



# Public Improvement District (PID) Policy

## I. OVERVIEW

Public Improvement Districts (“PIDs”), per the Texas Local Government Code Chapter 372 (“the code” or “PID Act”), provide the City of New Braunfels (“the City”) an economic development tool that permits the financing of qualified public improvement costs which confer a special benefit on a definable part of the City. Proceeds from bonds issued by a PID can finance capital costs and fund supplemental services to meet the community needs which could not otherwise be constructed or provided. The bonds issued by the PID to fund the costs of eligible capital improvements and/or supplemental services are paid entirely by property owners within the Public Improvement District (“PID”) who receive special benefits from the capital improvements or services. **A PID may only be used to pay for public improvements as defined in the code.**

A PID is comprised of properties, whose owners have petitioned the City to form a PID. The City Council establishes a PID by adoption of a resolution after a public hearing. Written notification of the public hearing is published and mailed to all property owners in the proposed PID. By petition, the owners pledge to pay an assessment in order to receive enhanced services and/or improvements within the District. The PID must demonstrate that it confers a benefit, not only to the properties within the district, but also to the “public” which includes the City.

The purpose of this PID policy is to outline the issues to be addressed by the owner of the taxable real property liable for assessment petitioning for creation of a PID (“Petitioner”) before the City Council can support the establishment of a PID. The PID policy outlines such things as petition requirements, qualified costs, financing criteria, information disclosures to property owners, and the determination of annual plans, budgets and assessments.

## II. GENERAL

1. 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.
2. 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.

3. PID petition signatures should reflect that a reasonable attempt was made to obtain the full support of the PID by all the property owners located within the proposed PID. Priority will be given to PIDs with the support of 100% of the landowners within a PID.
4. PID petitions will be more likely to be approved if the project includes one or more aspects of the following types of improvements:
  - a. Which generate economic development benefits to the City beyond what normal development would and meeting the goals of the Economic Development Strategic Plan;
  - b. Which provide for improvements in the public right-of-way which create new or enhanced public roads and streets and which enhance and create opportunities to redevelop older or underutilized areas of the City); (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, etc.);
  - c. Which meet community needs (e.g., enhanced drainage improvements, land and infrastructure for re-irrigation of treated wastewater, off-street public parking facilities, pedestrian and trail connectivity, mobility enhancements and workforce housing)
  - d. Which exceed development requirements of the City; in particular enhanced architectural standards, enhanced landscaping, low impact development (LID) features, impervious cover limitations, parking lot shading, floorplan variety, and which provide for a superior design of lots or buildings including green building ratings systems for energy efficiency;
  - e. Which provide for increased recreation and open space opportunities for public use;
  - f. Which protect and preserve natural amenities and environmental assets such as the rivers, lakes, trees, creeks, ponds, floodplains, slopes, hills, viewsapes, aquifer recharge and/or contributing zones, and wildlife habitats;
  - g. Which protect and preserve existing historical buildings, structures, features or places 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; and
  - h. Which are associated with property located within the city limits of the City of New Braunfels.

- i. Access to records that provides the City with the ability to perform due diligence on the Developer's ability and financial capacity to deliver the project as proposed.
5. A PID's budget shall include sufficient funds to pay for all costs, including the cost of establishing the PID, issuance of PID bonds, if any, as well as including funds for additional administrative and/or operational costs and management costs.
6. A Landowner's Agreement must be recorded in the Official Public Records of the County in which the PID is located which, among other things, will notify any prospective owner of the existence or proposal of special assessments on the property. All closing statements and sales contracts for lots must specify who is responsible for payment of any existing PID assessment or a *pro rata* share thereof until such time as the PID assessment is paid in full.
7. Any requested adjustments or deviations from the terms of this Policy for a PID shall be clearly requested and explained (including a detailed description of the basis for such a request under Chapter 372 of the Texas Local Government Code) in the PID petition, for that PID. Any adjustments or deviations granted are at the sole discretion of the City Council.
8. A PID must be identified as a PID with use of signage 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.
9. Property owned by the City of New Braunfels or that is intended to be conveyed or dedicated to the City and that is located in the boundaries of the PID shall not be subject to any assessment by the PID.
10. No PIDs will be allowed to be created that overlap the boundaries of another PID.
11. Annual Service and Assessment Plan updates, as required by Chapter 372 of the PID Act, shall be provided for if a PID is created in response to a petition.

### **III. PETITION REQUIREMENTS**

1. In addition to the requirements of Texas Local Government Code §372.005(a) the petition must include the following: PID petitions shall include this additional note: "With respect to community property, the City may accept the signature of a spouse as a representation of both spouses that they support the creation or renewal of the PID absent a separate property agreement. *However, if City staff is made aware of any disagreement among owners of community property, those petitions will not be counted.*
2. Signatures for PID petitions must be gathered not more than six months preceding submittal of the PID Application.

3. For a district to be established, a petition shall include the following:
  - a. Evidence that the petition's signatures meet the state law requirements, or the petition must be accompanied by a reasonable fee to cover the City's costs of signature verification. If the proposed district is an expansion of an existing district, a petition for the new portion of the district must identify each subdivision, or portion thereof, within the proposed boundaries of the new district, and each subdivision or portion thereof that is not currently in an existing PID shall individually satisfy the requirements for a petition under Section 372.005 of the Texas Local Government Code. Subdivision has the meaning assigned by Section 232.021 of the Texas Local Government Code.
  - b. Map of the area, a legal description of the boundaries of the district for the legal notices and a "commonly known" description of the area to be included in the district.
  - c. A narrative description of the project and how it meets or exceeds the types of public improvements discussed in General (4).
  - d. Acknowledgement that the party that submits the petition has read and understands the City's PID policy and will adhere to all language therein.

#### **IV. DOCUMENTS AND INFORMATION REQUIRED IN CONJUNCTION WITH THE PETITION**

The following issues must be addressed before the City Council will act on a petition.

A non-refundable application fee of \$15,000 will be required with the filing of a petition to create a PID. This fee is regulatory in character and approximates the 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 Developer.

1. A current tax roll, or other acceptable evidence of ownership, with notations indicating the owners registering support for the petition.
2. A copy of the Preliminary PID Finance Plan shall be submitted with the petition. This Finance Plan shall include at a minimum:
  - a. Targeted gross bond amount;
  - b. Estimated *ad valorem* revenue generated;
  - c. Annual installment per unit;
  - d. Estimated number of bond issuances;
  - e. Proposed maturity dates for PID Bonds; and

- f. Proposed timetable of the development
  - g. Any other such supporting information related to the success of the PID.
3. A copy of a Project Feasibility Report which demonstrates the economic feasibility of the project and includes the following information:
- a. An Assessment Revenue Pro forma for the proposed Project;
  - b. A financial review of the development projections and absorption schedule;
  - c. Analysis of above describing the timing and amount of Public Improvement District Assessment Revenue which will be generated based upon varying levels of assessments; and
  - d. Comparison of the Project with other similar projects in the area that will not have an assessment.

## **V. DOCUMENTS AND INFORMATION REQUIRED PRIOR TO THE PUBLIC HEARING FOR THE CREATION OF THE PID**

In addition to the requirements of Section 372.009 of the Texas Local Government Code the following information shall be submitted for review by the City prior to the public hearing:

- 1. Proof that any liens on the Properties to be included in the District will be subordinated to creation of the PID;
- 2. Consent Agreement to Dissolution of the PID if Project is not developed.
- 3. Any additional information required by the City to evaluate the Feasibility Report.

## **VI. ASSESSMENT CAP**

- 1. The City Council may consider an assessment amount, not to be in excess of the maximum requested in the Petition, at the time a PID is created. The annual installments for the approved Assessments, at the time of the levy of the Assessments, should not exceed \$0.50 cents equivalent ad valorem tax rate.

## **VII. PID ADMINISTRATION**

- 1. The City may contract with a qualified third-party company to manage and administer the

PID, subject to appropriate oversight by City staff.

2. The City's contract with a qualified third party to manage and administer the PID for the City shall provide authority for the contractor 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 contractor 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 Chapter 372 of the Texas Local Government Code 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 adopted the annual Service and Assessment Plan updates.
  - d. Prepare annual reports reflecting the expenditure of Bond Proceeds or the reimbursement of Developer expenditures as appropriate.
  - e. 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 to City Council on a monthly or other periodic basis as may be required by the City.
  - f. Prepare and provide any other reports or information required of the City or the Project under Chapter 372 of the Texas Local Government Code.
3. The contract with a third party 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.
4. The City may alternatively provide for the administration of the PID through in-house resources.
5. Provision for the costs associated with the provision of the administrative services, whether the services are provided by third parties or the City, shall be included in any budget proposed by the Developer and may include but is not limited to allocation of interest on the assessment to the extent authorized under Chapter 372 of the Texas Local Government Code.
6. Any management firm for a PID shall be required to submit quarterly reports of all activities and expenditures to the City until the project is 80% built out.

7. The City may request an independent audit at any time.
8. 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.

## **VIII. ADDITIONAL PROJECT CRITERIA**

In agreeing to form a PID for which debt will be issued to fund the costs of constructing qualified public improvements, the City will require the following:

1. The property owner must demonstrate to the City that it has the expertise to complete the new development that the PID will support.
2. The property owner must provide the City with its sources of funding the public improvements not being funded by the PID unless such improvements have already been constructed by the property owner prior to the PID funding.
3. No more than 80% of the costs of public improvements for the project may be funded by the PID.
4. The proposed development must be consistent with the entitlements on the property. All required zoning must be in place for the development of the portion or phase of the Property to be assessed by the PID Bond issue prior to the issuance of any PID bonds for that portion of the property.
5. The property owner must provide evidence to the City that the utility service provider has or will have sufficient capacity to provide all necessary utility services for the development of the portion or phase of the property to be assessed by the PID Bond issue prior to the issuance of any PID bonds for that portion of property.
6. All reasonable estimated costs must be identified before a decision is reached on a request to issue bonds for a PID. Costs to be identified include costs related to establishing the district, costs for construction and/or the acquisition of improvements, the maintenance and operation of improvements (if any) and PID administrative costs.
7. The Developer will submit a PID Financing agreement to be reviewed by City Staff and outside consultants. The PID Financing Agreement shall contain a section which clearly identifies the benefit of the PID to the affected property owners and to the City as a whole (i.e., public purpose).
  - a. All PID Agreements shall include Indemnification language for construction of public improvements as follows:

**DEVELOPER COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY (AND THEIR ELECTED OFFICIALS,**

EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND RELATING TO DEVELOPER'S CONSTRUCTION OF THE PUBLIC IMPROVEMENTS 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 CONTRACTORS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES, INCLUDING ANY SUCH ACTS OR OMISSIONS OF DEVELOPER OR DEVELOPER'S CONTRACTORS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF DEVELOPER OR DEVELOPER'S CONTRACTORS AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS 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 WRITING OF ANY CLAIM OR DEMAND AGAINST CITY, RELATED TO OR ARISING OUT OF DEVELOPER OR DEVELOPER'S CONTRACTORS 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 THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH 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 AND THE DEVELOPER SHALL SURVIVE THE TERMINATION AND / OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND / OR THEIR OFFICERS, EMPLOYEES, REPRESENTATIVES AND ELECTED OFFICIALS PERMITTED BY LAW.



## **IX. BOND SIZE LIMITATIONS**

The following limitations and performance standards shall apply to a PID debt issue approved by the City:

1. Minimum appraised value (subject to a qualified appraiser to be selected by the City) lien ratio at date of each bond issue - 3:1
2. Level annual debt service requirements
3. Maximum maturity for each series of bonds (to extent allowed by law) - 30 years

The aggregate principal amount of bonds required to be issued shall not exceed an amount sufficient to fund: (i) the actual costs of the qualified public improvements; (ii) required Reserve Fund and (iii) capitalized interest during the period of construction and not more than 12 months after the completion of construction and in no event for a period greater than three (3) years from the date of the initial delivery of the bonds; and (iv) any costs of issuance. Provided, however that to the extent the law(s) which limit the period of capitalized interest to 12 months after completion of construction change, the foregoing limitation may be adjusted to reflect the law(s) in effect at the time of future bond issuances. Additional terms may be considered by the City if the public improvements are constructed in phases or multiple bond sales are contemplated for the project.

## **XI. FINANCING CRITERIA**

1. The PID may seek bond issues in advance of construction of an individual phase of a project subject to compliance with these standards.
2. Other than the assessments levied within the PID, no City financial or moral obligations will be pledged to fund or support the PID bonds.
3. All proposed subsequent PID bond issues for a project, if any, will be subject to approval by the City Council.
4. Special assessments on any given portion of the property may be adjusted in connection with subsequent bond issues as long as an agreed-upon maximum annual assessment rate is not exceeded for a project or phase, and the special assessments are determined in accordance with the Service and Assessment Plan and the PID Act. Special assessments on any portion of the property will bear a direct proportionate relationship to the special benefit of the public improvements to that improvement area. In no case will assessments be increased for any parcel unless the property owner of the parcel consents to the increased assessment.
5. The City shall not be obligated but may choose to do so at its sole discretion, to provide funds for construction of any improvement except from the proceeds of the PID bonds and PID assessments.
6. Each PID Bond Indenture will contain language precluding the City from making any debt service payments for the PID bonds other than from available special assessment revenues.
7. A PID will be responsible for payment of all the City's reasonable and customary costs and

expenses including the cost of any appraisal

8. Any PID bond issued will include a Reserve Fund in an amount equal to the lesser of: (i) the maximum annual debt service on the bonds; (ii) 10 percent of the Bond Par Amount; or (iii) 125 percent of the average annual debt service and that such Reserve Fund will be funded from bond proceeds at the time bonds are issued.
9. All public infrastructure within the PID that is to be funded by PID assessments must include a minimum of three (3) bidders approved by the City and the Developer.
10. All Developers and significant landowners will provide any required continuing disclosure obligations associated with the issuance of PID bonds as required under the Indenture or any other regulatory agreement or regulatory agency.
11. All construction of improvements is subject to City review and provision shall be made for dedication to City or to another appropriate entity.

## **XII. MISCELLANEOUS**

1. Severability: 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.
2. No Liability of City or Public Officials. Neither the City, a public official, employee or representative shall be responsible for any liability arising under or growing out of any approved PID. Any obligation or liability of the Developer whatsoever that may arise at any time under the approved PID or any obligation or liability which may be incurred by the Developer pursuant to any other instrument transaction or undertaking as a result of the PID shall be satisfied out of the assets of the developer only and the City shall have no liability.