

CHAPTER 3

Districts

Article I

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ARTICLE I

Metropolitan Districts

Sec. 3-1. Purpose.

Colorado law provides for municipalities to review service plans proposed for formation of new metropolitan districts located wholly within the boundaries of the Town pursuant to Title 32, C.R.S. The policy of the Town is to reduce the proliferation of local governments and to prevent double taxation by overlapping governmental entities. The Town also recognizes that there are times when formation of a metropolitan district pursuant to Title 32, C.R.S., or a general improvement district pursuant to Section 31-26-601 et seq., C.R.S., may be appropriate to finance public improvements. The procedures are adopted to prevent problems which can occur by formation of additional governmental entities, including having indebtedness of districts affect the credit rating of the Town; preserve the financial integrity of the Town; minimize excessive tax burdens on properties within the Town; eliminate duplication of government services providers within the Town; and ensure that new districts do not dilute the control over governmental services by representatives elected by voters within the entire Town boundaries and that any districts formed will be dissolved or their powers removed as soon as their stated purposes are accomplished. The procedures for review of service plans established by this Article are intended to provide guidance to developers and Town residents as to the matters of importance to the Town. These procedures are general in nature and may be considered when reviewing a proposed service plan along with any other information that the Board of Trustees deems appropriate. (Ord. O-2 §1, 2004)

Sec. 3-2. Service plan general review guidelines.

These service plan approval procedures establish general rules to be utilized by the Town staff and consultants to review all applications for approval of metropolitan district service plans. The Town recognizes that differing market conditions may result in variations in the financial plans of a district applicant. Therefore, when a service plan is submitted to the Town that deviates from the specific procedures and requirements contained in this Article, the applicant shall include with its application a detailed written explanation of the reasons for the deviation and provide evidence in support thereof in the form of applicable reports, financial data, studies and other relevant documentation. The staff and consultants will consider the information submitted by the applicant in support of the deviation in conjunction with these procedures in making their recommendations to the Board of Trustees. (Ord. O-2 §1, 2004)

Sec. 3-3. Service plan submittal requirements.

(a) The applicant for approval of a special district service plan shall file twelve (12) copies of the proposed service plan or the proposed amendment to an approved service plan with the Town Clerk.

(b) At the time of such filing, the applicant shall pay a fee to the Town for review of the proposed service plan or proposed amendment to an approved service plan. The fee for such application review is set forth in Section 4-102, Fee Schedule, of this Code.

(c) At the time of such filing, the applicant shall make a deposit with the Town for the payment of the fees pursuant to Section 16-10 of this Code for the Town Attorney and the Town's financial advisor, bond counsel, Town Engineer and any other consultant the Town deems necessary for review of the proposed service plan or proposed amendment to an approved service plan. (Ord. O-2 §1, 2004)

Sec. 3-4. Service plan contents.

In addition to the applicable requirements of state law, the proposed service plan must:

(1) Specify the name of the district, which must be in the following form: "_____ District, Boulder County, Colorado." The name must not include the words "Town of Superior."

(2) Include a complete resume of each developer of property within the proposed district, including history of the entity, biographical information on principals or officers and references for principals or officers. Current financial statements of the entity (audited, if available) must be submitted separately to the Town financial advisor under a written agreement by the latter to hold the same in confidence.

(3) Identify the boundaries of the proposed district and include a legal description of the boundaries of the district, maps of the district and its service area and a narrative description of the proposed land use plan. The boundaries and service area of the district must not overlap with those of any existing special district authorized to provide the same or similar facilities or services.

(4) Provide facts sufficient to determine that it would be impracticable for the land within the boundaries of the district to be included within the boundaries of an existing or new General Improvement District pursuant to Section 31-25-601 et seq., C.R.S.

(5) Declare the policy of the district to be receptive to inclusion of additional land upon the petition of landowners.

(6) Provide a description of the facilities to be financed and the other facilities and services to be provided. Such facilities or services may not duplicate or compete or interfere with facilities and services provided by the Town or existing special districts and must be compatible with and integrated into Town and existing special district facilities and services. Facilities for potable water treatment and storage, sanitary sewage treatment, nonpotable water and sewer lines not less than twelve (12) inches in diameter, nonpotable water storage and distribution facilities, storm drainage facilities, collector and arterial roadways, community parks and recreation facilities, together with necessary appurtenant facilities, may be financed by the special district, but may only be constructed to be connected to the existing facilities provided by the Town. None of such facilities may be constructed separately from the existing facilities of the Town. For all facilities included in the service plan to be financed through the district, a justification for the inclusion of such facilities as a cost of the proposed district rather than the cost of a private developer shall be included.

(7) Require that all facilities financed by the district will be dedicated to the Town unless the Town determines otherwise.

(8) Provide cost estimates of all facilities, prepared by an independent engineer.

(9) Provide that all land and easements customarily dedicated by the developer to public entities such as the Town, the county, the school district or other public entities will be dedicated directly to such entities and will not be purchased by the district for dedication to such entities.

(10) Provide that all facilities constructed by the district must comply with Town engineering standards and be subject to review, monitoring and inspection by the Town or its engineering consultant. The cost of such review, monitoring and inspection will be borne by the district.

(11) Provide detailed construction phasing showing completion of water, sanitary sewer, storm drainage and road improvements before commencement of any parks or recreation facilities.

(12) Provide an independent absorption and feasibility study supporting the ability of the district to discharge its proposed indebtedness on a reasonable basis.

(13) Provide names, firms, addresses and telephone numbers of all professionals and organizations contributing to the service plan, including but not limited to engineers, legal counsel, financial analysts and bond underwriters.

(14) Provide a draft intergovernmental agreement between the proposed district and the Town which requires:

a. The review and/or approval of the Board of Trustees of any future change of the boundaries of the district; issuance, refinancing or prepayment of bonds or other multi-year financial obligations; payments to developers; construction of facilities to be connected to existing Town facilities; and extension of district facilities outside of the boundaries of the district;

b. Payment for water rights necessary to serve the property;

c. Submission of annual reports by the district;

d. Provisions for dissolution of the district;

e. Specificity of what shall constitute a "material modification" of the service plan;

f. Procedures for the powers of the district to be eliminated from the service plan and performed by the Town unless otherwise requested by the Town, such elimination of powers to occur in the event the district is not dissolved as provided in the service plan; and

g. Any other matters requested by the Town. (Ord. O-2 §1, 2004)

Sec. 3-5. Service plan financial requirements.

The proposed service plan must:

(1) Describe the security for all bonds or other financial obligations of the district, specify a mill levy not to exceed twenty-five (25) mills for debt service (including reimbursement to credit enhancers) and prohibit the pledge or encumbrance of district assets.

(2) Specify the maximum principal amount of bonds (excluding refunding bonds) to be issued by the district, the maximum net effective interest rate on such bonds not to exceed nine percent (9%) per annum, the maximum discount on such bonds and the maximum term of such bonds not to extend beyond twenty-five (25) years from the date of issuance of the first bonds issued by the district.

(3) Include the texts of the initial ballot questions to be submitted to electors of the district. (The ballot questions authorizing the issuance of bonds or the incurrence of other financial obligations must conform to the requirements of this Article).

(4) Require a fairness opinion by an independent financial advisor as to the interest rate on any bonds or other financial obligations sold in any transaction not involving a public offering of such bonds or other financial obligations.

(5) Prohibit the issuance of bonds or the incurrence of other financial obligations to which ad valorem property taxes are pledged having a principal amount that, when added to the principal amount of all other such outstanding bonds or other financial obligations, exceeds twenty-five percent (25%) of the valuation for assessment of all taxable property in the district except for:

a. Such bonds or other financial obligations if the principal amount thereof at any time outstanding does not exceed one million dollars (\$1,000,000.00);

b. Such bonds or other financial obligations sold in transactions not involving a public offering to "accredited investors" or "qualified institutional buyers" whose credentials as such are appropriately evidenced by customary documentation;

c. Such bonds or other financial obligations that are rated "investment grade" by one (1) or more nationally recognized rating agencies or are guaranteed as to the timely payment of principal and interest by financial institutions, the obligations of which are so rated; and

d. Such bonds or other financial obligations issued or incurred for the purpose of refinancing such bonds or other financial obligations.

(6) Prohibit acceleration of the principal of any bonds or other financial obligations of the district except credit-enhanced bonds or other obligations.

(7) Prohibit the creation of TABOR enterprises and 63-20 corporations without the prior written consent of the Board of Trustees.

(8) Set forth a bond marketing schedule and plan, including proposed exemptions from registration under Section 11-59-110, C.R.S., waive the exemption afforded by Section 11-59-110(1)(k), C.R.S. (if applicable), and require that a copy of the Notice of Claim of Exemption filed with the Colorado Securities Commissioner also be filed with the Town Clerk.

(9) Set forth schedules showing the sources and uses of the proceeds of all bonds or other financial obligations of the district.

(10) Set forth a detailed cash flow analysis prepared by an independent financial advisor showing for each year, beginning with the year in which the district is organized and ending in the year in which the district indebtedness is retired, the valuations for assessment of all taxable property in the district, mill levies, ad valorem tax receipts, utility fees, other revenues, debt service, operation and maintenance expenses and annual and cumulative surpluses.

(11) Require that the district furnish to the Town Clerk, prior to the issuance of any bonds or the incurrence of any other financial obligations, an opinion of the district's bond counsel that the district has complied with all of the requirements of the approved service plan relating to bonds or other financial obligations or that the district submit all financing documents to the Town Attorney for prior approval as to compliance with the requirements of the approved service plan.

(12) Require the district to file promptly with the Town Clerk the following documents:

a. Audited financial statements;

b. Budgets;

- c. Architectural plans;
- d. Bid documents evidencing compliance with Town public bidding procedures;
- e. Construction contracts;
- f. Intergovernmental agreements;
- g. Ballot questions;
- h. Resolutions authorizing bonds or other financial obligations;
- i. Financing documents;
- j. Credit agreements; and
- k. Any official statements to pay such reasonable charges for services and reimbursements for expenses as the Town may require.

(13) Prohibit the district from applying for Conservation Trust Funds, Great Outdoor Colorado Funds and other grant moneys for which the Town is eligible to apply without the prior written consent of the Board of Trustees.

(14) Provide that the inclusion of land, exclusion of land, changes in financial plans and other departures from the approved service plan require approval of the Board of Trustees as material modifications to the approved service plan.

(15) Require that the board of directors of the district commence proceedings for the dissolution of the district upon retirement of all district indebtedness, or upon substantial completion of all of the public improvements to be financed by the district, whichever occurs first.

(16) Comply with the other requirements of Sections 32-1-202(2) and 32-1-204.5, C.R.S., and any other applicable statutes. (Ord. O-2 §1, 2004)

Sec. 3-6. Service plan administrative review.

The proposed service plan will be reviewed by a committee consisting of at least the Town Manager, Finance Director, Public Works Director, Community Development Director, Parks, Recreation and Open Space Director, Town Attorney and Town financial advisor. Town staff may add additional consultants and employees to the review committee if it determines any other consultants are necessary or beneficial to provide complete recommendations to the Board of Trustees. Upon completion of review of the service plan and any revisions by the applicant necessary for the service plan to comply with state law and this Code, the service plan will be deemed submitted to the Town, and the committee will make recommendations to the Board of Trustees. (Ord. O-2 §1, 2004)

Sec. 3-7. Board of Trustees action on service plan.

Upon receipt of the recommendations of the administrative review committee, public hearings shall be set before the Board of Trustees on the proposed service plan and creation of a metropolitan district. In the event the service plan includes any land use plans or other matters under the supervision of the Planning Commission, the Planning Commission shall also hold a public hearing on the proposed service plan. The Planning Commission and Board of Trustees will review the submittal for compliance with this

Article and all other applicable requirements of this Code and policies of the Town. The Town may then adopt a resolution approving, disapproving or conditionally approving the proposed service plan and comply with other applicable requirements of Section 32-1-204.5, C.R.S., and any other applicable statutes. (Ord. O-2 §1, 2004)

Secs. 3-8—3-20. Reserved.