

# **CITY OF BOERNE, TEXAS**

## **Public Improvement District Policy**

### **I. OVERVIEW**

A Public Improvement District (“PID”) is an economic development tool that is used to fund public improvement projects that promote the interests of a municipality or county. PIDs are designed to fund the costs of authorized public improvement projects through the collection and levy of assessments on the properties directly benefitted by such improvement projects, rather than through the use of broader taxes or other general revenues. PIDs are authorized by state statute, specifically Texas Local Government Code Chapter 372 (the “PID Act”). Under the PID Act, the City of Boerne (the “City”) is permitted to fund qualified public improvements which confer a special benefit on a definable part of the City, including its corporate limits and its extraterritorial jurisdiction (“ETJ”). A PID can finance capital costs and fund supplemental services – through the levy of assessments on the benefitted properties within the PID – to fund community needs which may not otherwise be constructed or provided without the PID. The costs of the capital improvements and/or supplemental services are paid entirely by property owners within the PID who receive special benefits from the capital improvements or services.

A PID is a defined area 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. The public hearing is publicized per the PID Act and written notification of the hearing is published in a newspaper of general circulation and mailed to all property owners in the proposed PID. By petition, the owners understand that they will be paying an assessment to receive enhanced services and/or improvements within the PID. A PID must confer a special benefit to the properties within the PID at least equal to the amount of assessments levied on such properties, and a general benefit to the “public” which includes the City.

The purpose of this PID policy (the “Policy”) is to outline the issues to be addressed before the City Council can authorize the creation of a PID. This Policy outlines such things as petition requirements, qualified costs, financing criteria, information disclosures to property owners, and the determination of annual plans of services, budgets and assessments. To the extent of a conflict between the requirements of this Policy and the PID Act, the PID Act shall prevail.

### **II. GENERAL**

1. Proposed PIDs must be located entirely within the City limits or in the City’s ETJ before consideration will be given to establish the PID. The City will only consider the creation of a PID that consists of or includes land in the City’s ETJ if such property is subject to a development agreement or other concrete and binding plan for the voluntary annexation of all land within the PID with a schedule for annexation agreed to by the City.
2. PIDs must be financially 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 the taxable property owners located within the

proposed PID. Priority will be given to PIDs with the support of 100% of the landowners of taxable value within a PID.

4. PID petitions will be more likely to be approved if the petition includes projects which provide one or more of the community benefits described below.
5. A PID's budget shall include sufficient funds to pay for all related administrative and/or operational costs, including costs associated with tasks undertaken by City staff.
6. A landowner's agreement must be recorded in the Official Public Records of Kendall County which, among other things, will notify any prospective owner of the existence of assessments on the property. It will be the developer's and landowner's responsibility to ensure that all closing statements and sales contracts for lots with homebuilders, home purchasers, etc., must specify who is responsible for payment of any existing PID assessment or a *pro rata* share thereof. If the PID is located in the City's ETJ, it will be the developer's and/or landowner's responsibility to ensure that all closing statements and sales contracts for lots with homebuilders, home purchasers, etc. must specify the future voluntary annexation of the property within the PID.
7. The boundaries of a PID must be clearly identified as such by 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. Additionally, the boundaries of the PID shall be displayed at any sales centers located within the project.
8. Property owned by the City that is located in the boundaries of the PID shall not be subject to any assessment. Property in the PID owned by another governmental entity may be assessed only pursuant to an interlocal agreement between the entity and the City.
9. No PID will be created that overlaps the boundaries of another PID.
10. The PID shall confer special benefits on the property within the PID at least equal to the assessments to be levied on the property.
11. The boundaries of existing PIDs may be modified pursuant to the PID Act. However, a boundary change during the existing term of a PID may only be considered if no PID bonds have been issued and a new petition of the entire proposed PID area (both current boundary and areas to be added or excluded, as applicable) is submitted that meets the minimum criteria for creation/renewal and application fee as described below.
12. A Service and Assessment Plan and annual updates thereto shall be adopted as required by the PID Act.
13. The Service and Assessment Plan may contain procedures for the termination of the PID without imposing unintended costs on the City. A PID cannot be dissolved without a petition from property owners and must be sufficient as for creation or renewal in accordance with section 372.005(b) of the PID Act.

### III. COMMUNITY BENEFITS

1. PID petitions will be more likely to be approved if the project includes one or more aspects of the following types of improvements which:
  - a. Generate economic development benefits to the City above and beyond the benefits generated by hiring short-term workers to construct the project supported by the PID;
  - b. Provide for improvements in the public right of way (e.g., entryways, landscaping, fountains, specialty lighting, art, decorative and landscaped streets and sidewalks, bike lanes, multi-use trails, signage);
  - c. Provide innovative or exceptional benefits to improve the transportation infrastructure in the City, including the construction of full street cross section during initial construction, roundabouts at the intersection of roadways on the major thoroughfare plan, and street designs which promote safe mobility for pedestrians and bicycles;
  - d. Meet community needs beyond those required for the PID development (e.g., enhanced stormwater detention and LID treatment, land and infrastructure for re-irrigation of treated wastewater, pedestrian connectivity, community garden(s), and additional tree preservation requirements);
  - e. Exceed development requirements; in particular use of conservations subdivision layouts that cluster development area and maximizes open space, enhanced architectural standards, enhanced native, drought resistant landscaping (including the limiting turf grass and irrigation areas), rainwater harvesting, lighting which preserves dark skies, and which provide for a superior design of lots or buildings;
  - f. Provide for increased recreation and open space opportunities for public use, including public trails connectivity to the City's existing trail systems and park land dedication(s);
  - g. Protect and preserve natural amenities and environmental assets such as the lakes, trees, creeks, ponds, floodplains, slopes, hills, viewscales, and wildlife habitats;
  - h. Protect and preserve existing historical buildings, structures, features or places or would otherwise be of special benefit to the property users or community; and
  - i. Additional stream buffers beyond minimum requirements in the Drainageway Protection Zone requirements.
2. It is not necessary that all community benefits be funded by PID assessments or PID bonds. If a community benefit is not eligible for PID financing based on Section

372.003 of the PID Act, the petitioner must ensure ongoing financing of the benefit from other sources.

3. PIDs should provide multiple community benefits. Environmental benefits are especially important to the City Council, and creation of a PID without such community benefits will generally be appropriate only where the area surrounding the PID has a greater need for community benefits other than these listed. ]
4. At the City's discretion, a PID Petitioner for a project without community benefits specified in Section III.3 above may be required to pay a PID Community Benefit Fee in lieu of providing the community benefits.
5. PID bond proceeds are not allowed to be used to pay for:
  - a. The PID Community Benefit Fee,
  - b. Off-site improvements for public benefit.
6. The PID Community Benefit Fee shall be equal to 10% of net PID bond proceeds at each issuance, and shall be paid to the City or at the direction of the City, to an economic development corporation created by the City.

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

1. Under the PID Act, a petition requesting the establishment of a PID shall be signed by the landowners of taxable real property representing more than 50% of the appraised value of taxable real property within the proposed boundaries of the PID. In addition, the record owners of the real property shall:
  - a. constitute more than 50% of all record owners of property that are liable for assessments of the PID; or
  - b. own taxable real property that constitute more than 50% of the area of all taxable real property that is liable for assessments of the PID.
2. In accordance with section 372.005(a) of the PID Act the petition must state:
  - a. the general nature of the proposed improvements;
  - b. the estimated cost of the improvements;
  - c. the boundaries of the proposed PID
  - d. the proposed method of assessment, which may specify included or excluded classes of assessable property;
  - e. the proposed apportionment of costs between the proposed PID and the City as a whole;
  - f. whether the proposed PID will be managed by the City, by the private sector, or by a partnership of the two;

- g. that the persons signing the petition request or concur with the establishment of the proposed PID;
  - h. that an advisory body may be established to develop and recommend an improvement plan to the City Council; and
  - i. that the petitioner has read and understands this Policy and will adhere to all language herein.
- 3. Additional requirements include:
  - a. 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 signatures will not be counted.*"
  - b. Signatures for PID petitions must be gathered not more than six months preceding submittal of the PID petition.
- 4. For a PID 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.
  - b. A black and white map of the PID boundaries and the area suitable for publication, a legal description of the boundaries of the PID, and a "commonly known" description of the area to be included in the PID.
  - c. Statement that the petitioners understand that the annual update, including any annual costs, for the PID is subject to review by City staff with final approval by the City Council.
- 5. The following must be provided or addressed before the City Council will consider a petition:
  - a. A non-refundable application fee of \$15,000 will be required to create or renew a PID. This fee is regulatory in character and approximates the costs of administering the PID through creation or renewal by City staff. In addition to the application fee, any other related City-required cost is the responsibility of the developer, including but not limited to costs such as newspaper advertisements, postage, contractors, consultants, and advisors.
  - b. A current tax roll of the owners of property in the PID, including a separate list of any property that is designated as a homestead.
  - c. A copy of the preliminary plan for the anticipated financing of the construction of the authorized improvements in the proposed PID (the

“Financing Plan”) shall be submitted with the Petition. This Financing Plan shall include at a minimum:

- A. Targeted gross bond amount;
  - B. Estimated annual assessment revenue generated;
  - C. Annual installment per unit;
  - D. Estimated annual installments as an equivalent tax rate;
  - E. Estimated number of bond issuances;
  - F. Proposed maturity dates for PID bonds;
  - G. Proposed timetable of the development; and
  - H. Any other such supporting information related to the success of the PID.
6. A copy of a Feasibility Report (as referenced in section 372.007 of the PID Act) which demonstrates the economic feasibility of the project and includes the following information:
- a. An assessment revenue pro forma for the proposed project (including proposed and estimated reserve amounts, if any);
  - b. A financial review of the development projections and absorption schedule;
  - c. An analysis of the above describing the timing and amount of PID assessment revenue which will be generated based upon varying levels of assessments; and
  - d. A comparison of the project with other similar projects in the area that will not have an assessment.

## **V. PID ADMINISTRATION**

- 1. The City may provide for the administration of a PID through in-house resources or contract with a qualified third-party company to manage and administer the PID, subject to appropriate oversight by City staff.
- 2. If the City elects to hire a third-party PID administrator, the City will provide authority for the administrator to:
  - a. Coordinate the annual development of the budget, and creation of and update to the Service and Assessment Plan which will be submitted to the City Council for consideration in accordance with the PID Act and any other applicable Texas law. 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 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 reports reflecting the expenditure of PID 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 to the City Council on a periodic basis as may be required by the City.
  - e. Prepare and provide any other reports or information required of the City or the project under the PID Act.
3. 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 the PID Act.
4. 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 revenues generated within the PID.
5. The City may request an independent audit at any time.

## **VI. PROJECT CRITERIA FOR PIDS THAT WILL BE FUNDED WITH ASSESSMENTS OR BOND PROCEEDS**

Prior to forming a PID to fund the costs of qualified public improvements, the following requirements must be satisfied:

1. The property owner or developer must demonstrate to the City that it has the expertise to complete the proposed development.
2. The property owner must provide the City with its sources of funding the public improvements not being funded by the PID.
3. The proposed development must be consistent with the entitlements on the property. All required zoning, other required land use approvals or other required permits must be in place for the development prior to the issuance of any PID bonds.
4. The property owner must provide evidence to the City that the utility service provider has sufficient capacity to provide all necessary utility services.

5. 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 PID; costs for construction and/or the acquisition of improvements, the maintenance and operation of PID projects (if any) and PID administrative costs.
6. 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 assessment revenues. The PID administrator will be required to prepare the annual update to the Service and Assessment Plan.
7. The developer will submit a final Financing Plan (and other applicable PID documentation) for review by the City, which clearly identifies the benefit of the PID to the affected property owners and to the City as a whole (i.e., public purpose) and evidence of insurance.
8. The Service and Assessment Plan shall describe, if applicable, all City-owned land within the PID as well as its proposed share of project costs.
9. Improvements constructed in the public right-of-way will be dedicated to the City (or other political subdivision of the State with the City's consent) and maintained by the developer, an owner's association or other third-parties mutually agreed upon by the City and the developer. Any signs, structures, or improvements proposed to be built in the public right-of-way must be approved by the City in writing before any costs are incurred

## **VII. BOND SIZE LIMITATIONS**

1. The following limitations and performance standards shall apply to any PID bond issuance approved by the City unless otherwise approved by the City:
 

a. Minimum appraised value to bond ratio:	3:1
b. Maximum annual permitted increase in annual assessment installment:	2%
c. Maximum years of capitalized interest for each bond issue:	3
d. Maximum maturity for each series of bonds:	30 years
2. 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 reserves and 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 3 years from the date of the initial delivery of the bonds, and (iii) 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 and applicable federal law pertaining to the issuance of tax-exempt bonds.
3. Any bonds 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 principal



amount of the bonds, or (iii) 125 percent of the average annual debt service, and require that such reserve fund will be funded from bond proceeds at the time bonds are issued, subject to the regulations of the Internal Revenue Code related to tax-exempt bonds.

## **VIII. FINANCING CRITERIA**

1. Bonds will not be issued in advance of construction of an improvement area of a PID and will only be issued on a reimbursement basis after all public improvements within such phase have been completed unless otherwise approved by the City.
2. No General Obligation or Certificate of Obligation bonds will be utilized by the City to fund or support the PID improvements.
3. All subsequent PID bond issues, if any, will be subject to approval by the City Council. The City Council will consider evidence that (i) the value of the property within the PID and the City as a whole will be significantly increased by the projects financed with the PID bonds; (ii) no financial risk of burden will be imposed on the City; and (iii) development in phases will be self-sustaining and financially sound.
4. Additional assessments may be levied or assessments may be adjusted in connection with subsequent bond issues if an agreed-upon maximum annual assessment rate is not exceeded and the assessments are determined in accordance with the Service and Assessment Plan and the PID Act.
5. Assessments will bear a direct proportionate relationship to the special benefit of the public improvements received. In no case will assessments be increased for any parcel unless (a) the property owner of the parcel consents to the increased assessment and (b) no bonds secured by such assessment have been levied.
6. The City shall not be obligated to provide funds for any improvements except from the proceeds of the PID bonds and PID assessments.
7. Each PID bond indenture will contain language precluding any requirement for the City to make any debt service payments for the PID bonds other than from available PID assessment revenues.
8. A PID developer will be responsible for payment of all the City's reasonable and customary costs and expenses, including the cost of any appraisal, subject to reimbursement from PID bonds or PID assessments, if any.
9. Improvements funded with PID proceeds will be exempt from any public bidding or other purchasing and procurement policies in accordance with section 252.022(a)(9) of the Texas Local Government Code which states that a project is exempt from such requirements if "paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements."

10. Improvements to be funded by the PID are limited to those defined as Authorized Improvements under section 372.003(b) of the PID Act, including, but not limited to:
- a. Landscaping and irrigation in public rights of way;
  - b. Erection of fountains, distinctive lighting, backlit street signs and way finding signs;
  - c. Acquiring, constructing, improving, widening, narrowing, closing or rerouting sidewalks, streets or any other roadway or their rights-of-way;
  - d. Construction or improvement of pedestrian malls;
  - e. Acquisition and installation of pieces of public art;
  - f. Acquisition, construction or improvement of libraries;
  - g. Acquisition, construction or improvement of public off-street parking facilities;
  - h. Acquisition, construction, improvement or rerouting of mass transportation facilities;
  - i. Acquisition, construction or improvement of water, wastewater or drainage improvements;
  - j. The establishment or improvement of parks;
  - k. Projects similar to those listed in a. through j. above;
  - l. Acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;
  - m. Special supplemental services for improvement and promotion of the PID, including services related to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and culture enhancement;
  - n. Payment of expenses incurred in the establishment, administration, and operation of the PID, including expenses related to the operation and maintenance of mass transportation facilities; and
  - o. The development, rehabilitation, or expansion of affordable housing.
11. Any trails, parks, streets or other public amenities that are located within a gated community or an otherwise inaccessible location may not be funded or reimbursed by the PID.
12. All public infrastructure within the PID that is to be reimbursed will be subject to City inspection at any time and verification of eligible costs. Public infrastructure must be built to meet or exceed City specifications and comply with all of the City's

ordinances, regulations and codes. Upon completion, public infrastructure within a PID must be conveyed to the City, or to another political subdivision of the State with the City's consent.

13. All current and future landowners will be required to undertake continuing disclosure obligations associated with the issuance of PID bonds in accordance with the provisions of a regulatory agreement which meets the requirements of federal securities law.

## **IX. DEVELOPER REIMBURSEMENT**

1. The Developer will submit expenses for reimbursements pursuant to the terms of an agreed upon PID reimbursement agreement with the City.
2. The City's appointed designee (which may be the PID Administrator) will verify expenses' and eligibility for reimbursements pursuant to the provisions of the PID reimbursement agreement.
3. Subject to the availability of assessment revenues, reimbursement payments will be processed within [thirty (30) days] after the date on which the costs were verified.

## **X. MISCELLANEOUS**

1. 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. The City in its sole discretion may engage professionals to assist it, including but not limited to: 1) PID Administrator; 2) Appraiser; 3) Underwriter; and 4) Trustee.
3. Any waivers to this Policy must be approved by the City Council.
4. The City shall, upon reasonable prior written notice to the developer and during normal business hours, have the right to audit and inspect the developer's records, books, and all other relevant records related to reimbursable amounts under this agreement. The parties agree to maintain the appropriate confidentiality of such records, unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, State Law, municipal ordinance, or at the direction of the Office of the Texas Attorney General.
5. In the event of a default by the developer under a negotiated PID reimbursement agreement, the City shall, after providing the developer notice and an opportunity to cure, have the right to recapture all prior reimbursements.
6. No public official or employee shall be personally 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 because of the PID shall be satisfied out of the assets of the developer only and the City shall have no liability.

7. All PID agreements shall include indemnification language as follows: **Indemnification. Developer covenants and agrees to fully indemnify and hold harmless, City (and their elected officials, employees, officers, directors, representatives, and agents), 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 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 tenants' negligence, misconduct or criminal conduct in its activities under this agreement, including any such acts or omissions of Developer or Developer's tenants, any agent, officer, director, representative, employee, consultant or subconsultants of Developer or Developer's tenants, 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 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 tenants' activities under this agreement and shall see to the investigation and defense of such claim or demand at 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 shall survive the termination and or expiration of this agreement and shall always be broadly interpreted to provide the maximum indemnification of the City and/or their officers, employees and elected officials permitted by law.**

8. All PID agreements will stipulate that the developer, or its assign, will acquire General Liability and Property insurance which provides liability coverage at least equal to the liability coverage that the City maintains at the time the PID is approved.