

MEMORANDUM

To: City Council of the City of Brighton, Colorado

From: Sally Tasker and Monica Rosenbluth

Date: April 4, 2017

Subject: Special Districts – Model Service Plan and Changes to Existing Guidelines

The City of Brighton, Colorado (the “City”) previously approved certain Special District Service Plan Approval Procedures, together with an overall policy statement (the “Policy Statement”) regarding special districts (collectively, the “Existing Guidelines”). The City does not currently have a model service plan for Special Districts, which has resulted in wide variations in the provisions set forth in the service plans that have been approved by the City Council. The City staff and the City Attorney have been working with Butler Snow LLP to review, and ultimately, replace the Existing Guidelines with a Model Service Plan for Special Districts (the “Model Service Plan”) that are consistent with the Special District Act and which will reflect changes in the City’s policies regarding special districts and will result in more uniform service plans being filed with the City and ultimately considered by the City Council.

The purpose of this Memorandum is to set forth certain issues for discussion with the City Council at its Study Session on April 11, 2017 in order to receive direction from the City Council relating to the provisions of the Model Service Plan. The Model Service Plan will then be revised to reflect the direction of the City Council, after which the City staff will present the Model Service Plan for the review and approval of the City Council.

Attached to this Memorandum are: (a) the Existing Guidelines; (b) an initial draft of a proposed Model Service Plan; and (c) a comparison chart summarizing the provisions of the Existing Guidelines and how the initial draft of the proposed Model Service Plan varies from the Existing Guidelines.

Set forth below are certain key issues that the City staff wanted to highlight for discussion with the City Council in connection with finalizing the Model Service Plan:

1. The Existing Guidelines provide that the mill levy that may be imposed by the District for debt service on its bonds and other district debt shall not exceed 38 mills, although the City has recently approved service plans that have raised this limit to 50 mills.
 - A. What debt service mill levy limit should be imposed under the Service Plan? The original limit of 38 mills for debt service was based, in part, on the assumption that certain water and sewer regional infrastructure (primarily to the southern boundaries of the City) might be financed by a general improvement district (the “GID”) and that

- the taxpayers of the special district would also be paying a mill levy imposed by the general improvement district to finance the general improvement district debt. The Policy Statement provides that the City Council prefers that the combined mill levy of any general improvement district and the proposed metropolitan district not exceed 50 mills for debt service. The City therefore limited the mill levy to be imposed by the special district to 38 mills to allow the general improvement district to impose up to 12 mills. However, the City has financed that water and sewer infrastructure and it is no longer expected that a general improvement district will be providing regional infrastructure or imposing property taxes on residents of the special districts in that area of the City.
- B. Under the Special District Act, a District cannot issue general obligation debt that exceeds 50% of the assessed value of the taxable property in the district, that is payable from an unlimited mill levy, unless certain statutory exceptions are met. Under the Special District Act, a District may issue debt that is payable from a limited mill levy that does not exceed 50 mills, without regard to the assessed value of the property in the District. The current draft of the proposed Model Service Plan provides that the debt service mill levy will be limited to 50 mills until the debt is less than 50% of the assessed value of the table property in the District, at which time there will be no limit on the debt service mill levy imposed by the Service Plan.
- C. Financial advisors and underwriters for special districts have indicated that if a District pledges its full faith and credit to the payment of its bonds, without a mill levy limitation, this will result in lower interest rates and overall cost savings to the taxpayers of the District.
2. What responsibilities should the District assume with respect to operation and maintenance of the public improvements, and covenant enforcement and design review services? To the extent possible, should the District provide these services rather than a homeowners association?
- A. Under the Special District Act, the District would only be able to own, operate and maintain public improvements. Certain improvements that are not available to the public, such as a private swimming pool restricted to District residents, would have to be owned, operated and maintained by an HOA.
3. Does the City want to limit the number of mills that can be imposed by the District for operation and maintenance expenses or should the District be allowed to impose whatever mill levy is necessary to offset the operation and maintenance expenses?
4. The Existing Guidelines require the proposed Service Plan to specify the maximum principal amount of bonds that can be issued by the District. Can this provision be eliminated? The financial advisors and underwriters for special districts have indicated that the market will place limits on the amount of bonds that can be issued based on the proforma financial information provided to potential investors.

- A. The Special District Act requires that the Service Plan set forth all proposed indebtedness for the district together with a schedule indicating the year or years in which the debt is scheduled to be issued. The Service Plan is also required to set forth the estimated proposed maximum interest rate and discounts.
5. As set forth in the Policy Statement and under the Existing Guidelines, the proposed service plan must provide for certain extraordinary off-site improvements and upgraded on-site amenities that will be financed by the District.
 - A. Does the City want to continue to require that the proposed District finance regional improvements and upgraded on-site amenities? If so, should the City allow the District to impose an additional mill levy to pay for regional improvements?
6. Does the City want to impose any limitations on the use of public improvement fee revenues by the District?
7. The City staff and City attorney are recommending that certain provisions and restrictions be contained in an Intergovernmental Agreement (an “IGA”) between the City and the proposed District, rather than in the Service Plan. It is easier for the City to enforce a contract than it is to enforce a material departure from an approved Service Plan. How much detail does the City want to include in the IGA rather than in the Service Plan?
8. If the District requests variations from the Service Plan, how should the approval be granted? Does the City want to allow for administrative approval by the City Manager or only by City Council resolution?
 - A. Will certain departures from the Service Plan be deemed “material” and require the same notice and hearing requirements as the original approval of the Service Plan? The Special District Act provides that changes that are “of a basic or essential nature” may only be changed in the same manner as is provided for the approval of an original service plan. Under the Special District Act, such material modifications include (i) any addition of the types of services provided by the District, (ii) a decrease in the level of service, (iii) a decrease in the financial ability of the District to discharge the existing or proposed indebtedness, or (iv) a decrease in the existing or projected need for organized service in the area. Does the City want to specify any other provisions in the Service Plan that are deemed material and that would require notice and a new hearing to amend such provisions?
9. The Policy Statement provides that it is the City Council’s preference that any proposed metropolitan district contain at least 320 acres. The City Council has approved special districts that are less than 320 acres. Can this provision relating to the size of the proposed District be removed or modified?

10. What information would the City like to receive from the District on an annual basis?
The City staff has indicated that it is not receiving sufficient information from existing special districts relating to the construction or maintenance of public infrastructure by the special district. The City would like to increase reporting requirements.