

***Policy Analysis and Considerations for
Self-Managed Special Service Districts
in Minneapolis***

FEBRUARY 2013

**Prepared for
City of Minneapolis
Department of Public Works**

**Prepared by
Michael McLaughlin
Urban Works, Inc.**



PURPOSE

The purpose of this report is to provide a framework for city policymakers regarding Self-Managed Special Service Districts within the city of Minneapolis. It will provide an overview of the current policy environment for the city's existing Special Service Districts and the city's only Self-Managed Special Service District (the Minneapolis Downtown Improvement District). The report concludes with an outline of further policy considerations for future Self-Managed Special Service Districts within the city.

BACKGROUND

Minneapolis established its first Special Service District (SSD) in 1986 with the Uptown Special Service District. Between 1986 and 2008, an additional 15 SSDs were established throughout the city at the request of business leaders within each of those respective commercial areas. As the city established each of these SSDs it began providing services, generally via service contracts with third-party vendors retained through a city-administered procurement process. Under this "City-Managed" SSD model, the city retained day-to-day operational responsibilities for each district (developing contract specifications, managing the bidding and procurement process for services, implementing services by directing vendors, monitoring vendor performance, and overall contract administration, etc.) along with all financial management responsibilities (paying vendors, tracking expenditures, preparing financial reports, etc.).

With the establishment of the Downtown Improvement District (DID) in late 2008, the city created a new "Self-Managed" SSD model at the request of downtown business leaders. Under this new model, the city contracted with a single, nonprofit district management entity (Minneapolis Downtown Improvement District, Inc.) that assumed all day-to-day operational responsibilities for the district along with all day-to-day financial management responsibilities. Minneapolis Downtown Improvement District, Inc., was a newly created 501c6 nonprofit entity incorporated by the leaders from the Minneapolis Downtown Council to manage the DID. As part of this model, the contract between the city and Minneapolis Downtown Improvement District, Inc. was sole-sourced by the city, meaning the city waived its normal competitive bidding / request for proposal process.

With the Self-Managed SSD model, the city's role shifts from directly implementing the district's services to monitoring the service delivery and performance of the district management entity and ensuring its compliance with city contract provisions and deliverables. Key to this model, the city retains ultimate oversight and responsibility for the district as required by law.

Owing to the success of DID, stakeholders and leaders from multiple commercial areas within the city have expressed a strong interest in replicating the Self-Managed SSD model within their local business districts.

CURRENT POLICY ENVIRONMENT

The following topic areas will be used to compare and contrast the current policy environment for existing City-Managed SSDs and the city's sole Self-Managed SSD, the DID.

1. District Formation
2. Governance
3. Existing City Services
4. District Management Entity Eligibility
5. Budget Setting and Operating Plan
6. Eligible Services
7. Procurement of Services
8. Operational and Financial Transparency
9. Oversight
10. District Sunset and Renewal
11. Public Right-of-Way Powers and Responsibilities

1) District Formation

Minnesota Statute Chapter 428A provides municipalities with the authority to establish SSDs by ordinance and impose service charges to fund their activities. Both City-Managed and Self-Managed SSDs are established by the city via ordinance in the same manner and must follow identical establishing procedures as proscribed in Chapter 428A.

Though the DID includes the words "improvement district" in its common name, it is a "Special Service District" and was created under state statute that permits municipalities to create such districts. Further, the DID's legal name in ordinance is the "Downtown Business Improvement Special Service District."

2) Governance

City-Managed SSDs

To guide City-Managed SSDs, the city appoints an advisory board, typically with five to nine members, composed of representatives of property owners being assessed within the district using the city's standard open appointment process.

Self-Managed SSD

To direct the DID, Minneapolis Downtown Improvement District, Inc., selected its own board of directors. By city directive, the DID was to “[b]e governed by a management board of approximately twenty members including property owners, business owners and others who represent organizations downtown. Approximately 50% of the board will represent the properties that pay into the DID geographically, by property type, and by property size and will utilize the board member’s expertise in implementing services to raise the standard of property. Approximately 50% of the board will be representatives of the employee and visitor audiences for whom the services will be geared, many of whom will also pay for the services indirectly through their lease costs.”

3) Existing City Services

When the DID was established, the city prepared summaries of existing city services performed within the DID to assuage concerns by some property owners that DID resources would be used to replace services already provided by the city. These baseline service estimates along with a commitment by the city that it would give notice to the DID if the city needed to make any adjustments to the services were memorialized in a memorandum of understanding that was adopted by the city council.

4) District Management Entity Eligibility

With the establishment of the DID, the Downtown Council, which spearheaded efforts to create the DID, had many years of experience serving as the administrator of the Nicollet Mall Advisory Board. While the Nicollet Mall operated similarly to a city-managed district for decades, its management was very closely coordinated with the business community through the Nicollet Mall Advisory Board and the Downtown Council. With this background, the city was confident that the Downtown Council had the knowledge, experience and capacity to manage the DID.

5) Budget Setting and Operating Plan

City-Managed SSDs

With City-Managed SSDs, city staff meet with city-appointed advisory boards for each district each summer to develop annual budget and operating plan recommendations for the coming year. These recommendations are brought forward to the city council for review and adoption through the council’s Transportation and Public Works committee each September. The review is also a public hearing, as required by state law, and all assessed property owners are provided notice via mail at least 10 days in advance.

Self-Managed SSD

The DID works with its board and committees to develop its annual budget and operating plan recommendations for the coming year. Once these recommendations are forwarded to city

staff, the process for formal city review and adoption is identical to that required for City-Managed SSDs. (The recommendations are then brought forward to the city council for review and adoption through the council's Transportation and Public Works committee each September. Just as with the City-Managed SSDs, this review is a public hearing, as required by state law, and all assessed property owners are provided notice via mail at least 10 days in advance.)

6) Eligible Services

City-Managed SSDs

Ordinances that established existing individual districts enumerate a menu of specific services that the district can potentially provide. The types of eligible services within existing SSDs depends on whether a district was established under the authority of a special law or the general state statute 428A.

Self-Managed SSD

To provide greater flexibility over time with regard to determining eligible services for the DID, the ordinance establishing the DID defined classes of eligible services and then stipulated that the district's annual operating plan would describe, with particularity, the proposed services for the ensuing year. The DID's annual operating plan is reviewed and adopted by the city council each year as part of the district's annual budget and service charge assessment approval process.

7) Procurement of Service

City-Managed SSDs

With City-Managed SSDs, city staff manage all aspects of the procurement process using the city's standard procedures for retaining services. This includes competitively bidding all services agreements greater than \$1,000. In addition, all applicable city procurement policies are imposed upon all service agreements, including requiring that all contracts be awarded to the lowest responsive and responsible bidder, in addition to other city procurement requirements related to prevailing wage, living wage, equal benefits, affirmative action, and the city's small and underutilized business program.

Self-Managed SSD

For the DID, downtown business leaders asked for exemptions from certain city ordinances and procedures that they believed hindered optimal procurement of services for an endeavor of the DID's scope and magnitude. They also desired to have the DID managed more like a traditional Business Improvement District and they felt the exemptions were necessary for them to garner the business community support needed to move forward with the DID. While they understood that these provisions were important to the city council, by creating a climate and partnership in which the business community was excited about even further financially investing greatly in downtown, they felt these accommodations would ultimately benefit both

the downtown business community as well as the city as a whole. City staff requested that the exemption language be accompanied with the DID ordinance language to specifically ensure that the DID attempted in good faith to meet the spirit of the exempted city ordinances.

Thus, the following requested exemptions and the supporting ‘best efforts’ language were incorporated into the district’s enabling ordinance and nonprofit district management entity contract.

- Minneapolis Code of Ordinances (“MCO”): Section 18.200 Equal Benefits provisions in contracts:

As part of this exemption the District Management Entity extends any benefits offered to its employees based on marital status to employees with domestic partners registered as such pursuant to Minneapolis Code of Ordinances: Section 142.30. In addition, the District Entity requires its contractors and subcontractors to extend the same benefits to any of their employees providing services to the DID.

- MCO Section 139.50 Non-discrimination and Affirmative Action provisions in contracts:

The District Management Entity has a Modified Affirmative Action Plan that meets City Ordinance.

- MCO Chapter 423 Small and Underutilized Business Enterprise program:

As part of this exemption the District Management Entity, when seeking competitive bids for special services in the DID, must seek bids from, but not limited to, vendors on a list of small and underutilized businesses provided annually by the City.

- MCO Section 24.220 (prevailing wage);

The District Management Entity and its agreements with its contractors and subcontractors is exempt from this Ordinance. However, this exemption does not apply to any construction work that requires funding from more than one year’s assessment cycle.

8) Operational and Financial Transparency

City-Managed SSDs

With City-Managed SSDs, advisory boards for each district are required to follow Minnesota open meeting laws and related provisions. Advisory board members are required to comply with the city’s ethics ordinance and complete the city’s ethics training bi-annually. All documents and materials produced by or related to City-Managed SSDs are public data in accordance with the Minnesota Government Data Practices Act.

With City-Managed SSDs, day-to-day operational management is provided by staff from the Public Works department and day-to-day financial management is provided by staff from the city's Finance and Public Works departments. Year-end financial reports are prepared by the city and distributed to the respective advisory board members at the conclusion of each fiscal year.

Self-Managed SSD

The city does not currently require the DID to follow Minnesota open meeting laws and related provisions. The DID is required to comply with the city's ethics ordinance and all documents and materials produced by or related to the DID are public data in accordance with the Minnesota Government Data Practices Act.

With the DID, Minneapolis Downtown Improvement District, Inc., is responsible for all day-to-day operational and financial management of the district. The DID is required to submit a narrative annual report to the city at the conclusion of each fiscal year, along with year-end financial reports and an independent CPA-prepared financial audit.

9) Oversight

City-Managed SSDs

With City-Managed SSDs, the city retains direct responsibility for the oversight and the implementation of services in these districts. From an oversight perspective, City staff from multiple departments (Public Works, Finance and Purchasing) have direct access to all information about district expenditures and vendor performance. With regard to governance, city staff attend and participate in most if not all advisory board meetings for each district. In addition, advisory board meetings are open to the public allowing an interested property owner or member of the public the opportunity to understand and monitor a district's activities.

Self-Managed SSD

The city retains legal oversight for the district management entity and has done so with the DID. Over the past four years that the DID has been active, the city has come to better understand what the roles and responsibilities of the city and district management entity need be. With regard to governance, city staff have not been allowed to attend DID board and committee meetings (with the exception of one DID committee focused on monitoring the base level of services provided by the city within the district). In addition, DID board and committee meetings have not been open to the public.

10) District Sunset and Renewal

City-Managed SSDs

State law does not impose any sunset requirements on SSDs and no existing City-Managed district has a sunset requirement.

Self-Managed SSDs

At the request of downtown business community leaders, the city imposed a five-year sunset requirement via ordinance when it established the DID. The DID ordinance effectively expires at the end of its 2013 fiscal year unless the enabling ordinance is renewed under the procedures set forth in 428A (which requires a new petition of property owners and a series of public hearings).

Minnesota Statute Chapter 428A

Statute 428A, which provides cities with the authority to establish SSDs, is due to sunset on June 30, 2013. Historically, this statute has been renewed by the legislature in five-year increments. If the 428A were to sunset, any new SSDs would require passage of their own special legislation before they could be established by the city.

11) Public Right-of-Way Powers and Responsibilities

In both City-Managed and Self-Managed SSDs, the city retains all powers, rights, and responsibilities for the public right-of-way. No powers, rights, or responsibilities are delegated to the district management entity.

Advantages and Disadvantages: City-Managed SSD vs. Self-Managed SSD

Party	Self-Managed	City-Managed
City	<p><u>Advantages:</u></p> <ul style="list-style-type: none"> • Reduced administrative costs by eliminating day-to-day financial management and contract administration costs. • Supports formation of districts in areas where business leaders would not support a city-managed district (e.g. downtown). <p><u>Disadvantages:</u></p> <ul style="list-style-type: none"> • Less direct oversight of service vendors. • Greater oversight of district management entity required. 	<p><u>Advantages:</u></p> <ul style="list-style-type: none"> • More direct oversight of service vendors. <p><u>Disadvantages:</u></p> <ul style="list-style-type: none"> • Increased internal costs due to increased workload on city staff. • Property owners in some potential districts may not support formation a new district due to cumbersome process.
Special Service District	<p><u>Advantages:</u></p> <ul style="list-style-type: none"> • Greater flexibility in providing services due to streamlined procurement requirements. • Greater speed in providing services due to streamlined procurement requirements. • Reduced difficulty when holding service vendors accountable for performance issues due to streamlined procurement requirements. <p><u>Disadvantages:</u></p> <ul style="list-style-type: none"> • District must incur administrative costs. • District must have knowledge, technical skills, and capacity to provide financial management and contract administration in order to provide services. 	<p><u>Advantages:</u></p> <ul style="list-style-type: none"> • No administrative costs. • No technical knowledge, skills or organizational capacity required to serve on a district’s advisory board <p><u>Disadvantages:</u></p> <ul style="list-style-type: none"> • Reduced flexibility in providing services due to city procurement requirements. • Reduced speed in implementing services due to procurement requirements. • Greater difficulty when holding service vendors accountable for performance issues due to procurement requirements.

POLICY CONSIDERATIONS FOR SELF-MANAGED SSDS

By most accounts, the response to the formation of the Downtown Improvement District and the implementation of its services in downtown has been very positive. With the pending renewal of the DID's enabling ordinance and its contract with the city as well as the increased interest in replicating the "Self-Managed SSD" model in other areas of the city, the city is presented with an opportunity to consider refinements to its policies and strategy for both its existing Self-Managed SSD as well as the possible formation of new Self-Managed SSDs. Below is an outline of recommendations and Business Improvement District industry best practices that the city could consider when implementing such policy refinements.

1) District Formation

- a) The city should continue to facilitate and support the formation of new SSDs within the city (City-Managed as well Self-Managed). For its investment of city staff time, the city currently enjoys a 2,600% return on investment *annually* in the form of beneficial services provided within existing service districts (\$26 in beneficial services received for every \$1 spent on city staff time).
- b) The city should support extension of Minnesota Chapter 428A during the 2013 legislative session. Unless an extension is authorized by the legislature and governor this chapter is due to expire on June 30, 2013. Alternatively, the city should support repealing the chapter's sunset provision.

2) Governance

- a) The city should establish minimum governance structure requirements for district management entities, including such elements as minimum number of board members, minimum property percentage of property owner representation on the entity's board, and preferences for property owner representation based on location within a district, property type and size, etc. For the best interests of a district and the city, the boards of the management entities should be composed of a strong majority of property owners required to pay the district's service charge assessments. The city should allow remaining board positions to be filled by other district stakeholders such as tax-exempt and multifamily property owners that opt-in to pay for the district's services.

3) Existing City Services

- a) The city should continue its commitment to maintain existing city service levels within district, subject to budgetary constraints. Making best efforts to not unduly reduce city services within a district is critical to the district's overall credibility among property owners.

4) District Management Entity Eligibility

- a) The city should develop very specific eligibility criteria when selecting and awarding a contract to a district management entity to ensure the entity has the knowledge, operational capacity, and experience to manage such a district. For the best interests of a district and the city, a district management entity should be required to demonstrate that it can properly manage the districts' activities.
- b) The city should require that district management entities submit a detailed business plan describing how they will manage the district's operations. The business plan should detail district governance, financial management, service implementation, procurement management, management of the public realm, and ratepayer (property owner) engagement. Submission of a business plan provides not only transparency but is also one demonstration of a district management entity's knowledge, experience, and capacity.

5) Budget Setting Process and Operating Plan

- a) The city should develop standardized requirements for what information must be included in a district's annual operating plan. The operating plan should include a description of the district's proposed objectives for the year, its services and activities, its annual budget, its service charge method of assessment, its service map, its performance measurements and its outreach and engagement activities.

6) Eligible Services

- a) The city should replicate the approach it used for the DID with new Self-Managed SSDs whereby it allows services to be proposed in the district's operating plan and approved annually by the city. This approach retains the city's ability to approve specific eligible services while providing districts with a flexible mechanism to respond to the changing needs of a district over time.
- b) The city should develop specific policies regarding the eligibility of SSD funds for certain administrative costs and for certain activities not directly performed within the public right of way. Examples of administrative costs that the city might want to clarify in a policy include staffing, office space and supplies, acquisition of equipment, professional services, insurance, food and beverage purchases, professional development, organizational memberships, etc. Examples of non-right-of-way services that the city might want to clarify in a policy include SSD-funded advocacy and lobbying activities, marketing and events, business recruitment and retention, fundraising activities, grant programs, sponsorships, etc.

7) Procurement of Services

- a) The city should replicate the approach it used for the DID with new Self-Managed SSDs whereby it sole-sources the contract between the city and the district management entity. A group of property owners is highly unlikely to pursue the creation of a Self-Managed SSD for its commercial area if responsibility for managing the district could be awarded to another group via a competitive bidding or RFP process.
- b) The city should replicate the approach it used for the DID with new Self-Managed SSDs whereby it approved certain procurement related ordinance exemptions. The procurement policy exemptions and flexibility granted to the DID are found almost universally in districts across the nation.
- c) The city should develop specific policies relating to a district's provision of services, and its accounting policies, procedures and responsibilities. Creating such policies would provide consistency across all Self-Managed SSDs.

8) Operational and Financial Transparency

- a) The city should require all district management entities to comply with Minnesota Open Meeting laws and related provisions. Open meetings would provide city staff as well as property owners and the general public the opportunity to understand and monitor a district's activities.
- b) The city should continue to require all district management entities to comply with Minnesota's Government Data Practices Act and related provisions. Accessing information from a district should be frictionless for city staff as well as property owners and the general public.
- c) The city should develop a detailed list of reporting and other information that a district must submit on a scheduled basis, including financial reporting and performance reporting.
- d) The city should require that all district management entities maintain a public website with district information such as annual operating plans, annual reports, schedule of upcoming board and committee meetings, meeting minutes, etc.
- e) The city should require enhanced transparency of a district's program management and administrative expenses.

9) Oversight

- a) The city should establish a more formalized internal city process for conducting in-depth reviews of proposed operating plans and budgets, as well as, in-depth reviews of the required periodic financial reporting and performance reporting. This process should include staff from multiple city departments including Public Works, Finance, and the City Attorney's office.

10) District Sunset and Renewal

- a) The city should replicate the approach it used for the DID with new Self-Managed SSDs whereby it establishes a district with a five-year automatic sunset unless it is renewed by property owners. Sunset and renewal provisions for business improvement districts are very common across the nation.

11) Implementation procedures

- a) The city should develop detailed implementation procedures, including, but not limited to, oversight review processes and reporting, financial reporting forms and processes, petition forms and processes, and service charge assessment documentation and processes.