

**ORDINANCE NO. 1
SERIES 2009**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUNNISON ADOPTING A POLICY REGARDING THE CREATION AND REGULATION OF SPECIAL DISTRICTS FORMED PURSUANT TO TITLE 32, COLORADO REVISED STATUTES, AND AMENDING THE CITY CODE OF THE CITY OF GUNNISON BY THE ADDITION OF A NEW CHAPTER TO TITLE 10 THEREOF.

WHEREAS, the formation of Special Districts pursuant to Title 32, C.R.S., under proper circumstances, can provide competitive financing of infrastructure improvements for development projects in the City; and

WHEREAS, the City wishes to adopt a policy regarding the consideration of the formation and regulation of such special districts;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, ORDAINS THAT:

Section 1. The City Code of the City of Gunnison is hereby amended by the adoption of a new Chapter 10.20, to Title 10, Special Improvement Districts, which chapter reads as follows:

CHAPTER 10.20

**SERVICE PLANS FOR TITLE 32, SPECIAL DISTRICTS
(INCLUDING METROPOLITAN DISTRICTS)**

Sec. 10.20.10. Introduction.

A. The City of Gunnison, Colorado, (hereinafter "City") 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"); and (ii) for the regulation of Districts:

1. This Policy is intended as a guide only. Nothing in this Chapter is intended, nor shall it be construed, to limit the discretion of the City Council, which retains full discretion and authority regarding the terms and limitations of all District Service Plans.

B. The City 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 enhanced benefits to existing or future residents or business owners of the City and the District, whether such enhanced benefits are 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 City and the existing or future residents and taxpayers of the District.

2. For Districts whose primary revenue source is property taxes, and in the absence of special circumstances, District formation will not be favorably received where the future assessed value of all property within the District at full build-out is projected to be less than five million dollars (\$5,000,000). The five-million-dollar assessed valuation threshold, for Districts whose primary revenue source is property taxes, will increase biennially after 2008 to adjust for increases in the Consumer Price Index for the Denver-Boulder statistical region as prepared by the U.S. Bureau of Labor Statistics. Special circumstances and special cause must be demonstrated for exceptions to be granted.

3. Districts, when properly structured, can enhance the quality of growth in the City. The City 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 City 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 City to create multiple entities which could be construed as “competing governments.”

4. District formation will not be favorably received unless the District enables the underlying project to be enhanced by either the District or the entity developing the District. In determining whether such project is enhanced, the City may consider: 1) ways in which the proposed services or improvements exceed the City’s minimum requirements and standards; 2) 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; and 3) any other factors the City deems relevant under the circumstances.

Sec. 10.20.20. Service Plans.

A. Any Service Plan submitted to the City for approval must comply with all state, federal and local laws and ordinances, including Article 1, Title 32, C.R.S., (the special district “Act”).

B. The Service Plan shall include all information required by the Act.

C. The Service Plan shall enumerate and describe all powers requested on behalf of the District. Demonstration of the need or benefit of each power is required. Powers which are not clearly needed will not be approved in the Service Plan.

D. Any intergovernmental agreement which is required, or known at the time of formation of the District to likely be required, to fulfill the purposes of the District, must be described in the Service Plan, along with supporting rationale.

E. The Service Plan shall include the description of any planned inclusion into, or exclusion of property from, the District’s boundaries. The Service Plan shall provide that inclusions or exclusions by the District that are not described in the Service Plan shall require notice of same to City Council as set forth in the model service plan.

F. The Service Plan shall describe any planned extraterritorial service agreement. The Service Plan shall provide that any extraterritorial service agreements by the District that are not described in the Service Plan shall require prior written notice of same to the City Council as set forth in the model service plan.

G. The Service Plan shall outline any anticipated plans or needs for the exercise, by the District, of its power of eminent domain. The Service Plan will contain language limiting the use of the District’s power of eminent domain to carry out the District’s essential functions and services as well as to implement the intent of the Preliminary Infrastructure Plan as defined in the Model Service Plan described in Section 10.20.60. Additionally, the use of eminent domain will be undertaken strictly in compliance with state laws.

H. The Service Plan shall restrict the District’s debt service mill levy authorization to thirty (30) mills (the “Maximum Debt Mill Levy”) and operations and maintenance mill levy authorization to ten (10) mills (the “Maximum Operations and Maintenance Mill Levy”). The Service Plan shall restrict the

District's total aggregate mill levy (debt service mill levy plus operations and maintenance mill levy) to thirty-five (35) mills (the "Maximum Aggregate Mill Levy"). This means that the District shall not simultaneously levy a debt service mill levy equal to the Maximum Debt Mill Levy and an operation and maintenance mill levy equal to the Maximum Operations and Maintenance Mill Levy.

1. The Service Plan may provide that the Maximum Aggregate Mill Levy may be increased from thirty-five (35) mills to forty-five (45) mills by a resolution of City Council, with the resulting increase of mills attributable to a five (5) mill increase in the Maximum Debt Mill Levy, a five (5) mill increase in the Maximum Operations and Maintenance Mill Levy, or a combination of the two. In the event the Service Plan includes such a provision and Council passes such a resolution, such increase shall not constitute a material modification of the Service Plan.

2. The Maximum Debt Mill Levy, the Maximum Operations and Maintenance Mill Levy, and the Maximum Aggregate Mill Levy shall be adjustable from the base year of 2008; provided, however, that in the event the method of calculating assessed valuation is changed after the base year of 2008, the mill levy limitation applicable to such debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the District Board in good faith (such determination to be binding and final), so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation to assessed valuation shall be deemed to be a change in the method of calculating assessed valuation.

I. The Service Plan shall include Debt and operating financial projections prepared by an investment banking firm or financial advisor qualified to make such projections. Said firm shall be listed in the Bond Buyers Marketplace as a provider of financial projections or said firm shall provide an affidavit that it has prepared financial schedules used in more than 20 Colorado local government bond issuances. The Debt financial projections shall include debt issuance and service schedules and calculations establishing the District's projected maximum debt capacity based on assumptions of (i) the projected interest rate on the debt to be issued by the District; (ii) the projected assessed valuation of the property within the District; and (iii) the projected rate of absorption of the assessed valuation within the District. These assumptions must use market-based, market-comparable valuation and absorption data and shall not use an annual inflation rate which exceeds the greater of three percent (3%) and the Consumer Price Index for the preceding 12 month period for the Denver-Boulder statistical region as prepared by the U.S. Department of Labor Statistics. The Maximum Debt Authorization in the Service Plan shall not exceed 100% of the projected maximum debt capacity. The operating financial projections shall include foreseeable administrative and operation and maintenance costs. The Service Plan may provide that the Maximum Debt Authorization may be increased up to an amount equal to 150% of the initial projected maximum debt capacity by a resolution of City Council, and any such increase shall not constitute a material modification of the Service Plan.

J. If, after the Service Plan is approved, the State Legislature includes additional powers or grants new or broader powers for Special Districts by amendment of Part 10 of Article 1, Title 32, C.R.S., no such powers shall be available to or exercised until notice is provided to City Council as set forth in the Service Plan.

K. Every Service Plan shall include, in addition to all materials, plans and reports required by the Act, a Preliminary Infrastructure Plan ("PIP") as defined in the Model Service Plan. This PIP shall include, at a minimum, a map or maps, of such scale, detail and size as required by the Planning Department,

providing an illustration of public improvements proposed to be built, acquired or financed by the District, along with a written narrative and description of those items and a general description of the District's proposed role with regard to the same. Due to the preliminary nature of the PIP, the Service Plan shall indicate that the City's approval of the PIP shall not bind the City in reviewing and making land use approvals.

L. The District may impose a one-time development fee only if such fee is payable and collectible no later than the closing of the initial sale of the property to the first end user. The development fee, the right to collect the development fee, and any lien on the property to secure the development fee shall terminate immediately following such closing. The fee shall be calculated based on the limitations stated in the Service Plan.

Sec. 10.20.30. Bonded indebtedness.

A. Original issuance of bonded indebtedness by the District prior to build-out shall be limited to that debt which can be sized, serviced and defeased with no more than thirty (30) mills as described in Paragraph H of Section 10.20.20 above.

B. The District shall be limited to issuing new debt as provided in the Financial Plan set forth in the Service Plan. In the absence of evidence that development phasing will be of a duration that makes it impracticable to issue all debt within a fifteen-year period, or other special circumstances, the Financial Plan shall provide that all new debt will be issued within a period of fifteen (15) years from the date of the District's first debt authorization election. Debt issued by the District shall have a maximum maturity of thirty (30) years for each series of debt. The restrictions on issuance shall not pertain to refundings, but the thirty-year maximum maturity shall apply to refundings unless such refundings result in a net present value savings as set forth in Section 11-56-101, *et seq.*, C.R.S., and are otherwise permitted by law.

Sec. 10.20.40. Multiple-District structures.

A. It is the intent of the City that citizen/resident control of Districts be encouraged to occur as early as possible.

B. Multiple-District structures may be proposed:

1. When the projected absorption of the project and the public improvements to be financed are reasonably projected to occur over an extended period of time after the date of organization of the District.

2. When the project has varying projected uses, such as residential and commercial.

C. The Service Plan must fully describe and articulate the need, reasoning and mechanics if a multiple-District structure is proposed.

Sec. 10.20.50. Dissolution of District.

The Service Plan shall provide for the dissolution of the District after the District's debts and financial obligations are fully defeased and the District has completed all of its operations and maintenance responsibilities. A District with long-term, ongoing operations and maintenance will not be obligated to dissolve. However, the Service Plan must provide that, in the event said obligations are someday undertaken by another party or are otherwise no longer the responsibility of the District, it shall be required to dissolve. Additionally, the Service Plan shall provide that the District shall be obligated to obtain the approval of the City Council 25 years after organization of the District (and every ten (10) years thereafter) in order to continue providing operations and maintenance services;

provided, however, that failure to obtain such approval shall not be considered a material modification unless such approval is not obtained forty-five (45) days after written notice to the District by the City of the need to request such approval.

Sec. 10.20.60. Model Service Plan.

A. A City of Gunnison Model Service Plan shall be developed consistent with these policies, approved (and modified from time-to-time) by Resolution of the Council, and made available from the Community Development Department.

B. All Service Plans submitted to the City should follow the basic outline, form, sequence and structure of said model. Service Plans should duplicate the language contained in the Model Service Plan, and justification shall be provided for any material departures. Notwithstanding the preceding, any service plan approved by the City, or changes thereto approved in the manner set forth in such service plan, shall be deemed to be in compliance with all City requirements.

C. Service Plans shall be submitted in such numbers and format as specified by the City Planning Department. The initial submittal shall be accompanied by a mark-up copy showing changes from the Model Service Plan.

Sec. 10.20.70. Default of District.

A. In the event that a District fails to pay its debt when due or defaults in the performance of any obligation that has been agreed to between the District and the City, which obligation has been identified by the City in writing as a material obligation, and such default is continuing after the delivery of notice thereof to the District and the expiration of any cure periods, the District shall be precluded from issuing additional debt except refunding bonds issued to avoid or to cure a payment default, without the prior approval of the City Council.

B. In the event that a court of competent jurisdiction has made a final, unappealable determination that a District has defaulted on any of its financial obligations, the District shall be precluded from issuing additional debt except to refund or refinance a financial obligation for the purpose of avoiding or curing a default without receiving written permission from the City Council following a public hearing on the matter.

C. In the event of a material modification of the Service Plan, the City and the electors of the District shall be entitled to exercise their respective rights under the Act. Departures from the Service Plan that constitute a material modification include without limitation:

1. actions or failures to act that create greater financial risk or burden;
2. performance of a service or function or acquisition of a major facility that is not closely related to a service, function or facility authorized in the Service Plan; and
3. failure to perform a service or function or acquire a facility required by the Service Plan.

Actions that are not to be considered material modifications include without limitation changes in quantities of facilities or equipment, immaterial cost differences, and actions expressly authorized in the Service Plan.

Sec. 10.20.80. Annual Report.

A. The Service Plan shall obligate the District to file an annual report not later than September 1 of each year with the City Clerk for the year ending the preceding December 31, the requirements of which may be waived in whole or in part by the City Council.

The Service Plan shall require the annual report to include the following, unless waived by the City from year to year or completely:

1. A narrative summary of the progress of the District in implementing its Service Plan for the report year;

2. Except when exemption from audit has been granted for the report year under the Local Government Audit Law, the audited financial statements of the District for the report year including a statement of financial condition (*i.e.*, balance sheet) as of December 31 of the report year and the statement of operations (*i.e.*, revenues and expenditures) for the report year;

3. Unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the District in development of improvements in the report year;

4. Unless disclosed within a separate schedule to the financial statements, a summary of the financial obligations of the District at the end of the report year, including the amount of outstanding indebtedness, the amount and terms of any new District indebtedness or long-term obligations issued in the report year, the amount of payment or retirement of existing indebtedness of the District in the report year, the total assessed valuation of all taxable properties within the District as of January 1 of the report year and the current mill levy of the District pledged to debt retirement in the report year; and

5. Any other information deemed relevant by the City Council or deemed reasonably necessary by the City Manager.

B. In the event the annual report is not timely received by the City Clerk or is not fully responsive, notice of such default shall be given to the Board of such District, at its last known address. The failure of the District to file the annual report within forty-five (45) days of the mailing of such default notice by the City Clerk may constitute a material modification of the Service Plan, at the discretion of the City.

Sec. 10.20.90. Notice to Purchasers.

Within thirty (30) days of the issuance of a decree organizing a District, the District, or the proponents of the District, shall cause Notice of the District to be recorded in the land records of the Gunnison County Clerk and Recorder. Additionally, by submission of a Service Plan to the City, the proponents of the District consent to the City's inclusion in an Approved Development Plan or other land use regulation document a requirement that the initial end-purchaser of property within the District receive Notice of the District and other District matters (i) in the contract to purchase the property and (ii) in a separate document to be acknowledged at closing. The District shall use its best efforts to confirm that such Notice is being provided. Notice shall be in the form of the following, with any changes subject to the approval the City Planning Department:

BUYER ACKNOWLEDGES THAT THE PROPERTY BEING PURCHASED IS WITHIN THE BOUNDARIES OF ONE OR MORE METROPOLITAN DISTRICTS. THE DISTRICT(S) EXIST PRIMARILY FOR INFRASTRUCTURE FINANCING PURPOSES. AS A RESULT, THE DISTRICTS ARE AUTHORIZED TO ASSESS A PROPERTY TAX MILL LEVY UP TO 45 MILLS, SUBJECT TO

CHANGES IN THE STATEWIDE METHOD OF CALCULATING ASSESSED VALUATION. THE DISTRICTS ARE AUTHORIZED TO INCUR DEBT IN THE MAXIMUM AMOUNT OF \$ _____, FOR A PERIOD OF UP TO 40 YEARS FOLLOWING THE ISSUANCE OF THE DEBT. OTHER PROVISIONS AND ALLOWANCES APPLY AS CONTAINED IN THE DISTRICTS' SERVICE PLAN.

Acknowledged this _____ day of _____,
20____

Buyer

The requirements of this Section shall be reflected in the Service Plan.

Sec. 10.20.100. Sanctions.

Should any District undertake any act which constitutes a material modification to the Service Plan, the City Council may impose one (1) or more of the following sanctions, as it deems appropriate:

1. Exercise any applicable remedy under the Act;
2. Withhold the issuance of any permit, authorization, acceptance or other administrative approval, or withhold any cooperation, necessary for the District's development or construction or operation of improvements or provision of services;
3. Exercise any legal remedy under the terms of any intergovernmental agreement under which the District is in default; or
4. Exercise any other legal remedy, including seeking injunctive relief against the District, to ensure compliance with the provisions of the Service Plan or applicable law.

Sec. 10.20.110. Review and Approval Process.

A. Once the City Manager has established compliance with the Special District Policy, the City Manager shall, within a reasonable time, place before the City Council for its consideration a resolution adopting the Service Plan. The resolution shall be subject to a public hearing and shall be processed and governed by the City Charter and the City Code.

B. The proponents of the District shall cause a notice of the proposed resolution to be mailed by first class mail to the owners of record of all property within the proposed District and within any inclusion area specifically identified in the Service Plan, as such owners of record are listed on the records of the County Assessor. The mailed notice shall be made at least ten (10) days prior to the hearing on the resolution. The notice shall include the following:

1. A description of the general nature of the proposed services and public improvements.
2. A description of the property to be included in the District and the inclusion area (if any), which description shall be by street address, by reference to lots or blocks on any recorded subdivision plat thereof, or by metes and bounds if not subdivided, by tax identification number or by any other method reasonably calculated to apprise owners of the property to be included in the District.

3. The place at which a map of the district, preliminary plans and specifications and the Service Plan may be examined.

4. The date, time and place of the hearing.

5. A statement that all protests and objections must be submitted in writing to the City Manager at or prior to the hearing in order to be considered.

6. A statement that all protests and objections to the District, as proposed, shall be deemed to be waived unless presented in writing at the time and in the manner specified in this subsection.

C. Such resolution shall be conclusive of the City's determination. No action or proceeding, at law or in equity, to review any acts or proceedings or to question the validity of the Council's determination pursuant to this Chapter, whether based upon irregularities or jurisdictional defects, shall be maintained unless commenced within 30 days after the adoption of the Council's resolution, or else be thereafter perpetually barred. In the manner and to the extent provided in this Chapter, the Council shall maintain continuing jurisdiction over the operations and affairs of the District and shall exercise its rights in relation thereto, as deemed appropriate by the Council, pursuant to the Special District Act and as consistent with this Chapter.

Sec. 10.20.120. Fees.

With the submittal of a Service Plan, the proponent of the District shall also pay the City Clerk (i) a non-refundable application fee not to exceed \$1,000 and (ii) a \$5,000 deposit to reimburse the City for staff, legal, and consultant time on a monthly basis. A request for an amendment or modification to a Service Plan shall be accompanied by (i) a non-refundable application fee not to exceed \$250 and (ii) a \$1,500 deposit to reimburse the City for staff, legal, and consultant time on a monthly basis. City draws against such deposit shall be based upon then-current hourly rates (including benefits) of employees working on the Service Plan and the applicable rates for legal and other consultants. If the amount reimbursable exceeds the deposit, the balance shall be due the City on a monthly basis and prior to consideration of the Service Plan or amendment by the City Council. Any deposit amounts remaining shall be returned. The purpose of staff, legal, and consultants' review is to provide the City Council with expert advice in considering the adequacy of the Service Plan and in forming a basis for adopting a resolution approving, disapproving, or conditionally approving the Service Plan for the District.

Section 2. Should any section, clause, phrase, or provision of this ordinance be ruled invalid or unenforceable by any court of competent jurisdiction, it is hereby declared the intent of the City Council of the City of Gunnison, Colorado, that the remaining provisions of this ordinance shall be given full force and effect if it is possible to do so.

INTRODUCED, READ, PASSED, AND ORDERED PUBLISHED this 24th day of February, 2009, on first reading, and introduced, read, and adopted on second and final reading this ____th day of _____, 2009.

Mayor

ATTEST:

City Clerk