

**Comparison of current
Brighton Special District Service Plan Approval Guidelines
with
Provisions of Proposed Model Service Plan**

Special District Service Plan Approval Requirements	<u>Comments</u>	Provisions of Draft of Model Service Plan (the “MSP”)
A. Submittal Requirements		
At the time of 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 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	Not a requirement of the Special District Act (“Act”) This is a Policy decision related to the amount of the deposit required by the City.	n/a
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”	Not a requirement of the Act	Not set forth in the MSP

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	Not a requirement of the Act and not commonly done by other jurisdictions	Not a requirement of the MSP. The MSP provides for contact information for the initial proponents of the service plan.
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	Required by the Act	Required by the MSP
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	Not a specific requirement of the Act, but Act does require the City to make finding that there is sufficient need for the District and that existing service is inadequate for present and projected needs	Not requirement of the MSP but MSP does list all the findings City is required to make under the Act
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. Such facilities or services may not duplicate or compete or interfere with	Required by the Act	MSP requires description of facilities the District will provide

facilities and services provided by the City or existing special districts 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	Not required by the Act	Not required by the MSP
The proposed service plan must provide for certain extraordinary off-site improvements and upgraded on-site amenities as illustrated in the Policy Statement and as required by the City Manager and approved by the City Council	Not required by the Act and not commonly done unless District is empowered to impose an additional number of mills for regional improvements	This is an open question under the MSP.
The proposed service plan shall provide that the district will construct the full width of all major and minor arterials that serve the district	Often required by other jurisdictions; Act does not require	Not required by the MSP. This could be included in the Intergovernmental Agreement between the City and the District.
Before the district may finance any facilities that are solely on-site improvements (other than upgraded on-site amenities as required by the City Manager), such as streets, curb, gutter and sidewalks, drainage, water and sewer lines, etc., the district shall have financed or otherwise provided for the financing of all the extraordinary off-site	Extraordinary off-site improvements more commonly done through an additional "regional mill levy" component; not required by the Act	This is an open question under the MSP

improvements and upgraded on-site amenities required by the City Manager with respect to such district		
6. The proposed service plan must require that all facilities financed by the district will be dedicated to the City unless the City determines otherwise	Not required by the Act	Required by the MSP
7. The proposed service plan must provide cost estimates of all facilities prepared by an independent engineer	Act requires cost estimate prepared by an engineer but not an “independent” engineer	“Independent” engineer not required by MSP
8. The proposed service plan must provide that all land and easements customarily dedicated by the developer to public entities such as the City, the county, the school district or other public entities will be dedicated directly to such entities and will not be purchased by the district for dedication to such entities	Section 32-1-1001(1)(f) of the Act requires that any real property shall not be purchased by the District for more than fair market value	Not specifically set forth in the MSP.
9. The proposed service plan must provide that all facilities constructed by the district must comply with City engineering standards 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	Not a specific requirement of the Act	MSP requires that all Public Improvements be constructed in accordance with “City Approvals” - defined as, collectively, (a) the final plats for the areas within the District, (b) the final development plans and/or landscape plans for the areas within the District, (c) the construction plans for the areas within the District, (d) the development agreements a/k/a subdivision improvement agreements for the areas within the District, (e) any other agreements between the City and the District relating

		to the area within the District, including the Intergovernmental Agreement, and (f) any amendments made to any of the aforementioned documents
10. The proposed service plan must provide detailed construction phasing showing completion of water, sanitary sewer, storm drainage and road improvements in conjunction with any parks or recreation facilities	Not a requirement of the Act and not commonly required; developers may not have this information when they submit a service plan	MSP does not require
11. 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	This is not a statutory requirement and while it used to be a common requirement of jurisdictions approving service plans for metro districts, it's not frequently done any more	MSP does not require. There is a statutory requirement for a financing plan.
12. The proposed service plan must provide specific information regarding any administration or other fees to be assessed by the district against property within the service plan area 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	Not a statutory requirement and not commonly done – district may not have this information yet. Current District contact information is an annual filing the District must make to the Division of Local Government in accordance with the provisions of the Act	MSP does not require but does require the filing of annual notice and public disclosure documents with the Division of Local Government and the County Clerk and Recorder
The administrative plan shall include a referral and arbitration process for the resolution of issues that may	Not statutory requirement and not commonly done; could be an administrative burden on the City.	MSP does not require

arise regarding complaints or the coordination of issue resolution between landowners, the district, and the City		
13. The proposed service plan must specifically address the proposed use of homeowners associations (“HOAs”), 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 ongoing maintenance of the district’s infrastructure or improvements, the district shall assume all maintenance responsibilities and the HOA shall not be responsible for maintenance costs or expenses	Not a statutory requirement but use of Districts to provide HOA services is becoming more common. The District can only own/operate/maintain public improvements that are open to the public. Private improvements, such as a clubhouse or a pool that was restricted to District residents only, would have to be owned/operated/maintained by the HOA	MSP contemplates the provision by the District of covenant enforcement and design review services
14. The service plan shall provide that if a reimbursement agreement exists in connection with the acquisition, construction or installation of district improvements or amenities, whereby the district will be reimbursed for certain costs by parties or developments benefiting from such improvements, all reimbursements received by the district pursuant to such agreements must be used by the district to pay the principal of or interest on any district debt incurred to finance such improvements	Not a statutory requirement but this is a common provision in service plans.	Provided for in the MSP.

15. The proposed service plan shall make provision for the submittal of semiannual reports to the Brighton City Council, which report shall include a detailed financial report, as well as status reports on issue resolution or other coordination issues 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	Act provides for reporting requirement to be no more than annually (Section 32-1-207(3)(c)) Not a requirement of the Act	MSP provides for reporting in accordance with requirements of the Act and sets forth additional annual reporting requirements. MSP does not require
C. Financial Requirements		
1. The proposed service plan must describe the security for all bonds or other financial obligations of the district, specify a mill levy not to exceed thirty-eight (38) mills for debt service (including reimbursement to credit enhancers) and prohibit the pledge or encumbrance of district assets	The Act does not require that a mill levy limitation be set forth in the plan. If a service plan imposes a limit on a debt service mill levy, the general practice is for the limit to be 50 mills until the debt is less than 50% of the assessed value of the district, at which time there is no mill levy limitation. The original limit of 38 mills for debt service was based, in part, on the assumption that certain water and sewer regional infrastructure might be provided by a general improvement district and that the general improvement district would also be imposing a mill levy on the taxpayers of the District to pay for the general improvement district debt. The City did not want the combined debt	MSP provides for up to 50 mills for debt service until debt is less than 50% of assessed value, at which time the debt service mill levy becomes unlimited. The limitation on the O&M Mill Levy is an open question in the MSP. The Debt Service Mill Levy and Operation and Maintenance Mill Levy are both subject to the Gallagher adjustment.

	service mill levies to exceed 50 mills. However, the City financed this regional infrastructure with a City bond issue and a GID is no longer expected to issue bonds payable from a tax on the residents of the District.	
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 12% 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 of the first bonds issued by the district. The proposed service plan must set forth a date by which all bonds will be issued by the district and such date can only be extended by approval of the City Council	Not commonly done any more The Act requires the plan to set forth the estimated proposed maximum interest rates and discounts. Required by the Act Not required by the Act. This could be limiting if development is phased; could lead to creation of more districts than necessary for a single development if it's large and phased over a long period of time	MSP does not establish a Total Debt Limit. MSP specifies 18% as the maximum interest rate MSP specifies 5% maximum underwriting discount MSP does not identify a maximum term. The maximum term is limited by statute MSP does not require this
3. The proposed service plan must include the texts of the initial ballot questions to be submitted to electors of the district	Not required by the Act and not commonly done anymore. This could place a burden on the City to confirm that the ballot questions are in compliance with the service plan	MSP does not include, but the MSP does require an opinion letter that the ballot questions conform to the requirements of the service plan.

The ballot questions authorizing the issuance of bonds or the incurrence of other financial obligations must conform to the requirements of paragraphs C1 and C2 above	This is not a statutory requirement but IS common via opinion letter (see previous comment)	MSP requires opinion letter
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	Not required by Act but is common practice	Required by the MSP
5. The proposed service plan must prohibit the issuance of bonds or the incurrence of other 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, exceeds 25% of the valuation for assessment of all taxable property in the district except for (a) such bonds or other financial obligations if the principal amount thereof at any time outstanding does not exceed \$1,000,000, (b) such bonds or other financial obligations sold in transactions not involving a public offering to “accredited investors” or “qualified institutional buyers” whose credentials as such are appropriately evidenced by	The Act sets forth restrictions on the mill levy that can be imposed by the District, but this is based on a 50% debt to assessed value, rather than the 25% debt to assessed ratio	MSP requires that the debt service mill levy will not exceed 50 mills for so long as the total amount of aggregate debt of the District exceeds 50% of the District’s assessed valuation of the District.

customary documentation, (c) such bonds or other financial obligations that are rated “investment grade” by one or more nationally recognized rating agencies or are guaranteed as to the timely payment of principal and interest by financial institutions the obligations of which are so rated and (d) such bonds or other financial obligations issued or incurred for the purpose of refinancing such bonds or other financial obligation		
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	Not a requirement of the Act	Not addressed in MSP but a typical provision in bond documents
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	Not a requirement of the Act	MSP provides that the district can set up enterprises and public corporations in its discretion
8. The proposed service plan must set forth a 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),	The Act requires that the financing plan show how the proposed services are to be financed, including the proposed indebtedness Not required by the Act; District may not know which exemptions it will use when the Plan is approved Only applies if District has property in the Denver/Adams county airport annexation area	MSP provides that the district may issue debt on a schedule determined by the district and phased to serve development as it occurs MSP does not require this but the filings will be made when the bonds are issued MSP does not require

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	Act does not require; might be an administrative burden on City to monitor which exemption the district uses	MSP does not require
9. The proposed service plan must set forth schedules showing the sources and uses of the proceeds of all bonds or other financial obligations of the district	The Act requires the service plan to set forth all proposed indebtedness of the district together with a schedule indicating the year or years in which the debt is scheduled to be issued.	This is a statutory requirement.
10. The proposed service plan must set forth a detailed 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, debt service, operation and maintenance expenses and annual and cumulative surpluses	The Act requires that the service plan shall contain a financing plan showing how the proposed services are to be financed.	MSP does not require the level of detail set forth in the Existing Guidelines
11. 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 that the district has complied with all of the requirements of the approved service plan relating to bonds or other financial obligations	Act does not require.	MSP does not require, but bond counsel will not deliver its opinion if the bonds are not in compliance with the service plan

other material departures from the approved service plan require City Council approval of amendments to the approved service plan		changes in maximum debt mill levy. Open question on other changes that City deems material and that would require a service plan amendment
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	Act provides in Section 32-1-701 that when the district board deems it to be in the best interest of the district to dissolve, the board shall file a petition for dissolution with the district court. Not statutorily required and not common in most service plans any more.	MSP provides that the district will dissolve in accordance with the Act when the Board deems it to be in the best interest of the District and when the District is no longer performing Operation and Maintenance services MSP does not require
The proposed service plan must comply with the other requirements of §§ 32-1-202(2) and 204.5, Colorado Revised Statutes as amended, and any other applicable statutes	These are references to the requirements of the Act.	MSP does not specifically include this language, but the service plan must be in compliance with the Special District Act.
Policy Statement		
The City Council will only consider metropolitan districts that include extraordinary off-site improvements or upgraded on-site amenities in the development plan, as illustrated in the Policy Statement	This is not required by the Act	This is an open question for the MSP. Will the City require the District to finance regional infrastructure and will it authorize the imposition of an additional mill levy for regional improvements?

The City Council recognizes the need to use reimbursement agreements to share the costs of certain infrastructure and amenities between neighboring, abutting or otherwise benefited developments. The City Council recognizes that any reimbursement received by a district should be used to pay the debt service requirements on district debt that was incurred to finance such improvements, thereby lowering the tax burden of the property owners in the district.	This is not required by the Act	The MSP provides that any reimbursement received from a District shall be used to pay the District's debt.
The City Council prefers that any proposed metropolitan district contain at least 320 acres, but will consider districts with less acreage if adequate reasons are given and the City Manager recommends approval of a small district.	Not required in the Act.	Not included in the MSP