

From: [Gibson, Dylan - CM](#)
To: [Garland, Kim - CM](#)
Cc: [Rogers, Jason - CM](#); [Zarzecki, Lee - CA](#)
Subject: Fw: 25-092 Service Plans & Proposed Changes to Ordinance 2549
Date: Monday, January 6, 2025 10:02:34 AM
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For Public Comment as a written comment.



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Quality Community for a Lifetime

From: Daniel Frank <daniel@dfrankinc.com>
Sent: Monday, January 6, 2025 10:56 AM
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Subject: 25-092 Service Plans & Proposed Changes to Ordinance 2549

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Good Afternoon Mayor & Members of the Council,

I am concerned, even if the Mayor's revisions are not included, that it will be very difficult for a District to issue bonds or function under the limitations in the new Service Plan and not sure how a District could ever issue an opinion that the District is in compliance with its Service Plan. I wanted to share just a few of the many issues surrounding the proposed change to Ordinance 2549:

1. This was a late add to the agenda with ZERO stakeholder outreach/input. If the Service Plan is to undergo further modification, it should go through a similar process that it did last time with stakeholder meetings and outreach. Shoving things down the throats of stakeholders/residents is a really terrible look for the City and a horrible way to do business. I find it hypocritical that the City is requesting all of these changes to increase transparency, meanwhile doing the exact opposite in their own practice.

Furthermore, the Mayor assured me numerous times at our meeting on 6/21/24 that material changes of this nature relating to Metro Districts, Service Plans, Land Development Code, and Comp Plan would be discussed and worked through with stakeholders.

2. Private payments from sales towards the bonds, prepayments, construction timelines, etc..
 - a. Combining Private v Public Entity Roles- A governmental entity does not have the power to dictate what a private entity is doing from an operating perspective, seen specifically here with requirements to use land sale proceeds to repay debt. This is an incredibly dangerous precedent for the City to set that the City will come in and control private business. This should be a major concern for private citizens/businesses. I don't see why anyone would want to do develop or do business within the City under these circumstances.
 - b. Furthermore, the idea of using land sale proceeds is not enforceable because these would not be considered "good revenues" per the IRS from a tax perspective. Since we are issuing tax-exempt bonds, private land sale proceeds would not be considered public sources of repayment (i.e., "good revenues") and could provide an issue in getting a good tax opinion. Bondholders would need certainty that the bonds are tax-exempt prior to issuance.
 - c. If we were required to issue taxable bonds:
 - i. there is really no market for them
 - ii. they have a higher interest rate
 - iii. due to the higher interest rate, would be a larger burden on homeowners
 - iv. could not build nearly as much infrastructure due to interest expense
 - d. The requirement of a principal payment within a 5 year period would be problematic for cash flow bonds since they do not have stated principal payments early in the life of the bond issuance. Denver has this in older service plans that they've since removed since a principal payment in 5 years is not market for cash flow bonds (or convertible capital appreciation bonds), which would impact proceeds for infrastructure
 - e. Developers/Districts do not control prepayment penalties. We are at the mercy of the current bond market, similar to when the City issues their own bonds. This is determined by the lenders/bond holders. Lenders/bond holders require longer call protections.
 - f. The requirement to construct improvements within 6-12 months of a service plan approval does not make any sense. Usually, the Service Plan is approved concurrent with the PUD/Zoning. Then you still need to go through Site Plan, Plat, Civil Drawing approval before you can begin construction. This usually

takes 1 ½ to 2 years in Commerce City. If anything, it should be tied to when bonds are actually issued. Currently when bonds are issued, Developers have to sign a statement that funds from the bonds are intended to be used within 3 years anyways. Oftentimes the Developer is held up and prevented from starting construction due to City processes and other things that are completely out of their control.

- g. It is paramount to keep in mind that the bonds issued are used to pay CITY OWNED AND MAINTAINED INFRASTRUCTURE. If the City could use their own funds to construct/maintain its infrastructure, Metro District's would not be needed.
 - h. The bonds are repaid through a pledge of property tax revenue, and not a lien on the property. Developers oftentimes have separate loans on projects and those loans are either paid off, or transferred upon a sale
 - i. Finally, increase tax burdens on future residents that are not imposed on existing residents. For existing residents that currently live within a Metropolitan District or live within the City, but not within an existing Metropolitan District, the City pays for and maintains City-owned roads. The proposed supplement would result in homeowners within new Metropolitan Districts paying another 10 mills to be remitted to the City for road maintenance when other similarly situated homeowners in Commerce City do not have this extra tax burden. This is not equitable to new residents that they have to pay for a City service that existing residents (including those that live within existing Metropolitan Districts) do not have to pay. This is insanely unequitable as 95% of Commerce City already has metro Districts. That means that only 5% of CC residents would have this massive additional burden and would be paying costs for the rest of the City. Also, since these roads are City owned/maintained that means that the City did not do a good enough job with their budget, and is passing these costs on to a very small amount of Commerce City Residents
2. Audit
- a. An audit should not be required by the City unless debt has been issued. Audits are very expensive, and not necessary unless debt has been issued. Once debt has been issued, it is a requirement anyways.

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