

1 [Business Improvement District Ballot Procedures]

2 ESTABLISHING BALLOT PROCEDURES GOVERNING BALLOTS CAST BY PROPERTY
3 OWNERS OF PROPERTY LOCATED WITHIN THE BOUNDARIES OF A PROPOSED
4 BUSINESS IMPROVEMENT DISTRICT TO BE KNOWN AS THE "UNION SQUARE
5 BUSINESS IMPROVEMENT DISTRICT."

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

8 WHEREAS, Articles XIIC and XIID of the California Constitution impose certain
9 procedural and substantive requirements relating to assessments (as defined); and,

10 WHEREAS, The City and County of San Francisco has been complying with these
11 new requirements of the California Constitution; and,

12 WHEREAS, Some of the requirements of Proposition 218 are unclear and require
13 judicial interpretation or legislative implementation; and,

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

18 RESOLVED, That the Board of Supervisors declares as follows

19 Section 1. Statement of Legislative Intent. It is the Board of Supervisors' intent in
20 adopting this resolution, to adopt assessment ballot proceedings for the proposed Union
21 Square Business Improvement District which are consistent, and in compliance with, Articles
22 XIIC and XIID of the California Constitution and with the Proposition 218 Omnibus
23 Implementation Act (Government Code sections 53750 et seq.). It is not the intent of the
24 Board to vary in any way from the requirements of Articles XIIC and XIID or the Proposition
25 218 Omnibus Implementation Act.

SUPERVISOR KAUFMAN
BOARD OF SUPERVISORS

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

8 Section 3. Assessment Ballot Proceeding. The Clerk of the Board of Supervisors
9 ("Clerk of the Board") shall be responsible for the content and the conduct of the ballot
10 proceeding governed by this resolution. The following procedure shall be used for the
11 assessment ballot proceeding required by article XIID, section 4 of the California
12 Constitution for the proposed Union Square Business Improvement District;

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

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

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

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

24 3. The fact that other property within the City and County or within the area
25 may be, to a greater or lesser extent, specially benefited by the improvement or service, will

1 not have the effect of depriving assessed property of its character as specially benefited
2 property.

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

5 C. Engineer's Report. The Board of Supervisors shall direct the filing of an
6 engineer's report which shall comply with the applicable state statutes authorizing the
7 assessment and with article XIID of the California Constitution. The engineer's report shall
8 explain the special benefit, as defined in section 3B of this resolution, conferred by the
9 improvement or property-related service. The engineer's report shall describe the general
10 benefit and explain how it will be funded.

11 D. Notice. The following guidelines shall apply to giving notice of an
12 assessment:

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

17 2. The form of the notice of hearing is on file with the Clerk of the Board of
18 Supervisors in File No. 981845.

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

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

3 5. Failure of any person to receive notice shall not invalidate the
4 proceedings.

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

7 E. Assessment Ballot. The following guidelines shall apply to the assessment ballot:

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

11 2. The form of the ballot is on file with the Clerk of the Board of Supervisors
12 in File No. 981845.

13 3. All ballots must be returned to the Clerk of the Board by mail or in person,
14 sealed in the envelope provided with the ballot not later than the date for return of ballots
15 stated on the notice described in section 4(D).

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

22 6. If a parcel has multiple owners, any owner may request a proportional
23 assessment ballot. If the ownership interest of the owner is not shown on the last equalized
24 secured property tax assessment roll, such request must include evidence, satisfactory to the
25 Clerk of the Board, of the owner's proportional rights in the parcel. The Clerk of the Board will

1 provide the proportional ballot to the owner at the address shown on the assessment roll.
2 Any request for a ballot to be mailed to another location must be made in writing and must
3 include evidence, satisfactory to the Clerk of the Board, of the identity of the person
4 requesting the ballot. Each proportional ballot will be marked to show the date on which the
5 ballot was provided, to identify it as a proportional ballot and to indicate the owner's
6 proportional rights in the parcel. The Clerk of the Board will keep a record of each
7 proportional ballot provided to an owner.

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

9 8. If a ballot is lost, destroyed or never received, the Clerk of the Board will
10 provide a duplicate ballot to the owner upon receipt of a request in writing delivered
11 personally by the owner to the Clerk of the Board, San Francisco Board of Supervisors. Due
12 to the Board's relocation back to City Hall, such requests shall be delivered to 401 Van Ness
13 Avenue, Room 308, San Francisco, CA 94102 until 5 p.m. until December 28, 1998 or to
14 Room 244, City Hall, 1 Dr. Carlton Goodlett Place San Francisco, CA 94102, on or after
15 January 4, 1999, or at the public hearing on the proposed assessment. The duplicate ballot
16 will be marked to show the date on which the ballot was provided and to identify it as a
17 duplicate ballot or a duplicate proportional ballot.

18 9. To complete a ballot, the owner of the parcel must (1) stamp or mark the
19 appropriate box supporting or opposing the proposed assessment, and (2) sign, under
20 penalty of perjury, the statement on the ballot that the person completing the ballot is the
21 owner of the parcel or the owner's authorized representative. Only one box may be stamped
22 or marked on each ballot. Ballots must be completed in ink.

23 10. Only ballots provided by the Clerk of the Board will be accepted.
24 Photocopies, faxes, and other forms of the ballot will not be accepted.
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1 11. A ballot may be returned by the owner of the parcel or by anyone
2 authorized by the owner to return the ballot. Ballots may be mailed to the address indicated
3 on the ballot. Ballots may also be delivered in person to the Clerk of the Board, 401 Van
4 Ness Avenue, Room 308, San Francisco, CA 94102, until 5 p.m. until December 28, 1998 or
5 to Room 244, City Hall, 1 Dr. Carlton Goodlett Place San Francisco, CA 94102, on or after
6 January 4, 1999, or at the public hearing on the proposed assessment.

7 12. All returned ballots must be received by the Clerk of the Board prior to
8 the time the Board of Supervisors closes the public input portion of the public hearing on the
9 proposed assessment. The public input portion of the public hearing may be continued from
10 time to time. The Clerk of the Board will stamp on each ballot the date of its receipt. The
11 Clerk of the Board will pick up mailed ballots at 3 p.m. on January 25, 1999, the date of the
12 public hearing. To ensure that mailed ballots will be counted, they must be received by the
13 Clerk of the Board prior to the conclusion of the public input portion of the public hearing.
14 Mailed ballots received after 3 p.m. on January 25, 1999 will only be counted if the public
15 input portion of the hearing is continued to a later date and ballots are received by the Clerk
16 of the Board by 3 p.m. on that later date. The City and County makes no representation as to
17 whether the public input portion of the public hearing will be concluded on the date scheduled
18 for commencement of the public hearing or continued to a later date.

19 13. After returning a ballot to the City, the person who signed the ballot may
20 withdraw the ballot by submitting a written request in person to the Clerk of the Board, San
21 Francisco Board of Supervisors, 401 Van Ness Avenue, Room 308, San Francisco, CA
22 94102, until 5 p.m. until December 28, 1998 or to Room 244, City Hall, 1 Dr. Carlton Goodlett
23 Place San Francisco, CA 94102, on or after January 4, 1999, or at the public hearing on the
24 proposed assessment. Such request must be received by the Clerk of the Board prior to the
25 close of the public input portion of the public hearing on the proposed assessment. If any

1 ballot has been withdrawn, the person withdrawing the ballot may request a duplicate ballot.
2 The Clerk of the Board will retain all withdrawn ballots and will indicate on the face of such
3 ballots that they have been withdrawn.

4 14. Only ballots which are completed and returned in compliance with these
5 procedures will be counted. Ballots received by the Clerk of the Board after the close of the
6 public input portion of the public hearing on the proposed assessment will not be counted.
7 Ballots which are not signed by the owner will not be counted. Ballots with no boxes marked,
8 or with more than one box marked, will not be counted. Ballots withdrawn in accordance with
9 these procedures will not be counted. The Clerk of the Board will keep a record of each
10 proportional or duplicate ballot provided to an owner and will verify, prior to counting any
11 duplicate ballot, that only one ballot has been returned for the parcel (or for the owner in the
12 case of proportional ballots). If a non-duplicate ballot (original) has been returned and not
13 withdrawn, the Clerk of the Board will count the non-duplicative ballot and disregard all
14 duplicate ballots. If only duplicate ballots have been returned, the Clerk of the Board will
15 count the earliest provided duplicate ballot and disregard the later provided duplicate ballots.
16 If an owner returns both a non-proportional ballot and a proportional ballot, the Clerk of the
17 Board will count the proportional ballot and disregard the non-proportional ballot.

18 15. The final tabulation of ballots will be performed at the public hearing
19 following the close of the public input portion of the public hearing. The public hearing may
20 be continued from time to time for the purpose of tabulating ballots. The Clerk of the Board
21 may begin presorting and determining the proportionate weight of the returned ballots prior to
22 tabulating the ballots. Ballots may be counted by hand, by computer or by any other
23 tabulating device.

24 16. Ballots will be tabulated by adding the ballots submitted in opposition to
25 the assessment and adding the ballot submitted in favor of the assessment. Ballots shall be

1 weighted according to the proportional financial obligation of the affected property; provided,
2 further, that proportional ballots shall be weighted in accordance with the respective
3 ownership interests of each proportional ballot submitted. If one or more proportional ballots
4 are returned for a parcel and a non-proportional ballot is returned for the parcel, the non-
5 proportional ballot will either be disregarded (if the same owner has returned a proportional
6 ballot) or treated as a proportional ballot (if the same owner has not returned a proportional
7 ballot).

8 17. Ballots may be tabulated by the Clerk of the Board, or by Board staff
9 authorized by the Clerk to do so.

10 18. The results of the tabulation will be announced following the completion
11 of the tabulation and entered in the minutes of the Board of Supervisors' meeting. If ballots
12 submitted in opposition to the proposed assessment exceed the ballots submitted in favor of
13 the assessment (as tabulated above), the assessment will not be imposed.

14 19. In the event of a dispute regarding whether the signer of a ballot is the
15 owner of the parcel to which the ballot applies, the Clerk of the Board will make such
16 determination from the last equalized assessment roll and any evidence of ownership
17 submitted to the Clerk prior to the conclusion of the public hearing. The Clerk will be under
18 no duty to obtain or consider any other evidence as to ownership of property and the Clerk of
19 the Board's determination of ownership will be final and conclusive. In the event of a dispute
20 regarding whether the signer of a ballot is an authorized representative of the owner of the
21 parcel, the Clerk of the Board may rely on the statement on the ballot, signed under penalty
22 of perjury, that the person completing the ballot is the owner's authorized representative and
23 on any evidence submitted to the Clerk of the Board prior to the conclusion of the public
24 hearing. The Clerk of the Board will be under no duty to obtain or consider any other
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1 evidence as to whether the signer of the ballot is an authorized representative of the owner
2 and the Clerk of the Board's determination will be final and conclusive.

3 20. An assessment ballot is a "public record" as that phrase is defined by the
4 Public Records Act, but to prevent harassment and intimidation of property owners, ballots
5 shall not be open to public inspection until after the conclusion of the assessment ballot
6 proceeding. The Clerk of the Board shall establish appropriate and reasonable
7 administrative, technical, and physical safeguards to ensure the security and confidentiality of
8 the ballots until such time as they are open to public inspection.

9 F. Public Hearing.

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

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

15 3. At the conclusion of the hearing, the Clerk of the Board shall complete
16 tabulation of the ballots, including those received during the public hearing.

17 4. If it is not possible to tabulate the ballots that evening, or if additional time
18 is necessary for public testimony, the Board of Supervisors may continue the hearing until a
19 later date to receive additional testimony or information, or to finish tabulating the ballots.
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City and County of San Francisco

Tails

Resolution

Veterans Building
401 Van Ness Avenue, Room 308
San Francisco, CA 94102-4532

File Number: 981845

Date Passed:

Resolution establishing ballot procedures governing ballots cast by property owners of property located within the boundaries of a proposed business improvement district to be known as the "Union Square Business Improvement District."

December 7, 1998 Board of Supervisors — ADOPTED

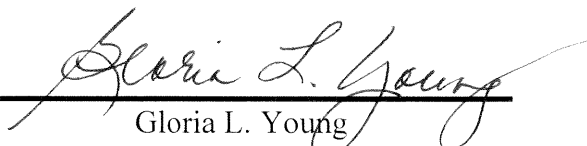
Ayes: 6 - Kaufman, Leno, Teng, Yaki, Brown, Katz

Noes: 3 - Yee, Ammiano, Bierman

Absent: 2 - Medina, Newsom

File No. 981845

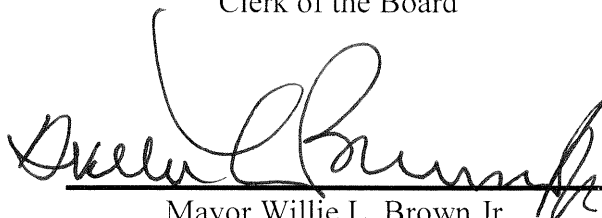
I hereby certify that the foregoing Resolution
was ADOPTED on December 7, 1998 by the
Board of Supervisors of the City and County
of San Francisco.



Gloria L. Young
Clerk of the Board

DEC - 8 1998

Date Approved



Mayor Willie L. Brown Jr.

File No. 981845 continued...