

**MANAGEMENT AND FINANCE POLICY COMMITTEE
WEBEX**

Members Present: Council Member David Gruber – Chair, Council Member Marcano – Vice Chair, Council Member Gardner – Member

Others Present: Council Member Coombs, T. Velasquez, S. Ruger, G. Hays, V. Irvin, T. Vaughn, A. Jamison, C. Dancy, D. Hudson, R. Peters, H. Hernandez, B. Rulla, T. George, T. Wendelin, and T. Hoyle

INTRODUCTIONS AND MINUTES

May 26, 2020 minutes were approved.

CONSENT ITEMS

May of 2020 was 12.6 percent lower than May of 2019.

Outcome

The Committee thanked staff.

Follow-up Action

No follow-up needed.

PROPOSED CHANGES TO THE METRO DISTRICT MODEL SERVICE PLAN

Summary of Issue and Discussion

Vinessa Irvin, Manager of Development Assistance, gave a presentation on the proposed service plan changes. She stated the first metro districts were formed within the City of Aurora during the 1980s. In 1989, the City enacted what eventually became Chapter 122 of the City Code and adopted its first Model Service Plan for metropolitan districts. In 2004, City Council significantly amended code to adopt guidance and requirements for Metropolitan Districts in the City of Aurora. The city's 2004 Model Service Plan, based on those requirements, remains largely unchanged to this day. It is characterized by the following basic features:

1. Maximum debt mill levy of 50 mills (Gallagher adjusted),
2. Maximum term for debt repayment of 40 years (residential)
3. Agreement to impose the Aurora Regional Improvements (ARI) mill levy.

Recently, there has been much attention on metro districts. As a result, several council members have inquired about additional education, transparency and protections/safeguards that the city may want to implement for metro districts within the city. Staff prepared an update for Council's information and consideration and received direction at the March 23rd Special Study Session. Based on City Council feedback and requests discussed at the March Study Session, staff has prepared the following outline of service plan changes for Council consideration. This list also includes minor edits to language and a reorganization of some provisions to improve clarity of the document. The list is arranged with the corresponding Sections and page numbers from the redlined Service Plan document attached.

Proposed Service Plan Changes

Section II. Definitions

Agreed Upon Procedures Engagement

This is a new definition necessary for the addition of provision “L” in Section VII. **Financial Plan** (page 16).

Section VI. Regional Improvements

D. For Residential District

The last 10 years of the ARI mill levy imposition for Residential Districts changed to a specific mill levy.

E. Commercial District

Language removed regarding an average for the final years of the ARI mill levy imposition.

These proposed changes are staff-initiated. Currently, these final years of the ARI Mill Levy is stated as an average of the previous 10 years debt service mill levy. This is problematic for several reasons.

- Every district’s debt service financing plan is different. Which means that under the current requirement, each district in an area will be paying a different ARI mill amount. This can create an unfair situation given that they will all benefit equally from the regional infrastructure they are funding with the ARI mill levy.
- This issue was also identified as a concern when the debt was being issued for the South Aurora Regional Infrastructure Authority (SARIA). The uncertainty of the expected funding for those last 10 years made creating the funding projections for the bond issuance difficult.

Therefore, the proposal is to remove the possible unfairness and uncertainty by setting a specified number of mills to be levied for the final years (page 11).

Section VII. Financial Plan

K. Districts Operating Costs

This is a new provision that has added language limiting the maximum O&M mill levy imposition to 35 mills. The limitation would be in place until the majority of board members are residents. This provision provides some protections until the residents are in control of the board and then allows the local government closest to the community to determine the level of services and amenities they wish to provide and increase the mills if they so desire.

L. Agreed Upon Procedures Examination

This is a new provision that has added language to include an examination of a district’s past financial records at the time the district board is a resident controlled board. This language is

general to allow the board to direct the examination based on specific concerns and cost considerations.

Section X. Disclosures and Meetings

A. Disclosure to Purchasers

Language has been added to require the disclosure form used by the districts to conform to the city's standard model disclosure form (Exhibit D).

B. Website

This is a new provision requiring districts to create and maintain a website for their community. A list of minimum requirements of information to be contained on the website is also within this provision. Included in this list is the requirement to post any and all candidate information, including any campaign funding information, that is required by the Secretary of State for candidates running for the district board.

C. Meetings

This is a new provision requiring district board meetings to be held within the district boundaries whenever possible and within the city limits when not possible within the district.

Service Plan Changes for Clarity

Section II. Definitions

ARI Mill Levy A, B, C & D

Simplified definition and moved the full explanation to Section VI. **Regional Improvements** for clarity (page 11-12).

Gallagher Amendment

This is a new definition to provide a more concise, consistent and clearly stated explanation of the allowed adjustments to the mill levies imposed (page 11,14 and 16).

CCR, Commercial District, CRS, Operations and Maintenance Mill Levy, Residential District

These definitions have been added for clarity as they were not included in the previous model.

Section V. Description of Proposed Powers, Improvements and Services

10. Total Debt Limitation

Moved and combined in Section VII. **Financial Plan** for consistency (page 13).

14. Bankruptcy

Portion moved to **Section VII. Financial Plan** and given a title **F. Excessive Mill Levy Pledges** (page 14).

Section VI. Regional Improvements

Last paragraph – Includes clarification that the debt limit identified for regional improvements (funded with the ARI mill levy), is not subject to the total debt issuance limitation for debt specific to the district obligations (page 12).

Section VII. Financial Plan

A. General

Includes language regarding allowed sources of debt funding moved from **B. Total Debt Issuance** for additional clarity (page 12).

B. Total Debt Issuance Limitation

Includes clarification that this limit does not include debt issued for ARI (page 13).

D. Maximum Debt Mill Levy

Includes language regarding maximum mill levy not including O&M from **K. Districts Operating Costs** for additional clarity (page 13).

Issues Not Included in Changes

There were a few issues raised by City Council and researched by staff that have not been included in these proposed changes at this time. They are as follows:

Maximum Debt Mill Levy Imposition Term

There was a request made to not allow City Council to change this term limit. In the past there have been districts that requested, and were approved, to change the service plan to extend the term for debt repayment past the 40-year limit included in the model service plan. Staff researched how to incorporate such a restriction. City Council has the discretion to change code and/or approve an ordinance to make such an exception to code for an individual district's service plan. It was determined that the only way to restrict Council's ability in this area would be to amend the City Charter, requiring a ballot question.

Restrictions to Eminent Domain Powers

A request was made to include restrictions to the districts eminent domain powers given to them in State Statute. The use of this tool by districts in the City of Aurora has only been

necessary in a few instances. There have been no abuses documented. This is an area that the legislature has been discussing. Staff would recommend waiting to see what, if any, changes are made at the state level.

Process for Adoption

City code Chapter 122-30 provides that the city manager has the authority to amend the model service plan. Therefore, after City Council provides direction on these changes being proposed, there will be no formal action necessary. The changes will be incorporated and become the city's new model service plan for all new districts requesting formation.

Staff will be presenting, for formal Council action, an amendment to City Code Chapter 122 reflecting any changes to provisions in the service plan that are also included in city code.

Council Member (CM) Gardner asked, on the website disclosure are you saying candidates will be subject to the state campaign finance limits or they just have to report them. V. Irvin replied, they're already required to abide by the state requirements concerning campaigns and candidate requirements. What this requires is more transparency for the residents, as a question was raised by a council member regarding a situation where district board elections had been infused with outside money. This then allows transparency for those local board elections. We're not asking them to post anything over and above what is being posted on the Secretary of State website. CM Gardner said I'm fine with that piece but I'm trying to understand what they're currently subject to. Does then your office track compliance, or how does that work? V. Irvin replied no, we would not track compliance this would be up to the individual metro districts as they are their own government, they would abide by the service plan requirements and would post on their website what has been filed with the Secretary of State. CM Gardner stated he had a couple more questions, but he would work offline with committee and staff.

CM Gruber stated he liked the changes. There's more transparency and it clarifies and mandates how it will be presented so people will be able to find it. He proposed that staff work with CM Gardner on his questions and send the latest draft changes to the Committee before it goes to Study Session. Staff agreed.

CM Marcano stated that he also agrees with CM Gruber. He likes the direction its going and thinks the disclosure portion will be very useful. He suggested with the communication portion of the website have some sort of newsletter a signup or portal so people could receive as opposed to having to go on the website. He asked about the enforcing of election requirements and if that falls under the Secretary of State office because its reported through TRACER. V. Irvin replied, yes. He asked if the timing of the elections is controlled through State Statue or is that something different in the service plan that we didn't get a chance to look at. V. Irvin said the timing of the election is determined at the state level through statue. I don't think we can change that with the service plan.

Outcome

The Committee recommended that this item be forward to Study Session. Staff will send the latest draft changes to the Management Finance Committee before it goes to Study Session.

Follow-up Action

Staff will forward this to Study Session, July 20, 2020

SANDCREEK METRO DISTRICT SERVICE PLAN AMENDMENT

Vinessa Irvin, Manager of Development Assistance, gave an overview and stated the Sand Creek Metro District serves the Gateway Park development. City Council approved the original Service Plan for the District in 1995. Since the formation, the District has completed the infrastructure to serve the development of approximately 80% of the 1200+ acre mixed use development.

The Sand Creek Metropolitan District is requesting Council approval of the Sixth Amendment of its Service Plan. The District has taken a measured approach over the years in their debt issuance strategy. This has included a conservative approach to the debt limits established in the District's Service Plan. Therefore, three of the previous amendments have been to request an increase in their debt limit.

The current service plan, as amended by the fifth Amendment, designates the District's debt limit at \$70,000,000, most of this debt has been issued and a portion has been repaid. The current outstanding amount of District debt is \$59,070,000. This sixth amendment would increase their current debt limit of \$70,000,000 to \$105,000,000. This will provide sufficient funding capacity to complete the infrastructure necessary for the full build-out of the remaining developable acres of the project. The current assessed value of the development is in excess of \$250,000,000.

No questions were asked. The Committee recommended it moves forward.

Outcome

The Committee recommended that this item be forward to Study Session.

Follow-up Action

Staff will forward this to Study Session, July 20, 2020

KING RANCH METROPOLITAN DISTRICT NOS 1-5

In 2004, the City adopted a model service plan for Title 32 Metropolitan Districts with the intent that any proposed service plan for a metropolitan district will be compliant with the model. The model service plan provides the following key features: 1. Maximum debt mill levy of 50 mills (Gallagher adjusted) 2. Maximum term for debt repayment of 40 years (for residential districts) 3. Agreement to impose the Aurora Regional Improvements (ARI) mill levy.

A request for the formation of new districts, King Ranch Metropolitan Districts, has been submitted for the November 2020 election cycle. Staff has had conversation with counsel for the Metropolitan District regarding the forthcoming proposed updates to the city's model service plan and they are agreeable to adopt the new model at the time of formation. The property is currently vacant and is located generally southwest and southeast of 56th Avenue and Monaghan Road. The districts will

service a mixed-use commercial development. There are no residential uses planned for the districts. The service area (initial and inclusion areas) is 1004 acres in size.

CM Marcano stated he has some tension regarding the timeliness because of not knowing what the plan will be. I know it's not a residential development, but do we know at least what the general idea is going to be? V. Irvin replied, all that we know at this point is there is some mixed-use commercial however, it can be requested that additional information be sent to the Committee before it goes to Study Session. Committee agreed.

Outcome

The Committee recommended that this item be forward to Study Session. Staff will request for additional information to be sent to the Committee before it goes to Study Session.

Follow-up Action

Staff will forward this to Study Session July 20, 2020.

PUBLIC BANKING

At the January 28, 2020 Management and Finance Policy Committee meeting Public Banking was discussed and a request for a legal opinion was made. This item is to discuss that legal opinion.

CM Marcano thanked staff for dedicating their time and resources to study this. He asked Hans to go over the memo and the communication he had with Kutak Rock to get the rest of the Committee up to speed.

Hans Hernandez Perez, Assistant Civil II City Attorney stated this ideal was presented to several people such as me, an outside attorney, Rocky Mountain Public Bank institute and the state general assembly's legal office. You have fortunately legal opinions which expand from yes you can all the way down to no I don't think you can at a local level. I don't have a preference one way or another. It's about the professional opinion as to whether this is something that can be done at a local level. So, I don't really have an answer for you because the opinions vary. We don't have a clear statutory a definition that says this is how you can do this if you are a public entity. I contacted the state commission and they came back that they would study the issue. They did not have an answer on hand, and these are the people to go to get banking charters. The opinion from Kutak and Rock was yes you may form it, and you may not able to operate it in regular sense and you may be challenged. The state general assembly said it's possible you could do it, but we would like clear statutory authority to do it. So, I don't have an answer unfortunately the subject is so intricate that we really don't have an answer. Lawyers can get together and agree and say yes you can. I can tell you why I think perhaps a local jurisdiction may not be able to do it and it's because we're a creature of the state and we have limit of powers. Kutak and Rock think that those powers extend to creating a bank. I think probably now because what a bank is, is a tool of interest to consumers. So, this is where we are and so even if I'm wrong and I'll admit that I'm wrong and Kutak and Rock is right, and you go ahead and form a bank but there's still questions about to what extent the bank can operate legally speaking. Because our statue prohibited competition with the private industry for banking and we don't have that clear statutory or constitute power to say we can go ahead and engage in this. I do believe members of the Committee at the state level of the 10th amendment and subject to the commerce clause limitations the state can form their own bank. You could have a State of Colorado bank. I don't see any problem at the state level but at the local level we can't agree, and we are all

over the place. So in the agenda backup are all the opinions and all the information that we were able to research as well as a fascinating topic it was not a waste of time it was really wonderful but it's one of those things that I do not have a yes or no answer for you. So, I'll open it up to you for questions.

CM Gardner stated he had several questions however let's not worry about the legality piece. I know the attorney doesn't want me to say that. What about the financial part of it in terms of what would be needed to capitalize the bank operating expenses? What information do you have on that?

T. Velasquez stated in the packet there's a memo that pertains to the financial impacts. It is mainly on the funding of the operation however a lot of it was preliminary estimates and not a lot on facts because there isn't a lot about Public Banking known. So, with that there's been some discussions of an amount of \$200 million discussed as being required in banking deposits to begin a Public Bank. Budget did an analysis and the City doesn't have those funds available. So that leaves you with the question how you will come up with the funding for a Public Bank. There are other considerations such as the banking operations assuming you have a physical presence and anticipate potential building costs of around \$5 million and operating costs approximately \$3 million. Again, these are high level estimates and beyond that is FDIC coverage that we're estimating it around \$30,000 a year. There probably would be litigation because of the competition with private banks therefore trying to anticipate that dollar amount I don't know a dollar amount to set aside in reserves for that but I do think that potential exists and should be mentioned and it could be in the millions. And the last piece included in this was Tabor. I think there may be a requirement for a Tabor election for any type of funding. In some of the conversations I've had with the folks that are involved in this on other ideas on how to fund the Public Bank. They talked about using pension funds and that doesn't work because our pension funds are in a trust. They talked about utilizing operation funds and that doesn't work because our obligations with rate payers and taxpayers. So, I think if this is pursued a lot more due diligence would be required and there needs to be a lot more understanding of what those dollar amounts are, and the risk involved. CM Gardner stated he was curious on how the \$200 million came about. T. Velasquez replied the \$200 million came from the Public Banking Institute of Colorado. We've had some conversation with the City Manager and that was their initial thought. Again, we haven't put a lot of effort in trying to look at what that really would look like or what the true requirements would be. We just took it at face value. Some of the other costs I received was from an individual that serves on a credit union board and I asked questions regarding their capital and operating costs. I know that's different, but this was the closest that I could come to in providing that data.

CM Gardner said I guess I'm not sure what were really being asked to do with it. T. Velasquez replied I think initially it was a request for a presentation and an overview and that's where we're at. I know the other piece of this was that there was another request receive in this process was could we fund it with some CBDG money or other funds to fund the bank. I reached out to housing community development department. They're not aware of any use of funds in that fashion to start a public bank. My understanding the request is can we do this and is it even an option. Hans you reached out to the banking commission and I think that's still under review.

H. Hernandez Perez replied that's correct. I did review the process and it appears to me that its design for individuals to walk in there, pledge as is and do all these things and then form the bank. It doesn't have as an example the issues what I've seen with having a public entity going in there is who will be the incorporators and who could be those individuals that can go on behalf of the city and apply for the bank. So, if the City Council designates the City Manager. I'm not sure the City Manager could be an

actual incorporator because that person must pledge assets and he doesn't have any assets to pledge as it would be city money. It will be a third party really at that point. And I don't see a process there. And the banking commission only sent me an email saying sorry we will have to research this. So, they didn't have an answer on the top of their head to say this is what you need to do fill out this application.

CM Gardner said that was my next question. Who owns the bank who's the shareholder whether it's for profit or not there's still someone who or group of people who are the shareholders are the owners and I guess I'm not understanding how the ownership structure would even work? H. Hernandez Perez said you are correct that's trouble with respect to Tabor that Terri mentioned. We have to two issues there if the city owns the bank directly we will have to probably have to go to the voters and say did you authorize us to put the money here and then detach all the revenues of the bank from Tabor's restrictions. If we create an enterprise to go away from Tabor you cannot receive more than 10% of grants of money etc. from the city. So that enterprise will have to raise its own capital funds to create necessary money to go ahead and form the bank and start operating the bank. But from the get-go you would have a bank coming out with debt because if you must raise capital you have to keep something in exchange like shares or money. CM Gardner agreed.

CM Gardner said my other question is on the insurance piece. I don't know if you looked at this but there's some banks that allow or credit unions to operate using only private insurance. In other words, they don't have to have FDIC or ? insurance. However, Colorado is not one of those states you have to be insured by FDIC or either UNCA. My understanding on how a Public Bank works it would not be eligible for either of those insurance structures in fact it would either be the City or the state depending upon who the owner was, I guess. H. Hernandez Perez replied I did. And there's couple options you have, a capital pledge or an access pledge but if you take money from the government you must be FDIC insured, or you have to have 102% of the amount that's being deposited as a backup or a pledge for those assets. So if you looked at the structure of the bank of North Dakota, number one you have a sovereign structure as its owned by the state which is a sovereign under the 10th amendment and they backup that bank with taxing power of the state which we cannot do under Tabor. And they back it up with the general fund of this Tabor of North Dakota which we cannot do under Tabor either. But even if we were able to do those are two things at the state level so they are like a sovereign under the US Constitution, so they get to do that with the limitations on the commerce clause they can't make commerce there difficult so things like that. Therefore, I did look at that and it will either require a large amount of money or go and get the insurance.

CM Marcano said I just want to reiterate thanks to staff for doing all of this. I kind of feel like we're really wrestling with the two questions. Number one, can we do this and number two, should we do this. Number one, is basically still unclear and number two, I don't know if it's worth exploring what a feasible structure would look like. So, without the assurance of number one as a definitive answer, I'm hearing we need to wait back to hear from the Charter commission to see if they will entertain this. And then there's more questions that we need answered for example what CM Gardner brought up in terms of what kind of insurance would we need to carry. I think the capitalization question also is still valid as well. In summary I think we need more information back from the state and we need still need action at the state legislature level for a clear path getting charter and clarifying these other potential legal hurdles that are a great concern. So again, I want to remind folks that I think there's commentary in here about the primary purpose being for social good. That's definitely one and I think the other purpose is finding a way to raise revenue for the city so we can address things like our \$20 million-dollar shortfall for streets maintenance and things like that and not having to go to the voters for a tax

hike. So, I think it's incumbent on us to explore and maybe an unorthodox solution to see if there's a way where we can generate some public good out of this. I want to thank the Committee for taking the time to review this and staff for all the work that you put in.

Outcome

The Committee thanked staff.

Follow-up Action

Staff will notify the Committee when a response from the banking commission is received.

LODGERS TAX EXEMPTION MODIFICATION

The concept of this modification was presented to City Council on March 2nd and a majority requested that it be brought forward for additional consideration.

The item was presented at the May meeting of the Business Advisory Board which supported the item with a unanimous vote of the members that were present.

Visit Aurora is not providing an official statement, but Bruce Dalton, President and CEO indicated that he is supportive of the changes to the tax exemption.

As a result of report from the Office of the State Auditor on State tax expenditures, an interim legislative committee recommended a modification to the State's exemption for long term lodging. This modification was adopted by the legislature through house bill 20-1020 which was signed by the governor on March 20th and will be effective January 1, 2021.

Lodger's tax or sales tax on lodging is intended to apply to short term lodging. Stays longer than 30 days with a written agreement are exempt from this tax as they are residential stays and not short-term lodging. The state and city tax codes define a person to include corporations and other non-natural persons. This has resulted in a situation for business entities that lease a room for longer than 30 days receiving the exemption as if it was a residential stay even when the people staying in the room may be different each night. The State determined this was not the original intent of the exemption. House bill 20-1020 redefines the exemption to only apply to natural persons. A business entity may still claim the exemption if it is leasing the room for a single person for longer than 30 days.

For the same reasons the state identified that the exemption is not serving its purpose when it is taken by non-natural persons, the city may consider making the same adjustment to the lodger's tax code. This will also allow for simplification with the state application of taxes. This change would result in an estimated \$240,000 in additional lodger's tax revenue each year.

CM Gruber asked do we know what Denver does. T. Vaughn stated Denver treats it the same way as we do today. I will tell you that some of the staff has taken an interest in modifying the exemption with the changes as well. CM Gruber said my concern obviously if we do this then folks will move out of Aurora hotels and will go on Tower, so we get hit twice. The hotels lose the revenue that comes from the people and we lose the tax revenue. Is there a way to coordinate with Denver on this? It would be good if we all did at the same time otherwise were going to chase away our customers

and simply increase their revenue. T. Vaughn replied, I don't know how we ensure we were coordinated unless we get some assurance at high levels.

CM Gruber stated I would like this item to come back to the Committee with an analysis on what it does for specific businesses and what Aurora rates are compared to what Denver is charging with the hotels on Tower Road. If this looks like we are cheaper and brings us up to equivalent numbers, then this is no brainer and let's move forward. However, if this drives our numbers up far above what Denver is charging and we chase all of these people out of our hotels then in a very bad time we hurt the hotels opposed to helping the city and I don't think we're trying to do either.

The Committee agreed.

Outcome

Committee recommended that this item return to the Management Finance Committee.

Follow-up Action

Staff will bring the item back to the next Management Finance Committee.

INVESTMENT ADVISORY COMMITTEE APPOINTMENT

Long-serving committee member Bob Gibson retired from the City & County of Denver in May and has resigned from the Committee. Bob and staff recommend Gregory T. King, CIO of the City & County of Denver to fill the vacancy.

The City's investment policy provides that the Investment Advisory Committee shall be composed of several non-staff volunteers having investment experience who provide expertise and insight on market conditions, investing, and sound policy and practice. A council member serving on the M&F Committee is also invited. Staff members include the Finance Director, a City Manager appointee (Currently Roberto Venegas), the Debt and Treasury Manager, City Attorney, Controller, and a representative from Internal Audit.

Volunteer nominees are solicited by staff. The Finance Director recommends nominees to the Management and Finance Committee, which makes the final selection. These volunteers provide valuable advice and feedback and are not afraid to ask difficult questions of staff. Volunteers are appointed for staggered three-year terms and may be re-appointed.

As the Chief Investment Officer for the City & County of Denver, Gregory T. King is an ideal candidate for the Investment Advisory committee. In 2019, Gregory attended several meetings as a guest and provided excellent input. His professional bio is attached. Finance staff recommends the appointment of this volunteer.

It was unanimous that Gregory T. King is appointed to the Investment Advisory Committee.

Outcome

The Committee thanked staff. Committee recommended that Gregory King is appointed to the Investment Advisory Committee.

Follow-up Action

No follow up is necessary as this item was informational only.

MISCELLANEOUS MATTERS FOR CONSIDERATION

Summary of Issue and Discussion

- The next meeting is on Tuesday, July 28, 2020 at 1:00 PM (WebEx).

THESE MINUTES WERE APPROVED AS SUBMITTED



David Gruber, Chair of the Management & Finance (M&F) Committee

7/31/20
Date