City of Hutto

<u>Agenda</u>

City Council Meeting

Thursday, September 1, 2022 at 6:00 PM

City Council Chambers

In accordance with the Texas Open Meetings Act this meeting agenda is posted for public information, continuously, for at least 72 hours prior to the scheduled time of the meeting on the bulletin board located on the exterior wall of the City Hall building at 500 West Live Oak, Hutto, Texas. This meeting agenda is also accessible via the Internet at huttotx.gov

1. **CALL SESSION TO ORDER**
2. **ROLL CALL**
3. **PUBLIC COMMENT**

   Any citizen wishing to speak during public comment may do so after completing the required registration form. The purpose of this item is to allow the residents of Hutto and other interested persons an opportunity to address the City Council on agenda issues and on non-agenda issues that are a matter of the jurisdiction of the City Council (i.e., City policy or legislative issues). Non-agenda issues regarding daily operational or administrative matters should be first dealt with at the administrative level by calling City Hall at (512) 759-4839 during business hours. Each person providing public comment will be limited to 3 minutes. Any citizen wishing to speak during public comment may do so after completing the required registration form. Written comments for this meeting may also be sent to comments@huttotx.gov PRIOR to 4:00 pm on 9/1/22. The email must include name, address, phone # and email to be recognized properly. Written comments will be provided to Council.
4. **OTHER BUSINESS**

   4.1. Public Improvement District Policy (Ashley Bailey)

   4.2. Comprehensive Plan Update (Ashley Bailey)
5. **ADJOURNMENT**
6. **CERTIFICATION**

   I certify that this notice of the Hutto City Council meeting was posted on the City of Hutto website and the City Hall bulletin board of the City of Hutto on 8.29.22 at 5:00 P.M.

Angela Walton

The City of Hutto is committed to comply with the Americans Disability Act. The Hutto City Council Chamber is wheelchair accessible. Request for reasonable special accommodations must be made 48 hours prior to the meeting. Please email the City Secretary's office at Angela.Walton@huttotx.gov or call (512) 759-4033 for assistance.

Major concerns in bold in green boxes

KDP Comments - 8.24.22
General -
1. Policy should be more organized, with section headers and consistent numbering. Grammar/duplicated terms should be corrected as well.(duplicates highlighted in Orange)
2. Many items in policy are restatements of existing state law or City Code, recommend removing for clarity/ease of reading. (Highlighted in green)
3. Several capitalized words are not defined; need definitions or just leave lowercase. (Highlighted in purple)

DRAFT 8.10.22

City of Hutto, Texas

Policy and Procedures for Public Improvement Districts

PURPOSE

The purpose of the Public Improvement District, ("PID"), policy is to outline the issues to be addressed before the City Council can support the establishment and continuation of a PID as allowed by Chapter 372 of the Texas Local Government Code.

Policy is not to discuss issues, but to provide guiding policy for council in the approval/implementation of PID.

"Continuation" does not make sense.

If the City Council finds that the PID promotes the interests of the municipality, the City Council may undertake an improvement project that confers a special benefit on a definable part of the municipality or the municipality's extraterritorial jurisdiction.

This section is not a "purpose", but a general statement of a City's discretionary ability to approve a PID.

GENERAL

PIDs must be self-sufficient and not adversely impact the ordinary service delivery of the City, except where City Council elects to participate in the project's costs.

A PID shall be self-sufficient and in no case shall any consideration or approval of a PID create a recourse position for the City, where the City is asked to pledge its full faith and credit or responsible for repayment of any debt. PIDs must be established carefully and only when related to a public purpose to avoid a proliferation of special districts.

Special district proliferation doesn't seem to be a negative if it benefits the City and citizens.

The PID Petition shall be signed by all of the property owners. PID PETITION

Formatting, and this requirement is listed two more times throughout document.

In agreeing to consider a petition for creation of a PID, the City will require the following from the developer of the PID at the time the PID Petition is submitted, :

1. Have entered into a Development Fee Agreement to cover all administrative or operational costs incurred by the City for legal, engineering, administrative and financial advisory services and fees in connection with vetting the request for a PID and drafting of a development agreement. The payment of such fees is not a guarantee that the City will approve the creation of the PID but is an initial fee for review of the application, processing the PID petition and creating the PID, if applicable.

suggest "reasonable" costs

Need confirmation if an application fee exists separately from the deposit amount.

agreement needs to also provide the return of unused fees if PID is not formed

2. Evidence that the developer has the expertise and financial backing to complete the new development to be supported by the PID financing. In connection with this requirement, the developer must provide the City with its evidence of its committed and anticipated sources of funding to fund the balance of the improvements in the PID not eligible to be funded by PID issued financing. Demonstrate previous experience developing similar scale and type of project.

Grammar, and duplicative of first sentence in this section.

"anticipated project costs"

DRAFT 8.10.22

3. Submit a Draft Development Agreement, negotiated with City Staff, with a Proposed development plan including construction schedule, phasing of the development and engineering analysis in the form of an Engineering Report, if available.

Commented [DP1]: Addresses Developer comment.

4. Identify all project costs, including acquisition, construction, soft costs, and applicable long-term management costs, including the Source and Uses budget and project proforma detailing projected cash flows over the life of the proposed PID including other public sources, private financing, and developer equity contribution into project

Third sentence has nothing to do with zoning and should be it's own section. Additionally, if City is utility service provider, Developer should not need to provide evidence as City staff should have that information available.

5. The proposed development must be consistent with the entitlements on the property. Zoning for the proposed development must be in place prior to PID creation or concurrent with PID creation. The Developer must provide evidence to the City that the utility service provider has sufficient capacity to provide all necessary utility services for a PID.

6. 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. The City, the developer, and any other parties involved in the approval of the PID Petition and/or financing, will 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, local or state laws or ordinances, or at the direction of the Attorney General.

REQUIREMENT FOR DEVELOPMENT AGREEMENT

With an application for a PID, the applicant acknowledges the obligation to have entered into a Development Fee Agreement and then enter into a Development Agreement that will include, but not be limited to, the following provisions, as the same may be applicable to the type of PID proposed:

This requirement should only apply after assessments have been levied.

Duplicate requirement for fee agreement.

1. Voluntary annexation of the project area, prior to (or concurrently with) the creation of the PID.

2. Outline the City's desired community benefits incorporated by the proposed development.

3. A development plan that outlines, at a minimum, land use and thoroughfare connections and is consistent with the City's Master Plans, as amended, and does not require multiple variances unless the Draft Development Agreement provides for Planned Unit Development

What about variances that can't be done within PUD zoning, such as site design standards? Should instead be "does not require multiple *land use* variances...".

In the alternative, it seems the Intent behind this section is to prevent a DA and PID being approved, then Developer coming back for additional variances and using DA/PID approval as justification for variance. As was noted by council, not all variances are created equal. Also, project is required to be consistent with current entitlements on the property as specified above which would capture variances.Recommend striking "and does not require multiple variances".

4. The proposed development will substantially contribute to funding the expansion of arterial streets, major collector roadways, and trunk line utility infrastructure, as applicable when necessary to address the projected demand for services and impacts of the development;

5. The development will be located within the City's existing Water and Wastewater CCNs or expanded CCNs facilitated by the developer if, in the City's discretion, such expansion is feasible;

This requirement does not make sense, since many projects are outside City's CCN's, and City doesn't always want to allocate capacity to new projects. Jonah SUD handles a lot of water in area, for example.

Unclear what is being asked for in the DA here. Is this a requirement for additional exactions from developers?

Additionally, most PID development is greenfield development, so recommend "expansion or construction".

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6. Plans for the proposed development shall be prepared and reviewed by the City in compliance with the City's development regulations as relates to land use, infrastructure design, permitting, and inspections and applicants shall seek City development approvals prior to the commencement of any construction.

This is just a restatement of City code.

7. Petitioner will dissolve or agree to not create any other special district vehicles that may overlay the PID; including but not limited to Municipal Utility Districts, Water Control & Improvement Districts.

TIRZ's should be explicitly excluded.

8. The development agreement shall provide for a PID Dissolution Petition in the event development does not commence within three (3) years.

9. The project should be a Master Planned Community, such as a large, custom-built residential communities and is typically built in phases and include recreational amenities for residents that have superior amenities, such as recreational facilities, hike and bike paths that connect to the City's trail system, green spaces, school sites, and public safety facilities.

As a policy matter, this excludes a large variety of projects that would benefit city. Additionally, asking for more amenities on top of infrastructure improvements and the PID Community Benefit Fee makes lots of projects unable to pencil out financially.

10. The project may be an Affordable Housing Development that may include senior housing, workforce housing or veteran's housing.

Grammar

COMMUNITY BENEFITS

Subject to the requirements of Chapter 372 of the Texas Local Government Code, the City Council will prioritize approval of PID petitions ~~for land in the City and / or Extraterritorial Jurisdiction of the City, ("ETJ")~~ that provide for the following public benefits to a degree that is superior to the benefits typically generated by real estate development projects not involving PID financing.

Projects are required to be in City limits, so reference to ETJ is not necessary.

1. Improvements or services that exceed the City's design standards in the Unified Development Code, for example, concrete streets. Take into consideration environmentally sensitive areas or natural features within the area for development, and create restrictive covenants governed by a Homeowner's Association. ("HOA"), with an Architectural Control Committee for enforcement of architectural restrictive covenants

This seems to really be three separate benefits:
A. Enhanced improvements for design
B. Environmentally sensitive improvements (duplicate of item 3 below)
C. Enhanced architecture managed by HOA committee

2. Projects that create or enhance parks, hike and bike trails, recreational facilities, open space benefits, etc., that exceed what is required by applicable development regulations. See, Hutto Comprehensive Plan, as may be amended.

3. Projects that improve environmental protection, storm water quality, and flood control benefits that meet or exceed what is required by applicable development regulations.

Reference to comp plan doesn't make sense. Comp plan doesn't show development regulations regarding parks, recreational facilities, etc.

4. Projects that increase or enhance multimodal transportation options.

5. Projects that improve public educational programs and/or facilities.

6. Projects that provide enhanced benefits to improve the public roadway network in the City.

7. Projects that provide enhanced water and wastewater infrastructure in the City.

8. Projects as identified by the City Council that promote the interests of the City made be undertaken by the City if the Project confers a special benefit on a definable part of the City to address community need as authorized by Chapter 372.

Grammar - Seems to be a catchall community benefit for anything not mentioned that the City Council likes. Should be more explicit.

Community Benefit Fee. A Community Benefit Fee of a minimum of $5,000 per single family dwelling is required to be paid to the City at the time of final plat for offsite or onsite Capital Improvement Projects that benefit the PID or provide for a comparable community benefit.

$5k minimum is the highest in the entire state, and will only deter good projects.

City Council explicitly asked for a more robust process for how offsets would work. My proposed process:
"A Community Benefit Fee of $__________ per single family dwelling, $____ per multifamily dwelling unit, and $___ per square foot of commercial space is required to be paid to the City at the time of final plat for offsite or onsite capital improvements that benefit the PID. The cost expended by the petitioner/developer for constructing offsite or onsite capital improvements, oversizing or improving city infrastructure not directly benefitting the PID funded project, or providing any community benefits described above that are not paid for by the PID shall be credited against the Community Benefit Fee."

This would provide a clear metric for developers to know what they need to do in order to be "PID-worthy", and creates certainty for developers, staff, and council as to what the criteria are.

ADDITIONAL REQUIREMENTS FOR PIDS WITHIN THE ETJ

1. For proposed PIDs in the ETJ, the petitioners shall be responsible for notice and coordination with and between the City, County and HISD at the earliest possible date to assess municipal annexation plans, the maximum PID assessment relative to municipal taxation, relative responsibilities for acceptance and maintenance of PID improvements to be financed by the PID, and related matters.

2. Generally, the City will consider PID petitions for property in the ETJ only if a development agreement has been approved that requires that the whole project is voluntarily annexed into the City prior to the creation of the PID and the project will enhance the City's tax base.

3. Petitioner will dissolve or agree to not create any other special PID vehicles that may overlay the PID; including, but not limited to Municipal Utility PIDs, Water Control & Improvement PIDs.

Incorrect terminology

Conflicts with earlier section that provides that projects must be annexed before or concurrently with PID creation, and provides no new requirements. Should just delete.

REQUIREMENTS FOR PID CONSIDERATION

Before a PID Petition may be approved, the PID petitioners and the City must enter into a Development Agreement (or PID Financing Agreement) that establishes:

1. The basic terms and conditions for creation of the PID, including the provision of community benefits;
2. Have entered into a Development Fee Agreement for payment or reimbursement to the City's ongoing administrative and operational costs, including the cost of outside consultants to assist with PID formation and financing, including but not limited to city attorney, financial advisor, bond counsel, underwriter and PID administrator;

4

Duplicated twice already.

PID Financing Agreement will never precede PID creation, unecessary and should be moved elsewhere. PID Financing Agreement terms would be their own section.

This section talks about things that should be in development agreement, should be wrapped into that section above.

3. The financing of the PID improvements and the payment of assessment revenues or PID Bond proceeds to pay for the costs of the PID Improvements; and
4. The planning, development, construction, management, and maintenance of the PID improvements, including review and approval by the governmental entities ultimately responsible for the PID improvements.

5. The City's ongoing administrative and operational costs related to an approved PID, such as collection of PID assessments, review and approval of Service and Assessment Plan updates, and other costs shall be reimbursed from PID assessments. The City's costs will be determined on an annual basis.

6. Administration and management of ongoing PID responsibilities, such as preparation and updating of the Service and Assessment Plan, issuance of notices for annual City Council action on the Service and Assessment Plan, operation and maintenance of PID improvements, and other related matters shall be paid by PID assessments and performed by a third-party firm under contract with the City.

7. The City will use PID bond proceeds only to pay or reimburse the costs of PID improvements that have been designed and constructed to the applicable standards of, and accepted for maintenance or otherwise approved by, the governmental entity responsible for them.

8. In the event of default under the terms of the PID Financing Agreement, the City shall, after providing notice and an opportunity to cure, have the right to capture reimbursements to complete development of public infrastructure.

"undisbursed reimbursements".

9. 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 inter-local agreement between the entity and the City.

10. The PID may not finance improvements or services that would not be accessible to the general public.

City legal has revised as of 8.23

11. If minimum requirements cannot be met, an explanation of why the minimum requirements cannot be met and alternatives provided to exceed the requirement.

PETITION REQUIREMENTS

Where a proposed PID is identified, Petitioners shall notify in the City Manager at least 30 days in advance of their intent to file a PID petition. Petitioners must attend one or more pre-filing meetings scheduled by City Staff. Petitions requesting establishment of a PID must satisfy all statutory requirements under §372.004 of the Texas Local Government Code. In addition, all petitions submitted for establishment of a PID shall include the following:

Is there a reasonable time frame that staff can commit to to set up this meeting? Within the 30 days? Who is responsible for coordinating meeting?

1. The basic terms and conditions for creation of the PID, including the provision of community benefits.

Many of these requirements to be included in the petition are really more appropriate as supplemental items with submittal.

2. The petitioner's qualifications and previous experience with real estate development, financing of the development, prior PIDs, etc.
3. A legal description of the boundaries of the PID, a black and white map of the PID boundaries suitable for publication for the legal notices and a "commonly known" description of the area to be included in the PID.
4. A current tax roll of the owners in the PID.
5. A draft Development Agreement that includes any plan for phasing of both the real estate development supported by the PID and construction of Public Improvements in the PID.
6. The estimated costs of the proposed improvements (in dollars, $)
7. The not to exceed maximum Assessment (in dollars, $)
8. The not to exceed initial maximum bond issuance (in dollars, $).
9. The not to exceed maximum tax equivalent Rate (in cents, $).
10. A sunset clause, and a pre-executed petition to dissolve the PID by the landowner in case the SAP is not approved, and assessments levied for either reimbursement or bond issuance within three (3) years of the date of the Development Agreement.
11. A plan for ensuring dissolution of the PID will not impose unintended costs on the City or other governmental entities, and that addresses the maintenance or disposition of PID improvements if a PID is dissolved.
12. Evidence that the petition's signatures are genuine or the petition will be accompanied by a reasonable fee to cover the city costs of signature verification.
13. If the proposed PID is an expansion of an existing public improvement PID, a petition for the new segment of the proposed PID must identify each subdivision, or portion thereof, within the proposed boundaries of the new PID, and each subdivision or portion thereof, that is not currently in an existing PID shall individually satisfy the requirements for a petition under §372.005 of the Texas Local Government Code. Subdivision has the meaning assigned by §232.021 of the Texas Local Government Code.
14. A section, which clearly identifies the Community Benefits of the PID to the affected property owners (for use in public hearing(s)) and to the city as a whole (i.e., promotes the interests of the city).
15. A description of all city-owned land within the PID and provide that city-owned land will not be assessed for any share of project costs, if any.
16. Specified assurances to the City that the construction of improvements in the public right-of-way (not including roads or utilities maintained by the City as required by the Hutto City Code of Ordinances) will be maintained by the HOA or other entity responsible for maintence, and in no way obligates the City to future maintenance or operational costs, unless otherwise stated in a subsequent agreement.
17. Statement that the petitioners understand that the annual budget for the PID is subject to review by city staff with final approval by the City Council.
18. A certified check or a wire transfer for the application fee will be paid by the applicant to reimburse the city for the cost of evaluating the petition. This application fee must be paid in full when the petition is submitted to the City for evaluation and review. Petitioners must pay all direct costs of processing the PID petition, such as newspaper advertisements, postage, and contractors pursuant to the City's current Fee Schedule. If a Development Fee Agreement has been executed and the fees paid to the City, the application fee and review costs to evaluate the petition will be taken from the fees paid to the City.

Duplicative of previous section.

Many of these PID requirements are just restatements of Chapter 372 of the Local Gov. Code.

This has never been explained by city legal. PID Petitions are always notarized, so this requirement seems unnecessary.

How do public hearings apply here? There are other places community benefits are to be listed.

Commented [DP4]: Addresses Developer Comment

This fee has never been identified, even after our specific request, and it is not clear if this is separate from the deposit pursuant to the fee agreement.

19. All estimated costs must be identified before a decision is reached on a request to establish a PID. Costs to be identified include costs related to establishing the PID; costs for maintenance, operations and administration; and costs for later repair or replacement of any Public Improvements.
20. An independently prepared market analysis or feasibility study – to be prepared and submitted prior to the public hearing. The market analysis or feasibility study will assess the reasonableness of the public improvements and overall development plan in light of market conditions. The costs of the third-party market analysis will be paid by the PID Petitioner and the City will order the study.
21. Include a provision that at the time of entering into a contract for property within the PID, a notification that includes questions and answers about the PID and at the time of contract closing, a notification that anyone selling land in a PID must include a "title encumbrance" which notifies any prospective property owner of the existence or proposal of special assessments on the property. All closing statements must specify who is responsible for payment of the PID assessment on a pro rata share thereof.
22. A plan for ensuring dissolution of the PID will not impose unintended costs on the City or other governmental entities and that addresses the maintenance or disposition of PID improvements if a PID is dissolved.
23. Include signage for the notification of the creation of a PID and signage identifying the PID, if created. The boundaries of the PID shall be displayed at the sales centers within the PID.

market analysis should be done by third party that is mutually agreed upon by City and Developer.

This section is likely unnecessary given the changes in state law regarding notification.

Duplicative of previous sections.

Is this asking for the Developer to put up a sign before PID creation and then another one after? Doesn't make sense. PID Signage at entrances/exits to PID are typical, and suggest language (as requested by Mayor) that all signage be clearly visible to motorists entering and exiting PID.

PREFERENTIAL FACTORS

PIDs, in which the costs of public improvements are financed without City financial participation, other than revenue generated from PID assessments and proceeds from PID bonds, are preferred. Except for Public Improvements specifically approved in a City bond proposition, the City will not expend or pledge a tax increment, general fund revenue, general obligation bonds or certificate of obligation proceeds, etc. to support the costs of PID improvements unless it is explicitly approved by City Council as advancing a City purpose. ~~In addition:~~

Duplicative

1. Priority will be given to PID Petitions which:
   a Generate economic and superior development benefits to the City beyond what normal development would generate;
   b Have the support of 100% of the landowners within a PID;
   c 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);
   d Meet community needs (e.g., enhanced drainage improvements, parks and off-street public parking facilities, pedestrian connectivity, wastewater and/or water on or off-site improvements), including without limitation, the development's pro-rata share of the of regional public improvements or off-site improvements;
   e Increase or enhance City's multimodal transportation and roadway plans;

Suggest removing, there is already a requirement for 100% signatures.

Commented [DP5]: Added Off-site improvements

Many of these are just restatements of community benefits.

f Exceed development requirements of the City; in particular, enhanced architectural standards, enhanced landscaping, enhanced amenities, and provide for superior design of lots or buildings;

g Protect and preserve natural amenities and environmental assets such as lakes, trees, creeks, ponds, floodplains, slopes, hills, and wildlife habitats.

2. Protect and preserve existing historical buildings, features, or places and preserve the community amenities or features that would otherwise be a special benefit to the community.

3. PIDs that have a value-to-lien ratio that exceed 3:1 are preferred;

4. PIDs that have a tax rate equivalent comparable to surrounding developments.

5. Petitioners that can demonstrate indication of demand (letters of intent, builder contracts with earnest money).

6. PIDs that have all community benefits.

7. PIDs that are a Master Planned Community or an Affordable Housing Development for seniors, veterans or workforce housing.

Unlikely to be met, as projects rarely get firm commitments from builders when project is still working out financing.

Unlikely for any project to meet *all* requirements. This revision was up from 3 or 5 benefits, which is more reasonable.

Project is already required under general requirements to be a master planned community.

NOTICE, PUBLIC HEARING, APPROVAL OF THE PETITION AND PID PROCESS

1. City staff and consultants will assess the adequacy of the PID petition and the PID agreement and compliance with the PID Policy and Chapter 372; have the PID Petition and Draft Development Agreement reviewed by the Planning and Zoning Commission and forward recommendations to the City Council whether to proceed with a public hearing on the PID petition.

2. If the City Council approves setting a public hearing on the PID petition, City staff will publish the newspaper notice and mail the notice to property owners required by Chapter 372.

3. The hearing may be continued from time to time. After the final adjournment of the public hearing, the City Council has six months to adopt a resolution making the findings required by Chapter 372 to approve the PID petition.

4. The PID Financing and Reimbursement agreement must be executed on or before the date the PID assessments are levied.

PID Process needs to include an earlier introduction of project to council. Having to go through P&Z first before setting up public hearing and going to council means developer spends time and money negotiating project with staff without any council input.

FINANCIAL LIMITATIONS AND PERFORMANCE STANDARDS

The City may issue PID Bonds solely for the purposes of acquiring or constructing Authorized Improvements. The Developer may request issuance of PID Bonds by filing with the City a list of the Authorized Improvements to be funded with the PID Bonds and the estimated costs of such

8

This is just a restatement of state law.

"filing" doesn't make sense here. List should be submitted to city manager.

Should also allow Developer to publish and mail notices with City consent.

What purpose is served by DA and petition going to P&Z? P&Z already sees project in zoning and platting process, and the PID is a financing vehicle, which is outside P&Z's area of expertise.

Unneeded reference to fee agreement.

Authorized Improvements. The Developer acknowledges that the Development Fee Agreement, as required in **REQUIREMENTS FOR A PID,** obligates the Developer to fund the costs of the City's professionals relating to the preparation for and issuance of PID Bonds, which amount shall be considered a cost payable from such PID Bonds. The issuance of PID Bonds is subject to all of the following conditions.

1. The City has evaluated and determined that there will be no negative impact on the City's creditworthiness, bond rating, access to or cost of capital, or potential for liability.

2. The City has determined that the PID Bonds assessment level, structure, terms, conditions and timing of the issuance of the PID Bonds are reasonable for the Authorized Improvement Costs to be financed and that there is sufficient security for the PID Bonds to be creditworthy.

3. All costs incurred by the City that are associated with the administration of the PID shall be paid out of special assessment revenue levied against property within the PID. City administration costs shall include those associated with continuing disclosure, compliance with federal tax law, agent fees, staff time, regulatory reporting and legal and financial reporting requirements.

4. The adoption of a service and assessment plan (the "Service and Assessment Plan") and an assessment ordinance levying assessments on all or any portion of the PID Property benefitted by such Authorized Improvements in amounts sufficient to pay all costs related to such PID Bonds.

5. The City has formed and utilized its own financing team including, but not limited to, bond counsel, financial advisor, PID Administrator, and underwriters related to the issuance of PID Bonds and bond financing proceedings.

6. The City has chosen and utilized its own continuing disclosure consultant and arbitrage rebate consultant. Any and all costs incurred by these activities will be included in City administration costs recouped from special assessments. The continuing disclosure will be divided into City disclosure and Developer disclosure, and the City will not be responsible or liable for Developer disclosure, but the City's disclosures professional will be used for both disclosures.

Why? Authorized amount under PID creation resolution is the maximum amount.

7. The aggregate principal amount of PID Bonds issued and to be issued shall will be documented in a Development Agreement (or PID Financing Agreement).

8. Each series of PID Bonds shall be in an amount estimated to be sufficient to fund the Authorized Improvements or portions thereof for which such PID Bonds are being issued.

9. The appraisal from an independent appraiser acceptable to the City should address whether the special benefits conferred on the properties being assessed for the Authorized Improvements increase the value of the property by an amount at least equal to the amount assessed against such property.

Commented [DP6]: Addresses Developer comment that appraisal may not be able to do this.

This does not sufficiently address issue. No appraisal we have seen makes this claim. Suggest appraisal simply be acceptable to the City. Appraiser should also be mutually agreed upon by City & Developer.

10. Approval by the Texas Attorney General of the PID Bonds and registration of the PID Bonds by the Comptroller of Public Accounts of the State of Texas.

11. The Developer is current on all taxes, assessments, fees and obligations to the City including without limitation payment of Assessments.

12. The Developer is not in default under the PID Financing Agreement or, with respect to the Property, any other agreement to which Developer and the City are parties.

13. No outstanding PID Bonds are in default and no reserve funds established for outstanding PID Bonds have been drawn upon that have not been replenished.

revise to "default by the Developer". Developer has no ability to control property owners within previous improvement areas who may or may not pay their PID assessments.

14. The Administrator has certified that the specified portions of the costs of the Authorized Improvements to be paid from the proceeds of the PID Bonds are eligible to be paid with the proceeds of such PID Bonds.

15. The Authorized Improvements to be financed by the PID Bonds have been or will be constructed according to the approved Development Standards imposed by this Agreement including without limitation any applicable City Regulations.

16. The City has determined that the amount of proposed PID assessments and the structure, terms, conditions and timing of the issuance of the PID Bonds are reasonable for the project costs to be financed and the degree of development activity within the PID, and that there is sufficient security for the PID Bonds to be creditworthy.

17. The maximum maturity for each individual PID Bond shall not exceed 30 years from the date of delivery thereof.

Majority of PIDs done by Hutto have been 35 years.

18. The maximum maturity for all PID Bonds will be documented in a Development Agreement (or PID Financing Agreement).

19. The City has determined that the PID Bonds meet all regulatory and legal requirements applicable to the issuance of the PID Bonds.

20. If the applicable portion of Authorized Improvements, as allowed by state law, has not already been constructed and to the extent PID Bond Proceeds are insufficient to fund such Authorized Improvement Costs, Developer shall, at time of closing the PID Bonds, fund or cause the funding of the difference between the Authorized Improvement Costs and the PID Bond Proceeds available to fund such Authorized Improvement Costs related to the applicable Authorized Improvement (without limiting any other provision, in the event Developer does not or cannot provide such funding, the City shall not be required to sell such PID Bonds, and Developer shall reimburse the City for all expenses and liabilities incurred by the City in connection with the proposed issuance of the PID Bonds).

Requirement seems to be only for a cash deposit, which is overly burdensome on Developers. Developer should be able to provide other forms of fiscal surety, or evidence of financial resources to fund difference. Letter's of Credit, completion agreements, statements of available equity/ funding, etc.

This isn't really a condition to bond issuance so much as a general statement to the underwriter.

21. No information regarding the City, including without limitation financial information, shall be included in any offering document relating to PID Bonds without the consent of the City.

22. The Developer agrees to provide periodic information and notices of material events regarding the Developer and the Developer's development within the PID in accordance with Securities and Exchange Commission Rule 15c2-12 and any continuing disclosure agreements executed by the Developer in connection with the issuance of PID Bonds.

23. The Developer satisfies the City Engineer or his designee that the Budgeted Cost(s) are reasonable.

with the City

24. Developer is not in default under a Developer Continuing Disclosure Agreement or is in default under an existing Development Agreement.

Because interest rates and tax rates fluctuate, this creates an artificial cap that limits projects. Maximum equivalent tax rate should be consistent with other projects nearby at the time of assessment.

25. The issuance of any Refunding Bonds, the amount of assessment necessary to pay the Refunding Bonds shall not exceed the amount of the assessments that were levied to pay the PID Bonds that are being refunded.

26. The maximum tax equivalent assessment rate for the assessment levy shall be documented in a Development Agreement (or PID Finance Agreement).

27. The Developer and the City shall have entered into a PID reimbursement agreement (or PID Finance Agreement) that provides for the Developer's construction of certain Authorized Improvements and the City's reimbursement to the Developer of certain Authorized Improvement Costs.

QUALIFIED TAX-EXEMPT STATUS

This language is just copied from other PFA's, recommend clarifying that all financing agreements include this language.

In any calendar year in which PID Bonds are issued, Developer agrees to pay the City its actual additional costs ("Additional Costs") the City may incur in the issuance of its own public securities or obligations on its own taxing power of municipal revenues (the "City Obligations"), as described in this section, if the City Obligations are deemed not to qualify for the designation of qualified tax-exempt obligations ("QTEO"), as defined in section 265(b)(3) of the Internal Revenue Code ("IRC") as amended, as a result of the issuance of PID Bonds by the City in any given year. The City agrees to deposit all funds for the payment of such Additional Costs received under this section into a segregated account of the City, and such funds shall remain separate and apart from all other funds and accounts of the City until December 31 of the calendar year in which the PID Bonds are issued, at which time the City is authorized to utilize such funds for any purpose permitted by law. On or before January 15th of the following calendar year, the final Additional Costs shall be calculated. By January 31st of such year, any funds in excess of the final Additional Costs that remain in such segregated account on December 31st of the preceding calendar year shall be refunded to the Developer and any deficiencies in the estimated Additional Costs paid to the City by Developer shall be remitted to the City by the Developer.).

Issuance of PID Bonds prior to City Obligations.

In the event the City issues PID Bonds prior to the issuance of City Obligations, the City, with assistance from its financial advisor ("Financial Advisor"), shall estimate the Additional Costs based on the market conditions as they exist approximately 30 days prior to the date of the pricing of the PID Bonds (the "Estimated Costs"). The Estimated Costs are an estimate of the increased cost to the City to issue its City Obligations as non-QTEO. Promptly following the determination of the Estimated Costs, the City shall provide a written invoice to Developer in an amount less than or equal to the Estimated Costs. Developer, in turn, shall remunerate to the City the amount shown on said invoice on or before the earlier of: (i) 15 business days after the date of said invoice, or (ii) 5 business days prior to pricing the PID Bonds. The City shall not be required to price or sell any series of PID Bonds until Developer has paid the invoice of Estimated Costs related to the PID Bonds then being issued.

Upon the City's approval of the City Obligations, the Financial Advisor shall calculate the Additional Costs to the City of issuing its City Obligations as non-QTEO. The City will, within 5 business days of the issuance of the City Obligations, provide written notice to Developer of the amount of the Additional Costs. In the event the Additional Costs are less than the Estimated Costs, the City will refund to Developer the difference between the Additional Costs and the Estimated Costs within 15 business days of the date of the City's notice to Developer required under this paragraph. If the Additional Costs are more than the Estimated Costs, Developer will pay to the City the difference between the Additional Costs and the Estimated Costs within 15 business days of the date of the City's notice required under this paragraph. If Developer does not pay the City the difference between the Additional Costs and the Estimated Costs within 15 business days of the date of the City's notice required under this paragraph, Developer shall not be paid any reimbursement amounts under any PID reimbursement agreement related to the Development until such payment of Additional Costs is made in full.

Issuance of City Obligations prior to PID Bonds.

In the event the City issues City Obligations prior to the issuance of PID Bonds, the City, with assistance from the Financial Advisor, shall calculate the Estimated Costs based on the market conditions as they exist 20 days prior to the date of the pricing of the City Obligations. Promptly following the determination of the Estimated Costs, the City shall provide a written invoice to Developer: (1) in an amount less than or equal to the Estimated Costs, and (2) that includes the pricing date for such City Obligations. The Developer, in turn, shall remunerate to the City the amount shown on said invoice at least 15 days prior to the pricing date indicated on the invoice. If Developer fails to pay the Estimated Costs as required under this paragraph, the City, at its option, may elect to designate the City Obligations as QTEO, and the City shall not be required to issue any PID Bonds in such calendar year.

Upon the City's approval of the City Obligations, the Financial Advisor shall calculate the Additional Costs to the City of issuing non-QTEO City Obligations. The City will, within 5 business days of the issuance of the City Obligations, provide written notice to Developer of the Additional Costs. In the event the Additional Costs are less than the Estimated Costs, the City will refund to Developer the difference between the Additional Costs and the Estimated Costs within 15 business days of the date of the City's notice to Developer. If the

Additional Costs are more than the Estimated Costs, Developer will pay to the City the difference between the Additional Costs and the Estimated Costs within 15 business days of the date of the City's notice. If Developer does not pay to the City the difference between the Additional Costs and the Estimated Costs as required under this paragraph, then Developer shall not be paid any reimbursement amounts under any PID reimbursement agreement related to the Development until such payment of Additional Costs is made in full.

To the extent any developer(s) or property owner(s) (including Developer, as applicable) has (have) paid Additional Costs for any particular calendar year, any such Additional Costs paid subsequently by a developer or property owner (including Developer, as applicable) to the City applicable to the same calendar year shall be reimbursed by the City to the developer(s) or property owner(s) (including Developer, as applicable) as necessary so as to put all developers and property owners (including Developer, if applicable) so paying for the same calendar year in the proportion set forth in subsection (e), below, said reimbursement to be made by the City within 15 business days after its receipt of such subsequent payments of such Additional Costs.

The City shall charge Additional Costs attributable to any other developer or property owner on whose behalf the City has issued debt in the same manner as described in this section, and Developer shall only be liable for its portion of the Additional Costs under this provision, and if any Additional Costs in excess of Developer's portion has already been paid to the City under this provision, then such excess of Additional Costs shall be reimbursed to Developer. The portion owed by Developer shall be determined by dividing the total proceeds from any debt issued on behalf of Developer in such calendar year by the total proceeds from any debt issued by the City pursuant to the PID Act for the benefit of all developers (including Developer) in such calendar year.

PID ADMINISTRATION AND MANAGEMENT

The City will contract with an outside consultant to administer the PID and to bill, collect, and track PID assessments. This cost will be considered a reimbursable project cost and shall be included in the PID Service and Assessment Plan.

City of Hutto, Texas

Policy and Procedures for Public Improvement Districts

PURPOSE

The purpose of the Public Improvement District, ("PID"), policy is to outline the issues to be addressed before the City Council can support the establishment and continuation of a PID as allowed by Chapter 372 of the Texas Local Government Code, ("Chapter 372").

If the City Council finds that the PID promotes the interests of the municipality, the City Council may undertake an improvement project that confers a special benefit on a definable part of the municipality or the municipality's extraterritorial jurisdiction.

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GENERAL

PIDs must be self-sufficient and not adversely impact the ordinary service delivery of the City, except where City Council elects to participate in the project's costs.

A PID shall be self-sufficient and in no case shall any consideration or approval of a PID create a recourse position for the City, where the City is asked to pledge its full faith and credit or responsible for repayment of any debt. PIDs must be established carefully and only when related to a public purpose to avoid a proliferation of special districts.

The PID Petition shall be signed by all of the property owners.

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PID PETITION

In agreeing to consider a petition for creation of a PID, the City will require the following from the developer of the PID at the time the PID Petition is submitted:

1. Have entered into a Development Fee Agreement to cover all administrative or operational costs incurred by the City for legal, engineering, administrative and financial advisory services, and fees in connection with vetting the request for a PID and drafting of a development agreement. The payment of such fees is not a guarantee that the City will approve the creation of the PID but is an initial fee for review of the application, processing the PID petition and creating the PID, if applicable~~.~~ .

2. Evidence that the developer has the expertise and financial backing to complete the new development to be supported by the PID financing. In connection with this requirement, the developer must provide the City with its evidence of its committed and anticipated sources of funding to fund the balance of the improvements in the PID not eligible to be

funded by PID issued financing. Demonstrate previous experience developing similar scale and type of project.

3. Submit a Draft Development Agreement, negotiated with City Staff, with a Proposed development plan including construction schedule, phasing of the development and engineering analysis in the form of an Engineering Report, if available.

Commented [DP1]: Addresses Developer comment to negotiate the development agreement.

4. Identify all project costs, including acquisition, construction, soft costs, and applicable long-term management costs, including the Source and Uses budget and project proforma detailing projected cash flows over the life of the proposed PID including other public sources, private financing, and developer equity contribution into project

5. The proposed development must be consistent with the entitlements on the property. Zoning for the proposed development must be in place prior to PID creation or concurrent with PID creation. The Developer must provide evidence to the City that the utility service providers have sufficient capacity to provide all necessary utility services for a PID.

6. 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. The City, the developer, and any other parties involved in the approval of the PID Petition and/or financing, will 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, local or state laws or ordinances, or at the direction of the Attorney General.

REQUIREMENT FOR DEVELOPMENT AGREEMENT

With an application for a PID, the applicant acknowledges the obligation to have entered into a Development Fee Agreement and then enter into a Development Agreement that will include, but not be limited to, the following provisions, as the same may be applicable to the type of PID proposed:

1. Voluntary annexation of the project area, prior to (or concurrently with) the creation of the PID.

2. Outline the City's desired community benefits incorporated by the proposed development.

3. A development plan that outlines, at a minimum, land use and thoroughfare connections and is consistent with the City's Master Plans, as amended, and does not require multiple variances unless the Draft Development Agreement provides for Planned Unit Development

Commented [DP2]: Addresses Developer Comment for PUD zoning

4. The proposed development will substantially contribute to funding the expansion of arterial streets, major collector roadways, and trunk line utility infrastructure, as applicable when necessary to address the projected demand for services and impacts of the development;

5. The development will be located within the City's existing Water and Wastewater CCNs,

or other service provider's CCN, or expanded CCNs facilitated by the developer if, in the City's discretion, such expansion is feasible;

6. Plans for the proposed development shall be prepared and reviewed by the City in compliance with the City's development regulations as relates to land use, infrastructure design, permitting, and inspections and applicants shall seek City development approvals prior to the commencement of any construction.

7. Petitioner will dissolve or agree to not create any other special district vehicles that may overlay the PID; including but not limited to Municipal Utility Districts, Water Control & Improvement Districts.

8. The development agreement shall provide for a PID Dissolution Petition in the event development does not commence within three (3) years.

9. The project should be a Master Planned Community, such as a large, custom-built residential communities and is typically built-in phases and include recreational amenities for residents that have superior amenities, such as recreational facilities, hike and bike paths that connect to the City's trail system, green spaces, school sites, and public safety facilities.

Commented [DP3]: Addresses Developer comment for definition of Master Planned Community.

10. The project may be an Affordable Housing Development that may include senior housing, workforce housing or veteran's housing.

COMMUNITY BENEFITS

Subject to the requirements of Chapter 372 of the Texas Local Government Code, the City Council will prioritize approval of PID petitions for land in the City and / or Extraterritorial Jurisdiction of the City, ("ETJ") that provide for the following public benefits to a degree that is superior to the benefits typically generated by real estate development projects not involving PID financing.

1. Improvements or services that exceed the City's design standards in the Unified Development Code, for example, concrete streets. Take into consideration environmentally sensitive areas or natural features within the area for development, and create restrictive covenants governed by a Homeowner's Association, ("HOA"), with an Architectural Control Committee for enforcement of architectural restrictive covenants

2. Projects that create or enhance parks, hike and bike trails, recreational facilities, open space benefits, etc., that exceed what is required by applicable development regulations. See, Hutto Comprehensive Plan, as may be amended.

3. Projects that improve environmental protection, storm water quality, and flood control benefits that meet or exceed what is required by applicable development regulations.

4. Projects that increase or enhance multimodal transportation options.

5. Projects that improve public educational programs and/or facilities~~,~~.

6. Projects that provide enhanced benefits to improve the public roadway network in the City.

7. Projects that provide enhanced water and wastewater infrastructure in the City~~,~~.

8. Projects as identified by the City Council that promote the interests of the City made be undertaken by the City if the Project confers a special benefit on a definable part of the City to address community need as authorized by Chapter 372.

Commented [DP4]: Addresses developer comment for project that may not be a Master Planned Community

Community Benefit Fee. A Community Benefit Fee of a minimum of $5,000 per single family dwelling is required to be paid to the City at the time of final plat for offsite or onsite Capital Improvement Projects that benefit the PID or provide for a comparable community benefit.

Commented [DP5]: Suggestions by developer comment for 10% of bonds.

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ADDITIONAL REQUIREMENTS FOR PIDS WITHIN THE ETJ

1. For proposed PIDs in the ETJ, the petitioners shall be responsible for notice and coordination with and between the City, County and HISD at the earliest possible date to assess municipal annexation plans, the maximum PID assessment relative to municipal taxation, relative responsibilities for acceptance and maintenance of PID improvements to be financed by the PID, and related matters~~,~~.

2. Generally, the City will consider PID petitions for property in the ETJ only if a development agreement has been approved that requires that the whole project be voluntarily annexed into the City prior to the creation of the PID and the project will enhance the City's tax base.

3. Petitioner will dissolve or agree to not create any other special PID vehicles that may overlay the PID; including, but not limited to Municipal Utility PIDs, Water Control & Improvement PIDs~~,~~.

REQUIREMENTS FOR PID CONSIDERATION

Before a PID Petition may be approved, the PID petitioners and the City must negotiate a Development Agreement (or PID Financing Agreement) that establishes:

Commented [DP6]: Addresses developer comment that development agreement will need to be negotiated with City Staff prior to Council approval.

1. The basic terms and conditions for creation of the PID, including the provision of community benefits;

2. Have entered into a Development Fee Agreement for payment or reimbursement to the City's ongoing administrative and operational costs, including the cost of outside consultants to assist with PID formation and financing, including but not limited to city attorney, financial advisor, bond counsel, underwriter and PID administrator;

3. The financing of the PID improvements and the payment of assessment revenues or PID Bond proceeds to pay for the costs of the PID Improvements;

4. The planning, development, construction, management, and maintenance of the PID improvements, including review and approval by the governmental entities ultimately responsible for the PID improvements;

5. The City's ongoing administrative and operational costs related to an approved PID, such as collection of PID assessments, review and approval of Service and Assessment Plan updates, and other costs shall be reimbursed from PID assessments. The City's costs will be determined on an annual basis;

6. Administration and management of ongoing PID responsibilities, such as preparation and updating of the Service and Assessment Plan, issuance of notices for annual City Council action on the Service and Assessment Plan, ~~operation~~operation, and maintenance of PID improvements, and other related matters shall be paid by PID assessments and performed by a third-party firm under contract with the City;

7. The City will use PID bond proceeds only to pay or reimburse the costs of PID improvements that have been designed and constructed to the applicable standards of, and accepted for maintenance or otherwise approved by, the governmental entity responsible for them;

8. In the event of default under the terms of the PID Financing Agreement, the City shall, after providing notice and an opportunity to cure, have the right to capture reimbursements to complete development of public infrastructure;

9. 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 inter-local agreement between the entity and the City;

10. The PID may not finance improvements or services that would not be accessible to the general public; and

11. If the above requirements cannot be met, an explanation of why the requirements for PID consideration cannot be met and alternatives provided to exceed the requirements.

Commented [DP7]: Addresses developer comment for alternatives that may not meet the policy.

PETITION REQUIREMENTS

Where a proposed PID is identified, Petitioners shall notify in the City Manager at least 30 days in advance of their intent to file a PID petition. Petitioners must attend one or more pre-filing meetings scheduled by City Staff. Petitions requesting establishment of a PID must satisfy all statutory requirements under §372.004 of the Texas Local Government Code. In addition, all petitions submitted for establishment of a PID shall include the following:

Commented [DP8]: Developers requesting 35

1. The basic terms and conditions for creation of the PID, including the provision of community benefits.
2. The petitioner's qualifications and previous experience with real estate development, financing of the development, prior PIDs, etc.

3. A legal description of the boundaries of the PID, a black and white map of the PID boundaries suitable for publication for the legal notices and a "commonly known" description of the area to be included in the PID.
4. A current tax roll of the owners in the PID.
5. A draft Development Agreement that includes any plan for phasing of both the real estate development supported by the PID and construction of Public Improvements in the PID.
6. The estimated costs of the proposed improvements (in dollars, $)
7. The not to exceed maximum Assessment (in dollars, $).
8. The not to exceed initial estimated ~~maximum~~ bond issuance (in dollars, $).
9. The not to exceed maximum tax equivalent Rate (in cents, $).
10. A sunset clause, and a pre-executed petition to dissolve the PID by the landowner in case the SAP is not approved, and assessments levied for either reimbursement or bond issuance within three (3) years of the date of the Development Agreement.
11. A plan for ensuring dissolution of the PID will not impose unintended costs on the City or other governmental entities, and that addresses the maintenance or disposition of PID improvements if a PID is dissolved.
12. Evidence that the petition's signatures are genuine, or the petition will be accompanied by a reasonable fee to cover the city costs of signature verification.
13. If the proposed PID is an expansion of an existing public improvement PID, a petition for the new segment of the proposed PID must identify each subdivision, or portion thereof, within the proposed boundaries of the new PID, and each subdivision or portion thereof, that is not currently in an existing PID shall individually satisfy the requirements for a petition under §372.005 of the Texas Local Government Code. Subdivision has the meaning assigned by §232.021 of the Texas Local Government Code.
14. A section, which clearly identifies the Community Benefits of the PID to the affected property owners (for use in public hearing(s)) and to the city as a whole (i.e., promotes the interests of the city).
15. A description of all city-owned land within the PID and provide that city-owned land will not be assessed for any share of project costs, if any.
16. Specified assurances to the City that the construction of improvements in the public right-of-way (not including roads or utilities maintained by the City as required by the Hutto City Code of Ordinances) will be maintained by the HOA or other entity responsible for maintence, and in no way obligates the City to future maintenance or operational costs, unless otherwise stated in a subsequent agreement.
17. Statement that the petitioners understand that the annual budget for the PID is subject to review by city staff with final approval by the City Council.
18. A certified check or a wire transfer for the application fee will be paid by the applicant to reimburse the city for the cost of evaluating the petition. This application fee must be paid in full when the petition is submitted to the City for evaluation and review. Petitioners must pay all direct costs of processing the PID petition, such as newspaper advertisements, postage, and contractors pursuant to the City's current Fee Schedule~~.~~ . If a Development Fee Agreement has been executed and the fees paid to the City, the application fee and review costs to evaluate the petition will be taken from the fees paid to the City.
19. All estimated costs must be identified before a decision is reached on a request to establish a PID. Costs to be identified include costs related to establishing the PID; costs for

Commented [DP9]: Recommended by Financial Advisors

Commented [DP10]: Addresses developer comment that another entity could be responsible for maintenance

maintenance, ~~operations~~operations, and administration; and costs for later repair or replacement of any Public Improvements.

20. An independently prepared market analysis or feasibility study – to be prepared and submitted prior to the public hearing. The market analysis or feasibility study will assess the reasonableness of the public improvements and overall development plan in light of market conditions. The costs of the third-party market analysis will be paid by the PID ~~Petitioner~~Petitioner, and the City will order the study.

21. Include a provision that at the time of entering into a contract for property within the PID, a notification that includes questions and answers about the PID and at the time of contract closing, a notification that anyone selling land in a PID must include a "title encumbrance" which notifies any prospective property owner of the existence or proposal of special assessments on the property. All closing statements must specify who is responsible for payment of the PID assessment on a pro rata share thereof.

22. A plan for ensuring dissolution of the PID will not impose unintended costs on the City or other governmental entities and that addresses the maintenance or disposition of PID improvements if a PID is dissolved.

23. Include signage for the notification of the creation of a PID and signage identifying the PID, if created. The boundaries of the PID shall be displayed at the sales centers within the PID.

PREFERENTIAL FACTORS

PIDs, in which the costs of public improvements are financed without City financial participation, other than revenue generated from PID assessments and proceeds from PID bonds, are preferred. Except for Public Improvements specifically approved in a City bond proposition, the City will not expend or pledge a tax increment, general fund revenue, general obligation bonds or certificate of obligation proceeds, etc. to support the costs of PID improvements unless it is explicitly approved by City Council as advancing a City purpose. In addition:

1. Priority will be given to PID Petitions which:
   - a Generate economic and superior development benefits to the City beyond what normal development would generate;
   - 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 Meet community needs (e.g., enhanced drainage improvements, parks and off-street public parking facilities, pedestrian connectivity, wastewater and/or water on or off-site improvements), including without limitation, the development's pro-rata share of the of regional public improvements or off-site improvements;
   - d Increase or enhance City's multimodal transportation and roadway plans;
   - e Exceed development requirements of the City; in particular, enhanced architectural standards, enhanced landscaping, enhanced amenities, and provide for superior design of lots or buildings;
   - f Protect and preserve natural amenities and environmental assets such as lakes, trees, creeks, ponds, floodplains, slopes, hills, and wildlife habitats.

Commented [DP11]: Added Off-site improvements

2. Protect and preserve existing historical buildings, features, or places and preserve the community amenities or features that would otherwise be a special benefit to the community.

3. PIDs that have a value-to-lien ratio that exceed 3:1 are preferred;

4. PIDs that have a tax rate equivalent comparable to surrounding developments.

5. Petitioners that can demonstrate indication of demand (letters of intent, builder contracts with earnest money).

6. PIDs that provide all community benefits.

7. PIDs that are a Master Planned Community or an Affordable Housing Development for seniors, ~~veterans~~veterans, or workforce housing.

NOTICE, PUBLIC HEARING, APPROVAL OF THE PETITION AND PID PROCESS

1. City staff and consultants will assess the adequacy of the PID petition and the PID agreement and compliance with the PID Policy and Chapter 372; have the PID Petition and Draft Development Agreement reviewed by the Planning and Zoning Commission and forward recommendations to the City Council whether to proceed with a public hearing on the PID petition.

2. If the City Council approves setting a public hearing on the PID petition, City staff will publish the newspaper notice and mail the notice to property owners required by Chapter 372.

3. The hearing may be continued from time to time. After the final adjournment of the public hearing, the City Council has six months to adopt a resolution making the findings required by Chapter 372 to approve the PID petition.

4. The PID Financing and Reimbursement agreement must be executed on or before the date the PID assessments are levied.

FINANCIAL LIMITATIONS AND PERFORMANCE STANDARDS

The City may issue PID Bonds solely for the purposes of acquiring or constructing Authorized Improvements. The Developer may request issuance of PID Bonds by filing with the City a list of the Authorized Improvements to be funded with the PID Bonds and the estimated costs of such Authorized Improvements. The Developer acknowledges that the Development Fee Agreement, as required in **REQUIREMENTS FOR A PID CONSIDEERATION,** above**,** obligates the Developer to fund the costs of the City's professionals relating to the preparation for and issuance of PID Bonds, which amount shall be considered a cost payable from such PID Bonds. The issuance of PID Bonds is subject to all of the following conditions.

1. The City has evaluated and determined that there will be no negative impact on the City's creditworthiness, bond rating, access to or cost of capital, or potential for liability.

Commented [DP12]: Comments: Lien to value is just one aspect of credit quality and can not be determined until after due diligence is completed.

2. The City has determined that the PID Bonds assessment level, structure, terms, ~~conditions~~conditions, and timing of the issuance of the PID Bonds are reasonable for the Authorized Improvement Costs to be financed and that there is sufficient security for the PID Bonds to be creditworthy.

3. All costs incurred by the City that are associated with the administration of the PID shall be paid out of special assessment revenue levied against property within the PID. City administration costs shall include those associated with continuing disclosure, compliance with federal tax law, agent fees, staff time, regulatory ~~reporting~~reporting, and legal and financial reporting requirements.

4. The adoption of a service and assessment plan (the "Service and Assessment Plan") and an assessment ordinance levying assessments on all or any portion of the PID Property benefitted by such Authorized Improvements in amounts sufficient to pay all costs related to such PID Bonds.

5. The City has formed and utilized its own financing team including, but not limited to, bond counsel, financial advisor, PID Administrator, and underwriters related to the issuance of PID Bonds and bond financing proceedings.

6. The City has chosen and utilized its own continuing disclosure consultant and arbitrage rebate consultant. Any and all costs incurred by these activities will be included in City administration costs recouped from special assessments~~. ~~. The continuing disclosure will be divided into City disclosure and Developer disclosure, and the City will not be responsible or liable for Developer disclosure, but the City's disclosures professional will be used for both disclosures.

7. The aggregate principal amount of PID Bonds issued and to be issued shall be documented in a Development Agreement (or PID Financing Agreement).

8. Each series of PID Bonds shall be in an amount estimated to be sufficient to fund the Authorized Improvements or portions thereof for which such PID Bonds are being issued.

9. The appraisal from an independent appraiser acceptable to the City should address whether the special benefits conferred on the properties being assessed for the Authorized Improvements increase the value of the property by an amount at least equal to the amount assessed against such property.

10. Approval by the Texas Attorney General of the PID Bonds and registration of the PID Bonds by the Comptroller of Public Accounts of the State of Texas.

11. The Developer is current on all taxes, assessments, ~~fees~~fees, and obligations to the City including without limitation payment of Assessments.

Commented [DP13]: Addresses Developer comment that appraisal may not be able to do this.

Commented [DP14R13]: Other comments: Current best practice is to have an appraisal for first phase of a multiphase PID project with future phases using price points from the previous phases (6 months) unless the new phase includes different development type.

12. The Developer is not in default under the PID Financing Agreement or, with respect to the Property, any other agreement to which Developer and the City are parties.

13. No outstanding PID Bonds are in default and no reserve funds established for outstanding PID Bonds have been drawn upon that have not been replenished.

14. The Administrator has certified that the specified portions of the costs of the Authorized Improvements to be paid from the proceeds of the PID Bonds are eligible to be paid with the proceeds of such PID Bonds.

15. The Authorized Improvements to be financed by the PID Bonds have been or will be constructed according to the approved Development Standards imposed by this Agreement including without limitation any applicable City Regulations.

16. The City has determined that the amount of proposed PID assessments and the structure, terms, ~~conditions~~conditions, and timing of the issuance of the PID Bonds are reasonable for the project costs to be financed and the degree of development activity within the PID, and that there is sufficient security for the PID Bonds to be creditworthy.

17. The maximum maturity for each individual PID Bond shall not exceed 30 years from the date of delivery thereof.

18. The maximum maturity for all PID Bonds will be documented in a Development Agreement (or PID Financing Agreement).

19. The City has determined that the PID Bonds meet all regulatory and legal requirements applicable to the issuance of the PID Bonds.

20. If the applicable portion of Authorized Improvements, as allowed by state law, has not already been constructed and to the extent PID Bond Proceeds are insufficient to fund such Authorized Improvement Costs, Developer shall, at time of closing the PID Bonds, fund or cause the funding of the difference between the Authorized Improvement Costs and the PID Bond Proceeds available to fund such Authorized Improvement Costs related to the applicable Authorized Improvement (without limiting any other provision, in the event Developer does not or cannot provide such funding, the City shall not be required to sell such PID Bonds, and Developer shall reimburse the City for all expenses and liabilities incurred by the City in connection with the proposed issuance of the PID Bonds).

21. No information regarding the City, including without limitation financial information, shall be included in any offering document relating to PID Bonds without the consent of the City.

22. The Developer agrees to provide periodic information and notices of material events regarding the Developer and the Developer's development within the PID in accordance

with Securities and Exchange Commission Rule 15c2-12 and any continuing disclosure agreements executed by the Developer in connection with the issuance of PID Bonds.

23. The Developer satisfies the City Engineer or his designee that the Budgeted Cost(s) are reasonable.

24. Developer is not in default under a Developer Continuing Disclosure Agreement or is in default under an existing Development Agreement.

25. The issuance of any Refunding Bonds, the amount of assessment necessary to pay the Refunding Bonds shall not exceed the amount of the assessments that were levied to pay the PID Bonds that are being refunded.

26. The maximum tax equivalent assessment rate for the assessment levy shall be documented in a Development Agreement (or PID Finance Agreement).

27. The Developer and the City shall have entered into a PID reimbursement agreement (or PID Finance Agreement) that provides for the Developer's construction of certain Authorized Improvements and the City's reimbursement to the Developer of certain Authorized Improvement Costs.

QUALIFIED TAX-EXEMPT STATUS

Any PID Bonds will be issued to ensure the City's compliance with Federal tax law regarding the issuance of tax-exempt debt, including the preservation of any possible bank qualified debt opportunities.

If in any calendar year the City issues bonds that would constitute a bank qualified debt issuance but for the issuance of the PID bonds, then the developer shall pay to the City a fee to compensate the City for the interest savings, the City would have achieved had the debt issued by the City been bank qualified provided that all other developers or owners benefitting from the City issuing debt are similarly burdened with an obligation to compensate the City.

In any calendar year in which PID Bonds are issued, Developer agrees to pay the City its actual additional costs ("Additional Costs") the City may incur in the issuance of its own public securities or obligations on its own taxing power of municipal revenues (the "City Obligations"), as described in this section, if the City Obligations are deemed not to qualify for the designation of qualified tax-exempt obligations ("QTEO"), as defined in section 265(b)(3) of the Internal Revenue Code ("IRC") as amended, as a result of the issuance of PID Bonds by the City in any given year. The City agrees to deposit all funds for the payment of such Additional Costs received under this section into a segregated account of the City, and such funds shall remain separate and apart from all other funds and accounts of the City until December 31 of the calendar year in which the PID Bonds are issued, at which time the City is authorized to utilize such funds for any purpose permitted by law~~—~~. On or before January 15th of the following calendar year, the final Additional Costs shall be calculated~~—~~. By January 31st of such year, any funds in excess of the final Additional Costs that remain in such segregated account on December 31st of the preceding

Commented [DP15]: Bond Counsel and Financial Advisor suggestion to shorten this provision.

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Issuance of PID Bonds prior to City Obligations.

In the event the City issues PID Bonds prior to the issuance of City Obligations, the City, with assistance from its financial advisor ("Financial Advisor"), shall estimate the Additional Costs based on the market conditions as they exist approximately 30 days prior to the date of the pricing of the PID Bonds (the "Estimated Costs"). The Estimated Costs are an estimate of the increased cost to the City to issue its City Obligations as non-QTEO. Promptly following the determination of the Estimated Costs, the City shall provide a written invoice to Developer in an amount less than or equal to the Estimated Costs. Developer, in turn, shall remunerate to the City the amount shown on said invoice on or before the earlier of: (i) 15 business days after the date of said invoice, or (ii) 5 business days prior to pricing the PID Bonds. The City shall not be required to price or sell any series of PID Bonds until Developer has paid the invoice of Estimated Costs related to the PID Bonds then being issued.

Upon the City's approval of the City Obligations, the Financial Advisor shall calculate the Additional Costs to the City of issuing its City Obligations as non-QTEO. The City will, within 5 business days of the issuance of the City Obligations, provide written notice to Developer of the amount of the Additional Costs. In the event the Additional Costs are less than the Estimated Costs, the City will refund to Developer the difference between the Additional Costs and the Estimated Costs within 15 business days of the date of the City's notice to Developer required under this paragraph. If the Additional Costs are more than the Estimated Costs, Developer will pay to the City the difference between the Additional Costs and the Estimated Costs within 15 business days of the date of the City's notice required under this paragraph. If Developer does not pay the City the difference between the Additional Costs and the Estimated Costs within 15 business days of the date of the City's notice required under this paragraph, Developer shall not be paid any reimbursement amounts under any PID reimbursement agreement related to the Development until such payment of Additional Costs is made in full.

Issuance of City Obligations prior to PID Bonds.

In the event the City issues City Obligations prior to the issuance of PID Bonds, the City, with assistance from the Financial Advisor, shall calculate the Estimated Costs based on the market conditions as they exist 20 days prior to the date of the pricing of the City Obligations. Promptly following the determination of the Estimated Costs, the City shall provide a written invoice to Developer: (1) in an amount less than or equal to the Estimated Costs, and (2) that includes the pricing date for such City Obligations. The Developer, in turn, shall remunerate to the City the amount shown on said invoice at least 15 days prior to the pricing date indicated on the invoice. If Developer fails to pay the Estimated Costs as required under this paragraph, the City, at its option, may elect to designate the City Obligations as QTEO, and the City shall not be required to issue any PID Bonds in such calendar year.

Upon the City's approval of the City Obligations, the Financial Advisor shall calculate the Additional Costs to the City of issuing non-QTEO City Obligations. The City will, within 5 business days of the issuance of the City Obligations, provide written notice to Developer of the Additional Costs. In the event the Additional Costs are less than the Estimated Costs, the City will refund to Developer the difference between the Additional Costs and the Estimated Costs within 15 business days of the date of the City's notice to Developer. If the Additional Costs are more than the Estimated Costs, Developer will pay to the City the difference between the Additional Costs and the Estimated Costs within 15 business days of the date of the City's notice. If Developer does not pay to the City the difference between the Additional Costs and the Estimated Costs as required under this paragraph, then Developer shall not be paid any reimbursement amounts under any PID reimbursement agreement related to the Development until such payment of Additional Costs is made in full.

To the extent any developer(s) or property owner(s) (including Developer, as applicable) has (have) paid Additional Costs for any particular calendar year, any such Additional Costs paid subsequently by a developer or property owner (including Developer, as applicable) to the City applicable to the same calendar year shall be reimbursed by the City to the developer(s) or property owner(s) (including Developer, as applicable) as necessary so as to put all developers and property owners (including Developer, if applicable) so paying for the same calendar year in the proportion set forth in subsection (e), below, said reimbursement to be made by the City within 15 business days after its receipt of such subsequent payments of such Additional Costs.

The City shall charge Additional Costs attributable to any other developer or property owner on whose behalf the City has issued debt in the same manner as described in this section, and Developer shall only be liable for its portion of the Additional Costs under this provision, and if any Additional Costs in excess of Developer's portion has already been paid to the City under this provision, then such excess of Additional Costs shall be reimbursed to Developer. The portion owed by Developer shall be determined by dividing the total proceeds from any debt issued on behalf of Developer in such calendar year by the total proceeds from any debt issued by the City pursuant to the PID Act for the benefit of all developers (including Developer) in such calendar year.

PID ADMINISTRATION AND MANAGEMENT

The City will contract with an outside consultant to administer the PID and to bill, collect, and track PID assessments. This cost will be considered a reimbursable project cost and shall be included in the PID Service and Assessment Plan.