

# AGENDA ITEM SUMMARY

## FORT COLLINS CITY COUNCIL

ITEM NUMBER: 29

DATE: July 15, 2008

STAFF: Mike Freeman  
Chuck Seest

### SUBJECT

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Resolution 2008-069 Adopting a Policy Concerning the Approval of Metropolitan District Service Plans.

### RECOMMENDATION

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Staff recommends adoption of the Resolution.

### FINANCIAL IMPACT

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There is no direct financial impact to the City when a Metropolitan District is formed to finance and install public infrastructure related to a development project. The financial impact is to the property owners within the Metropolitan District who pay a property tax to the District to pay for the infrastructure construction related to the development.

### EXECUTIVE SUMMARY

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The City Council is being asked to consider adopting a policy regarding the formation of Metropolitan Districts. Metropolitan Districts are a common tool used in Colorado to assist in financing significant infrastructure related to developing property. In the past, the City of Fort Collins has not encouraged the use of Districts. Recently, the City has been asked to consider the use of Districts and staff has drafted a proposed policy on their use and presented the Policy to the Council Finance Committee and the entire City Council in a work session. The City's proposed Policy includes a variety of proposed restrictions on the use of Metropolitan Districts that are outlined in the Agenda Item Summary and Resolution 2008-069.

### BACKGROUND

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#### Overview of Metropolitan Districts

A Metropolitan District is a type of special district authorized by Title 32 of the Colorado Revised Statutes. Special districts authorized by Title 32 are quasi-municipal corporation and are political subdivision of the State of Colorado. They are able to issue tax-exempt financing to finance a portion of the total cost of public infrastructure and may also own, operate and maintain public improvements and facilities.

As of April 2008, the number of Title 32 Districts within the State of Colorado totaled 1,698.

Within the total there are the following types:

Metropolitan Districts	1,052
Water or Sanitation Districts or Both	277
Fire Protection Districts	126
All Others (Parks and Recreation, Health Services, etc.)	243
<b>Total of Title 32 Districts in the State</b>	<b>1,698</b>

Metro Districts are the most common type of Title 32 District within the State of Colorado, commonly used in both residential and commercial developments in other communities. In Northern Colorado all the larger cities allow for Metropolitan Districts. The City of Boulder is the only city that staff could identify in the state that does not allow metro districts.

- A Metropolitan District is formed once a “service plan” is submitted to and approved by the jurisdiction in which the property is located. The Service Plan is similar to a City Charter or State Constitution in that it outlines the purpose of the Metropolitan District and its functions and powers.
- The service plan is submitted to the government agency within which the development is proposed.

The service plan is the essence of the Metropolitan District. It outlines key points such as:

- A description of the capital improvements to be constructed and/or funded.
- A map of the District’s boundaries.
- An estimate of population and valuation for assessment purposes.
- A financial plan showing how improvements and/or services will be financed.
- A preliminary schedule showing when debt will be issued.

It is very important that the service plan reflect the policy goals and objectives of the City. The City Council is the deciding body regarding whether a service plan meets the City’s policy goals and objectives – the City Council has the sole discretion to approve or not approve a service plan.

A Metropolitan District is a government entity recognized under Colorado law. It has a Board of Directors that meet on a regular basis and the District will often hire staff (usually a professional management company, general counsel and finance personnel). The Board of Directors are publicly accountable and must conduct open meetings with proper notice given to the public and must maintain minutes of all meetings.

A Metropolitan District Board must:

- adopt an annual budget at a public hearing.
- complete an annual audit by June 30th.
- file an annual report to the City that includes information on the progress of the District in implementing the service plan.

The main purpose of a Metropolitan District is to fund infrastructure that facilitates the overall development which typically includes the following types of improvements:

- Street Improvements
- Stormwater Improvements
- Transportation Improvements
- Parks and Recreation Improvements
- Water Improvements
- Sanitary Sewer Improvements
- Operations and Maintenance (O&M) for above items

Once the District has been formed and service plan is approved, the District may issue tax-exempt bonds, to be repaid by the mill levy and the full faith and credit of the District. This would be similar to debt that the City may issue that is backed by general obligation property taxes.

### **Recommended Fort Collins Policies Relating to Metro Districts**

Historically, the City of Fort Collins has not encouraged the formation of Metropolitan Districts. The use of Metropolitan Districts has grown statewide from 295 in 1999 to 1052 in 2008, and now nearly all Front Range municipalities allow for their formation. Fort Collins is the only municipality in Northern Colorado that does not allow Metropolitan Districts, which puts the City at a disadvantage in a competitive market place. Staff believes that Metropolitan Districts are an appropriate tool to offer developers with certain provisions being put in place that are described later in this agenda item summary.

Metropolitan Districts allow for the developer to publicly finance significant infrastructure related to the development of an overall project. The developer is then allowed through the District to pay for those improvements over time through the District's assessment of a property tax that generally lasts for 20 to 25 years, or until the debt is repaid. The City is not involved in the financing of the infrastructure, the burden to repay the debt falls with the property owners in the District area. No liability for making payments falls to anyone outside the District and therefore there is not liability for the City or other residents outside the District.

Metropolitan Districts are very common in the development community. They allow a developer to finance significant infrastructure costs and amortize the cost over time, with future property owners and tenants paying the cost. In a project that did not include the formation of a Metropolitan District, the developer has to secure private financing for infrastructure improvements. The Developer then spreads that cost over the development through the sale of raw or developed land and/or through lease/rents.

There are potential downsides to allowing Metropolitan Districts. These include having multiple governmental entities within the City, and the potential loss of tax revenues to the State of Colorado and Federal Governments. However, staff sees more positives in allowing Metropolitan Districts than in continuing to discourage their formation. Staff is recommending that the City Council consider imposing several policies that would limit the usage of Metropolitan Districts. The proposed policies are summarized as follows:

1. Metropolitan Districts should be allowed for projects that are mostly commercial, with the exception of mixed use projects, where it is recommended that half the assessed value of the project must come from the commercial component of the project. Staff's recommendation is to focus the use of Metropolitan Districts on commercial projects which is consistent with the City's attention to sustaining and growing primary employment and encouraging major retail center redevelopment and development.
2. Metropolitan District funds could be used to pay for significant infrastructure improvements such as:
  - Major arterial, and arterial roadways
  - Regional stormwater improvements
  - Regional water/wastewater improvements
  - Public/private improvements such as open space, regional trail connections

The intent of the Metropolitan District is to help finance major infrastructure that facilitates an overall commercial or mixed use project not to take the place of all typical developer required infrastructure improvements.

3. Metropolitan District funds can be used for paying for enhancements or improvements above City requirements:
  - Public amenities
  - Landscaping
  - Other projects that the City may deem to be important

Often times, a commercial developer will voluntarily propose enhancements that are above and beyond City requirements. It is advantageous to the developer to allow them to finance these enhancements through the Metropolitan District and advantageous to the City in that the overall quality of the development is enhanced.

4. An overall cap on the Metropolitan District of 40 mills would be established. Staff believes it is important to limit the overall tax liability to future property owners and tenants within the Metropolitan District. A 40 mills cap is sufficient to allow the District to finance significant infrastructure while also limiting the tax liability. It is recommended that the Metropolitan District Board decide how much of the overall cap to allocate to operations and maintenance versus the repayment of debt, as long as the 40 mills cap is not exceeded.
5. The Metropolitan District would have an overall time limit of 40 years. Given that the purpose of the District is to finance significant infrastructure, it makes sense to then limit how long the Metropolitan District can be in place. Given that most Districts will finance their debt over 20 to 25 years and that debt is generally issued 3-5 years following the formation of the District, 45 years is sufficient time for the District. It is further recommended that the time limit for the Metropolitan District would start upon the adoption of the Service Plan.

**ATTACHMENTS**

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1. Summary from work session of May 13, 2008.
2. PowerPoint presentation.



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## MEMORANDUM

Date: May 16, 2008  
To: Mayor and City Council Members  
Thru: Darin A. Atteberry, City Manager  
From: Mike Freeman, CFO

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### RE: Council Work Session Follow Up on Metro District Discussion

On May 13, 2008 the City Council discussed staff recommendations regarding the formation of Metro Districts in the City associated with development projects. The following items were discussed and staff is working on addressing these in the resolution that will be forthcoming to City Council in July.

1. Provide more pro and con information regarding the use of Metro Districts.
2. Provide a definition of mixed use for purposes of applying the Metro District policies.
3. Better define what kinds of enhancements might be provided by Metro Districts including LEED certification, landscaping, etc.
4. Find out why Boulder does not allow Metro Districts.
5. Calculate the amount of foregone taxes to the federal and state governments through the use of tax-exempt financing by Metro Districts.
6. Ensure that the overall Metro District policy is not too prescriptive – there needs to be some flexibility built in for exceptions or projects the City Council may want to support but don't meet all the policy objectives of the Metro District resolution.

## City Council Presentation

### Metro District Policy Discussion

July 15, 2008



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## Discussion

- Formation of Metro District
- Service Plans Details
- Recommended Fort Collins Policy
  - Limit the overall debt
  - Limit the mill levy (40 mills)
  - Limit the existence of Metro District (40 years)



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## Formation of a Metro District

1. Applicants (developer) submits Service Plan to City.
2. City Council approves the Service Plan by resolution.
3. Following Council approval, applicant files petition with District Court.
4. District Court sets Public Hearing date.



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## Formation of a Metro District continued

5. After Public Hearing, District Court orders an Election to form District.
6. After favorable Election, the Metro District is formed.
7. Elected Board of Directors oversees the Metro District.



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## What does the Service Plan include?

- A description of potential capital improvements and/or possible services to be constructed and/or funded by the District.
- A map of the District's boundaries.
- An estimate of population and valuation for assessment purposes.
- A financial plan showing how improvements and/or services will be financed. Preliminary schedule showing when debt will be issued.



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## Policy Issues

- Economic competitiveness of Fort Collins
- Limit the use of Metro Districts for significant infrastructure improvements.
- Allow Metro Districts to fund capital improvements that are in excess of City requirements.
- Cap the mill levy of the Metro District to protect future owners/tenants.
- Set an overall time limit on the Metro District.



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## Policy Issues

- Disallow Metro Districts for:
  - Residential developments
  - Funding ongoing operations and maintenance except for customary administrative charges



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## Cap the Mill Levy

- Many Metro Denver municipalities cap the overall Metro District mill levy rate at 50 mills as a matter of policy thereby protecting future owners/investors/tenants. If the municipality does not cap the mill, the Metro District may impose a cap.
  - City of Loveland does not impose a cap.
  - Town of Windsor imposes a 35 mill cap for capital and a 10 mill cap for operations and maintenance.
- Recommendation: Cap the Mill rate at 40.



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## Overall Time Limit

- Municipalities approach the overall time a Metro District can be in place differently.
  - Loveland does not have a limit.
  - Windsor has a time limit of 45 years.
- Require the Metro District time limit to start upon the adoption of the Service Plan.
- Recommendation: Limit the Metro District to 40 years, or sooner if the debt is paid off. Start the time limit when the Service Plan is adopted.



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## Summary

- It is the City staff recommendation that the City Council, should it elect to allow Metro Districts for commercial and mixed use projects explicitly link together the concepts:
  - Limit the overall debt to be issued
  - Limit the mill levy to 40 to protect future owners and tenants
  - Limit the time the District can exist to 40 years or less



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# Closing



RESOLUTION 2008-069  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
ADOPTING A POLICY CONCERNING  
APPROVAL OF METROPOLITAN DISTRICT SERVICE PLANS

WHEREAS, the Colorado Revised Statutes allow for the formation of a variety of entities to finance and operate public services and infrastructure; and

WHEREAS, a metropolitan district is one of the entities authorized by Article 1, Title 32 of the Colorado Revised Statutes; and

WHEREAS, metropolitan districts have not historically been used within the City; and

WHEREAS, due to many factors, including escalating costs to construct public infrastructure and fiscally challenged government, Colorado developers have increasingly sought approval of metropolitan districts to assist in the costs of financing infrastructure, as shown by the growth of the creation of metropolitan districts from 295 in 1999 to 1052 today; and

WHEREAS, the Council has requested that staff investigate the merits of metropolitan districts and, if advisable, develop a policy concerning the formation of these entities within the City; and

WHEREAS, staff has, after discussions with interested citizens, consultants, developers and City Council over the last several months, developed a policy for reviewing proposed service plans for metropolitan districts, which policy is dated July 9, 2008, and attached hereto as Exhibit "A" and incorporated herein by this reference.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the City Council hereby adopts the Policy for Reviewing Proposed Service Plans for Title 32 Metropolitan Districts, City of Fort Collins, CO, dated July 9, 2008, to be used to evaluate requests for metropolitan districts within the City.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 15th day of July A.D. 2008.

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Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

**POLICY FOR REVIEWING PROPOSED  
SERVICE PLANS FOR TITLE 32 METROPOLITAN DISTRICTS  
CITY OF FORT COLLINS, CO**

**July 9, 2008**

**Introduction.**

A. The City establishes the following as its Special District policy for (i) the review and approval or disapproval of Service Plans, including any amendment thereof, for the creation of a Metropolitan District ("District") pursuant to Title 32, Article 1 of the Colorado Revised Statutes (the "Act"); and (ii) for the regulation of those Districts:

1. This Policy is intended as a guide only. Nothing in this document is intended, nor shall it be construed, to limit the discretion of City Council, which retains full discretion and authority regarding the terms and limitations of all District Service Plans.

B. The City generally supports the formation of a District where it is demonstrated that a District is needed to provide public improvements to local development and will result in enhanced benefits to existing or future business owners and/or residents of the City and the District, whether such enhanced benefits are provided by the District or by the entity developing the District because the District exists to provide public improvements.

1. A District may be permitted to conduct ongoing operations and maintenance activities where it can be demonstrated that having the District provide operations and maintenance is in the best interest of the City and the existing or future taxpayers of the District.

C. For a District whose primary revenue source is property taxes, and in the absence of special circumstances, District formation will not be favorably received where the future assessed value of all property within the District at full build-out is projected to be less than ten million dollars (\$10,000,000). The ten million dollar assessed valuation threshold, for Districts whose primary revenue source is property taxes, will increase biennially after 2008 to adjust for increases in the Consumer Price Index for the Denver-Boulder-Greeley statistical region as prepared by the U.S. Bureau of Labor Statistics. Special circumstances and special cause must be demonstrated for exceptions to be granted.

D. A District, when properly structured, can enhance the quality of development in the City. The City is receptive to District formation as an instrument to provide competitive financing for projects, build better and enhanced infrastructure, and, where needed, create a quasi-governmental entity to provide essential improvements which 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. It is not the intent of the City to create multiple entities which could be construed as "competing governments."

1. Formation of a District will not be favorably received unless the District enables the underlying project to be enhanced by either the District or the entity or entities developing property within the boundaries of the District. In determining whether such project is enhanced, the City may consider: a) ways in which the proposed improvements exceed the City's minimum requirements and standards; b) ways in which the existence of the District facilitates the enhancement of the improvements and whether the enhancements are feasible without the District; and, c) any other factors the City deems relevant under the circumstances.

### **Service Plans.**

A. Any Service Plan submitted to the City for approval must comply with all state, federal and local laws and ordinances, including the Act.

B. The Service Plan must include all information required by the Act.

C. The Service Plan must enumerate and describe all powers requested on behalf of the District. Demonstration of the need or benefit of each power is required. Powers which are not clearly needed will not be approved in the Service Plan.

D. Any intergovernmental agreement which is required, or known at the time of formation of the District to likely be required, to fulfill the purposes of the District, must be described in the Service Plan, along with supporting rationale. The Service Plan must provide that execution of intergovernmental agreements which are likely to cause a substantial increase in the District's budget and are not described in the Service Plan will require the prior approval of City Council.

E. The Service Plan must include the description of any planned inclusion into, or exclusion of property from, the District's boundaries known at the time of the submittal of the Service Plan. The Service Plan must provide that inclusions or exclusions by the District that are not described in the Service Plan will require the prior approval of City Council.

F. The Service Plan must describe any planned extraterritorial service agreement. The Service Plan must provide that any extraterritorial service agreements by the District that are not described in the Service Plan will require the prior approval of City Council.

G. The Service Plan must contain language that prohibits the District from using powers of eminent domain. However, the City may choose to exercise its powers of eminent domain to construct public improvements within the District in which case the District and City will enter into an intergovernmental agreement concerning the public improvement and funding for the use of eminent domain.

H. The Service Plan must restrict the District's total mill levy authorization for both debt service and operations and maintenance to forty (40) mills (the "Maximum Mill Levy"), subject to adjustment as provided below. It is anticipated that a portion of the Maximum Mill Levy may be utilized by the District to fund operations and maintenance functions, including customary administrative expenses incurred in operating the District such as accounting and legal expenses and otherwise complying with applicable reporting requirements. The District's Board of Directors will have full discretion to determine what portion of the Maximum Mill

Levy may be levied for debt service and what portion for operations and maintenance. For example, a District levying 30 mills for debt service and 5 mills for operations would be in compliance, as would a District levying 20 mills for debt service and 15 mills for operations. In both examples, the total mill levy of the Districts would be 35 mills, which is within the Maximum Mill Levy. The Maximum Mill Levy may be adjustable from the base year of 2008; provided, however, that in the event the method of calculating assessed valuation is changed after the base year of 2008, the mill levy limitation applicable to such debt may be increased or decreased to reflect those changes, the increases or decreases to be determined by the District Board in good faith (that determination to be binding and final), so that to the extent possible, the actual tax revenues generated by the District's mill levy, as adjusted, for changes occurring after January 1, 2008, are neither diminished nor enhanced as a result of the changes. For purposes of the foregoing, a change in the ratio of actual valuation to assessed valuation will be a change in the method of calculating assessed valuation.

I. The Service Plan must include Debt and operating financial projections prepared by an investment banking firm or financial advisor qualified to make such projections (the "Financial Plan"). The financial firm must be listed in the Bond Buyers Marketplace or, in the City's sole discretion, other recognized publication as a provider of financial projections. The Financial Plan must include debt issuance and service schedules and calculations establishing the District's projected maximum debt capacity (the "Total Debt Limitation") based on assumptions of (i) the projected interest rate on the debt to be issued by the District; (ii) the projected assessed valuation of the property within the District; and (iii) the projected rate of absorption of the assessed valuation within the District. These assumptions must use market-based, market-comparable valuation and absorption data and may use an annual inflation rate of three percent (3%) or the Consumer Price Index for the preceding 12 month period for the Denver-Boulder-Greeley statistical region as prepared by the U.S. Department of Labor Statistics, whichever is greater. The Total Debt Limitation set forth in the Service Plan must not exceed 100% of the projected maximum debt capacity as shown in the Financial Plan. The Financial Plan must also include foreseeable administrative and operation and maintenance costs.

J. If, after the Service Plan is approved, the State Legislature includes additional powers or grants new or broader powers for Districts by amendment of Part 10 of Article 1, Title 32, C.R.S., no such powers will be available to or exercised by an existing District without the prior approval of the City Council.

K. Every Service Plan must include, in addition to all materials, plans and reports required by the Act, an Infrastructure Preliminary Development Plan ("PDP"). This PDP must include, at a minimum, a map or maps, and construction drawings of such scale, detail and size as required by the Planning Department, providing an illustration of public improvements proposed to be built, acquired or financed by the District, along with a written narrative and description of those items and a general description of the District's proposed role with regard to the same. Due to the preliminary nature of the PDP, the Service Plan must indicate that the City's approval of the PDP shall not bind the City's reviewing and making land use approvals. Approval of the PDP must precede or be concurrent with approval of the Service Plan.

L. Development Fees must not be imposed by the District unless the Development Fees are identified with particularity in the Service Plan and the Financial Plan.



### **Bonded Indebtedness.**

A. Original issuance of bonded indebtedness by the District prior to build-out is limited to that debt which can be sized, serviced and defeased with no more than the Maximum Mill Levy as described in Paragraph H of the Service Plans Section above.

B. The District will be limited to issuing new debt as provided in the Financial Plan. In the absence of evidence that development phasing will be of a duration that makes it impracticable to issue all debt within a fifteen-year period, or other special circumstances, the Service Plan must provide that all new debt will be issued within a period of fifteen (15) years from the date of the District's formation. Debt issued by the District will have a maximum maturity of thirty (30) years for each series of debt. The restrictions on issuance will not pertain to refundings, but the thirty-year maximum maturity does apply to refundings unless such refundings result in a net present value savings as set forth in Section 11-56-101, *et seq.*, C.R.S., and are otherwise permitted by law.

### **Multiple-District Structures.**

A. It is the intent of the City that citizen/resident control of Districts is encouraged to occur as early as possible.

B. Multiple-District structures may be proposed in the following situations:

1. The projected absorption of the project and the public improvements to be financed are reasonably projected to occur over an extended period of time after the date of organization of the District.

2. The project has varying projected uses, such as residential and commercial. Service Plans proposing mixed use must, at a minimum, reflect that 50% of the assessed value is derived from non-residential usage. The actual market value of the project may differ greatly from the 50% assessed value for non-residential.

C. The Service Plan must fully describe the need, reasoning and mechanics if a Multiple-District structure is proposed.

### **Dissolution of District.**

The Service Plan must provide for dissolution of the District, and all debts and financial obligations of the District must be defeased as well, no more than 40 years after the Service Plan is initially approved. Additionally, the Service Plan must provide that the District is obligated to obtain the approval of the City Council 20 years after organization of the District (and every ten (10) years thereafter) in order to continue providing operations and maintenance services; provided, however, that failure to obtain such approval shall not be considered a material modification unless such approval is not obtained forty-five (45) days after written notice to the District by the City of the need to request such approval.

## **Default of District.**

A. In the event that 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, and such default is continuing after the delivery of notice thereof to the District and the expiration of any cure periods, the District shall be precluded from issuing additional debt except refunding bonds issued to avoid or to cure a payment default, without the prior approval of the City Council.

B. In the event that a court of competent jurisdiction has made a final, unappealable determination that a District has defaulted on any of its financial obligations, the District will be precluded from issuing additional debt, except to refund or refinance a financial obligation for the purpose of avoiding or curing a default, without receiving written permission from the City Council following a public hearing on the matter.

C. In the event of a material modification of the Service Plan, the City and the electors of the District will be entitled to exercise their respective rights under the Act. Departures from the Service Plan that constitute a material modification include without limitation:

1. actions or failures to act that create greater financial risk or burden;
2. performance of a service or function or acquisition of a major facility that is not closely related to a service, function or facility authorized in the Service Plan; and
3. failure to perform a service or function or acquire a facility required by the Service Plan.

Actions that are not to be considered material modifications include without limitation changes in quantities of facilities or equipment, immaterial cost differences, and actions expressly authorized in the Service Plan. Following formation of the District, the District's Board of Directors may, from time to time, submit a letter to the City Manager, or designee, outlining the proposed actions of the District for which the Board of Directors is unclear as to whether a Service Plan amendment is required. The City Manager, or designee, will determine whether an amendment to the Service Plan is required under the provisions of this Policy and Section 32-1-207, C.R.S., and then provide a copy of the determination to the District's Board of Directors.

## **Annual Report.**

A. The Service Plan must obligate the District to file an annual report not later than September 1 of each year with the City Clerk for the year ending the preceding December 31, the requirements of which may be waived in whole or in part by the City Council or the City Manager.

Unless waived by the City the Service Plan must require the annual report to include the following:

1. A narrative summary of the progress of the District in implementing its Service Plan for the report year;

2. Except when exemption from audit has been granted for the report year under the Local Government Audit Law, the audited financial statements of the District for the report year including a statement of financial condition (*i.e.*, balance sheet) as of December 31 of the report year and the statement of operations (*i.e.*, revenues and expenditures) for the report year;

3. 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;

4. 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; and

5. Any other information deemed relevant by the City Council or deemed reasonably necessary by the City Manager.

B. In the event the annual report is not timely received by the City Clerk or is not fully responsive, notice of such default shall be given to the District Board at its last known address. The failure of the District to file the annual report within forty-five (45) days of the mailing of such default notice by the City Clerk may constitute a material modification of the Service Plan, at the discretion of the City.

#### **Sanctions.**

Should any District undertake any act which constitutes a material modification to the Service Plan, the City Council may impose one (1) or more of the following sanctions, as it deems appropriate:

1. Exercise any applicable remedy under the 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 remedy, including seeking injunctive relief against the District, to ensure compliance with the provisions of the Service Plan or applicable law.

#### **Review and Approval Process.**

A. Once the City Manager has established compliance with this Policy, the City Manager will, within a reasonable time, place before the City Council for its consideration a resolution approving the Service Plan. The resolution will be processed and governed by the City Charter and the City Code.

B. The proponents of the District must cause a notice of the public hearing at which the proposed resolution is to be considered by the City Council to be mailed by first class mail to the owners of record of all property within the proposed District and within any inclusion area specifically identified in the Service Plan, as such owners of record are listed on the records of the County Assessor. The mailed notice must be made at least ten (10) days prior to the public hearing on the resolution. The notice shall include the following:

1. A description of the general nature of the proposed services and public improvements to be provided by the District;
2. A description of the property to be included in the District and the inclusion area (if any), which description will be by street address, by reference to lots or blocks on any recorded subdivision plat thereof, or by metes and bounds if not subdivided, by tax identification number or by any other method reasonably calculated to apprise owners of the property to be included in the District;
3. The place at which a copy of the Service Plan may be examined;
4. The date, time and place of public hearing on the Service Plan;
5. A statement that all protests and objections must be submitted in writing to the City Manager at or prior to the public hearing, in order to be considered; and
6. A statement that all protests and objections to the District, as proposed, will be deemed to be waived unless presented in writing at the time and in the manner specified in this subsection.

C. The resolution will be conclusive of the City's determination on the Service Plan. No action or proceeding, at law or in equity, to review any acts or proceedings or to question the validity of the Council's determination pursuant to this Policy, whether based upon irregularities or jurisdictional defects, will be maintained unless commenced within 30 days after the adoption of the Council's ordinance, or else be thereafter perpetually barred. In the manner and to the extent provided in this Policy, City Council will maintain continuing jurisdiction over the operations and affairs of the District and will exercise its rights in relation thereto, as deemed appropriate by City Council, pursuant to the Act and as consistent with this Policy.

**Fees.**

With the submittal of a Service Plan, the entity proposing the District must also submit to the City Clerk the following amounts:

1. a non-refundable application fee not to exceed \$2,000; and
2. a \$10,000 deposit to reimburse the City for staff, legal, and consultant time.

A request for an amendment or modification to a Service Plan must be submitted to the City Clerk and be accompanied by the following:

1. a non-refundable application fee not to exceed \$250; and
2. a \$1,500 deposit to reimburse the City for staff, legal, and consultant time.

The City may draw against the deposits referred to above based upon then current hourly rates (including benefits) of employees working on the Service Plan and the applicable rates for legal and other consultants. If the reimbursed amount exceeds the deposit, the balance shall be due to the City immediately and prior to consideration of the Service Plan or amendment by the City Council. Any deposit amounts remaining upon Council consideration of the Service Plan or amendment will be returned. The purpose of staff, legal, and consultants' review is to provide the City Council with expert advice in considering the adequacy of the Service Plan and in forming a basis for adopting an ordinance approving, disapproving, or conditionally approving the Service Plan for the District. The fees set forth in this Section may be waived by City Council.