

Town of Erie Policy for Reviewing Service Plans for Special Districts

July 26, 2022

Introduction.

The Board of Trustees (the "Board") wants to protect current residents from paying costs associated with new development. Further, the Board wants to ensure that prospective buyers of property in a special district (District) are made aware of the taxes they will be subject to in the District, as well as how they will be able to participate in governance of the District. Additionally, the Board wants to confirm that taxes imposed by a District on future residents of the District will result in clear public benefits and are set at a level that is no higher than needed to fund the public infrastructure in the District. Finally, the Board wants to promote development that reflects the Town's strategic priorities.

To help achieve these goals, this policy ("Policy") establishes criteria, guidelines and processes to be followed for applications requesting approval by the Board of service plans for the organization of special districts or amendments to such plans, 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 a special district is a quasi-municipal corporation and political subdivision 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 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 each District to conform to its Service Plan.

Section 1 – Policy Statements and Objectives.

- A. It is the Town's Policy to approve a District Service Plan or amendment to an existing Service Plan only when:
 1. The Service Plan includes clear notice requirements such that all prospective buyers of property within the District will have sufficient time, information on District taxes they will be subject to, and information on the District governance structure and how they can participate, to make an informed decision on buying property within the District; and
 2. The applicant demonstrates the District will produce clear public benefits; it is not possible to finance the public infrastructure proposed to be constructed within the District without imposing the proposed taxes in the District; and the project cash flows, including revenue from land sales, home sales, building rentals, fees and taxes collected by the District, and any other source of revenue do not generate a rate of return (ROR) that

exceeds 12% to 15% (the typical market minimum acceptable rate of return (MARR) for housing development); and

3. The District and development within the District reflects the Town's strategic priorities as follows:
 - a. Strategic Priorities: Development of public improvements that deliver or facilitate the delivery of strategic priorities and uses specified in the Town's existing long-term strategic planning documents, such as the [Comprehensive Plan](#); Parks, Recreation, Open Space and Trails Master Plan ([PROST](#)); [Sustainability Master Plan](#); [Transportation Master Plan](#); Priorities and Strategies for Expanding Access to Diverse Housing for the Community; Water Master Plan, Sewer Master Plan, Wastewater Utility Plan, Drought Plan, Water Conservation Plan, Drainage and Outfall Systems Plans, Non-Potable Water Master Plan, and applicable Sub-Area Plans. These priorities include without limitation:
 - i. Sustainability Outcomes: Enable delivery of specific and measurable sustainability outcomes identified in the Town's Sustainability Master Plan, such as: (i) renewable energy generation and energy storage capacity, (ii) dark sky compliance, (iii) development that enhances community connectivity and reduces commuting outside of Erie for work, errands and play.
 - ii. Oil and Gas: Enable the elimination of existing or permitted oil and gas wells and related facilities that are within 2,000 feet of existing or permitted residential, commercial or institutional development.
 - iii. 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.
 - iv. Attainable Housing: Deliver or facilitate the delivery of additional attainable housing units in the Town's defined range of AMI. For purposes of this policy, the Town defines Attainable Housing as units affordable to a household earning between 81% and 120% of Area Median Income ("AMI").
 - v. 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. For purposes of this policy, the Town defines Affordable Housing as units affordable to a household earning up to 80% of AMI.
 - b. To determine whether a proposed District or Service Plan amendment reflects the Town's strategic priorities, a proposed development must receive development approval before a District can be approved and must achieve a minimum score of 20 on the Special District Review

Policy Point System (Exhibit A), including a minimum of at least 10 points in the Attainable Housing and/or Affordable Housing Categories. The Town may also consider: (i) ways in which the proposed improvements exceed the Town's minimum requirements and standards; (ii) ways in which the existence of the District facilitates the strategic priorities; and (iii) any other factors the Town deems relevant under the circumstances.

- B. The approval of a District Service Plan, or amendment of an existing District Service Plan, is at the sole discretion of the Board of Trustees. The Board of Trustees may reject, approve, or conditionally approve Service Plans and amendments on a case-by-case basis. Nothing in this Policy is intended, nor shall it be construed, to limit this discretion of the Board, which retains full authority regarding the approval, terms, conditions and limitations of all Service Plans.

Section 2 – Evaluation Criteria

- A. To provide the Board of Trustees with information and an assessment consistent with this Policy, staff will review and report on District Service Plan proposals in the following areas:
 - 1. Adequate Notice and District Governance: The Town Administrator or their designee will review the proposed Service Plan or Service Plan amendment to evaluate the applicant's materials to confirm the Service Plan includes clear notice requirements such that all prospective buyers of property within the District will receive at least 10-days before any earnest money becomes non-refundable to the prospective buyer under the terms of any contract to buy and sell real estate or other legal instrument to buy property in the District, information on District taxes they will be subject to, and information on the District governance structure and how new residents can participate, to make an informed decision on buying property within the District.
 - 2. Financial Assessment: All proposed Service Plans must include a Financial Plan, including full sources and uses of funds. If specifically requested by the applicant, the Town will maintain sources and uses of funds information as "Proprietary and Confidential Business Information, Not for Public Disclosure" to the extent permitted by law. Using the District's Financial Plan, and other supporting information which may be necessary, the Town Administrator and Finance Director or their designees will evaluate a District's debt capacity, servicing ability, and other factors to confirm:
 - i. It is not possible to finance the public infrastructure proposed to be constructed within the District without imposing the proposed taxes in the District;

- ii. The Service Plan identifies adequate resources, including appropriate coverage ratios and reserves to cover the District's costs of financing the public infrastructure; and
 - iii. The project cash flows, including revenue from land sales, home sales, building rentals, fees and taxes collected by the District, and any other sources of revenue does not generate a rate of return (ROR) that exceeds 12% to 15% (the typical market minimum acceptable rate of return (MARR) for housing development).
- 3. Strategic Priorities: To comprehensively and consistently evaluate District Service Plan proposals, an interdisciplinary staff team, including representatives from Planning, Economic Development, Sustainability, Finance, Parks and Recreation, Diversity/Equity/Inclusion and others as appropriate, will be formed. This team will review the Service Plan to assess the economic, environmental, and social impacts of the District proposal consistent with this Policy and Town goals and objectives. To facilitate this review, the applicant must provide specific examples of how development within the District addresses the Town's strategic priorities (Sustainability Outcomes, Oil and Gas, Economic Health Outcomes, Attainable Housing, and Affordable Housing).
- 4. Evaluation Report: Town staff will evaluate all Service Plans for compliance with this Policy and the Town's "Model Service Plan" attached as **Exhibit "B"** for single-district Service Plans and as **Exhibit "C"** for multi-district Service Plans, and prepare a report and recommendations for consideration by the Board of Trustees during a public hearing at a regularly scheduled Board meeting. [**Note:** Model Service Plan Exhibits will be developed for consideration with the final draft of this Review Policy.]

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: Applicant will provide Town with a Letter of Interest and pre-application fee (refer to fees below). The Letter of Interest shall contain the following:
 - 1. Proposed notice requirements to ensure that all prospective buyers of property within the District will receive at least 10-days before any earnest money becomes non-refundable to the prospective buyer under the terms of any contract to buy and sell real estate or other legal instrument to buy property in the District, information on District taxes they will be subject to, and information on the District governance structure and how they can

participate, to make an informed decision on buying property within the District.

2. Summary of the District's governance structure, including composition of the District's Board of Directors (the "District Board"), qualifications for election to the District Board, how and when elections for District Board positions will be conducted, when and where District Board meetings will take place, how notice of District Board meetings will occur, and other relevant matters ensuring equitable representation on the District Board by owners of property within the District.
 3. Service Plan specifics, including: District powers and purpose; District infrastructure and costs; maximum mill levy rate and term (both debt, and operations and maintenance); term of District; forecasted period of build-out and assessed valuation; proposed timeline for formation; and current development status of property.
 4. Clear justification for why a District is needed, including full sources and uses of funds (SUF) reflecting the projected rate of return (ROR) on the project. The SUF shall be submitted in the format of the Town's Pro Forma Template. If the applicant would like the SUF to remain confidential, the applicant shall mark the SUF file as "Proprietary and Confidential Business Information, Not for Public Disclosure". The Town will treat as confidential any records that constitute proprietary or confidential information under federal or State law, to the extent the applicant makes the Town aware of such confidentiality. Applicant shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the Town believes it must release any such confidential records to respond to a Colorado Open Records Act request, or for any other reason, it shall advise Applicant in advance so that Applicant may take appropriate steps to protect its interests.
 5. demonstrate how development within the District will be constructed to achieve a minimum score of 20 on the Special District Review Policy Point System (Exhibit A), including a minimum of at least 10 points in the Attainable Housing and/or Affordable Housing Categories.
- C. Staff Response to Letter of Interest: Staff will provide a written response to a Letter of Interest within 30 days of receipt and payment of the pre-application fee.
- D. Preliminary Staff Meeting with Applicant (Optional): Based on an initial review of the Letter of Interest, the applicant may meet with staff to discuss the District proposal, potential public benefits, initial staff response, the evaluation process, fees, and other application elements.

- E. Formal Application and Service Plan Submittal: After considering staff response and recommendations, the applicant may submit a formal application for consideration on the Town's District Application form, including the Service Plan in which the applicant shall highlight the substantive provisions that deviate from this Policy and the applicable Model Service Plan attached as **Exhibit B** or **Exhibit C**. The formal application and application fees must be received by the Town no later than the third Tuesday of December in the preceding year for a spring election (May) or the third Tuesday of May for a fall election (November). The Town cannot commit to timely processing of applications submitted after these dates.
- F. Formal Staff Review: The interdisciplinary staff team will review the application along with any follow-up documentation that is requested in order to assess the application according to this Policy and applicable law.
- G. Board Study Session (optional): Based on the magnitude and complexity of the development project and the District proposal, staff may recommend a Study Session with the Board of Trustees.
- H. Public Hearing Notice: The applicant must cause a written notice of the public hearing to be mailed by first-class mail to 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 such notice shall be mailed no later than 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 30 days before the scheduled hearing date. The mailed and published notices shall include the following information:
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, with such property being described by street address, lot and block, metes and bounds if not subdivided, or such other method that reasonably appraises 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 Board of Trustees consider excluding their properties from the District must file a petition for exclusion with the Town Clerk's Office no later than 10 days before the scheduled hearing date in accordance with C.R.S. § 32-1-203(3.5);
 5. A description of proposed notice requirements to prospective buyers of property within the District.
 6. A description of the District's governance structure, including composition of the District Board, qualifications for election to the District Board, how and

- when elections for District Board positions will be conducted, when and where District Board meetings will take place, how notice of District Board meetings will occur, and other relevant matters ensuring equitable representation on the District Board by owners of property within the District.
7. A statement that a copy of the proposed Service Plan can be reviewed in the Town Clerk's Office;
 8. The date, time and location of the Board of Trustees' public hearing on the Service Plan; and
 9. Any other information required by the Act.
- I. Public Hearing: The Board of Trustees will conduct the public hearing at a regular or special Board meeting to consider a resolution approving the Service Plan. This hearing will occur no later than 30 days prior to the final submittal date to the District Court to order an election. By way of example, for a fall election, the Board of Trustees, which meets on the second and fourth Tuesdays of the month, must conduct the public hearing no later than the fourth Tuesday in August.

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. Model Service Plan: To clearly communicate Town requirements and streamline legal review, the Town requires the use of the applicable Model Service Plan attached as **Exhibit "B"** or **Exhibit "C"** (As noted previously, these will be finalized and included with the final draft of this policy). With justification, the Town may consider deviations in the proposed Service Plan, but generally all Service Plans should include the following:
 1. Maximum Mill Levy: The Service Plan shall restrict the District's total mill levy authorization for both debt service and operations and maintenance to 55 mills, subject to adjustment as provided below. No more than 10 mills of the Maximum Mill Levy may be used by the District to fund operations and maintenance functions, including customary administrative expenses incurred in operating the District such as accounting and legal expenses (the "Operations and Maintenance Mill Levy").

- a. Increased mill levies may be considered for Districts that are predominately commercial in use, at the sole discretion of the Board of Trustees.
 - b. The Maximum Mill Levy may be adjustable from the base year of the District as provided for in the Model Service Plan, so that to the extent possible, the actual tax revenues generated by the District's mill levy, as adjusted, for changes occurring after the base year, are neither diminished nor enhanced as a result of the changes.
2. Debt Term Limit: A District shall be allowed no more than 30 years for the levy and collection of taxes used to service debt unless a majority of the Board of Directors are residents of the 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. § 11-56-104.
3. 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.
4. Fees: Impact fees, development fees, service fees, and any other fees must be identified with particularity in the service plan. Impact and development fees must not be levied or collected against the end user – i.e., residents or non-developer owners. District fees shall not duplicate existing Town fees.
5. Notice Requirements: The service plan shall require that the District use reasonable efforts to assure that all developers of the property located within the District provide at least 30 days prior to closing written notice to all purchasers of property in the District regarding the District's existing mill levies, its maximum debt mill levy, 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 included with the service plan and filed with the Town prior to the initial issuance of the debt of the District imposing the mill levy.
6. Annual Report: The Service Plan must obligate the District to file an annual report not later than July 1 of each year with the Town Clerk for the year ending the preceding December 31, the requirements of which may be waived in whole or in part by the Town Administrator. Details of the Annual Report are included in the Model Service Plan.
7. Notice of Meetings. The Service Plan must obligate the District to deliver to the Town Clerk an electronic copy of the notice of every regular or special meeting of the District at least 14 days prior to such meeting, and, from the time 25% of the structures to be built in the District have been sold to

purchasers, to (i) hold at least quarterly Board of Directors meeting each year, (ii) hold all meetings of the Board of Directors within Town limits, and (iii) least 14 days prior to such meeting provide electronic and mailed notice to all property owners within the district notifying them of the time, date, and place of the meeting, providing an agenda listing all matters that will be discussed during the meeting, and indicating that all property owners have the opportunity at the meeting or prior to the meeting to comment on any item on the agenda or to comment on items not on the agenda.

D. 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 and may use an annual inflation rate of 3% or the Consumer Price Index for the preceding 12-month period for the Denver-Boulder-Greeley statistical region as prepared by the U.S. Department of Labor Statistics, whichever is lesser.
 - 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.
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:
 - a. 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 constructed, installed, acquired or financed by the District;
 - b. A written narrative and description of the Public Improvements;

- c. A general description of the District's proposed role with regard to the same; and
- d. A list of those Public Improvements that the District commits to maintain, which list shall be consistent with all other planning and land use documents related to the development for which the District is created, including without limitation development agreements, maintenance agreements, plats and site plans. Maintenance plans shall comply with the Erie Municipal Code and the adopted Town standards and specifications.

Due to the preliminary nature, the Service Plan must indicate that the Town's approval of the Public Improvements shall not bind the Town in any way relating to the review and consideration of land use applications within the District.

- 3. Intergovernmental Agreement: An intergovernmental agreement ("IGA") that specifies the obligations of the District must be described in the Service Plan, and a copy of the IGA must be attached to the Service Plan.
- 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 is not described in the Service Plan will require prior approval of the Board of Trustees.

Section 5 – Fees

- A. No request to create a District shall proceed until the fees set forth herein are paid. All checks are to be made payable to the Town of Erie and delivered to the Planning Department. Applicable fees are as follows:
 - 1. Letter of Intent Submittal Fee: A Letter of Intent is to be submitted to the Planning 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 (based on the Model Service Plan) is to be submitted to the Town's Planning Department and a \$7,500 non-refundable fee along with a \$7,500 deposit towards the Town's other expenses shall be paid at the time of submittal of the Application and draft Service Plan.
 - 3. Annual Fee: Each District shall pay an annual fee for the Town's on-going monitoring of each District. This annual fee shall be \$500 or if multiple Districts exist serving a single project, then the annual fee shall be \$500 plus \$250 for each additional District beyond the first (e.g., the annual fee for Consolidated ABC Districts 1 to 7 shall be \$500 plus \$250 times six or \$2,000).
 - 4. Non-Model Service Plan Fee: A Service Plan with any substantial deviation from this Policy or the applicable Model Service Plan, shall be subject to an

additional non-refundable fee of \$5,000 at the time of submitting its application. The Town shall in its sole discretion determine if a draft Service Plan proposes a substantial deviation from this Policy or the applicable Model Service Plan.

5. Other Expenses: If the deposits paid in subsections 2 and 6 are not sufficient to cover all the Town's 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.
6. Service Plan Amendment Fee: If a proposed amendment to a Service Plan is submitted, it shall be submitted with a non-refundable \$2,500 fee along with a \$2,500 deposit towards the Town's other expenses, which shall be paid at the time of submittal of the application and draft amended Service Plan.