

COUNCIL POLICY STATEMENT

Policy No. 33
Date Issued 12/17/02
Effective Date 12/17/02
Cancellation Date None
Supersedes No. 6/23/98

General Subject: Financing of Public Improvements

Specific Subject: Policy for Use of Assessment Districts, Community Facilities Districts, and Bridge and Thoroughfare Districts

Copies to: City Council, City Manager, City Attorney, Department and Division Heads, Employee Bulletin Boards, Press, File

BACKGROUND

The City Council often receives requests from property owners to use special districts to fund public improvements. These "Special Districts" include Assessment Districts formed pursuant to the Municipal Improvement Act of 1913 (Streets and Highways Code Section 10000 and following) (the "1913 Act"), with Improvement Bonds issued pursuant to the Improvement Bond Act of 1915 (Streets and Highways Code Section 8500 and following) (the "1915 Act"), Community Facilities Districts formed pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code Section 53311 and following) (the "Mello-Roos Act"), and Bridge and Thoroughfare Districts (Government Code Section 66484 and Carlsbad Municipal Code Section 20.08.140). The City Council has found it necessary to determine circumstances under which the City Council will approve Special District formation and financing as a guide to those who would seek to request it.

The ability of a property owner or developer to obtain financing of public improvements from the proceeds of tax-exempt bonds provides substantial economic benefits to such owner or developer. These benefits include the financing of such improvements at interest rates substantially lower than conventional financing interest rates, if such conventional financing is available, and/or the ability to obtain financing without providing equity compensation to the lender. For this consideration, the City Council has determined that tax-exempt financing should only be used if the public interest would be served thereby in addition to the benefit conferred on the properties within the proposed Special District.

The Mello-Roos Act requires that a public agency initiating proceedings to form a Community Facilities District after January 1, 1994 must first consider and adopt local goals and policies concerning the use of the Mello-Roos Act. This policy shall act as such a statement of local goals and policies pursuant to this statutory requirement and as a consolidation and replacement of the existing Policy 33 and Policy 38 and shall also provide guidance in the approval of Bridge and Thoroughfare Districts. Thus, the existing Policies No. 33 and 38 have been repealed.

PURPOSE

The primary purpose for the City Council's approval of Special District financing is to complete the links in the City's traffic circulation system. The City Council in that regard will not favor a proposed Special District that contemplates the construction of a portion of an arterial street unless it is extended in a logical way to connect with and improve the City's existing traffic circulation system. The City may require that proponents of a Special District expand the area to be included within a proposed Special District as may be necessary to complete linkages in the City's traffic circulation system. Other improvements may be considered by the City Council on a case-by-case basis. This policy does not address the funding of public services.

COUNCIL POLICY STATEMENT

Policy No. 33
Date Issued 12/17/02
Effective Date 12/17/02
Cancellation Date None
Supersedes No. 6/23/98

General Subject: Financing of Public Improvements

Specific Subject: Policy for Use of Assessment Districts, Community Facilities Districts, and Bridge and Thoroughfare Districts

Copies to: City Council, City Manager, City Attorney, Department and Division Heads, Employee Bulletin Boards, Press, File

The underlying principals behind this policy are:

- To protect the public interest;
- To ensure fairness in the application of the assessments, special taxes, or fees to current and future property owners;
- To ensure full disclosure to current and future property owners of the Special District;
- To ensure the creditworthiness of any Special District debt;
- To protect the City's credit rating and financial position;
- To ensure that the applicants for Special District proceedings, other than City-initiated proceedings, pay all costs associated with the formation of any Special District;
- To establish one policy regarding the requirements that must be met before the City Council will consider approving the financing of public improvements using Special Districts;
- To provide City staff, the residents of the City, and owners and developers of property located within the City with guidance in the application for and consideration of the establishment of Special Districts; and
- To incorporate the requirements of new legislation pertaining to the use of Special Districts.

It is not the intent of this policy to relieve any developer of responsibilities for the construction of public improvements or satisfaction of other conditions of development related to the subdividing of property, the processing of tentative or final maps, or master plan developments. This policy does not supersede any law, but the intent is to further restrict or clarify its use.

POLICY

Statement:

1. FINDING OF PUBLIC INTEREST

The City may allow the financing of public improvements under the provisions of this policy if, in the City's opinion, the public interest would be served thereby in addition to the benefit conferred on the properties within the proposed Special District.

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

CITY OF CARLSBAD**COUNCIL POLICY STATEMENT**Policy No. 33Date Issued 12/17/02Effective Date 12/17/02Cancellation Date NoneSupersedes No. 6/23/98

General Subject: Financing of Public Improvements

Specific Subject: Policy for Use of Assessment Districts, Community Facilities Districts, and Bridge and Thoroughfare Districts

Copies to: City Council, City Manager, City Attorney, Department and Division Heads, Employee Bulletin Boards, Press, File

*Facilities Allowed:***2. AUTHORIZED PUBLIC IMPROVEMENTS**

Improvements proposed to be financed through a Special District must be public improvements that will be owned, operated, or maintained by the City or other public agency or public utility. The City Council shall have the final determination as to the eligibility of any improvements for financing, as well as the prioritization of financing of such improvements. Such improvements generally include, but are not limited to:

- A. Streets and Highways: Arterial streets, highways, major bridges, and freeway interchanges identified on the traffic circulation element of the Carlsbad General Plan. If the primary purpose of completing a circulation link is met, and overriding public interest is shown, then public facilities increasing traffic capacity for a circulation element may be considered. Right-of-way must be dedicated, offered for dedication, or acquired prior to formation of the Special District. Right-of-way within the boundaries of the Special District is generally not authorized to be financed through a Special District except under special circumstances as recommended by the City Engineer.
- B. Other Public Improvements: If appurtenant to the types of street and highway improvements described in (A) above, the following additional improvements may be considered:
 - 1) Sewer lines or other sewer facilities: Sewer lines must be located within the rights-of-way of the arterial streets when the City Engineer determines it is necessary that they be so located.
 - 2) Water lines and other water facilities: Water lines must be located within the rights-of-way of the arterial streets when the City Engineer determines it is necessary that they be so located.
 - 3) Drainage facilities.
 - 4) Landscape and irrigation facilities.
 - 5) Reclaimed water facilities in rights-of-way.
 - 6) Grading for eligible public streets.
 - 7) Environmental mitigation required for the improvements being financed through the Special District.
 - 8) Bicycle and pedestrian facilities, if located on land or easements owned or dedicated to the City and accepted as part of the Citywide trail system.
 - 9) Such other improvements as may be authorized by law and which the City Council determines are consistent with the policies herein.

COUNCIL POLICY STATEMENT

Policy No. 33
Date Issued 12/17/02
Effective Date 12/17/02
Cancellation Date None
Supersedes No. 6/23/98

General Subject: Financing of Public Improvements

Specific Subject: Policy for Use of Assessment Districts, Community Facilities Districts, and Bridge and Thoroughfare Districts

Copies to: City Council, City Manager, City Attorney, Department and Division Heads, Employee Bulletin Boards, Press, File

Such improvements may be limited by the type of Special District utilized or at the discretion of City Council. Any improvements already included in an existing fee program are not eligible to be financed by a Special District. Generally, other facilities may be considered if initiated by City Council or the owners of existing developed property. All improvements must be located in public rights-of-way dedicated or otherwise granted to the City or other public agency.

3. **INCIDENTAL COSTS**

Eligible Incidental Costs that may be financed from the proceeds of bonds issued for a Special District or the assessments, special taxes, or fees levied within a Special District shall be limited to those incidental costs directly related to the improvements financed from the proceeds of such bonds or revenues. These incidental costs are eligible to the extent that such costs have been included in the calculation of the assessment, special tax, or fees. "Administrative Procedures for Reimbursable Public Works Projects," as issued from time to time by the City Engineer, are provided and detail eligible incidental costs for public works construction projects.

Ineligible Incidental Costs. Costs considered ineligible to be financed from the proceeds of Special District bonds or the assessments, special taxes, or fees levied within a Special District include, but are not limited to, the following:

- A. Development impact fees.
- B. Administrative or overhead expenses, financial consultant, or legal fees incurred by an applicant for the formation of a Special District. This limitation does not apply to amounts advanced by the applicant to the City pursuant to the provisions of this policy to pay for pre-formation costs incurred by the City. (See "Pre-Formation Costs, Deposits, and Reimbursements.")
- C. Land-use planning and subdivision costs and environmental review costs related to such land-use planning and subdivision.
- D. Environmental impact studies, unless directly related to the project and done separately for the project.
- E. Endowments for mitigation land.
- F. Construction loan interest.
- G. Costs incurred prior to the City Council's acceptance of a request to begin work on the formation of a Special District, a reimbursement, or acquisition agreement, or the adoption of a resolution of intention to form the Special District, whichever comes first.
- H. Subdivision financial analysis.
- I. Attorney's fees incurred by the property owners or their agents, except as recommended by the City Attorney related to condemnation proceedings.

COUNCIL POLICY STATEMENT

Policy No. 33
Date Issued 12/17/02
Effective Date 12/17/02
Cancellation Date None
Supersedes No. 6/23/98

General Subject: Financing of Public Improvements

Specific Subject: Policy for Use of Assessment Districts, Community Facilities Districts, and Bridge and Thoroughfare Districts

Copies to: City Council, City Manager, City Attorney, Department and Division Heads, Employee Bulletin Boards, Press, File

- J. On-site right-of-way and easements.
K. Other overhead expenses incurred by the applicant.

4. STAGE OF THE IMPROVEMENTS

Any public improvements proposed to be financed through a Special District must meet all design and construction requirements and standards as may be established by the City and in accordance with current State laws. A public improvement proposed to be acquired from the proceeds of bonds, assessments, fees, or special taxes shall not be paid for out of Special District funds until all components, including appurtenant improvements, of such improvement are completed, bonds are sold if applicable, and such improvement has been opened to the public or could be opened to the public but for the fact that such opening has been withheld or delayed solely by the City.

An "improvement" shall be generally defined as a particular street with independent usage, including all appurtenant improvements such as sewer, drainage, and utility improvements appurtenant to the street. The City Engineer shall have the authority and discretion to establish one or more separate improvements consistent with the definition thereof for any Special District. Each improvement established by the City Engineer for any Special District and all components, including any appurtenant improvements, included within each such improvement must be described in the acquisition and financing agreement for such Special District. Any deviation of the description of an improvement shall be approved by the City Engineer.

The City Engineer may authorize the partial release of funds of up to ninety percent (90%) of the cost of any such improvement to pay for the acquisition of such improvement when such improvement, including all components thereof, can, in the opinion of the City Engineer, be opened by the City for use by the public. Ten percent (10%) of the cost of any improvement shall not be paid for until final acceptance of such improvement by the City and the City Engineer or his or her designee has certified the final cost of such improvement.

Prior to formation, any required environmental review and an environmental certification for development within the proposed Special District and the improvements proposed to be financed by the Special District must be completed, land use entitlement approvals for such development must be obtained, and right-of-way for all improvements proposed to be financed by the Special District must be dedicated or an irrevocable offer to dedicate must be received by the City.

Prior to the sale of bonds, if applicable, design of substantially all improvements to be financed from the proceeds of such bonds must be completed (100%) and bids for construction received.

The City may enter into acquisition agreements prior to the formation of the Special District. Any acquisition under such agreement shall be conditional upon formation of the Special District and, if

COUNCIL POLICY STATEMENT

Policy No. 33
Date Issued 12/17/02
Effective Date 12/17/02
Cancellation Date None
Supersedes No. 6/23/98

General Subject: Financing of Public Improvements

Specific Subject: Policy for Use of Assessment Districts, Community Facilities Districts, and Bridge and Thoroughfare Districts

Copies to: City Council, City Manager, City Attorney, Department and Division Heads, Employee Bulletin Boards, Press, File

applicable, issuance of bonds for such Special District. Except as provided below, the purchase price of any improvement shall not exceed the estimated costs for such improvement per the acquisition agreement, the engineer's report, or Community Facilities District report, as applicable, for the Special District when such Special District was formed. Any costs above this amount will be eligible for inclusion in the purchase price for an improvement only if there are eligible funds remaining upon completion of all of the improvements to be financed by a Special District. For Bridge and Thoroughfare Districts, or Community Facilities Districts that do not or cannot issue debt, construction to be completed by the developers will be reimbursed through fees or special taxes, if and when collected.

Property Owner Requirements:

5. CONCURRENCE OF PROPERTY OWNERS

Where a Special District is initiated by the property owners, the application for the consideration of the establishment of a Special District shall have the concurrence of the affected area's property owners representing not less than 65%, by area, of the land proposed to be assessed, taxed, or subject to the payment of fees. The application for consideration shall include an acceptance of this policy and, when applicable, a waiver of the property owners' rights under the Majority Protest Act. The City Council is in no way required to proceed with the formation of a Special District if the City Council finds that the creation of the Special District, the financing of the improvements by a Special District, or the construction of the improvements will not be in the best interest of the City.

6. FINANCIAL CAPABILITY AND STABILITY OF THE PROPONENTS

Any application for the establishment of a Special District shall contain such information and be submitted in such form as the Finance Director may require. In addition to such information as the Finance Director may require, each application must contain:

- A. 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.
- B. Evidence satisfactory to the Finance Director that the applicant represents or has the consent of the owners of not less than 65%, by area, of the property proposed to be subject to the levy of the fees, assessments, or special taxes.
- C. A business plan for the development of the property within the proposed Special District and such additional financial information as the Finance Director may deem necessary to adequately review the financial feasibility of the Special District. The applicant must demonstrate to the satisfaction of the Finance Director the ability of the owner(s) of the property proposed to be developed to pay the fees, assessments or special taxes for the Special

CITY OF CARLSBAD

COUNCIL POLICY STATEMENT

Policy No. 33

Date Issued 12/17/02

Effective Date 12/17/02

Cancellation Date None

Supersedes No. 6/23/98

General Subject: Financing of Public Improvements

Specific Subject: Policy for Use of Assessment Districts, Community Facilities Districts, and Bridge and Thoroughfare Districts

Copies to: City Council, City Manager, City Attorney, Department and Division Heads, Employee Bulletin Boards, Press, File

District and any other assessment, special taxes and ad valorem taxes on such property until full build-out of the property.

7. PRE-FORMATION COSTS, DEPOSITS, AND REIMBURSEMENTS

Except for those applications for Special Districts where the City is the applicant, all City and consultant costs incurred in the evaluation of applications and the proceedings to form a Special District and issue bonds, if applicable, 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 a Special District shall be accompanied by an initial deposit in an amount to be determined by the Finance Director to be adequate to fund the evaluation of the application and begin the proceedings to form the Special District and issue bonds, if applicable. If additional funds are required to pay pre-formation costs, the Finance Director 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 pre-formation costs, all proceedings shall be suspended until receipt by the City of such additional funds as the Finance Director 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 proceedings for the formation of the Special District and the issuance of bonds (if applicable) including, but not limited to, legal, special tax or assessment consulting, engineering, appraisal, market absorption, financial advisor, 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:

- A. The formation of the Special District and the issuance of the bonds, if applicable;
- B. The formation of the Special District or the issuance of the bonds is not approved by the City Council; or
- C. The proceedings for the formation of the Special District and the issuance of bonds are abandoned at the written request of the applicant.

Except as otherwise provided herein, the applicant shall be entitled, at the option of the City, to reimbursement of or credit against special taxes or assessment installments for all amounts deposited, if such amounts are recovered in the Special District. Any such reimbursement shall be payable solely from the proceeds of the bonds, special taxes, or fees as applicable.

CITY OF CARLSBAD**COUNCIL POLICY STATEMENT**

General Subject: Financing of Public Improvements

Specific Subject: Policy for Use of Assessment Districts, Community Facilities Districts, and Bridge and Thoroughfare Districts

Copies to: City Council, City Manager, City Attorney, Department and Division Heads, Employee Bulletin Boards, Press, File

Policy No. 33Date Issued 12/17/02Effective Date 12/17/02Cancellation Date NoneSupersedes No. 6/23/98**8. STAGE OF THE DEVELOPMENT PROJECT**

Development projects shall be at the stage of land use entitlements and design where all criteria of the policy can be adequately assessed. All property to be included in a Special District shall have already received environmental review and approval of all land use entitlements such as zoning, master plans, specific plans, or Local Facilities Management Plans and regulatory permits. The City Council may approve a Special District that includes some land without such approvals if the improvements to be financed are consistent with the General Plan and if the City Council finds the improvements are required in the public interest.

9. DEVELOPMENT RIGHTS

Approval of a Special District and construction of the public improvements does not, in and of itself, vest any rights to the then existing land use approvals for the property to be assessed or taxed for such improvements or to any particular level, type, or intensity of development or use. Applicants for a Special District 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 Process:**10. CREATION OF THE SPECIAL DISTRICT REVIEW COMMITTEE**

It is the intention of the City Council that proponents of a Special District have an early opportunity to have the proposal reviewed by City staff for compliance with this policy. In that regard, the City Council hereby directs the creation of the Special District Review Committee. The Committee shall consist of the City Manager, City Attorney, Community Development Director, Planning Director, City Engineer, Administrative Services Director (Chairperson), Finance Director, and Public Works Director. The Committee shall meet to review a proposal for a Special District for the purpose of determining whether or not the requirements of this policy have been satisfied.

Committee review shall take place prior to the presentation of a Special District proposal to City Council. Whenever any such proposal is presented to the City Council, it shall be accompanied by a report containing the findings and recommendations of the Committee made in regard to such proposal. The Committee may require the proponents to furnish any additional information necessary to the evaluation of the proposed Special District. The Committee may require all or any part of the deposits provided for in this policy to be made prior to commencing their review of the proposed Special District.

COUNCIL POLICY STATEMENT

Policy No. 33
Date Issued 12/17/02
Effective Date 12/17/02
Cancellation Date None
Supersedes No. 6/23/98

General Subject: Financing of Public Improvements

Specific Subject: Policy for Use of Assessment Districts, Community Facilities Districts, and Bridge and Thoroughfare Districts

Copies to: City Council, City Manager, City Attorney, Department and Division Heads, Employee Bulletin Boards, Press, File

11. SELECTION OF CONSULTANTS

The City shall select all consultants, such as, but not limited to, the assessment engineer or special tax consultant, bond counsel, financial consultant, and if required, underwriter and appraiser.

12. FEASIBILITY STUDY

If the City Council determines it necessary, a financial feasibility study may be required by a consultant selected by the City to be accomplished at the expense of the proponents of the Special District to ascertain whether or not the proposed Special District is financially feasible and whether or not the proposed bonds will find market acceptance.

Assessment /Special Tax Considerations:

13. APPORTIONMENT METHODOLOGY / REQUIREMENTS

The City or the special tax consultant or assessment engineer, as applicable, selected by the City shall determine the special tax formula or method of assessment spread. The prime emphasis in the establishment of the special tax formula will be fairness to the future property owner who will be paying the taxes over the years. The methodology for spreading assessments shall be based upon the benefit to the properties assessed. The methodology utilized shall adhere to the following requirements:

- A. The annual assessment or special tax shall be sufficient to include an amount necessary to pay for the expenses incurred by such Special District in the levy and collection of the assessment, special tax, or fee and the administration of the bonds and the Special District.
- B. For special taxes:
 - 1) The maximum projected annual special tax revenues must equal 110% of the projected annual gross debt service of any bonds of the Community Facilities District.
 - 2) The special tax formula shall include provisions to protect against changes in density resulting in the generation of insufficient special tax revenue to pay annual debt service and administrative expenses. As a condition of approval of the downsizing of the development by the applicant or the applicant's successor-in-interest, the City Council may require the prepayment of a portion of the special tax obligation as may be necessary in the determination of the City to ensure that adequate debt service coverage exists with respect to any outstanding bonds. Alternatively, the City Council may require security in a form and amount deemed necessary by the City to provide for the payment of debt service on the bonds.
 - 3) A partial and/or total prepayment option shall be included in any rate and method of apportionment of special taxes to pay for public improvements.

CITY OF CARLSBAD

COUNCIL POLICY STATEMENT

Policy No. 33

Date Issued 12/17/02

Effective Date 12/17/02

Cancellation Date None

Supersedes No. 6/23/98

General Subject: Financing of Public Improvements

Specific Subject: Policy for Use of Assessment Districts, Community Facilities Districts, and Bridge and Thoroughfare Districts

Copies to: City Council, City Manager, City Attorney, Department and Division Heads, Employee Bulletin Boards, Press, File

- 4) The applicable special tax to pay for public improvements levied against any parcel used for private residential purposes must be discharged prior to the sale of the individual lot.
- 5) The rate and method of apportionment of a special tax to pay for public improvements shall specify a fiscal year or number of years beyond which the special tax may not be levied on any parcel.
- C. All developed and undeveloped property within any Special District that is not otherwise statutorily exempt from the levy of the assessment, fee, or special taxes shall bear its appropriate share of the Special District's aggregate obligation from the date of formation of the Special District consistent with the other goals and policies set forth herein.
- D. The City Council will not approve a Special District unless all assessments, fees, or special taxes apportioned to publicly owned parcels within the District have been paid or discharged to the City's satisfaction.

14. DISCHARGE OF ASSESSMENT OR SPECIAL TAX OBLIGATION

It is the City's desire that any assessment or special tax obligation be discharged prior to the sale of individual lots. Under this policy, property owners of residential land within a Community Facilities District must discharge the special tax obligation applicable to the property prior to the sale of individual lots. For commercial/industrial property within a CFD and any property within an assessment district, the City Council may approve a pass-through of the obligation to a prospective purchaser at the City's sole discretion.

15. MAXIMUM AGGREGATE TAXES AND ASSESSMENTS

If the City Council approves a pass-through of the assessment or special tax obligation, it is the policy of the City that the total of the following taxes, assessments, and special taxes appearing on the property tax bill shall not exceed 1.8% of such initial sales price of any residential dwelling unit to such residential homeowner:

- A. Ad valorem property taxes.
- B. Voter-approved ad valorem property taxes in excess of 1% of the assessed value of the subject property.
- C. The maximum annual special taxes levied by all Community Facilities Districts under consideration and any other Community Facilities Districts or other public agency charges on the tax roll.
- D. The annual assessment installments, including administrative surcharge, for any existing or proposed assessment district, whether such assessment installments are utilized to pay debt service on bonds issued for such assessment district or to pay for maintenance or services.

COUNCIL POLICY STATEMENT

Policy No. 33
Date Issued 12/17/02
Effective Date 12/17/02
Cancellation Date None
Supersedes No. 6/23/98

General Subject: Financing of Public Improvements

Specific Subject: Policy for Use of Assessment Districts, Community Facilities Districts, and Bridge and Thoroughfare Districts

Copies to: City Council, City Manager, City Attorney, Department and Division Heads, Employee Bulletin Boards, Press, File

While there is no specific limit on the rate of assessment or taxation of commercial or industrial property, the City Council reserves the right to limit the rate of such taxation or assessment to ensure the economic feasibility of such property.

The applicant for the establishment of any Special District shall be required to enter into an agreement with the City or the Special District requiring the prepayment by the applicant of that portion of the obligation applicable to any parcel used for residential purposes in order to reduce the annual maximum obligation to the standards described above.

16. DISCLOSURE TO PROPERTY PURCHASERS

Property owners for all Special Districts will be required to provide for full and complete disclosure of such Special District applicable to the property to prospective purchasers. The disclosure must include all of the following in addition to such other provisions as may be required by State law, the Municipal Code of the City, or as the applicant may deem necessary:

- A. Provide full disclosure of the proposed Special District and all other assessment and special tax financing applicable to the property (whether imposed by the City or any other public agency), including the maximum annual payment, monthly payments, principal, average interest rate, duration of payments, list of facilities to be funded, and the tax formula or method of spread in easily understood terms.
- B. List the amount of the assessment or special tax payments in all sales brochures, all advertising and all purchase documents adjacent to the sales price of the property and in the same size type.
- C. Where an assessment or special tax is authorized to be passed through, give prospective purchasers an option to have the obligation lien discharged prior to the close of escrow or to assume the obligation by a pass-through as a part of the sales price of the property.
- D. 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 purchaser of property within a Special District for further information regarding the Special District and the lien.

The disclosure program will be subject to City Council approval. The City Council's goal is to provide complete and concise disclosure to any subsequent property purchaser.

Requirements of Debt Issuance:

17. TERMS AND CONDITIONS OF BONDS

The following Section is only applicable to assessment districts and Community Facilities Districts. Bridge and Thoroughfare Districts are unable to issue debt. Bonds shall be issued in accordance

CITY OF CARLSBAD

COUNCIL POLICY STATEMENT

Policy No. 33

Date Issued 12/17/02

Effective Date 12/17/02

Cancellation Date None

Supersedes No. 6/23/98

General Subject: Financing of Public Improvements

Specific Subject: Policy for Use of Assessment Districts, Community Facilities Districts, and Bridge and Thoroughfare Districts

Copies to: City Council, City Manager, City Attorney, Department and Division Heads, Employee Bulletin Boards, Press, File

with the Improvement Bond Act of 1915 for assessment districts and Chapter 2.5, Part 1, Division 2, Title 5 of the Government Code, commencing with Section 53311 for Community Facilities Districts unless the City Council determines otherwise.

Bonds issued under this policy may be sold through competitive or negotiated sale as determined by City Council. The City Council will consider recommendations from staff and/or the City's financial consultant in selecting a method of sale.

The terms and conditions of any bonds issued by the City for any Special District 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. Each 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:

- A. A reserve fund or other security recommended by City staff, the City's financial advisor, and/or underwriter shall be established for each bond issue in an amount recommended by the City's financial advisor and/or underwriter.
- B. Interest shall be capitalized for a bond issue only so long as necessary to place the charges on the assessment roll. Interest may be capitalized for a longer term (not to exceed an aggregate of 18 months) on an exception basis at the sole discretion of the Finance Director, taking into consideration the value-to-lien ratio, the expected timing of initial residential occupancies, expected absorption and build-out of the project, the expected construction and completion schedule for the public improvements to be funded from the proceeds of the bond issue in question, the size of the bond issue, the development pro forma and the equity position of the applicant, and such other factors as the Finance Director may deem relevant.
- C. In instances where multiple series of bonds are to be issued, the City shall determine what improvements shall be financed from the proceeds of each series of bonds.
- D. 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 assessments or special taxes, capitalized interest, if any, and monies on deposit in the reserve fund established for such bonds.

18. REQUIRED VALUE-TO-LIEN RATIO / APPRAISAL

Project property value-to-lien ratio, i.e., the full cash value of the properties subject to the levy of the assessments or special taxes, including the value of the improvements to be financed, compared to the aggregate amount of the lien to be created, plus any prior or anticipated fixed assessment liens and/or special tax liens, must be 4:1. A project may be approved with a ratio between 4:1 and a

COUNCIL POLICY STATEMENT

Policy No. 33

Date Issued 12/17/02

Effective Date 12/17/02

Cancellation Date None

Supersedes No. 6/23/98

General Subject: Financing of Public Improvements

Specific Subject: Policy for Use of Assessment Districts, Community Facilities Districts, and Bridge and Thoroughfare Districts

Copies to: City Council, City Manager, City Attorney, Department and Division Heads, Employee Bulletin Boards, Press, File

minimum of 3:1 if the ratio is recommended by the underwriter and/or financial advisor to the City and if the City Council finds the reduced ratio to be within acceptable parameters. The required value-to-lien ratio shall be determined with respect to all taxable property within the Special District in the aggregate and with respect to each discrete development area as defined by the Finance Director.

In addition, the City Council may, at its sole discretion, accept a form or forms of credit enhancement such as a letter of credit, bond insurance, or the escrow of bond proceeds to offset a deficiency in the required value-to-lien ratio as it applies to the taxable property within the Special District in the aggregate or with respect to any development area.

The appraisal shall be undertaken by, done under the direction of, and addressed to the City. The value of the property proposed to be assessed shall be performed by a certified real estate appraiser (MAI) selected and retained by the City or the City's financial advisor.

19. MARKET ABSORPTION STUDY

The City may require a market absorption study for any Special District proposed to include new development. In any case, the City shall retain, at the applicant's sole expense but subject to 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 Special District. 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 Special District or shall justify, to the satisfaction of the City Manager, why such conclusions were not utilized in conducting such appraisal.

20. PRIORITIZATION OF PUBLIC IMPROVEMENTS

The City reserves the right to establish priorities for payment or reimbursement.

21. RESPONSIBILITY FOR THE COST OF FORECLOSURE

The City Council may require the proponents of the Special District to enter into an agreement with the City to be responsible for the cost of any judicial foreclosures that the City determines are necessary in regard to the Special District bonds. The City may, at its option, retain an attorney to prosecute the foreclosures in a timely manner in the name of the City, and the proponent shall agree to be responsible for all costs of such foreclosures. If the City Council approves a pass-through of the obligation to the purchaser of an individual lot, the proponents shall be relieved of their obligation under such agreement for such lot.

COUNCIL POLICY STATEMENT

Policy No. 33
Date Issued 12/17/02
Effective Date 12/17/02
Cancellation Date None
Supersedes No. 6/23/98

General Subject: Financing of Public Improvements

Specific Subject: Policy for Use of Assessment Districts, Community Facilities Districts, and Bridge and Thoroughfare Districts

Copies to: City Council, City Manager, City Attorney, Department and Division Heads, Employee Bulletin Boards, Press, File

22. SURPLUS FUNDS

It is the City Council's policy that, in the event that there are surplus funds generated through the creation of the Special District and the sale of bonds, if applicable, these surplus funds shall be used as follows:

- A. To complete any work related to the project that the City Council determines is equitable and reasonable as allowed by statutes.
- B. The City Council may direct staff to use a portion of this surplus to offset the annual levy of assessments or special taxes to property owners in following years in a manner consistent with the applicable statutes. Under this policy, an amount of up to 5% of the total bond issue size not to exceed \$1 million may be used to offset the annual levy without further Council action.
- C. Unless otherwise directed by the City Council, any amount in excess of that used to offset the annual levy described in (B) above will be used to call bonds at an appropriate bond call date.

PROCEDURE:

1. CONTACT FOR PROPONENT(S)

Whether there is one or multiple proponents of a proposed Special District, an authorized spokesperson shall be designated to act for the proponent(s) in their dealing with the City. The spokesperson shall be responsible for collecting any fees for deposit with the City, providing any necessary information to the City, and for communicating, as necessary, back to the other proponent(s).

2. REQUEST TO BEGIN WORK

Any request for the City to begin work on the feasibility or formation of a Special District shall contain such information and be submitted in such form as the City Finance Director may require. In addition to the information required by Section 6 above, each application must contain data on the proposed Special District to include, but not be limited to: a description of the improvements and estimated cost of such improvements proposed to be funded by the Special District, written justification of how these facilities comply with this policy, a construction and phasing schedule of the improvements and the development project, and map(s) that identify the proposed boundary of the Special District.

3. INITIAL PRESENTATION TO THE SPECIAL DISTRICT REVIEW COMMITTEE

In the initial meeting of the Special District Review Committee, the City Engineer will provide an overview of the proposed project and the requested public facilities to be financed. This overview will state whether or not the proposed public facilities generally adhere to this policy and describe the timing requirement of the public facilities in conjunction with the estimated build-out of the development project. The Finance Director shall present a brief summary of the financial stability

COUNCIL POLICY STATEMENT

Policy No. 33

Date Issued 12/17/02

Effective Date 12/17/02

Cancellation Date None

Supersedes No. 6/23/98

General Subject: Financing of Public Improvements

Specific Subject: Policy for Use of Assessment Districts, Community Facilities Districts, and Bridge and Thoroughfare Districts

Copies to: City Council, City Manager, City Attorney, Department and Division Heads, Employee Bulletin Boards, Press, File

of the proponents as provided by the proponents, confirmation of the consent of 65% of the property owners by area, and an estimate of the pre-formation costs. Recommendation of the Special District Review Committee shall be communicated to the proponents of the Special District.

4. **AUTHORIZATION TO PROCEED**

Upon review of the proposed Special District and after considering the report of the Committee, the City Council shall determine whether or not to authorize staff to proceed. It is the policy of the City Council to limit projects to the criteria set forth in this policy. The City Council reserves to itself the authority to approve or disapprove any proposed Special District. Any exceptions to the criteria of this policy will be approved only upon an express finding by the City Council that the proposed Special District is so effected with a public interest that the City should assist in providing tax-free financing for the improvement in order to satisfy a public need. If the City Council authorizes the assessment of feasibility and proceeding with the formation of the Special District, City staff and the proponents shall proceed to do that in accordance with State law and the requirements of this policy.

5. **ASSESSMENT OF FEASIBILITY AND FORMATION**

The City Engineer and/or Finance Director shall obtain contracts with consultant(s) as required to review the feasibility of the project and collect a pre-formation deposit as determined by the Finance Director. The feasibility of the project as prepared by staff or consultant shall be presented to the Special District Review Committee. Should the Special District Review Committee recommend against the proposed Special District, such recommendation along with the feasibility study will be communicated to the proponents of the Special District. Should the Special District Review Committee recommend that formation of the Special District should be recommended to City Council, a preliminary schedule shall be determined along with requirements of the proponents to submit any additional information or deposit of funds. The recommendations of the Special District Review Committee, preliminary schedule, and requirements of the proponents, as discussed, shall be transmitted to the proponents.

If needed, additional meetings of the Special District Review Committee shall be held to determine if formation of the Special District should be recommended to City Council.

6. **REQUEST FOR FORMATION**

The report of feasibility and recommendation of formation of the proposed Special District by the Special District Review Committee shall be taken to City Council for consideration. If the City Council approves proceeding with the formation of the Special District, City staff and the proponents shall proceed to do that in accordance with State law and the requirements of this policy.

- END OF POLICY -