



# **Policy for Operating Public Improvement Districts**

## **I. OVERVIEW**

Operating Public Improvement Districts (“Operating PIDs” or “O-PIDs”) are development financing tools authorized pursuant to Chapter 372 of the Texas Local Government Code (“Act”), which allow for the costs of certain public improvements and supplemental services in a designated area to be allocated to and paid by the owners of the parcels that actually benefit from such improvements and services with such improvements and services paid for solely out of current assessment revenues or accumulated balance from past assessments and with debt-obligation financing being unavailable as a funding option.

This Policy is intended to (1) set forth the guidelines and considerations that the City of Fort Worth (“City”) will use to guide the establishment, management, operation, and administration of O-PIDs and (2) serve as a supplement to all other applicable City rules, regulations, and policies. Specifically, this Policy addresses petition requirements, assessments, mandatory information disclosures to property owners in a potential PID, the contents of an O-PID’s annual service and assessment plan, the annual budget, and administration requirements. The guidelines and considerations set forth herein are not intended to be all-inclusive, and City staff is permitted to exercise reasonable and prudent judgment where issues arise that are not covered by this Policy. Certain requirements of this Policy may be in addition to those of the Act and other state laws.

PIDs created for the specific purpose of funding capital improvements benefiting a defined area (“Capital PIDs”) or funding hotel-and-tourism promotional activities (“Tourism PIDs”) are governed by separate policies. The Act, this Policy, and City staff are the primary sources of information regarding O-PIDs in the City.

## **II. MINIMUM REQUIREMENTS FOR CONSIDERATION OF CREATION**

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

2. O-PIDs must be financially self-sufficient and not adversely impact the ordinary service delivery of the City.
3. O-PIDs must be established carefully and only when related to a public purpose to avoid a proliferation of special districts.
4. O-PID petition signatures should reflect that a reasonable attempt was made to obtain full support of the O-PID by all property owners.
5. Priority consideration will be given to O-PIDs for:
  - a. Improvements in the public right-of-way (e.g., entryways, landscaping installation and maintenance, fountains, specialty lighting, and streets and sidewalks);
  - b. Improvements that meet community needs (e.g., drainage improvements, parks and off-street parking facilities); and
  - c. Improvements related to operations and maintenance expense (e.g., sidewalk and street cleaning).
6. Secondary consideration will be given for supplemental services not outlined above.

### **III. PETITION REQUIREMENTS**

1. In addition to the requirements set forth in the Act, all petitions requesting establishment of an O-PID must include the following:
  - a. Assurances of long-term backing and support by those submitting the petition and the land owners.
  - b. Specific language outlining the O-PID's stated goals.
  - c. Evidence that the petition's signatures meet the requirements of the Act and this Policy.
    - i. If the proposed O-PID is an expansion of an existing O-PID, a petition for the new segment of the proposed O-PID must identify each subdivision, or portion thereof, within the proposed boundaries of the expanded portion of the O-PID, and each subdivision or portion thereof that is not currently in an existing O-PID shall individually satisfy the requirements for a petition under the Act. Subdivision has the meaning assigned by §232.021 of the Texas Local Government Code.
  - d. Contingency plans to address how, if an O-PID is dissolved, the maintenance or disposition of O-PID improvements and property that has not been dedicated to the public will be maintained or disposed of.
  - e. Legal and "commonly known" descriptions of the O-PID boundaries, along with a map outlining said descriptions.

- f. A section that clearly identifies the benefits of the O-PID to the affected property owners (for use in public benefit hearings) and to the City as a whole (i.e., public purpose).
  - g. Identification of all land owned by the City or other exempt jurisdiction, and all other public land within the O-PID as well as each's proposed share of benefits, if any.
  - h. Types of improvements and services that will be undertaken within the O-PID and who will determine those improvements and services.
  - i. A budget that includes all of the O-PID's projected revenue, including, without limitation, assessments revenue, and how all funds will be managed.
  - j. Documentation of liability insurance that provides adequate protection, as determined by the City in its sole discretion, for risks associated with the types of improvements and services being proposed.
  - k. Specified procedure for eventual termination of the O-PID.
  - l. Specified assurances to the City that the construction of improvements in the public right-of-way will be maintained by assessments from the O-PID and in no way obligates the City to future maintenance or operational costs, unless otherwise stated in a subsequent agreement.
  - m. Statement that the applicant understands that the annual budget, service and assessment plan, and assessment levy for the O-PID are subject to review by the Director of the City's Financial Management Services Department (or that person's authorized designee) ("Director") with final approval by the City Council.
  - n. A notation that it is the City's right to internally manage the activities of the O-PID or to hire a management firm to perform such activities.
  - o. Identification of all methods to be deployed to ensure that sales of assessable property in the O-PID will include the disclosure of the existence or proposal of special assessments on the property. Applicants must acknowledge and agree that, at a minimum, (i) all initial sales by home builders or developers and all resales by current homeowners will include a "title encumbrance" notifying any prospective buyers of the assessment; (ii) all closing statements will specify who is responsible for payment of the O-PID assessment or, in the case of initial sale of newly subdivided property, of a pro-rata share thereof; and (iii) all marketing and sales materials will include notice of the assessment and its estimated amount.
2. In addition, the following issues must be addressed before the City Council will take action on a petition:
- a. An "application fee" will be paid by the Applicant to reimburse the City for the cost of evaluating the petition.

- i. Application fees are intended to pay for all costs incurred by the City that are associated with establishing the O-PID, including, but not limited to: salaries for City staff, consultant fees, attorney fees, independent appraisal fees, and all other reasonable and appropriate expenses.
- b. A petition will be viewed more favorably if it has a current tax roll with the signatures of the owners registering support of the petition next to the account for the owner's property on the tax rolls.
- c. All estimated costs related to establishing and maintaining the O-PID, including, without limitation, costs for maintenance, operations, and administration; and costs for later maintenance, repairs, or replacement of any public improvements.
- d. A professional management plan, detailing who will be responsible for addressing problems and corrective actions to be taken, must be submitted for review and approval when the petition is submitted.
- e. For an O-PID within a residential area, the City Council will look more favorably on a petition where the developer of a new subdivision has established a homeowner's organization with a governing body the majority of the members of which are selected by individual homeowners rather than the developer.
- f. Annually, the City or a designated management firm will hold a public meeting for property owners in the O-PID to review and comment on the Budget and Service Plan, and to invite attendance at the annual City Council public hearing, which is held prior to action being taken on the Budget and Service Plan.

#### **IV. ESTABLISHMENT**

1. The Act provides the City Council with the authority to undertake an improvement project that confers a special benefit on a definable area of land if certain procedures in the Act are met. In establishing an O-PID, the City will comply with all mandatory procedural requirements set forth in the Act; provided, however, that the City reserves the right to invoke any permissive procedural requirement as it may deem necessary on a case-by-case basis.
2. The applicant must submit a proposed service and assessment plan to the City. The City reserves the right to have its own O-PID consultant finalize the service and assessment plan should the City decide to move forward with the O-PID; the cost of finalization must be included in the O-PID budget.
3. There is no requirement to establish a statutory advisory body to oversee the development and recommendation of a service and assessment plan. In the absence of a statutory advisory body, Director may approve of an informal advisory committee that is representative of the property owners within the O-PID. The function of the informal advisory committee will be to provide comments and recommendations concerning the O-PID to the Director and City Council; however, the advisory committee will have no decision-making power over the O-PID. The

composition of an informal advisory committee may vary; the committee members could include a mix of individual property owners and representatives of homeowners associations, business associations, historical associations, and similar organizations with a direct interest in property subject to assessment within the O-PID or could consist entirely of the governing body of an association or organization having direct interest in property subject to assessment in the O-PID. The City reserves the right to review and revise the criteria for appointed informal advisory bodies.

## **V. ASSESSMENTS**

1. The City Council will apportion the costs of improvements and services to be assessed against property in an O-PID. The apportionment will be made on the basis of special benefits accruing to the property because of the improvements and services. The costs of the improvements and services will be assessed in accordance with the Act and this Policy.
2. By ordinance, the City annually levies the assessments on the properties in the O-PID in accordance with the adopted Budget and Service Plan.
3. The City has contracted with the Tarrant County Tax Assessor/Collector's Office for billing and collecting of O-PID assessments.
4. The City Council will have the final authority on the assessment methodology.
5. An O-PID assessment will generally not be allowed if it causes the total City assessment rate, including all City property taxes, to exceed \$1.13 per \$100 of property valuation. Special assessments established before the adoption of this policy shall be grandfathered.
6. The O-PID assessment is billed on each property owner's annual ad valorem tax statement.
7. All costs incurred by the City that are associated with the administration of the O-PID will be paid out of revenue generated from the special assessment levied against property within the O-PID.
8. Through approval of this Policy, the City Council delegates authority to City staff to collect assessments in any manner authorized by the Act and all other applicable law, which provides that assessments may be collected in the same manner as the collection of ad valorem taxes. To the extent permitted by law, such authorized collection efforts may include the initiation of foreclosure proceedings on any lien for an unpaid special assessment, interest, and collection and attorney's costs, if any, associated with the O-PID.

## **VI. O-PID MANAGEMENT**

1. The City may directly manage an O-PID or contract with a separate entity to manage an O-PID ("Management Company"), subject to administrative oversight by the Director. Costs associated with the management of the O-PID will be paid from annual assessment revenue.

2. Either the Management Company or the Director, as applicable, will:
  - a. Prepare the annual budget and five-year Service and Assessment Plan within the timeline published by the City on an annual basis to coincide with the City's annual budget process;
  - b. Hold a public meeting with owners of property within the O-PID to review the proposed budget and assessment plan and to seek input regarding the needs of the O-PID; and
  - c. Submit the budget and assessment plan to the City Council for consideration following a public hearing conducted in accordance with the Act.
3. The Management Company or Director, as applicable, will communicate to all property owners within the O-PID regarding special events, activities, or other pertinent news concerning the O-PID.
4. The Management Company or the City, as applicable, will perform, or ensure the performance of, the improvements and services specified in the applicable service plan for each O-PID and coordinate, or ensure coordination of, such work with property owners within the O-PID.
5. The Management Company or Director, as applicable, will attend all O-PID meetings.
6. The Director must be notified at least 72 hours in advance of the time and place of all O-PID informal advisory body meetings and of annual budget-and-service-plan review meetings if a Management Company is in place; otherwise, the Director will call such meetings and notify the property owners within the O-PID of the time, location, and agenda for the meeting.
7. Any member of an O-PID statutory advisory body, if so appointed by the City Council in accordance with the Act, is subject to the City's Ethics Code.
8. If a Management Company is in place, no cash or assets of the City (which includes the O-PID) will be held by the Management Company. All financial resources will be administered by the Director and the Department of Financial Management Services.

## **VII. SERVICE AND ASSESSMENT PLAN**

1. A Service and Assessment Plan sets out the improvements and services to be provided within an O-PID and the costs associated therewith. Each applicant is responsible for submitting an initial Service and Assessment Plan that complies with the Act, with annual updates to be completed by the Management Company or Director, as applicable. All Service and Assessment Plans are subject to review by the Director and approval by City Council.
2. O-PIDs may be used to finance the costs of any authorized improvement or service allowed by the Act and approved in the Service and Assessment Plan and the annual budget, provided, however, that no debt-based financing shall be allowed for such improvements or services.

3. Budgets must be developed and funds allocated so that all improvements and services in the O-PID confer a special benefit on the property within the O-PID.
4. Annual budgets must be supplemented by a detailed, line-item explanation of the various components and how the amount was derived.
5. Annual budgets may be altered by submitting requested adjustments at least sixty (60) days prior to their proposed effective date for approval by City Council.
6. An O-PID's budget must include sufficient funds to pay for all costs above and beyond the City's ordinary costs, including, but not limited to, additional administrative and operational costs incurred, as well as additional maintenance costs resulting from the operation of the O-PID.

## **VIII. EXPENDITURE REIMBURSEMENTS**

1. In order to ensure that O-PIDs continue to operate without cost to the City, the City will charge a fee to each O-PID for the annual costs associated with administering the O-PID. This fee will be calculated annually for each O-PID to be the greater of:
  - a. 2% of the projected externally generated revenue for that year, to include special assessments and any City contributions; or
  - b. \$2,000.
2. The City will pay all approved and qualified expenses of the O-PID in accordance with the adopted Budget and Service and Assessment Plan, including invoices submitted by the Management Company, with such approval and payment to occur in a timely manner. For purposes of this Article VIII, an expense that is included in the then-current Budget and Service and Assessment Plan approved by the City Council is considered to be an "approved and qualified expense" eligible for payment or reimbursement.
3. If a Management Company is selected to perform administrative duties of the O-PID, the following provisions will apply:
  - a. By the 5<sup>th</sup> business day of each month, the Management Company must submit the following to the Director:
    - i. All receipts or invoices for approved and qualified expenses incurred by the O-PID that were paid in the prior month;
    - ii. A monthly report detailing activity and work performed during the prior month in alignment with the Service and Assessment Plan;
    - iii. An invoice for the Management Company's services for the prior month.
  - b. The City will reimburse the Management Company in a timely manner for O-PID management services in accordance with the terms of a separately executed contract and within the limit of assessments actually collected.

- c. Management fee payments will not exceed 20% of the current year's budgeted assessment revenue, including any City contributions.
  - i. Administrative costs include, but are not limited to, rent, office supplies, salaries for management and clerical staff, and other expenses necessary for the administration and oversight of O-PID projects.
  - ii. Management fee payments under this provision are for the payment of oversight and expenses incurred in the establishment, administration, and operation of the O-PID under §372.003(b)(14) of the Act and are separate from payment for special supplemental services that may be authorized for the improvement and promotion of the O-PID under §372.003(b)(13) of the Act.
- d. Management Companies are responsible for complying with the Act concerning the expenditure of any O-PID funds.
- e. The Management Company is subject to the City's purchasing policies, rules, regulations, and procedures.
  - i. Exceptions to this policy may be made at the City's discretion for emergency situations, long-term contracts negotiated for cost management before January 1, 2009, and professional services approved in the budget.
- f. Compliance with this Policy is subject to review by the Director.
- g. Care should be taken to classify expenditures. Routine repairs and maintenance should not be classified as capital improvements. Capital improvements involve the construction, purchase, or substantial renovation of buildings, parks, streets, or other physical structures that will either enhance a property's overall value or increase its useful life. A capital improvement must have a useful life of five or more years.
- h. An income statement comparing the annual budget to the projected year end line item balances must be prepared and submitted by the Management Company to the Director by the 10<sup>th</sup> business day of January, April, July, and October, which are the months following the end of each City quarter.
- i. The records maintained by the Management Company for the O-PID are subject to review and audit by City personnel and external auditors at any time, provided that reasonable advance notice will generally be provided.

## **IX. FINANCIAL RESERVES**

- 1. Reserve funds must be maintained in accordance with the City reserve policies that are included in the Financial Management Policy Statements.
  - a. Reserve funds shall not exceed 75% of the prior year's assessment without advance written approval from the Director.

2. The annual assessment rate should be supported by the required Budget and Service and Assessment Plan. If a Management Company is selected, an explanation in writing of the reason for delaying or cancelling a project or expenditure in a given year that result in the increase of fund balance shall be provided by the Management Company to the Director prior to the submission of the next year's budget.

## **X. DISPUTE RESOLUTION**

1. To address complaints within an O-PID, property owners within an O-PID and any advisory board or committee must provide a written communication of an initial complaint to the Management Company, if one exists, or to the Director if no such Management Company exists.
2. Property owners who are dissatisfied with the decision of the Management Company may then submit such written complaint to the Director.
3. Property owners who are dissatisfied with the decision of the Director may appeal such decision to the City Manager (or that person's authorized designee). The decision of the City Manager is final.

## **XI. DISSOLUTION**

1. An O-PID may be dissolved in accordance with the procedures set forth in the Act. If an O-PID is dissolved, the O-PID will remain in effect for the purpose of meeting unpaid obligations for improvements and services.