

Chapter 13.50 - Metropolitan Districts

13.50.010 - Legislative declaration.

- (a) Metropolitan Districts ("Districts") organized under Title 32, Article 1, C.R.S. (the "Special District Act"), under appropriate circumstances, provide an economic alternative to the development of municipal infrastructure at the expense and risk of the City. The provisions of this Chapter are intended to provide procedures for the processing and review of proposals for formation of new Districts and to define the restrictions and limitations which may be imposed by the City as a condition to the approval of such Districts consistent with the policy and intent of this Chapter.
- (b) The adoption of this Chapter is necessary, requisite and proper for the government and administration of local and municipal matters pursuant to the City's home rule powers granted by Article XX of the Colorado Constitution. The City Council specifically finds that the determination of whether to use Districts to provide for the development of capital facilities and incurring of debt to finance such facilities is purely a matter of local concern and shall determine the merits of allowing the formation of a District for development of municipal infrastructure to allow a District on a case-by-case basis.

(Ord. 13, 2007 §1)

13.50.020 - Definitions.

As used in this Chapter, the following terms, phrases and words shall have the following meanings:

Board means the Board of Directors of a District.

District means a Metropolitan District proposed to be established and organized under the Special District Act whose Service Plan is to be approved by the City under applicable state law, and also means any existing Metropolitan District that is located wholly within the corporate limits of the City as of the effective date of this Chapter.

Petitioners means those persons proposing the formation of a District, a Service Plan for a District or an amendment to an approved Service Plan of a District.

(Ord. 13, 2007 §1)

13.50.030 - Reservation and construction.

The City reserves all the powers and authority granted to municipalities by the Special District Act. The provisions of this Chapter shall be construed and applied to supplement the applicable provisions of the Special District Act and, to the extent provided herein, supersede the Special District Act pursuant to the home rule powers granted the City by Article XX of the Colorado Constitution.

(Ord. 13, 2007 §1)

13.50.040 - District's location.

- (a) Districts proposed to be located outside of the Mid-Range Expected Service Area (MRESA) shall demonstrate compliance with those standards required by Section 18.40.040(4)a.4. of the Development Code, which allows the City Council to grant a waiver from the requirement for development to occur only within the established MRESA.
- (b) Districts proposed to be located within the MRESA may be permitted only for either of the following types of projects:
 - (1) Substantial redevelopment of a site when it is projected to provide a positive property tax return from the project utilizing the available City infrastructure investment; or
 - (2) Initial development of a site that demonstrates compliance with the standards required by Section 18.40.040(4)a. of the Development Code.

(Ord. 13, 2007 §1)

13.50.050 - Permitted District improvements.

A District shall only be permitted to construct those capital and infrastructure improvements which are identified within an approved service plan, which may include but are not limited to required off-site improvements and/or improvements required by Section 18.40.040(4)a.4.d) of the Development Code.

(Ord. 13, 2007 §1)

13.50.060 - District minimum size.

A District shall consist of an area of at least one (1) square mile in area size with all property included in the District contiguous, except streets, ditches and other similar easements or features. A District may be less than one (1) square mile if it can be demonstrated that the development substantially accomplishes the land use mix and connectivity with adjacent parcels required by Section 18.40.040(4) of the Development Code.

(Ord. 13, 2007 §1)

13.50.070 - Use of eminent domain by a District.

Eminent domain may be utilized by a District only on a case-by-case basis and only after review and approval by the City Council. The City Council may approve the use of eminent domain within a Metropolitan District if the proposed use of eminent domain is necessary for the development of the District and there is an identified public benefit obtained by the use of eminent domain.

(Ord. 13, 2007 §1)

13.50.080 - District's application for grants.

A District may be permitted to apply for grant funds for which the City is also eligible only after review and approval by the City Council of the application for said grant proposal by the District.

(Ord. 13, 2007 §1)

13.50.090 - Disclosure.

As part of any sale of real property located within a Metropolitan District, there shall be a written disclosure statement which accompanies the sales transaction that identifies and describes the increased property tax burden of the property due to its location in the Metropolitan District. The document shall be executed as part of the title work associated with the sale of the property, shall be signed by the seller and purchaser of the property and shall be recorded promptly with the County Clerk and Recorder by the District.

(Ord. 13, 2007 §1)

13.50.100 - Referral notice to other affected special districts.

As part of the City review and approval of all proposed Districts, a written notice from the City shall be forwarded to each existing special district located within the proposed District's boundary at least thirty (30) calendar days prior to the public hearing. The purpose of the notice is to afford the special districts the opportunity to provide comment about the proposed District and any adverse impacts, including the District's proposed financing and mill levy, which the existing special district anticipates may arise from the District due to its anticipated development and its proposed location.

(Ord. 13, 2007 §1)

13.50.110 - District review timeframe.

Creation of new Districts shall be considered as part of the annual City Council review of the Mid-Range Expected Service Area (MRESA) boundary. An exception to this timeframe may be granted by the City Council for a District, in the City's sole discretion, when the proposed District meets the waiver criteria found in Section 18.40.040.

(Ord. 13, 2007 §1)

13.50.120 - District fees and costs.

- (a) The application and processing fee for the City to review the creation of a District and Service Plan shall be set periodically by the City Manager at a rate to recover administrative review expenses as well as reasonable direct costs incurred by the City related to such District and plan review, including but not limited to costs of the City's bond counsel.
- (b) All owners of real property within any District shall be required to pay any and all applicable City fees, costs and expenses, including but not limited to building and development fees that apply to all properties Citywide.

(Ord. 13, 2007 §1)

13.50.130 - Required annual report.

Not later than September 1 of each calendar year, each District shall file an annual report (the "annual report") with the City Clerk, the requirements of which may be waived in whole or in part by the City Council, if such reporting requirements place an undue hardship on such District. The annual report shall reflect activity and financial events of the District through the preceding December 31 (the "report year"). The annual report shall include the following:

- (1) A narrative summary of the progress of the District in implementing its Service Plan for the report year;
- (2) Except when exemption from audit has been granted for the report year under the Local Government Audit Law, the audited financial statements of the District for the report year, including a statement of financial condition (i.e., balance sheet) as of December 31 of the report year, and the statement of operations (i.e., revenues and expenditures) for the report year or a copy of the audit exemption application;
- (3) Unless disclosed within a separate schedule attached to the financial statements, a summary of the capital expenditures incurred by the District in development of public improvements in the report year, as well as any public improvements proposed to be undertaken in the five (5) years following the report year;
- (4) Unless disclosed within a separate schedule attached to the financial statements, a summary of the financial obligations of the District at the end of the report year, including the amount of outstanding debt, the amount and terms of any new debt issued in the report year, the amount of payment or retirement of existing debt of the District in the report year, the total assessed valuation of all taxable properties within the District as of January 1 of the report year and the current mill levy of the District pledged to debt retirement in the report year;
- (5) A summary of residential and commercial development in the District for the report year;
- (6) A summary of all fees, charges and assessments imposed by the District as of January 1 of the report year;
- (7) Certification by the Board of Directors that no action, event or condition enumerated in Section 13.50.210 has occurred in the report year; and
- (8)

The name, business address and telephone number of each member of the Board of Directors and its chief administrative officer and general counsel, together with the date, place and time of the regular meetings of the Board of Directors.

(Ord. 13, 2007 §1)

13.50.140 - Review of annual report.

Annually, the City Council, at a regular public meeting, may review the annual reports received from each District. In the event the annual report is not timely received by the City Clerk, notice of such default shall be given by certified mail by the City Clerk to the Board of Directors of such District at its last known address. The failure of the District to file the annual report within forty-five (45) calendar days of the mailing of such default notice by the City Clerk shall empower the City Council to impose the sanctions authorized in Section 13.50.280. The remedies provided for noncompliance with the filing of the annual report shall be supplementary to any remedy authorized by the Special District Act.

(Ord. 13, 2007 §1)

13.50.150 - Presubmittal meeting.

Petitioners shall initiate a Service Plan proposal by scheduling a meeting with designated City staff representatives to discuss the procedures and requirements for a Service Plan. The City representative shall explain the administrative process and provide information to assist petitioners in the orderly processing of the proposed Service Plan.

(Ord. 13, 2007 §1)

13.50.160 - Filing of proposed Service Plan.

- (a) Petitioners shall file a proposed Service Plan and fifteen (15) additional copies with the City Clerk. The proposed Service Plan shall substantially comply with the format of any Model Service Plan which is maintained on file with the City Clerk.
- (b) A copy of the proposed petition to be filed with the district court must be included with the proposed Service Plan filed with the City.

(Ord. 13, 2007 §1)

13.50.170 - Service Plan contents.

The proposed Service Plan shall include the following:

- (1) The information required under Section 32-1-202(2), C.R.S. and Section 18.40.040 of the Development Code.
- (2) A map of the proposed District boundaries with a legal description or lot and block description.
- (3) An itemization of any costs which petitioners expect to be assumed by the City for the construction and maintenance of public improvements and the timing of said public expenditure.
- (4) Proof of ownership for all properties within the District.
- (5) A copy of any and all proposed, contractual and/or operations documents which would affect or be executed by the proposed District, including the form of any intergovernmental agreement between the District and the City.
- (6) A capital plan including the following:
 - a. A description of the type of capital facilities to be developed by the District;
 - b. An estimate of the cost of the proposed facilities; and
 - c. A pro forma capital expenditure plan correlating expenditures with development of District infrastructure.
- (7) A financial plan including the following:
 - a. The total amount of debt issuance planned for the five-year period commencing with the formation of the District;
 - b. All proposed sources of revenue and projected District expenses, as well as the assumptions upon which they are based, for at least a ten-year period from the date of the District formation;
 - c. The dollar amount of any anticipated financing, including capitalized interest, costs of issuance, estimated maximum rates and discounts and any expenses related to the organization and initial operation of the District;
 - d. A detailed repayment plan covering the life of any financing, including the frequency and amounts expected to be collected from all sources;
 - e. The amount of any reserve fund and the expected level of annual debt

service coverage which will be maintained for any financing;

- f. The total authorized debt for the District;
 - g. The provisions regarding credit enhancement, if any, for the proposed financing, including but not limited to letters of credit and insurance; and
 - h. A list and written explanation of potential risks of the financing.
- (8) Such other information contained in the Model Service Plan or as may reasonably be deemed necessary or appropriate by the City, including but not limited to potential impacts to other existing developments within the City.

(Ord. 13, 2007 §1)

13.50.180 - Administrative review.

Once a review of the Service Plan by the City has been completed, a comprehensive analysis shall be made in written report form to the City Council. The report shall evaluate the Service Plan and incorporate comments of the City staff as well as any consultants. The report shall set forth the recommendations made in accordance with the review criteria contained in Section 13.50.170.

(Ord. 13, 2007 §1)

13.50.190 - Public hearing and criteria applied to a Service Plan.

Upon completion of the administrative report, a public hearing shall be scheduled for consideration at a regular City Council meeting. Public notice shall be accomplished in accordance with the requirements of Section 32-1-204, C.R.S.

- (1) Any testimony or evidence which, in the discretion of the City Council, is relevant to the organization of the District shall be considered.
- (2) The City Council shall apply the following criteria to consideration of the proposed Service Plan:
 - a. Whether there is a sufficient existing and projected need for organized service in the area to be serviced by the proposed District;
 - b. Whether the existing service in the area to be served by the proposed District is inadequate for present and projected needs;

- c. Whether the proposed District is capable of providing economical and sufficient service to the area within its proposed boundaries;
- d. Whether the area to be included in the proposed District has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis;
- e. Whether adequate service is not, or will not be, available to the area through the City or other existing quasi-municipal corporations, including existing Districts, within a reasonable time and on a comparable basis;
- f. Whether the facility and service standards of the proposed District are compatible with the facility and service standards of the City;
- g. Whether the proposal is in substantial compliance with the City's Comprehensive Plan;
- h. Whether the proposal is in substantial compliance with the county, regional or state long-range water quality management plans and wastewater plans for the area;
- i. Whether the creation of the District will be in the best interests of the area proposed to be served;
- j. Whether the creation of the District will be in the best interests of the residents or future residents of the area proposed to be served;
- k. Whether the proposed Service Plan is in substantial compliance with this Chapter; and
- l. Whether the creation of the District will foster urban development that is remote from, or incapable of being integrated with, existing urban areas, or place a burden on the City or adjacent jurisdictions to provide urban services to residents of the proposed District.

(Ord. 13, 2007 §1)

13.50.200 - Findings and written determination regarding District Service Plan.

If, after consideration of the applicant's submitted materials, staff reports and public testimony at the public hearing, the Service Plan is approved, a resolution of approval of the Service Plan, either as approved or as approved with conditions, shall be adopted by the City Council. The resolution of approval of the Service Plan shall include findings that conclusively

establish that the Service Plan is in substantial compliance with this Chapter and, in particular, the criteria found in Section 13.50.170 and Subsection 13.50.190(b) above. In all cases, the City Council shall make findings for its determination of approval, approval with conditions or denial based on the criteria stated in Subsection 13.50.190(b).

(Ord. 13, 2007 §1)

13.50.210 - Material modification.

In addition to any material modifications made to any approved Service Plan, the occurrence of any of the following actions, events or conditions, subsequent to the date of approval of the Service Plan or most recent amendment thereto, shall constitute material modifications requiring a Service Plan amendment:

- (1) Default in the payment of principal or interest of any District bonds, notes, certificates, debentures, contracts or other evidences of indebtedness or borrowing issued or incurred by the District which:
 - a. Persists for a period of one hundred twenty (120) calendar days or more;
 - b. The defaulted payment exceeds the lesser of: fifty thousand dollars (\$50,000.00) or ten percent (10%) of the outstanding principal balance of the indebtedness; or
 - c. The creditors have not agreed in writing with the District to forbear from pursuit of legal remedies.
- (2) The failure of the District to develop, cause to be developed or consent to the development by others of any capital facility proposed in its Service Plan when necessary to service approved development within the District.
- (3) Failure of the District to realize at least seventy-five percent (75%) of the development revenues (including developer contributions, loans or advances, fees, exactions and charges imposed by the District on residential and commercial development, excluding taxes) projected in the financial portion of the Service Plan during the three-year period ending with the report year, provided that the disparity between projected and realized revenue exceeds fifty thousand dollars (\$50,000.00).
- (4)

The development of any capital facility in excess of one hundred thousand dollars (\$100,000.00) in cost, which is not either identified in the Service Plan or authorized by the City in the course of a separate development approval, excluding bona fide cost projection miscalculations; and state or federally mandated improvements, particularly water, storm drainage and/or sanitation facilities.

- (5) The occurrence of any event or condition which is defined under the Service Plan or intergovernmental agreement as necessitating a Service Plan amendment.
- (6) The material default by the District under any intergovernmental agreement with the City.
- (7) Any of the events or conditions enumerated in Section 32-1-207(2), C.R.S.

(Ord. 13, 2007 §1)

13.50.220 - Appeal hearing of material modification determination.

Should the District dispute that one (1) or more of the occurrences enumerated in Section 13.50.210 above is a material modification, the District may, within sixty (60) calendar days of notice by the City, and after consultation with City staff, request in writing a hearing before the City Council. After hearing and receipt of any relevant information presented by the District and the recommendation of City staff, the City Council shall make a finding as to whether such occurrence constitutes a material modification. In the event it is found that a material modification has taken place, the District shall submit its request for an amendment in accordance with this Chapter, unless waived by the City Council. Upon a finding that no material modification has taken place, the District shall be relieved from obtaining an amendment. The City Council may, however, require a later amendment if the change or deviation, on a cumulative basis, subsequently becomes a material modification. In making its determination, the City Council shall consider, among other relevant information, whether the modification will have a probable adverse financial impact on the City.

(Ord. 13, 2007 §1)

13.50.230 - Service Plan amendment.

(a)

Except as otherwise provided in the approved Service Plan and except when the City Council has determined that no material modification has occurred pursuant to Section 13.50.220 above, within ninety (90) calendar days of the occurrence of an action, event or condition enumerated in Section 13.50.210, the Board of Directors shall forward an appropriate petition to the City Council for approval requesting a Service Plan amendment. The petition for amendment shall include:

- (1) Any information or documentation required under the applicable provisions of the Special District Act;
 - (2) Any material changes since the Service Plan was last reviewed and approved by the City Council to any of the information, assumptions or projections furnished in conjunction with the petition for approval of organization of a District or contained in the Service Plan;
 - (3) A detailed explanation of the activity, events or conditions which resulted in the material modification, including what action was taken or alternatives considered, if any, by the District to avoid the action, event or condition;
 - (4) The impact of the material modification on the District's ability to develop the capital facilities and infrastructure necessary to meet its capital development plan;
 - (5) The effect of the material modification on the District's ability to retire, as scheduled, its outstanding financial obligations and its ability to issue and market additional indebtedness, if any;
 - (6) A current financial plan for the District reflecting development absorption rates anticipated within the District's service area, projected annual revenues and expenditures based upon such projected absorption rates, debt issuance and amortization schedules and a projection of anticipated capital outlays;
 - (7) The financial impact of the modification on existing residents of the District;
 - (8) An updated five-year capital improvements plan; and
 - (9) What alternatives or options are available to the District if the requested amendment is not approved.
- (b) All of the required information shall be supported by appropriate technical analysis, reports and supporting documents of qualified professionals and consultants. The amendment shall be processed and reviewed in the same manner as prescribed by this Chapter for an initial Service Plan, except that the submittal

requirements of this Section shall be substituted for those of Section 13.50.160, and the application fee shall be set by the City Manager. This Section shall not impair the right of the City to bring an action in the District Court to pursue appropriate remedies, including but not limited to enjoining the activities of the District pursuant to Section 32-1-207(3)(b), C.R.S.

- (c) After the effective date of this Chapter, all Service Plan amendments shall comply with this Chapter.

(Ord. 13, 2007 §1)

13.50.240 - Exemption from compliance with this Chapter.

If any District has not undertaken development of capital facilities or issued any indebtedness within one (1) year after approval of the District by the City, it may apply to the City Council within thirty (30) calendar days of expiration of the one-year period for a one-time exemption from compliance with this Chapter for a period of time not to exceed two (2) years beginning from the end of the initial one-year performance period. The City Council may grant, at its sole discretion, an exemption if the Board of Directors submits a resolution to the City Council stating that, upon issuance of the exemption, the District's authorization under the Service Plan and the intergovernmental agreement with the City to undertake development of capital facilities or issue any indebtedness is temporarily suspended. Upon issuance of the exemption, the District shall be excluded from compliance with this Chapter, except that the District annually, not later than September 1, shall submit financial statements from the previous year and the budget for the current year.

(Ord. 13, 2007 §1)

13.50.250 - Review of financing.

A District shall not issue any indebtedness that is not consistent with the Service Plan previously approved by the City, without first submitting the proposed financing to the City for review and comment. The City shall have sixty (60) calendar days to review the proposed financing. The submission shall include the dollar amount of the issue, the estimated interest rate and other financing costs, the type of revenues pledged to repayment, including amount of the mill levy pledged, and a description of the credit enhancements, together with any preliminary

official statement or other prospectus for the debt issue. The submission shall be accompanied by a certification of the Board of Directors that the proposed issuance or refinance of indebtedness is authorized by and in compliance with the Service Plan for the District.

(Ord. 13, 2007 §1)

13.50.260 - Land use.

Approval of a Service Plan does not guarantee the petitioner and/or the District any other land use approvals by the City required for the development of property within the District.

(Ord. 13, 2007 §1)

13.50.270 - Capital facilities.

Districts are prohibited from developing or constructing any capital facility unless such facility is authorized under the Service Plan and intergovernmental agreement and any applicable City ordinances.

(Ord. 13, 2007 §1)

13.50.280 - Enforcement.

Should any District fail to comply with any applicable provision of this Chapter, the City Council may impose one (1) or more of the following sanctions, as it deems appropriate:

- (1) Exercise any applicable remedy under the Special District Act.
- (2) Withhold the issuance of any permit, authorization, acceptance or other administrative approval necessary for the District's development of public facilities or construction.
- (3) Exercise any legal remedy under the terms of any intergovernmental agreement under which the District is in default.
- (4) Exercise any other legal remedies, including but not limited to seeking injunctive relief against the District, to ensure compliance with the provisions of this Chapter.

All remedies of the City are cumulative in nature.

(Ord. 13, 2007 §1)

13.50.290 - Application to pending Service Plans and amendments.

This Chapter shall govern the processing, review and consideration of Service Plans for new Districts or those existing Districts required to submit Service Plans or Service Plan amendments which have not received approval by the City Council prior to the effective date of this Chapter.

(Ord. 13, 2007 §1)

13.50.300 - Severability.

The sections, paragraphs, sentences, clauses and phrases of this Chapter are severable, and if any phrase, clause, sentence, paragraph or section of this Chapter is declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Chapter.

(Ord. 13, 2007 §1)