

PUBLIC IMPROVEMENT DISTRICT POLICY

1. State Law Reference.

- a. Chapter 372 of the Texas Local Government Code

- 2. Purpose.** The purpose of this policy is to outline conditions that must be satisfied by a developer seeking to establish a public improvement district (“PID”) under Chapter 372 of Texas Local Government Code.

The intent of this policy is to provide parameters for establishment and use of PIDs within the City and to outline the issues to be addressed before the City Council can support the establishment of a PID. The City Council supports the use of economic tools to create sustainable developments with a higher level of public improvements (and maintenance of those improvements) than exists in a development that meets the City’s minimum standards. These projects should be self-supporting, should not place administrative burdens on the City nor involve management or oversight by the City for their daily activities. This policy shall serve to supplement all other applicable City rules, regulations, and policies. Even if all conditions of this policy are satisfied, the City Council, in its sole discretion, may choose to approve, modify or deny a Petition’s proposed PID.

- 3. Staff Point-of-Contact.** The staff point of contact for this policy is the City Manager or designee.

4. Background.

- a. PIDs are economic development financing tools authorized pursuant to Chapter 372 of the Texas Local Government Code (the “PID Act”) that allow for financing costs of certain qualified public improvements that confer a special benefit on the property within the PID. A City, through a PID may provide a means to fund certain public improvements that meet or exceed community needs and that might not otherwise be constructed as quickly, or at all, by levying assessments on properties that directly benefit from the eligible public improvements. Negotiations on the use of PIDs between the City and the developer occur on a case-by-case basis. This policy establishes guidelines for these negotiations.

5. Definitions.

- a. “Petitioner” and “Developer” may be used interchangeably and shall refer to any person(s) or entity(ies) which is responsible for requesting the PIDs creation or for managing the development of the property within the limits of the PID.
- b. “City” is defined as meaning the City of Fair Oaks Ranch, Texas.
- c. “PID Act” is defined as meaning Chapter 372 of the Texas Local Government Code.

6. Attachments.

The following documents are included as attachments to this policy and incorporated by reference.

- a. Attachment A – PID Process Outline
- b. Attachment B – Petition Template

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7. Miscellaneous Provision

The following provisions shall be included in all PID Agreements:

- a. **Severance.** If any section, subsection, sentence, clause, phrase, or word of this Policy is declared unconstitutional or invalid for any purpose, the remainder of this Policy shall not be affected.
- b. **Waivers.** Waivers to or deviations from this policy may only be approved by the City unless otherwise stated herein.
- c. **No Personal Liability of Public Officials.** No public official or employee shall be personally responsible for any liability arising under or growing out of any approved or disapproved PID. Any obligation or liability of the Petitioner or Developer whatsoever that may arise at any time under the approved PID or obligation or liability which may be incurred by the Petitioner or Developer pursuant to any other instrument transaction or undertaking as a result of the PID shall be satisfied out of the assets of the Petitioner or Developer only, and the City shall have no liability.
- d. **Indemnification.** All PID agreements shall include Indemnification language as follows:

“Indemnification. DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS CITY (AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, ATTORNEYS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PRECEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD-PARTY AND RELATING TO DEVELOPER’S ACTIONS ON THE PROJECT INCLUDING, BUT NOT LIMITED TO PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO DEVELOPER OR DEVELOPER’S AGENTS’ OR REPRESENTATIVES’ NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR DEVELOPER’S AGENTS OR REPRESENTATIVES, AND ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANTS OR SUBCONSULTANT OF DEVELOPER OR DEVELOPER’S AGENTS OR REPRESENTATIVES, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER STATE LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER STATE LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. DEVELOPER SHALL PROMPTLY ADVISE CITY IN

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WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY, RELATED TO OR ARISING OUT OF DEVELOPER OR DEVELOPER'S AGENTS' OR REPRESENTATIVES' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT THE DEVELOPER'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH A DEFENSE WITHOUT RELIEVING DEVELOPER OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF ANY AGREEMENT TO WHICH THE DEVELOPER OR ITS AGENTS OR REPRESENTATIVES ARE A PARTY RELATED TO THE PID AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND / OR THEIR OFFICERS, ATTORNEYS, EMPLOYEES AND ELECTED OFFICIALS PERMITTED BY LAW."

PUBLIC IMPROVEMENT DISTRICTS

1. Types of PIDs.

- a. **Capital PIDs** are those that are established to construct infrastructure within a development. There are two types of Capital PIDs:
 - i. *Reimbursement PID*: The developer pays for the infrastructure up front and is reimbursed from assessments collected over time.
 - ii. *Bonded PID*: The City issues special assessment revenue bonds for the construction of improvements and/or reimbursement to the Developer and such bonds are repaid from assessments collected annually

PID BONDS THAT MAY BE ISSUED BY THE CITY SHALL NEVER CONSTITUTE AN INDEBTEDNESS OR GENERAL OBLIGATION OF THE CITY. THE STATE OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE, WITHIN THE MEANING OF ANY CONSTITUTIONAL PROVISION OR STATUTORY LIMITATION WHATSOEVER. BUT THE PID BONDS WILL BE LIMITED AND SPECIAL OBLIGATIONS OF THE CITY PAYABLE SOLELY FROM THE PID SPECIAL ASSESSMENTS TO BE COLLECTED. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE CITY. THE STATE OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE WILL BE PLEDGED TO THE PAYMENT OF ANY PID BONDS.

Capital PIDs will have a termination date of either the maturity of the bonds for Bonded PIDs, or full repayment of the reimbursement obligation for Reimbursement PIDs.

The maximum term for PID special assessments to be levied for a single-phase development shall not exceed 30 years. The maximum term for PID special assessments to be levied for a multiple-phase development shall not exceed 30 years for each phase of development requiring a separate PID assessment levy.

- b. **Operation and Maintenance PIDs** (“O&M PIDs”) are used to fund ongoing required or enhanced operation and maintenance for public improvements such as parks, public open space, trails and other public improvements.
 - (i) There may be no termination date with an O&M PID until City Council decides otherwise.
 - (ii) The assessment is determined annually based on a budget to maintain and operate the PID.
 - (iii) Payment of the assessment is on an annual basis, and no pre-payment can occur since there is no principal amount.
 - (iv) The City may create advisory boards for Maintenance PIDs.
 - (v) Development projects may include both Capital PIDs and Maintenance PIDs.

2. General.

A PID may be created and utilized to construct qualified public improvements and/or reimburse a portion of the Developer’s actual and documented costs required for public improvements to serve the development. Such incremental costs shall be associated with the construction of qualified public improvements.

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PIDS MUST BE SELF-SUFFICIENT AND NOT REQUIRE THE CITY TO INCUR ANY COSTS ASSOCIATED WITH THE FORMATION OF THE PID. BOND ISSUANCE COSTS, PID ADMINISTRATION OR THE CONSTRUCTION OF PID IMPROVEMENTS.

PID petition signatures will reflect that a reasonable attempt was made to obtain the full support of the PID by all the property owners, who will be responsible for the payment of the special assessments, located within the proposed PID. Priority will be given to PIDs with the support of 100% of the landowners, who will be responsible for the payment of the special assessments, within a PID.

A PID petition will be more likely to be approved if the development project includes one or more aspects of the following types of improvements which:

- a. Generate economic development benefits to the City consistent with the City's Comprehensive Plan and other city initiatives;
- b. Provide for improvements in the public right-of-way that are consistent with the City's Comprehensive Plan and Unified Development Code, and create new or enhanced public roads and streets (e.g., entryways, gateways, landscaping, street trees, fountains, specialty lighting, art, decorative and landscaped streets and sidewalks, bike lanes, multi-use trails, signage, terminating vistas, decorative pedestrian lighting, pedestrian safety elements, ADA accessibility, underground utilities, street lighting, etc.);
- c. Meet community needs (e.g., sales-tax generating developments, commercial development compatible with nearby residential communities, enhanced drainage improvements, pedestrian and trail connectivity)
- d. Exceed development requirements of the City; in particular enhanced architectural standards, enhanced landscaping, low impact development features, impervious cover limitations, parking lot shading, and which provide for a superior design of lots or buildings;
- e. Provide for increased recreation and open space opportunities for public use as well as protect and preserve natural amenities and environmental assets such as the lakes, trees, creeks, ponds, floodplains, slopes, hills, viewsapes, and wildlife habitats;
- f. Protect and preserve the rural and community amenities or features that further the look and feel of the hill country or would otherwise be of special benefit to the property users or community; or which establish a unified architectural or design theme throughout the development that complements the community's character and heritage.

Any requested adjustments or deviations from the terms of this PID Policy for a proposed PID shall be clearly requested and explained (including a detailed description of the basis for such a request under the PID Act) prior to submitting the PID petition. Any adjustments or deviations granted are at the sole discretion of the City Council.

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Property owned by the City or that is intended to be conveyed or dedicated to the City and located within the boundaries of the PID shall not be subject to any assessment by the PID.

No PIDs will be allowed to be created that overlap the boundaries of another PID.

3. Petition Requirements

In addition to the requirements of Texas Local Government Code §372.005(a) and this PID Policy, all petitions requesting establishment of a PID shall include at a minimum the following additional requirements, the satisfaction of which shall be determined in the sole discretion of the City Council:

- a. Demonstration of long-term financial capital for the PID development in the form of a cash deposit, proof of financing and/or equity capital from an investment grade financial institution, or letter of credit in favor of the City with an amount confirmed by an engineer's opinion of probable costs, or other commitments from verified funding sources which funding sources are subject to approval by the City.
- b. Evidence that the petition's signatures meet the ownership requirements of the PID Act and this PID Policy. If the Petitioner fails to provide sufficient evidence, the Petitioner shall reimburse all City's costs of signature verification.
- c. If a Petitioner submits a petition that seeks to add to or expand an existing PID, such petition shall be subject to this PID Policy.
- d. A section that clearly, and in detail, identifies the extraordinary benefit of the PID to the affected property owners and to the City in general (i.e., distinct public purpose).
- e. Identification of all land within the proposed PID that is, or will be, publicly owned including, but not limited to, sites for public rights-of-way, easements or greenbelts.
- f. Description of all City-owned and City-maintained land within the PID as well as any project costs for which the City is expected to be responsible.
- g. A budget, including the PID's revenues in addition to the assessments, and a description on how all funds will be managed.
- h. Specified procedure for eventual termination of the PID.
- i. Contingency plans to address how, if a PID is dissolved, the PID improvements and any property belonging to the PID that have not been dedicated to the public will be maintained or disposed of upon such dissolution. A PID cannot be dissolved as long as debt obligations secured by the PID's assessments remain outstanding.
- j. Statement that the Petitioner understands the annual budget for the PID is subject to review by City staff with final approval by the City Council.

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- k. A professional management plan detailing who will be responsible for addressing problems and corrective actions to be taken, including a comprehensive list of financial, management and legal consultants and their respective qualifications.

4. Required Fees, Additional Documents and Information

The following must be provided or addressed before the City Council will consider a petition:

- a. A non-refundable application fee of \$20,000.00 will be required with the filing of a petition to create a PID. This fee is regulatory in character and approximates the City staff costs of evaluating the PID petition. In addition to the application fee, any other related City-required cost, limited to actual costs as are documented by the City, is the responsibility of the Petitioner.

Additionally, if the City Council determines it is in its best interest to establish a PID, a Professional Services Agreement (“PSA”) will be entered into with the Petitioner. The PSA will require the Petitioner to initially deposit funds to pay for the City's third-party consultants including, but not limited to, Bond Counsel, Financial Advisor, PID Administrator, Appraiser, and Market Study Analysis. Additional deposits will be required when the deposit balance meets a minimum threshold as described below. Funds that have been expended for payment to the City's consultants are non-refundable except for potential reimbursements from bond proceeds or special assessments. The unused balance will be rolled into the PID administration costs for the creation of the PID or refunded to Petitioner at the discretion of the City depending on circumstances. The initial deposit amount shall be \$35,000.00 with additional \$5,000.00 deposit increments when the deposit balance reaches \$10,000.00.

- b. Current tax roll, or other acceptable evidence of ownership, with notations indicating the owners registering support for the petition.
- c. A copy of the Preliminary PID Finance Plan shall be submitted with the petition. This Finance Plan shall include at a minimum:
 - (i) Description and estimated costs of the proposed public improvements to be financed;
 - (ii) Description of the proposed development;
 - (iii) Proposed timetable of the development including anticipated construction timelines;
 - (iv) Detailed development financing plan showing breakdown of proposed private (loan and equity) and public financing structure;
 - (v) Targeted gross assessment amount;
 - (vi) Estimated ad valorem tax revenue generated by the proposed development;
 - (vii) Estimated number of bond issuances;
 - (viii) Proposed maturity dates for assessments; and
 - (ix) Any other such supporting information related to the success of the PID.
- d. A copy of a Project Feasibility Report which demonstrates the economic feasibility of the proposed development project and includes the following information:
 - (i) An assessment revenue pro forma for the proposed development project;
 - (ii) A financial review of the development projections and schedule;

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- (iii) Analysis of above describing the timing and amount of assessment revenue which will be generated based upon varying levels of assessments; and
- (iv) Comparison of the development project with other similar projects in the area that will not have an assessment.

5. Additional Submission Requirements for Bonded PIDs

If it is proposed that debt obligations secured by and payable from assessments (“PID Bonds”) are to be issued to reimburse for authorized improvements that a developer would ordinarily fund at its own costs, the petition must demonstrate how creation of the PID and financing of the public infrastructure provides a special benefit to the property that, but for the PID, would not occur. Examples of “special benefits” under which the City is willing to consider a PID include, but are not limited to, the following: accelerated development of neighborhood amenities, high quality development (i.e. amenities, sustainability, etc.) or furtherance of a major City Town Plan objective.

The following requirements must be met in connection with a PID Bond issuance:

- a. Value-to-lien ratio of 3:1 on a parcel-by-parcel basis is preferred. A minimum value to lien ratio of 2.5:1 on an aggregate basis across the entire area for which assessments have been levied to secure PID bonds will be considered, provided that the value to lien ratio individual parcels is not less than 2:1. The City will evaluate the value-to-lien ratio requirements on a case-by-case basis and may increase or reduce the required value-to-lien ratio for the issuance of PID Bonds based on proposed project profile, developer profile, proposed public and private financing structure of the development, prevailing market and industry trends and other relevant factors.
- b. To the extent feasible, preliminary design and engineering work for public improvements to be funded with PID Bonds shall be completed prior to the levy of assessment.
- c. Petitioner is required to provide evidence of financing of the non-public improvements which may include closed loan(s) from a bank or a financial institution in an amount necessary to fund the Private Improvements for the applicable PID Phase for which PID Bonds are being sold. Any loan agreement for such Private Improvements shall have no conditions to funding other than those customarily included in similar financings and such loan must meet the approval of the City’s financial advisor and the City.
- d. Petitioner is required to demonstrate committed capital (acceptable to the City) in the form of cash deposit, proof of bank financing and/or equity capital, or letter of credit, which represents the difference between budgeted costs to complete the public improvements assumed to be complete in the appraisal and the net proceeds of the PID Bonds. The form of acceptable committed capital (cash deposit or letter of credit) will be determined by the City (in consultation with its financial advisors, consultants and participating underwriters) on a case-by-case basis. Terms of any letter of credit used to satisfy the requirements of this paragraph will include:
 - (i) an irrevocable and unconditional letter of credit issued by one or more banks satisfactory to the City and on terms and conditions satisfactory to the City to provide a funding source

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- for the agreed upon cost of infrastructure improvements that will be constructed with funds other than bond proceeds;
- (ii) the City being named as the beneficiary;
 - (iii) provisions that would enable the City, upon presentment of a properly executed draft request to the provider of the letter of credit, to draw upon the letter of credit to fund any obligation of the Developer, including funding to pay for a portion of the costs to the public infrastructure improvements that are not being funded with the proceeds of any bonds issued by the City; and
 - (iv) a commitment by an acceptable letter of credit provider with a long-term rating by a nationally recognized ratings service of at least an A or better.
- e. In the event that issuance of PID Bonds in a calendar year causes other City debt issuances not to qualify as "qualified tax-exempt obligations" under section 265(b)(3) of the Internal Revenue Code of 1986, as amended, the Petitioner will be required to pay the additional costs of the City incurred as a result thereof.

6. Maximum Assessment

The annual PID installment shall not exceed an amount that increases the expected total initial equivalent tax rate upon buildout above \$3.00 per \$100.00 of assessed value; provided that the City may consider a higher initial equivalent tax rate for developments that are funding critical infrastructure improvements. A true-up calculation will be performed at each bond issuance and upon filing of a final plat to ensure that the maximum assessment is not exceeded.

If the true-up calculation reveals that the maximum assessment is exceeded, a mandatory prepayment from the PID Petitioner will be required.

7. PID Administration

The City may contract with a qualified third-party company to manage and administer the PID, subject to approval by City Council. The PID Administrator shall have authority and responsibility to:

- a. Prepare and submit a budget and five-year service and assessment plan to the City Council for consideration and adoption. The budget shall provide for sufficient funding to pay for all costs above and beyond the City's ordinary costs, including additional administrative and/or operational costs as well as additional maintenance costs resulting from the PID.
- b. Provide for the calculation of the assessment and allocation to the respective parcels in the PID and shall provide for the billing of the assessments to the property owners or provide information to the appropriate County tax office. The PID Administrator and Developer will coordinate to ensure that the billing/assessment information provided to the tax office includes all pertinent properties.
- c. Prepare annual updates and reports for the Service and Assessment Plan as required by the PID Act and submit an annual Service and Assessment Plan in a form appropriate for consideration and adoption by the City Council each year and assist the City Council and staff in adopting the annual Service and Assessment Plan updates. The PID Administrator

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will coordinate with City staff to ensure timely filing of annual Service and Assessment Plan updates with County as required by the PID Act. Prepare annual reports reflecting the expenditure of Bond Proceeds or the reimbursement of Developer expenditures as appropriate.

- d. Prepare annual reports reflecting the imposition and collection of the assessments and the balances in the various accounts related to the PID to be provided on a monthly or other periodic basis as may be required by the City.
- e. Design and implement a property buyer disclosure program consistent with the PID Act and this policy.
- f. Prepare, provide or undertake any other reports, information or tasks required by the City or the development project under the PID Act, the governing documents or the applicable contract for PID administration

If the City elects to hire a qualified third party PID administrator to administer the PID, the costs for such administration shall be paid for with PID funds. A contract with a PID Administrator to manage the PID shall not preclude the City from entering into a contract with another taxing unit for the collection of the assessments levied for the PID.

Provision for the costs associated with providing administrative services, whether the services are by third parties or the City, shall be included in any budget proposed by the Developer.

The PID Administrator may be required to submit reports of all activities and expenditures to the City until the project is built out at the frequency to be determined and adjusted from time to time by the City. The City may request an independent audit by a qualified public account at any time.

8. Disclosure to Property Buyers

To satisfy disclosure to property buyers within a PID, the City will require the petitioner to comply with the following:

- a. A landowner's agreement must be recorded in the official public records of Bexar/Kendall/Comal County which, among other things, will notify any prospective owner of the existence or proposal of assessments on the property. All closing statements and sales contracts for lots must specify who is responsible for payment of any existing assessment or a pro rata share thereof until such time as the PID assessment is paid in full.
- b. A PID must be identified as a PID with use of signage approved by the City along the main entry/exits located at the boundaries of the PID. All signage shall be clearly visible to all motorists entering and exiting the PID.
- c. Signage and information flyers for use at sales offices and model homes as approved by the City and provided by the PID Administrator.
- d. PID disclosure documents in accordance with Section 5.014 of the Texas Property Code to be signed both at contract signing and at closing with such agreements maintained on file and available for inspection by the City.

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- e. Requirement to provide notice of the PID to builders in addendum to contracts and to disclose the PID on any listing.
- f. Comply with any property buyer disclosure program designed and implemented by the City or the PID Administrator.