



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

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

REQUESTED ACTION:

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

STAFF RECOMMENDATION

Approve the requested action.

SUMMARY:

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

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

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

DISCUSSION:

Maintenance Assessment Districts (MADs) are special assessment districts where property owners pay assessments to fund enhanced improvements and activities, in their neighborhood or community, which confer Special Benefits on those assessed. These improvements and activities are beyond those generally provided by the City as a General Benefit.

Support for forming a MAD is often initiated by a developer, during the development of a new community, or by property owners within an already-developed community. Property owners may also indicate an interest in having the MAD managed by a non-profit which represents the property owners. However, the City is ultimately responsible for establishing a MAD and for the appropriate use of MAD assessments, therefore, the formation process and management of MADs requires procedures and guidelines as proposed in these amendments to the San Diego Municipal Code.

Enabling Legislation

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

Major changes

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

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

With regards to the Assessment Engineering, the City shall assign the Assessment Engineer, or the district formation committee may hire an outside engineer, but only if approved by the Mayor of Mayor’s Designee. All Assessment Engineers will be required to insure and indemnify the City of San Diego for their work, and shall be required to ensure that the Report meets the requirements of Proposition 218.

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

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

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

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

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

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

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

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

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

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

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

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal #2: Work in partnership with all of our communities to achieve safe and livable neighborhoods.

Objective #5. Cultivate civic engagement and participation.

Goal #3: Create and sustain a resilient and economically prosperous City.

Objective #1. Create dynamic neighborhoods that incorporate mobility, connectivity, and sustainability.

FISCAL CONSIDERATIONS:

Anticipated general fund fiscal impact is an unquantified reduction in the use of General Funds for MAD advances, reimbursements, and expenses prior to receipt of assessments from the County of San Diego.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

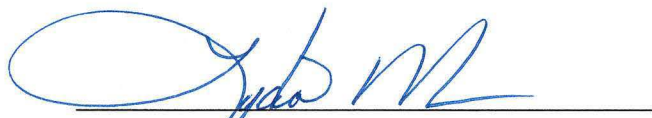
This section of the Municipal Code was last amended effective June 1998.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Proposed changes were shared with community members over the last four months by Economic Development and Park and Recreation staff. Drafts of the proposed municipal code amendments were shared at three noticed public meetings on October 27 and November 10, 2015 and January 11, 2016. An additional meeting was held for self-managed MAD associations.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include those property owners in a current MAD and nonprofit administrators of self-managed MADs.


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