



# City of San Antonio

## Agenda Memorandum

**File Number:**20-7049

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**Agenda Item Number:** 29A.

**Agenda Date:** 12/3/2020

**In Control:** City Council A Session

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**DEPARTMENT:** Planning

**DEPARTMENT HEAD:** Bridgett White, AICP

**COUNCIL DISTRICTS IMPACTED:** ETJ near City Council District 8

### **SUBJECT:**

Approving two items related to the Lemon Creek Public Improvement District located in the extraterritorial jurisdiction of the City of San Antonio

### **SUMMARY:**

A public hearing and consideration of the following two items related to the proposed Lemon Creek Special Improvement District: A) A Resolution granting the City of San Antonio's consent to the creation by Bexar County of a Public Improvement District to later be named the Lemon Creek Special Improvement District and B) An Ordinance authorizing a Development Agreement between the City of San Antonio and VEP Lemon Creek LP.

### **BACKGROUND INFORMATION:**

Texas Local Government Code Chapter 382 allows for the creation of Public Improvement Districts (PIDs), by a city or a county. PIDs are economic development tools used to pay or finance public improvements and economic development within (and that benefit) a defined geographical area which will ultimately become the PID. The general nature of the proposed public work may include, but is not limited to, the improvement and construction of roads, thoroughfares, collectors, arterial roads, utilities, water, waste water, sanitary sewer, drainage, trails, park and recreational facilities; which are located within the district boundaries. PIDs may levy an assessment and impose an ad valorem tax, sales and use tax or hotel occupancy tax as sources of funding and costs are apportioned and paid by landowners within the PID that benefit from public improvements and/or services.

In order to create a PID in a county, more than fifty percent (50%) of owners of taxable real property liable for assessment within the proposed PID area, must submit a petition to the governing body of the county. The municipality has the option to object to the formation of the PID within its ETJ pursuant to state law. However, a PID being created with a purpose of supplying fresh water for domestic or commercial use or to furnish sanitary sewer services, roadways, or drainage, may not be created in the ETJ of a municipality unless the City gives its written consent by ordinance or resolution.

On November 4, 2019, VEP Lemon Creek (Owner) filed a petition and application with Bexar County (County) to create a PID to be named the Lemon Creek Special Improvement District (the Lemon Creek PID) pursuant to Chapter 382 of the Texas Local Government Code. Their petition also requested the County to delegate to the PID the powers of a road district or to construct water, wastewater and drainage facilities. On September 8, 2020, the Owner requested that the City grant its consent to the creation of the PID within its ETJ as required by State law. On October 6, 2020, the Bexar County Commissioners Court approved a resolution stating their intent to create the District with road district powers as well as power to impose ad valorem, hotel occupancy, sales and use taxes on future property owners located within the PID's boundaries.

In accordance with Section 212.172 of the Texas Local Government Code, a municipality and a land owner may enter into a written development agreement by which the municipality will extend its planning authority, establish terms for annexation or non-annexation of land, extend its development regulations including land use and development standards, and provide for the infrastructure of the land. The City and the Owner has agreed to enter into a 30-year Development Agreement with the City setting forth terms and conditions governing development standards and voluntary annexation for the PID property. The Development Agreement will include the proposed framework of a Strategic Partnership Agreement, which is a written contract between the City and the PID that allows the City to annex for limited purposes and collect sales taxes in the commercial property in the PID boundaries.

The proposed Lemon Creek PID is approximately 117.837 acres of land, generally located along IH-10 W, north of Dietz Elkhorn Road and west of Old Fredericksburg Road. The PID property is located within the water and sewer Certificates of Convenience and Necessity (CCNs) of SAWS. The proposed Lemon Creek PID development will consist of 71.07 acres of commercial use with an approximately 527 multi-family residential unit development. The proposed improvement costs of sewer, water, streets and drainage for the residential subdivision are estimated at \$24 million. The proposed District revenue is estimated at \$48 million.

#### **ISSUE:**

If approved, this Resolution recommends the City's consent to the creation of the Lemon Creek PID by Bexar County and the Ordinance would authorize the execution of a 30-year Development Agreement (Agreement) between the City and the Owner. The written consent of the City by Resolution, which includes the delegation of the road district powers along with the powers to construct water, wastewater and drainage facilities, is required by state law for this District to exercise those powers. However, the City's consent will not include the following:

- The power to exercise eminent domain by the District; and
- The power to annex, expand, divide, or exclude land into the PID's existing boundaries.

The proposed Agreement sets forth the conditions of the City's consent, as mentioned above, and includes the following terms and obligations between the City and the Owner with respect to the development of the PID property:

- The Owner will pay to the City an Application Fee of \$7,500 and a Special District Operations Assessment of \$175 per residential unit.
- The tax rates of the proposed PID shall not exceed the City's tax rates.
- The City will guarantee the continuation of the extraterritorial status of the PID property for a period of 30 years except in the case of default by the Owner during the Agreement's term.
- The Owner agrees that the Agreement constitutes a petition for voluntary annexation at the City's discretion and that the Owner consents to annexation by the City at the end of the Agreement's term or upon default of the Agreement by the Owner.
- The Agreement includes a Written Agreement regarding services between the Owner, subsequent Owners and the City under Chapter 43 of the Local Government Code.
- The Owner agrees to comply with all municipal regulations, ordinances and other laws applicable to all properties located within the City's ETJ during all the phases of development and construction of the PID Project and during the term of the Agreement.
- The Owner will reimburse CoSA for the recordings of the development agreement with Bexar County Real Property Records.

- The framework of the proposed Strategic Partnership Agreement (SPA) between the City and the Lemon Creek PID will include the following provisions:
  - The PID will petition for the Limited Purpose Annexation of the commercial property of the PID by the City for the purpose of assessment and collection of sales and use taxes.
  - The PID will reimburse CoSA for the recordings of the SPA with Bexar County Real Property Records and future costs related to Limited Purpose Annexation.
  - The City will remit to the PID an amount equal to 25% of the Sales Tax Revenues collected within the annexed commercial property.

The proposed timeline for the establishment of the proposed PID is as follows:

<u>Dates</u>	<u>Schedule of Action</u>
October 6, 2020	Bexar County Commissioners Court consideration of a resolution expressing their intent to create the PID
November 18, 2020	San Antonio Planning Commission public hearing and recommendation
December 3, 2020	San Antonio City Council consideration and action
December 15, 2020	Bexar County Commissioners Court consideration to create the proposed PID and appoint a Board of Directors
May 2021	PID Election and approval of the PIDs' taxes and bonds

#### **ALTERNATIVES:**

A denial of the Resolution would result in the PID not being created by Bexar County. This action would require the Owner to seek a different financing mechanism for the development of the property. It may result in the development and construction of infrastructure occurring in a traditional method rather in the manner proposed by the developer.

City Council may require staff to re-negotiate the terms of the Agreement which would delay the activation of development in the PID.

#### **FISCAL IMPACT:**

This item is to consider the resolution granting the City's consent to the creation by Bexar County of a PID located within an unincorporated area of the ETJ of the City San Antonio, and an ordinance authorizing the execution of a Development Agreement between the City of San Antonio and Equitable Land Holdings, LLC, HoodaEnterprises, Inc., and SA Given to Fly, LLC., owner of PID property. This ordinance enables the developer to pay an Application Fee of \$7,500 and a Special District Operations Assessment estimated at \$92,225 (for a total of 527 residential units at \$175 per residential unit) to the City of San Antonio's General Fund. The Owner will pay for costs related to the SPA and Limited Purpose Annexation and reimburse the City for the recordings of the Development Agreement and SPA with Bexar County Real Property Records. The City will pay to the PID an amount equal to 25% of the sales and use tax revenues collected within the Limited Purpose Annexation Property, commencing on the effective date of the Limited Purpose Annexation of the commercial land.

#### **RECOMMENDATION:**

Staff recommends approval of A) a Resolution granting the City's consent to the creation by Bexar County of a PID to later be named the Lemon Creek Special Improvement District; and B) an Ordinance authorizing the execution of a 30-year Development Agreement between the City and VEP Lemon Creek LP.

On November 18, 2020, the Planning Commission recommended to City Council to grant its consent to the County PID creation by Bexar County subject to the execution of a Development Agreement with the Owner.