

**RESOLUTION NO. 2016-21**

**A RESOLUTION OF THE SCOTIA COMMUNITY SERVICES DISTRICT BOARD OF DIRECTORS**

**ADOPTING PROPOSITION 218 PROCEDURES FOR USER FEE BALLOT PROCEEDINGS**

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

WHEREAS, Article XIID of the California Constitution imposes certain procedural and substantive requirements relating to user fees (as defined below); and

WHEREAS, the Proposition 218 Omnibus Implementation Act (Government Code §53750 *et seq.*) clarifies Proposition 218; and

WHEREAS, Proposition 26 amended Cal. Const. arts. XIIA and XIIC and provided a new definition of "tax"; and

WHEREAS, article XIIC Section 1(e)(7) makes "assessments and property-related fees" an exception to the new definition of "tax"; and

WHEREAS, the Scotia Community Services District shall apply Government Code §61123 allowing community services districts to levy property-related user fees; and

WHEREAS, the Scotia Community Services District shall be responsible for the maintenance and operation of the water treatment facilities and wastewater treatment facilities; and

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

WHEREAS, the Scotia Community Services District Board of Directors ("Board") believes it to be in the best interests of the community to record its decisions regarding the implementation of the provisions of Proposition 218, relating to user fees and to provide the community with a guide to those decisions and how they have been made.

NOW, THEREFORE, the Scotia Community Services District Board of Directors does hereby resolve as follows:

SECTION 1. All the above recitals and attached exhibits are hereby incorporated by reference.

SECTION 2. **Statement of Legislative Intent.** It is the Board's intent in adopting this Resolution, to adopt user fee ballot proceedings that are consistent, and in compliance with, Articles XIIC and XIID of the California Constitution and with the Proposition 218 Omnibus Implementation Act and the provisions of other statutes authorizing the levy of user fees. It is not the intent of the Board to vary in any way from the requirements of Articles XIIC and XIID or the Proposition Omnibus Implementation Act.

**SECTION 3. Definition of Property-Related Fee.** Proposition 218, article XIID section 2(e) defines “fee” as any levy or charge imposed upon real property by an agency “as an incident of property ownership, including a user fee or charge for a property related service.” Article XIID section 2(h) defines “property-related service” as “a public service having direct relationship to property ownership.”

**SECTION 4.** Scotia Community Services District (“SCSD”), a newly formed public agency, has no user fees at this time. According to SHN Engineering Consultants reports and SCSD budget, the SCSD has a treated water revenue requirement for the Fiscal Year (“FY”) 2016-17 of \$454,150. The projected revenue requirement for FY 2016-17 for raw water is \$35,130. The projected revenue requirement for FY 2016-17 for wastewater is \$620,280. These projected revenue requirements do not include the necessary capital improvements to the water treatment and wastewater treatment plants (See Exhibit C). In order to provide water and wastewater treatment and services, the SCSD must have a source of revenue.

**SECTION 5.** The Board hereby declares its intention to levy and collect user fees pursuant to California law on identified parcels within the District’s boundaries. These user fees shall be utilized to pay the costs associated with the operation, maintenance and improvements for the water treatment, raw water, wastewater treatment and water distribution infrastructure and facilities.

**SECTION 6.** The Board hereby directs staff to mail the notice of the public hearing regarding the levy of a user fee to be held on February 16, 2017 at 5:30 p.m. at the Scotia Community Services District office located at 122 Main Street, Scotia. The Board also directs staff to include in the notice envelope the user fee ballot and Resolution 2016-21.

**SECTION 7. User Fee Notice and Ballot Proceedings.** The Board directs staff to use the following procedures for the user fee ballot proceeding required by article XIID, section 6(b) of the California Constitution:

- A. **User Fee Substantive Requirements.** The fee which shall be imposed must comply with the following requirements:
  1. Revenues derived from the fee cannot exceed the funds required to provide the property-related service.
  2. Revenues shall not be used for any other purpose than the purpose herein described.
  3. The amount of fee imposed on a parcel as an incident of ownership shall not exceed the proportional cost of the service attributable to the parcel.
  4. The service must be actually used of immediately available to the owner of the property.
  5. No fee shall be charged for general government services; the service must not be available in the same manner to the public at large.
  
- B. **User Rate Analysis as Evidence of Compliance.**

Proposition 218 places the burden of demonstrating the validity of user fees on the SCSD. Although not legally required, the Board has directed the filing of a User Rate Analysis and Recommendations from SHN Engineering. The report compiled by registered, professional certified engineers shall demonstrate the SCSD’s compliance

with the requirements outlined in subsection A (above) and provide a record of evidence required under article XIII D, section 6(b) of the California Constitution. The User Rate Analysis and Recommendations for water and wastewater are attached as Exhibits C and D.

- C. **Notice.** The following guidelines shall apply to giving the record property owners of each identified parcel notice of a user fee:
1. Article XIII D, Section 6(a)(1) requires the SCSD to “provide written notice by mail of the proposed fee or charge to the record owner of each...parcel upon which the fee or charge is proposed for imposition.” The Proposition 218 Omnibus Implementation Act (Gov’t Code Section 53750 et seq.) defines “record owner” as “the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll.”
  2. The record owner(s) of each parcel to be assessed shall be determined from the last equalized Humboldt County property tax roll. If the property tax roll indicates more than one owner, each owner shall receive notice. Only one protest per parcel may be counted. Only record property owners shall receive notice via mail as permitted by SCSD Resolution 2016-4.
  3. The draft form of notice is attached to this resolution as Exhibit A. It shall contain:
    - (a) The amount of proposed user fee for each parcel
    - (b) The basis upon which the user fee was calculated
    - (c) The reason for the user fee
    - (d) The date, time and location of the public hearing
  4. The notice shall be sent at least forty-five (45) days prior to the date set for the public hearing on the user fee.
  5. The notice provided by this section, and in accordance with article XIII D, section 4 of the California Constitution, shall supersede and be in lieu of any other statutes requiring notice to levy or increase a user fee, including but not limited to the notice required by the state statute authorizing the user fee and Government Code §54954.6. (Proposition 218 Omnibus, Gov’t Code Sec. 53753)
  6. Failure of any person to receive notice shall not invalidate the proceedings.
  7. The cost of providing notice will NOT be included as a cost for purposes of the user fee.
- D. **User Fee Ballot.** The following guidelines shall apply to the user fee ballot:
1. The ballot required by article XIII D, section 4(d) of the California Constitution shall be mailed to all property owners of record within the district at least forty-five (45) days prior to the date of the public hearing on the proposed user fee.
  2. The form of the ballot is attached to this resolution as Exhibit B.
  3. All ballots must be returned to the Board Clerk by mail or in person, sealed in the envelope provided not later than the date for return of ballots stated on the notice described in section 4(d).
  4. The District-provided envelopes shall be “security envelopes” which conceal the contents therein. The envelopes shall denote the property to which the ballot applies.

5. A ballot must be signed under penalty of perjury. Only one ballot will be accepted for each parcel.
6. Because user fees are levied on record property owners, tenants of real property shall not have the power or authority to submit a user fee ballot unless they are the record owner on the Humboldt County tax roll.
7. Only ballots with original signatures, not photocopies, will be accepted. Ballots will not be accepted via email or fax. Ballots not submitted in the security envelope provided by the District shall not be counted.
8. The Board Clerk may issue a duplicate ballot to any property owner whose original ballot was lost or destroyed. Such ballots shall be clearly marked as duplicate ballots and shall be accompanied by sufficient information for the Clerk to verify the location and ownership of the property in question and the identity of the individual casting the ballot in order to verify its authenticity.
9. A user fee ballot proceeding is not an election.
10. User fee ballots shall remain sealed until the tabulation of ballots commences at the conclusion of the public hearing. A user fee ballot may be submitted, changed, or withdrawn by the person who submitted the ballot prior to the conclusion of the public testimony on the proposed user fee at the public hearing.
11. Prior to public hearing, neither the user fee ballot nor the envelope in which it is submitted shall be treated as a public record, pursuant to Government Code §6254(c) and any other applicable law, in order to prevent potential unwarranted invasions of the submitter's privacy and to protect the integrity of the balloting process.

**E. Public Hearing.**

1. At the public hearing, the Board of Directors shall hear all oral and written public testimony regarding the proposed user fee and accept ballots until the close of the public hearing which hearing may be continued from time to time.
2. The Board of Directors may impose reasonable time limits on both the length of the entire hearing and the length of each speaker's testimony.
3. At the conclusion of the hearing, the Clerk shall call for any remaining ballots and then complete a tabulation of the ballots, including those received during the public hearing.
4. If it is not possible to tabulate the ballots on the same day as the public hearing, or if additional time is necessary for public testimony, the Board may continue the public hearing to a later date to receive additional testimony, information or to finish tabulating the ballots; or may close the public hearing and continue the item to a future meeting to finish tabulating the ballots.
5. If according to the final tabulation of the ballots, ballots submitted in protest of the user fee exceed the ballots submitted in favor of the user fee a "majority protest" exists and the Board shall not impose the user fee.

**F. Tabulating Ballots.** The following guidelines shall apply to tabulating user fee ballots:

1. The Clerk shall determine the validity of the ballots. The Clerk shall accept as valid all ballots except those in the following categories:
  - a) A photocopy of the ballot which does not contain an original signature;
  - b) An unsigned ballot;
  - c) A ballot which lacks an identifiable "yes" or "no" vote;
  - d) A ballot which appears to be tampered with or otherwise invalid based upon its appearance or method of delivery or other circumstances;
  - e) A ballot which is submitted on a form which is different than the form of ballot provided by the District;
  - f) A ballot submitted to the District via email or fax.
  - g) A ballot not returned to the District in its District-provided "security envelope."

The Clerk's decision, after consultation with the Special Counsel, that a ballot is invalid, shall be final and may not be appealed to the Board of Directors.

2. An impartial person designated by Board who does not have a vested interest in the outcome of the proposed user fee shall tabulate the user fee ballots submitted, and not withdrawn, in support or opposition to the proposed user fee. The impartial person may include the Board Clerk. During and after tabulation, the user fee ballots shall be treated as disclosable public records, as defined in the Public Records Act, and shall be equally available for inspection by proponents and opponents of the proposed user fee.
3. A property owner who has submitted a user fee ballot may withdraw the ballot and submit a new or changed ballot at any time until the conclusion of the public hearing on the user fee.
4. A property owner's failure to receive an user fee ballot shall not invalidate the proceedings conducted under this section and section 4, article XIID of the California Constitution.

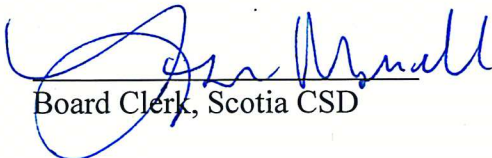
SECTION 8. The Board Clerk shall attest and certify to the passage and adoption of this Resolution, and it shall become effective immediately upon its approval.

Dated: December 15, 2016

APPROVED:

  
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Rick Walsh, Board President, Scotia CSD

ATTEST:

  
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Board Clerk, Scotia CSD

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of Resolution No. 2016-21, passed and adopted at a regular meeting of the Board of Directors of the Scotia Community Service District, County of Humboldt, State of California, held on the 15<sup>th</sup> day of December, 2016, by the following vote:

AYES: Bristol, Mcknight, Newmaker, Pryor, Walsh  
NOES:   
ABSTAIN:   
ABSENT:

  
Board Clerk, Scotia CSD

Attachments: Exhibit A: Form of Notice

Exhibit B: Form of User Fee Ballot

Exhibit C: Water User Rate Analysis and Recommendations

Exhibit D: Wastewater User Rate Analysis and Recommendations