

AGENDA
LAKEWOOD CITY COUNCIL
STUDY SESSION
CITY OF LAKEWOOD, COLORADO
VIRTUAL MEETING
MARCH 15, 2021
7:00 P.M.

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ITEM 1 – CALL TO ORDER

ITEM 2 – ROLL CALL

ITEM 3 – PRESENTATION – FUTURE METROPOLITAN DISTRICTS

PUBLIC INPUT

ITEM 4 – REPORTS

ITEM 5 – ADJOURNMENT



STAFF MEMORANDUM

DATE OF COUNCIL MEETING: March 15, 2021 / AGENDA ITEM NO. 3

To: Mayor and City Council

From: Jay N. Hutchison, Public Works Director, 303-987-7900

Subject: **FUTURE METROPOLITAN DISTRICTS**

SUMMARY STATEMENT: City Council has indicated an interest in discussing approaches to responding to future proposals for metropolitan districts. The Development Dialogue Ad Hoc City Council Committee has completed its consideration of the topic. The Committee's recommendations to the City Council are presented below. Additional information is provided that may be helpful during City Council's discussion. The background Staff Memorandum provided to City Council in June 2020 is also attached for reference.

BACKGROUND INFORMATION: 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 one type of special district. Metropolitan districts are governmental entities that can be created and must be operated pursuant to Colorado state statute.

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.

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 of existing districts. This opportunity arises when a service plan is proposed to be materially modified, which obligates the metro district to seek City Council review of the modification.

Policies adopted by the City Council will apply to future proposals for metropolitan districts. 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 direct authority to supplant another duly constituted governmental entity. And, the City Council does not have the authority to supplant a metropolitan district's elected board—a separate governmental entity duly constituted pursuant to state statute. 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.

UPDATED INFORMATION: The remainder of this memorandum provides new information developed subsequent to the information contained in the June 2020 staff memorandum.

This memorandum focuses primarily on the recommendations from the City Council's Development Dialogue Ad Hoc Committee. The Committee invested three meetings on this topic. All three meetings included public comment. The first meeting included a panel discussion. During the second meeting, the Committee focused on developing potential recommendations for the City Council to consider, which were finalized during the third meeting.

During the Committee's deliberations, it was noted that one option available to the City Council is to prohibit creation of additional metropolitan districts within the City. The Committee chose to proceed with proposing recommendations for application to future metropolitan districts leaving to the full city council further discussion of whether to have a City Council vote on whether to prohibit additional metro districts in Lakewood. See Committee recommendation 9 later in this memorandum.

Background material was provided to City Council and the Committee in the June 2020 staff memorandum (attached). As noted in that memorandum, potential methods to accomplish the Committee's goals and complete legal analysis had not yet been addressed.

This memorandum does address legal and other considerations applicable to the Committee's recommendations to support City Council's upcoming discussion. Generally, the additional information addresses the following questions:

1. What legal difficulties might a recommendation create and how could they be addressed?

The City Attorney has reviewed and contributed to the material below.

2. Should consideration be given to applying a particular recommendation differently depending on whether the proposed district includes residential property or is exclusively non-residential?

The distinction for residential properties recognizes that many residential end-users do not have professional advisors for real estate transactions. Further, many non-residential property owners have a higher commitment to property transaction knowledge and more commonly have professional advisors. This distinction may support a higher standard if residential development will occur.

3. Should consideration be given to applying a particular recommendation differently during the period of time that the proposed district's board is controlled by developer affiliates compared to when the board is controlled by end-users?

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 within a metro district, they can be elected to replace developer-affiliated board members through metro district elections at times and using processes defined by state law.

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 transparency and authority of the metro district is somewhat different during the initial, developer-controlled board period in comparison to the later, end-user controlled board period.

For purposes of this memorandum, the term "end-user" means an owner or tenant of an owner who will pay metro district property taxes. An entity that constructs infrastructure or 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 does not include end-users.

Within the discussions below of some Committee recommendations, recommendation-specific enforcement and remedies are also discussed. In addition, there are more universally applicable existing remedies that would be relevant to multiple recommendations including actions in response to statutory, contractual or service plan violations.

Preliminary indications suggest that the 2021 Colorado General Assembly may consider regulation changes for metropolitan districts. While most of the Committee recommendations can be implemented solely in Lakewood, some may be more effective and more useful to consumers if they are implemented in a broader, statewide context. Staff will monitor General Assembly activity and inform City Council as this process moves forward.

POLICY RECOMMENDATIONS FROM THE DEVELOPMENT DIALOGUE AD HOC CITY COUNCIL COMMITTEE: The Committee's recommendations are in bold font below followed by additional information. Public Works believes all of the Committee's intended results are achievable, although implementation of the first two recommendations may benefit from somewhat modified forms as discussed below.

- 1. Improve metropolitan district information disclosure to potential end-users including:**
 - a. Require a one-page, standalone disclosure in simple language as part of real estate closings.**
 - b. Include in the disclosure the following:**
 - i. What a metro district is and its ability to control certain costs of the end-users,**
 - ii. How the board is elected,**
 - iii. Initial costs to the end-user of the metro district in dollars, and**
 - iv. What the metro district cost (in dollars) could be in the future.**
 - c. Include disclosure as part of the Multiple Listing Service (MLS).**
 - d. Consider how to enforce the disclosure requirement.**

A model disclosure document could be prepared consistent with 1.b. if the City Council adopts this Committee recommendation. A district-specific disclosure document consistent with the model document would be required with each new metro district proposal.

A more complex challenge is ensuring each potential end-user receives the disclosure. Three possibilities will be discussed below: disclosure (i) as part of real estate closings, (ii) as part of the MLS, and (iii) as part of the County Clerk and Recorder's records. A challenging aspect of disclosure is ensuring disclosure in perpetuity as properties are transferred multiple times through various processes and by varied parties. A staff recommendation is included at the end of the discussion of this Committee recommendation that suggests an implementation approach designed to support the Committee's intent as understood by Public Works.

- i. Real Estate Closing: The real estate community transacts business generally without regard to jurisdictional boundaries within the state of Colorado. A broker in Colorado Springs or Aurora may sell a property in Lakewood that is in a metro district area but not be familiar with the City's unique disclosure requirement.

There are statewide closing requirements imposed by the Colorado Real Estate Commission, which include a notice that special taxing districts, which includes metro districts, may have indebtedness and mill levies and encourages buyers to pursue several avenues to be well informed. However, the Commission's reach extends only to those parties it regulates – brokers, appraisers and mortgage originators. Transactions that do not include any of those parties could occur

without the involved parties being aware of the desired disclosure requirement. Because the Commission's documents apply statewide, it does not seem likely that a district-specific or even more general Lakewood-centric disclosure would be required by the Commission.

It seems impractical for the city to monitor inclusion of a disclosure as part of closing documents in perpetuity. However, ensuring the initial end-user's closing includes the disclosure seems manageable.

There may be substantial value in monitoring disclosure with the sale to the initial end-user. An initial buyer may be less likely to be aware of the effect of a metro district because the district is in its infancy. As a metro district matures, its existence and mill levy will become apparent in the certificate of taxes for the property and on the County Assessor's website. Because of the biannual real estate assessment process and the time that may pass as a district is formed, then issues debt, then certifies a future year mill levy that is then added to the County Assessor's website, it is less likely that an early buyer will come across the potential financial effects of a metro district than subsequent buyers of a particular property.

The initial sale to an end-user will likely include either the developer that creates the metro district or builders who contract with the initial developer to construct the initial buildings, residential or not. Proof of disclosure on each initial transaction could be a required part of a metro district's annual report to the city.

- ii. MLS: There are multiple MLS services in the state, all of which are private entities. The potential issues associated with ensuring disclosure within closing documents, as described above, also apply to ensuring the disclosure occurs as part of an MLS.

Potential City liability may also accrue from this approach. The concern revolves around the City inserting itself into the private transfer of property. For example, if the City failed to notice a transfer of property that was not properly associated with a metro district through MLS, has the City defaulted on its responsibility? And, has the City created grounds for a claim that the property wasn't validly transferred?

In addition, data entry into an MLS is typically the responsibility of individual real estate professionals and not a single identifiable entity that could be held responsible for failing to provide a required disclosure. Finally, there is no entity that regulates MLS content other than the individual private MLS organizations.

- iii. County Clerk and Recorder's Records: Recording, in the records of the County Clerk and Recorder, the disclosure against each property within the metro district

enhances the potential that a buyer will receive the disclosure in perpetuity including sales from future end-users to subsequent end-users. Disclosure of pre-existing conditions or restrictions is a primary purpose of the property records maintained by the Clerk and Recorder. Most real estate transactions include a title search to determine whether there are any of a variety of pre-existing conditions or limitation or claims against the property being purchased. The title search should reveal to a potential buyer the recorded disclosure document.

Recordation should occur immediately upon final creation of the district. And, to optimize effectiveness, it should be recorded again by lot and block, upon each subsequent subdivision. The City permit to construct a building could be withheld until proof is provided to the City that the disclosure notice has been recorded.

An additional option available to City Council would be to pursue Colorado General Assembly action to require the Colorado Real Estate Commission to obligate brokers, appraisers and mortgage originators to include, statewide, a disclosure statement. Such a statewide disclosure could also be pursued directly with the Colorado Real Estate Commission. Neither approach could be assured and either approach seems likely to require substantial effort over an indeterminate time with unknown potential for success.

The harmed party if disclosure compliance does not occur is the buyer. And the city is not made aware of pending real estate transactions, making it difficult for the City to timely enforce a disclosure violation. Public Works recommends that buyers be provided the opportunity to pursue enforcement and seek remedy directly without city involvement. This approach is also fairer to out-of-district Lakewood taxpayers who are not harmed by a violation yet would likely fund any City action to enforce disclosure violations.

Staff Recommendation regarding the Committee's Recommendation 1:

Public Works recommends that the following occur to improve disclosure to potential end-users of information related to future metropolitan district:

- a. Require a one-page, standalone disclosure in simple language.
- b. Include in the disclosure the following:
 - i. What a metro district is and its ability to control certain costs of the end-users,
 - ii. How the board is elected,
 - iii. Initial costs to the end-user of the metro district in dollars, and
 - iv. What the metro district cost (in dollars) could be in the future.
- c. Require that the disclosure document be recorded against all property within the metro district immediately upon formation of the district and against each parcel upon subdivision of any property within the metro district.
- d. Prior to the City issuing a building permit, require proof that the disclosure was recorded against the lot on which the building will be constructed.

- e. Require that the disclosure be included in all real estate transaction closing documents at least until the metro district's mill levy is included in the closing documents' disclosure of taxes and available on the County assessor's website.
- f. Require the metro district to annually report all real estate transactions that should have included the disclosure and evidence that the appropriate disclosure occurred and to certify compliance with disclosure requirements.
- g. Create authority for buyers to pursue enforcement and seek remedy, without city involvement, if disclosure does not occur as prescribed.

Applicability Regarding Land Use and Board Control: If a disclosure document is required, Public Works recommends that it be required regardless of whether there is residential development planned for the metro district area and regardless of whether the district board is controlled by developer affiliates or end-users.

- 2. Require transition of metro district boards from developer-affiliate members to 100% end-user members at the earlier of:**
- a. A defined time after creation of the district (e.g., within __ years), or**
 - b. Upon a defined percentage of the district has end-user electors (e.g., __% of the lots have sold to end-users).**

Metro district boards are the governing body of limited local governments. State law explicitly defines who is eligible to be a metro district board member, how board members are elected, and when board elections occur. The provisions of state statutes do not provide a means for the City to control when an election occurs or who can run for a board seat.

Consequently, board elections are not a practical way to implement a requirement that the board be 100% end-users within a certain amount of time or at the point of a defined amount of development.

However, it may be possible to establish obligations of the district and its developer affiliated board members that accomplish the Committee's goal to accelerate transition of a board to end-users. Whether the transition is of 100% of the board members or a majority of the board members to end-users may warrant some consideration. Transition of 100% of the board at a single point in time may burden the new directors with self-educating themselves regarding the board's obligations, authorities and on-going activities.

Retaining on the board the institutional knowledge of a minority number of developer affiliated board members until the next regular election may be beneficial to the end-user, newer board members. One alternative transition requirement could be to a majority rather than 100% end-user board members at a pre-defined date or level of development.

Regardless of whether the Council's choice is to require turn-over of 100% or a majority of the board at a particular time or level of development, the following steps could be utilized:

- a. As a condition of City Council approval of a proposed metro district, all (or a majority of) potential developer-affiliated board members must commit in writing to resigning from the board upon a pre-defined date or level of development.
- b. Upon resignation of any board member, state law requires that the remaining board members select the replacement to serve the remaining partial board term.
- c. As a condition of City Council approval of the proposed metro district, the metro district must commit to using the board member election process as the means for appointing board members to replace developer-affiliated board members who resign.

This process will not guarantee that end-users are selected to fill the partial board term created by resignation of a developer-affiliated board member. However, it would ensure that any end-user eligible to serve on the board pursuant to state law will be made aware of the opportunity to pursue a board seat and be on the ballot.

The Committee's recommendation 3, below, addresses the board member election process including notification to individual voters and use of mail-in ballots.

Establishing the deadline for the board membership transition may be district specific. Perhaps the deadline should be set as part of City Council's service plan review and approval process. Factors that may be relevant to establishing the board transition deadline include the number of potential electors, the projected pace of development, the actual pace of development, and the land-use types in the district. These factors will vary among potential metro districts.

Complying with a board-control transition requirement will be a one-time event. The City could monitor the district's progress toward the trigger independently and through an annual metro district report to City Council (see Committee recommendation 6.c.).

The harmed parties if a developer-affiliated board member does not timely resign are the end-user eligible electors. Public Works recommends that eligible metro district voters be provided the opportunity to pursue enforcement and seek remedy directly without city involvement. This approach is also fairer to out-of-district Lakewood taxpayers who are not harmed by a violation yet would likely fund any City action to enforce resignation and election requirements.

Applicability Regarding Land Use: If a required transition to end-users is adopted, Public Works recommends that it be required if there is any property planned for residential

development within the metro district area. Such a requirement seems less necessary if the metro district is exclusively non-residential.

3. **Require metro district board selection information be effectively provided to end-users including:**
 - a. **Send, by U.S. Mail at least 90 days prior to an election or appointment of a board member, notification to all electors of such impending election or appointment and the opportunity to seek a board position, and**
 - b. **Use only mail-in board election ballots with each elector receiving a ballot.**

State statute requires only annual publication in a newspaper of metro district election information including for those who are interested in self-nominating for a board seat.

This Committee recommendation would result in an election process similar to elections of a broader nature in Lakewood and Jefferson County (i.e., a mail ballot election) and it would provide direct notification to potential voters of upcoming elections, which should improve voter awareness.

The harmed parties if a district fails to comply with election notification and process requirements are the end-user eligible electors. Public Works recommends that eligible metro district voters be provided the opportunity to pursue enforcement and seek remedy directly without city involvement. This approach is also fairer to out-of-district Lakewood taxpayers who are not harmed by a violation yet would likely fund any City action to enforce election requirements.

Applicability Regarding Land Use and Board Control: If this recommendation is adopted, Public Works recommends that it be required regardless of whether there is residential development planned for the metro district area and regardless of whether the district board is controlled by developer affiliates or end-users.

4. **Prevent loan interest paid by a metro district from being a profit center for the developer by limiting interest paid to the developer.**

Developers provide funds for initial development activities. One way those funds can be recovered is through a reimbursement agreement between the metro district and the developer. Such a reimbursement agreement may occur while the metro district board is developer controlled. To prevent the conflict of interest between the developer and the developer-controlled board entering into a reimbursement agreement that creates a profit center from the interest paid, the following options are suggested:

- a. The maximum interest rate allowed for a reimbursement agreement could be established during approval consideration of the proposed metro district.
- b. The maximum interest rate could be the prime rate.

- c. The interest rate could be required to be established through a market transaction.
- d. A reimbursement agreement could be prohibited, which would require that the developer seek reimbursement from other source(s).

All four options could be retained and considered on a district-specific basis.

The harmed parties if an inappropriate interest rate is paid to a developer are the end-users within the metro district. Public Works recommends that eligible metro district voters be provided the opportunity to pursue enforcement and seek remedy directly without city involvement. This approach is also fairer to out-of-district Lakewood taxpayers who are not harmed by a violation yet would likely fund any City action to enforce interest limitations.

Applicability Regarding Land Use and Board Control: If this recommendation is adopted, Public Works recommends that it be required regardless of whether there is residential development planned for the metro district area and regardless of whether the district board is controlled by developer affiliates or end-users.

- 5. Limit metro district debt issued by:**
 - a. Establish in the Service Plan the maximum initial debt amount, and**
 - b. Prohibit additional debt until approved by an end-user-controlled metro district board, and**
 - c. Consider whether to prevent a metro district TABOR election until the board is end-user controlled.**

Implementation of 5.a. will require a TABOR election to approve the initial debt and to approve the related tax to retire that debt. However, 5.c. could be modified to only allow, until the board is end-user controlled, the minimum TABOR election scope necessary to implement the initial debt established in the service plan and the tax associated with retirement of such initial debt.

Note that Committee recommendation 10 includes further provisions that would limit metro district debt.

Applicability Regarding Land Use and Board Control: If this recommendation is adopted, Public Works recommends that it be required regardless of whether there is residential development planned for the metro district area and regardless of whether the district board is controlled by developer affiliates or end-users.

- 6. Determine how City Council provides oversight of metro districts including:**
 - a. Require with the proposed Service Plan:**

development planned for the metro district area and regardless of whether the district board is controlled by developer affiliates or end-users.

- 8. Prohibit any multi-district structure that could result in one of the districts being perpetually controlled by developer-affiliates and having authority to impose costs on or require revenue from any other district.**

Applicability Regarding Land Use and Board Control: If this recommendation is adopted, Public Works recommends that it be required regardless of whether there is residential development planned for the metro district area and regardless of whether the district board is controlled by developer affiliates or end-users.

- 9. Discuss whether to have a City Council vote on whether to prohibit additional metro districts.**

Applicability Regarding Land Use: Additional metropolitan districts could be prohibited in Lakewood. Another option would be to only prohibit additional metro districts that would contain residential land uses.

- 10. Consider Preliminary Recommendations C.1. through C.10 regarding Financial Considerations included in the June 11, 2020 Staff Memorandum (attached) from Jay N. Hutchison, Director of Public Works.**

For convenience, section C of the June memorandum is reproduced below in all italics.

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 city 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.

For several of the Preliminary Recommendations above, the harmed parties if a district fails to comply are the end-user eligible electors (see C.3., C.4., C.5. and C.7.). Public Works recommends that, for any of those Preliminary Recommendations that are adopted, eligible metro district voters be provided the opportunity to pursue enforcement and seek remedy directly without city involvement. This approach is also fairer to out-of-district Lakewood taxpayers who are not harmed by a violation yet would likely fund any City action to enforce election requirements.

Applicability Regarding Land Use and Board Control: Public Works recommends that any of these Preliminary Recommendations that are adopted be required regardless of whether there is residential development planned for the metro district area and regardless of whether the district board is controlled by developer affiliates or end-users except where the description of the Preliminary Recommendation suggests otherwise (see C.3. and C.6.).

11. Consider Preliminary Recommendations H.1. and H.2. included in the June 11, 2020 Staff Memorandum.

Section H of the June memorandum addressed the topic of City Council authority to review district changes. For convenience, it is reproduced below in all italics. The Committee recommendation is understood to include consideration of only Preliminary Recommendations H.1. and H.2. All of section H has been reproduced below because H.2. includes a reference to H.4.

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.

Applicability Regarding Land Use and Board Control: Public Works recommends that any of the preliminary recommendations in section H that are adopted be required regardless of whether there is residential development planned for the metro district area or not and regardless of whether the district board is controlled by developer affiliates or end-users.

12. Consider Preliminary Recommendations E.2. and E.3 included in the June 11, 2020 Staff Memorandum.

Section E of the June memorandum addressed the breadth of services a district could provide. For convenience, the relevant portion of Section E of the June memorandum is reproduced in all italics below.

E. Breadth of Services Provided by a District

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.*

Applicability Regarding Land Use and Board Control: Public Works recommends that any of the preliminary recommendations in section E that are adopted be required regardless of whether there is residential development planned for the metro district area and regardless of whether the district board is controlled by developer affiliates or end-users.

BUDGETARY IMPACTS: Additional resources will be necessary for implementation of some of the Committee's recommendations if adopted. The additional resources could be provided through a fee paid by those proposing new metropolitan districts. City Council consensus is requested on whether to require a fee be paid by metro district proponents to cover additional costs incurred.

STAFF RECOMMENDATION: City Council consensus will be helpful regarding each of the Committee's 12 proposed policies and sub points, including revisions or amendments thereto, and whether to consider a fee.

ALTERNATIVES: City Council could choose to pursue all or some of the Committee's proposals, as-is or amended, or pursue other policy proposals or pursue no policies.

PUBLIC OUTREACH: Public notification was made through the normal processes for all three Development Dialogue Ad Hoc Committee meetings and for this City Council study session.

NEXT STEPS: City staff will draft implementation documents reflecting City Council's consensus received during the study session.

ATTACHMENTS: June 11, 2020 Staff Memorandum

REVIEWED BY: Kathleen E. Hodgson, City Manager
Benjamin B. Goldstein, Deputy City Manager
Alison McKenney Brown, City Attorney



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:

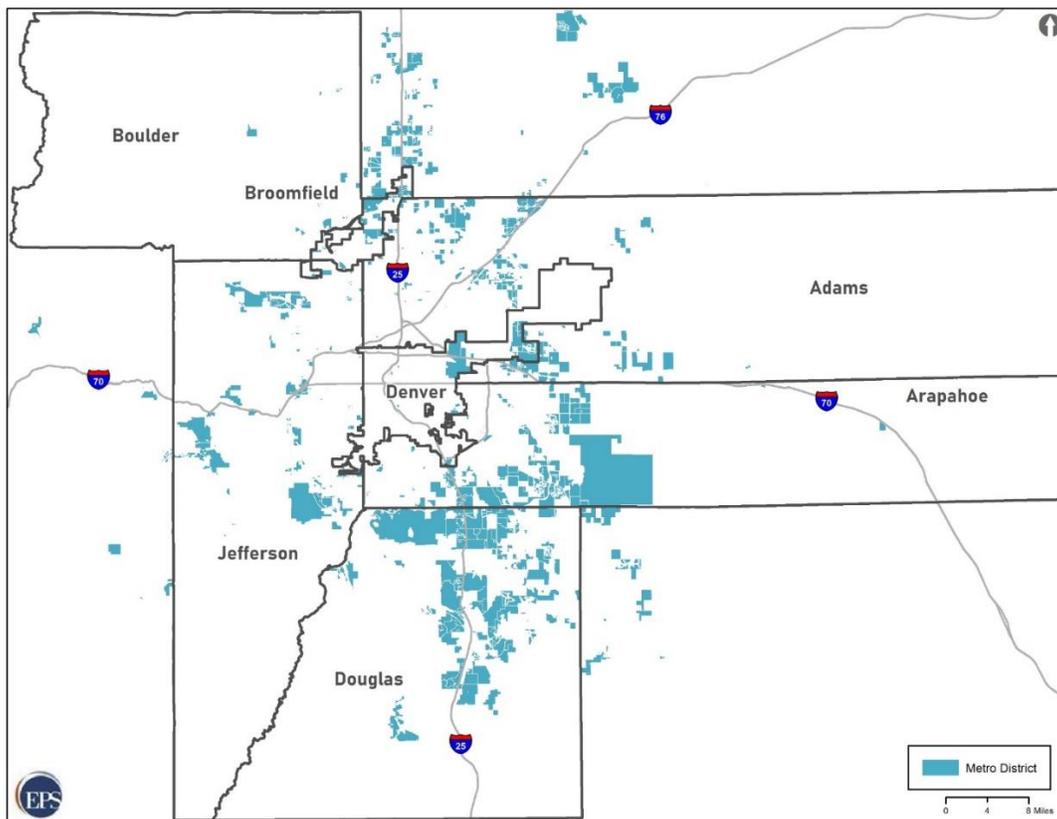
- A. **Geography** – What property is proposed to constitute the metro district and what land, if any, is considered area that may be included in the district at a later time?

- 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.

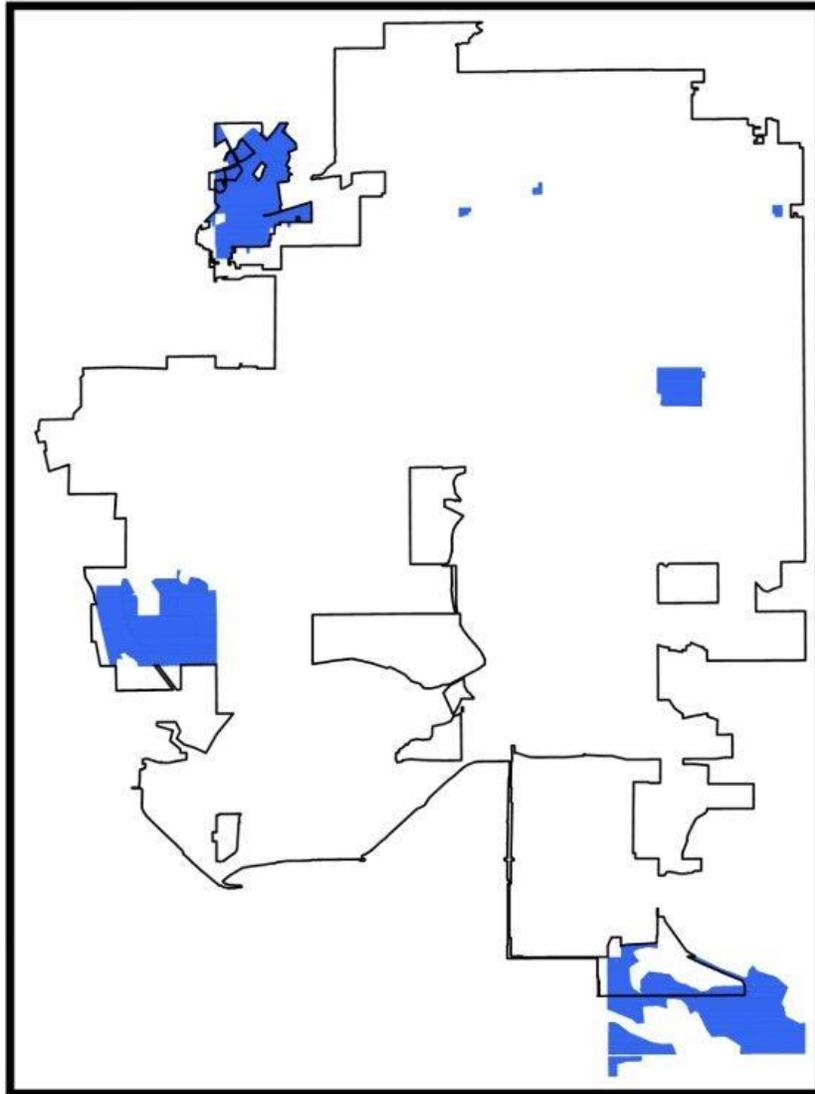
In summary, metropolitan districts are a tool, established by Colorado statute, to provide services or improvements including their financing, operation and maintenance. Metro districts have been created for many types of projects in Colorado and in what is now Lakewood since the 1940s.

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.