



# Town of Johnstown

## TOWN COUNCIL WORKSESSION COMMUNICATIONS

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**AGENDA DATE:** May 24, 2021

**SUBJECT:** Metropolitan District Work Session

**ACTION PROPOSED:** Discuss metropolitan district policy considerations

**ATTACHMENTS:**

1. Model service plan redlined to reflect current version
2. Metropolitan district procedural policy

**PRESENTED BY:** Matt LeCerf, Town Manager, Avi Rocklin, Town Attorney, Carolyn Steffl, Special Counsel

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### WORK SESSION DESCRIPTION:

On or about February 22, 2017, the Town Council adopted a model service plan for the Town of Johnstown (“Town”). Since adoption, the model service plan has been modified in practice to accommodate various contingencies and reflect recommendations from special counsel, Carolyn Steffl and Sam Light. A copy of the form of service plan is attached in a redline format showing revisions to date. In addition, on or about April 16, 2018, the Town Council adopted a procedural policy. A copy of the procedural policy is also attached.

The purpose of the work session is to reevaluate the model service plan and the procedural policy, discuss various policy considerations and, based on that discussion, consider whether revisions to form of model service plan or to the procedural policy are appropriate.

### BACKGROUND

The Town Council is already familiar with metropolitan districts, but a short summary is anyway provided.

A metropolitan district is a special district under the Colorado Special District Act, C.R.S. §§ 32-1-101 *et seq.*, and is a quasi-governmental entity governed by a board of directors. A metropolitan district is primarily used to finance public improvements and operate and maintain the improvements not dedicated to a municipality. A metropolitan district may also be used to operate and maintain amenities and provide covenant enforcement, design review, trash collection, park and recreation services, and other services, replacing or supplementing a homeowners’ association. A metropolitan district is subject to the statutory

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requirements applicable to government entities, including, among others, the Colorado Open Meetings Law, CORA, TABOR and Colorado's budget and audit laws.

A metropolitan district has numerous powers delineated by statute, including, importantly, the ability to levy property taxes, impose fees and issue debt. A district's maximum debt authorization is set forth in a service plan. Regardless of the maximum, the actual issuance of debt is limited by assessed valuation and market conditions. In other words, the district can only issue the amount of debt that would be supported by anticipated repayment from tax dollars derived from the assessed valuation of the property at the time of issuance.

Metropolitan districts may be structured to include a single district or multiple related districts and may also utilize a coordinating (a/k/a control) district. A multiple district structure may be useful when there are distinct commercial and residential uses, which may want to impose different mill levy rates or have different board goals, or when development is intended to occur in phases to limit the financial obligations of one phase onto another.

Some special districts are structured to have a coordinating district, whose boundaries include only a small area that remains within ownership and control of the developer, and separate financing districts, whose boundaries include the larger development that provides the tax base to repay debt. A coordinating district may be used to coordinate the financing, construction, and maintenance of the public improvements between and among the various districts and operates through intergovernmental agreements that allow the coordinating district to make certain development and financial decisions on behalf of, and binding upon, the financing districts.

After complete or even partial development has been accomplished, end users (property owners and their spouses or civil union partners and residents) are eligible to sit on a metropolitan district board. Unless structured appropriately, end users are not likely to sit on the board of a coordinating district and may thus be limited in the ability to control long-term financing issues, absent protective measures in a service plan. For coordinating districts, the transition of developer-assigned board members to other end users may be accomplished by a transition structure included in the service plan.

A metropolitan district only has the powers granted by state law or those incidental thereto and operates pursuant to a service plan. The service plan sets forth the powers and limits of the metropolitan district and is similar in concept to a home rule charter.

To form a metropolitan district, a property owner first submits a proposed service plan to the municipality. Subsequent to a public hearing, the municipality has the power to approve the service plan, deny the service plan or approve the service plan with conditions. After approval of the service plan, the property owner files a petition in the district court. The district court thereafter orders an election and, if approved by the voters, orders the formation of the district. As a practical matter, metropolitan districts are often organized when the developer owns all of the property in the proposed districts. Since corporations cannot vote in special district elections, the corporate developer may qualify individual representatives via contract, who are often the only eligible electors for the organizational election and are able to vote for approval of the metropolitan district and for all TABOR matters such as the mill levy authorization.

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Importantly, a municipality's control and discretion lies primarily in the contents of the service plan. Once a metropolitan district is formed, a municipality does not have authority to control or manage the district as long as the district continues to operate pursuant to the terms of the service plan, complies with contractual obligations existing through intergovernmental agreements that are executed between the Town and the districts and complies with applicable land use and related Town ordinances. This functional distinction is important, but may be confusing to the public. A municipality does not want to take on liability or be responsible for the actions of a metropolitan district. On the other hand, the general public may not understand the distinction and may expect the municipality to provide assistance when metropolitan district issues arise.

## SUBSTANTIVE POLICY CONSIDERATIONS

Below is a list of substantive issues to discuss during the work session.

- Mill levies.
  - Commercial and residential debt mill levy caps.
    - The current mill levy caps are 50 mills for commercial and 40 mills for residential.
    - Is Council comfortable with the caps?
  - Regional improvement debt mill levy.
    - Does Council want to provide the ability to impose a regional improvement mill levy, and, if so, under which circumstances?
  - Operation and maintenance mill levy.
    - The model service plan does not contain an operations and maintenance mill levy cap. In practice, the service plans since adoption of the model have provided a mill levy cap of 10 mills with recent modifications to provide for an unlimited operations and maintenance mill levy cap once end users constitute a majority of the district's board.
    - Should a maximum be set forth in the service plan until end users constitute the majority of the district's board?
  - Mill levy for the Town.
    - Does Council want to require that the district impose a mill levy for the benefit of the Town to support regional improvements owned and maintained by the Town?
- Debt limit.
  - Should the maximum debt limit correlate with anticipated public improvement costs?
  - Should the maximum debt limit include a percentage contingency above the anticipated costs, and, if so, in approximately what amount?
  - Should the maximum debt limit be capped at the financing capacity shown in the financial plan attached to the service plan or include a percentage contingency above the anticipated financing capacity, and, if so, in approximately what amount?
- Recurring fees.
  - Should the districts be allowed to impose a recurring fee, in addition to the mill levies, other than with administrative approval by the Town?
  - If a fee is permissible, should a cap be established for this or are there factors that would warrant a recurring fee?
    - The model service plan currently provides that a recurring fee is permissible if it is contained in the financial plan.

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- Water issues.
  - Does Council want to allow the districts to own water rights for non-potable systems?
    - The model service plan does not allow this unless authorized pursuant to intergovernmental agreement with the Town for implementation of a non-potable water system.
  - Does Council want to allow the districts to finance the cost of water rights?
- Coordinating districts.
  - Should they be permitted?
  - The goal is to transfer control to end users as soon as reasonably practicable.
- Overlay Operational districts.
  - Should they be permitted?
  - Are they an alternative to coordinating districts?

#### PROCEDURAL POLICY CONSIDERATIONS

- Qualities of development that may be appropriate to permit metropolitan district formation.
  - Does Council want to require enhanced amenities or a commercial component in order to permit a metropolitan district?
    - This was the direction originally provided.
- Development thresholds, if any, to be met prior to consideration of a proposed service plan.
  - Does Council want to require that development is at a particular stage in order to consider a metropolitan district?
    - The current policy requires an approved preliminary plat and development plan.
- Number of districts in a multiple district structure.
  - Does Council want to limit the number of districts?
    - The trend is to seek formation of numerous districts. For example, multiple filings are now seeking the formation of nine districts without concrete development plans. The formation of the multiple districts may mitigate the financial obligations of certain phases of development onto other phases.
- Lead time for review.
  - Does the Town want to require a 6-month lead time for consideration of a service plan?
    - As a practical matter, this may be a staff consideration with the goal to ensure there is sufficient review time before an election.

***Reviewed and Approved for Presentation,***




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Town Manager

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