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| 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 |
|---------------------|--|--------------------|

SUBJECT: Amendments to Council Policy 100-21 (Funding for Maintenance Assessment District Formation)

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| 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 |
|-------------------------------|---------------------|---------------------------|------------------------------|
| Liaison Office | Comptroller | ORIG DEPT. | Caldwell, Erik 10/09/2015 |
| Equal Opportunity Contracting | | CFO | |
| Park and Recreation | | DEPUTY CHIEF | Graham, David 10/21/2015 |
| Environmental Analysis | | COO | |
| Financial Management | | CITY ATTORNEY | Wander, Adam |
| | | COUNCIL PRESIDENTS OFFICE | |

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

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

STAFF RECOMMENDATIONS:
Approve Requested Actions

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

COUNCIL DISTRICT(S): Citywide

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|-----------------------------|--|
| COMMUNITY AREA(S): | All |
| ENVIRONMENTAL IMPACT: | This activity is not a "project" and is therefore not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3). |
| CITY CLERK INSTRUCTIONS: | |

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 9/25/2015

ORIGINATING DEPARTMENT: Economic Development

SUBJECT: Amendments to Council Policy 100-21 (Funding for Maintenance Assessment District Formation)

COUNCIL DISTRICT(S): Citywide

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

DESCRIPTIVE SUMMARY OF ITEM:

Amend Council Policy 100-21 to be consistent with the proposed Municipal Code amendments for Maintenance Assessment Districts and to provide policy and processes for formation, budgeting, and management practices for Maintenance Assessment Districts and greater flexibility to update as needs and circumstances change in the future.

STAFF RECOMMENDATION:

Approve Requested Actions

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 which provides 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.

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.

Please refer to Report to the City Council No. 15-088 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:

Due to the proposed flat rate for City administration there is an anticipated General Fund impact of \$79,918 for FY2017. Economic Development Department (EDD) staff costs are captured within the department budget. Annual administrative costs are approximately \$230,000.

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 \$28,000. This represents a \$66,314 reduction in annual budgeted revenue.

In FY16, the Park and Recreation Department (P&R) budgeted for \$20,604 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 \$13,604 reduction in annual budgeted revenue.

The total impact will be a reduction of \$79,918 in annual revenue from MADs for cost recovery in the EDD and P&R Departments. MAD administrative costs that 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 budget.

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.

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

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:

Drafts of the policy and proposed municipal code amendments were shared with community members in MADs and a noticed public meeting is scheduled for October 27, 2015. Previously, Economic Development staff along with City Attorney and Park and Recreation staff participated in various meetings with the self managed MAD Contractors.

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.

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.: 15-088

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 which 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 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.

With the proposed revisions to the Municipal Code and the need to update the Council Policy, additional provisions added to the Council Policy will facilitate closer coordination from the outset between property owners and the City during the MAD formation process along with more guidance for nonprofit entities seeking to manage a MAD.

Community Initiation of a Maintenance Assessment District

Under current procedures property owners can expend a great deal of time and energy on formation efforts before engaging with the City. Therefore, the amendments to the Council Policy outline the process to contact the City with a letter of intent and the mutual responsibilities of the interested property owners and the City in order to move forward with a feasibility study to generate a MAD Proposal.

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 and consistent with the Municipal Code regarding the preparation of an Engineer's Report. The Report can either be prepared by the City's Assessment Engineer or the district formation committee may hire an outside engineer 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. 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 duplication of professional engineering work and 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 City's MAD Formation Fund. However, under the proposed amendments an additional funding source is being proposed for forming special assessment districts in commercial neighborhoods, the Commercial Districts Revolving Fund.

Property owners who seek to form a MAD using City funding should submit the MAD proposal and petitions by July 1 each year after which staff can allocate available funding for the fiscal year. If the requests exceed the amount of available funding then staff shall give priority to the MAD proposals with more external funding thus reducing the amount needed from the City and higher support both from property owners and local community groups. MAD proposals and funding requests received at other times of the year will be considered for funding depending on funds availability.

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, a flat City Administration rate of \$3,500 will be placed on self-managed MADs moving forward.

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%. This reserve may be held either by the City or by an Owners’ Association.
- B. *Unanticipated Expenditure Reserve* – An amount based on a percentage of projected assessments for unanticipated operating and capital expenditures until required, (such as recent history of unanticipated expenditures or average cost to replace a elements such as a tree, a light post, street furniture element, and a trash receptacle).
- C. *Cash Flow/Advance Reserve* – an amount needed to provide sufficient cash balance in the fund as determined by City staff; preferably six 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.
- D. *Capital Reserve* – an amount reserved for planned future Capital projects which require multiple years of reserved funding. Self-Managed MADs may establish Capital Reserves either held by the City or by the Owners’ Association.

To the extent that an administering nonprofit owners’ association wishes to have a working capital advance then 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 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 while providing flexibility for budgeting reserves and providing 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 flat rate for City administration there is an anticipated General Fund impact of \$79,918 for FY2017.

Economic Development Department (EDD) staff costs are captured within the department budget. Annual administrative costs are approximately \$230,000.

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 \$28,000. This represents a \$66,314 reduction in annual budgeted revenue.

In FY16, the Park and Recreation Department (P&R) budgeted for \$20,604 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 \$13,604 reduction in annual budgeted revenue.

The total impact will be a reduction of \$79,918 in annual revenue from MADs for cost recovery in the EDD and P&R Departments. MAD administrative costs that 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 budget.

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.



Lydia Moreno
Deputy Director, Economic Development



David Graham
Deputy Chief Operating Officer

CITY OF SAN DIEGO, CALIFORNIA
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SUBJECT: MAINTENANCE ASSESSMENT DISTRICTS
POLICY NO.: 100-21
EFFECTIVE DATE:

BACKGROUND

A *Maintenance Assessment District (MAD)* is a special assessment districts where property owners pay assessments to fund enhanced *improvements* and *activities*, in their neighborhood, communities, mixed use districts or business districts which confer *Special Benefits* on those assessed. These *improvements* and *activities* are beyond those generally provided by the City which provide *General Benefits*.

MADs are authorized in San Diego through provisions of the San Diego Maintenance Assessment District Ordinance (San Diego Municipal Code section 65.0201 *et seq.*) However, formation of all *MADs* must also comply with provisions of Article XIID of the California Constitution (Proposition 218).

MADs may fund activities and improvements as defined in San Diego Municipal Code section 65.0201 *et seq.*, for example:

- Maintenance of a variety of *improvements* within public rights-of-way and other publicly-owned land;
- Provision of a variety of enhanced *activities* including maintenance and services; and,
- On a more limited basis, to fund acquisition of parkland or open space, for park and recreation *improvements* and *activities*, and for construction and installation of public *improvements*.

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 district property owners. However, the City, based upon the rules and procedures outlined in the state constitution, 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 *MAD* proponents and City staff and adherence to procedures and guidelines.

MAD formation also generally requires that the initiating party, or *MAD* Formation Committee, 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

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developer or other private contribution.

PURPOSE

The intent of this policy is to set forth guidelines regarding: establishing *MADs*; the conditions under which City funding mechanisms may be requested and used for eligible formation costs in *Developed Communities*; developer deposits for formation costs in *Developing Communities*; and budgeting and management of *MADs*, especially where a *MAD* is proposed to be or is already managed by a nonprofit organization pursuant to an agreement with the City.

DEFINITIONS

Definitions provided in San Diego Municipal Code section 65.0204 shall control even if the terms are also defined herein and such definitions listed herein are only for convenience.

1. “*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*.
 - e. Maintenance of improvements
2. “*Annual Report*” means a report prepared annually for a *MAD* which is consistent with the *MAD* management plan and the *engineer’s report* approved by Council as part of establishing that specific *district* and which includes:
 - a. the proposed *activities* and *improvements*;
 - b. the associated budget with estimates of the cost of the providing the proposed activities and improvements;
 - c. any increase in *assessments* as authorized by the *district* formation documents;
 - d. the method and basis of levying the assessment in sufficient detail to allow each real property to estimate the amount of the assessment to be levied against his or her property for that fiscal year;
 - e. a list of parcels in the district from the most recent secured equalized roll at the County of San Diego;
 - f. the estimated *assessment* amount for each parcel;

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- g. the estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year;
 - h. the estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part; and
 - i. any other information deemed appropriate by City.
3. “*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 pursuant to San Diego Municipal Code section 65.0201 *et seq*, are not special taxes but rather property assessments as defined in Article 13 of the state constitution.
4. “*Assessment Engineer*” means an engineer registered pursuant to the Professional Engineers Act (Chapter 7 (commencing with section 6700) of Division 3 of the Business Professions Code) on staff or hired by the City and assigned to prepare an engineer’s report.
5. “*City Administrative Expense*” includes all expenses incurred as a result of managing the *MAD* operations, including, but not limited to *district* formation, assessment engineering, annual reporting, budget preparation, and monitoring,
6. “*Commercial Districts Revolving Fund*” is a City special fund which is the repository for a minimum of \$175,000 from the Small Business Enhancement Program to be used to assist with eligible special district formation expenses in mixed use and commercial neighborhoods. These eligible expenses include the cost of Assessment Engineer services necessary to generate the required Assessment Engineer Reports or the *MAD* Management District Plan, and, at the Mayor’s discretion, up to an additional \$25,000 of the cost to conduct the *MAD Feasibility Study* in a mixed use or commercial neighborhood but not to cover the cost of any advocacy activities.
7. “*Developed Community*” means a community that is built out, with all initial construction complete, and in which no adequate developer-initiated maintenance assessment *district* exists.
8. “*Developing Community*” means a community that is being constructed by a developer and is not built out.
9. “*District*” or “*Maintenance Assessment District*” or “*MAD*” means an area established pursuant to San Diego Municipal Code section 65.0201 *et seq*, within which *Property Owners* pay *assessments* to fund *improvements* and *activities* which confer a special benefit on those paying.

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10. “*Engineer’s Report*” refers to a report prepared by an *assessment engineer* pursuant to California Constitution Article XIID §4(b), and San Diego Municipal Code section 65.0201 et seq., as may be amended from time to time. This report typically contains the proposed *activities* and *improvement* of a specified *district*, an estimate of the costs of the *improvements* and *activities*, a diagram of the specified *district*, the assessments proposed to be levied on each parcel within the *district*, and any other information required by law or determined by the *assessment engineer* or the City to be relevant with respect to the *district*.
11. “*General Benefit*” means baseline level of public land maintenance services, improvements, and activities provided by the City of San Diego throughout the City limits. A baseline service level summary shall be provided by the City each and every time a new *MAD* has been formed and shall be part of the *MAD* Management District Plan.
12. “*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, 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;
13. “*MAD Feasibility Study*” means a preliminary process which may be conducted by the *MAD Formation Committee* to determine desired *improvements* and *activities* which would confer a *Special Benefit* on those property owners; the estimated costs of the *improvements* and *activities*; the general extent of the area in which these activities and

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improvements would occur (proposed *district*) for which benefitting property owners would be assessed; and a range of possible assessments on benefitted property owners.

14. “*MAD Formation Committee*” means a formal or information organization of *property owners* who seek to form a *MAD* and will lead the effort in the community to outreach to fellow *property owners* and gather support and to conduct the *MAD Feasibility Study*.
15. “*MAD Formation Fund*” means the Formation Fund initially containing \$150,000 as established by the City Council through Ordinance No. O-19083 on July 30, 2002, to assist eligible Developed Communities seeking to form a *MAD* and which must be repaid through the assessments collected from property owners in the *MAD* as explained further in this policy.
16. “*MAD Petition*” means a process demonstrating support provided to the City to be used by interested *property owners*, functioning as a *MAD formation committee*, to indicate their interest to the City in forming a *maintenance assessment district*. The petition also gathers relevant information regarding the proponents and the general anticipated *district* area so City staff can determine if there are sufficient interested *property owners* to be the community representatives for *district* formation and the nature of the community.
17. “*Owners’ association*” means a private nonprofit entity which represents, and whose participants include 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*.
18. “*Property*” means real property situated within a proposed *MAD* district.
19. “*Property owner*” or “*owner*” means any person shown as the owner of *property* on the last equalized secured assessment roll or otherwise known to be the current owner of *property* by the City.

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20. “*Self-Managed (MAD)*” means that the *MAD* is managed by a nonprofit owners’ association pursuant to San Diego Municipal Code and this Policy and in accordance with a *MAD* Management Agreement.
21. “*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 and are not per se, considered to be public funds subject to public fund allocation procedures.

POLICY

It is the policy of the City of San Diego City Council to support formation of *MADs*, based upon demonstrated property owner support, for the purpose of providing *Special Benefit*.

Support includes providing: formation guidelines for community members or developers seeking to initiate a *MAD*; funding mechanisms to assist with eligible formation costs in *Developed Communities*; management and budgeting guidelines for such *districts*; and replenishing Formation Fund monies as needed on an annual basis.

The City may pay costs and related expenses, or a portion thereof, necessary for initial district formation, including creation of the *MAD* Management District Plan, *Assessment Engineer’s Reports*, balloting, administrative costs, and other incidental expenses through its *MAD Formation Fund* or the *Commercial Districts Revolving Fund*, . However, it is the intent of this Council Policy that any formation advocacy costs, including fliers and handouts of an advocacy nature, are not eligible or reimbursable costs.

DEVELOPED COMMUNITIES

The City desires *MAD* property owner proponents to notify City staff and their respective Council representatives early in the formation process of their interest in establishing a *MAD* and to ensure that the he City is aware that such an investigation is underway with the purpose of coordinating the procedures required to create the new *MAD*.

Not including any funds used for a *Feasibility Study*, a maximum of \$75,000 may be used by the City in total from the *MAD Formation Fund* or the *Commercial Districts Revolving Fund* (collectively, “*City Funds*”) for the formation of a *MAD* though the use of funds from the *Commercial Districts Revolving Fund* is restricted to forming *MADs* in mixed use or commercial neighborhoods.

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If the *MAD* is successfully formed, the total amount used by the City for *MAD* formation must be repaid in full by the community through the first one to three years of assessments collected from property owners in the *MAD*.

Since these *City Funds* primarily rely on revenues being replenished through assessment collections, it is important that any communities allocated funding strongly support district formation so there is a high likelihood of the *MAD* being formed, otherwise, the funding may be lost.

I. Formation and Funding Requests

- A. Notwithstanding the provisions outlined in this policy a *district* must be established as outlined in the San Diego Municipal Code section 65.0207.
- B. *Property owners* seeking to form a *MAD* are required to contact the Mayor and submit a *letter of intent* along with a letter of support from each relevant City Council Office.
- C. After creation of a district management plan and *engineer's report* pursuant to San Diego Municipal Code section 65.0207(a), the *MAD formation committee* shall submit a written petition consistent with San Diego Municipal Code section 65.0207(c).
- D. The *MAD formation committee* shall submit the petitions to the Mayor or Mayor's designee so that the City may verify that the petitions comply with the provisions of this policy, including, but not limited to:
 1. the sufficiency of the *MAD* proposal, petition language, and supporting documents;
 2. the completeness of information required and submitted per petition;
 3. the timeliness of signatures;
 4. the eligibility of the locations of the parcel; and
 5. the validity of the owner name as signed.
- E. Upon verification by the Mayor that the petitions of support representing at least 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*.

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II. Assessment Engineer's Report

In order for the Council to accept an assessment engineer's report for any new district the entity or person having prepared or contributed to the preparation of the report must:

- 1) Must provide evidence of insurance in a form satisfactory to the Mayor or Mayor's designee; and
- 2) Must agree to indemnify the City of San Diego in a form satisfactory to the Mayor or Mayor's designee.

III. Self-Management

In accordance with San Diego Municipal Code section 65.0209, the Notice, Protest and Hearing Procedure shall comply with section 53753 of the California Government Code. If the *MAD* petition submitted indicates that the proposed *MAD* is to be administered by an *owners' association*, the ballot required pursuant to California Government Code shall include an advisory vote on whether *property owners* want the City or an *owners' association* to administer the *MAD* if it is established.

IV. Selection of an Owners' Association

If the ballot procedure as noted in Section III (Self-Management) above indicates that a majority of respondents support self-management then Council may consider entering into an agreement with an owners' association for administration of the *MAD*.

V. City Cost Recovery

The City may recover \$3,500 of its costs associated with administering self-managed *MADs* from the respective *MAD* Funds unless otherwise directed by Council during the annual budget process.

VI. Standards for an *Owner's Association* to administer a *MAD* pursuant to a *MAD* Management Agreement which complies with the provisions of San Diego Municipal Code section 65.0220

As part of the formation process, the *MAD* petition must identify whether the proponents are recommending that the *MAD* be managed by the City or a nonprofit owners' association. The City shall consider such self-management but only if these organizational standards are met to ensure transparency and accountability with regards to management and use of *MAD* funds.

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- A. *Owners' Association* must:
1. Obtain and maintain a Federal Tax Exempt status under section 501(c)3 or 501(c)6 of the Internal Revenue Code and obtain and maintain equivalent State nonprofit status as applicable under State Law;
 2. Provide for Property Owner representation on its Board of Directors;
 3. Comply with the Ralph M. Brown Act at all times when matters within the subject matter of the *MAD* are heard, discussed, or deliberated, and with the California Public Records Act, for all documents relating to activities of the *MAD*;
- B. *Owners' Association* Bylaws must identify that property owners paying the assessment shall have the opportunity to be nominated to the Board of the management corporation on an annual basis
- C. *Owners' Association*, pursuant to *MAD* Management Agreement, must agree to:
1. Be bound by reporting requirements for reconciling of expenditures as outlined in the *MAD* Management Agreement which may be amended.
 2. Be bound by transparency requirements for on-line posting of documents as specified in the *MAD* Management Agreement; such as Meeting Agendas, Meeting Minutes, Articles of Incorporation, Bylaws, Annual Report, Annual Engineer's Report, RFP's, and Contracts awarded.
 3. Timely prepare and mail annually to the membership, or those paying the assessment, a notification of an annual report summarizing the goals, accomplishments and provide for access of a summary of financial statements for the past fiscal year.

VII. Other Provisions for the *Owner's Association MAD* Management Agreement which shall also comply with the provisions of San Diego Municipal Code section 65.0219:

- A. Duration of agreements shall be up to five years;
- B. Provide for advances for an amount and duration as determined by the Mayor or City Manager
- C. Provide a process for issuing and reconciling advances and any reimbursement procedures.
- D. Provide for reimbursement of expenditures against unused reserve funds (except those already disbursed as the advance) but only if budgeted.
- E. Articulate general budgeting principles and timelines, and;
- F. Articulate appropriate dates and budget detail requirements.

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VIII. District Reserve Requirements:

For budgeting and fund management purposes, Reserves shall be established in the annual budgets as noted below. However, the specific amounts or percentages shall be tailored to the needs and characteristics of the respective districts as noted below and incorporated into *MAD* Agreements where nonprofit management applies.

- 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%. This reserve may be held either by the City or by an Owners’ Association. If this reserve is held by an Owners’ Association the manner and conditions of the reserve must be outlined in the Owners’ Association agreement with the City.
- B. *Unanticipated Expenditure Reserve* – an amount based on a percentage of projected assessments for unanticipated operating and capital expenditures until required, (such as recent history of unanticipated expenditures or average cost to replace a elements such as a tree, a light post, street furniture element, and a trash receptacle). If this reserve is held by an Owners’ Association the manner and conditions of the reserve must be outlined in the Owners’ Association agreement with the City.
- C. *Cash Flow/Advance Reserve* – an amount needed to provide sufficient cash balance in the fund as determined by City staff; preferably six 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. Held by the City except for the portion provided as a working capital advance. Self-Managed *MADs* 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. Self-Managed *MADs* may establish Capital Reserves either held by the City or by the Owners’ Association.

DEVELOPING COMMUNITIES

- I. To establish a new *MAD* in a *Developing Community*, interested developers may deposit funds with the City to pay for the costs of formation, including the independent Assessment Engineer’s Report, balloting costs, and City staff administrative costs. Any efforts to advocate the *MAD* formation are not considered part of the formation costs, and must be borne by the developer or the developer’s agent. Developers must submit a *MAD* proposal as described in this Council Policy, and work closely with City staff in providing necessary information.

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- II. In general, the total cost of formation will vary depending on size, complexity, and scope of the proposed *MAD*. The developer is required to submit funds prior to the initiation a new *MAD* formation process, with an expectation of full cost recovery for the City. The City Auditor and Comptroller is authorized, upon direction by the City Manager, to create special interest-bearing funds for the purpose of forming new *MADs*. These developer deposit funds are separate from the *City Funds*.
- III. If a surplus exists in the developer deposit fund for the particular *MAD* formation at the completion of the ballot process, the funds will be returned to the developer. If additional funds are required to complete the formation process, the developer will be charged for the cost of the remaining services.
- IV. Similarly to *Developed Communities*, upon a successful formation effort, the first one to three year's assessments may be used to pay back the developer for formation costs associated with the Assessment Engineer's Report, balloting process, and City oversight costs. It is the intent of this Council Policy that any formation advocacy costs, including fliers and handouts, are not reimbursable costs.

HISTORY

Adopted by Resolution R-299589; 09/07/2004

Amended by Resolution R-_____, / /

CITY OF SAN DIEGO, CALIFORNIA
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CURRENT

| | |
|-----------------|---|
| SUBJECT: | FUNDING FOR MAINTENANCE ASSESSMENT DISTRICT FORMATION |
| POLICY NO.: | 100-21 |
| EFFECTIVE DATE: | September 07, 2004 |

SUBJECT: MAINTENANCE ASSESSMENT DISTRICTS
POLICY NO.: 100-21
EFFECTIVE DATE:

BACKGROUND

~~A Maintenance Assessment Districts (MADs) are established by the City of San Diego as District (MAD) is a means of providing special assessment districts where property owners with the opportunity to assess themselves to pay for assessments to fund enhanced improvements, maintenance, services and activities, known as Special Benefits, in their neighborhood, communities, mixed use districts or community business districts which confer Special Benefits on those assessed. These improvements and activities are beyond those generally provided by the City, known as which provide General Benefits.~~

~~MADs are authorized by the State of California in the Landscape and Lighting Act of 1972 (Part 2, Division 15, California Streets and Highways Code, Sections 22500 et seq.) and through provisions of Article XIID of the California Constitution (Proposition 218); and by the City of San Diego through provisions of the San Diego Maintenance Assessment District Ordinance (Division 2, Article 5, Chapter VI, Sections San Diego Municipal Code section 65.0201 et seq.) However, formation of all MADs must also comply with provisions of Article XIID of the California Constitution (Proposition 218).~~

~~MADs may fund activities and improvements as defined in San Diego Municipal Code section 65.0201, et seq.). Provided that a MAD meets these governing provisions of State and local law, a MAD may: 1) maintain, for example:~~

- ~~• Maintenance of a variety of improvements within public rights-of-way and other publicly-owned land; 2) provide~~
- ~~• Provision of a variety of enhanced activities including maintenance and services; and,~~

~~3) be used on a more limited basis, to fund acquisition of parkland or open space for park and recreation~~

- ~~• improvements and maintenance activities, and for construction and installation of public improvements.~~

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~~Support for forming a MAD formation is often initiated by a developer, during the development of a new community, or by property owners within an already-developed community who desire Special Benefits. The. Property owners may also indicate an interest in having the MAD managed by a non-profit which represents the district property owners. However, the City, based upon the rules and procedures outlined in the state constitution, 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 with Park between the MAD proponents and Recreation Department City staff for residential or mixed-use MADs, or Community and Economic Development Department staff for commercial districts and adherence to, be managed by a non-profit organization pursuant to San Diego Municipal Code Sections 65.0201 et seq, and procedures and guidelines.~~

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~~MAD formation also generally requires that the initiating party, or MAD Formation Committee, 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 other private contribution. However, because this cost may be prohibitive for property owners in some already-developed areas, the San Diego City Council has created a MAD Formation Fund of \$150,000 to assist in financing these start-up costs.~~

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PURPOSE

~~The intent of this policy is to set forth the criteria for guidelines regarding establishing new MADs either through the use of the MAD Formation Fund by; the conditions under which City funding mechanisms may be requested and used for eligible formation costs in Developed Communities, or through; developer deposits for formation costs in Developing Communities; and budgeting and management of MADs, especially where a MAD is proposed to be or is already managed by a nonprofit organization pursuant to an agreement with the City.~~

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DEFINITIONS

1. Definitions provided in San Diego Municipal Code section 65.0204 shall control even if the terms are also defined herein and such definitions listed herein are only for convenience.

1. "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.
 - e. Maintenance of improvements

2. "Annual Report" means a report prepared annually for a MAD which is consistent with the MAD management plan and the engineer's report approved by Council as part of establishing that specific district and which includes:
 - a. the proposed activities and improvements;
 - b. the associated budget with estimates of the cost of the providing the proposed activities and improvements;
 - c. any increase in assessments as authorized by the district formation documents;
 - d. the method and basis of levying the assessment in sufficient detail to allow each real property to estimate the amount of the assessment to be levied against his or her property for that fiscal year;
 - e. a list of parcels in the district from the most recent secured equalized roll at the County of San Diego;
 - f. the estimated assessment amount for each parcel;
 - g. the estimated amount of any surplus or deficit revenues to be carried over from a previous fiscal year;
 - h. the estimated amount of any contributions to be made from sources other than assessments levied pursuant to this part; and
 - i. any other information deemed appropriate by City.

3. "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 pursuant to San Diego Municipal Code section 65.0201 et

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seq, are not special taxes but rather property assessments as defined in Article 13 of the state constitution.

4. "Assessment Engineer" means an engineer registered pursuant to the Professional Engineers Act (Chapter 7 (commencing with section 6700) of Division 3 of the Business Professions Code) on staff or hired by the City and assigned to prepare an engineer's report.

5. "City Administrative Expense" includes all expenses incurred as a result of managing the MAD operations, including, but not limited to district formation, assessment engineering, annual reporting, budget preparation, and monitoring.

6. "Commercial Districts Revolving Fund" is a City special fund which is the repository for a minimum of \$175,000 from the Small Business Enhancement Program to be used to assist with eligible special district formation expenses in mixed use and commercial neighborhoods. These eligible expenses include the cost of Assessment Engineer services necessary to generate the required Assessment Engineer Reports or the MAD Management District Plan, and, at the Mayor's discretion, up to an additional \$25,000 of the cost to conduct the MAD Feasibility Study in a mixed use or commercial neighborhood but not to cover the cost of any advocacy activities.

7. "Developed Community" means a community that is built out, with all initial construction complete, and in which no adequate developer-initiated maintenance assessment district exists.

8. "Developing Community" means a community that is being constructed by a developer and is not built out.

9. "District" or "Maintenance Assessment District" or "MAD" means an area established pursuant to San Diego Municipal Code section 65.0201 et seq, within which Property Owners pay assessments to fund improvements and activities which confer a special benefit on those paying.

10. "Engineer's Report" refers to a report prepared by an assessment engineer, pursuant to California Streets and Highways Code Sections 22500 et seq., California Constitution, Article XIID, §4(b), and San Diego Municipal Code Section 65.0201 et seq., as may be amended from time to time. This report typically contains the plans proposed activities, and specifications for the improvement of a specified MAD district, an estimate of the costs of the improvements and maintenance of the improvements activities, a diagram of the specified MAD district, the assessments proposed to be levied on each parcel within the MAD district, and any other information required by law or determined by the assessment engineer, or the City to be relevant with respect to the MAD district.

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2. Developed Community means a community that is built out, with all initial construction complete, and in which no developer-initiated MAD exists.

3. Developing Community means a community that is being constructed by a developer and is not built out.

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11. 4. "General Benefit" means baseline level of public land maintenance services, improvements, and activities provided by the City of San Diego throughout the City limits. A baseline service

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level summary shall be provided by the City each and every time a new MAD has been formed and shall be part of the MAD Management District Plan.

~~5. — *Improvement* has the meaning contained in California Streets and Highways Code Section 22525, as amended from time to time. In addition, for purposes of this Council Policy, *improvement* also means the provision of security services; the installation or construction of ponds; the installation or construction of flood control or drainage facilities; or the installation or construction of any other facilities, or, the provisions of any other property-related services deemed by the City Council to provide a *Special Benefit* to real property within a *MAD*.~~

12. 6. — *MAD* means a Maintenance Assessment District formed pursuant to California Streets and Highways Code Sections 22500 et *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, 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;

13. “*MAD Feasibility Study*” means a preliminary process which may be conducted by the *MAD Formation Committee* to determine desired *improvements* and *activities* which would confer a *Special Benefit* on those property owners; the estimated costs of the *improvements* and *activities*; the general extent of the area in which these activities and improvements would occur (proposed *district*) for which benefitting property owners would be assessed; and a range of possible assessments on benefitted property owners.

14. “*MAD Formation Committee*” means a formal or information organization of *property owners* who seek to form a *MAD* and will lead the effort in the community to outreach to fellow *property owners* and gather support and to conduct the *MAD Feasibility Study*.

~~“*seq.* California Constitution Article XIID, and San Diego Municipal Code Sections 65.0201 et *seq.* as~~

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may be amended from time to time.

15. 7. —MAD Formation Fund” means the Formation Fund initially containing \$150,000 as established by the City Council through Ordinance No. O-19083 on July 30, 2002, to assist eligible Developed Communities seeking to form a MAD for the purpose of providing Special Benefit and which must be re-paid through the first year’s assessment assessments collected from property owners in the MAD as explained further in this policy.
16. “MAD Petition means a process demonstrating support provided to the City to be used by interested property owners, functioning as a MAD formation committee, to indicate their interest to the City in forming a maintenance assessment district. The petition also gathers relevant information regarding the proponents and the general anticipated district area so City staff can determine if there are sufficient interested property owners to be the community representatives for district formation and the nature of the community.

“Owners’ association” means a private nonprofit entity which represents, and whose participants include 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., 8. — Maintain — or Maintenance has the meaning contained in California Streets and Highways Code Section 22531, as amended from time to time. In addition, for purposes of this Council Policy, maintain or maintenance also means the furnishing of property-related services and materials for the ordinary and usual maintenance, operation, and servicing of any improvement.

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including creation of the MAD Management District Plan, Assessment Engineer's Reports, balloting, administrative costs, and other incidental expenses. It through its MAD Formation Fund or the Commercial Districts Revolving Fund. However, it is the intent of this Council Policy that any formation advocacy costs, including fliers and handouts of an advocacy nature, are not eligible or reimbursable costs.

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DEVELOPED COMMUNITIES

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The City desires MAD property owner proponents to notify City staff and their respective Council representatives early in the formation process of their interest in establishing a MAD and to ensure that the City is aware that such an investigation is underway with the purpose of coordinating the procedures required to create the new MAD.

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Not including any funds used for a Feasibility Study, a maximum of \$5075,000 may be used by the City in total from this the MAD Formation Fund for the formation of any MAD or the Commercial Districts Revolving Fund (collectively, "City Funds") for the formation of a MAD though the use of funds from the Commercial Districts Revolving Fund is restricted to forming MADs in mixed use or commercial neighborhoods.

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If the MAD is successfully formed, the total amount used by the City for MAD formation must be repaid in full by the community through the first year's one to three years of assessments collected from property owners in the MAD. Since the MAD Formation Fund was established by the City Council with the anticipation that revenues would be replenished through assessment collections, it is important that any communities receiving these funds have a strong chance of completing district formation, otherwise, the funding may be lost.

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A. Criteria for Funding

Funding requests will be evaluated by the City Park and Recreation Department staff for residential or mixed-use MADs, and by the Community and Economic Development Department staff for commercial MADs. All of the following criteria must be met before monies from the MAD Formation Fund may be used in the MAD formation process for a *Developed Community*:

1. A project description has been developed which includes:
 - a) the proposed *Improvements* to be maintained by the *MAD*;
 - b) the proposed *MAD* boundaries;
 - c) any proposed new *Improvements* to be installed, maintained and funded by the *MAD*;and

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- d) ~~a preliminary estimate of anticipated assessments to be levied on property owners within the proposed MAD boundaries. This estimate may be developed in conjunction with City of San Diego staff, based on the information provided by the community in Criteria 1a)–1e).~~
- 2. ~~The amount of up-front funding needed from the MAD Formation Fund to pay for the Assessment Engineer’s Report and other incidental costs has been determined, and does not exceed \$50,000.~~
- 3. ~~Where the proposed MAD boundaries are substantially similar to those of the officially recognized community planning area boundaries, documentation in the form of minutes has been provided showing that the officially recognized community planning committee:~~
 - a) ~~Has held at least two (2) publicly-noticed meetings to discuss the proposed MAD concept, in compliance with that planning committee’s public noticing requirements;~~
 - b) ~~supports by majority vote the proposed MAD concept, including all aspects listed in Criteria 1 above;~~
 - e) ~~is aware of the estimated formation costs and understands the requirement to repay the MAD Formation Fund with the first year’s assessments after successful district formation; and~~
 - d) ~~has formed a MAD advisory subcommittee;~~
- 4. ~~Where the proposed MAD boundaries are not substantially similar to the officially recognized community planning area boundaries, documentation in the form of a letter has been provided showing that a self-designated MAD advisory committee has been formed, and that this committee:~~
 - a) ~~supports by majority vote the proposed MAD concept, including all aspects listed in Criteria 1 above;~~
 - b) ~~has informed the officially recognized community planning committee for the area where the proposed MAD is located about the proposed MAD formation;~~
 - e) ~~is aware of the estimated formation costs and understands the requirement to repay the MAD Formation Fund with the first year’s assessments after successful~~

Since these City Funds primarily rely on revenues being replenished through assessment collections, it is important that any communities allocated funding strongly support district formation so there is a high likelihood of the MAD being formed, otherwise, the funding may be lost.

I. Formation and Funding Requests

- d) ~~Notwithstanding the provisions outlined in this policy a district formation; and~~
~~has held at least two (2) meetings open to the public and has:~~

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- ~~1) published a notice of the meeting that accurately summarizes the proposed *MAD* concept and cost in a community newspaper, newsletter, or publication of similar distribution; and~~
- ~~2) posted information about the proposed *MAD* at a community-accessible public building within the proposed *MAD* boundary.~~

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5. A community initiated petition containing valid, non-weighted signatures of at least 30% of the property owners within the proposed MAD area boundaries has been submitted. This petition must:

- a) accurately describe the MAD proposal, including all aspects listed in Criteria 1 above;
- b) disclose the estimated formation costs and disclose that any MAD Formation Fund monies must be repaid in full through assessments collected from MAD property owners within the first year following successful district formation; and
- e) contain printed names, signatures, addresses and parcel numbers for each property owner signatory.

6. Any individual involved in the formation of the proposed MAD with an anticipated direct economic interest in the maintenance and/or management of the proposed MAD must disclose to the City and the community that potential economic interest.

must be established as outlined in

A. The information necessary to meet the above criteria must be provided by the Developed Community and submitted to the appropriate City department by September 1 in order to form the district for the following fiscal year. For residential or mixed use MADs, the information should be submitted to the Park and Recreation Department MAD Deputy Director. For commercial districts to be managed by a non-profit organization in accordance with the San Diego Municipal Code Sections section 65.0201 et seq., this information should be submitted to the City Community and Economic Development Department Economic Development Deputy Director. City Park and Recreation Department MAD staff and City Community and Economic Development Department staff will assist any Developed Communities requesting funds in obtaining or developing the necessary information 0207.

B. Ranking of Developed Communities Requesting Funding

In the event that the total amount of money in the MAD Formation Fund is less than the total amount needed to accommodate formation funding requests received from Developed Communities on September 1 of each year, funding requests will be jointly ranked by the City Park and Recreation and Community and Economic Development Departments based on the following criteria:

- 1. Amount of matching funds the Developed Community is able to provide to partially offset formation costs, thus either:
 - a) lowering the amount needed from the MAD Formation Fund; or,
 - b) providing additional funding to complete the formation process if the maximum amount of \$50,000 needed from the MAD Formation Fund is insufficient.

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- ~~2. Percentage of additional valid property owner petition signatures the *Developed Community* is able to provide over and above the minimum required 30%, in increments of 5% (35%, 40%, 45%, etc).~~
- ~~3. Support from the officially recognized community planning committee for the proposed MAD area.~~
- ~~4. Location of the *Developed Community* relative to Council District boundaries. In order to permit equal *MAD* formation opportunities throughout the City, only one *MAD* per Council District will be considered for use of *MAD-Formation Fund* monies in any one year, unless there are no other eligible proposals in other Council Districts.~~

Developing Communities

- B. Property owners seeking to form a *MAD* are required to contact the Mayor and submit a letter of intent along with a letter of support from each relevant City Council Office.
- C. After creation of a district management plan and engineer's report pursuant to San Diego Municipal Code section 65.0207(a), the *MAD formation committee* shall submit a written petition consistent with San Diego Municipal Code section 65.0207(c).
- D. The *MAD formation committee* shall submit the petitions to the Mayor or Mayor's designee so that the City may verify that the petitions comply with the provisions of this policy, including, but not limited to:
 1. the sufficiency of the *MAD* proposal, petition language, and supporting documents;
 2. the completeness of information required and submitted per petition;
 3. the timeliness of signatures;
 4. the eligibility of the locations of the parcel; and
 5. the validity of the owner name as signed.
- E. Upon verification by the Mayor that the petitions of support representing at least 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.

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II. Assessment Engineer's Report

In order for the Council to accept an assessment engineer's report for any new district the entity or person having prepared or contributed to the preparation of the report must:

- 1) Must provide evidence of insurance in a form satisfactory to the Mayor or Mayor's designee; and
- 2) Must agree to indemnify the City of San Diego in a form satisfactory to the Mayor or Mayor's designee.

III. Self-Management

In accordance with San Diego Municipal Code section 65.0209, the Notice, Protest and Hearing Procedure shall comply with section 53753 of the California Government Code. If the MAD petition submitted indicates that the proposed MAD is to be administered by an owners' association, the ballot required pursuant to California Government Code shall include an advisory vote on whether property owners want the City or an owners' association to administer the MAD if it is established.

IV. Selection of an Owners' Association

If the ballot procedure as noted in Section III (Self-Management) above indicates that a majority of respondents support self-management then Council may consider entering into an agreement with an owners' association for administration of the MAD.

V. City Cost Recovery

The City may recover \$3,500 of its costs associated with administering self-managed MADs from the respective MAD Funds unless otherwise directed by Council during the annual budget process.

VI. Standards for an Owner's Association to administer a MAD pursuant to a MAD Management Agreement which complies with the provisions of San Diego Municipal Code section 65.0220

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As part of the formation process, the MAD petition must identify whether the proponents are recommending that the MAD be managed by the City or a nonprofit owners' association. The City shall consider such self-management but only if these organizational standards are met to ensure transparency and accountability with regards to management and use of MAD funds.

A. Owners' Association must:

1. Obtain and maintain a Federal Tax Exempt status under section 501(c)3 or 501(c)6 of the Internal Revenue Code and obtain and maintain equivalent State nonprofit status as applicable under State Law;
2. Provide for Property Owner representation on its Board of Directors;
3. Comply with the Ralph M. Brown Act at all times when matters within the subject matter of the MAD are heard, discussed, or deliberated, and with the California Public Records Act, for all documents relating to activities of the MAD;

B. Owners' Association Bylaws must identify that property owners paying the assessment shall have the opportunity to be nominated to the Board of the management corporation on an annual basis

C. Owners' Association, pursuant to MAD Management Agreement, must agree to:

1. Be bound by reporting requirements for reconciling of expenditures as outlined in the MAD Management Agreement which may be amended.
2. Be bound by transparency requirements for on-line posting of documents as specified in the MAD Management Agreement; such as Meeting Agendas, Meeting Minutes, Articles of Incorporation, Bylaws, Annual Report, Annual Engineer's Report, RFP's, and Contracts awarded.
3. Timely prepare and mail annually to the membership, or those paying the assessment, a notification of an annual report summarizing the goals, accomplishments and provide for access of a summary of financial statements for the past fiscal year.

VII. Other Provisions for the Owner's Association MAD Management Agreement which shall also comply with the provisions of San Diego Municipal Code section 65.0219:

- A. Duration of agreements shall be up to five years;
- B. Provide for advances for an amount and duration as determined by the Mayor or City Manager
- C. Provide a process for issuing and reconciling advances and any reimbursement procedures.

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Engineer's Report, balloting costs, and City staff administrative costs. Any efforts to advocate the MAD formation are not considered part of the formation costs, and must be borne by the developer or the developer's agent. Developers must submit a ~~project description~~ MAD proposal as described above in this Council Policy, and work closely with City staff in providing necessary information.

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II. In general, the total cost of formation will vary depending on size, complexity, and scope of the proposed MAD. The developer ~~would be required to submit funds prior to the initiation of~~ a new MAD formation, ~~study process~~, with an expectation of full cost recovery for the City. The City Auditor and Comptroller is authorized, upon direction by the City Manager, to create special interest-bearing funds for the purpose of forming new MADs. These developer deposit funds are separate from the MAD Formation Fund, and would be identified in the annual Appropriation Ordinance ~~City Funds~~.

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III. If a surplus exists in the developer deposit fund for the particular MAD formation at the completion of the ballot process, the funds will be returned to the developer. If additional funds are required to complete the formation process, the developer will be charged for the cost of the remaining services.

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the formation process, the developer will be charged for the cost of the remaining services.

IV. Similarly to Developed Communities, upon a successful formation effort, the first one to three year's assessments may be used to pay back the developer for formation costs associated with the Assessment Engineer's Report, balloting process, and City oversight costs. It is the intent of this Council Policy that any formation advocacy costs, including fliers and handouts, are not reimbursable costs.

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HISTORY

Adopted by Resolution R-299589, 09/07/2004

Amended by Resolution R-_____, / /

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Council Policy 100-21 Funding for Maintenance Assessment District Formation

**Public Safety & Livable Neighborhoods Committee
February 3, 2016**



Background

CP 100-21 Funding for Maintenance Assessment District Formation

- Adopted September 2004
- Narrow Focus

Outdated

- Rename and broaden
- Consistency with Municipal Code
- Additional MAD Management Guidance

Outreach

- Emails, Calls and three Publicly Noticed Meetings



Proposed Policy Revisions

MAD Formation – Amended Sections

Definitions

- Activities
- Commercial Districts Revolving Fund

Formation and Funding Requests

- Process in Alignment with Municipal Code Revisions
- Petitions
- Assessment Engineering

City Cost Recovery

- City administration fee \$3,500 for self-managed



Proposed Policy – MAD Management

Owners' Association

- Organization Standards
- Property Owner Representation on Board of Directors
- Compliance with Brown Act
- Budget and Reporting Requirements

District Reserve Requirements

- More Flexibility

Requested Action:

**Forward draft Council Policy 100-21
to City Council for consideration.**

Questions?