

BY AUTHORITY

ORDINANCE NO. _____
SERIES OF 2022

COUNCIL BILL NO. CB 1501

COMMITTEE OF REFERENCE:

LAND USE, TRANSPORTATION AND INFRASTRUCTURE

A BILL

For an ordinance adopting a new Article XIV of Chapter 20 of the Denver Revised Municipal Code concerning Cost-Recovery Districts.

The absence or insufficiency of critical public infrastructure impedes the efficient delivery of utility service to support increasing capacity demands in specific identified and defined areas within the City. This issue is compounded by the high cost of such critical public infrastructure, the necessary construction of such critical public infrastructure to support the fair and efficient delivery of utility services, and the disparities in the ability of individual customers to fund and deliver such critical public infrastructure capacity on their own. The Cost-Recovery District is an infrastructure financing tool that will help alleviate these problems by allowing the private constructor of new critical public infrastructure to recover a proportionate share of the costs of its construction from the subsequent redevelopment projects that benefit directly from and rely upon its availability and it will improve the overall quality and capacity of the City’s critical public infrastructure systems.

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. A new article XIV of Chapter 20 of the Denver Revised Municipal Code is hereby adopted to read as follows:

ARTICLE XIV. – COST-RECOVERY DISTRICTS

Sec. 20-425. – Definitions.

As used in this article, the following words and phrases shall have the meanings given to them in this section except where the context clearly indicates and requires a different meaning.

- (1) *Cost-recovery or cost-recovery assessment* shall mean the proportional cost of any and all improvements within an established district that is allocated to the properties that directly benefit from and are reliant upon the improvement for their own respective future service needs as determined by the manager pursuant to subsection 20-427 of this article.
- (2) *Improvements* shall mean the critical public infrastructure facilities and/or improvements specified in subsection 20-426(a) of this article as to any established district.
- (3) *Manager* shall mean the manager of the department of transportation and infrastructure.

- 1
- 2 (4) *Private delivery party* shall mean the private party or entity within an established district
- 3 who incurs the cost to complete an improvement within that district.
- 4
- 5 (5) *District* shall mean the identified boundaries of an area established by the manager for the
- 6 allocation, collection and payment of cost-recovery assessments.

7 **Sec. 20-426. - Findings.**

- 8 (a) The City hereby finds and determines that increasing density and redevelopment within
- 9 the City results in additional impacts upon critical public infrastructure facilities and/or
- 10 improvements, and necessitates the construction or expansion of new critical public
- 11 infrastructure facilities and/or improvements consisting of the following:
- 12 (1) Public sanitary and/or storm sewer facilities and/or improvements; and
- 13 (2) [Reserved]
- 14 (b) The City further finds that properties that directly benefit from and are reliant upon such
- 15 improvements may be developed on different timelines and on different scales but
- 16 each, in isolation, still necessitates the construction or expansion of the same
- 17 improvements to meet anticipated future service requirements.
- 18 (c) The City further finds that not all development projects have the financial capacity to
- 19 construct or expand such improvements, as may be required by the City, to the benefit
- 20 of all other properties reliant upon such improvements for their own respective future
- 21 service requirements.
- 22 (d) The City further finds that it would be beneficial to the City to establish a mechanism
- 23 to incentivize the construction or expansion of necessary improvements that the City
- 24 would not otherwise provide within its existing capital improvement plans at that time
- 25 and that may directly serve not only a single property or development project, but also
- 26 directly serve all properties that may be reliant upon such improvements for their own
- 27 respective future service needs.
- 28 (e) The City further finds and determines that it is fair and equitable and in the best
- 29 interests of the City to require new development to bear a proportionate share of the
- 30 cost of privately-funded and previously-constructed or previously-expanded
- 31 improvements as the City determines are reasonably necessitated by, and of
- 32 reasonable benefit to, the future service needs of nearby properties.

1 (f) The City further finds and determines that it is fair, reasonable, and equitable for the
2 City to plan for improvements necessary for the efficient and logical development of
3 land within the City, and for the private party who constructed or expanded such
4 improvements to recover a proportional cost of such improvements from new
5 development upon the properties that directly benefit from and are reliant upon the
6 improvements for their own respective future service needs.

7 **Sec. 20-427. – Recovery of Costs of Public Facilities and/or Improvements.**

8 (a) The manager shall have the authority to establish cost-recovery districts in accordance
9 with this article. Such districts shall be created to:

10
11 (1) Identify and establish boundaries among specific properties to equitably and
12 proportionally allocate the construction and expansion costs of improvements
13 between such properties that may benefit from and be reliant upon the construction
14 or expansion of such improvements, if and when such properties are further
15 developed.

16
17 (2) Recognize, substantiate and quantify the costs associated with the construction or
18 expansion of the improvements completed within a district and identify the private
19 delivery party responsible for incurring such costs.

20
21 (3) Establish a fair and proportional cost-recovery amount that may be payable from
22 future development projects within the established district that may otherwise have
23 been required to construct or expand the improvements in support of their own
24 respective development programs.

25
26 (4) Levy and collect cost-recovery assessments allocated to future development
27 projects occurring within a district to offset the proportional costs incurred by the
28 private delivery party for constructing or expanding such improvements.

29
30 (5) Remit such cost-recovery assessments to the private delivery party, less any
31 administrative and management overhead charge payable to the City as
32 established by the manager.

1 (b) All districts shall be created, administered, and managed in accordance with rules
2 and/or regulations that have been duly adopted by the manager in accordance with
3 City Charter and subsection 2-91, *et seq.*, as each may be amended, and any policies
4 and procedures promulgated thereunder Such rules shall establish, among other
5 items:

6
7 (1) The standard(s) and type(s) of improvements for which cost-recovery may be
8 identified, imposed, collected and remitted.

9
10 (2) The procedure(s) associated with the creation of districts, including, without
11 limitation, the requirements for demonstration of the public purpose and need for
12 establishment of the district, the method(s) by which the district boundaries may be
13 identified, details related to the authorized duration of any district, notification
14 requirements, and public hearing requirements.

15
16 (3) The method(s) and procedures(s) for verifying the cost of improvements that are
17 eligible for reimbursement by cost-recovery, and identifying the private delivery
18 party entitled to receive such reimbursement.

19
20 (4) The method(s) of identifying the relative direct benefits from and reliance upon
21 improvements between and amongst all future development projects occurring
22 within the district.

23
24 (5) The timing of payment of any cost-recovery from future development projects
25 occurring within a district, and any penalties or consequences related to non-
26 payment or delinquent payment of cost-recovery assessments.

27
28 (6) Any method(s) and/or criteria for the possible exempting of any development
29 projects within a district from payment of cost-recovery. Such exemptions may be
30 contemplated to account for objective criteria, such as a minimum threshold of
31 impact on the improvements, or for policy reasons, such as the facilitation of
32 affordable housing development, or for other specified reasons established by the
33 manager.

1 (7) The procedures and requirements by which the City shall collect, administer,
2 manage, record and disburse cost-recovery proceeds to private delivery parties.

3
4 (8) The administrative overhead, if any, associated with any districts, including any
5 administrative and management overhead that may be charged by the City in
6 connection with its activities detailed in this article.

7
8 (9) The procedures associated with the dissolution and close-out of all matters relating
9 to an established district, including, without limitation, notification requirements,
10 disbursement of remaining cost-recovery proceeds, and related matters.

11
12 (c) The manager shall provide a written annual report to council no later than December
13 1 of each year detailing the then-current status of any existing districts areas and
14 describing any districts that are proposed or reasonably anticipated to be created within
15 the following fiscal year.

16 **Sec. 20-428. – Limitations of Actions.**

17 No action or proceeding, at law or in equity, to review any acts or proceedings, or to question
18 the validity or enjoin the performance of any act or proceeding, or for any other relief against any
19 acts or proceedings authorized, done or had under this article XIV, whether based upon a claim of
20 illegalities, irregularities, or jurisdictional defects, shall be maintained unless commenced within thirty
21 (30) days after the performance of the act or proceeding complained of, or else be thereafter
22 perpetually barred.

23 **Sec. 20-429. – Liberal Construction.**

24 This article XIV, being necessary to secure the public health, safety, welfare, and
25 convenience, shall be liberally construed to affect its purposes within the parameters of the City's
26 Charter and home rule authority.

27 **Sec. 20-430. – Substantial Compliance.**

28 Substantial compliance with this article XIV shall be all that is required in determining the
29 validity of the performance of any duty hereunder.

30 **Sec. 20-431. – Other Laws.**

1 Nothing contained in this article XIV shall limit or waive any requirements related to the
2 development of property otherwise required under the Denver Revised Municipal Code, the City
3 Charter, or any rules, regulations, policies, procedures, or executive orders of the City, as each may
4 be amended or restated from time to time.

5 **Secs. 20-432 – 20-440. – Reserved.**

6 COMMITTEE APPROVAL DATE:

7 MAYOR-COUNCIL DATE:

8 PASSED BY THE COUNCIL: _____

9 _____ - PRESIDENT

10 APPROVED: _____ - MAYOR _____

11 ATTEST: _____ - CLERK AND RECORDER,
12 EX-OFFICIO CLERK OF THE
13 CITY AND COUNTY OF DENVER

14 NOTICE PUBLISHED IN THE DAILY JOURNAL: _____; _____

15 PREPARED BY: John G. McGrath, Assistant City Attorney DATE: _____

16 Pursuant to section 13-9, D.R.M.C., this proposed ordinance has been reviewed by the office of the
17 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
18 ordinance. The proposed ordinance is not submitted to the City Council for approval pursuant to
19 § 3.2.6 of the Charter.

20
21 Kerry Tipper, Interim Denver City Attorney

22
23 BY: _____, Assistant City Attorney DATE: _____