

# SECTION 3200 – LOCAL IMPROVEMENT DISTRICTS

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## 3200 LOCAL IMPROVEMENT DISTRICTS

Local improvement districts shall be created by ordinance in accordance with the statutory requirements set forth in the Idaho Local Improvement District Code (the "Code"), Chapter 17, Title 50, *Idaho Code*. The policies and procedures set forth in this Section 3200 are intended to supplement and clarify, and shall at all times be construed to be consistent with, the Code.

## 3201 INITIATION BY RESIDENTS' OR OWNERS' PETITION

The organization of a local improvement district may be initiated by the filing with the Clerk of the District of a written petition signed by either: (i) not less than sixty per cent (60%) of the resident owners (Section 3201.3.3.2); or, (ii) not less than two thirds (2/3rds) of the owners (Section 3201.3.3.1), of the property subject to assessment within the proposed local improvement district (*Idaho Code*, Section 50-1706), together with the filing fee determined pursuant to Section 3201.2.1.

### 3201.1 Burden of Presenting Facts

The burden of presenting all the relevant and objective prima facie information necessary for the Commission to be able to make the findings of fact and conclusions required by the Code to support the enactment of an ordinance creating the local improvement district is on the petitioners throughout the process.

### 3201.2 Filing Fee

The filing fee is established to cover or offset the administrative costs associated with the review of the petition by District staff in order to determine the validity of the petition, the competence and completeness of the facts and information provided by petitioners, and prepare the staff report(s) for the Commission. Fees and costs for independent professionals retained under Section 3201.2.2 are in addition to the filing fee.

#### 3201.2.1 Amount of Filing Fee

The filing fee is the lesser of: (i) One Thousand Dollars (\$1,000), or (ii) one per cent (1%) of the estimated total costs and expenses of the proposed improvements as set forth in the petition. Provided, if the filing fee presented is less than One Thousand Dollars (\$1,000) and, following its review of the petition, District staff determines that the petitioners' estimate of the total cost and expenses is less by a factor of at least ten percent (10%) from that estimated by District staff, the filing fee shall be adjusted accordingly, to the lesser of one percent (1%) of the District staff estimate or One Thousand Dollars (\$1,000), and the petitioners must pay such additional fee before the petition is placed on the agenda for action by the Commission.

#### 3201.2.2 Employment of Development Professionals

In the initial review of the petition and at any time and from time-to-time during the process, District staff, or the Commission itself, may determine that advice and assistance of independent consultants, inspectors, appraisers, bond

counsel and/or other professionals is required in order for District staff to complete their review of the petition and/or for the Commission to have available all the information needed to support the findings and conclusions required if the Commission is to enact the proposed ordinance. If such determination is made, District staff will request authorization from petitioners pursuant to *Idaho Code*, Section 50-1706A, for the District to retain such independent professionals at the cost of petitioners. At the request of petitioners, District staff will negotiate the selection, fees and other terms and conditions of employment of the independent professionals in advance of petitioners giving their authorization.

The District has no responsibility to retain such independent professionals at its cost. If the petitioners do not authorize the District to retain such independent professionals at the cost of petitioners, and all the necessary information is: (i) not available to the satisfaction of the Director, under Section 3203 the matter cannot be placed on the Commission agenda; (ii) not presented to the Commission at its meeting scheduled to adopt the resolution of notice of intention to create the district, the Commission will be unable to complete the notice of intention to create and, therefore, unable to schedule the public hearing; and/or (iii) not presented at the public hearing on the notice of intention to create the district, the Commission will be unable to adopt the ordinance.

Some or all of these costs may be eligible for inclusion as costs and expenses of the proposed improvements under *Idaho Code*, Section 50-1703(h), to be assessed against the local improvement district, in which event those costs will be reimbursed to the petitioners if and when the local improvement district is created and the bonds sold.

### 3201.3 Required Information

The petition shall include information sufficient to enable District staff and the Commission to make all findings and conclusions required by: (i) *Idaho Code*, Section 50-1706 in order to determine the validity of the petition; (ii) *Idaho Code*, Section 50-1707 in order to complete the notice of intention to create; and, (iii) *Idaho Code*, Section 50-1710 in order to adopt the ordinance creating the local improvement district. The following information is required:

#### 3201.3.1 Description of Improvement

A description of the improvements to be made (*Idaho Code*, Sections 50-1706 and 50-1707(b)), sufficient to enable District staff to determine:

- a. which lots and parcels will abut and adjoin the proposed improvements;
- b. the accuracy of the estimate of total costs and expenses submitted by petitioners under Section 3201.3.5 and of the amount of the filing fee under Section 3201.2.1;

- c. that the proposed improvement project is under the statutory jurisdiction of the District, and in connection with a highway or right-of-way which is or will be dedicated to the District for public use, and is a project authorized under *Idaho Code*, Section 50-1703 for funding by a local improvement district.

The description must include a statement by petitioners of whether the improvements are proposed for purchase or other form of acquisition by the District, or are to be constructed by the District. (*Idaho Code* Sections 40-1310 and 50-1703(a)(2).)

- a. If the improvements are to be constructed on or substantially on District right-of-way, or if the use of the District's power of eminent domain, or threat thereof, may be required to acquire property necessary for the construction of the improvements, the District shall be the principal contracting party in all contracts for the construction of the improvements. Provided, on good cause shown by petitioners, supported by legal authority, the Commission may allow the petitioners to be the principal contracting party.
- b. Where the District is to be the principal contracting party in the contract(s) for construction of the proposed improvements, the Commission shall appoint the engineer to prepare the necessary plans and specifications for the proposed improvements in accordance with then existing District policies, the Idaho Standards for Public Works Construction and good engineering practices, and advertise by giving notice calling for sealed bids for the construction, and make the award to the lowest responsible bidder, and comply with the Idaho Public Works Contractors Act (Title 54, Chapter 19, *Idaho Code*). (*Idaho Code*, Section 50-1710.)
- c. If the improvements are to be constructed on or substantially on property owned or under the control of petitioners, the petitioners, their agents and contractors, can be the principal contracting party in all contracts for the construction of the improvements.
- d. Unless otherwise required by law, the petitioners need not comply with public bidding and other public works requirements in awarding contracts where they are the principal contracting party.
- e. If the petition proposes that the improvements are to be constructed by or under the direction of petitioners to be subsequently purchased or otherwise acquired by the District by use of the proceeds from the sale of local improvement district bonds, the final designs, plans and specifications of the

proposed improvements shall be prepared in accordance with District policies, the Idaho Standards for Public Works Construction and good engineering practices, and approved by District staff, in writing, before construction contracts are let.

- f. If the petition proposes that a local improvement district be formed to purchase improvements that have already been constructed by or under the direction of petitioners or third persons, petitioners must provide District staff with full and complete copies of the final designs, plans and specifications of such improvements, including as-built plans, and the certification of a licensed engineer that the improvements are constructed in accordance with District policies in effect at the time the petition seeking initiation of the local improvement district was presented, the Idaho Standards for Public Works Construction and all supplements thereto in effect at the time the petition was presented, and good engineering practices.
- g. The District will not close the purchase or other acquisition of local improvements until: (i) petitioners provide the District with engineering reports certified by the engineer of record on the project showing that all testing required by the then current District Quality Assurance Manual has been completed and the results of the testing establish quality compliance; (ii) District staff inspects the improvements and finds that the construction has been accomplished in accordance with the plans and specifications approved by the District under subparagraph (e) of this Section, or under subparagraph (f), the then current District Policy Manual, the then current Idaho Standards for Public Works Construction and all supplements thereto and good engineering practices; and, (iii) clear title to the right-of-way so improved is transferred to the District. Cost of curing any deficiencies in construction from the District approved plans and specifications or from then current District policies, Idaho standards and good engineering practices, or of curing defects in title shall not be an obligation of the District or the local improvement district, but an obligation of the petitioners, their agents and contractors.

### 3201.3.2 Description of Boundaries

A description of the boundaries of the proposed local improvement district and the property to be assessed sufficient to inform the owners thereof that their property is to be assessed. (*Idaho Code*, Sections 50-1706 and 50-1707(a).) Unless the petition asks for a modified district by unanimous agreement under Section 3201.7 (*Idaho Code*, Section 50-1705), the “property subject to assessment” consists of all lots and parcels of real property which are or will be “specially benefited” by the improvements. The description that is required is a legal description of the outer boundaries of the proposed local improvement district, excepting any interior lots and parcels which are not specially benefited, and will be conterminous with the property to be assessed. Petitioners shall also provide separate legal descriptions for each lot and parcel

therein which will be specially benefited by the proposed improvements and a map or similar depiction showing the outer boundaries of the proposed local improvement district and each lot and parcel therein. (*Idaho Code*, Section 50-1707(c).)

A lot or parcel is “specially benefited” if it will receive benefits from the proposed improvements which are greater in kind or degree or in value than the benefits Ada County property owners will receive in general. Unless the petitioners seek a modified district by unanimous agreement under Section 3201.3.7 (*Idaho Code*, Section 50-1705):

- a. All lots and parcels which abut or adjoin the proposed improvements are presumed to be specially benefited, and, absent the presentation of facts or information that there are no special benefits (such as the inability to access a new highway), will be included in the proposed local improvement district;
- b. The petitioners may ask the Commission to include lots and parcels which do not abut or adjoin the proposed improvements because they receive special benefits, and, if so, the petition must include an explanation and rationale for the inclusion and the legal description of those lots and parcels.

### 3201.3.3 Names and Addresses

The petitioners shall also provide a list showing the names and resident addresses of each owner of a lot or parcel described and depicted under Section 3201.3.2, sufficient to enable District staff to determine if either (i) the required sixty percent (60%) of the resident owners, or (ii) the required two thirds (2/3rds) of the owners of property subject to assessment within the proposed local improvement district have signed the petition. (*Idaho Code*, Section 50-1706.)

- a. An “owner” is the current holder of the fee simple legal title to the property, or where the legal owner holds title for the benefit of another, as a trustee, for example, the beneficial or equitable owner is the “owner.” Generally this is established by a deed, judgment or other indenture recorded in the office of the Ada County Recorder, but it can be established by other evidence, such as a true copy of a deed held in escrow under a specifically enforceable contract of purchase and sale supported by an assessment notice from the office of the Ada County Assessor.
- b. A “resident owner” is an owner who also resides and maintains his or her principal dwelling house or abode on a lot or parcel situated in whole or in part within the limits of the proposed local improvement district. Some independent proof of residency is required, such as an affidavit or verification of residency in the application itself. If the owner is a corporation

or other form of business enterprise, the resident address is the address of the principal place of business, which may be established by providing a copy of the most recent filing with the Secretary of State or an opinion of counsel letter. (*Idaho Code*, Section 50-1702(g).)

#### 3201.3.4 Estimate of Costs

An estimate of the total costs and expenses of the proposed improvements. (*Idaho Code*, Section 50-1707(b).) The term “costs and expenses” is “the contract price of all improvements, including the cost of making improvements within any intersection, together with any costs or expenses incurred for engineering, clerical, printing and legal services as well as for advertising, surveying, inspection of work, collection of assessments, interest upon bonds or warrants, and an amount for contingencies as shall be considered necessary by the Commission.” (*Idaho Code*, Section 50-1703(h).)

#### 3201.3.5 Portion from General Fund

A statement of the percentage or calculation of the total costs and expenses of the proposed improvements which petitioners envision is to be paid from the general funds of the District or some source other than the proceeds from the sale of local improvement district bonds, if any, together with a rationale for the statement. (*Idaho Code*, Section 50-1707(b).)

The District and the petitioners may enter into a written agreement providing for payments or contributions toward the costs and expenses of the proposed improvements from general funds or other sources of the District, or by petitioners, or both.

#### 3201.3.6 Method of Assessment

A proposal for the method of assessment, whether according to the front foot method, or square foot method, or a combination thereof, in proportion to the benefits derived to the lots and lands specially benefited, or by another method agreed to in writing by all property owners to be assessed, together with a rationale for the proposal. (*Idaho Code*, Section 50-1707(c).)

If it can be reasonably anticipated that a parcel to be assessed will be subdivided after the local improvement district is created, the proposal should include an analysis and recommendation as to how the assessment on the parcel is to be reallocated among the lots when the final plat is recorded.

#### 3201.3.7 Modified District

The petition must state whether the proposed local improvement district is to be a modified district under *Idaho Code*, Section 50-1705, and, if it is to be a modified district, the petitioners shall provide a description of the boundaries of the proposed modified district. (*Idaho Code*, Section 50-1707(d).) There are two methods by which a modified local improvement district may be created under *Idaho Code*, Section 50-1705:

- a. If the petitioners request that the district be a modified district because the special benefits to result from the local improvement: (i) extend beyond the lots and parcels abutting

or adjoining the improvement; or, (ii) do not accrue to some or all of the lots or parcels abutting or adjoining it, but to other lots or parcels, the Commission may create the same as a modified district if it so determines from the facts and information presented. The petition should provide a legal description and a map or similar depiction of the proposed modified district showing: (i) which lots or parcels that abut or adjoin the proposed improvements are to be excluded from the local improvement district because special benefits will not accrue; and (ii) which lots or parcels that do not abut or adjoin the proposed improvements are to be included in the local improvement district because special benefits from the improvements will accrue. The petitioners must provide the name and address of each owner whose lot or parcel abuts or adjoins the proposed improvements who are to be excluded and included, and those whose lot or parcel does not abut or adjoin the proposed improvements who are to be included, and, for purposes of calculating whether the necessary percentage of resident owners or owners of the property subject to assessment within the local improvement district have signed the petition, the petitioners must designate each resident owner. (*Idaho Code*, Section 50-1706; Section 3201.) The petitioners must explain why special benefits do accrue to included lots and parcels and do not accrue to excluded lots and parcels. Since the statement that the district is to be a modified district must be included in the notice of intention to create, the Commission will normally consider this request, and make a preliminary finding, at the outset of the process and, accordingly, may allow testimony and evidence to be presented on this issue at the regular meeting when it considers the validity of the petition and the setting of the date, time and place of the public hearing on the notice of intention to create.

- b. If the petitioners are asking that the district be a modified district by reason of the unanimous agreement of the property owners to be assessed regardless of whether they will be specially benefited by the local improvement (*Idaho Code*, Section 50-1705), the petition must so state and include: (i) a legal description and a map or similar depiction of the proposed modified district showing all lots or parcels which are to be included in, and all lots and parcels which abut or adjoin the proposed improvements but are to be excluded from, the proposed district; (ii) the name and address of each owner of a lot or parcel described and depicted under “(i)” above, and (iii) original agreements executed, before a notary public, by each owner of a lot or parcel named under “(ii)” above as included in the proposed modified district, showing their unanimous agreement to the boundaries of the proposed modified local improvement district.



### 3201.3.8 Credit Assurances

Whether the petitioners propose to provide commercially reasonable credit assurances, such as guarantees, letters of credit or bonds to supplement the value of the properties to be assessed, and if so the complete terms, provisions and conditions of such assurances. (*Idaho Code*, Section 50-1772.)

## 3201.4 Additional Information

In addition, the petition shall include such information as is then available relating to the findings and conclusions required to be made by the Commission under *Idaho Code*, Section 50-1710. By no later than four (4) working days prior to the public hearing on the notice of intention to create the local improvement district, petitioners will supplement the petition to include all the information relating to these required findings which petitioners will present at the hearing, as well as any new information which petitioners will present at the hearing relating to other findings which the Commission is required to make under the Code and this policy in order to enact the ordinance creating the local improvement district. The information required by *Idaho Code*, Section 50-1710 is as follows:

### 3201.4.1 Best Interest of Property, District

The local improvement district will be for the best interest of the property affected and the District.

Construction of local residential streets within a new subdivision or new planned unit development is not considered to be an improvement which is in the best interest of the District, and, accordingly, the Commission will not create a local improvement district to purchase, acquire or construct such improvements and/or the public right-of-way upon which they are to be constructed. This limitation does not apply to the improvement of existing local streets located on public right-of-way by paving, repaving, adding curbs and gutters, sidewalks, etc.

### 3201.4.2 No Credit Risk

There is reasonable probability that the obligations of such local improvement district will be paid.

### 3201.4.3 Sufficiency of Security

The value of the property within the proposed local improvement district, including the proposed improvements to be located within the district, is sufficient security for the bonds to be issued.

- a. Under *Idaho Code*, Section 50-1711, in the ordinance establishing the local improvement district the Commission must provide "the method of determining the actual value of the real property including the improvements thereon in the district . . ." The initial evidence to be submitted by petitioners in the petition to support the actual value is at least a listing of the current values according to the Ada County Assessor of each lot and parcel of real property proposed to be included in the local improvement district. The method of determining the

actual value in the ordinance will be by an appraisal by an independent qualified appraiser, selected by District staff and paid for at petitioners' expense, of each lot and parcel in the proposed district assuming the local improvements are constructed and in place, and valued as of the date of the filing of the petition, unless the Commission modifies this method because additional credit assurances satisfactory to the Commission are provided by petitioners under *Idaho Code*, Section 50-1772, or for other good cause shown by petitioners.

- b. The Commission shall not order any improvement to be paid for by local assessment where the portion of estimated costs to be assessed, when added to all other outstanding and unpaid local improvement assessments against the property included in the local improvement district, shall exceed the actual value of the property, including the value of the proposed improvements. (*Idaho Code*, Section 50-1711.)

### 3202 INITIATION BY RESOLUTION OF COMMISSION

The organization of a local improvement district may be initiated by the Commission by resolution adopted by the affirmative vote of the majority of the Commissioners at a regular or special meeting. (*Idaho Code*, Section 50-1706.)

#### 3202.1 District Staff to Assemble Facts

If the request for the Commission to investigate the possibility of initiating the organization of a local improvement district originates with the Commission itself or with the Director, District staff shall assemble all the facts and information required to be provided in a residents' petition under Section 3201, and prepare a staff report, at the cost and expense of the District.

### 3203 RESOLUTION OF INTENTION TO CREATE, NOTICE AND PUBLIC HEARING

When the Director is satisfied that: (i) the residents' or owners' petition presented under Section 3201 is valid and complete and the proper filing fee has been paid; or, (ii) the staff report is complete for initiation of the organization of a local improvement district by the Commission itself under Section 3202.1, the Director shall place the matter on the Commission agenda at a regular or special meeting. If at the meeting the Commission determines all the information required by Section 3201 has been presented, the Commission shall adopt a resolution giving notice of its intention to create the local improvement district, to make (by purchase, acquisition or construction, as applicable) the local improvements and to levy assessments to pay all or a part of the costs and expenses thereof. (*Idaho Code*, Section 50-1707.) If the resolution is adopted, the Commission shall also set the date and time within which and the place at which protests shall be filed and of the date, time and place at which it will conduct a public hearing to consider such protests. (*Idaho Code*, Section 50-1709.)

### 3203.1 Notice of Intention to Create

Based on the findings made by the Commission, District staff shall prepare the notice of intention to create in full compliance with the provisions of *Idaho Code*, Section 50-1707, paragraphs (a) through (e) inclusive, and publish and mail the notice as provided in *Idaho Code*, Section 50-1708.

#### 3203.1.1 Ownership of Property

Ownership of the property within the proposed local improvement district is to be determined as of the date of the adoption of the resolution of the intention to create.