

Public Improvement Districts: A Bond Attorney's Perspective

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INTRODUCTION

Chapter 372, Texas Local Government Code, grants to the governing body of a municipality the power to establish a public improvement district within its corporate boundaries or within its extraterritorial jurisdiction, upon its own initiative or upon receipt of a petition requesting the establishment of a public improvement district. If the governing body of a municipality finds that an improvement project promotes the interests of the municipality, the governing body may undertake an improvement project that confers a special benefit on a definable part of the municipality or the municipality's extraterritorial jurisdiction through the establishment of a public improvement district.

The costs of the improvements may be paid through the levy of assessments on the benefited property. The apportionment of costs must be made on the basis of special benefits accruing to the property because of the improvement and documented in a service and assessment plan that is updated annually. Additionally, a municipality may issue bonds secured by the payment of annual installments of assessments to pay for the costs of an improvement project.

PUBLIC IMPROVEMENT DISTRICT TEAM MEMBERS

- City Staff
- City Attorney
- City's Financial Advisor
- City's Bond Counsel
- Underwriter
- Underwriter's Counsel
- Developer/Property Owner
- Developer's Counsel
- Special Assessment Consultant
- Appraiser
- Trustee
- Dissemination Agent

ESTABLISHMENT OF PUBLIC IMPROVEMENT DISTRICT (PID)

- Chapter 372, Texas Local Government Code
- Creation proceedings submitted to Attorney General as part of transcript of proceedings
- Include bond counsel in creation proceedings
 - Petition
 - Resolution accepting petition and setting public hearing
 - Notice of public hearing – publication and mailing
 - Minutes of public hearing on advisability of the public improvements
 - Creation Resolution
 - Publication of Creation Resolution (Authorization of PID is not effective until published.)
- Use Attorney General promulgated forms for affidavits of publication provided by bond counsel
- Creation Resolution establishes maximum costs of public improvements
- Consider filing Creation Resolution in real property records

PUBLIC IMPROVEMENTS

- A city may undertake an improvement project that confers a special benefit on a definable part of the city or the city's extraterritorial jurisdiction.
- A public improvement project may include:
 - Landscaping;
 - Fountains, distinctive lighting, and signs;
 - Sidewalks or of streets, any other roadways, or their rights-of-way;
 - Pedestrian malls;
 - Pieces of art;
 - Libraries;
 - Off-street parking facilities;
 - Mass transportation facilities;
 - Water, wastewater, or drainage facilities or improvements;
 - Parks;
 - Projects similar to those listed above;

PUBLIC IMPROVEMENTS, CONTINUED

- Acquisition, by purchase or otherwise, of real property in connection with an authorized improvement;
- Special supplemental services for improvement and promotion of the district, including services relating to advertising, promotion, health and sanitation, water and wastewater, public safety, security, business recruitment, development, recreation, and cultural enhancement;
- Payment of expenses incurred in the establishment, administration, and operation of the district; and
- Affordable housing.

SECURITY FOR PID BONDS

- PID bonds are secured by special assessments
 - An assessment, with interest, the expense of collection, and reasonable attorney's fees, if incurred, is:
 - A first and prior lien against the property assessed;
 - Superior to all other liens and claims except liens or claims for state, county, school district, or municipality ad valorem taxes; and
 - A personal liability of and charge against the owners of the property regardless of whether the owners are named.
 - The lien is effective from the date of the ordinance levying the assessment until the assessment is paid.
 - The lien runs with the land and that portion of an assessment payment that has not yet come due is not eliminated by foreclosure of an ad valorem tax lien.
- Certificate from developer's lender acknowledging subordinate lien position
- Appraisal
 - Assumes public improvements (or initial phase public improvements) are in place
 - Value to Lien Ratio

SERVICE AND ASSESSMENT PLAN

- Prepare Service and Assessment Plan (SAP) which describes:
 - Property included in the PID
 - Public improvements and projected costs
 - Assessment plan (benefits, allocation of costs) – equal share of costs
 - Service plan (sources and uses of funds)
 - Annual indebtedness
 - Assessment roll
- Allocations of costs for improvements that benefit the city as a whole
 - Examples – utility capacity expansions, pools and parks
 - Financing of costs allocated to the city or property owners outside of PID
- Ownership and management of public improvements
 - Dedicated to city, county, or other political subdivision
 - Any private entity management, including HOA, needs qualified management contract to maintain tax-exempt status

SERVICE AND ASSESSMENT PLAN, CONTINUED

- Consult with city's financial advisor
 - Target tax rate (including tax rate equivalent of assessments)
 - Overlapping debt – rating agencies view assessments as an ad valorem tax and include assessments in a city's overlapping debt
- Annual SAP Updates

LEVY OF ASSESSMENTS

- Levy special assessments
 - Set public hearing; publish and mail notice of hearing
 - Hold public hearing
 - Adopt Assessment Ordinance
 - Approve initial SAP
 - Levy assessments on property located within the PID
 - Assessments are payable in installments
 - Lien is effective until assessment is paid
 - Consider filing evidence of assessment in real property records
- Levy special assessments prior to establishment of homestead rights

MARKETING PID BONDS

- Marketing PID bonds
 - City bonds
 - Prepare offering document (Preliminary Official Statement or Limited Offering Memorandum)
 - Underwriter’s counsel or city’s disclosure counsel will prepare offering document
 - Developer provides disclosure regarding developer, development and development related risks
 - City Council must approve form of offering document (City is accessing capital markets to provide financing for public improvements.)
 - Marketing period (2 – 3 weeks)
 - Pricing call
- Continuing disclosure obligations for public offerings
 - City is an “obligated person” under Rule 15c2-12
 - Developer agrees to provide ongoing reporting on status of development

AUTHORIZING THE PID BONDS AND RELATED DOCUMENTS

- PID Bond Ordinance – Authorizes the issuance of PID Bonds and approves bond financing documents
 - Trust Indenture
 - Between city and trustee
 - Flow of funds
 - Coverage amount limited to 0.50% higher than the bond rate
 - Reserves
 - IRS Reasonable Reserve (lesser of (i) maximum annual debt service, (ii) 125% annual debt service, and (iii) 10% of proceeds)
 - Prepayment Reserve
 - Delinquency Reserve
 - Additional Bonds Test
 - City covenants to bill and collect assessments and foreclose on property, if necessary; PID debt cannot be accelerated upon delinquency

AUTHORIZING THE PID BONDS AND RELATED DOCUMENTS, CONTINUED

- Financing Agreement
 - Between city and developer
 - Construction, acquisition, and maintenance of public improvements
 - Funding of construction of public improvements by PID bonds and developer pursuant to requisitions approved by the city
- Reimbursement Agreement
 - Between city and developer
 - Developer agrees to construct public improvements
 - City agrees to reimburse developer from assessment revenues or the proceeds of PID bonds
 - Applies to future PID bonds if current PID bonds are not sufficient to cover cost of public improvements
- Bond Purchase Agreement (BPA)
 - Among city, underwriter, and developer
 - Developer may be party to BPA or execute a representation letter
 - Need comfort from developer that disclosures provided in offering document are accurate and not misleading (Rule 10b5)

AUTHORIZING THE PID BONDS AND RELATED DOCUMENTS, CONTINUED

- Continuing Disclosure Agreements (CDA)
 - City CDA
 - Between city and dissemination agent
 - File annual audit and financial information relating to PID with Electronic Municipal Market Access (EMMA)
 - Developer CDA
 - Among developer, PID administrator and dissemination agent
 - File quarterly reports regarding status of (i) development and (ii) construction of public improvements with EMMA
- Agreement Regarding Conveyance of Right of Redemption and Waiver of Agricultural Valuation
 - Between city and developer/property owner
 - If foreclose on land that is subject to agricultural valuation, owner enjoys right to redeem property
 - Upon closing of PID bonds, developer/property owner will deliver a waiver of agricultural valuation to trustee
 - Escrow property taxes



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Julie's practice focuses on various aspects of traditional public finance and public/private project financing. Julie has served as bond counsel to various state agencies and local governmental entities, including, special districts, cities, counties and public facility corporations; as underwriter and bank counsel to financial institutions that underwrite and purchase tax-exempt and taxable governmental obligations; and as outside counsel to a public facility corporation that owns and operates a convention center hotel and to professional sports teams that lease bond financed sports venue facilities. Julie also has experience representing domestic banks that provide credit and liquidity facilities for tax-exempt financings. Prior to entering private law practice, Julie served as an assistant attorney general in the Public Finance Division of the Office of the Attorney General of the State of Texas.



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