

POLICY STATEMENT: PUBLIC INFRASTRUCTURE DISTRICTS

This policy statement addresses the circumstances under which the City will expend staff and outside resources to consider an application for a proposed Public Infrastructure District (the “District”). Conformity with these circumstances does not in any way obligate the City to direct staff to attend to such application nor approve formation of a District.

The policy statement has three sections:

- 1. Process for applying including fees charged**
 - 2. The City’s decision-making process**
 - 3. Governing Document and Operating Contract requirements**
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I. Process and Fees

Any proposed Public Infrastructure District will be considered in relation to the best interests of the City, determined in the sole legislative discretion of the City Council. Such interests include using the most appropriate financing mechanism for the type and magnitude of the public improvements to be financed and the appropriate governance structure of the District. If through the review process, a Public Infrastructure District is determined to be the most appropriate mechanism for financing public infrastructure required to serve the District, the process, and the requirements provided herein apply.

A. Petition and Letter of intent to form a Public Infrastructure District

An applicant with a vested development application within the proposed District shall submit to the Community Development Department (1) a petition meeting the requirements outlined in Utah Code Title 17B, Chapter 4¹; (2) a letter of intent containing the following information in summary form; and (3) an initial deposit of \$10,000, and a commitment to renew the exhausted deposit, to assure the City is reimbursed for its internal and out-of-pocket expenses related to the petition. The petition and letter will be used by staff and any consultant the City determines is required to make a preliminary determination about the propriety of forming a District in the particular location, as proposed. A positive staff response to the Letter of Intent is an invitation to negotiate Governing Documents and an Operating Contract with staff/consultants, ultimately for Council review and consideration. The petition shall also be submitted concurrently with the City Attorney and City Recorder for certification required under Chapter 17B-4.

Letter of Intent contents:

1. Description of District area including size, location, area context (significant natural and man-made features, major public improvements, adjacent development), development history, and proposed development, by ownership and parcel;

¹ This policy statement will be suspended for further evaluation and possible revision upon each revision to the laws applicable to Public Infrastructure Districts.

2. Description, and proposed schedule for completion, of all proposed private investment and improvements within the proposed description of the District.
3. Summary of needed infrastructure required for the District based on the following:
 - a. Currently expected private investment and improvements;
 - b. Required local infrastructure and facilities for such development;
 - c. Local infrastructure the proposed District is to provide;
 - d. Estimated construction costs for the proposed District improvements (excluding the cost of financing such improvements);
 - e. Estimated cost of financing District improvement construction;
 - f. Description of phasing of construction based on development projections; and
 - g. A detailed finance plan describing the requested authorization, sources, and uses, of any public and private funds to finance the District improvements.
4. Acknowledgement that the proposed District will provide no services.
5. Proposed timeline for District creation.
6. Proposed maximum mill levy and limited duration of District.
7. Signed consent from all property owners and registered voters, if any, within the proposed District boundaries approving of the creation of the proposed District and consenting to the issuance of debt in an amount sufficient for the proposed plan of financing. The signed consent must designate the signatories for each parcel within the proposed District and for each signatory, for each parcel, whether the person has consented to the formation of the District as a property owner within the proposed District or as a registered voter
8. Disclosure of any conflicts of interest between the applicant and the officers and employees of the City or the proposed officers of the proposed District.
9. Copy of a signed out-of-pocket expense agreement between the applicant and the City, whereby the applicant agrees to pay all out-of-pocket costs of the City including applicable consultants and legal counsel retained by the City in reviewing the application and preparation of any necessary documents.

B. Review Process

1. The City will review the petition in accordance with the provisions of state law and within 35 days after the day on which the petition is filed, with the advice and consent of the City

Attorney, determine whether the petition complies with the minimum applicable requirements for City consideration and shall notify the applicant of the outcome of such determination.

2. The District Advisory Committee (“DAC”) is a City committee that advises the Mayor, City Council, and other policy makers about District issues. The DAC includes representatives of the departments or Offices of: [Community Development, City Attorney, Finance, Engineering as needed].

The DAC will review the Petition and Letter of Intent and make a recommendation to the City Council who will determine whether or not to direct the staff to proceed with preparation of a draft Governing Document and Operating Contract for submittal.

C. Governing Document and Operating Contract

1. If directed by the City Council, the City Attorney shall draft a proposed Governing Document and Operating Contract for the DAC’s review and consideration.
2. The draft Governing Document and Operating Contract will be reviewed by the DAC to troubleshoot all outstanding issues that may arise from the formation of the District that is described in the Governing Document and Operating Contract. The DAC will discuss with appropriate City staff, the Mayor, and if appropriate shall discuss with a subcommittee of the City Council those issues that arise during this drafting period to have such issues resolved.
3. Once the DAC completes its review of the draft documents, the City Attorney shall share the proposed Governing Document and Operating Contract with the applicant and shall negotiate any proposed revisions thereto, in consultation with the DAC.
4. If the applicant desires to move forward with the proposed documents, as negotiated, the DAC shall forward the final draft Governing Document and Operating Contract to the City Council for consideration in accordance with standard legislative and statutory processes.
5. After the public hearing required by state law (and after expiration of the 60-day protest period, if such period is not waived), the City Council may consider a resolution regarding the creation of the District in accordance with the Governing Documents and the Operating Contract².
6. Within 10 days of approval of a resolution creating a District, and the Mayor’s signature thereon, the City, in coordination with and with the advice and consent of the City Attorney, shall file the resolution, notice of boundary action, and approved final local entity plat with the office of the Lieutenant Governor in accordance with state law.

² This policy shall be suspended for further evaluation and possible revision upon each revision to the laws applicable to Public Infrastructure Districts.

II. Considerations for Evaluating Proposed Public Infrastructure Districts

A. Public Benefit—Limited to Sewer Improvements in Support of Significant Private Investment

Formation of a District bestows certain benefits on the District’s proponents and is expected to provide public benefit consistent with the City’s policy goals. Components of public benefit to be considered may include:

1. Provision of needed sewer infrastructure;
2. Applicant’s agreement for new private development investment within the District of a minimum of \$100M of assessed value within three (3) years of forming the District.

B. Evaluation Criteria

These criteria provide thresholds for consideration.

1. The applicant shall not propose, and the resulting District shall not create an assessment area nor finance infrastructure with an assessment area bond.
2. The District shall not build nor finance any infrastructure other than that specifically described in the Governing Document and as further constrained by the Operating Contract.
3. A District’s sole method for public finance of infrastructure is through a mill levy for the repayment of a single issue of limited tax bonds. The District’s levy shall be limited to that as is reasonably required to finance the specifically authorized infrastructure detailed in the Governing Document.
4. There must be a demonstrated public benefit to the City, in addition to the facilitation of the proposed development, enforced through a Development Agreement, that directly results from the creation of the District and its undertakings as described in the Governing Document .

C. Evaluation of Applicant

The following criteria relating to the applicant and the development will be considered:

1. Historical performance of the applicant (within and outside of the City) at delivering infrastructure and high quality, mixed use development;
2. The current proposed plan of finance of the District;
3. The benefits to the City from the proposed plan of finance.

III. Governing Document and Operating Contract Requirements

In addition to statutory requirements, a Governing Document memorializes the understandings between the applicant, the District, and the City, as well as the considerations that compelled the City to authorize the formation of the District. An Operating Contract between the applicant, the District, and the City further constrains the relationship between the newly formed District and the City. At a minimum, the Governing Document and the Operating Document for the proposed District shall contain:

A. District Description

1. Description of District area including size, location, area context (significant natural and man-made features, limitations on the public improvement authorized for construction of or financing by the District, adjacent development), development history, proposed development scenario (land uses by type and intensity and general urban design character), and the applicant's commitment to and timing of private investment within the boundaries of the District;
2. Description of the public benefit resulting from the creation of the District and its undertakings that is in excess of public benefits derived from compliance with the Code;
3. Description of the proposed development and incorporation of a proposed Development Agreement between the applicant and the City for specific private investment and the timing thereof, including the land uses, densities, and phasing of development;
4. Contractual obligation of the applicant and the District to complete a specific, proposed, infrastructure before a date certain;
5. Itemization and description of all infrastructure the City will allow the District to build and dedicate;
6. Estimated construction costs of such infrastructure;
7. Description of phasing of construction based on the District applicants' commitment to construct specific private development, within projected milestones and consistent with specific phasing;
8. Provide the following financial plan information:
 - a. Proforma financial overview of total costs and total revenues to and from the District;
 - b. A plan of finance showing a proposal of how the proposed financing will take place, recognizing that the actual financing terms and structure will be approved by the board of trustees of the District (the "Board") within the parameters of this Governing Document;
 - c. Anticipated maximum tax rate required to meet debt service of the District;

- d. Applicant's and District's acknowledgement that it will not seek additional public resources to finance any public infrastructure within the District;
 - e. Analysis of proposed mill levies in light of outstanding debt and mill levies of other taxing entities affecting the area;
 - f. Comparison of the mill levies, individually and in the aggregate of the property tax burdens imposed by similar taxing entities in the area;
 - g. An analysis of the Redevelopment Authority's projected subsidy of the proposed development;
 - h. Proposed operating budgets for the District's first three years of existence, demonstrating that there will be no carried interest after three years; and
9. Description of the ownership of proposed infrastructure and provision for the ongoing operating and maintenance costs for infrastructure.
 10. Description of any proposed division of voting districts within the District and an inclusion/exclusion process both prior and subsequent to formation, as appropriate.
 11. Proposed governance plan, including proposed Board structure comprised of the City Council and Mayor as the initial Board, and the transition from appointed Board to elected Board.

B. Requirements and Expectations

1. The date on which the applicant proposes that the District transfers ownership of the Improvements to the City.
2. All debt issued by the District for which a tax is pledged to pay the debt service shall meet the requirements of all applicable statutes.
3. Land, easements, or improvements to be conveyed or dedicated to the City shall be conveyed in accordance with the related standards, without encumbrances or contamination, at no cost to the City.
4. The District shall not pledge as security any land, assets, or funds to be transferred to the City.
5. The District shall be subject to City zoning, subdivision, building codes, and all other applicable City ordinances and regulations. Approval of the Governing Document shall not bind the City to approve other matters that the District or applicant may request.
6. The District shall pay all fees and expenses as provided in the Governing Document and the Operating Contract.

7. The District shall have no authority whatsoever to charge impact fees.
8. The District may not double tax.
9. The District shall have no taxing or fee authority, other than the mill levy authorized in the Governing Document.
10. A Governing Document shall prohibit a District from issuing Assessment Bonds, Revenue Bonds, Tax or Revenue Anticipation Bonds, or other bonds of any nature, other than the District General Obligation Bond authorized herein.
11. At a minimum, the Governing Board of the District shall meet monthly, in an open public meeting, at City Hall.
12. Governing Document shall state a date certain upon which the District shall cease to exist, which date shall be no longer than the life of the original bond.

C. Disclosure and Reporting Requirements

Disclosure of the existence of the District to property owners and potential property owners within the District is important and the following actions to be taken by each District shall be included in the Governing Document.

1. Within 30 days after the formation of the District, the Board shall record a notice of formation of the District with the county recorder:
 - a. Containing a description and depiction of the boundaries of the District;
 - b. Stating that a copy of the Governing Document and Operating Contract is on file at the office of the City and on the District's website;
 - c. Stating that the District may finance the construction of specific infrastructure through the levy of a property tax;
 - d. Stating the current property tax rate the District has levied and the maximum property tax rate that the District may levy; and
 - e. Stating that the debt may not convert to any other debt or financing vehicle.
2. Applicant, homebuilders, commercial developers, and commercial lessors, as applicable, shall be required to disclose the following information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants:
 - a. All of the information required under (1)(b) above;
 - b. A disclosure outlining the impact of any applicable property tax, in substantially the following form:

“Under the maximum property tax rate of the District, a primary residence valued at \$[insert average anticipated primary residential property value] would have an **additional annual property tax of \$_____** for the duration of the District’s Bonds. A non-primary residential property valued at \$[insert average anticipated commercial property value] would have an **additional annual property tax of \$_____** for the duration of the District’s Bonds.”

- c. Such disclosures shall be contained on a separate colored page of the applicable closing or lease documents and shall require a signature of such end user acknowledging the foregoing.
3. At least annually, following the formation of the District, the District shall notify (by mail, e-mail, and posting to the public notice website and the District’s website) property owners in the District of the existence of the District and of the next scheduled meeting of the Board of the District. Such meeting shall occur at least 10 days and not more than 30 days following the date of the notice. Such notification shall include names, mailing addresses, and contact phone numbers, of the Board of Directors and officers, the mailing address, phone number, and e-mail address of the District manager, and shall include reference to the existence of a District file maintained by the City as described below.
4. The District shall provide the following information to the Mayor’s Office on a semi-annual basis, and at any time upon the Mayor’s request, and the District shall create and maintain a file for public review of the following information.
 - a. Annual District budget;
 - b. Annual financial statements of the District, audited;
 - c. Total debt authorized and total debt issued;
 - d. Names, complete contact information, and terms of Board members and officers and progress towards milestones required for transition to elected Board;
 - e. A copy of the language required to be disclosed in (2)(b) above;
 - f. Rules and regulations of the District regarding bidding, conflict of interest, and contracting, which such rules and regulations shall meet or exceed the City’s requirements for City bidding, conflict of interest and contracting, and other governance matters;
 - g. List of all current contracts for services or construction (to be delivered to the City upon request);
 - h. Official statements of current outstanding bonded indebtedness, if not previously received by the City;
 - i. Governing Document and Operating Contract, if changed; and

j. District Office contact information.

Exhibit A

Draft Engagement Letter

[Date]

South Salt Lake City, Utah
[Address]

Re: Engagement as Special Counsel for South Salt Lake City, Utah

This will record the terms of our engagement as special counsel for South Salt Lake City, Utah (the “City”) in analyzing and exploring the use of a public infrastructure district (“PID”) at the discretion of the City to assist the City to form a new Public Infrastructure District, that will support _____ (the “Developer”) in the development of (specific infrastructure)_____ within the City (the “Development”).

Our services as special counsel will include educating the City and the Developer on PIDs and how they may be utilized in the Development and the preparation, negotiation, and review of any documents required for the formation of a PID. Our engagement is at the will of the City and will terminate at the end of the review processes described herein.

While it is difficult to predict the complexity of such process, our fee for services provided as special counsel will be at a discounted blended hourly rate of \$____/hour, plus reimbursement for out-of-pocket costs. Fees will be billed monthly and are subject to prepayment by the Developer to the City. A \$_____ retainer fee is due from the City at this time. Under no circumstances shall the City be liable for fees hereunder. The entire fee is payable by the Developer to the City and is not contingent upon the formation of any PID. The creation of any District shall be at the discretion of the City and entering into this agreement in no way guarantees that any District will be formed, or bond issued for the District or the Development. If the review process is abandoned or deferred beyond a reasonable period, such as 3 months, we will negotiate a reasonable fee for the work undertaken to that point with the based on the circumstances.

The City is our client in this engagement. We do not represent the Developer in this or other matters. The Developer is represented by its own counsel, _____. We note that we do expect to be bond counsel (as applicable), but the City and the District have made no commitment, for any PID(s) ultimately created at the City’s discretion.

If these terms are acceptable, please sign and return a copy of this letter. We look forward to working with you.

Sincerely,

GILMORE & BELL, P.C.

AGREED AND ACCEPTED:

SOUTH SALT LAKE CITY, UTAH

By: _____

Title: _____

Date: _____

_____, DEVELOPER

By: _____

Title: _____

Date: _____

_____, DEVELOPER

By: _____

Title: _____

Date: _____

_____, DEVELOPER

By: _____

Title: _____

Date: _____

_____, DEVELOPER

By: _____

Title: _____

Date: _____

Note: Gilmore & Bell, P.C. may be contacted at the below information:

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