

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) N/A
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Economic Development	DATE: 9/25/2015
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SUBJECT: Proposed Amendments to the Municipal Code for Maintenance Assessment Districts

PRIMARY CONTACT (NAME, PHONE): Elizabeth Studebaker, 619-533-4561 MS 56-D	SECONDARY CONTACT (NAME, PHONE): Luis Ojeda, 619-236-6475 MS 56-D
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COMPLETE FOR ACCOUNTING PURPOSES

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE): N/A

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Environmental Analysis	Comptroller	ORIG DEPT. Caldwell, Erik	10/09/2015
Equal Opportunity Contracting		CFO	
Liaison Office		DEPUTY CHIEF Graham, David	10/21/2015
Park and Recreation		COO	
Financial Management		CITY ATTORNEY Wander, Adam	
		COUNCIL PRESIDENTS OFFICE	

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

Amend the existing language in San Diego Municipal Code Chapter 6 (Public Works and Property), Article 5, Division 2, regarding Maintenance Assessment Districts to create a local enabling (procedural) ordinance for establishing Maintenance Assessment Districts.

STAFF RECOMMENDATIONS:
Approve requested action.

SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)

COUNCIL DISTRICT(S):	Citywide
COMMUNITY AREA(S):	All
ENVIRONMENTAL IMPACT:	This activity is not a project as defined by the California Environmental Quality Act Section 21065 and State CEQA Guidelines Sections 15378(b)(4) and 15378(b)(5), as it is a funding mechanism and an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment. The determination that this activity is not subject to CEQA, pursuant to Section 15060(c)(3), is not appealable and a Notice of Right to Appeal the Environmental Determination (NORA) is not required.
CITY CLERK INSTRUCTIONS:	

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 9/25/2015

ORIGINATING DEPARTMENT: Economic Development

SUBJECT: Proposed Amendments to the Municipal Code for Maintenance Assessment Districts

COUNCIL DISTRICT(S): Citywide

CONTACT/PHONE NUMBER: Elizabeth Studebaker/619-533-4561 MS 56-D

DESCRIPTIVE SUMMARY OF ITEM:

Amend the Municipal Code to create a local enabling (procedural) ordinance and clarify and update provisions regarding establishment and management of Maintenance Assessment Districts.

STAFF RECOMMENDATION:

Approve requested action.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

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.

While property owners are extensively involved in MADs, 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 procedures and guidelines as proposed in these amendments to the San Diego Municipal Code.

Please refer to Report to the City Council No. 15-087 for more information.

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:

Anticipated general fund fiscal impact is an 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.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

This section of the Municipal Code was last amended effective June 1998.

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 municipal code 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 those property owners in a current MAD and nonprofit administrators of self-managed MADs.

Caldwell, Erik

Originating Department

Graham, David

Deputy Chief/Chief Operating Officer



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: January 25, 2016 Report No.: 15-087
ATTENTION: Honorable Council President and Members of the City Council
SUBJECT: Proposed Amendments to the Municipal Code for Maintenance Assessment Districts

REQUESTED ACTION:

Amend the existing language in San Diego Municipal Code Chapter 6 (Public Works and Property), Article 5, Division 2, regarding Maintenance Assessment Districts to create a local enabling (procedural) ordinance for establishing Maintenance Assessment Districts.

STAFF RECOMMENDATION

Approve the requested action.

SUMMARY:

City staff proposes amending Municipal Code provisions regarding Maintenance Assessment Districts (MADs) to create a local enabling (procedural) ordinance for establishment of MADs which shall also include specific provisions for management of MADs.

In reviewing the Municipal Code, staff also determined that certain items were best addressed via Council Policy. Additionally, over the last few years there have been a variety of discussions about best practices for management of Maintenance Assessment Districts by nonprofit organizations. Council Policy provides greater flexibility in updating budgeting and management practices for self-managed Maintenance Assessment Districts as needs and circumstances change. A separate report has been prepared concerning proposed amendments to Council Policy 100-21 (Funding for Maintenance Assessment District Formation) to incorporate elements of the update not captured in the proposed Municipal code amendments.

This report provides an overview of the proposed changes to the Municipal Code.

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 an already-developed community. Property owners may also indicate an interest in having the MAD managed by a non-profit which represents the property owners. 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 procedures and guidelines as proposed in these amendments to the San Diego Municipal Code.

Enabling Legislation

These amendments will create a local enabling (procedural) ordinance for establishing MADs. Previously the City has alternated between using a local ordinance and relying on state legislation (“Landscape and Lighting Act of 1972” - Streets and Highways Code §22500 et seq.). Now City staff recommends that City Council replace the existing Municipal Code provisions in their entirety with the proposed amendments for a local procedural ordinance for establishing MADs. Please note that formation of MADs must still follow applicable provisions of “Proposition 218” (Article XIII D of the California Constitution).

Major changes

Definitions have been standardized to be consistent with other assessment districts such as Property and Business Improvement Districts (PBIDs) and clarification has been provided regarding “Administrative Expenses” so there is consistency between self-managed and City-managed MADs. A definition has been added for “Owners’ Association” to clarify that the entity is a private entity consistent with PBID and Tourism Marketing District (TMD) legislation but still requires compliance with Brown Act for all MAD business. Other changes were made as needed for the amendments.

The amendments provide a clearer process for formation (and disestablishment) including the petition requirements and the crafting of the required Assessment Engineer’s Report. For example, with regards to petitions, the petition process will begin with a district formation committee, which is comprised of property owners, and is responsible for developing (with assistance from City Staff) a draft district management plan and Assessment Engineer’s Report for review and adoption by the City before starting the petition signature gathering phase. Once approved, the district formation committee can start gathering signatures to be submitted to the City to provide proof of property owner support for the proposed MAD. Petitions in support must be submitted from property owners representing 30% of the weighted assessments to be generated in the proposed district.

With regards to the Assessment Engineering, the City shall assign the Assessment Engineer, or the district formation committee may hire an outside engineer, but only if 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.

The Resolution of Intention shall include provisions for noticing the required Public Hearing consistent with Proposition 218 Districts (Cal Govt. Code §53753).

Then, upon establishment through adoption of the Resolution of Formation, assessments shall be levied in perpetuity for new districts and the validity of the MAD may only be contested within 30 days after adoption of the resolution (like PBIDs). For existing MADs, during the next annual budget process, the authorization to levy assessments shall effectively levy the assessments in perpetuity.

Regarding the Collection of Assessments, there has been language included to enable an owners association to receive assessments directly from the County of San Diego, but only after appropriate safeguards and measures of accountability are established to the satisfaction of the City.

There are also a number of provisions which address representation of property owners and administration of MADs, particularly where the City may decide to contract with an owners' association for administration of the MAD (self-managed MAD). For example, once established, MAD operations may commence no sooner than six months later to allow time for assessments to be collected by the County and remitted to the City so that the City does not have to float MAD advances and/or operational spending.

A modified provision concerns property owner representation through a community planning group. Currently, where a proposed MAD is generally coterminous with a Community Planning Area, then the respective community planning group is the preferred representative for the property owners within the MAD. However, now the community planning group may form a committee and designate that committee as the property owner representative in lieu of the planning group acting as the property owner representative. Unchanged is that where the boundaries are not coterminous then property owners may establish their own advisory group of designated representatives to speak for the property owners.

The requirements for meetings between City and Property Owners and, if applicable, owners' associations are set at a minimum of one noticed meeting though more may be required for self-managed MADs.

Currently, the owners' association cannot have a financial interest in any agreements executed by the board for MAD-related goods and services (including improvements), however, it is proposed that the provision will now also encompass board members. Procurement procedures shall be specified in the agreement. The agreement may not exceed five (5) years and must still include a provision allowing for termination for convenience upon 30 days written notice. Additionally, the owners' association must still indemnify, defend, and hold the City free and harmless and obtain and maintain comprehensive insurance including public liability and workers compensation.

The provisions for changing administrators of a MAD have been clarified; property owners may request a change of administrator by petition of 30% or more of all parcels (unweighted), however, City Council retains final authority over the decision.

The amendments also clarify budget submittal requirements. Accounting records and audited financial statements are still required but now must include advances and program income and

document how program income offsets the use of MAD or City funds. Also, an Annual Report rather than an Assessment Engineer's Report shall be submitted annually to Council for budgeting purposes.

Generally, most of the provisions pertaining to delinquent payments, waivers, liens, and sales of property are proposed to be eliminated from the Municipal Code and to be required in the Resolution of Formation.

Staff believes that implementing the proposed provisions in conjunction with the proposed amendments to Council Policy 100-21 will provide clarity on MAD formation and management requirements.

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:

Anticipated general fund fiscal impact is an 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:

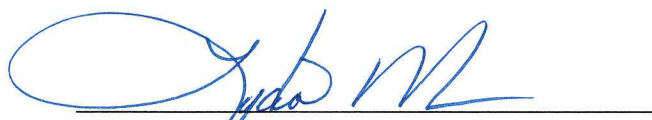
This section of the Municipal Code was last amended effective June 1998.

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 municipal code 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 those property owners in a current MAD and nonprofit administrators of self-managed MADs.


Lydia Moreno
Deputy Director, Economic Development


David Graham
Deputy Chief Operating Officer

Article 5: Street Lighting, Landscaping and other Public Facility Procedures**Division 2: Maintenance Assessment District Procedural Ordinance****§65.0201 Purpose and Intent**

- (a) One of the purposes of this division is to allow for the formation of *districts* in the City to fund *improvements* and *activities* through the levy of *assessments* upon the real property that receive benefits from those improvements. To accomplish this purpose, the City Council intends that the definition of the terms *improvement* and *activities* be interpreted liberally.
- (b) It is also the purpose and intent of this Division to establish a method by which *improvements* may be constructed, installed, or *maintained*; the costs of which are to be assessed to any real property which receives a *special benefit* from such *improvements*.
- (e) It is also the intent of this Division to provide a method for the City Council to authorize a *non-profit corporation* to assume responsibility for the administration and day to day management of a *district*.

§65.0202 Citation of Division

This division may be cited as the San Diego Maintenance Assessment District Procedural Ordinance.

§65.0203 Rules of Construction

This Division shall be liberally construed in order to effectuate its purposes. No error, irregularity, informality and no neglect or omission of any officer, in any procedure taken under this Division which does not directly affect the jurisdiction of the City Council (“Council”) to order the work shall void or invalidate such procedure or any *assessment* or the cost of the work done thereunder. The exclusive remedy of any person affected or aggrieved thereby shall be by appeal to the Council in accordance with the provisions of this Division.

§65.0204 Definitions

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. For purposes of this Division, the following definitions shall apply:

“*Administrative Expense*” includes all incidental and personnel expenses incurred as a result of managing the *district*, including but not limited to *district* formation, assessment engineering, annual reporting, budget preparation and monitoring, assessment levying, invoicing, collections, information technology, communications

(12-2007)

equipment, contract procurement, vendor invoice payments, inspection of *improvements* and *activities* as required by contract, personnel, preparation and routing of requests for Council action, legal assistance, rent, office space, miscellaneous office expenses (i.e., supplies and utilities), and any related overhead or supervisory function incurred by the City or *owners' association*.

"*Activities*" means, but is not limited to, all of the following that benefit real property in the *district*:

- (a) Promotion of *district* events.
- (b) Furnishing of music, programming, entertainment, or public art within the *district*.
- (c) Providing security, sanitation, graffiti removal, street and sidewalk cleaning, landscaping, management of public spaces and other such services supplemental to those normally provided by the City.
- (d) Other services provided for the purpose of conferring *special benefit* upon assessed *property* located in the *district*, including *administrative expenses*.

"*Assessment*" means a levy for the purpose of acquiring, constructing, installing, or maintaining *improvements* and providing *activities* that will provide certain benefits to real property located within a *district*. *Assessments* levied under this Division are not special taxes.

"*Assessment engineer*" means an engineer registered pursuant to the Professional Engineers Act (Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code) hired by the MAD formation committee, or the City to prepare *engineer's reports*.

"*District*," means an area established pursuant to this Division, within which *Property Owners* pay *assessments* to fund *improvements* and *activities*.

"*Engineer's Report*" means a report prepared by an *assessment engineer* in accordance with article XIII D, section 4(b) of the California Constitution.

"*Improvement*" means the acquisition, construction, installation, or maintenance of any tangible property including, but not limited to, the following:

- (a) Parking facilities.
- (b) Benches, booths, kiosks, display cases, pedestrian shelters and signs.
- (c) Trash receptacles and public restrooms.
- (d) Lighting and heating facilities.
- (e) Decorations.
- (f) Parks and public spaces.
- (g) Fountains and monuments.
- (h) Planting areas.

- (i) Closing, opening, widening, or narrowing of existing streets.
- (j) Facilities or equipment, or both, to enhance security of persons and property within the area.
- (k) Ramps, sidewalks, plazas, and pedestrian malls.
- (l) Rehabilitation or removal of existing structures.
- (m) Design, construction and maintenance of community signs;

"*Owners' association*" means a private nonprofit entity which represents, and whose membership includes the assessed *property owners* or *property owners'* representatives in a *district*. An *owners' association* may be an existing nonprofit entity or a newly formed nonprofit entity. Consistent with California Streets and Highways Code section 36614.5, the *owners' association* is a private entity and may not be considered a public entity for any purpose, nor may its board members or staff be considered to be public officials for any purpose. An *owners' association* shall comply with the Ralph M. Brown Act, California Government Code section 54950 *et seq.*, at all times when matters within the subject matter of the *district* are heard, discussed, or deliberated, and with the California Public Records Act, California Government Code section 6250 *et seq.*, for all documents relating to *improvements* and *activities* of the *district*. Board members, officers, and members of the *owners' association* are intended and understood to represent and further the interest of the property owners located within the *district*. Each *property owner* or *property owner's* representative paying the *assessment* has the right to seek nomination in annual elections to the board of directors of the *owners' association*.

"*Property*" means real property situated within a *district*.

"*Property owner*" or "*owner*" means any person shown as the owner of *property* on the last equalized *assessment* roll or otherwise known to be the current owner of *property* by the City.

"*Special benefit*" means a particular and distinct benefit over and above general benefits conferred on real property located in a *district* or to the public at large. Special benefit includes incidental or collateral effects that arise from certain *improvements* or activities of *districts* even if those incidental or collateral effects benefit property or persons not assessed. *Special benefit* excludes general enhancement of property value.

§65.0205 Alternative Financing Method; No Limit on Other Provisions of Law

This Division provides an alternative method of financing certain *improvements* and *activities*. The provisions of this Division shall not affect or limit any other provisions of law authorizing or providing for *improvements* or *activities* or the raising of revenue for the benefit of *properties*.

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§65.0206 Non-exclusiveness of Remedies

The remedies provided in this Division for the enforcement of any *assessment* levied pursuant to this Division are not exclusive, and additional remedies may be provided at any time.

§65.0207 Establishment of District

A *district* may be established as provided in this Division, in the following manner:

- (a) A *district* formation committee, comprised of property owners proposing to form a *district*, working with the Mayor or Mayor's designee, shall formulate, vote upon, and submit a draft *district* management plan to the City for review and comment. Once the City has commented, an independent *assessment engineer* hired by the City or the *district* formation committee will review the report and prepare an engineer's report consistent with the draft district management plan, article XIII D, section 4(b) of the California Constitution, Sections 53750 through 53758 of the California Government Code, the City of San Diego Municipal Code, and all other applicable laws. Once the *engineer's report* and the draft *district* management plan have been finalized and approved by the City, with all the respective relevant elements, including special benefit services to be funded, assessment methodology, benefit zones (if any), frequency of services, boundaries, and whether the district will be managed by the City or by an *owners' association*, the City shall inform the *district* formation committee that they may initiate a formal petition drive to demonstrate to the City that appropriate support exists to proceed with the assessment ballot proceeding for formation of the *district*.
- (b) The City may, at its sole discretion, determine whether or not the City will provide the initial funding for the costs of preparing the draft *district* management plan and engineer's report.
- (c) Upon the submission of a written petition supporting the approved MAD management plan, signed by the *property owners* who represent 30 percent of the weighted property owners in the proposed district, or equal to at least 30% (thirty percent) of the proposed assessments to be generated in the proposed district, the City may initiate proceedings to establish a *district*. The petition shall contain a map showing the boundaries of the *district*, a generally summary of the types of *improvements* and *activities* that will be provided within the *district*, the exact cost to the respective property owner and their proportional weight relative to the total budget proposed for the new district which will fund the costs of providing such *improvements* and activities.
- (d) Prior to submitting the draft *district* management plan and petitions to the City, the formation committee shall document that:
 - i. At least two (2) noticed and open meetings were held which included an agenda item for discussion of the *district* proposal;
 - ii. A notice was published in a newspaper of general circulation, or

- publication of similar distribution which accurately summarized the draft *district* management plan and cost and gave notice of the two public meeting dates; and
- iii. Information about the proposed *district* was posted for a minimum of three (3) weeks at a community-accessible public building within the proposed *district* boundary;
 - iv. The officially recognized community planning committee for the area where the proposed *district* is located was informed about the proposed *district* formation; and
- (d) Upon verification by City staff that the petitions of support representing 30% of weighted property owners are the legal owners or the designated representatives of the owners within the proposed district the Council may proceed with the formation of the *district* by the adoption of a resolution of intention expressing its intention to establish a *district*.
- (e) The resolution of intention described in subdivision (d) shall contain all of the following:
- (1) A brief description of the proposed *improvements* and *activities*, the amount of the proposed *assessment*, a statement that bonds will not be issued, and a description of the exterior boundaries of the proposed *district*. The descriptions and statements do not need to be detailed and shall be sufficient if they enable an *owner* to generally identify the nature and extent of the *improvements* and *activities* and the location and extent of the proposed *district*.
 - (2) A time and place for a public hearing on the establishment of the *district* and the levying of *assessments*, which shall be consistent with the requirements of San Diego Municipal Code sections 65.0209 and 65.0210.

§65.0208 Engineer's Report

The *engineer's report* shall contain all of the following:

- (a) A map of the *district*.
- (b) The name of the proposed *district*.
- (c) A description of the boundaries of the proposed *district*, including the boundaries of any benefit zones, in a manner sufficient to identify the affected *properties*. Nothing in this Division prohibits the boundaries of a *district* created pursuant to this Division to overlap with other assessment districts established pursuant to other provisions of law including, but not limited to, the

(12-2007)

Parking and Business Improvement Area Law of 1989, California Streets and Highways Code section 36500 *et.seq.*, or the Property and Business Improvement District Law of 1994, California Streets and Highways Code section 36600 *et.seq.*

- (d) The general description of *improvements* and *activities* proposed the estimated maximum cost thereof for first fiscal year.
- (e) The estimated total annual amount proposed to be expended for administration and operation of the *district*.
- (f) The proposed source or sources of financing including the proposed method and basis of levying the *assessment* in sufficient detail to allow each *property owner* to calculate the amount of the *assessment* to be levied against their *property*.
- (h) A statement that the *district* will continue until it is disestablished pursuant to San Diego Municipal Code section 65.0223.
- (k) A list of the *properties* to be assessed.
- (m) Any other item or matter required to be incorporated therein by the Council, the San Diego Municipal Code, or any other applicable law.

§65.0209 Notice of Proposed Assessments; Public Hearing

If the Council proposes to levy a new or increased *assessment*, the notice, protest, and hearing procedure shall comply with Section 53753 of the California Government Code. There shall be no statements in favor or in opposition by either the City, *district* proponents, or *district* opponents contained in or accompanying the notice and ballot materials.

§65.0210 Resolution of Formation of District

- (a) Following a public hearing in which there is no majority protest from the returned weighted ballots, the Council may decide to establish the proposed *district*, and if the Council decides to establish the proposed *district* it shall do so by adopting a resolution of formation that shall contain all of the following:
 - (1) A brief description of the proposed *improvements* and *activities*, the amount of the proposed *assessment*, a statement that bonds will not be issued, and a description of the exterior boundaries of the proposed *district*, which may be made by reference to any plan or map that is on file with the clerk. The descriptions and statements need not be detailed and shall be sufficient if they enable an *owner* to generally identify the nature and extent of the *improvements* and *activities* and the location and extent of the proposed *district*.

- (2) The number, date of adoption, and title of the resolution of intention.
 - (3) The time and place where the public hearing was held concerning the establishment of the *district*.
 - (4) A determination regarding any protests received. The city shall not establish the *district* or levy *assessments* if a majority protest was received, as that term is defined in Section 53753 of the California Government Code.
 - (5) A statement that the *properties* in the *district* established by the resolution shall be subject to any amendments to this part.
 - (6) A statement that the *improvements* and *activities* to be conferred on properties in the *district* will be funded by the levy of the *assessments*. The revenue from the levy of *assessments* within a *district* shall not be used to provide *improvements* or *activities* outside the *district* or for any purpose other than the purposes specified in the resolution of intention, as modified by the Council at the hearing concerning establishment of the *district*.
 - (7) A finding that the property within the area of the *district* will be specially benefited by the *improvements* and *activities* funded by the proposed *assessments*.
- (b) Prior to adopting the resolution of formation, the Council may modify the *engineer's report*, or any portion thereof, so long as the modification does not result in any *property owner* paying a higher *assessment* than indicated on that *property owner's* ballot or result in an *assessment* being levied on any *property* for which the *property owner* was not balloted.
 - (c) The adoption of the resolution of formation shall constitute the levy of an *assessment* in each of the fiscal years for the life of the *district*.
 - (d) The *improvements* and *activities* in the *district* may not commence any sooner than six months after the resolution of formation so that the necessary amount of *assessment* funds may accrue to implement the *improvements* and *activities*.

§65.0211 City Clerk to Record Notice and Map of District

Following adoption of a resolution establishing a *district* pursuant to San Diego Municipal Code section 61.2510 the City Clerk shall record a notice and map of the *district*.

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§65.0212 Existing Districts

Every *district* established prior to April 1, 2016, pursuant to State law or prior versions of this Division is hereby declared valid, effective, and in compliance with this Division. Such an existing district is subject to this Division rather than any provision of prior law and adoption of a resolution authorizing the levy of *assessments* in the *district* for any fiscal year beginning on or after April 1, 2016, shall authorize and constitute the levy of an *assessment* in each of the fiscal years for the life of the *district*.

§65.0213 Property Owner Representatives

- (a) In the event a *district* is managed by the City and the *district's* boundaries are substantially the same as the boundaries of a community represented by a community planning group that has been established under applicable City guidelines, the community planning group shall be the preferred property owner representative for the *property owners* within the *district* for the purposes of Chapter 6, Article 5, Division 2. The community planning group may form a committee and designate that committee as the property owner representative in lieu of the planning group acting as the property owner representative.
- (b) In the event the boundaries of a *district* managed by the City are substantially not the same as the boundaries of an established community planning group, the *property owners* within the *district* may establish their own advisory group made up of designated representatives.

§65.0214 Collection of Assessments

The collection of the *assessments* levied pursuant to this Division shall be made at the time and in the manner set forth by the Council in the resolution establishing the *district* described in San Diego Municipal Code section 65.0210. A method for charging interest and penalties for delinquent payments of *assessments* may also be prescribed in the resolution establishing the *district*. *Assessments* may be collected at the same time and in the same manner as for the ad valorem property tax, and may provide for the same lien priority and penalties for delinquent payment. All delinquent payments for *assessments* levied pursuant to this division may be charged interest and penalties. The City may act to receive the *assessments* or allow an *owners association* to receive the assessments directly from the County of San Diego. The City shall only allow an *owners' association* to receive assessments directly from the County, if appropriate safeguards and measures of accountability are established to the satisfaction of the City.

§65.0215 Validity of Assessments; Contests

The validity of an *assessment* levied under this Division shall not be contested in any action or proceeding unless the action or proceeding is commenced within 30 days after the resolution establishing the *district* and levying the *assessment* is adopted pursuant to San Diego Municipal Code section 65.0210 or, in the case of *districts* in existence as of January 1, 2016, upon adoption of the resolution pursuant to San Diego Municipal Code section 65.0213. Any appeal from a final judgment in any action or proceeding shall be perfected by the appellant within 30 days after the entry of judgment.

§65.0216 District Modification; Public Hearing Required

- (a) The Council may modify a *district* by adopting a resolution after conducting one public hearing on the proposed modifications. The Council may only make minor modifications to the *improvements* and *activities* to be funded with the revenue derived from the levy of the *assessments* to the extent that those minor modifications are consistent with the *engineer's report*. The City Council may modify the boundaries of the proposed *district*, but only if the modification does not result in additional *property* being included in the proposed *district*. Notice of the public hearing and the proposed modifications shall be accomplished by a first-class mailing to all affected *property owners* of the resolution of intention to modify the *district*, as well as an official notice of the public hearing regarding the proposed modifications. If the modification includes the levy of a new or increased *assessment*, as defined in Gov't Code section 53750, or if the modification is not consistent with the *engineer's report*, then the Council shall comply with Section 53753 of the California Government Code.
- (b) The Council shall adopt a resolution of intention which states the proposed modification prior to the public hearing required by this section. The public hearing shall be held not more than 90 days after the adoption of the resolution of intention and not less than 45 days after the mailing of the notice as referenced in 65.0217(a) above.

§65.0217 Establishment, Modification, or Disestablishment of Benefit Zones

All provisions of this Division applicable to the establishment, modification, or disestablishment of a *district* apply to the establishment, modification, or disestablishment of benefit zones. In order to establish, modify, or disestablish a benefit zone, the Council shall follow the procedure to establish, modify, or disestablish a *district*.

§65.0218 Administration by an Owners' Association

- (a) If the Council determines that the *district* will be administered by an *owners' association*, then the Council may adopt a resolution stating that an *owners' association* shall be responsible for administering all contracts necessary to

(12-2007)

provide the *improvements* and *activities* within the *district* as well as managing the day to day operations of the district

- (b) Upon the submission of a written petition, signed by the *property owners* who represent 30 percent of the assessed weight within an existing *district*, the City may initiate proceedings to switch administrators of a *district*. If the *district* is currently administered by the City, the petition shall include a statement that the *property owners* desire to have an *owners' association* administer the *district*. If the *district* is currently administered by an *owners' association*, the petition will include a statement as to whether the *property owners* desire the City to administer the *district* or another *owners' association*.
- (c) After verification of petition sufficiency, Council may adopt a resolution of intention expressing its intention to switch administrators of the *district*. If the *district* is currently administered by an *owners' association*, the resolution of intention shall seek applicants from nonprofit corporations who desire to act as the *district's owners' association*. The resolution of intention shall also set forth a time and place for a public hearing on the matter of switching administrators for the *district*.
- (d) After the public hearing, the Council may, but is not required to, switch administrators for the *district* by adoption of a resolution to that effect.
- (e) If there is any gap between *owners' associations* in administration of a *district*, the City shall administer the *district* until the new *owners' association* takes over administration.
- (f) Nothing in this section shall be construed as to limit the City's ability to switch *district* administrators at any time without a petition of the *property owners*.

§65.0219 Terms of Owners' Association Agreement

- (a) The agreement with the *owners' association* for administration of the *district* shall be exempt from Chapter 2, Article 2, Divisions 30 and 32 of the San Diego Municipal Code.
- (b) The agreement with the *owners' association* shall require the *owners' association* to indemnify, defend, and hold the City free and harmless from and against any and all claims, demands, liens, or judgments for death of or injury to any person or damage to any property whatsoever alleged to be caused, or caused, by any act or omission of the *owners' association* or any officer, contractor, agent, or employee of the *owners' association*.
- (c) The agreement shall require the *owners' association* to obtain a comprehensive public liability insurance policy satisfactory to the City Manager and the City Attorney, naming the City as an additional insured. The *owners' association*

shall provide the City Manager a copy of a certificate of such insurance each year.

- (d) The agreement shall require the *owners' association* to maintain worker's compensation insurance for its employees.
- (e) The agreement shall provide that neither the *owners' association* nor any of its board members shall have a financial interest in any contract awarded for the *district*.
- (f) As provided for in San Diego Municipal Code section 65.0221, the agreement shall provide that the *owners' association* agrees to conduct at least one (1) noticed meeting per year which shall include the designated advisory group, if applicable, and City staff, along with property owners within the district to discuss the budget, improvements, and activities for the following fiscal year.
- (g) The agreement shall require the *owners association* to hold at least three other noticed meetings per year, in addition to the one required in subsection (g) above open, to *property owners* within the district to provide input on bids or proposals received by the *owners association* for any contracts for *improvements* and *activities* of the *district*, to evaluate the performance of any contractor for the *district*, and to advise the *owners' association* regarding the *improvements* and *activities* for the *district*.
- (h) The agreement shall require the *owners' association* to submit to the City Manager a prospective annual budget pursuant to section 65.0222 for the *improvements* and *activities* for the *district* no later than April 1 of each year for the following *fiscal year*. The City may modify the annual budget prior to submitting it to Council for consideration.
- (i) The agreement shall require the *owners' association* to maintain separate books and records for the *district* which shall be available for audit at any time during normal business hours and as often as the City deems necessary. All records shall be made available within the City of San Diego and the City or its designee shall be allowed to audit, examine, and make excerpts from such data pertaining to all matters covered by this agreement. The *owners' association* shall maintain such books and records for a period of three years following completion of the agreement. The *district* shall pay for the costs of the audit.
- (j) The agreement shall require the *owners' association* to timely provide an audited financial statement of all reimbursements and working capital advances paid to the *owners' association* with *district* funds within the timeframe specified in the agreement. The financial statements must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and audited by an independent Certified Public Accountant (CPA) as selected or

(12-2007)

approved by the City in accordance with Generally Accepted Auditing Standards (GAAS).

- (k) The agreement shall provide that failure of the *owners' association* to comply with any term or conditions of the agreement may result in termination of the agreement.
- (l) The agreement shall provide that if the *owners' association* receives revenue directly generated by *activities* carried out with any *district assessment* funds, then a portion of that revenue must be returned to the *district* account based on the *district's* participation in the funding of the activity generating the revenue.
- (m) The agreement shall have a term not to exceed five (5) years.
- (n) The agreement shall allow the City Manager to terminate the agreement for just cause or impropriety with 30 days' notice. The City Council may terminate the agreement for convenience with 30 days' notice after adopting a resolution expressing the Council intention to terminate the agreement.

§65.0220 Meetings between City and Property Owners; Notice

- (a) Representatives of the City shall participate in or conduct at least one (1) publicly noticed meeting with the designated advisory group or, absent an advisory group, *property owners* within each *district* to discuss the budget, *improvements*, and *activities* for the following *fiscal year*.
- (b) For any *contracts* awarded by the City, or *activities* provided by the City, or *improvement* installed or provided by the City pursuant to this Division, representatives of the City shall attempt to meet on a regular basis with the advisory group or, absent an advisory group, *property owners* within the *district* to evaluate the performance of the contractor or the City and to advise the representatives of the City regarding *improvements* and *activities* for each *district*.
- (c) Upon receipt of bids or proposals for a *contract* for *improvements* or *activities*, representatives of the City shall attempt to meet with the advisory group of the *district* or, absent an advisory group, *property owners* within the *district* to review the bids or proposals.

§65.0221 Annual Report

- (a) The Council shall consider a prospective annual report for each fiscal year, except the first year, for which *assessments* are to be collected to pay the costs of the *improvements* and *activities* described in the report.
- (b) The report shall be consistent with the *engineer's report*, filed with the City Clerk prior to August 10 each year, refer to the *district* by name, specify the

fiscal year to which the report applies, and, with respect to that fiscal year, shall contain all of the following information:

- (1) The *improvements* and *activities* to be provided for that fiscal year.
 - (2) An estimate of the cost of providing the *improvements* and *activities* for that fiscal year.
 - (3) The method and basis of levying the *assessment* in sufficient detail to allow each *property owner* to estimate the amount of the *assessment* to be collected from him or her for that fiscal year.
 - (4) The estimated amount of any surplus or deficit revenues to be carried over from the previous fiscal year.
 - (5) The estimated amount of any contributions to be made from sources other than *assessments* collected pursuant to this Division.
 - (6) A list of parcels within the *district* as indicated on the last equalized secured property tax assessment roll.
- (c) The Council may approve the report as filed or may modify any portion of the report and approve it as modified.

§65.0222 Disestablishment of District; Procedures

- (a) Any *district* established pursuant to the provisions of this Division may be disestablished by resolution by the Council.
- (b) The Council may, at its sole discretion, initiate the process to dissolve a *district*.
- (c) Section 65.0222(b) notwithstanding, *Property owners* interested in dissolving a *district* shall provide written documentation to the City Manager verifying that *property owners* representing at least 30% of the assessed weighted property owners of the relevant *district* support dissolution of the district.
 - (1) The written documentation shall contain the name, signature, address, and parcel number of each *property owner* signing the documentation. The City Council will not act on a resolution to dissolve a district until the City Manager or his designee has verified the contents of the documentation.
 - (2) All costs of mailing and printing the written documentation, and all costs incurred by the City in administering, mailing, printing, and

(12-2007)

tabulating the written documentation and providing notice shall be paid from *district assessment* funds.

- (d) Upon verification of written documentation that *property owners* representing at least 30% of the assessed weighted property owners of the relevant *district* support dissolution of the district, the Council shall adopt a resolution noticing the public hearing required by this section. The resolution shall state the time and place of the public hearing and shall contain a proposal to dispose of any assets acquired with the revenues of the *assessments* levied within the *district*. The notice of the hearing on disestablishment required by this section shall be given by mail to the *owner* of each *property* subject to *assessment* in the *district*. The Council shall conduct the public hearing not less than 30 days after the mailing of the notice to the *property owners*. The public hearing shall be held not more than 60 days after the adoption of the resolution of intention.
- (1) If the Council orders the dissolution of an existing *district*, any moneys left in the fund shall first be used to pay all obligations and costs of administration incurred on behalf of the *district*, including any costs incurred to return funds to *property owners*.
 - (2) Upon dissolution, the remaining *district* funds shall be returned to the *property owners* of the assessed parcels in amounts proportionate to the amounts of *assessments* they paid for the *district*.
 - (3) All *general benefit* contributions shall be returned to their originating fund.
 - (4) Interest earned on any reserve shall be returned to the City's originating fund.

§65.0223 Disestablishment; Refund of Assessments

After all outstanding debts are paid upon the disestablishment of a *district*, any remaining revenues derived from the levy of *assessments*, or derived from the sale of assets acquired with the revenues, shall be refunded to the *property owners* then located and operating within the *district* in which *assessments* were levied. Such refunds shall be distributed by applying the same method and basis that was used to calculate the *assessments* collected in the fiscal year in which the *district* is disestablished. If the disestablishment occurs before an *assessment* is collected for the fiscal year, the method and basis that was used to calculate the *assessments* collected in the immediate prior fiscal year shall be used to calculate the amount of any refund. All outstanding *assessment* revenue collected after disestablishment or expiration shall be spent on *activities* specified in the *engineer's report*.

Maintenance Assessment Districts Municipal Code Amendments

Public Safety & Livable Neighborhoods Committee
February 3, 2016



Background

Existing MAD Formation Legislation

- State (Streets & Highways §22500, Prop 218, Senate Bills)
- Local – SDMC §65.0201 et. seq. (1969, 1975, 1986, 1998)

Outdated and Unclear Municipal Code

- Procedures for Formation
- Guidance for Management

Outreach

- Emails, Calls and three Publicly Noticed Meetings

Recommended Modifications & Clarifications

§65.0204 – Definitions

- New permissible activities:
 - Entertainment or public art
 - Acquisition, construction, and maintenance of community signs
 - Maintenance of parks and public spaces

§65.0207 – Establishment of District

- Assessment Engineer hired by the City or the district formation committee
- Petition support - 30% weighted by assessments

§65.0213 – Property Owner Representatives

- Relationship to community planning groups

Recommended Modifications & Clarifications(cont.)

§65.0214 – Collection of Assessments

- May consider allowance for direct transfer of assessments from the County of San Diego to non-profit management org (with appropriate measures for accountability)

§65.0216 – District Modification; Public Hearing Required

- Minor modifications allowable by City Council if consistent with the Engineer's Report

§65.0219 - Terms of Owners' Association Agreement

- Indemnification of City
- Conflict of Interest
- Meeting requirements

§65.0222 – Disestablishment of District; Procedures

- Petition support- 30% weighted by assessments

Requested Action:

Direct Staff to collaborate with the City Attorney's Office to draft amendments to the Municipal Code and forward to City Council for consideration.

Questions?