

ASSESSMENT DISTRICT BALLOTING GUIDELINES

FOR PROPOSED NEW OR INCREASED SPECIAL ASSESSMENTS

A. Introduction

The following guidelines (these “Assessment Balloting Guidelines”) will govern the preparation, distribution, return, handling and tabulation of assessment ballots in any proceeding of the City of Newport Beach (the “City”) in which the City Council is considering a proposed new or increased special assessment. These Assessment Balloting Guidelines are intended to assure compliance with the provisions of Section 4 of Article XIID of the California Constitution (“Section 4”) and Section 53753 of the California Government Code (“Section 53753”) and to improve understanding of the Assessment Balloting Guidelines by affected property owners and other interested persons.

While these Assessment Balloting Guidelines seek to provide general guidance to the City Clerk and to anticipate situations which may arise, the City Clerk is granted discretion to exercise judgment and to seek further guidance from the City Attorney and bond counsel for the Assessment District in question before determining how to proceed in the event circumstances arise which are not expressly provided for in these Assessment Balloting Guidelines.

B. Designation of City Clerk to Oversee Assessment Ballot Custody and Tabulation

Pursuant to subsection (e)(1) of Section 53753, the City Clerk is hereby designated as the impartial person to oversee and coordinate all matters pertaining to the receipt and custody of returned assessment ballots and, following the close of the public hearing, the opening and tabulation of assessment ballots. The City Clerk may be assisted by members of the City Clerk’s staff and by an outside consultant providing services under the supervision of the City Clerk, and the City Clerk may designate a member of the City Clerk’s staff to discharge the responsibilities of the City Clerk as established by these Assessment Balloting Guidelines.

In the event that, for any reason, the City Clerk has a vested interest in the outcome of the proposed assessment proceedings, whether by virtue of ownership of property within the subject assessment district which is proposed to be assessed or otherwise, the City Clerk shall so advise the City Council, and

the City Council of the City (the "City Council") shall designate another person to serve those functions which would otherwise be served by the City Clerk for that assessment district.

As used in these Assessment Balloting Guidelines, the term "City Clerk" shall be deemed to include the City Clerk's designee, if any, or the City Council's designee, if any, as established pursuant to the foregoing provisions of this paragraph B.

C. Preparation of Assessment Ballots

The preparation of assessment ballots, together with the related notice of hearing, shall be under the supervision of the City Clerk, with such assistance as the City Clerk may request from the City Attorney, as well as the City's bond counsel and the City's assessment engineer for the subject assessment district.

Both the assessment ballots and the notices of hearing shall contain those matters specified by Section 4 and by Section 53753.

The term "proposed assessment," as used in Section 4 and Section 53753, shall mean the amount proposed to be assessed against each parcel as set forth in the written engineer's report (the "Engineer's Report") which is prepared, submitted and preliminarily approved by resolution of the City Council, whether as submitted by the assessment engineer (the "Assessment Engineer") or as modified by the City Council prior to such preliminary approval. The amount of the proposed assessment, as derived from the Engineer's Report (including any modification to the amount of any given proposed assessment, if any, by action of the City Council prior to preliminary approval of the Engineer's Report), shall remain the amount of the proposed assessment for purposes of weighting of assessment ballots following the close of the public hearing.

D. Distribution of Assessment Ballots

The City Clerk shall distribute or cause the distribution of assessment ballots, together with the related notice of hearing, to the record owner of each parcel (the "Record Owner") for which an assessment is proposed to be levied in the subject assessment. Such distribution shall be made by mail, postage prepaid, with the return address of the City Clerk set forth on the mailing envelopes to facilitate the return of any envelope which is deemed not deliverable as addressed.

The term "Record Owner," as used in this paragraph D, shall have the meaning

set forth in Section 53750 of the Government Code.

Each envelope mailed to a Record Owner shall include, in addition to the notice of hearing and the assessment ballot or ballots respecting the parcel or parcels of that Record Owner, a self-addressed, return envelope by which the Record Owner may mail completed assessment ballots to the City Clerk. The return envelope shall be marked in such manner as shall be determined by the City Clerk so as to inform staff in the City Clerk's office that it contains an assessment ballot and should therefore remain unopened prior to the close of the public hearing for the subject assessment district.

In the event that, for any reason, a return envelope containing an assessment ballot is opened prior to the close of the public hearing, the envelope shall be re-sealed immediately and in such manner as will assure that the contents of the assessment ballot shall remain concealed until the close of the public hearing.

Mailing of the notices of hearing and assessment ballots shall be completed not less than 45 days prior to the date of the public hearing, and the City Clerk (or other person designated to serve the functions of the City Clerk) shall complete a certificate of mailing, evidencing compliance with the requirements of Section 4 and Section 53753 with respect to such mailing.

E. Completion of Assessment Ballots

1. Who may complete an Assessment Ballot?

An Assessment Ballot may be completed by the Record Owner of the parcel to be assessed or by an authorized representative of the Record Owner. For purposes of this paragraph E(1), the term "Record Owner" shall be deemed to include the following:

- a. a person meeting the definition of "Record Owner" as set forth in Section 53750 of the Government Code;
- b. any person who is shown as a transferee of title to the subject parcel on a copy of a recorded grant deed or similar instrument of conveyance of title, as established by a copy of such instrument submitted with the Assessment Ballot which is completed by such person; and
- c. an authorized representative of a person qualifying as a Record Owner pursuant to the foregoing subparagraphs (a) or (b), as established by documentation submitted with the Assessment

Ballot which is completed by the authorized representative.

If the Record Owner of the parcel is a partnership, joint tenancy, or tenancy in common, an Assessment Ballot may be completed by any of the general partners, joint tenants, or tenants in common. If there are multiple Record Owners of a parcel, an Assessment Ballot may be completed by any one of the multiple Record Owners.

Except as provided in the following paragraph E(2) for the circumstance of multiple Record Owners of a parcel, only one Assessment Ballot may be completed for each parcel.

2. Multiple-Owner Assessment Ballots

If a parcel has multiple Record Owners, any one of them may request the City Clerk to provide Multiple-Owner Assessment Ballots to all of the owners of the parcel.

Such request must be in writing, must specify the names and mailing addresses of all of the multiple Record Owners, must include evidence, satisfactory to the City Clerk, of each owner's proportional rights in the parcel (including percentages), and must be delivered to the City Clerk at 3300 Newport Boulevard, Newport Beach, California 92663-3884. Upon the receipt of such a request, complete with the information prescribed in the foregoing sentence, the City Clerk shall prepare and mail a Multiple-Owner Assessment Ballot to each Record Owner, along with a copy of the notice of hearing and the self-addressed, return envelope.

To ensure that the City Clerk has sufficient time to notify each Record Owner prior to the public hearing, all requests for Multiple-Owner Assessment Ballots must be received by the City Clerk no later than 14 calendar days prior to the public hearing date, and the City Clerk shall not be obligated to provide Multiple-Owner Assessment Ballots in response to requests received after that deadline.

3. Replacement Assessment Ballots

If an Assessment Ballot is lost, destroyed or never received, or if a Record Owner wishes to change his or her ballot, the City Clerk will provide a Replacement Assessment Ballot upon request of the Record Owner, whether prior to or at the public hearing. As soon as reasonably possible following receipt of such a written request, the City Clerk shall provide a Replacement Assessment Ballot to the Record Owner.

If mailed delivery of the Replacement Assessment Ballot is requested, the request must be received no later than 14 calendar days prior to the public hearing date, and the mailed Replacement Assessment Ballot shall be accompanied by a copy of the notice of hearing and the self-addressed, return envelope. If the request is received after that deadline but before the public hearing, the Record Owner shall be obligated to pick up the Replacement Assessment Ballot at the City Clerk's office.

If the request is made at the public hearing, the City Clerk shall provide the Record Owner with the Replacement Assessment Ballot by personal delivery for completion and submission prior to the close of the public hearing.

If both a Replacement Assessment Ballot and an original Assessment Ballot are received for a given parcel, the Original Ballot will be considered to be withdrawn and the Replacement Ballot will be counted.

4. Marking and signing the Assessment Ballot

To complete an Assessment Ballot, the Record Owner must (1) mark the appropriate box to express either support or opposition to the proposed Assessment District and (2) sign the statement on the Assessment Ballot, under penalty of perjury, that the person completing the Assessment Ballot is a Record Owner (as defined in paragraph E(1) above to include an authorized representative of the Record Owner). Only one box may be marked on each Assessment Ballot.

F. Return of Assessment Ballots

1. Who may return Assessment Ballots

An Assessment Ballot may be returned by a Record Owner of the parcel to which the Assessment Ballot pertains, as the term "Record Owner" is defined in paragraph E(1) above.

2. Where to return Assessment Ballots

Assessment Ballots may be mailed or delivered in person to the City Clerk's office at 3300 Newport Boulevard, Newport Beach, California 92663-3884. Assessment Ballots may also be delivered to the City Clerk via facsimile transmission so long as there is no evidence on the face of the Assessment Ballot that raises questions as to its validity. Finally, Assessment Ballots may be delivered in person at the public hearing, provided that Assessment Ballots must be received by the City Clerk prior

to the close of the public hearing.

3. When to return Assessment Ballots

- a. The City Clerk must receive all Assessment Ballots which are returned by mail and by facsimile transmission by the end of the business day on the public hearing date. Postmarks will not be counted.
- b. Assessment Ballots may be hand delivered to the City Clerk at any time prior to the close of the public hearing. The City makes no representation whether the public portion of the public hearing will be concluded on the public hearing date or continued to a later date. If for any reason the public hearing is continued, the entitlement to submit Assessment Ballots shall likewise be continued until such time as the public hearing is closed.

4. Withdrawal of Assessment Ballots

After returning an Assessment Ballot to the City, the Record Owner who returned the Assessment Ballot may request that it be withdrawn. If the Record Owner is not known personally to the City Clerk, the City Clerk may require that the request be in writing, which shall include information to enable the City Clerk to identify the parcel to which the Assessment Ballot pertains. Such request must be received by the City Clerk prior to the close of the public hearing.

If an Assessment Ballot has been withdrawn, the Record Owner requesting the withdrawal may request a Replacement Assessment Ballot, in which case the provisions respecting timeliness of the request set forth in paragraph E(3) above shall apply.

The City Clerk will retain all withdrawn Assessment Ballots, together with any applicable written requests pertaining thereto, and will indicate on each such Assessment Ballot that it has been withdrawn.

G. Handling and Tabulation of Returned Assessment Ballots

1. Handling of returned Assessment Ballots

Upon receipt of returned Assessment Ballots, the City Clerk shall place all such returned Assessment Ballots together in a secure location, where they shall be accumulated and shall remain unopened until the close of the public hearing. In the event that the envelope containing a returned

Assessment Ballot is inadvertently opened, the envelope shall be immediately re-sealed in a manner to assure that the contents of the Assessment Ballot remain concealed until the close of the public hearing.

2. Which Assessment Ballots will be counted?
Only Assessment Ballots which are completed and returned in compliance with these guidelines prior to the close of the public hearing will be counted. Assessment Ballots will not be counted if any of the following is true:
 - a. The City Clerk receives the Assessment Ballot after the close of the public hearing on the Assessment District.
 - b. The Assessment Ballot has not been signed.
 - c. The Assessment Ballot either (1) has not been marked to indicate either support for or opposition to the Assessment District or (2) has been marked for both.
 - d. The Assessment Ballot has been withdrawn in accordance with these procedures.

The City Clerk will keep a record of each Multiple-Owner Assessment Ballot or Replacement Assessment Ballot provided to a Record Owner and will verify that only one Assessment Ballot has been returned (or, in the case of Multiple-Owner Assessment Ballots, no more than the applicable number of Multiple-Owner Assessment Ballots have been returned, as applicable) for the parcel. If the City Clerk has received both the original Assessment Ballot and a Replacement Assessment Ballot for a given parcel, the City Clerk will count the Replacement Assessment Ballot and disregard the original Assessment Ballot. If the City Clerk has received both an original Assessment Ballot and a Multiple-Owner Assessment Ballot for a given parcel, the City will count the Multiple-Owner Assessment Ballot and disregard the original Assessment Ballot.

The intention of the guidelines in the foregoing paragraph is to give cognizance to the latest expression of either support for or opposition to the Assessment District by a Record Owner for a given parcel.

3. When and where Assessment Ballots will be tabulated
The tabulation of Assessment Ballots will be performed in a public place following the close of the public hearing, whether on the same day as the public hearing is closed or thereafter during normal business hours. In

the event that the tabulation is not going to be performed on the same day as the public hearing is closed, the City Clerk shall announce forthwith following the close of the public hearing the date, time and place for commencement of the tabulation. The public shall have access to the place where the Assessment Ballots are tabulated and may observe the process of the tabulation. The City Clerk may impose reasonable restrictions upon the public's access in order to facilitate the orderly and accurate tabulation of the Assessment Ballots.

4. How Assessment Ballots will be tabulated

The Assessment Ballots will be opened at such time as the tabulation is being commenced following the close of the public hearing, and the tabulation shall be conducted under the supervision of the City Clerk and in a public place which provides the opportunity for any interested person to observe. Assessment Ballots may be counted by hand, by computer or by any other tabulating device.

Assessment Ballots shall be weighted according to the amount of the proposed assessment, as the term "proposed assessment" is defined in paragraph C above.

With respect to Multiple-Owner Assessment Ballots, if only one Multiple-Owner Assessment Ballot is returned, then it will be weighted with the full amount of the proposed assessment pertaining to the applicable parcel. If more than one Multiple-Owner Assessment Ballot is returned and not all of the returned Multiple-Owner Assessment Ballots are marked the same (whether in support of or in opposition to the Assessment District), then the assessment amount will be allocated among the Multiple-Owner Assessment Ballots returned, as follows:

- a. In accordance with the provisions of subsection (e)(1) of Section 53753, if the ownership interests are shown on the County Assessor's records or, if the ownership interests are not shown on the record, as established to the satisfaction of the City Clerk by documentation provided by one of those multiple owners, then the assessment amount will be allocated among the Multiple-Owner Assessment Ballots returned in proportion to those ownership interests.
- b. Otherwise and in the event that the ownership interests cannot be established in accordance with the foregoing subparagraph (a),

then the assessment amount will be evenly split among the Multiple-Owner Assessment Ballots returned.

5. Who may tabulate Assessment Ballots
Assessment Ballots may be tabulated by the City Clerk or by any representative authorized by the City Clerk.
6. Results of the tabulation
Upon completion of the tabulation, the City Clerk will announce the results of the tabulation to the City Council, whether at the meeting on the day the public hearing is closed or at the first regular meeting of the City Council following the completion of the tabulation, and such results shall be entered in the minutes of the meeting.

If a weighted majority of the Assessment Ballots returned are opposed to the new or increased assessments (which means that a “majority protest” exists), then the new or increased assessments shall not be imposed.

If a majority protest does not exist, then the City Council shall have the discretion whether or not to proceed to impose the new or increased assessments.

7. Retabulation
In cases in which the results of the Assessment Ballot tabulation is so close that a retabulation of the Assessment Ballots could assist in giving credibility to the tabulation, the City Council, in its sole discretion, may order a retabulation of the Assessment Ballots in a manner consistent with these guidelines and the presentation of the results at the next regular meeting of the City Council or at a special meeting of the City Council called for that purpose.

H. Resolution of Disputes

1. Property Ownership
 - a. In the event of a dispute regarding whether the signer of an Assessment Ballot is a Record Owner of the parcel to which the Assessment Ballot pertains, as the term “Record Owner” is defined in paragraph E(1) above, the City Clerk shall resolve the dispute to the best of the City Clerk’s ability on the basis of the information and documents available to the City Clerk as of the close of the public hearing, and the City Clerk’s determination shall be final and conclusive as to all persons.

- b. In the event of a dispute regarding whether the signer of an Assessment Ballot is an authorized representative of a Record Owner of the parcel, the City Clerk may rely on the statement on the Assessment Ballot, signed under penalty of perjury, that the person completing the Assessment Ballot is an authorized representative of a Record Owner, together with the documentation submitted with the Assessment Ballot in accordance with paragraph E(1) above. The City Clerk shall be under no duty to obtain or consider any other evidence as to whether the signer of the Assessment Ballot is an authorized representative of a Record Owner, and the City Clerk's determination shall be final and conclusive.

2. Assessment Calculation Appeals

If a Record Owner disagrees with the calculation of the amount of the assessment on the basis that such calculation has not been made in accordance with the method of assessment described in the Engineer's Report, as finally approved by the City Council following the close of the public hearing, then the property owner may appeal the calculation to the Director of Public Works of the City (the "Director") by providing written documentation explaining the reason why the assessment should be changed. The Director may designate a member of the Public Works staff or the Assessment Engineer as the "Director's Designee" to conduct a review of the calculation in question. The Director or the Director's Designee shall review the information pertaining to the calculation and make a determination as to whether the amount of the assessment in question has been correctly calculated, and if not what the correct amount should be. The appeal provided for in this paragraph H(2) shall be strictly limited to objections based upon the calculation of the amount of the subject assessment. Any objections to the method of assessment itself must be raised prior to the close of the public hearing and will not be considered or reviewed pursuant to this paragraph H(2).

In the event that the Director or the Director's Designee determines that the amount of the assessment in question has been incorrectly calculated, appropriate steps shall be taken to modify the amount to the correct amount, including but not limited to the preparation and recordation of an appropriate addendum to the recorded notice of assessment.

I. General Provisions

1. Envelopes returned by U.S. Postal Service

In the event that the envelope containing the notice of hearing, Assessment Ballot and self-addressed return envelope is returned to the City Clerk by the U.S. Postal Service with the notation “undeliverable” or like notation, the City Clerk shall make use of such information resources as are reasonably available in a reasonable effort to establish either (a) a new address for the Record Owner or (b) a new name and address for the Record Owner; provided that the City Clerk shall not be required to purchase title reports or like information documents in the effort to establish possible new information.

In the event that the City Clerk is able to identify either a new address for the Record Owner or a new name and address for the Record Owner, the City Clerk shall send copies of the returned materials to the Record Owner as soon as practicable, using the new information; provided that the City Clerk shall have no obligation to assure that the new mailing is received in time to enable the recipient to complete, sign and return the Assessment Ballot in a timely manner.

The City Clerk shall retain any such returned envelope and the materials enclosed in it.

2. Assessment Ballots, once opened, are public records

Prior to commencement of the tabulation, all Assessment Ballots received shall be kept together in a secure location by the City Clerk. Pursuant to subsection (e)(1) of Section 53753, during and after the tabulation, all returned Assessment Ballots are public records and shall be available for review by the public. A complete listing of Assessor’s Parcel Numbers for which “Yes” or “No” Assessment Ballots are received shall be available for public information.

J. Voting of City Land.

The City Council recognizes and is sensitive to the fact that assessments are a cost to the taxpayer, either directly as an assessment against the taxpayer’s property or through the payment of assessments for benefits to City-owned land. As a result, the voting of City land in favor of an assessment can have significant impact on property owners. On the other hand, the City Council is also sensitive to benefits that can be provided to taxpayers, property owners and the City as a

whole through the proper use of the assessment process. As a result, the decision of how to vote City land, either for an assessment or against an assessment, is a policy decision that must be made by the City Council on a case by case basis.

The City Council reserves to itself the authority to vote City land. The City Council shall determine how to vote City land in an assessment district proceeding at the time of its preliminary approval of the assessment engineer's report and the setting of the protest hearing. The City Council shall instruct the City Manager to act consistently with the City Council's determination. The decision by the City Council on how to vote City land shall not bind the City Council on the issue of whether to approve the assessment district once all of the protest ballots are tabulated at the public hearing on the matter. The City Council will make that final determination based upon the balloting and the testimony it receives in that public hearing.

Adopted - November 24, 2009