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# PROP 218 PRESENTATION

**Los Olivos Community Services District**

**August 14, 2024**



ORANGE COUNTY

LOS ANGELES  
& WESTLAKE VILLAGE

BAY AREA

CENTRAL VALLEY

INLAND EMPIRE

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# History of Prop 218



Prop 13 (1979)



Prop 218 (1996)



Prop 26 (2010)

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## **Proposition 13- prior to adoption, property taxation governed by article XIII of the Constitution and state legislation.**

- Annually, agencies imposed local property taxes; sole limitation was that they be imposed on an *ad valorem* basis (in proportion to value).
- Political climate- Residential property prices and assessed valuations rising; burden on taxpayers kept increasing; property tax bills began to outstrip mortgage payments. Proposition 13, “the People’s Initiative to Limit Taxation,” passed in June 1978, with 65% affirmative vote.

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# Effect of Prop 13

- a. Imposed: a real property tax rate limitation(1 percent of a property's full cash value) (Cal. Const. art. XIII A, § 1);a real property assessment limitation (Cal. Const. art. XIII A, § 2); a restriction on state taxes (Cal. Const. art. XIII A, § 3); and a restriction on local taxes (Cal. Const. art. XIII A, § 4)
  
- b. Consequences- property tax revenues reduced by half statewide; state Legislature gained control over allocation of property tax among local governments.

## Post Prop 13 – Public agencies continued to rely on the revenue including:

- a. Assessments- courts held assessments not taxes subject to restrictions of article XIII A
- b. Mello Roos funding- to finance local improvements for new developments
- c. Regulatory Fees
- d. User Fees



## Prop 218- Intent

Primary purpose of Proposition 13 - cut property taxes.

Subsequent court cases- no extension of Prop 13's limitations to other types of levies impacting property ownership- assessments are not special taxes; deference to legislative determinations upholding assessments, regulatory fees, user fees.

“FINDINGS AND DECLARATIONS. The people of the State of California hereby find and declare that Proposition 13 was intended to provide effective tax relief and to require voter approval of tax increases. However, local governments have subjected taxpayers to excessive tax, assessment, fee and charge increases that not only frustrate the purposes of voter approval for tax increases, but also threaten the economic security of all Californians and the California economy itself. This measure protects taxpayers by limiting the methods by which local governments exact revenue from taxpayers without their consent”.

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## Proposition 218

- The Right to Vote on Taxes Act” (Proposition 218)
- Approved by the voters at the November 5, 1996 statewide general election. Added a new Article XIII C to the California Constitution

# Assessments

- Prop 218 distinguishes assessments from other types of levies. (“any levy or charge upon real property by an agency for a special benefit conferred upon the real property.”)
- A charge imposed on particular real property for a public improvement of direct benefit to that property. Examples: street improvements; lighting improvements; sewer connections.
- Policy principle- the assessed property has received a special benefit over and above that received by the general public. The general public should not be required to pay for special benefits for the few, and the few specially benefited should not be subsidized by the general public.



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# Proposition 218

- “All taxes imposed by any local government shall be deemed to be either general taxes or special taxes.” (Cal. Const. art. XIII C, § 2, subd. (a).)
- The distinction between special and general taxes hinges on whether the revenues from the tax are committed to a specific purpose or can be used for any governmental purpose. “‘Special tax’ means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.”
- Special purpose districts or agencies” may only levy special taxes ( *Rider v. County of San Diego* (1991) 1 Cal.4th 1) which held that because “a ‘special tax’ is one levied to fund a specific governmental project or program ... every tax levied by a ‘special purpose’ district or agency would be deemed a ‘special tax.’” (*Id.* at 15, “Special purpose districts or agencies, including school districts, shall have no power to levy general taxes.” (Cal Cont art XIII C (2)(a).

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## Prop 218

# Substantive Requirements for Assessments

- Identify all benefitted parcels. All parcels that will have special benefit conferred upon them and on which assessment will be imposed must be identified in an engineer's report and included in the assessment district. Parcels owned by the government cannot be excluded unless clear and convincing evidence demonstrates such a parcel receives no special benefit.
  - Distinguish general from special benefit. The general benefits must be distinguished from the special benefits enjoyed by assessed parcels
  - Proportionality. The proportionate special benefit derived by each parcel must be determined in relationship to the entirety of the capital cost of a public improvement, and associated O&M.
  - Reasonable cost. The amount assessed to a parcel may not exceed the reasonable cost of the proportional special benefit conferred on that parcel. Cannot include any costs attributable to general benefits. Any portion of a project cost associated with general benefit must be funded from non assessment revenues.
  - All assessments shall be supported by a detailed engineer's report prepared by a registered professional engineer certified by the State of California.
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## Procedural Requirements for Assessments



Section 4 of article XIII D and the Proposition 218 Omnibus Implementation Act (Gov. Code § 53750 et seq.) establish procedural requirements:



Agency must provide 45 days' written notice of a public hearing, and mail ballots, to the owners of the parcels to be assessed;



Notice must include specified information, including information regarding the assessments, the public hearing, and property owners' right to cast votes weighted by each owner's assessment amount;



Agency must hold a noticed public hearing and tally the results of the majority protest vote; and



If a majority of the weighted votes does not oppose the assessments, the agency may vote to levy the assessment

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# Notice and Ballot

- Agency must provide mailed notice of proposed assessment to record owner of each parcel identified as being subject to the assessment.
- “Record owner” means the owner of a parcel whose name and address appears on last property tax assessment roll
- Assessment ballot must be included. Envelope containing the notice and ballot must include on its face, the statement: “OFFICIAL BALLOT ENCLOSED.”

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## Notice to Whom

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Notice must be mailed to the owners of record of the parcels to be assessed.

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“Record owner” means the owner whose name and address appears on the last equalized secured property tax assessment roll.

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Separate notice need not be provided to tenants.

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Renters, even if they are registered within the District don't vote; only property owners vote.

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# Contents of Notice Required Elements

- Total proposed assessment for the entire district. The notice must state “the total amount [of the proposed assessment] chargeable to the entire district.”
- Proposed assessment for the owner’s parcel. The notice must state “the amount chargeable to the owner’s particular parcel.”

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# Content of Notice- required element continued...

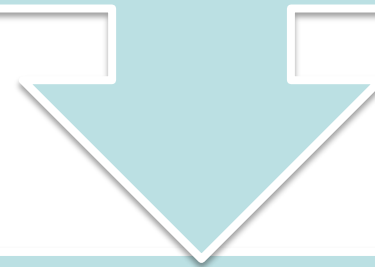
## Duration of the assessment

- Reason for the assessment- identify improvements to be built or maintained or the services to be provided.
- Basis upon which the amount of the proposed assessment was calculated.
- Public Hearing Date, Time, and Location. The notice must state “the date, time, and location of a public hearing on the proposed assessment.”
- Procedures Summary. The notice must include “a summary of the procedures applicable to the completion, return, and tabulation of the ballots.” This information must be “in a conspicuous place” on the notice.
- Protest Statement. The notice must include a “disclosure statement that the existence of a majority protest will result in the assessment not being imposed.”
- The assessment shall not be imposed if the ballots submitted, and not withdrawn, in opposition to the assessment exceed the ballots submitted, and not withdrawn, in favor of the assessment, with ballots weighted according to the proportional financial obligation of the affected property.”

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## Content of Ballot

Agency's address for receipt of the ballot once completed;



Place where owner may indicate his or her name, and reasonable identification of the parcel, and his or her support or opposition to the proposed assessment.



## Handling and Tabulation of Ballots



Assessment ballots shall remain sealed until the tabulation of ballots.



Assessment ballot may be submitted, changed, or withdrawn prior to the conclusion of the public testimony at the hearing.



Impartial person designated by the agency who does not have a vested interest in the outcome of the proposed assessment shall tabulate the assessment ballots. Clerk of the agency deemed as impartial by statute.

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# Determination of Protest



Ballots must be tabulated according to the proportional financial obligation of the affected properties.



Example- vote of a property owner assessed \$100 will have 20 times the weight of the vote of a property owner assessed \$5.

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## Determination of Protest continued



A majority protest exists if the assessment ballots submitted, and not withdrawn, in opposition to the proposed assessment exceed the assessment ballots submitted, and not withdrawn, in its favor, weighting those assessment ballots as described above.



If there is a majority protest, the assessment cannot be imposed. If there is no majority protest, the agency may impose the assessment but can also choose to not impose the assessment.

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# Certain Legal Considerations

- Burden- In action contesting validity of any assessment, the burden shall be on the agency to demonstrate that the property or properties in question receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question.
- Standard of Review- no deference to agencies, courts must “exercise independent judgment in reviewing local agency decisions that have determined whether benefits are special and whether assessments are proportional to special benefits within the meaning of Proposition 218.



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# Prop 26- The Next Iteration

- Earlier requirements of Proposition 13 and Proposition 218 that voters approve “general taxes” and “special taxes” did not define “tax.” Rather the Constitution and statutes described what type of levy was not a tax:



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# The Next Iteration continued...

A new definition of “tax.” All levies, charges, or exactions of any kind imposed by a local government are taxes unless they meet one of seven enumerated exceptions:

1. A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
2. A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.
3. A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

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# The Next Iteration continued...

- 4. A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.
- 5. A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.
- 6. A charge imposed as a condition of property development.
- 7. Assessments and property-related fees imposed in accordance with the provisions of Art. XIID.

# Legal Considerations

The local government bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity.





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# QUESTIONS?

