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Presenters:
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Carl Schueler, Comprehensive Planning Manager

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Special Districts Overview- Session No. 4

Presenters:

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Summary:

This is the fourth of what are now anticipated to be seven Work Sessions requested by Council as an overview of City special districts and policy. Today's areas of focus will include a focused limited follow-up on Colorado Revised Statutes Criteria 32-1-203 (a) (2) followed by background on local improvement districts (LIDs), special improvement districts (SIDs), and the topic of district mill levies in general and the 1982 Gallagher Amendment and "Gallagher Adjustments" as these pertain to special districts.

An updated schedule for future special district overview sessions is also presented.

Background:

Please refer to the attached PowerPoint presentation. Supporting materials are attached, including the following:

- Colorado Springs Staff Overview of LIDs and SIDs
- Colorado Springs Staff Overview of the Gallagher Amendment and Gallagher Adjustments

Follow-up on C.R.S Criteria 32-1-203 (a) (2)

Based in Overview Session #3 (which occurred on November 7, 2019), Councilman Knight has requested additional background on the following criteria for which evidence must be provided satisfactory to City Council, prior to approval of a metropolitan district service plan.

“b) The existing service in the area to be served by the proposed special district is inadequate for present and projected needs”.

The specific question from Mr. Knight is:

“I am looking for what the State considered inadequate when they wrote the ordinance [statute]. Did they have any examples”?

The City Attorney's Office has researched the readily available legislative history. The Special District Act was recodified in CRS (repealed and reenacted) in 1981 with HB - 1320. The prior language equivalent to 32-1-203(2)(b) was codified in CRS 1973, § 32-1-205 (1)(b), which was originally enacted in 1965 as HB 65-1056.

In doing the reenactment, the 1965 text was changed from:

“....may disapprove the service plan....upon satisfactory evidence that: (b) The existing service in the area....is adequate for present and projected needs;” [emphasis added]

to

“.... shall disapprove the service plan unless evidence satisfactory to the board of each of the following is presented: (b) The existing service in the area is inadequate for present and future needs.” [emphasis added]

These say essentially the same thing except in the 1965 version, disapproval was discretionary if service existed which was “adequate”, while the 1981 change mandated disapproval “unless” service was inadequate.

Per the City Attorney's Office, it is possible, but maybe not probable that documentation of any circa 1981 General Assembly floor debates is available to provide additional context regarding the choices around this language.

Planning staff would note that up through the 1980s there were only a limited number of Title 32 districts created wholly inside of municipalities. Moreover, most of the metropolitan districts that not exist within cities and towns throughout Colorado have been created under the current language as it has read since 1981. Presumably, a basis for the “inadequacy” finding for many of these districts is related to the requirement for developers to provide public facilities such as streets, parks or utilities for undeveloped or redeveloping areas, including in cases where a general purpose local government (e.g. the City) or one of its enterprises (e.g. CSU) or may maintain the facilities and provide the services thereafter.

Assessment Districts Including City LIDs (Local Improvement Districts) and Statutory SIDs (Special Improvement Districts)

A more detailed overview of Colorado assessment districts is provided as an attachment.

Assessment districts differ from other types of “special districts” in that instead of levying ad valorem property taxes and/or imposing fees rates tolls or charges, they apportion a fixed annual amount of the costs of identified public improvements (and sometimes associated financing costs) to particular properties based on a variety of methodologies. This “assessment roll” is adopted by a local government and then certified to the County Treasurer for collection. Most often, these assessments are structured to extend for a ten-year period. Regardless of their particular form or structure, assessment districts operate as a component unit of another local government and not exist as a fully distinct governmental entity. Assessment districts exist only as long as necessary to fulfill their defined financial obligations.

For many decades, assessment districts, were commonly used by Colorado Springs, and in many other areas of the Colorado and elsewhere as the primary mechanism to finance public improvements specific and obligated to defined areas. Currently, there are no active City- initiated assessment districts, as all of the prior ones have paid off their obligations. The one still-active exception is a special improvement district (SID) which has been created within the Briargate Center BID, with City concurrence.

For the past several decades City of Colorado Springs itself has used local improvement districts (LIDs), as its preferred structure for assessment districts. These are authorized by City Code. For municipalities, the alternative statutory option is a special improvement district (SID). Functionally (in terms of assessment methodology and process), these structures operate fairly similarly.

No new assessment districts have been created in Colorado Springs in the last decade. Likely reasons for the diminished use of these districts are provided in the attachment.

Special District Mill Levies

Limits in Policy and Model Service Plans

Since the Colorado Springs Special District Policy was adopted in January of 2006, the policy of the City has been to allow Metropolitan Districts, BIDs* or GIDs to be created with the following maximum mill levies:

Maximum Operational Mill Levy:

- 10.0 mills for all districts

Maximum Debt Service Mill Levy:

- 30.0 mills for any district with any properties used for residential purposes
- 50.0 mills for any district with no properties used for residential purposes

*because BIDs cannot tax residentially assessed properties, they can never be subject to the more limiting residential mill levy caps.

The way the current Policy and metropolitan district Model Service Plans are written, both the maximum operational and debt service mill levies are allowed to be “Gallagher Adjusted” back to 2006, with the effect being that essentially all existing residential metropolitan districts now certify mill levies greater than the 10.0 for operations and 30.0 for debt service. Gallagher adjustments are described in more detail below and in an attachment.

By operation of Colorado Revised Statutes, the mill levy of a district can be temporarily increased to account for abatements granted by the Assessor for the prior year. These temporary increase

In 2006 these mill levy caps were purposefully adopted with “consumer protection” bias toward residential development. The thinking at the time was that business purchasers or lease holders could be expected to perform a higher standard of due diligence with respect to the presence and impacts of district-related financial obligations.

For solely non-residential districts, the combined effect of the higher mill levy caps and the Gallaher Amendment effectively results in these districts having about 630% greater taxing potential for debt service on a market value basis. This assumes the residential district has undertaken Gallagher adjustments.

Exceptions from Current Policy

Council has approved a limited number of exceptions to the normal mill levy caps for residential metropolitan districts. There are no GIDs, BIDs or non-residential metropolitan districts with approved mill levy caps higher than those allowed under the Special District Policy. The exceptions City staff are aware of to date are as follows:

- Banning Lewis Ranch Metropolitan District Nos. 2-5 and 8-11 - 20 mills for Operations (parks, landscaping and community centers- also no HOAs)
- Upper Cottonwood Creek Metropolitan District Nos. 3-5 - 20 mills for Operations (enhanced landscaping and amenities)
- Patriot Park Metropolitan District Nos. 1 and 2 - 15 mills for operations (amenities, affordability and no HOAs).
- Colorado Crossing Metropolitan District No. 3 - 20 mills for operations (parking garage)
- Lowell Metropolitan District - This district (which includes residential uses) has a current total mill levy of 54.110 mills and debt service mill levy of possibly 49.110 mills. The Year 2000 service plan for this district limited its total mill levy to 40.00 mills but with the ability to do Gallagher Adjustments
- Stadium Metropolitan District - 15.0 mills for Operations (based on unique circumstances and limited internally generated revenue)
- Sands Metropolitan District Nos. 1-3 - 40 mills for Debt Service (pending and pursuant to a 2018 IGA)
- Meadowbrook Crossing Metropolitan District- 50 mills for debt service (along with 10 mills for operations)
 - This is a residential district recently created in the County, which then subsequently included non-contiguous property within City limits
- Rock Creek Metropolitan District -residential district total combined mill levy of 65 mills including a debt service levy of 50.0 mills and a special purpose mill levy of 5.0 mills
 - This is another district recently created in the County, which also now includes

property within City limits

- Colorado Centre Metropolitan District developer owned portion only- 100 total mills based on a court order
 - This a mid-1980s created in the County and subsequently annexed in 1988)

Summary of Current District Mill Levies

- The total mill levies currently certified by all City special districts can be found as part of the El Paso County Assessor's Abstract of Assessment at [<https://assessor.elpasoco.com/abstract-assessment-understanding-value/>](https://assessor.elpasoco.com/abstract-assessment-understanding-value/)
 - (this source does not break out separate levies for debt service or operations if applicable)
 - Districts will be certifying new or updated mill levies in December of this year, for the following year
- Two of the three existing GIDs (Spring Creek and Briargate) have relatively modest mill levies, whereas the Marketplace at Austin Bluffs GID levies the full allowable 50.0 mills in order to meet debt service obligations
- Six of the seven SIMDs (special improvement maintenance districts) have relatively modest mill levies which have remained constant for many years (although the Old Colorado City SIMD has a comparatively higher levy of 13.46 mills)
- Twelve of the City's 15 BIDs now certify a mill levy with the remaining three recently created BIDs expected to certify a levy in 2020
 - Of the 12 with debt service mill levies at this time, six impose the maximum allowable levy for debt service
 - Most BIDs do not perform ongoing operations and maintenance functions and only certify an operational levy of 1.0 mills for administrative activities
- About 51 metropolitan districts with property in Colorado Springs now certify a mill levy, with a few more expected to follow in 2020
 - As a general rule, most residential metropolitan districts levy their full allowable maximum mill levies with Gallagher adjustments
 - Conversely, of the relatively smaller number of commercial metropolitan districts, it appears that only one (Colorado Crossing No. 3) levies the full allowable 50 mills.
 - As a side note, for multi-district metropolitan district structures that include a small operating or developer district, these district do not certify a mill levy. There are about 10 of these at the current time.

Gallagher Adjustments

"Gallagher adjustments" in special district mill levies are described in more detail in an attachment.

Generally, these are adjustments in mill levies to compensate for any change in the ratios of assessment value to market value triggered by the 1982 Gallagher Amendment. Among other things,

this amendment to the Colorado established a statewide ratio wherein the total assessed valuation of all residential property must be maintained at 45% of the total of all assessed valuation. In order to maintain this ratio, what effectively happens is the assessment rate of 0.29 (or 29%) of market value for most other classes of property remains constant, with the residential assessment adjusting up or down in order to maintain the ratio. Under the Gallagher Amendment, the residential assessment rate declined dramatically beginning in 1985, and after leveling out in much of the 2000s, it has recently been decreased further. The residential property assessment rate is currently set at 7.2% and is slated to decrease to 7.15% in the next cycle.

“Gallagher adjustment” language has been a part of all metropolitan district service plans and BID ordinances since at least the year 2000, and is included as part of the 2006 Special District Policy, Model Service Plans for metropolitan districts. For metropolitan districts, this language is effectively retroactive back to 2006 (including for districts created recently. As interpreted by most districts, the language allows upward adjustments of both operational and debt service mill levies in residential districts in order to essentially hold tax revenue generation capacity harmless as proportion of market value within the district. This adjustment provision is typically incorporated as a requirement associated with formal debt issuance by districts.

At this time most but not all City metropolitan districts with residentially assessed properties have made upward Gallagher adjustments to both their debt service and operational mill levies. This includes recently created districts that have initially higher mill levies based on the differential between the current residential assessment rate and the rate in place in 2006. Gallagher adjustments vary among districts depending on their circumstances and methodology used.

Up to this point Gallagher adjustments have not been a consideration for BIDs (which cannot tax residential property) or non-residential metropolitan districts. Presumably, under TABOR, Gallagher adjustments that result in an increase in mill levies can only be certified if this potential increase has been part of a previously approved election question. Staff is of the understanding that developer-initiated districts routinely “deTABOR” in this fashion whereas City-initiated GIDs and SIMDs may not have allowed for this by election.

Overall Summary and Current Schedule of Session Topics

Session 1- (September 23, 2019)- completed

- General district overview
- State and County-wide district context
- 2006 Special District Policy
- BIDs
- Review of future sessions, topics and proposed schedule

Session 2- (October 21, 2019) - completed

- Metropolitan Districts

Session 3- November 7, 2019- completed

- Metropolitan district follow-up- statutory findings
- Special district submittal, review and approval processes
- GIDs

Session 4- November 25, 2019

- Limited follow-up on metropolitan district service adequacy finding
- LIDs and SIDs
- Mill levies and Gallagher adjustments

Session 5- December 9, 2019

- SIMDs
- Special district financial obligations, debt authorizations and debt issuances

Session 6- January 13, 2019

- District powers and functions in addition to debt issuance
- District boards and elections/ TABOR

Session 7- January 27, 2019

- Contacts, annual reports, audits, data and disclosure
- District dissolution, or conversion to resident boards

Previous Council Action:

This is an overview and Council discussion item only.

Financial Implications:

N/A for this agenda item

Board/Commission Recommendation:

N/A

Stakeholder Process:

N/A for this agenda item

Alternatives:

N/A

Proposed Motion:

N/A

N/A