

Article 11



Special District Review

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11-100 General Provisions and Procedures

11-101 Purposes

- A. The purpose of this Article is to implement the Commissioners' authority to review and approve service plans for proposed special districts under Part 2 of Article 1 of Title 32, C.R.S., as amended through the 1993 Colorado Legislative Session ('Control Act'). All provisions of this Article are intended to be in compliance with the authority and procedures specified in the Control Act and related statutes. To the extent that this Article does not expressly incorporate all applicable provisions of the Control Act and related statutes, those provisions shall still govern as stated in the Control Act or related statutes.
- B. The procedures recognized in the Control Act and set forth in this Article are necessary for the orderly creation of special districts and for the logical extension of special district services throughout the County. The Control Act as implemented herein serves the purposes of preventing unnecessary proliferation and fragmentation of local government and avoiding excessive diffusion of local tax sources. (See C.R.S. 32-1-102.)

11-102 Service Plan Application Requirements

(see C.R.S. 32-1-202)

- A. Any person proposing the organization of a special district which includes property in the unincorporated County shall submit a service plan to the Commissioners prior to filing a petition for the organization of the proposed special district in any district court.
- B. Filing of Service Plan with Clerk and Recorder
 1. The service plan shall be filed with the County Clerk and Recorder at least ten days prior to a regular meeting of the Commissioners.
 2. Within five days after the filing of any service plan, the County Clerk and Recorder, on behalf of the Commissioners, shall report to the Division of Local Government in the Colorado Department of Local Affairs, on forms furnished by the Division, the name and type of the proposed special district for which the service plan has been filed.
 3. Within five days after the filing of any service plan, the Clerk and Recorder shall deliver the service plan to the Director, for review by the Planning Commission pursuant to Section 11-103, below.

C. Required Contents of Service Plan

1. A description of the proposed services;
2. A financial plan showing how the proposed services are to be financed, including the proposed operating revenue derived from property taxes for the first budget year of the district, which shall not be materially exceeded except as authorized pursuant to C.R.S. 32-1-207 or 29-1-302 (see 32-1-202(2)(b)). All proposed indebtedness for the district shall be displayed together with a schedule indicating the year or years in which the debt is scheduled to be issued. The board of directors of the district shall notify the Commissioners of any alteration or revision of the proposed schedule of debt issuance set forth in the financial plan;
3. A preliminary engineering or architectural survey showing how the proposed services are to be provided;
4. A map of the proposed special district boundaries and an estimate of the population and valuation for assessment of the proposed special district;
5. A general description of the facilities to be constructed and the standards of such construction, including a statement of how the facility and service standards of the proposed special district are compatible with facility and service standards of any county within which all or any portion of the proposed special district is to be located, and of the municipalities and special districts which are interested parties pursuant to Section 11-104(B)(2), below (see C.R.S. 32-1-204(1));
6. A general description of the estimated cost of acquiring land, engineering services, legal services, administrative services, initial proposed indebtedness and estimated proposed maximum interest rates and discounts, and other major expenses related to the organization and initial operation of the district;
7. A description of any arrangement or proposed agreement with any political subdivision for the performance of any services between the proposed special district and such other political subdivision, and, if the form contract to be used is available, it shall be attached to the service plan;
8. Information which, along with other evidence presented at the public hearing on the service plan, is satisfactory to establish that each of the applicable criteria required for the Commissioners' service plan approval set forth in Sections 11-203 and 11-204, below (see C.R.S. 32-1-203) is met; and
9. Such additional information as the Commissioners may require by resolution on which to base their findings pursuant to Sections 11-203 and 11-204, below (see C.R.S. 32-1-203).

D. Service Plan Processing Fee

1. Each service plan filed shall be accompanied by a processing fee set by the Commissioners not to exceed \$500.00, which shall be deposited into the County's General Fund. The Commissioners may waive the fee for good cause shown. The processing fee shall be used to reimburse the County for the reasonable direct costs related to processing the service plan and conducting the public hearings on the plan, including but not limited to the costs of notice, publication, and recording of testimony.
2. If the Commissioners determine that more in-depth review of a particular service plan is required, the Commissioners may impose an additional service fee to reimburse the County for the reasonable direct costs related to the in-depth review. If the Commissioners impose an additional fee, it shall not be less than \$500.00, and shall not exceed the lesser of one one-hundredth of one percent of the total amount of debt to be issued by the district as indicated on the service plan or the amended service plan, or \$10,000.00. The Commissioners may waive all or any portion of the additional fee for good cause shown.

11-103 Planning Commission Review of Service Plan

(adopted pursuant to the procedure provided in C.R.S. 30-28-112, as required by C.R.S. 32-1-202(1)).

- A. The Planning Commission shall study and make a recommendation on the service plan to the Commissioners within thirty days after the plan was filed with the County Clerk and Recorder.
- B. The Planning Commission shall review the service plan at a public hearing of which the proponent of the service plan shall receive prior notice. The Director shall publish notice of the Planning Commission hearing in a newspaper of general circulation in the County at least seven days prior to the hearing.
- C. To the extent time allows prior to the hearing, the Director shall refer information concerning the service plan to the interested governmental units specified in Section 11-104(B)(2), below, and to any other relevant agencies in the discretion of the Director.

11-104 Commissioners' Review of and Action on Service Plan

(see C.R.S. 32-1-202 and 32-1-204)

A. Setting and Notice of Public Hearing on Service Plan

1. At the next regular meeting of the Commissioners which is held at least ten days after the final Planning Commission action on the service plan, the Commissioners shall set a date within 30 days after the regular meeting for a public hearing on the service plan of the proposed special district.
2. The Commissioners shall provide written notice of the date, time, and location of the public hearing to the Colorado Division of Local Government.
3. The Commissioners shall provide written notice of the date, time, and location of the public hearing to the proponent of the special district and to the governing body of any existing municipality or special district which has levied an ad valorem tax within the next preceding tax year and which has boundaries within a radius of three miles of the proposed special district boundaries, which governmental units shall be interested parties in the public hearing process.
4. The Commissioners shall publish notice of the public hearing in a newspaper of general circulation in the County, the first publication of which shall be at least 20 days prior to the public hearing date. The publication shall constitute constructive notice to the residents and property owners within the proposed special district, who shall also be interested parties at the public hearing.
5. The published newspaper notice shall contain the following information:
 - a. The date, time, location, and purpose of the hearing;
 - b. A general description of the land contained within the boundaries of the proposed special district; and
 - c. Information outlining the methods and procedures pursuant to Section (C), immediately below (see C.R.S. 32-1-203(3.5)) concerning the filing of a petition for exclusion of territory from the proposed district.
6. Not more than 30 days nor less than 20 days prior to the public hearing, the proponent of the special district shall send postcard or letter notification of the hearing to the property owners within the proposed special district, all as further required by C.R.S. 32-1-204(1.5).
7. The Commissioners may continue the hearing for a period not to exceed 30 days, unless the proponent of the special district and the Commissioners agree to continue the hearing for a longer period.
8. If the boundaries of the proposed special district include territory within the County and another county or counties, the Commissioners of each of the respective counties, in their discretion, may hold a joint hearing on the proposed special district in accordance with the procedural requirements applicable to Commissioners' hearings on proposed service plans stated in this Section (see C.R.S. 32-1-205(1), referencing the hearing requirements of 32-1-204).

B. Required Public Hearing Procedures

1. The hearing held by the Commissioners shall be open to the public, and a record of the proceedings shall be made.
2. Interested parties at the hearing shall be the following:
 - a. The governing bodies of any existing municipality or special district which has levied an ad valorem tax within the next preceding tax year and which has boundaries within a radius of three miles of the proposed special district; and
 - b. The residents and property owners within the proposed special district.
3. All interested parties shall be afforded an opportunity to be heard under such rules of procedure as may be established by the Commissioners. Any testimony or evidence which in the Commissioners' discretion is relevant to the organization of the proposed special district shall be considered.

C. Exclusions of Property from Proposed District

1. The Commissioners may exclude territory from a proposed special district prior to approval of any service plan.
2. Any person owning property in the proposed district who requests that his or her property be excluded from the special district prior to approval of the service plan shall submit the request to the Commissioners no later than 10 days prior to the Commissioners' public hearing on the service plan, but the Commissioners shall not be limited in their action with respect to exclusion of territory based upon such request.
3. The proponent of the special district shall have the burden of proving that the exclusion of any property requested to be excluded is not in the best interests of the proposed special district.
4. The Commissioners shall act on all requests for exclusion before they take final action issuing a resolution of approval for the proposed special district.

- D. Commissioners' Authority To Act on Service Plan; Required Form and Timing of Decision on Plan**
1. The findings of the Commissioners on the service plan shall be based solely upon the service plan and the evidence or recommendations presented at the Commissioners' public hearing by the proponent of the special district, the Planning Commission, and any interested party as defined in Section (B)(2), immediately above.
 2. The Commissioners have the following authority in the review of any proposed service plan:
 - a. To approve the service plan as submitted without condition or modification.
 - b. To disapprove the service plan as submitted.
 - c. To conditionally approve the service plan subject to the submission of additional information relating to, or the modification of, the proposed service plan. The Commissioners may exercise this power of conditional approval if they have satisfactory evidence, based on the public hearing, that the proposed service plan does not comply with the required criteria of Section 11-203, below (see C.R.S. 32-1-203(2)). The Commissioners' final approval shall then be contingent upon the proponent modifying the service plan to include the changes, or providing the additional information, as the Commissioners shall specifically state in their findings on the service plan. The proceedings shall be continued until such changes, modifications, or additional information are incorporated into the service plan.
 3. Within 20 days after the completion of the public hearing, the Commissioners shall advise the proponent of the special district in writing of their action on the service plan.
 - a. If the plan is approved as submitted, a resolution of approval shall be issued to the proponent.
 - b. If the plan is disapproved as submitted, the specific detailed reasons for the disapproval shall be set forth in writing.
 - c. If the service plan is conditionally approved, the Commissioners shall set forth in writing the changes or modifications to be made in, or the additional information relating to, the service plan, together with the reasons for the changes, modifications, or additional information. Upon incorporation of the specified changes, modifications, or additional information into the service plan, the Commissioners shall issue a resolution of approval to the proponent of the special district.

11-200 Criteria for Approval of Service Plan

11-201 Territory which District May Cover

(see C.R.S. 32-1-107(1))

- A. A special district may be entirely within or entirely without, or partly within and partly without, one or more municipalities or counties, and may consist of noncontiguous tracts or parcels of property.

11-202 Mandatory Criteria for Disapproval of a Service Plan

(see C.R.S. 32-1-107(2) & 32-1-202(2.1))

- A. No special district may be organized wholly or partly within an existing special district providing the same service. Nothing in this provision, however, shall prevent a special district providing different services from organizing wholly or partly within an existing special district.
- B. No service plan shall be approved if a petition objecting to the service plan and signed by the owners of taxable real and personal property, which property equals more than 50 percent of the total valuation for assessment of all taxable real and personal property to be included in the proposed district, is filed with the Commissioners no later than 10 days prior to the Commissioners' public hearing on the service plan, unless such property has been excluded by the Commissioners pursuant to Section 11-104(c), above (see C.R.S. 32-1-203(3.5)).

11-203 Mandatory Criteria for Disapproval

(see C.R.S. 32-1-203(2))

- A. The Commissioners shall disapprove a service plan unless evidence satisfactory to them of each of the following is presented (or, in the Commissioners' discretion, they may conditionally approve the service plan pursuant to Section 11-104(D)(2)(c), above, to cause compliance with these criteria):
 1. There is sufficient existing and projected need for organized service in the area to be served by the proposed special district;
 2. The existing service in the area to be served by the proposed special district is inadequate for present and projected needs;
 3. The proposed special 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 special district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

11-204 Discretionary Criteria for Disapproval

(see C.R.S. 32-1-203(2.5))

- A. The Commissioners may disapprove the service plan if evidence satisfactory to them of the following, at the Commissioners' discretion, is not presented:
 1. Adequate service is not, or will not be, available to the area through the County or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis;
 2. The facility and service standards of the proposed special district are compatible with the facility and service standards of each county within which the proposed special district is to be located and each municipality which is an interested party as defined in Section 11-104(B)(2), above;
 3. The proposal is in substantial compliance with the *Boulder County Comprehensive Plan* (or the *Boulder Valley Comprehensive Plan* or other approved comprehensive plan, as applicable);
 4. The proposal is in compliance with any duly adopted county, regional, or state long-range water quality management plan for the area;
 5. The creation of the proposed special district will be in the best interests of the area proposed to be served.

11-300 Material Modifications to County-Approved Service Plans

(see C.R.S. 32-1-207(1)-(3), as amended)

11-301 County Approval of Substantial Modifications to Special District Service Plans; Processing Fee

- A. Once a special district with territory in the unincorporated County has been organized pursuant to the terms of this Article and the Control Act, the governing body of the special district may make material modifications to the approved service plan only by petition to and approval by the Commissioners (including Planning Commission review) pursuant to the procedures governing the County's review and approval of original service plan submittals as stated in Sections 11-102 through 11-104 and 11-200, above.
- B. The processing fee for County review of a petition for approval of a material modification to an approved service plan shall not exceed \$250.00.
- C. A material modification of an approved service plan shall be a change of a basic or essential nature, including but not limited to the following:
 - 1. Any addition to the types of services provided by the special district;
 - 2. A decrease in the level of services provided by the special district;
 - 3. A decrease in the financial ability of the district to discharge the existing or proposed indebtedness; or
 - 4. A decrease in the existing or projected need for organized service in the area.
- D. A material modification may be found to exist if an approved special district changes its boundaries to include territory in the unincorporated County when the district previously included no territory in the unincorporated County. If the district changes its boundaries in this fashion, it shall notify the Commissioners, who may review the inclusion of territory. If the Commissioners determine based on this review that the inclusion constitutes a material modification to the district's service plan, the governing body of the special district shall file a petition for approval of a material modification of the service plan in accordance with Sections (A)-(C), immediately above.
- E. Approval for modifications of an approved service plan shall not be required for changes necessary only for the execution of the original service plan, or for changes in the boundaries of the special district other than the type of change covered by Section (D), immediately above.

11-302 Judicial Enforcement against Material Departures or Modifications to Approved Service Plans

- A. The Commissioners may seek an injunction in the district court which approved the service plan of any material departure from the service plan as approved, or, if the plan has been modified, from the service plan as modified, which constitutes a material modification of the approved service plan as defined in Section 11-301, above.
- B. No action may be brought to enjoin the construction of any facility, the issuance of bonds or other financial obligations, the levy of taxes, the imposition of rates, fees, tolls and charges, or any other proposed activity of the special district unless such action is commenced within 45 days after the special district has published notice of its intention to undertake such activity.
 - 1. Such notice shall describe the activity proposed to be undertaken by the special district and provide that any action to enjoin such activity as a material departure from the service plan must be brought within 45 days from publication of the notice.
 - 2. The notice shall be published one time in a newspaper of general circulation in the district, and shall be provided to the district court, as well as mailed to the Commissioners on or before the date of publication of the notice.

11-400 Annual Reporting Requirements

(see C.R.S. 32-1-104(2) and 32-1-207(3)(c)-(d))

11-401 Request for Required Reports from Any Special District

- A. The Commissioners may request any special district located wholly or partly within the unincorporated County to file, not more than once a year, a special district annual report.
 - 1. The annual report shall be filed with the Commissioners, the Colorado Division of Local Government, and the State Auditor, and shall be deposited with the County Clerk and Recorder for public inspection. A copy of the report shall also be made available to any interested party as defined under Section 11-104(B)(2), above.
 - 2. The annual report shall include but shall not be limited to information on the progress of the special district in the implementation of its service plan.
 - 3. The Commissioners may review the annual reports in a regularly scheduled public meeting, and such review shall be included as an agenda item in the public notice for such meeting.
- B. On or before January 15 of each year, each special district located in the unincorporated County shall notify the Commissioners, the County Assessor, the County Treasurer, and the County Clerk and Recorder (in addition to the other entities specified in C.R.S. 32-1-104(2)), of the name of the chair of the board, the contact person, the telephone number, and the business address of the special district. If such persons and address are not located within the special district, the special district shall notify the County Clerk and Recorder of the name, address, and telephone number of a contact person located within the special district, if such person is available.
- C. If a special district fails to file an annual report or provide any information required to be submitted under this Section 11-401, within nine months of the date of the request for such report or information, the Commissioners, after notice to the affected special district, may notify any county treasurer holding moneys of the special district to prohibit release of any such moneys until the special district complies with the applicable requirement.

11-402 Required Reports for Special Districts Created on or after July 1, 1991

- A. Any special district created on or after July 1, 1991, which has obtained a resolution of service plan approval from the Commissioners, shall annually file the report specified in Section 11-401(A), above, with the Commissioners. This report shall be filed for five years after the district's organization, and for succeeding annual periods if requested by the Commissioners. The annual report shall also be filed with the Colorado Division of Local Government and with the State Auditor.
- B. The State Auditor shall review the annual report and report to the Colorado Division of Local Government any apparent decrease in the financial ability of the district to discharge its existing or proposed indebtedness in accordance with the service plan. In such event, the Division of Local Government shall confer with the board of the special district and with the Commissioners regarding such condition.