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Chapter 11.02

Special District Oversight

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11.02.010 Legislative declaration.

Special districts, including metropolitan districts, organized under the Special District Act ("Districts"), under appropriate circumstances provide an economic alternative to the development of municipal infrastructure at the expense and risk of the Town. The Town has previously authorized numerous Districts within its corporate limits for the sole purpose of development of infrastructure within their respective service areas. Through its approving resolutions and intergovernmental agreements with the Districts, the Town has restricted the authority and autonomy of the Districts by limiting the Districts' powers to the construction and financing of capital infrastructure. Certain Districts have undertaken capital development financed with District bonds exceeding the ability of the Districts to retire such indebtedness and the ability of the Town to maintain and fund replacement of the facilities within the constraints of available municipal resources. It is necessary to coordinate the development of capital facilities between the Town and Districts to achieve the most efficient and cost effective delivery of municipal services.

It is the intention of the Town Council to impose conditions, restrictions and requirements on the development by existing Districts of additional capital infrastructure and the issuance and refunding of indebtedness, in order to preserve the financial integrity of the Town and the health, safety, prosperity, security and general welfare of all of the residents and citizens of the Town, including the residents and citizens of the Districts. The Town Council finds that the Special District Act and the existing intergovernmental agreements between the Town and the Districts in certain respects do not adequately address the local concerns and interest of the Town in regulating the Districts' development of capital facilities and incurrence of debt to finance such development, both of which ultimately have a direct financial consequence to the Town. The Town Council further determines that it is necessary and

advisable to specify the events and conditions which, under the Special District Act, likely constitute material modifications to an approved District service plan, in the context of the particular business and legal relationship between the Town and Districts. The provisions of this Chapter are also 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 Town as a condition to the approval of such Districts consistent with the policy and intent of this Chapter.

The adoption of this Chapter is necessary, requisite and proper for the government and administration of local and municipal matters under the Town's home rule powers granted by Article XX, Section 6 of the Constitution of the State of Colorado. (Ord. 92-15 §1(part), 1992)

11.02.020 Definitions.

For the purpose of this Chapter, the following terms, phrases and words shall have the meanings indicated:

- A. *Board* means the Board of Directors of a District.
- B. *District* means a special district organized under the Special District Act whose service area is located wholly or partially within the corporate limits of the Town.
- C. *Petitioners* means any person(s) proposing a service plan or an amendment to an approved service plan.
- D. *Service plan* is the service plan required under 32-1-202 of the Special District Act.
- E. *Special District Act* means Article 1 of Title 32, C.R.S.

Certain other terms are defined in the text of this Chapter and shall have the meaning so indicated. (Ord. 92-15 §1(part), 1992)

11.02.030 Reservation and construction.

The Town Council 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, consistent with the express contractual rights of the Districts under the terms of applicable existing intergovernmental agreements between the Town and Districts. (Ord. 92-15 §1(part), 1992)

11.02.040 Required annual report.

Not later than September 1 of each calendar year each District shall file an annual report (the "annual report") with the Town Clerk at the Town's administrative offices. 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:

- A. A narrative summary of the progress of the District in implementing its service plan for the report year;
- B. Except when an 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;

C. Unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the District in development of public facilities in the report year, as well as any capital improvements or projects proposed to be undertaken in the five (5) years following the report year;

D. Unless disclosed within a separate schedule 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 indebtedness, the amount and terms of any new District indebtedness or long-term obligations issued in the report year, the amount of payment or retirement of existing indebtedness 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;

E. The District's budget for the calendar year in which the annual report is submitted;

F. A summary of residential and commercial development which has occurred within the District for the report year;

G. A summary of all fees, charges and assessments imposed by the District as of January 1 of the report year;

H. Certification of the Board that no action, event or condition enumerated in Section 11.02.060 of this Chapter has occurred in the report year; and

I. The name, business address and telephone number of each member of the Board and its chief administrative officer and general counsel, together with the date, place and time of the regular meetings of the Board. (Ord. 92-15 §1(part), 1992)

11.02.050 Review of annual report.

Annually, on a date established by resolution of the Town Council, the Town Council at a regular public meeting shall review the annual reports received from each District. In the event the annual report is not timely received by the Town Clerk, notice of such default shall be given by the Town Clerk to the Board of such District, at its last known address. The failure of the District to file the annual report within thirty (30) days of the mailing of such default notice by the Town Clerk shall empower the Town Council to impose the sanctions authorized in Section 11.02.230 of this Chapter. The remedies provided for noncompliance with the filing of the annual report shall be supplementary to the remedy authorized under 32-1-209 of the Special District Act. (Ord. 92-15 §1(part), 1992)

11.02.060 Material modification.

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 are presumed to be changes of a basic or essential nature of a District, requiring a service plan amendment:

A. 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:

1. Persists for a period of one hundred twenty (120) days or more;

2. The defaulted payment(s) aggregates either fifty thousand dollars (\$50,000.00) or ten percent (10%) of the outstanding principal balance of the indebtedness; and

3. The creditors have not agreed in writing with the District to forbear from pursuit of legal remedies.

B. The institution of a proceeding for debt adjustment or the confirmation of a plan for adjustment of debt under Chapter 9 of the Bankruptcy Code;

C. The failure of the District to develop any capital facility proposed in its service plan when necessary to service approved development within the District;

D. Failure of the District to realize at least seventy-five percent (75%) of the development revenues (including developer contributions, loans or advances) projected in the financial portion of the service plan during the three-year period ending with the report year, where development revenue is defined as fees, exactions and charges imposed by the District on residential and commercial development, excluding taxes, provided that the disparity between projected and realized revenue exceeds fifty thousand dollars (\$50,000.00);

E. The development of any capital facility in excess of ten thousand dollars (\$10,000.00) in cost, which is not either identified in the service plan or authorized by the Town in the course of a separate development approval;

F. The occurrence of any event or condition which is defined under the service plan or intergovernmental agreement as necessitating a service plan amendment;

G. The default by the District under any intergovernmental agreement with the Town;

H. The disconnection from the corporate limits of any property within the District's boundaries exceeding either ten percent (10%) of the service area of the District or ten (10) acres in area; or

I. Any of the events or conditions enumerated in 32-1-207(2) of the Special District Act. (Ord. 92-15 §1(part), 1992)

11.02.070 Determination of applicability.

Should the District dispute that one (1) or more of the occurrences enumerated in Section 11.02.060 has not or will not result in a change of a basic or essential nature, it may request a hearing before the Town Council within the time prescribed in Section 11.02.080. After hearing and receipt of any relevant information presented by the District and the recommendation of the Town Manager, the Town Council shall make a finding as to whether such occurrence constitutes a material modification under this Chapter and the Special District Act. In the event it is found a material modification has taken place, the District shall submit its request for an amendment in accordance with this Chapter. Upon a finding that no material modification has taken place, the District shall be relieved from obtaining an amendment for the events or occurrences reviewed by the Town Council. The Town Council shall retain the prerogative to require an amendment thereafter if the change or deviation, on a cumulative basis, subsequently becomes material. In making its determination, the Town Council shall consider, among other relevant information, whether the modification will have a probable adverse financial impact on the Town. (Ord. 92-15 §1(part), 1992)

11.02.080 Amendment.

Except when the Town Council has determined that no material modification has occurred under the procedure of Section 11.02.070, within ninety (90) days of the occurrence of an action, event or condition enumerated in Section 11.02.060, the Board shall forward an appropriate petition to the Town Council for approval requesting a service plan amendment ("amendment"). The petition for amendment shall include, among other relevant information:

A. Any information or documentation required under the applicable provisions of the Special District Act;

B. Any changes since the service plan was last reviewed and approved by the Town Council to any of the information, assumptions or projects furnished in conjunction with the petition for approval of organization of a District or contained in the service plan;

C. A detailed explanation of the activity, events or conditions which resulted in the material modification to the service plan, including what action was taken or alternatives considered, if any, by the District to avoid the action, event or condition;

D. 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;

E. 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 to finance additional capital expenditures;

F. 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;

G. The financial impact of the modification on existing residents of the District;

H. An updated five-year capital improvements plan; and

I. What alternatives or options are available to the District if the requested amendment is not approved.

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 11.02.150 and the application fee shall be two hundred fifty dollars (\$250.00). This Section shall not impair the right of the Town to bring an action in the district court to enjoin the activities of the District pursuant to 32-1-207(3)(b) of the Special District Act. (Ord. 92-15 §1(part), 1992)

11.02.090 Exemption.

If any District has not undertaken development of capital facilities or issued any indebtedness, it may apply to the Town Council for an exemption from compliance with this Chapter. The Town Council shall grant an exemption if the Board submits a resolution to the Town Council stating that upon issuance of the exemption, the District's authorization under the service plan and the intergovernmental agreement

with the Town to undertake development of capital facilities or issue any indebtedness if suspended. With 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. Prior to any District with an exempt status undertaking capital development or issuing any indebtedness authorized under its service plan or the Special District Act other than regulatory reporting, it shall fully comply with the provisions of this Chapter. (Ord. 92-15 §1(part), 1992)

11.02.100 Required service plan.

Any District for which the Town Council has not approved a service plan meeting the requirements of the Special District Act in all material and substantial respects as of the effective date of this Chapter, and any District which is required to obtain a service plan amendment as of the effective date of this Chapter, shall, not later than December 31, 1992, submit a service plan for approval of the Town Council in accordance with the provisions of this Chapter, provided that the Town Council upon written application of the Board may extend the submittal date for a period of not to exceed one hundred eighty (180) days, upon a showing of good cause. A District with an approved *statement of purpose* as defined in 32-1-208 of the Special District Act shall be subject to the December 31, 1992 submittal requirement; however, such District is required to submit only capital and financial plans, irrespective of the provisions of Section 11.02.150. Any refinancing or adjustment of a District's indebtedness approved through the bankruptcy court as of the effective date of this Chapter shall be recognized as a *de facto* amendment to the financial portion of the existing service plan, as necessary to give effect to court-approved debt restructuring. Notwithstanding such adjustment of the District's debts, the capital and facilities development plan for the District shall be subject to review and approval in accordance with this Chapter. Failure of a District to submit such service plan request shall subject the District to the sanctions specified in Section 11.02.230 of this Chapter. (Ord. 92-15 §1(part), 1992)

11.02.110 Review of district financing.

A District shall not issue any indebtedness or refinance any outstanding indebtedness without first submitting the proposed financing to the Town for review and comment. The submission shall include the dollar amount of the issue, the interest rate and other financing costs, the type of revenues pledged to repayment, including the 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 that the proposed issuance or refinance of indebtedness is authorized by and in compliance with the service plan for the District. The Town Council shall review such proposed financing at a regular meeting within thirty (30) days of receipt of the required submittal and forward any comments to the Board within ten (10) days of such meeting. The approval or authorization of the Town Council for the proposed financing is not required under this Section, unless required under the express terms of the service plan or intergovernmental agreement. The Town Council at the request of the Board or of its own initiative may waive the review, in its discretion. Upon request, an officer of the Town shall certify to the Board or its underwriter when compliance with this Section has been met. The failure of a District to substantially comply with this Section shall empower the Town Council to impose the sanctions authorized in Section 11.02.230 of this Chapter. (Ord. 92-15 §1(part), 1992)

11.02.120 Service plan consideration.

Sections 11.02.130 through 11.02.190 shall govern the processing, review and consideration of service plans, for new Districts or those existing Districts required to submit service plans pursuant to Section

11.02.100 of this Chapter. These provisions shall also apply to the consideration of service plan amendments with the exception of Section 11.02.150. (Ord. 92-15 §1(part), 1992)

11.02.130 Presubmittal meeting.

Petitioners shall initiate a service plan proposal by meeting with a designated Town staff representative to discuss the procedures and requirements for a service plan. The Town representative shall explain the administrative process, and provide information to assist petitioners in the orderly processing of the proposed service plan. (Ord. 92-15 §1(part), 1992)

11.02.140 Filing of proposed service plan.

Petitioners shall file a proposed service plan with the office of the Town Manager. The proposed service plan shall substantially comply with the format of any model service plan which is maintained on file with the Town Manager. The application and processing fee for a service plan shall be five hundred dollars (\$500.00), provided that, if the Town Council determines that special review of the service plan or amendment is required, the Town Council may impose an additional fee to reimburse the Town for reasonable direct costs related to such special review. If the Council imposes such an additional fee, it shall not be less than five hundred dollars (\$500.00) and it shall not exceed one one-hundredth of one percent (.01%) of the total amount of the debt proposed to be issued by the District as indicated in the service plan or the amended service plan or ten thousand dollars (\$10,000.00), whichever is less. The Town Council may waive all or any portion of the application and processing fee. A copy of the proposed petition to be filed with the district court must be included with the proposed service plan filed with the Town. Fifteen (15) copies of the proposed service plan must be submitted. (Ord. 92-15 §1(part), 1992)

11.02.150 Service plan contents.

The proposed service plan shall include the following:

- A. The information required under 32-1-204.5(1) of the Special District Act.
- B. A map of the proposed District's boundaries, which shall have attached a legal description.
- C. An itemization of any costs which petitioners expect to be assumed by the Town for the construction of public improvements.
- D. An identification, by name, address and phone number, of those persons who the petitioners intend to be the nominees for the initial Board.
- E. Proof of ownership for all properties within the District, in a form acceptable to the legal department of the Town.
- F. A copy of any and all proposed enabling, controlling, 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 Town. Any enabling intergovernmental agreement shall contain the following provisions, unless waived by the Town Council:
 - 1. The District's power and functions shall be limited to construction and financing of public infrastructure;

2. The District shall be prohibited from ownership and maintenance of public facilities and shall convey to the Town all facilities upon completion to Town standards;

3. A prohibition on the District owning, managing, adjudicating or developing water rights and water resources;

4. Limitations on the mill levy, development exactions and other revenues pledged to service payment of indebtedness of the District and required credit enhancements for District debt in order to preclude the creation of undue financial risk to the District residents and taxpayers;

5. Appropriate assurances that all facilities are developed by the District to Town standards;

6. Standards and parameters for imposition by the District of capital recovery fees and exactions;

7. Limitations on the inclusion or exclusion of properties from the District;

8. Requirements for dissolution of the District upon the accomplishment of the purposes and undertakings for which the District was formed;

9. That a copy of the written notice of every regular or special meeting of the District will be delivered to the Town Clerk at least three (3) days prior to such meeting; and

10. That the annual report will be submitted in a timely fashion in accordance with the provisions of this Chapter.

G. A capital plan including the following:

1. A description of the type of capital facilities to be developed by the District;

2. An estimate of the cost of the proposed facilities; and

3. A *pro forma* capital expenditure plan correlating expenditures with development.

H. A financial plan including the following:

1. The total amount of debt issuance planned for the five-year period commencing with the formation of the District;

2. 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;

3. 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;

4. A detailed repayment plan covering the life of any financing, including the frequency and amounts expected to be collected from all sources;

5. The amount of any reserve fund and the expected level of annual debt service coverage which will be maintained for any financing;

6. The total authorized debt for the District;

7. The provisions regarding any credit enhancement, if any, for the proposed financing, including but not limited to, letters of credit and insurance; and

8. A list and written explanation of potential risks of the financing.

I. Such other information contained in the model plan or as may be deemed necessary or appropriate by the Town Manager. (Ord. 92-15 §1(part), 1992)

11.02.160 Administrative review.

The Town Manager or designee, in cooperation with other affected departments and with the assistance of outside consultants, shall have thirty (30) days from the date the service plan is filed, to complete its preliminary review. Such deadline may be extended for up to an additional thirty (30) days, as deemed necessary by the Town Manager. Once a review has been completed, a comprehensive analysis shall be made in written report form ("the report") to the Town Council. The report shall evaluate the service plan and incorporate comments of the Town staff as well as consultants. The report shall set forth the recommendations made in accordance with the review criteria set forth in this Chapter. (Ord. 92-15 §1(part), 1992)

11.02.170 Public hearing.

The Town Manager, upon acceptance of the report on the service plan, shall schedule a public hearing at a regular Town Council meeting. Public notice shall be accomplished in accordance with the requirements of 32-1-204(1)(1.5) of the Special District Act. (Ord. 92-15 §1(part), 1992)

11.02.180 Hearing.

The hearing held by the Town Council shall be open to the public and record of the proceeding shall be made by a certified shorthand reporter or an audio or video recording device. Any testimony or evidence which, in the discretion of the Town Council, is relevant to the organization of the District shall be considered. The hearing may be postponed or continued until a later time or date or relocated in accordance with established Town Council protocol. The Town Council shall approve without condition, approve with condition, or disapprove the proposed service plan or amendment, applying the criteria prescribed under 32-1-204.5 of the Special District Act after consideration of the service plan reports, evidence and testimony accepted or taken at the public hearing. (Ord. 92-15 §1(part), 1992)

11.02.190 Written determination.

Within twenty (20) days after completing the public hearing, the Town Council shall adopt a resolution regarding the proposed service plan or amendment. If the service plan is approved, a resolution of approval shall be adopted. If the service plan is disapproved, a resolution for such disapproval shall be adopted, including the reason(s) for such disapproval. If the service plan is conditionally approved, the amendments to be made in, or additional information relating to, the service plan, together with the reasons for such amendments, or additional information, shall also be set forth in writing, and the hearing shall be continued until such amendments, or additional information, are incorporated in the service plan. Upon the incorporation of such amendments or additional information in the proposed service plan, the Town Council shall adopt a resolution of approval. In the manner and to the extent provided in this Chapter, the Town Council shall maintain continuing jurisdiction over the operations and affairs of the District, after approval of the service plan or amendment. (Ord. 92-15 §1(part), 1992)

11.02.200 Appeal.

A resolution passed by the Town Council shall document the Town Council's determination. No action or proceeding, at law or in equity, to review any acts or proceedings or question the validity of the Town Council's determination pursuant to this Chapter, whether based upon irregularities or jurisdictional defects, shall be maintained in the district court unless commenced within thirty (30) days after the passage of the Town Council's resolution or thereafter any legal proceedings shall be barred. (Ord. 92-15 §1(part), 1992)

11.02.210 Quinquennial review.

The quinquennial review required under 32-1-1101.5 of the Special District Act shall be subject to the following procedures:

A. Fifteen (15) copies of the application shall be submitted to the Town Manager together with an application fee of two hundred fifty dollars (\$250.00);

B. Within thirty (30) days of receipt of a complete application, the Town Manager shall submit a report to the Town Council including a recommendation as to the statutory findings which should be made by the Town Council on the application;

C. The application shall be reviewed and considered at a regular meeting of the Town Council held within thirty (30) days of the submission of the report of the Town Manager;

D. The Town Council shall consider all evidence and testimony as it deems relevant to its consideration of the application written; and

E. A written decision on the application shall be made by resolution of the Town Council within twenty (20) days of conclusion of its review and consideration of the application. (Ord. 92-15 §1(part), 1992)

11.02.220 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 Town regulations, including public works and land use regulations. (Ord. 92-15 §1(part), 1992)

11.02.230 Sanctions.

Should any District fail to request and obtain a service plan amendment when required under the term of this Chapter or otherwise fail to fully and completely comply with this Chapter, the Town Council by resolution may impose one (1) or more of the following sanctions, as it deems appropriate:

A. Exercise any applicable remedy under the Special District Act;

B. Withhold the issuance of any permit, authorization, acceptance or other administrative approval necessary for the District's development of public facilities or construction;

C. Exercise any legal remedy under the terms of any intergovernmental agreement under which the District is in default; or

D. Exercise any other legal remedy, including seeking injunctive relief against the District, to force compliance with the provisions of this Chapter. (Ord. 92-15 §1(part), 1992)

11.02.240 Effective date.

This Chapter shall take effect on October 1, 1992. (Ord. 92-15 §1(part), 1992)