



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: July 1, 2016 Report No.: 16-069
ATTENTION: Honorable Council President and Members of the City Council
SUBJECT: Amendments to Council Policy 100-21 (Funding for Maintenance Assessment District Formation)
REFERENCE: Manager's Report No. 04-193, September 1, 2004 to the Mayor and City Council

REQUESTED ACTION:

Amend Council Policy 100-21 to provide guidance on formation, budgeting, and management of Maintenance Assessment Districts.

STAFF RECOMMENDATION

Approve the requested action.

SUMMARY:

In seeking to update the City's Municipal Code pertaining to Maintenance Assessment Districts, it was determined that updating Council Policy 100-21 was necessary to be consistent with the proposed Municipal Code. Addressing policy and processes for formation, budgeting, and management practices for Maintenance Assessment Districts through amendments to Council Policy 100-21 will provide greater flexibility for future updates.

DISCUSSION:

Maintenance Assessment Districts (MADs) are special assessment districts where property owners pay assessments to fund enhanced improvements and activities, in their neighborhood or community, which confer Special Benefits on those assessed. These improvements and activities are beyond those generally provided by the City as a General Benefit.

Support for forming a MAD is often initiated by a developer during the development of a new community or by property owners within a developed community. However, the City is ultimately responsible for establishing a MAD and for the appropriate use of MAD assessments. Therefore, the formation process and management of MADs requires close coordination between the proponents and the City, and adherence to procedures and guidelines.

MAD formation also generally requires that the initiating party pay for the preparation of an Assessment Engineer's Report, the cost of balloting, administrative costs, and other incidental expenses. In developing communities, this cost may be funded by a developer or with private contributions. However, this cost may be prohibitive for property owners in developed areas.

Typically, MADs are located in residential areas and are managed by the City. However, there are a number of MADs, mainly located in the City's older commercial corridors, where the property owners desired to have the MAD managed by a nonprofit that represents the property owners. In these cases, the property owners indicated on the formation ballot their interest in having a self-managed MAD, and the City then entered into an agreement with the indicated nonprofit entity to implement the approved MAD activities and improvements in compliance with the MAD's Assessment Engineer's Report and with State law.

Proposed revisions to the Municipal Code and the need to update the Council Policy will facilitate closer coordination from the outset between property owners and the City during the MAD formation process. It will also facilitate greater guidance to nonprofit entities seeking to manage a MAD.

Community Initiation of a Maintenance Assessment District

The amendments to the Council Policy outline the process for the formation of new districts using City funds. City funds may only be used for creation of a district management plan and engineer's report, as well as the ballot process, including notice and ballot tabulation. A funding request will be granted based on objective and quantifiable ranking criteria as established by the Mayor or the Mayor's designee, including but not limited to the results of a survey, feasibility study, receipt of letter of opinion, or property owner and community organization support.

The amendments also clarify the procedure, requirements, and timing for the petition process and review of petitions to ensure sufficient current support for the MAD proposal prior to bringing the item to City Council for consideration.

A major clarification in the amended Policy, consistent with the Municipal Code, regards the preparation of an Engineer's Report. The Report may be prepared by either the City's Assessment Engineer or, alternatively, by an outside engineer selected by the district formation committee and approved by the Mayor or Mayor's Designee.

All Assessment Engineers will be required to insure and indemnify the City of San Diego for their work, and shall be required to ensure that the Report meets the requirements of Proposition 218. Interested property owners may retain a consultant to help with the feasibility study and for advocacy efforts. However, those activities and expenses are not eligible for reimbursement by the City.

It is the City's preference for district formation committees to work with the City's Assessment Engineer, as it is anticipated to shorten the time between the petition process and routing the proposed MAD item for City Council consideration. It may also reduce the overall formation cost per MAD by eliminating both duplication of professional engineering work as well as

requests for the City to assume additional risk during negotiations with consultants retained by community members.

The existing policy is focused on the availability and requirements to request funding from the one funding source for district formations. The proposed policy will, however, have two sources of City funds available: the Commercial Districts Revolving Fund and the Community Districts Revolving Fund (currently MAD Formation Fund). The additional funding sources are being proposed for forming special assessment districts in commercial neighborhoods under the Commercial Districts Revolving Fund.

City Cost Recovery

The existing policy has a City Administration fee set at 4% of each self-managed MAD's assessments or \$3,500, whichever is greater. Due to the varying size of MADs and to be consistent with other cities in the state of California, the updated proposed City Administration fee will, moving forward, be set at 4% of each self-managed MAD's assessments, or \$3,500, whichever is lesser.

Standards for a Contractor (nonprofit Owner's Association) to administer a MAD

The proposed policy addresses the requirements for a nonprofit owners' association if it is proposed to be the administrator of a MAD. It also has provisions regarding transparency of the owners association with regards to the MAD through compliance with the Brown Act and California Public Records Act, the involvement of assessed property owners, the posting of documents, and mailing of notices.

Reserve and Disbursement Payment Policy

Generally, assessment revenue for MADs is collected by the County and remitted to the City throughout the fiscal year. Those entities whose property is not subject to a special fixed charge by the County (such as public agencies) are assessed by the City directly.

Most of the annual assessment revenue is collected and remitted to the City in the months of January and May. The City deposits all of the assessment revenue into the respective MAD accounts (Funds) to fund appropriate expenditures.

The City may advance funds at the beginning of each fiscal year and also provide reimbursements monthly for eligible expenditures. Depending on the amount of accumulated reserves, MAD Funds may have negative cash balances during the fiscal year with the necessary cash being fronted by the General Fund. Conversely, if too many assessments are held in accumulated reserves then needed activities and improvements in the community may be delayed.

Staff reviewed these concerns and is proposing provisions in the policy to address advances and reimbursements; specifically, four kinds of reserves are to be identified annually in the budget:

- A. *Delinquency Reserve* – an amount based on a percentage of projected *assessments* using the average *assessment* delinquency rate from the last three years plus 1%.

- B. *Operating Reserve* – an amount based on a percentage of the operating annual budget expenditures ranging from 10% - 50% for unanticipated operating expenditures and emergency situations until required (such as recent history of unanticipated expenditures to replace elements such as, but not limited, to a tree, light post, street furniture element, trash receptacle, etc.).
- C. *Cash Flow/Advance Reserve* – an amount needed to provide sufficient cash balance in the fund as determined by City staff for self-managed districts; not to exceed three months of assessments, but otherwise at least an amount equal to the size of the advance requested by the owners’ association for the start of an Agreement. This reserve shall be held by the City except for the portion provided to the owners’ association as a working capital advance. Self-managed districts may determine their own Cash Flow/Advance Reserve requirements and must inform the City of their established requirements.
- D. *Capital Reserve* – an amount reserved for planned future capital projects which require multiple years of reserved funding.

To the extent that an administering nonprofit owners’ association wishes to have a working capital advance, that amount must be budgeted and reserved with the City until such time as the appropriate level of cash over and above other reserve requirements is reached in the MAD Fund.

The advance must be returned or accounted for upon or before the termination of the MAD Agreement. The City, at its discretion, may accept either a reduction of the final reimbursement request(s) or a transfer of funds from the Contractor. The City will continue to provide monthly reimbursements to the Contractor for eligible expenses incurred. The MAD Management Agreement may be a term of up to five years.

Conclusion

In general, these proposed changes to the Policy are intended to provide guidance and standardization of practices for interested community members and the City in establishing and managing districts. The proposed changes will simultaneously afford flexibility for budgeting reserves and will provide advances for circumstances unique to each MAD.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

- Goal #2: Work in partnership with all of our communities to achieve safe and livable neighborhoods.
- Objective #5. Cultivate civic engagement and participation.
- Goal #3: Create and sustain a resilient and economically prosperous City.
- Objective #1. Create dynamic neighborhoods that incorporate mobility, connectivity, and sustainability.

FISCAL CONSIDERATIONS:

Due to the proposed City administration rate of the lesser of \$3,500 or 4% of annual assessments, there is an anticipated General Fund impact of \$72,032 for FY2017. Economic Development Department (EDD) staff costs are captured within the department budget.

In FY16, the EDD budgeted \$94,314 in revenue from self-managed MADs to partially offset administrative cost. With the proposed change, FY17 annual revenue to the department to offset administrative costs for self-managed MADs will be an estimated \$25,668. This represents a \$68,646 reduction in annual budgeted revenue from the previous year.

In FY16, the Park and Recreation Department (P&R) budgeted for \$10,386 in revenue from MADs to partially offset administrative costs for two existing self-managed MADs. With the proposed change to the administration fee formula, in FY17 the Park and Recreation Department's revenue for existing MADs will be an estimated \$7,000. This represents a \$3,386 reduction in annual budgeted revenue from the previous year. EDD will offset the P&R reduced annual budgeted revenue for self-managed districts within the department budget.

The total impact will be a reduction of \$72,032 in annual revenue from self-managed MADs for cost recovery in the EDD and P&R Departments. MAD administrative costs have historically not been fully cost recoverable for self-managed districts, as noted above. Moving forward, EDD will absorb the total reduction in revenue for all self-managed MADs in its annual department budget.

Currently, the Community Districts Revolving Fund balance is \$79,510. The proposed policy requires a repository for a minimum of \$150,000 from the General Fund. In order to meet the minimum proposed requirement to fund district formations, an additional \$70,490 is being requested to replenish the Community Districts Revolving Fund.

There is also an anticipated but unquantified reduction in the use of General Funds for MAD advances, reimbursements, and expenses prior to receipt of assessments from the County of San Diego.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

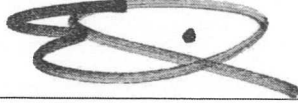
City Council established Council Policy 100-21 (Funding for Maintenance Assessment District Formation) on September 7, 2004.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

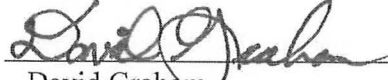
Proposed changes were shared with community members over the last four months by Economic Development and Park and Recreation staff. Drafts of the proposed Council Policy amendments were shared at three noticed public meetings on October 27 and November 10, 2015 and January 11, 2016. An additional meeting was held for self-managed MAD associations.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include all property owners within the boundaries of the MADs and the Contractors that oversee the self-managed assessment districts.



Erik Caldwell
Director, Economic Development



David Graham
Deputy Chief Operating Officer