



## Legislation Text

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### Special Districts Overview- Session No. 6

#### **Presenters:**

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#### **Summary:**

- This is the sixth 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 the following:
  - Follow-up from Session #5
  - District powers and functions in addition to taxation and debt issuance
  - District boards and elections

#### **Background:**

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

- Table summarizing Colorado Springs residentially improved parcels currently included in special districts
- Special district contact lists
- List of some of the parks sites and facilities

#### **Follow-up from Session 5**

- During Overview Session #5 (which occurred on December 9, 2019), Councilman Geislinger asked for information on the "checks and balances" pertaining to district's performance and accountability.

Staff will provide a high level overview of this topic as part of Session #7.

- In a separate request, Councilman Knight asked for an updated number of total City residentially approved parcels currently located within metropolitan districts.

The current numbers are included in an attached table.

Of the approximately 138,000 residentially improved parcels in the City, about 11,400 are currently included in metropolitan districts. Based on a comparison with numbers from about two years ago, it would appear that about 2/3rds of recent residential development is occurring in metropolitan districts.

- Councilman Knight asked to hear from a tax expert regarding the cost-related pros and cons of inclusion in metropolitan districts compared with more traditional property owners associations.

This is outside the area of expertise of City staff.

- Councilwoman Avila requested information on special districts assuming maintenance for repairing a road that is a City responsibility. Councilman Murray asked a question regarding responsibility for maintenance of areas within roundabouts and medians.

Generally, when streets are dedicated for City maintenance, the City takes over the responsibility for maintenance of the basic roadway improvements, following a warranty period. Most often, if there is a district involved in these circumstances, its role is limited to reimbursing some or all of the original capital costs originally incurred by the developer, who is obligated to construct the facilities to City standards. Districts do somewhat routinely both finance and maintain local streets and drive aisle improvements that are not ever dedicated to the City for maintenance. These facilities typically are reviewed by the City for general compliance with the approved development plans (and in some cases for ADA compliance), but otherwise are not inspected or required to have warranties by the City. It would be up to the entity accepting the improvement for maintenance, to stipulate the terms of the conveyance of that asset.

- Councilman Knight requested information on the purposes of voter-authorized maximum debt authorization amounts, as compared with City imposed caps that are oftentimes more limiting

As described at the December 9<sup>th</sup> Work Session, staff would suggest the often higher caps are intended to provide the districts with greater levels of assurance that their debt authorizations will not ever be exceeded in total or for specific uses and categories of debt issuance within these overall caps. Even though any lower City-imposed caps govern, this assures the districts they will not have to go back to their voters, even in those situations where they might have to come back for City approval.

- As previously indicated, a table summarizing all City of Colorado Springs special district current mill levies and mill levy caps will be provided when the latest information for certified mill levies for 2020, becomes available with the Assessor's Office.

## **District Powers and Functions in Addition to Debt issuance**

The following is a generalized summary of special district powers and functions. The applicable statutes, City Code and district plan approval documents should be referred to for more detail and verification.

### District Staff

Generally, statutory districts can have dedicated employees, but in practice they seldom do; instead relying on a variety of contracts for services. As Colorado Springs' metropolitan districts and BIDs proliferate, mature and perform additional services and functions, these contractual staffing arrangements continue to become more complex and extensive.

City Code-based LIDs do not exist as separate organizational entities, and therefore do not have separate staff.

SIMDs technically do not have their own staffs. However, via the City and Parks Department budgeting process, there are about 9 full time employees along with additional seasonal employees, dedicated in budgets to SIMD functions.

As distinct statutory entities, Colorado Springs GIDs could employ staff members, but in practice they do not.

### Property and Asset Ownership and Maintenance

BIDs, metropolitan districts and GIDs are authorized to own, maintain and operate property and other assets. In Colorado Springs, BIDs and more so, metropolitan districts, are accumulating more extensive portfolios of real properties and other assets. District assets include but are not limited to:

- neighborhood parks and pocket park properties and improvements (several at this time)
- tracts including common areas detention pond sites (becoming more common)
- recreation and community centers
- parking lots and parking structures
- non-City streets and drive aisles
- a Downtown stadium (ultimately)
- a USAFA visitors center (temporarily)
- a future affordable housing property (interim ownership by the DDA)
- public art and streetscape improvements on City or district-owned properties

Up to this point in time, most City BIDs have been limited in function to the financing of public improvements that end up being owned by a non-district entity.

Generally, district-owned properties are assessed as owned by a political subdivision, and therefore are tax exempt.

Because LIDs in Colorado Springs are effectively not distinct entities, they do not own or maintain

properties. While Colorado Springs GIDs legally could both own and maintain property and other assets, in practice they do not. SIMDs do not technically own any assets, they maintain extensive areas, primarily within City rights-of-way.

Generally, metropolitan districts and BIDs operate and maintain properties they own, most commonly via contracts for services. Additionally, these entities have taken on substantial roles and responsibilities related to enhanced landscaping and other maintenance along City-owned streets and roadways. With metropolitan districts and BIDs, these responsibilities are typically addressed either independently from the City or via notes on various development approvals (such as plats or development plans). Typically, there are no separate agreements (e.g. IGAs) between the districts and the City regarding maintenance.

### Eminent Domain

Colorado Revised Statutes authorize metropolitan districts to exercise eminent or dominant eminent domain authority for otherwise allowable public purposes. However, the Special District Policy and City-approved service plans limit the use of this authority without the express prior approval of the City Council.

BIDs do not have the statutory authority to condemn property.

GIDs also have eminent domain authority, although in this case, it would be exercised by City Council sitting as the GID board.

### Other District Services

As noted in a prior overview session, districts may have the authority to provide a variety of somewhat unique services such as snow removal, trash service, internet provision and the operation of various facilities. Colorado Revised Statutes allow metropolitan districts to provide a wide variety of functions including fire protection, water and sanitary sewer, if allowed in their service plans. Because Colorado Springs provides these functions, they are never authorized in service plans.

Metropolitan districts have the authority to provide certain law enforcement-related services subject to the concurrence and approval of the City.

### Fees, Tolls Rates and Charges

Metropolitan districts, BIDs and GIDs are generally authorized by statute to impose fees, rates tolls and charges for any otherwise allowable function (as may be further limited by the City's approval of service plans or BID operating plans). As some metropolitan districts evolve into what had been the traditional roles of property owners associations, and expand services, it is likely that annual district fees and charges could become more significant, in some cases, surpassing the financial impact of district-imposed taxes.

### IGAs and Contracts

Generally, Colorado law allows for any two or more governmental entities to enter into agreements pertinent to any functions for which the entities individually have the appropriate authority.

Metropolitan districts, BIDs and GIDs fall into this category.

In Colorado Springs, metropolitan district IGAs are primarily limited to the numerous internal agreements between and among the districts that are related through a multi-district consolidated service plan. For example, there is typically an IGA among the operating district and the financing districts in these multi-district structures.

IGAs between districts have been rare up to this point in time.

### District Owned and Maintained Parks and Related Facilities

Several metropolitan districts now both own and maintain park and recreation facilities of various types. In some cases, these reflect the outcome of annexation agreements which specifically required annexors to construct and maintain parks that would ordinarily have been the responsibility of the general City. In other cases, the districts have taken on the role and responsibility to own and maintain community or recreation facilities not ordinarily provided by the City on a City-wide basis. Finally, as noted below, districts sometimes take on ownership and maintenance responsibility for the types of smaller “pocket park” and similar facilities that would otherwise be the responsibility of an HOA or similar entity, and not the City.

Attached is a list of some of the parks-related properties and facilities currently owned, operated and maintained by metropolitan districts. This list is not represented as being entirely complete and up to date.

### **Special District Boards and Election/TABOR**

The following is a staff-generated summary of the various special district boards and their elections. Colorado Revised Statutes, Colorado Department of Local Affairs (DOLA) publication and special expertise should be consulted for verification and more detail.

Generally:

- Local improvement districts (LIDs), as created and administered under City Code, do not have boards of directors. Council acts as their *de facto* or *ex officio* board. Although property owners within LID assessment areas may function as “electors” during the LID creation process (and under TABOR must authorize any debt issued in conjunction with an LID), the “electors” for these districts otherwise have no ongoing roles.
- SIMDs, (special improvement maintenance districts), also created under City Code, operate similarly with no separate and distinct boards of directors. Council also acts as their *ex officio* board. However, with SIMDs, City Code provides for, but does not require the appointment of advisory committees for SIMDs. In practice, each of the City’s seven SIMDs has an active advisory committee. City Code essentially defines electors for SIMDs as owners of real property or their designees. This definition does not include residents who do not own property.
- Colorado Revised Statutes stipulate that City Council operates and convenes separately as the boards of GIDs (general improvement districts). Notice of the required annual meetings of these boards to set budgets and certify mill levies is determined by Statute. There is no

requirement in Statute that would stipulate the creation of Council appointed advisory committees, although presumably, Council could exercise this prerogative, if there ever were a need or desire.

- Under Colorado Revised Statutes Title 31, BIDs (business improvement districts) can be initially created or subsequently amended to have any of four types of structures:
  - Council acting as the *ex officio* board of the BID
  - Council- appointed boards of directors
  - Urban Renewal or DDA Board acting as directors if an urban renewal area substantially overlaps
  - Separately elected boards of directors if the petitioners represent more than half of the property to be included
- Metropolitan district and applicable BID boards of directors normally consist of a maximum of five members. Ordinarily, terms are initially 2-4 years staggered to eventually result in four-year terms that overlap.
- Eligible electors for metropolitan districts include otherwise eligible Colorado electors who are either residents of the district (or area proposed for district creation), or are owners or spouses of owners of property in the district, or who have a contract for purchase of property in the district that includes a responsibility to pay taxes. For developer-initiated metropolitan districts consisting of vacant property (and for operating districts in multiple district structures), it is typical for a district to “qualify” electors by providing them a shared contract interest in parcel within each applicable district.
- Eligible electors for BIDs are defined a little differently (in Colorado Revised Statutes § 31-25.1203). Technically they can include residents but for the most part are owners or lessees of real property or designees in the case of corporately-owned property (for example).
- For GIDs, eligible electors are defined to include resident electors otherwise eligible to vote in Colorado, owners or spouses of owners of real property or the designees similar to BIDs.
- Generally, organizational and TABOR-related elections for metropolitan districts and TABOR-related elections for BIDs are allowed to occur essentially three times every two years (every November and in May of even numbered years through 2022 and odd numbered years 2023 and thereafter). Following formation, regular district election dates for boards of directors occur every two years in May.
- The elections themselves must be conducted in accordance with applicable notice requirements, and are often conducted as mail ballot elections in the early stages of district organization and administration.

Throughout Colorado, most metropolitan districts and BIDs have voted to remove term limits for their directors. However, it is important to note that the required biennial board election dates cannot be waived (although an election could be cancelled following notice, if there are no actions to be voted on).

Districts are subject to the relevant provisions of the Colorado Taxpayer’s Bill of Rights (TABOR). However, concurrent with the initial stages of formation development- specific districts routinely vote on and approve elections questions that allow them to “de-TABOR”. Ordinarily, these questions authorize the districts to issue future debt, increase mill levies subject to limits, and to retain what might otherwise be considered excess revenues under TABOR.

## 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- completed

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

### Session 5- December 9, 2019- completed

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

### Session 6- January 13, 2019

- Limited follow-up from Session 5
- District powers and functions in addition to debt issuance
- District boards and elections

### Session 7- January 27, 2019

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

**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