

SUBJECT:
Land-Secured Financing Policy for the
Formation of Assessment Districts
and Community Facilities Districts

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ADOPTED 8-10-83
REVISED 6-2-93
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Purpose and Scope

The purpose of this Statement of Policy is to provide the City staff, the residents of the City and the owners and developers of property located within the City with guidance in the application for and consideration of the establishment of assessment districts and common facilities districts (CFDs) within the City for the purpose of financing or assisting in financing the acquisition or construction of public infrastructure to benefit and serve either existing or new development or a combination thereof. The underlying principals behind this policy are the protection of the public interest, assuring fairness in the application of assessments to current and future property owners, assuring full disclosure of the existence of any assessment liens, protection of the City's financial position and assuring that applicants for all assessment district proceedings other than City-initiated proceedings pay all costs associated with the formation of any assessment district or CFD.

The scope of this policy is limited to the proposed formation of assessment districts and CFDs for the limited purpose of financing or assisting in financing the acquisition or construction of public infrastructure. This policy does not apply to the formation of assessment districts or other financing districts formed for the purpose of maintaining public improvements or financing public services.

Introductory Statement

The City of Oceanside will consider applications initiated by property owners or the City itself for the establishment of assessment districts or CFDs to finance authorized public improvements which benefit existing or new development or a combination thereof.

Each application for the establishment of an assessment district or CFD must comply with the applicable policies contained herein unless the City Council expressly grants an exception to such policy or policies as they apply to a specific application.

Finding of Public Interest or Benefit

The City Council may authorize the initiation of proceedings to form an assessment district or CFD to finance authorized public improvements if the City Council determines that the public improvements to be financed and/or, in the case of an assessment district proposed to finance public improvements to benefit new development, the attributes of the new development will provide, in the opinion of the

City Council, a significant public benefit to the community at large as well as the direct and special benefit to be derived by the properties within the assessment district from the public improvements to be financed.

Examples of significant public benefit to the community at large may include, but are not limited to, the following:

1. Construction of a major public facility which meets an immediate community need such as a major arterial which will provide a vital highway facility to alleviate congestion, water storage facilities which will remedy inadequate fire flow, etc.
2. Development of a residential project which will provide low- and moderate-income housing, improved parkland and/or facilities, open space or other public facilities or land in excess of that otherwise required to be provided by the development.

Authorized Public Facilities

Improvements proposed to be financed through an assessment district or CFD must be public improvements which will be owned, operated and maintained by the City or another public agency. The types of improvements eligible to be financed include:

1. Streets and highways identified in the Circulation Element of the City as collectors or arterials.
2. Sewer and water lines or other sewer and water facilities to be located within authorized streets and highways or within other public rights-of-way shown on the master plan of sewer or water facilities.
3. Drainage facilities shown on the master plan of drainage facilities or public utilities such as the undergrounding of electrical or telephone lines.
4. Such other improvements as may be authorized by law and which the City Council determines are consistent with the policies herein.

The City Council shall have the final determination as to the eligibility of any improvement for financing, as well as the prioritization of financing of such improvements. Use of bond proceeds for grading and right-of-way acquisition will be reviewed by the City Council and City's assessment engineer or special tax consultant and bond counsel on a case-by-case basis to determine the eligibility of financing of such expenses. Generally, "in-tract" (e.g., local streets or utilities) improvements which serve residential development will not be considered eligible to be financed through an assessment district or CFD unless requested by the owners of an existing

residential development to remedy a threat to the public health or safety resulting from an existing deficiency in public improvements to serve such existing development.

Eligible incidental costs which may be financed from the proceeds of assessment district improvement bonds or of CFD special tax bonds shall be limited to those incidental costs associated with only those improvements financed from the proceeds of such bonds and may include:

1. Usual and customary engineering costs, e.g., design, survey, etc.
2. Plan check and inspection fees.
3. Capacity fees as permitted under assessment district law.
4. Prefunded interest until the assessment installments or special taxes may be placed upon the assessment roll.
5. Construction administration or supervision.

The City Manager, or his/her designee, shall review all incidental costs to ensure that such costs are customary and reasonable.

The following costs are not eligible to be financed from the proceeds of assessment district improvement bonds or CFD special tax bonds:

1. Development impact fees, although the City Council may, in its sole discretion, grant credit in an amount not to exceed the obligation for the payment of such fees if improvements which would otherwise be financed from the proceeds of such fees are financed from the proceeds of assessment district improvement bonds or CFD special tax bonds.
2. Administrative or overhead expenses, financial or legal fees incurred by an applicant for the formation of an assessment district or CFD. This limitation does not apply to amounts advanced by the applicant to the City pursuant to the provisions of this policy to pay for preformation costs incurred by the City. (See "Preformation Cost Deposits and Reimbursements" below.)
3. Land-use planning and subdivision costs and environmental review costs related to such land-use planning and subdivision.

Required Value-to-Lien Ratio

The value-to-lien ratio, i.e., the aggregate fair market value of the properties subject to assessment or special tax, including the value of the improvements to be financed from the proceeds of the issue or series of improvement bonds or special tax bonds for

which the value-to-lien ratio is being computed, compared to the aggregate amount of the assessment lien or special tax lien proposed to be created plus any prior fixed assessment district liens or special tax liens, for an assessment district or CFD must be at least 4:1. An assessment district or CFD with a value-to-lien ratio of less than 4:1 but equal to or greater than 3:1 may be approved, in the sole discretion of the City Council, upon a determination by the City Manager, after consultation with the Chief Financial Officer, the bond counsel, the underwriter and the financial advisor, that approval of an assessment district or CFD with a value-to-lien ratio of less than 4:1 is financially prudent under the circumstances of the particular district.

The value-to-lien ratio shall be determined based upon an appraisal of the fair market value or assessed value of the properties proposed to be assessed; provided, however, the City Manager may require that the value-to-lien ratio be determined by an appraisal if, in his judgment, the assessed values of the properties proposed to be assessed do not reflect the current fair market value of such properties. The appraisal shall be coordinated by, done under the direction of, and addressed to the City. The appraiser shall be selected and retained by the City. The costs associated with the preparation of the appraisal report shall be paid by the applicant for the assessment district or CFD, but shall be subject to possible reimbursement as provided for herein. The appraisal shall be conducted in accordance with assumptions and criteria established by the City, based upon generally accepted appraisal standards or state-recommended standards for similar appraisals conducted for the same purpose.

The City reserves the right to require a market absorption study for any assessment district or CFD proposed to include new development. In any such case the City shall retain, at the applicant's sole expense but subject to possible reimbursement as provided for herein, a consultant to prepare a report to verify or establish the projected market absorption for and the projected sales prices of the properties proposed to be included within the assessment district or CFD. If a market absorption study is conducted, the appraiser shall utilize the conclusions of the market absorption study in conducting the appraisal of the properties within the proposed assessment district or CFD, or shall justify, to the satisfaction of the City Manager, why such conclusions were not utilized in conducting such appraisal.

Maximum Taxes and Assessments

The maximum annual assessment installment or special tax shall not exceed one percent (1%) of the estimated fair market value (as determined by the City) of the properties subject to the levy of the proposed assessment or special tax (the "Assessed Properties") as of the date of the completion of both the public improvements and the private improvements. Additionally, the total of the following taxes and assessments or special taxes appearing on the property tax bill, shall not exceed two percent (2%) of such estimated fair market value of the Assessed Properties:

1. Ad valorem property taxes.
2. Voter-approved ad valorem property taxes in excess of one percent (1%) of the assessed value of the Assessed Properties.
3. The maximum annual special taxes levied by any community facilities district or other public agency.
4. The annual assessment installments for any other assessment district for the payment of bonded indebtedness or for services.
5. The annual assessment installments or special taxes, including any administrative surcharge, for the proposed assessment district or CFD.

All assessment districts or CFDs formed pursuant to this policy shall include an annual levy to pay the administrative costs of the City incurred in the administration of both the assessment district or CFD following the formation thereof and the improvement bonds or special tax bonds issued on behalf of the assessment district or CFD.

Preformation Cost Deposits and Reimbursements

Except for those applications for assessment districts or CFDs where the City is the applicant, all City and consultant costs incurred in the evaluation of applications and the proceedings to form an assessment district or CFD and issue improvement bonds or special tax bonds therefor will be paid by the applicant by advance deposit with the City of monies sufficient to pay all such costs.

Each application for the formation of an assessment district or CFD shall be accompanied by an initial deposit in an amount to be determined by the City Manager to be adequate to fund the evaluation of the application and undertake the proceedings to form the assessment district or CFD and issue the improvement bonds or special tax bonds therefor. The City Manager may, in his sole discretion, permit an applicant to make periodic deposits to cover such expenses rather than a single lump sum deposit; provided, however, no preformation costs shall be incurred by the City in excess of the amount then on deposit for such purposes. If additional funds are required to pay required preformation costs, the City Manager may make written demand upon the applicant for such additional funds and the applicant shall deposit such additional funds with the City within five (5) working days of the date of receipt of such demand. Upon the depletion of the funds deposited by applicant for preformation costs, all proceedings shall be suspended until receipt by the City of such additional funds as the City Manager may demand.

The deposits shall be used by the City to pay for costs and expenses incurred by the City incident to the evaluation of the application and the proceedings for the formation of the assessment district or CFD and the issuance of the improvement bonds therefor,

including, but not limited to, legal, assessment engineering, other engineering, appraisal, market absorption, financial advisor, special tax consultant, administrative and staff costs and expenses; required notifications, printing and publication costs.

The City shall refund any unexpended portion of the deposits upon the occurrence of one of the following events:

1. The formation of the assessment district or CFD or the issuance of the improvement bonds or special tax bonds is disapproved by the City Council;
2. The proceedings for the formation of the assessment district or CFD and the issuance of the improvement bonds or special tax bonds are abandoned at the written request of the applicant; or
3. The improvement bonds or special tax bonds may not be issued and sold.

Except as otherwise provided herein, the applicant shall be entitled, at the option of the applicant, to reimbursement of or credit against assessments or special taxes for all amounts deposited with the City to pay for costs incident to the evaluation of the application and the proceedings for the formation of the assessment district or CFD and the issuance of the improvement bonds or special tax bonds therefor upon the formation of the assessment district or CFD and the successful issuance and sale of the improvement bonds or special tax bonds for the assessment district or CFD. Any such reimbursement shall be payable solely from the proceeds of the improvement bonds or special tax bonds.

The City shall not accrue or pay interest on any monies deposited with the City.

Selection of Consultants

The City shall select and retain all consultants necessary for the evaluation of any application and the proceedings for the formation of an assessment district or CFD and the issuance of the improvement bonds or special tax bonds therefor, including, but not limited to, assessment engineer, bond counsel, financial advisor, special tax consultant, underwriter, appraiser, and market absorption analyst after consultation with the applicant.

Land-Use Approvals

Properties proposed to be included in an assessment district or CFD must have received such land-use approvals as may, in the determination of the City, be necessary to enable the City to adequately evaluate the proposed assessment district or CFD including the properties to be included and the improvements proposed to be

financed. The City will schedule and conduct the public hearing or hearings pertaining to the formation of an assessment district or CFD only when (i) the properties proposed to be included within such assessment district or CFD have received all discretionary land-use approvals which would permit the development of such properties consistent with the assumptions utilized in the evaluation and formulation of the assessment district or CFD as proposed and (ii) all required environmental review has been completed.

It is the policy of the City Council in granting approval for development such as zoning, specific plan or subdivision approval to grant such approval as a part of the City's ongoing planning and land-use approval process. In granting such approval, the City reserves such rights as may be permitted by law to modify such approvals in the future as the City Council determines the public health, safety, welfare and interest may require. Such approval when granted is subject to a condition that the construction of any part of the development does not, standing alone, grant any rights to complete the development of the remainder of such development. Construction of public improvements to serve undeveloped land financed through an assessment district or CFD shall not vest any rights to the then-existing land-use approvals for the property assessed or taxed for such improvements or to any particular level, type or intensity of development or use. Applicants for an assessment district or CFD must include an express acknowledgement of this policy and shall expressly waive on their behalf and on behalf of their successors and assigns any cause of action at law or in equity including, but not limited to, taking or damaging of property, for reassessment of property or denial of any right protected by USC Section 1983 which might be applicable to the properties to be assessed.

Formation of an assessment district or CFD pursuant to this policy shall not vest any right in or establish any entitlement to any benefit or allocation under the provisions of Proposition A.

Terms and Conditions of Improvement and Special Tax Bonds

All terms and conditions of any improvement bonds or special tax bonds issued by the City for any assessment district or CFD, including, without limitation, the sizing, timing, term, interest rates, discount, redemption features, flow of funds, investment provisions and foreclosure covenants, shall be established by the City in accordance with applicable bond law. Each improvement or special tax bond issue shall be structured to adequately protect bond owners and to avoid negatively impacting the bonding capacity or creditworthiness of the City. Unless otherwise approved by the City Council, the following shall serve as minimum bond requirements:

1. A reserve fund shall be established for each bond issue to be funded out of the bond proceeds in an amount equal to the lesser of (i) ten percent (10%) of the proceeds of the sale of the bonds, (ii) Maximum Annual

Debt Service on the Bonds, or (iii) 125 percent of average Annual Debt Service on the Bonds, as determined by the City.

2. The assessment installments or special taxes shall be placed on the assessment roll in the first fiscal year following the issuance of the bonds. Interest shall be capitalized only so long as necessary to place the assessment installments or special taxes on the assessment roll.
3. The repayment of principal on improvement bonds shall begin on the earliest principal payment date permitted under the applicable bond law. The repayment of principal on special tax bonds shall begin on the earliest feasible principal payment date, as determined by the City Staff in consultation with the City's consultants.
4. In instances where multiple series of bonds are to be issued, the City shall determine what facilities shall be financed from the proceeds of each series of bonds.
5. Neither the faith, credit nor taxing power of the City shall be pledged to the payment of the bonds. The sole source of revenue for the payment of the bonds shall be the assessment installments or the special taxes.

Discharge of Assessments or Special Taxes

It is the policy of the City that all fixed lien assessments for assessment districts or special tax liens for CFDs levied on vacant property to be developed for residential use be prepaid and discharged prior to the subdivision of such property into parcels for sale to residential homeowners. Notwithstanding the foregoing, the City Council may, in its sole discretion, approve an assessment district or CFD in which assessments or special taxes may be "passed through" to the residential homeowner. An applicant desiring to "pass through" assessments or special taxes must request approval of such a "pass through" in the original application for approval of the assessment district. The application must contain a plan, satisfactory to the City Council, of how the prospective residential homeowners will be notified of the existence of the assessment lien and the options which the prospective residential homeowner has regarding the assessment lien. Such plan must include all of the following in addition to such other provisions as the applicant may deem necessary:

1. Provide for full disclosure of the existence of the assessment lien or special tax lien and any other assessment or special tax obligation applicable to the properties within the assessment district or CFD (whether imposed by the City or any other public agency), including the principal amount of the assessment or special tax lien and any other applicable assessment or special tax obligation, the applicable interest rates and prepayment premiums for the assessment district

improvement bonds or the CFD special tax bonds, term of each of the assessment or special tax liens, the amount of the regular payments of the assessment installments or special taxes, the option to prepay the assessment or special tax lien or allow the assessment or special tax lien to be passed through and the adjustment in the sales price of the homes which will apply if the assessment or special tax lien is passed through.

2. Disclose the option to prepay the assessment or special tax lien or allow the assessment or special tax lien to be passed through and the adjustment in the sales price of the homes which will apply if the assessment or special tax lien is passed through in all sales brochures, all other on-site advertising and all purchase documents adjacent to the sales price of the property in the same size and style of type.
3. Grant, in writing, to the prospective residential homeowner the option to have the assessment or special tax lien discharged prior to the close of escrow or to assume the assessment or special tax lien by a pass-through.
4. Specify in all disclosure documents the name, title, telephone number and address of a representative of the City as provided to the applicant who may be contacted by any prospective residential homeowner for further information regarding the assessment district or CFD and the assessment or special tax liens.
5. Agree to provide a copy of all applicable disclosure documents, signed by any prospective residential homebuyer, to the City.
6. Agree that, in the event that the development of the property within the assessment district or CFD is downsized at the request of the applicant or the applicant's successor in interest so that the subsequent reapportionment of assessments or special taxes throughout the resulting development would be contrary to the lien-to-value and/or maximum tax and assessment limitations contained herein, the applicant shall prepay such portion of the assessments or special taxes as may be necessary to bring the assessments or special taxes as reapportioned into compliance with such limitations.

Application Procedure

Any application for the establishment of an assessment district or CFD shall contain such information and be submitted in such form as the City Manager may require. In addition to such information as the City Manager may require, each application must contain:

1. Proof of authorization to submit the application on behalf of the owner of the property for which the application is submitted if the applicant is not the owner of such property.
2. Evidence satisfactory to the City Manager that the applicant represents the owners of not less than 60 percent (60%), by area, of the property proposed to be assessed or taxed.
3. For any assessment district or CFD proposed to finance improvements to benefit new development, financial statements, preferably audited, or federal income tax returns for the three most recent years for the owners of the property to be developed on whose behalf the application is being submitted and/or such other parties as the City Manager may require and such additional financial information as the City Manager may deem necessary to adequately review the financial feasibility of the assessment district or CFD. For assessment districts or CFDs proposed to finance improvements to benefit new development, the applicant must demonstrate to the satisfaction of the City the ability of the owner of the property proposed to be developed to pay the assessment installments or special taxes on such property until full build-out of the property.

It is the intention of the City Council that applicants for an assessment district or CFD have an early opportunity to have the application reviewed by City staff for compliance with this policy. In that regard, the City Council hereby directs the City Manager to create an assessment district and CFD application review committee composed of the City Manager, City Attorney, City Engineer, Planning Director, Chief Financial Officer and such additional persons as the City Manager may deem necessary. The committee shall meet on request with the applicant for an assessment district or CFD for the purpose of reviewing an application to form an assessment district or CFD following the determination by the City Manager that the information contained in the application for such assessment district or CFD complies with the requirements of this policy. Following the review of such an application, the committee shall prepare and submit a report to the City Council containing the findings and recommendations of the committee regarding the application.

Following completion of the committee report, the City Manager shall place the application on the City Council agenda for review. After review of the application and consideration of the committee report, the City Council shall determine whether or not to approve the initiation of proceedings to form the assessment district or CFD. The decision of the City Council pertaining to the applications shall be final.