



SPECIAL DISTRICTS

Introduction.

- (a) The Town of Kersey "Town" establishes the following as its Special District policy for: (i) the review and approval or disapproval of service plans, including any amendment thereof, for metropolitan Districts and other Title 32 special Districts (collectively, "Districts"); (ii) the regulation of Districts; and (iii) the review of and response to metropolitan District-related inquiries from the public.
- (b) This policy is intended as a guide only. Nothing in this Article is intended, nor shall it be construed, to limit the discretion of the Town Board, which retains full discretion and authority regarding the terms and limitations of all special District service plans.

The Town generally accepts the formation of Districts where it is demonstrated that the formation of a District is needed to provide public services or facilities to local development and will result in a demonstrated public benefit, whether such demonstrated public benefit is provided by the District or made possible to be provided by the developer because the District exists to provide public improvements.

- (1) Districts will be permitted to conduct ongoing operations and maintenance activities where, it can be demonstrated that having the District provide operations and maintenance is in the best interest of the Town and the existing or future residents and taxpayers of the District.
- (2) Districts, when properly structured, can enhance the quality of growth in the Town. The Town is receptive to District formation as an instrument to provide competitive financing for projects, build better and enhanced infrastructure and, where needed, create a quasi-governmental entity to provide essential and beneficial services which are otherwise not available and could not be practically provided by the Town or any other existing municipal or quasi-municipal entity, including existing special Districts, within a reasonable time and on a comparable basis. It is not the intent of the Town to create multiple entities which could be construed as "competing governments."
- (3) District formation will not be favorably received unless the District enables the underlying project to result in a demonstrated public benefit by either the District or the entity developing the District. In determining whether such project results in a demonstrated public benefit, the Town may consider all or any of the following:
 - a. Whether the District contributes to needed regional and sub-regional infrastructure.
 - b. Whether the District results in enhanced amenities.
 - c. Ways in which the proposed services or improvements exceed the Town's minimum requirements and standards.
 - d. Ways in which the existence of the District facilitates the enhancement of the services or improvements and whether the enhancements are feasible without the District.
 - e. Any other factors the Town deems relevant under the circumstances.
- (c) It is the Town's policy that (i) the costs of public improvements are to be paid from taxes and not from fees (with the exception of a limited capital improvements fee) and that (ii) property shall not be taxed for more than a period of forty (40) years to pay the costs of the public improvements necessary for or part of the master planned development of the project of which such property is a part.

DEFINITIONS:

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section:

APPROVED SERVICE PLAN:

- A. Any Title 32 District service plan or amended service plan that has been approved by resolution adopted by the Board of Trustees; or
- B. A service plan of a District that was originally approved by a board of county commissioners and all of the property in the District is later annexed by the Town and jurisdiction for such service plan was accepted through the adoption of a resolution by the Board of Trustees.

DISTRICT OR DISTRICTS: One or more special Districts which are quasi-municipal corporations and political subdivisions proposed, organized, or acting pursuant to the provisions of this policy, and Title 32. Business improvement Districts, special improvement Districts and general improvement Districts are specifically excluded from this definition.

MATERIAL MODIFICATION: Modifications to an approved service plan described in Colorado Revised Statutes 32-1-207(2).

MODEL SERVICE PLAN: Kersey's model Title 32 District service plan as approved by the Town Board in accordance with the provisions of this chapter.

PETITIONER: Any person(s) or other legal entity proposing a service plan or an amendment to an approved service plan.

PROPOSED SERVICE PLAN: Any Title 32 District service plan or amended service plan filed with the Town that: a) has not yet been approved or disapproved by resolution of the Board of Trustees, or b) has been conditionally approved by resolution of the Board of Trustees subject to the inclusion of such amendments or additional information as stated in such resolution.

TITLE 32: Title 32, article 1, Colorado Revised Statutes, as the same may be amended from time to time.

LEGISLATIVE DECLARATION:

- A. The Board of Trustees recognizes that under certain appropriate circumstances Districts provide financing alternative for developers of infrastructure within the Town. The general assembly has adopted legislation for the organization of special Districts pursuant to Title 32 to facilitate the elimination of overlapping services provided by local governments, because of annexation or otherwise, when all of the taxable property of a District lies within the boundaries of the Town.
- B. The Board of Trustees, in furtherance of the best interests of the Town and the preservation and protection of the health, safety, prosperity, security, and general welfare of Town residents, declares its intent:
 - 1. To prevent the indebtedness incurred by Districts from adversely affecting the credit worthiness and credit ratings of the Town;
 - 2. To ensure that the cost burden of infrastructure in newly developed areas is placed upon those benefiting from such infrastructure improvements;
 - 3. To prevent the shifting of development risk to non-developers;
 - 4. To minimize the likelihood of excessive tax and fee burdens upon Town residents and property owners located within Districts;
 - 5. To prevent the shifting of costs of Districts to residents of the Town who do not live within the geographical boundaries of a District;
 - 6. To permit the creation of Districts where it will enhance the value of property; and
 - 7. To ensure that the creation of Districts is consistent with the Town's comprehensive plan and will add to the quality of life of citizens of the Town.

- C. The Board of Trustees further declares that it recognizes that the formation of Districts requires the adoption of procedures for the orderly processing of proposals for the organization of these Districts. The Board of Trustees prefers that nonresidential uses be in a District which does not include residential uses, but exceptions to such preferences will be considered.

APPLICATION OF STATE STATUTE:

In addition to the power, authority, and protection set forth in this chapter, the Board of Trustees shall have all the power, authority and protection granted to municipalities by Title 32; provided, however, that where any conflicts exist between Title 32 and this chapter, such inconsistencies are specifically intended and the provisions of this chapter shall control.

FILING OF PROPOSED SERVICE PLAN:

- A. Prior to the submission of an application for a proposed service plan, the petitioner shall request in writing a pre-submission meeting with the Town Manager or his designee and such other Town staff or consultants as the Town Manager deems appropriate to discuss the procedures and requirements for submission of a proposed service plan. The applicant shall describe the proposed special District to the Town staff and consultants. The staff and consultants shall explain the administrative process and provide information to assist the petitioner with the orderly processing of the proposed service plan.
- B. The application shall comply with the requirements of this chapter. The Town Manager shall have the sole discretion to determine staff availability to conduct the review and manage the review process. The Town Manager shall set the review time for the proposed service plan based upon the availability of staff or outside consultants. In the event the Town Manager accepts the application for staff review, the Board of Trustees shall be notified and an estimated processing time for staff review shall be established and communicated to the petitioner. In the event the application is rejected, the Town Manager shall notify the petitioner and Board of Trustees. The determination of the Town Manager shall be conclusive and binding without right of appeal. However, a new application may be submitted by the petitioner at a later date. In no event shall more than two (2) applications be filed on any proposed District.
- C. The proposed service plan shall be in the form of the model service plan (when adopted). The Town Manager shall have the sole discretion to determine whether the proposed service plan complies with the form and content of the model service plan. Deviations from the model service plan shall be highlighted in the proposed service plan.
- D. At the time the proposed service plan is filed, petitioner shall remit a nonrefundable application fee to the Town of: 1) fifteen thousand dollars (\$15,000.00) for a service plan for a new District or 2) two thousand dollars (\$2,000.00) for an amended service plan. If the Town's reasonable direct costs related to the proposed service plan review and hearing exceed the amount of the application fee, the Town Manager may impose any additional processing fees as necessary to reimburse the Town for such additional reasonable direct costs related to the proposed service plan review and hearing. In addition, the petitioner shall pay the costs of outside consultants hired by the Town to assist staff with review of the proposed service plan. The Town Manager may require the petitioner to sign an agreement with the Town agreeing to pay the amounts in excess of the application fee as required by this subsection and may require such security for the payment of such amounts as the Town Manager deems appropriate.

MODEL SERVICE PLAN:

- A. The Town Manager in conjunction with the Town Attorney or Town Planner, may develop a model service plan which complies with this chapter. All proposed service plans shall substantially comply with the model service plan. The model service plan may be amended by the Town Manager in conjunction with the Town Attorney or Town Planner, in whole or in part, from time to time.
- B. In addition to the requirements of Title 32, the proposed service plan shall include or shall otherwise provide all information required by the model service plan as well as the following:
1. A legal description of the proposed District boundaries as well as a map of the proposed District's boundaries and a Town vicinity map.

2. The mill levy assessed by the District on real or personal property within the District shall be capped at fifty-five (55) mills for both debt service and for operation and maintenance purposes, as provided in the service plan. The debt service mill levy may be subject to adjustment in future years to reflect changes in the residential assessment ratio. The debt service mill levy will terminate when the bonds are no longer outstanding. The District shall not impose a debt service mill levy for more than forty (40) years after the year of the initial imposition of such debt service mill levy unless: a) a majority of the board of directors of the District imposing the mill levy are residents of such District, and b) such board has voted in favor of issuing debt with a term which requires or contemplates the imposition of a debt service mill levy for a longer period of time than the limitation contained herein.
3. A statement that the District shall not issue any debt in any amount that exceeds the amount of debt authorized in its approved service plan.
4. A capital plan which shall, at a minimum, contain:
 - a. A description of the type of capital facilities to be acquired or constructed by the District;
 - b. An estimate of the cost of the proposed facilities;
 - c. A pro forma capital expenditure plan correlating expenditure with construction within the development over time.
5. A financial plan which shall, at a minimum, contain:
 - a. The total amount of debt issuance planned over the life of the District;
 - b. All proposed sources of revenue and projected District expenses, as well as the assumptions upon which they are based.
 - c. The dollar amount of any anticipated financing, including capitalized interest, costs of issuance, estimated maximum rates and discounts, and any expenses related to the organization and initial operation of the District;
 - d. A detailed repayment plan or payment schedule covering the life of any financing, including the frequency and amounts expected to be collected from all sources;
 - e. The amount of any reserve fund and the expected level of annual debt service coverage which will be maintained for any financing;
 - f. The provisions regarding any credit enhancement, if any, for the proposed financing, including, but not limited to, letters of credit and insurance; and
 - g. A list and written explanation of potential risks of the financing.
6. Statements that the District shall not:
 - a. Condemn property inside or outside the District boundaries without first providing prior written notice to the Board of Trustees of the District's intention to use the power of eminent domain.
 - b. Include or exclude any property that lies outside of the combined boundaries of related Districts without first obtaining approval in advance by the Board of Trustees; provided, however, that advance approval of the Board of Trustees shall be required for inclusion of property already subject to a debt service mill levy of a related District.
7. Acknowledgment that any debt of the District, issued with a pledge or which results in a pledge, that exceeds the maximum debt mill levy and the maximum debt mill levy imposition term required by subsection B2 of this section, shall be deemed a material modification of a District's approved service plan and shall not be an authorized issuance of debt unless and until such material modification has been approved by the Board of Trustees as part of a modification to the approved service plan.
8. Identification by name, address and phone number of those persons who the petitioner intends to be the nominees for the initial board of directors of the District.
9. Proof of ownership and a list of encumbrances on all ownership (including mineral rights) within the District in a form acceptable to the Town attorney.
10. Limitations on the mill levy, rates, fees, charges, development exactions and other revenues pledged to service payment of indebtedness of the District or provisions for any credit enhancements for District debt in order to preclude the creation of undue financial risk to the District and its residents.
11. Requirements for dissolution of the District upon the accomplishment of the purposes and undertakings for which the District was formed. If the District was only created for construction of public improvements, it shall dissolve when all outstanding debt is paid. If the District was created for providing services or maintenance functions, the District may continue so long as those services are provided.
12. A description of rates, fees, charges or exactions proposed for imposition by the District. Any changes to rates, fees, charges or exactions shall be decided by the Board of Trustees.

13. A statement that all activities by the proposed District will be subject to all of the Town's zoning, subdivision, building code or land use requirements.
14. Agreement that prior to the issuance of any bond issue, a copy of an opinion of nationally recognized bond counsel acceptable to the Town attorney shall be delivered to the Town stating that the bond issue satisfies the requirements of the approved service plan.
15. Agreement that the District shall use reasonable efforts to assure that all developers of or builders on the property located within such District provide written notice to all persons who purchase or lease property in the District from the developer or builder which notice discloses the maximum mill levy, as well as a general description of the District's authority to impose and collect rates, fees, charges or exactions. The form of notice shall be filed with the Town Manager prior to the initial issuance of the debt of the District imposing the mill levy that is the subject of the maximum debt mill levy. All promotional, marketing, and sales information shall display notice, equal in size and font to all other pertinent information, as to debt, taxes, rates, fees, and exactions, and this information shall further be recorded in the real estate records of the county with the order of the court creating the District.
16. Agreement that the District shall dedicate all public improvements planned for, designed, acquired, constructed, installed, relocated, redeveloped, and financed by a District to the Town or other appropriate governmental jurisdiction in a manner consistent with the approved development plan and other rules and regulations of the Town and applicable provisions of this code. The District shall describe in detail the regional infrastructure previously recommended by Town staff, which benefits the citizens of the Town outside the boundaries of the District.
17. Agreement that the District shall design and construct all public improvements in accordance with the standards and specifications of the Town or any other governmental jurisdiction having proper jurisdiction and the District shall obtain the Town's approval of civil engineering plans and applicable permits of the construction and installation of any public improvements prior to performing any work thereon.
18. A statement that the District shall provide a copy of the written notice of every regular or special meeting of the District to the Town clerk at least five (5) business days prior to such meeting. The District shall cause a copy of such notice to be posted at Town hall and the Town post office.
19. Agreement that the District shall not apply for or accept monies from the Colorado conservation trust fund, the great outdoors Colorado fund, or any other fund available or through governmental or nonprofit entities that the Town is eligible to apply for, except pursuant to approval by the Board of Trustees.
20. Agreement that the District shall obtain prior written consent of the Board of Trustees before filing a request with any court to consolidate with any other District.
21. Agreement that not later than August 1 of each calendar year each District shall file an annual report with the Town clerk. The annual report shall reflect activity and financial events of the District for the District's preceding fiscal year. The annual report shall include the following:
 - a. A narrative summary of the progress of the District in implementing its approved service plan;
 - b. Except when an exemption from audit has been granted for the fiscal year under the local government audit law, the audited financial statements of the District for the fiscal year including a statement of financial condition (i.e., balance sheet) as of December 31 of the fiscal year and the statement of operations (i.e., revenues and expenditures) for the fiscal year;
 - c. Unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the District in development of public facilities in the fiscal year, as well as any capital improvements or projects proposed to be undertaken in the five (5) years following the fiscal year;
 - d. Unless disclosed within a separate schedule to the financial statements, a summary of the financial obligations of the District at the end of the fiscal year, including the amount of outstanding indebtedness, the amount and terms of any new District indebtedness or long term obligations issued in the fiscal year, the amount of payment or retirement of existing indebtedness of the District in the fiscal year, the total assessed valuation of all taxable properties within the District as of January 1 of the fiscal year, and the current mill levy of the District pledged to debt retirement in the fiscal year;
 - e. The District's budget for the calendar year in which the annual report is submitted;
 - f. A summary of residential and commercial development which has occurred within the District for the fiscal year;
 - g. A summary of all taxes, fees, charges and assessments imposed by the District as of January 1 of the fiscal year;

- h. The name, business address and telephone number of each member of the board and its chief administrative officer and general counsel, together with the date, place and time of the regular meetings of the board. Notification of any changes shall be made immediately to the Town Clerk.

INTERGOVERNMENTAL AGREEMENT; IMPROVEMENT GUARANTY:

The District shall not levy any taxes or issue any debt until it enters into an intergovernmental agreement with the Town regarding the enforcement of this chapter and the provisions of the adopted model service plan. The intergovernmental agreement shall be in form and substance satisfactory to the Town Manager and Town attorney. The creation of the District shall not alter the obligation of the developer of property in the District to provide the Town with improvement guarantees pursuant to the requirements of this policy as adopted.

ADMINISTRATIVE REVIEW OF PLAN:

The Town staff shall have one hundred eighty (180) days (unless an extension of such review period is approved by the Town Manager) from the date the proposed service plan is filed, to complete an administrative review. This time period may be extended as deemed necessary by the Town Manager and the petitioner shall be notified of the extension period. Once the review is complete, an analysis of the proposed service plan shall be prepared in the form of a written report to the Board of Trustees. The report shall set forth the recommendations of the staff for approval, disapproval or conditional approval of the proposed service plan and the reasons therefore.

NOTICE OF PUBLIC HEARING:

The Town Manager shall schedule a public hearing at a regular Board of Trustees meeting upon completion of the administrative review report. Notice of the hearing shall be published by the Town in an issue of the newspaper selected by the Town as the official newspaper of publication. The petitioner shall pay the Town for the costs of such publication.

- A. Notice: Notice of the hearing shall also be mailed by the petitioner by first class mail, on the date such notice is to be published to:
 1. The owners of record of all real property within the District as such owners of record are listed in the proposed service plan as well as adjacent properties as determined by law.
 2. The state of Colorado division of local government.
 3. The governing body of any municipality or District which has levied an ad valorem tax within the next preceding tax year, and which has boundaries within a radius of three (3) miles of the proposed District's boundaries or otherwise defined by law.
- B. Contents of Notice: The notice of hearing shall set forth the following:
 1. The date, time, location and purpose of the hearing.
 2. A general description of the land contained within the boundaries of the proposed District.
 3. Information outlining methods and procedures for the filing of a petition for exclusion.
 4. A description of the type of District to be organized.
 5. The proposed maximum property tax levy to be imposed by the District and the maximum period of time which such levy shall be collected.
 6. The place at which the proposed service plan may be examined.
 7. A statement that all protests and objections must be submitted in writing to the Board of Trustees at or prior to the hearing or any continuance or postponement thereof in order to be considered.
 8. A statement that all protests and objections to the District shall be deemed to be waived unless presented at the time and in the manner specified in this chapter.

PUBLIC HEARING:

- A. The hearing held by the Board of Trustees pursuant to the notice provided pursuant to the Notice of Public Hearing section of this policy shall be open to the public, and a record of summary minutes shall be made by the Town Clerk. Any testimony or evidence which, in the discretion of the Board of Trustees, is relevant or material to the organization of the District shall be considered.

- B. The Board of Trustees may postpone or continue the hearing until a later time or date or relocate the hearing by announcing such postponement, continuance or relocation of the hearing or by posting notice at the originally scheduled time and place of the hearing, and no further publication or mailing of the notice shall be necessary.

ACTION BY THE BOARD OF TRUSTEES:

- A. Upon its review of the report presented by staff, the proposed service plan, and any evidence presented at the public hearing, the Board of Trustees shall have the authority to:
1. Approve without condition or modification the proposed service plan, or
 2. Disapprove the proposed service plan, or
 3. Conditionally approve the proposed service plan subject to the submission of additional information relating to, or the modification of, the proposed service plan or by agreement with the petitioner of the proposed service plan.
- B. The Board of Trustees shall disapprove the proposed service plan unless evidence satisfactory to the Board of Trustees of each of the following is presented:
1. There is sufficient existing and projected need for organized service in the area to be serviced by the proposed District.
 2. The existing service in the area to be served by the proposed District is inadequate for present and projected needs.
 3. The proposed District is capable of providing economical and sufficient service to the area within its proposed boundaries.
 4. The area to be included in the proposed District has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.
- C. The Board of Trustees may conditionally approve the proposed service plan upon satisfactory evidence that it does not comply with one or more criteria enumerated in subsection B of this section. Final approval shall be contingent upon modification of the proposed service plan to include such changes or additional information as shall be specifically stated in the findings of the Board of Trustees. Final approval of a proposed service plan may be withheld by Board of Trustees until such changes of information are made to the proposed service plan.
- D. The Board of Trustees may exclude territory from a proposed District prior to approval of the proposed service plan. The petitioner shall have the burden of proving that the exclusion of such property is not in the best interests of the proposed District. Any person owning property in the proposed District who requests his or her property be excluded from such District prior to the approval of the proposed service plan shall file such request with the Town clerk not later than ten (10) days prior to the public hearing held pursuant to the section pertaining to Public Hearings of this policy. However, the Board of Trustees shall not be limited in its action with respect to exclusion of territory based upon such request. Any request for exclusion shall be acted upon before final action of the Board of Trustees.
- E. The findings of the Board of Trustees shall be based solely upon the proposed service plan, the report(s) presented by staff, and any evidence presented at the public hearing by the petitioners, Town officials, and interested parties.
- F. The Board of Trustees may require a District providing improvements to a residential development to prepay a portion of water and wastewater tap fees and/or impact fees based on a schedule defined in an agreement between the Town and the District.
- G. The Board of Trustees may require a District providing improvements to a residential development to dedicate raw water as agreed upon by the Town Manager during the review process through a non-revocable letter of commitment secured by adequate funding to meet the demand analysis referenced in the Water Demand Analysis report as required in the additional requirements to the Model Service Plan or other application requirements.

- H. If the Board of Trustees has not approved a development agreement and/or preliminary plat for the development of the property within the District prior to approval of the proposed service plan, the proposed service plan shall provide that the District shall not issue any debt or impose any taxes, fees or charges until the development agreement or preliminary plat is approved. If the Board of Trustees has not approved a development agreement and/or preliminary plat for the development of the property within the District within two (2) years from the date of the organizational election, the Board of Trustees may require the dissolution of any such District; provided, however, that the Board of Trustees may extend such option to require dissolution for an additional year, if it deems such extension is appropriate. If the District requests such extension, the Town may charge a fee of not more than one thousand dollars (\$1,000.00) for processing such request.
- I. Decisions of the Board of Trustees concerning a proposed service plan shall be in the sole discretion of the Board of Trustees. Any waiver of the provisions of this chapter in connection with a proposed service plan shall not be deemed as an amendment of this chapter unless the Board of Trustees adopts an ordinance expressly amending this chapter.

WRITTEN DETERMINATION BY BOARD OF TRUSTEES:

- A. Within ninety (90) days after completing the public hearing held under this chapter, the Board of Trustees shall adopt a resolution regarding the proposed service plan.
- B. If the proposed service plan is approved, a resolution of approval shall be adopted.
- C. If the proposed service plan is disapproved, a resolution of disapproval shall be adopted. The resolution shall include the reasons for such disapproval.
- D. If the proposed service plan is conditionally approved, the amendments to be made in or additional information relating to the proposed service plan, together with the reasons for such amendments or additional information, shall also be set forth in writing, and the public hearing shall be continued until such amendments or additional information is incorporated in the proposed service plan. Upon the incorporation of such amendments or additional information in the proposed service plan, the Board of Trustees shall adopt a resolution of approval.
- E. A resolution passed by the Board of Trustees shall document determination of the Board of Trustees. No action or proceeding, at law or in equity, to review any acts or proceedings or question the validity of any determination by the Board of Trustees related to the proposed service plan pursuant to this chapter, whether based upon irregularities or jurisdictional defects, shall be maintained in the District court of the relevant county unless commenced within ninety (90) days after the passage of the Board of Trustees' resolution or thereafter any legal proceedings shall be barred. Should the court determine that the action of the Board of Trustees regarding the proposed service plan was arbitrary, capricious, or unreasonable the court may remand the matter back to the Board of Trustees with specific direction as necessary to avoid the arbitrary, capricious, or unreasonable result.
- F. In the manner and to the extent provided in this chapter, the Board of Trustees shall maintain continuing jurisdiction over the service plan and shall exercise its rights in relation thereto.

COMPLIANCE; MODIFICATION; ENFORCEMENT:

- A. Upon final approval by the District court of the organization of the District, the petitioner shall file written notice thereof with the Town Manager.
- B. After the creation of a District, material modifications to the approved service plan may be made by the board of directors of the District only by petition to and approval by the Board of Trustees. Such approval shall be in substantially the same manner as provided for in the approval for the original approved service plan. The application fee for a modification shall be as provided within Filing of Proposed Service Plan of this policy.
- C. Any material departures from the approved service plan, unless such has been modified with the approval of the Board of Trustees, shall be considered to be a violation of this section. Such unauthorized material modifications may be enjoined by the District court upon application by the Town.

- D. Any action of the District that violates any of the requirements of this section shall be deemed to constitute a material modification to the approved service plan and the Town shall be entitled to all remedies available under state and local law to enjoin such action of the District.
- E. Nothing herein prohibits the Town from requiring or requires the Town to require a 5-year review pursuant to Colorado Revised Statutes section 32-1-1101.5 of Title 32.
- F. Every development that creates or proposes to create a District shall have, as a requirement in its development agreement with the Town, a disclosure statement indicating the existence (or proposed formation) of a District that may impose up to fifty-five (55) mills and additional fees upon all taxable property within the District's boundaries. Such disclosure statement shall be signed by the property owner with the execution of the sales contract for the purchase of the property.