

LAKWOOD CITY COUNCIL
DEVELOPMENT DIALOGUE AD HOC COMMITTEE
VIRTUAL MEETING
To watch the meeting live, please visit [Lakewoodspeaks.org](https://lakewoodspeaks.org)

September 17, 2020
6:00-8:00 PM
AGENDA

1. Roll Call
2. Call to Order
3. Approval of Minutes
 - July, 23 2020
4. Metro Districts
 - Public Comment
 - Please visit [Lakewoodspeaks.org](https://lakewoodspeaks.org) to provide public comment before and during the meeting.
 - Committee Discussion
5. Next Steps
6. Set Meeting Dates/Times
7. Adjournment

Due to COVID-19 and public health orders, the Committee Meeting will not be held in person. This meeting will be conducted using Zoom and the recording will be available after the meeting on the City of Lakewood YouTube account. The public is welcome to view the meeting live stream and provide comments online at lakewoodspeaks.org.

**LAKWOOD CITY COUNCIL
DEVELOPMENT DIALOGUE AD HOC COMMITTEE
MEETING
July 23, 2020**

MINUTES

Call to Order

Chairman Skilling called the meeting to order at 6:00 p.m.

Roll Call

Members present: Council members David Skilling, Charley Able, Mike Bieda, Dana Gutwein and Jacob LaBure

Absent: None

Others present: Council member Ramey Johnson, Director of Planning Travis Parker, Director of Public Works Jay Hutchison, and Business Specialist Laura Pemberton

Metro Districts

1. Panel discussion featuring:
 - Tom George, Spencer Fane
 - Megan Schrader, Denver Post
 - John Henderson, Attorney
 - Kyle Thomas, D.A. Davidson

Director of Planning Travis Parker introduced the four present panelists. He mentioned that Denise Gammon of Gammon Real Estate, a listed panelist on the agenda, cannot attend tonight's meeting.

Megan Schrader stated that she first became familiar with the development process when her father developed 40 acres of land in their hometown of Grand Junction. Her father took out the loan and any potential risks for that development. She became familiar with Metro Districts during the development of the Gaylord Hotel in Aurora. She was concerned with the projects layering of tax districts. She then wrote a column discussing Metropolitan Districts and future consequences, such as cost, that result from their use. She clarified that her opinions tonight do not necessarily reflect the Denver Post's views. She then stated that the Denver Post Editorial Board has developed some items that can alleviate potential consequences of Metro Districts. These items include: disclosure of all Metropolitan District taxes on MLS listings, elimination of the ability to charge and impose fees, eliminate the risk of self-dealing by having elected officials on boards and not representatives from the developer, and eliminate loopholes so those who have a conflict of interest cannot vote on that matter.

John Henderson stated that Metro Districts create problems that communities should address. The first question is whether the community wants Metro Districts and the second question is whether the proponents of Metro Districts have proven that they are beneficial to the community. This first question

needs to be answered before the community addresses ordinances or reforms. The City of Longmont voted to prohibit Metro Districts. Metro Districts break from the traditional costs for land. This includes the cost of the lot, the cost of the infrastructure, and the cost for the developer. It costs \$30,000 for a lot's infrastructure and the millions in costs of Metro Districts are for paying for this \$30,000. Metro Districts are the least efficient and most expensive way to do this. Metro Districts are bad from both an economic perspective and a local government perspective. They are bad for local governments because Metro Districts eliminates resident's ability to vote on items, such as taxes and future debt. Metro Districts take away the residents right to vote in order to make development convenient and less risky for the developer. Solterra is an example of Metro District abuse of power in Lakewood.

Tom George stated that his firm represents Metro Districts in Colorado. He stated that he has represented Cardel and wanted to clarify they he is in not representing that client or any other clients tonight. He stated that Metro Districts have been around for more than 40 years and are more prevalent in certain parts of Colorado.

Kyle Thomas stated his firm is involved with financing and Metro District bonds. Housing prices have increased considerably in Colorado. Cities and counties now require more infrastructure and it is a challenge for communities to fund the necessary infrastructure. Metro Districts are a tool to close the gap in this funding shortfall by using taxes to support the cost of the new infrastructure in that community. In Colorado, the top twenty selling communities all have Metropolitan Districts. Metropolitan Districts provide about one third of the public infrastructure in a community. The developer can fund the remainder through their own capital or a loan. Typically, interest on this capital is in the 12% range where the interest on a Metro District is in the 5% range. For many projects a developer cannot get a loan for horizontal infrastructure. Typically, developers can get loans for vertical construction but not for horizontal construction. Service plans are authorized by the city. Service protection plans often have mill levy and time caps. There is a narrow limit on how taxes can be used in a service protection plan. He stated that improving transparency is a great goal. Metro Districts operate as local governments and comply with the same transparency and standards as other local governments. Metro Districts provide flexibility and efficient financing that build the most infrastructure for the developers.

Committee Questions

Council Member Able asked how do we ensure that Metro Districts follow standards? Solterra and Fossil Ridge's districts failed to follow their service plans for the first years of their existence, and they did not submit their financial statements with the City of Lakewood or DOLA. How do we create legislation so changes to service plans are authorized by City Council? Currently, districts are making changes to service plans without oversight if it is not a significant change. The word significant is vague, so how do we ensure that service plans and financial reports remain under the standards that are approved by municipalities and all conditions of formation are followed?

Jon Henderson answered that ordinances are priority cities and state legislation provided guidelines for municipalities. When municipalities approve legislation, they can conditionally approve the Metro District application. There is no limit on that time period. He proposed that every application is conditionally approved, and no application is approved unless it is conditional. The application is

conditional until the Metro District is 100% resident run and no agents of the developer are on the board. This creates the opportunity to hold districts accountable with monitoring and reporting requirements. Currently, there is not a check and balance on how developers spend money. Since, it is conditional developers can lose their privileges if they do not comply.

Tom George responded that legally conditional approval would not work. There are multiple steps in creating a district. First the service plan goes to the municipality, and the City Council must approve that service plan. Then the service plan goes to the court and a petition is filed with the district court of Colorado. After that, there is an election. Under Colorado statute, elections cannot be challenged after a certain amount of time. Also, the developer would have already entered the bond market. The notion that there is a condition on this approval that instantly revokes the election, the court approval and decree, and undo a bond transaction will not work. This would make it impossible for the district to function. A more reasonable approach is to be as clear as possible in the service plans and in the language of the requirements. There are avenues of recourse in the Colorado statute. Concerned citizens can file an injunction in court stating that the district has not followed the service plan and departed in a material manner from the service plan. The residents can stop the district if the service plan is clear, but the terms are not followed.

Megan Schrader responded that she is concerned about potential loopholes in service plans. A service plan may address one issue, but other issues seem to appear in its place. She would argue that the best way to ensure these districts use their money appropriately and are good stewards of taxpayer money; is to have City Council members serve as members of the board until residents can serve on the board. It is a slippery slope to trust developers with tax payer money. It is important to have elected representatives who are good stewards of tax payer money serving on the district's boards.

John Henderson responded that the statues states there can be conditional approval. If the Metro District does not comply then the City can revoke the district's power.

Council Member Able asked about methods to ensure transparency of Metro District costs for new homebuyers?

Kyle Thomas answered that it is a great idea to notify new homeowners that they are purchasing their home in a Metro District. This can be down with MLS or an informational piece at the model home in the Metro District. A lot of homeowners do not know how to calculate their taxes. Homeowners should be educated on the taxes and cost of amenities to properly inform their homebuying decision. He stated that it is often challenging to find people who want to serve on a Metro District board. There are many districts who have developers serving on the board because no one else will run. He is unsure if it is efficient to have City Council members serve on the roughly 30 Metro Districts in Lakewood.

John Henderson responded that the financial information for homeowners can easily be condensed and not a lot of detail is needed to disclose to homeowners the amount and duration of tax payments. This information can be disclosed during the three contact points of the homebuying process. In his personal experience residents were turned away when they appeared at board elections for Metro Districts. There is a distinction between what is stated in the service plans and what happens in practice. The

developers campaign for their own representatives, and they make it difficult for residents to serve on boards. The City needs to provide oversight and protect future residents.

Megan Schrader responded that a simple way to give power back to residents is to only approve one district at a time per development. This provides transparency and control for residents.

Council Member Bieda stated that it has been suggested to not allow Metro Districts. Why are we not first discussing prohibiting special districts? Also, is it fair to assume that local governments have the expertise and resources to effectively oversee special districts? Accounting and legal expertise is needed to oversee the Metro Districts. Is it realistic to assume the City of Lakewood can oversee Metro Districts? What are the benefits for the City to allow Metro Districts?

John Henderson responded that the development industry needs to prove the necessity of special districts before the districts are funded. When the City of Longmont decided not to allow Metro Districts, the City determined that they did not have the resources, time, and money to properly oversee Metro Districts. It is the City's responsibility to provide checks and balances for Metro Districts. The developers are now asking taxpayers to subsidize development.

Kyle Thomas responded that previous issues with Metro Districts have been addressed with the current statutes. Also, no homeowner who purchases a home is at risk of losing their house if their Metropolitan District bonds go into default. No bank would give you a mortgage if that was the case. He responded that the downside of having one district for a development is they are often built in filings and infrastructure is not developed at one time. The district boundaries are meant to coincide with the filings that are going to be constructed. It is a more efficient tool to issue bonds as the development progresses instead of one large bond upfront. It is a common tool used across Colorado and developers want to know the bond capacity of properties. There are projects that would not happen in the absence of bond funding.

Tom George responded that there have been abuses of Metro Districts. Yet, this is not the case for all developers and Metro Districts. There are approximately 4,000 Metro Districts across the state and most function perfectly fine. The committee should not disregard a development tool due to a few bad examples. There are two reasons to have a Metro District in a development. One is enhanced improvements and services. One example is transit-oriented development that wants to pay for parking infrastructures. Affordable housing is a serious issue and developers can use Metro Districts as a tool to build affordable housing.

Megan Schrader responded that she questions the need for these districts. The developer can do a "but-for analysis" for projects proving why they need districts and cannot pay for the development without the Metro District. The developers must provide numbers to prove the value and need for projects that include special districts.

John Henderson responded that the statute previously mentioned has loopholes. These loopholes are demonstrated in Solterra and Candelas at Rocky Flats. It is misleading to state that the homeowners are not at risk of losing their homes. He stated that affordable housing only works through subsidies and developers are not going to subsidize affordable houses because they want to make a profit.

Council Member Bieda asked Mr. Thomas about his statement that residents will never lose their house due to a special district tax. This may be true in principal, but the deed of trust will take precedent over the lean created by a special district.

Kyle Thomas responded that homeowners who pay their taxes are not at risk. If the district goes on default for their bonds the homeowners who pay their tax bills are not at risk. If the homeowners do not pay their taxes that is a different matter.

Council Member Bieda asked about the burden of Metro District taxes on new homeowners. Often the value of the homes initially drops due to these taxes, and the home's value takes many years to recover.

Megan Schrader responded that homeowners are not aware of these taxes and are not factoring these taxes into their financial decisions. These taxes are contributing to higher home prices due to mill levies. Disclosure of mill levies on MLS should be provided for homeowners. She believes some homebuyers would be deterred if they were provided with all tax information when buying houses in Metro Districts.

Council Member Gutwein stated that the abuse of Metro Districts is well documented and believes there should be changes. She agrees with many of Megan's recommendations. She is a proponent of affordable housing and transit-oriented development. There was a great development project this Council approved that included a Metro District. She noted there was article in the Longmont Leader that revised their rule to allow residential Metro Districts and asked if this is true.

John Henderson answered that for one year in 2019 Longmont allowed Metro Districts but then reversed this decision.

Council Member Gutwein stated one challenge is homeowners not being aware of elections or involved in elections. She asked the panel about potential improvements to the Metro District election process.

Tom George stated that many districts do have issues finding people to serve on boards. One recommendation is to provide more notice to residents that elections are taking place. They should mail notice of the election to all residents and publish the election information on their website. Currently, their only requirement is posting the election information in a newspaper of general circulation in the Metro District's county.

John Henderson answered that election information and resident's right to serve on a board should be included in the home's disclosure.

Council Member Gutwein asked if there are developments that would be impossible without a Metro District.

Kyle Thomas answered communities that provide amenities such as parks, play structures, pools, or a community structure use Metro Districts to pay for these amenities.

John Henderson answered that amenities should not be a reason for a Metro District. He believes that amenities should be provided with traditional financing mechanisms.

Council Member Gutwein asked Megan if she has other ideas to close loopholes or address additional concerns.

Megan Schrader answered the other improvement is transfer fees. Most homeowners are not aware of fees that are assessed when their home is sold. There were limits on transfer fees, but now districts seem to be calling transfer fees by different names. There is not a clear need for people to have a one percent fee when selling their house.

Public Comment

JD Lobue Jr. asked that understanding full disclosure might deter potential home owners from purchasing a home within a Metro District, can someone please explain why a metro/special district is more valuable to homeowners and not to builders?

Tom George answered that paying for long term maintenance for items such as stormwater maintenance benefits homeowners.

JD Lobue Jr. asked how can we balance developer risk with the abuses we have seen in special districts?

John Henderson answered this is what we are trying to address. He believes that every district he is aware of in the front range has demonstrated abuses. Metro Districts need to prove their value to residents.

Deborah Romero asked about housing prices skyrocketing in recent years, yet the costs of builders do not seem to have increased commensurately (labor and materials). Therefore, the difference would go toward profits. Why can't that differential be applied toward infrastructure costs instead of it all going in the builder's pockets?

Megan Schrader answered that we should ask developers what their true costs are to identify the transparent costs for these developments. If this is transparent, then we do not have to worry about homeowners getting inappropriately charged for infrastructure. Once we know the true cost of development then we can answer this question.

John Henderson answered that developers should prove that they cannot develop without the assistance of Metro Districts. Metro District money should be publicly disclosed.

Recommendations

Council Member Skilling concluded that there are two major themes the committee should focus on.

1. Disclosures
2. Resident control/transparency.

Council Member LaBure asked for comparisons of other local city and county Metro District policies.

Council Member Skilling stated that the June 11 Memo from the Director of Public Works, Jay Hutchison, and tonight's discussion will provide a template for the committee's recommendations and future discussion.

Approval of Minutes

- July 09, 2019
 - Consensus, 5 ayes

Adjournment

Chairman Skilling adjourned the meeting at 8:08 p.m.

Set Meeting Dates/Times

The committee will determine the next meeting date and time.

Next Steps

The committee will continue the Metro District discussion.



STAFF MEMORANDUM

To: Mayor and City Council

From: Jay N. Hutchison, Public Works Director, 303-987-7901

Subject: **FUTURE METROPOLITAN DISTRICTS**

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.

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. 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.

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.

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.

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).

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.

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:

- 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. 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:

- 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.

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

- Providing early funding that can support community or commercial area amenities early in a development rather than late in the development cycle.
- Allowing residential end-users to qualify for and obtain a reduced home loan amount and monthly payment.
- 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.
- Providing operation and maintenance of district owned facilities and improvements.
- Replacing a homeowners' association or commercial development's common area maintenance fee.
- Supporting infrastructure costs needed for a project.

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.

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.

Typical metro district service plans generally address the following topics:

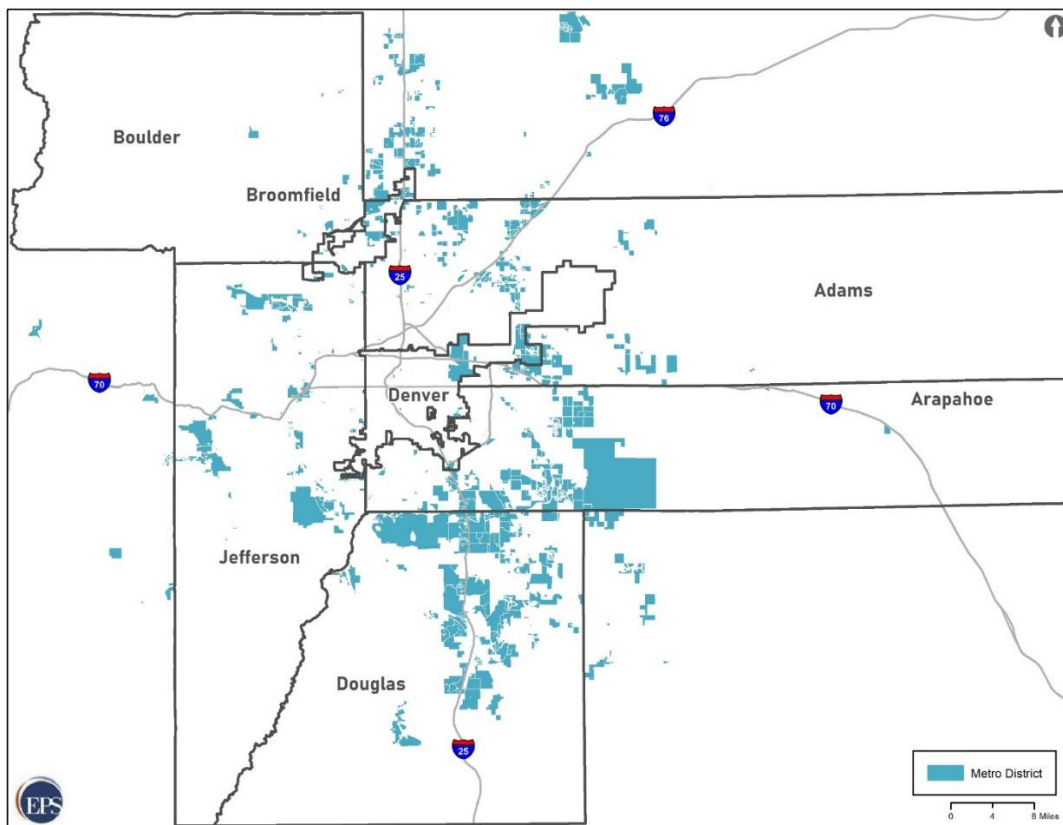
- A. **Geography** – What property is proposed to constitute the metro district and what land, if any, is considered area that may be included in the district at a later time?

- 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.
- C. **Finances** – What are the estimated costs of the services and improvements and how will those expenses be funded?
- D. **Agreements** – What agreements is the metro district proposed to have with other entities?

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.

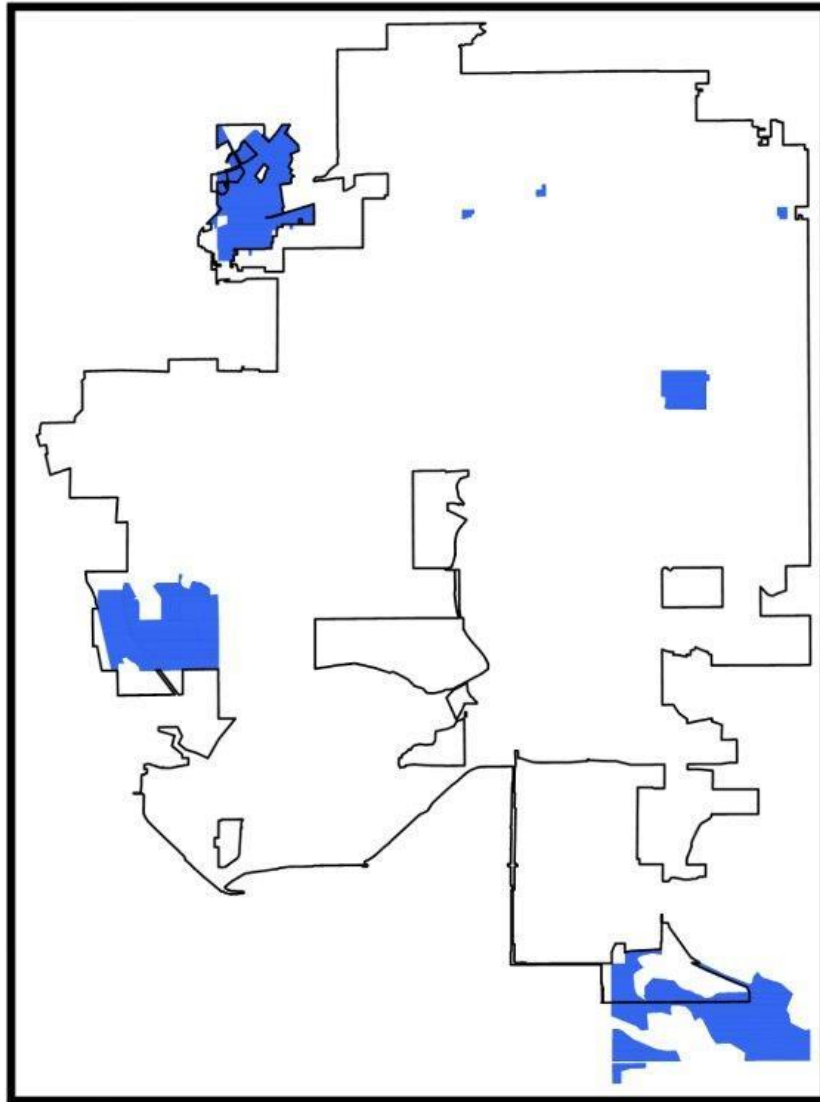
In summary, metropolitan districts are a tool, established by Colorado statute, to provide services or improvements including their financing, operation and maintenance. Metro districts have been created for many types of projects in Colorado and in what is now Lakewood since the 1940s.

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.

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.

Mill Levy	0 Mills	1 – 5 Mills	20 – 29 Mills	30 – 39 Mills	60 – 69 Mills	110 – 120 Mills
Number of Districts	Ten	One	Three	Four	Two	One

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

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. 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

POTENTIAL POLICY TOPICS REGARDING FUTURE METROPOLITAN DISTRICTS

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.

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.

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.

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.
- 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.

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.

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.

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.

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.

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.

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.

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.

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.

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:

- ✓ A defined scope of improvements for which metro district debt can be used.
- ✓ 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.
- ✓ A cap on the duration of the debt mill levy for which residential end-users will be obligated.
- ✓ A reasonable debt interest rate.

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?

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 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.

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.

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.

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.

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.

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.

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. 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.1.: 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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. 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 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.

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.

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.

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.

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.

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.

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

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.

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.