

## **TOWN OF BERTHOUD POLICY FOR REVIEWING SERVICE PLANS FOR METROPOLITAN DISTRICTS**

### **Introduction.**

This policy establishes the criteria, guidelines, and processes to be followed by Town Board and Town staff in considering service plans for the organization of metropolitan districts or amendments to those plans (“Policy”), as provided in Colorado’s Special District Act in Article 1 of Title 32 of the Colorado Revised Statutes (the “Act”). The Act provides that metropolitan districts are quasi-municipal corporations and political subdivisions of the state of Colorado (“District”) that can be organized within the boundaries of a municipality provided the municipality’s governing body approves by resolution the proposed service plan for the District. Under the Act, the service plan constitutes the document that delineates the specific powers and functions the District can exercise, including the facilities and services it can provide, the taxes it can impose and its permitted financial arrangements (the “Service Plan”). The Act requires Districts to conform to their Service Plans. “Material modifications” to service plans may be enjoined through court suits brought by the Town or other interested parties.

### **Section 1 – Policy Objectives and Statements.**

- A. This Policy generally supports the formation of a District if it is in the best interests of the area to be served and helps to further the development policies of the Town, as articulated in the Comprehensive Plan, Development Code, development guidelines and other overlay codes as adopted by the Board.
- B. A District, when properly structured, can enhance the quality of development in the Town. The Town is receptive to District formation that provides public benefits which could not be practically provided by the Town or another existing public entity, within a reasonable time and on a comparable basis. It is not the intent of the Town to create multiple entities which would be construed as competing or duplicative.
- C. *The approval of a District Service Plan or Service Plan Amendment for existing Districts is at the sole discretion of Town Board*, which may reject, approve, or conditionally approve Service Plans on a case-by-case basis. Nothing in this Policy is intended, nor shall it be construed, to limit this discretion of Town Board, which retains full authority regarding the approval, terms, conditions, and limitations of all Service Plans subject only to the terms of the Act.
- D. The Town wishes to require a high standard of use for Districts thereby limiting their use to situations that provide a true public benefit. An applicant project is expected to deliver extraordinary benefits across four or more of the objectives described in Section 1.E. of this Policy.

E. It is the intent of the Town that owner/resident control of Districts occur as early as feasible. Service Plans should include governance structures that encourage and accommodate this. Control Districts (also known as “service” or “managing” Districts), without resident representation on the Board of the Control District, that allow developers to control the other Districts that provide the tax revenues (known as “financing” or “taxing” districts) beyond the time needed to repay the issued debt, are prohibited. The use of districts controlled by members of the District Board of Directors who are employed by, owners or principals of, or otherwise affiliated with the developer/proponent of the Service Plan during the period that District debt is being repaid shall be considered on a case by case basis and approved only upon a showing of genuine necessity for the control district structure. Applicants are also encouraged to have a President of the Board of Directors of the control district who is an eligible elector of both the control district and one of the financing or taxing districts, and applications for approval of Service Plans that include having such a President within a fixed time period will be regarded as supporting a finding of “genuine necessity” for the control district structure.

F.

## **Section 2 – Evaluation Criteria**

- A. Prior to considering any proposed Service Plan, or Service Plan Amendment for existing Districts which modifies the total mill levies or debt limitations of a District, a Neighborhood Master Plan (“NMP”) must be approved by the Board as outlined in the Town’s Municipal Code Section 30-6-106. This requirement applies to all properties regardless of underlying zoning, including those properties that have an approved Planned Unit Development (“PUD”). The intent of the NMP process is to outline street and utility infrastructure needs, traffic improvements, open space amounts and locations, park amenities and locations, trail networks, land use types and locations, and other items of significance that may provide benefit to the public and the residents of the District. Other issues such as architectural standards and landscaping standards unique to the development may be incorporated in the NMP but are not required.
- B. Following approval of an NMP, the Town will evaluate any proposed District and its Service Plan based on the District’s ability to deliver public benefits through extraordinary development outcomes. The District applicant must provide a “Public Benefits Narrative” which outlines and explains how the proposed District will deliver public benefits through extraordinary development by addressing “Environmental Sustainability” and “Smart Growth Management” as outlined below, as well as two additional focus areas for a minimum total of FOUR of the following focus areas:
  1. Environmental Sustainability: Development of public improvements that deliver or facilitate the delivery of specific and measurable environmental outcomes, including but not limited to: (i) reduction of Green House Gases (“GHG”), (ii) conservation of water or energy, (iii) encourage multimodal transportation, (iv) enhance community resiliency – against future environmental events (e.g., flooding, drought, etc.); (v) increase renewable energy

capacity; and/or (vi) deliver other environmental outcomes.

2. **Critical Public Infrastructure:** Development of public improvements that address or facilitate addressing significant infrastructure challenges previously identified by the Town, either within or proximate to the District, whether such improvements address a locally-significant challenge or a Town-wide challenge. Examples of a public improvement that constitutes “Critical Public Infrastructure” include water and sewer treatment plants that were constructed to serve the development project where the proposed Districts are located, but which will be owned and operated by the Town and can be expanded to serve areas outside the Districts’ Service Area.
3. **Smart Growth Management:** Development of public improvements that deliver or facilitate the delivery of specific design components that: (i) increase the density of development within portions of the District; (ii) establish, enhance or address the walkability and pedestrian friendliness of the District; (iii) increase the availability of transit and/or multimodal oriented facilities; (iv) create compelling public spaces; and (v) encourage mixed-use development patterns.
4. **Affordable Housing:** Deliver or facilitate the delivery of additional affordable housing units at the Town’s defined level of Area Median Income (“AMI”) or below. The Town defines Affordable Housing as units affordable to a household earning 80 percent of AMI.
5. **Workforce Housing:** Deliver or facilitate the delivery of workforce housing units in the Town’s defined range of AMI. For purposes of this policy, Workforce Housing units shall be defined as units affordable to a household earning between 81 percent and 120 percent of AMI.
6. **Infill/Redevelopment:** Enable the infill or redevelopment of property within the Town, especially when such development is consistent with Town Plan.
7. **Economic Health Outcomes:** Enable delivery of specific and measurable economic outcomes, such as: (i) job growth; (ii) retention of an existing business; and/or (iii) construction of a missing economic resource.
8. **Emergency Services.** Meeting challenges for the provision of emergency services previously identified by the Town. This includes financing the acquisition or donation of land for facilities that will house emergency vehicles and equipment such as fire stations. Preference will be given for Service Plans that facilitate the construction of fire stations that will improve the Town’s Insurance Services Office (ISO) rating.
9. **Water Supply and Storage.** Acquiring a stable and adequate supply of water sufficient to meet the needs of development within the Districts in an environmentally friendly manner that encourages water conservation and reuse.

C. To provide Town Board with information and an assessment consistent with this Policy, staff will

also review and report on all District proposals in the following areas:

1. **Financial Assessment:** All District proposals are required to submit a Financial Plan to the Town for review. Utilizing the District's Financial Plan, and other supporting information which may be necessary, the Town will evaluate a District's debt capacity and servicing ability. This review may be performed by an independent financial firm and the cost of this review will be the sole responsibility of the District Applicant.
2. **Policy Evaluation:** All proposals will be evaluated by Town staff against this Policy and a recommendation to approve or deny the request will be made by Town staff to the Board.

### **Section 3 – Application Process**

- A. **Process Overview:** The application process is designed to provide early feedback to an applicant, adequate time for a comprehensive staff review, and the appropriate steps and meeting opportunities with decision makers.
- B. **Letter of Interest:** An applicant will provide Town with a Letter of Interest and pay the Letter of Interest fee (refer to fees below). This Letter of Interest may be submitted and considered in parallel with the approval process required for an NMP. The Letter of Interest shall contain the following:
  1. Summary narrative of the proposed development as required in Section 2.B of this policy.
  2. District proposal and Service Plan specifics, including: District powers and purpose; District infrastructure and costs; mill levy rate (both debt and, operations and maintenance); term of District from formation until dissolution or consolidation; forecasted period of build-out; proposed timeline for formation; and current development status of project.
- C. **Preliminary Staff Meeting with Applicant:** Based on an initial review of the Letter of Interest, staff shall meet with the applicant to discuss the District proposal, potential public benefits, initial staff feedback, the evaluation process, fees, and other application elements.
- D. **Formal Application and Service Plan Submittal:** After considering any comments made by Town staff in the Preliminary Staff Meeting the applicant may submit a formal application for consideration including the Public Benefits Narrative, the Service Plan and any associated financial plans, and any proposed intergovernmental agreements between the District and the Town.
- E. **Formal Staff Review:** An interdisciplinary staff team will review the applicant submittal along with any follow-up documentation that is requested to assess the application according to State Statute, this Policy, and other applicable Town policy. Applicants should expect several rounds of feedback and review from Town staff.
- F. **Public Hearing Notice:** The Service Plan Applicant must cause a written notice of the public hearing to be mailed by first-class mail to the following: (1) all fee title owners of real property within the

boundaries of the proposed District(s) and of any future inclusion area proposed in the Service Plan and (2) all fee title owners of real property located within any proposed extraterritorial “Service Area” located outside the boundaries of the Districts. Such notice shall be mailed no later than thirty (30) days before the scheduled hearing date. A notice shall also be published once in a newspaper of general circulation in the Town no later than thirty (30) days before the scheduled hearing date. The mailed and published notices shall include the following information and shall be in addition to any other statutory notices required by state law:

1. A description of the general nature of the public improvements and services to be provided by the District;
2. A description of the real property to be included in the District and in any proposed future inclusion area, as well as real property located within any proposed extraterritorial Service Area, with such property being described by street address, lot and block, metes and bounds if not subdivided, or such other method that reasonably apprises owners that their property will or could be included in the District’s boundaries;
3. A statement of the maximum amount of property tax mill levy that can be imposed on property in the District under the proposed Service Plan;
4. A statement that property owners desiring to have the Town Board consider excluding their properties from the District must file a petition for exclusion with the Berthoud Town Clerk’s Office no later than ten (10) days before the scheduled hearing date in accordance with Section 32-1-203(3.5) of the Colorado Revised Statutes;
5. A statement that a copy of the proposed Service Plan can be reviewed in the Berthoud Town Clerk’s Office; and
6. The date, time, and location of the Town Board’s public hearing on the Service Plan.

**Board Public Hearing:** The Town Board will conduct a noticed public hearing at a regular or special Board meeting to consider a resolution approving the proposed Service Plan. This hearing will occur no later than thirty (30) days prior to the final date for filing the petition with the District Court seeking an order calling an election on the question of organizing the district.

#### **Section 4 –Service Plan**

- A. **Purpose:** In addition to the requirements of the Act, a Service Plan should memorialize the understandings and agreements between the District and the Town, as well as the considerations that compelled the Town to authorize the formation of the District. The Service Plan must also include all applicable information required by the Act.
- B. **Compliance with Applicable Law:** Any Service Plan submitted to the Town for approval must comply with all state, federal and local laws and ordinances, including the Act.
- C. **Eminent Domain NOT Authorized:** The Service Plan shall contain language that prohibits the District

from exercising the power of eminent domain. However, the Town may choose to exercise its power of eminent domain to construct public improvements within the District in which case the District and the Town will enter into an intergovernmental agreement concerning the public improvements and funding for that use of eminent domain.

- D. Maximum Mill Levies: The maximum amount of requested mill levy for both debt service, and operations and maintenance, shall be consistent with State statutes.
- E. Debt Term Limit: A District shall be allowed no more than forty (40) years for the levy and collection of taxes used to service debt unless a majority of the Board of Directors of the District imposing the mill levy are residents of such District and have voted in favor of a refunding of a part or all of the Debt and such refunding is for one or more of the purposes authorized in C.R.S. Section 11-56-104. The forty-year period shall be measured from the date that the District first issues debt.
- F. District Dissolution: Perpetual Districts shall not be allowed except in cases where ongoing operations and maintenance are required. Except where ongoing operations and maintenance has been authorized, a District must be dissolved as soon as practical upon:
  - a. The payment of all debt and obligations; and
  - b. The completion of District development activity; or
  - c. A period of five or more years without substantial development activity in any of the Districts governed by the Service Plan. The requirement in this Section 4F may be extended or altered upon a majority vote of the Town Board of Trustees.
- G. District Fees: All impact fees, development fees, service fees, and any other fees must be identified with particularity in the District Service Plan.
- H. Notice Requirements: The Service Plan shall require that the District use all reasonable efforts to ensure that all developers of the property located within the District provide written notice to all purchasers of property in the District and any proposed future inclusion area (as well as the purchasers of property located within any extraterritorial Service Area outside the boundaries of the District) regarding the District's existing mill levies, its maximum debt mill levy, any District fees identified in the Service Plan pursuant to Section 4.G, as well as a general description of the District's authority to impose and collect rates, fees, tolls and charges. The form of notice shall be filed with the Town prior to the initial issuance of the debt of the District imposing the mill levy and shall be substantially in the form of **Exhibit A** attached hereto and incorporated by reference.
- I. Annual Report: The Service Plan must obligate the District to file an annual report not later than September 1 of each year with the Town for the year ending the preceding December 31. Details of the Annual Report are to be included in the Service Plan and will be in addition to any requirements in State statutes.
- J. Service Plan Requirements: In addition to all other information required in a Service Plan by the Act, a Service Plan must include the following:

1. Financial Plan: The Service Plan must include debt and operating financial projections prepared by an investment banking firm or financial advisor qualified to make such projections. The financial firm must be listed in the Bond Buyers Marketplace or, in the Town's sole discretion, other recognized publication as a provider of financial projections. The Financial Plan must include debt issuance and service schedules and calculations establishing the District's projected maximum debt capacity (the "Total Debt Limitation") based on assumptions of: (i) Projected Interest Rate on the debt to be issued; (ii) Projected Assessed Valuation of the property within the District; and (iii) Projected Rate of Absorption of the assessed valuation within the District. These assumptions must use market-based, market comparable valuation and absorption data.
  - a. Total Debt Limitation: The total debt authorized in the Service Plan must not exceed 100% of the projected maximum debt capacity as shown in the Financial Plan.
  - b. Administrative, Operational and Maintenance Costs: The Financial Plan must also include foreseeable administrative, operational and maintenance ~~costs~~ and a plan that demonstrates the District's ability to sufficiently maintain any improvements made and owned by the District for the life of the District. The Service Plan shall also include a Funding and Reimbursement agreement between the Developer and the District that obligates the Developer to fund needed maintenance and operations of the District until such time as the District is financially able to maintain and operate the District.
2. Public Improvements and Estimated Costs: Every Service Plan must include, in addition to all materials, plans and reports required by the Act, a summary of public improvements to be constructed and/or installed by the district (the "Public Improvements"). The description of these Public Improvements must include, at a minimum:
  1. A map or maps, and construction drawings of such a scale, detail and size as required by the Planning Department, providing an illustration of public improvements proposed to be built, acquired or financed by the District. The NMP may serve this purpose if sufficient detail is provided; and
  2. A written narrative and description of the public improvements; and
  3. A general description of the District's proposed role with regard to the same.

Due to their preliminary nature, the Service Plan must indicate that the Town's approval of the Public Improvements shall not bind the Town, its boards and commissions, and Town Board in any way relating to the review and consideration of land use applications within the District. Applicants will be expected to show the differing costs and consequent debt service requirements for different levels of amenities and Public Improvements within the Districts.

The Service Plan must provide that except in cases in which the Districts will receive aid from a governmental agency or purchase through the state purchasing program, a notice shall be published for

bids on all construction contracts for work or material, or both, involving an expense of sixty thousand dollars or more of public moneys. The Districts may reject any and all bids, and, if it appears that the Districts can perform the work or secure material for less than the lowest bid, they may proceed to do so. No contract for work or material including a contract for services, regardless of the amount, shall be entered into between one or more Districts and a member of the boards of any of the Districts or between one or more Districts and the owner of twenty-five percent or more of the territory within any one of the Districts unless a notice has been published for bids and such member or owner submits the lowest responsible and responsive bid. In the event that applicable Colorado law imposes a more restrictive standard for bidding construction contracts or for contracts between members of the board and the Districts or the owners of property and the Districts, the more restrictive standard shall apply. In the event that applicable Colorado law imposes a less restrictive standard, the requirements of this Policy shall continue to apply.

3. Intergovernmental Agreement: As a condition of final approval of any Service Plan by the Town Board of Trustees, the Districts must execute a Master Intergovernmental Agreement with the Town of Berthoud substantially in the form attached hereto as Exhibit B. Any other intergovernmental agreement which is required or known at the time of formation of the District to likely be required, to fulfill the purposes of the District, must be described in the Service Plan, along with supporting rationale. The Service Plan must provide that execution of intergovernmental agreements which are likely to cause substantial increase in the District's budget and are not described in the Service Plan will require the prior approval of Town Board.
4. 4. Extraterritorial Service Agreement: The Service Plan must describe any planned extraterritorial service agreement. The Service Plan must provide that any extraterritorial service agreement by the District that are not described in the Service Plan will require prior approval of Town Board.
5. Tree Replacement Policy: The Service Plan for any metropolitan district that will have park and recreation powers under the Act must include a provision for the mandatory replacement of trees located on District owned or operated property and facilities. The District shall be required to replace trees or shrubs when 40% or more of the plant is dead or is succumbing to a disease that is likely fatal in the short term. Final determinations about the condition of a tree or shrub shall be made by the forester employed or retained by the Town to administer the Town's urban forest.
6. Public Access to Facilities and Improvements. The Service Plan shall include a provision that all public facilities to be financed, constructed, maintained, and operated by the Districts such as golf courses, parks, and recreation centers must be open and accessible to all members of the public including residents of the Town of Berthoud who do not reside within the Districts and persons who do not reside within the Town. Nothing in this Policy shall be construed to prohibit the imposition of a fee or charge for the use of the facilities that is reasonably related to the cost of providing services through the facility. A higher fee may be imposed upon non-residents of the Town or upon residents of the Town who do not reside within the Districts and who do not pay ad valorem taxes to the Districts. Any differential fee imposed upon non-

residents of the Districts must be reasonably proportional to the additional tax burden imposed upon residents of the Districts to pay for the financing, construction, maintenance, and operation of the facilities.

## **Section 5 – Fees**

- A. No request to create a Metro District shall proceed until the fees set forth herein are paid when required.
  1. Letter of Interest Submittal Fee: A Letter of Interest is to be submitted to the Town's Community Development Department and a non-refundable \$2,500 fee shall be paid at the time of submittal of the Letter.
  2. Application Fee: An application along with a draft Service Plan is to be submitted to the Town's Community Development Department and a \$7,500 non-refundable fee. In addition to the non-refundable fee, the applicant must enter into an MOU with the Town regarding payment of Town expenses for review, and submit a \$7,500 deposit towards the Town's review expenses..
  3. Other Expenses: The applicant for a District shall pay all reasonable consultant, legal, and other fees and expenses incurred by the Town in the process of reviewing the draft Service Plan or amended Service Plan prior to adoption, documents related to a bond issue and such other expenses as may be necessary for the Town to incur to interface with the District. All such fees and expenses shall be paid within 30 days of receipt of an invoice for these additional fees and expenses.
  4. Service Plan Amendment Fee: If a proposed amendment to a Service Plan is submitted to the Town's Community Development Department, it should be submitted with a non-refundable \$2,500 fee along with a \$2,500 deposit towards the Town's other expenses and shall be paid at the time of submittal of the application and draft amended Service Plan.

## **Section 6—Continuing Oversight by the Town.**

- A. It is the Town's intention to exercise oversight of Districts following approval of their Service Plans to the maximum extent permitted by Colorado law. Toward that end, the Town will designate a member or members of staff to act as a liaison between the Town and its residents and all Districts within the boundaries of the Town. This individual shall review the annual report provided for in Section 4I. and shall evaluate compliance of the Districts with the Service Plan, including without limitation the Financing Plan. The staff member shall also be available to answer inquiries from the public about the Districts and to direct interested persons to available sources of information regarding the Districts. Representatives of the Districts shall be expected to meet with the staff liaison on an as-needed basis and no less than annually.

**TOWN OF BERTHOUD**  
**RESOLUTION NO. 2023-07**

**A RESOLUTION ADOPTING THE BERTHOUD METROPOLITAN DISTRICT  
POLICY**

WHEREAS, the Town seeks to adopt a metropolitan district policy to guide formation of metropolitan districts within the Town, set consistent and reasonable expectations for developers and proponents of metropolitan districts, and provide more transparency and notice to prospective property owners and homeowners within metropolitan districts regarding the effects and obligations of owning real property within a metropolitan district; and

WHEREAS, the Board of Trustees (“Board”) has reviewed the benefits, burdens, impacts, and various components of metropolitan districts, with input from Town staff and legal counsel; and

WHEREAS, based on guidance from the Board, staff developed: (1) Town of Berthoud Policy for Reviewing Service Plans for Metropolitan Districts; (2) Master Intergovernmental Agreement between the Town and proposed Metropolitan Districts; and, (3) a General Disclosure Form, all attached and incorporated by reference (collectively, “Berthoud Metropolitan District Policy”); and

WHEREAS, the Board finds that adopting the Berthoud Metropolitan District Policy is in the best interests of the Town and will assist in guiding the formation of metropolitan districts, setting consistent and reasonable expectations for developers and proponents of metropolitan districts, and providing more transparency and notice to prospective property owners and homeowners within metropolitan districts.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO AS FOLLOWS:

Section 1. That the Town of Berthoud Policy for Reviewing Service Plans for Metropolitan Districts is hereby adopted to guide the Board of Trustees’ evaluation and decision regarding metropolitan district service plans and to achieve the purposes set forth above.

Section 2. That an agreement in substantially the same form as the Master Intergovernmental Agreement is required to be executed between the Town and any approved metropolitan district following Town approval of a Metropolitan District Service Plan.

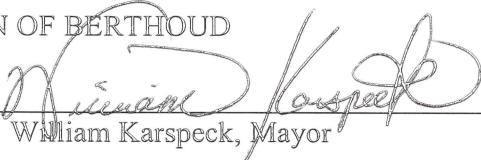
Section 3. Any Metropolitan District Service Plan must incorporate the General Disclosure Form approved by the Town.

Section 4. That this Resolution shall be effective as of the date of its adoption.

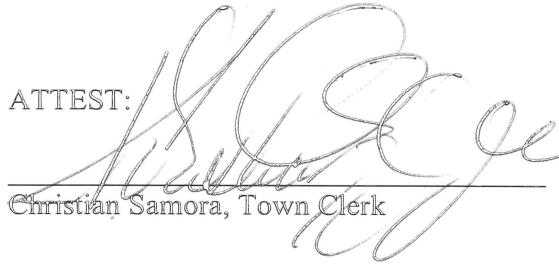
APPROVED, and ADOPTED this 11th day of April, 2023.

TOWN OF BERTHOUD

BY:

  
William Karspeck

ATTEST:

  
Christian Samora, Town Clerk

