



# Commerce City

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## Council Communication

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### Metro Districts Regulation

#### Summary & Background

Metro districts are an integral part of Commerce City, particularly in the North Range. A large portion of Commerce City residents live within Metro Districts. While metro districts provide funding and enable development, they also impose significant costs on home buyers. There is also the potential for abuse by bad actors. Council has expressed an interest in enhancing regulations. The purpose of the presentation this evening is to provide a very high level overview of metro districts and discuss Council's consensus direction to Staff in continuing to develop additional regulations.

#### Metro District Overview:

While most council members are likely very familiar with metro districts and their operations, this presentation will also serve to ensure that all council members have the same underlying base of knowledge. Making sure everyone has the same understanding and background is vital to making informed decisions. This background information is designed to be introductory rather than exhaustive, and staff can provide more information as requested.

Metropolitan districts are a quasi local government allowed under Title 32 of the Colorado Revised Statute (CRS). They possess governmental powers subject to legal restrictions and provide services that are typically provided by government entities but are not currently being provided. These services are laid out in the service plan, the district's chief organizing document. The typical services covered by metro districts are related to infrastructure - the funding and construction of streets, sewer/water lines, and more. Importantly, they also possess another key power of a local government: the ability to levy property tax. The tax imposed by the district within its borders is what funds the services provided.

Metro districts are chiefly used by developers as a financing mechanism. It allows them to finance development and offer lower home prices. New developments are expensive as they require significant infrastructure investment, particularly in undeveloped areas such as Commerce City's North Range. In order to construct a new development, the developer either needs to front the money or get the City to agree to pay for the infrastructure. Both of these options can be prohibitively expensive. Existing residents may balk at bond issues or tax increases to pay for a new development, and developers

may not have the cash on hand or means of securing sufficient credit to pay for extensive infrastructure development. Metro districts offer a way to secure funding. The developer creates a metro district, which then finances the development through bond issues guaranteed by the future tax revenue it will raise when residents move in. Since the district is a quasi governmental entity, it has access to favorable tax treatment as well. Metro districts allow development to pay for itself. Rather than increase taxes in the whole municipality to finance new roads and related infrastructure for a development, the residents of the development pay for it through increased property taxes. Metro districts keep home prices low - in the absence of metro districts, developers recoup infrastructure investment through passing costs on to the home's sticker price - in exchange for an increased tax burden.

Metro districts may continue to offer services even after the completion of initial infrastructure development. Whether or not a particular district offers continuing services is laid out in the service plan, and not every metro district offers services, and all that do offer services do not necessarily offer the same services. These services typically include landscaping maintenance, recreation and park facilities, design review and covenant enforcement (typical HOA duties), and security services. In order to provide these services, metro districts may impose a separate mill levy for operations and maintenance, separate from the levy to service the debt incurred in construction.

The creation of metro districts requires significant involvement from the city. Without city approval, metro districts cannot exist. The service plan, that chief organizing document that outlines what services a metro district will provide, is a legal agreement between the city and the district. The process is briefly outlined in five steps:

1. The property owner (or owners) submit a service plan to the city, outlining what services they will provide, their financial plan, and proposed mill levies. Staff then reviews the plan and the Development Review Team makes a recommendation.
2. Council holds a public hearing on the plan.
3. If approved, a Petition for Organization is filed in District Court, which sets up an election for the initial Board of Directors and district authority.
4. The Court has a hearing and orders an election. This is typically referred to as the TABOR date, and is the main window of opportunity that dictates the timelines for applications in these projects.
5. The election results are certified and an Order and Decree is issued, which officially organizes the district.

Council plays a key role in the first two steps of the process, and without Council's approval, the application cannot advance. Staff reviews the plan, referring it out to each relevant department and soliciting comments. While Council is not directly involved in this step, any regulations enacted by Council would dictate the referrals and what staff is looking for when making comments. The Development Review Team ultimately makes a recommendation to advance the plan, or may go back to the applicant to address concerns. When staff believes that the service plan meets the legal criteria as dictated by Title 32 (and eventually by Council's enhanced regulations), it will advance the plan to the public hearing. Title 32 stipulates that Council can only approve a service plan if the following conditions are met, otherwise it must disapprove it (that does not mean Council

must approve all service plans that meet these criteria, they are merely the baseline for approval. Council may disapprove a plan for any other reason):

1. There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special district.
2. The existing service in the area to be served by the proposed special district is inadequate for present and projected needs.
3. The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries.
4. The area to be included in the proposed special district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

In addition to making a decision on the initial service plan application, Council has other responsibilities it must fill as mandated by Title 32. These include making decisions on material modifications/amendments to the service plan, filling any vacancies on a metro district's board, and receiving any required reports (most reports are required to only be submitted to the State, however). The process for reviewing material modifications/amendments is nearly identical to the initial service plan application, with staff review followed by a public hearing.

Beyond these mandated responsibilities, Title 32 also stipulates that Council is permitted to require their approval for any inclusion, exclusion, or consolidation of districts (which it currently does), request the dissolution of a district if it has completed the services as laid out in the service plan, and most importantly, to provide oversight and enforcement of the service plan or any intergovernmental agreements (IGAs). This last provision is what empowers Council to impose additional regulations and requirements on metro districts as it sees fit. Under Title 32, Council has broad discretion to enact regulations that it believes will help it fulfill its permitted duty of ensuring that the service plan is carried out as stated.

### **Obstacles to Regulation**

While Council does have broad discretion in creating regulations, there are serious obstacles to implementing those regulations. Service plans are binding legal agreements between the city and the district. Once they are approved, they can only be changed through an amendment process agreed to by both parties. If Council wished to impose additional requirements, whether transparency reporting, district size or structure, or any other measure, it could only do so on future metro districts. If an existing district did not wish to amend its service plan to include regulations enacted after approval, the city cannot compel them to. The nature of these service plans unfortunately means that the current Council is limited in its actions by decisions made in some cases 20 years ago by previous Councils. If a district wished to seek an amendment for another reason, such as modifying services provided, or reorganizing the district, Council could make agreeing to its enhanced regulations a prerequisite for other changes, forcing districts to agree to these terms or be frustrated in other efforts. Additionally, Council could ask districts to voluntarily submit to these regulations and amend their service plans but cannot compel them to do so.

Additionally, while Council has broad latitude under Title 32 of action it may take, enforcement of those regulations is limited by staff capacity and budget. Council is

restricted by feasibility, not possibility. Any meaningful regulations that Council enacts will require more staff time to enforce, or necessitate the contracting of a third-party. Staff capacity is currently limited, and stricter regulations may require deprioritizing some projects, or hiring at least one additional full-time employee to engage in oversight. Alternatively, staff could contract out the oversight to a third-party, which would entail a budget implication. This is not at all to say that it is impossible to enforce these regulations, but rather that stricter regulations will require Council to make a significant investment in order to ensure that these regulations are enforceable and generate the outcomes that Council desires.

### **Regulations**

Based on Council direction, staff has already developed and implemented regulations on metro districts. Last year, the city adopted a new model service plan, which includes several regulations designed to protect residents from potential abusive practices from districts. Chief among these is the cap established on mill levies. Districts under this service plan are capped at a 10 mill operations and maintenance levy and 50 mill debt service levy (these amounts may float over those amounts due to Gallagher Amendment adjustments). Additionally, at Council direction, staff engaged outside counsel to conduct a review of metro districts in the city.

### **Aligning Regulation and Development**

The main question for Council to consider is how it sees the alignment between regulation and development. Metro districts have been a massive facilitator of growth in Commerce City. Much of the development in the North Range is a result of the financing provided by metro districts. Additional regulations could adversely affect future development. If it is easier for developers to form districts and build elsewhere with less oversight or regulation, they may. Previous Councils have prioritized development over regulation.

### **Council Direction**

Staff is seeking consensus direction from Council as to next steps. Any additional efforts from staff will require significant investments in terms of staff time. Continuing to develop potential additional regulations will require deprioritizing other staff work in order to accomplish this effort. Staff will continue with this project if it is Council's consensus decision to do so.

### **Next Steps**

If Council gives staff consensus direction to continue on this effort, staff will begin developing potential additional regulations. These regulations will be informed by subsequent discussions with Council. These discussions will center around the alignment between regulation and development, as well as the amount Council is willing to invest budgetarily in continuing to develop regulations and in implementation and enforcement. As Council continues to provide direction, staff will continue to refine and make potential regulations more specific until arriving at a final product on which Council can vote.

**Staff Responsible (Department Head):** Cathy Blakeman

**Staff Presenting:** John Bourjaily

**Financial Impact:** N/A

**Funding Source:** N/A

**Staff Recommendation:** Provide staff direction on developing potential regulations for metro districts

**Suggested Motion:** N/A