

TO: BOARD OF DIRECTORS
FROM: BRUCE BUEL *BBB*
DATE: SEPT. 4, 2009

**AGENDA ITEM
E-6
SEPT. 9, 2009**

USER FEE PROTEST PROCEEDING GUIDELINES

ITEM

Consider adoption of protest proceeding guidelines [ADOPT RESOLUTION]

BACKGROUND

Your Board previously edited a draft set of guidelines and directed staff to bring a revised version back for Board consideration. Attached are the draft guidelines as revised along with a draft resolution providing for adoption.

It should be noted that staff is working on a set of guidelines for conducting an assessment proceeding and will present these guidelines separately.

FISCAL IMPACT

Development of this draft did use previously budgeted staff time and legal consulting cost.

RECOMMENDATION

Staff recommends that the Board review the draft guidelines, order any additional edits and then consider adoption of the resolution.

ATTACHMENTS

- Draft Guidelines
- Draft Resolution

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NIPOMO COMMUNITY SERVICES DISTRICT

GUIDELINES FOR THE SUBMISSION AND TABULATION OF PROTESTS

APPLICATION

Where notice of a public hearing, with respect to the adoption or increase of a utility charge, has been given by the Nipomo Community Services District (NCSD or District) pursuant to Article XIID, Section 6(a) of the California Constitution, the following guidelines shall apply.

RELEVANT DISTRICT CODE SECTIONS

District Code Section 3.03.040 states:

The owner of the property which is furnished services is the customer and shall be responsible for the payment of all rates, charges and fees, including penalties, thereon regarding such furnished services. Unpaid obligations shall run with the land, and shall lead to delinquency and termination of service for the residential unit or other real property involved without regard to any changes of residency or occupancy by persons different than the persons shown on district records as obligated to pay said bill. (Ord. 95-81 § 1 (part), 1995)

District Code Section 3.04.020 states:

A. Each house or building under separate ownership shall be provided with its own service connection or connections.

B. Two or more houses or buildings (such as apartments) under one ownership and located on the same lot or parcel of land may be supplied through one service connection.

C. When a parcel or building receiving water service through one connection is subdivided into smaller lots, parcels or units, capable of separate ownership, then the existing service connection shall be deemed appurtenant to the parcel or building unit upon which it is situated or most immediately adjacent.

D. The district reserves the right to limit the number of houses or buildings, or the area of the land under one ownership to be supplied by one service connection.

E. A service connection shall not be used to supply adjoining property of a different owner or to supply the property of the same owner on opposite sides of a public street or alley. (Ord. 98-87 § 8, 1998)

District Code Section 3.04.030 states:

Except for connection to a single-family residence, a separate service connection with backflow prevention device shall be provided to each parcel of property for landscape irrigation. A separate landscape connection fee shall be computed pursuant to Section 3.04.050, and paid. (Ord. 98-87 § 9, 1998)

DEFINITIONS

Unless the context plainly indicates another meaning was intended, the following definitions shall apply in construction of these Guidelines:

1. "Parcel" means a piece of land or property (within the NCSD) identified by Assessor's Parcel Number (APN) that is served by the NCSD, as determined by the San Luis Obispo County Tax Assessor.
2. "Record customer" and "customer of record" means the person or persons whose name or names appear on the NCSD's records as the person who has contracted for utility services to a particular parcel and utility account. Record customer is generally the record owner but, in a limited number of cases, a record customer means a tenant or property manager when the tenant or property manager's name appears on NCSD's records as the person who has contracted for utility services to a particular parcel.
3. "Record owner" or "parcel owner" means the person or persons whose name or names appear on the San Luis Obispo County Tax Assessor's latest equalized assessment roll as the owner of a parcel that is receiving utility services. Pursuant to District Code Section 3.03.040, the record owner is responsible for the payment of all rates, charges, and fees, including penalties thereon regarding such furnished services.
4. A "fee protest proceeding" is not an election, but the District Secretary/Clerk will maintain the confidentiality of protests as provided in Section 12 below.
5. "Public hearing" means the public hearing on the proposed charges.
6. "Protest official" means the NCSD District Secretary/Clerk or his/her designee.
7. "Representative(s)" means designated trustees, legal guardians, probate estate executors or administrators, court-appointed or other legal representatives, or property managers/agents of a record owner or a record customer.

NOTICE OF PROPOSED RATES AND PUBLIC HEARING

6. **Notice Delivery.**
 - A. The NCSD shall give notice of proposed charges and public hearing on the proposed charges via 1st-class U.S. mail to all record owners and customers of record served by the NCSD, effective on the date the public hearing is approved by the Board of Directors.
 - B. The NCSD will mail each notice subject to a request that the U.S. Postal Service provide forwarding address information to the NCSD for any notices forwarded by the U.S. Postal Service.

- C. If the U.S. Postal Service returns any notice to the NCSD as undeliverable and provides the NCSD a forwarding address, the NCSD shall mail the notice to the forwarding address, but its doing so does not extend the time in which protests may be submitted with respect to the proposed charges that are the subject of the public hearing.
- D. The NCSD will provide the notice of proposed charges and public hearing to each record owner and/or record customer who initiates NCSD utility services after the notice is mailed and before the date of the public hearing on the proposed charges, but its doing so does not extend the time in which protests may be submitted with respect to the proposed charges that are the subject of the public hearing.
- E. The NCSD will post the notice of proposed charges and public hearing at its official posting site on the date the notice is mailed pursuant to subparagraph 6(B) above.

SUBMISSION OF PROTESTS

7. *Protest Requirements.*

- A. A written protest must include:
 - (i) A statement that it is a protest against the proposed charge which is the subject of the notice;
 - (ii) Name of the record owner or customer of record;
 - (iii) Identity of the affected parcel by assessor's parcel number or service address;
 - (iv) Original signature of the record owner or customer of record with respect to the identified parcel; and
 - (v) The date the written protest is signed.
- B. Protests shall not be counted if any of the required elements (i thru v) outlined in the preceding subsection "7.A." are omitted.
- C. A notice of proposed charges may, but need not, include a form by which record owners and customers of record may note their protest of, or support for, a proposed charge. However, use of such a protest form shall not be required and the NCSD shall accept any protest which complies with these Guidelines.

8. ***Protest Submittal.***

- A. Any record owner or customer of record who is subject to the proposed utility charges may submit a written protest to the District Secretary/Clerk, by:
- Delivery to the District Secretary/Clerk's Office, 148 S. Wilson, Nipomo, CA 93444,
 - Mail to the NCSD, Attention: District Secretary/Clerk, 148 S. Wilson, Nipomo, CA 93444 or P.O. Box 326 Nipomo, CA 93444-0326, or
 - Personally submitting the written protest at the public hearing.
- B. Protests must be received by the close of the public hearing, including those mailed to the NCSD. No postmarks will be accepted; therefore, any protest not actually received by the close of the public hearing, whether or not mailed prior to the public hearing, shall not be counted.
- C. In order to reduce duplicate protests and to avoid fraud, a protest may only be submitted by a record owner or a customer of record who has signed the protest or an individual authorized in writing, with original signature, by the record owner or the customer of record, to submit the protest. That written authorization with original signature shall be provided to the District Secretary/Clerk with the written protest so that the District Secretary/Clerk may accept a protest from someone other than the person who signed it.
- D. A Representative may sign a written protest on behalf of a record owner or a record customer provided the Representative attaches written documentation/authorization, with original signature, to act in such capacity to the written protest.
- E. Emailed or faxed protests shall not be counted. Only protests with original signatures shall be counted.
- F. Copied protests shall not be counted. Only protests with original signatures shall be counted.
- G. Although oral comments at the public hearing will not qualify as a formal protest unless accompanied by a written protest, the NCSD Board of Directors welcomes input from the community during the public hearing on the proposed charges.

9. ***Protest Withdrawal.***

Any record owner, record customer, or Representative who submits a written protest may withdraw it by submitting to the District Secretary/Clerk a signed and dated written request that the protest be withdrawn. The withdrawal of a protest

shall identify the affected parcel by parcel number or service address and the name of the record owner or customer of record who submitted both the protest and the request that it be withdrawn.

10. ***Multiple Record Owners or Customers of Record.***

A. Each record owner or customer of record of a parcel served by the NCSD may submit a protest. This includes, but is not limited to, instances where:

- (i) A parcel is owned by more than a single record owner or more than one name appears on the NCSD's records as the customer of record for the parcel, or
- (ii) A customer of record is not the record owner, or
- (iii) A parcel includes more than one record customer, or
- (iv) Multiple parcels are served via a single utility account such as master-metered condominium units and multi-family residential units.

B. Only one protest will be counted per parcel.

C. Any one protest submitted in accordance with these rules will be sufficient to count as a protest for the identified parcel.

11. ***NCSD as Record Owner of Parcel.***

Parcels owned by the NCSD that receive utility services, but are not subject to the proposed charges which are the subject of the public hearing, shall not be included in the parcel count for tabulation.

12. ***Transparency, Confidentiality, and Disclosure.***

A. To ensure transparency and accountability in the fee protest tabulation, while protecting the privacy rights of record owners and customers of record, protests will be maintained in confidence until tabulation begins following the public hearing.

B. Once a protest is opened during the tabulation, it becomes a disclosable public record, as required by state law.

TABULATION OF PROTESTS

13. *Protest Official.*

The Protest Official shall tabulate written protests. The Protest Official shall not accept as valid any protest if he or she determines that any of the following conditions exist:

- A. The protest does not state its opposition to the proposed charges.
- B. The protest does not name the record owner or record customer of the parcel identified in the protest, as of the date of the public hearing.
- C. The protest does not identify a parcel served by the NCSD which is subject to the proposed charge.
- D. The protest is not dated.
- E. The protest does not bear an original signature of the named record owner, record customer or Representative (pursuant to subsection 8.D) with respect to the parcel identified on the protest. Whether a signature is valid shall be entrusted to the reasonable judgment of the Protest Official, who may review and compare it with signatures on file with the County Elections Official and/or the NCSD. If the signature is questionable, it will be retained for further follow-up with the record owner or customer of record. Should the count be close enough that any retained protest might change it, the Protest Official will mail a notice to the record owner, customer of record or representative requesting they contact the Protest Official within five (5) business days of the date of the mailing to verify their signature.
- F. The protest was altered in a way that raises a fair question as to whether the protest actually expresses the intent of a record owner or a customer of record to protest the charges.
- G. The protest was emailed, faxed, copied or by any other means without an original signature.
- H. The protest was not received by the District Secretary/Clerk before the close of the public hearing on the proposed charges.
- I. A request to withdraw the protest was received prior to the close of the public hearing on the proposed charges.
- J. The Protest Official's decision that a protest is not valid shall constitute a final administrative action of the NCSD.

14. *Majority Protest.*

A majority protest exists if protests are timely submitted and not withdrawn by the record owners, or customers of record with respect to, a majority (50% plus one) of the parcels subject to the proposed charge.

15. ***Tabulation of Protests.***

At the conclusion of the public hearing, the Protest Official shall tabulate all protests received, including those received during the public hearing, and shall report the results of the tabulation to the NCSD Board of Directors.

16. ***Report of Tabulation.***

If at the conclusion of the public hearing the Protest Official determines that he or she will require additional time to tabulate the protests, he or she shall so advise the NCSD Board of Directors, which may continue the meeting to allow the tabulation to be completed on another day or days. If so, the NCSD Board shall declare the time and place of tabulation, which shall be conducted in a place where interested members of the public may observe the tabulation, and the Board shall declare the time at which the meeting shall be resumed to receive and act on the tabulation report of the Protest Official.

17. ***Severability***

If any section, paragraph or phrase within these guidelines are in conflict with the California Constitution, the Proposition 218 Omnibus Implementation Act or other legislation (as now exists or as adopted in the future) then such legislation or Constitutional provisions shall prevail.

RESOLUTION 2009-XXXX

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE NIPOMO COMMUNITY SERVICES DISTRICT
ADOPTING GUIDELINES FOR THE SUBMISSION AND TABULATION OF
PROTESTS IN CONNECTION WITH RATE HEARINGS
CONDUCTED PURSUANT TO ARTICLE XIID, SECTION 6,
OF THE CALIFORNIA CONSTITUTION,
AND RELATED NOTICING**

WHEREAS, Proposition 218 was adopted on November 6, 1996 adding Article XIID to the California Constitution; and

WHEREAS, Article XIID Section 6 of the California Constitution imposes certain procedural and substantive requirements related to the adoption of fees and charges for property-related services; and

WHEREAS, the State of California has adopted the Proposition 218 Omnibus Implementation Act, Sections 57750 et seq. of the Government Code; and

WHEREAS, some of the requirements of Proposition 218 and the Omnibus Implementation Act do not offer specific guidance as to how written protest are to be submitted or how the Nipomo Community Services District (District) is to tabulate the protests; and

WHEREAS, Government Code Section 61040(a) states, in relevant part, "a legislative body of five members known as the board of directors shall govern each district. The board of directors shall establish policies for the operation of the district"; and

WHEREAS, Government Code Section 61045(g) states, "the board of directors shall adopt policies for the operation of the district, including, but not limited to, administrative policies, fiscal policies, personnel policies, and the purchasing policies required by this division"; and

WHEREAS, the District Board of Directors believes it to be in the best interest of the community, and pursuant to Government Code Section 61040(a) and 61045(g), to adopt guidelines for the implementation of the provisions of Article XIID Section 6 of the California Constitution and the Proposition 218 Omnibus Implementation Act related to the adoption of fees and charges for property related services;

NOW, THEREFORE, BE IT RESOLVED DETERMINED AND ORDERED
by the Nipomo Community Services District Board of Directors as follows:

SECTION 1. The Guidelines for the Submission and Tabulation of Protests attached hereto as Exhibit A are incorporated herein by this reference and are hereby adopted and approved.

SECTION 2. If any section, paragraph or phrase within the Guidelines for the Submission and Tabulation of Protests are in conflict with the California Constitution, the Proposition 218 Omnibus Implementation Act or other legislation (as now exists or as adopted in the future) then such legislation or Constitutional provisions shall prevail.

SECTION 3. The above recitals including references to the California Constitution and the Proposition 218 Omnibus Implementation Act, are incorporated herein by this reference and constitute further findings in support of the District's approval of the attached Guidelines for the Submission and Tabulation of Protests.

Upon motion by Director _____, seconded by Director _____, on the following roll call vote, to wit:

AYES:
NOES:
ABSTAIN:

the foregoing resolution is hereby passed and adopted on this _____ day of _____ 2009.

JAMES HARRISON
President of the Board

ATTEST:

APPROVED:

DONNA K. JOHNSON
Secretary to the Board

JON S. SEITZ
District Legal Counsel