

ORDINANCE NO. 2549

INTRODUCED BY: ALLEN-THOMAS, CHACON, DOUGLAS, FORD, HURST, HUSEMAN, KIM, MADERA, NOBLE

AN ORDINANCE ENACTING CHAPTER 13 - METROPOLITAN DISTRICTS OF THE COMMERCE CITY REVISED MUNICIPAL CODE

WHEREAS, the City of Commerce City, Colorado (the “City”), is a home rule municipality and political subdivision of the State of Colorado (the “State”) organized and existing under a home rule charter (the “Charter”) pursuant to Article XX of the Constitution of the State; and

WHEREAS, pursuant to Article 1, Title 32, Colorado Revised Statutes, as amended (the “Special District Act”), the City has the authority to approve service plans for metropolitan districts organized under the Special District Act that are organized wholly within the City’s boundaries; and

WHEREAS, the City Council of the City (the “City Council”) has determined and hereby determines that it is necessary and in the best interest of the City and its inhabitants to set forth uniform procedures and limitations for the orderly creation and regulation of metropolitan districts organized under the Special District Act; and

WHEREAS, the City Council has determined that, in order to achieve the City Council’s objectives of establishing review processes, service plan requirements, decision criteria, and oversight standards for the regulation of metropolitan districts organized under the Special District Act, it is necessary to enact Chapter 13 - Metropolitan Districts, of the Commerce City Revised Municipal Code as follows.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

Section 1. Enactment. Chapter 13 - Metropolitan Districts, of the Commerce City Revised Municipal Code, is hereby enacted to read as follows:

**“CHAPTER 13 – METROPOLITAN DISTRICTS**

**ARTICLE I. – GENERAL PROVISIONS**

**Sec. 13-1000. – Purpose and policy preferences.**

- (a) The purpose and intent of this chapter is to establish review processes, service plan requirements, decision criteria, oversight standards and enforcement processes for the regulation of metropolitan districts organized under Title 32 of the Colorado Revised Statutes that include property within the boundaries of the city.
- (b) The city is receptive to district formation and continued existence as an instrument to provide competitive financing for projects, to build better and enhanced infrastructure and, where needed, to provide essential and beneficial services that are otherwise not available

and could not be practically provided by the city or any other existing municipal or quasi-municipal entity, including existing special districts, within a reasonable time and on a comparable basis.

- (c) Absent substantial justification for the need for deviations, the city will only approve service plans and modifications to existing service plans that meet the standards and goals set forth in this chapter and the requirements of the Special District Act, provide a demonstrated public benefit, and conform to the city's model service plan.
- (d) Absent substantial justification, the city will not approve service plans or modifications to existing service plans that:
  - (1) provide no extraordinary public benefits or fund only basic infrastructure;
  - (2) rely on fees, other than a limited one-time capital improvements fee that is not imposed on end users, for the payment of costs of public improvements;
  - (3) restrict or inhibit the election of end users to district boards or the decision-making of future boards controlled by end users through the use of onerous intergovernmental agreements or revenue pledge agreements, control or managing districts, the creation of separate authorities, or other mechanisms;
  - (4) provide for the taxation of property owners for more than thirty-five (35) years for the purpose of paying costs of public improvements, including any refunding or refinancing of existing debt unless a majority of the district board are end users who vote in favor of a refunding of a part or all of the district's debt that will result in a net present value savings;
  - (5) provide for an original issuance of debt by the district that requires the imposition of a mill levy exceeding fifty (50) mills for repayment;
  - (6) rely on property taxes as a primary revenue source if the future assessed value of all property within the district at full build-out is projected to be less than five million dollars (\$5,000,000.00), subject to adjustment after 2023 for increases in the Consumer Price Index for the Denver-Boulder statistical region as prepared by the U.S. Bureau of Labor Statistics;
  - (7) rely on financing mechanisms that involve private reimbursements to developers instead of independent, market-based options;
  - (8) permit the reimbursement of a developer of property in the district on unfair or unreasonable terms;
  - (9) create consolidated/service metropolitan districts or districts without lots that will be sold to end users; or
  - (10) contemplate formation of a district with less than 5 acres contained within its district boundaries; or noncontiguous property contained within its district boundaries.

- (e) ~~contemplate~~The city will not approve service plans or modifications to existing service plans that contemplate (i) a parent/child, control or managing district/financing district or other multiple district structure or a financing mechanism whereby a district pledges its mill levy or other revenue to another district to pay for such district's debt, or (ii) the existence of a district with little or no assessed valuation that is maintained throughout the life of a project for the sole purpose of maintaining control by a developer board of directors over any district.

**Sec. 13-1001. – Definitions.**

Administrative operation and maintenance costs means the reasonable and necessary costs of ongoing administrative, accounting and legal services to the district.

Commercial district means a metropolitan district with a proposed service plan considered by the city council after the January 1, 2023, in which ten percent (10%) or less of the property to be included in the district is expected to be residential development.

*Debt* means bonds or other obligations for the payment of which a district has promised to impose an ad valorem property tax mill levy and/or collect fee revenue. *Debt* includes an intergovernmental agreement that contains a pledge to impose an ad valorem property tax mill levy and/or collect fee revenue between the district and any other governmental or quasi-governmental entity.

*District activities agreement* means the intergovernmental agreement between any district and the city for the purpose of implementing the applicable district's service plan.

*End user* means any owner, or tenant of any owner, of any taxable improvement within a district's boundaries who is intended to become burdened by the imposition of ad valorem property taxes imposed by the district, provided a person or entity that entitles or develops property or constructs residential or commercial structures for the purpose of sale to another person is not an end user.

*Extraordinary public benefits* means development outcomes that benefit the public in an extraordinary manner, including without limitation by: exceeding minimum requirements and standards; delivering or facilitating the delivery of infrastructure or services that address significant challenges or strategic priorities previously identified by the city; providing systemic solutions that deliver a greater benefit to the community; or any other factor deemed relevant by the city.

*Financial plan* means, in addition to the requirements of the Special District Act, a description of the manner in which the public improvements will be financed with a schedule of debt and operating financial projections, including debt issuance and service schedules, prepared by an investment banking firm or qualified financial advisor establishing the maximum debt capacity of the district based on assumptions of a projected interest rate not less than 150 basis points more than the 30 Year AAA MMD Index (as of the date of the submission of the Service Plan) and not to exceed twelve percent (12%), projected assessed valuation of property to be included in the district, and the project rate of absorption of the assessed valuation. The financial plan must contemplate that the debt will amortize over a period of 35 years with level debt service payments beginning no later than 10 years after issuance of each series of bonds, and must use market-based,

market comparable valuation and absorption data with inflation on completed structures not to exceed not exceed a 4% biennial growth rate. The financial plan must also include the regional improvement mill levy and detailed projections of the revenue to be generated by the imposition of the regional improvement mill levy for a period of forty (40) years following the year in which the regional improvement mill levy is implemented.

*Inactive special district* has the meaning assigned in the Special District Act.

*Material modification* or *materially modifies* (or any variation thereof), when used with respect to a service plan, means a change to a service plan of a basic or essential nature as provided in C.R.S. 32-1-207(2)(a), an action or omission of a district that is materially inconsistent with the service plan, or a provision of a service plan that is specifically designated as a material modification if changed or not complied with in any manner. Departures from a service plan that constitute a material modification include without limitation:

- (1) actions or failures to act that create materially greater financial risk or burden to the taxpayers of the district;
- (2) an alteration or revision of the proposed schedule of debt issuance set forth in the financial plan, subject to the conditions set forth in the service plan;
- (3) performance of a service or function, construction of an improvement, or acquisition of a major facility that is not closely related to an improvement, service, function, or facility authorized in the service plan, except as authorized by an amendment to the district activities agreement approved by the city council, provided that non-material modifications of the types of improvements and facilities and changes in proposed configurations, locations, or dimensions shall not be considered material modifications;
- (4) failure to perform a service or function, construct an improvement, or acquire a facility as provided in the service plan, except as authorized by an amendment to the district activities agreement approved by the city council;
- (5) the issuance of any Debt with a mill levy pledge, or which results in a mill levy pledge, that exceeds the maximum combined mill levy, maximum debt mill levy, or maximum debt imposition term authorized by the district's service plan;
- (6) the conversion of any taxable real property within the district to a tax-exempt status if such property was included in the district's financial plan unless the district demonstrates to the city council that the tax-exempt use of the property does not materially impact the district's ability to meet its annual debt service obligations or if the district imposes a fee on the purchaser in an amount comparable to the revenue that would have been generated by an equivalent property tax from the property until such time as the district's outstanding debt has been paid off;
- (7) the exclusion of any real property within the district without a prior resolution of the city council approving such exclusion;

- (8) failure to provide an essential public improvement or service described in its service plan when necessary to preserve the public health, safety, or welfare or necessary to serve approved development within the district;
- (9) failure to receive authorization for the regional improvement mill levy, or failure to impose, collect, or remit the regional improvement mill levy at the direction of the city, or the issuance of any debt prior to the authorization of the regional improvement mill levy;
- (10) failure to comply with any of the preconditions, prohibitions, limitations and restrictions of the service plan.

*Metropolitan district* or *district* has the meaning assigned to the term “metropolitan district” in the Special District Act but does not include the Greater Brighton Fire Protection District, the South Adams County Fire Protection District, or the South Adams County Water & Sanitation District.

*Operate and Maintain* or *Operation and Maintenance* means (a) the reasonable and necessary ongoing operation, maintenance, planning, design, acquisition, construction, repair and replacement of all or a portion of any public improvements or the provision of services related thereto; and (b) the reasonable and necessary ~~costs of~~ ongoing administrative, accounting and legal services to a district; all in accordance with the provisions and requirements of, as applicable, the Special District Act, the service plan, the district activities agreement, the city code and any city approvals.

*Public Improvements* means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as authorized by a service plan that benefit the district and serve the future residents and taxpayers of the district.

*Public improvements operation and maintenance costs* means the reasonable and necessary costs of ongoing operation, maintenance, planning, design, acquisition, construction, repair and replacement of all or a portion of the Public Improvements or the provision of services related thereto.

*Regional improvement mill levy* means a mill levy to be imposed, collected, and remitted to the city or a city controlled entity by a district on an annual basis to pay costs related to the planning, design, acquisition, funding, construction, installation, relocation, redevelopment, administration and overhead costs of such regional improvements as identified in accordance with the service plan, subject to change as planning, design, acquisition, funding, construction, installation, relocation, and redevelopment occurs, as the city in its sole reasonable discretion believes are public in nature, have a benefit to the end users paying the mill levy, and are permitted by state law to be paid for from revenues derived from the district, including operations and maintenance thereof.

*Residential district* means a metropolitan district with a proposed service plan considered by the city council after the January 1, 2023, in which more than ten percent (10%) of the property to be included in the district is expected to be residential development.

*Special District Act* means Article 1 of Title 32 of the Colorado Revised Statutes, as amended from time to time.

*Special district* has the meaning assigned in the Special District Act.

**Sec. 13-1002. – Authority.**

- (a) The city council retains full discretion and authority regarding the approval or disapproval of any matters relating to metropolitan districts, including without limiting the terms, conditions, and limitations of any service plan, the approval, conditional approval, disapproval of any service plan or modification thereof, or any other application by a metropolitan district. This chapter is not intended to, and shall not be construed to, limit the discretion or authority of the city and the city council.
- (b) In the manner and to the extent provided in this article, the city council shall maintain continuing jurisdiction over the operations and affairs of any district operating within its boundaries and shall exercise its rights in relation thereto, as deemed appropriate by the city council, pursuant to the Special District Act, the home rule charter of the city and this article.
- (c) No action or proceeding, at law or in equity, to review any acts or proceedings or to question the validity of the city council's determination pursuant to this article, whether based upon irregularities or jurisdictional defects, shall be maintained unless commenced within thirty (30) days after final action of the city council or else be thereafter perpetually barred.

**Sec. 13-1003. – Fees.**

- (a) *Application fees.* Any application under this article or any other request by a metropolitan district for city consideration shall be accompanied by a fee in the amount established by resolution of the city council to defray the costs of the city's review and, if applicable, a deposit of funds to reimburse the city for the costs of third-party legal, financial or other consulting services retained by the city in its sole discretion related to the application or inquiry, including without limitation review and analysis of proforma analysis, district financial plans, original service plan applications and proposed service plan amendments. The city council may establish a tiered fee structure to account for the complexity of an application, including applications proposing modifications to the model service plan established pursuant to this article. Any application or inquiry fees, other than unspent deposited funds, shall be nonrefundable.
- (b) *Annual oversight fee.* All metropolitan districts organized wholly or partially within the city's boundaries shall pay to the city an annual fee for review of metropolitan district operations and service plan compliance in an amount established by resolution of the city council. The city council may establish a tiered fee structure to account for unique considerations, including district population, relationships with other metropolitan districts, consolidated service plans, or outstanding debt. Annual oversight fees shall be nonrefundable. Neither the city's review, nor any communications from the city to a district

regarding its service plan shall be construed as (1) approval of or consent to the district's operations, or (2) a finding or waiver of the district's compliance with its service plan.

- (c) *Enforcement fees.* All metropolitan districts organized wholly or partially within the city's boundaries shall pay to the city any fees and costs incurred by the city in connection with the enforcement of the applicable district's service plan or the protection of the city's rights thereunder, including reasonable ~~attorneys~~attorney's fees.

#### **Sec. 13-1004. – Sanctions.**

Should any district undertake any act without obtaining the prior approval of the city as required by the district's service plan or district activities agreement or this article that constitutes a material modification requiring a service plan amendment or under the Special District Act, or that does not otherwise comply with the provisions of the district's service plan, the city council may impose one 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, or withhold any cooperation, necessary for the district's development or construction or operation of improvements or provision of services;
- (3) exercise any legal remedy under the terms of any intergovernmental agreement under which the district is in default; or
- (4) exercise any other legal and equitable remedy available under the law, including seeking prohibitory and mandatory injunctive relief against the district, to ensure compliance with the provisions of the service plan or applicable law.

All remedies available to the City under this section shall be cumulative and non-exclusive.

#### **Sec. 13-1005. – Application to existing metropolitan districts.**

This article shall apply to all metropolitan districts organized wholly or partially within the city's boundaries, including any metropolitan district organized before the effective date of this article to the extent not inconsistent with such district's service plan.

### **ARTICLE II. – SERVICE PLANS.**

#### **Sec. 13-2100. – Service plans.**

- (a) *Model service plan.*

- (1) The city manager shall develop a model service plan consistent with this article for approval by the city council by resolution. The approval of a model service plan shall not be construed to limit the discretion or authority of the city council to approve modifications to the model service plan in its consideration of any application. Pending the approval of a model service plan by the city council, the city manager may designate a model service plan consistent with this article.

(2) The model service plan will include the following at a minimum:

- (i) a prohibition on the use of eminent domain without prior authorization of the city council;
- (ii) a prohibition on the inclusion or exclusion of property from the district without prior authorization of the city council;
- (iii) a prohibition on the imposition of fees, rates, tolls, penalties, or charges on end users for the payment of debt or for the costs of any public improvements;
- (iv) a prohibition on the execution of any intergovernmental agreement or reimbursement agreement that is likely to cause a material modification to the district's service plan without prior consent of the city council;
- (v) a prohibition on the execution any agreement establishing an authority or other separate entity under Section 29-1-201, et seq., C.R.S. without prior authorization of the city council;
- (vi) a prohibition on the invocation or exercise of any actual or perceived city sales and use tax exemption;
- (vii) a prohibition on the execution of any extraterritorial service agreement not described in the service plan without prior authorization of the city council;
- (viii) a prohibition on the consolidation with any other special district or the formation of any subdistrict without prior authorization of the city council;
- (ix) a prohibition on shifting district costs (including public improvement costs and operation and maintenance costs) to undeveloped property in the district in such a manner so as to inequitably burden such property to the benefit of developed property in the district;
- (x) a prohibition on the reimbursement of any developer of property in the district more than eighty percent (80%) of the actual costs of public improvements, more than \$25,000 of the costs of organizing the district; or any development security expenses;
- (xi) a restriction of the total debt authorization to no more than the lesser of one hundred percent (100%) of the maximum projected debt capacity or one hundred percent (100%) of the estimated costs of the public improvements, as shown in the district's financial plan;
- (xii) a limitation of the total mill levy authorization to fifty (50) mills for a residential district and thirty-five (35) mills for a commercial district for both debt service and operations and maintenance, with no more than five (5) mills being used for administrative operations and maintenance costs and ten (10) mills being used for public improvement operations and maintenance costs even if the debt service mill levy becomes unlimited, provided that twenty (20) mills may be used for



public improvement operations and maintenance costs if end users cast the majority of the affirmative votes taken by the district's board of directors at the meeting authorizing such action, provided that the service plan may allow for unlimited mill levy for the payment of debt if the total amount of the district's debt is equal to or less than fifty percent (50%) of the district's assessed valuation and if end users cast the majority of the affirmative votes taken by the district's board of directors at the meeting authorizing such action;

- (xiii) no provision authorizing the adjustment of any mill levy to account for changes in the method of calculating assessed valuation (including any change in the ratio of actual valuation) or any constitutionally mandated tax credit, cut or abatement;
- (xiv) a limitation on the term for the repayment of debt to thirty-five (35) years for residential districts unless a majority of the district board are residents of the district and have voted in favor of a refunding that will result in a lower net effective interest rate as set forth in C.R.S. 11-56-101 *et seq.* and a net present value savings;
- (xv) a limitation of the maximum voted interest rate on any debt to twelve percent (12%) and of the maximum underwriting discount for any debt to three percent (3%).
- (xvi) a prohibition of compounding interest in any reimbursement agreement with any owner of property or developer of land in the district;
- (xvii) a limitation of the purchase price of any land acquired by the district from any developer of property within the district's boundaries to no more than the current fair market value at the time of purchase;
- (xviii) sufficient independent controls to ensure the reasonableness of interest rates for any debt obligations of the district, including any repayment or reimbursement agreement related to public improvements;
- (xix) sufficient independent controls to ensure that expenditures reimbursable to any developer are reasonable;
- (xx) sufficient independent controls to ensure that district expenditures are properly allocated if public improvements as part of an overall project including private improvements or improvements benefiting other property;
- (xxi) a prohibition on the district's cooperation with or support of the conversion of any real taxable property within the district to a tax-exempt status, if such property was included in the district's financial plan;
- (xxii) provisions requiring the submittal to the city for review and comment of agreements involving any pledge of revenue or promise to reimburse any person or entity from district revenue and any proposed debt issuance or refinancing of outstanding debt;

- (xxiii) a provision requiring the dissolution of the district after the district's debts and financial obligations have been paid or defeased, and, if the district has been authorized to operate and maintain any part of the public improvements under a district activities agreement, the district shall retain only the powers necessary for ongoing operations and maintenance as authorized in its district activities agreement;
  - (xxiv) restrictions on the issuance of debt by the district until the developer of the property within the district's boundaries agrees to provide a disclosure notice, approved by the city, to each potential end user of a residential lot or dwelling before the end user enters into a written agreement for the purchase and sale of that residential lot or dwelling unit; and
  - (xxv) provisions implementing the governance and transparency requirements of this article and the Special District Act, as each may be amended.
- (b) *Contents.* In addition to those contents required by the C.R.S. 32-1-202(b), the Special District Act and otherwise provided in this article, all service plans shall include the following:
- (1) a description of the relationship between the organizer of the district and the developer and owner of any property to be included in the district's boundaries;
  - (2) a specific identification of all fees that the district can impose;
  - (3) a description of the services that will be provided by the district;
  - (4) a financial plan;
  - (5) a description of the public improvements that will be built, acquired, or financed by the district, including at a minimum a map or maps and preliminary construction drawings of such improvements, a written narrative and description of the public improvements, and a general description of the district's role with regard to the public improvements;
  - (6) a description of the material terms of and justification for any intergovernmental agreement or reimbursement agreement which is required or known at the time of district formation that is likely to be required to fulfill the purposes of the district;
  - (7) a description of the material terms of and justification for any extraterritorial service agreements known at the time of district formation; and
  - (8) a district activities agreement.

**Sec. 13-2101. – Regional improvement mill levy.**

- (a) All service plans approved after the January 1, 2023, shall provide for the authorization of and require the imposition, collection, and remittance of a regional improvement mill levy applicable to all properties within the district or the payment of a lump sum amount from

the district to ensure that properties benefiting from regional improvements pay a reasonable share of costs associated with such improvements.

- (b) The service plan shall require that, as part of the district's initial TABOR election, the district seek authority to impose the regional improvement mill levy and the authority under TABOR to enter into an intergovernmental agreement with the city, or a city controlled entity obligating the district to pay the proceeds from the regional improvement mill levy to the city or a city controlled entity as a multiple-fiscal year obligation. The district shall not issue debt or impose any mill levy or fee for the repayment of debt until the district has complied with this subsection.
- (c) The regional improvement mill levy shall be in addition to and not subject to any limitation on the mill levy for debt service or operations and maintenance.
- (d) When imposed by a district, a regional improvement mill levy shall not exceed a term of forty (40) years from December 31 of the tax collection year after which the regional improvement mill levy is first imposed.

### **ARTICLE III. – REVIEW.**

#### **Sec. 13-3100. – Applications.**

Applications pursuant to this article shall be filed with the Department of Community Development on forms approved by the City Manager and shall be accompanied by any materials required by this article or deemed necessary by the City Manager to carry out the provisions of this chapter or applicable law and all required fees and deposits. Applications must identify all deviations from the model service plan and the requirements of this article. The City Manager may require the submission of additional information at the time of application or at any time during the review process at the applicant's cost. No application will be considered complete until all fees and deposits have been paid and all known requested information has been submitted.

#### **Sec. 13-3101. – Service plans.**

- (a) *Approval required.* Approval of a service plan by the city council shall be required for the organization of any metropolitan district wholly or partially within the city's boundaries.
- (b) *Conceptual review.*
  - (1) *Purpose.* The conceptual review process in this subsection is intended to provide information to the applicant for use in determining whether it will submit an application for a service plan and the contents of such application. Any comments, suggestions, and recommendations by the city, including the city council and city staff, are not binding or limiting on the city in any manner. No service plan application will be accepted unless a conceptual review under this subsection has been completed within the preceding twelve (12) months for the same or substantially similar property and for the same or a substantially similar purpose.
  - (2) *Concept letter.* To propose a new service plan, an applicant must pay the applicable fee and provide a concept letter including the following:

- (i) a summary narrative of the proposed service plan and the development it will serve, including the current status of the development;
  - (ii) a detailed proposal for the metropolitan district, including: a clear justification of the need for the district, including a proforma analysis or other appropriate documentation demonstrating that no other entities (including the applicant) consider it desirable, feasible or practical to undertake the public improvements or demonstrating that it is more economically advantageous to the future end users of the proposed metropolitan district for the district to undertake the public improvements; an explanation of the public benefits that the district will provide; anticipated modifications to the model service plan; proposed district powers; estimated costs to be financed; anticipated fees and purposes; anticipated proposed mill levy rates; anticipated repayment term; proposed timeline for district formation; and anticipated build-out period;
  - (iii) a sketch plan detailing the property location and boundaries; surrounding land uses; proposed use(s); proposed public improvement(s) (including structures, infrastructure, parks, drainage; and landscaping); and significant natural features (including irrigation ditches and canals); known utility locations; and
  - (iv) a detailed description of the services that the district will provide.
- (3) *Preliminary staff meeting.* The city manager or their designee will review the concept letter and meet with the applicant to discuss the proposal, initial staff feedback, potential public benefits, and procedural and fee requirements.
- (4) *Council review; notice.* Following the preliminary staff meeting, the city council will review the concept letter at an informal public hearing scheduled by the city manager at which the applicant, staff, and the public may be heard and the city council may provide informal, non-binding comments. At least fifteen (15) days prior to the hearing, the applicant must cause written notice of the hearing to be sent by first-class mail to: (A) all fee title owners of real property in the proposed boundaries or future inclusion area of the proposed district; and (B) all special districts in which the property subject to the application is included.
- (c) *Service plan review.*
- (1) *Timing.* Applicants are advised to submit applications for service plans by no later than the first of December for a spring election in the year following the submittal or by no later than the first day of May for an election in the fall of the year of submittal.
  - (2) *Staff review.* The city manager or their designee will conduct a staff review of service plan applications. Staff will refer applications to the Development Review Team, the city attorney, and any special districts in which the subject property is included. The city attorney may engage special counsel and the city manager may retain consultants having pertinent experience, at the applicant's cost, to assist in the city's review. Applicants may expect multiple rounds of review and comment on the application.

(3) *Staff report and hearing.* Upon completion of the staff review, the city manager will schedule the application for a public hearing before the city council and provide a report to the city council. No public hearing on a proposed service plan will be conducted less than fifteen (15) days prior to the final date on which the service plan can be submitted to a district court for the ordering of an election in the next upcoming election. The city manager's report will include:

- (i) an assessment of public benefits and extraordinary public benefits, including value of basic infrastructure against the public benefits;
- (ii) a financial assessment of the proposed district's debt capacity and servicing ability, based on the applicant's financing plan;
- (iii) an assessment of any proposed fees and the proposed debt authorization and mill levy;
- (iv) a report of proposed changes to the model service plan, the applicant's justifications for such changes, and recommendations regarding each proposed change;
- (v) an assessment of any intergovernmental agreements or inter-district relationships and any proposed extra-territorial service identified in the proposed service plan; and
- (vi) any additional information relevant to the proposed service plan's conformity with this article and the Special District Act.

(4) *Notice of hearing.*

- (i) At least thirty (30) days prior to the hearing, the applicant must cause written notice of the hearing to be:
  - (A) delivered by first-class mail to: (I) all fee title owners of real property in the proposed boundaries or future inclusion area of the proposed district; and (II) all special districts in which the property subject to the application is included; and
  - (B) published once in a newspaper of general circulation in the city.
- (ii) Mailed and published notices shall include the date, time, and location of the public hearing and the following information:
  - (A) a description of the general nature of public improvements and services to be provided by the proposed district;
  - (B) a description of the property to be included in the district and any future inclusion area, with the description being given by street address, by reference to a subdivision plat, or by use of a metes and bounds legal description if the property is not subdivided;

- (C) a statement of the maximum property tax mill levy that can be imposed on property in the district;
- (D) a statement of the maximum debt authorization proposed in the service plan;
- (E) a statement that property owners within the proposed boundaries may request that the city council consider excluding their property from the proposed district boundaries by filing a petition for exclusion in the city clerk's office at least ten (10) days before the hearing;
- (F) a statement that the proposed service plan and a map of the proposed district and its preliminary plans can be reviewed in the city manager's office; and
- (G) a statement that advance registration may be required and the hearing may be conducted virtually, as stated in the published meeting agenda.

(5) *Hearing.*

- (i) The city council will consider the application, the city manager's report, and any other testimony at a public hearing and after the hearing, shall approve, approve with conditions, or deny the application, based on the approval criteria in this article. The hearing will be conducted as a legislative proceeding but shall include a staff presentation, a presentation and rebuttal by the applicant, public testimony, and council questions.
- (ii) No public hearing on a proposed service plan will be conducted less than fifteen (15) days prior to the final date on which the service plan can be submitted to a district court for the ordering of an election in the next upcoming election.

(6) *Action on application.*

- (i) The city council shall disapprove a proposed service plan unless evidence satisfactory to the city council of each of the following is presented:
  - (A) There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special district.
  - (B) The existing service in the area to be served by the proposed special district is inadequate for present and projected needs.
  - (C) The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries.
  - (D) 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.

(ii) The city council shall disapprove a proposed service plan that contemplates (i) a parent/child, control or managing district/financing district or other multiple district structure or a financing mechanism whereby a district pledges its mill levy or other

revenue to another district to pay for such district's debt, or (ii) the existence of a district with little or no assessed valuation that is maintained throughout the life of a project for the sole purpose of maintaining control by a developer board of directors over any district.

~~(ii)~~(iii) Subject solely to the city council's discretion, the city council may disapprove a proposed service plan if the city council determines that the formation of the proposed district is not necessary for development to occur in the area to be served by the proposed district or that formation of the district would not be in the best interests of the city or its current or future residents and property owners, including those of the area to be served. The city council may consider any factor that the city council deems relevant to its consideration, including without limitation whether:

(A) adequate service is, or will be, available to the area to be served through other existing governmental or quasi-governmental entities within a reasonable time and on a comparable basis;

(B) the facility and service standards of the proposed district are not compatible with the facility and service standards of the city or another governmental or quasi-governmental entity providing service to the area to be served;

(C) the proposed service plan is not in substantial compliance with the comprehensive plan or any adopted area plan;

(D) the proposal is not in compliance with any duly adopted county, regional, or state long-range water quality management plan for the area to be served;

(E) the district's performance of ongoing operations or maintenance, if included, are in the best interests of the city and the existing or future residents and taxpayers of the district;

(F) the proposed district does not provide extraordinary public benefits;

~~(G) the service plan involves a multi-district structure and the projected project absorption and public improvements to be financed by the districts are not reasonably projected to occur over an extended period of time or the project does not involve varying projected uses;~~

~~(H)~~(G) the service plan does not satisfactorily detail the mechanics of a proposed multi-district structure or such mechanics do not comply with this article; or

~~(H)~~(H) the proposed modifications to the model service plan are not justified to the city council's satisfaction or are not consistent with this article.

~~(iii)~~(iv) As an alternative to denial of a proposed service plan, the city council may conditionally approve a service plan by requiring specific changes to the proposed service plan or on the provision of additional information.

~~(iv)~~(v) Before acting on a service plan application, the city council may, in its discretion, exclude territory from the area to be served by the proposed special district based on the petition of a property owner in the area to be served by the proposed district no later than ten (10) days prior to the hearing unless the applicant establishes to the city council's satisfaction that the exclusion of the property is not in the best interests of the proposed district

**Sec. 13-3102. – Material modifications; amendments.**

- (a) *Approval required.* Approval of any material modification or amendment to an existing service plan by the city council shall be required. Review of any material modification or amendment shall follow the procedure established by this article for the review of service plans and the city council is not limited to only reviewing the requested material modification or amendment. The city council reserves the right to propose and approve amendments or modifications to any section of an existing service plan in connection with the review of any material modification or amendment. The city manager may require a conceptual review of any material modification or amendment in their sole discretion.
- (b) *Notice of certain actions that may constitute material modifications.* A district shall provide written notice by U.S. First Class mail to the city council, city manager, and city attorney of any material modification.
- (c) *Restriction on certain actions.* A district shall provide written notice by U.S. First Class mail to the city council, city manager, and city attorney of any notice given pursuant to C.R.S. 32-1-207(3)(b) and shall not undertake the action described in such notice until the city council approves such action by resolution. If the city fails to respond to such notice, the district shall apply for an amendment to its service plan to authorize such action.

**Sec. 13-3103. – Other applications.**

- (a) *Scope.* This section shall apply to all applications, inquiries, or requests with respect to a metropolitan district other than an application for a service plan for a new district or a modification to an existing service or an action initiated by the city.
- (b) *Application.* To submit an application, inquiry, or request under this section, the applicant shall submit the application including:
  - (1) A discrete statement of the action that the city is requested to take;
  - (2) A legal and factual justification for the action, including specific citations to applicable provisions of the service plan, any applicable agreement, this article, or the Special District Act;
  - (3) A copy of the minutes or other record of formal action of the district's board authorizing the application, inquiry, or request; and
  - (4) Any additional information required by the service plan or the city manager.



- (c) *Authority.* The city council will have authority to determine any application, inquiry, or request under this section except to the extent such authority is vested in another official or body pursuant to the service plan. The decision on the application, inquiry, or request shall be in the sole discretion of the city council or other official or body, as applicable, unless a different standard is established by the service plan, any applicable agreement, this article, or the Special District Act.
- (d) *Hearing; notice.* For any determination by the city council or another body under this section, the application, inquiry, or request will be considered at a public meeting after an informal public hearing at which the applicant, staff, and the public may be heard. At least fifteen (15) days prior to the hearing, the applicant must cause written notice of the hearing to be sent by first-class mail to: (A) all fee title owners of real property in the proposed boundaries or future inclusion area of the district; and (B) all special districts in which the property subject to the application is included.

**Sec. 13-3104. – Inactive applications.**

If an applicant, having been notified that additional information or corrected materials are required, fails to submit such information or materials within thirty (30) days of the request, or an applicant fails to attend any scheduled meeting or public hearing, the director may notify the applicant that the application is considered inactive and unless corrective action is taken within thirty (30) days, the application shall be considered withdrawn.

**Sec. 13-3105. – Withdrawal of applications.**

After an application is withdrawn by an applicant or by failure of the applicant to take corrective action on an inactive application, no further action on the application shall take place. To re-initiate review, the applicant shall resubmit the application, which in all respects shall be treated as a new application for purposes of review, scheduling, and fees.

**ARTICLE IV. – GOVERNANCE.**

**Sec. 13-4000. – Board meetings and membership.**

(a) *Board meetings.*

- (1) All special and regular meetings of district's board of directors shall be open to the public and shall be held at a location that is within the city's boundaries.
- (2) All meetings shall include remote access participation and public comment options.

(b) *Board membership.* No district shall enter into any agreement or approve any rule or regulation by which the ability of end users to be elected to or appointed to the district's board of directors is removed or diminished.

(c) *Notices.* In addition to any notices required by the Special District Act, the district shall provide notices of any meeting and any call for nominations through social media accessible to end users of the district.

- (d) *Elections.* All district elections must be located within five miles of the district's boundaries.

**Sec. 13-4001. – Transparency.**

- (a) *Website.* All districts shall maintain a website as required by the Special District Act to be used primarily for the purpose of the district's operations and transparency and shall include district formation documents, debt documents, budgets, audits, contracts involving the expenditure of district funds, and meeting minutes.
- (b) The website shall not contain marketing materials or ads of any kind promoting the development, developers or homebuilders within the district's boundaries.
- (c) *Annual reports.*
- (1) *Requirement.* All metropolitan districts (other than inactive special districts) shall file and distribute an annual report as required by the Special District Act and shall post the annual report to the district's website by no later than October 1 of each year.
- (2) *Contents.* Annual reports shall include all contents required by the Special District Act and any additional information required by the service plan, including at a minimum the following information unless waived by the city council:
- (i) a narrative summary of the progress of the district in implementing its service plan for the report year;
  - (ii) the current year budget of the district, including a description of the public improvements to be constructed by the district in such year;
  - (iii) except when exemption from audit has been granted for the report year under state law, the audited financial statements of the district for the report year prepared in accordance with generally accepted accounting principles, including a statement of financial condition (i.e. balance sheet) as of December 31 of the report year and a statement of operation (i.e. revenue and expenditures) for the report year;
  - (iv) unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the district in development of improvements in the report year;
  - (v) unless disclosed within a separate schedule to the financial statements, a summary of 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 district debt issued in the report year, the total assessed valuation of all taxable property within the district's boundaries as of January 1 of the report year and the current total district mill levy pledged to debt retirement in the report year;
  - (vi) the names and contact information of the current directors on the district's board, any district manager, and the attorney for the district; and

- (vii) the district's current office address, phone number, email address and any website address.
- (3) *Review.* The city manager shall cause the annual report to be provided to the city council and to be posted on the city's website within ten (10) days of the receipt of the annual report. The city council may elect to review the annual report and to require the presence of a representative of a district to discuss the annual report at a regular or special meeting or study session. Neither the city council's review, nor any discussion with the district regarding its annual report shall be construed as (1) approval of or consent to the district's operations, or (2) a finding or waiver of the district's compliance with its service plan.

**Sec. 13-4002. – Disclosures to purchasers and buyers.**

- (a) *Disclosure to purchasers.* Districts shall use reasonable efforts and due diligence to cause any home builder or developer of residential property within the district's boundaries to provide to all initial purchasers of property within the district's boundaries, before execution of a purchase contract, written notice of disclosure that includes the information required by C.R.S. 38-35.7-110(2). The district shall record such notice of disclosure with the Adams County Clerk and Recorder at the time the subdivision plat is recorded or, if the subdivision plat has already filed, provide the City with a copy of the recorded notice of disclosure. The notice of disclosure shall include the maximum mill levy that may be assessed and the associated taxes that may be imposed on the residential property for each year the District is in existence.
- (b) *Disclosure to potential residential buyers.* The district shall use reasonable efforts and due diligence to provide information to potential residential buyers by: (i) furnishing to any developer of property or home builders within the district's boundaries information describing the key provisions of the service plan for prominent display at all sales offices; and (ii) inspecting the sales offices within the district's boundaries on a quarterly basis to assure the information provided is accurate and prominently displayed. Such information shall include the information required by C.R.S. 38-35.7-110(2).

**Sec. 13-4003. – District default.**

- (a) If a district fails to pay its debt when due or defaults in the performance of any obligation that has been agreed to between the district and the city, which obligation has been identified by the city in writing as a material obligation or would result in a material modification under the district's service plan, and such default is continuing after the delivery of notice of such default to the district and the expiration of any cure periods, the district shall not issue additional debt, except refunding debt resulting in a net present value savings or refunding debt issued to avoid or to cure a payment default, without the prior authorization of the city council.
- (b) If a court of competent jurisdiction has made a final determination that a district has defaulted on any of its financial obligations, and such determination is not subject to further appellate review, the district shall be precluded from issuing additional debt, except to

refund or refinance a financial obligation for the purpose of avoiding or curing a default without prior authorization of the city council.

- (c) The city shall not be liable for any debt or default of any district by virtue of the city's review or approval of any service plan or district activities agreement.”

Section 2. Severability. If any section, subsection, paragraph, clause or other provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability thereof shall not affect any of the remaining sections, subsections, paragraphs, clauses or provisions hereof.

Section 3. Statutes Superseded. Pursuant to Article XX of the State Constitution and the Charter, all State statutes that might otherwise apply in connection with the provisions of this Ordinance are hereby superseded to the extent of any inconsistencies or conflicts between the provisions of this Ordinance and such statutes. Any such inconsistency or conflict is intended by the City Council and shall be deemed made pursuant to the authority of Article XX of the State Constitution and the Charter.

Section 4. Effective Date. This Ordinance shall be effective five (5) days after both final posting and publication have been accomplished.

INTRODUCED, PASSED ON FIRST READING, AND PUBLIC NOTICE ORDERED THIS 13TH DAY OF NOVEMBER 2023.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS 27TH DAY OF NOVEMBER 2023.

CITY OF COMMERCE CITY, COLORADO

\_\_\_\_\_  
Benjamin A. Huseman, Mayor

ATTEST

\_\_\_\_\_  
Dylan A. Gibson, City Clerk

DRAFT