

BOCC

RESOLUTION NO. 22 - 376

BOARD OF COUNTY COMMISSIONERS
COUNTY OF EL PASO, STATE OF COLORADO

**RESOLUTION TO AMEND THE EL PASO COUNTY SPECIAL DISTRICT POLICIES
AND MODEL SERVICE PLANS**

WHEREAS, the General Assembly of the State of Colorado grants certain authority to El Paso County concerning the creation and operation of special districts within its boundaries pursuant to C.R.S. § 32-1-101, *et seq.*; and

WHEREAS, since 1987, the Board of County Commissioners of El Paso County, Colorado ("Board") has adopted guidelines, procedures, and policies for the development and review of service plans for special districts within unincorporated El Paso County; and


WHEREAS, the El Paso County Special District Policies currently in effect were adopted pursuant to Resolution No. 07-272 ("Policies") and are accompanied by El Paso County Model Service Plans adopted pursuant to Resolution No. 07-273 ("Model Service Plans"); and

WHEREAS, the Board has identified a need to update the Policies and Model Service Plans for the purposes of complying with amendments to state law, updating references and other nomenclature, and increasing the maximum mill levy for operations and maintenance by 5 mills; and

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of El Paso County, Colorado hereby adopts the amendments to the El Paso County Special District Policies and El Paso County Model Service Plans set forth in Exhibit A, attached hereto and incorporated herein.

DONE this 1st day of November, 2022 at Colorado Springs, Colorado.

ATTEST:



Chuck Broerman
County Clerk & Recorder



BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

By: 

Stan VanderWerf, Chair

Chuck Broerman
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RESOLUTION NO. 22-376
EXHIBIT A
SPECIAL DISTRICT POLICIES

I. PURPOSE, INTENT AND APPLICATION

- A. Purpose.** The purpose of these policies is to provide a framework for the evaluation of applications for new, amended and updated special district service plans as authorized by C.R.S. Title 32 and which are under the jurisdiction of the El Paso County Board of County Commissioners.
- B. Intent.** It is the intent that applications for new and revised service plans should be drafted to both address and be consistent with these policies. However, the applicant(s) for a proposed district or districts, or amendment to any existing service plan shall have the right to seek relief or modification from any of these stated policies, based on proper justification, to the extent allowable by law. The County, for its part, maintains its discretion to apply additional evaluation criteria, policies and limitations to the formation of new and revised districts, as the County may deem applicable.
- C. Model Service Plans.** New service plans and any material modification thereof shall adhere to the applicable Model Service Plan formats as further addressed in Resolution No. 21-XXX-273 (Date) as may be amended. The purposes of the model plan approach include standardizing the organization of information, and inclusion of standard language and limitations consistent with current Board policy. Additionally, this approach is intended to focus on variations from standard language and/or policy. The appropriate Model Service Plan template (i.e. Single District, Multiple District, and Master District) should be utilized and then modified as appropriate to address the particular needs and circumstances associated with a given application. Title 32 Special Districts which are not metropolitan districts should adhere to the Model Service Plan template to the extent possible.
- D. Required Hearings.** All service plans for new Title 32 Special Districts and material modifications thereof shall first be considered at a hearing of the Planning Commission in accordance with Colorado Revised Statutes and as further described in the El Paso County Land Development Code and its accompanying Procedures Manual. Any request for a service plan amendment

which does not meet the definition of a material modification does not require a hearing by the Planning Commission unless a need for this hearing is specifically determined by the Planning and Community Development Department Director. The above policy is intended to apply retroactively to any previously approved Service Plans which may have had conditions requiring all requests for material modifications to first be heard by the Planning Commission.

At a hearing occurring at least ten (10) days after the Planning Commission hearing on new service plans, the BoCC shall set a date for its hearing on the service plan, which date must be within thirty (30) days after the first BoCC hearing.

E. Special Justification. Certain matters shall be specifically and comprehensively justified based on the unique needs and circumstances associated with the particular Service Plan application. Matters requiring special justification include but are not necessarily limited to the following, as further addressed in these policies:

1. Use of Master Districts;
2. Authorization of mill levy caps in excess of the caps as set forth in Section III.F;
3. Specific authorization of special purpose mill levy caps which have the effect of increasing the Maximum Combined Mill Levy Cap above 60 (sixty) mills as set forth in Section III.F.5 and 6;
3. Processing of service plans prior to approval of underlying land use approvals as set forth in Section III.I.;
4. Use of a district or districts for covenant enforcement in lieu of Homeowners Associations (HOAs), where a Master District arrangement is proposed and/or where the district or districts are not otherwise being used to provide ongoing services.

III. OVERALL SERVICE PLAN POLICIES

A. Conformity. All proposed service plans shall be evaluated by both the applicant and County staff for conformity with the applicable standards contained in C.R.S. 32-1-203. Evaluation shall consist of more than a simple listing of the standards and/or statement that the service plan complies.

- B. Consistency.** All proposed service plans shall also be evaluated by the County for consistency with applicable elements of the El Paso County Master Plan, including but not limited to Your El Paso Master Plan (2021), the El Paso County Water Master Plan (2018), the El Paso County Parks Master Plan (2013), the El Paso County Major Transportation Corridors Plan, and with these Special District Policies.
- C. Applicable Statutes and El Paso County Preferences.** It shall be the responsibility of the applicant to assure that service plans are drafted to meet all of the minimum requirements contained in C.R.S. Title 32, specifically including C.R.S. 32-1-202 (2) as well as all other applicable State requirements.
1. Districts which include water supply as one of their purposes shall be strongly encouraged to join the Pikes Peak Regional Water Authority upon formation.
 2. The preference of El Paso County is for the formation of conventional districts which accord full electoral representation to residents and property owners within the district(s) and/or service area(s).
- D. Application and Schedule.** Although the County will endeavor to be reasonably flexible in accommodating the scheduling needs of special district applicants, it is the ultimate responsibility of the applicants to allow sufficient time to meet the County's procedural guidelines and requirements for application processing.
- E. Review.** Service plans shall be drafted and processed in a manner that allows for coordination and input of all affected elected officials and County departments and other external agencies, specifically including the Clerk and Recorder, the Assessor and the Treasurer.
- F. Mill Levy Caps**
1. All proposed districts that rely significantly on future development to meet financing projections shall include mill levy caps as part of their service plans. To the extent permitted by law, such caps may be lifted once the district achieves the ratios of assessed valuation to debt and other requirements which would allow these caps to be removed. However, actual removal of a Board-imposed mill levy cap is subject to approval of the Board of County Commissioners at the time the cap is proposed to be removed. Removal of mill levy caps should be supported by justifications including, but not limited to, data establishing ratios of assessed valuation

to debt that meet statutory criteria for the issuance of bonds without a mill levy cap, and enhancement of a district's ability to refinance debt at a more favorable rate (if proposed in connection with a refunding of debt).

2. The Maximum Debt Service Mill Levy Cap for Full Service Districts shall normally be 50 (fifty) mills. Debt Service Caps for Limited Service Districts should be correspondingly lower based generally on the proportion of services and facilities the district will be providing compared with a Full Service District.
3. A Maximum Operational Mill Levy Caps of up to 15 (fifteen) mills if District(s) is proposed to own and maintain infrastructure and or open space, landscape, and or other facilities that serve as amenities to the residents within the proposed district(s) shall be allowed if supported by the Service Plan and accompanying detailed Development and Financial analyses.
4. All service plans for metropolitan districts shall specify a Maximum Combined Mill Levy cap. Unless otherwise provided for and justified below, the Maximum Combined Mill Levy shall be 60 (sixty) mills.
5. If justified and fully documented by supporting information, an increase in the Maximum Operational, Debt Service and/or Maximum Combined Mill Levy Caps to allow up to 20 (twenty) additional mills may be specifically authorized for the purpose of funding ongoing fire protection services where either the District itself will be providing these services or the District(s) propose to contract with another district to provide these services. Such additional mill levy caps shall only be allowed in cases where the property within the proposed district is not presently included in an organized fire protection district.
6. If justified and fully documented by supporting information, an increase in the Maximum Combined Mill Levy Caps of up to 5 (five) additional mills may be specifically authorized as a Special Purpose Mill Levy for the purpose of funding ongoing covenant enforcement and/or maintenance of common facilities in the absence of a Homeowners Association, or if such covenant enforcement, in the alternative, is to be undertaken by the District.

7. In cases where districts are subject to a mill levy cap and will be relying significantly on future development to meet financing projections, notice shall be provided in the service plan or its approval to the effect that repayment periods for bonds and/or other district obligations are subject to extension in the event revenues come in at a rate lower than anticipated.

G. Disclosure, Notice and Annual Reports

1. It is the policy of El Paso County to further and encourage full, balanced, clear, convenient and constructive disclosure of special district information to all potentially effected parties especially including existing and potential future residential property owners.
2. Notice and disclosure should specifically address topics including but not necessarily limited to unique representational issues (e.g. master districts), dissemination of contact and basic financial information to property owners, and apprising tax and rate payers of their potential maximum financial risk and exposure associated with owning property in the district(s)
3. All districts shall file an Annual Report and Disclosure form in accordance with Resolution 06-472, as may be amended.

H. Non-Proliferation and Need for Districts. Notwithstanding the many factors which may create a justification to form one or more new and independent special district(s), it is the policy of the County to discourage the unnecessary proliferation of additional districts in the County.

1. All proposals for new districts shall clearly and comprehensively justify their need compared with alternatives including using existing districts or non-special district options.
2. Plans for new districts shall be designed and implemented to allow reasonable options for inclusion of additional property; thereby reducing the necessity of creating additional districts in the future.
3. Although the County supports the reasonable and judicious inclusion of additional territory by existing and proposed new districts, conditions should be placed on new and revised service plans to limit the potential for inclusion of remote properties unless these actions were anticipated in the original service plan.

4. Service Plans should be written with contingences that contemplate eventual annexation of territory by a municipality, in cases where this is a significant possibility.

I. **Land Use Approvals.** Applicants for developer-initiated districts are encouraged to obtain Underlying Land Use Approvals prior to, or at a minimum, in conjunction with service plan application. In those cases where an applicant desires to process a service plan prior to final action on underlying land use approvals, the burden shall be on the applicant to justify the necessity of this timing, sufficient conditions shall be placed on the service plan to address potential subsequent denial or modification of the land use applications, and notations shall be added making it clear that the County has no obligation whatsoever to approve subsequent land use applications in cases where applicants may chose to process service plans in advance of obtaining underlying land use approvals.

J. **Fees.** Within the limits of State Statutes, it is the policy of the County to establish and charge fees commensurate with the actual cost of processing and reviewing of new and amended service plans. Such fees are established by separate Board resolution and may be waived or reduced by the Board of County Commissioners either in advance of or in conjunction with the hearing on a given service plan. Justifications for fee waiver or reduction include, but are not limited to:

1. County-initiated or partnered service plans.
2. Reduced fee based on limited non-controversial modification to an existing Service Plan.
3. Processing of service plans for volunteer initiatives and/or for districts with limited proposed indebtedness and revenue generation.

IV. SERVICE PLAN REQUIREMENTS & PROCEDURES

A. **Development and Financial Analysis.** A development analysis shall be required prior to formation or full authorization of all proposed districts which rely significantly on future development to meet financial projections

1. At a minimum, the development analysis shall include a summary of the anticipated development within the district described by applicable category and with development absorption projected throughout the applicable forecast period, including justification for the basis of such projections.

2. A summary financial analysis shall be provided to correspond with the development analysis. This financial analysis shall include a first-year revenue budget, a summary of projected revenues, expenditures, and proposed debt issuances over the forecast period, and at a minimum shall address the requirements of C.R.S. 32-1-202 (2) (b) and (f). The summary financial analysis shall also estimate the average annual impact to the County's Specific Ownership Tax of the proposed maximum district mill levy and a comparison of that impact with the estimated increase in County property tax collections from property within the district.
3. The development analysis and financial plan shall address the "most probable" market absorption assumptions at a minimum but shall also specifically address contingencies in the event initial development is significantly delayed and/or market absorption occurs at significantly lower rates than anticipated.
4. Service Plans for newly developing areas shall specifically address the potential vulnerability of the development forecasts to short-term market downturns at the beginning of the forecast period.

B. Eligible Improvements.

1. It is the policy of the County to encourage the use of financing districts for Regional Public Improvements which provide a benefit to a significant share of residents and businesses within a larger development and/ or to areas outside the development.
2. Special districts may be authorized to fund Local Public Improvements, where a need is demonstrated, and if a plan for this financing can be justified in the Service Plan.
3. Districts shall not be authorized to finance non-public improvements, nor shall district facilities be used for non-public purposes without proper remuneration to the district(s).
4. In cases where districts are used to finance Local Public Improvements which are tied to the subdivision process, any Service plans and/or subdivision agreements shall be structured in order to prevent a loss of sales tax revenue from sales of construction materials which would otherwise accrue to the County or other local government taxing entities.

C. Acquisitions and Eminent Domain

1. The policy of the County is to generally discourage the use of districts as a mechanism to reimburse developers for the cost of facilities or other costs already committed to a land development project unless such reimbursement was contemplated in previous County approvals.
2. The contemplated use of eminent domain and/or dominant eminent domain should be addressed in the service plan with reasonable limits placed on thereon, based on the intended use of the district(s). Such limits may include the requirement for express prior approval of the Board for any purposes not explicitly identified in the service plan.
3. In no case shall the authorized eminent or dominant eminent domain powers of the district(s) be used to acquire land or other assets for the purpose of private economic development of such property, where such acquisition is not clearly necessary to support the essential facility and service provision purposes of the districts (s).
4. Pursuant to Colorado Revised Statutes, districts shall not be authorized to acquire water rights by condemnation.

D. Authorization of Debt and Issuance of Bonds

1. Districts shall be encouraged to prudently phase the issuance of debt, especially in situations where future development will be substantially relied upon for to generate revenue to pay such debt.
2. The pre-authorization of debt shall be reasonably limited.
3. In cases where there will be a Master District arrangement, consideration may be given to limitations which require prior Board of County Commissioners approval for re-authorization of debt if and when the original authorization expires.
4. Districts shall evaluate their proposed mill levy and debt in relationship to the current and potential future combined mill levies and debt which may be levied by all overlapping and eligible taxing entities for the affected area.
5. Where applicable and appropriate, districts are encouraged to rely on a combination of property taxes, fees and charges both to diversify their revenue sources and to reduce some of the repayment impact on future

property owners, particularly in the case where the district(s) will be used to fund Local Public Improvements.

6. Districts are encouraged to limit the term of bond issuances to the shortest time period that is reasonable and practical. The term of each individual bond issue should be limited to thirty (30) years or less unless specific justification for a longer duration is provided.
7. In cases where developers or other directly interested parties may be purchasing developer-held bonds, an opinion letter from an external financial advisor shall be provided to ensure that interest rates for these bonds are competitive as compared with bonds sold on the open market.
8. Districts shall not be authorized to directly accept sales or use tax revenues (i.e. from tax increment financing arrangements) without express prior approval of the Board).

E. Developer Funding Agreements. Districts shall be allowed to prudently use developer funding agreements and/or capitalized interest as a means of compensating for delays in receipt of property tax and other revenues in newly developing districts.

1. The proposed and potential use of Developer Funding Agreements shall be addressed as part of the Service Plan for new districts and material modifications, if this topic is deemed by the Planning and Community Development Director to be pertinent to the amendment.
2. To the extent Developer Funding Agreements are included in an approved Service Plan (or any amendment thereof), such Agreements may provide for the earning of simple interest thereon, but under no circumstances shall any such Agreement permit the compounding of interest. The Service Plan may permit an interest rate that does not exceed the prime interest rate plus two points thereon
3. Unless specifically addressed in the original Service Plan or a Board of County Commissioners-approved amendment of the Service Plan, the maximum term for repayment of a Developer Funding Agreement shall be twenty (20) years from the date the Special District becomes obligated to repay the Developer Funding Agreement under the associated contractual obligation. For the purpose of this provision, Developer Funding Agreements are considered repaid once the obligations are fully

