

COUNCIL POLICY**CURRENT**

SUBJECT: INDUSTRIAL DEVELOPMENT BOND PROGRAM
POLICY NO.: 100-12
EFFECTIVE DATE: June 15, 1993

BACKGROUND:

The City, through its Charter and/or under the California Industrial Development Financing Act, has the authority to issue the full range of taxable and tax-exempt conduit revenue private activity industrial development bonds (IDB's) permitted by the Internal Revenue Code.

PURPOSE:

To establish policy guidelines and procedures regarding issuance by the City of IDB's for nongovernmental borrowers.

POLICY:

It shall be the policy of the City to utilize IDB's to promote private sector economic development in San Diego. The City shall issue IDB's as authorized by the City Council. IDB's shall only be issued when the City determines that substantial public benefits shall result.

Project Qualifying Criteria. The City shall require all IDB issues to be investment grade-rated by a nationally-recognized bond rating agency. Public benefit criteria to be considered in determination of project eligibility shall include the following:

- 1) Employment creation or retention;
- 2) Expansion of the City's tax base;
- 3) Diversification of the City's economy;
- 4) Increase in the availability or reduction of the costs of consumption of necessary goods and services, either Citywide or in a particular community;
- 5) Resource conservation and recycling;
- 6) Environmentally optimal disposition of waste materials;
- 7) Improvement in the viability of a redevelopment area, enterprise zone or community revitalization project, and
- 8) Preservation, expansion or enhancement of cultural resources.

In addition, IDB applicants shall, as applicable, provide evidence of compliance with Title VII of the Civil Rights Act of 1964 and the California Fair Employment Practices Act and a workforce analysis as required by the City Equal Opportunity Program.

IMPLEMENTATION:

Marketing and Outreach. Economic Development Services in the City Manager's Office shall actively engage in marketing and outreach efforts in order to generate IDB Program participation from the private sector and shall provide preliminary transaction structuring guidance.

IDB Review Committee. Economic Development Services shall be responsible for coordinating staff review of IDB applications, utilizing an IDB Review Committee with representatives from Economic Development Services, the City Attorney, the City Treasurer, the City Auditor and Comptroller, the Financial Management Department and other City departments and agencies as needed. The objective of the review will be to prudently evaluate the suitability of particular projects for IDB financing and potential fiscal impacts on the City. Upon completion of the Committee's review, Economic Development Services will produce a City Manager Report which presents perceived benefits, identifies financial concerns and offers a recommendation. The Committee shall also meet periodically for updates on IDB Program status.

Independent Consultants. The City shall normally designate financial advisor, bond trustee and bond counsel for all City-issued IDB's. The City shall also have the right to approve the applicant's nominee(s) for bond/underwriter, which shall be consistent with the City's MBE/WBE and equal opportunity participation goals. The cost of all consultant services shall be paid for by the applicant.

The financial advisor shall review the financial aspects of the IDB issue, including project feasibility and security structure. The bond trustee shall perform certain bond administration fiduciary functions, including registrar and paying agent. The bond counsel shall provide services customarily provided by bond counsel, including procedural issues and review of the legal aspects of the proposed transaction. In the event that the City Council approves bond counsel nominated by the applicant, the City shall also engage independent legal counsel.

Review of IDB Applications. IDB applications shall be submitted to the Director, Economic Development Services. The application may be denied at the Economic Development Services level, referred to another issuer such as the California Statewide Communities Development Authority Joint Powers Agency ("the JPA"), or, if initially deemed potentially feasible and appropriate for financing through IDB's issued by the City, distributed to the IDB Review Committee for further review.

The IDB Review Committee and the City's independent consultants shall prudently and expeditiously evaluate applications not previously denied for financial feasibility, public benefit, security structure, reasonable costs, potential fiscal impacts and compliance with City policy and applicable state and federal laws. Applicants shall expeditiously provide any supplemental information required.

Upon completion of the application review, Economic Development Services shall forward through the IDB Review Committee a report and recommendation to the City Manager. The item shall then be docketed directly to the full City Council for approval or denial. Every effort will be made to obtain initial official action by the City Council on all applications within 60 days of submission.

Processing of Approved IDB Financings. Final City Council approval of any IDB issue shall be subject to the submission of substantially final documentation for the bonds and shall be at the sole discretion of the City Council. If the IDB application is approved by City Council, Economic Development Services shall be responsible for coordinating implementation of the financing with the applicant, the IDB Review Committee, the City's independent consultants and the appropriate City officials.

Administration of Outstanding Bond Issues. Ongoing day-to-day administration of outstanding bond issues shall be the responsibility of Economic Development Services, which shall consult with and provide status reports to other IDB Review Committee members as appropriate.

Fees. It shall be the policy of the City to obtain full recovery of all City and consultant costs related to review and approval of IDB applications, IDB issuance and subsequent bond administration costs. Fees shall be charged in accordance with applicable federal law as sufficient to maintain an ongoing IDB Program. First priority use of fee revenues in excess of IDB Program expenses shall be for City economic development programs, particularly MBE/WBE and small business assistance and neighborhood commercial revitalization efforts.

The City's maximum IDB fee schedule shall be as follows:

- 1) **Application Fee.** If the City is proposed to be the issuer, a \$2,500 non-refundable application fee shall be payable at time of submission of the IDB application; if the issuer is to be the JPA or some similar entity other than the City, the application fee shall be \$1,250.
- 2) **Other City Processing and Administrative Expenses.** Staff shall engage the services of qualified independent consultants, at the expense of the applicant, to provide assistance in IDB application review, transaction processing and/or bond administration, as needed. The applicant shall be required to deposit in advance with City amounts sufficient to pay for City staff time and City out of pocket costs for consultant services. If bonds are issued, any unexpended balance remaining on deposit shall be applied, without interest, towards reduction of the origination fee due prior to closing. If bonds are not issued, any amount remaining shall be returned without interest to the applicant.
- 3) **Origination Fee.** A non-refundable IDB origination fee equal to 1/4% of the principal amount of bonds shall be payable prior to IDB issue closing.
- 4) **Administration Fee.** An administration fee equal to .025% of the principal amount of bonds outstanding as of January 1 of the year of payment (minimum \$500) shall be payable on each anniversary of the date of issuance of the IDB's. The administration fee shall be waived if the City is not the issuer of the IDB's.
- 5) **Transaction Fee.** The applicant or its successor shall be required to deposit in advance with the City amounts sufficient to cover City staff and consultant costs related to any proposed change in the bond documents after IDB's are issued.

Indemnification. Each applicant shall be required, as a part of bond documentation, to provide an indemnity to the City, its officers, agents and employees for all expenses, including attorneys' fees, as well as any investigation, defense, judgement or settlement costs arising out of any investigation, claim or litigation involving any IDB issue or the documentation related thereto, including any disclosure materials.

CITY OF SAN DIEGO, CALIFORNIA
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HISTORY:

“Administration of the City’s
Private Activity Bond Allocation”
Adopted by Resolution R-264213 10/14/1985
Retitled to “Industrial Development Bond Program” and
Amended by Resolution R-282170 06/15/1993