

1 [Approving ballot and hearing procedures for renewal of the Union Square Business
2 Improvement District.]

3 **Resolution establishing ballot and hearing procedures governing ballots cast by**
4 **property owners of property located within the boundaries of the Business**
5 **Improvement District known as the “Union Square Business Improvement District” for**
6 **the purpose of deciding whether to renew the assessment for the Union Square**
7 **Business Improvement District for an additional five year term.**

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

11 WHEREAS, Articles XIIC and XIID of the California Constitution and related
12 implementing legislation impose certain procedural and substantive requirements relating to
13 assessments (as defined); and,

14 WHEREAS, The City and County of San Francisco has been complying with
15 these requirements; and,

16 WHEREAS, The Board of Supervisors believes it to be in the best interest of the
17 community to record its decisions regarding the implementation of the provisions of
18 Proposition 218 relating to assessments and to provide the community with a guide to those
19 decisions and how they have been made; now, therefore, be it

20 RESOLVED, That the Board of Supervisors declares as follows:

21 Section 1. Statement of Legislative Intent. It is the Board of Supervisors’ intent in
22 adopting this resolution, to approve assessment ballot proceedings for the proposed renewal
23 of the Union Square Business Improvement District which are consistent with, and in
24 compliance with, Articles XIIC and XIID of the California Constitution and with the
25 Proposition 218 Omnibus Implementation Act (Government Code sections 53750 et seq.). It

1 is not the intent of the Board to vary in any way from the requirements of Articles XIIC and
2 XIID or the Proposition 218 Omnibus Implementation Act.

3 Section 2. Definition of Assessment. Proposition 218 defines “assessment”
4 as any levy or charge upon real property by an agency for a special benefit conferred upon
5 the real property. “Assessment” includes, but is not limited to, “special assessment,” “benefit
6 assessment,” “maintenance assessment” and “special assessment tax.” Under this definition,
7 an assessment which is not a charge upon real property for a special benefit conferred upon
8 the real property is not an “assessment” for purposes of Article XIID, section 2(b) of the
9 California Constitution.

10 Section 3. Assessment Ballot Proceeding. The Director of the Department of
11 Elections (“Director of Elections”) shall be responsible for the content and the conduct of the
12 ballot proceeding governed by this resolution. The following procedure shall be used for the
13 assessment ballot proceeding required by article XIID, section 4 of the California Constitution
14 for the proposed renewal of the Union Square Business Improvement District;

15 A. Amount of Assessment. Only special benefits are assessable. The
16 amount of each assessment shall not exceed each parcel’s proportionate share of the public
17 improvement or property related service based upon that parcel’s special benefit from the
18 improvement or service. The amount shall be proportional to and no greater than the benefits
19 conferred on the property.

20 B. Special Benefit. For purposes of determining the amount of the
21 assessment:

22 1. Special benefit means a particular and distinct benefit over and
23 above the general benefits conferred on real property located in the assessment district or to
24 the public at large;

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1 2. Special benefits are those which the property assessed receives,
2 due to the improvement or service, in excess of the general public benefit;

3 3. The fact that other property within the City and County or within the
4 area may be, to a greater or lesser extent, specially benefited by the improvement or service,
5 will not have the effect of depriving assessed property of its character as specially benefited
6 property.

7 4. Special benefit is immediate and of such character as can be seen
8 and traced. General benefits are remote and sometimes contingent.

9 C. Engineer's Report. The Board of Supervisors shall direct the filing of an
10 engineer's report which shall comply with California Streets and Highways Code Sections
11 33600 et seq. and article XIID of the California Constitution. The engineer's report shall
12 explain the special benefit, as defined in section 3B of this resolution, conferred by the
13 improvement or property-related service. The engineer's report shall describe the general
14 benefit and explain how it will be funded.

15 D. Notice. The following guidelines shall apply to giving notice of an
16 assessment:

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

21 2. The form of the notice of hearing is on file with the Clerk of the
22 Board of Supervisors in File No. _____.

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

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1 4. The notice provided by this resolution and in accordance with
2 article XIID, section 4 of the California Constitution, Section 53753 of the Government Code,
3 Section 16.112 of the San Francisco Charter, and Section 67.7-1 of the San Francisco
4 Administrative Code shall supersede and be in lieu of notice required by any other statutes to
5 levy or increase an assessment, including, but not limited to the notice required by the state
6 statute authorizing the assessment and Government Code section 54954.6.

7 5. Failure of any person to receive notice shall not invalidate the
8 proceedings.

9 6. The cost of providing notice shall be included as a cost of the
10 assessment district.

11 E. Assessment Ballot Procedures. The following procedures shall apply to
12 the assessment ballot:

13 1. The ballot required by article XIID, section 4(d) of the California
14 Constitution shall be mailed to all property owners of record within the assessment district at
15 least forty-five (45) days prior to the date of the public hearing on the proposed assessment.

16 2. The form of the ballot is on file with the Clerk of the Board of
17 Supervisors in File No. _____.

18 3. All ballots must be returned to the Director of Elections by mail or
19 in person, sealed in the envelope provided with the ballot not later than the date for return of
20 ballots stated on the notice described in Subsection D.

21 5. A ballot may be completed by the owner of the parcel to be
22 assessed, and must be signed under penalty of perjury. As used in this resolution, the term
23 "owner" includes the owner's authorized representative. If the owner of the parcel is a
24 partnership, joint tenancy, or tenancy in common, a ballot may be completed by any of the
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1 general partners, joint tenants, or tenants in common. Except as set forth below, only one
2 ballot may be completed for each parcel.

3 6. If a parcel has multiple owners, any owner may request a
4 proportional assessment ballot. If the ownership interest of the owner is not shown on the last
5 equalized secured property tax assessment roll, such request must include evidence,
6 satisfactory to the Director of Elections, of the owner's proportional rights in the parcel. The
7 Director of Elections will provide the proportional ballot to the owner at the address shown on
8 the assessment roll. Any request for a ballot to be mailed to another location must be made in
9 writing and must include evidence, satisfactory to the Director of Elections, of the identity of
10 the person requesting the ballot. Each proportional ballot will be marked to show the date on
11 which the ballot was provided, to identify it as a proportional ballot and to indicate the owner's
12 proportional rights in the parcel. The Director of Elections will keep a record of each
13 proportional ballot provided to an owner.

14 7. Only ballots with original signatures, not photocopies, will be
15 accepted.

16 8. If a ballot is lost, withdrawn, destroyed or never received, the
17 Director of Elections will provide a duplicate ballot to the owner upon receipt of a request in
18 writing delivered to the Director of Elections. Such requests shall be delivered to Room 48,
19 City Hall, 1 Dr. Carlton B. Goodlett Place San Francisco, CA, or at the public hearing on the
20 proposed assessment. The duplicate ballot will be marked to show the date on which the
21 ballot was provided and to identify it as a duplicate ballot or a duplicate proportional ballot.
22 The same procedure applies to duplicate ballots or duplicate proportional ballots which are
23 lost, withdrawn, destroyed or never received.

24 9. To complete an assessment ballot, the owner of the parcel must
25 (1) stamp or mark the appropriate box supporting or opposing the proposed assessment, and

1 (2) sign, under penalty of perjury, the statement on the ballot that the person completing the
2 ballot is the owner of the parcel or the owner's authorized representative. Only one box may
3 be stamped or marked on each ballot. Ballots must be completed in ink.

4 10. Only ballots provided by the Director of Elections will be accepted.
5 Photocopies, faxes, and other forms of the ballot will not be accepted.

6 11. A ballot may be returned by the owner of the parcel or by anyone
7 authorized by the owner to return the ballot. Ballots may be mailed to the address indicated
8 on the ballot. The Department of Elections has provided postage on the ballots. Ballots may
9 also be delivered in person to the Director of Elections, Room 48, City Hall, 1 Dr. Carlton B.
10 Goodlett Place San Francisco, CA 94102, or at the public hearing on the proposed
11 assessment.

12 12. All returned ballots must be received by the Director of Elections
13 prior to the time the Board of Supervisors closes the public input portion of the public hearing
14 on the proposed assessment. The public input portion of the public hearing may be continued
15 from time to time. The Director of Elections will stamp on each ballot the date of its receipt.
16 The Director of Elections will pick up mailed ballots at 3 p.m. on the date scheduled for the
17 public hearing. To ensure that mailed ballots are received by the Director of Elections prior to
18 the conclusion of the public input portion of the public hearing, mailed ballots must be
19 received by the Director of Elections prior to that time. Mailed ballots received after 3 p.m. on
20 the date scheduled for the public hearing will only be counted if the ballots are received by the
21 Director of Elections prior to the conclusion of the public input portion of the public hearing.
22 The City and County makes no representation as to whether the public input portion of the
23 public hearing will be concluded on the date scheduled for commencement of the public
24 hearing or continued to a later date.

1 13. After returning a ballot to the Department of Elections, the person
2 who signed the ballot may withdraw the ballot by submitting a written statement to the Director
3 of Elections, Room 48, City Hall, 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102, or
4 at the public hearing on the proposed assessment, directing that the ballot be withdrawn.
5 Such statement must be received by the Director of Elections prior to the close of the public
6 input portion of the public hearing on the proposed assessment. If any ballot has been
7 withdrawn, the person withdrawing the ballot may request a duplicate ballot. The Director of
8 Elections will retain all withdrawn ballots and will indicate on the face of such ballots that they
9 have been withdrawn. When ballots for the assessment are tabulated, the Director of
10 Elections will segregate withdrawn ballots from all other returned ballots.

11 14. In order to change the contents of a ballot that has been
12 submitted, the person who has signed that ballot may (1) request that such ballot be
13 withdrawn, (2) request that a duplicate ballot be issued, and (3) return the duplicate ballot fully
14 completed. Each of these steps must be completed according to the procedures set forth
15 above.

16 15. Only ballots which are completed and returned in compliance with
17 these procedures will be counted. Ballots received by the Director of Elections after the close
18 of the public input portion of the public hearing on the proposed assessment will not be
19 counted. Ballots which are not signed by the owner will not be counted. Ballots with no boxes
20 marked, or with more than one box marked, will not be counted. Ballots withdrawn in
21 accordance with these procedures will not be counted. The Director of Elections will keep a
22 record of each proportional or duplicate ballot provided to an owner and will verify, prior to
23 counting any duplicate ballot, that only one ballot has been returned for the parcel (or for the
24 owner in the case of proportional ballots). If a non-duplicate ballot (original) has been
25 returned and not withdrawn, the Director of Elections will count the non-duplicative ballot and

1 disregard all duplicate ballots. If only duplicate ballots have been returned, the Director of
2 Elections will count the earliest provided duplicate ballot and disregard the later provided
3 duplicate ballots. If an owner returns both a non-proportional ballot and a proportional ballot,
4 the Director of Elections will count the proportional ballot and disregard the non-proportional
5 ballot.

6 16. The tabulation of ballots will be performed in view of those present
7 at the public hearing following the close of the public input portion of the public hearing. The
8 public hearing may be continued from time to time for the purpose of tabulating ballots.
9 Ballots shall remain sealed until the tabulation of ballots commences following the close of the
10 public input portion of the public hearing, provided that a ballot may be submitted, or changed,
11 or withdrawn by the person who submitted the ballot prior to the close of the public input
12 portion of the public hearing. Ballots may be counted by hand, by computer or by any other
13 tabulating device.

14 17. Ballots will be tabulated by adding the ballots submitted in
15 opposition to the assessment and adding the ballot submitted in favor of the assessment.
16 Ballots shall be weighted according to the proportional financial obligation of the affected
17 property; provided, however, that proportional ballots shall be weighted in accordance with the
18 respective ownership interests of each proportional ballot submitted. If one or more
19 proportional ballots are returned for a parcel and a non-proportional ballot is returned for the
20 parcel, the non-proportional ballot will either be disregarded (if the same owner has returned a
21 proportional ballot) or treated as a proportional ballot (if the same owner has not returned a
22 proportional ballot).

23 18. Ballots may be tabulated by the Director of Elections, or by
24 Department of Elections staff authorized by the Director to do so.

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1 19. The results of the tabulation will be announced following the
2 completion of the tabulation and entered in the minutes of the Board of Supervisors' meeting.
3 If ballots submitted in opposition to the proposed assessment exceed the ballots submitted in
4 favor of the assessment (as tabulated above), the assessment will not be imposed.

5 20. In the event of a dispute regarding whether the signer of a ballot is
6 the owner of the parcel to which the ballot applies, the Director of Elections will make such
7 determination from the last equalized assessment roll and any evidence of ownership
8 submitted to the Director prior to the conclusion of the public hearing. The Director of
9 Elections will be under no duty to obtain or consider any other evidence as to ownership of
10 property and the Director's determination of ownership will be final and conclusive. In the
11 event of a dispute regarding whether the signer of a ballot is an authorized representative of
12 the owner of the parcel, the Director of Elections may rely on the statement on the ballot
13 signed under penalty of perjury, that the person completing the ballot is the owner's
14 authorized representative and on any evidence submitted to the Director of Elections prior to
15 the conclusion of the public hearing. The Director of Elections will be under no duty to obtain
16 or consider any other evidence as to whether the signer of the ballot is an authorized
17 representative of the owner and the determination by the Director of Elections will be final and
18 conclusive.

19 21. During and after the tabulation the assessment ballots shall be
20 treated as disclosable public records, and shall be equally available for inspection by the
21 proponents and opponents of the proposed assessment. The Director of Elections shall
22 establish appropriate and reasonable administrative, technical, and physical safeguards to
23 ensure the security and confidentiality of the ballots until such time as they are open to public
24 inspection.

25 F. Public Hearing.

1 1. At the public hearing, the Board of Supervisors shall hear all public
2 testimony regarding the proposed assessment and accept ballots until the close of the public
3 hearing.

4 2. The Board of Supervisors may impose reasonable time limits on
5 the length of each speaker's testimony.

6 3. At the conclusion of the hearing, the Director of Elections shall
7 complete tabulation of the ballots, including those received during the public hearing.

8 4. If it is not possible to tabulate the ballots that evening, or if
9 additional time is necessary for public testimony, the Board of Supervisors may continue the
10 hearing until a later date to receive additional testimony or information, or to finish tabulating
11 the ballots.

12 Section 4. The Board of Supervisors hereby approves the form of the "Procedures
13 for the Completion, Return, and Tabulation of Assessment Ballots for the Union Square
14 Business Improvement District" which is on file with the Clerk of the Board of Supervisors in
15 File No. _____.

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