

Metro District

Objective:

To provide guidelines and parameters to be considered when reviewing, developing and approving service plans for Title 32 Metropolitan Districts.

Applicability:

Applies to all Metro Districts formed by the City of Fort Collins

Authorized by:

City Council Resolution 2008-069

10.1 Introduction

- A. The City establishes the following as its Special District policy for (i) the review and approval or disapproval of Service Plans, including any amendment thereof, for the creation of a Metropolitan District ("District") pursuant to Title 32, Article 1 of the Colorado Revised Statutes (the "Act"); and (ii) for the regulation of those Districts. This Policy is intended as a guide only. Nothing in this document is intended, nor shall it be construed, to limit the discretion of City Council, which retains full discretion and authority regarding the terms and limitations of all District Service Plans
- B. The City generally supports the formation of a District where it is demonstrated that a District is needed to provide public improvements to local development and will result in enhanced benefits to existing or future business owners and/or residents of the City and the District, whether such enhanced benefits are provided by the District or by the entity developing the District because the District exists to provide public improvements. A District may be permitted to conduct ongoing operations and maintenance activities where it can be demonstrated that having the District provide operations and maintenance is in the best interest of the City and the existing or future taxpayers of the District.
- C. For a District whose primary revenue source is property taxes, and in the absence of special circumstances, District formation will not be favorably received where the

future assessed value of all property within the District at full build-out is projected to be less than ten million dollars (\$10,000,000). The ten million dollar assessed valuation threshold, for Districts whose primary revenue source is property taxes, will increase biennially after 2008 to adjust for increases in the Consumer Price Index for the Denver-Boulder-Greeley statistical region as prepared by the U.S. Bureau of Labor Statistics. Special circumstances and special cause must be demonstrated for exceptions to be granted.

- D. All Districts and all persons or entities developing property within a District must comply with all provisions of the City Code and Land Use Code and all related standards.
- E. The City generally supports the formation of a District where the projected use is primarily commercial. The City will not approve a Service Plan proposing a residential use only. However, mixed use may be considered as long as the Service Plan clearly identifies that the project is predominately commercial. "Predominately commercial" as used in this Policy shall mean that the assessed value derived from non-residential usage is no less than 90% of the assessed value of the entire project. The actual market value of the project may differ from the assessed value for the project.
- F. A District, when properly structured, can enhance the quality of development in the City. The City is receptive to District formation as an instrument to provide competitive financing for projects, build better and enhanced infrastructure, and, where needed, create a quasi-governmental entity to provide essential improvements which are otherwise not available and could not be practically provided by the City or any other existing municipal or quasi-municipal entity, including existing special districts, within a reasonable time and on a comparable basis. It is not the intent of the City to create multiple entities which could be construed as "competing governments." Formation of a District will not be favorably received if the District will be used to fund basic infrastructure improvements normally required of new development.

10.2 Service Plans

- A. Any Service Plan submitted to the City for approval must comply with all state, federal and local laws and ordinances, including the Act.
- B. The Service Plan must include all information required by the Act.
- C. The Service Plan must enumerate and describe all powers requested on behalf of the District. Demonstration of the need or benefit of each power is required. Powers which are not clearly needed will not be approved in the Service Plan.
- D. Any intergovernmental agreement which is required, or known at the time of formation of the District to likely be required, to fulfill the purposes of the District, must be described in the Service Plan, along with supporting rationale. The Service Plan must provide that execution of intergovernmental agreements which are likely to cause a substantial increase in the District's budget and are not

described in the Service Plan will require the prior approval of City Council.

- E. The Service Plan must include the description of any planned inclusion into, or exclusion of property from, the District's boundaries known at the time of the submittal of the Service Plan. The Service Plan must provide that inclusions or exclusions by the District that are not described in the Service Plan will require the prior approval of City Council.
- F. The Service Plan must describe any planned extraterritorial service agreement. The Service Plan must provide that any extraterritorial service agreements by the District that are not described in the Service Plan will require the prior approval of City Council.
- G. The Service Plan must contain language that prohibits the District from using powers of eminent domain. However, the City may choose to exercise its powers of eminent domain to construct public improvements within the District in which case the District and City will enter into an intergovernmental agreement concerning the public improvement and funding for the use of eminent domain.
- H. The Service Plan must restrict the District's total mill levy authorization for both debt service and operations and maintenance to forty (40) mills (the "Maximum Mill Levy"), subject to adjustment as provided below. It is anticipated that a portion of the Maximum Mill Levy may be utilized by the District to fund operations and maintenance functions, including customary administrative expenses incurred in operating the District such as accounting and legal expenses and otherwise complying with applicable reporting requirements. The District's Board of Directors will have full discretion to determine what portion of the Maximum Mill Levy may be levied for debt service and what portion for operations and maintenance. For example, a District levying 30 mills for debt service and 5 mills for operations would be in compliance, as would a District levying 20 mills for debt service and 15 mills for operations. In both examples, the total mill levy of the Districts would be 35 mills, which is within the Maximum Mill Levy. The Maximum Mill Levy may be adjustable from the base year of 2008; provided, however, that in the event the method of calculating assessed valuation is changed after the base year of 2008, the mill levy limitation applicable to such debt may be increased or decreased to reflect those changes, the increases or decreases to be determined by the District Board in good faith (that determination to be binding and final), so that to the extent possible, the actual tax revenues generated by the District's mill levy, as adjusted, for changes occurring after January 1, 2008, are neither diminished nor enhanced as a result of the changes. For purposes of the foregoing, a change in the ratio of actual valuation to assessed valuation will be a change in the method of calculating assessed valuation.
- I. The Service Plan must include Debt and operating financial projections prepared by an investment banking firm or financial advisor qualified to make such projections (the "Financial Plan"). The financial firm must be listed in the Bond Buyers Marketplace or, in the City's sole discretion, other recognized publication as a provider of financial projections. The Financial Plan must include debt issuance and service schedules and

calculations establishing the District's projected maximum debt capacity (the "Total Debt Limitation") based on assumptions of (i) the projected interest rate on the debt to be issued by the District; (ii) the projected assessed valuation of the property within the District; and (iii) the projected rate of absorption of the assessed valuation within the District. These assumptions must use market-based, market-comparable valuation and absorption data and may use an annual inflation rate of three percent (3%) or the Consumer Price Index for the preceding 12 month period for the Denver-Boulder-Greeley statistical region as prepared by the U.S. Department of Labor Statistics, whichever is greater. The Total Debt Limitation set forth in the Service Plan must not exceed 100% of the projected maximum debt capacity as shown in the Financial Plan. The Financial Plan must also include foreseeable administrative and operation and maintenance costs.

- J. If, after the Service Plan is approved, the State Legislature includes additional powers or grants new or broader powers for Districts by amendment of Part 10 of Article 1, Title 32, C.R.S., no such powers will be available to or exercised by an existing District without the prior approval of the City Council.
- K. Every Service Plan must include, in addition to all materials, plans and reports required by the Act, an Infrastructure Preliminary Development Plan ("PDP"). This PDP must include, at a minimum, a map or maps, and construction drawings of such scale, detail and size as required by the Planning Department, providing an illustration of public improvements proposed to be built, acquired or financed by the District, along with a written narrative and description of those items and a general description of the District's proposed role with regard to the same. Due to the preliminary nature of the PDP, the Service Plan must indicate that the City's approval of the PDP shall not bind the City's reviewing and making land use approvals. Approval of the PDP must precede or be concurrent with approval of the Service Plan.
- L. Development Fees must not be imposed by the District unless the Development Fees are identified with particularity in the Service Plan and the Financial Plan.

10.3 Bonded Indebtedness

- A. Original issuance of bonded indebtedness by the District prior to build-out is limited to that debt which can be sized, serviced and defeased with no more than the Maximum Mill Levy as described in Paragraph H of the Service Plans Section above.
- B. The District will be limited to issuing new debt as provided in the Financial Plan. In the absence of evidence that development phasing will be of a duration that makes it impracticable to issue all debt within a fifteen-year period, or other special circumstances, the Service Plan must provide that all new debt will be issued within a period of fifteen (15) years from the date of the District's formation. Debt issued by the District will have a maximum maturity of thirty (30) years for each series of debt. The restrictions on issuance will not pertain to refundings, but the thirty-year maximum maturity does apply to refundings unless such refundings result in a net present value savings as set forth in Section 11-56-101, *et seq.*, C.R.S., and are otherwise

permitted by law.

10.4 Multiple-District Structures

- A. It is the intent of the City that citizen/resident control of Districts is encouraged to occur as early as possible.
- B. Multiple-District structures may be proposed in the following situations:
 - 1. The projected absorption of the project and the public improvements to be financed are reasonably projected to occur over an extended period of time after the date of organization of the District.
 - 2. The project has varying projected uses, such as residential and commercial. Service Plans proposing mixed use must, at a minimum, reflect that 90% of the assessed value is derived from non-residential usage. The actual market value of the project may differ greatly from the 90% assessed value for non-residential.
- C. The Service Plan must fully describe the need, reasoning and mechanics if a Multiple-District structure is proposed.

10.5 Dissolution of District

The Service Plan must provide for dissolution of the District, and all debts and financial obligations of the District must be defeased as well, no more than 40 years after the Service Plan is initially approved. Additionally, the Service Plan must provide that the District is obligated to obtain the approval of the City Council 20 years after organization of the District (and every ten (10) years thereafter) in order to continue providing operations and maintenance services; provided, however, that failure to obtain such approval shall not be considered a material modification unless such approval is not obtained forty-five (45) days after written notice to the District by the City of the need to request such approval.

10.6 Default of District

- A. In the event that a District fails to pay its debt when due or defaults in the performance of any obligation that has been agreed to between the District and the City, which obligation has been identified by the City in writing as a material obligation, and such default is continuing after the delivery of notice thereof to the District and the expiration of any cure periods, the District shall be precluded from issuing additional debt except refunding bonds issued to avoid or to cure a payment default, without the prior approval of the City Council.
- B. In the event that a court of competent jurisdiction has made a final, unappealable determination that a District has defaulted on any of its financial obligations, the

District will be precluded from issuing additional debt, except to refund or refinance a financial obligation for the purpose of avoiding or curing a default, without receiving written permission from the City Council following a public hearing on the matter.

- C. In the event of a material modification of the Service Plan, the City and the electors of the District will be entitled to exercise their respective rights under the Act. Departures from the Service Plan that constitute a material modification include without limitation:
1. actions or failures to act that create greater financial risk or burden;
 2. performance of a service or function or acquisition of a major facility that is not closely related to a service, function or facility authorized in the Service Plan; and
 3. failure to perform a service or function or acquire a facility required by the Service Plan.

Actions that are not to be considered material modifications include without limitation changes in quantities of facilities or equipment, immaterial cost differences, and actions expressly authorized in the Service Plan. Following formation of the District, the District's Board of Directors may, from time to time, submit a letter to the City Manager, or designee, outlining the proposed actions of the District for which the Board of Directors is unclear as to whether a Service Plan amendment is required. The City Manager, or designee, will determine whether an amendment to the Service Plan is required under the provisions of this Policy and Section 32-1-207, C.R.S., and then provide a copy of the determination to the District's Board of Directors.

10.7 Annual Report

- A. The Service Plan must obligate the District to file an annual report not later than September 1 of each year with the City Clerk for the year ending the preceding December 31, the requirements of which may be waived in whole or in part by the City Council or the City Manager.

Unless waived by the City the Service Plan must require the annual report to include the following:

1. A narrative summary of the progress of the District in implementing its Service Plan for the report year;
2. Except when exemption from audit has been granted for the report year under the Local Government Audit Law, the audited financial statements of the District for the report year including a statement of financial condition (*i.e.*, balance sheet) as of December 31 of the report year and the statement of operations (*i.e.*, revenues and expenditures) for the report year;
3. Unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the District in development of improvements in the report year;

4. Unless disclosed within a separate schedule to the financial statements, a summary of the financial obligations of the District at the end of the report year, including the amount of outstanding indebtedness, the amount and terms of any new District indebtedness or long-term obligations issued in the report year, the amount of payment or retirement of existing indebtedness of the District in the report year, the total assessed valuation of all taxable properties within the District as of January 1 of the report year and the current mill levy of the District pledged to debt retirement in the report year; and
 5. Any other information deemed relevant by the City Council or deemed reasonably necessary by the City Manager.
- B. In the event the annual report is not timely received by the City Clerk or is not fully responsive, notice of such default shall be given to the District Board at its last known address. The failure of the District to file the annual report within forty-five (45) days of the mailing of such default notice by the City Clerk may constitute a material modification of the Service Plan, at the discretion of the City.

10.8 Sanctions

Should any District undertake any act which constitutes a material modification to the Service Plan, the City Council may impose one (1) or more of the following sanctions, as it deems appropriate:

1. Exercise any applicable remedy under the Act;
2. Withhold the issuance of any permit, authorization, acceptance or other administrative approval, or withhold any cooperation, necessary for the District's development or construction or operation of improvements or provision of services;
3. Exercise any legal remedy under the terms of any intergovernmental agreement under which the District is in default; or
4. Exercise any other legal remedy, including seeking injunctive relief against the District, to ensure compliance with the provisions of the Service Plan or applicable law.

10.9 Review and Approval Process

- A. Once the City Manager has established compliance with this Policy, the City Manager will, within a reasonable time, place before the City Council for its consideration a resolution approving the Service Plan. The resolution will be processed and governed by the City Charter and the City Code.
- B. The proponents of the District must cause a notice of the public hearing at which the proposed resolution is to be considered by the City Council to be mailed by first class mail to the owners of record of all property within the proposed District and within any inclusion area specifically identified in the Service Plan, as such owners of

record are listed on the records of the County Assessor. The mailed notice must be made at least ten (10) days prior to the public hearing on the resolution. The notice shall include the following:

1. A description of the general nature of the proposed services and public improvements to be provided by the District;
 2. A description of the property to be included in the District and the inclusion area (if any), which description will be by street address, by reference to lots or blocks on any recorded subdivision plat thereof, or by metes and bounds if not subdivided, by tax identification number or by any other method reasonably calculated to apprise owners of the property to be included in the District;
 3. The place at which a copy of the Service Plan may be examined;
 4. The date, time and place of public hearing on the Service Plan;
 5. A statement that all protests and objections must be submitted in writing to the City Manager at or prior to the public hearing, in order to be considered; and
 6. A statement that all protests and objections to the District, as proposed, will be deemed to be waived unless presented in writing at the time and in the manner specified in this subsection.
- C. The resolution will be conclusive of the City's determination on the Service Plan. No action or proceeding, at law or in equity, to review any acts or proceedings or to question the validity of the Council's determination pursuant to this Policy, whether based upon irregularities or jurisdictional defects, will be maintained unless commenced within 30 days after the adoption of the Council's ordinance, or else be thereafter perpetually barred. In the manner and to the extent provided in this Policy, City Council will maintain continuing jurisdiction over the operations and affairs of the District and will exercise its rights in relation thereto, as deemed appropriate by City Council, pursuant to the Act and as consistent with this Policy.

10.10 Fees

With the submittal of a Service Plan, the entity proposing the District must also submit to the City Clerk the following amounts:

1. a non-refundable application fee not to exceed \$2,000; and
2. a \$10,000 deposit to reimburse the City for staff, legal, and consultant

A request for an amendment or modification to a Service Plan must be submitted to the City Clerk and be accompanied by the following:

1. a non-refundable application fee not to exceed \$250; and
2. a \$1,500 deposit to reimburse the City for staff, legal, and consultant time.

The City may draw against the deposits referred to above based upon then current hourly rates (including benefits) of employees working on the Service Plan and the applicable rates for legal and other consultants. If the reimbursed amount exceeds the deposit, the balance shall be due to the City immediately and prior to consideration of the Service Plan or amendment by the City Council. Any deposit amounts remaining upon Council consideration of the Service Plan or amendment will be returned. The purpose of staff, legal, and consultants' review is to provide the City Council with expert advice in considering the adequacy of the Service Plan and in forming a basis for adopting an ordinance approving, disapproving, or conditionally approving the Service Plan for the District. The fees set forth in this Section may be waived by City Council.