

BLACK FOREST FIRE RESCUE PROTECTION DISTRICT

RESOLUTION NO. 2021-02

RESOLUTION ADOPTING FEES AND SETTING POLICY AND PROCEDURES FOR INCLUSIONS AND EXCLUSIONS OF PROPERTY

WHEREAS, Black Forest Fire Rescue Protection District (the “**District**”) is a quasi-municipal corporation and political subdivision of the State of Colorado and a duly organized and existing special district pursuant to Title 32, Article 1, C.R.S.; and

WHEREAS, the Board of Directors (the “**Board**”) of the District is empowered by Title 32, Article 1, Parts 4 and 5 of the C.R.S. (the “**Special District Act**”), to consider petitions to include or exclude property from the District, filed with the District and accompanied by a deposit of money sufficient to pay all costs of such proceedings; and

WHEREAS, consideration of petitions to include or exclude property requires the District to incur costs associated with the preparation and publication of a notice of hearing, review of the petition for statutory sufficiency, conduct of a hearing and advice of legal counsel, and evaluation of the petition and the property proposed for inclusion or exclusion against statutory criteria; and

WHEREAS, the District is authorized to establish fees, rates, tolls, penalties, or charges for non-fire suppression services and for services provided outside the District boundaries; and

WHEREAS, the District is authorized to adopt general procedures to govern the procedures and hearings to be conducted by the Board to consider petitions to include or exclude property; and

WHEREAS, newly included property benefits from the District’s previous capital expenditures funded through prior tax revenues from the District’s existing taxpayers and may impose the need for additional capital improvements; and

WHEREAS, parcels of property seeking to exclude may have an operational impact on the District and may result in remaining taxable parcels of property within the District or the staff assigned to respond to emergency incidents within the District being burdened by the operational impact of such exclusions, requiring careful consideration of the necessary factors outlined in Section 32-1-501 whenever a parcel of property seeks to exclude and receive service from another special district or to exclude territory into an unincorporated portion of the County in which the property is situate. Parcels of property wishing to exclude in order to receive municipal services will be governed by Section 32-1-502; the District and the City shall coordinate such requests for exclusion to the greatest extent possible to allow for the orderly processing of such requests and the transition of duties for call response to the affected area, and parcels of property seeking to exclude outside of such coordinated City/District effort shall bear the full cost of legal proceedings necessary for such exclusion proceeding; and

WHEREAS, parcels of property seeking exclusion which will result in gaps in contiguous coverage areas, or which will result in service delivery confusion with neighboring properties served by the District and another fire response agency (“checkerboard exclusions”) may create administrative difficulties for the Fire Chief and operational inefficiencies for the region, and are as a general policy matter, not considered desirable absent a showing of unusual circumstances; and

WHEREAS, any petition to exclude will be considered pursuant to the statutory requirements of Title 32, C.R.S. and will include consideration by the Board of the geographic location of the subject property, in accordance with the general policy objectives of the District as provided herein; and

WHEREAS, the Board finds and determines that it is in the best interest of the health, safety and welfare of the District’s existing and future taxpayers and residents that procedures be adopted and fees be charged for considering the inclusion of additional property within or the exclusion of property from the District to reflect the costs to the District associated with processing the proposed inclusion or exclusion, for providing service to any newly included property, and to provide for the orderly hearing of such exclusion requests so as not to burden the other taxpayers of the District with such costs; and

WHEREAS, the Board finds and determines that it is in the best interest of the health, safety and welfare of the District and its existing and future taxpayers and residents to coordinate services provided to any area subject to dual call response authority due to municipal annexation and to provide for efficient and effective sharing of operational response to any area which could result in overlapping, or noncontiguous service boundaries.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Black Forest Fire Rescue Protection District as follows:

1. **Recitals Incorporated/General Policy.** The Recitals to this Resolution set forth the background policy considerations necessary for the Board of Directors, as fiduciaries of the District, to take into consideration when considering requests to include or exclude taxable property. As a result of potential impact on overall service delivery, the Board must take into consideration ability to serve any new property proposed for inclusion without incurring substantial impact to overall operations of the District or significant cost that outweighs the benefit of inclusion. As a result of the erosion of tax revenue from any area proposed for exclusion, the Board must consider the operational efficiencies and the possible negative impact to neighboring properties of any petition to exclude, along with the factors established in Title 32, C.R.S., which are intended to permit exclusions when practicable and when the weight of the statutory criteria support the decision to take such action. The Recitals set forth herein are an integral part of this Resolution and are incorporated herein.

2. **Adoption of Inclusion Fee.** Upon the filing of a petition for inclusion of property, the District may impose a fee to provide for the District’s costs incurred in the inclusion proceeding or may choose to waive such fee.

3. **Adoption of Exclusion Fee.** Upon the filing of a petition for exclusion of property, a deposit in the amount of \$750 shall be required of the exclusion fee of \$2,000 for each parcel of property proposed for exclusion. Such deposit shall be paid prior to the District reviewing the exclusion petition or setting the exclusion hearing and the remaining unpaid fee will be due at conclusion of the hearing. All exclusion orders shall be contingent upon the payment of such fees, unless waived by the District. A municipal exclusion process initiated by the District Board of Directors in cooperation with the City of Colorado Springs shall not be subject to the imposition of an exclusion fee upon any parcel of property within the proposed exclusion area.

4. **Purpose of Fees.** The inclusion and exclusion fees shall be used to offset costs of processing the inclusion or exclusion petition, including preparation and publication of a notice of hearing, review of the petition for statutory sufficiency, conduct of a hearing and advice of legal counsel, evaluation of the petition and the property proposed for inclusion or exclusion against the statutory criteria and the criteria established by this Resolution and preparing any final order related to the petition, preparation of a revised boundary map (if necessary), and Clerk and Recorder fees for recordation of the court order, disclosure and boundary map.

5. **Modification of Waiver of Fees.** The Board of Directors reserves the ability to modify, waive, or increase such fees for any exclusion of property in its sole discretion as it determines appropriate to improve efficiency of any proceeding or based upon the actual cost of such proceeding. In addition, the Board may at its discretion delegate authority to the Fire Chief or designee to waive all or part of the legal fees for the exclusion of properties that meet the following criteria:

(a) Exclusion or inclusion of properties necessary to correct incongruent service boundaries; or

(b) Several parcels included in the same petition, or multiple petitions filed at the same time, such that the economies of scale for processing the multiple parcels significantly reduce the anticipated cost per parcel, in which case a reduction of fees may be offered.

6. **Inclusion Procedures.** The following shall be the Board's procedures for Petitions for Inclusion:

(a) A Petition for Inclusion must be executed before a notary public by 100% of the owners of the real property to be included into the District. An accurate legal description and map of the real property to be included into the District must be attached to the fully executed Petition for Inclusion.

(b) The fully executed Petition for Inclusion must be filed with the District at the following address:

Black Forest Fire Rescue Protection District
c/o Fire Chief

11445 Teachout Road
Colorado Springs, CO 80908

- (c) Upon receipt of the fully executed Petition for Inclusion with the required attachments and fee, if any, consideration of the Petition for Inclusion will be included on the next regular meeting agenda of the Board of Directors of the District. Upon consideration, the Board of Directors will set a public hearing at which time the Board will consider approval or denial of the Petition for Inclusion.
- (d) At such public hearing, the Board will consider the Petition and receive any public comment. Following the public hearing the Board will consider and, if appropriate, approve or deny the Petition for Inclusion. If the Board approves the Petition for Inclusion an Order of Inclusion will be issued, which will be filed with the El Paso County District Court with a request that the Court issue a final Order of Inclusion.
- (e) Upon issuance of the final Order of Inclusion by the El Paso County District Court, the Order will be recorded with the El Paso County Clerk and Recorder and filed the Division of Local Government and El Paso County Assessor, and the process for inclusion will be complete.
- (f) Options available to the District to include individual or multiple properties are as follows:
 - (i) The District may consider individual property owner petitions for inclusion, with or without a waiver of the inclusion fees to the owner of the property; or
 - (ii) The District could send a targeted mailing to the owners of property within a subdivision regarding their eligibility to include into the District as part of one large inclusion action to be funded by the District; or
 - (iii) The District could enlist assistance from property owners to obtain petition signatures from 100% of the property owners within a subdivision, allowing the Board to act on one inclusion action for all of the eligible properties; or
 - (iv) The Board could adopt a resolution to include a certain described area into the District, which would require the conduct of an election and voter approval within the inclusion area. If the election were to be unsuccessful, then the Board could discuss pursuing any of the other inclusion options.

7. **Exclusion Hearing Procedures.** The following shall be the Board's procedures for hearings to consider Petitions for Exclusion:

- (a) A Petition for Exclusion must be executed before a notary public by 100% of the owners of the real property to be excluded from the District. An accurate legal description

and map of the real property proposed to be excluded, proof of guaranteed comparable service delivery from a different fire rescue authority, and deposit must be attached to the fully executed Petition for Exclusion.

(b) The fully executed Petition for Exclusion must be filed with the District at the following address:

Black Forest Fire Rescue Protection District
c/o Fire Chief
11445 Teachout Road
Colorado Springs, CO 80908

(c) Upon receipt of the fully executed Petition for Exclusion with the required attachments and fee, if any, discussion of receipt of the Petition for Exclusion will be included as soon as can reasonably be accommodated on a subsequent regular meeting agenda of the Board of Directors of the District. Following this initial consideration and if the petition is in a form that meets the requirements of Section 32-1-501, C.R.S., the Board of Directors will set a public hearing date at which time the Board will consider and hear evidence from staff and the Petitioner and consider approval or denial of the Petition for Exclusion.

(d) Publication must be made following the requirements of statute to provide proper notice of the exclusion hearing to not just the petitioner but all members of the public. The public hearing will be opened by the District Board and the public is permitted to both attend and provide a statement.

(e) The District's Board shall serve as the Hearing Officer for the proceeding, with assistance of either (a) the District's general legal counsel or (b) a legal advisor to the Board (referred to herein as the "**Legal Advisor**"). The Board shall make factual findings to be considered in its final decision in accordance with Section 32-1-501(3), C.R.S., for Petitions for Exclusion being considered under the Special District Act. The Board shall make all findings by a preponderance of the evidence.

(f) Either party may call witnesses to testify at the hearing and introduce exhibits. Either party may be represented by legal counsel at the hearing.

(g) The hearing will be scheduled for two hours. Both the petitioner and the District will have equal amount of time to present testimony and exhibits. The Board may set other reasonable time limitations on testimony or arguments, and restrict or exclude duplicative or relevant evidence or testimony. The hearing is not subject to the Colorado Rules of Civil Procedure or the Rules of Evidence, except that only relevant evidence shall be allowed.

(h) The Board shall have full authority to hear and resolve any issues relating to the conduct at the hearing and to establish hearing procedures.

(i) The hearing will be audio recorded. Either party, at its own expense, may utilize a court reporter to transcribe the proceedings.

(j) The hearing may be continued for good cause shown at the request of either party or upon the Board's own action.

(k) The Board shall decide all factual issues relating to the Petition for Exclusion and make a final decision regarding such Petition. A written decision, containing the Board's factual findings, will be prepared, and sent to the Petitioner, and the District's general counsel within 60 calendar days from the date of the completion of the hearing.

(l) The Board as a policy matter will not approve exclusions that will create a service area "checkerboard" within the boundaries of the District, absent a showing by the Petitioner of good cause or other ameliorative agreement to minimize the negative impact of such exclusion.

(m) If the Board approves the Petition for Exclusion an Order of Exclusion will be issued, which will be filed with the El Paso County District Court with a request that the Court issue a final Order of Exclusion. Upon issuance of the final Order of Exclusion by the El Paso County District Court, the Order will be recorded with the El Paso County Clerk and Recorder and filed the Division of Local Government and El Paso County Assessor, and the process for exclusion will be complete.

(n) The decision of the Board will be final and binding upon the parties, subject only to statutorily allowed appeals.

(o) Petitions for Exclusion that are for property located within a service area annexed by the City of Colorado Springs will require coordination with the City and may be subject to additional procedures and fees as necessary to defray the cost of any special legal counsel review, court proceedings and fees necessary to obtain a joint plan for exclusion and service to such property by the City.

8. **Severability.** If any part, section, subsection, sentence, clause or phrase of this Resolution is, for any reason, held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

9. **Effective Date.** This Resolution shall take effect and be enforced immediately upon its approval by the Board.

The foregoing Resolution was approved and adopted this 20th day of January, 2021.

BLACK FOREST FIRE RESCUE
PROTECTION DISTRICT
By: *Rick Nearhoof*
Rick Nearhoof, Chairman

ATTEST:
Donna
Secretary

