

TO: James L. App, City Manager
FROM: Joseph M. Deakin, Public Works Director
SUBJECT: Landscaping & Lighting District Ballot Process
DATE: April 15, 2003

NEEDS: For the City Council consider adopting Landscaping and Lighting District Assessment Ballot Proceedings & Procedures by resolution.

FACTS:

1. The City Council formed a Landscape & Lighting Assessment District (L&L District) in 1989 for the maintenance of streetlights, hardscapes, detention basins, parkways, median islands, open space, slopes and other appurtenant facilities related to the L&L District. The City began assessing levies in 1993.
2. The L&L District is divided into tracts and/or neighborhoods (or "sub-areas") with shared local improvements and utilities. There are currently over 70 sub-areas and over 3,000 individual lots in the L&L District.
3. On December 3, 2002, the City Council directed staff to initiate ballot proceedings for each sub-area in the Landscape & Lighting District that is operating in deficit (on advice from the Council Ad Hoc Committee). The Council directed the timing for proceedings such that the results could be incorporated into the Annual Levy for Fiscal Year 2003/2004 (FY04).
4. On April 1, 2003, the City Council was briefly updated on the ballot process, and discussed the same in preparing for the routine publication of the FY04 Engineer's Levy Report and approving the initiation of FY04 annual levy proceedings.

**ANALYSIS
AND**

CONCLUSION: In preparing for the ballot initiative for the L&L District, it was noted that the process for the ballot measure could be more thoroughly described and more closely defined. The Proposition 218 Omnibus Implementation Act provides some measure of process related guidance to municipalities initiating an assessment increase by ballot, however, as with most laws, there is room for reasonable interpretation, while still meeting the full intent and expressed requirements of the Act.

The Council is provided a resolution drafted by the Assistant City Attorney, in consultation with MuniFinancial, the City's contract manager for the L&L District, as well as City staff, for consideration and adoption. The Resolution provides specific details on the ballot process, that, upon approval by Council, will formally bind the process by which the ballots are issued, properly executed, returned to the City, counted and resulting actions implemented. Some key details described in the Resolution are:

- The Assessment Ballot proceeding is not an election
- Ballots are mailed by the City to affected property owners no less than 45 days in advance of the deadline for submittal
- Ballots are mailed to property owners as documented in the most recent tax assessment roll
- Ballots will be received by the City Clerk, 1000 Spring Street, Paso Robles
- Only the affected property owner(s) may submit a valid ballot (specific delegation is allowed)
- Ballots remain sealed until all are counted, after counting they are public record

- The City Clerk, or impartial designee, will count and tabulate all valid, completed ballots
- Ballots may be rescinded or altered by the property owner up to the time the public hearing is concluded
- If according to the final tabulation of the Assessment Ballots for each Sub-Area, Assessment Ballots submitted against the assessment exceed the Assessment Ballots submitted in favor of the assessment, weighted according to the proportional financial obligation of the affected property, a “majority protest” exists and the City Council shall not impose the assessment within the Sub-Area.
- The Council will be presented with the Ballot results, and may then adopt the Engineer’s Levy Report, with any needed amendments to coincide with the Ballot results, to properly assess the L&L District for FY04

POLICY

REFERENCE: Resolution No. 89-89 which formed the Landscape & Lighting District No. 1 for the City of Paso Robles; California Constitution Articles XIII C and XIII D; Government Code Section 53753; Proposition 218 Omnibus Implementation Act

FISCAL

IMPACT: Costs to prepare ballots and filing with San Luis Obispo County is funded from District Assessment Fees. Should the ballots fail in receiving a positive result, staff will need to determine how to decrease the maintenance services in order to eliminate the deficit, or to subsidize the deficit from another fund source.

- OPTIONS:**
- a. Adopt Resolution No. 03-xx outlining Proposition 218 Ballot Proceedings & Procedures.
 - b. Amend, modify or reject the above option.

Attachments (1)

- 1) Resolution

RESOLUTION NO. 03-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
ADOPTING PROCEDURES APPLICABLE TO THE COMPLETION, RETURN AND
TABULATION OF ASSESSMENT BALLOTS FOR THE LANDSCAPE AND LIGHTING
DISTRICT ASSESSMENT INCREASE FOR FISCAL YEAR 2003-2004 LEVY

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

WHEREAS, Articles XIIIIC and XIIID of the California Constitution impose certain procedural and substantive requirements relating to assessments (as defined therein); and

WHEREAS, Section 4C of Article XIIID of the California Constitution and Government Code Section 53753 provides the opportunity for the City to develop a summary of the procedures for the completion, return, and tabulation of Assessment Ballots to be included with the notice requirements of Article XIIID of the California Constitution; and

WHEREAS, the City Council of the City of El Paso de Robles ("City) finds it to be in the interest of the City to record its decisions regarding the procedures for the completion, return and tabulation of Assessment Ballots for Landscape and Lighting District Assessment Increase Fiscal Year 2003-04 levy.

NOW, THEREFORE, the City Council does hereby resolve, determine and order as follows:

SECTION 1. It is the City Council's intent in adopting this resolution, to adopt procedures applicable to the completion, return and tabulation of Assessment Ballots which are consistent with, and in compliance with, Articles XIIIIC and XIIID of the California Constitution and with the Proposition 218 Omnibus Implementation Act. It is not the intent of the City Council to vary in any way from the requirements of Articles XIIIIC and XIIID or the Proposition 218 Omnibus Implementation Act and the provisions of this Resolution shall be interpreted in accordance therewith.

SECTION 2. The following guidelines shall apply in giving notice of an assessment:

A. The record owner(s) of each parcel to be assessed shall be determined from the last equalized property tax roll. If the property tax roll indicates more than one owner, each owner shall receive notice. Only property owners shall receive notice.

B. The notice shall be sent at least forty-five (45) days prior to the date set for the public hearing on the assessment.

C. The notice provided by this section and in accordance with Article XIIID, Section 4, of the California Constitution, shall supersede and be in lieu of any other statutes requiring notice to levy or increase an assessment, including but not limited to the notice required by the state statute authorizing the assessment and Government Code section 54954.6.

D. Failure of any person to receive notice shall not invalidate the proceedings.

SECTION 3. The following procedures are applicable to the completion, return and tabulation of Assessment Ballots required by Article XIIID, of the California Constitution:

A. **Assessment Ballot.** The following guidelines shall apply to the Assessment Ballot:

1. At least forty-five (45) days prior to the date of the public hearing on the proposed assessment, the Assessment Ballot required by article XIID, Section 4(D) of the California Constitution shall be mailed to all property owners within specified Sub-Areas whose name(s) and address(s) appears on the last equalized, secured property tax assessment roll. If the person who receives the Assessment Ballot is not the property owner, (i.e. the property has been sold), the person receiving the Assessment Ballot should promptly notify the new property owner and the City Clerk or designee.

2. All Assessment Ballots must be returned to the City Clerk, or his/her designee ("City Clerk") by mail or in person, sealed in the envelope provided not later than the end of the public testimony at the Hearing identified in Section C below. If the envelope is lost the property owner can request an envelope from the City Clerk. The City Clerk may accept Assessment Ballots sealed in an envelope where the outside envelope is clearly marked that it contains an Assessment Ballot. Mailed Assessment Ballots must be addressed to:

1000 Spring Street
ATTN: City Clerk
Paso Robles, CA 93446

3. The Assessment Ballot must be signed under penalty of perjury. For properties with more than one owner of record, Assessment Ballots will be accepted from each owner of record. Each owner of record is entitled to vote. The City Clerk shall apportion the voting rights between the owners based upon the respective record interests as the City Clerk deems correct, proper, and appropriate. However, if only one owner of record votes, the City Clerk shall tabulate that vote on behalf of the entire parcel. Multiple property owners may indicate their proportional property interest on the Assessment Ballot.

4. The City Clerk may issue additional Assessment Ballots to "additional property owners" whose name(s) does not appear on the last equalized, secured property tax assessment roll, for the County of San Luis Obispo. These additional Assessment Ballots shall be issued upon presentation of adequate information that the requesting party is an additional owner of record. Additional Assessment Ballots may be obtained from the City Clerk: 1000 Spring Street, Paso Robles, CA 93446

5. A tenant of real property shall not have the power or authority to submit an Assessment Ballot.

6. A property owner of record may delegate his/her Assessment Ballot vote to an authorized agent provided the authorization is:

- (a) In writing,
- (b) Clearly identifies by first and last name the authorized agent,
- (c) Identifies the property by APN number or other information adequate to identify the property.
- (d) Signed by the property owner under penalty of perjury, and attached to the Assessment Ballot.

7. Only original Assessment Ballots with original signatures (i.e. no photocopies) will be accepted.

8. The City Clerk may issue a duplicate Assessment Ballot to any property owner whose original Assessment Ballot was lost or destroyed. The new Assessment Ballot shall be issued upon presentation of adequate information that the requesting party is an owner of record. The new Assessment Ballots shall be clearly marked as duplicate Assessment Ballots.

9. An Assessment Ballot proceeding is not an election.

10. The Assessment Ballot shall remain sealed until tabulation as provided in subsection C below. During and after the tabulation, the Assessment Ballot shall be treated as a disclosable public record, as defined in Government Code §6252, and equally available for inspection by the proponents and the opponents of the proposed Assessment.

B. **Tabulating Assessment Ballots.** The following guidelines shall apply to tabulating Assessment Ballots:

1. An impartial person, including, but not limited to, the City Clerk or other person designated by the City who does not have a vested interest in the outcome of the proposed Assessment shall tabulate the Assessment Ballots submitted, and not withdrawn, in support or opposition to the proposed Assessment.

2. The City Clerk, or the designated person, shall begin tabulating the Assessment Ballots at the conclusion of the Public Hearing referenced in Section C below.

3. The City Clerk, or the designated person, shall determine the validity of all Assessment Ballots. The City Clerk, or the designated person, shall accept as valid all Assessment Ballots except those in the following categories:

- (a) An Assessment Ballot or authorization, which does not contain an original signature;
- (b) An unsigned Assessment Ballot and/or authorization;
- (c) An Assessment Ballot which lacks an identifiable “yes, I support” or “no, I oppose” vote (i.e. both boxes marked or neither box marked);
- (d) An Assessment Ballot which appears tampered with or otherwise invalid based upon its appearance or method of delivery or other circumstances.
- (e) Assessment Ballots not in actual receipt of the City Clerk prior to the conclusion of public testimony at the Hearing referenced in Section C below.

The City Clerk’s, or the designated person’s, decision, after consultation with the City Attorney, that an Assessment Ballot is invalid, shall be final and may not be appealed to the City Council.

4. A property owner who has submitted an Assessment Ballot may withdraw the Assessment Ballot and submit a new Assessment Ballot up until the conclusion of the public testimony at the Public Hearing on the assessment.

5. A property owner’s failure to receive an Assessment Ballot shall not invalidate the proceedings conducted under this section and section 4, article XIID of the California Constitution.

C. **Public Hearing on Assessments.**

1. At the Public Hearing, the City Council shall hear all public testimony regarding all objections or protests, if any, to the proposed assessment and accept Assessment Ballots until the close of public testimony.

2. The City Council may impose reasonable time limits on both the length of the entire hearing and the length of each speaker’s testimony.

3. If additional time is necessary for public testimony, the City Council may continue the Public Hearing to a later date to receive additional public testimony and information.

4. At the conclusion of the public hearing the Assessment Ballots shall be tabulated.

5. If according to the final tabulation of the Assessment Ballots for each Sub-Area, Assessment Ballots submitted against the assessment exceed the Assessment Ballots submitted in favor of the assessment, weighted according to the proportional financial obligation of the affected property, a "majority protest" exists and the City Council shall not impose the assessment within the Sub-Area.

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 15th day of April 2003 by the following vote:

AYES:
NOES:
ABSTAIN
ABSENT:

Frank R. Mecham, Mayor

ATTEST:

Sharilyn M. Ryan, Deputy City Clerk