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 XIIID 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.


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


“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.
“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.
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 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.
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.
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;
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;
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.

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