

AGENDA  
WORKSHOP OF THE CITY COUNCIL  
480 S. ALLISON PARKWAY  
CITY MANAGER'S CABINET ROOM  
CITY OF LAKEWOOD, COLORADO

CITY OF LAKEWOOD, COLORADO  
**IN-PERSON**  
NOVEMBER 4, 2024  
**5:30 PM**

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The City of Lakewood does not discriminate on the basis of race, age, national origin, color, creed, religion, sex, sexual orientation or disability in the provision of services. People needing reasonable accommodation to attend or participate in a City service program can call 303-987-7080 or TDD 303-987-7057. Please give notice as far in advance as possible so we can accommodate your request.

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In accordance with City Council Policy 5.1(A), all virtual meeting participants are advised that technological issues, whether caused by the City's equipment or the user's equipment, shall not be grounds for canceling a public meeting.

**How to Connect to Provide Public Comment:** Online participants may post written comments of any length to LakewoodSpeaks.org, an online forum for public comments.

**ITEM 1 – CALL TO ORDER**

**ITEM 2 – ROLL CALL**

**ITEM 3 – METRO DISTRICTS**

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**ITEM 4 – ADJOURNMENT**

# STAFF MEMO

**DATE OF COUNCIL MEETING: NOVEMBER 4, 2024 / AGENDA ITEM NO 3**

To: Mayor and City Council

From: Travis Parker, Chief of Sustainability and Community Development, 303-987-7908

Subject: **Metropolitan District Ordinance**

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**SUMMARY STATEMENT:** A proposed ordinance has been prepared in response to discussions of future potential metropolitan districts within the City of Lakewood. Prior to second reading of the proposed ordinance, a presentation will be available on Lakewood Speaks for public review and City Council consideration. City staff, including from the Public Works Department, the City Attorney's Office, and the Finance Department, have been involved in the development of the ordinance and will be available during City Council's discussion.

**BACKGROUND INFORMATION:** The proposed ordinance was initially prepared back in 2021 based on that City Council's request following its 2020 planning session. After the ordinance failed in October of 2021, the matter was tabled until 2024 when there was a renewed interest in establishing requirements and restrictions on the formation of metropolitan districts, and requirements and restrictions on the amendment of Service Plans for existing metropolitan districts. Following this renewed interest, the City Council held a workshop on this topic on May 6, 2024. At that workshop, members of City Council provided suggested changes to the ordinance. Those changes were incorporated by the City Attorney's Office.

**BUDGETARY IMPACTS:** There will be costs associated with implementing this ordinance. Because proposals for new metropolitan districts tend to be infrequent, it is difficult to quantify the additional costs which fall into two primary categories. Additional City Council and City staff time will be necessary to review metropolitan district proposals for compliance with the ordinance and state law. The use of existing staff is not anticipated to cause increased financial outlay.

The proposed ordinance would require utilization of consultant(s) to review the financial aspects of any proposed metropolitan district to support a recommendation to City Council regarding the proposal and to respond to City Council questions. City staff does not perform this type of evaluation routinely and does not have the expertise necessary. Consequently, City-selected consultant(s) is a reasonable method to provide this portion of the review. The proposed ordinance would obligate the petitioners seeking to create a new metropolitan district to reimburse the City for the costs of the consultant(s) selected by the City.

**STAFF RECOMMENDATIONS:** Approval of the ordinance.

**ALTERNATIVES:** City Council could amend the ordinance or choose not to adopt it.

**PUBLIC OUTREACH:** This item has been promoted through the regular communication channels to be considered by the Lakewood City Council.

**NEXT STEPS:** The next step will be a City Council public hearing to review and approve the final ordinance.

**ATTACHMENTS:** Draft Metro District Ordinance

**REVIEWED BY:** Kathleen E. Hodgson, City Manager  
Benjamin B. Goldstein, Deputy City Manager  
Alison McKenney Brown, City Attorney

O-2024-XX

AN ORDINANCE

CREATING CODE 14.29 OF THE CITY OF LAKEWOOD, COLORADO MUNICIPAL CODE REGULATING METROPOLITAN DISTRICTS

WHEREAS, the City of Lakewood (“City”) is a home rule municipality organized under Article XX of the Colorado Constitution and the authority of its Home Rule Charter;

WHEREAS, as part of its home rule authority, the City has the discretion to determine the merits of allowing the formation of Metropolitan Districts (“Districts”), or amendments to existing Metropolitan Districts, all in accordance with the Special District Act, C.R.S. § 32-1-101 *et seq.*;

WHEREAS, it is appropriate for the City to determine the merits of allowing the formation of a District for the development of municipal infrastructure following the public hearing process;

WHEREAS, monitoring and reviewing Districts’ actions in the development of their capital facilities and the creation of their debt to finance such facilities is a matter of local concern;

WHEREAS, Metropolitan Districts pass the cost of developing capital infrastructure on to properties located within such Districts which may create unnecessary conflicts with impacted property owners and the community at large, and the establishment by the City of appropriate requirements, restrictions, and limitations is a means to avoid some of these potential conflicts;

WHEREAS, approval of this Ordinance on first reading does not constitute a representation that the City Council, or any member of the City Council, supports, approves, rejects or denies any particular proposal related to this proposal identified herein; and

WHEREAS, approval of this ordinance on first reading is intended to confirm that the City Council desires to comply with the Lakewood Municipal Code by setting a public hearing to provide the public and City Staff an opportunity to present evidence and testimony regarding the proposal.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Lakewood, State of Colorado:

SECTION 1. Title 14, Code 29 is hereby added to the Lakewood Municipal Code as follows:

Section 14.29.010 - Legislative Declaration

- A. Metropolitan districts (Districts) organized under C.R.S. Title 32, Art. 1 (the Special District Act), provide an economic means to the development of municipal infrastructure for the establishment of both residential and commercial development, but a District is a separate municipality operating within the City and the decisions that a District makes regarding the establishment of infrastructure impacts the citizens of the City.
- B. The provisions of this Code are intended to:
1. Establish procedures for processing and reviewing proposals for the formation of new Metropolitan Districts,
  2. Outline procedures for processing and reviewing proposed Service Plan Amendments for existing Districts, and
  3. Define requirements, restrictions, and limitations applicable to such Districts or Service Plan Amendments.

#### Section 14.29.020 - Definitions

The terms listed hereunder shall have the following meanings for purposes of this Code.

*Board* means the Board of Directors of a District.

*Capital Plan* means the plan for providing Public Improvements included in a District's Service Plan, which shall include the following: (1) a list of the Public Improvements to be provided by the District, supported by an engineering or architectural conceptual plan; (2) a good faith estimate of the cost of the Public Improvements which shall include a cost contingency, the size of which shall be explained in the Capital Plan; and (3) a *proforma* capital expenditure plan correlating expenditures and revenues with phases of development.

*City* means the City of Lakewood, Colorado.

*City Attorney* means the City Attorney of the City of Lakewood, Colorado.

*City Council* means the City Council of the City of Lakewood, Colorado.

*City-District IGA* means an intergovernmental agreement between the City and a District primarily reflecting the terms and obligations of the Service Plan, in substantially the form provided as an exhibit to the Model Service Plan.

*City Manager* means the City Manager of the City of Lakewood, Colorado or such person's designee.

*Clerk* means the City Clerk of the City of Lakewood, Colorado or such person's designee.

*C.R.S.* means the Colorado Revised Statutes, as amended from time to time.

*Debt* means all general obligation debt of the District as authorized in

C.R.S. § 32-1-1101, *et seq.*, which the District has promised to repay through levy and collection of an *ad valorem* property tax assessed against taxable property within the District.

*Developer* means an entity or person that is the owner of property or owner of contractual rights to property in the Service Area that intends to develop the property.

*Developer Affiliate* or *Affiliate of a Developer* means an entity or person that directly or indirectly controls, is controlled by, or is under common control with a developer. For the purposes of this definition, “control” means the power to direct or cause the direction of the management and policies on behalf of the District, has a financial interest in the District, or is otherwise involved in matters pertaining to the District such as voting or contracting.

*District* or *Metropolitan District* means an entity created in accordance with Title 32, Article 1, C.R.S., and as specifically defined in C.R.S. § 32-1-103(10).

*End-user* means an elector of the District who either: (a) has the elector's primary residence within the District and is neither a developer nor builder of property within the District nor a Developer Affiliate, or (b) owns and operates developed commercial property within the District. End-user shall not include anyone who is an eligible elector pursuant only to C.R.S. § 32-1-103(5)(b).

*Material Modification* means a Service Plan Amendment that is deemed a Material Modification by one or more of the following: the Special District Act, this Code, the District Service Plan, or the City-District IGA.

*Metropolitan District Consideration Calendar* means the City's calendar of deadlines for consideration of a Service Plan for a proposed District, which the City Manager is hereby authorized and directed to prepare, in consultation with the City Attorney, and amend as needed. Each version shall be transmitted to the City Council as an informational update upon adoption by the City Manager and shall be on file with the Clerk for public inspection.

*Model Disclosure Document* means the City's model summary of the costs and benefits of a District, which the City Manager is hereby authorized and directed to prepare, in consultation with the City Attorney, and amend as needed. Each version shall be transmitted to the City Council, with an explanation of the changes, as an informational update upon adoption by the City Manager and shall be on file with the Clerk for public inspection.

*Model District Report* means the City's model District status and update report, which the City Manager is hereby authorized and directed to prepare, in consultation with the City Attorney, and amend as needed. Each version shall be transmitted to the City Council, with an explanation of the changes, as an informational update upon adoption by the City Manager and shall be on file with the Clerk for public inspection.

*Model Service Plan* means the City's model District Service Plan, which the

City Manager is hereby authorized and directed to prepare, in consultation with the City Attorney, and amend as needed. Each version shall be transmitted to the City Council, with an explanation of the changes, as an informational update upon adoption by the City Manager and shall be on file with the Clerk for public inspection.

*Operation and Maintenance Plan* means the plan for funding and managing operation and maintenance of Public Improvements that will be owned, maintained, operated or replaced by the District, which shall include: (1) identification of all such Public Improvements; (2) a good faith estimate of the annualized costs of such maintenance, operation or replacement of each such Public Improvement; and (3) a *pro forma* report correlating such expenditures with phases of development.

*Petitioners* means those persons proposing a Service Plan for the formation of a new District.

*Preliminary Development Plan* means a preliminary plan, agreement, application, or other document established by the City that identifies the Public Improvements necessary for facilitating development of property within the Service Area. The Preliminary Development Plan shall precede the Operation and Maintenance Plan.

*Public Improvements* means part or all of the improvements, facilities and services of which a District is authorized to do one or more of the following: plan, design, acquire, construct, install, relocate, redevelop, maintain, operate, finance or replace as generally described in the Special District Act.

*Service Plan* means a service plan as required in the Special District Act and includes all Service Plan Amendments.

*Service Plan Amendment* means a change to a Service Plan approved by the City Council and the District. A Service Plan Amendment may or may not be a Material Modification.

*Special District Act* means Title 32, Article 1, C.R.S., *et seq.*

#### Section 14.29.030 - Applicability, Restriction on Approvals, and Authority

- A. All provisions of this Code shall apply to all Districts operating under a Service Plan which was approved or amended by the City Council on and after the effective date of this Code.
- B. In addition to the applicable provisions of this Code, all Districts must follow applicable State legal requirements, as those may be updated and amended, including, but not limited to: audits, reporting, debt issuance, budget submission, election requirements, financial regulations, and other governance actions. Such reports shall be concurrently filed with the City in conformance with this Code.

- C. No District shall be approved by the City Council that will have no development within its boundaries.
- D. No District shall be approved by the City Council that will have control over the finances of another District by contract or otherwise.
- E. Multiple Districts serving contiguous areas may be approved by the City Council, with a joint or separate Service Plan(s), to reflect different development types, land uses, service needs or development timing. Such contiguous Districts may collaborate and are encouraged to seek mutual operational efficiencies.
- F. In addition to the power, authority and protection set forth in this Code, the City shall have all of the power, authority and protection granted by the Special District Act to municipalities and by the City's Home Rule Charter.

#### Section 14.29.040 - Filing for Consideration of a Proposed Metropolitan District or Proposed Service Plan Amendment

- A. Petitioners shall file a proposed Service Plan and a District Board shall file each proposed Service Plan Amendment with the Clerk. Copies of the proposed Service Plan or proposed Service Plan Amendment and any other required documents shall be submitted in a quantity and format acceptable to the City Manager.
- B. All Petitioners shall submit each proposed Service Plan to the Clerk no later than the deadline in the Metropolitan District Consideration Calendar unless the submittal deadline is modified in writing by the City Manager for good cause shown.
- C. At the time of filing a proposed Service Plan or Service Plan Amendment, the Petitioners or Board, respectively, shall pay a nonrefundable application fee in accordance with the fee schedule adopted by the City Manager.
- D. Conformance with this Code requires a special review of each Service Plan and Service Plan Amendment by the City and, pursuant to C.R.S. § 32-1-202(3), Petitioners or the District shall pay all direct costs that the City incurs to review a proposed Service Plan or Service Plan Amendment that exceed the amount of the application fee through a reimbursement agreement between the City and the Petitioners or District. Such costs shall be substantially paid, to the satisfaction of the City Manager, prior to a date being set for the public hearing pursuant to section 14.29.070 and fully paid within thirty (30) calendar days after final City Council action on the Petitioners' or District's request. Failure to honor the terms of the reimbursement agreement shall nullify the City's approval of the Service Plan or Service Plan Amendment.
- E. Petitioners or the District shall file, at the time of filing the proposed Service Plan or Service Plan Amendment, a letter of intent including each of the following:
  - 1. An explanation of the benefits of the proposed District or Service Plan Amendment, which may include, but are not limited to, one or more of the

following, and the mechanisms to ensure such benefits are provided:

- a. How the proposed Service Plan complies with the City's Comprehensive Plan and other adopted City plans;
  - b. Advancement of City goals that would not be accomplished if the Metropolitan District or Service Plan Amendment is not approved including, where applicable, quantitative information;
  - c. Public Improvements, if any, to be provided by the proposed District or Service Plan Amendment that further City goals and exceed City requirements;
  - d. Provision of and/or contribution by the proposed District or Service Plan Amendment, if any, to needed infrastructure that exceeds City requirements; and
  - e. Public Improvements, programs and facilities, if any, to be provided by the District or Service Plan Amendment that are not required by the City and are superior in quality, nature or timing to those associated with similar land uses without a Metropolitan District.
2. A description of anticipated property owners' association(s) and the purpose(s) for each including the division of responsibilities among such association(s) and the District, and the comparative advantages of the association(s) and the District for each responsibility.
  3. A disclosure document consistent with the Model Disclosure Document and the submitted Service Plan or Service Plan Amendment.

#### Section 14.29.050 - Contents of Service Plan and City-District IGA

- A. All Service Plans shall comply with the requirements of C.R.S. § 32-1-202 and include the requirements set forth within this section. The requirements set forth within this section shall not be eliminated by any Service Plan or City-District IGA, or amendments thereto. The Service Plan shall substantially comply with the form and content of the Model Service Plan provided by the City. The City Council shall determine whether the proposed Service Plan complies with C.R.S. § 32-1-202, the form and content of the Model Service Plan, and this Code.
- B. Disclosures.
  1. The District shall provide a publicly accessible website, which shall be referenced on all its communications, shall provide a method for two-way communication between District electors and the District, shall include an illustration of the District's boundaries on an aerial image, and shall require District elector email addresses to be used only for District business communication purposes.
  2. The District shall provide a disclosure document, approved by the City

Manager and City Attorney, explaining the costs and benefits of owning a property within the District. Such disclosure shall be consistent with the Model Disclosure Document provided by the City. Said disclosure shall, at a minimum, be made available as follows:

- a. Provided by the City on the City's website on a page dedicated to Metropolitan District information.
  - b. Provided by the District on the District's website, which each District is hereby required to have and maintain.
3. Every District shall prominently display upon their website, and in all documents provided to potential purchasers of real property within the District, the contents of the disclosure statement set forth in C.R.S. § 38-35.7-101(1). Additionally, the language set forth within C.R.S. § 38-35.7-101(2), regarding the obligation of all Sellers to include such language within every contract for the purchase and sale of residential real property shall be prominently displayed upon the District's website.
  4. The District and all property owners' associations located within any area that overlaps the District partially or entirely, shall require within its covenants, rules and regulations that all properties within such District's boundaries post a notice on the property via a yard sign at any time the property is for sale and via all other means utilized to identify a property as being available for sale. Said notice shall state that such property is located within the District, identifying such District by name, and providing the District's website address. Such sign shall conform to the City of Lakewood regulations for Yard Signs and shall be no smaller in size than one foot (1') by two feet (2'), with lettering a minimum of two (2) inches in height so as to be clearly visible from the abutting roadway. Such sign shall be located within one foot (1') of the sign indicating that the property is available for sale or, if no sign is placed on the property indicating it is available for sale, within twenty feet (20') of the abutting roadway and readable from either direction of travel on said street. The District is encouraged to provide such signs to property owners upon such property owner's request to assure property owner compliance with these noticing requirements.
  5. The District and all property owners' associations, located within any area that overlaps the District partially or entirely, shall require within its covenants, rules and regulations that all seller's within the District's boundaries provide an attestation or acknowledgement form to all buyers indicating that said buyer received all disclosure documents under this section. The attestation or acknowledgement form shall be approved by the City Manager and City Attorney prior to use. All attestation or acknowledgement forms signed by a buyer within the District shall be kept on file with the District.
  6. For any District property listed for sale on the Multiple Listing Service ("MLS")

website, an individual or licensed broker responsible for the listing shall make every effort to indicate that the property for sale is located within a District by clicking the “Y” box for the question “In Metro Tax District: Y or N?” indicating said property is within a District.

C. Public Record of Disclosures.

1. The disclosures required pursuant to section 14.29.050(A)(2) shall be recorded by the Petitioners or District in the Jefferson County Clerk and Recorder's property records prior to the earlier of:
  - a. Sale of any property within the District, or
  - b. No later than ten (10) calendar days after the court order, pursuant to C.R.S. § 32-1-305(6) that declares the District organized.
2. The disclosure pursuant to section 14.29.050(A)(2) shall be recorded by the City in the Jefferson County Clerk and Recorder's property records concurrent with recordation of each subdivision located partially or wholly within the boundaries of the District.

D. Finances.

1. The Service Plan and City-District IGA shall include a Capital Plan and an Operation and Maintenance Plan prepared on behalf of the Petitioners by professional, commercial entities that prepare similar plans and cost estimates in the normal course of their business.
2. The Service Plan and City-District IGA shall establish the maximum debt that may be issued by the District, as determined by the City Council that is approving the Service Plan.
3. The Service Plan shall include a cost estimate of what an individual property within the District would cost an End-user with and without the establishment of the District.
4. Agreement(s) for a Metropolitan District to reimburse the expenses or financial advances of any party shall require the following, and said requirements for reimbursement shall be included in the Service Plan and City-District IGA:
  - a. Reimbursement shall be limited to the direct costs of contracts competitively bid and a copy of such bid documents and all bids received shall be provided the District. Award to a party that is not the lowest-bidder shall require written justification accepted, in writing, by the District Board and, if a majority of the District Board is not End-users, by the City Manager;
  - b. Prior to each reimbursement payment, all costs to be reimbursed shall be documented in invoices to the District that include detail comparable to the information typically included in invoices or payments for such work and no less detailed than the information provided to the party to be

reimbursed;

- c. The contract(s) or agreement(s) between any party to be reimbursed and the contractor(s) performing the work for which reimbursement is being sought shall be provided to the District prior to any reimbursement;
  - d. Any interest charged on amounts advanced for later reimbursement shall not exceed the rate defined in the Service Plan and/or the City-District IGA; and
  - e. No subcontracting or other arrangement shall be used to prevent disclosure of the work for which reimbursement is sought, the costs of the work, or the parties involved.
4. A District's obligation for Debt issued and any costs, including reimbursement of costs, of providing Public Improvements, other than pay-as-you-go expenses such as operation and maintenance, shall encumber revenue derived only from such District's Debt mill levy unless otherwise approved in the District's Service Plan.
  5. For Districts that can include residential use, each Debt solicitation and Debt instrument issued by or on behalf of a District shall include disclosure of the Debt limitations of the District, including but not limited to, maximum initial Debt, maximum Debt mill levy, and maximum Debt mill levy duration.
  6. For Districts that can include residential use, each issuance of Debt issued by or on behalf of a District that is not placed through a public offering, shall include an independent financial professional's evaluation and written finding that the terms of such Debt instrument are reasonable in the marketplace, and comply with this Code, the Service Plan and the City-District IGA. The independent financial professional shall be registered as a Municipal Advisor as defined by the U.S. Securities and Exchange Commission, shall not be a Developer Affiliate, shall be selected by the District and, if the majority of the District Board is not End-users, the District shall obtain approval from the City Manager prior to the selection of the Municipal Advisor. Such finding shall be included in the District's next report pursuant to section 14.29.100.
  7. The District shall notify the City Manager of any District application for grant funds no later than the date the application is submitted. Any District application for grant funds shall be withdrawn by the District if the City notifies the District that it has applied or will apply for such grant unless the District receives approval from the City Manager to continue pursuit of the grant.
  8. Each District formed on or after the effective date of this Code shall remit all specific ownership tax received by the District to the City within thirty (30) calendar days of receipt by the District unless otherwise provided in the District's Service Plan and the City-District IGA.

#### E. Mill Levies.

1. For Districts that can have residential use, the District shall comply with the maximum Debt mill levy to finance Public Improvements including reimbursement of any expenses of any party to provide Public Improvements. Such maximum Debt mill levy shall be established in the Service Plan and the City-District IGA.
2. For Districts that can have residential use, the District shall comply with the maximum operating mill levy permitted to fund pay-as-you-go costs, such as operating, and maintenance expenses, including the reimbursement of any expenses of any party to provide such services to the District. Such maximum operating mill levy shall be established in the Service Plan and the City-District IGA.
3. For Districts that can include residential use, the District shall comply with the maximum Debt mill levy imposition term within which the District's Debt and Debt mill levy shall be extinguished. Such maximum Debt mill levy imposition term shall be established in the Service Plan and the City-District IGA. Said term can be extended for refunding only by a District Board on which a majority of the members are End-users. Such refunding shall comply with applicable limitations and requirements set forth in C.R.S. § 11-56-101, *et seq.*

#### F. Elections.

1. Ballot issues shall be subject to the following:
  - a. This section 14.29.050(E)(1) shall not apply to Districts in which residential use cannot occur or in which the majority of Board seats are occupied by End- users.
  - b. Petitioners for a new District and Boards of existing Districts shall provide the language of all ballot questions, including the organizational election ballot question, to the City Manager, with a copy to the City Attorney, at least twenty (20) calendar days prior to any statutory ballot certification deadline.
  - c. Petitioners or the Board may proceed with ballot certification if the City Manager does not object in writing within fifteen (15) calendar days of submittal of the election ballot question(s) to the City. The City Manager shall only object if the ballot language is not consistent with the Service Plan and City-District IGA.
  - d. If the City Manager objects to the ballot language, the language shall be changed by the Petitioners to the satisfaction of the City Manager and City Attorney.
2. In addition to requirements of the Special District Act, District elections for Districts in which residential use is allowed shall comply with the following:
  - a. All elections, including for Board seats and ballot questions, shall be by

mail ballot.

- b. Notice of each election shall be sent via U.S. Mail and via email to each address associated with at least one eligible elector at least thirty (30) and no more than sixty (60) calendar days prior to the deadline for nominations to the office of District Board director.
  - c. Notice of each election shall be posted on the District's website for the period beginning sixty (60) calendar days before and ending the day after the deadline for nominations to the office of District Board director.
  - d. The notice required in section 14.29.050(E)(2)(b) and (c) shall identify the legal name of the District, describe the process to be nominated for a Board seat, identify the deadline for returning nomination forms and the deadline for returning ballots, include the disclosure described in section 14.29.050(A)(2), include a link to the District's website, and include a link to the City's and the Colorado State Department of Local Affairs websites containing information about the District.
3. In addition to requirements of this section and the Special District Act, Developer Affiliates shall also comply with the following:
    - a. Candidates running for the Board shall notify all eligible electors if they are a Developer Affiliate.
    - b. Notification pursuant to this subsection shall be sent via U.S. mail and via email to each address within the District that is associated with one eligible elector at least sixty (60) days prior to the election.
    - c. Notification pursuant to this subsection shall also be posted on the District's website at least sixty (60) calendar days before the election and remain on the website until the day after the election.
  4. For Districts that can include residential use, a majority of Board seats shall be timely transferred to End-users as follows:
    - a. Board members who are not End-users shall, in writing prior to appointment or re-appointment or election to the Board, resign:
      1. Effective no later than the day immediately prior to the next possible District special election, as defined in C.R.S. § 32-1-103, that follows the date when the amount of development, defined in the Service Plan and/or City-District IGA for the purposes of section 14.29.050(E)(3) is achieved; and
      2. Effective at one-year intervals beginning one year after the required initial resignation date until the Board majority consists of End-users.
    - b. The District shall notify the City Manager and City Attorney, in writing, of the date when the amount of development defined in the Service Plan and/or City-District IGA for the purposes of section 14.29.050(E)(3) is

achieved. Such written notice shall be made no later than ten (10) calendar days after such date.

- c. Vacancies on the Board created by resignation required by section 14.29.050(E)(3) shall be filled by appointment by the remaining director(s) as required by C.R.S. § 32-1-905. Selection of the appointees shall be by special election, as defined in C.R.S. § 32-1-103. The Board shall set the special election for the earliest possible special election date after the amount of development is achieved that is defined in the Service Plan and/or City-District IGA and at one-year intervals thereafter until the majority of the Board seats are held by End-users. If, after each such special election, one or more vacancies remain on the Board, such vacancy(ies) shall be filled as required by C.R.S. § 32-1-905, and the selection of appointees is not required to occur by special election.
- d. Board members who resign and remain eligible electors are not prohibited by section 14.29.050(E)(3) from seeking re-election.

#### G. Board Limitations.

1. The District Board shall approve and enter into the City-District IGA during the District Board's first meeting and prior to any other Board action. Amendments to the City-District IGA shall be approved by the District Board at its first meeting subsequent to the City's approval of such amendment and prior to any other Board action.
2. District use of the power of eminent domain or dominant eminent domain shall first require approval by City Council resolution pursuant to C.R.S. § 32-1-1004(4).
3. District modification of its boundaries is considered a Material Modification and shall comply with this Code and the Special District Act.
4. For Districts that can include residential use, none of the following actions shall be permitted unless the majority of Board seats are held by End-users:
  - a. Any commitment to exceed the maximum initial Debt amount identified in section 14.29.050(C)(2).
  - b. Any election authorized or required by Article 10, Section 20, of the Colorado Constitution (TABOR) except as necessary to authorize either or both of the following:
    1. No more than the maximum initial Debt pursuant to section 14.29.050(C)(2) and the Debt service mill levy necessary to issue such Debt, revenue from which shall only be used to service the initial Debt.
    2. No more than the maximum operating mill levy pursuant to 14.29.050(D)(2).
    3. Any action to expand the number of Board seats from its original

number.

- c. The ballot language for any such election shall be included in the proposed Service Plan and proposed City-District IGA.

#### H. Public Improvements.

1. The Service Plan shall identify Public Improvements that will not be freely available to the general public and those that will not be available to the general public on a basis equal to property owners within the District.
2. The Service Plan shall identify Public Improvements that will serve property located outside of the District, provide an explanation of why the District should provide such Public Improvements, provide the estimated cost to the District for providing such Public Improvements, and describe any anticipated reimbursement to the District for such costs.

#### I. Preliminary Development Plan.

1. The Service Plan shall include, in addition to all other materials, plans, and reports required by this Code, a Preliminary Development Plan. This Preliminary Development Plan shall include, at a minimum, a description of the nature of the project and planned development, a map(s) providing an illustration of the public improvements proposed to be built, acquired, or financed by the District along with a written narrative and description of those items.
2. The Preliminary Development Plan shall not bind the City when reviewing and making decisions regarding approvals. Approval of the Service Plan, along with the Preliminary Development Plan, does not impart approval of the development of any land use for any specific area within the District.
3. Any formal application that is a significant deviation from the Preliminary Development Plan submitted with the Service Plan shall be considered a Material Modification to the Service Plan subject to approval by the City Council. For purposes of this Section, a significant deviation means a material change from the Preliminary Development Plan. Any Petitioner or Applicant may request a determination letter as to whether a change in the Preliminary Development Plan is considered a significant deviation. The determination as to whether a change in the Preliminary Development Plan constitutes a significant deviation shall be made by the City Council.
4. Should the District proceed with the submission of any formal application that is a significant deviation from the Preliminary Development Plan, the City may elect to exercise any of the options in section 14.29.110(B) of this Code.
5. The District may not levy taxes, enter into long-term financial obligations, or issue debt without approval by the City of an approved development plan.

#### J. Service Plan Material Modifications.

1. The Service Plan shall include a list of actions that are, if proposed or undertaken by a District, Material Modifications pursuant to C.R.S. § 32-1-207. However, such list shall not reduce the circumstances that, under

C.R.S. § 32-1-207, would be Material Modifications.

2. Prior to legal action pursuant to C.R.S. § 32-1-207(3), for a Material Modification without City approval, the following shall occur:
  - a. If a District Board identifies an intended action, that may be included on the list pursuant to section 14.29.050(H)(1), that such Board asserts is not a Material Modification, such assertion and supporting reasoning shall be provided in writing to the City Manager and City Attorney. The City Manager shall immediately transmit the information to the City Council. The City Council shall direct the City Manager whether to concur with the Board. The City's response shall be in writing and shall occur, within forty-five (45) calendar days of receiving the Board's assertion and reasoning. If the response is concurrence, the District may proceed. Failure of the City to respond within forty-five (45) calendar days shall be deemed concurrence. If the response is not concurrence, the Board and City shall follow the procedures outlined in the Special District Act, C.R.S. § 32-1-207(3).
  - b. If the City identifies an action or potential action by the District or its Board that the City asserts is a Material Modification, whether or not included on the list pursuant to section 14.29.050(H)(1), such assertion and supporting reasoning shall be provided in writing to the Board. The Board shall, within forty-five (45) calendar days of receiving the City's assertion and reasoning, respond in writing to the City. If the response is concurrence, the District shall not proceed with such action or potential action unless a Service Plan Amendment allowing such action or potential action is approved. Failure of the Board to respond within forty-five (45) calendar days shall be deemed concurrence. If the response is not concurrence, the Board and City shall follow the procedures outlined in the Special District Act, C.R.S. § 32-1-207(3).

#### Section 14.29.060 - Administrative Review of Proposed District or Service Plan Amendment.

- A. The City Manager and City Attorney shall review the proposed Service Plan or Service Plan Amendment. Such review shall include the following:
  1. The financial aspects by person(s) or firm(s) qualified to evaluate the reasonableness of the financial plan including, but not limited to, estimated costs to the proposed District of providing, operating and maintaining proposed Public Improvements, the projected rate of development, the projected revenues and cash flows, and the estimated financing costs. The person(s) or firm(s) who perform the review shall be selected by the City Manager based on their experience and qualifications relevant to the review, and their independence from the Petitioners or District and any development to be served by the District.

2. The proposed Service Plan or Service Plan Amendment for compliance with this Code and the Special District Act.
  3. The community goals, needs and amenities to be provided by the District that are beyond those required of the development to be served by the District.
- B. The City Manager shall provide a report to the City Council, after consultation with the City Attorney, of the City Manager's findings including a recommendation to approve, disapprove or conditionally approve the Service Plan. A recommendation of conditional approval shall include the additional information, Service Plan changes, and/or City-District IGA changes recommended including a recommended deadline for submission of such information or changes.

Section 14.29.070 - Public Hearing Regarding a Proposed District or Proposed Service Plan Amendment.

- A. Upon completion of administrative review pursuant to section 14.29.060, the City Council or City Manager may determine that a City Council study session is required and, if so, the Clerk shall schedule the study session.
- B. The Clerk shall schedule a public hearing in association with any proposed City Council resolution regarding approval of any Service Plan or Service Plan Amendment. Notice of the City Council meeting on which the proposed resolution of approval is scheduled shall be in accordance with the City Charter and the Lakewood Municipal Code, as amended, and any additional policies or procedures.
- C. If any property is proposed for inclusion in the District that is not fully owned by the Petitioners, such other owners shall be sent, by U.S. mail, notice of each City Council meeting postmarked at least fourteen (14) calendar days, but not more than thirty (30) calendar days, prior to each City Council meeting.
- D. The content of the notice shall be pre-approved by the City Manager and City Attorney. Petitioners or District shall print and mail such notices at the expense of the Petitioners or District. The Petitioners or District shall provide to the City Manager independent written confirmation of the date, person(s) and addresses to which such notice is mailed.
- E. Notices of each City Council meeting shall set forth the following:
  1. The date, time, location, and purpose of the City Council meeting.
  2. A general description of the properties contained within the boundaries of the District or proposed District including a boundary illustration on an aerial image.
  3. How to obtain access to the material that will be submitted to the City Council for its meeting including the Service Plan or Service Plan Amendment.
  4. A description of the process to submit comments on the proposed Service

Plan or Service Plan Amendment.

Section 14.29.080 - Action by City Council Regarding Proposed Districts and Proposed Service Plan Amendment.

- A. The City Council shall have the authority and legislative discretion to act, by resolution pursuant to section 14.29.070, on the Service Plan or Service Plan Amendment and the City-District IGA. Such action shall be as C.R.S. § 32-1-203 requires of County Commissioners considering and acting on a Service Plan or Service Plan Amendment.
- B. In making its decision, the City Council shall consider the Model Service Plan, the proposed Service Plan or Service Plan Amendment, the proposed City-District IGA or amendment, the Petitioners' letter of intent pursuant to 14.29.040(E), information presented during the City Council meeting, the report of the City Manager, and whether the material submitted by the Petitioners complies with this Code and the Special District Act.
- C. If the City Council conditionally approves the Service Plan or Service Plan Amendment, the City Council shall, by resolution, define the additional information required, Service Plan Amendment(s) required, and/or City-District IGA amendment(s) required and a deadline for submission of such information or amendment(s). The City Manager may, upon request of the Petitioners, reasonably extend the deadline for cause. Failure to meet the deadline shall be deemed disapproval of the Service Plan or Service Plan Amendment by the City Council. Upon the requirements of a conditional approval being met by the Petitioners or District, the City Council shall vote on a resolution to approve, without further condition or further amendment, the Service Plan and City-District IGA. If the vote on said resolution does not pass, the proposed District or Service Plan Amendment shall be deemed disapproved by the City Council.
- D. The City Council may reject, approve, or conditionally approve Service Plans. Nothing in this Code is intended to limit the discretion of the City Council which retains full authority to dictate the terms and conditions of all Service Plans in accordance with this Code and all other applicable laws.

Section 14.29.090 - Service Plan Amendment.

- A. In addition to the events or conditions enumerated in C.R.S. § 32-1-207(2), the occurrence of any of the following actions, events or conditions, subsequent to the date of approval of the Service Plan or most recent Service Plan Amendment, shall constitute Material Modifications requiring a Service Plan Amendment and, if required by the City Manager, a City-District IGA amendment.
  - 1. The failure of the District to provide any essential Public Improvements or services described in its Service Plan when necessary to preserve the public

health, safety, or welfare or necessary to serve approved development within the District;

2. The failure of the District Board to approve and enter into the City-District IGA within the timeframe required by section 14.29.050(F)(1);
  3. The occurrence of any event or condition defined under the Service Plan or City- District IGA necessitating a Service Plan Amendment;
  4. Creation of a special improvement district;
  5. The material default by a District under the City-District IGA or any other intergovernmental agreement or written agreement with the City;
  6. Any proposed activity of a District determined to be a Material Modification of the Service Plan pursuant to section 14.29.050(I); or
  7. Any other action, event or condition identified in a District's Service Plan by the District or the City as a Material Modification.
- B. Submission of information for a proposed Material Modification shall comply with sections 14.29.040 and 14.29.050.

#### Section 14.29.100 - Annual Report Requirements.

- A. Annually, all Districts located wholly or partially in the City, regardless of when formed and in addition to any other required reports, shall submit the following documents to the City Council and the City Manager concurrent with submission to the Colorado Division of Local Affairs:
1. A certified copy of the District's annual budget; and
  2. A copy of the District's audit or audit exemption.
- B. Each District operating under a Service Plan or Service Plan Amendment, which was approved by the City Council on or after the effective date of this Code, shall submit a report to the City Council, City Attorney, and the City Manager conforming to the Model District Report concurrently with its annual submittal of its budget pursuant to section 14.29.100(A).
- C. The obligation to submit the information identified in section 14.29.100(B) shall be required after the date by which all of the following have occurred:
1. The area within the District is fully developed,
  2. All Public Improvement construction and installation is complete, and the Public Improvements have been accepted by the relevant entity(ies) for ownership, operation and maintenance;
  3. A majority of Board seats are occupied by End-users; and
  4. The District notifying the City Manager and City Attorney, in writing, of the dates upon which section 14.29.100(C)(1) through (3) have each occurred.

- D. The District shall pay all costs that the City incurs to review an annual report pursuant to the reimbursement provisions of the Service Plan and/or City-District IGA.
- E. The Board shall, following receipt of a written notice from the City Manager, appear during a City Council meeting, on the date included in the notice, to update the Public and City Council on District activities and finances and respond to questions from the City Council.

#### Section 14.29.110 - Noncompliance.

- A. In the event of any dispute, claim, or controversy of any kind or nature relating to compliance with the approved Service Plan or City-District IGA arising between the City and District, prior to seeking redress in a court of competent jurisdiction, the Parties shall meet and make a good faith effort to resolve the dispute. Nothing in this section 14.29.110(A) shall be construed to prevent or delay a party from seeking any other remedy available to it at law, including seeking redress in a court of competent jurisdiction.
- B. Should any District fail to comply with any applicable provision of this Code or with its approved Service Plan or City-District IGA, the City Council, by resolution, may authorize any one (1) or more of the following measures, as it deems appropriate:
  - 1. Authorize the City Manager to withhold the issuance of or rescind any of the following: permit(s), authorization(s), inspection(s), acceptance(s) or other administrative action(s) necessary for the District's development or construction of Public Improvements;
  - 2. Authorize the City Attorney to exercise any legal remedy under the terms of any intergovernmental agreement with the City under which the District is in default;
  - 3. Authorize the City Attorney to exercise any other legal remedy available at law, including seeking injunctive relief against the District, to ensure compliance with the provisions of this Code; or
  - 4. Pursue any other remedy provided by the Special District Act.

#### Section 14.29 120 - No Abrogation of Rights

- A. Nothing in this Code shall be construed to limit or abrogate the rights and immunities set forth in the Colorado Governmental Immunity Act, Article 10 of Title 24, C.R.S.
- B. No provision herein shall be construed to limit or abrogate the right of any person to bring a private cause of action.

SECTION 2. Severability. If any provision of this Ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this Ordinance that can be given effect without the invalid portion, provided such remaining portions or application of the Ordinance are not determined by the court to be inoperable.

SECTION 3. Effective date. This Ordinance shall take effect thirty (30) days after final publication.

I hereby attest and certify that within and foregoing Ordinance was introduced and read on first reading at a hybrid regular meeting of the Lakewood City Council on the XX<sup>nd</sup> day of \_\_\_\_, 20XX; published by title in the Denver Post and in full on the City of Lakewood's website, www.lakewood.org, on the XX<sup>th</sup> day of \_\_\_\_, 20XX; set for public hearing to be held on the XX<sup>th</sup> day of \_\_\_\_, 20XX; read, finally passed and adopted by the City Council on the XX<sup>th</sup> day of \_\_\_\_, 20XX; and signed by the Mayor on the XX<sup>th</sup> day of \_\_\_\_, 20XX.

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Wendi Strom, Mayor

ATTEST:

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Jay Robb, City Clerk

APPROVED AS TO FORM:

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Alison McKenney Brown, City Attorney