

Metropolitan District Decisions by the City of Lakewood - Prohibit or Proposed New Ordinance

And Evaluating the Following Material Presented by the
Lakewood City Director of Public Works Regarding
Metropolitan District Abuse and Reform Dated June 11, 2020

Prepared by: John Henderson jkhr1@gmail.com 316-295-0084
July 21, 2020

CONTENTS:

Executive Summary p. 2 - 15

 Questions to be Answered p. 2

 Six Essential Documents p. 3 - 7

 Initial Ballot Issue p. 3

 Service Plan p. 3

 Financial Plan p. 4

 Agreements p. 4

 Bonds p. 5

 Disclosures to Potential Residents p. 6

 Essential Elements of Metro District Ordinance p. 8 - 15

 Part I - Demonstration of Need p. 8

 Part II - Application for Service Plan p. 9

 Disclosures to City by Developer p. 9

 Initial Ballot Issue p. 10

 Service Plan p. 11

 Financial Plan p. 14

 Agreements p. 14

 Disclosure to Residents p. 15

Critical Evaluation of Staff Memorandum Paragraph by Paragraph p. 16 - 93

Resource: Denver Post Articles and Commentary

<http://rooneyvalleynews.com/denver-post-special-district-series-plus-commentaries-and-letters-to-the-editor/>

Executive Summary

Metro Districts are a form of special districts which have been abused to the point where they drain billions of dollars of wealth from the Front Range with no value for the residents.

Residents' tolerance for taxes is not unlimited. By forcing residents to pay higher taxes to finance large profits to developer, taxpayers are even less willing to pay additional taxes for schools, law enforcement, roads and mental health. There are only so many tax dollars. If they go to pay developer profits, there may not be enough left for schools, roads, police and mental health.

Metro districts finance large profits for developers with no accountability to the residents.

Metro districts are private governments run by the developers to tax residents to pay large profits to the developer and suppress the residents' right to vote on future taxes and bond debt. In practice there is no check and balance on this private profit driven developer run government.

Metro districts remove the traditional checks and balances found in the competitive market place and guarantee a tax funded profit to developers. **If metro districts are allowed to form, the city must be willing to make a significant investment in staff and resources to provide the oversight and regulation necessary to eliminate any potential abuses.**

The first question for the city is whether or not to allow metro districts for residential development.

Longmont prohibits metro districts for residential development.

So should Lakewood. Metro districts are more expensive, less effective and less accountable than the traditional way of paying for infrastructure costs used throughout the rest of the United States.

The second question is, even if the developers prove that there is a "need" for metro districts, is it even possible to regulate metro districts sufficiently to eliminate the abuses. Is the city willing to make the commitment in resources to fulfill its obligation to regulate metro districts until the boards are 100% residents.

There are **6 key documents** that illustrate the metro district abuse. The initial ballot, the service plan, the financial plan, agreements between the developer and himself as both the developer and the district, bonds, and disclosures to the residents

In the **initial ballot** issue a handful of developer employees "vote" to eliminate the right of future residents to vote on taxes and bond debt.

In the initial ballot issue a handful of developer employees "vote" to empower the district boards to impose taxes and issue bond debt.

The same employees "elect" and later appoint themselves to serve on the boards - to the exclusion of the residents.

The boards populated by the developer's employees then vote to impose taxes and issue bond debt as the residents buy homes and move into the district.

The developer actively suppresses the residents' right to vote or serve on the boards until the boards issue enough in bond debt to satisfy the developer's profit goal.

The residents are then burdened with the resulting tax debt which is routinely more than 50% and often more than 100% of the assessed value of the entire community.

In the **initial ballot issue**, the developer's employees also "vote" to authorize exponentially large amounts as the "limit" of the debt and the cost to finance that debt. These amounts far exceed the amounts stated in the service plan. The city rarely if ever sees these ballot issues as part of the metro district approval process.

Here are examples of ballot issues in Lakewood, Denver and Aurora:

<http://solterracommunity.org/index.php/2020/07/20/ballot-issues-lakewood-denver-aurora/>

The **service plan** identifies the limited purpose, limited geographical boundary and financial plan for the metro district.

These documents are often written in a way to make only vague statements

about the limits on how they will operate and build in many of the metro district abuses. They generally discourage city oversight and provide no checks and balances on their operation. No accountability.

Here are critical evaluations of service plans proposed here in Lakewood and one in Longmont:

<http://solterracommunity.org/index.php/2020/07/20/special-district-evaluations/>

The **financial plan** provides raw data that can be used as the starting point for holding the developer accountable and providing disclosures to the potential residents.

The financial plan is attached to each service plan.

Here are three examples of service plans with the attached financial plan:

<http://solterracommunity.org/index.php/2020/07/20/service-plans-and-attached-financial-plans/>

The **agreements** (usually intergovernmental agreements - IGA's) are typically single party agreements with the developer signing as both the developer and the district. There is a blatant conflict of interest rendering the self-serving agreements unenforceable.

Typically the **first agreement** is between the developer and himself as both the developer and the the lead district guaranteeing that the lead district will pay the developer whatever the developer says he is owed - with no accountability for income or expenses.

Typically a **second agreement** is between the developer and himself as the board of the lead district and as the board of any subdistricts where the developer as the subdistricts guarantees that the future residents will pay all the expenses of the developer as the lead district. Of course, in the first agreement, the developer as the lead district agreed to pay all his expenses as the developer.

Neither agreement provides for any check and balance to hold the developer accountable for his income and expenses. And all the parties to these agreements - the developer, the lead district and the subdistricts - are all the same person. The developer.

Here are examples of these single party agreements. Every metro district has one or more of these agreements. They all show the same person "agreeing" with himself for both the developer and the districts. Note at the end of each agreement below that the same person signs for both the developer and the districts:

<http://solterracommunity.org/index.php/2020/07/20/developer-agreements-with-himself-unenforceable-single-party-conflict-of-interest-agreements/>

The end goal for the developer is to issue **bonds**. When the bonds are issued, the developer receives several very large checks (i.e \$12,600,000, \$13,500,000) and the residents get the bill which is typically paid over at least 40 years at, for example, over \$2,000,000 per year.

The bonds contain interesting stories about each district, the finances of each district and how each district is organized. Note that the bond documents are legal prospectus' to investors. The attorneys and accountants have a higher obligation to present the most accurate information possible.

That being said, the bonds typically state that the "voters" of each district

"voted" to authorize the "voters" going into debt to pay the bonds. What the bonds don't say is that these "voters" were a handful of - around 8 - employees of the developer and never were actual residents or taxpayers of the district. And they "voted" to approve all this debt many years before the actual tax paying residents ever arrived. And the bonds never explain that the developers routinely suppress the residents' access to information about the debt and that the developers routinely suppress the actual residents' right to vote on the debt.

Here are sample bonds:

<http://solterracommunity.org/index.php/2020/07/20/bonds-issued-to-pay-developer/>

There are no meaningful **disclosures furnished to potential residents**. Efforts by the industry to create disclosures get mired down in minutiae about the details of mill rates which are designed to and successfully confuse rather than educate. A simple half page disclosure must be published at least 3 times - at the time the potential homebuyer first comes into contact with the sales person or sales office, again at the time the homebuyer makes an offer and again at the time of the closing.

Here is a proposed form of the disclosure:

Important Financial Disclosure Regarding Metro Districts

The home you are potentially buying is in a metro district. The taxes in metro districts are typically higher because you are paying taxes to repay developer debts which include two loans and two sets of interest. Please compare the tax burden in a metro district and homes in non-metro districts.

1. The total amount of the resident debt limit for this district is _____.
2. The total amount of the resident debt finance limit is _____.
3. The total current length of time that residents will be required to pay taxes

on the debt is _____.

4. The average total annual payment (principal and interest) by all the residents for the total length of the debt payments is currently _____.

5. The total number of lots that will be created and sold for the metro district is _____.

6. The pro-rata share per lot for the total annual payment of principal and interest for all the metro district debt for the total length of all the debt payments is _____.

7. The maximum interest on any debt is _____.

8. You are eligible to vote and serve on the board of directors as soon as you enter into a contract to purchase the property in the metro district territory

9. The city will continue to regulate the conditional approval of the metro district until the board is 100% residents with no employees, principals or agents of the developer serving on the board.

10. No loan or bond debt or taxes will be imposed on the residents until and unless a majority of the voting residents vote at the next election cycle to impose that loan or bond debt or taxes.

11. Metro district taxes will be higher than the taxes for the same property in a non-metro district.

12. The pro-rata share of your cost for the land is _____.

13. The pro-rata share of your cost for the infrastructure is _____.

14. The cost of your lot which includes the cost of the land, the cost of the infrastructure and profit to the developer is _____.

If the city council decides to permit metro districts in the City of Lakewood, the new **Metro District Ordinance** should have at least the following elements:

1. Two part application process with separate vote on each part (and sub parts)

Part I Developer Must First Prove there is a need

CRS 32-1-203 (2) states:

"(2) The board of county commissioners **shall disapprove** the service plan unless evidence satisfactory to the board of each of the following is presented:

(a) There is sufficient **existing and projected need** for organized service in the area to be serviced by the proposed special district. . . .

(b) The **existing service** in the area to be served by the proposed special district is **inadequate for present and projected needs**. . . . [and]

CRS 32-1-203 (2.5) states:

(2.5) The board of county commissioners **may disapprove** the service plan if evidence satisfactory to the board of any of the following, at the discretion of the board, is not presented:

(e) **The creation of the proposed special district will be in the best interests of the area proposed to be served. CRS 32-1-203 (2.5)**

CRS 32-1-203 (2) expressly states that there is a presumption that metro district service plans will **not** be approved **unless** the developer proves there is a need. "Shall disapprove" "unless". If the infrastructure can be paid for through the traditional means of including the cost in the cost of the lot, then there is no need for a metro district and the application for a metro district "shall" be denied.

The application "shall" also be denied "unless" the developer can prove that the existing services to the area are inadequate for the present or projected needs.

Even if the developer can overcome these burdens, the city "may" still "disapprove" the application unless the developer proves that the metro district **will be in the best interests of the present and future residents of the geographic area** of the proposed district.

If the city council votes and makes a public finding that there is a need that is not met with the traditional means of financing infrastructure, and the traditional financing is inadequate, and a metro district is in the best interests of the residents, then and only then, should the City go on to consider an application for approval of a service plan.

The documents provided by the developer **to satisfy this first requirement - prove there is a need** - are at a minimum:

original documents, which can be verified, which demonstrate:

1. The cost of the land which will form the boundaries of the new geographic area for the district.
2. The cost of the infrastructure for the proposed development.
3. The cost of the lot to the home builder or home buyer at the time the lot is sold.
4. The number of lots
5. The amount of profit to the developer for the price of the lot. (Amount paid minus the cost of the prorated cost of the land and the cost of the infrastructure.)

Part II Application for Approval of Service Plan

The application for a service plan must include the following documents. There must be a separate vote to approve each document before the council votes to formally approve the creation of a new metro district:

1. Proposed Ballot Issue

2. Proposed Service Plan
3. Proposed Financial Plan
4. Proposed Agreements
5. Proposed Disclosure to the potential homebuyer

In addition to the documents above that will be approved, the developer must also submit original documents, which can be verified, which demonstrate:

1. The cost of the land which will form the boundaries of the new geographic area for the district.
2. The cost of the infrastructure for the proposed development.
3. The cost of the lot to the home builder or home buyer at the time the lot is sold.
4. The number of lots
5. The amount of profit to the developer for "developing" the lot. (Amount paid minus the cost of the prorated cost of the land and the prorated cost of the infrastructure.)

[These are the same documents which will be provided as part of the disclosure under Part I requirements]

1. Proposed Ballot Issue

The new ordinance must expressly state that

- a. Every ballot issue must be approved by the city until the board is 100% resident with no employee or principal or agent of the developer.

b. The service plan will not be conditionally approved unless the initial ballot issue is approved by the city.

c. The city **will not approve** any proposed ballot issue **that contains** the following provisions. In other words, the following provisions are **prohibited**:

1. Eliminating the right of the residents to vote on future tax and bond debt (including but not limited to any provisions which "debruce" the Constitutional rights under TABOR).

2. Giving the right to issue tax debt or bond debt to the board of directors.

3. Setting a debt limit and/or finance limit higher than the limit stated in the service plan.

4. Setting an interest rate on any loans greater than that authorized by the service plan.

5. Allowing unlimited terms in office on the board. The ballot may not eliminate term limits.

d. Every ballot issue must state that the residents have the right to petition to place an issue on the next election ballot. Ten percent of the resident voters will be sufficient to place an issue on the ballot - to be determined sufficient by the County Registrar of Voters.

2. Proposed Service Plan

A. The city **will only conditionally approve** service plans or modifications to service plans until the board of directors is 100% residents who are not employees, principal or agents of the developer. **No service plans will be approved other than on a conditional basis.**

B. The application for a service plan must have all the provisions listed in CRS 32-1-202(2)

C. The application for a service plan must also include the documents showing:

1. The cost of the land which will form the boundaries of the new geographic area for the district.
2. The cost of the infrastructure for the proposed development.
3. The cost of the lot to the home builder or home buyer at the time the lot is sold.
4. The number of lots
5. The amount of profit to the developer for "developing" the lot. (Amount paid minus the cost of the prorated cost of the land and the prorated cost of the infrastructure.)

[These are the same documents which will be provided as part of the disclosure under Part I requirements]

D. The service plan must also expressly provide that

1. **The territory** which forms the proposed district must be defined, including a detailed map, and the boundary may not be enlarged or reduced unless an application for modification is filed, heard at a public hearing and voted on in a public hearing.
2. **The purpose of the proposed district** must be detailed and may not be modified in any way without an application for a modification, heard at a public hearing and voted on in an public hearing. The city will only consider approving metro districts for the purpose of building homes and building infrastructure for those homes - both within the boundary of the territory. The city will not consider approving metro districts for any other purpose, including building infrastructure or providing services outside the boundary of the district.
3. No metro district may do anything as a metro district government that is not **expressly stated in the service plan**. The metro district has no right to take any action unless it is expressly stated in the service plan. A generic reference to being able to do everything allowed in the statutes is prohibited.
4. **Any proposed agreements** between the district and the developer **are prohibited** until the district board is 100% residents with no employees, principals or agents of the developer.
5. The city must **pre-approve any agreement** proposed by the district with any person or entity until the board is 100% residents with no employees, principals or agents of the developer. The city reserves the right not to approve any agreement proposed by the district with any person or entity where the city

determines based upon its sole discretion that the proposed agreement is not in the best interest of the future or present residents.

The city must give notice of any proposed agreements by the district to the residents of the district and the residents neighboring communities and decide whether or not to approve any such proposed agreements at a public hearing.

6. The **district is prohibited from entering into any loan or bond debt or imposing any taxes upon current or future residents** a.) until the board is 100% resident with no employees, principals or agents of the developer and b.) without first placing the question on the next ballot for a vote by the residents - on the question of imposing taxes or entering into any loan or bond debt.

No loan or bond debt and no tax increase may occur in the metro district unless the question is voted upon favorably by a majority of the residents who cast a vote on the issue at the next election cycle.

7. No metro district is authorized to impose upon its residents a mill levy higher than 35 mills for all the metro district tax debt.

7. The city will **only grant conditional approval** until the board is 100% residents with no employees, principals or agents of the developer.

8. During the time of conditional approval, the developer is required to file monthly, or at the discretion of the staff, weekly reports on money spent, income received, and progress of the construction of the development. These reports shall include copies of original invoices and receipts showing the detail of the expenses or income.

9. At any time during the course of the conditional approval, the city may at its sole discretion require the developer to appear at a public hearing and provide a report on the status of the construction and the city may require the developer to provide any information required by the city in order for the city and the residents of the community to evaluate the status of the development, expenses and income to the developer regarding the development.

10. At any time that the city determines, after a public hearing and opportunity by the developer to be heard, that the developer is not acting in the best interests of the current and future residents, the city may terminate the conditional approval of the metro district.

3. Proposed Financial Plan

A. The proposed financial plan shall strictly conform to the requirements of CRS 32-1-202 (2) (b). In particular, as stated in that statutory provision, there shall be no change to the financial plan unless the developer makes a formal application for a modification presented at a public hearing and vote on the proposed change with notice to all residents and residents in neighboring communities.

B. The proposed financial plan shall also strictly conform to the requirements set forth above for the ballot issue and service plan.

C. No financial plan will be conditionally approved that anticipates or proposes total debt (including but not limited to loan and bond) that exceeds 30% of the total assessed value of the development at any time, including but not limited to the time that the total debt is proposed to issue.

D. No financial plan will be conditionally approved that proposes a total mill rate for the metro district in excess of 35 mills.

4. Proposed Agreements

A. The city prohibits **any proposed agreements** between the district and the developer, employees of the developer or any agent of the developer until the district board is 100% residents with no employees, principals or agents of the developer.

B. During the time of conditional approval (until the board is 100% elected residents with no employees, principals or agents of the developer), the city must **pre-approve any agreement** proposed by the district with any person or entity, particularly intergovernmental agreements (IGA's). The city reserves the right not to approve any agreement between any person or entity and the district, that the city determines, based upon its sole discretion, is not in the best interest of the future or present residents.

The city must give notice of any proposed agreements by the district to the residents of the district and the residents neighboring communities and decide whether or not to approve any such proposed agreements after and during a public hearing.

5. Proposed Disclosure to the Homebuyer

No application for a service plan or approval for the creation of a metro district will be approved unless the developer prepares and circulates the following disclosure to prospective homebuyers at the following times:

A. The disclosure shall be presented to every prospective homebuyer at three times: 1.) When the prospective homebuyer comes into a sales office or encounters a sales person regarding the potential purchase of a home in the metro district territory. 2.) When the prospective homebuyer makes an offer on the home in the metro district territory. 3.) Three business days before the closing on the home in the metro district territory

B. The disclosure shall require a signed acknowledgement of receipt of the disclosure - signed by both the prospective homebuyer and the agent for the developer or home builder or real estate sales agent.

The following is a critical evaluation, paragraph by paragraph of the Lakewood Staff Memorandum on metro districts. The evaluation is in bold 15 pt font. The staff text is in un-bold 12 pt font.

STAFF MEMORANDUM

To: Mayor and City Council
From: Jay N. Hutchison, Public Works Director, 303-987-7901
Subject: **FUTURE METROPOLITAN DISTRICTS**

The abuses of special districts for residential development (metro districts) and the reform of those abuses must not be limited to "future" metro districts. Current metro districts are engaged in abuses - now - which actively threaten the financial health of the residents. The City of Lakewood (City) is just as accountable for current abuses as they are future abuses.

City Council has indicated an interest in discussing approaches to responding to future proposals for metropolitan districts. Based on City Council's discussion during its 2020 planning session, it is anticipated that opportunities for public input on this topic will occur as part of the Development Dialogue process, one or more City Council study sessions, and during a formal City Council meeting if action is taken. The outcome of the City Council's process could result in districts that are more transparent, effective and fair.

City Council should also consider whether or not, as a rule, metro districts are appropriate where residential development is included in a proposed development.

For example, the City of Longmont has demonstrated a healthy and successful growth of quality residential development without metro districts.

Metro districts are concentrated in the Front Range of Colorado but are rare throughout the country. In most residential development throughout the United States, infrastructure is paid for in the cost of the building lot.

When paid for in the cost of the lot, the homebuyer can pay cash or finance all or a portion of that cost in their mortgage without paying interest over a substantial period of time.

The average cost of infrastructure industry wide throughout the country is \$30,000 per lot. So, the Front Range Metro District financing model and the enormous industry grown around metro districts - is all about simply financing \$30,000 per lot.

The metro district model finances the payment of that \$30,000 per lot with two loans, two sets of interest, interest on interest for at least 40 years and often with no limit on the number of years.

There is also evidence that the residents in Colorado have already paid for the infrastructure when they paid for their lots.

The lots are not free and residents pay a premium for those lots. Traditionally and throughout the country, the cost of the lot includes the 1.) cost of the land, the 2.) cost of the infrastructure and 3.) profit to the developer.

Before any development is considered for a metro district, the developer must disclose the cost of the lot with appropriate documentation regarding the cost of the land and an independent evaluation of the estimated cost of the infrastructure.

The City must then require monthly disclosures by the developer to confirm the accuracy of these costs and be prepared to revoke the metro district approval where the developer is proposing to double - bill the residents for the cost of infrastructure.

The City must then establish obligations by the developer to file monthly reports which are available to the public without a freedom of information act request showing in detail the income and expenses (beginning with the cost of the land, infrastructure and cost of the lots) related to the development as well as the identities, background, conflicts of interest with residents and basis for eligibility of the members of the board of directors.

The City must also prescribe the contents of a separate disclosure to all potential residents.

The disclosure must be presented to potential homebuyers 1.) at the point of first contact in the sales office, 2.) at the time an offer is made to purchase and 3.) again at the closing with signatures by the homebuyer on a copy of the disclosure.

The disclosure must state in plain language the disclosures set forth above in the proposed disclosure to prospective homebuyers.

BACKGROUND

Metropolitan districts are a creation of state law. Colorado state statutes create an obligation for the City Council during creation of any metropolitan district located at least partially within Lakewood. The City Council's obligation is to evaluate the proposed service plan of a proposed metro district.

This statement is a reflection of what the special district industry and lobbyist groups wish to be true, but is not.

Metro districts are in fact created by the city or county (city). The statutes, Title 32, authorize the city or county to create the district.

It is critically important to note that the city creates the metro district, has an obligation to regulate, supervise and police compliance by the metro district with the limitations imposed by the city and the city is ultimately accountable for abuses by the metro district.

The city's obligation is much more than simply reviewing the proposed Service Plan.

The city has an obligation to first decide whether or not to allow metro districts within the city limits.

The city must next decide whether or not a metro district is really needed for this particular development. Does the cost of the lot reasonably include the cost of the infrastructure. What is the reasonable cost of the land and profit to the developer.

There is no right by the developer to create a metro district.

If the developer is applying to become a government entity, the developer must provide these disclosures to ensure oversight, checks and balances and ensure the integrity of the fiduciary duty to the public trust.

Next, the city must decide what standards the metro district must meet - establish well defined requirements for the structure, financing and management of the metro district.

The city also has an obligation to provide oversight and monitor compliance with the city's requirements and the Service Plan. This oversight must be particularly rigorous until the residents hold all of the seats on the board of directors.

One of the tools available is to conditionally grant the application for a metro district contingent upon meeting all the requirements and the election of residents to all the seats on the board of directors.

State law also creates an opportunity for City Council to participate in limited types of future changes for existing districts. This opportunity arises when a service plan is proposed to be materially modified, which obligates the metro district to seek review of the modification by the City Council.

This is also misleading. The principal functions of the Service Plan are to 1.) identify the limited purpose of the district, 2.) the limited physical boundary of the district and 3.) the limited financing of the district.

Any change to the purpose, to the physical boundary and the financing of the district must be presented to the City Council for approval.

There is a provision in the statutes which allow a district to make an end run around the city by posting notice of the proposed change in a local newspaper which change becomes effective unless the city (or another district) opposes the change by filing an objection in court.

The city ordinance allowing metro districts and Service Plan must expressly require that any proposed change to the limited 1.) purpose, 2.) boundary or 3.) financing of the metro district set forth in the Service Plan be filed with the city and not considered for approval until after a public hearing with time for the residents to present to the city council equal to the time allotted to the developer.

The authority of the City to control or influence existing metropolitan districts is limited by state law. Governmental entities, including metro districts, that already exist are less malleable than governmental entities yet to be created. An imperfect, but useful comparison could be made to the authority of the state or the county to impose its will on cities within the county. If a city in Jefferson County becomes a bad player, the County's ability to create and enforce new rules for the existing municipality is limited—the County does not have the authority to supplant another duly constituted governmental entity. And, the City does not have the authority to supplant a metropolitan district's elected board—a separate governmental entity duly constituted pursuant to state statute.

This is not accurate. It again reflects what the metro district industry and lobbyists wish to be true - but is not.

The power of the city to control, influence metro districts and provide the necessary oversight is not limited. Indeed, it is the only check and balance on metro district abuse until the residents take control of the boards.

Title 32 provides unlimited power to the city to create or not create a district.

Title 32 provides unlimited power to the city to restrict, monitor, police, correct and stop the operation of a metro district.

This is critically important when the metro district is run by the developer who has an obvious conflict of interest with the residents or future residents. The developer is making decisions about how much future residents will be taxed to pay profits to the developer.

A metro district is created by and overseen by the city. That is not the case with a city within a county. A county does not create the city. The suggested comparison is "apples and oranges".

Here are highlights of the obligation to control and the tools to provide checks and balance on metro districts:

The City contributes to the content of the Service Plan and must approve the content of the Service Plan.

That approval may be “conditional” which allows the City to continue to oversee and hold the developer accountable for the implementation of the Service Plan, especially during the first several years when the developer board of directors is making all the decisions - before the resident voter base is established and before residents are running the District Boards.

There is no limit to the nature of the additional information to be reviewed and no time limit for the conditional approval

CRS 32-1-204.5 (1) No special district shall be organized if its boundaries are wholly contained within the boundaries of a municipality or municipalities, **except upon adoption of a resolution of approval by the governing body of each municipality. The information required and criteria applicable to such approval shall be the information required and criteria set forth in sections **32-1-202 (2) and 32-1-203 (2).** With reference to the review of any service plan, the governing body of each municipality has the following authority:**

- (a) To approve without condition or modification, the service plan submitted;**
- (b) To disapprove the service plan submitted;**
- (c) To conditionally approve the service plan subject to the submission of additional information**

relating to, or the modification of, the proposed service plan or by agreement with the proponents of the proposed service plan.

CRS 32-1-202 (2) The service plan shall contain the following:

- (a) A description of the proposed services;
- (b) A financial plan showing how the proposed services are to be financed, including the proposed operating revenue derived from property taxes for the first budget year of the district, which shall not be materially exceeded except as authorized pursuant to section 32-1-207 or 29-1-302, C.R.S. All proposed indebtedness for the district shall be displayed together with a schedule indicating the year or years in which the debt is scheduled to be issued. The board of directors of the district shall notify the board of county commissioners or the governing body of the municipality of any alteration or revision of the proposed schedule of debt issuance set forth in the financial plan.
- (c) A preliminary engineering or architectural survey showing how the proposed services are to be provided;
- (d) A map of the proposed special district boundaries and an estimate of the population and valuation for assessment of the proposed special district;
- (e) A general description of the facilities to be constructed and the standards of such construction, including a statement of how the facility and service standards of the proposed special district are compatible with facility and service standards of any county within which all or any portion of the proposed special district is to be located, and of municipalities and special districts which are interested parties pursuant to section 32-1-204 (1);
- (f) A general description of the estimated cost of acquiring land, engineering services, legal services, administrative services, initial proposed indebtedness and estimated proposed maximum interest rates and discounts, and other major expenses related to the organization and initial operation of the district;
- (g) A description of any arrangement or proposed agreement with any political subdivision for the performance of any services between the proposed special district and such other political subdivision, and, if the form contract to be used is available, it shall be attached to the service plan;
- (h) **Information, along with other evidence presented at the hearing, satisfactory to establish that each of the criteria set forth in section 32-1-203, if applicable, is met;**
- (i) **Such additional information as the board of county commissioners may require by resolution on which to base its findings pursuant to section 32-1-203;**
- (J) and (k) omitted as not relevant (health service districts)

CRS 32-1-203 (2) The board of county commissioners **shall disapprove** the service plan **unless evidence satisfactory to the board** of each of the following is presented:

- (a) There is sufficient **existing and projected need** for organized service in the area to be serviced by the proposed special district.
- (b) The **existing service** in the area to be served by the proposed special district **is inadequate for present and projected needs.**
- (c) The proposed special district **is capable of providing economical and sufficient service** to the area within its proposed boundaries.
- (d) The area to be included in the proposed special district **has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.**

(2.5) The board of county commissioners **may disapprove** the service plan **if evidence satisfactory to the board of any of the following, at the discretion of the board, is not presented:**

- (a) **Adequate service is not, or will not be, available to the area through the county or other existing municipal or quasi-municipal corporations, including existing special districts, within a**

reasonable time and on a comparable basis.

(b) The facility and service standards of the proposed special district are compatible with the facility and service standards of each county within which the proposed special district is to be located and each municipality which is an interested party under section 32-1-204 (1).

(c) The proposal is in substantial compliance with a master plan adopted pursuant to section [30-28-106](#), C.R.S.

(d) The proposal is in compliance with any duly adopted county, regional, or state long-range water quality management plan for the area.

(e) The creation of the proposed special district will be in the best interests of the area proposed to be served.

(3) The board of county commissioners **may conditionally approve the service plan** of a proposed special district upon satisfactory evidence that it does not comply with one or more of the criteria enumerated in subsection (2) of this section. **Final approval shall be contingent upon modification of the service plan to include such changes or additional information as shall be specifically stated in the findings of the board of county commissioners.**

There must be a public hearing before approval is granted. CRS 32-1-204.

The City must approve any material changes to the Service Plan. There must be a public hearing before any changes are approved. CRS 32-1-207.

The developer must submit annual reports to the City for at least the first five years and thereafter, if requested. CRS 32-1-207 (3)(c) and (d)

The City is not limited in the nature of information it may require the applicant to submit in the annual report. CRS 32-1-207 (3)(c)

The annual reviews may be (should be) held as part of a public meeting with notice to the public. CRS 32-1-207 (3)(c)

CRS 32-1-207 (3) (c) If a special district files an annual report pursuant to this paragraph (c), **such report shall include but shall not be limited to** information on the progress of the special district in the implementation of the service plan. The board of county commissioners or the governing body of the municipality **may review the annual reports in a regularly scheduled public meeting, and such review shall be included as an agenda item in the public notice for such meeting.**

The City may require a hearing every five years after debt is issued on the status of implementing the Service Plan with particular attention to the burden of the financial debt repayment upon the

residents:

CRS 32-1-1101.5 (2)

II) Determine that the implementation of the service plan or financial plan will not result in the timely and reasonable discharge of the special district's general obligation debt and that such implementation will place property owners at risk for excessive tax burdens to support the servicing of such debt. If the board of county commissioners or the governing body of the municipality makes such a finding, **it shall deny a continuation of the authority of the board of the special district to issue any remaining authorized general obligation debt**

However, the City Council's goals regarding future metro districts could provide starting points for discussions with existing metro districts. While the goals may be the same for future and existing districts, the ability to achieve those goals will be diminished when approaching existing districts.

Again, as set forth above, there are tools available to the City to provide checks and balances on existing districts particularly through what is required in the annual reports (CRS 32-1-207 (30(c))) and the 5 year reviews (CRS 32-1-1101.5). They City can regulate existing districts as well as new districts.

The focus of this memorandum is discussion of results the City Council may desire from its involvement in creation of future metropolitan districts (e.g., minimizing the potential that future property owners subject to a district will be surprised by the existence, roles and costs of a metropolitan district).

The focus of this study should be

1.) whether or not to adopt an ordinance prohibiting metro districts for residential developments as has Longmont.

2.) If metro districts are allowed for residential developments, what reforms must be adopted and vigorously enforced in order to ensure the abuses and financial harm to the future residents are eliminated.

The overly restrictive scope of the staff memo reveals an artificial limitation to only giving future residents notice of all the abuses - and likely minimizing the abuses so as not to scare off potential homebuyers. We must eliminate the abuse instead of sugar coating the abuse.

Accomplishing the goals around which City Council coalesces may require utilization of one or more tools. Rather than focusing this memorandum on the mechanics of how to accomplish City Council's goals, this memorandum focuses on potential results City Council may want to achieve.

The term "end-user" is utilized in the following information. In this context, an end-user is an owner or tenant of an owner who will pay metro district property taxes. An entity that constructs homes or commercial structures is generally not an end-user. However, a developer that retains a structure long-term, such as an apartment developer/owner or a retail developer/owner, may also be an end-user.

Residents and future residents - people - voters - taxpayers. Not "end users".

The term "developer" used herein generally includes the developer(s) and builder(s) of property within a metro district and their affiliates but not end-users.

MEMORANDUM ORGANIZATION

This remainder of this memorandum is organized as follows:

- Metropolitan districts in general.
- Metropolitan districts in Lakewood.
- Potential policy topics regarding future metropolitan districts in Lakewood.

Most of this memorandum will be focused on the potential policy topics built on the background context from the earlier sections listed above. The potential policy topics are an initial list the City Council may want to consider when evaluating any future metro district proposal. The potential policy topics are organized as follows to facilitate consideration and discussion:

Again, the initial issue is whether or not metro districts should be allowed for residential development. Longmont adopted an ordinance prohibiting metro districts for residential development. Lakewood should seriously consider also prohibiting metro districts for residential development. There is no real need. The traditional way of financing the new development infrastructure is more efficient, less costly, more transparent and does not suppress the residents' right to vote on tax debt.

The second issue is, if metro districts are allowed in residential development, what information must be provided to the city as part of the application.

The third issue is, if allowed, all resolutions approving metro districts must be conditional approvals subject to continued close monitoring at least until the boards are completely resident boards.

A fourth issue is, if allowed, what ongoing reporting requirements will be allowed as part of the conditional approval.

- A. Disclosure to potential end-users
- B. District governance including district board elections
- C. Financial considerations
- D. Developer transactions with districts
- E. Breadth of services provided by a district
- F. Geographical boundaries of districts
- G. Acquisition of property rights and eminent domain use by districts
- H. City Council authority to review district changes
- I. District reporting obligations
- J. Standard consideration schedule and model documents
- K. Potential state law changes

The material below is extensive although not exhaustive.

METROPOLITAN DISTRICTS IN GENERAL

Metropolitan districts are governmental entities that can be created and must be operated pursuant to Colorado state statute.

The districts must not only comply with state statute. They must also comply with the (new) city ordinance regulating metro districts and they must also strictly comply with the limiting conditions set forth in the Service Plan approved by the city.

Colorado law provides for a variety of types of local government entities, in addition to cities, towns and counties, that are often referred to generally as *special districts*. Metropolitan districts are a type of special district.

Other types of special districts include fire districts (e.g., West Metro Fire Protection District), water districts, sewer districts, water and sewer districts (e.g., Bancroft Clover Water and Sanitation District), business improvement districts (e.g., the West Colfax Business Improvement District), special improvement districts, the Mile High Flood Control District, and the Regional Transportation District. These types of special districts are not discussed below.

Urban renewal is also not a topic of this discussion. This memorandum focuses on metropolitan districts.

Metropolitan districts or, as they are often referred to, metro districts have geographical boundaries, are governed by an elected board and must comply with several state laws including the following:

Again, metro districts must comply with the (new) city ordinance, Service Plan as well as the state statutes.

The state statutes provide a laundry list of things a metro district can do - but it can only do those things from the list in the statutes which are expressly authorized in the city ordinance and service plan.

For example, a metro district limited to a certain geographic boundary for the purpose of building homes cannot, without express authorization from the city, suddenly decide to expand the geographic boundary and become a sanitation district providing regional sanitation services to communities outside its original boundary.

- Elections,
- Open meetings,
- Open records,
- TABOR,
- Budget,
- Audit,
- Reporting, and
- Director qualification

Metro districts are required by state law to provide two or more of the following generally described services:

- Fire protection
- Elimination and control of mosquitoes
- Parks or recreational facilities or programs
- Safety protection through traffic and safety controls and devices on streets and highways and at railroad crossings
- Sanitation services
- Street improvement through the construction and installation of curbs, gutters, culverts, and other drainage facilities and sidewalks, bridges, parking facilities, paving, lighting, grading, landscaping, and other street improvements
- Establishment and maintenance of television relay and translator facilities
- Transportation
- Water and sanitation services
- Water
- Solid waste disposal facilities or collection and transportation of solid waste

To provide those services, metro districts can purchase services and materials, construct and install improvements, operate and maintain improvements, and condemn property under state law.

Again, they can provide these services if the ordinances and service plan say they can.

As a financing tool, metro districts can provide advantages including:

The staff memo at this point embraces the industry lobbying sales pitch without any critical evaluation of what it is they said. These points are critically false or misleading to any honest evaluation of the metro district financing program - both with reference to the statute and with reference to what the developers, with help from their attorneys and accountants, actually do.

These are areas of the greatest abusive conduct.

- Providing early funding that can support community or commercial area amenities early

in a development rather than late in the development cycle.

This is a myth. The developers provide their own funds to build the infrastructure. The money from the future residents does not arrive until they arrive which is long after the infrastructure is already built and paid for.

The suggestion that metro districts are necessary to pay for the infrastructure is simply false. The metro districts are used to reimburse the developer for "advances" they have made from their own funds.

Again, the money generated by the metro districts does not arrive until after the residents arrive which is 2 - 5 years after the infrastructure is bought and paid for.

- Allowing residential end-users to qualify for and obtain a reduced home loan amount and monthly payment.

Another significant myth. There is absolutely no data to support this suggestion. The data in fact establishes the complete opposite.

What this suggests is that a home in a metro district costs less than a home in a community without a metro district. We all know from our own experiences this is not accurate.

The market drives the cost of the home. The developer is charging as much as he can for the lot (which traditionally includes the cost of the infrastructure). The builder is charging as much as they can for the home. The owner reselling his or her home is charging as much as they can for the resale.

Homes in metro districts are just as expensive as they are outside metro districts.

And then you add the tax burden. Simple math demonstrates that the tax burden in a metro district is significantly higher than the tax burden across the street in a non-metro district.

This is because the cost of the infrastructure in a non-metro district is included in the cost of the lot. Typically \$30,000 per lot. In a

non-metro district the homebuyer can pay cash for all or part of that cost. And if they don't pay cash for all of the cost, they can finance all or part of that cost in their home loan. One loan. One set of interest.

And, importantly, the cost of the infrastructure under the traditional, non-metro district plan is regulated by the market. The market forces provide the check and balance that motivate the developer to provide the infrastructure at the most efficient cost possible.

In a metro district, there is no oversight and the market forces are eliminated. In a metro district the developer can come up with any number they want to as the "infrastructure cost" with no checks and balance. They could include a vacation trip to Hawaii in that number if they wanted to and no one would know the difference.

Note, significantly, the developer still charges as much as they can for the lot. It is more than likely that all the cost of the infrastructure is already built into the cost of the lot, plus the cost of the land, plus profit to the developer. The developers aren't giving the lots away for free. But without the checks and balances, there is currently no way to know whether or not the homebuyer has already paid for the infrastructure.

Then the developer takes that number - the "cost" of the infrastructure and converts it into a loan. The new homebuyer has absolutely no idea that when he or she buys a home in a metro district that they are also in debt on a loan unilaterally created by the developer to pay himself what he and only he defines as the infrastructure "cost", plus interest.

Then the developer takes that loan with interest and refinances the loan with interest with a second loan with interest to pay of the first loan with interest. These are the bonds.

What happens is that the developer says to himself, I am giving the future residents a loan. "The residents have to pay me the principal on the loan plus interest." Interest on the loan keeps building. When enough of the residents finally arrive, then the developer, still in control of the boards, decides to issue bonds to pay himself the principal and interest on the loan - more interest - interest on interest. The bonds are issued, the developer gets a lump sum check - say \$23 million - and goes on to the next development.

Meanwhile, the residents are paying, for at least the next 45 years, principal (the original loan plus years of interest) and interest on that \$23 million bond.

It is similar to taking out a second credit card to pay off the first credit card.

Again, applying simply math, the tax burden in a metro district is significantly higher because instead of financing the market checked cost of infrastructure through cash or a home loan, the resident is paying unchecked "cost" defined solely by the developer, through the developer's loan at his interest rate (typically "no greater than 18%") plus a second loan with additional interest to pay off the first loan with interest. Two interest bearing loans instead of none (cash) or one and unknown costs instead of market checked costs.

And, there is no value - absolutely none - for this additional cost. It is exponentially increased unearned profit to the developer, not increased value to the residents.

- Creating the opportunity to use tax exempt bonds with access to a national bond investor market, which can reduce cost to those who pay the debt service for the bonds.

Again, myth. Paying twice or three times for the same cost that is paid once in a non-metro district is not an "opportunity" or "cost reduction". It is pure and simple a way for the developer to make more profit. Finding a "convenient" way to go into deeper debt is not a good thing - at least for the residents paying the bills.

- Providing operation and maintenance of district owned facilities and improvements.

Another myth. This is equivalent to saying its a good thing to go into debt with an interest bearing loan in order to pay for gas and groceries. Good for a loan shark perhaps.

Operation and maintenance of the the district should be "pay as you go" with dues or fees that pay for the daily operation and pay into reserves for a longer term capital budget. Taking out a loan - never mind two

loans - to pay for operations and maintenance is a recipe for an even higher tax burden and is simply bad financial management.

- Replacing a homeowners' association or commercial development's common area maintenance fee.

Same point as above. Not a good idea to go into debt once or twice for the operations and maintenance fees.

I have yet to see a metro district that didn't take full advantage of the power to not only issue debt but also charge fees. In Solterra we have HOA fees, metro district fees, metro district taxes and special assessments.

There is no "replacing" or eliminating fees going on anywhere.

- Supporting infrastructure costs needed for a project.

Myth. As noted above, it is clear that the infrastructure costs are already paid for with the cost of the lot.

The metro district financing is to pay unearned high profits to the developer.

Again, the infrastructure costs needed for the project are paid by the developer. Metro district financing doesn't provide funding it provides "reimbursement" for whatever the developer said he spent, with no checks and balance.

And since the cost of paying the metro district financing doesn't come until the property taxes are paid, the homebuyer doesn't see these costs until at least a year after the home is purchased. And the actual costs of the increased tax bill are buried deep in budgets, financial audits and other documents that will take considerable time and expense to understand.

For creation of a metro district in the City of Lakewood, a metro district service plan must be approved by the City Council, the District Court must approve a petition for organization of any metro district, and an organizing election must be held. The service plan is the guiding document that establishes parameters within which the metro district must operate.

Approval by the District Court is a "rubber stamp" function. The Court does not address or even have any idea what is substantively happening with the metro district.

The key function here is the application and approval through the city. The metro district is created by the city. The city is ultimately accountable for what they create and how they do it.

The service plan is a critical document and the new ordinance must clearly define what needs to be in the service plan, what information the developer must provide to the city to help evaluate the application and the service plan must clearly define what the metro district is authorized to do. If its not authorized in the service plan, the metro district can't do it.

Just as important if not more important however is the ballot issue for the "election". This document is never voluntarily provided as part of the application for a metro district and never disclosed to homebuyers. It must be provided as part of the application under the new ordinance. And the ordinance must clearly define what can and cannot be on the ballot.

In some ways the ballot is more important than the service plan. In the ballot, the voters ("electors") of the district vote on "laws" and pass those "laws" that will govern the district.

Here is are examples with critical evaluation regarding a typical ballot provision.

<http://solterracommunity.org/index.php/2020/07/20/ballot-issues-lakewood-denver-aurora/>

The "election" is typically held at the November election cycle. The voters ("electors") are always employees or family of the developer. Typically 3 - 8 people. The votes of course are all unanimous. The decisions made with the votes are locked in stone - they are voter

approved laws - until the residents establish themselves on the boards and are able to hold new elections on new ballot issues.

Note that at this time, issues cannot be placed on the ballot through citizen initiatives. Citizen initiatives are authorized for every other level of government - city, county, state. But not metro districts.

The first issue voted on in this "developer election" is to eliminate the right of voters - future residents - to vote on tax debt. Under the Colorado Constitution, the government unit (city, county, state, and metro district) cannot go into debt without the voters approving the ballot issue. The same provision in the Constitution also says that the voters can pass a ballot measure that eliminates the right of voters to vote on tax debt.

So, the 8 developer voters in the first election vote to eliminate the right of future residents (voters) to vote on tax debt.

Then, the 8 developer voters also vote in the first election to give that right to issue tax debt (bonds) to the boards.

And, as we know from every district, the developer does what he can to dominate the boards until the developer controlled boards have issued all the tax debt (bonds) they want to "reimburse" the developer's "costs".

So the developer

- 1.) eliminates the right of residents to vote on future tax debt (bonds),**
- 2.) gives that power to issue future tax debt to the board**
- 3.) dominates the board**
- 4.) issues tax debt to be paid to himself**
- 5.) and imposes the burden to pay that debt on the residents**
- 6.) And the residents get the bill and say "what just happened".**

The second issue in the ballots is the debt and financing limit. Whatever limits set in the service plan are exponentially small compared to the

actual debt voted on by the "developer voters" in the ballot issues. These debt and financing limits are in fact the only real limits, not those set in the service plan. Yet these numbers are typically never disclosed to the city in the application or the future homebuyers.

Note that the Constitutional limits set in TABOR are also eliminated. There are no TABOR limits to the amount that can be financed.

The third issue is the ballot issue also sets a maximum interest rate - typically not greater than 18%.

Here is a sample ballot issue - they are all virtually the same. The attorneys for the metro districts just recycle the same language.

BALLOT ISSUE 5B: DE-BRUCING

SHALL MOUNTAIN BROOK METROPOLITAN DISTRICT BE AUTHORIZED TO COLLECT, RETAIN, AND SPEND THE FULL AMOUNT OF ALL TAXES, TAX INCREMENT REVENUES, TAP FEES, PARK FEES, FACILITY FEES, DEVELOPMENT FEES, IMPACT FEES, SERVICE CHARGES, INSPECTION CHARGES, ADMINISTRATIVE CHARGES, GRANTS, OR ANY OTHER FEE, RATE, TOLL, PENALTY, OR CHARGE AUTHORIZED BY LAW OR CONTRACT TO BE IMPOSED, COLLECTED, OR RECEIVED BY THE DISTRICT DURING FISCAL YEAR 2020 AND EACH FISCAL YEAR THEREAFTER, SUCH AMOUNTS TO CONSTITUTE A VOTERAPPROVED REVENUE CHANGE AND BE COLLECTED, RETAINED, AND SPENT BY THE DISTRICT WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, THE LIMITS IMPOSED ON INCREASES IN PROPERTY TAXATION BY SECTION 29-1-301, C.R.S. IN ANY SUBSEQUENT YEAR, OR ANY OTHER LAW WHICH PURPORTS TO LIMIT THE DISTRICT'S REVENUES OR EXPENDITURES AS IT CURRENTLY EXISTS OR AS IT MAY BE AMENDED IN THE FUTURE, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED, RETAINED, AND SPENT BY THE DISTRICT?

BALLOT ISSUE 5C: STREET IMPROVEMENTS

SHALL MOUNTAIN BROOK METROPOLITAN DISTRICT DEBT BE INCREASED \$25,000,000 WITH A REPAYMENT COST OF NOT MORE THAN \$205,000,000, AND SHALL MOUNTAIN BROOK METROPOLITAN DISTRICT TAXES BE INCREASED \$205,000,000 ANNUALLY OR SUCH LESSER AMOUNT AS MAY BE NECESSARY FOR THE PAYMENT OF SUCH DEBT AND ANY REFUNDINGS THEREOF, AT AN INTEREST RATE THAT IS EQUAL TO, LOWER, OR HIGHER THAN THE INTEREST RATE ON THE REFUNDED DEBT, FOR THE PURPOSE OF PAYING, LEASING, FINANCING, OR REIMBURSING ALL OR ANY

PART OF THE COSTS OF DESIGNING, ACQUIRING, CONSTRUCTING, RELOCATING, INSTALLING, COMPLETING, UPGRADING, EXPANDING, REPAIRING, REPLACING, AND OTHERWISE PROVIDING, WITHIN OR WITHOUT THE BOUNDARIES OF THE DISTRICT, STREET IMPROVEMENTS, INCLUDING BUT NOT LIMITED TO CURBS, GUTTERS, CULVERTS, STORM SEWERS AND OTHER DRAINAGE FACILITIES, ACCELERATION AND DECELERATION LANES, DETENTION PONDS, RETAINING WALLS AND APPURTENANCES, UNDERGROUND CONDUITS FOR PUBLIC UTILITIES, SIDEWALKS, TRAILS, PUBLIC PARKING LOTS, STRUCTURES AND FACILITIES, PAVING, LIGHTING, GRADING, LANDSCAPING, BIKE PATHS AND PEDESTRIAN WAYS, PEDESTRIAN OVERPASSES, PEDESTRIAN UNDERPASSES, RETAINING WALLS, FENCING, ENTRY MONUMENTATION, STREETSCAPING, BRIDGES, OVERPASSES, UNDERPASSES, INTERCHANGES, MEDIAN ISLANDS, IRRIGATION, SNOW REMOVAL EQUIPMENT OR TUNNELS AND A SAFETY PROTECTION SYSTEM THROUGH TRAFFIC AND SAFETY CONTROLS AND DEVICES ON STREETS AND HIGHWAYS AND AT RAILROAD CROSSINGS, SIGNALIZATION, SIGNING AND STRIPING, AREA IDENTIFICATION, DRIVER INFORMATION AND DIRECTIONAL ASSISTANCE SIGNS, AND OTHER STREET IMPROVEMENTS TOGETHER WITH ALL NECESSARY, INCIDENTAL, AND APPURTENANT FACILITIES, EQUIPMENT, LAND, EASEMENTS, AND EXTENSIONS OF AND IMPROVEMENTS TO SUCH FACILITIES, AND, AS NECESSARY AND CONVENIENT THEREFOR, THE ACQUISITION OF PROPERTY AND EASEMENTS ACQUIRED BY CONDEMNATION OR OTHERWISE, SUCH DEBT TO BEAR INTEREST AT A **MAXIMUM NET EFFECTIVE INTEREST RATE NOT TO EXCEED 18% PER ANNUM**, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES, AND WHICH MAY COMPOUND ANNUALLY OR SEMIANNUALLY, AND SUCH DEBT TO MATURE, BE SUBJECT TO REDEMPTION WITH OR WITHOUT PREMIUM, AND BE ISSUED AND SOLD AT, ABOVE, OR BELOW PAR, SUCH DEBT TO BE ISSUED OR INCURRED AT ONE TIME OR FROM TIME TO TIME, TO BE PAID FROM ANY LEGALLY AVAILABLE REVENUES OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; **SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY OF THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT'S BOARD OF DIRECTORS**, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON SUCH DEBT OR ANY REFUNDING DEBT (OR TO CREATE A RESERVE FOR SUCH PAYMENT); **ALL OF THE ABOVE AS MAY BE DETERMINED BY THE DISTRICT'S BOARD OF DIRECTORS; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE REVENUE FROM SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT EARNINGS THEREON, BE COLLECTED, RETAINED, AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, OR ANY OTHER LAW WHICH PURPORTS TO LIMIT THE DISTRICT'S REVENUES OR EXPENDITURES AS IT CURRENTLY EXISTS OR AS IT MAY BE AMENDED IN THE FUTURE, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED, RETAINED, AND SPENT BY THE DISTRICT?**

The new ordinance must require approval of the ballot issues by the city.

It must also prohibit any provision in the ballot issue which eliminates the right of the residents to vote on future tax debt. In other words, the TABOR Constitutional provisions must all apply.

It must provide that the residents, not the boards, must approve future tax debt (bonds).

It must also provide that no fees or taxes may be assessed until the district has elected at least a majority of residents to the boards.

Finally, the ballot issue must also contain a debt and financing limit no greater than what is stated in the service plan and an interest rate set by the city.

State statute establishes four minimum threshold findings of the City Council without which the City Council cannot approve a service plan. Those threshold requirements are as follows:

- (a) There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special district.
- (b) The existing service in the area to be served by the proposed special district is inadequate for present and projected needs.
- (c) The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries.
- (d) The area to be included in the proposed special district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

While these findings regarding the service plan must be made for City Council to approve a service plan, this is not a definitively limiting list.

Again, here is the definitive list of criteria from the statutes:

The City contributes to the content of the Service Plan and must approve the content of the Service Plan.

That approval may be “conditional” which allows the City to continue to oversee and hold the developer accountable for the implementation of the Service Plan, especially during the first several years when the developer board of directors is making all the decisions - before the resident voter base is established and before residents are running the District Boards.

There is no limit to the nature of the additional information to be reviewed and no time limit for the conditional approval

CRS 32-1-204.5 (1) No special district shall be organized if its boundaries are wholly contained within the boundaries of a municipality or municipalities, **except upon adoption of a resolution of approval by the governing body of each municipality.** The information required and criteria applicable to such approval shall be the information required and criteria set forth in sections **32-1-202 (2) and 32-1-203 (2).** With reference to the review of any service plan, the governing body of each municipality has the following authority:

- (a) To approve without condition or modification, the service plan submitted;
- (b) To disapprove the service plan submitted;
- (c) To conditionally approve the service plan subject to the submission of additional information relating to, or the modification of, the proposed service plan or by agreement with the proponents of the proposed service plan.**

CRS 32-1-202 (2) The service plan shall contain the following:

- (a) A description of the proposed services;
- (b) A financial plan showing how the proposed services are to be financed, including the proposed operating revenue derived from property taxes for the first budget year of the district, which shall not be materially exceeded except as authorized pursuant to section 32-1-207 or 29-1-302, C.R.S. All proposed indebtedness for the district shall be displayed together with a schedule indicating the year or years in which the debt is scheduled to be issued. The board of directors of the district shall notify the board of county commissioners or the governing body of the municipality of any alteration or revision of the proposed schedule of debt issuance set forth in the financial plan.
- (c) A preliminary engineering or architectural survey showing how the proposed services are to be provided;
- (d) A map of the proposed special district boundaries and an estimate of the population and valuation for assessment of the proposed special district;
- (e) A general description of the facilities to be constructed and the standards of such construction, including a statement of how the facility and service standards of the proposed special district are compatible with facility and service standards of any county within which all or any portion of the proposed special district is to be located, and of municipalities and special districts which are interested parties pursuant to section 32-1-204 (1);
- (f) A general description of the estimated cost of acquiring land, engineering services, legal services, administrative services, initial proposed indebtedness and estimated proposed maximum interest rates and discounts, and other major expenses related to the organization and initial operation of the district;
- (g) A description of any arrangement or proposed agreement with any political subdivision for the performance of any services between the proposed special district and such other political subdivision, and, if the form contract to be used is available, it shall be attached to the service plan;
- (h) Information, along with other evidence presented at the hearing, satisfactory to establish that each of the criteria set forth in section 32-1-203, if applicable, is met;**
- (i) Such additional information as the board of county commissioners may require by resolution on which to base its findings pursuant to section 32-1-203;**
- (j) and (k) omitted as not relevant (health service districts)

CRS 32-1-203 (2) The board of county commissioners **shall disapprove** the service plan **unless evidence satisfactory to the board** of each of the following is presented:

- (a) There is sufficient **existing and projected need** for organized service in the area to be serviced by the proposed special district.
- (b) The existing service in the area to be served by the proposed special district is inadequate for**

present and projected needs.

(c) The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries.

(d) The area to be included in the proposed special district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

(2.5) The board of county commissioners may disapprove the service plan if evidence satisfactory to the board of any of the following, at the discretion of the board, is not presented:

(a) Adequate service is not, or will not be, available to the area through the county or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis.

(b) The facility and service standards of the proposed special district are compatible with the facility and service standards of each county within which the proposed special district is to be located and each municipality which is an interested party under section 32-1-204 (1).

(c) The proposal is in substantial compliance with a master plan adopted pursuant to section 30-28-106, C.R.S.

(d) The proposal is in compliance with any duly adopted county, regional, or state long-range water quality management plan for the area.

(e) The creation of the proposed special district will be in the best interests of the area proposed to be served.

(3) The board of county commissioners may conditionally approve the service plan of a proposed special district upon satisfactory evidence that it does not comply with one or more of the criteria enumerated in subsection (2) of this section. Final approval shall be contingent upon modification of the service plan to include such changes or additional information as shall be specifically stated in the findings of the board of county commissioners.

There must be a public hearing before approval is granted. CRS 32-1-204.

The City must approve any material changes to the Service Plan. There must be a public hearing before any changes are approved. CRS 32-1-207.

The developer must submit annual reports to the City for at least the first five years and thereafter, if requested. CRS 32-1-207 (3)(c) and (d)

The City is not limited in the nature of information it may require the applicant to submit in the annual report. CRS 32-1-207 (3)(c)

The annual reviews may be (should be) held as part of a public meeting with notice to the public. CRS 32-1-207 (3)(c)

CRS 32-1-207 (3) (c) If a special district files an annual report pursuant to this paragraph (c), such report shall include but shall not be limited to information on the progress of the special district in the implementation of the service plan. The board of county commissioners or the governing body of the municipality may review the annual reports in a regularly scheduled public meeting, and such review shall be included as an agenda item in the public notice for such meeting.

The City may require a hearing every five years after debt is issued on the status of implementing the Service Plan with particular attention to the burden of the financial debt repayment upon the

residents:

CRS 32-1-1101.5 (2)

II) Determine that the implementation of the service plan or financial plan will not result in the timely and reasonable discharge of the special district's general obligation debt and that such implementation will place property owners at risk for excessive tax burdens to support the servicing of such debt. If the board of county commissioners or the governing body of the municipality makes such a finding, **it shall deny a continuation of the authority of the board of the special district to issue any remaining authorized general obligation debt.**

Typical metro district service plans generally address the following topics:

The developers like to skip over the first part. You don't even begin looking at the service plan until the developer has proven to the city that there is even a need for the metro district.

The developer must be able to show - with reference to actual document showing the cost of the land, the cost of the infrastructure, the cost of the lot to the builder/homebuyer - that the only way they can build the development is through the double loan/interest of a metro district.

The developer must be able to show that it is not more efficient and less expensive to the homebuyer to have the homebuyer pay cash for the \$30,000 or finance the \$30,000 through his or her mortgage.

If and only if the developer proves - and he has the burden - to the city that a metro district is absolutely necessary, then and only then should the city begin to look at the service plan.

Again,

CRS 32-1-203 (2) The board of county commissioners shall disapprove the service plan unless evidence satisfactory to the board of each of the following is presented:

- (a) There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special district.**
- (b) The existing service in the area to be served by the proposed special district is inadequate for present and projected needs.**
- (c) The proposed special district is capable of providing economical and sufficient service to the area within its proposed boundaries.**

(d) The area to be included in the proposed special district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

(2.5) The board of county commissioners may disapprove the service plan if evidence satisfactory to the board of any of the following, at the discretion of the board, is not presented:

(a) Adequate service is not, or will not be, available to the area through the county or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis.

(b) The facility and service standards of the proposed special district are compatible with the facility and service standards of each county within which the proposed special district is to be located and each municipality which is an interested party under section 32-1-204 (1).

(c) The proposal is in substantial compliance with a master plan adopted pursuant to section [30-28-106](#), C.R.S.

(d) The proposal is in compliance with any duly adopted county, regional, or state long-range water quality management plan for the area.

(e) The creation of the proposed special district will be in the best interests of the area proposed to be served.

There are three primary functions of the service plan.

1. Tell the developer what the geographic boundaries are for this new government. The developer can't go outside the boundaries unless expressly authorized to do so in the service plan. The developer can only do what the service plan says he can do.

2. Tell the developer what services this new government will provide. (Fire, water, sanitation, build residential homes and infrastructure for those homes, recreation services)

3. Set limits on financing and the checks and balances for the city to oversee the district until the residents completely replace the developer employees on the board.

A. **Geography** – What property is proposed to constitute the metro district and what land, if any, is considered area that may be included in the district at a later time?

This is setting up the city for problems down the road. It is always a bad idea to say in a service plan "you might be able to do this later". The service plan says in black and white only what the developer can do. If he wants to change it - add territory or change the conditions - there is a process to do that

which includes a formal application and public hearings. There is absolutely no point to saying what might happen in the future in the service plan. If it is going to be changed - the only thing that matters is what is in the application for the change.

- B. **Services** – Which services and what improvements is the metro district intended to provide? Adequate conceptual design is provided to prepare estimates of district costs.

See above.

- C. **Finances** – What are the estimated costs of the services and improvements and how will those expenses be funded?

See above.

- D. **Agreements** – What agreements is the metro district proposed to have with other entities?

This is another significant area of abuse. The developer enters into single party contracts with himself - the agreement between himself that the lead district will repay all the developers expenses with no accountability and the agreement between subdistricts to pay all the expenses of the lead district, with no accountability.

The new ordinance should prohibit these self-serving agreements between the developer and himself.

After a metro district is created, state statute provides that the district must obtain City Council approval of any material modifications of the service plan. By statute, this is the only opportunity for the City to be involved in an existing metro district. Service plan material modifications are discussed later in this memorandum.

This is a false statement. Under the statutes, there are numerous opportunities for the "city to be involved in an existing metro district".

See, for example, CRS 32-1-207 (3) (Annual Report) and CRS 32-1-1101.5 (Five Year Report).

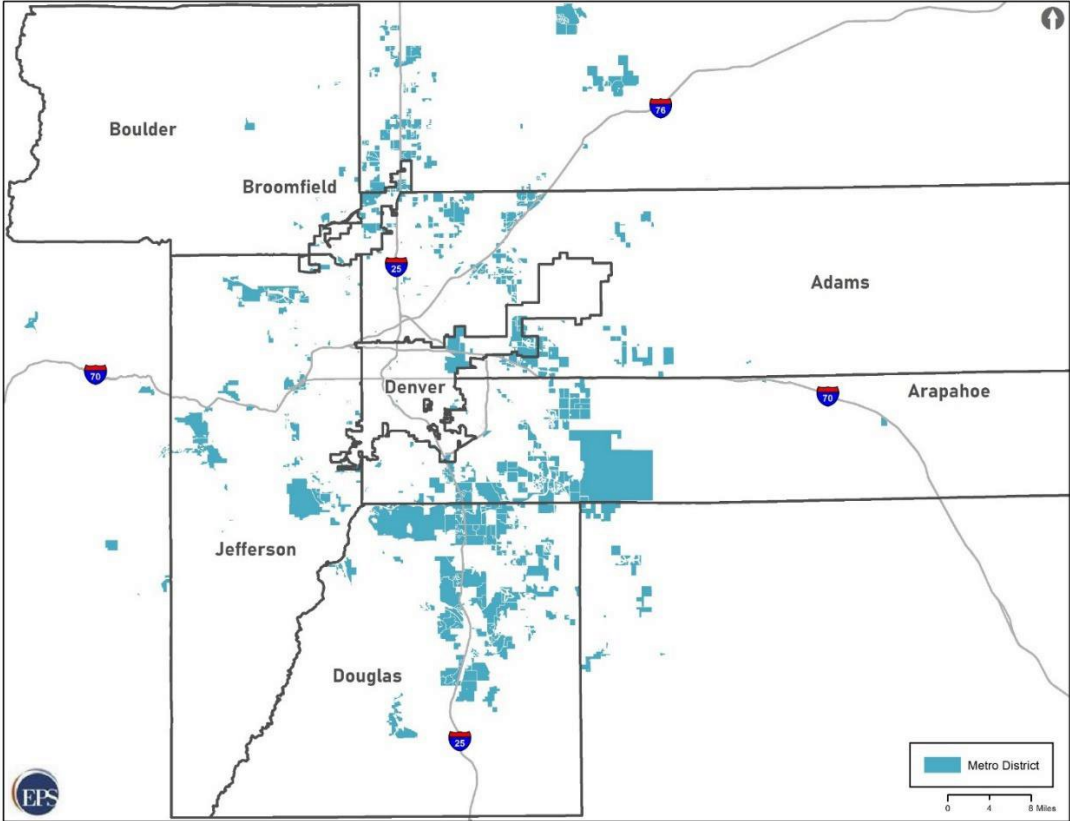
In summary, metropolitan districts are a tool, established by Colorado statute, to provide services or improvements including their financing, operation and maintenance. Metro districts have been created for many types of projects in Colorado and in what is now Lakewood since the 1940s.

In fact, metro districts changed in the 80's to permit the abuses that are currently draining billions of dollars of wealth out of the Front Range that could be spent on roads, mental health, open space and social services. They provide the same services that were always provided in developing areas - only with metro districts the cost for providing the same services is exponentially higher - feeding exponentially higher profits for developers with no value to the residents.

And again, it is not prudent to go into debt to pay for operating and maintaining a new community. We didn't do it before metro districts and there is no good reason to do it now.

Metro districts were initially adopted to provide a way for residents, who were already present, to pay for - and tax themselves to pay for - community centered projects that no one resident could afford. Residents who were present could band together to pay for these projects. But that is not what is taking place with the current program. Currently, developers are imposing costs upon and taking away constitutional rights of residents who are not present and denying them the right to decide how their tax money will be spent. The current system has completely corrupted the original reason for special districts.

The following map, provided by Economic and Planning Systems, illustrates, in blue, the locations of metropolitan districts throughout the Denver metropolitan area:



METROPOLITAN DISTRICTS IN LAKEWOOD

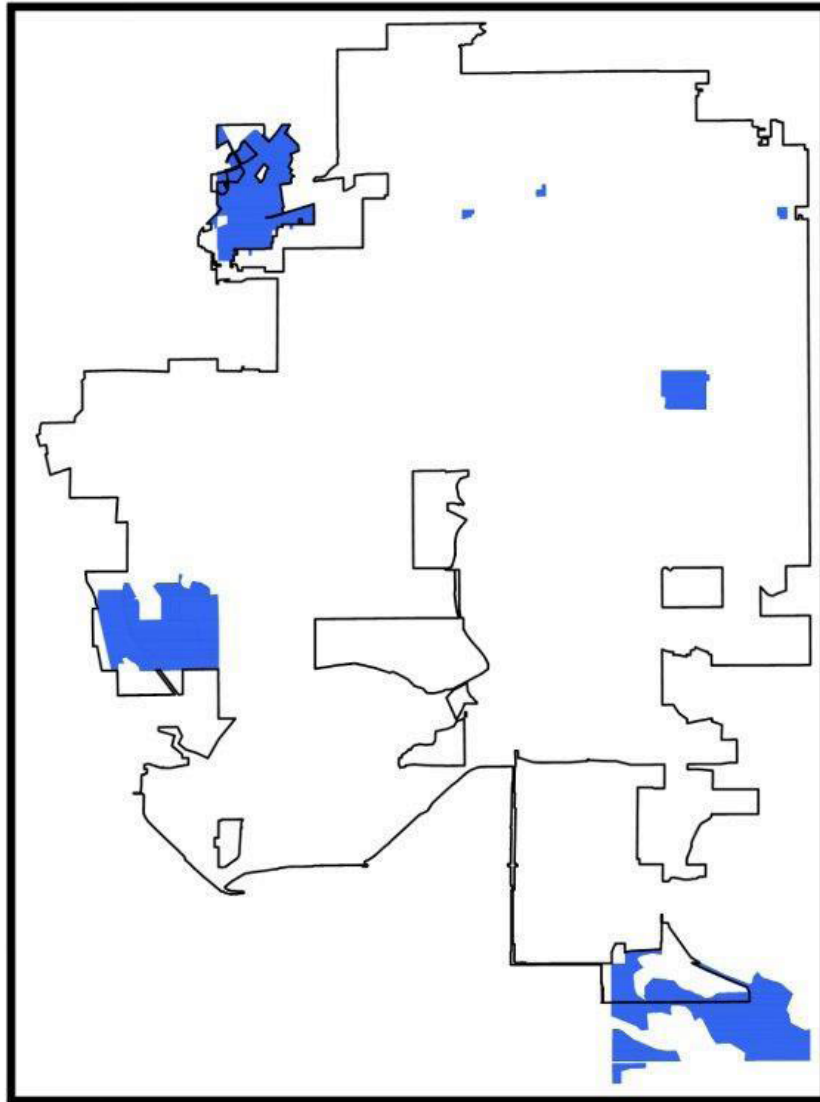
There are seven general geographic locales within Lakewood that have existing metropolitan districts. The following illustration shows metro district areas (in blue) that are at least partially within Lakewood with the City of Lakewood boundary drawn in black.

Some of the seven geographic locales include more than a single metro district. Multiple metro districts may exist in one general locale for a variety of reasons including:

- Different districts may serve different geographic areas within the general locale.
- Different districts may provide different services or facilities.

- Multiple districts may be used as a governance structure.

Not sure what is intended here. Under the statutes, there can only be one district for any one geographic area and service. Multiple districts cannot be used as a "governance structure". Examples of abuse and violation of the prohibition of more than one district are the Red Rocks Centre. There are two metro districts - Red Rocks Centre and Mount Carbon. Both provide sanitation services.



The number, names and year the metro districts were formed in each locale are as follows:

- Denver West area (shown in the northwestern—upper left—part of Lakewood). This area has four metropolitan districts – Denver West (1984), Lena Gulch (1998), Indiana Valley (2001), Denver West Promenade (2012) – and includes residential and non-residential properties. A portion of this area is in unincorporated Jefferson County. Much of the area

was annexed into Lakewood in the 1990s.

- Rooney Valley area (the most western area—farthest left—on the illustration). This area has ten metropolitan districts – Fossil Ridge Metropolitan District No. 1, 2 and 3 (2006), Big Sky Metropolitan District No. 1 through 7 (2015) – and includes residential properties and property planned for residential uses. Most of this area was annexed in the 1970s.
- South Wadsworth area (the farthest south area). This area has two metropolitan districts –Bowles (1986), Section 14 (1987) – and includes residential and non-residential properties. Each of these districts includes properties in Lakewood, unincorporated Jefferson County and Denver. The portion of these districts within Lakewood was annexed in the 1980s.
- Belmar (the nearly square area near the middle of the eastern portion of the City). This area has three metropolitan districts – Plaza Metropolitan District No. 1, 2 and 3 (2000) –and includes residential and non-residential properties.
- Sheridan Station (the smaller area near the eastern City boundary in northern Lakewood). This area is a single metropolitan district – Sheridan Station West (2016) – and includes residential properties and property planned for residential uses.
- Indy-Oak (two separate locales shown as the smaller areas in the central portion of northern Lakewood). These two locales are a single metropolitan district – Indy-Oak TOD (2017) – and include residential properties.

A commonly used metro district financial tool is a property tax mill levy. Each district establishes its own mill levy. The following table identifies the number of Lakewood metro districts within several ranges of property tax mill levies.

The table would not copy. The noteworthy point here is that, according to this table there are three districts with mill rates over 50 mills. The statutes sought to establish a 50 mill rate maximum. However, as shown by this table, that goal is not enforced (largely because of exceptions which virtually eliminated the 50 mill limit).

The new ordinance must also set a mill rate maximum that may not be exceeded under any circumstances and will be a basis for removing the authority to issue any debt and a basis for dissolving the district. The prudent limit as indicated by the state in a handbook for new homeowners would be no higher than 30% of the the assessed value of the community at the time the mill rate is imposed. And, again, the rate must be approved by the resident voters as a ballot issue at the next election cycle.

Districts may have a mill levy to retire debt, a mill levy for on-going operations and maintenance, or both.

The new ordinance should prohibit issuing mill levys - setting taxes - to pay for operations and maintenance.

The mill levies included in the preceding table are the sum of any mill levy for debt retirement plus any mill levy for operational or maintenance activities.

There are three other metropolitan districts located at least partially in the City of Lakewood. They have been excluded from the above descriptions for specific reasons as follows:

- The Pleasant View Metropolitan District was created in 1948 and provides fire protection, parks and recreation services to a portion of the Denver West area in northwest Lakewood. The majority of the land area in this district is outside of Lakewood.
- The South Sheridan Water, Sanitary Sewer & Storm Drainage Metropolitan District was created in 1965, and only provides water and sewer services. If it were created today, it would likely be a water and sanitation district rather than a metropolitan district. South Sheridan serves approximately 1000 customers and is in the vicinity of Sheridan Boulevard, Harlan Street, Florida Avenue and Mississippi Avenue.
- The Mount Carbon Metropolitan District was created in 1976 in the Rooney Valley. The district filed for bankruptcy in 1997, which reduced district debt for which the landowners were responsible and restricted the district's activities to water and sewer services. If created today for its currently authorized functions, it would likely be a water and sanitation district rather than a metropolitan district.

The Mount Carbon district has, over time, largely been excluded from properties within Lakewood. However, in compliance with state law, properties formerly included in the Mount Carbon district retain their share of the obligation for the reduced, post-bankruptcy debt originally taken on by Mount Carbon when those properties were a part of the metro district.

There are also several metro districts located near but fully outside of Lakewood in unincorporated Jefferson County including the RRC metro district area in the southern portion of the Rooney Valley, The Green Tree metro district around the C-470/Alameda interchange, and the Green Gables metro district near the intersection of Wadsworth Boulevard and Jewell Avenue.

Outcomes of Lakewood Metropolitan Districts

Additional information about the purposes or benefits of existing Lakewood metro districts may be helpful in considering the future of metro districts in Lakewood. Some examples of potential benefits are as follows:

Accomplish Key Community Needs – Metro districts can contribute to developments that help meet key Lakewood community goals or bring something important or new to Lakewood. Colorado Mills filled an important, long-term need for tax revenue to fund public services at the time the Villa Italia mall was declining rapidly from its role as a major tax revenue generator for the City. The south Wadsworth area has also been a key source of funds necessary to provide City services to the community. Belmar created a downtown and replaced a rapidly failing mall that, for many, was also a community center. The Sheridan Station West and Indy-Oak TOD areas provide new investment in older areas of Lakewood.

Mixing apples and oranges here. This addresses commercial special districts, not residential metro districts. Commercial enterprises, particularly where the developer is also the subsequent owner of the commercial enterprise, is a different issue altogether. The developer is not imposing tax burdens and suppressing the right of the resident to vote. In addition, the commercial residents have access to legal and accounting resources to inform and counsel decisions about whether or not to buy into the district. These resources and experiences are not available to the typical homebuyer.

Provide Supplemental Facilities, Services or Amenities – Metro Districts can be used to help create unique neighborhoods or features potentially increasing the value of residential or non-residential areas. Belmar is a unique place in Lakewood in part because of the metro district owned, maintained and operated features such as a park, non-standard street lighting, and parking garages. The metro districts provide a higher level of snow removal service in the commercial areas than the City could by providing snow services from building face to building face and in a timely manner.

See response above.

Solterra's metro districts own, operate and maintain the recreation/community center, landscaping along the major roadways and multiple pocket parks and trail connections. These features support the uniqueness of the Solterra neighborhood within the City.

These items are identical to items included in residential developments without metro districts. The metro district doesn't facilitate these improvements any more than the traditional development with amenities and an HOA to manage those amenities. I lived in a similar community in Northern Virginia that had three swimming pools, recreation center, open spaces and trails without a metro district and without the multiple layers of debt associated with metro districts. And similar homes were less expensive.

Address Uncommon Needs – Some development projects require infrastructure improvements on a large scale and metro districts are a tool that can help finance those improvements. The Colorado Mills and Denver West Village developments required major transportation improvements including expansion of Colfax Avenue and Colorado Mills Denver West Boulevard. Solterra required a new underground water storage tank, a water supply pipeline of approximately six and one-half miles, substantial transportation improvements to Alameda Avenue and creation of McIntyre Boulevard. Belmar included demolition of a large, two-story enclosed mall, creation of a grid of public streets with associated utility infrastructure and construction of public parking garages.

Again, commercial developments are different as set forth above.

As to Solterra, many of these improvements had more to do with "paving the way" for future development in Rooney Valley than paying for Solterra's improvements (streets outside the district, water supply outside the district). And, again, there is no evidence that these costs weren't already paid for with the cost of the lot and more efficiently financed through payment in cash by the homebuyer or through the mortgage.

Reduced Financing Costs – As a governmental entity, districts have access to tax-exempt bonds to provide funds for improvements necessary for a development. Tax-exempt bonds have a national market that can bring more competitive financing for a metro district. Because end-users ultimately fund all costs of development, the use of competitive market, tax-exempt bonds can provide a financial benefit to end-users of property within a metro district.

Again, myth. This bonding adds at least one additional layer of

interest and eliminates the competitive market forces which normally motivate the developer to keep his costs low. See the discussion above in the beginning of the section on metro districts in general. There is absolutely no benefit to using this structure to pay two or three times for the one item traditionally financed through the cost of the lot (and probably still is)

End-user Affordability – Metro districts often use property tax as a funding source. Some end-users may benefit by deferring expenses through:

- Lower initial housing cost,
- Lower total cost due to the use of tax-exempt financing, and
- The tax deductibility of property tax payments in contrast to mortgage principal payments or property owners' association dues.

The trade-off is typically higher property taxes.

Again repeating the myth. Cost of housing is higher. Cost of taxes much higher. Benefit - increased value for the increased costs - zero.

Protect City-wide Taxpayers – A metro district need not become a financial burden on the portions of Lakewood that pre-existed creation of the district. Metropolitan districts are responsible for their finances and cannot obligate City-wide taxpayers to provide funding for the district's obligations. In Lakewood, this was experienced with the bankruptcy of the Mount Carbon metropolitan district. None of the Mount Carbon debt became the obligation of the City or of Lakewood property or business owners that did not have property ownership in the former Mount Carbon area. Similarly, if the financial effects of COVID-19 reduce revenues for a metro district, the district will have no recourse to non-district taxpayers as a backstop for its unrealized revenues.

City-wide taxpayers didn't pay for these costs before metro districts either. Metro districts don't change who pays and significantly increase the cost to the residents in a metro districts with absolutely no increased value.

Mt. Carbon is a great example. If Mt. Carbon had not been a metro district, there would have been no burden on the city when it went bankrupt. It would turn to dust just as it did with a metro district. However, since it was a metro district, the new landowners were now responsible for that debt. In fact, the new landowners - developers - paid for the land by paying off the debt. But the way they persuaded the bankruptcy court to pay off the debt was by - imposing a 21 mill

tax levy on every new resident who bought a home in the area. No risk to the developer - all profit to the developer.

Property Owners' Association Replacement or Complement – A metro district can perform the typical functions of a property owners' association whether it is residential (often referred to as a homeowners' association) or non-residential property (where a common area maintenance [CAM] fee is often used for funding). A metro district, using property tax funding, is in a better position to ensure that it can accomplish its responsibilities and treat all owners fairly because processes exist to ensure property taxes are collected whereas failure to pay property owners' association dues (a typical homeowners' association mechanism) and failure to pay CAM fees can require a more extensive, less certain and more costly collections process.

Metro districts, including Solterra, still have HOA's and HOA fees. No benefit in fact. Double the costs. And, again, imprudent to take out loans to pay operation and maintenance costs for running a community.

Other Potential Community Goals – Metro districts could help facilitate community goals such as affordable housing or improved sustainability. While a district may not directly address a particular goal, the desire for a district may offer the opportunity for a developer and the City to collaborate to include development components that help implement other community goals.

There is absolutely nothing "affordable" about living in a metro district. Metro district financing, by definition, increases the tax burden without reducing the cost of the housing.

The industry is trying to "sell" metro districts as a way to build affordable housing. Another myth. The simple math adds up to nothing but increased costs in a metro district with no additional value. More profit to the developer. Less accountability and value to the residents.

The preceding examples of potential community value of metro districts are not intended to imply that the advantages used as examples were fully attributable to metro districts or that they could not have happened without metro districts. Such an analysis is outside of the scope of this memorandum. However, it was determined by the City Council at the time each district was approved that the district had a role to play in accomplishing the goals of the project.

This statement is entirely inconsistent with the knowledge and critical evaluation of metro districts by past councils. It was not until recently that the city council became aware of the fact that developers were not entitled to metro districts or that the city council had any opportunity to critically evaluate and regulate metro districts.

This outcome of course was purposeful. Their only source of information, reflected in this staff memo, was the industry whose goal was to obtain approval for the districts with as little disclosure to and oversight by the city as possible.

The state law regarding metro districts does not require that a metro district provide any of the added value opportunities in the preceding examples. Some may suggest that there are more items that metro districts can support, while others may suggest this list is too extensive. The purpose here is not to perfectly articulate the exact universe of potential value to the community of approving metro districts. Rather, this portion of this memorandum has been intended to recognize that metro districts are a tool that can provide improvements or services from which the community could benefit and to mention how varied the possibilities are.

There are no benefits described above that weren't already available through the traditional procedure for financing infrastructure before metro districts. All cost - financial and accountability to the residents - with no benefit to the residents. Only benefit is exponentially larger profit with no accountability to the developer.

Because of the complexity and variety associated with property development and redevelopment, each situation where a metro district is proposed may warrant project-specific, City Council consideration within some universally applicable City Council established boundaries. Establishing those boundaries would require City Council decisions on multiple policy questions such as those introduced later in this memorandum.

The developer community had no difficulty providing infrastructure improvements before metro districts. The cost to the residents in money and accountability does not begin to justify the convenience and additional profits to the developers.

Much of the preceding discussion has focused on existing metropolitan districts. The remainder

of this memorandum will focus on considerations that may be of interest to the City Council regarding the formation of any metropolitan districts in the future. As noted in the memorandum introduction, future policies can be directly applied to proposed future districts. Their application to existing metro districts will be constrained by those districts' current existence as governmental entities with their own elected boards and approved service plans.

Again, the city has a duty to the residents to regulate existing districts as much as they do new districts. The existing districts are still accountable to the city that created them under the statutes. The myth repeated from the industry in this staff memorandum is inaccurate. The city still has a duty to regulate existing districts.

For example. Big Sky. It has 7 districts. 6 are "inactive". The seventh's most recent financial audit filing requested a waiver since it hasn't done anything. The district is completely dormant, has all the abuses written into its ballots and service plan. It only has two directors instead of the required 5 or 7.

The city must initiate a 5 year review of Big Sky pursuant to CRS 32-1-1101.5 to establish whether or not there is a need for this district and whether or not to revoke its financing authorization as well as refer it to the local department of government affairs to determine whether or not it should be dissolved.

POTENTIAL POLICY TOPICS REGARDING FUTURE METROPOLITAN DISTRICTS

Lets talk about the new Metro District Ordinance. The staff has proposed a number of provisions. Several are worthy of consideration. There are also several provisions which must be added.

First, the city council must decide whether or not it is in the best interest

of the community to even have metro districts for residential development. Longmont said no. Lakewood should too. Metro districts impose an enormous cost to the residents of the community with no benefit. The traditional way of financing infrastructure works well throughout the rest of the country, worked well here in Colorado, still works well in Longmont and will continue to work well in Lakewood.

If the city decides to permit future districts, the new ordinance must create a two step process to considering a new metro district.

The first step is for the developer to prove to the city that there is a need. The developers have evolved to the point where they feel they are entitled to a metro district. That is not the law and the city must set a very high burden for the developer to prove:

"(a)There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special district. . . .

(b) The existing service in the area to be served by the proposed special district is inadequate for present and projected needs. . . . [and]

(e) The creation of the proposed special district will be in the best interests of the area proposed to be served. CRS 32-1-203 (2)

The second step in the process is to critically evaluate the ballot issue, the service plan, any proposed agreements and the proposed financial plan.

The Colorado General Assembly has addressed some concerns regarding metro districts through changes to the applicable state law. The law also includes an opportunity for the City Council to tune specific metro district proposals more finely. Some communities have written policies or ordinances or model documents to guide an applicant proposing a metro district. Such documents may articulate a community's goals and reduce community concerns regarding metro districts.

Many concerns with metro districts seem to be driven by desires to:

- More completely and timely inform future and existing end-users regarding the district,

- Provide City Council appropriate information during consideration of the service plan proposed for a new metro district, and
- Define the limitations within which new metro districts will be considered by the City Council.

No. Concerns with metro districts are:

- 1.) they are not needed - they do not improve the traditional way of financing a local development's infrastructure**
- 2.) they embrace a financing mechanism which completely corrupts the market place checks and balances and completely eliminates accountability for how tax money is spent**
- 3.) they actively suppress the right of voters to decide their own taxes and literally tax the voters without any representation at the table where the tax and spend decisions are made.**
- 4.) they actively suppress the ability of homebuyers to understand the risks they are taking by buying into a community with a metro district.**
- 5.) they are designed and operated with one singular goal in mind - maximizing the developer's profit with little or no accountability to the city that created it or the residents who have to live with it.**

Accomplishing these desires could help align service plan preparation by a developer with City Council's goals, improve the efficacy of City staff review of proposed service plans, improve information available for City Council decision making, and improve public and end-user understanding of a metro district.

Potential policy topics the City Council could consider can be described in several ways. The following structure is used in the remainder of this memorandum to facilitate discussion:

- A. Disclosure to potential end-users
- B. District governance including district board elections
- C. Financial considerations
- D. Developer transactions with districts
- E. Breadth of services provided by a district
- F. Geographical boundaries of districts
- G. Acquisition of property rights and eminent domain use by districts

- H. City Council authority to review district changes
- I. District reporting obligations
- J. Standard consideration schedule and model documents
- K. Potential state law changes

There are many *Preliminary Recommendations* suggested below for City Council's consideration. There are circumstances—concerns or opportunities—that may be specific to some proposed metro districts and not others. City Council retaining the flexibility to recognize circumstances associated with a particular metro district proposal may be a goal to pursue while addressing the topics discussed below.

Some *Preliminary Recommendations* are discussed below as only applying to proposed districts that include residential properties and some are presented as only applying to the initial period of a metro district during which the district board is developer controlled. Most of the *Preliminary Recommendations* are suggested to apply regardless of these distinctions. The distinction for residential properties is an acknowledgement that many residential end-users do not have professional advisors for real estate transactions and that many non-residential property owners have a higher commitment to property transaction knowledge and more commonly have professional advisors. The separate recognition of the period that the metro district is controlled by the developer is explained in greater detail later in this memorandum.

The *Preliminary Recommendations* included below are preliminary for the following reasons:

- City Council is beginning its discussion of this topic with this memorandum and the topics addressed may be revised by City Council.
- As more information is developed, some *Preliminary Recommendations* may require revision or deletion and other recommendations may arise.
- Given the early stage and breadth of this topic, full research regarding implementation and potential unintended consequences has not occurred for the *Preliminary Recommendations*.

The goal of this memorandum is to support articulation by City Council of its intended results for metro districts. Defining implementation methods best suited to accomplish Council's intended results can occur after City Council's goals are clarified; although, some implementation examples are provided below.

Here is the approach the Council should take:

- 1. First decide, as did Longmont, whether or not there is a need for special districts in residential development.**

The traditional way, and the way most communities across the country are developed, is for the developer to include the cost of the infrastructure in the cost of the lot. In fact, the Colorado developers are not giving away the lots. Homebuyers and homebuilders are paying top dollars for lots. The comparable lots in other parts of the country cost the same or less than the lots in Colorado. So, the cost of the lot likely already includes the cost of the infrastructure, plus the cost of the land, plus profit to the developer.

The industry must prove to the lawmakers (including the city) that there is an actual need for metro districts. They must prove beyond any doubt that metro district financing is more efficient and more economical than the traditional way of financing the cost of infrastructure.

We already know that the developers are using their own money to pay for the infrastructure. The metro district money doesn't appear until long after the infrastructure is paid for and installed. So, metro district financing does not provide money to the developer before the infrastructure is installed. They don't need metro districts to get the money up front - whether or not it is a metro district, the developers are still paying for the infrastructure out of their own pockets. That doesn't change whether the cost is financed later through the cost of the lot or through the two developer loans.

We also know that the cost of metro district financing is at least three times more than the traditional cost of financing the cost of the infrastructure. There are two loans, two sets of interest and no accountability for what the money was actually spent on. Metro district financing completely corrupts and eliminates the normal market place checks and balances.

We also know that the developers resist disclosing their costs and profits even though they are acting as governments and taxing residents to pay the developers' own profits. It appears that the metro district financing is actually creating a profit center with absolutely no additional value. It is simply generating very large profits for the developer with no accountability.

Longmont voted to prohibit metro districts in residential development.

So should Lakewood.

The industry has failed to prove that metro districts are needed or that they provide a benefit to the community. There is nothing wrong with the traditional way of paying for infrastructure.

2. If the Council decides it is in the best interest of the community to allow metro districts for residential development, then it must enact a metro district ordinance with the following safeguards.

Here are the provisions that must be included in the new Metro District Ordinance:

- 1. Two part application process with separate vote on each part (and sub parts)**

Part I Developer Must First Prove there is a need

CRS 32-1-203 (2) states:

"(2) The board of county commissioners **shall disapprove** the service plan unless evidence satisfactory to the board of each of the following is presented:

(a) There is sufficient **existing and projected need** for organized service in the area to be serviced by the proposed special district. . . .

(b) The **existing service** in the area to be served by the proposed special district is **inadequate for present and projected needs**. . . . [and]

CRS 32-1-203 (2.5) states:

(2.5) The board of county commissioners **may disapprove** the service plan if evidence satisfactory to the board of any of the following, at the discretion of the board, is not presented:

(e) **The creation of the proposed special district will be in the best interests of the area proposed to be served. CRS 32-1-203 (2.5)**

CRS 32-1-203 (2) expressly states that there is a presumption that metro district service plans will **not** be approved **unless** the developer proves there is a need. "Shall disapprove" "unless". If the infrastructure can be paid for through the traditional means of including the cost in the cost of the lot, then there is no need for a metro district and the application for a metro district "shall" be denied.

The application "shall" also be denied "unless" the developer can prove that the existing services to the area are inadequate for the present or projected needs.

Even if the developer can overcome these burdens, the city "may" still "disapprove" the application unless the developer proves that the metro district **will be in the best interests of the present and future residents of the geographic area** of the proposed district.

If the city council votes and makes a public finding that there is a need that is not met with the traditional means of financing infrastructure, and the traditional financing is inadequate, and a metro district is in the best interests of the residents, then and only then, should the City go on to consider an application for approval of a service plan.

The documents provided by the developer **to satisfy this first requirement - prove there is a need** - are at a minimum:

original documents, which can be verified, which demonstrate:

1. The cost of the land which will form the boundaries of the new geographic area for the district.
2. The cost of the infrastructure for the proposed development.
3. The cost of the lot to the home builder or home buyer at the time the lot is sold.
4. The number of lots
5. The amount of profit to the developer for the price of the lot. (Amount paid minus the cost of the prorated cost of the land and the cost of the infrastructure.)

Part II Application for Approval of Service Plan

The application for a service plan must include the following documents. There must be a separate vote to approve each document before the council votes to formally approve the creation of a new metro district:

1. Proposed Ballot Issue

2. Proposed Service Plan
3. Proposed Financial Plan
4. Proposed Agreements
5. Proposed Disclosure to the potential homebuyer

In addition to the documents above that will be approved, the developer must also submit original documents, which can be verified, which demonstrate:

1. The cost of the land which will form the boundaries of the new geographic area for the district.
2. The cost of the infrastructure for the proposed development.
3. The cost of the lot to the home builder or home buyer at the time the lot is sold.
4. The number of lots
5. The amount of profit to the developer for "developing" the lot. (Amount paid minus the cost of the prorated cost of the land and the prorated cost of the infrastructure.)

[These are the same documents which will be provided as part of the disclosure under Part I requirements]

1. Proposed Ballot Issue

The new ordinance must expressly state that

- a. Every ballot issue must be approved by the city until the board is 100% resident with no employee or principal or agent of the developer.
- b. The service plan will not be conditionally approved unless the initial ballot issue is approved by the city.

c. The city **will not approve** any proposed ballot issue **that contains** the following provisions. In other words, the following provisions are **prohibited**:

1. Eliminating the right of the residents to vote on future tax and bond debt (including but not limited to any provisions which "debruce" the Constituional rights under TABOR).

2. Giving the right to issue tax debt or bond debt to the board of directors.

3. Setting a debt limit and/or finance limit higher than the limit stated in the service plan.

4. Setting an interest rate on any loans greater than that authorized by the service plan.

5. Allowing unlimited terms in office on the board. The ballot may not eliminate term limits.

d. Every ballot issue must state that the residents have the right to petition to place an issue on the next election ballot. Ten percent of the resident voters will be sufficient to place an issue on the ballot - to be determined sufficient by the County Registrar of Voters.

2. Proposed Service Plan

A. The city **will only conditionally approve** service plans or modifications to service plans until the board of directors is 100% residents who are not employees, principal or agents of the developer. **No service plans will be approved other than on a conditional basis.**

B. The application for a service plan must have all the provisions listed in CRS 32-1-202(2)

C. The application for a service plan must also include the documents showing:

1. The cost of the land which will form the boundaries of the new geographic area for the district.

2. The cost of the infrastructure for the proposed development.

3. The cost of the lot to the home builder or home buyer at the time the lot is sold.

4. The number of lots

5. The amount of profit to the developer for "developing" the lot.
(Amount paid minus the cost of the prorated cost of the land and the prorated cost of the infrastructure.)

[These are the same documents which will be provided as part of the disclosure under Part I requirements]

D. The service plan must also expressly provide that

1. **The territory** which forms the proposed district must be defined, including a detailed map, and the boundary may not be enlarged or reduced unless an application for modification is filed, heard at a public hearing and voted on in a public hearing.

2. **The purpose of the proposed district** must be detailed and may not be modified in any way without an application for a modification, heard at a public hearing and voted on in an public hearing. The city will only consider approving metro districts for the purpose of building homes and building infrastructure for those homes - both within the boundary of the territory. The city will not consider approving metro districts for any other purpose, including building infrastructure or providing services outside the boundary of the district.

3. No metro district may do anything as a metro district government that is not **expressly stated in the service plan**. The metro district has no right to take any action unless it is expressly stated in the service plan. A generic reference to being able to do everything allowed in the statutes is prohibited.

4. **Any proposed agreements** between the district and the developer **are prohibited** until the district board is 100% residents with no employees, principals or agents of the developer.

5. The city must **pre-approve any agreement** proposed by the district with any person or entity until the board is 100% residents with no employees, principals or agents of the developer. The city reserves the right not to approve any agreement proposed by the district with any person or entity where the city determines based upon its sole discretion that the proposed agreement is not in the best interest of the future or present residents.

The city must give notice of any proposed agreements by the district to the residents

of the district and the residents neighboring communities and decide whether or not to approve any such proposed agreements at a public hearing.

6. The **district is prohibited from entering into any loan or bond debt or imposing any taxes upon current or future residents** a.) until the board is 100% resident with no employees, principals or agents of the developer and b.) without first placing the question on the next ballot for a vote by the residents - on the question of imposing taxes or entering into any loan or bond debt.

No loan or bond debt and no tax increase may occur in the metro district unless the question is voted upon favorably by a majority of the residents who cast a vote on the issue at the next election cycle.

7. No metro district is authorized to impose upon its residents a mill levy higher than 35 mills for all the metro district tax debt.

7. The city will **only grant conditional approval** until the board is 100% residents with no employees, principals or agents of the developer.

8. During the time of conditional approval, the developer is required to file monthly, or at the discretion of the staff, weekly reports on money spent, income received, and progress of the construction of the development. These reports shall include copies of original invoices and receipts showing the detail of the expenses or income.

9. At any time during the course of the conditional approval, the city may at its sole discretion require the developer to appear at a public hearing and provide a report on the status of the construction and the city may require the developer to provide any information required by the city in order for the city and the residents of the community to evaluate the status of the development, expenses and income to the developer regarding the development.

10. At any time that the city determines, after a public hearing and opportunity by the developer to be heard, that the developer is not acting in the best interests of the current and future residents, the city may terminate the conditional approval of the metro district.

3. **Proposed Financial Plan**

A. The proposed financial plan shall strictly conform to the requirements of CRS 32-1-202 (2) (b). In particular, as stated in that statutory provision, there shall be no change to the financial plan unless the developer makes a formal application for a modification presented at a public hearing and vote on the proposed change with notice to all residents and residents in neighboring communities.

B. The proposed financial plan shall also strictly conform to the requirements set forth above for the ballot issue and service plan.

C. No financial plan will be conditionally approved that anticipates or proposes total debt (including but not limited to loan and bond) that exceeds 30% of the total assessed value of the development at any time, including but not limited to the time that the total debt is proposed to issue.

D. No financial plan will be conditionally approved that proposes a total mill rate for the metro district in excess of 35 mills.

4. **Proposed Agreements**

A. The city prohibits **any proposed agreements** between the district and the developer, employees of the developer or any agent of the developer until the district board is 100% residents with no employees, principals or agents of the developer.

B. During the time of conditional approval (until the board is 100% elected residents with no employees, principals or agents of the developer), the city must **pre-approve any agreement** proposed by the district with any person or entity, particularly intergovernmental agreements (IGA's). The city reserves the right not to approve any agreement between any person or entity and the district, that the city determines, based upon its sole discretion, is not in the best interest of the future or present residents.

The city must give notice of any proposed agreements by the district to the residents of the district and the residents neighboring communities and decide whether or not to approve any such proposed agreements after and during a public hearing.

5. **Proposed Disclosure to the Homebuyer**

No application for a service plan or approval for the creation of a metro district will be approved unless the developer prepares and circulates the following disclosure to prospective homebuyers at the following times:

A. The disclosure shall be presented to every prospective homebuyer at three times: 1.). When the prospective homebuyer comes into a sales office or encounters a sales person regarding the potential purchase of a home in the metro district territory. 2.). When the prospective homebuyer makes an offer on the home in the metro district territory. 3.) Three business days before the closing on the home in the metro district territory

B. The disclosure shall require a signed acknowledgement of receipt of the disclosure - signed by both the prospective homebuyer and the agent for the

developer or home builder or real estate sales agent.

C. The disclosure shall state:

1. From the proposed service plan and ballot issue the total amount of the debt limit.
2. From the proposed service plan and ballot issue the total amount of the debt finance limit.
3. From the proposed financial plan the total length of the proposed debt payments.
4. From the proposed financial plan the average total annual payment (principal and interest) by all the residents for the total length of the debt payments.
5. The total number of lots that will be created and sold for the metro district and the pro-rata share per lot for the total annual payment of principal and interest for all the metro district debt for the total length of all the debt payments.
6. From the proposed ballot issue and service plan the maximum interest on any debt.
7. That the resident is eligible to vote and serve on the board of directors as soon as they enter into a contract to purchase the property in the metro district territory
8. That the city will continue to regulate the conditional approval of the metro district until the board is 100% residents with no employees, principals or agents of the developer.
9. That no loan or bond debt or taxes will be imposed on the residents until and unless a majority of the voting residents vote at the next election cycle to impose that loan or bond debt or taxes.
10. That the metro district taxes will be higher than the taxes for the same property in a non-metro district.
11. The pro-rata share of your cost for the land is _____.
12. The pro-rata share of your cost for the infrastructure is _____.

13. The cost of your lot which includes the cost of the land, the cost of the infrastructure and profit to the developer is _____.

Continued Critical Evaluation of the Lakewood Staff Memo Proposed Ordinance Provisions:

A. Disclosure to Potential End-users

Some residential end-users have expressed surprise, after a purchase, of the existence or effects of a metro district that includes the end-user's property. There are several existing obligations that ensure notice to potential end-users of a metro district. Those methods are as follows

- All Purchase Agreements for Real Estate within a District – This notice, which is required to be in bold-faced type, indicates that taxable property in a district may be subject to general obligation indebtedness of a special taxing district and that owners of such property may be at risk for increased mill levies and tax to support payment of such debt. Purchasers are urged, within the notice, to investigate the district by contacting specifically noted governmental departments and to review tax related information. State law requires that this notice be contained within the property purchase agreement.
- Court Order of Organization of or Inclusion in a District – When a district is formed, the court issues an Order of Organization. The Order of Organization is required, by state law, to be recorded in the county property records. Similarly, if a district's boundaries are expanded by the inclusion of additional property, the court issues an inclusion order that is recorded. Title work for buyers of property within a district should identify the court's Order of Organization or inclusion order, whichever is relevant, to potential buyers.
- Special District Notice – State law requires that a notice disclosing the presence of each special district be recorded in the county property records. The notice must include a map of the district, the district name, the district's scope (e.g., service plan or statement of purpose), notice that the service plan is available from the state, a statement that the district can raise revenue for a variety of purposes by issuing debt, levying taxes, and imposing fees and charges, and a statement that more information is available from the district or state. This notice should be provided to a buyer in the title work for a property.
- Title Insurance Policy – Each title insurance policy for sale of residential

property must disclose that the property may be in a special taxing district and how to obtain a certificate of taxes due and the boundaries of special districts.

- Property Tax Statement – After a district has imposed a tax on properties, it will appear on the property tax statement available from the county treasurer along with other property tax entities and rates.

The disclosures noted above are all available prior to a purchase being concluded. While helpful and probably adequate for many buyers, notices in purchase contracts, county records and title work tend to be embedded in substantial documents that some potential end-users may not review thoroughly. Further, purchase agreements and title work are documents that typically become available after a potential end-user has evaluated many other considerations associated with potential purchase of a property.

None of these "disclosures" are the least bit effective. They are "disclosures" in name only. There has been no genuine effort to educate potential homebuyers about the financial risks associated with metro districts. The evidence is to the contrary. Developers actively and deliberately work to suppress transparency about metro districts.

The City may be able to improve potential end-users' awareness of metro district existence. The overall goal may be to timely provide information such that a prudent or reasonable person could avoid being surprised, after completing a purchase or lease, by obligations attributable to the existence of a metro district.

Preliminary Recommendation A.1.: Sellers, lessors, real estate professionals and sales people of property within a metro district could be required to disclose information about the metro district to potential end-users perhaps as follows:

- A summary about the metro district in plain language.

This turns into a sales pitch complete with false and misleading information.

See,

<http://rooneyvalleynews.com/special-district-abuse-brookfield-residential-disclosures-less-than-transparent/>

- Access to more detail including the metro district service plan, services and improvements to be provided, financial parameters that may affect an end-user, governance structure including board members and election rules, geography and the latest annual report.
- Disclosure early enough in the process for it to be a part of considering

whether to enter into a transaction.

Preparation of a model disclosure document is discussed later in this memorandum. Another potential step is requiring real estate professionals to support earlier and more complete disclosure.

See the proposed half-page disclosure set forth above in the executive summary and outline for the new metro district ordinance.

To enhance the potential of accomplishing this goal, district-specific information could be required to be part of initial inquiry information packets provided by a seller, lessor, real estate professional or sales person and confirmation could be required that receipt of the information by the potential end-user was timely.

Preliminary Recommendation A.2.: Sellers, lessors, real estate professionals and sales people could be required to obtain a signed and dated acknowledgement from the potential end-user indicating receipt of the disclosure discussed above. The acknowledgement could be required to be executed a defined minimum number of days before closing, or perhaps before contract execution, on any transaction that would cause the purchaser or lessee to become a district end-user.

A signed acknowledgement is also recommended above.

Enforcement of *Preliminary Recommendations A.1.* and *A.2.* is likely to be difficult and perhaps impractical, particularly with sales after the initial developer's sale of a property. For example, a fourth or fifth owner may or may not be aware of requirements such as *A.1.* and *A.2.* and an end-user's recourse may be limited or questionable due to the multiple disclosure aspects of existing state law noted above. As mentioned earlier in this memorandum, these are *Preliminary Recommendations* for several reasons including detailed research into whether City Council's intended results can be achieved.

An additional concern is the legal or political liability that *A.1.* and *A.2.* may create. If the City creates these two obligations and they are not carried out, end-users may seek recourse against the City or express dissatisfaction to future City Council's about the City's ineffectiveness. The dissatisfaction may be justifiable because the City may have no ability to monitor or enforce compliance with these recommendations.

The liability will be on the developer or home builder. The city ordinance will set the standard of conduct and a failure to comply with that standard will open the developer/home builder to liability, not the city.

An alternative to *A.1.* and *A.2.* may be for the City Council to work toward improved metro district disclosure through the state and its regulatory role in real estate sales,

which is known to real estate professionals and has enforcement provisions.

Preliminary Recommendation A.3.: City Council could support a change to state real estate transaction requirements to require earlier disclosure of metro district-specific information by sellers, lessors, real estate professionals and developers' sales people involved in a potential transaction and in the documents they often use (e.g., the Multiple Listing Service).

Preliminary Recommendation A.1. and A.2. have potential appearance, enforcement and remedy difficulties. If improving disclosure is desired beyond existing disclosure requirements, *Preliminary Recommendation A.3.* may be a more meaningful effort.

The city and the state legislators keep pointing fingers at each other. It is time for the city to take responsibility. Either prohibit metro districts or regulate metro districts. There is no middle ground once you create them.

B. **District Governance Including District Board Elections**

Metro districts are governed by an elected board. State law defines eligible electors for metropolitan district elections and, consequently, who is eligible to be a district board member.

There are typically two periods of a metro district board's existence during each of which the board has fundamentally different character. Initially the board consists of individuals affiliated with the developer. This is because of the developer's ownership or control of the property the metro district encompasses. As end-users begin to own property, they can be elected to replace developer-affiliated board members in metro district elections.

During the initial developer-controlled board period several key decisions are typically made that carry forward into the period when end-users control the board. Perhaps the City's interest in the governance of the metro district is somewhat different during the initial, developer-board period in comparison to the later end-user controlled board period.

This is an understatement. The city must closely oversee and regulate the metro district until it is 100% resident controlled with a 100% resident board with no employees, principal or agents of the developer.

Any approval of a metro district must be conditional until the boards are 100% residents.

The proposed ordinance provisions above provide for the close oversight and required disclosures by the developer to the city during this period of time.

District Governance – Initial Board Phase Only (Developer Controlled)

During the first phase of a metro district, while the board is controlled by developer interests, the City Council may desire a more direct communication link to the district to increase awareness of district activity. A City representative cannot be a board member because board members must be persons who own property in the district or are obligated by contract to pay taxes on property in the district.

Preliminary Recommendation B.1.: City Council could appoint a person to attend district board meetings during the time the developer controls the board of any district that has or will have residential property. Of particular importance is ensuring the community and future city councils understand that this is a communication connection between the City Council and the district board and does not create, in itself, any actionable authority or responsibility for the City Council given the district's independent governmental status.

Again, this is much too passive. This will quickly devolve into a tiny bandaid on a mortal wound. The disclosures by the developer will provide the needed information for the city and the residents to check and balance any potential abuses.

District Governance – Initial and Subsequent Board Phases

There have been indications that some end-user electors may not be aware of their opportunity to vote or to run for board positions in subsequent elections. State law provides that a call for nominations be published annually in a newspaper. A disclosure that is more visible to electors may be helpful.

Preliminary Recommendation B.2.: Concurrent with the state-required annual publication of self-nomination and election information, a district could provide the same information via direct mailing to all electors or on the district's website.

To facilitate end-user participation, metropolitan district board meetings should be held within the district. However, that is not always practical because the district may be vacant land for a time and even when fully developed there may be no suitable facility for district meetings (e.g., in the case of a district of solely single-family homes).

Preliminary Recommendation B.3.: Metro district board meetings could be held

within the district for any district that has or will have residential property. When that is not reasonably practical, the meetings could be required to be held within the City of Lakewood. To avoid additional cost to the district, the City could make available space in a City building for the district meetings. This recommendation could apply only to metro districts that have or will have residential uses.

These are good ideas and should also be adopted.

District Governance – Multiple District Structure

A development project may be proposed to have multiple metropolitan districts. Multiple district structures are used for a variety of reasons that generally fall into three categories. First, multiple districts may best serve end-users of a large, long timeframe build-out project. Financing may be most efficient for long timeframe projects if issued incrementally as needed to meet each project phase's infrastructure needs. Each project phase could be a separate district to support phased financing.

Secondly, end-users in a development that has distinctly different needs in different geographic areas may best be served by multiple districts. An example might be a development project that has residential development in one area and non-residential in another. A multiple district approach may be preferable in these types of situations in recognition of different types or amounts of costs for which each district may have responsibility.

A third use of a multiple district structure is for one district to be retained by the developer (sometimes referred to as the control or coordinating district and generally a small geographic area). The other district(s) (sometimes referred to as the financing district(s)) would, while the developer controls the boards of all the districts, contract with the control district for the control district to issue debt, which the financing districts share responsibility to repay; contract for the construction of and then own and operate facilities or improvements; and receive revenues generated from the financing districts.

Preliminary Recommendation B.4.: A control district multiple district structure could be prohibited for metro districts that have or will have residential property.

This is also a good proposal. There is no legitimate purpose served by more than one district in residential development.

C. Financial Considerations

Metro districts are primarily a financing tool. There are a variety of potential financing

needs and options. The following topics and *Preliminary Recommendations* are intended to protect the district and its end-users while recognizing the complexity and evolutionary nature of the financial markets and while retaining the flexibility for districts to accomplish their varied intended purposes.

Financial Considerations – Service Plan Review

Metropolitan districts' proposed service plans include information that the City is not routinely in the business of reviewing such as the financial plan. Because metro district proposals are not frequent in Lakewood, it is impractical to maintain adequate staff capability to perform a complete review of service plans.

Preliminary Recommendation C.1.: The City could obtain the services of a consultant to review the cost estimates and financial plan for the district's proposed services, improvements and funding. Cost for these services could be recovered through a fee charged to the district organizer.

The more detailed the City's review of the district's proposed finances, the greater the potential for future end-users to assume that future district financial issues that may arise could have been prevented by the City. If *Preliminary Recommendation C.1.* is implemented, the resolution approving each district's service plan should include an explicit statement that the City Council relied on the financial consultant that used information provided by the district proponents to perform its review.

A district's financial plan is nonbinding but its financial projections inform the service plan's financial restrictions discussed below, such as a debt mill levy cap. A link between the financial projections and the financial restrictions is reasonable and would support fairness to end-users. Given the inherently imperfect nature of financial projections years into the future and the rigidity of service plan financial restrictions the link between the two should be carefully considered.

Preliminary Recommendation C.2.: The financial plan for a proposed district should be based on estimates of the actual costs of the improvements to be funded and the financial restrictions of the service plan should have a reasonable relationship to the financial projections.

If the city is going to consider approving metro districts instead of prohibiting metro districts, it must have trained neutral staff to evaluate the service plans and other documents related to the metro district.

Using consultants will only further corrupt the process. Virtually all of the metro district players all work from the same template which is driven by the developers. These consultants will devolve quickly into agents of the developers.

Financial Considerations – Debt

Financial risk associated with land development includes the combination of the predictability of costs and of revenues to cover those costs. A key to fair utilization of metro districts is to avoid shifting those two risks—that costs will exceed projections or that a revenue shortfall will occur—from the developers and financial entities to the metro district and its end-users.

To avoid those two potential risk shifts a fence can be created around the financial obligation of the metro district and its end-users. If the end-users' financial obligation is fenced in by pre-determined limits, then the risks of costs exceeding estimates and revenue being less than estimates remain with the developer and financing entities.

Creating the protective fence requires the following:

- ü A defined scope of improvements for which metro district debt can be used.
- ü A cap on the debt mill levy that end-users will be responsible to pay for metro district debt in districts that have or will have residential properties.
- ü A cap on the duration of the debt mill levy for which residential end-users will be obligated.
- ü A reasonable debt interest rate.

This is what the developer are doing now. Only its not a "fence" its actually a blank check. The "cap" or "limit" is so high that there is, in fact, no cap or limit at all.

The traditional way of financing infrastructure is the safest because it relies upon competitive market forces to provide the checks and balances. The developer uses his own money, just as he does now, but his repayment is in the money he earns from the sale of the lot. And the sale of the lot is going to be competitive. So he will be as efficient in spending his money as possible and competition will keep the prices low enough to provide a quality product at a reasonable profit.

The metro district financing on the other hand corrupts the competitive market forces. The "cap" or "limit" becomes a guarantee. There is no check and balance. There is no accountability for what the developer spent the money on or his income. He simply charges the maximum of the "cap" or "limit". So the profit becomes not what he earned but how much money you have in your wallet.

This provision guarantees one of the worst elements of metro district abuse.

With these boundaries in place, each residential end-user's financial obligation for retiring debt associated with the costs of developing the end-user's property is fenced. With good information disclosure, as discussed elsewhere in this memorandum, a potential residential end-user will be able to understand the following:

- How is my cost calculated for paying metro district debt?
- How long will I be paying for metro district debt?

See the proposed disclosure above.

Further, the fencing is effective regardless of whether the board is in the developer-controlled period or the board is controlled by end-users. It is also effective regardless of how much of the debt is for reimbursement of developer advances used to create the neighborhood and how much is for infrastructure that will be built after the district's debt is issued.

This reasoning helps make the point against metro districts. By guaranteeing the payment will be the maximum "cap" or "limit", there is absolutely no accountability. No check and balance. This is a really bad idea.

This approach also provides flexibility for the metro district to respond to the financial markets at the time debt is issued. Regardless of financial market evolution, financial regulation changes, or other factors, a district and the financial markets can fulfill their obligations knowing that the end-users' role is defined and limited.

Preliminary Recommendation C.3.: Debt issued by a metro district that does or will include residential property could be limited to a maximum debt mill levy (amount) and maximum debt mill levy term (duration).

Preliminary Recommendation C.4.: Metro districts could include a statement in each bond and any other debt-related instruments that explicitly identifies and obligates the bond holder to accept the limitation on the metro district's obligation under the bond.

Debt can be issued publicly or can be placed privately. In a public market transaction, the competitive market will determine the appropriate interest rate and the acceptability of the structure of the debt. Public market transactions typically result in the debt being

purchased by financial professionals and large-scale investors such as financial institutions and institutional investors.

In privately placed transactions, an independent financial advisor's professional review of the structure and interest rate on the debt could provide protection for the end-users that the debt is reasonable based on the district's financial circumstances.

More of the same. Institutionalizing a guaranteed return instead of relying upon the competitive market forces.

Preliminary Recommendation C.5.: Prior to a metro district privately placing debt, the district could be required to obtain a certification from an independent financial advisor experienced in such debt that the terms of such debt are reasonable given the district's financial circumstances.

Developers are working hard to sell these independent financial advisors already. Another metro district developer oriented "expert" to tell the residents what to do. In our community they were used to sell the ideas of issuing more bonds to pay the developer more in profits without an independent forensic evaluation of the income and expenses. The "expert" basically said "trust" the developer and just "go along to get along" because "that's the way it works here."

Financial Considerations – On-Going Expenses

In addition to financing infrastructure, amenities and other improvements in the early stages of development, metro districts can operate and maintain facilities and property that the district may own or control. On-going costs require on-going revenue that can be varied as costs change over time

Preliminary Recommendation C.6.: For a metro district that has or will contain residential property, the service plan could pre-define, for the period the board will be developer controlled, estimated operation, maintenance and any other costs not associated with debt. It could also contain an estimate, in current year dollars, of the annualized operation and maintenance cost anticipated after the district is fully built-out. By the service plan including estimates of operation and maintenance costs, a potential end-user would have information to make a ballpark estimate of perpetual costs the end-user may experience.

Future end-users may infer from such information that, if financial issues arise with district operation and maintenance costs, the City should have prevented the issue. Perhaps it should be made clear that this is information for potential end-users and was not evaluated by the City.

Again, if the city allows metro districts, they have to take responsibility for the oversight and regulation of the districts until the boards are residents 100% without developer employees, principals or agents.

Financial obligations for operations and maintenance must be monitored and any abuses corrected until the boards are 100% residents.

Under no circumstances may metro districts go into debt with loans from the developer or bonded debt to pay for operations and maintenance.

Financial Considerations – Revenue Sources

State law allows the use of fees, charges, and taxes by metro districts to defray expenses. Some sources of funds are better suited for specific uses than others. Fees may be an appropriate revenue source for on-going maintenance or operations. For instance, a metro district could require a fee for use of a community building or pool, which would be similar to City fees for use of City recreation centers. Because some district end-users may choose not to use such a facility, charging a fee to those who do may be a fair choice by a district board.

However, requiring fees or other payments, other than property tax, from end-users for the purpose of debt retirement or capital costs may circumvent the limitation intended in *Preliminary Recommendation C.3.*

Preliminary Recommendation C.7.: Metro district boards may choose to assess fees, but such fees should not be used for capital costs or for repayment of debt so as not to circumvent the restrictions in *Preliminary Recommendation C.3.*

No objection to this proposal; but continued objection to the C3 concept of limits and caps. The standard way of financing infrastructure with competitive market forces is the most efficient and effective.

There are grant funds potentially available to metro districts that are also available to the City.

Preliminary Recommendation C.8.: Metro districts could be generally prohibited from applying for or accepting funds for which the City is eligible to apply or receive. However, with the City's agreement, the District may apply for such funds or co-apply with the City.

Financial Considerations – Specific Ownership Tax

Generally, metro districts are thought of as self-taxing entities meaning that those who pay the costs are those who benefit from or are required to provide the district's improvements and services. To a large degree this is true, except for specific ownership tax.

No, this is a myth. Metro district financing guarantees the developer benefits while suppressing the residents - the actual taxpayers - ability to control their own taxing and spending.

State law mandates how specific ownership tax is collected and distributed. Specific ownership tax is paid with each annual registration of a vehicle. It is remitted from the vehicle sellers to the county. The county distributes the funds according to state law to all property tax collecting entities in proportion to their property tax. Each property tax collecting entity, including metro districts, receives a portion of the specific ownership tax collected from throughout the county.

In Jefferson County approximately \$4.2 million of specific ownership tax is distributed to metro districts each year. If there were no metro districts in Jefferson County, the JeffCo Public Schools would receive approximately \$2 million more each year, Jefferson County about \$1 million more, approximately \$500,000 more would be available to fire districts and nearly \$55,000 more to Lakewood annually.

Preliminary Recommendation C.9.: A state law change could stop the growing distribution of specific ownership tax to metro districts and away from other public entities. It is likely a law change would not affect distribution of specific ownership tax for pre-existing districts because it could significantly harm such districts' ability to fulfill their service plan obligations.

Preliminary Recommendation C.10.: An alternative to, or interim step until, a state law change may be a requirement that future metro districts in Lakewood annually remit revenue from specific ownership tax to and in proportion to property tax revenues of entities other than metro districts or remit it all to the City.

This makes sense. There is no reason for metro districts to collect a ownership tax (automobile tax). They only exist to pay off the \$30,000 cost of infrastructure - assuming the \$30,000 isn't already paid with the cost of the lot.

D. Developer Transactions with Districts

Given the inherent conflicts of interest for metro district board members who are affiliated with the developer, limitations on transactions between the developer and metro district are reasonable.

Initial expenses necessary for land development are paid by the developer. Ultimately, the end-users pay these costs either through the metro district or through purchase of developed properties.

Now we are beginning to address one of the essential areas of abuse. If we stop right here, the question is, which means of paying for the \$30,000 cost of infrastructure is the most efficient, effective and fair to all parties.

The traditional means used throughout the United States is the most efficient, effective and fairest to all parties, not metro districts. Metro districts cost more in taxes, with no discount on the sale of the properties, guaranteeing large profits to the developer with no check and balance or accountability. The final payment is a function of how much money the residents have in their wallets, not what the developer earned.

As financial capacity of a district is created by a district's development, initial costs may be reimbursed by the metro district to the developer. The decision to reimburse developer advances usually occurs while the metro district board is controlled by the developer.

Preliminary Recommendation D.I.: A metro district's reimbursement agreement with the developer could be defined in the service plan and could establish the reimbursement amount, other terms and accounting requirements. Such an agreement could include reimbursement of actual not-yet-incurred expenses based on parameters defined by the agreement.

This is handled in the proposed ordinance by only conditionally approving metro districts and aggressively regulating the district with monthly or weekly public reporting and oversight until the boards are 100% residents with no developer employees, principals or agents.

Portions of the real property within most development proposals are necessary for public facilities such as roadways that will be owned by a public entity. Providing land for public facilities, at no cost to the public, is a normal development requirement. Land

within the metro district boundaries is typically owned or controlled by the same interests as those proposing creation of a metro district.

A purchase of real property from the developer by a metro district while the district board is developer controlled creates a direct conflict of interest that is unnecessary.

Preliminary Recommendation D.2.: The developer could be required to donate, at no cost to the district, all real property rights that are owned by the developer or its affiliates and are needed for public purposes.

This is or should be the normal course. The residents paid for the land and improvements as part of the \$30,000.

Again, the proposed new ordinance addresses this issue by requiring city oversight and approval of any agreements until the board is 100% residents.

Transactions between a developer and a metro district are less likely to occur later in the life of a metro district. However, in some districts, such an arrangement could be beneficial for maintenance or operation of district facilities or for creation of district facilities or public improvements. A metro district board that is controlled by end-users could find such a transaction beneficial to end-users.

Preliminary Recommendation D.3.: A metro district could, during the time the board is end-user controlled, be free to transact business with the developer.

Yes. Once the boards are 100 % residents, then they are on their own.

E. Breadth of Services Provided by a District

Metro districts are required by state law to provide at least two of the services noted earlier in this memorandum. Some metro district proposals have included authorization for all the services in that list regardless of whether such services are explicitly intended by the service plan.

Preliminary Recommendation E.1.: The types of services and facilities authorized for metro districts could be limited to those explicitly necessary to fulfill the service plan.

Agreed. See proposed ordinance and related discussion.

Metro districts can provide facilities that will appear to be available to the general public including individuals who are not district end-users such as sidewalks, paths, trails, open space and parks. Districts can also provide facilities that are intentionally designed for

only the anticipated number of district end-users and may be capacity-limited such as recreation centers or pocket park playgrounds embedded in small residential areas.

Preliminary Recommendation E.2.: Generally, trails, paths, sidewalks and some parks owned by a metro district could be required to be open to the general public including non-district City residents. A district could limit access to district end-users or charge a fee to allow non-end-users access to facilities with limited capacity or with operation or maintenance costs that are affected by usage. Identification of which, if any, facilities would not be open to the general public could be established in the district's service plan.

Metro districts can construct or provide improvements outside of their boundaries and such facilities are sometimes necessary to provide services or improvements to serve the property located within the district. As an example, some districts construct transportation improvements adjacent to or near the boundary of the metro district but outside of the district's legal boundaries. Often such improvements are a requirement of the development imposed by the City or other jurisdiction and are provided by a district.

Some circumstances may arise that justify a district providing services outside its boundaries.

Preliminary Recommendation E.3.: Metro district service to properties outside of the district could be permitted in several circumstances that would have minimal material effect on the district such as the following:

- The services or facilities are a necessary part of anticipated future service to an area planned for inclusion in the district; however, such improvements should be either the minimum necessary to facilitate future expansion for service to the inclusion area or should occur after the area is included into the district.
- The district is reimbursed for the services.
- A district board that is end-user controlled deems the services beneficial to the district.
- If providing service outside the district is a no cost or low-cost addition to services provided within the district. Such a situation may occur when the district requires a main utility line to serve its properties and an adjacent property would connect to that utility line, at minimal district cost, to serve the adjacent property. This is consistent with most utilities, which provide networks that routinely cross boundaries of multiple developments.
- The services or facilities are necessary to fulfill the district's obligations under its service plan.
- Upon approval of a service plan modification by the City Council.

As noted in the proposed ordinance, no metro district should be required to pay for and build any improvements outside the boundary of the district. Once the residents arrive and the

boards are 100% residents with no developer employees, principals or agents, then they can vote on whether or not to tax themselves to pay for improvements outside their district boundary.

A metro district can overlap with or replace the need for a property owners' association (POA), often referred to in a residential area as a Homeowners' Association. (HOA). Such an association can have a variety of purposes including, but not limited to one or more of the following: managing and operating community facilities, maintaining community property, providing community communication, enforcing covenants and providing design review. Metro districts can perform these services also and have some distinctions compared to POAs such as the following:

- Metro districts have a state law defined process for electing board members. POAs do not.
- Metro district boards are subject to several transparency and fairness requirements by state law, which are listed earlier in this memorandum. POAs are not.
- City Council has an explicit role in creation of metro districts but not in POAs.
- Property tax, available to metro districts and not to POAs, is a more reliable source of revenue than dues or fees resulting in a higher confidence that the community organization's obligations can be fulfilled.
- Property tax has a reliable, fair, well-defined collection process that is managed by the county treasurer. Collection of POA dues and fees is subject to court processes, which means more of the amount owed is lost to administrative and legal expenses.
- POAs typically must file annual informational tax returns, an expense obligation not applicable to metro district end-users.

It may be less confusing and be more efficient for end-users to have either a metro district expense or a POA expense rather than both.

There is the possibility that a metro district and POA should overlap. For example, a small townhome neighborhood within a larger metro district that is otherwise detached single-family homes may warrant a POA for the townhomes. Townhomes, by definition, have community responsibilities, such as maintaining commonly held real estate, that may not exist in the detached single-family areas.

Preliminary Recommendation E.4.: Property owners' associations could generally be prohibited in a metro district that has or will have residential properties. However, also having a POA may be appropriate if circumstances are shown to specifically warrant both.

There is no reason to create another level of government to provide private contractual HOA type services. Using a metro district to correct problems with the operation of HOA's is a

bad idea. Fix the HOA statute, don't compound the problem by adding another layer of government in the form of a metro district.

Metro district property are completely public. HOA property are private. State and federal regulations limit the ability of residents in a community to use that property. For example, adult swim hour at a metro district pool is discriminatory while adult swim hour at a HOA pool is not.

Metro districts may create special improvement districts. Special improvement districts can generally be thought of as a geographic area within which the property owners pay a special assessment for defined improvements that benefit those properties whose owners pay the assessment. As an example, the City of Lakewood used special improvement districts in the past to pave gravel streets with the owners of adjacent properties paying a portion of the cost. No metro districts in Lakewood have created special improvement districts.

Preliminary Recommendation E.5.: Creation of a special improvement district by a metro district could be considered a material modification of a service plan requiring City Council approval unless creation of such special improvement district is included in the original service plan.

Again, let the city create special improvement districts. This is not a reason to allow metro districts.

F. Geographical Boundaries of Districts

Most metro districts serve a single geographic area when public street rights-of-way are ignored. It is possible that two or more geographically separated areas within a single metro district may, over time, have disparate interests.

Preliminary Recommendation F.1.: A metro district could be limited to a single, contiguous geographic area unless, through the service plan approval process, long-term interests of multiple areas proposed for a district can be shown to coincide. The single, contiguous area could be composed of the initial district boundaries plus future inclusion areas.

Not sure what the point is here. Keep it simple. The district should be limited to a well defined geographic area and that area may not be enlarged or reduced without a public hearing and vote by the city council at a public meeting.

Initial financial modeling confirms that a metro district area is anticipated to successfully support certain improvements or services. If properties are later excluded from the district the remaining property may or may not be able to support those costs. If an exclusion occurs after legal commitments are made by the district to provide, operate or maintain improvements or services, the area that remains within the district may become financially overburdened.

Preliminary Recommendation F.2.: Any exclusions of property from a metro district could require City Council approval.

The statute already provides a check on this abuse.

G. Acquisition of Property Rights and Eminent Domain Use by Districts

Eminent domain, also known as condemnation, is a tool available to various governmental entities that allows such an entity to acquire a property or a portion of a property for a public purpose but only in exchange for payment of fair market value. A key feature of eminent domain authority is that the governmental entity can, through a prescribed process and with court approval, compel the sale of the property rights needed for the public purpose. The City of Lakewood has eminent domain authority but relies first on reasonable, arms-length negotiations to seek an agreement satisfactory to all parties. The courts are the final backstop to prevent misuse of eminent domain

Unless otherwise limited by applicable service plan provisions, metro districts may utilize eminent domain for acquisition of property rights under the same state laws.

The Uniform Relocation Assistance and Real Property Acquisition Policies Act was created to protect the rights of property owners through an eminent domain acquisition process. The Act is designed for federally funded projects and may, given the difference in scale, require some adjustments for metro district application.

Preliminary Recommendation G.1.: Metro districts could be required to comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act for their acquisitions possibly with some modification including an exception for minimal value acquisitions.

It is conceivable that property rights near but outside of a metro district could be needed to provide necessary public improvements such as a road at the perimeter of the metro district or a utility line connection from outside of the district. State law includes limitations on the use of eminent domain by metro districts. It does permit eminent domain within or without district boundaries, if the condemnation is for an authorized purpose.

Preliminary Recommendation G.2.: The potential need for metro district use of eminent domain to acquire real property rights for necessary public improvements

could be identified in its service plan and be limited to that necessary to accomplish the improvement obligations of the district as identified in the service plan, in addition to conforming with state law limitations.

Preliminary Recommendation G.3.: Any other use of eminent domain proposed by a metro district could require notice from the district to the City Council and, within a set time period (perhaps 45 calendar days), City Council could have an opportunity to object. If the City does not object within the prescribed time, the district could go forward with the condemnation. If the City does object a process to reconcile the parties, perhaps as described in *H.4.* below, could occur.

Or the ordinance could prohibit metro districts from using the eminent domain power. And this prohibition could be written into the service plan.

There should be no reason for a metro district whose purpose is to finance the \$30,000 cost of the infrastructure to seize land by eminent domain.

H. City Council Authority to Review District Changes

Metro districts are required to obtain City Council approval of any material modification to the service plan. However, the City does not have complete discretion to define whether an action is a material modification of a service plan.

Sure it does. The city can and should define a material modification. It should make clear, for example, that any change in the purpose of the district and any change in the boundary must be presented at a public hearing and voted upon by the council in a public meeting. Additionally, the service plan only states what the district can do and it should make crystal clear that the only function of the metro district is to finance the cost of the \$30,000 per lot infrastructure for the construction of homes for a particular geographic area. Any changes must come before the city council and public community.

By state statute, material modifications are defined as follows:

Changes of a basic or essential nature, including but not limited to the following: Any addition to the types of services provided by the special district; a decrease in the level of services; a decrease in the financial ability of the district to discharge the

existing or proposed indebtedness; or a decrease in the existing or projected need for organized service in the area.

Note that the examples in the preceding paragraph are provided only as examples and not as limitations. The material modification definition rests on the phrase “changes of a basic or essential nature.”

Preceding sections of this memorandum include actions by a metro district that could be considered service plan material modifications requiring City Council approval. Because the definition of a material modification under state law is broad, service plans may define whether certain actions constitute a material modification and may contain a non-exclusive list. Those actions which constitute material modifications to the service plan or require City concurrence could include any of the following:

1. Changing the scope of improvements or services.
2. Exceeding debt related limitations (e.g., debt mill levy cap and debt mill levy duration).
3. Applying for grants or other funds for which the City is eligible.
4. Changing terms for reimbursement to the developer.
5. Providing services to property outside of the district that would not fit within the listed minimal effects (see *Preliminary Recommendation E.3.*).
6. Allowing a property owners’ association within a district.
7. Forming special improvement districts where not permitted under the service plan.
8. Changing metro district boundaries that would exclude property from the district.
9. Using eminent domain in a manner requiring City concurrence.

Additional actions that could be considered material modifications of the service plan include the following:

10. Defaulting materially on any financial or contractual obligation.
11. Material shortfall in district revenue from the service plan’s financial projection.
12. Changes included as examples in the statutory language (quoted above).

This is not intended to be a limiting or comprehensive list of actions that may be material modifications of a service plan under state law. Anything else that would change the basic or essential nature of the service plan of a district would also require City Council review as a material modification of a district’s service plan.

Preliminary Recommendation H.1.: Future service plans should include a non-exhaustive list of actions that may constitute material modifications.

It is always dangerous to try to inventory all the potential changes. For example, the list above fails to include changing the boundary to include land.

The most effective way to manage this issue is to say what the statute makes clear. Nothing can be done in a district unless the service plan says it can be done. The general powers and functions listed in the statute only apply if the service plan says they do. The service plan, not the statute, defines the precise boundaries of what the district can do and if its not in the service plan, they can't do it.

Putting it in this context, adding an example of things they can't do will help make the point. But it must be emphasized that the list does not change the fact that if it isn't in the service plan, it can't be done.

It may be possible in some fact situations that a change of a type included in the above list will not change the “basic and essential nature” of the service plan because it is minor.

Preliminary Recommendation H.2.: A metro district board that believes an action identified pursuant to *Preliminary Recommendation H.1.* does not rise to the threshold of changing the basic and essential nature of the service plan could be required to provide a written explanation to the City. The City could respond within a pre-defined period (perhaps 45 calendar days) either concurring with the district’s position or asserting that and explaining why the action is a material modification requiring City Council approval. If the City does not concur, *Preliminary Recommendation H.4.* could provide the resolution process.

Again, the ordinance and the service plan must define in no uncertain terms what changes must be pre-approved by the city through the public hearing and vote process. Everything that is not expressly allowed in the service plan.

The provisions of *Preliminary Recommendation H.2.* should precede a district pursuing the statutory process that allows it to provide notice and proceed if no objection is received to an action the district deems to not be a material modification of its service plan. The remedy for the statutory process is legal action by the City to pursue an injunction for relief. The statutory process would remain available, but *H.2.* would insert an alternative resolution process (described below) during which the district and City would pursue resolution without court involvement.

This is fine.

The City may identify a district action as a material modification of the service plan without such acknowledgement by the district.

Preliminary Recommendation H.3.: Upon notification from the City of a potential material modification, a metro district board could be required to concur with the City’s position or report the district’s reasoning that such action is not a major modification of the district’s service plan (perhaps within 45 calendar days). Such a report could be in writing and/or by presentation at a public City Council meeting. If the City does not concur, *Preliminary Recommendation H.4.* could provide the resolution process.

The language in the proposed new ordinance makes clear that if the city says it is a modification, it is a modification. The developer does not define the modification - that is up to the city. If it is not allowed in the service plan, then it is a modification.

State law does not provide a non-litigation process to resolve potential differences between a metro district board’s opinion and the City’s opinion whether a particular action is a service plan material modification requiring City Council concurrence.

Preliminary Recommendation H.4.: If a district and the City disagree after the steps suggested in *Preliminary Recommendations G.3., H.2.* or *H.3.* the parties could have a reasonable time and process to resolve the question prior to either party filing legal action. This process may be a negotiation period and/or a mediation and prior to any court filing without prejudicing either party’s potential court filing.

Under the proposed new ordinance, there is no need to set up a process to litigate whether or not something is a modification

I. District Reporting Obligations

Annual reporting is a typical business function of metro districts. The Colorado Department of Local Affairs (DOLA) requires certain information be reported each year and makes that information publicly available via <https://dola.colorado.gov/lgis/>. The City has typically required metro districts to provide annual reports.

Preliminary Recommendation I.1.: Annual reports from metro districts could provide summary information in plain language (including financial obligation calculation examples) and either provide or provide access to additional specifics. Topics included in a typical metro district annual report may vary depending on the district’s obligations for providing improvements and services, the district’s on-going operational and maintenance responsibilities, and the financial aspects of each district’s authorizations including sources and uses of funds.

Preliminary Recommendation I.2.: Metro districts could routinely notify end-users of the availability of a district's annual report and how to access it.

For districts that have or will include residential properties and during the period that the district board is developer controlled, a more public presentation of annual district information may be helpful.

Preliminary Recommendation I.3.: Until end-users control the board of a metro district that has or will have residential properties, the board could present a summary of each annual report to the City Council during a public City Council meeting. It must be clear that the presentation is information for the community and that City Council has no actionable authority regarding the information presented.

Preliminary Recommendation I.4.: When the board of a district that has or will have residential properties is end-user controlled, the board could notify the City Council of its availability to present a summary of its annual report to City Council if requested by City Council; however, future City Councils should be reminded that any costs of such presentation will be borne by end-users and that the City Council's purview is quite limited by state law. It must be clear that the presentation is information for the community and that City Council has no actionable authority regarding the information presented.

Annual reporting, whether only written or including a presentation to City Council, may carry with it potential legal or political liability. While the reporting could be quite comprehensive regarding the district's progress, upcoming actions and condition, the City has a very narrow role regarding districts as described elsewhere in this memorandum.

No. The city has a unlimited obligation to provide oversight and regulation of metro districts particularly until the boards are 100% residents with no developer employees, principals and agents.

The reporting must be at least monthly if not weekly to provide timely and consistent oversight of the developer's expenses and income. The developer will try to use the taxing power of the district to guarantee payment of his profits. Aggressive oversight and regulation of this process is mandatory until the boards are 100% residents.

It is possible that district reporting may reveal information about which end-users infer the City should act on and, given the City's limited role with district governments, may cause dissatisfied end-users to seek recourse against the City or express dissatisfaction to future City Council's about the City's ineffectiveness.

- J. **Standard Consideration Schedule and Model Documents** – Establishing reasonable expectations typically allows all parties to work more efficiently and collaboratively to a successful conclusion of any interaction. For metro districts proposed in the City of Lakewood, expectations of all parties—public, City Council, applicant, staff—can be clarified to improve the process for all.

State law very specifically limits the dates on which elections to form metro districts can be held. City Council has, at times, been in the position of either approving a service plan for a proposed district at the first City Council meeting during which the service plan is considered or the district formation election would be delayed by up to a year.

A clearly established schedule for service plan submittal, staff review and City Council consideration of a proposed metro district’s service plan would benefit all parties.

Preliminary Recommendation J.1.: A standard schedule could require that a proposed service plan be ready for City Council consideration early enough that City Council could continue its decision on the proposed service plan until its next regular meeting without causing the potential district to miss an election deadline. A schedule for earlier steps would be built back from the required initial City Council meeting for consideration of the service plan.

Other model metropolitan district documents and guidance for annual report contents have been discussed earlier in this memorandum.

Preliminary Recommendation J.2.: A model disclosure document for prospective end-users could be prepared that would define required content, ensure appropriate dissemination and ensure a means to formally confirm receipt of the disclosure by prospective end-users.

Preliminary Recommendation J.3.: A model service plan could be prepared to guide future metro district proposals.

Preliminary Recommendation J.4.: Guidance regarding annual report content could be prepared and incorporated as a requirement of service plans.

Model documents - ballot issue, service plan, financial plan, disclosure to the residents are a must.

A model for MONTHLY/WEEKLY reports is also a must.

- K. **Potential State Law Changes** – This memorandum focuses primarily on actions the City Council could consider implementing. There are potential state law changes that were mentioned earlier in this memorandum and are summarized as follows:

Real Estate Professionals – An obligation for real estate professionals, developers’ sales people and their documents to disclose early in a potential sale or lease, perhaps prior to

contract execution, information comparable to the metro district disclosure information City Council finds appropriate.

Specific Ownership Tax – Remove future metro districts from the entities qualified for a share of Specific Ownership Tax or provide the flexibility for an entity approving a future metro district, such as the City of Lakewood, to remove the metro district from the list of entities qualified for a share of Specific Ownership Tax. It is likely a law change would not affect distribution of specific ownership tax for pre-existing districts because it could significantly harm such districts' ability to fulfill their service plan obligations.

SUMMARY

See the executive summary above at the beginning of this memorandum.

The first question is whether or not the development community has provided convincing data and rationale for making this exception to the traditional way of financing infrastructure.

If the development community is able to make that showing, then the second question is whether or not the city is willing to make the commitment in resources to provide the necessary oversight and regulation to replace the traditional competitive market forces to guarantee there will be no abuses.

Adoption by City Council of policies establishing minimum requirements and providing guidance for metro district proposals could:

- Optimize fairness for all parties including future end-users,
- Improve timeliness and content of information for City Council, potential end-users and developers,
- Reduce the potential that end-users will receive post-purchase/lease surprises, and
- Help clarify what actions require a metro district to return to the City Council for authorization.

See the executive summary above, the elements of the proposed new ordinance and the disclosure requirements.

Well-crafted policies can also retain, for the City Council, reasonable flexibility to determine

the appropriateness of a new metro district being created in any of a broad range of potential future circumstances.

The *Preliminary Recommendations* included in this memorandum are intended to facilitate City Council discussion of future metropolitan districts within the City of Lakewood. Given the breadth of potential topics and the early stage of City Council's discussion, the *Preliminary Recommendations* herein are intended to support City Council's determination of its goals for future metro districts. Adjustments may be required based on legal issues or subsequently identified unintended consequences.