



# **Metro District Regulations and Model Service Plan – Ordinance on First Reading**

May 2nd, 2022

# Purpose

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- Provide Overview of Regulations and Model Service Plan
- Highlight changes made after Council Feedback
- Answer Council Questions as needed



# Updates to Regulations

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Metro District Regulations Update

# Updates to Regulations

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- Section 13-1000(d)(4): Language was added to make the provision consistent with what is in the Model Service Plan drafts.
- Section 13-1001: The definition of “Financial plan” was revised to make it consistent with the Regional Improvement Mill Levy provisions.
- Section 13-1001: The definition of “Material modification or materially modifies” was revised to include material modifications that are contained in the Model Service Plan drafts.



# Updates to Regulations

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- Section 13-1001: The definition of “Regional improvement mill levy” was revised to conform to revisions made to the Regional Improvement Mill Levy provisions at the request of staff. The revisions to the Regional Improvement Mill Levy provisions were designed to make the City’s requirements similar to what is required in other municipalities.
- Section 13-1003(a): Language was added to make clear that the City is allowed to retain third party consultants to review proforma analysis, district financial plans, and service plans and that the applicant is responsible for reimbursing the City for those expenses.

# Updates to Regulations

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- Section 13-1003(b): Language was added to make clear that the City's annual review of metropolitan district operations and service plan compliance does not constitute an approval of the district's operation, or a finding or waiver of the district's compliance with its service plan.
- Section 13-2100(2)(vi), (xviii) and (xxiii) were revised to be consistent with the Model Service Plan drafts.
- Section 13-2101 was revised to make the Regional Improvement Mill Levy provisions similar to what is required in other municipalities at the request of City staff.

# Updates to Regulations

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- Section 13-3101(b)(2)(ii): Language was added to make clear that the City may request that applicants provide proforma analysis or other documentation demonstrating that it is not desirable or feasible for public improvements to be undertaken by another entity or that it is economically advantageous to the future residents of the district to have the metropolitan district undertake the public improvements.
- Section 13-3101(c)(6)(ii): Language was added to make clear that the City Council can disapprove a proposed service plan if it determines that the proposed district is not necessary for development to occur in the area to be served by the proposed district.

# Updates to Regulations

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- Section 13-3102(a): Language was added to make clear that when a material modification or service plan amendment is requested, the City Council has the power to revisit the entire plan and require changes beyond what is being requested by the district.
- Section 13-4001(c)(3): Language was added to make clear that the City's review of metropolitan district annual reports does not constitute an approval of the district's operation, or a finding or waiver of the district's compliance with its service plan.



# Staff Recommendation

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- Staff recommends approval of the Ordinance on First Reading.





# Questions and Comments on Updates?

Staff and Outside Counsel are available for question.



# Proposed Measures

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Metro District Regulations

# Proposed Regulations

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- New City Code chapter focused on residential metro districts:
  - Policy statement and preferences
  - Definitions
  - Fees
  - Sanctions
  - Service Plan requirements
  - Review procedures & decision criteria
  - Governance and transparency standards
- Would be implemented through a model service plan formally approved by Council.



# Policy & Preferences

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- Use of districts to provide competitive financing, better infrastructure and needed services
- Plans meeting city criteria and Special District Act
- Disfavor for districts or service plans:
  - Propose only Basic infrastructure
  - Use of extra fees (other than 1-time fees)
  - Restricts end user control
  - > 35 year repayment term
  - > 50 mills for debt repayment
  - < \$5M in future assessed value
  - Private developer reimbursements and unfair or unreasonable terms
- Regional mill levy (5 mills, up to 25 years)
  - Remitted to the City to pay for regional improvements outlined in the service plan, such as regional drainage ditches or road improvements.

# Fees & Process

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- Application fees & oversight fee to be established
- Tiered review for new plans and modifications:
  - Concept review with council component
  - Service plan review:
    - Staff report expectations
    - Council hearing
    - Council example criteria
  - Time limits to avoid rushed applications
- Codified sanctions



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# Material Modifications

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- Broader examples than Special District Act:
  - Creating materially greater risk or burden to taxpayers
  - Alteration of debt issuance schedule
  - Failure to perform service or function
  - Conversion of taxable property to tax-exempt or exclusion of property without demonstration of no material impact
  - Failure to implement regional mill levy
- Establishes standard for affirmative city response to district actions under CRS 32-1-207(3)(b)



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# New Model Service Plan Items

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- Limiting fees payable by end users for debt
- IGAs/reimbursement agreements increasing budgets
- Limit on extraterritorial service and IGAs not identified in the service plan
- Limit developer reimbursement to 80% of actual costs of improvements and \$25,000 for organization, no security reimbursement



# New Model Service Plan Items

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- Debt limit at lesser of 100% of projected debt capacity or estimated improvement costs
  - More detailed financial plan with limits
- 50 mill cap (including debt and operations, with 10 mill cap on operations)
  - May be unlimited for debt service in limited circumstances
  - No "Gallagherization" or adjustment
- 35 year repayment for residential districts without resident-controlled board votes to refund

# New Model Service Plan Items

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- Requirements for independent controls
- Limit on debt issuance until:
  - Regional improvement mill levy authorized
  - Developer agreement to provide disclosures



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# New Model Service Plan Items

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- Description of organizer-developer relationship
- Specifically identified: fees, services, public improvements, intergovernmental agreements, reimbursement agreement
  - If not identified in service plan, modification or council approval required



# Regional Mill Levy

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- For plans approved after January 1, 2022
- District must obtain voter approval for mill levy and IGA with city for remittance of revenue
  - 5 mills, 25 years (not included in cap)
  - Imposed and collected when City requests
- Improvements identified in the service plan
  - Have benefit to taxpayers
  - Have no other funding source

# Authority Limits

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- Includes requirements of SB21-262 and future new requirements of the Special District Act
  - Restricts application of new powers or authorities granted by future laws (Sections I, V.A).
- If property is sold for a non-taxable use, the district must find no material impact to the its ability to meet debt service obligations; district will not cooperate in sale (Section V.A.16.b).
- Land acquisitions by the District from a developer must be based on independent appraisal (Section V.A.23).
- Requires public improvements be certified by independent professional engineer as to inventory and cost (Section V.A.24).
- Prohibits dissolution if there is any outstanding debt or ongoing O&M (Section VIII).



# Governance/Transparency

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- Specifies additional annual report contents (Section VII.B) and authorizes the City to post the report (Section VII.A).
- Prohibition on including marketing materials or ads for development or developers within District's boundaries on website (Section IX.D).
- District meetings allow for virtual option (Section X.A)
- Prohibiting rules, regulations, or agreements that diminish or remove the ability of End Users to be appointed or elected to the Board (Section X.B).

# New Model Service Plan Items

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- Increased restrictions on "Parent-Child" Metro District relationships
  - Parent Districts may not hold all debt.
  - Parent-Child IGAs are restricted to 50 mills collectively.
- Regional Mill Levy has alternative pay ability.
  - Metro District may either remit 5 mills to the City annually, or they can pash cash in-lieu.



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# Staff Recommendation

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Metro District Regulations Update



# Staff Recommendation

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- Staff recommends Approval of the new Metro District Regulations and Model Service plan on first reading.





# Questions and Comments?

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Staff is available for questions and comments.



# Appendix

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Metro District Regulations



# Background on Metro Districts

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Metro District Regulations Update

# What are Metropolitan Districts?

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- Special Districts created under Title 32 of the Colorado Revised Statutes (C.R.S.) in 1973.
  - Special Districts are created to provide a specific service, such as provide fire protection or schools.
  - Special Districts are governmental entities subject to similar legal requirements as municipalities.
- Metro Districts are special districts created to finance the cost of developing land.
  - Metro Districts are required to provide two services, such as infrastructure, parks, etc.
  - Metro Districts also have the power to incur debt and to levy taxes in their boundaries.
  - Metro Districts **are a** quasi-municipal, meaning they operate similarly to cities.



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# What do Metro Districts do?

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- Metro Districts provide financing mechanisms for public infrastructure development
  - Gains favorable tax treatment.
  - District can “Pay for Itself” by basing debt amounts of future projected growth.
- Metro Districts fund ongoing operations and maintenance for authorized services (if allowed by service plan)
  - Landscaping maintenance
  - Recreation/park facilities
  - Sanitary Water and Sewer
  - Public/Private Infrastructure like Roadways and Sidewalks
  - Design review/covenant enforcement
  - Security services



# History of Metro Districts

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- When created in 1973, Metro Districts primarily provided water and sanitation services to undeveloped land on the Front Range.
  - Municipalities did not regularly provide those services at that time.
- However, when tax reforms passed in the 1980s and 1990s, metro districts became a primary tool for developers.
  - Many Metro Districts began providing road improvements and urban build-out on undeveloped land.

# History of Metro Districts, cont.

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- Up until the early 2000s, Metro Districts were viewed as a win-win for municipalities.
  - Districts would finance up-front development for municipalities and profit from said development.
  - Municipalities could then reap the financial benefits of growth while avoid the cost of urban build-out and some service provision in the area.
- Public sentiment has since changed towards metro districts.
  - 2018 - Denver Post Investigation revealed massive tax bills for homeowners and limited oversight.
  - Municipalities like Commerce City have moved towards increased oversight and regulations.



# Historical Context in Commerce City

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- Metro Districts have historically been a tool used to enable Commerce City development
  - Most North Range developments are products of metro districts.
- Much like other Colorado municipalities, the City has historically prioritized development over strict oversight or regulation.



# How are Metro Districts Created?

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1. Interested parties, most often developers, **identify and purchase land** on which they want to create residential and commercial structures.
2. Those parties **create a draft service plan, budget, estimate of costs, and other items which get packaged into their application.** The service plan is the Metro District's founding document, similar to a city charter.
3. Applicants **submit their packaged application and pay a fee to the local municipality**, like Commerce City, which is then tasked with reviewing and approving the application.
  - At this point in the process, the municipality has wide latitude to approve or deny the application. Municipalities decide on their own standards by which to review and approve applications, most often by creating a model service plan for applicants to follow.

# How are Metro Districts Created, Cont.

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4. If the municipality approves the application, the **applicants then petition the county** to get on the November ballot.
5. Voters (many of them Property Owners) in the proposed district boundaries must then **approve the creation of the metro district** and its proposed service plan.
6. If approved, the metro district can then **form their governing body and begin to incur debt** to develop the land.

# Amending Service Plans

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- If at any point the district wants to change their service plan, they must go through the process to **amend their plan**.
- This follows the same process as creating a new district...
  - Applying and Paying Fees
  - City and Council Review and Approval
  - Petitioning for November Ballot
  - Voting on the Proposed Changes



# Council's Role

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Under Title 32 and the Colorado Special District Act, Municipalities are:

- Mandated to...
  - Make a Decision on service plan applications
  - Make a Decision on material modifications
  - Fill vacancies on the District's Board of Directors
  - Receive reports and due diligence findings
- Permitted to...
  - Take Action on inclusions, exclusions, and consolidations
  - Request dissolution of a district
  - Provide oversight and enforcement of Service Plan/IGA

# City Involvement in Metro Districts

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- The City may be heavily involved **before and during the creation** of Metro Districts.
- Once the Metro District is approved by Council, however, the City **has little involvement in the functioning** of the District.
- However, the **City may remain involved insofar as the service plan details**, such as if the service plan involves regular reporting, oversight, or audits of the District by the City.



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# Obstacles to Regulation

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- Service Plans **already approved are set** and likely cannot be altered unilaterally by the **City**
  - As history has shown, opinions on regulation of Metro Districts have shifted in the past 20 years
- City can renegotiate service plans if amendment (initiated by a district) is proposed, if a material modification occurs, or some other incentive is provided
- Increased oversight can **increase costs to City** and **compliance could increase costs for residents**



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# Previous Action and Requests by Council

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Metro District Regulations



# Timeline of Recent Action

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Council has taken more interest in regulating metro districts, staff has taken Council's direction

- **April 2021** – Preliminary study session to review options, Council gives direction to Staff
- **July 2021** – Additional study session to provide additional feedback and refine options
- **August 2021** – Staff conducts community and stakeholder outreach
- **October 2021** – Presentation of proposed changes
- **December 2021** – Public comment period on proposed changes

# Future Action

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- Q1 2022 - Council vote on Proposed Regulations
- Implementation of proposed regulations and oversight measures
- Imposition of oversight fee
- Hiring/contracting of additional staff to perform oversight
- Additional measures as deemed necessary by Council



# Questions about Metro District Review or Past Council Direction?

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Metro District Regulations



# Appendix

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Metro District Regulations

# Enhanced Service Plan Elements

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- Comment on issue of debt and refinancings (not approval)
- Requires statutory annual notice to be mailed to property owners by January 31 (IX.D; CRS 32-1-809)
- Requires annual report to the city (VII; CRS 32-1-207(3))
- Recorded statement regarding taxes and debt (CRS 32-1-104.8)
- Interest rate (12%), underwriting discount (3%)

# Authority Limits

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  - Restricts application of new powers or authorities granted by future laws (Sections I, V.A).
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# City Oversight

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- Service plan requires the written opinion from an External Financial Advisor (Section VI.A2.c).
- Opportunity for administrative review of revenue pledge or reimbursement agreements to another metropolitan district or a developer-controlled entity (Section VI.G).
- Prohibits formation of authorities or other entities without Council approval (Section V.A.22).
- Requires payment of an annual oversight fee (if imposed by Council through future ordinance) (Section X.C).
- Establishes more clear terms for material modifications (Consolidated V.A.21 with new text in new Section XI).
- Establishes sanctions (New Section XIII).



# Recommendations and Next Steps

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- Staff recommends Council provide staff any final feedback for Regulations and Model Service Plan.
- Any feedback will be incorporated into the regulations (as appropriate) and regulations will be brought back to Council for formal vote.





# Questions and Comments?

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Staff is available for questions and comments.