

**CITY OF SMITHVILLE**  
**Public Improvement District Policy**

**I. OVERVIEW**

A Public Improvement District (“**PID**”) is a special purpose district within a city or a city’s extraterritorial jurisdiction created under Chapter 372, Texas Local Government Code. A PID establishes a funding source for certain improvements within the district by levying assessments against the property within the PID.

PIDs can be used in several ways. Several large cities, such as San Antonio and Austin, have formed PIDs to finance improvements to their downtown areas. Many PIDs are also formed at the request of developers to finance the improvements for a particular property development. This policy addresses PIDs when proposed by developers.

PID assessments create a lien upon the land within the PID that must be paid by the landowners. The assessment is collected similarly to a property tax. However, a PID assessment is not a “tax” under Texas law.

Often, improvements will be financed with bonds secured by the assessments levied against the property within the PID (“**PID Bonds**”). PID Bonds are issued in the name of the (“**City**”). However, the bonds are non-recourse against the City and the City cannot be held liable for the debt represented by the bonds. Even so, a default in the payment of PID Bonds may negatively affect the perception of the City’s bonds in the future.

Additionally, the City is obligated to administer the PID throughout its lifecycle. The City may outsource the administration to a third-party contractor to be paid by the developer. Although the City can outsource the administration to a third-party, under Texas law, the City is ultimately responsible for the administration.

Because a PID involves the dedication of significant public resources, and potentially affects the City’s reputation and perception of financial stability, any PID applicant must provide compelling data and other information clearly demonstrating that the project confers an extraordinary benefit, not only to the properties within the PID, but also to the entire City. The benefits must be significantly above and beyond typical improvements and amenities to justify the City’s involvement.

The purpose of this Policy is to outline issues to be addressed before the (“**City Council**”) can support the establishment of a PID. Before consenting to the creation of a PID, the City Council must ensure that the project meets the previously described “extraordinary benefit” test.

## II. GENERAL

### 2.1 PID Services and Improvements.

- (A) Permissible Services and Improvements. PID assessments may only be used to reimburse costs that serve or improve public property and may not be used to benefit or enhance private property. PID assessments may only be used for the following services and improvements:
- (1) Improved landscaping and irrigation.
  - (2) Enhanced entry features.
  - (3) Installation of fountains, distinctive lighting, and signs.
  - (4) Acquisition and installation of art.
  - (5) Construction or improvement of streets, sidewalks, and rights of way.
  - (6) Establishment or improvement of parks and recreational amenities.
  - (7) Enhanced regional infrastructure improvements.
  - (8) Construction of off-street parking facilities.
  - (9) Other improvements allowed under Texas law, to be reviewed and considered individually by the City.
- (B) Prohibited Services and Improvements. PID assessments may not be used to provide or maintain:
- (1) Swimming pools;
  - (2) Travel expenses;
  - (3) Perimeter fencing;
  - (4) Acquisition, construction, improvement, or maintenance of privately owned facilities or land; or

- (5) Any trails, parks, streets, or other public amenities that are located within a gated community or otherwise inaccessible by the general public.
  - (C) No Additional Debt. Except for public improvements specifically listed in a voter-approved City bond proposition, the City will not expend or pledge a tax increment, general fund revenue, general obligation, certificate of obligation, or similar obligation to support the costs of PID improvements, unless explicitly approved by City Council as advancing a City purpose.
- 2.2 Reimbursement Only.** The financing of the PID improvements and the payment of assessment revenue or PID Bond proceeds will be made on a reimbursement-only basis upon completion of all streets, utilities, amenities, and other infrastructure related to the project. PID proceeds will only be authorized to reimburse costs of improvements designed and constructed in conformance with City standards and the provisions of any PID Agreement.
- 2.3 Maximum Assessment.** The annual assessment to property owners within the PID shall not exceed an amount that increases the expected total initial equivalent tax rate upon build out above \$3.00 per \$100 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 the maximum assessment is not exceeded. If the true-up calculation reveals that the maximum assessment is exceeded, a mandatory prepayment from the developer will be required.
- 2.4 PID Self-Sufficiency.** A PID must be self-sufficient and not adversely impact the ordinary service delivery of the City, except where the City Council elects to participate in the project's costs. The consideration or approval of a PID shall not create a recourse position for the City, where the City is asked to pledge its credit or assume responsibility for repayment of any debt.
- 2.5 Administrative and Operational Costs.** A PID's budget shall include sufficient funds to pay for all costs above and beyond the City's ordinary costs, including administrative or operational costs as well as additional maintenance costs resulting from the PID.
- 2.6 Annexation.** A proposed PID must be located within the City's corporate limits. The City will not consider the creation of a PID where any portion of the property is located in the City's extraterritorial jurisdiction unless such property is annexed prior to the creation of the PID.

- 2.7 Variances.** Development of property within the PID may not require variances from applicable development regulations that result in a significantly lower standard of development.
- 2.8 City Administration of PID.** The City reserves the right and shall select and retain, in the City's sole and unfettered discretion, the services of any professionals or consultants in association with the creation and administration of the PID including, but not limited to, financial advisor, bond counsel, underwriter, trustee, PID administrator, and appraiser.
- 2.9 No Liability for City Representatives.** Neither the City, nor any City 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.
- 2.10 Third-Party Administrator.** 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. The PID administrator will be required to review and comment on the budget and to attend the annual public hearing regarding the Service and Assessment Plan. Contracting with a third party 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.
- 2.11 Entitlements.** The proposed development must be consistent with the entitlements on the property. All required zoning, subdivision, and other required land use approvals and permits must be in place for the development prior to the levy of PID assessments.
- 2.12 Deviation.** 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.

### III. COMMUNITY BENEFITS

- 3.1 General Policy.** PIDs must be established carefully and only when related to a public purpose to avoid a proliferation of special districts. PIDs are intended for projects that will enhance the City and provide public benefits outside the PID.
- 3.2 Prioritization.** Subject to the requirements of this policy, the City Council will prioritize approval of petitions for PIDs that provide for the following public benefits to a degree that is superior to the level of community benefits typically generated by real estate development projects not involving PID financing. Such benefits include, but are not limited to, the following:
- (A) Quality Development. The development exceeds the development, infrastructure, and design standards of City codes.
  - (B) Extraordinary Benefits. The development provides extraordinary public benefits that advances the vision and goals of the City’s Comprehensive Plan or other planning documents, such as the extension, financial contribution, or enhancement of infrastructure; diversity of housing; and enhanced parks, trails, open space, and recreational amenities that are available to the public.
  - (C) Enhance Public Service and Safety. The development enhances public services and optimizes service delivery through its design, dedication of sites, connectivity, and other features.
  - (D) Education. The development improves public education programs or facilities.
  - (E) Finance Plan. The developer contributes financially to cover a portion of infrastructure expenses without reimbursement by the PID or the City and as reflected in conditions placed on issuance of PID bonds.
- 3.3 Benefit Funding.** Community benefits may be funded by sources other than PID assessments. If a community benefit is not eligible for PID financing based on Section 372.003, Texas Local Government Code, the petitioner must demonstrate sufficient funding of the benefit from other sources.
- 3.4 Infrastructure Funding.** If a developer proposes to use PID Bonds to reimburse costs for infrastructure that merely meets, but does not exceed, minimum City development standards, the petition must demonstrate how creation of the PID and financing of the infrastructure provides an extraordinary benefit to the City as a whole and to the property

in the PID, such as accelerated development or demonstrable furtherance of a major City policy objective. The City will not create, nor consider, a PID to solely finance the costs of constructing infrastructure that only meets minimum City development standards.

- 3.5 Community Benefit Fee.** The developer must pay to the City a fee (the “*Community Benefit Fee*”) based on either: (a) ten percent (10%) of the net proceeds to be generated from the issuance of PID Bonds; or (b) if PID Bonds are not issued, \$3,400 per single family dwelling or commercial lot or unit. The developer must pay the Community Benefit Fee to the City prior to the levy of any assessments. The City may use the Community Benefit Fee at its sole discretion for any lawful purpose, regardless of whether such purpose is located in or directly benefits the PID.

#### **IV. PETITION REQUIREMENTS**

- 4.1 Petition Requirements.** In accordance with Texas Local Government Code § 372.005(a), the petition must include the following:

- (A) The general nature of the proposed improvements.
- (B) The estimated cost of the improvements.
- (C) The boundaries of the proposed assessment district.
- (D) The proposed method of assessment, which may specify included or excluded classes of assessable property.
- (E) The proposed apportionment of costs between the PID and the municipality or county as a whole.
- (F) Whether the PID will be managed by the City, by the private sector, or by a partnership between the City and the private sector.
- (H) That the persons signing the petition request or concur with the establishment of the PID.
- (I) That an advisory body may be established to develop and recommend an improvement plan to the governing body.

- 4.2 PID Petition Signatures.** The PID petition shall be signed by all of the property owners in the PID, other than governmental entities whose property within the PID consists solely of

street and road rights of way. Petitioner must provide either: (a) evidence that the petition's signatures meet the state law requirements; or (b) a reasonable fee (as determined by the City and in addition to the required application fee) to cover the City's costs of signature verification.

## V. CONDITIONS FOR CONSIDERATION

**5.1 Evaluation Before Consideration of PID.** Before the City will consider a PID petition, the petitioners must provide the following for evaluation:

- (A) Public Purpose. Identification of the benefit of the PID to the affected property owners and to the City as a whole, sufficient to establish a public purpose for the PID.
- (B) PID Boundaries. Map of the area, description of the boundaries of the PID for the legal notices and a "commonly known" description of the area to be included in the PID.
- (C) City Property. Description of all City-owned land within the PID. Property in the PID owned by the City shall not be subject to PID assessments. Property in the PID owned by another governmental entity, may be assessed only pursuant to an interlocal agreement between the entity and the City.
- (D) Market Feasibility Study. Evidence of the feasibility of the real estate development project and the PID, taking into account both the market for the proposed product types and the petitioner's capacity to deliver the project. The feasibility study must be prepared by a third party approved by the City.
- (E) Financial Support. Assurance of long-term backing and support, which will include the financial plan and build out/phasing forecasts. If proposing reimbursements through PID bonds, the value to lien ratio must be a minimum of 2.5:1.
- (F) Contingency Plan. A plan to address maintenance or disposition of PID improvements or property that has not been dedicated to the public if a PID is dissolved.
- (G) Sunset Provisions. Procedures for public review of the success of the PID and a determination of property owners whether to continue with the PID or dissolve it; provided that, if dissolved, the PID must remain in effect for the purpose of meeting obligations of indebtedness for improvements as required by state law.

- (H) Maintenance. Plans and funding mechanisms for maintenance of improvements dedicated to the public such that the City will have no obligation for future maintenance or operational costs during the term of the PID.
- (I) Costs. All estimated costs related to establishing the PID and all anticipated costs for construction, maintenance, repairs and replacements, operations, and administration.
- (J) Extraordinary Benefit. Identification of the extraordinary benefits of the PID to the City.

**5.2 Agreements.** Before the City Council will take action on a petition, the developer must have entered into an agreement or series of agreements (the “*PID Agreement*”) that addresses the following:

- (A) The basic terms and conditions for creation of the PID, including the provision of extraordinary community benefits and compliance with the requirements of this policy.
- (B) Payment or reimbursement to the City of all of the City’s one-time and ongoing administrative and operational costs related to the PID, including but not limited to costs for reviewing the PID petition, publishing related notices, reviewing the petition and required materials, services provided by the City’s third party PID Administrator, attorneys representing the City, bond counsel, disclosure counsel, financial advisors, and any other consultant or professional selected by the City to assist the City in a PID-related matter.
- (C) The financing of the PID improvements and the payment of assessment revenue or PID Bond proceeds will be made on a reimbursement-only basis upon completion of all streets, utilities, amenities, and other infrastructure related to the project. PID proceeds will only be authorized to reimburse costs of improvements designed and constructed in conformance with City standards and the provisions of any PID Agreement. As a condition to reimbursement, the City must be provided with lien releases and other information reasonably satisfactory to the City establishing that all improvements have been fully paid for.
- (D) The planning, development, construction, management, and maintenance of the PID improvements.

- (E) Terms and conditions for ongoing PID administration, operation, and management, including collection of PID assessments.
- (F) Any services to be funded by the PID.
- (G) If the project is outside of the City’s municipal boundaries, voluntary annexation of the project area prior to the creation of the PID.
- (H) Contribution to funding the expansion of arterial streets, major collector roadways, and trunk line utility infrastructure, as applicable, to address the projected demand for services and impacts of the development.
- (I) Location of the PID within the City’s authorized service areas for water, wastewater, and electricity. If expansion of the City’s utility service areas is necessary, the developer shall facilitate and be responsible for costs associated with such expansion.
- (J) Clear identification of the extraordinary benefit of the PID to the affected property owners and to the City as a whole.

**5.3 Fees and Deposit.** Fees and deposits must be paid in accordance with the following before the City Council will take action on a petition:

- (A) Application Fee. A non-refundable and non-negotiable application fee of \$25,000 (the “**Application Fee**”) will be paid by the developer to reimburse the City for the cost of evaluating the petition, including but not limited to costs related to a feasibility report under Texas Local Government Code § 372.007, attorney fees, financial advisor fees, and engineering fees. If City costs exceed the initial fee, the developer shall provide an additional deposit. All City costs associated with review of a petition must be covered by the application fee or subsequent deposits before any petition will be placed before the City Council for action.
- (B) PID Agreement Deposit. The developer must deposit a sum of \$50,000 (the “**PID Agreement Deposit**”) with the City as an initial deposit for developer’s obligations under the PID Agreement after the PID petition is reviewed and accepted for filing with the City Secretary.
- (C) Costs in Addition. Payment of costs under this Section 5.3 as a condition for City Council review is in addition to any other conditions in this policy or as otherwise required by the City.

## VI. BOND SIZE LIMITATIONS AND FINANCING CRITERIA

**6.1 PID Bonds Limitations and Performance Standards.** The following limitations and performance standards shall apply to PID Bond issues approved by the City:

- (A) The minimum appraised value to lien ratio on the date of each PID Bond issue shall be 2.5:1. The City, in its sole discretion, may require such values to be supported by an appraisal of the applicable parcels prepared by an appraiser selected by the City with all reasonable appraisal fees to be paid by the developer.
- (B) Maximum maturity for each series of PID Bonds (to extent allowed by law): 30 years from their date of issuance.
- (C) The last PID Bond issuance for a PID shall be not later than the date that is ten (10) years after the date of the first PID Bond issuance for that PID.
- (D) The aggregate principal amount of PID Bonds required to be issued shall not exceed an amount sufficient to:
  - (1) Reimburse the actual costs of the qualified PID improvements;
  - (2) Fund required reserves;
  - (3) Capitalized interest to the extent determined by the City in its sole discretion to be appropriate, if any, but not more than 12 months after the completion of construction; and
  - (4) Pay any costs of issuance, arbitrage, administrative fees, third party fees, or other costs related to issuance.
- (E) Any new PID Bonds issued must include a reserve fund funded from proceeds of such PID Bonds at the time of issuance. All PID Bond reserve funds, with the potential exception of PID Refunding Bonds, at the time of issuance shall be in an amount equal to the lesser of:
  - (1) The maximum annual debt service on the PID Bonds;
  - (2) 10 percent of the PID Bond proceeds; or

- (3) 125 percent of the average annual debt service on the PID Bonds.
- (F) The City will apply to PID Bonds the same post-issuance compliance requirements as the City applies to its general obligation and certificate of obligation debt.
- (G) Failure by the developer to timely submit required continuing disclosure filings will be deemed a breach under any PID development, reimbursement, or financing agreement with the City.

## 6.2 Conditions to Levy and Bonds.

- (A) Taxes. Prior to the levy of special assessments and issuance of PID Bonds, the developer must be current on all taxes, assessments, fees, and obligations to the City.
- (B) Construction of Improvements. Prior to the issuance of PID Bonds, the City must have: (1) confirmed the PID improvements to be reimbursed have been completed in accordance with all applicable design and construction requirements, including City codes and any PID related agreements between the City and the developer; and (2) accepted such improvements. As a condition for the City's acceptance of a PID improvement, the developer shall provide the City with an assignment of the warranties and guaranties, if applicable, to those improvements and a two-year maintenance bond, all in a form reasonably acceptable to the City. The developer must also submit to the City for verification all invoices and other supporting documentation clearly evidencing the actual costs of the PID improvements to be reimbursed.

## VII. CONSTRUCTION BONDS

**7.1 Exception to Reimbursement-only Bonds.** Notwithstanding anything in this policy to the contrary, if a developer requests that PID bonds be issued to provide the initial funding for improvements ("*Construction Bonds*"), rather than on a reimbursement basis, the City Council may authorize Construction Bonds in accordance with and as authorized by the terms of this Article VII.

**7.2 Petition.** Any request for Construction Bonds must be included in the petition along with the following information:

- (A) A list of authorized improvements to be constructed with the Construction Bonds
- (B) The estimated cost of the authorized improvements.

- (C) The estimated costs of professional fees that the City may incur for professional services related to the proposed PID.
- (D) Information reasonably required by the City for the City to determine that the developer has the financial resources to complete the project contemplated in the petition.
- (E) Any other information reasonably requested by the City.

**7.3 Pending Petition.** If the developer under a pending petition for a PID operating under the standard reimbursement model desires to request Construction Bonds, such developer must:

- (A) Withdraw the pending petition in writing, which terminates the processing of the pending petition. Any PID Agreement Deposit remaining will be refunded. The Application Fee will not be refunded.
- (B) Execute an agreed termination of any PID Agreement in a form acceptable to the City.
- (C) Submit a new petition containing the request for Construction Bonds and including all information required under this Article.
- (D) Pay the non-refundable Application Fee.

**7.4 Council Vote.** Prior to taking any action on a Petition or entering into any PID Agreement, the City Council must vote on whether or not to allow the proposed project to move forward with Construction Bonds. Such vote is not a vote to issue the Construction Bonds, but only a vote to authorize moving forward with the project to be funded by Construction Bonds.

**7.5 Draws.** A PID Agreement contemplating Construction Bonds will require the developer to submit draw requests for the disbursement of any Construction Bond funds. Draw requests must be submitted before any work to be paid for with the requested funds has begun. Draw requests will include such information as reasonably required by the City and will be subject to those conditions set forth in the PID Agreement.