



**CITY OF BOULDER
CITY COUNCIL AGENDA ITEM**

MEETING DATE: September 1, 2015

AGENDA TITLE: Supplemental Information:

Second Reading and consideration of a motion to adopt as an emergency Ordinance No. 8069, setting the ballot title for a proposed initiated charter amendment that would require new development to pay for facilities and services required by that new development.

PRESENTER/S

Jane S. Brautigam, City Manager
Thomas A Carr, City Attorney
Bob Eiche, Chief Financial Officer
David Gehr, Deputy City Attorney
David Driskell, Executive Director, Community Planning and Sustainability
Susan Richstone, Deputy Director, Community Planning and Sustainability
Eric M. Ameigh, Public Works Projects Coordinator,
Chris Meschuk, Senior Planner

EXECUTIVE SUMMARY

The purpose of this agenda memorandum is to provide the council with information that describes the initiative related to growth paying its own way; current city practices related to growth paying its own way; and initial thoughts on implementation of the initiative if it passes at the November 3, 2015 election.

This information supplements the information that was included in the regular city council packet. Given the time and work effort required to put this information together, this information did not go out in with the rest of the city council packet.

BACKGROUND

The city presently addresses some of the issues related to growth paying its own way. The policy is based in the Boulder Valley Comprehensive plan and is implemented in its development regulations, fees, and taxes.

The city has a policy that new growth should pay its own way, which is articulated in the Boulder Valley Comprehensive Plan (BVCP). Policy 1.30 states:

1.30 Growth to Pay Fair Share of New Facility Costs

Since the public costs of annexation and developing several areas concurrently could prove excessive, the city will limit said costs to those, which can reasonably be accommodated within the Capital Improvements Program and are compatible with anticipated revenues. When permitting additional development or redevelopment, the city will consider whether public facilities and services are adequate to reasonably maintain current levels of service or service standards given the impacts of such additional development or committed funding sources for such adequate facilities are sufficient to ensure their provision in a timely fashion. Growth will be expected to pay its own way, with the requirement that new development pay the cost of providing needed facilities and an equitable share of services including affordable housing, and to mitigate negative impacts such as those to the transportation system.

This policy is implemented through the BVCP Service Standards and Criteria, (BVCP Policy 1.27) Departmental Master Plans, and development excise taxes, and impact fees, city sales and use tax, and user fees.

New Development.

The city requires private development to construct any city infrastructure that directly benefits the site (such as sewer, water and storm sewer mains, detention facilities, road improvements, sidewalks, multi-use paths) and dedicate to the city any necessary easements on the site (such as flood control & conveyance, utility, and pedestrian easements).

When a development enters the discretionary review process (such as site review), additional items are requested to be provided by private development such as higher quality and enduring materials, enhanced site amenities, (landscaping, lighting, benches, bike racks, etc.) energy performance upgrades and public spaces.

Facilities that are directly attributable to new growth, such as basic infrastructure like streets, utilities, and drainage, are required to be provided by the developer creating the impacts or the need for infrastructure. The land use code also includes laws that allow property owners to construct infrastructure early and collect assessments for later developing properties that also directly benefit from the construction of facilities.

For properties that require annexation to come into the city, in addition to the improvements described above, are also required to demonstrate “community benefit” under the BVCP Policy 1.24.

Fees and Taxes.

The city is currently updating the development-related fee studies. The city has retained two consultants to assist in the analysis. The update is examining four different areas:

1. An update of the 2009 Impact Fee study. This update will include all of the components of the Capital Facility Impact Fee (Fire, Human Services, Library, Municipal Services, Parks & Recreation, and Police) and an update to the Park land component of the Excise Tax Study. This update will look at the current and projected development, and capital facility needs.
2. A study of both the capital and operating impacts to multimodal transportation facilities and services of new development. The purpose of the study would be to develop a multimodal transportation impact fee and/or excise tax as well as other mechanisms to provide capital improvements and possibly initial and on-going operations and maintenance funding associated with new development. This study will go beyond impact fees and into operational funding tools including some level of consideration of both the needed capital facilities created by new growth as well as identifying revenue sources for both capital facility deficiencies and associated revenues to sustainably fund programs, operations, and maintenance.
3. Affordable Housing Linkage Fee on Non-Residential Development. The city recently adopted an affordable housing linkage fee that was recommended by the 2009 impact fee and excise tax studies. This component will include preparation of a nexus study for an affordable housing linkage fee on new non-residential development that would mitigate the need for affordable and workforce housing created by the development.
4. Preparation of a study to create a public art program for new development – The City Council will soon be considering a recommendation in the Community Cultural Plan to establish a public art program, which will require a sustainable and sufficient source of funding to implement. The purpose of this study would be to identify best practices across the country including both regulatory and fee based approaches, and recommend options for the city to develop a program.

The city is in the early stages of the process of these fee and revenue studies and should be able to work this effort into implementation of the initiative should it pass in November.

ANALYSIS

Description of the growth pays its own way initiative:

The initiative related to new growth paying its own way requires the city to look at costs associated with some of its facilities and services. A copy of the language can be found in Attachment A. It directs the city to determine the costs related to new growth for city services that are typically paid for through the general fund or a combination of the general fund and user fees. The city is prohibited from approving new development that does not fully pay for or otherwise provide all of the additional facilities and services required to fully offset the burdens that would have been imposed by such new development on city facilities and services.

The initiative permits the city to consider both the direct and indirect revenues and contributions from new development and to aggregate amounts generated by multiple developments while developing standards and practices that are reasonably designed to achieve the requirements of this new charter section.

Facilities and services included. The facilities and services includes without limitation police, fire-rescue, parks and recreation, public libraries, housing, human services, senior services, parking services, transportation, and open space and mountain parks.

Facilities and services excluded. The initiative does not include traditional utilities that operate independent of the general fund such as water, wastewater, flood control and storm water management, and electricity. The initiative also exempts many of the internal services that are among core city services including the city manager's office, the city attorney's office, human resources, and finance as well as the Municipal Court.

Definition of new development. New development includes the addition of any floor area for non-residential buildings, or the addition of dwelling units. It also applies to the change of use of an existing building unless such change of use will only have a *de minimis* affect on facilities and services. City facilities and services are those that are material and provided by all the city departments or divisions, with the exceptions of the utilities, internal municipal services, and the Municipal Court as described above.

Prohibitions. The initiative prohibits the city from approving any new development that does not fully pay for or otherwise provide all the additional facilities and services required to fully offset the burdens that would have otherwise been imposed by such development on city facilities and services. While there is no implementation date in the initiative, staff assumes that it would be effective immediately upon passage. The initiative specifically exempts building permit and change of use applications in the pipeline at the time of passage.

Facility and Service Standards. For all other services other than transportation, the city council is directed to adopt standards and practices that are reasonably designed to achieve the requirements of the initiative and that are consistent with generally accepted

professional standards and practices were such exist. Council has some discretion in developing these standards for facilities and services. As noted early in the initiative language, the standards will need to be tied to a burden attributable to new growth on a city facility or service.

The initiative's transportation standards are based upon existing transportation level of service at the time of the passage of the initiative. In other words, it anticipates the new development will not cause any degradation to the transportation system. New development will need to address additional impacts to the transportation system.

Standards for transportation facilities and services are tied to emergency response times, daily vehicle miles traveled within the city, and travel times on the streets for which the city measured travel times as of the passage of this Section. Travel time measurements will include the hour before and the hour after the morning and evening peak hours. The initiative also provides that new development will be responsible for any additional streets that may be warranted.

Scope of the Initiative and Exempt Developments. The initiative does not apply residential growth that does not add one or more dwelling units and has de minimis effects on facilities and services as well as changes of use of any building that have a de minimis effect on the facilities and services. The City Council is provided the authority to exempt some projects from the requirements of the petition that include permanently affordable housing units, the affordable housing portions of new developments, or publicly-owned new developments if it does so with at least six votes.

Reporting. The city manager is required to make an annual report to the city council at a meeting that includes a recitation of the standards used and a summary of the measurements and actions taken and analyses performed to satisfy the requirements in the initiative.

Next Steps if the Initiative Passes. The city will need to identify affected city services and facilities and quantify the revenue needs to support new development through capital investment and ongoing operation and maintenance. The city may need to draft additional ordinances to implement this initiative. It is also anticipated that the city will need to develop and identify new revenue sources if the analysis determines that existing fees, taxes, and development regulations do not result in growth paying its own way under the existing rules.

Tasks to be completed to implement the "New Development Shall Pay its Own Way" petition.

The tasks listed below are the staff's first effort to identify some of the tasks that will need to be completed. It is not intended to be a comprehensive work plan proposal.

- A. Research potential issues of state and federal law to determine if there are any impediments or other limitations that will prevent or limit the implementation of the initiative.

- B. Consider suspending the acceptance of building permit and other development applications until all legislation necessary to implement the petition is completed. The petition provides that the “City shall not approve new development that does not fully pay for . . . the burdens that otherwise would have been imposed by such new development on City facilities and services.”
 - 1. This is a general prohibition on approving applications until the city adopts standards and practices to ensure that the ballot measure is implemented.

 - 2. The first step in implementation will be to identify and further define the building permit or development application that would not be affected by the initiative so that the city could continue to process such development applications in the normal course of business.

 - 3. The next step will be to indentify the applications that will need to be analyzed for compliance with the initiative. Staff should stop accepting applications for affected new developments. One approach would be to take the position that the initiative is self executing and stop accepting applications upon its passage. The other approach, and perhaps more preferable, would be to have the council adopt an ordinance that suspends the acceptance of applications for new development, where the council could tie it to a work plan and make any necessary interpretations or regulatory requirements

 - 4. A transition issue that will need to be addressed is what to do about site review and use review applications in the process. These applications are not addressed in the initiative.

 - 5. Analyze how to complete a fair transition to the new regulatory realm considering state and federal law, including the provisions of state law related to impact fees or other similar development charges. § 29-20-104.5, C.R.S. “Impact Fees”.

C. Specifically identify all city services and facilities to which the petition applies.

1. Create an inventory of facilities and Services included in the petition. The city will need to create an inventory of all of the facilities and services that are “material and provided by all City departments or divisions.” It is anticipated that this will include police, fire-rescue, parks and recreation, public libraries, housing, human services, senior services, parking services, transportation, and open space and mountain parks.
 - Utilities Excluded: The language of the petition exempts all of the traditional utilities for which rates cover the entire cost of the service, including water, wastewater, flood control and storm water management and electricity.
 - Internal Service Departments Excluded. The language of the petition also exempts many of the internal city service departments that include and the departments of finance and human resources (personnel), the offices of the city manager and city attorney, and the municipal court.
2. Develop Service Standards. Develop Service standards for city facilities and services. Service standards for many city services or facilities can be found in the various departmental master plans.
 - An analysis of the master plans will need to be completed to ensure that there are services standards that would allow the city to determine the amount of development that should be attributed to new growth. There is a general standard stated for facilities and services to ensure that new development does not create a burden. The service standards for transportation are more descriptive, including metrics that should be used to measure the burdens of new development. The city will need to consider the appropriate level of service for all services and facilities affected by the petition.
 - The city will need to document the present level of service for facilities and services at the time of the initiative passage so that it can be the documented service standard. This will need to be done in accordance with metrics in the initiative for transportation.

3. Planning for Growth. The city should look at its growth assumptions in its comprehensive plan and departmental master plans to:

- Ensure that that the data upon which the city will make regulatory assumptions is appropriate for use in the implementation of the initiative.
- Planning documents should be analyzed to ensure that assumptions and standards can be developed on the impact of new development to city services and facilities.
- The city will need to quantify the amount and quantity of new development

4. Revenue Requirement. A revenue requirement will need to be developed for each of the services and facilities. It is anticipated that a revenue requirement will have two components: capital and ongoing operations and maintenance.

- Inventory of revenue sources that pay for the various facilities and services. The inventory should include both direct and indirect sources of revenue that are generated by new growth. Direct revenue source may include development and housing excise taxes, capital facilities impact fees, construction sales and use taxes, and developer installed public infrastructure. Indirect revenues sources might include things such as estimates of sales and use taxes generated by the new development, the city portion of property taxes, fees for services, etc.
- Identify facilities or services affected by the petition that will have a revenue deficiency because of new growth.
- Develop implementation approaches that may include without limitation the following: new taxes, new fees, development regulations, adjusting service standards to be in line with available revenue.

D. Legislative Standards. The city will need to develop and draft legislation to implement the initiative. The legislation will provide the basis for approving

development applications that fully pay for or otherwise provide all the additional facilities and services required to fully offset the burdens that otherwise would have been imposed by such new development on City facilities and services.

1. In addition to new approaches to revenue, the city should also consider land use regulations that allow property owners options for meeting the requirement that new development does not result in burdens on city facilities and services. An example of this approach is in the inclusionary housing ordinance, where the code requires a certain amount of new housing to be permanently affordable. The code provides a great deal of flexibility to meet this requirement.
2. Consider options for construction related standards for public improvements that will mitigate impacts of growth not fully paying its own way.
3. Develop other approaches and options that may be necessary to implement the initiative. For example, the city could consider developing programs that could be used by property owners that would provide property owners with some flexibility in how to mitigate impacts caused by new development.
4. The city could consider the adoption of some type of adequate public facilities ordinance as a growth management tool. Such ordinances provide city's with standards that could be used to phase the timing of new development to be concurrent with the infrastructure that is necessary to serve them.

New Development Shall Pay Its Own Way:
Initiative petition language

To the extent allowed by Federal and state law, the City shall not approve new development that does not fully pay for or otherwise provide all the additional facilities and services required to fully offset the burdens that otherwise would have been imposed by such new development on City facilities and services.

For purposes of this Section, "new development" shall be defined as:

(a) Any residential or non-residential construction that results in additional floor area in a building or on a site, except for modifications to residential buildings that do not add additional dwelling units and that have a de minimis effect on the facilities and services referred to in this Section, or

(b) Any change in use of an existing building or site, except for changes of use that have a de minimis effect on the facilities and services referred to in this Section.

For purposes of this Section, "City facilities and services" shall be defined as all of those that are material and provided by all City departments or divisions, except the departments or divisions supplying City water, wastewater, flood control, and electric utility services, as these already have service standards, and the departments of finance and human resources (personnel), the offices of the city manager and city attorney, and the municipal court.

The City Council shall adopt and apply standards and practices that are reasonably designed to achieve the requirements of this Section and that are consistent with generally accepted professional standards and practices where such exist. These standards and practices shall include without limitation consideration of indirect revenues and contributions from new development, such as sales and use tax paid by occupants, and consideration of multiple developments evaluated in aggregate.

Standards for transportation facilities and services shall include without limitation emergency response times, daily vehicle miles traveled within the City, and travel times on the streets for which the City measured travel times as of the passage of this Section, and any additional streets that may be warranted. These travel time measurements shall be expanded to include the hour before and the hour after the morning and evening peak hours.

The City Council, by an affirmative vote of six members, may exempt the development of permanently affordable housing units, or the affordable housing portions of new developments, or publicly-owned new developments from the requirements of this Section.

New development with a complete and properly submitted application for a building permit, or a change of use permit, as of the date of passage of this Section, shall be exempt from the requirements of this Section, but only for the construction or change of use covered by the permit or change of use application as submitted.

The City Manager shall report annually at a City Council meeting all standards used and a summary of the measurements and actions taken and analyses performed to satisfy the intent of this Section?

END OF SECTION