

# TOWN OF ERIE POLICY FOR REVIEWING SERVICE PLANS FOR SPECIAL DISTRICTS

*September 17, 2021*

## Introduction.

This policy establishes the criteria, guidelines and processes to be followed by the Board of Trustees and Town staff in considering and by applicants in submitting to the Town service plans for the organization of special 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 a special district ("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 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 each District to conform to its Service Plans.

## Section 1 – Policy Statements and Objectives.

- A. It is the Town's Policy to support the formation of a District only where it will deliver extraordinary public benefits that align with the goals and objectives of the Town.
- B. A District, when properly structured, can enhance the quality of development in the Town. The Town is receptive to District formation that provides extraordinary public benefits which could not be practically provided by the Town or an existing public entity, within a reasonable time and on a comparable basis. It is not the intent of the Town to create multiple entities that are competing or duplicative.
- C. 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.
- D. Policy Objectives.

The Town will evaluate a proposed District and its Service Plan and any amendment to an existing Service Plan based on the District's ability to deliver extraordinary public benefits. Specific examples of extraordinary public benefits are provided in **Exhibit A** and generally occur in the following four focus areas:

1. Environmental Sustainability Outcomes: Development of public improvements that deliver or facilitate the delivery of specific and measurable environmental outcomes, including without limitation: (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 (vi) deliver other positive 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.
  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 the District; (ii) establish, enhance or address the walkability and pedestrian friendliness of the District; (iii) increase the availability of transit or multimodal oriented facilities; (iv) create compelling public spaces; and/or (v) encourage mixed-use development patterns.
  4. Strategic Priorities: Development of public improvements that deliver or facilitate the delivery of strategic priorities 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](#); 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:
    - a. 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.
    - b. Oil and Gas: Enable the elimination of existing or permitted oil and gas wells and related facilities that are within 2,500 feet of existing or permitted residential, commercial or institutional development.
    - c. 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.
    - d. Attainable Housing: Deliver or facilitate the delivery of 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").
    - e. 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 80% of AMI.

In determining whether a proposed District delivers extraordinary public benefits, the Town may 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 extraordinary public benefits and whether the extraordinary public benefits are feasible without the District; (iii) ways in which the proposed extraordinary public benefits work together as a system to deliver greater benefit to the community than individually; and (iv) any other factors the Town deems relevant under the circumstances.

#### E. Policy Statements:

1. **Limited Use:** Because a District imposes on the residents and businesses within the District a property tax burden that is in addition to the property taxes imposed by the county, school district, fire and other special districts, and the Town, the use of Districts shall be limited to instances where the applicant project clearly delivers extraordinary benefits across multiple Town objectives (listed in Section 1.D. of this Policy) that would not be financially feasible but for the use of the District as a financing mechanism.
2. **Broad and Demonstrable Public Benefit:** Districts are expected to provide broad public benefit and the applicant will be asked to demonstrate and provide assurances of those benefits. The Town will use the Service Plan, development agreements, and other contractual agreements to document and enforce District commitments.
3. **District Governance:** Owner/resident control of Districts should occur as early as feasible. Service Plans should include governance structures that encourage and accommodate this. The use of control Districts (also known as "service" or "managing" Districts) that allow developers to control the other Districts that provide the tax revenues beyond the time needed to repay the issued debt, is discouraged.
4. **Basic Infrastructure Improvements:** A District proposing to fund basic infrastructure improvements will not be favorably received except when used to offset higher costs associated with delivering extraordinary public benefits (see **Exhibit A** for examples).
5. **Minimum District Size:** A District proposed to issue less than \$7 million of authorized debt will not be considered.

## 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 proposals in the following areas:

1. Public Benefit Assessment and Triple Bottom Line Scan (Economic, Environmental and Social): To comprehensively and consistently evaluate District proposals, an interdisciplinary staff team, including representatives from Planning, Economic Development, Sustainability, Finance, Diversity/Equity/Inclusion and others as appropriate, will be formed. This team will review the proposal to assess the economic, environmental and social impacts of the District proposal consistent with this Policy and Town goals and objectives.
2. Financial Assessment: All District proposals must submit to the Town for review a Financial Plan, including a full sources and uses of funds. Using 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. Additionally, should a District desire to use District funding for basic infrastructure improvements, as determined by the Town in its sole discretion, staff will assess the value of this benefit against the public benefits received in exchange.
3. Policy Evaluation: All proposals will be evaluated by Town staff against 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, with any areas of difference being identified, evaluated and reported to the Board of Trustees.

### **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. Summary narrative of the proposed development and District proposal.
  2. Sketch plan showing: property location and boundaries; surrounding land uses; proposed use(s); proposed improvements (buildings, landscaping, parking/drive areas, water treatment/detention, drainage); existing natural features (water bodies, wetlands, large trees, wildlife, canals, irrigation ditches); utility line locations (if known); and photographs (helpful but not required).
  3. Clear justification for why a District is needed, including a full sources and uses of funds ("SUF") reflecting the projected internal rate of return ("IRR") on the project. The SUF shall be submitted in the format of the Town's Pro Forma Template. If the applicant expects the SUF to remain confidential, the applicant shall mark the SUF file as "Proprietary and Confidential Business Information, Not for Public Disclosure".

4. Explanation of public benefits, making specific reference to this Policy and other relevant Town documents, and documentation demonstrating the project and public benefits would not be financially feasible but for the use of the District as a financing mechanism.
  5. 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; forecasted period of build-out; proposed timeline for formation; and current development status of project.
- 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 applicant submittal along with any follow-up documentation that is requested in order to assess the application according to this Policy and other appropriate Town policy.
  - G. Board Study Session (optional): Based on the magnitude and complexity of the development project and District proposal, staff may recommend a Study Session with the Board of Trustees.
  - H. Public Hearing Notice: The Service Plan 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 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 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 statement that a copy of the proposed Service Plan can be reviewed in the Town Clerk's Office;
  6. The date, time and location of the Board of Trustees' public hearing on the Service Plan; and
  7. Any other information required by the Act.
- I. Board 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"**. 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 50 mills, subject to adjustment as provided below. A portion 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 and otherwise complying

with applicable reporting requirements. No more than 10 mills may be used for operations and maintenance (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. 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.
4. District Fees: Impact fees, development fees, service fees, and any other fees must be identified with particularity in the District 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 14 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 September 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 50% of the structures to be built in the District have been sold to purchasers, to (i) hold at least one 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 Town's current code related to infrastructure.

Due to the 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 the Board of Trustees 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 template 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 when required. 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 Town's 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 District proposal requesting a substantial deviation from this Policy or the applicable Model Service Plan, shall pay an additional non-refundable fee of \$5,000 at the time of submitting its application; the Town shall in its sole and reasonable 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.

## **Section 6 – Fulfillment of Obligations**

- A. Within three years from the Board of Trustees' approval of the Service Plan, the District must secure the Board of Trustees' approval by resolution of an intergovernmental agreement ("IGA") or a development agreement that specifies the public benefits described in the Service Plan and describes the obligations the District must fulfill to provide those public benefits.
- B. Until the District secures Board of Trustees' approval of the IGA or development agreement, the District may not impose a mill levy or issue debt, and the Town will not issue any certificate of occupancy within the District until the District has produced the public benefits listed in the IGA or development agreement.

## EXHIBIT A PUBLIC BENEFIT EXAMPLES

The following list illustrates examples of the type of projects that deliver the defined public benefits in this policy. The Town will also consider on their merits projects that deliver similar or better outcomes.

<b>Category/Subcategory</b>	<b>Example Projects</b>
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### **Environmental Sustainability Outcomes**

1. Green House Gas Reductions	- See subsequent sub-categories
2. Water and/or Energy Conservation	- District-wide renewable energy systems(s)
	- Delivery of 20% or more rooftop solar
	- Greywater reuse system(s) - if allowed by law
	- Low water use, pollinator and xeric landscaping
	- Permeable paving and rain gardens
3. Multimodal Transportation	- Buffered bike lanes
	- Wider than required sidewalks
	- Enhanced pedestrian crossings
	- Underpass(es)
4. Enhance Community Resiliency	- Significant stormwater improvements (previously identified)
	- Improvements to existing bridges
5. Increase Renewable Energy Capacity	- District-wide renewable energy systems(s)
	- Set aside land for community solar garden(s)
	- Utility scale renewable project(s)

### **Critical Public Infrastructure**

1. Within District Area	- Community Park Land (beyond code requirements)
	- Regional Stormwater Facilities
	- Major arterial development
	- Parking Structures (Publicly Accessible)
	- Regional Water, Non-Potable Water and Sewer Infrastructure
	- Sewage Lift Stations are highly discouraged
	- Pressurized water systems (pump stations) discouraged in favor of gravity drinking water storage

2. Adjacent to Proposed District	- Contribution to major interchange/intersection
	- Contribution to grade separated railroad crossings

### High Quality and Smart Growth Management

1. Increase density	- Alley load construction
	- Smaller Lot Size
	- Increased multifamily development
2. Walkability & Pedestrian Friendliness	- Wider than required sidewalks
	- Enhanced pedestrian crossings
	- Underpass(es)
	- Trail system enhancements
3. Increase availability of Transit	- Improved bus stops
	- Restricted access guideways for bus operations
	- Transfer facilities
4. Public Spaces	- Pocket Parks
	- Neighborhood Parks (beyond code requirements)

### Strategic Priorities

1. Affordable Housing	- Units permanently affordable to 80% Area Median Income
	- Land dedicated to Town's land bank program
2. Attainable Housing	- Units permanently affordable to 81 to 120% Area Median Income
3. Infill/Redevelopment	- Address environmental contamination / concern
	- Consolidate wetlands or natural area (positive benefits)
4. Economic Health Outcomes	- Facilitate job growth (at or above County median income)
	- Retain an existing business