



# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 9/21/2021**

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**File #:** 21-412, **Version:** 1

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**SUBJECT:**

DRAFT Special District (Metro District) Review Policy Community Engagement Plan

**DEPARTMENT:** Administration

**PRESENTERS:** Malcolm Fleming, Town Administrator

**TIME ESTIMATE:** 30 minutes

**STAFF RECOMMENDATION:**

**Consider staff's proposed additional community engagement plan on this matter, consider previous comments received from developers and HOA representatives on the draft Special District Review Policy, and address any questions the Board may have on the current draft policy before conducting additional community / stakeholder engagement on the draft policy.**

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

**Proposed Community/Stakeholder Engagement**

In July 2020, staff distributed the draft policy to all local developers and asked for comments. The comments received at that time are summarized in the "Developer Comments from Preliminary Review" section below. During the Town's Organized Neighborhoods of Erie (ONE) quarterly meetings, HOA representatives have asked questions and made comments about Metro Districts. Due to the challenge of engaging the community effectively during the pandemic, not previously having a Community Engagement Director who could assist with engagement on this issue, and the Board identifying numerous other issues as higher priorities, staff-with Board concurrence-postponed additional consideration of this draft policy.

To restart Community/Stakeholder Engagement staff proposes the following:

1. September 27: Send updated draft of policy to all developers and HOA representatives, summarize and provide a link to the draft policy in the Weekly Update, and request comments by October 25.
2. October 14: Conduct a Listening/Q&A session using virtual format (like previous Oil and Gas listening sessions)
3. November 2: During Board's study session to review comments received to date and discuss possible revisions to the draft policy
4. December 14: During the Board's regular meeting discuss the revised draft policy and take public comments as a General Business item

5. January 11, 2022: Board consideration of resolution to adopt a final draft of the policy.

### **Previous Background Information**

Metro districts are an important financing tool to facilitate new development, and a metro district enables new development to “pay its own way” without imposing new financial burdens on the existing community. Additionally, compared to home owners’ associations (HOAs), metro districts provide a more stable organizational structure to ensure that maintenance responsibilities assumed by the property owners within a district are fulfilled. Finally, unlike HOA dues, taxes imposed by metro districts are tax deductible for home owners.

However, the reasonableness of tax levies in metro districts has been the subject of criticisms of metro districts among the public, and over the long term is of concern to local governments. In addition to imposing a higher tax burden on residents of a metro district, the additional taxes levied in metro districts impose a total tax burden that may make voters who live in metro districts less likely to vote for potential tax and or bond measures proposed by the Town, school districts, counties, or fire districts to fund capital improvements. Consequently, staff recommends the Board of Trustees authorize metro districts only when an applicant demonstrates a metro district is necessary for the developer to make a reasonable rate of return on venture and when they produce amenities that justify higher taxes when compared with the surrounding/adjacent community.

To make clear the Town’s (A) policy objectives for metro districts, (B) expectations on metro district submittals, and (C) the timeline for reviewing applications for metro districts, staff developed a draft Policy for Reviewing Service Plans for Special Districts. The policy is similar one used by the [City of Fort Collins <https://citydocs.fcgov.com/?cmd=convert&vid=4&docid=3265403&dt=RESOLUTION&doc\\_download\\_date=AUG-21-2018&RESOLUTION\\_NO=079>](https://citydocs.fcgov.com/?cmd=convert&vid=4&docid=3265403&dt=RESOLUTION&doc_download_date=AUG-21-2018&RESOLUTION_NO=079), but has been adapted to fit Erie’s specific circumstances.

Among other things, if adopted by the Board of Trustees the Erie Policy would:

- **Clarify the Town’s Policy Objectives.** The Policy specifies that a Special/Metro District should achieve outcomes in one or more of four focus areas:
  1. Environmental Sustainability Outcomes
  2. Critical Public Infrastructure
  3. Smart Growth Management
  4. Strategic Priorities:
    - a. Sustainability Outcomes:
    - b. Oil and Gas:
    - c. Economic Health Outcomes:
    - d. Attainable Housing:
    - e. Affordable Housing:
- **Clarify the Town’s Evaluation Criteria.** The Policy outlines the criteria on which metro district service plans would be evaluated, including the following areas:
  1. Public Benefit Assessment and Triple Bottom Line Scan (Economic, Environmental and

Social):

2. Financial Assessment:

3. Policy Evaluation:

- **Outlines the Application Process.** 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.
- **Service Plan Requirements.**
- **Fees.** The Policy lists the fees associated with the different aspects of reviewing a metro district application. All fees are intended only to cover the Town's costs associated with application review.
- **Fulfillment of Obligations.** The policy provides for a 3-year time limit for the district to secure the Board of Trustees' approval of an IGA or 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. The policy also provides that 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.

#### HOA Representative Comments on Metro Districts

- Metro Districts impose high taxes on homeowners without enabling any review of those taxes
- Metro District board meetings are not advertised in a way that makes people aware of the meetings, nor is it clear how residents might become Metro District Board members
- Metro District taxes escalate dramatically without any opportunity for residents to influence them
- When a buyer is considering purchasing a home, disclosures that there is a Metro District are buried in a stack of other closing documents and only available to the purchaser when it is too late to back out of a purchase.

#### Developer Comments from Preliminary Review

- This has the potential to increase the cost of housing.
- Suggest the Town simply set Gallagher at 2017 for everything moving forward and set a debt cap of 45 mills of debt for run of the mill subdivisions with little public benefit, 50 for run of the mill subdivisions with public benefit, and 55 for the special ones with public benefit.
- Recommend a study session on Metro District 101 for the Trustees with White Bear, DA Davidson, and the Town's bond council - Kim Crawford.
- Metro Districts became necessary when municipalities stopped funding infrastructure for growth with GO bonds and shifted the burden to Metro Districts.
- The purpose of Metro Districts is to build the public basic infrastructure necessary for growth - not to build higher levels of private amenities. Per Title 32 of the CRS any amenity built with

District funds must be publicly accessible. It is for this reason that Westerly's main amenity (the pool and amenity center) will be built with private funds - so that it is only available to residents of Westerly. Additionally, most of the "surrounding communities" were built with Metro Districts so how is the new community supposed to provide more amenities than the other communities unless a higher tax is levied? This only begins to make sense to me if a tiered cap system as outlined above is adopted.

- The only outcome of a Metro District as intended by Title 32 is for new development to pay its own way by building the public infrastructure needed. If the Town moves away from that purpose and makes them about additional objectives, the cost of housing could increase.
- Recommend a legal review of the policy by a special district attorney relative to Title 32
- Reimbursables from the District will be kept to the most clear-cut items allowable in Title 32 - roads, water, sewer, storm, landscaping. The funds will not be used for anything outside the normal like buying out an oil and gas well.
- Regarding Attainable Housing provisions: The benefit of a Metro District is to bring down the initial cost of housing. Think of the mill levy as deferred initial purchase price. Without them, the homes have to cover the entire cost of the infrastructure on the first purchase thus the price goes up.
- Regarding Affordable Housing provisions: If there is the implication of utilizing district funds for the purpose of subsidizing the affordable homes in a community by placing a higher burden on the remainder of homes in the district there could be a conflict with the law. This should also be reviewed by a special district attorney; district burden has to be proportionately or equally shared by all district residents.
- Regarding provisions for Fulfillment of Obligations (The draft policy provides that 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): This would dramatically impact a developer's cash flow if the intent is to require all of the public benefit of a community be built in phase one. This would break most pro formas and cause projects to stall until home pricing increases to a point that the cashflow problem can be resolved. If a District were obligated in this way it should be done with a revision to the Town's form DA that relieves the requirement that 115% of cost of those district funded benefits be held in an LOC as districts are required by law to bond for the work. In fact, the Town's current LOC policy should be revised to exclude District work from LOC's for that same reason. Otherwise 215% of the cost of district work is being held between District bonds and the Town's LOC.
- One big picture issue is the difference between commercial metro districts and residential districts. In commercial districts you are dealing with sophisticated corporate entities that understand finance, taxes and the pros/cons of using district financing as it relates to increasing the operating costs of tenants versus the lowering of the costs of capital for infrastructure. As a result, strongly suggest less stringent requirements for commercial districts where single family residents are not involved because they generally don't understand the tax/assessment process.
- As an overarching comment, the context of the policy appears to be geared at disallowing the

use of Metropolitan Districts at large, except in very specific situations where there is significant extraordinary infrastructure that needs to be constructed.

- The reality in Colorado is the cost of development, whether that be residential or commercial, is so expensive given the cost of the underlying land, construction costs, regulatory costs and fees, the time value of money and a litany of other factors, creates a situation where without the benefit of district financing, many developments won't pencil, and therefor won't occur.
- Residential growth in Erie is due in part because many of the surrounding communities are so regulatorily difficult and expensive to build in that either the market won't support it, or the builders only provide what the market can support which becomes only higher and higher priced properties. At that point, the building community looks for an alternative marketplace where they can build and still get the numbers to work. It's not talked about much, but the reality is that the numerous counties, cities and towns that depend on growth as part of their aggregate budget are in competition for that growth, and as you know, when the residential falters, the commercial follows suit.
- Without the ability to use metropolitan districts as a financing tool the Town will see many builders look elsewhere in order to make their numbers work. Additionally, the ongoing dialog regarding housing diversity becomes moot because the only housing constructed in the Town will be expensive.

**Board Priority(s) Addressed:**

- ✓ Attractive Community Amenities
- ✓ Engaged and Diverse Community
- ✓ Prosperous Economy
- ✓ Well-Maintained Transportation Infrastructure
- ✓ Small Town Feel
- ✓ Safe and Healthy Community
- ✓ Effective Governance
- ✓ Environmentally Sustainable
- ✓ Fiscally Responsible

**ATTACHMENTS:**

1. DRAFT Policy for Reviewing Service Plans for Special Districts