City of Benson
City Council Communication

Regular Meeting **December 14, 2015**

To: Mayor and Council Agenda Item # 10

From: Dustin DeSpain, Finance Director

Subject:

Discussion and possible action regarding the Community Facilities Districts policies and procedures

Discussion:

For Council consideration and possible approval are the Community Facilities Districts policies and procedures.

Staff Recommendation:

Approval of the Community Facilities Districts policies and procedures

CITY OF BENSON ARIZONA
POLICY GUIDELINES AND APPLICATION PROCEDURES
FOR
COMMUNITY FACILITIES DISTRICTS

In order to secure for the City of Benson, Arizona (the "*City*") the benefits of the Community Facilities Act (the "*Act*") enacted by the Arizona Legislature in 1988 and to support projects that address a public need and provide a public benefit as well as to promote the best interests of the City, the following Policy Guidelines and Application Procedures are adopted by the City Council.

Community facilities districts (the "*CFD*") provide a funding mechanism to finance construction, operation, and maintenance of public infrastructure within the boundaries of the CFD, and to better enable the City to provide public services within the boundaries of the CFD. The underlying principles behind this policy are the protection of the public interest and benefit, assuring fairness in the application of special taxes, incurring creditworthiness of any formed special taxing districts and issued bonds, protecting the City's creditworthiness and financial position, and assuring that applicants for special taxing districts pay all costs associated with the formation of the CFD. It is for these reasons that the City Council has established these Policy Guidelines and Application Procedures.

Considering that the establishment of a CFD is the legal equivalent of the establishment of an entirely new municipal entity within the boundaries of the City, the City Council believes that the formation of the CFD should be entered into carefully, to ensure its lasting success.

ARTICLE 1
General Policies

1.1 CFD's should be utilized primarily in connection with the financing of infrastructure for development of public infrastructure and improvements.

1.2 Priority should be given to CFD's that provide an enhanced level of public infrastructure amenities and/or services. Public Improvements financed by a CFD should be in conformance with the City's General Plan in order to encourage orderly growth and development. Facilities to be financed must be public facilities for which the City or another public entity will be the owner or will have maintenance and operating responsibilities.

1.3 All costs incurred by the City or the CFD in connection with the CFD application, formation and administration and operation expenses appurtenant thereto, will be paid by the applicant/landowner through advance payments as provided herein (unless initiated by the City). Payment shall include payment for services rendered by City, CFD staff and services rendered by outside consultants who may be retained by the City or CFD, including but not limited to bond counsel, special tax consultants, financial advisors, engineers and appraisers. If the City or CFD uses outside consultants as "staff", such as attorneys or engineers, those consultants will also be paid their normal rate for services. If authorized by the CFD board, exercising its sole discretion, all or part of such costs may be paid by a CFD tax levy or reimbursed to the developer/landowner from a CFD tax levy, CFD assessments, CFD revenues or CFD bond proceeds provided such reimbursement is in conformance with federal law, state law and these guidelines.

1.4 The City will encourage an area to be governed by as few CFD's as possible, and a preference will be given to one master CFD. This policy is adopted to provide ease of administration and the largest tax/revenue base possible. The decision to form a CFD shall be a decision of the City Council exercised in its sole and absolute discretion.

1.5 Unless otherwise agreed to by the City or modified by state law, the CFD will be governed by a board of directors comprised [pa1] of the members of the City Council. The day-to-day responsibilities of the CFD will be performed, pursuant to a contract by outside personnel or by City staff. The City Council will accept an application to allow an outside board of directors to govern the CFD for CFDs over six hundred acres or that meet the statutory size requirements, whichever is greater, where the applicant can demonstrate to the satisfaction of the City, reviewing the application with its absolute discretion, that adequate safeguards and controls are in place to ensure the soundness of any CFD financing program.

1.6 Unless otherwise agreed to by the City, the CFD must be self-supporting from the standpoints of financing, operations and maintenance, and no City funds will be used (except on a reimbursement basis as otherwise approved by the Mayor and Council) for CFD purposes. Notwithstanding anything contained herein, neither the property, the full faith and credit nor the taxing power or any other revenues of the City shall be pledged or utilized for the payment of any CFD obligation or indebtedness.

1.7 The CFD board will determine, in its sole and absolute discretion, the amount, timing and form of financing to be used by a CFD after review of the project feasibility report.

1.8 The CFD will construct all improvements utilizing public bidding procedures mandated by applicable law.

1.9 The CFD will not use bond proceeds or other CFD funds to purchase rights-of-way or other real property to be used for infrastructure improvements.

1.10 Unless otherwise agreed to by the City, all costs of administration and operation of the CFD and the operation and maintenance of public infrastructure in the CFD shall be the responsibility of the CFD, the developer/landowner, applicable homeowners associations, or any combination of the foregoing, as may be acceptable to the City and the CFD. The City will consider accepting public roadways and other improvements only after the completion of applicable warranty periods.

1.11 These Policy Guidelines and Application Procedures may be modified from time to time by the City Council to address special circumstances. Each application for establishment of a special taxing district must comply with the applicable goals and policies contained herein unless the City expressly grants an individual exception to an identified policy. Any applicant will be given the opportunity to propose alternative approaches to those provided herein, with the understanding that concerns of the City must be adequately addressed before the staff of the City will recommend approval of a CFD to the City Council.

1.12 The City will not consider an application to form a CFD on a property on which the City Manager determines that a Development Agreement is necessary to identify any factor allowed by State statute until after the Development Agreement is adopted by all parties.

ARTICLE 2
Content of Application

The application shall contain the following:

2.1 A description of the proposed CFD including a legal description of its boundaries and addresses of all persons or entities with any interest in the property, and the names and addresses of any qualified electors located within the proposed boundaries. A current title report and a certificate from the county elections department shall be submitted as evidence of the names of persons with any interest in the land and qualified electors, respectively. The description must contain an analysis of the appropriateness of the CFD boundaries and discuss public need and benefit.

2.2 A description of the types of public infrastructure to be financed by the CFD, including the estimated construction or acquisition costs of the public infrastructure, the annual operation and maintenance costs of public infrastructure such as traffic control, water, or wastewater and the governmental approvals that will be required for both the public and private improvements to be constructed and operated.

2.3 A proposed project schedule for commencement and completion of (a) the public infrastructure and (b) the private development.

2.4 A financing plan for the public infrastructure, including both capital and operating/maintenance costs.

2.5 A financial *pro forma* for the entire project (or such phases of the project that are expected to be constructed within five (5) years of submission of the Application) covering both the public infrastructure and the private development. The study may be conducted by the Developer and should include:

a. An analysis of how the proposed debt financing, operation and maintenance costs, user charges and other CFD costs will be allocated and what will be the impact to the ultimate end users of the property, specifically projected property taxes and property tax rates, special assessments, fees, charges and any other costs that would be borne by property in the CFD. The analysis should also address the impact these costs will have on the marketability of the private development and a comparison of proposed tax rates or charges within the proposed CFD contrasted to the tax rates and charges in adjoining and similar areas outside of the proposed CFD. It will be necessary to include within this analysis a proposed schedule for the sale of bonds.

b. A financing plan for the private development in the CFD.

c. A market absorption study for the private development in the CFD. Such study shall include estimates of the revenue to be generated by the development and an estimate of the ability of the market to absorb the development as wells as a market absorption calendar for the private development.

2.6 If not otherwise included in the financing plan, a description of the proposed equity contribution(s) from the applicant/landowner and a calendar showing the timing and sources of such equity contribution(s).

2.7 A description of the applicant's professional experience and evidence demonstrating its financial capacity (including financial statements) to undertake the development associated with the public infrastructure and the private development.

2.8 A disclosure form which will be used to explain the expected and possible tax, assessment and other financial burdens of the CFD to prospective CFD landowners. Upon each sale of property in the CFD, the developer/landowner shall file with the City a receipt, signed by the purchaser, that acknowledges the purchaser's receipt of the disclosure form. (Landowners/developers are required to describe in their promotional material the financial and other relative impacts on the development being included in a CFD.)

2.9 An operating plan for the CFD, i.e., what functions the CFD would provide and how the operation and maintenance of the infrastructure and all other services in the CFD would be provided.

2.10 Unless the Developer has already submitted such information through a zoning, plan amendment, CMP or other similar process, a description of how the proposed CFD meets the existing development objectives of the City, including the degree to which the CFD is consistent with the goals of the City's General Plan for promoting orderly development, consistent with growth management policies and zoning requirements and the degree to which the land use plan for the CFD is consistent with the City's General Plan Map for the area.

ARTICLE 3
Application Procedures

3.1 Five copies of the application for the formation of a CFD shall be submitted to the City Manager of the City who will coordinate an inter-departmental analysis of each application.

3.2 At the time of submission of the application, the applicant shall pay a non-refundable application fee of $50,000 [pal2] and shall deposit an additional $25,000 as a deposit on account to be applied by the City in its sole discretion to the costs incurred in connection with the processing of the application, the formation and administration of the CFD (the "Reimbursement Funds"). When the Reimbursement Funds are expended, an accounting will be made to the applicant for all costs incurred by the City and an additional $25,000 will be requested and must be promptly paid as additional Reimbursement Funds. In a single application requesting the formation of multiple districts to serve one project, the City shall charge only one non-refundable application fee. The unexpended balance of the Reimbursement Funds will be transferred to the CFD following its formation as a basis for its operating fund.

3.3 If the City Council approves the formation of a CFD and there are existing agreements with developers/landowners for the provision of infrastructure proposed to be furnished by the CFD, the land owner shall agree that such infrastructure shall be constructed in addition to the improvements required by the development agreement. The amendments will reflect that such

infrastructure improvements will be provided (including by acquisition) by either the developer/landowner or the CFD.

3.4 After the application fee and deposit are submitted, the City Manager shall arrange a pre-application conference with the appropriate City staff (and/or consultants) for the purpose of reviewing the application for conformity with City policies.

3.5 If, following the pre-application conference or any other time during the application process City staff requests additional information, the applicant shall provide any and all supplemental information requested.

3.6 After analysis of an application as supplemented, City staff, under the direction of the City Manager shall prepare a report including recommendations relating to the CFD and an analysis of the impact of the formation of the CFD and its effects on the City. This report may provide a recommended disposition of the application and any additional requirements that will be placed on the developer/landowner and the CFD.

3.7 If all costs billed have been paid and all other required agreements are submitted by the applicant to the City by a date at least fifteen days prior to the date of the meeting of the council at which the application is to be considered and if the application meets the qualifications provided herein, the application, along with any report and recommendations by City staff, will be forwarded to the City Council.

3.8 If the City Council approves an application for formation of a CFD, the applying developer/landowner and the staff of the City shall coordinate a schedule of events for formation of the CFD and shall negotiate an appropriate agreement between the City and the developer/landowner which shall be entered into prior to formation of the CFD, which shall incorporate the requirements of any report, recommendations of the City staff relating to such CFD, the requirements of these policy guidelines and any other restrictions, provisions and agreements required by the City.

3.9 For new development, the applicant or property owner must demonstrate its financial plan for the property within the District and ability to pay all special taxes during the build-out period. Additional security such as credit enhancement may be required by the City in certain instances. If the City requires letters of credit or other security, the credit enhancement shall be issued by an institution in a form and upon terms and conditions satisfactory to the City. All fees payable on the letter of credit or other security shall be the sole responsibility of the applicant or developer, not the City or District.

ARTICLE 4
CFD Operations and Debt Financing

4.1 Upon formation of a CFD the developer/landowner shall deposit with the CFD a nonrefundable administrative expense fee in the amount of $25,000 for a first CFD covering a designated parcel and an additional [pal3]$10,000 for each additional CFD covering serving the same development. Any unexpended amounts deposited with the City to pay for City expenses (not including the nonrefundable application fee) may be transferred by the City to the CFD as an offset to the CFD administrative expense fee deposit. The administrative expense fee shall be applied by the CFD to the costs and expenses incurred in connection with the formation, review of any feasibility

study, election costs, administration, operation and maintenance of the CFD or its public improvements. From time to time, upon depletion of the administrative expense fee, the CFD may request, and the developer/landowner shall promptly deposit with the CFD, additional $5,000.00 deposits to be applied to the purposes contemplated in this Section 4.1.

4.2 In order to assist the CFD to be self-supporting for its administrative, operation and maintenance expenses the City and the CFD, unless otherwise agreed, will require the imposition of a $.30 per $100 of assessed value ad valorem tax upon the CFD taxable property. Failure to impose such tax will relieve the City and the CFD from undertaking any obligations or operations. Any unexpended administrative assessment will be used to pay down the outstanding balance of issued bonds.

4.3 In connection with any request for debt financing, applicant shall provide a current appraisal of the fair cash market value of the property within the proposed CFD which is to be taxed or assessed, prepared by a person who is designated as a Member Appraisal Institute ("*MAI*") and a certified general real estate appraiser (such person hereafter referred to as an "*MAI Appraiser*"), such appraisal to be in form and substance acceptable to the City, in its sole discretion. Generally, the appraisal shall be based on the wholesale, bulk sale [pal4] of the property in the CFD.

4.4 The amount of debt of a CFD may not have any substantial direct or indirect negative impacts on the debt or financing capabilities of the City.

4.4 The debt imposed on the CFD shall not impose an unreasonable financial burden on future owners of property included within the district. If an applicant seeks to establish multiple CFDs for the same development (either in separate zones or overlapping districts), the financial impact of all proposed debt financing shall not impose disparate financial burdens on similarly-situated properties.

4.5 General obligation bonds of the CFD are secured by an ad valorem tax on all taxable property located within the CFD. An applicant for general obligation bonds should describe in each project feasibility report the following:

a. The current direct and overlapping tax and assessment burden on the taxable property that is proposed to be taxed and the full cash value and assessed valuation of the taxable property as shown on the most recent assessment roll.

b. The amount and timing of CFD general obligation bonds to be issued.

c. The expected market absorption of development within the CFD.

d. The effect of the CFD bond issuance on CFD tax rates, calculated as of the beginning, midway through and at the end of the market absorption period or based on the phasing of the project to be financed, as applicable.

e. Estimated savings, if any, to residents in the form of reduced sales prices which are projected to result from CFD financing.

f. Any plan for subsidizing CFD tax rates.

g. Whether the bonds will be publicly offered or privately placed. Publicly offered bonds must be rated in one of the four highest investment grade ratings from either Standard & Poor's Corporation, Moody's Investors Services, Inc., or other nationally recognized bond rating services. Privately placed bonds need not be rated; however, the purchases of such general obligation bonds must be "qualified institutional buyers" (as such term is defined in Rule 144A of the Securities and Exchange Commission), an "accredited investor" (as such term is defined in Rule 501 of Regulation D of the Securities and Exchange Commission) or a sophisticated municipal market participant ("*SMMP*") and must agree not to resell the bonds except to such entities in a private placement, provided, however, that a purchaser of general obligation bonds in a private placement may sell the bonds in a public offering if the CFD board approves the public sale and the bonds have an investment grade rating.

4.6 Revenue bonds shall be payable from a CFD revenue source. An applicant for revenue bonds must describe in each project feasibility report, the following:

a. The current direct and overlapping tax and assessment burdens on the taxable property within the CFD and the full cash value and assessed valuation of that taxable property as shown on the most recent assessment roll.

b. The revenue source from which bonds will be payable. The City reserves the right to require the applicant to produce such independently prepared feasibility studies or reports as it deems necessary to confirm the amount and availability of revenues.

c. The expected market absorption of development within the CFD.

d. The amount and timing of CFD revenue bonds to be issued.

e. The financial impact of the proposed issue(s) on prospective residents.

f. Whether the bonds will be publicly offered or privately placed. Publicly offered revenue bonds must be rated in one of the four highest investment grade ratings from either Standard & Poor's Corporation, Moody's Investors Service, Inc., or other nationally recognized bond rating services. Privately placed bonds need not be rated; however, the purchasers of such revenue bonds must be "qualified institutional buyers" or an "accredited investor" (as such term is defined in Rule 501 of Regulation D of the Securities and Exchange Commission) and must agree not to sell the bonds except to qualified institutional buyers, an accredited investor or SMMP in a private placement, provided, however, that a purchaser of a revenue bond in a private placement may sell the bonds in a public offering if the CFD board approves the public sale and the bonds have an investment grade rating.

4.7 Assessment bonds shall be secured by first lien (subject only to the lien for general taxes and prior special assessments) on the property benefited. Applicants for assessment bonds should describe in each project feasibility report, the following:

a. The current direct and overlapping tax and assessment burdens on real property to comprise the CFD and the full cash value and assessed valuation of that property as shown on the most recent assessment roll.

b. The amount and timing of CFD assessment bonds to be issued.

c. The expected market absorption of development within the CFD.

d. The assessment burden to be placed on prospective residents.

e. Whether the assessment bonds will be publicly offered or privately placed. Publicly offered assessment bonds must be rated in one of the four highest investment grade ratings from either Standard & Poor's Corporation, Moody's Investors Service, Inc., or other nationally recognized bond rating services or in an unrated public offering, an appraisal of the land to be encumbered, prepared by an MAI Appraiser and in form and substance acceptable to the CFD board, in its sole discretion, shall indicate a land value (prior to improvements being installed) to debt ratio of at least ~~4~~6 to 1 prior to the issuance of debt. Privately placed bonds need not be rated; however the purchasers of such assessment bonds must be "qualified institutional buyers", an "accredited investor" (as such term is defined in Rule 501 of Regulation D of the Securities and Exchange Commission) or a SMMP, who must agree to hold the bonds for their own account or agree not to sell the bonds except to "qualified institutional buyers", "accredited investor" or SMMP. Further, in connection with the sale of unrated privately placed assessment bonds, the CFD board must have received an appraisal of the land to be encumbered, prepared by an MAI Appraiser and in form and substance acceptable to the City, in its sole discretion, indicating a land value to debt ratio of at least 4 to 1 as of a date prior to the issuance of debt.

4.8 Notwithstanding the restrictions pertaining to public sales and private placements of the bonds set forth in this Article 4, the restrictions may be modified if other financing structures are presented which, in the sole discretion of the CFD board, provide other means to address CFD concerns.

ARTICLE 5
Financing Considerations

5.1 The applicant or developer/landowner shall provide at least $0.25 in infrastructure or community improvements for each $1.00 of debt to be issued by a CFD to finance public infrastructure purposes. If agreed to by the CFD, prior infrastructure and community improvements constructed or acquired by the applicant or the developer/landowner and benefiting the property within the CFD may be included in calculating the applicant's or developer/landowner's compliance with this Section 5.1.

5.2 All bond issues shall include a debt service reserve fund in an amount acceptable to the CFD board.

5.3 A CFD’s general obligation bond authorization shall expire no later than thirty years from the date of voter authorization.

5.4 The applicant, developer/landowner (or such other third party acceptable to the City and CFD) for any CFD bonds, shall indemnify, defend, and hold harmless the City and the CFD and their agents, consultants, officers and employees for, from and against any and all liabilities,

claims, costs and expenses, including attorneys' fees, incurred in any challenge or proceeding to the formation, operation, administration of the CFD, the offer and sale of CFD bonds, the levying by the CFD of any tax, assessment or charge and the operation and maintenance of public infrastructure financed or owned by the CFD.

5.5 Unless otherwise provided to the City pursuant to other requirements, prior to CFD financing and acquisition by the CFD or City, the CFD or City will require an independent environmental report or assessment of any real property which will be dedicated to or otherwise owned, leased or operated by the City or the CFD and a proposed form or indemnity agreement with respect to all environmental law liability.

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TONEY D. KING, SR., MAYOR

ATTEST:

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VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

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MESCH, CLARK & ROTHSCHILD
By GARY J. COHEN
City;s Attorney

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