upon which the fee or charge is proposed for imposition, the amount of the fee or charge proposed to be imposed upon each, the basis upon which the amount of the proposed fee or charge was calculated, the reason for the fee or charge, together with the date, time, and location of a public hearing on the proposed fee or charge.

(2) The agency shall conduct a public hearing upon the proposed fee or charge not less than 45 days after mailing the notice of the proposed fee or charge to the record owners of each identified parcel upon which the fee or charge is proposed for imposition. At the public hearing, the agency shall consider all protests against the proposed fee or charge. If written protests against the proposed fee or charge are presented by a majority of owners of the identified parcels, the agency shall not impose the fee or charge.

(b) Requirements for Existing, New or Increased Fees and Charges. A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements:

(1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service.

(2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed.

(3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

(4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with section 4.

(5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.

Reliance by an agency on any parcel map, including, but not limited to, an assessor's parcel map, may be considered a significant factor in determining whether a fee or charge is imposed as an incident of property ownership for purposes of this article. In any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance with this article.

(c) Voter Approval for New or Increased Fees and Charges. Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area. The election shall be conducted not less than 45 days after the public hearing. An agency may adopt procedures similar to those for increases in assessments in the conduct of elections under this subdivision.

(d) Beginning July 1, 1997, all fees or charges shall comply with this section.

ELECTIONS CODE  
DIVISION 0.5. Preliminary Provisions  
CHAPTER 4. Definitions

Cal Elec Code § 324 (2006)

Section 324. “General election.”

(a) “General election” means either of the following:

(1) The election held throughout the state on the first Tuesday after the first Monday of November in each even-numbered year.

(2) Any statewide election held on a regular election date as specified in section 1000.

(b) At each general election there shall be elected to the Congress of the United States:

(1) One Representative for each congressional district.

(2) One Senator, when the general election immediately precedes the commencement of a full term.

ELECTIONS CODE  
DIVISION 1. Established Election Dates  
CHAPTER 1. Election Dates

Cal Elec Code § 1000 (2006)

Section 1000. Regular election dates.

The established election dates in each year are as follows:

- (a) The second Tuesday of April in each even-numbered year.
- (b) The first Tuesday after the first Monday in March of each odd-numbered year.
- (c) The first Tuesday after the first Monday in June in each year.
- (d) The first Tuesday after the first Monday in November of each year.

ELECTIONS CODE  
DIVISION 1. Established Election Dates  
CHAPTER 6. Mail Ballot Elections

Cal Elec Code § 1500 (2006)

Section 1500. Mailed ballot election dates.

The established mailed ballot election dates are as follows:

- (a) The first Tuesday after the first Monday in May of each year.
- (b) The first Tuesday after the first Monday in March of each even-numbered year.
- (c) The last Tuesday in August of each year.

ELECTIONS CODE  
DIVISION 4. Mail Ballot Elections  
CHAPTER 2. Conduct of Mail Ballot Elections

Cal Elec Code § 4100 (2006)

Section 4100. Provisions governing conduct of elections.

Except as otherwise provided in this chapter, mail ballot elections shall be conducted in accordance with Chapter 1 (commencing with section 3000) of Division 3.

ELECTIONS CODE  
DIVISION 4. Mail Ballot Elections  
CHAPTER 2. Conduct of Mail Ballot Elections

Cal Elec Code § 4101 (2006)

Section 4101. Dates for mailing ballots.

Notwithstanding sections 13300 and 13303, the elections official shall not commence to mail the combined sample ballot and mail ballot prior to the 29th day before the election and shall complete the mailing by the 10th day before the election.

ELECTIONS CODE  
DIVISION 4. Mail Ballot Elections  
CHAPTER 2. Conduct of Mail Ballot Elections

Cal Elec Code § 4102 (2006)

Section 4102. Notice of return by certified or registered mail.

The elections official may include in the mailings set forth in section 4101 a printed notice to the voters informing the voters that they may return the voted ballot by certified or registered mail.

ELECTIONS CODE  
DIVISION 4. Mail Ballot Elections  
CHAPTER 2. Conduct of Mail Ballot Elections

Cal Elec Code § 4103 (2006)

Section 4103. Deadline to return ballots.

Notwithstanding section 3020, ballots cast under this chapter shall be returned to the elections official from whom they were obtained no later than 8 p.m. on election day.

GOVERNMENT CODE  
TITLE 5. Local Agencies  
DIVISION 2. Cities, Counties, and Other Agencies  
PART 1. Powers and Duties Common to Cities, Counties, and Other Agencies  
CHAPTER 4. Financial Affairs  
ARTICLE 4.6. Proposition 218 Omnibus Implementation Act

Cal Gov Code § 53750 (2006)

Section 53750. Definitions.

For purposes of Article XIII C and Article XIII D of the California Constitution and this article:

(a) “Agency” means any local government as defined in subdivision (b) of section 1 of article XIII C of the California Constitution.

(b) “Assessment” means 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 service, 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.”

(c) “District” means an area that is determined by an agency to contain all of the parcels that will receive a special benefit from a proposed public improvement or service.

(d) “Drainage system” means any system of public improvements that is intended to provide for erosion control, landslide abatement, or for other types of water drainage.

(e) “Extended,” when applied to an existing tax or fee or charge, means a decision by an agency to extend the stated effective period for the tax or fee or charge, including, but not limited to, amendment or removal of a sunset provision or expiration date.

(f) “Flood control” means any system of public improvements that is intended to protect property from overflow by water.

(g) “Identified parcel” means a parcel of real property that an agency has identified as having a special benefit conferred upon it and upon which a proposed assessment is to be imposed, or a parcel of real property upon which a proposed property-related fee or charge is proposed to be imposed.

(h) (1) “Increased,” when applied to a tax, assessment, or property-related fee or charge, means a decision by an agency that does either of the following:

(A) Increases any applicable rate used to calculate the tax, assessment, fee or charge.

(B) Revises the methodology by which the tax, assessment, fee or charge is calculated, if that revision results in an increased amount being levied on any person or parcel.

(2) A tax, fee, or charge is not deemed to be “increased” by an agency action that does either or both of the following:

(A) Adjusts the amount of a tax or fee or charge in accordance with a schedule of adjustments, including a clearly defined formula for inflation adjustment that was adopted by the agency prior to November 6, 1996.

(B) Implements or collects a previously approved tax, or fee or charge, so long as the rate is not increased beyond the level previously approved by the agency, and the methodology previously approved by the agency is not revised so as to result in an increase in the amount being levied on any person or parcel.

(3) A tax, assessment, fee or charge is not deemed to be “increased” in the case in which the actual payments from a person or property are higher than would have resulted when the agency approved the tax, assessment, or fee or charge, if those higher payments are attributable to events other than an increased rate or revised methodology, such as a change in the density, intensity, or nature of the use of land.

(i) “Notice by mail” means any notice required by Article XIII C or XIII D of the California Constitution that is accomplished through a mailing, postage

prepaid, deposited in the United States Postal Service and is deemed given when so deposited. Notice by mail may be included in any other mailing to the record owner that otherwise complies with Article XIII C or XIII D of the California Constitution and this article, including, but not limited to, the mailing of a bill for the collection of an assessment or a property-related fee or charge.

(j) “Record owner” means the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll, or in the case of any public entity, the State of California, or the United States, means the representative of that public entity at the address of that entity known to the agency.

(k) “Registered professional engineer” means an engineer registered pursuant to the Professional Engineers Act (Chapter 7 (commencing with section 6700) of Division 3 of the Business and Professions Code).

(l) “Vector control” means any system of public improvements or services that is intended to provide for the surveillance, prevention, abatement, and control of vectors as defined in subdivision (k) of section 2002 of the Health and Safety Code and a pest as defined in section 5006 of the Food and Agricultural Code.

(m) “Water” means any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water.

GOVERNMENT CODE  
TITLE 5. Local Agencies  
DIVISION 2. Cities, Counties, and Other Agencies  
PART 1. Powers and Duties Common to Cities, Counties, and Other Agencies  
CHAPTER 4. Financial Affairs  
ARTICLE 4.6. Proposition 218 Omnibus Implementation Act

Cal Gov Code § 53753 (2006)

Section 53753. Notice, protest, and hearing requirements for new, increased, or extended assessments

(a) The notice, protest, and hearing requirements imposed by this section supersede any statutory provisions applicable to the levy of a new or increased assessment that is in existence on the effective date of this section, whether or not that provision is in conflict with this article. Any agency that complies with the notice, protest, and hearing requirements of this section shall not be required to comply with any other statutory notice, protest, and hearing requirements that would otherwise be applicable to the levy of a new or increased assessment, with the exception of Division 4.5 (commencing with section 3100) of the Streets and Highways Code. If the requirements of that division apply to the levy of a new or increased assessment, the levying agency shall comply with the notice, protest, and hearing requirements imposed by this section as well as with the requirements of that division.

(b) Prior to levying a new or increased assessment, or an existing assessment that is subject to the procedures and approval process set forth in section 4 of article XIII D of the California Constitution, an agency shall give notice by mail to the record owner of each identified parcel. Each notice shall include the total amount of the proposed assessment chargeable to the entire district, the amount chargeable to the record owner's parcel, the duration of the payments, the reason for the assessment and the basis upon which the amount of the proposed assessment was calculated, and the date, time, and location of a public hearing on the proposed assessment. Each notice shall also include, in a conspicuous place thereon, a summary of the procedures for the completion, return, and tabulation of the assessment ballots required pursuant to subdivision (c), including a statement that the assessment shall not be imposed if the ballots submitted in opposition to the assessment exceed the ballots submitted in favor of the assessment, with ballots weighted according to the proportional financial

obligation of the affected property. An agency shall give notice by mail at least 45 days prior to the date of the public hearing upon the proposed assessment.

(c) Each notice given pursuant to subdivision (b) shall contain an assessment ballot that includes the agency's address for receipt of the form and a place where the person returning the assessment ballot may indicate his or her name, a reasonable identification of the parcel, and his or her support or opposition to the proposed assessment. Each assessment ballot shall be in a form that conceals its contents once it is sealed by the person submitting the assessment ballot. Each assessment ballot shall be signed and either mailed or otherwise delivered to the address indicated on the assessment ballot. Regardless of the method of delivery, all assessment ballots shall be received at the address indicated, or the site of the public testimony, in order to be included in the tabulation of a majority protest pursuant to subdivision (e). Assessment ballots shall remain sealed until the tabulation of ballots pursuant to subdivision (e) commences, provided that 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 hearing required pursuant to subdivision (d). An agency may provide an envelope for the return of the assessment ballot, provided that if the return envelope is opened by the agency prior to the tabulation of ballots pursuant to subdivision (e), the enclosed assessment ballot shall remain sealed as provided in this section.

(d) At the time, date, and place stated in the notice mailed pursuant to subdivision (b), the agency shall conduct a public hearing upon the proposed assessment. At the public hearing, the agency shall consider all objections or protests, if any, to the proposed assessment. At the public hearing, any interested person shall be permitted to present written or oral testimony. The public hearing may be continued from time to time.

(e) (1) At the conclusion of the public hearing conducted pursuant to subdivision (d), an impartial person designated by the agency 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 of or opposition to the proposed assessment. In a city, the impartial person may include, but is not limited to, the clerk of the agency. The impartial person may use technological methods of tabulating the assessment ballots, including, but not limited to, punchcard or optically readable (bar-coded) assessment ballots. During and after the tabulation, the assessment ballots shall be treated as disclosable public records, as defined in section 6252, and

equally available for inspection by the proponents and the opponents of the proposed assessment.

In the event that more than one of the record owners of an identified parcel submits an assessment ballot, 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.

(2) A majority protest exists if the assessment ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the assessment ballots submitted, and not withdrawn, in its favor, weighting those assessment ballots by the amount of the proposed assessment to be imposed upon the identified parcel for which each assessment ballot was submitted.

(3) If there is a majority protest against the imposition of a new assessment, or the extension of an existing assessment, or an increase in an existing assessment, the agency shall not impose, extend, or increase the assessment.

(4) The majority protest proceedings described in this subdivision shall not constitute an election or voting for purposes of Article II of the California Constitution or of the California Elections Code.

STREETS AND HIGHWAYS CODE  
DIVISION 11.5. Refunding Act of 1984 for 1915 Improvement Act Bonds  
CHAPTER 2. Reassessment Proceedings

Cal Sts & Hy Code § 9525 (2006)

Section 9525. Confirmation of report; Required findings; Exemptions

(b) Any reassessment that is approved and confirmed pursuant to this section shall not be deemed to be an assessment within the meaning of, and may be ordered without compliance with the procedural requirements of, Article XIID of the California Constitution.