

COUNCIL POLICY

CURRENT Proposed

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

SUBJECT: MAINTENANCE ASSESSMENT DISTRICTS
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BACKGROUND

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

MADs are authorized in San Diego ~~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, San Diego Municipal Code §Sections 65.0201 et seq.) However, formation of all MADs must also comply with provisions of Article XIID of the California Constitution (Proposition 218).

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

- maintain a variety of *improvements* within public rights-of-way and other publicly-owned land;
- provide a variety of enhanced activities including maintenance and services ~~maintenance and services~~; and,
- 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. Property owners may also indicate an interest in having the MAD managed by a non-profit which represents the property owners. However, the City is ultimately responsible for establishing a MAD and for the appropriate use of MAD assessments, therefore, T~~ the formation process and management ~~process of MADs~~ requires close coordination between the proponents with and ~~Park and Recreation Department staff for residential or mixed-use MADs, or Community and Economic Development Department staff for commercial districts to be managed by a non-profit organization pursuant to San Diego Municipal Code Sections 65.0201 et seq~~ City staff and adherence to procedures and guidelines.

MAD, and 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 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.~~

PURPOSE

The intent of this policy is to set forth ~~the criteria for establishing new guidelines regarding: establishing MADs; the conditions under which either through the use of the MAD Formation Fund~~ City funding mechanisms may be requested and used by for eligible formation costs in Developed Communities; or through developer deposits for formation costs for 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

- ~~1. — Assessment 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 XIII D, and San Diego Municipal Code Sections 65.0201 et seq., as may be amended from time to time. This report typically contains the plans and specifications for the improvement of a specified MAD, an estimate of the costs of the improvements and maintenance of the improvements, a diagram of the specified MAD, the assessments proposed to be levied in each parcel within the MAD, and any other information required by law or determined by the engineer or the City to be relevant with respect to the MAD.~~
- ~~2. — Developed Community means a community that is built out, with all initial construction complete, and in which no developer-initiated MAD exists.~~

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- ~~3. *Developing Community* means a community that is being constructed by a developer and is not built out.~~
- ~~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.~~
- ~~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*.~~
- ~~6. *MAD* means a Maintenance Assessment District formed pursuant to California Streets and Highways Code Sections 22500 et seq., California Constitution Article XIID, and San Diego Municipal Code Sections 65.0201 et seq., as may be amended from time to time.~~
- ~~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 collected from property owners in the *MAD*.~~
- ~~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*.~~
- ~~9. *Special Benefit* has the meaning contained in California Constitution, Article XIID, Section 2, as amended from time to time. In addition, for purposes of this Council Policy, *Special Benefit* also means the enhanced public lands maintenance services, improvements, and activities that are provided by a *MAD* over and above the general maintenance, improvements and activities the City provides to the general public.~~

DEFINITIONS

Definitions provided in SDMC (SDMC) §§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 within the district.

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- c. Providing security, sanitation, graffiti removal, street and sidewalk cleaning, 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. “Administrative Expense” includes all incidental and personnel expenses incurred as a result of managing the *district*, including but not limited to *district* formation, assessment engineering, annual reporting, budget preparation and monitoring, assessment levying, invoicing, collections, information technology, communications equipment, contract procurement, vendor invoice payments, inspection of *improvements* and *activities* as required by contract, personnel, preparation and routing of requests for City Council action, legal assistance, rent, office space, and any related overhead or supervisory function.
- 3. “Annual Report” means a report prepared annually for a *district* which is consistent with 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.
- 4. “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 SDMC §65.0201 et seq. are not special taxes.
- 5. “Assessment Engineer” means an engineer registered pursuant to the Professional Engineers Act (Chapter 7 (commencing with §6700) of Division 3 of the Business

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Professions Code) on staff or hired by the City and assigned to prepare an engineer's report.

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 commercial neighborhoods. These eligible expenses include the cost of Assessment Engineer services necessary to generate the required Assessment Engineer Reports or Management District Plan, and, at the City's discretion, up to \$5,000 of the cost to conduct the feasibility study in a 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 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" ("MAD") means an area established pursuant to SDMC §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 Constitution Article XIID §4(b), and SDMC §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. "Feasibility Study" means a preliminary process conducted with property owners to determine desired improvements and activities which would confer a Special Benefit on 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.
12. "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 feasibility study.

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13. *General Benefit* means baseline level of public land maintenance services, improvements, and activities provided by the City of San Diego throughout the City limits.
14. "*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.
 - g. Fountains.
 - 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.
15. "*Letter of Intent*" means a form provided by the City to be used by interested *property owners*, functioning as a *formation committee*, to indicate their interest to the City in forming a *maintenance assessment district*. The form 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 advocates for *district* formation and the nature of the community.
16. "*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 first year's assessment collected from property owners in the MAD as explained further in this policy.
17. "*Owners' association*" means a private nonprofit entity which represents, and whose membership includes the assessed *property owners* or *property owners'* representatives in a *district*. An *owners' association* may be an existing nonprofit entity or a newly formed nonprofit entity. Consistent with California Streets and Highways Code §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 §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

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Act, California Government Code §6250 et. seq., for all documents relating to improvements and activities of the district. Board members, officers, and members of the owners' association are intended and understood to represent and further the interest of the property owners located within the district. Each property owner or property owner's representative paying the assessment has the right to vote in annual elections of the owners' association and the right to seek nomination or election to the board of directors of the owners' association.

18. "Property" means real property situated within a 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.

20. "Self-Managed (MAD)" means that the MAD is managed by a nonprofit owners' association pursuant to SDMC 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.

POLICY

~~Developed Communities~~

It is the policy of the City of San Diego City Council to ~~support formation of MADs assist-eligible Developed Communities seeking to form a MAD~~ 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; standards for nonprofits or owners' associations seeking to manage a MAD; and replenishing Formation Fund monies as needed on an annual basis.

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The City may pay costs and related expenses, or a portion thereof, necessary for initial district formation, including *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, are not eligible or reimbursable costs.

Developed Communities

The City desires *MAD* proponents to notify City staff early in the formation process of their interest in having the City establish a *MAD* and for the City to coordinate the services to create the *district*.

~~Through the \$150,000 in the *MAD Formation Fund* created by resolution of the City Council, the City may pay costs and related expenses, or a portion thereof, necessary for initial district formation, including *Assessment Engineer's Reports*, balloting, administrative costs, and other incidental expenses. It is the intent of this Council Policy that any formation advocacy costs, including fliers and handouts, are not reimbursable costs.~~

A maximum of \$50,000 may be used by the City in total from the *MAD Formation Fund* or the *Commercial Districts Revolving Fund* (collectively, "*City Funds*") ~~from this *MAD Formation Fund*~~ for the formation of any a *MAD* though the use of funds from the *Commercial Districts Revolving Fund* is restricted to forming *MADs* in commercial neighborhoods.

~~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 assessments collected from property owners in the *MAD*.~~

~~—Since these *City MAD Formation Fund* was established by the City Council with the anticipation that *Funds* primarily rely on revenues ~~would be being~~ replenished through assessment collections, it is important that any communities ~~receiving allocated funding~~ these funds have a strongly chance of completing support district formation so there is a high likelihood of the *MAD* being formed, otherwise, the funding may be lost.~~

Also, given the City's responsibility and liability for use of *MAD* assessments, that management and budgeting guidelines be provided and adhered to, especially where a nonprofit representing the property owners wishes to manage the *MAD*,

I. ~~A.~~ Formation and ~~Criteria for~~ Funding Requests

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- A. Property owners seeking to form a MAD are required to contact the Mayor, or City Manager, or designee, and submit a letter of intent along with a letter of support from each relevant City Council Office.
1. City staff shall then review the letter of intent and letters of support to determine: if there appears to be sufficient and/or significant participating property owners to constitute a formation committee; if other community groups, such as the local Planning Committee or BID association, support the concept as appropriate; and ascertain the nature of the community.
 2. If City staff approves the letter of intent then City staff, with the assistance of their consultant (assessment engineer) shall collaborate with the formation committee while they conduct the feasibility study.
 3. City staff will supply the formation committee with a list drawn from County records of potentially affected parcels and property owners to facilitate outreach efforts.
 4. The formation committee shall attempt to survey all potentially affected property owners, either by mail, email, site visits, or by holding at least one noticed meeting, to solicit input on desired activities and improvements and potential district boundaries. City staff and/or City consultant shall be available at this meeting (and may be requested to attend other meetings) to answer general MAD questions.
 5. Once the feasibility study is complete, if the formation committee wishes to proceed with gathering petitions in support of MAD formation then a MAD proposal must be created which incorporates the results of the feasibility study. The proposal must include:
 - a. the proposed improvements and activities which would confer a Special Benefit on those paying;
 - b. the estimated costs of the improvements and activities;
 - c. the general extent of the proposed district including the number of parcels;
 - d. the estimated cost to establish the MAD and the source of funding for all costs including those which exceed the amount that may be requested from the City;
 - e. the possible range of proposed assessments (though this shall be non-binding on the Assessment Engineer's Report); and
 - f. the amount of funding for formation costs to be requested from the City and, if provided, that it must be repaid from the first year of assessments if the MAD is established.
 6. The petition must be provided to City staff for review and comment prior to gathering signatures.

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7. The petition must be signed by the appropriate number of property owners from within the proposed MAD in accordance with SDMC §65.0207 and must:
- a. indicate that its purpose is to document the general interest of the community in forming a MAD and only if the appropriate threshold is met as identified in the SDMC §65.0207(a) or (b) then the City may proceed with a ballot procedure to determine if there is a sufficient support to form the MAD unless there is a majority protest;
 - b. accurately describe the MAD proposal, including all aspects listed in I.A.5. above;
 - c. disclose the estimated formation costs and sources of funding and if City Funds are used that these monies must be repaid in full through assessments collected from MAD property owners within the first year following successful district formation;
 - d. indicate whether the MAD is proposed to be managed by the City or an owners' association (self-managed);
 - e. Contain for each property owner signatory - the printed owner name, title, signature, date signed, parcel number, and site address which falls within the proposed district;
 - f. Contain declarations by each property owner signatory that he or she is the current owner, or authorized representative of the current owner, of the identified parcel; and
 - g. Contain signatures no older than six (6) months as of the date submitted to City staff.
8. Prior to submitting the MAD proposal and petitions to the City, the formation committee shall also obtain documentation which complies with either of the following:
- a. Where the proposed MAD boundaries are substantially similar to those of the officially recognized community planning area boundaries, documentation in the form of minutes showing that the officially recognized community planning committee:
 - i. Has held at least two (2) publicly-noticed meetings to discuss the MAD proposal, in compliance with that planning committee's public noticing requirements;
 - ii. supports by majority vote the MAD proposal, including all aspects listed in I.A.5. above;
 - iii. is aware of the estimated formation costs and understands the requirement to repay the City Fund, if used, with the first year's assessments after successful district formation; and
 - b. Where the proposed MAD boundaries are not substantially similar to the officially recognized community planning area boundaries, documentation in the form of a

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letter is provided showing that a self-designated MAD advisory committee has been formed, and that this committee:

- i. supports by majority vote the proposed MAD concept, including all aspects listed in I.A.5. above;
- ii. has informed the officially recognized community planning committee for the area where the proposed MAD is located about the proposed MAD formation;
- iii. is aware of the estimated formation costs and understands the requirement to repay the *City Funds* with the first year's assessments after successful district formation; and
- iv. has held at least two (2) meetings open to the public and has:
 - v. published a notice of the meeting that accurately summarizes the MAD proposal and cost in a community newspaper, newsletter, or publication of similar distribution; and
 - vi. posted information about the proposed MAD at a community-accessible public building within the proposed MAD boundary.

9. The formation committee shall submit the petitions to City staff who shall verify within 45 calendar days of the submission date that the petitions comply with the provisions of this policy by checking:

- a. the sufficiency of the MAD proposal, petition language, and supporting documents per Item 8 above;
- b. the completeness of information required and submitted per petition;
- c. the timeliness of signatures;
- d. the eligibility of the locations of the parcel; and
- e. the validity of the owner name as signed.

10. Once verified by City staff, the formation committee shall be advised via email or mail of the number of eligible and ineligible petitions and the general reasons for ineligibility. If the number of valid petitions does not meet the required threshold, then the formation committee shall have an additional 30 calendar days as of the date of notification by City staff to obtain the required additional petitions which comply with the provisions of this policy.

11. Once additional petitions are submitted, but no later than 30 days after notification, City staff shall verify these additional petitions in accordance with the procedures above. Previous eligible petitions will not be reevaluated. If there are still insufficient petitions then all formation efforts cease and no new effort to establish a MAD in the same community shall be considered by the City within three (3) years.

12. If sufficient petitions along with the proposal and required documentation are

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submitted to City staff, then formation proceedings may continue in accordance with SDMC §65.0201 et seq, using the City's assessment engineer. However, all necessary funding must be identified by the formation committee and deposited with the City such that the deposited funds cover the total formation costs or make up the difference between the anticipated formation costs and the amount of funding being provided by the City at the City's discretion, in compliance with this Policy.

~~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. a) the proposed *Improvements* to be maintained by the *MAD*;~~
- ~~b. b) the proposed *MAD* boundaries;~~
- ~~c. c) any proposed new *Improvements* to be installed, maintained and funded by the *MAD*; and~~
- ~~d. 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)–1c).~~

~~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;~~
- ~~c) 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~~

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- 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;~~
- ~~c) 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 held at least two (2) meetings open to the public and has 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~~
- ~~posted information about the proposed MAD at a community-accessible public building within the proposed MAD boundary.~~
- ~~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~~
- ~~c) contain printed names, signatures, addresses and parcel numbers for each property owner signatory.~~

~~4.13. 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 or provision of goods and services to the MAD must disclose such interest in writing in the Letter of Intent to the City and must disclose to the community that potential economic interest.

14. Those formation committees (in Developed Communities) seeking to utilize City

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~~the~~ funding mechanisms to cover some or all of the formation costs shall submit their ~~The~~ MAD information necessary to meet the above criteria proposal, petitions and documentation, as required by this Policy, to the City by July 1 so that funding needs, ranking of requests, and allocations may be made by City staff to utilize the respective Funds for the coming fiscal year once the annual City Budget Appropriation Ordinance is passed. Funding requests received after July 1 will be considered to the extent that there are still funds available. ~~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 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.~~

I.II. B. Ranking of *Developed Communities* Requesting Funding

In the event that the total amount of money available for MAD formation in the City MAD Formation Fund Funds 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~~ staff based on the following criteria:

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

~~B.~~

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- ~~C. 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).~~
- B. Percentage of additional valid property owner petition signatures the *Developed Community* is able to provide over and above the minimum required percentage pursuant to SDMC §65.0207, in increments of 5% e.g. if minimum required is 30% then increments are 35%, 40%, 45%, etc.
- C. Support from the officially recognized community planning committee or other relevant local groups for the proposed MAD area.
- ~~D.~~
- ~~3. Support from the officially recognized community planning committee for the proposed MAD area.~~
- ~~E.~~
- F.D. 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 **per fund** for use of **City MAD-Formation Fund** monies in any one year, unless there are no other eligible proposals in other Council Districts.

III. Replenishment of Funds

In the event that the total amount of money available for MAD formation in the MAD Formation Fund is less than \$250,000 then the City shall include with the next fiscal year City Budget additional funding to increase the City Funds to a minimum of \$250,000 and authorization in the annual Appropriations Ordinance to expend the funding pursuant to this Council Policy. Similarly, in the event that the total amount of money available in the Commercial Districts Revolving Fund for special district formation expenses in commercial neighborhoods is less than \$175,000 then the City shall include with the next fiscal year City Budget additional funding to increase the fund to a minimum of \$175,000 and authorization in the annual Appropriations Ordinance to expend the funding pursuant to this Council Policy.

IV. Self-Management

In accordance with SDMC §65.0209, the Notice, Protest and Hearing Procedure shall comply with §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

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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.

V. Selection of an Owners' Association

If the ballot procedure as noted in Section IV (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 so long as the standards below are met by the owners' association in question and the agreement includes the provisions identified below in this policy.

VI. City Cost Recovery

The City shall recover in full or in part all of its costs associated with administering self-managed MADs from the respective MAD Funds unless otherwise directed by Council during the annual budget process. The default recovery rate to be included with the annual budget for each self-managed MAD is four percent (4%) of projected annual assessments or \$3,500, whichever is greater.

VII. Standards for an *Owner's Association* to administer a MAD pursuant to a MAD Management Agreement which complies with the provisions of SDMC §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.

A. *Owners' Association* must:

1. Obtain and maintain a Federal Tax Exempt status under §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;
4. Make provision for participation by property owners within the district and any property owner advisory groups pursuant to SDMC §65.0214 to facilitate program/budget development and oversight, and contractor performance.
 - a. Any standing advisory committees of the *owners' association* shall 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.

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- b. All members of the standing advisory committee shall represent *property owners* from within the boundary of the applicable *MAD*.
- 5. The *owners' association* board or standing advisory committee shall hold at least four noticed meetings per year concerning the *MAD*:
 - a. As provided for in SDMC §65.0220 (h), the agreement shall provide that the *owners' association* agrees to conduct at least one (1) noticed meeting which shall include the advisory group, if applicable, and City staff, along with property owners within the district to discuss the budget, improvements, and activities for the following fiscal year. Notice of the meeting is to be provided in accordance with the Brown Act and via first class mail to assessment paying property owners within the *MAD*. The minutes from the meeting are to be posted online.
 - b. The owners association shall also hold at least three other noticed meetings per year open to property owners within the district to provide input on bids or proposals received by the Owners Association for any contracts for improvements and activities of the district, to evaluate the performance of any contractor for the district, and to advise the owners' association regarding the improvements and activities for the district. The minutes from the meetings are to be posted online.

B. *Owners' Association* Bylaws must:

- 1. Identify that property owners paying the assessment shall be members of the corporation.
- 2. Require an annual election of board members by the membership by written ballot.

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, an annual report summarizing the goals, accomplishments and summary of financial statements for the past fiscal year.

VIII. Standards for Procurement of Goods and Services in Self-Managed *MAD*s:

- A. Pursuant to SDMC §65.0220 (k), *Owners' Associations* shall comply with City's own procurement provisions (as specified in the SDMC) and as further articulated in the *MAD* management agreement however stricter standards may be imposed such as lower thresholds or written quotes or bids. Any modified requirements are to ensure transparency and efficient use of *MAD* funds in recognition of the value of the *MAD*

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budgets and contracts as compared with the City's overall budgets and contracts. Further, agreements for such goods and services may be limited to a term of five years maximum including any modifications or extensions.

IX. Other Provisions for the *Owner's Association MAD* Management Agreement which shall also comply with the provisions of SDMC §65.0220:

- 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.

X. District Reserve Requirements:

For budgeting and fund management purposes, four classes of Reserves shall be established in the annual budgets to be held/managed by the City 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%: and is held by the City.
- B. Unanticipated Expenditure Reserve – an amount based on a percentage of projected assessments for unanticipated operating and capital expenditures and is held by the City 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. Held by the City except for the portion provided as a working capital advance.
- D. Capital Reserve – an amount reserved for planned future Capital projects which required multiple years of reserved funding and is held by the City until required.

Developing Communities

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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 ~~project description~~ MAD proposal as described above in I.A.5, and work closely with City staff in providing necessary information.

In general, the total cost of formation will vary depending on size, complexity, and scope of the proposed *MAD*. The developer ~~would~~ is required to submit funds prior to the initiation of a new *MAD* formation study, 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 City Funds*~~, ~~and would be identified in the annual Appropriation Ordinance~~.

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.

Similarly to *Developed Communities*, upon a successful formation effort, the first 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- , / /