

**CITY OF CHESTERFIELD
POLICY STATEMENT**

FINANCE AND ADMINISTRATION		NO.	6
SUBJECT	Neighborhood Improvement District Policy (NID)	INDEX	FA
DATE ISSUED	8/1/05	DATE REVISED	TBD

INTRODUCTION

A problem facing many residents within the City of Chesterfield today is how to finance local infrastructure improvements, especially those in private subdivisions. Improvements to streets, storm water systems and subdivision amenities are critical to the quality of life of the residents of the City. Unfortunately, these infrastructure projects tend to be expensive and can be overly burdensome for some residents.

The City Council is aware of the need to support a program that would enable improvements to be made to private streets, stormwater systems and other subdivision amenities. At the same time, the City Council is concerned about maintaining its current strong financial rating. The City Council believes that the formation of Neighborhood Improvement Districts can provide an excellent opportunity for citizens to examine the particular needs of their communities or subdivisions and to structure a plan to address those needs. The City Council believes that it is important that local residents have the ability to avail themselves of those lawful opportunities which enable them to improve their quality of life. Further, the City Council is willing and able to partner with residents to make the necessary improvements in a way that is suitable to the residents and the City.

THE MISSOURI NEIGHBORHOOD IMPROVEMENT DISTRICT ACT

The Missouri Neighborhood Improvement District Act, Sections 67.453 to 67.475 of the Revised Statutes of Missouri, also known as the NID Act, was designed to provide a practical, flexible, and responsive tool to finance public infrastructure in response to citizen needs. Simply defined, a Neighborhood Improvement District, or NID, is a geographically defined area within which certain public improvements are financed by the local governmental entity (either city or county) through the issuance of general obligation bonds. These general obligation bonds are in turn retired through

special assessments imposed on the owners of real property within the NID area. Therefore, the basic premise of NID financing is that only those who benefit from the financed improvements pay for those improvements.

FORMATION OF A NEIGHBORHOOD IMPROVEMENT DISTRICT

In Missouri, Neighborhood Improvement Districts can be formed in one of two ways: through the initiative petition process in which a petition is signed by at least two-thirds of the owners of record of real property within the proposed district area; or through an election submitted to all qualified voters residing within the proposed district area. Passage of the NID issue requires a four-seventh majority if the election is conducted at a general municipal election day, primary or general elections and two-thirds at all other elections. On all other election days, a two-thirds majority is required for passage.

The NID Act outlines the structure of and formation process for NIDs. These can be very complex, even to those experienced in governmental affairs. The NID Act places very specific requirements on City officials planning to implement a NID. While some may believe that the passage of the ballot issuance or the submission of the petition is the major hurdle in the formation of a NID, it represents the first step in what can be a complicated and potentially costly process.

PROJECTS ELIGIBLE FOR NID FINANCING

The NID Act has defined the range of projects which are eligible for Neighborhood Improvement District financing. Under the Act, to "improve" a project is to "construct, reconstruct, maintain, restore, replace, renew, repair, install, equip, extend, or to otherwise perform any work which will provide a new public facility or enhance, extend or restore the value or utility of an existing public facility." Further, an "improvement" includes "any one or more public facilities or improvements which confer a benefit on property within a definable area and may include or consist of a re-improvement of a prior improvement" including but not limited to projects:

- A. to acquire property or interests in property when necessary or desirable for any purpose authorized by sections 67.453 to 67.475;
- B. to open, widen, extend and otherwise to improve streets, paving and other surfacing, gutters, curbs, sidewalks, crosswalks, driveway entrances and structures, drainage works incidental thereto, and service connections from sewer, water, gas and other utility mains, conduits or pipes;

- C. to improve streetlights and street lighting systems;
- D. to improve waterworks systems;
- E. to improve parks, playgrounds and recreational facilities;
- F. to improve any street or other facility by landscaping, planting of trees, shrubs, and other plants;
- G. to improve dikes, levees, and other flood control works, gates, lift stations, bridges and streets appurtenant thereto;
- H. to improve vehicle and pedestrian bridges, overpasses and tunnels;
- I. to improve retaining walls and area walls on public ways or land abutting thereon;
- J. to improve property for off-street parking facilities including construction and equipment of buildings thereon;
- K. to acquire or improve any other public facilities or improvements deemed necessary by the governing body of the city or county; and
- L. to improve public safety.

While all of the above actions are technically eligible for a NID, the City of Chesterfield will only approve NIDs for capital improvement projects – NOT maintenance projects. A capital improvement project shall generally have an expected life of twenty years or greater. Examples of projects which are considered maintenance and will NOT qualify for a NID include asphalt overlays, lake dredging, and parking lot repairs.

Due to the City's expertise in administering concrete replacement projects, if a NID is proposed with a scope of only concrete street and sidewalk replacement the City will manage the project on behalf of the NID (if desired). If the City manages a project all costs incurred by the City in administration and management of the NID will be recouped by the City through the NID. All other NID projects will need to be managed by a licensed Professional Engineer selected and funded by the NID.

COSTS THAT CAN BE PAID WITH NID FINANCING

The NID Act identifies the costs that can be paid through a Neighborhood improvement District. Eligible costs include:

“... all costs incurred in connection with an improvement, including, but not limited to, costs incurred for the preparation of preliminary reports, the preparation of plans and specifications; the preparation and publication of notices of hearings, resolutions, ordinances and other proceedings; fees and expenses of consultants, interest accrued on borrowed money during the period of construction, underwriting costs and other costs incurred in connection with the issuance of bonds or notes, establishment of reasonably required reserve funds for bonds or notes, the cost of land, materials, labor and other lawful expenses incurred in planning, acquiring and doing any improvement, reasonable construction contingencies; and work done or services performed by the city or county in the administration and supervision of the improvement...”

FINANCING NEIGHBORHOOD IMPROVEMENT DISTRICTS

Neighborhood Improvement Districts can be financed in several ways. The most common means is through the issuance of "debt" by the City, which is usually in the form of a general obligation bond. Because these bonds are designated as "Neighborhood Improvement District Bonds," they generally carry relatively low interest rates when compared to conventional bank financing.

Once a NID is established, the City may issue temporary notes or may authorize a local bank or other financial institution to issue temporary notes which may then be refunded by issuing the NID bonds or general obligation bonds. This allows for projects to be linked together (also called "pooling") creating a larger single bond which further reduces issuance costs and allows projects to begin construction while the final financing structure is developed.

These bonds are repaid through an annual special assessment on all real property within the NID. Failure to pay the special NID assessment results in a lien filed against the property. Further, the IRS has determined that special assessments cannot be deducted from a property owner's income taxes, as can real and personal property taxes.

COMPLEXITIES ASSOCIATED WITH BOND ISSUES

Bond issues, including those issued for Neighborhood Improvement Districts, create an obligation for the issuing agency, the City, which pledges its "full faith and credit" to secure the bonds. This means that should a default occur and repayment of the principal and interest on the bonds not occur as scheduled, the City of Chesterfield has pledged to make the delinquent payments. Therefore, the legal and financial structure of these bond issues is of critical importance both to ensure that the project is financially viable and, should a default occur, that sufficient protection is in place to minimize the potential for losses.

Correctly structuring and marketing general obligation bonds requires professional advice and expertise. First, bond counsel must be retained. Bond counsel serves several purposes including structuring the issue, drafting the documents, certifying its tax-exempt status and other related actions. Second, a trustee can be retained. A trustee is the paying agent for the issuance. It is the trustee who certifies that sufficient funds are available to meet debt service obligations. In some instances, an underwriter is retained to "market" the bonds. To "market" bonds is to determine the bond interest rates and supply potential customers to purchase the bonds. In certain instances, a financial advisor is retained to provide independent financial analysis of the project to ascertain risk. The costs incurred in completing these and other related tasks are called the costs of issuance. These costs of issuance are added to all other project costs to create the overall issuance.

The costs of bond issuance delineated in the previous paragraph can be high. However, one must consider the fact that interest rates for government backed securities, including those issued for NIDs, will carry an interest rate substantially lower than the interest rates normally available to individuals because the City's pledge of its full faith and credit makes the obligations virtually risk free. Therefore, in considering whether to pursue a Neighborhood Improvement District, one must weigh the bonding costs and other costs of issuance with the substantially lower interest rate offered by using government backed securities.

IMPACT OF SIZE OF PROJECT

Given that the most appropriate means of financing Neighborhood Improvement District projects is through the issuance of bonds, it is important that projects be large enough to justify the costs associated with the issuance. It makes very little sense to use bond financing for a small project if the costs of issuance add appreciably to the project. The bond market generally favors larger projects over smaller projects and there are distinct cost savings for larger projects when compared to smaller projects. Therefore, the City recommends that

subdivisions consider the following when deciding whether to pursue a NID project:

Projects with total costs below \$500,000 will face difficulty seeking Neighborhood Improvement District financing. The administrative costs and the costs of issuance are such that including projects of this size in the NID program will cause issuance and sale problems for the entire program. There are some additional considerations to make for projects between \$500,000 and \$750,000. It is possible that projects of this size can be "pooled", or joined, to one another to form a larger bond issue, but this will require significant coordination between construction and completion schedules. Projects greater than \$1,000,000 are more feasible than other smaller projects, although the aspect of "pooling" of these issues is still a very important consideration. Projects of \$1.0 million or greater are typically sustainable as "stand alone" bond issuances.

Although the City has recommended the above considerations, it is willing to consider any capital project that leads to the improvement of local subdivisions. To encourage the NID process for existing streets, stormwater systems and other subdivision improvements, the City desires to provide assistance to its residents by evaluating potential NID projects and determining such project's feasibility.

SPECIAL REQUIREMENTS TO ESTABLISH A NID

In addition to the requirements for financing, the NID Act requires that the area seeking to be designated as a NID operate in a readily defined area. If the proposed NID area is not an established subdivision, a metes and bounds survey, including a legal description, will be required. This will necessitate that the NID engage an acceptable land surveyor.

The NID Act also requires that the total costs for the proposed project be certified. However, properly determining these costs can be a cumbersome and expensive activity for property owners who are not familiar with the process. An incorrect cost estimate could cost the subdivision flexibility later. Accordingly, the City is willing to prepare cost estimates for any NID project that only includes the replacement of streets and sidewalks in concrete. Projects with other or additional scopes will require that the subdivision secure the services of a licensed Professional Engineer for estimating purposes.

Because NID projects involve public improvements, all projects must include the payment of prevailing wage rates, must comply with the normal bidding and procurement policies of the City, and must adhere to the Americans with Disabilities Act (ADA). The City views itself as a partner in this process,

and is therefore willing to assist in ensuring these requirements are met. Additionally, the City may front the initial legal expenses necessary to work with the subdivision trustees to prepare a proper petition and to ensure that the NID process has been properly initiated. The City will later recoup those costs by incorporating them into the costs of issuance.

LENGTH OF FORMATION PROCESS

Because each Neighborhood Improvement District must be judged on its own strengths and merits, it is not possible to establish a "normal" time frame for establishment. It is important to understand that a NID is a "quasi-public" structure that requires that the City Council complete several administrative and legislative steps. However, the City Council is committed to considering and approving all NID projects that adhere to the parameters of this Policy.

HOW TO INITIATE THE FORMATION PROCESS

Given the fact that there are several "up-front" costs required to comply with the NID Act to form a Neighborhood Improvement District, and that these up-front costs may be substantial, the City Council will provide some assistance during the initiation process to verify that the proposed projects are being properly defined and that they have been structured in a way that is economically feasible. City Council has developed a "pre-application process" which will be used to enable the City to perform an initial evaluation of all NID proposals. The Pre-Application process is designed to help residents conceptualize the project and identity the means of making it most productive. After an initial review and evaluation, it will then go through the formal review process.

Pre-Application

The Pre-Application contains the following elements, all of which are essential to its evaluation:

1. The name of the proposed Neighborhood Improvement District and the principals involved in the project. "Principals" include the designated project contact (must be one person), the subdivision attorney, the subdivision engineer, the subdivision trustees, and any other individual that will be involved in the project.
2. A Narrative Description of the proposed project. This narrative should include a statement of the problem and the prior steps that the subdivision has taken in attempting to solve the problem. If any sanctions have been imposed by other governmental agencies, such as the County Health

Department, those should be listed as well. The narrative should also include a general description of the area, including the major roads which service the subdivision and the character of the subdivision. Finally, the narrative should describe any prior steps that the subdivision has taken to secure financing for this project and the status of such requests.

3. If available, a metes and bounds survey of the proposed district. If this is not available, a copy of the recorded plat from the Recorder of Deeds office will suffice, which the City will help obtain. If this is not available, an aerial of the proposed area should be provided, which the City is also able to assist in securing.
4. A list, by street address and mailing address, of all persons residing within the boundaries of the proposed district. Such list can be obtained from St. Louis County.
5. A list, by street address, of all current owners of real property located within the boundaries of the proposed district. Such list can be obtained from St. Louis County.
6. A Preliminary Construction Estimate prepared and sealed by a Professional Engineer registered in the State of Missouri for the proposed construction project. If this project is solely a removal and replacement of concrete streets and sidewalks the estimate can be provided by the City of Chesterfield. Because NID projects are public works projects, they are subject to the prevailing wage statutes of the state of Missouri.
7. A petition, which at a minimum, includes the signatures of at least 70% of the qualified voters residing within the proposed district;

-OR-

A petition, which at a minimum, includes the signatures of at least 70% of the owners of real property located within the proposed district. St. Louis County can help obtain names and addresses of those eligible to sign the petition.

8. A record of the current annual subdivision assessments, if any, the uses established for these assessments, a record of payments for each lot or property owner for the past three (3) years, and what proposed maintenance schedule will be established to ensure that once the improvements have been made they can be adequately maintained.

One electronic copy and two paper copies of this Pre-Application should be submitted to the Director of Public Works as follows:

Director of Public Works
City of Chesterfield
690 Chesterfield Parkway West
Chesterfield, Missouri 63017
Publicworksdirector@chesterfield.mo.us

After receipt, the Director of Public Works will cause a formal review of the application by all appropriate City Staff and/or City consultants and will, following said review, forward those applications considered to be complete to the City's Finance and Administration Committee of City Council.

Throughout the evaluation process, the City Staff and Finance and Administration Committee will be committed to reviewing and revising the proposal as necessary to help meet the needs of the subdivision and the City. To the extent that portions of the proposal are not sufficient to satisfy the requirements of the NID Act, the City will discuss potential revisions with the subdivision and attempt to reach agreement on any issues of concern.

After the review of the Pre-Application is completed, the Director of Public Works will complete a written evaluation of the proposed project. This evaluation will include a recommendation from the Finance and Administration Committee on whether to include the project in the Neighborhood Improvement District Program for the City. The evaluation will be submitted to the full City Council for their action.

Formal Application

Once the Pre-Application review process is complete and the proposal is approved by the City Council it will be included in the NID program and the formal development of a NID Proposal will be started. Costs incurred during the formal application process are also reimbursable under the NID Act. The formal proposal should include all statutory requirements including, but not limited to:

1. The completion of a metes and bounds survey and the development of a project legal description;
2. The compilation of bid documents suitable for publicly bidding the project, including plans and specifications. Once these are provided to the City the project will be publicly advertised with a bid opening administered by the City's Department of Public Works. Please note that the total project cost cannot exceed the estimated cost contained in the petition/election by more

than 25 percent.

3. The completion and submission of a petition which complies with the statutory requirements of section 67.457 RSMO.

-OR-

The conduct of an election which complies with the statutory requirements of section 67.457 RSMO

Once submitted all information contained within the petition or election results will be reviewed and certified by the City of Chesterfield City Clerk.

4. The development and certification of all costs associated with the project. This will include design and construction costs (developed through the formal bidding process detailed above); construction management costs; inspection and testing costs; the costs of issuance of the bonds required to finance the project; all administrative costs incurred by the City of Chesterfield; and any other allowable costs deemed necessary and appropriate for the successful operation of the NID.

As with the Pre-Application, to the extent that the subdivision requires assistance with any of the elements of the formal application process, City staff is available to help.

The Formal Application shall be submitted to the Director of Public Works, who shall oversee a comprehensive review, including consultation with legal counsel and the Director of Finance. Once the Director of Public Works has confirmed the Formal Application adheres to City Policy and all statutory requirements, a Public Hearing shall be scheduled. The Public Hearing will generally be conducted in the City Council Chambers prior to a City Council meeting. During the Public Hearing anyone who wishes to speak about the project will be given the opportunity to do so. Subsequently, as part of the regular City Council meeting, the City Council will formally consider approval of the NID petition. If the NID is denied no further action will be taken. If the NID is approved construction can commence in accordance with the bid documents and the direction of City Council.

A Project Manager from the City's Department of Public Works will be assigned to administer the NID on behalf of the City of Chesterfield. The Project Manager will coordinate with the designated NID contact to ensure all project requirements are met. At the end of the project the Project Manager will submit all project costs to the City's Director of Finance. The Director of Finance will review all project costs and oversee the issuance of bonds. Once bonds have been issued the Director of Finance will oversee collection from all members of

the NID over a twenty-year period, unless a shorter prior is requested by the NID and approved by the City.

Anyone requesting additional information about Neighborhood Improvement Districts shall contact the Director of Public Works.

RECOMMENDED BY:

Department Head/Director/Council Committee (if applicable) Date

APPROVED BY:

City Administrator Date

City Council (if applicable) Date

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