



MEMORANDUM

To: City of Commerce City

From: McGeady Becher Cortese Williams P.C.

Date: January 6, 2025

Re: Comments to City of Commerce City's Proposed Model Service Plan

Our office specializes in the formation and representation of Metropolitan Districts in the Front Range and represents developers in the formation process as well as Metropolitan Districts whose Board of Directors consists solely of homeowners in the community. In our role as general counsel to over 200 Metropolitan Districts, we see the vital role these entities play in development in Colorado as well as vehicles for mature communities to refresh and complete new or needed capital repairs within their boundaries.

We are in receipt of the City's Agenda for its January 6, 2025 City Council Hearing and have had the opportunity to review Mayor Douglas' proposed supplements to the City's proposed Model Service Plan. We support the City's efforts to further transparency and education of potential homeowners as to the effect a potential Metropolitan District may have on their homeownership. We do, however, have a concern that certain of the proposed supplements will not achieve the desired result (or increase costs on taxpayers without providing beneficial information).

Certain of the requested supplements will effectively make it so that Metropolitan Districts are not an effective tool for financing or constructing the public improvements that are necessary to support the construction of housing product to meet the increasing demand in Commerce City. The benefit in Metropolitan District financing to the residents who live in a Metropolitan District is in financing the public improvements with tax-exempt interest at the lowest rates available.

The suggestion that "excess profits" from a land, lot or project sale be calculated and paid from the Developer to the District for use in the repayment of the District's bonds, can, without

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understanding how projects are financed sound compelling. With regard to Metropolitan District financing, requiring bonds be repaid, in part, through a private revenue stream (i.e., Developer “excess profits”), will put at risk the classification by the IRS of the interest on the bonds being tax-exempt, resulting in higher interest rates to be paid on the bonds by the resident taxpayers. Further, with regard to a Developer’s decision to pursue development of a particular project and finding private funding to launch a project, there are many risks which need to be considered and weighed in determining how to proceed. Introducing the risk of a limit on profit that can be made in addition to the risks that cannot be controlled, such as home mortgage interest rate fluctuation risk, increasing cost of construction materials and labor risk, and increasing oil and gas price risks, Developers will necessarily look to develop much needed housing in other markets where they will not be exposed to the risk of a limit on profit and their ability to be compensated for their risk, time and investment is not artificially limited. Such policy could also have a chilling effect on business development in general with the City with other businesses and owners being concerned that the City will regulate their profits as well.

We are also concerned that by divesting the Board of Directors of an independent government of the ability to make certain decisions, including the setting of its mill levy, that it is no longer an independent government, but rather simply another arm of the City government without truly local governance. City Council Members that do not live within the boundaries of the proposed Metropolitan District (and therefor, not subject to the tax of the Metropolitan District) will be determining how homeowners are taxed, when such City Council Members will not be subject to the tax burden that they impose. This may be perceived as unfair representation by many homeowners.

We also note that the proposed supplements will also 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. The City will receive revenue from the new development and its increased revenue should be utilized to pay for these governmental services.

Finally, with respect to the requirement to have an annual audit, for Metropolitan Districts that have not issued bonds and have very little financial activity, the overall cost of an annual audit will be passed on to the homeowners without providing significant added transparency or information for the homeowners. The state statutes require audit exemptions to be filed as opposed to a full audit when the revenue and expenditures for the year that is the subject of the audit exemption is between \$100,000 and less than \$750,000. See Section 29-1-604, C.R.S. The state statutes also require the audit exemption to be filed by an independent accountant with knowledge of governmental accounting and it must be completed in accordance with the

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regulations issued by the State auditor. The straight forward format of the audit exemption forms very clearly set forth the revenues and expenditures of the District and the amount of any outstanding obligations (including amounts owing to Developers under Reimbursement Agreements) at a cost that is reasonable for the Metropolitan District to incur prior to the issuance of Bonds or when the financial activity is limited when the resources of the District to pay for staff and the auditor to prepare a full audit are also limited.

We thank you for your consideration and we are happy to answer any questions you may have.

Sincerely,

McGeady Becher Cortese Williams P.C.

McGeady, Becher, Cortese, Williams P.C.