

ORDINANCE NO. 1852

INTRODUCED BY: Dick Hodge

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, ADOPTING *SPECIAL DISTRICT SERVICE PLAN APPROVAL PROCEDURES*; AND SETTING FORTH THE PURPOSE AND ESTABLISHING THE EFFECTIVE DATE THEREOF.

WHEREAS, the City has received a number of requests to create Special Districts for residential and non-residential developments within the City; and

WHEREAS, the City Council desires to provide approval procedures and guidelines and set forth its policy statement with respect to the creation of Special Districts within the City; and

WHEREAS, the proposed approval procedures have been reviewed by a committee consisting of the City Manager, Finance Director, Public Works Director, Community Development Director, Parks and Recreation Director, City Attorney, City financial advisor and City bond counsel, and have been recommended to the City Council; and

WHEREAS, the City Council desires to adopt the *Special District Service Plan Approval Procedures* heretofore submitted to the City Council for its review and consideration.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BRIGHTON, COLORADO, AS FOLLOWS:

Section 1. The City Council hereby adopts the *Special District Service Plan Approval Procedures* attached hereto as Addendum A, including the overall *Policy Statement Concerning Special Districts* included therein as Exhibit A.

Section 2. Said *Special District Service Plan Approval Procedures* shall be applicable to all applications for the approval of an original or amended special district service plan currently on file with the City but which have not been considered or formally acted upon by the City Council and to all applications for the approval of an original or amended special district service plan submitted to the City on or after July 19, 2005.

Section 3. Purpose. The purpose of this Ordinance is to provide for the health, safety and welfare of the people.

Section 4. Repeal. Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 5. Validity. If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

Section 6. Interpretation. This Ordinance shall be so interpreted and construed as to effectuate its general purpose.

INTRODUCED, PASSED ON FIRST READING AND ORDERED PUBLISHED THIS
19th DAY OF July, 2005.

CITY OF BRIGHTON, COLORADO



Janice E. Pawlowski, Mayor

ATTEST:



Karen Borkowski, City Clerk

APPROVED AS TO FORM:

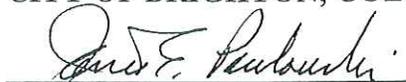


Margaret R. Brubaker, City Attorney

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First Publication: July 27, 2005

PASSED ON SECOND AND FINAL READING AND ORDERED PUBLISHED THIS
6th DAY OF September, 2005.

CITY OF BRIGHTON, COLORADO



Janice E. Pawlowski, Mayor

ATTEST:

Ordinance No. 1852

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A handwritten signature in cursive script, reading "Karen Borkowski", written in black ink. The signature is positioned above a horizontal line.

Karen Borkowski, City Clerk

Published in the *Standard Blade*

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CITY OF BRIGHTON, COLORADO
SPECIAL DISTRICT SERVICE PLAN APPROVAL PROCEDURES

A. Submittal Requirements

The applicants who apply for approval of a special district service plan must comply with these Procedures and are referred to the City's "Overall Policy Statement Concerning Special Districts" (the "Policy Statement") a copy of which is attached as Exhibit A hereto and by this reference made a part hereof. The applicants must file twelve (12) copies of the proposed service plan or the proposed amendment to an approved service plan with the City Clerk.

At the time of such filing the applicant must pay a fee to the City of \$5,000 for review of the proposed service plan or \$2,500 for review of the proposed amendment to an approved service plan.

In addition, at the time of such filing the applicant must make a deposit with the City for the payment of the fees of the City Attorney and the City's financial advisor, bond counsel, engineering consultant, etc. of \$20,000 for review of the proposed service plan or \$10,000 for review of the proposed amendment to an approved service plan. Any portion of such deposit not expended by the City for such purposes will be returned to the applicant following final action by the City Council on the proposed service plan or amendment. If such deposit should be insufficient for the payment of such fees, the applicant must make additional deposits with the City upon request of the City Manager.

The applicant must comply with the requirements of Article 1, Title 22 Colorado Revised Statutes, as amended ("C.R.S."), also known as the "Special District Act" and all other applicable statutes.

B. Service Plan Contents

1. The proposed service plan must specify the name of the district, which must be in the following form: " District, Adams County, Colorado." The name must not include the words "Brighton" or "City of Brighton."

2. The proposed service plan must include a complete resume of each developer of property within the proposed district, including history of the entity, biographical information on principals or officers and references for principals or officers. Current financial statements of the entity (audited, if available) must be submitted separately to the City financial advisor under a written agreement by the latter to hold the same in confidence.

3. The proposed service plan must include a legal description of the boundaries of the district, maps of the district and its service area and a narrative description of the proposed land use plan. The boundaries and service area of the district may not overlap with those of any existing special district authorized to provide the same or similar facilities or services, except as permitted by Section 32-1-107 C.R.S., including obtaining the approval of the City.

4. The proposed service plan must provide facts sufficient to conclude that it would be impracticable for the land within the boundaries of the district to be included within the

boundaries of an existing special district and declare the policy of the district to be receptive to inclusion of additional land upon the petition of landowners.

5. The proposed service plan must provide a description of the facilities to be financed and the other facilities and services to be provided by the district. Subject to the limitations set forth herein, the proposed service plan may authorize the proposed district to undertake those public improvements and services as may be permitted from time to time by the Special District Act. Such facilities or services may not duplicate or compete or interfere with facilities and services provided by the City or existing special districts (except as permitted by Section 32-1-107, C.R.S.) and must be compatible with and integrated into City and existing special district facilities and services. The proposed service plan shall specify in sufficient detail the benefit that will accrue to the future residents of the district and to the City resulting from the district's provision of such facilities and services. The proposed service plan must require that all facilities financed by the district will be dedicated to the City unless the City determines otherwise.

As set forth in the City's Policy Statement attached hereto as Exhibit A, the City expects a district to provide certain facilities and amenities within the district, as determined by the City Manager. In addition, if required by the City Manager, the proposed service plan must also provide for certain regional improvements and/or upgraded on-site amenities as illustrated in the Policy Statement. To the extent that the proposed service plan contemplates the construction of major and minor arterials to serve the district, the service plan shall state that the District will construct such facilities consistent with the applicant's City approved Traffic Improvement Analysis and the City's then-existing Transportation Master Plan (as it may be subsequently amended by Sub-Area plans).

6. The proposed service plan must provide estimates of the costs of all proposed facilities prepared by an independent engineer.

7. The proposed service plan must specifically reference the applicability of Section 32-1-1001(1)(f), C.R.S., as it may be revised from time to time, which provides that the board of the district may not pay more than fair market value and reasonable settlement costs for any interest in real property and may not pay for any interest in real property which must otherwise be dedicated for public use or the district's use in accordance with any governmental ordinance, regulation or law.

8. The proposed service plan must provide that all facilities constructed by the district must comply with City engineering standards and specifications and be subject to review, monitoring and inspection by the City or its engineering consultant. The cost of such review, monitoring and inspection will be borne by the district.

9. The proposed service plan must provide an independent absorption and feasibility study supporting the ability of the district to discharge its proposed indebtedness on a reasonable basis.

10. The proposed service plan must contain an acknowledgement that the approval of the service plan does not constitute the approval of any specific land use plan, or grant any

vested rights, and that any such approval shall be subject to separate action by the City in accordance with its ordinances, rules, regulations and policies.

11. The proposed service plan must provide specific information regarding any administration or other fees (including without limitation public improvement fees or similar fees imposed on retail sales) to be assessed at the request of or for the benefit of the district or the developer of the district against property within the service plan area, including the type, amount, and purpose of such fees, and shall include a process and list of administrative contact personnel (name, address, phone number) with authority and responsibility for responding to and coordinating resolution of issues that arise from property owners, or others, relating to the district and its services. The service plan must provide that at least annually the City Manager will be provided with current contact information on administrative personnel. The administrative plan shall include a referral and arbitration process for the resolution of issues that may arise regarding complaints or the coordination of issue resolution between landowners, the district, and the City.

12. The proposed service plan must specifically address the proposed use of homeowners associations ("HOA's") within the service plan area, and clearly specify the role and responsibility of the HOA as it relates to the district and its facilities and services. If the service plan provides that the district will levy taxes to provide for certain specified ongoing maintenance of the district's infrastructure or improvements, the district shall assume all maintenance responsibilities with respect thereto and the HOA shall not be responsible for maintenance costs or expenses related thereto. If the HOA is to be responsible for any maintenance costs or expenses of the facilities of the district, the service plan must set forth such responsibilities.

13. The service plan shall provide that if a reimbursement agreement or participation agreement exists in connection with the acquisition, construction or installation of district improvements or amenities, whereby the district is eligible for reimbursement for certain costs by parties, developments and/or districts abutting or otherwise benefiting from such improvements, all reimbursements received by the district pursuant to such agreements must be specifically accounted for and must be used by the district to either defray the costs of capital expenditures of the district or to pay the principal of or interest on any outstanding district debt as the same becomes due.

14. The proposed service plan shall require the submittal of semi-annual reports to the City Council for the first five years after the establishment of the district and for annual reports to the City Council thereafter. Such reports shall contain a status report on material activities of the district, including construction projects, financings, intergovernmental agreements, any litigation involving the district, the district's assessed valuation, issue resolution or other coordination issues, contact information for administrative personnel, and any other information deemed material by the City Manager. The proposed service plan shall require the district to submit a copy of its annual audit to the City within 30 days of filing its audit with the State of Colorado. The proposed service plan shall also provide that all annual and other meetings of the district board be held within the corporate limits of the City.

15. The proposed service plan must require the district to file promptly with the City Clerk the following documents: (a) audited financial statements, (b) budgets, (c) architectural plans, (d) bid documents evidencing compliance with the Special District Act, (e) construction contracts, (f) intergovernmental agreements, (g) ballot questions, (h) resolutions authorizing bonds or other financial obligations, (i) financing documents, (j) credit agreements and (k) official statements.

16. The proposed service plan must require the district to pay such reasonable charges for services and reimbursements for expenses incurred by the City in connection with the district as the City may require.

17. The proposed service plan must require the district to post notices on each construction project identifying the district as the project sponsor, and containing contact information for interested parties. The proposed service plan must also require the district to furnish notice to property owners within the district of the existence of the district, the types and amounts of taxes levied and fees imposed, a description of the district's maintenance responsibilities for public improvements, a statement that the district is not related to or affiliated with the City, and contact information for further information and questions concerning district construction projects, taxes and fees, and maintenance activities.

C. Financial Requirements

1. The proposed service plan must specifically describe the expected source of repayment and security for all bonds or other financial obligations of the district. The service plan shall provide that all bonds or other financial obligations of the district shall be payable only from the specific revenues or fees set forth in the service plan, unless additional revenues or fees are approved by the City Council and the service plan is amended accordingly. The proposed service plan shall specify a mill levy not to exceed thirty-eight (38) mills for debt service (including the cost of credit enhancement) and prohibit the pledge or encumbrance of district assets. The mill levy cap may be adjusted to offset the effect of the Gallagher Amendment. The proposed service plan must specify what improvements are expected to be maintained by the district and specify the maximum operating mill levy the district will impose.

2. The proposed service plan must specify the maximum principal amount of bonds (excluding refunding bonds) to be issued by the district, the maximum net effective interest rate on such bonds not to exceed 15% per annum, the maximum discount on such bonds and the maximum term of such bonds not to extend beyond thirty (30) years from the date of issuance. The proposed service plan must set forth the latest date by which all bonds will be issued by the district and such date can only be extended by approval of the City Council.

3. The proposed service plan must include the text of the initial ballot questions to be submitted to electors of the district. If the text of such initial ballot questions do not conform to the limitations contained in the proposed service plan, including without limitation, the maximum principal amount of bonds to be issued by the district, the maximum discount on such bonds, the maximum mill levy for debt service, the maximum net effective interest rate and the maximum term thereof, the proposed service plan shall specifically provide that the district shall

only issue bonds or other multiple fiscal year financial obligations that conform to the requirements and limitations of the approved service plan, as it may be amended from time to time with the approval of the City Council in accordance with the Special District Act. The proposed service plan shall also provide that if such bonds or other financial obligations do not conform to the requirements and limitations of the approved service plan, this shall constitute a material departure from the service plan within the meaning of Section 32-1-207, Colorado Revised Statutes.

4. The proposed service plan must require a fairness opinion by an independent financial advisor as to the interest rate on any bonds or other financial obligations sold in any transaction not involving a public offering of such bonds or other financial obligations.

5. The proposed service plan must prohibit the issuance of bonds or the incurrence of other multiple fiscal year financial obligations to which ad valorem property taxes are pledged having a principal amount that, when added to the principal amount of all other such outstanding bonds or other financial obligations, exceed the greater of \$2,000,000 or 50% of the valuation for assessment of the taxable property in the district, as certified by the assessor, except for debt which complies with the provisions of Section 32-1-1101(6)(a) or 32-1-1101(6)(b), C.R.S., as it may be amended from time to time.

6. The proposed service plan must prohibit acceleration of the principal of any bonds or other financial obligations of the district except credit enhanced bonds or other obligations.

7. The proposed service plan must prohibit the creation of TABOR enterprises and 63-20 corporations without the prior written consent of the City Council.

8. If a district expects to impose, collect or otherwise receive public improvement fees or other similar fees imposed on retail sales within the district, this must be specifically set forth in the service plan. No such public improvement fees or similar fees shall be imposed, collected or received by the proposed district unless the City Council has consented thereto and approved an amendment to the service plan to reflect the same.

9. The proposed service plan must set forth an estimated bond marketing schedule and plan, including proposed exemptions from registration under §11-59-110, Colorado Revised Statutes, as amended, waive the exemption afforded by §11-59-110(1)(k), Colorado Revised Statutes, as amended (if applicable), and require that a copy of the Notice of Claim of Exemption filed with the Colorado Securities Commissioner also be filed with the City Clerk.

10. The proposed service plan must set forth schedules showing the anticipated sources and uses of the proceeds of all bonds or other financial obligations of the district.

11. The proposed service plan must set forth an estimated cash flow analysis prepared by an independent financial advisor showing for each year, beginning with the year in which the district is organized and ending in the year in which the district indebtedness is retired, the valuations for assessment of all taxable property in the district, mill levies, ad valorem tax receipts, utility fees, other revenues (including, without limitation, any public improvement fees or similar fees imposed on retail sales expected to be received by the district or the developer of the district), debt service, operation and maintenance expenses and annual and cumulative

surpluses. The cash flow analysis shall state the growth assumptions on which it is based, in terms of residential and non-residential development.

12. The proposed service plan must require that the district furnish to the City Clerk prior to the issuance of any bonds or the incurrence of any other financial obligations an opinion of the district's bond counsel or its general counsel that the district has complied with all of the requirements of the approved service plan relating to bonds or other financial obligations or that the district submit all financing documents to the City Attorney for prior approval as to compliance with the requirements of the approved service plan.

13. The proposed service plan must prohibit the district from applying for Conservation Trust Funds, Great Outdoor Colorado Funds and other grant moneys for which the City is eligible to apply without the prior written consent of the City Council.

14. The proposed service plan must provide that the inclusion of land, exclusion of land, material changes in financial plans and other material departures from the approved service plan, including but not limited to, modifications to the maximum principal amount, maximum discount, maximum mill levy for debt service, maximum net effective interest rate and maximum term for bonds or other financial obligations of the district, constitute material modifications to the service plan and require City Council approval of any such amendments to the approved service plan, as required by Section 32-1-207, C.R.S. In multiple district structures, the service plan may permit the boundaries within the combined service area of the districts to be adjusted among the districts without City Council approval.

15. The proposed service plan must require that the board of directors of the district commence proceedings for the dissolution of the district upon retirement of all district indebtedness. The proposed service plan must also provide a date by which the district will commence proceedings for the dissolution of the district if the bonds are not issued or the development does not occur.

16. The proposed service plan must comply with the other requirements of the Special District Act and any other applicable statutes.

D. Administrative Review

The proposed service plan will be reviewed by a committee consisting of the City Manager, Finance Director, Public Works Director, Community Development Director, Parks and Recreation Director, City Attorney, City financial advisor and City bond counsel, which will make recommendations to the City Council.

E. City Council Action

Upon receipt of the recommendations of the administrative review committee, the City Council will adopt a resolution approving, disapproving or conditionally approving the proposed service plan and comply with other applicable requirements of § 32-1-204.5, Colorado Revised Statutes, as amended, and any other applicable statutes.

Exhibit A

City of Brighton, Colorado

Overall Policy Statement
Concerning Special Districts

General Policy Statement

The formation of metropolitan districts within the City of Brighton is viewed by the City Council as a form of financial incentive for development. Therefore, any applicant that proposes to create a metropolitan district to fund infrastructure, services and amenities must demonstrate in its service plan that the development will add value to the City beyond just the added tax base and enhance the quality of life for the residents of the metropolitan district. The City Council expects that a metropolitan district will provide certain on-site facilities and amenities to support the development, as determined by the City Manager, such as water and sewer lines that are greater than 12 inches in diameter, storm drainage facilities, collector and arterial roadways and community parks. In addition, the City Council has directed the City Manager to review each proposed metropolitan district to determine if such metropolitan district must include regional improvements and/or upgraded on-site amenities in the development plan, with examples of such improvements and amenities set forth below. If the City Manager requires any such regional improvements and/or upgraded on-site amenities, the City Council will consider the district's service plan only if such improvements and/or upgraded on-site amenities are included in such service plan.

One of the primary goals of the City Council in reviewing applications for new development is to ensure that the new development provides for both manageable and quality growth; that new development supplies the necessary infrastructure, services and amenities to address and provide for the impact of the development on the specific community and the City as a whole; and that new development appropriately and adequately assumes the financial responsibility for the costs of that impact.

Inherent to the provision of infrastructure, services and amenities for new development is a determination of the most appropriate financing mechanism. In general, the City Council believes that general improvement districts should be used to construct major water and sewer infrastructure and, in certain circumstances as determined by the City, to provide street and transportation improvements. Metropolitan districts should be used to finance other necessary infrastructure and amenities as set forth in the City's Special District Service Plan Approval Procedures. Under certain circumstances, however, the City Manager, with the consent of the City Council, may determine that it is appropriate for metropolitan districts to construct regional water and sewer infrastructure and transportation improvements if there is not sufficient justification for using a general improvement district to construct such infrastructure and improvements. In such circumstances, the City Council may allow the mill levy of such a metropolitan district to exceed 38 mills for debt service, if it finds that such an increased mill levy is in the best interest of the City.

The City Council recognizes the need for districts to use reimbursement agreements or participation agreements to share the costs of certain infrastructure and amenities between neighboring, abutting or otherwise benefited developments and/or districts. The City Council also recognizes that any reimbursements received by a district should be used either to defray additional capital expenditures for the district or to pay the debt service requirements on outstanding district debt as it becomes due, thereby lowering the tax burden of the property owners in the district.

Regional Improvements or Upgraded Amenities for Residential Development.

The City Council recognizes that each proposed metropolitan district is unique and that in order to determine which regional improvements or upgraded on-site amenities should be provided by a proposed district, each situation must be considered individually depending on, among other things, the size and location of the proposed district, the type of development to be serviced by the proposed district, the neighboring developments, and the overall state of development of the territory surrounding the proposed district. The City Council therefore acknowledges that the City Manager, in consultation with other City officials and employees, will ultimately determine, with the City Council's approval, which regional improvements and/or upgraded on-site amenities, if any, should be provided by each particular metropolitan district. Set forth below are certain regional improvements and upgraded onsite amenities that may be required by the City Manager and the City Council. The improvements and amenities so listed are not exclusive and are set forth for illustrative purposes only.

Examples of regional improvements or upgraded onsite amenities that may be required to be provided in connection with the formation and development of a metropolitan district for residential improvements are as follows:

1. Enhanced recreational amenities in the community parks;
2. Upgraded perimeter fencing and landscaping along arterial and collector streets;
3. Upgraded and expanded entrance landscaped areas and right-of-way (common area) landscaping within the development;
4. Off-site regional drainage improvements or facilities required by the Urban Drainage and Flood Control District;
5. Off-site full width improvements to major and/or minor arterial streets or construction of the full width of a collector street to the major or minor arterial;
6. Dedication of land for public safety purposes, for example dedication of land for fire stations, police substations or other public safety related purposes; and
7. Dedication of land for wildlife habitat or open space that protects the City's water supply or otherwise benefits the City.

Regional Improvements or Upgraded Amenities for Commercial Development.

Examples of regional improvements or upgraded onsite amenities that may be required to be provided in connection with the formation and development of a metropolitan district for commercial improvements are as follows:

1. Upgraded landscaping and design that exceeds the City's commercial design standards;
2. Upgraded signage and fencing;
3. Dedication of art within the development that equals 1/2 of one percent of the cost of the development up to a maximum of \$200,000;
4. Off-site regional drainage improvements or facilities required by the Urban Drainage and Flood Control District;
5. Off-site construction of the full width of a major or minor arterial street with median landscaping; and
6. Providing trails as part of the commercial development that connect to the City's trail system.

Additional Considerations

The City Council prefers that any proposed metropolitan district contain at least 320 acres (either through a single district or combination of districts, such as a "coordinating" or "operations" district and one or more "financing districts"), but will consider districts with less acreage if adequate justification is provided, a determination is made that such approval would be in the best interest of the City, and the City Manager recommends approval of a smaller district.

The City Council recognizes that certain metropolitan districts may be located within general improvement districts that impose a mill levy on the property in the district in connection with the construction of major water and sewer infrastructure. The City Council prefers that the combined mill levy of any such general improvement district and the proposed metropolitan district not exceed fifty (50) mills for debt service. If it is determined by the City Council that other regional improvements, such as transportation improvements, should also be constructed by general improvement districts, the City Council may recognize the need to have a combined mill levy in excess of fifty (50) mills for debt service. In determining whether the City Council will approve a proposed service plan, the City Council will consider the combined mill levy on the property in the proposed district.

The City Council recognizes that one financing technique that has been used by special districts is the imposition of a public improvement fee, which is a fee that is imposed on retail sales in the district. If a public improvement fee, or similar fee imposed on retail sales, is expected to be imposed, collected or otherwise received by the district, this must be specifically set forth in the proposed service plan. The City Council will consider the imposition of such a public improvement fee or similar fee on a case-by-case basis to determine if imposing such a fee would be in the best interests of the City.

The City Council has adopted specific Special District Service Plan Approval Procedures with respect to the required contents of a proposed service plan. If a proposed

service plan is not in compliance with the City's adopted Procedures, the applicant should attach to its application a summary of the areas of non-compliance as well as a detailed explanation and justification for such non-compliance.

The City Council expects to periodically review its Procedures and Policy relating to special districts to ensure continued compliance with City visions and goals.