

EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION
Statutory Authority: 22 Delaware Code, Section 1903 (22 **Del.C.** §1903)

GENERAL NOTICE

PUBLIC NOTICE

Guidelines Governing the Administration and Review of Applications for Designation as Downtown Development Districts

The November 2014 *Register of Regulations* included proposed guidelines relating to the administration and review of applications for designation as Downtown Development Districts (the "Guidelines"). See 18 DE Reg. 359 (11/01/14) (Prop.). As set forth in the Guidelines, public comments were accepted through November 30, 2014. In the November *Register*, the proposed procedures were incorrectly designated as Regulations. For that reason, the Guidelines have been designated for inclusion in the General Notice section of the January 2015 *Register of Regulations*, and will not be included in the Administrative Code. No changes were made to the Guidelines as a result of the public comment period described above.

Guidelines Governing the Administration and Review of Applications for Designation as Downtown Development Districts

1.0 Authority

These guidelines are authorized pursuant to 22 **Del.C.** §1903.

2.0 Background and Purpose

2.1 On June 5, 2014, Governor Markell signed Senate Bill 191, the Downtown Development Districts Act. The purposes of the Act are:

2.1.1 To spur private capital investment in commercial business districts and surrounding neighborhoods;

2.1.2 To stimulate job growth and improve the commercial vitality of such districts and neighborhoods;

2.1.3 To help build a stable community of long-term residents in such districts and neighborhoods by improving housing opportunities for persons of all incomes and backgrounds; increasing homeownership rates; building a diverse array of successful businesses; and reducing the number of vacant houses; and

2.1.4 To help strengthen neighborhoods, while harnessing the attraction that vibrant downtowns hold for talented young people, innovative small businesses, and residents from all walks of life.

2.2 Under the Act, the Office of State Planning is responsible for administering the application process. The purpose of these Guidelines is to establish procedures relating to the administration and review of Applications for Designation as Downtown Development Districts.

3.0 Definitions

"Act" means the Downtown Development Districts Act, 22 **Del.C.** §1901 *et seq.*

"Agency Liaison" means the person designated by the Secretary or Director of a Reviewing Agency to fulfill the Reviewing Agency's obligations under §6.0 hereunder.

"Applicant" means any municipality or unincorporated area (as such terms are defined in the Act) filing an Application.

"Application" means the Application for Designation as a Downtown Development District promulgated by the Office in accordance with the Act.

"Central Business District" means an area around the downtown portion of a city or town that allows for higher intensity residential uses as well as commercial, office, personal services, governmental, and similar uses intended to serve the community and surrounding areas of the city or town.

"CCSPI" or "Committee" means the Cabinet Committee on State Planning Issues established pursuant to the Delaware Planning Act, 29 **Del.C.** §9101 *et seq.*

"DDD," "District," or "Downtown Development District" means an area within a municipality or unincorporated area designated as a Downtown Development District in accordance with the Act.

"District Plan" means the strategic plan or other detailed description of the overall strategy for the development of a proposed district submitted by the municipality or unincorporated area as part of its Application.

“Downtown” means that portion of a city, town, or unincorporated area that traditionally comprises its downtown or central business district, as determined by such city, town, or unincorporated area in accordance with guidelines promulgated by the Office.

“Local Incentives” means the incentives offered by an Applicant as part of its Application that address local economic and community conditions, and that will help achieve the purposes set forth in the Act.

“Office” or “OSPC” means the Office of State Planning Coordination.

“Reviewing Agency” means any State Agency assigned by the Office to review and provide comments regarding an Application or any portion thereof.

“Staff Report” means any report prepared by the Office, with assistance from Reviewing Agencies, to aid the Committee in determining which Applications to recommend to the Governor for District designation.

4.0 Responsibilities of Office of State Planning Coordination

In accordance with the Act, the Office:

- 4.1 Shall develop the Application and other supporting materials and information, with input from other state agencies as appropriate;
- 4.2 Shall solicit Applications, at the request of the Governor, from municipalities and unincorporated areas to have areas designated as Downtown Development Districts;
- 4.3 Shall provide assistance to potential Applicants and other stakeholders in connection with the Application process;
- 4.4 Shall evaluate completed Applications and present recommendations to the Committee in accordance with §7.0 below; and
- 4.5 Shall perform such tasks assume such other responsibilities as may arise from time to time in connection with the administration and review of Applications.

5.0 Content of Applications

5.1 In accordance with §1903(c) of the Act, the Application shall include but not be limited to the following elements:

5.1.1 Need and Impact

- 5.1.1.1 The Application must require the Applicant to describe the need for the incentives that will be available in the proposed District, and to describe the potential positive impacts that are likely to accrue due to District designation.
- 5.1.1.2 Whenever possible, the Application should require the Applicant to demonstrate need and impact through the use of U.S. Census data or other objective information.
- 5.1.1.3 The Applicant shall be permitted to submit as part of its Application any additional information it deems relevant to demonstrate the need for and potential impact of the proposed District designation.

5.1.2 District Plan

- 5.1.2.1 The Application must require the Applicant to submit a detailed description of the overall strategy for the development of the proposed District, with such maps, descriptions, and other information as the Office may require.
- 5.1.2.2 At minimum, the Application:
 - 5.1.2.2.1 Must require each District Plan to describe the key actions and strategies that will be used to guide growth and revitalization efforts in the proposed District;
 - 5.1.2.2.2 Must require each Applicant to demonstrate that the District Plan is consistent with its certified Comprehensive Plan, the *Strategies for State Policies and Spending*, and any other applicable local planning documents or studies;
 - 5.1.2.2.3 Must require each Applicant to include its Central Business District in its District Plan; and
 - 5.1.2.2.4 Must provide that the proposed District shall be contiguous.
- 5.1.2.3 In addition, the Application must state that Districts shall be subject to maximum acreage requirements as determined by the Office. For the initial round of Applications, Districts shall be subject to the following area limitations, based on the most recent U.S. Census data:
 - 5.1.2.3.1 No more than 85 acres in area for jurisdictions having a population of less than 9,000 persons; and
 - 5.1.2.3.2 No more than 170 acres for jurisdictions having a population between 9,000 and 30,000 persons; and

5.1.2.3.3 No more than 225 acres for jurisdictions having a population greater than 30,000 persons.

5.1.3 Local Incentives

5.1.3.1 The Application must require the Applicant to propose Local Incentives that will help achieve the purposes set forth in the Act, as set forth in §2.1 above. These incentives must address local economic and community conditions, and may include but not be limited to reductions in fees or taxes, permit process and licensing reform, special zoning districts, and exemptions from local ordinances.

5.1.3.2 Upon designation as a District the Applicant shall be required to implement the proposed Local Incentives for the duration of the District designation.

5.1.4 Resolution

5.1.4.1 The Application shall require the Applicant to provide a resolution adopted by its governing body stating that the governing body supports the Application and will adhere to the District Plan and the Local Incentives for the duration of the District designation.

5.1.4.2 Upon the written approval of the Office, the Applicant may provide a resolution adopted by its governing body that deviates from the requirements of §5.1.4.1. In no event, however, shall the requirement to provide a resolution be waived.

5.2 In addition to the above, the Office may include such other provisions and adopt such other requirements in connection with the Application process as may be necessary or desirable in connection with the consideration of Applications, or any of them.

6.0 Initial Review by Office; Comments from Reviewing Agencies

6.1 Immediately following the Application deadline, the Office will conduct an initial review to determine the completeness of each Application and, if necessary, to request and receive additional clarifying information.

6.2 If the Office determines that a Reviewing Agency has expertise relevant to the consideration of any Application, the Office may forward the Application or any portion thereof to the Reviewing Agency for review and comment.

6.3 Each Reviewing Agency will designate an Agency Liaison to serve as the Office's point of contact during the Application process. The Agency Liaison will ensure that the Reviewing Agency reviews and provides comments on the Application in accordance with the deadlines established by the Office. Reviewing Agencies are advised that the Office may request responses on an expedited basis.

6.4 Comments by Reviewing Agencies shall address:

6.4.1 The principal strengths of the Application from the Reviewing Agency's perspective, including those considerations set forth in §8.0 that are within the Reviewing Agency's area of expertise;

6.4.2 The principal weaknesses of the Application from the Reviewing Agency's perspective, including those considerations set forth in §8.0 that are within the Reviewing Agency's area of expertise; and

6.4.3 Such other information as the Reviewing Agency shall determine is relevant to its consideration of the Application and the District Plan and Local Incentives contained therein.

7.0 Staff Reports and Recommendations—Procedure

7.1 Following a review of each Application and comments from Reviewing Agencies, the Office will prepare a Staff Report to assist the Committee in fulfilling its obligations under §9.0 below.

7.2 The Office will summarize or incorporate in the body of each Staff Report those comments from Reviewing Agencies that the Office determines are relevant to its review of the underlying Application. In addition, the Office may attach *verbatim* the comments of the Reviewing Agency as an exhibit to such Staff Report.

7.3 Upon completion of all Staff Reports, the Office will determine which Applications, in its opinion, have the greatest potential for accomplishing the purposes of the Act, as set forth more fully in §2.1 above.

7.3.1 In distinguishing among competing Applications, the Office will evaluate Applications in accordance with the considerations set forth in §8.0 of these Guidelines.

7.3.2 For the initial round of District designations, the Office will make separate recommendations pursuant to §7.3 for each county.

7.4 The Office will present each Staff Report, as well as its recommendations pursuant to §7.3 above, at the next meeting of the Committee. Copies of all Staff Reports, recommendations, and other relevant materials will be provided to members of the Committee at least ten (10) days prior to the date of such meeting.

8.0 Evaluation of Applications

8.1 General Principles

8.1.1 It is understood that Applicants will be given significant flexibility and authority to create a District Plan and propose Local Incentives that best meet the needs of their communities. As a result, each Application will be different, and the evaluation of each Application will require qualitative judgments as well as quantitative factors.

8.1.2 Notwithstanding the above, a substantive framework is necessary to assist the Office and Reviewing Agencies in determining which Applications have the greatest potential for accomplishing the purposes of the Act in accordance with §2.1 above, and to distinguish among competing Applications. To that end, Applications will be reviewed in accordance with the considerations set forth in this section.

8.1.3 Nothing in this section shall be construed to prohibit the establishment or consideration of such other matters as may be necessary or desirable in connection with the consideration of any Application.

8.2 Need and Impact – Need and impact factors will account for 50 percent of the consideration given to each Application. Evaluation of need and impact may include but shall not be limited to the following:

8.2.1 Economic considerations, including median income, poverty rate, and percentage of low- and moderate-income residents or households;

8.2.2 Considerations relating to housing and community conditions, including the number or percentage of vacant or abandoned properties, homeownership and rental rates, median home value, and average or median age of dwelling units or structures;

8.2.3 Other considerations as set forth in the Application pursuant to §5.1.1.2, which may include but shall not be limited to considerations relating to population, crime, and education levels; and

8.2.4 The Applicant's description of the potential positive impacts that are likely to result from District designation.

8.3 District Plan – The District Plan will account for 30 percent of the consideration given to each Application. Evaluation of each District Plan may include but shall not be limited to the extent to which:

8.3.1 The District Plan is consistent with sound planning principles, including the extent to which:

8.3.1.1 The size and shape of the proposed District make sense from an urban planning and revitalization perspective;

8.3.1.2 The District Plan clearly and specifically identifies the types of projects and uses intended to be promoted—and discouraged—within the proposed District, for purposes of administering the DDD Grant Program and otherwise;

8.3.1.3 The District Plan is consistent with the Applicant's certified Comprehensive Plan, the *Strategies for State Policies and Spending*, and any other applicable planning documents or studies;

8.3.1.4 The District Plan is well-coordinated, with clear lines of authority among local government agencies, members of the community, for- and non-profit organizations, and other stakeholders;

8.3.1.5 The District Plan complements and is consistent with existing revitalization efforts, including (if applicable) any historic districts or business improvement districts; and

8.3.1.6 The District Plan promotes energy-efficient and environmentally sensitive development, and addresses the potential effects of flooding and sea level rise as applicable;

8.3.2 The District Plan is likely to leverage significant private funding, including whether District designation is likely to assist or result in specific projects moving forward within the first six (6) to twelve (12) months of District designation;

8.3.3 District designation is likely to benefit a wide variety of stakeholders, including investors and other businesses (large and small, non-profit and for-profit), homeowners, and other stakeholders;

8.3.4 The District Plan evidences input from, and the support of, such stakeholders;

8.3.5 The extent to which the proposed District concentrates benefits in as small an area as possible, which may but shall not be required to include prioritization, phasing, and/or timing of redevelopment activities as appropriate to maximize the effectiveness of District incentives;

8.3.6 The key actions and strategies proposed in the District Plan are realistic in light of existing economic and other conditions;

8.3.7 The District Plan encourages accountability by establishing clear lines of responsibility for the applicant to meet its District obligations; and

8.3.8 The District Plan evidences a strong and sustained commitment of the Applicant to ensure the long-term success of the District, to the extent it is so designated.

8.4 Local Incentives – The Local Incentives shall account for 20 percent of the consideration given to each Application. Evaluation hereunder may include but shall not be limited to the extent to which the proposed Local Incentives:

- 8.4.1 Are coordinated with and integrated into the District Plan, i.e., they support the specific initiatives contained in or contemplated by such Plan;
- 8.4.2 Are likely to leverage significant private funding;
- 8.4.3 Are meaningful and substantial, thereby demonstrating the Applicant's commitment to the success of the proposed District;
- 8.4.4 Are likely to benefit a wide variety of stakeholders, including those stakeholders described in §8.3.3 above;
- 8.4.5 Promote energy-efficient and environmentally sensitive development, and address the potential effects of flooding and sea level rise as applicable;
- 8.4.6 Are user-friendly, easy to understand, and to the extent possible, cut or minimize red tape;
- 8.4.7 Clearly and specifically describe which person(s) are responsible for ensuring that the Local Incentives are available throughout the life of the District; and
- 8.4.8 Are measurable with respect to determining the success or failure of such Local Incentives in accomplishing the purposes of the Act, as set forth more fully in §2.1 above.

9.0 Committee Review of Applications

- 9.1 At a reasonable time following the close of the Application period, a meeting of the Committee will be convened to consider, discuss, and evaluate the Applications.
- 9.2 At such meeting, the Office shall present to the Committee each Application and associated Staff Report, as well as the Office's recommendations in accordance with §7.3 above. The Committee shall give significant weight to the Staff Reports and the recommendations contained therein, but shall not be bound thereby.
- 9.3 At the conclusion of the meeting, the Committee shall recommend to the Governor those applications with the greatest potential for accomplishing the purposes of the Act. In connection therewith, the Committee shall consider the provisions of §§2.1 and 8.0 above.
- 9.4 Recommendations of the Committee shall be made by a resolution adopted by no less than a majority of Committee members present. If the Committee is unable to adopt a resolution at the conclusion of the meeting, the Committee shall defer its recommendations until the next meeting, which shall be scheduled at the earliest possible opportunity in accordance with FOIA. In connection therewith, the Committee may request that the Office provide additional information relevant to its consideration of Applications hereunder.
- 9.5 As soon as is practicable following the date upon which the Committee issues its recommendations, the Office shall forward to the Governor:
 - 9.5.1 All Applications recommended by the Committee in accordance with this §9.0, and any supporting materials submitted by the Applicant in connection therewith;
 - 9.5.2 All Staff Reports prepared by the Office and presented to the Committee in connection with such Applications, including all comments of Reviewing Agencies;
 - 9.5.3 The minutes of the Committee meeting held pursuant to §9.0 above; and
 - 9.5.4 Such other information as the Office or the Committee shall deem relevant, or as otherwise requested by the Governor or his designee(s).

10.0 Review and Designation; Agreements Evidencing Designation

- 10.1 As set forth in §1904(b) of the Act, following receipt of any Application set forth in §9.5 above, the Governor:
 - 10.1.1 Shall approve the Application for immediate designation as a District; or
 - 10.1.2 Shall approve the Application for designation as a District, effective one (1) year from the date of such determination by the Governor; or
 - 10.1.3 Shall deny such Application.
- 10.2 In connection with the Designation of any District hereunder, the Office may require the successful Applicant to execute such documents and enter into such agreements as may be necessary or desirable in connection with such designation and the rights and obligations of the Applicant thereunder.

11.0 Preservation of Applications

- 11.1 Any Application that is not approved for District designation will remain on file with the Office for a period of not less than four (4) years from the date the original Application was filed.
- 11.2 In subsequent Application periods, any Applicant whose Application remains on file will not be required to submit an entirely new Application. Instead, the Office will request that the prior Applicant revise, amend, or supplement only those portions of the prior Application as necessary to update the Application for consideration in the subsequent round of Applications.

- 11.3 Nothing in this section shall prohibit or prevent the prior Applicant from revising, amending, or supplementing such portions of the Application as may be necessary to improve upon the prior Application and to better position the Applicant for District designation in the subsequent round of Applications.
- 11.4 Notwithstanding the foregoing, a prior Applicant seeking to renew its Application in any subsequent round of Applications shall be required to obtain and submit a new Resolution in accordance with §5.1.4 above.

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