

## Planning for P3 Success

**PUBLIC-PRIVATE PARTNERSHIPS**, or P3s, are one of the more complex—and mutually beneficial—vehicles for the development of public buildings or other projects in the public interest. Traditionally, when a city wants to build a new public building or develop a mixed use affordable housing project within a transit-oriented development district, it must act as both developer and financier, which can be challenging for city departments and costly to taxpayers.

By entering into a public-private partnership—a joint venture between public and private entities—a city can outsource those cumbersome responsibilities to a developer with construction experience and access to multiple avenues of equity and financing. In exchange for these efficient, higher quality, and more cost-effective products, cities often grant developers benefits such as the right to receive rent from the development's commercial uses or other real estate rights.

A P3's effectiveness greatly depends on collaboration between all stakeholders—citizens, local businesses, even city departments. If everyone isn't on board, a P3's chances of success are extremely low. Fortunately, with some preparatory legwork—particularly when it comes to land-use and other planning considerations—cities can set themselves up for success.

### Clearing the path

Complexity of process, potential public opposition, contested competitive procurement issues, and municipal office turnover are just a few of the many challenges that can derail P3s at numerous junctures. Another is the critical, yet sometimes overlooked, preparatory analysis of a P3's planning and zoning implications.

Failure to address planning and zoning considerations in advance can lead to land-use issues that delay or even stop the P3 project. To prevent this, municipalities should ask their planning departments to iron out certain issues prior to soliciting bids for P3s or proceeding forth with an unsolicited offer for a project. Questions might include: Are the intended uses and desired dimensions allowed under current zoning code and comprehensive plan designations? What public approval processes will be triggered? How might the development phase, including site plan and building permit approvals, most easily navigate bureaucratic red tape? What development guidelines should a city insert into an RFP so bidders' submissions fit desired construction parameters?

Let's say a city wants to construct an eight-story, mixed use public parking garage to alleviate a parking shortage and meet an

increased demand for ground-floor retail. In a typical P3, a municipality would initiate the project through issuance of an RFP or RFQ. While state statutes and local ordinances establish required procedures for most jurisdictions, such regulations usually cover only baseline requirements (mandatory public notice or minimum number of days to receive bids), failing to address myriad development issues that risk inconsistency between a proposed project and what is allowed under the municipality's code.

The development and land-use requirements governing a project are vital components of a P3. Characteristics like height, density, square footage, and setbacks should be incorporated into an RFP—not developed after bids are received. Such preliminary planning not only helps cities navigate the P3 process, but also creates a framework for bidders to understand the development goals up front. With a framework in place, conflicts between regulations currently in effect and desired goals will be minimized,

and issues ranging from political opposition to project termination are less likely to occur.

Now let's assume a city has selected a developer for this P3 project and is prepared to move forward with development. What if the land has underlying zoning and future land-use designations incompatible with the desired use? The city could be required to undergo months of amendments to the zoning map and comprehensive plan. In such cases, because there is no guarantee the amendments will receive final approval, the city's P3 could be hit with a major roadblock.

### Preemption practices

There are multiple options available to streamline the land-use approval process relating to a P3. For example, a city could amend its code to require that all city-acquired land automatically converts to a

“municipal” zoning and comprehensive plan designation upon acquisition. Through such a mechanism, cities can avoid lengthy and cumbersome rezoning and comprehensive planning processes upon site acquisition.

Similarly, a city code can provide that, relative to projects on city land, a city's design review board or historic preservation board has only advisory rather than decision-making authority for site plan approval. This ex-ante rewriting of a code can avoid an awkward situation where the city's land use boards are rejecting or imposing major restrictions upon the city government's own projects. Further, a city could provide that its referendum requirement for transfers of city land do not apply to cases in which the transfer is connected with a P3 having a public purpose and where the city will ultimately own the project. ■

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