

CITY COUNCIL COMMUNICATION



MEETING DATE: February 25, 2020

ITEM NUMBER: 8.C.

SECOND READING: March 17, 2020

O-2020-11

TYPE OF ITEM: Consent

PRESENTED BY: Tony Chacon, Redevelopment Manager (303) 651-8318

SUBJECT/AGENDA TITLE: A Bill For An Ordinance Amending Chapter 4.10 Of The Longmont Municipal Code On Special Districts Policies And Procedures

EXECUTIVE SUMMARY: At the February 4, 2020, Study Session, Council had an agenda item to discuss rescission of Chapter 4.10 of the Longmont Municipal Code pertaining to Special Districts as approved on February, 12, 2019, and reinstatement of the Chapter previously amended in 2012, as written or with modification. The current ordinance has no limitations relative to the creation of a District that is comprised exclusively of residential, whereas the previous ordinance restricted residential development to that being part of a mixed use development, whereby no more than 50% of the development's square footage could be residential.

A motion was made and seconded to proceed with rescinding the current ordinance approved by Council on February 12, 2019 that removed limitations relative to residential development, and reinstate the previous ordinance, as amended in 2012. Following discussion, the Council voted to approve the motion and instructed Staff to prepare an ordinance for 1st Reading at the regularly scheduled City Council meeting of February 25, 2020.

The Special District Ordinance is attached for Council review and discussion. Also attached are proposed amendments to the ordinance that were submitted by Council Members.

COUNCIL OPTIONS: Approve, amend or do not approve the ordinance

RECOMMENDED OPTIONS: A policy decision of the City Council

FISCAL IMPACT & FUND SOURCE FOR RECOMMENDED ACTION: N/A

BACKGROUND AND ISSUE ANALYSIS: N/A

ATTACHMENTS:

Ordinance

Proposed Amendments submitted by Council Member Christensen

Proposed Amendments submitted by Council Members Martin and Waters



ORDINANCE O-2020-

A BILL FOR AN ORDINANCE AMENDING CHAPTER 4.10 OF THE LONGMONT
MUNICIPAL CODE ON SPECIAL DISTRICTS POLICIES AND PROCEDURES

THE COUNCIL OF THE CITY OF LONGMONT, COLORADO, ORDAINS:

Section 1

In this ordinance, ellipses indicate material not reproduced as the Council intends to leave that material in effect as it now reads.

Section 2

The Council amends chapter 4.10 of the Longmont Municipal Code, by adding italicized material and deleting stricken material, to read as follows:

4.10.010. – Purpose of policies and procedures.

Under appropriate circumstances, financing districts, including special districts organized under the Special District Act (C.R.S. § 32-1-101 et seq.) ("districts") provide an alternative means of financing the construction of municipal infrastructure.

A. Objectives. The purpose of these policies is to accomplish the following objectives:

...

8. Finance and facilitate construction of required improvements and, if possible, additional amenities necessary and beneficial for a *commercial/industrial* district's development.

...

1 C. *Residential Districts. The city council will not approve the formation of*
2 *districts to fund capital improvements in developments containing residential uses,*
3 *except mixed use residential districts, for the following reasons:*

4 1. *All existing Longmont residential development was funded without districts,*
5 *so the lack of these districts will not adversely affect Longmont residential*
6 *development.*

7 2. *Creation of a residential district creates a differential property tax structure*
8 *among similar residential developments, and the district resident would pay*
9 *significantly more property tax without any commensurate public benefit.*

10 a. *The higher mill levy in district projects may make these residents less*
11 *inclined to support other city property tax increases.*

12 b. *Buyers of homes in district projects are often unaware of the higher*
13 *property taxes in their development and may become upset when property taxes*
14 *increase. Residents may be surprised to find out the price of their homes did not*
15 *include the price of streets and utilities in their development and that they must pay*
16 *for this over 30 or more year period through their property taxes.*

17 D. ~~C. Commercial districts. Case-by-case consideration.~~ In general, the city
18 will consider the formation of *commercial* districts ~~on a case-by-case basis~~, if there
19 are demonstrated benefits to the citizens and the city, such as implementing the
20 *Longmont Area Envision Longmont* Comprehensive Plan and increasing the city's
21 tax base.

22 E. *Mixed-use residential districts. Mixed-use developments that include*
23 *residential uses may present the same or similar issues to those posed by residential*

1 *districts, outlined above. However, the council finds it in the public interest to*
2 *promote mixed-use developments. To balance these competing concerns, the city*
3 *may approve a particular residential district that includes mixed-use development*
4 *if, after considering the factors listed in the paragraphs below, and after public*
5 *notice and a public hearing, the council finds the proposed mixed-use residential*
6 *district at least satisfies the factors listed in the paragraphs below:*

7 *(1) There is a distinct need for the proposed development and special district,*
8 *to promote mixed-use development, consistent with the Longmont Area*
9 *Comprehensive Plan, including the following:*

10 *a. Strategy LUD 5.1 (a). Support development patterns that facilitate the*
11 *integration of residential and non-residential land uses and that are conducive to*
12 *transit, pedestrians, and bicycles; and*

13 *b. Strategy LUD 5.1 (c). Promote urban design and site planning in mixed-use*
14 *areas to make them pedestrian and bicycle friendly and to incorporate on-site*
15 *interconnections where appropriate;*

16 *(2) The likely public benefits resulting from the district outweigh the potential*
17 *adverse effects listed above;*

18 *(3) Use of the proposed district will reduce the cost of the proposed*
19 *improvements, and those cost savings will accrue to further occupants;*

20 *(4) The proposed mixed-use development:*

21 *a. Is extraordinary, by way of enhanced landscaping, artwork or other*
22 *physical features that create a “sense of place;” and*

1 *b. Provides a necessary or desired use or service not currently provided within*
2 *the city; and*

3 *c. Includes:*

4 *I. Retail, residential, office and entertainment uses that are pedestrian in scale*
5 *with architectural variety;*

6 *II. Connections between buildings, minimizing conflicts between pedestrians*
7 *and autos; and*

8 *III. Plaza spaces and special stopping points throughout the mixed-use*
9 *development to engage the pedestrian; and*

10 *IV. Parking buffered by landscape plantings behind buildings and*
11 *supplemented by parking along the streets;*

12 (5) *The proposed mixed-use development will provide a large-scale regional*
13 *retail and mixed-use project that will provide significant sales tax revenues to the*
14 *city and will include high quality residential products integrated into the regional*
15 *retail area using exceptional architectural design;*

16 (6) *The proposed mixed-use development will provide a unique new urbanism*
17 *project that incorporates a retail commercial area, office buildings, retail space*
18 *and a variety of housing types, including single-family detached and attached*
19 *products along with recreational amenities (pool, clubhouse, etc.), private and*
20 *public parks, and common open space; or*

21 (7) *The cost of the proposed necessary infrastructure or additional amenities*
22 *is extraordinary or would otherwise prevent or limit construction of the proposed*
23 *mixed-use development and to pay for elements of added infrastructure and*

amenities that are needed to achieve and meet the high standards of mixed-use developments;

(8) A mixed-use district should not consist of more than 50 percent by square footage of residential gross floor area.

4.10.020. - Definitions.

...

Commercial means any development that does not include, or is not planned to include, residential units.

...

Mixed use means a single building containing more than one principal permitted land use or a single development of more than one building containing more than one principal permitted land use. In a mixed-use development, the different types of land uses are in close proximity, planned as a unified complementary whole, and functionally integrated to the use of vehicular and pedestrian access and parking areas.

...

Residential means any development in which the residential units currently exist or are planned to exist.

...

4.10.050. - Application process.

The city council will use certain criteria in determining whether to accept a draft service plan to review for any given district:

...

1 B. The proposed development *shall include commercial property and* shall
2 conform to the *Longmont Area Envision Longmont* Comprehensive Plan and
3 applicable city development code provisions.

4 ...

5 4.10.070. - Service plan contents—See Appendix A for an illustrative service plan
6 outline.

7 ...

8 A. Contents of proposed plan...

9 ...

10 9. For a *mixed-used residential* district ~~that could include residential development,~~
11 a requirement that the district inform residential buyers of the additional tax burden
12 to be imposed....

13 ...

14 11.

...

15 ...

16 b. The city council will determine what change constitutes a “material
17 modification” of the service plan. Any *significant change* ~~material modification~~ in
18 the service plan shall be submitted to the city and shall first be subject to approval
19 by the city council in accordance with the provisions of the Special District Act and
20 the Longmont Municipal Code.

21 ...

22 4.10.080 – Annual report required and reviewed.

23 A.... The annual report shall include the following:

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6. A summary of *mixed-use residential and commercial* development (*whichever is appropriate*) which has occurred within the district for the report year.

...

Section 3

To the extent only that they conflict with this ordinance, the Council repeals any conflicting ordinances or parts of ordinances. The provisions of this ordinance are severable, and invalidity of any part shall not affect the validity or effectiveness of the rest of this ordinance.

Introduced this _____ day of _____, 2020.
Passed and adopted this _____ day of _____, 2020.

MAYOR

ATTEST:

CITY CLERK

NOTICE: THE COUNCIL WILL HOLD A PUBLIC HEARING ON THIS ORDINANCE AT 7:00 P.M. ON THE _____ DAY OF _____, 2020, AT THE LONGMONT CITY COUNCIL MEETING.

1 APPROVED AS TO FORM:

2
3
4 _____
5 CITY ATTORNEY

_____ DATE

6
7
8 _____
9 PROOFREAD

_____ DATE

10
11
12 APPROVED AS TO FORM AND SUBSTANCE:

13
14
15 _____
16 ORIGINATING DEPARTMENT

_____ DATE

17
18 CA File: 20-000581

Chapter 4.10 Special District Policies and Procedures
Proposed Amendment
Council Member Polly Christensen

Amendment #	Proposed by	Section and Subsection	Proposed Amendment	Rationale
4.10.010 Subsection E Mixed Use Residential Districts				
1	Christensen	4.10.010 Subsection E.	Eliminate the entire Section allowing Metro Districts for Mixed-Use Developments.	<ol style="list-style-type: none"> 1. Since 2012 when this document was created we have changed both our comprehensive plan (now Envision Longmont) and extensively changed and updated our zoning and code documents. We now have many mixed use areas, all financed without metro districts according to Joni Marsh. There is no need for this section, which is a bit vague and has not been needed or used. (This mixed use designation appears to have been added on in 2012 to encourage walkable neighborhoods but has not proven to be a useful financing mechanism for this use.) 2. Several members of Council (Waters, Martin, Bagley) found the mixed use section disturbing and puzzling. Why add more confusion. Just simplify to NO metro mixed use as these can obviously be financed any number of other ways. 3. Thus we have a cleaner and clearer law allowing any special and metro

				districts for all but residential development.
				4.

Chapter 4.10 – Special District Policies and Procedures
Proposed Amendments

Amendment #	Proposed by	Section and Subsection	Proposed Amendment	Rationale
4.10.010 Subsection A is a list of justifications for the body of the ordinance, not all of which are objectives at all. This section is careless with language (e.g. pay-for instead of finance, two words which don't mean the same thing at all). It makes assertions which are matters of opinion and not matters of fact, some of which are debatable and some of which are provably false. The objectives list is amended so that it only includes factual statements and references to city policies and goals, rather than mere conjectures that support the arbitrary position the old ordinance took.				
1	Martin	4.10.010 Subsection A. <i>Objectives</i> #1.	pay for finance	The district does not pay for anything. It issues bonds to raise cash to fund development in the district, spend the cash to do the development, levies a tax to retire the bond debt, and sells developed lots to builders, who improve the property and sell the improved property to final owners. All costs of development, building, administration, and property transfer are ultimately borne by the final owners, regardless of how the development and construction phases are financed.
2	Waters	A. <i>Objectives</i> # 3	Avoid having indebtedness of special districts affect the credit rating of the city.	In what way might indebtedness of a special district affect the credit rating of the city? Doesn't current state statute establish parameters for District debt for which a municipality is not responsible?

3	Martin	A. <i>Objectives</i> #5	Prevent the shift of development risk to non-developers	This foments a false concept of risk allocation. The risk of changes in bond rates and values (via the state statute and FCC rules) already lands squarely on bondholders. (Bond buyers are in the business of risk taking.)
4	Waters, Martin	A. <i>Objectives</i> #6	Manage and insulate the city from risks and controversies that may arise in relation to special districts.	Not certain “risks” to which the City is exposed, but limiting the City’s exposure to risk is part of our job. However, I don’t believe it is the Council’s responsibility to “insulate the city from controversy.” Here, the city’s oversight responsibility is to avoid irresponsibly creating too many districts, especially overlapping districts that will actually result in spots where taxation is excessive: “management,”
5		A. <i>Objectives</i> # 7	Minimize excessive tax burdens upon city residents in special districts Alternative language: Cap mill levies in special districts and ensure that approved caps cannot be exceeded without subsequent Council action.	“Minimizing excessive” sounds like an oxymoron to me. This objective presumes that taxes in special districts will be excessive and a burden. Our objective should be to cap mill levies in special districts and ensure through a service plan that any change to the mill levy represents a “material change” to

				the service plan than must be presented to, and approved by, the Council.
6	Martin	A. <i>Objectives</i> # 8	a commercial/industrial district development development consistent with the city master plan and vision.	It's not necessary to distinguish between different allowed zoning plans. If the city needs it, the city needs it.
7	Waters	A. <i>Objectives</i> #11	Add an objective: Ensure that special districts deliver extraordinary benefits to Longmont that may include, but not limited to, attainable housing, transit improvements, all-electric, low-carbon, or carbon-free neighborhoods, micro grids, distributed energy resources, child care, early childhood, and/or post-secondary education facilities. All benefits must align with the published goals of the City Government.	There is nothing in this section that specifies "attainable" housing or any other extraordinary benefit as objectives to achieve through the use of special districts. We have observed that the availability of residential metro districts has incentivized the creation of proposals that align with the city's goals, whereas before they only aligned with market sweet spots.
8	Waters	C. <i>Residential Districts</i> #1	All existing Longmont residential development was funded without districts, so the lack of these districts will not adversely affect Longmont residential development.	This is simply not a true statement. In fact, there is evidence that Longmont's unbalanced housing stock favoring executive homes and luxury apartment is because the advantageous financing terms that Metro Districts offer was not available.
9	Waters	C.	Creation of a residential district creates a differential property tax structure among	

		<i>Residential Districts</i> #2	similar residential developments, and the district resident would pay significantly more property tax without any commensurate public benefit. Alternative language for C. 2: Because higher property taxes are collected in special districts, the City of Longmont requires that commensurate public benefits be planned and delivered in each district approved by City Council.	This is not a true statement. There is no such thing as a “residential” special district. There are special districts for residential development but not “residential districts”. Whether or not there is “any commensurate public benefit” resulting from a higher property tax would depend on service plans approved by City Council.
10	Waters	C. <i>Residential Districts</i> 2. a	The higher mill levy in district projects may make these residents less inclined to support other city property tax increases.	This statement is pure conjecture. There has been no evidence presented to support this statement. Unfounded statements of opinion should not be included, looking like factual statements, in ordinances.
11	Waters	C. <i>Residential Districts</i> 2. b	Buyers of homes in district projects are often unaware of the higher property taxes in their development and may become upset when property taxes increase. Residents may be surprised to find out the price of their homes did not include the price of streets and utilities in their development and that they must pay	This is, again, is the conjecture of whomever authored this ordinance. Instead, the ordinance must include measures requiring earlier disclosure of the metro district status of the development.

			<p>for this over a 30 or more year period through their property taxes.</p> <p>Alternative language: In all Special Districts approved by City Council, disclosure to home buyers of mill levies/property taxes set to fund infrastructure, amenities, and extraordinary public benefits, shall be required by Developers, Builders, and Realtors at the following phases in the construction and sale of homes in the district:</p> <ol style="list-style-type: none"> 1. Marketing literature and advertising 2. Contract for Sale 3. Closing 4. Plat and all other maps published by the City or the District 	<p>The concerns reflected in this subsection can be addressed in an affirmative statement. The benefits of the District and the impact on property investors (especially including homebuyers) can be elaborated by the sellers at each communication point.</p>
12	Waters	<p>E. <i>Mixed Use Residential Districts</i></p> <p>2.</p>	<p>The likely public benefits resulting from the district outweigh the potential adverse effects (new language) will advance the objectives listed in subsection A. Special or Metro District financing for residential units shall be limited to the cost of land and infrastructure of homes priced at 120% of AMI and below, and, possible extraordinary benefits such as transit solutions, micro grids, carbon free neighborhoods, distributed energy resources, child care,</p>	

			early childhood, and post-secondary education facilities.	
13	Waters	E. <i>Mixed Use Residential Districts</i> 8.	A mixed-use district should not consist of more than 50 percent by square footage of residential gross floor area.	An arbitrary limit or restriction of 50% of square footage makes no sense, especially in-light-of our definition of “Mixed Use”. What is the magic of 50%? Do Council member concerns about the use of special districts for residential development in mixed use developments not apply at 50% but do apply at 51%? If so, we need an explanation as to why concerns or fears about special districts are not relevant at 50% but are relevant at 51%, or 55%, or 60%, etc.
Financial Limitations on Districts. This section already contains most of the required safeguards that proponents of special districts have been calling for. All apply equally to residential investors in districts as well as commercial investors. These amendments mostly speak to elevated transparency in disclosure of district terms and in the use of financial instruments.				
14	Martin	4.10.030 C. (new) Bonding Transparency	Each bond issue by the District shall be noticed to the City and to all property owners in the District. A full disclosure of all outstanding bonds shall be available upon request to any member of the public.	This needs word by professionals in finance and accounting to be sure it is correctly stated.
15		1.	No increase in indebtedness after the initial bond issue shall be allowed without a District election and the ballot question shall constitute a material change to the Service Plan and must be approved by the Council.	That is, the original debt must be partially retired before any increase may be considered.

16		2.	No “junior” or subordinate bonds shall be permitted.	
17		3.	Increases in indebtedness for the district after part of the initial debt has been retired shall be limited to returning the debt to the initial limit on indebtedness.	
18		4.	Buy-back of bonds by district board members and property owners shall not be permitted.	
19		5.	Excessive interest rates on bonds	The city should retain experts who can determine what limitations should be placed on bond rates.
20		6.	Any restrictions above ruled to be inconsistent with (C.R.S. § 32-1-101 et seq.) shall be void in this ordinance and shall not impact the validity of any District created under this ordinance.	
4.10.140. - Failure to comply with policies and procedures.				
21				We need to find a way to explicitly list remedies. Need the advice of staff or council.
Service Plan Contents				
22	Martin	4.10.070 Service Plan Contents	Add a requirement that a copy of the written notice of every regular or special meeting of the district will be delivered to	

		#6 g.	<p>the city clerk at least three days prior to such meeting. Such notice shall be posted in a well-defined place at the Civic Center as well as:</p> <p>1) mailed or emailed to the members of the Board of the District;</p> <p>2) when the District has residents or commercial tenants, posted at a well-defined place within the District where it is accessible and visible to all interested parties.</p> <p>3) The location of the meeting shall be, when feasible, within the boundaries of the District, or if not, within the City of Longmont.</p>	
23	Waters		<p>Add to this subsection:</p> <ul style="list-style-type: none"> Requirement that the service plan include and explanation(s) of how the District contributes to, or advances, City of Longmont and/or City Council housing objectives and impact on other City of Longmont or City Council priorities e.g. child care and early childhood education facilities, carbon-free neighborhoods. A statement that City Council will favor applications that include (or establish) 	<p>Objectives: This section should include a reference back to Section A, <i>Objectives</i>; with explicit statements regarding how this Special District advances objectives lists in Section A.</p> <p>Governance:</p>

			at least one member of City Council to serve as a member of the District Board until the board is controlled by District residents or business owners.	A District's organizing board should include at least one member who represents Longmont taxpayers and future residents of the District. The City cannot require that a District include this provision. The Council should signal in this section that it favors this approach and will be more positively disposed toward applications proposing this governing structure.
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DRAFT