



Commerce City

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Council Communication

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FIRST READING OF AN ORDINANCE ENACTING CHAPTER 13 - METROPOLITAN DISTRICTS OF THE COMMERCE CITY REVISED MUNICIPAL CODE.

Staff has prepared an ordinance to implement the new Metro District Regulations and the Model Service Plan. Staff most recently solicited feedback from Council on February 14th, 2022 and has since consulted with outside Counsel on revisions based on Council's feedback.

Updates to the New Regulations and Model Service Plan (since 2/14/22)

There have been a number of changes made to match with Council's vision.

Multiple District Service Plans

The first major change is the inclusion of a model service plan for Multiple District proposals. There is an expectation that a multiple district plan is designed to support the phased development of an area. Under these regulations, the maximum combined mill levy is limited to 50 mills; however, if there is debt issued as part of an intergovernmental agreement, it shall not count towards the 50 mill limit. Moreover, under a multiple district service plan, each residential district must seek a 5 mill regional improvement levy, each commercial district must seek a 1.5 mill regional improvement levy, and each industrial district must issue a 10 mill regional improvement levy. Each district within a multiple service plan must issue independent disclosure reports to the City as part of their annual reports.

Refund Votes by Metro District Boards

The regulations gives Metro District Boards whose seats are majority held by end-users the ability to vote for refunds that will result in net present value savings. However, these refund votes may not occur in districts wherein end-users (or residents) do not hold the majority of district seats.

Material Modifications

Additional clarification was made stating that the issuance of debt that results or will result in a mill levy pledge constitutes a material modification.

There is also clarification that inclusion of any real property into the district without prior resolution of the City consists of a material modification as well.

Council Discretion during Service Plan Amendments

There is additional clarification that City Council has wide discretion during a service plan amendment phase. Under the regulations, if a service plan amendment is proposed, the City Council has the discretion to review all aspects of the service plan in connection with the proposed amendment, not just the section specifically being amended by the applicant.

City Discretion Over Fees

The City shall have the sole discretion to determine the fees for the new oversight, review, and reporting requirements. Specifically explicated in the regulations include fees for conducting proforma analyses, financial analyses, reviews of service plan applications, and reviews of service plan modifications.

Regional Improvement Mill Levy Repayment Term

The regulations clarify that the regional improvement mill levy can be issued with repayment term of up to 40 years.

Regular Review of District Operations

Additional clarification was made that the review of annual reports or service plans, or communications related thereto, does not constitute the City's approval of the contents of the reports nor does it imply that the City believes the district is in compliance with the service plan.

Background

Metro Districts represent a powerful force for growth and development on the Colorado Front Range and in Commerce City. Many Commerce City residents live in Metro Districts, particularly in the Northern Range communities. However, the recent explosion of Metro Districts across Colorado has come with controversy and a perceived lack of oversight.

In April 2021, staff and Council held a preliminary study session to review potential regulation options and Council gave direction to staff to begin drafting regulations. When brought back to Council in July 2021, Council directed staff to engage the community with potential regulation. In October 2021, Council provided additional feedback and directed staff to solicit public comment, which was held in December 2021.

History of Metro Districts

Metro Districts are special districts created under Title 32 of the Colorado Revised Statutes (CRS) by the Special District Act of 1973. Just like other special districts like school and fire districts, metro districts are created to provide a specific community service in lieu of, or complementary to, existing government services. Metro Districts are subject to similar legal requirements to municipalities and function in similar way.

Under Title 32 of the CRS, Metro Districts are allowed to:

Enter into contracts

Participate in bidding processes

Borrow money and incur debt

Acquire and maintain property and staff

Furnish services and implement fees for said services

Adopt bylaws

Use eminent domain to provide services

While these powers are enumerated by statute, Metro Districts are required to provide two of the following services:

Fire protection

Mosquito/Pest control

Parks and Recreation facilities and programs

Traffic safety

Sanitation services

Street improvement and construction through gutters, sidewalks, etc.

Television relay and translator facilities

Transportation systems

Water and sanitation services

Drinking water

Solid Waste disposal

While initially used by communities to finance development of services, the predominant use of metro districts changed after the implementation of statewide taxation regulations under the Gallagher Amendment and the Taxpayer Bill of Rights. Booming largely in the mid-2000s, many homeowners and property developers have utilized metro districts to publically fund private developments by taking out loans against projected future land development. Now, estimates say that Colorado has over 1,500 metro districts currently in effect.

Creation of Metro Districts

Metro districts are created using the statutes governing the creation of special districts but includes additional requirements to ensure that metro district creation is accompanied by subsuming government approval, most often the municipality or county. As political subdivisions of the state, metro districts must be approved by the state courts and by the appropriate county or municipal government.

A metro district is created following these steps:

Purchase/Conception - A large parcel of land is purchased then/or the need for a metro district to supplement the initial costs for development of the property is assessed.

Service Plan - The developers pursuing a metro district (referred to as the proposers) then develop a detailed plan that is presented to the appropriate subsuming local government.

Municipal Approval - The service plan must be presented to the subsuming municipal government(s) for their review and approval. This process provides incredible latitude to the subsuming government to request additional information and specific provisions.

Election - After approval from the subsuming government, the proposers then petition the local state court to place the creation of the district on the ballot the Fall of that year. Contrary to the subsuming local government, the court has very little latitude to influence the creation of the district; the local judge must only confirm that the petitioners are qualified electors of the location, and will only then approve the petition for the ballot.

Approval - After the election is held, if approved, the local court approves the creation of the metropolitan district and the proposers will now enact their service plan.

Revision - While uncommon, there may present an opportunity to revise the service plan, by which the same process is followed: proposal by the district board to the subsuming government, petitioning of the court, and electoral approval.

The process of creating a metro district is quite straightforward. There can be jockeying and logrolling with the subsuming government to ensure the district meets the needs of its community, but assuming that all disagreements can be worked out, metro district

creation is relatively painless.

The major component of metro district applications is their service plan, similar to a municipality's charter. Service plans incorporate lengthy discussions of the following:

Proposed Services - In accordance with CRS 32.1.1004, a metro district must provide two of the ten aforementioned services, including but not limited to, fire protection, water sanitation, parks and recreation, etc. New regulations have recently given metro districts additional power to provide services and to operate similarly to a municipality, allowing new sales taxes to fund transportation services, among other things.

Proposed Operating Budget and Debts - The purpose of metro districts is to fund new development and services; therefore, it is incredibly necessary to justify how much funding (and therefore debt) is necessary to operate the district. There must be a clear outline of how much operating revenue will be derived from property taxes in at least the first year of the district's existence. This may be in the form of a bond or a mill levy. However, most common is that the operating budget includes a provision that allows the developer to loan money to the district that is repaid, with interest, by projected property taxes.

Proposed Boundaries of District and Projected Population - Perhaps the simplest part of the service plan, the proposers must describe the exact boundaries of the proposed district (aligned with the purchased land). They must the project out the expected population and property valuations. This must also clearly describe the subdivision of the district and what each subdivided parcel's responsibility is.

Role of Council

Legally, under Title 32, municipalities are mandated to make a decision on service plan applications, material modifications, fill vacancies on district's boards of directors, and receive reports and due diligence findings. However, municipalities are permitted to take action on inclusions, exclusions, and consolidations, request dissolution of districts, and provide oversight and enforcement of service plan and intergovernmental agreements.

Practically, the City may be heavily involved prior to and during the creation of metro districts. However, the City has little involvement of the functioning of the district unless otherwise specified in the service plan. The City has taken steps to maximize their leverage during the metro district creation process, including supplying a draft service plan for applicants to follow and having numerous chances for review and amendment throughout the process.

It is important to reiterate that the City cannot unilaterally alter existing metro district service plans. The City can renegotiate service plans if the district initiates an amendment, if material modification occurs, or if some other incentive is provided to alter a service plan. This is why it is crucial for the City to take steps to regulate districts as they are created.

Regulations

A summary of the draft regulations is below, but staff strongly urges Council to read through the draft regulations and service plan.

The model service plan has been altered to increase oversight and transparency and limit authorities of metro district boards. These changes include limiting fees payable by end users, creation of reimbursement agreement or IGAs for increasing budgets, limit on extraterritorial service outside of service plan, and a limit on developer reimbursement to 80% of actual costs. The debt limit will be less than 100% of projected debt capacity with a cap on 50 mills. There will also be a 35-year repayment period for residential districts without resident-controlled board votes to refund.

The proposed regulations create a new City Code chapter focused on metro districts, which outline the following:

Policy Statement and Preferences - The district should provide competitive financing, better infrastructure, and needed services. These include that the City will view unfavorably applications that include provision basic infrastructure, the use of fees other than the one-time application fee, and restrictions on end-user control, among other financial restrictions on districts with greater than 35-year repayment term, greater than 50 mills for debt repayment, and less than \$5 million is future assessed value. Moreover, there will be additional restrictions on districts with private developer reimbursements and unfair/unreasonable terms.

Fees - This section involves the creation of additional application fees and an oversight fee. This fee will subsidize the tiered review process which includes a Council concept review, an extensive service plan review, and time limits to avoid rushed applications.

Material Modifications - This includes a broadening of examples from the state statutes for material modifications, including creating materially greater risk or burden to taxpayers, alteration of debt schedule, failure to perform a service/function, conversion of taxable property to tax-exempt or the exclusion of property without justification, and a failure to implement regional mill levy.

Regional Mill Levy - To apply to plans approved after January 1, 2022, the district must obtain voter approval for a regional mill levy and IGA with the City for remittance of revenue, which can be imposed and collected at City request. This will improve taxpayer benefits that are identified in the service plan and cannot have another funding sources.

Authority Limits - The new regulations will specify additional annual reporting contents and authorizes the City to post the reports. There will be a prohibition on including marketing materials or ads for development or developers online. District meetings must allow for virtual attendance and the district is prohibited from creating or implementing rules that diminish or remove the ability of end users to be appointed to the Board.

Public Comment

City staff posted the draft regulations and model service plan for public comment for 30 days during the month of December 2021. During this period, we received 87 responses, 85 resident responses and 2 developer responses. Of the responses, 90% believed that the enhanced regulations are necessary and that 77% believe that the draft regulations are the correct direction. With this online survey, staff posted online materials that improved resident understanding of metro districts and these regulations.

Staff Responsible (Department Head): Roger Tinklenberg, City Manager

Staff Member Presenting: Trenten Robinson, Management Analyst

Staff Recommendation: Staff recommends Approval of the new Metro District Regulations and Model Service Plan on first reading.