



CITY OF INDIAN WELLS

Fire Access Maintenance District

Overview and Report
January 21, 2014

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EXECUTIVE SUMMARY

This report is a snap shot of the Fire Access Maintenance District No. 1 (FAMD), a unique a one of a kind agency in California. The following report explains the history and operating provisions of the District.

As with most unique things, there are special practices and operating principles that apply. The City Council main focus is that the FAMD operates efficiently and consistent with the applicable regulations. A staff liaison has been assigned to the FAMD to insure seamless cooperation between the District and the City, as well as to provide any needed assistance.

This report is a mix of past and present, statues and operations. It serves as an overview and guide to both those familiar and unfamiliar with the FAMD. There are additional documents such as the FAMD Policy Manual which set forth particular practices and regulations pertaining to the District, which are not attached to this report even though some are referenced.

Background and History

In 1973 the City Council was asked to consider a proposal to convert the public streets in the area then known as the Indian Wells Country Club to a private status. At that time, all the streets were open, public and ungated. The City Council implemented this proposal by abandoning all interest in the public streets within the identified area, and designating them within a maintenance district ("Fire Access Maintenance District" or "FAMD"). This action was taken pursuant to Chapter 26 of Division 7 of the Streets and Highway Code, Sections 5820-5856. Formation of the maintenance district gave the City Council the authority to impose a property tax rate on those properties located within the FAMD to pay for the district's operations.

The abandonment of the streets changed their character from public streets to private streets. However, at the time the public easements in the streets were vacated, the Council reserved an emergency vehicle easement, which granted emergency vehicles access to the now private streets. The City Council was to be ultimately responsible for the expenditure of FAMD funds and FAMD activities. The FAMD is governed by the City Council and over the years the City Council has employed different means to operate and govern the FAMD.

From 1973 to 1982 the City Council directly handled all of the FAMD's operations. From 1982 through 1996 the City Council created and sought the advice of an Advisory Council composed of members living within the FAMD. In 1996 the City Council reorganized the governance of the FAMD and adopted Chapter 2.18 of the Indian Wells Municipal Code.

Chapter 2.18 provides that: "The selection of Directors of the Fire Access Maintenance District (FAMD) shall be the responsibility of the FAMD and their selection procedures shall be adopted by Resolution of the City Council." (IW Muni. Code section 2.18.010). The Chapter further provides that the FAMD could enter into contracts, but "only if countersigned by the City Treasurer certifying there are adequate budgeted funds and countersigned by the City Attorney or his representative certifying that the contract is authorized by this resolution and conforms to laws applicable to general law cities and Maintenance Districts." (IW Muni. Code section 2.18.020.)

To implement Chapter 2.18, the City Council adopted Resolution No. 96-44, which have been amended numerous times since 1996, the last version is Resolution No. 2006-13, establishing rules of procedure for the FAMD. The Resolutions provided for an elected Board of Directors and granted the Board of Directors authority to make and execute agreements, contract for services and otherwise manage the affairs of the FAMD. The Board included seven districts. One of the districts consists of the Indian Wells Country Club which is represented by the Club Manager or his or her designee, and is not subject to election, or related term rules, but possessing equal power (one vote) as a Board Member. The additional six (6) Districts are represented by Directors elected to serve four (4) year terms. The Districts were established and memorialized by a map entitled, "FAMD Sub District Boundary Map".

Powers and Duties

The powers of the District are effective only in the geographical boundaries of the District and are as follows:

“Maintaining and operating access roadways and easements for fire protection.”

Incidental to these powers are the following:

1. grading or regarding
2. paving or repaving
3. planking or re-planking
4. macadamizing or re-macadamizing
5. graveling or re-graveling
6. oiling or re-oiling
7. Any structures, barriers, gates or other facilities necessary to restrict the use thereof to fire access purposes.
8. Such other powers as are reasonably related to the above and which serve to carry out or facilitate the primary powers and purposes of the District.

All of the above powers, and those which are logically related thereto, must be exercised solely for the benefit of the District, not the City of Indian Wells as a whole. Those powers and duties include the following, for example:

1. Engage a private security firm on a contract basis and furnish personnel to operate the guard gates and roving patrol.
2. Arrange for building, rebuilding, and maintenance of the guard houses and collateral equipment such as gates, gate arms, lighting, plumbing, air conditioning, signs, etc.
3. Arrange for temporary and emergency gates, and fencing within the District.
4. Arrange for street repairs, striping, restriping, installation of stop and speed limit signs, and other appropriate signs.
5. Arrange for keeping records, such as a list of each owner in the District and authorized guests lists, issuance of decals to owners, passes to guests, tenants and employees.
6. Arrange for gardening in the areas around the gate houses, payment of utility bills, telephone bills and performance of other routine maintenance.
7. Provide information to the owners and residents of the District on matters of special interest or concern to the District.
8. Adopt Standard Operating Procedures governing security within the District, including speed limits, conduct of its citizens regarding care for property, trimming of trees, fire hazards on property, and related matters; prescribe sanctions for violations of published rules and regulations by such citizens or visitors to the community. To protect the citizens or visitors against any arbitrary or unreasonable exercise of the power and authority herein delegated, such Standard Operating Procedures and prescribed sanctions shall be submitted to the City Council for its approval prior to becoming effective.

Policy Manual

The FAMD Policy Manual was adopted by Resolution No. 2010-29 on May 20, 2010. It provides for the operation of the FAMD as outlined below.

The City Council adopts the FAMD Policy Manual, and may amend the FAMD Policy Manual, to govern the activities of the City Council, City Staff, and the Board of Directors, with respect to the FAMD. (Policy Manual, Chapter 2.01.)

The FAMD Board is empowered by the City Council to operate the FAMD in accordance with the FAMD Fiscal Procedures Manual and the FAMD Policy Manual. The City Council and City Staff will continue to oversee the functions of the FAMD. (Section 2.03.030.)

The City Council is responsible for approving the FAMD budget, disbursing moneys collected and assuring that all contracts comply with statutes governing the FAMD. The City Council and City Staff have the authority, without need of concurrence from the Board, to take any actions deemed necessary if (a) prompt action is deemed necessary, and the Board is unavailable; (b) the Board has acted improperly; or (c) the Board has failed to take action in the best interest of the FAMD. The City Council reserves the right to terminate the authority granted to the Board by the Policy Manual. (Section 2.02.020.)

The City Manager, his/her designees and City Attorney are liaisons for the City Council. (Currently, Mr. Seumalo is tasked with that responsibility.) No contract is enforceable unless countersigned by the City Attorney as complying with the laws of the City and by the City Treasurer certifying adequate funds. (Section 2.02.030.) The Board Secretary is required to submit to the City Liaison copies of Board minutes and bid documents. (Section 1.05.060.)

The Board is required to comply with the Brown Act (Chapter 1.05), the Fair Political Practices Commission financial disclosure obligations (Chapter 2.04), the City's Conflict of Interest Code (Chapter 2.05), and generally all ordinances and polices of the City and all statutes of the State of California. (Section 1.01.030.)

REVENUES AND OPERATIONS

As a Special District, the FAMD is in overall good financial condition. The audited financial statements from June 30, 2013 indicate that the FAMD finished the fiscal year with \$2,159,480 in spendable cash and a fund balance of \$2,023,071. During fiscal year 2012/13, the FAMD received actual revenues of \$1,496,723 and paid actual expenditures of \$1,157,172, achieving an excess of revenues over expenditures of \$339,551.

The FAMD Fiscal Procedures Manual requires minimum cash reserves set equal to ½ of the adopted FAMD operating and capital budgets. This requirement corresponds with anticipated cash flow. FAMD revenues are comprised of property taxes and special levies which are paid to the City in January and May of each fiscal year.

Looking at the FAMD in Fiscal Year 2013/14

The FAMD works closely with the City's Finance Department to develop the annual budget. Once developed the City Council reviews and adopts the budget as a part of the City's overall budget.

Attached is the FAMD Statement of Revenues and Expenditures for month ending December 31, 2013.

Revenues (inflows)

The FAMD has two sources of revenues: (1) property taxes of approximately \$287,650, based on an assessment of \$1.19 per \$100 of assessed valuation levied by the City Council prior to the adoption of Proposition 13 in 1978; and (2) a voter-approved special assessment of \$1,030 per residential unit approved by the voters in 2004/05, which yields \$1,200,000 annually. Any increase the special assessment requires voter approval. During fiscal year 2013/14, total FAMD revenues are estimated to be \$1,504,150.

Expenditures (outflows)

During fiscal year 2013/14, total FAMD expenditures are estimated to be \$1,149,000. The FAMD budget is divided into two primary areas: (a) operating and (b) capital maintenance.

FAMD general operations are budgeted at \$1,149,000. The largest portion of this cost is for contracted security services which costs \$815,000. Professional services consume another \$111,000 and utilities budgeted at \$35,000. Building and grounds maintenance for contracted landscape is budgeted at \$82,000 and contracted street sweeping consumes an additional \$68,000.

Historically, the cost capital repairs can change significantly for year to year, from \$20,000 to over \$500,000, based upon the capital projects undertaken. Maintenance to the Guard

Gate is modest compared to the cost of repaving. Within the last five years, the FAMD Board has made a concerted effort to better understand the capital needs of the FAMD. Working with Desert Resorts Management, the FAMD's management firm, the FAMD Board has conducted several capital needs assessments and long range planning tools. The Board is using this information to build a multiyear strategy for capital improvements to most effectively use their resources and protect their assets.

Relationship with the City of Indian Wells

The FAMD authority is delegated from the City Council to the FAMD Board. Generally, a city may delegate specific administrative power to subordinate boards or persons, subject to imposition of standards that constrain the discretion of the board or person. (Cal. Muni. Law Handbook, section 1.6). In this case, the City Council has delegated operational control of the FAMD to the FAMD Board subject to a lengthy and detailed Policy Manual, which prescribes in detail the manner of the Board's operation and the laws and regulations it must follow. The City Council retains ultimate responsibility for the FAMD. Under the Policy Manual, the City Council retains the authority to approve the FAMD's budget, to act in the Board's place if the Board acts improperly and to revoke the Council's delegation of power to the Board. City Staff retains oversight supervision of the activities of the Board by attending the FAMD Board meetings, receiving the agenda packet including minutes, and approving contracts. The scope of the City's oversight role is sufficient to satisfy the legal requirements for delegation to a subordinate board.

City Staff is actively engaged in monitoring the activities of the FAMD. Mr. Seumalo from the Public Works Department acts as City liaison and attends FAMD Board meetings. City Finance reviews contracts and budgets; the City Attorney reviews contracts for legal sufficiency and City Staff handle monitoring of the FAMD contracts and insurance.

The City retains any liability with respect to FAMD operations. Generally, the FAMD is a subsidiary district of the City, and the City remains ultimately liable for the District's operations. City responsibility for FAMD contractual liability is limited by providing in FAMD contracts that any liability under the contracts is limited to the funds of the FAMD, and disavowing any City liability. Tort liability and property damage are addressed by including the FAMD under the City's liability insurance program. FAMD funds would be the first source of repayment of any fees, costs, damages or other expenses arising from FAMD operations that are not covered by City insurance. Consequently, the FAMD does not present any extraordinary liability exposure to the City (any greater than other City departments), assuming the City's oversight role is exercised reasonably and in accordance with law.

ATTACHMENTS

City of Indian Wells Fire Access Maintenance District #1 Statement of Revenues and Expenditures Month ending December 31, 2013

	Budget Revenues	Current Month Revenues	Year -to- date Revenues			Budget Favorable (Unfavorable)
Revenues:						
Taxes	284,650.00	49,669.13	62,645.05			(222,004.95)
FAMD Assessments	1,200,000.00	-	9,270.00			(1,190,730.00)
Investment Earnings	15,000.00		862.00			(14,138.00)
Homeowner's Property Tax Relief	3,000.00	372.79	372.79			(2,627.21)
Misc Permits	1,500.00	567.00	1,747.00			247.00
Total Revenues	1,504,150.00	50,608.92	74,896.84			(1,429,253.16)
	Budget	Current Month Expenditures	Year-to-Date Expenditures	Year-to-Date Encumbrances	Total Y-T-D Including Encumbrances	Budget Favorable (Unfavorable)
Operating Expenditures:						
Professional Services	111,000.00	17,137.00	45,449.87	67,776.13	113,226.00	(2,226.00)
Other Contracted Svcs-Guard Svcs	815,000.00	59,908.68	255,783.40	533,148.96	788,932.36	26,067.64
Utilities	35,000.00	1,913.73	12,144.24	22,205.76	34,350.00	650.00
Building & Grounds Maintenance	82,000.00	30,183.95	77,805.00	40,799.32	118,604.32	(36,604.32)
Infrastructure - Street Sweeping	68,000.00	17,465.00	29,375.00	36,335.00	65,710.00	2,290.00
Communications	10,500.00	999.76	5,060.37	5,589.63	10,650.00	(150.00)
Office Supplies	9,500.00	841.55	3,420.00	4,718.31	8,138.31	1,361.69
Operating Supplies	1,500.00	124.48	497.92	882.08	1,380.00	120.00
Minor Equipment	1,500.00	-	334.00	-	334.00	1,166.00
Indirect Costs	15,000.00	-	2,500.00	-	2,500.00	12,500.00
Total Operating Expenditures	1,149,000.00	128,574.15	432,369.80	711,455.19	1,143,824.99	5,175.01
Improvement Projects						
Roadway Repairs	-	20,945.39	20,945.39	4,054.61	25,000.00	(25,000.00)
Ground Lighting Renovation Manitou/Club	-	-	14,057.32	302.68	14,360.00	(14,360.00)
Total Improvement Projects	-	20,945.39	35,002.71	4,357.29	39,360.00	(39,360.00)
Total Expenditures	1,149,000.00	149,519.54	467,372.51	715,812.48	1,183,184.99	(34,184.99)
Net Revenue Over (Under) Expenditures	355,150.00	(98,910.62)	(392,475.67)			
	Beginning Fund Balance 07/01/2013		2,023,070.70			
	Ending Fund Balance 12/31/13		1,630,595.03			

Note: Investment Earnings and Indirect Costs subject to change due to journal entries not yet posted.

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