

**TO: Salt Lake County Council
Mayor Jenny Wilson**

**FROM: Zachary Shaw, Senior Civil Attorney, SL County District Attorney
Megan Smith, Civil Attorney, SL County District Attorney**

DATE: June 16, 2021

RE: Response to concerns about Public Infrastructure Districts (PID)

PID Enabling Legislation

The Utah Legislature adopted the Public Infrastructure District Act during its 2019 General Session. The Act allows the County Council to consider and approve applications from owner/developers to create one or more Public Infrastructure Districts (“PIDs”). District boards are initially comprised of appointed members and are limited to property owners within the district. Once established, PIDs are authorized to sell bonds to finance costs of infrastructure in new developments. Within the framework of a council-approved governing document, PIDs are authorized to levy taxes on future property owners in the district to repay bonds. They are not allowed to impose impact fees on developers.

Background

Beginning in March 2020, Council Members Granato and Jensen and their respective policy advisors, as well as Ryan Perry from the Mayor’s portfolio, began working with the DA’s office to draft Countywide policies on how the Council should review PID applications, and if a PID is advisable, how to create governing documents.

During this process, this committee met with experts in Utah on local districts (Mark Anderson) and public finance (Jon Bronson). Likewise, the committee sought and received input from the development community (Destination Homes, Holmes Homes, and Olympia Hills). The policies resulting from this collaborative process are intended to allow districts created by the Council to pursue the finances necessary to build needed infrastructure while maintaining guardrails on the potential tax burden faced by the ultimate homeowners in these districts.

Policy 1700 addresses the application and review process, Policy 1701 addresses criteria for reviewing the application, and Policy 1702 outlines requirements of Governing Documents, including mitigation of potential impacts of PIDs on future property owners.

Other jurisdictions in Utah that have adopted or are in the process of adopting policies to allow for limited PID creation include: Provo¹, Herriman², West Jordan³ and Apple Valley⁴.

Response to Concerns Raised about PIDs

It is evident that a lot of questions remain about Public Infrastructure Districts and whether the issues experienced in Colorado could happen in Salt Lake County. The majority of problems in Colorado relate to three issues: first, lack of notice to buyers; second, conflicts of interest; and third, burdens on taxpayers.

Lack of Notice to Buyers

In November 2019, the Denver Post identified that buyers weren't notified well about the potential taxes they could face. The Post pointed out that buyers only received general warnings about the risks of PIDs which were buried deep in mortgage paperwork – which wasn't seen until closing. The Post identified that the notice was confusing and vague – that the property “may be subject to general obligation indebtedness” and that information about future property taxes are often not provided to buyers.

In Utah, state law doesn't distinguish itself well from Colorado - Under section 17D-4-205, PIDs are required to file annual reports with the creating entity regarding the district's actions. Under section 17D-4-303, PIDs must record a notice for its boundaries indicating the boundaries of the PID, where the governing document can be located, that a PID can levy a property tax, and the maximum property tax levy. The same problem exists regarding late notice of a PID at closing.

Texas has a statute which sets out specifically how a seller must notify a buyer and requires notice early in the sales transaction.

In order for buyers in Salt Lake County to receive notice of the property tax implications early in the sales transaction – more like Texas than Colorado - Policy 1702 requires that PID Board members, their Affiliates, or homebuilders that contract with PID board members or their Affiliates, who sell real property located within the PID to notify in their real estate purchase contracts, in a bold and conspicuous manner, of:

The Maximum mill levy rate for the PID, that the PID property taxes are in addition to any other property taxes imposed, and that they may be subject to additional property taxes via general obligation bonds.

¹ (medical campus owned and operated by PID applicant)

² (specifically defined boundary limits within the city)

³ (limited recreation amenities)

⁴ (sewer upgrades)

This provision would likely cover the initial sale of property within a PID but not subsequent sales. A requirement that all property sales provide notice of a PID at the time of listing and/or in the real estate purchase contract is best accomplished by action from the state legislature and the real estate industry.

Conflicts of Interest

In the same press article referenced above, the Denver Post identified that District boards can have the developer's financial interests ahead of taxpayers.

In both Colorado and Utah, broadly-applicable statutes against conflicts of interest do not apply to PID board members – allowing them to have a personal financial interest in matters they have taxing authority over.⁵ The Post cited several examples of Developers using District-financing to buy their own bonds which taxpayers finance. These bonds are known as junior bonds and are designed to remain unpaid for decades, allowing interest to compound while ballooning their investment returns at taxpayer expense.

Like PIDs in Colorado, Utah District Boards are also comprised of developer-owners, and Salt Lake County is constrained by Utah law on who may be appointed to a position. The legislature established that to be qualified to be appointed to a PID board, one must be an owner of land within the district boundaries or an agent or officer of the owner – for PIDs consisting of vacant property owned by a small number of property owners wishing to develop the property, a PID board would be comprised of property owners or their agents, including developers of the property.⁶

To minimize placing private financial interests over taxpayers', Policy 1702 prohibits the sale of bonds to parties who have a material conflict of interest related to the ownership of the property within the District.⁷

Burdens on Tax-Payers

Finally, to illustrate the potential tax burdens placed on homeowners – the Post identified a family, whose home was foreclosed when they could no longer keep up with the ballooning property taxes on their home - \$5,000 for an average \$312,000 home. One reason for the ballooning taxes cited in the article was that the builder couldn't build homes fast enough to shift taxes to more homeowners. They had only completed 650 of the planned 1,900 homes.

To protect homeowners in Salt Lake County, Policy 1702 requires Governing documents to prohibit the district from authorizing more debt than needed to complete the infrastructure⁸

⁵ U.C.A. Sec. 17D-4-202 expressly exempts PID Board members from UCA 67-16-9 which otherwise prohibits public officers from having personal investments in any business entity which will create a substantial conflict between his private interests and his public duties.

⁶ Section 17D-4-202

⁷ Policy 1702, section 2.7.2.

⁸ Section 2.8

(plus other required amounts).⁹ Additionally, Policy 1700 outlines a robust process for a PID applicant to provide a best case, worst case, and best estimate pro forma (to determine reasonable rate of build-out, necessary infrastructure construction, etc), which is reviewed by expert consultants to test applicant's market assumptions and conclusions.¹⁰

Finally, to ensure that development of a property tax base keeps pace with debt obligations, Policy 1702 requires governing documents to provide for milestones in the construction of residential and commercial properties (in the form of number of dwelling units and amount of square footage, respectively), completion of which shall be conditions on the District's issuance of any additional bonds.¹¹

⁹ contingencies, reserves, surplus fund, capitalized interest, and cost of issuance

¹⁰ See Policy 1700, Sections 4 and 5

¹¹ See Policy 1702, Section 2.11