Memorandum to Lakewood City Council

John Henderson

October 2, 2021

Re: In Response to Staff Recommendation for Metropolitan District Reform Ordinance Scheduled for Public Hearing Monday, October 4, 2021

Executive Summary

For 11 years public elections in Solterra were cancelled by the developer.

- Residents were told they could not serve on the boards until Solterra was built out.
- That was false. Under Title 32 the moment a resident buys a house in Solterra they were eligible to serve on the board.
- During the reign of the developer the board put the residents into $29 million of bond debt, with interest growing every year for at least 30 years. The developer still demands another $30 million repayment.
- The residents had no vote.
- Requests to account for the $59 million were ignored.
- Subsequent research revealed that the Solterra developer was reimbursed for all the infrastructure costs and made a profit of at least $75 million, even before metro district financing applied.
- Research the past 5 years including detailed evaluations of dozens of metro districts has revealed zero metro districts in Colorado which do not employ virtually all the Solterra abuses. Solterra is not the exception. It is the rule. In Sterling Ranch for example, even worse abuses exist and the developer has authorized himself $21 billion of debt at the expense of the future residents - currently about the same number as Solterra.
- It took a recall by the residents, a committee of 26 citizens, to recall the developer board - despite opposition which continues today. The metro district developer community has many friends including lawyers, managers, accountants and public officials who are well compensated or otherwise supportive of the metro district industrial complex that has evolved since the most recent overhaul of the statute in 1982.
- And the only purpose for residential metro districts is to pay the $30,000 average it costs to put the pipes in the ground and pave the streets and sidewalks.

- The industry still has not even attempted to explain why paying two loans and two sets of interest over at least 30 years is cheaper than the traditional way of including that cost in the cost of the developed lot.

- Neither has the industry even attempted to provide the data to show that the $30,000 cost is not already included in the cost of the lot and the homebuyer isn't paying twice for the same infrastructure cost.

The following is the Lakewood City Staff recommended reform ordinance. Lakewood's first metro district reform ordinance and one of the first in the state. The text of the ordinance is in black type. Comments and recommended edits are in red type.

<u>Here are several key observations</u>:

The ordinance relies heavily on metro district industry lobbyist proposals. However, there are a few excellent reforms and easy fixes are readily available to correct the major unwarranted concessions to the industry which perpetuate the worst of the abuses.

Of course, until the industry provides data that conclusively demonstrates metro district financing is more cost effective than the traditional way of paying for infrastructure through the cost of the developed lot, the City should simply prohibit metro districts in residential development as did the City of Longmont.

1. The proposed ordinance perpetuates the "big lie" by promoting developer control until build out. Title 32 requires the opposite and encourages residents to serve on the boards as soon as they have purchased a home in the district.

2. The ordinance leaves it up to the City Manager, instead of City Council after public hearing, to approve ballot issues (the Solterra ballot issue established authority for $4.9 billion in debt based upon the vote of 8 developer employees).

3. The ordinance leaves it up to the City Manager to provide the detail requirements for the model metro district service plan, model disclosure form and model district report form. These are critical details and documents which should be vetted in a public hearing and approved by the City Council.

4. The ordinance adopts the developer view, contrary to Title 32, that once a district is created, it can do anything authorized by Title 32. In fact, Title 32 says the district can only do what is expressly authorized in the Service Plan.

- The ordinance must make clear that the City is creating a limited government - limited by what the Service Plan specifically authorizes - defined by the plan when it is approved; not the developer later on. (I.e. providing sanitation services within the boundary of the district to only residents in the district).

- Limited government is not a blank check to do whatever you want to with a list of things you can't do.

- Instead, limited government is restricted to a list of expressly stated things you can do. There is no blank check.

5. The ordinance lets the developer tell the City what material modifications are.

6. The ordinance ignores a key power provided in title 32 - conditional approval. The City can conditionally approve the district subject to 100% resident control which means the City can revoke the approval at any time for any reason if the developer abuses their power.

7. The ordinance artificially states the the ordinance only applies to future districts. Current districts must comply as well. No legal reason prevents the City from requiring current districts to do what new districts have to do - such as disclosures to new homebuyers and reporting until the district is 100% end user.

8. The ordinance does not provide for citizen initiative. The City can extend the City right to citizen initiatives to metro districts as part of the Service Plan.

9. The ordinance still allows multi-districts (there is still no authority in Title 32 for multi-districts).

10. The ordinance still acknowledges the existence of single-party conflict of interest agreements where there is no authority in Title 32 for such agreements and they are clearly against public interest. These are the agreements where the developer wears the developer hat and enters into an agreement with himself wearing the district board hat to impose financial debt obligations on the residents who never get to vote. There is no authority for these agreements. The legislature last year expressly denied the industry effort to have them approved through the "back door".

Single party conflict of interest agreements must be expressly prohibited.

11. The basic financial controls are good but there are several areas that are fuzzy.

12. The use of a hired financial expert is always going to be problematic. It should be a staff person without affiliation with the developer community.

13. The disclosure process is good, but again the ordinance leaves the content up to the City Manager without public hearing and Council approval.

14. The ordinance prohibits master servant relationships which is good. But again,

essentially gives the developer permission to control the board until the developer has their money and are done building.

15. The ordinance uses "majority of end-users" as the definition of resident controlled boards. The developer has no more right to a seat on a district board than it does City Council. 100% end-users is resident controlled.

Here is the proposed ordinance in black type. Comments and recommended changes are in red type:

O-2021-25

AN ORDINANCE

CREATING CHAPTER 14.28 OF THE CITY OF LAKEWOOD, COLORADO MUNICIPAL CODE REGULATING METROPOLITAN DISTRICTS

WHEREAS, the City of Lakewood ("Lakewood" or "City") is a home rule municipality organized under Article XX of the Colorado Constitution and the authority of the Home Rule Charter for the City of Lakewood ("Charter");

WHEREAS, Section 2.1 of the Charter vests all municipal legislative powers in the City Council;

WHEREAS, metropolitan districts exist within Lakewood, have been used for a variety of purposes, and may be created in the future;

WHEREAS, metropolitan districts are created pursuant to state law, which requires City Council involvement for Districts within Lakewood;

- It is more accurate to state that state law permits the City Council to create metro districts. The city, not the state creates the districts. The city is not just "involved". Metro districts do not exist unless the City creates them. It is accountable for what it creates. And there is no right to a metro district. The City does not have to provide any explanation and can universally prohibit metro districts for residential construction as did the City of Longmont.

WHEREAS, the City Council has determined that an ordinance is necessary and desirable to establish procedures for processing and reviewing proposals for formation of new metropolitan districts;

- The ordinance is also necessary to regulate metro districts after they are created. The City obligation does not end with processing and reviewing proposals for their formation. Once they are formed, the city has a continuing obligation to regulate them until the residents 100% control the board.

WHEREAS, approval of this ordinance on first reading is intended to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide the public and the City staff an opportunity to present evidence and testimony regarding the proposal; and

WHEREAS**,** approval of this ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies the proposal.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, Colorado, that:

SECTION 1. Chapter 14.28, as follows, is hereby adopted and included in the Lakewood Municipal Code.

CHAPTER 14.28 – Metropolitan Districts

Section 14.28.010 – Purpose and Background

A. The Governing Body of the City of Lakewood finds and determines:

1. The City Council is vested with the authority to determine the merits of allowing the formation of a Metropolitan District in accordance with duly adopted standards and criteria of approval pursuant to the City's home rule powers granted by Article XX of the Colorado Constitution and Title 32, Article 1, C.R.S., known and cited as the "Special District Act", and the Charter for the City of Lakewood;

2. The provision and maintenance of public infrastructure within City boundaries is a matter of local concern, and the City has a strong interest in ensuring timely provision and continuing maintenance of such infrastructure in accordance with applicable City standards; and

3. Adoption of this Chapter 14.28 is necessary and proper to provide for the safety, preserve the health, and promote the prosperity of the City of Lakewood and its citizens.

Recommended added amendment:

4. The City has an obligation to the future citizens of every new development to oversee the creation, operation and management of every special district and protect the residents from un-represented taxing and spending abuses until the residents exercise 100% control of the new district board.

Recommended Amendment replacing current "B":

B. Metropolitan Disttricts have been the source of significant financial and management abuse which is ongoing.

1. Metro Districts charge residents twice for the cost and profit for infrastructure construction.

2. Metro Districts are used by developers to impose significantly high debt with no accountability for how the money was spent.

3. Metro Districts are used by developers to suppress public elections and prevent residents from serving on the governing boards of the districts.

4. Metro Districts are used by developers to pay themselves unearned and unchecked significant profits through government taxation.

5. Metro Districts are used to create a false illusion that paying two or three times the taxes for a house that costs the same in a non-district is "affordable housing".

6. Metro Districts have little or no transparency or accountability.

B. Metropolitan Districts may provide advantages to End-users and the community without burdening taxpayers outside of the District including, but not limited to, one or more of the following:

- This is an often recited set of promotional statements which have been issued by developers over the past several years to justify metro district abuse. They are generally false or misleading. Specific comments follow.

1. A financing mechanism to provide, own, operate and maintain Public Improvements.

    - This might be accurate if it the developers have not already recovered the cost of the infrastructure and profit in the cost of the developed lot which they charge the builder or homeowner.

2. A financing mechanism that could provide Public Improvements earlier than otherwise may occur in development of the District's service area.

    - There is nothing about metro district financing which accelerates the money available to pay for infrastructure.
    - As repeated by industry spokespersons, metro district financing allegedly pays the developer back for his costs of building infrastructure.
    - Yet, in every case, the repayment does not begin until the infrastructure is built, paid for and a critical mass of residents move in.
    - In every case, the developer has the money to build the infrastructure long before metro district financing begins to generate income to the developer.

3. A tax-advantaged financing mechanism that could provide Public Improvements for less total cost.

    - Metro district financing in every case involves two loans and two sets of interest, including interest paid on interest.
    - There is no math that generates an equation supporting the theory that metro districts cost less than traditional funding for infrastructure.

4. A financing mechanism that could defer for End-users costs that otherwise could affect qualification for property purchase in the District service area.

- The cost of a house is exactly the same in a metro district as it is in a non-metro district.
- The marketplace governs.
- The metro district house is not cheaper. The developer/builder will charge just as much for the same house inside and outside a metro district.
- What is different are the taxes.
- Metro districts generate taxes at least two or three times the tax rate in a non-metro district and the taxes frequently go on forever.
- And there is no real accountability for what the money is being spent on.

5. An alternative to a property owners' association that could include greater transparency and fairness to all property owners within the District.

- HOA's are not governments that can tax. Metro districts are. Metro districts are a dangerous and unregulated alternative to HOA's.

6. A means to further key community goals or help address broad community needs in association with development of the District service area.

- This is one advantage of special districts.
- But the only responsible way to create such a district is through the actual residents who live in the are.
- Not by a developer and his employees who will never live in the area or pay the taxes they impose on future residents.

C. Without appropriate standards and requirements established by the City, Metropolitan
Districts may create unnecessary complications or conflicts with End-users and the community including, but not limited to, one or more of the following:

- This is a watered down version of the actual abuses. See proposed "B" above.

1. Governmental and financial burden unexpected by End-users subject to District requirements.

2. Costs of the District being spread to all City taxpayers due to improper development of District services or improper provision of District services.
3. Actions by developer-affiliates that overburden End-users, unnecessarily enrich non-End-users or prolong non-End-user control of the District.
4. Use of eminent domain authority by a District detrimental to the overall welfare of the City as a whole.
5. Inappropriate modification of limitations on the authority and responsibilities of a District.
6. Unexplained differences among Districts serving various areas of the City.
7. Inadequate reporting by a District.

D. The provisions of this Chapter provide procedures for the processing and review of proposals for formation of new Districts, provide procedures for the processing and review of proposed Service Plan Amendments of existing Districts, and define the requirements, restrictions and limitations applicable to such Districts or Service Plan Amendments.

Section 14.28.020 – Definitions

The terms listed hereunder shall have the following meanings for purposes of this Chapter.

Board means the Board of Directors of a District.

Capital Plan means the plan for providing Public Improvements included in a District's Service Plan, which shall include the following: (1) a list of the Public Improvements to be provided by the District, supported by an engineering or architectural conceptual plan; (2) a good faith estimate of the cost of the Public Improvements which shall include a cost contingency, the size of which shall be explained in the Capital Plan; and (3) a *pro forma* capital expenditure plan correlating expenditures and revenues with phases of development.

City means the City of Lakewood, Colorado.

City Attorney means the City Attorney of the City of Lakewood, Colorado.

City Council means the City Council of the City of Lakewood, Colorado.

City-District IGA means an intergovernmental agreement between the City and a District primarily reflecting the terms and obligations of the Service Plan, in substantially the form provided as an exhibit to the Model Service Plan.

City Manager means the City Manager of the City of Lakewood, Colorado or such person's designee.

Clerk means the City Clerk of the City of Lakewood, Colorado or

such person's designee.

C.R.S. means the Colorado Revised Statutes, as amended from time to time.

Debt means all general obligation debt of the District as authorized in C.R.S. § 32-1-1101, *et seq.*, which the District has promised to repay through levy and collection of an *ad valorem* property tax assessed against taxable property within the District.

District or M*etropolitan District* means an entity created in accordance with Title 32, Article 1, C.R.S., and as specifically defined in C.R.S. § 32-1-103(10).

End-user means an elector of the District who either: (a) has the elector's primary residence within the District and is neither a developer nor builder of property within the District nor affiliated with such a developer or builder, or (b) owns and operates developed commercial property within the District. End-user shall not include anyone who is an eligible elector pursuant only to C.R.S. § 32-1-103(5)(b).

Material Modification means a Service Plan Amendment that is deemed a Material Modification by one or more of the following: the Special District Act, this Chapter, the District Service Plan, or the City-District IGA.

Metropolitan District Consideration Calendar means the City's calendar of deadlines for consideration of a Service Plan for a proposed District, which the City Manager is hereby authorized and directed to prepare, and amend as needed. Each version shall be transmitted to the City Council as an informational update upon adoption by the City Manager and shall be on file with the Clerk for public inspection.

- **Critical**: Model Disclosure, Model Report, Model Service Plan below - should be vetted in a public hearing, approved by Council and not amended without council approval. These are key documents to regulating metro districts and their requirements must have the full weight of the council behind them. This is far too much power in the hands of one person who frequently has a history of close relationships with the development community and is not directly accountable to the residents.

Model Disclosure Document means the City's model summary of the costs and benefits of a District, which the City Manager is hereby authorized and directed to prepare, and amend as needed. Each version shall be transmitted to the City Council, with an explanation of the changes, as an informational update upon adoption by the City Manager and shall be on file with the Clerk for public inspection.

Model District Report means the City's model District status and update report, which the City Manager is hereby authorized and directed to prepare, and amend as needed. Each version shall be transmitted to the City Council, with an explanation of the changes, as an informational update upon adoption by the City Manager and shall be on file with the

Clerk for public inspection.

Model Service Plan means the City's model District Service Plan, which the City Manager is hereby authorized and directed to prepare, and amend as needed. Each version shall be transmitted to the City Council, with an explanation of the changes, as an informational update upon adoption by the City Manager and shall be on file with the Clerk for public inspection.

Operation and Maintenance Plan means the plan for funding and managing operation and maintenance of Public Improvements that will be owned, maintained, operated or replaced by the District, which shall include: (1) identification of all such Public Improvements; (2) a good faith estimate of the annualized costs of such maintenance, operation or replacement of each such Public Improvement; and (3) a *pro forma* report correlating such expenditures with phases of development.

Petitioners means those persons proposing a Service Plan for the formation of a new District.

Public Improvements means part or all of the improvements, facilities and services of which a District is authorized to do one or more of the following: plan, design, acquire, construct, install, relocate, redevelop, maintain, operate, finance or replace as generally described in the Special District Act.

Service Plan means a service plan as required in the Special District Act and includes all Service Plan Amendments.

Service Plan Amendment means a change to a Service Plan approved by the City Council and the District. A Service Plan Amendment may or may not be a Material Modification.

Special District Act means Title 32, Article 1, C.R.S., *et seq*.

Section 14.28.030 – Applicability, Restriction on Approvals, and Authority

A. All provisions of this Chapter shall apply to all Districts operating under a Service Plan,
which was approved or amended by the City Council on and after the effective date of this Chapter.

- No. These requirements must apply to **all current districts as well as future districts**.
- Big Sky for example has done nothing pursuant to its service plan. It is run by the same person who presided over the suppression of public elections and issuing un-accounted for debt with no resident input in Solterra.
- The future residents of the Big Sky Metro District require the same commitment and protection as any other future residents.

- Another example - the disclosures.

- After a metro district is created and even after residents are in control of the boards, it will still be critically important for new homebuyers in older, current districts, to have access to the same disclosures required in brand new districts.
- The disclosure requirements are equally important in existing districts as they are in new districts.

B. All Districts must follow applicable State legal requirements, as those may be updated and amended, including, but not limited to: audits, reporting, debt issuance, budget submission, election requirements, financial regulations, and other governance actions. (Budget submission requirements can be found on the State of Colorado Department of Local Affairs website. Audit submission requirements can be found on the Office of the State Auditor website.) Such reports shall be concurrently filed with the City in conformance with this Chapter.

C. No District shall be approved by the City Council that will have no development within its boundaries.

D. No District shall be approved by the City Council that will have control over the finances of another District by contract or otherwise.

- These are both excellent and should remain un-touched.

E. Multiple Districts serving contiguous areas may be approved by the City Council, with a joint or separate Service Plan(s), to reflect different development types, land uses, service needs or development timing. Such multiple Districts may collaborate and are encouraged to seek mutual efficiencies.

- This is a major "loophole" that completely contradicts C and D above. There must be an absolute ban on multiple districts for the same residential development. No exceptions.
- Title 32 does not provide for multi districts under any circumstances. There is no authority to allow multi-districts. The developers just do it but there is no legal authority for them under Title 32.

F. In addition to the power, authority and protection set forth in this Chapter, the City shall have all of the power, authority and protection granted by the Special District Act to municipalities and by the City's Home Rule Charter.

Section 14.28.040 – Filing for Consideration of a Proposed Metropolitan District or Proposed Service Plan Amendment

A. Petitioners shall file a proposed Service Plan and a District Board shall file each proposed Service Plan Amendment with the Clerk. Copies of the proposed Service Plan or proposed Service Plan Amendment and any other required documents shall be submitted in a quantity and format acceptable to the City Manager.

B. All Petitioners shall submit each proposed Service Plan to the Clerk no later than the deadline in the Metropolitan District Consideration Calendar unless the submittal deadline is modified in writing by the City Manager for good cause shown.

C. At the time of filing a proposed Service Plan or Service Plan Amendment, the Petitioners or Board, respectively, shall pay a nonrefundable application fee in accordance with the fee schedule adopted by the City Manager.

D. Conformance with this Chapter requires a special review of each Service Plan and Service Plan Amendment and, pursuant to C.R.S. § 32-1-202(3), Petitioners or the District shall pay all direct costs that the City incurs to review a proposed Service Plan or Service Plan Amendment that exceed the amount of the application fee through a reimbursement agreement between the City and the Petitioners or District. Such costs shall be substantially paid, to the satisfaction of the City Manager, prior to a date being set for the public hearing pursuant to section 14.28.070 and fully paid within thirty (30) calendar days after final City Council action on the Petitioners' or District's request. Failure to honor the terms of the reimbursement agreement shall nullify the City's approval of the Service Plan or Service Plan Amendment.

E. Petitioners or the District shall file, at the time of filing the proposed Service Plan or Service Plan Amendment, a letter of intent including each of the following:

1. An explanation of the benefits of the proposed District or Service Plan Amendment, which may include, but are not limited to, one or more of the following, and the mechanisms to ensure such benefits are provided:

   a. Advancement of City goals that would not be accomplished if the Metropolitan District or Service Plan Amendment is not approved including, where applicable, quantitative information;

b. Public Improvements, if any, to be provided by the proposed District or Service Plan Amendment that further City goals and exceed City requirements;

c. Provision of and/or contribution by the proposed District or Service Plan Amendment, if any, to needed infrastructure that exceeds City requirements; and

d. Public Improvements, programs and facilities, if any, to be provided by the District or Service Plan Amendment that are not required by the City and are superior in quality, nature or timing to those associated with similar land uses without a Metropolitan District.

2. A description of anticipated property owners' association(s) and the purpose(s) for each including the division of responsibilities among such association(s) and the District, and the comparative advantages of the association(s) and the District for each responsibility.

3. A disclosure document consistent with the Model Disclosure Document and the submitted Service Plan or Service Plan Amendment.

4. **Critical** Recommended addition:

A detailed explanation of the costs of the land, the costs of the infrastructure and the profit to the developer to be included in the cost of the lot to a prospective builder or homeowner.

The applicant must provide verifiable documentation to support each data point in the previous sentence.

An applicant will not be able to satisfy the requirements of CRS 32-1 203 (2) unless the applicant can prove with verifiable data that the cost of the infrastructure will not be collected in the cost of the developed lot.

Section 14.28.050 – Contents of Service Plan and City-District IGA

Any Service Plan shall comply with the requirements of C.R.S. § 32-1-202 And CRS 32-1-203 and include all provisions set forth within this section. Such provisions shall not be eliminated by any Service Plan or City-District IGA, or amendments thereto. The Service Plan shall substantially comply with the form and content of the Model Service Plan provided by the City. The City Council shall determine whether the proposed Service Plan adequately complies with C.R.S. § 32-1-202 and CRS 32-1-203, the form and content of the Model Service Plan, and this Chapter.

- The critical criteria for approving a service plan are in 32-1-203 and cannot be ignored.

A. Disclosures.

1. The District shall provide a publicly accessible website, which shall be referenced on all its communications, shall provide an avenue for two-way communication between District electors and the District, shall include an illustration of the District's boundaries on an aerial image, and shall solicit District elector email addresses to be used only for District business communication purposes.

2. The District shall provide a disclosure document, approved by the City Manager, explaining the costs and benefits of owning a property within the District. Such disclosure shall be consistent with the Model Disclosure Document provided by the City. Said disclosure shall, at a minimum, be made available as follows:

   a. Provided by the City on the City's website on a page dedicated to Metropolitan District information.

   b. Provided by the District on the District's website, which website each District partially or fully within the City is hereby required to have and maintain.

3. Every District shall prominently display upon their website, and in all documents provided to potential purchasers of real property within the District, the contents of the disclosure statement set forth in C.R.S. § 38-35.7-101(1). Additionally, the language set forth within C.R.S. § 38-35.7-101(2), regarding the obligation of all Sellers to include such language within every contract for the purchase and sale of residential real property shall be prominently displayed upon the District's website.

4. The District and all property owners' associations, which include an area that overlaps the District partially or entirely, shall require within its covenants, rules and regulations that all properties within such District's boundaries post a notice on the property via a yard sign at any time the property is for sale and via all other means utilized to identify a property as being available for sale. Said notice shall state that such property is located within the District, identifying such District by name, and providing the District's website address. Such sign shall conform to the City of Lakewood regulations for Yard Signs and shall be no smaller in size than one foot (1') by two feet (2'), with lettering a minimum of two (2) inches in height so as to be clearly visible from the abutting roadway. Such sign shall be located within one foot (1') of the sign indicating that the property is available for sale or, if no sign is placed on the property indicating it is available for sale, within twenty feet (20') of the abutting roadway and legible from either direction of travel on said street. The District is encouraged to provide such signs to property owners upon such property owner's

request to assure property owner compliance with these noticing requirements.

B. Public Record of Disclosures.

1. The disclosures required pursuant to section 14.28.050(A)(2) shall be recorded by the Petitioners or District in the Jefferson County Clerk and Recorder's property records prior to the earlier of:
   a. Sale of any property within the District, or
   b. No later than ten (10) calendar days after the court order, pursuant to C.R.S. § 32-1-305(6) that declares the District organized.
2. The disclosure pursuant to section 14.28.050(A)(2) shall be recorded by the City in the Jefferson County Clerk and Recorder's property records concurrent with recordation of each subdivision located partially or wholly within the boundaries of the District.

- **Critical** These disclosures and procedures are good. However, the required disclosures - the content of the form - must be vetted in a public hearing and approved by Council.

C. Finances.

1. The Service Plan and City-District IGA shall include a Capital Plan and an Operation and Maintenance Plan prepared on behalf of the Petitioners by professional, commercial entities that prepare similar plans and cost estimates in the normal course of their business.
2. The Service Plan and City-District IGA shall establish the maximum initial Debt amount in dollars.
3. Agreement(s) for a Metropolitan District to reimburse the expenses or financial advances of any party shall require the following, and said requirements for reimbursement shall be included in the Service Plan and City-District IGA:
   a. Reimbursement shall be limited to the direct costs of contracts competitively bid and a copy of such bid documents and all bids received shall be provided to the District. Award to a party that is not the lowest-bidder shall require written justification accepted, in writing, by the District Board and, if a majority of the District Board is not End-users, by the City Manager;
   b. Prior to each reimbursement payment, all costs to be reimbursed shall be documented in invoices to the District that include detail comparable to the information typically included in invoices or payments for such work and no less detailed than the information provided to the party to be reimbursed;
   c. The contract(s) or agreement(s) between any party to be

reimbursed and the contractor(s) performing the work for which reimbursement is being sought shall be provided to the District prior to any reimbursement;

d. Any interest charged on amounts advanced for later reimbursement shall not exceed the rate defined in the Service Plan and/or the City-District IGA; and

- Red flag. Interest for what. Why is interest charged. Currently the metro district "interest" charged by the developer is un-accounted for profit.

e. No subcontracting or other arrangement shall be used to prevent disclosure of the work for which reimbursement is sought, the costs of the work, or the parties involved.

4. A District's obligation for Debt issued and any costs, including reimbursement of costs, of providing Public Improvements, other than pay-as-you-go expenses such as operation and maintenance, shall encumber revenue derived only from such District's Debt mill levy unless otherwise approved in the District's Service Plan.

- This requires further explanation. It sounds like it authorizes the issuance of debt for operations and maintenance (like taking out a loan to pay for groceries). That should not be authorized.
- Otherwise it simply states that debt issued by the district will be paid by taxes. Which is already required in Title 32.

5. For Districts that can include residential use, each Debt solicitation and Debt instrument issued by or on behalf of a District shall include disclosure of the Debt limitations of the District, including but not limited to, maximum initial Debt, maximum Debt mill levy, and maximum Debt mill levy duration.

- Debt solicitation and Debt instrument sound like the current "loans" created by the developer between himself and the district and between the district and the residents - without input or agreement by the residents.
- These two documents would also include the bonds issued to pay off the above "loans".
- It needs to be clarified exactly what we are talking about here.

6. For Districts that can include residential use, each issuance of Debt

issued by or on behalf of a District that is not placed through a public offering, shall include an independent financial professional's evaluation and written finding that the terms of such Debt instrument are reasonable in the marketplace, and comply with this Chapter, the Service Plan and the City-District IGA. The independent financial professional shall be registered as a Municipal Advisor as defined by the U.S. Securities and Exchange Commission, shall not be affiliated with any developer or builder of property within the District, shall be selected by the District and, if all [the majority of] the District Board is not End-users, the District shall obtain concurrence from the City Manager of the Municipal Advisor selected. Such finding shall be included in the District's next report pursuant to section 14.28.100.

- Red Flag.
- This provision will require strict scrutiny and audit. Currently the developers are using captive financial advisors who are simply repackaging what the developer gives them without any objective or professional critical evaluation.
- The financial advisor must be completely free of any business interests aligned with the development industry. The best practice is a hired staff person with accountability to the public through the City Council.
- Also, the developer has no more right to sit on the board of the district when there are residents to sit on the board than he does to sit on City Council.
- Resident controlled should be defined not as a majority but as 100% end-users.

7. The District shall notify the City Manager of any District application for grant funds no later than the date the application is submitted. Any District application for grant funds shall be withdrawn by the District if the City notifies the District that it has applied or will apply for such grant unless the District receives approval from the City Manager to continue pursuit of the grant.

8. Each District formed on or after the effective date of this Chapter shall remit all specific ownership tax received by the District to the City within thirty (30) calendar days of receipt by the District unless otherwise provided in the District's Service Plan and the City-District IGA.

D. Mill Levies

1. For Districts that can have residential use, the District shall comply with the maximum Debt mill levy to finance Public Improvements including reimbursement of any expenses of any party to provide Public Improvements.

Such maximum Debt mill levy shall be established in the Service Plan and the City-District IGA.

2. For Districts that can have residential use, the District shall comply with the maximum operating mill levy permitted to fund pay-as-you-go costs, such as operating, and maintenance expenses, including the reimbursement of any expenses of any party to provide such services to the District. Such maximum operating mill levy shall be established in the Service Plan and the City-District IGA.

- Red Flag. Issuing taxes to pay for operations and maintenance - day to day charges is one thing. Going into debt (with loans or bonds) to pay operations and maintenance is another.
- This allows the developer to charge interest for providing basic services. Again, this is like taking out an interest bearing loan to pay for groceries.
- Operations and maintenance should be paid through annual fees or taxes, not loans. This needs clarification.

3. For Districts that can include residential use, the District shall comply with the maximum Debt mill levy imposition term within which the District's Debt and Debt mill levy shall be extinguished. Such maximum Debt mill levy imposition term shall be established in the Service Plan and the City-District IGA. Said term can be extended for refunding only by a District Board on which all the members a majority of the members are End-users. Such refunding shall comply with applicable limitations and requirements set forth in C.R.S. § 11-56-101, *et seq*.

- Again, resident controlled is 100% end-users, not a majority.

E. Elections.

1. Ballot issues shall be subject to the following:
   a. This section 14.28.050(E)(1) shall not apply to Districts in which residential use cannot occur or in which all the [majority of] Board seats are occupied by End-users.
   b. Petitioners for a new District and Boards of existing Districts shall provide the language of all ballot questions, including the organizational election ballot question, to the City Manager, with a copy to the City Attorney, at least twenty

      (20) calendar days prior to any statutory ballot certification deadline.

- **Critical** Any ballot issue must be vetted at a public hearing and approved by the City Council, not the City Manager.

Recommended substition for c. :

c. The City Manager and City Attorney shall make a recommendation to City Council. The City Council shall hold a public hearing on the ballot questions and either approve or deny the proposed ballot question. No ballot questions may be presented to the electors for a vote unless approved by the City Council.

c. [d e l e t e] Petitioners or the Board may proceed with ballot certification if the City Manager does not object in writing within fifteen (15) calendar days of submittal of the election ballot question(s) to the City. The City Manager shall only object if the ballot language is not consistent with the Service Plan and City-District IGA.

See above.

d. [d e l e t e] If the City Manager objects to the ballot language, the language shall be changed by the Petitioners to the satisfaction of the City Manager.

See above.

2. In addition to requirements of the Special District Act, District elections for Districts in which residential use is allowed shall comply with the following:

   a. All elections, including for Board seats and ballot questions, shall be by mail ballot.

   b. Notice of each election shall be sent via U.S. Mail and via email to each address associated with at least one eligible elector at least thirty (30) and no more than sixty (60) calendar days prior to the deadline for nominations to the office of District Board director.

   c. Notice of each election shall be posted on the District's website for the period beginning sixty (60) calendar days before and ending the day after the deadline for nominations to the office of District Board director.

   d. The notice required in section 14.28.050(E)(2)(b) and (c) shall identify the legal name of the District, describe the process to be nominated for a Board seat, identify the deadline for returning nomination forms and the deadline for returning ballots, include

the disclosure described in section 14.28.050(A)(2), include a link to the District's website, and include a link to the Colorado Division of Local Governments website containing information about the District.

Recommended additions:

e. Each notice shall include a prominent statement that every elector is eligible to serve on the board.

f. Each notice shall include a self-nomination form with instructions to fill it out and email it to the designated election official if the person would like to serve on the board.

- **Critical** Section (E)(3) below assumes that the developers should control the board until the development is built out to a certain point. That is simply false, completely contradicted by Title 32 and perpetuates the "Big Lie" that resulted in the developer cancelling Solterra's public elections for 11 years.

  - Under Title 32, every homeowner is entitled to sit on the board as soon as they have a contract to purchase a home. There is no right of the developer to sit on the board if there is even just one homeowner who would like to serve. Repeatedly in Solterra, homeowners were turned away "because the development was not built out yet"
  - The proposed section (E)(3) must be deleted in its entirety. What follows is a proposed substitution:

Recommended substitution for 3. :

3. The board shall issue notices of every regular and special meeting of the board by email and regular mail.

Each notice of the regular or special meeting shall include the following:

a. The agenda

b. The board packet including all documents submitted to the board members prior to and at the meeting.

c. A clear and prominent statement in all caps at the beginning of the agenda and board packet which states:

- "One or more of the board members are associated with the developer and have an express conflict of interest with you and all the residents of the district.
- You and other residents are encouraged to nominate yourselves to serve on the board and govern your own taxing and spending.
- Currently, the developer affiliated board members are voting to pay themselves profits with your taxes.
- Enclosed is a self-nomination form with instructions to fill it out and send it to the designated election official and counsel for the board.
- Once it is received, the developer affiliated board member(s) must resign and you will either be appointed or elected to serve on the board."

d. No board member who is not an end-user may serve on the board once an end-user presents a self nomination form to the designated election official and counsel for the board.

e. At the time a self nomination form is received by either the designated election official or counsel for the board, the most recent board member(s) who is not an end-users is no longer eligible to sit on the board and may not attend or vote as a board member.

f. If there are fewer self-nominations than there are non end-users on the board, then each end user who submitted a self-nomination form shall automatically be appointed to serve on the board.

g. If there are more self-nominations than there are non end-users on the board, the district shall immediately schedule a special election for the purposes of voting upon the self-nominated end users to replace the developer affiliated board members on the board.

- Delete all of 3. :

3. [D E L E T E] For Districts that can include residential use, all [a majority of] Board seats shall be timely transferred to End-users as follows:

   a. Board members who are not End-users shall, in writing prior to appointment or re-appointment or election to the Board, resign:

1. Effective no later than the day immediately prior to the next possible District special election, as defined in C.R.S. § 32-1-103, that follows the date when the amount of development, defined in the Service Plan and/or City-District IGA for the purposes of section 14.28.050(E)(3) is achieved; and

2. Effective at one-year intervals beginning one year after the required initial resignation date until the Board majority consists of End-users.

b. The District shall notify the City Manager, in writing, of the date when the amount of development defined in the Service Plan and/or City-District IGA for the purposes of section 14.28.050(E)(3) is achieved. Such written notice shall be made no later than ten (10) calendar days after such date.

c. Vacancies on the Board created by resignation required by section 14.28.050(E)(3) shall be filled by appointment by the remaining director(s) as required by C.R.S. § 32-1-905. Selection of the appointees shall be by special election, as defined in C.R.S. § 32-1-103. The Board shall set the special election for the earliest possible special election date after the amount of development is achieved that is defined in the Service Plan and/or City-District IGA and at one-year intervals thereafter until the majority of the Board seats are held by End-users. If, after each such special election, one or more vacancies remain on the Board, such vacancy(ies) shall be filled as required by C.R.S. § 32-1-905, and the selection of appointees is not required to occur by special election.

d. Board members who resign and remain eligible electors are not prohibited by section 14.28.050(E)(3) from seeking re-election.

F. Board Limitations.

- These do not appear to be "limitations". The purpose of this section is unclear.

1. The District Board shall approve and enter into the City-District IGA during the District Board's first meeting and prior to any other Board action. Amendments to the City-District IGA shall be approved by the District Board at its first meeting subsequent to the City's approval of such amendment and prior to any other Board action.

2. District use of the power of eminent domain or dominant eminent domain shall first require approval by City Council resolution.

- Modification of the district boundaries by the district is a significant

modification of the service plan. The two founding elements of a service plan are the territory and the purpose.

- No modification of the territory may be allowed without a public hearing and vote by the City Council:

Amended language:

3. District modification of its boundaries is strictly prohibited without approval by City Council following a public hearing. [delete the following:] [shall require notice to the City Manager and City Council at least sixty (60) calendar days before such District action becomes effective.]

4. For Districts that can include residential use, none of the following actions shall be permitted unless [all] [the majority of] Board seats are held by End-users:
   a. Any commitment to exceed the maximum initial Debt amount identified in section 14.28.050(C)(2).
   b. Any election authorized or required by Article 10, Section 20, of the Colorado Constitution (TABOR) except as necessary to authorize either or both of the following:
      1. No more than 50% of the then current assessed value of the property which is the same limitation for the maximum initial Debt pursuant to section 14.28.050(C)(2) and the Debt service mill levy necessary to issue such Debt, revenue from which shall only be used to service the initial Debt.

- **Critical** This is a significant issue:

- The initial debt is limited to 50% of the then current assessed valuation.
- There is no money until the residents arrive.
- Therefore there should be no vote on an obligation for the residents to pay money until the residents arrive.
- The debt authorization must be limited to what the developer has invested in the property.
- He can vote to spend his money.
- He can't vote to spend the future residents' money.

      2. No more than the maximum operating mill levy pursuant to 14.28.050(D)(2).

   The ballot language for any such election shall be included in the proposed Service Plan and proposed City-District IGA. Every ballot

issue must be approved by the City Council.

c. Any action to expand the number of Board seats from its original number.

G. Public Improvements

1. The Service Plan shall identify Public Improvements that will not be freely available to the general public and those that will not be available to the general public on a basis equal to property owners within the District.

2. The Service Plan shall identify Public Improvements that will serve property located outside of the District, provide an explanation of why the District should provide such Public Improvements, provide the estimated cost to the District for providing such Public Improvements, and describe any anticipated reimbursement to the District for such costs.

H. Service Plan Material Modifications

- **Critical** This is a significant issue. The ordinance assumes, contrary to Title 32, that a district can do whatever it wants to unless it is expressly prohibited.
- No. In creating a new government we expressly state what limited powers it has.
- We do not give it unlimited powers with express statements only of what it can't do.

Paragraph H 1 of the draft ordinance should be eliminated and replaced with:

1. The powers of the district are expressly limited to those express and specific powers listed in the Service Plan. A statement that the district may do everything permitted under Title 32 is not an express statement of a specific power and will not be permitted. A district is only authorized to do those things which are specifically identified in the service plan limited to purpose and territory (i.e. provide sanitation services within the boundary of the district to only residents of the district).

a. Any proposed change in the boundary of the district is a material modification.

b. Any proposed change in the stated purpose of the district is a material modification.

c. Any proposed change to provide services outside the district boundary is a

material modification.

d. Any proposed action which is not expressly authorized in the Service Plan and expressly included in the capital plan is a material modification.

e. General statements that the district will provide services authorized by Title 32 is not an express authorization to provide a service. The specific service (i.e. sanitation services) must be expressly stated and authorized and the cost documented in the capital plan.

The draft ordinance section H 1 should be deleted:

1. [d e l e t e] The Service Plan shall include a list of actions that are, if proposed or undertaken by a District, Material Modifications pursuant to C.R.S. § 32-1-207. However, such list shall not reduce the circumstances that, under C.R.S. § 32-1-207, would be Material Modifications.

- The next section H 2 eliminates the requirement for a public hearing before City Council action to approve a material modification. It should be eliminated and replaced by:

2 . No material modification shall be allowed without a formal application filed with the City Manager, public hearing and vote by the City Council. All applications for material modifications shall follow each requirement for the original service plan.

Section H 2 should be completely deleted:

2. [d e l e t e] Prior to legal action pursuant to C.R.S. § 32-1-207(3), for a Material Modification without City approval, the following shall occur:

   a. If a District Board identifies an intended action, that may be included on the list pursuant to section 14.28.050(H)(1), that such Board asserts is not a Material Modification, such assertion and supporting reasoning shall be provided in writing to the City Manager. The City Manager shall immediately transmit the information to the City Council. The City Council shall direct the City Manager whether to concur with the Board. The City's response shall be in writing and shall occur, within forty-five (45) calendar days of receiving the Board's assertion and reasoning. If the response is concurrence, the District may proceed. Failure of the City to respond within forty-five (45) calendar days shall be concurrence. If the response is not concurrence, the Board and City shall follow the process of section 14.28.110(A) prior to any legal action pursuant to C.R.S. § 32-1-207(3).

b. If the City identifies an action or potential action by the District or its Board that the City asserts is a Material Modification, whether or not included on the list pursuant to section 14.28.050(H)(1), such assertion and supporting reasoning shall be provided in writing to the Board. The Board shall, within forty-five (45) calendar days of receiving the City's assertion and reasoning, respond in writing to the City. If the response is concurrence, the District shall not proceed with such action or potential action unless a Service Plan Amendment allowing such action or potential action is approved. Failure of the Board to respond within forty-five (45) calendar days shall be concurrence. If the response is not concurrence, the Board and City shall follow the process of section 14.28.110(A) prior to any legal action pursuant to C.R.S. § 32-1-207(3).

Section 14.28.060. - Administrative Review of Proposed District or Service Plan Amendment.

A. The City Manager shall review the proposed Service Plan or Service Plan Amendment. Such review shall include the following:

1. The financial aspects by person(s) or firm(s) qualified to evaluate the reasonableness of the financial plan including, but not limited to, estimated costs to the proposed District of providing, operating and maintaining proposed Public Improvements, the projected rate of development, the projected revenues and cash flows, the estimated financing costs. The person(s) or firm(s) who perform the review shall be selected by the City Manager based on their experience and qualifications relevant to the review, and their independence from the Petitioners or District and any development to be served by the District.

- This needs to be strictly scrutinized. Currently the "expert" the City Manager might hire will be from a stable of developer cultivated "experts" who simply repackage what the developers provide without any critical evaluation.
- The better practice is to hire a staff person, one of whose responsibilities would be to provide this service.
- The point is to obtain this expertise from someone accountable to the residents who will never have any business interests with the development community.

2. The proposed Service Plan or Service Plan Amendment for compliance with this Chapter and the Special District Act.
3. The community goals, needs and amenities to be provided by the District that are beyond those required of the development to be served by the District.

B. The City Manager shall provide a report to the City Council of the City Manager's findings including a recommendation to approve, disapprove or conditionally approve the Service Plan. A recommendation of conditional approval shall include the additional information, Service Plan changes, and/or City-District IGA changes recommended including a recommended deadline for submission of such information or changes.

Critical Recommended addition:

The City Manager shall also provide any reasons why the Service Plan shall not be conditionally approved until the board is 100% end users.

- Title 32 allows the City to conditionally approve service plans.
- Service Plans may be conditionally approved until the board is 100% end users.
- This will continue to keep the districts accountable to the surrogate residents (City Council and public at large) until the actual residents move in

Section 14.28.070. - Public Hearing Regarding a Proposed District or Proposed Service Plan Amendment.

A. Upon completion of administrative review pursuant to section 14.28.060, the City Council or City Manager may determine a City Council study session is required and, if so, the Clerk shall schedule the study session.

B. The Clerk shall schedule public input in association with any proposed City Council resolution regarding approval of any Service Plan or Service Plan Amendment or proposed modification. Notice of the City Council meeting on which the proposed resolution of approval is scheduled shall be in accordance with the City Charter and the Lakewood Municipal Code, as amended.

C. If any property is proposed for inclusion in the District that is not fully owned by the Petitioners, such other owners shall be sent, by U.S. mail, notice of each City Council meeting postmarked at least fourteen (14) calendar days, but

not more than thirty (30) calendar days, prior to each City Council meeting.

D. The content of the notice shall be pre-approved by the City Manager. Petitioners or
District shall print and mail such notices. The Petitioners or District shall provide to the City Manager independent written confirmation of the date, person(s) and addresses to which such notice is mailed.

E. Notices of each City Council meeting shall set forth the following:

1. The date, time, location, and purpose of the City Council meeting.
2. A general description of the properties contained within the boundaries of the District or proposed District including a boundary illustration on an aerial image.
3. How to obtain access to the material that will be submitted to the City Council for its meeting including the Service Plan or Service Plan Amendment.
4. A description of the process to submit comments on the proposed Service Plan or Service Plan Amendment.

Section 14.28.080. - Action by City Council Regarding Proposed Districts and Proposed Service Plan Amendment.

A. The City Council shall have the authority and legislative discretion to act, by resolution
pursuant to section 14.28.070, on the Service Plan or Service Plan Amendment or modification and the City-District IGA. Such action shall be as C.R.S. § 32-1-203 requires of County Commissioners considering and acting on a Service Plan or Service Plan Amendment.

B. In making its decision, the City Council shall consider the Model Service Plan, the
proposed Service Plan or Service Plan Amendment or modification, the proposed City-District IGA or amendment, the Petitioners' letter of intent pursuant to 14.28.040(E), information presented during the City Council meeting, the report of the City Manager, whether the material submitted by the Petitioners complies with this Chapter, input by the citizens and any experts presented by the citizens, and the Special District Act.

C. If the City Council conditionally approves the Service Plan or Service Plan
Amendment, the City Council shall, by resolution, define, pursuant to C.R.S. § 32-1-204.5, the additional information required, Service Plan Amendment required, and/or City-District IGA amendment required and a deadline for submission of such information or amendment(s). The City May also conditionally approve the district subject to the board being 100% end user. The City Manager may, upon request of the Petitioners, reasonably extend the deadline for cause. Failure to meet the deadline shall be deemed disapproval of the Service Plan or Service Plan Amendment by the City Council. Upon the requirements of a conditional approval being met by the Petitioners or District, the City Council shall vote on a resolution to approve, without further condition

or further amendment, the Service Plan and City-District IGA. If the vote on said resolution does not pass, the proposed District or Service Plan Amendment shall be deemed disapproved by the City Council

Section 14.28.090. – Service Plan Amendment.

A. In addition to the events or conditions enumerated in C.R.S. § 32-1-207(2), the

occurrence of any of the following actions, events or conditions, subsequent to the date of approval of the Service Plan or most recent Service Plan Amendment, shall constitute Material Modifications requiring a Service Plan Amendment and, if required by the City Manager, a City-District IGA amendment.

1. The failure of the District to provide any essential Public Improvements or services described in its Service Plan when necessary to preserve the public health, safety, or welfare or necessary to serve approved development within the District;
2. The failure of the District Board to approve and enter into the City-District IGA within the timeframe required by section 14.28.050(F)(1);
3. The occurrence of any event or condition defined under the Service Plan or City-District IGA necessitating a Service Plan Amendment;
4. Creation of a special improvement district;
5. The material default by a District under the City-District IGA or any other intergovernmental agreement or written agreement with the City;
6. Any proposed activity of a District determined to be a Material Modification of the Service Plan pursuant to section 14.28.050(H); or
7. Any other action, event or condition identified in a District's Service Plan as a Material Modification.

B. Submission of information for a proposed Material Modification shall comply with

section 14.28.040 and 14.28.050.

Section 14.28.100. – delete annual [Annual] Report Requirements.

- Title 32 allows the City to require reports at any time for any reason. The ordinance should not be limited to "annual" reports. The reports should be tailored to the development. Monthly or even weekly reports would be appropriate in the early stages - particularly construction of the infrastructure.
- Certainly the reports should be no less than annually and more likely monthly.

A. D e l e t e a n n u a l y [Annually], all Districts located wholly or partially in the City, regardless of when formed and in addition to any other required reports, shall submit the following documents to the City Council and the City Manager concurrent with submission to the Colorado Division of Local Affairs when requested by the City Manager:

1. A certified copy of the District's annual budget; and
2. A copy of the District's audit or audit exemption.

B. Each District operating under a Service Plan or Service Plan Amendment, which was approved by the City Council on or after the effective date of this Chapter, shall submit a report to the City Council and the City Manager conforming to the Model District Report concurrently with its [d e l e t e a n n u a l] [annual] submittal of its budget pursuant to section 14.28.100(A).

- The following is non-sensical. There is no reason to provide these reports once the development is complete and controlled by the residents. It should be deleted.

C. [d e l e t e] The obligation to submit the information identified in section 14.28.100(B) shall be required by the City Manager [through two annual] submittals after the date by which all of the following have occurred:

1. The area within the District is fully developed,
2. All Public Improvement construction and installation is complete, and the Public Improvements have been accepted by the relevant entity(ies) for ownership, operation and maintenance;
3. A majority of Board seats are occupied by End-users; and
4. The District notifying the City Manager, in writing, of the dates upon which section 14.28.100(C)(1) through (3) have each occurred.

D. The District shall pay all costs that the City incurs to review an [delete annual] report pursuant to the reimbursement provisions of the Service Plan and/or City-District IGA.

E. The Board shall, following receipt of a written notice at any time from the City Manager, appear during a City Council meeting, on the date included in the notice, to update the Public and City Council on District activities and finances and respond to questions from the City Council.

Section 14.28.110. - Noncompliance.

- This section skipped a step. The City Council, after a hearing, should decide whether or not the district has not complied. If the district disputes the Council's decision, they can sue, but this alternative dispute resolution provision can kick in then before the court is involved.

- But not before the City Council has a public hearing and makes a decision.

A. In the event of any dispute, claim, or controversy of any kind or nature relating to compliance with the approved Service Plan or City-District IGA arising between the City and District, there shall be a public hearing for the purposes of taking testimony and evidence regarding compliance. The City Council shall then vote on whether or not there has been compliance.

Prior to seeking redress in a court of competent jurisdiction, the Parties shall meet and make a good faith effort to resolve the dispute. If the dispute is not resolved within thirty (30) calendar days after the Parties first meet to discuss it or longer if mutually extended by the parties, one or both the Parties shall refer the dispute to non-binding mediation under the Commercial Mediation Procedures of the American Arbitration Association ("AAA"). A single mediator engaged in the practice of law within the State of Colorado, who is knowledgeable as to the subject matter relevant to the dispute, shall conduct the mediation under the then-current procedures of the AAA. The costs of mediation shall be borne equally by the parties. The mediation shall be held at a mutually agreeable site. Unless otherwise stated in this Chapter, nothing in this section 14.28.110(A) shall be construed to prevent or delay a Party from seeking any other remedy available to it at law, including seeking redress in a court of competent jurisdiction.

B. Should any District fail to comply with any applicable provision of this Chapter or with its approved Service Plan or City-District IGA, the City Council, by resolution, may authorize any one (1) or more of the following measures, as it deems appropriate:

1. Authorize the City Manager to withhold the issuance of or rescind any of the following: permit(s), authorization(s), inspection(s), acceptance(s) or other administrative action(s) necessary for the District's development or construction of Public Improvements;
2. Authorize the City Attorney to exercise any legal remedy under the terms of any intergovernmental agreement with the City under which the District is in default;
3. Authorize the City Attorney to exercise any other legal remedy available at law, including seeking injunctive relief against the District,

to ensure compliance with the provisions of this Chapter;

Recommended addition:

4. Where the district was conditionally approved subject to 100% of the board becoming end-users, revoke the conditional approval; or

[5] 4. Pursue any other remedy provided by the Special District Act

Section 14.28 120. – No Abrogation of Rights

A. Nothing in this Chapter shall be construed to limit or abrogate the rights and

immunities set forth in the Colorado Governmental Immunity Act, Article 10 of Title 24, C.R.S.

B. No provision herein shall be construed to limit or abrogate the right of any person to
bring a private cause of action.

SECTION 2. In accordance with the provisions of section 7.4 of the Lakewood home rule charter, this ordinance shall become effective thirty (30) days after final publication.

SECTION 3. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided that such remaining portions or application of this Ordinance are not determined by the court to be inoperable.

I hereby attest and certify that the within and foregoing ordinance was introduced and read on first reading at a virtual regular meeting of the Lakewood City Council on the 13th day of September 2021; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the 16th day of September, 2021; set for public hearing to be held on the 4th day of October, 2021, read, finally passed and adopted by the City Council on the _____ day of October, 2021 and, signed by the Mayor on the _____ day of October, 2021.

Adam Paul, Mayor

ATTEST:

Bruce Roome, City Clerk

APPROVED AS TO FORM:

Alison McKenney Brown, City Attorney