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Financing Public Infrastructure via Special Districts: The Domino Effect

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I. OVERVIEW

A. Request for a Special District

1. This process generally starts with a developer request for a special district to assist with financing the public improvements for the proposed development.
2. From the developer's point of view the request may seem simple and straightforward—just another method to finance the development. But from the city's point of view, the request is complex and requires consideration of the following:
 - a. Overall vision for growth including development goals and adoption of policies;
 - b. Coordination with land entitlements and other processes in the city;
 - c. Impact on city-wide finances including operation and maintenance of public improvements and cost of public safety; and
 - d. Analysis of best development tool for the proposed project.
3. City does not have to approve every request that comes through and in some cases cannot legally approve the request. A denial of a special district request does not necessarily indicate lack of support or interest in a development.

B. Vision for Growth

1. Development Goals
 - a. Establish goals for future development or redevelopment
 - i. Can be unique to each city. Examples might include:
 - Workforce housing
 - Growth within city limits
 - Increased commercial development with residential
 - Mix of types of residential development
 - Increased estate housing
 - ii. Goals should be tied to overall vision of the city and approved by the city Council.

2. Adopt policies pursuant to development goals
 - a. While not required, it is recommended that the city adopt policies related to anticipated special districts. The city may adopt policies specific to types of special district or combine all policies into one special district policy.¹ Regardless of the approach, if the city decides to create any such policies, the policies must be adopted by city council and should include the following considerations:
 - i. General criteria for consideration of a special district;
 - ii. Development goals prioritized by the city;
 - iii. Special benefits necessary for approval of a special district;
 - iv. Application requirements for a special district; and
 - v. Bond size limitations and financing criteria.
 - b. Establishing policies in advance of receiving an application for a special district helps both the developer and the city by ensuring clarity of criteria for review, establishing application process, and giving clear guidance to city staff and the development of city council expectations.
 - c. Adopted policies can help create incentive to encourage certain development in the city — special districts are a desirable form of public infrastructure financing for most developers. If a developer can adjust a project to meet the development goals and policies of a city, thereby increasing likelihood of approval of a special district, they are likely to do so.

C. Coordination with Land Entitlements and Annexation

1. Land entitlements and Annexation
 - a. Land Entitlements. Requests for special districts include applications intended to secure land entitlements — specifically development agreements if the property is in the extraterritorial jurisdiction or rezoning applications if within the city limits. Because special districts are often viewed as merely a financial consideration, special attention should be paid to coordination between those responsible for reviewing and processing an application for a special district and the planning department handling the land entitlements process.
 - b. Annexation. If annexation of a proposed project is desired (as potentially part of the overall vision of growth), generally it is important to annex the property prior to approval of a special district. As discussed in more detail later, future annexation cannot be a provision of certain special district agreements and, with the change in annexation law, even if an agreement provides for future annexation of property, it may not be enforceable.
2. Timing Considerations
 - a. Does the land entitlement and the special district approval need to occur at the same time?

Distinction may be necessary between approval of the special district and zoning — one does not necessarily ensure the other (cannot by contract guarantee zoning for example). If the rezoning is necessary for the financing model for the district to

¹ See Appendices for examples of a municipal utility district policy and public improvement district policy.

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