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Metropolitan District Regulation & Oversight
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Contents of this presentation reflects the view of the presenter, not of CML.


Metro District Oversight

- [“A kind of regulatory Wild West”](#)
- Common perceptions:
 - Confusion of service providers
 - Limited transparency
 - No control over debt, taxes, or decision-making
- What can or should municipalities do:
 - Under the Special District Act?
 - Through service plans?
 - Through local regulation?

Metro District Basics

- Metro Districts are special districts (local governments) authorized by Special District Act
- Provide two or more services as provided in the “service plan”
- Formation requires local jurisdiction and court approval and an election by eligible electors
- 1,794 active Metro Districts ([per DOLA](#))

Colorado Metro Districts



Source: <https://data.colorado.gov/Local-Aggregation/Metro-Districts-in-Colorado/wlbf-gg/2/data>. “Aggregated from thousands of local jurisdictions by the Colorado Department of Local Affairs Demography office. Many of the district boundaries were created from scanned drawings or digitized PDFs, and therefore no guarantee of accuracy can be made for the data.”

Statutory Powers

- Levy and collect taxes and fees
- Issue debt
- Provide services and facilities
- Own and dispose of property
- Manage its business and affairs
- Eminent domain (for limited purposes)
- “All rights and powers necessary or incidental to or implied from the specific powers granted . . .”
 CRS 32-1-1001, 1101 *et seq.*

Development Metro District Services

- Street improvements, including drainage facilities, sidewalks, parking, lighting and landscaping
- Traffic safety improvements
- Covenant enforcement & design review*
- Parks or recreational facilities or programs
- Security services*
 CRS 32-1-1004 (for a complete list)

Metro District Transparency

- Annual reports (CRS 32-1-207(3)(c-d)):
 - Mandatory for 5 years and then annually at the municipality's option (CRS 32-1-207(3)(c-d))
- Annual notice to electors (CRS 32-1-809(1)):
 - Governance, meeting, and election information
 - Mill levy and tax revenue for the prior year
- Public disclosure document and map (CRS 32-1-104.8)
- Open Meetings Law & Open Records Act
 - Plus meeting notices posted in 3 public places in the district and the clerk & recorder's office (CRS 32-1-903(2))
- Colorado Local Government Audit Law
- Local Government Budget Law of Colorado

Metro District Transparency?

- Meetings can be held far outside a district (CRS 32-1-903(1))
- Limited remedy for failure to file annual report, public disclosure, or notice to electors (CRS 32-1-104.8(2), 209)
- Annual notice to electors can be provided by posting to the [Special District Association website](#) (CRS 32-1-809(2)(d))

Metro Districts: Municipal Role

- Mandated by the Act:
 - Decision on service plan (CRS 32-1-204.5)
 - Decision on material modifications (CRS 32-1-207(2)(a))
 - Filling vacancies (CRS 32-1-905(2.5))
- Permitted by the Act:
 - Opposition to inclusions, exclusions, consolidations
 - Requesting dissolution
 - Oversight and enforcement

Municipal Review of Service Plan

- Must disapprove unless satisfactory evidence presented showing:
 - *Sufficient existing and projected need for organized service*
 - *Existing service is inadequate for present and projected needs*
 - *Proposed district is capable of providing economical and sufficient service*
 - *Area to be included has or will have financial ability to discharge the proposed indebtedness on a reasonable basis* (CRS 32-1-203(2), 204.5)
- May approve, disapprove, or conditionally approve
- Reviewed under an "arbitrary, capricious, or unreasonable standard" (CRS 32-1-206(1))

Metro Districts: Notable Litigation

- *Plains Metro. Dist. v. Ken-Caryl Ranch Metro. Dist.* (service plan enforceable unless not practicable*)
- *Todd Creek Village Metro. Dist. v. Valley Bank & Trust* (material modification not found)
- *Prospect 34, LLC v. Gunnison County* (mill levy cap enforceable)
- *Bill Barrett Corp. v. Sand Hills Metro. Dist.* (shift in location/purpose was material modification)

Material Modifications

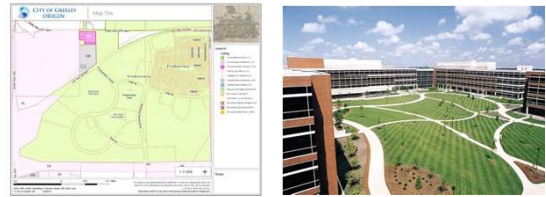
- "Changes of a basic and essential nature" to the service plan require municipal board approval (CRS 32-1-207(2)(a))
 - Does not include changes only to execute the original service plan or boundary changes
 - Material departure from service plan may be enjoined (CRS 32-1-207(3)(a))
- "So far as practicable" (*Plains; Prospect 34*)

Metro Districts in Greeley: Past

- Past City Councils have been skeptical:
 - 1999 – Approved first two Metro Districts
 - 2006 – Issued Moratorium on new Districts
 - 2007 – Adopted Regulatory Ordinances
 - 2008 – Adopted Model Service Plan
 - 2014 – Declined to approve new Districts

Tri-Pointe (Promontory) -- 1999

Residential & Commercial Metro Districts State Farm Service Center
 JBS USA Headquarters



Greeley's Primary Concerns

- Metro District residents may oppose City or School District tax increases
- Metro Districts may have better amenities than in other parts of the City, resulting in perceptions of inequality
- Metro District residents, especially subsequent buyers, may be uninformed and blame City for additional taxes
- Within commercial Metro Districts, major economic engines may seek relief from perpetual additional tax burden

Metro Districts in Greeley: Present

Current City Council is more receptive:

- 2018 adopted Amended Model Service Plan
- Approved six new Metro Districts
- Why the change of heart?
 - Pressure for new housing stock in NOCO
 - Competition from neighboring towns
 - All new Districts in West Greeley, close to Interstate 25

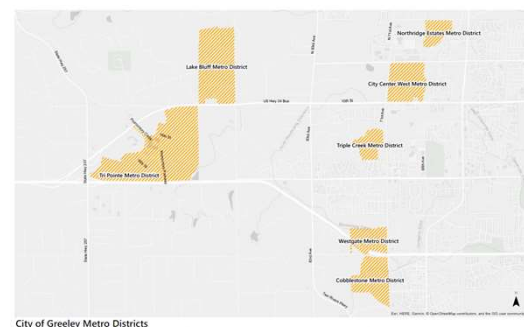
Lake Bluff Metropolitan Districts

Declined approval in 2014.

Approved resubmittal 2018.



City of Greeley Metro Districts



What does Greeley regulate?

- Location and size of District
- Capital and infrastructure improvements
- Mill levy caps and interest rates
- Disclosure statements
- Referral notices to other Districts
- Fees and costs
- Use of eminent domain
- Competitive grants

How does Greeley regulate?

- Require Metro Districts to file annual reports
- Require Council review and approval
- Sanction noncompliance with City ordinance or Special District Act
- Enforce contractual compliance with IGAs
 - Storm Water Facilities Construction & Maintenance
 - Dedication of land for public purpose
 - Collection and remittance of fees

Metro Districts in Windsor

- 1995 - first Metro District (Water Valley)
- 2005 - 6 Districts
- 2005-2007 – developed Model Service Plan
- 2015 – Revised Model Service Plan
 - Relaxed earlier requirements
 - More developer friendly
- 2019 – 20 active Districts

Windsor's First Model Service Plan

- Relied on home rule authority
- Desired because of lack of consistent policy
- Recognized economic inducement to developers (residential or commercial)
- Allowed use for "Enhancements"
 - Debt was limited for Metro Districts for enhancements only
 - Definition:
 - Entry features, non-potable systems, parkways with medians, etc.
 - Definition of enhancements was vague, causing issue with bond counsel
 - Town later required non-potable systems

Windsor's Primary Concerns

- Homeowner awareness of mill levy
- Resistance to future tax increases proposed by Town, special districts, and schools
- Inconsistency between service plans
- Protection of residents from excessive developer cost-shifting
- Potential for district default

Windsor's Current Regulations

- Model Service Plan
- Mill levy cap of 39 total mills – (4) operations; (35) debt service (adjusted for Gallagher, approx. 42 mills now)
- Limits developer cost reimbursements & interest rates for developer obligations
- Minimizes development fees/assessments
- Fees and cost reimbursement for Town review
- Transparency requirements for meetings, elections, notices
- Prohibits use of eminent domain
- Favors formation for mixed use, commercial and industrial developments, higher priced subdivisions and amenity driven developments.

Windsor: Current Trends

- Traditional developer financing
- Metro Districts serving HOA functions
 - Tax advantages for property owners have changed
- Metro District created water enterprise to deliver water to all the areas served within the metro district (Poudre Tech)
- Outsourcing legal, accounting, and financial functions

Windsor: Oil & Gas

- Raindance will have 100+ producing wells
- Benefits:
 - Developing a \$10 million recreation center paid for by oil and gas revenues from ad valorem tax
 - 45-50 acres devoted to farm land and open space.
- Developer claimed services would not be possible without oil and gas development

Municipal Oversight: Policy Questions

- Service plans and IGAs; regulations

Mill levy term & caps	Debt controls: max; fairness/interest rates
Expense limits	Enhanced public benefit
Minimum size/value	Early end user/resident control
Transparency	Sanctions/enforcement mechanisms
Reimbursement limits	Social policy
- Annual reports (potentially expanded)
- Annual fees & review fees
- Statutory remedies
- Litigation
 - Material departures from service plans/modifications
 - Breach of IGA terms
 - Application of municipal laws and standards