

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: MAINTENANCE ASSESSMENT DISTRICTS

POLICY NO.: 100-21

EFFECTIVE DATE: September 26, 2016

BACKGROUND:

A Maintenance Assessment District (“MAD”) is a special assessment district where *property owners* pay *assessments* to fund enhanced *improvements* and *activities*, which confer *Special Benefits* on those assessed. *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).

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*. *Property owners* may also indicate an interest in having the *MAD* managed by a non-profit which represents the *property owners*. The formation process and management of *MADs* requires close coordination between the *MAD* proponents, *property owners*, and City staff, and adherence to procedures and guidelines.

PURPOSE

The purpose of this policy is to set forth guidelines regarding: the establishment of *MADs*; the conditions under which City funding mechanisms may be requested and used for eligible formation costs in *Developed Communities*; the process for developer deposits and reimbursement for formation costs in *Developing Communities*; and the procedure for budgeting and management of *MADs*.

DEFINITIONS

“*Activities*” has the meaning ascribed to it in San Diego Municipal Code section 65.0204.

“*Annual report*” means a report prepared in accordance San Diego Municipal Code section 65.0220.

“*Assessment*” has the meaning ascribed to it in San Diego Municipal Code section 65.0204.

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“*Assessment engineer*” has the meaning ascribed to it in San Diego Municipal Code section 65.0204.

“*Ballot*” means the ballot required by Article XIII D of the California Constitution and California Government Code section 53753.

“*City administrative expense*” includes all expenses incurred as a result of managing the *district* operations, including, but not limited to, *district* formation, *assessment* engineering, annual reporting, budget preparation, and monitoring.

“*City funds*” means the *commercial districts revolving fund* and the *community districts revolving fund* collectively.

“*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 costs of the *district management plan*, *assessment engineer*, *petition*, and *ballot* necessary to form a *district* and must be re-paid through the *assessments* collected from *property owners* in the *district*. If necessary, funding shall be replenished annually by City Council action.

“*Community districts revolving fund*” is a City special fund which is the repository for a minimum of \$150,000 from the General Fund to assist eligible Developed Communities seeking to form a *district*. Eligible expenses include the costs of the *district management plan*, *assessment engineer*, *petition*, and *ballot* necessary to form a *district* and must be re-paid through the *assessments* collected from *property owners* in the *district*. If necessary, funding shall be replenished annually by City Council action.

“*Developed community*” means a community that is built out, with all initial construction complete, and in which no adequate developer-initiated *district* exists.

“*Developing community*” means a community that is being constructed by a developer and is not built out.

“*District*” or “*maintenance assessment district*” or “*MAD*” means an area established pursuant to San Diego Maintenance Assessment District Ordinance.

“*District management plan*” has the meaning ascribed to it in San Diego Municipal Code section 65.0204.

“*Engineer’s report*” has the meaning ascribed to it in San Diego Municipal Code section 65.0204.

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“*Feasibility study*” means a preliminary process conducted by the *formation committee* to determine the community’s willingness to pay for the desired *improvements* and *activities*. The feasibility study shall include the estimated costs of the *improvements* and *activities*; the general extent of the area in which these *activities* and *improvements* would occur; and a range of possible *assessments* on benefitted *property owners* based on *districts* of a similar scope and nature; the estimated costs of forming the *district* and anticipated sources of funding to cover those costs.

“*Formation committee*” means a formal or informal organization of *property owners* who seek to form a *district* and will lead the effort in the community to outreach to fellow *property owners* and gather support and to conduct the *feasibility study*.

“*Improvement*” has the meaning ascribed to it in San Diego Municipal Code section 65.0204.

“*Letter of intent*” means a letter to the City from a group of *property owners*, expressing their intent and desire to create a new *district*.

“*Management agreement*” means an agreement between the City and an *owners’ association* for administration of a *district* pursuant to San Diego Municipal Codes section 65.0218.

“*Owners’ association*” has the meaning ascribed to it in San Diego Municipal Code section 65.0204.

“*Petition*” means a written petition as described in San Diego Municipal Code section 65.0206(e).

“*Property*” has the meaning ascribed to it in San Diego Municipal Code section 65.0204.

“*Property owner*” or “*owner*” has the meaning ascribed to it in San Diego Municipal Code section 65.0204.

“*Self-Managed (district)*” means a *district* that is managed by a non-profit *owners’ association* pursuant to San Diego Municipal Code Sections 65.0201 et seq and this Policy and in accordance with a *management agreement*.

“*Survey*” means a preliminary survey conducted by the *formation committee* and mailed to all property owners within the proposed *district* seeking input from the *property owners* on the types of *improvements* and *activities* they would like the *district* to provide.

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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 *district*; establishing funding mechanisms to assist with eligible formation costs in *Developed Communities*; providing management and budgeting guidelines for *districts*; and replenishing the *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 *district management plan* and *engineer's report*, the *ballot* process, administrative costs, and other incidental expenses through the *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 for reimbursement.

I. DEVELOPED COMMUNITIES

a. Formation Process if Requesting City Funds

- i. Notwithstanding the provisions outlined in this policy a *district* must be established as outlined in the San Diego Municipal Code section 65.0206.
- ii. A *district formation committee*, comprised of property owners proposing to form a district shall be established.
- iii. The *formation committee* shall then conduct a *survey*, followed by a *feasibility study*, and report back to City staff with the results of each.
- iv. *Property owners* seeking to form a *district* are required to submit to the Mayor a *letter of intent* along with a letter of opinion from each relevant City Council office. The letter of opinion shall show that the Council Member has been informed of the property owners' desire to form a district and shall include an opinion of the Council Member as to whether or not he or she supports such an effort.
- v. Upon receipt of the letter of intent and the letter(s) of opinion, and if there is sufficient number of proponents, the *property owner* proponents of the *district* may be considered to constitute the *formation committee*.

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- vi. Upon completion of the *feasibility study*, the *formation committee* shall conduct a public hearing on the results in accordance with San Diego Municipal Code section 65.0206(f). In addition to the requirements of San Diego Municipal Code section 65.0206(f), the public hearing shall be noticed by mail to each *property owner* within the proposed *district*, and shall clearly indicate the date, time, and location. The location shall be open and accessible to all members of the public.
- vii. The formation committee may request city funds to help pay the costs of the *district management plan* and *engineer's report* upon completion of subsection (i) through subsection (vi) of this section.

If the request for City funds is approved, a *district management plan* and *engineer's report* may be created in accordance with San Diego Municipal Code section 65.0206(a).

- viii. After the *district management plan* and *engineer's report* are approved by the City, the *formation committee* shall conduct a second public hearing and shall submit a proposed *petition*, for City staff approval, prior to beginning the *petition* process pursuant to San Diego Municipal Code section 65.0206(e).
- ix. The *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 San Diego Municipal Code section 65.0206(e) and this Policy, including, but not limited to:
 - 1. the accuracy and completeness of the *petition* language and supporting documents;
 - 2. the timeliness of signatures;
 - 3. the inclusion of the appropriate parcels in the *district*; and
 - 4. the validity of the *property owner* name as signed.

b. Funding Requests

- i. *City funds* may only be used for creation of *district management plan* and *engineer's report*, and the *ballot* process, including notice and ballot tabulation.

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- ii. Funding request will be granted based on objective and quantifiable ranking criteria as established by the Mayor or the Mayor's designee, including but not limited to the results of the survey, feasibility study, receipt of letter of opinion, and property owner and community organization support.
- iii. A maximum of \$75,000 of *city funds* may be used for the formation of a *district*. The use of funds from the *commercial districts revolving fund* is restricted to forming *districts* in mixed use or commercial neighborhoods.
- iv. If the *district* is successfully formed, the total amount of *city funds* used for *district* formation must be repaid in full through the first one to three years of *assessments* collected within the *district*.
- v. *City funds* primarily rely on revenues being replenished through *assessment* collections, therefore, it is important that any communities allocated funding from *City funds* strongly support district formation so there is a high likelihood of the *district* being formed.
- vi. Any shortfall in the either the *community districts revolving fund* or the *commercial districts revolving fund* should be replenished annually.

II. DEVELOPING COMMUNITIES

- a. To establish a new *district* in a *developing community*, interested developers may deposit funds with the City to pay for the costs of formation, including the *district management plan*, *engineer's report*, *petition*, and the *ballot* process costs, and *City administrative expenses*. Any efforts to advocate for *district* formation are not considered part of the formation costs, and must be borne by the developer. Developers must: (1) submit a *letter of intent* and receive a letter of opinion as described in Section I.a.ii above; and (2) deposit funds with the City in an amount necessary to pay the full costs of the district formation process.
- b. In general, the total cost of formation will vary depending on size, complexity, and scope of the proposed *district*. The developer is required to submit funds prior to initiation of the *district* 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 *districts*. These developer deposit funds are separate from the *City funds*.

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- c. If a surplus exists in the developer deposit fund for the particular *district* after 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.
- d. 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 *district management plan*, *engineer's report*, *petition*, *ballot*, and City administration costs. All formation advocacy costs, including fliers and handouts, are not reimbursable costs.

III. INSURANCE AND INDEMNITY

- a. In order for the Council to accept a *district management plan* and *engineer's report* for any new *district* the entity or person having prepared or contributed to the preparation of the *district management plan* or *engineer's report* must: (1) provide evidence of insurance in a form satisfactory to the Mayor or Mayor's designee; and (2) agree to indemnify the City of San Diego in a form satisfactory to the Mayor or Mayor's designee.

IV. SELF MANAGEMENT

- a. As part of the formation process, the *petition* must identify whether the proponents are recommending that the *district* be managed by the City or an *owners' association*. If the *petition* submitted indicates that the proposed *district* is to be administered by an *owners' association*, the *ballot* shall also include an advisory vote on whether *property owners* want the City or an *owners' association* to administer the *district* if it is established. If the *ballot* procedure indicates that a majority of respondents support *self-management*, then Council may enter into an agreement with an *owners' association* for administration of the *district*, but only if these organizational standards are met to ensure transparency and accountability with regards to management and use of *assessment* funds:
 - i. The *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 non-profit status as applicable under State Law;

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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 *district* are heard, discussed, or deliberated, and with the California Public Records Act, for all documents relating to *activities* of the *district*.
- b. The *Owners' Association* bylaws must identify that *property owners* paying the *assessment* shall have the opportunity to vote on and be nominated to the *owners' association* board on an annual basis.
- c. The *Owners' Association*, pursuant to the *management agreement* must agree to:
- i. Be bound by reporting requirements for reconciling of expenditures as outlined in the *management agreement*;
 - ii. Be bound by transparency requirements for on-line posting of documents as specified in the *management agreement*; such as meeting agendas, meeting minutes, articles of incorporation, bylaws, *annual report*, *engineer's report*, *district management plan*, RFP's, and contracts awarded;
 - iii. Timely prepare and mail annually to the *property owners* a notification of the *annual report* summarizing the goals and accomplishments for the past fiscal year; and
 - iv. Provide for access to the *property owners* of a summary of financial statements for the past fiscal year.
- d. The *management agreement* shall:
- i. not have a term that exceed five years, but the management agreement may be renewed after expiration of the term;
 - ii. provide for advances in an amount and for a duration as determined by the Mayor;
 - iii. shall provide a process for issuing and reconciling advances and any reimbursement procedures;

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- iv. articulate general budgeting principles and timelines;
- v. articulate appropriate dates and budget detail requirements;
- e. The City may recover either \$3,500 or 4% of annual *district* assessments, whichever is less, to cover costs associated with administering *self-managed districts* from the respective *assessments* unless otherwise directed by Council during the annual budget process.

V. RESERVES

To effectually minimize the impact to the general fund, the following reserve components within this section shall serve as a guideline for the appropriate use(s) that are specific and necessary to the *districts*. *District* reserves shall be established in the annual budgets and shall be incorporated into the management agreements of self-managed districts.

- a. *Delinquency Reserve* – an amount based on a percentage of projected *assessments* using the average *assessment* delinquency rate from the last three years plus 1%.
- b. *Operating Reserve* – an amount based on a percentage of the operating annual budget expenditures ranging from 10% - 50% for unanticipated operating expenditures and emergency situations until required (such as recent history of unanticipated expenditures to replace elements such as but not limited to a tree, light post, street furniture element, trash receptacle, etc.).
- c. *Cash Flow/Advance Reserve* – an amount needed to provide sufficient cash balance in the fund as determined by City staff for self-managed districts; not to exceed three months of assessments, but otherwise at least an amount equal to the size of the advance requested by the owners' association for the start of an Agreement. This reserve shall be held by the City except for the portion provided to the owners' association as a working capital advance. Self-managed districts may determine their own Cash Flow/Advance Reserve requirements and must inform the City of their established requirements.

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- d. *Capital Reserve* – an amount reserved for planned future capital projects which require multiple years of reserved funding.

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HISTORY

“Funding for Maintenance Assessment District Formation”

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

“Maintenance Assessment Districts”

Amended by Resolution R-310686 – 09/26/2016