



## Legislation Text

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**File #:** 19-398, **Version:** 2

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Ordinance No. 19-62 organizing the MW Retail Business Improvement District and appointing an initial Board of Directors. (Legislative Item)

**Presenter:**

Peter Wysocki, Director of Planning and Community Development

Carl Schueler, Comprehensive Planning Manager, Planning & Community Development Department

**Summary:**

This is a request to create a new MW Retail Business Improvement District (“District”) to finance and maintain improvements within its boundaries to benefit retail and commercial business therein and appoint an initial Board of Directors. Because of its relationship to other overlying districts with previously issued debt (primarily the Woodmen Heights Metropolitan District No. 3), this BID will not initially have a debt service mill levy. However, it does anticipate issuing debt to be repaid from public improvement fee (PIF) revenues.

This item was presented for first reading at the September 10, 2019 City Council meeting. At that hearing the petitioners agreed to reduce the maximum operating mill levy from 5.0 to 1.0 mills. City Council’s motion for approval included this change. An Operating Plan and Budget with this revision has now been provided and is attached as an exhibit to the ordinance.

**Background:**

BIDs are created under Colorado Statutes and City Policy to finance and/or maintain certain public improvements in non-residential areas, primarily utilizing a property tax mill levy as the revenue source. By Colorado Statutes, properties assessed as residential use cannot be levied a BID tax.

BIDs are separate legal entities from the City. However, their formation requires Council approval, and City Council must then annually approve their Operating Plans and Budgets. These processes provide an opportunity for City Council to establish limits and parameters for operation to the BIDs beyond those included in State Statutes. City Council adopted a Special District Policy (“Policy”) in 2006. It establishes recommended limits regarding districts including metropolitan districts, BIDs and general improvement districts (GIDs) including mill levy caps. In 2014, Council adopted a standard template for BID operating plans and budgets. Together with state statutes, these documents are used as the standard with which to review new BIDs.

This District’s initial boundaries will be about 35.01 acres, with an additional 1.57-acre parcel proposed for inclusion in the near future. The 1.57 acres is a no-longer-needed right-of-way parcel now owned by the Woodmen Road Metropolitan District and expected to be sold to this developer. This and any future inclusions will be subject to subsequent approval by City Council by ordinance.

Options for governance for BIDs include City Council serving as the ex officio board of directors, or a Council- appointed board, or an elected board. The petitioners are proposing to have an initially City-appointed board of directors after which the positions on the board will be elected starting with an election on November 5, 2020. Having an elected board is consistent with the governance structure used for all but one of the existing BIDs in the City. The current exception is the Greater Downtown BID which has a Council-appointed board. The board for this BID is proposed to include the following individuals, all of whom have a development interest in this project:

- 1) Jerry Thompson
- 2) Nancy L. Heck
- 3) Daniel T. Thompson
- 4) Zachary R. Thompson
- 5) Ray Terrell

The petitioners have provided an initial 2019-2020 Operating Plan and Budget using the City's adopted standard format. The Operating Plan and Budget stipulates a maximum operational mill levy cap of 5.0 mills and no debt service mill levy at this time (see discussion of the PIF below). In addition to general administration, ongoing activities of this BID are expected to include covenant enforcement and maintenance of the parking lot for this facility. This BID would be responsible for maintenance of the internal improvement associated with this retail center, with the Woodmen Heights Metropolitan District No. 3 being responsible for landscaping along Woodmen and Marksheffel Roads.

The City's standard-form BID Operating Plan and Budget template requires petitioner to seek prior approval for use of a Public Improvement Fee (PIF) in conjunction with BID debt issuance. Under current law the City otherwise has no authority over whether a property owner chooses to record a PIF covenant on their property. In this case the petitioners have drafted their initial Operating Plan and Budget to allow full authority to use a PIF in conjunction with their BID, with the expectation that PIF revenues would be used to service any future debt, rather than a property tax mill levy.

This property has previously been included in Woodmen Heights Metropolitan District No. 3. The Woodmen Heights Districts were originally created in 2004. District No. 3 is the designated commercial district as part of the consolidated service plan for Woodmen Heights Districts No. 1-3. The Woodmen Heights Districts have currently outstanding debt, which is supported in part by the debt service mill levy of 30.00 mills levied by District No. 3. This district also has an operations and maintenance mill levy of 10 mills (for a total of 40.0 mills). The manager of the Woodmen Heights Metropolitan Districts attended the September 10, 2019 first reading on this item.

This property is not currently included in the Woodmen Road Metropolitan District, but could likely be required to be included in the future, because it is included in an identified future service area referenced in a 2003 IGA between the City, El Paso County and that District. The Woodmen Road Metropolitan District was set up for the singular purpose of providing a share of financing for major previously completed improvements to the Woodmen Road corridor. The Woodmen Road IGA (as amended in 2013) effectively requires inclusion of identified properties at the time platting takes place. Most of this district's current 11.59 Gallagher adjusted mill levy is pledged toward the outstanding debt of this district. The existing Woodmen Road bond issue has a maturity date of 2027, but at this time is expected to be paid off by 2025, after which that district would be dissolved.

A map of the current boundaries of the Woodmen Heights Metropolitan Districts is included in the attached PowerPoint presentation, as is map of both the current boundaries of the Woodmen Road Metropolitan District and the adopted service area for that district.

The petitioners have specifically represented that this BID will not separately own the parking lots in this development, and language to that effect is included in the proposed Operating Plan and Budget.

This item was discussed at length at the August 13, 2019 City Council Budget Committee, with representatives including counsel for this BID as well as the manager for the Woodmen Road and Woodmen Heights districts. Several topics, issues and clarifying questions were raised. A list of anticipated public improvements costs was requested along with a justification for the proposed \$25 Million in maximum debt authorization. There were questions about the interrelationship of what would be total of a 15.0 mill operations and maintenance levy (10.0 from Woodmen Heights and 5.0 from this BID).

An update was provided to the Budget Committee at their August 19, 2019 special meeting. Public improvements cost estimates in the amount of approximately \$7.8M were provided, and the petitioner's representative agreed to amend the Operating Plan and Budget to limit the maximum debt authorization of \$10,000,000. There was additional discussion of the overlapping operations and maintenance mill levies between the Woodmen Heights Metropolitan District No. 3 and this proposed BID.

This item was introduced at Council's August 26, 2019 Work Session. Discussion centered around the total combined operations and maintenance mill levy of 15.0 mills (10.0 mills currently for Woodmen Heights Metropolitan District No. 3, and 5.0 proposed for this BID). City Council requested the presence of the manager for the Woodmen Heights District along with information on the existing O&M mill levies for other BIDs. Information on the mill levies is now provided in a separate attachment.

As noted in the summary above, at the September 10, 2019 first City Council hearing on this ordinance, the petitioners agreed to limit their Initial Maximum Operating Mill Levy to 1.0 mills at with this Operating Plan and Budget. Council's September 10, 2019 motion included this change. An Operating Plan and Budget incorporating this change is now attached as an exhibit to this ordinance.

**Previous Council Action:**

On August 10, 2004 (Resolution NO. 178-04) City Council approved a service plan authorizing creation of the Woodmen Heights Metropolitan Districts, one of which (District No.3) overlies this property. Council has taken several subsequent actions relating to amending that service plan, and authorizing debt for that district.

On February 26, 2013 (Resolution No. 15-13) Council approved the most recent version of an original Year 2003 IGA among the City, El Paso County and the Woodmen Road Metropolitan District, that is pertinent to this property.

Colorado Springs has zoned this property Planned Business Center (PBC) District to generally accommodate the proposed commercial/ retail uses. However, more detailed development

applications are pending.

**Financial Implications:**

Pursuant to the Policy and the initial Operating Plan and Budget, the debt and financial obligations of BIDs do not constitute a financial obligation of the City. The District does not anticipate any debt issuance for the remainder of 2019 but does contemplate a possible issuance in 2020. Initial funding for public improvements will be provided by the developer and thereafter is expected to be repaid from the anticipated PIF revenues. The District will have an initial maximum debt authorization of \$10,000,000.

**Board/Commission Recommendation:**

The City's staff-level Special District Committee has been provided copies of these materials. No outstanding comments or concerns have been received.

**Stakeholder Process:**

Legal publication of this hearing will be required. Because of the overlap issues, management of the Woodmen Heights and Woodmen Road Metropolitan Districts, have been informed of and involved in the review of this petition.

**Alternatives:**

City Council could choose to approve, deny or modify the proposed ordinance.

**Proposed Motion:** (for September 24, 2019)

Move to approve an Ordinance organizing the MW Retail Business Improvement District and appointing initial Board of Directors.

An ordinance organizing the Interquest MW Retail Business Improvement District and an appointment of the initial Board of Directors