BeeChicas and Pollinator Appreciation Month
Native Bee House
#BeeLiterate Hives
Support Pollinators!

- Eliminate the use of pesticides
- Add more flowering plants, shrubs and trees to your yard
- Buy organic produce
- Support beekeepers, buy local honey!
Flower Nectar and Honeybee Enzymes

- Forager bees gather nectar in their honey stomach
- In the hive they transfer nectar to house bees who ‘chew’ it mixing in additional enzymes
- Processed nectar is stored in honeycombs and water is evaporated until moisture content is 17% or below.
1st Look at the color / is it light, pale amber or dark?

2nd Smell it / is it fruity, floral, earthy or nutty?

3rd Taste it / move beyond sweet, is it citrus or tropical, butterscotch or caramel?
HONEY!
Suggestions for adjustments to the Library Commission application

From Koenig:

"What are your thoughts about various options for establishing consistent sustainable funding?"

"Are you aware that the Library is considering creating a Library District? If so what questions, and/or opinions do you have?"

"Plans are underway for a new library in North Boulder. Do you have ideas of innovative new services that can be provided which will be a template for the other branches?"

"Are there any current library programs you would like to be expanded or curtailed?"

"The Library plans to/has eliminated fines for overdue books. Your thoughts?"
October 2, 2018

City of Boulder
City of Boulder Colorado Library Commission
1001 Arapahoe Avenue
Boulder, CO 80302

Attn: David Farnan, Director
Via Email: farnand@boulderlibrary.org

Re: Report on Library District Formation and Operations

Dear Mr. Farnan and Library Commissioners:

You have requested a report on the formation and operations of library districts under the Colorado Library Law, C.R.S. § 24-90-101, et seq. An outline of topics to address was provided by Mr. Farnan on August 11, 2018 (copy attached). Additional enquiries were made by Commissioners Teter and Koenig by email and at a meeting on July 27, 2018.

This report generally follows the outline provided by Mr. Farnan but I have restated and rearranged some topics for clarity. Responses to the Commissioners’ questions are incorporated in the outline where appropriate.

The information in Sections II. and III. is repetitive of information contained in the discussion of the library district formation process in Section I. However, we deemed repetition appropriate to ensure that we responded to your questions in the manner they were presented.

REPORT

I. Summary of Colorado Library Law on Library District Formation.

A. Municipal v. District Libraries. The City’s library and a library district differ in significant ways.

1. The Boulder Public Library is a “municipal library” which is a “public library” established by the City. See, C.R.S. § 24-90-103 (11).

   a. It is governed by a Board (advisory in Boulder) known as the Commission. See, C.R.S. § 24-90-109 (2)(a).

   b. It is funded as part of the City budget.
2. A “library district” is also a “public library.” It is established by one or more cities and/or counties, school districts, etc. See, C.R.S., § 24-90-104(6).

   a. It is governed by a Board of Trustees appointed by the establishing entities. See, C.R.S. § 24-90-108(2)(c).

   b. It is a “political subdivision of the state of Colorado” created by the establishing entities. The library district is its own taxing authority and is not a division or department of the city or other establishing entities and is not included in the establishing entities’ budgets.

B. Establishing a Library District. A library district can be formed by resolution or ordinance of one or more existing governments (i.e., the city, the county, or both) (the “establishing entities”); or, by initiative of citizens through a petition process.

1. Boundaries. The geographic boundaries of the district are determined by the establishing entities or in the citizen-initiated petition.

   a. Boundaries should provide sufficient tax base to support library services and include the area actually utilizing those services.

   b. Aggregating existing government entity boundaries to create the library district boundary is cost efficient because geographic, demographic and financial information already exists in the Colorado Department of Local Affairs and from other sources.

2. Establishing the District by Resolution/Ordinance. Establishing the library district by resolution or ordinance is cost effective and allows greater control of the process by the establishing entities.

   a. The establishing entities determine the appropriate boundaries of the district.

   b. A public hearing or hearings is held by the establishing entity(ies) after published notice to discuss the purpose of the district, its powers; and the financial and other obligations of the establishing entities, if any.

   c. 90 days written notice of the proposed establishment is given to other “governmental units” that maintain a public library so they may determine whether to participate in the district.
d. The resolution or ordinance must describe:

i. The district’s legal service area;

ii. identify and provide that the electors must approve the proposed mill levy.

e. The library district is established upon adoption of the resolution or ordinance.

i. The establishing entities appoint the first board of trustees (5 or 7 members) to the library district.

ii. Within 90 days after appointment of the trustees, the establishing entities and trustees must enter into an intergovernmental agreement describing their rights, obligations, and responsibilities to one another, if any (“IGA”). We utilize the IGA to:

   (a) Establish a deadline for the district to obtain funding from its electors at an election authorized by the TABOR Amendment (i.e., at the November 2019 election);

   (b) Provide terms to transition library services from the establishing entities to the district including:

      (1) Any conveyance by donation or sale of real and personal property used to provide library services;

      (2) The transition of library employees from the establishing entity to the library district addressing earned leave, benefits, retirement funds, etc.;

      (3) Interim funding, if any, for the existing libraries and the district;

      (4) Whether the district will temporarily or permanently purchase or otherwise acquire administrative, maintenance, personnel, procurement, insurance, employee benefits etc. through contract with an establishing entity; and,
(5) Establishing procedures for future library trustee selection and appointment within the confines established by the Library Law; and,

(6) Generally providing for a mutually beneficial relationship or separation as the parties’ desire.

(c) If the district does not obtain funding within the time allowed (we prefer 2-3 election cycles), the IGA may require it to dissolve leaving the municipal library to continue operations.

3. Establishing the District by Petition of Registered Electors. One hundred electors residing in the proposed library district “service area” can trigger an election to form a district by petition.

a. The petition is addressed to the commissioners of each county proposed to be included in the district and must be filed at least 90 days before a TABOR election.

b. The petition must comply with C.R.S.§ 24-90-107(3)(a), including a request for establishment of the district, name of the district, the governmental units involved and contain a description of the “service area” and proposed mill levy.

c. A bond must be filed to pay election expenses in the event the election is unsuccessful unless waived by the county.

d. Once in receipt of the petition, the establishing entities must pass a resolution or ordinance establishing the district or submit the question of establishment to a vote. Either way, a TABOR election will be required to establish the mill levy.

e. After a successful election, library trustees must be appointed and an IGA is to be negotiated to address the matters discussed in I.B.2.e. above.

II. Summary of Colorado Library Law on Library District Structure, Governance and Operations.

A. Governance Options in the Library District. The establishing entities select the first “Board of Trustees” once the library district is established. Succeeding
trustees are appointed by the establishing entities following procedure established by the Library Law and the IGA.

1. The Board of Trustees is the sole, autonomous legislative body of the district, with the establishing entities retaining the power to appoint. Trustees are not in elected positions.

2. Governance concerns and operational parameters should be established in the IGA at the time the library district’s first board of trustees is appointed and prior to the district obtaining its own mill levy funding.

3. A district board of trustees is guaranteed to receive its property tax revenues and may spend the resulting property tax revenues to further library purposes. The establishing entities may not place restrictions on the library’s use of funds, so long as the funds are being used legally and in the interest of the library. However, the establishing entities can ensure the continuation of services and some control through the IGA.

B. The Library District is an Independent Single Purpose Government. Structurally, the library district is a quasi-municipal corporation and political subdivision of the State and not a branch, department or service of the establishing entities. It obtains its own financial support through an ad valorem property tax levy authorized and approved in a TABOR Election.

1. Its “Legal Service Area” means the geographic area for which a public library has been established to offer services and from which, or on behalf of which, the library derives income. This includes areas served pursuant to contract. C.R.S. § 24-90-103(4.5). The “Legal Service Area” is the same as its corporate boundary. The size of the legal service area is at the discretion of the establishing entities if established by resolution or ordinance. The petition will identify the legal service area if established by petition.

2. Library districts are funded by a mill levy approved by the electors within its boundary. As an autonomous political subdivision of the state it will have complete control over legal spending of its tax revenues. However, some control and mutual financial benefits can be determined and fixed in the IGA.

3. The library district will be subject to TABOR to the same degree as the City and County.

C. Operational Governance. The powers, duties and responsibilities of library district governing boards and their relationship to city and county governments is set forth in the Colorado Revised Statutes.
1. C.R.S. § 24-90-109 delegates the power and establishes the duties of a library Board of Trustees along with any implied powers derived from the express powers below described below:

   a. To adopt bylaws, rules, and regulations for its own guidance and policies for the governance of the library as it deems expedient;

   b. Have custody of all property of the library, including rooms or buildings constructed, leased, or set apart therefore;

   c. Employ a director and, upon the director’s recommendation, employ such other employees as may be necessary;

   d. Submit an annual budget to legis. body and certify a mill levy;

   e. Have exclusive control and spending authority over the disbursement of library funds;

   f. Accept such gifts of money or property for library purposes, as it deems expedient;

   g. Hold and acquire land by gift, lease, or purchase for library purposes;

   h. Lease, purchase, or erect any appropriate building for library purposes and acquire such other property as needed;

   i. Sell, assign, transfer or convey real or personal property which may not be needed in the foreseeable future;

   j. Borrow funds for library purposes;

   k. Authorize the bonding of persons entrusted with library funds;

   l. Conduct annual audit of district financial statements;

   m. Adopt a policy for the purchase of library materials and equipment on the recommendation of the library director;

   n. Hold title to property given to or for the use or benefit of the library;

   o. Have the authority to enter into contracts;
p. Maintain a current, accurate map of the legal service area and provide for it to be on file with the State Library;

q. Receive copies of all school district collective bargaining agreements submitted and create a repository of same available to the public for inspection;

r. Make an annual report to the establishing entities and provide response to State Library survey;

s. The Board may allow nonresidents to use library materials and equipment;

t. The Board may request that the establishing entities authorize an election be held to alter the maximum tax levied to support the district. The City shall cause the vote to be held.

III. Colorado Case Studies. We have formed library districts in rural communities and the metropolitan area. The variety of issues and processes varies widely and is very difficult to generalize because much of the process depends on the separate needs or desires of the parties involved.

A. We have utilized both the petition and the resolution/ordinance process. The petition process is adequate for smaller rural communities; but, we have always used the resolution/ordinance process for larger library districts. Arapahoe Library District, Rangeview Library District (Anythink), and Poudre River Regional Library District utilized this process to move from county and city service to the district model. Under the terms of IGAs, Rangeview (Anythink) separated from Adams County within approximately 5 years; however, Poudre River has maintained a close relationship under its IGA with Fort Collins since 2005. Both of these arrangements have been beneficial to the parties involved.

B. You have specifically enquired as to options for distribution of assets under C.R.S. § 24-90-107 “library’s real and personal property, personnel, and the provision of administrative services during the transition.” The distribution of assets is the subject of negotiation.

1. Almost all of the establishing entities have conveyed real and personal property to the library district without charge. However, some buildings have been leased by the district and some have had title restrictions that require payment if the property ceases to be used to provide library services, or upon sale. The statutes do not preclude the parties from negotiating a long-term purchase option.
2. As for personnel, we have discussed leasing city employees but did not implement that procedure. In the most efficient process we have used, the library district made employment offers to all city/county library employees that offered the same benefits and salary, accumulated leave and vacation pay. Simultaneously, the city/county issued notices of termination.

3. As for administration, Poudre River continues to utilize and pay the city for many administrative and contracting services, janitorial and maintenance, personnel (until very recently), financial services etc. Rangeview (Anythink) and Poudre River continue to contribute to the county and city retirement programs despite the fact that they are independent in many other ways.

4. In short, all of the transition items have been worked out in other districts and, because of the mutual benefits available, some “transitions” continue after more than thirteen years.

We are looking forward to discussing these matters with you and we have reserved the evening of November 27 to engage directly with the Commissioners and Council. In the meantime, please let me know what additional information you would like.

Sincerely,

SETER & VANDER WALL, P.C.

Kim J. Seter

Cc: Commissioner Teter
Commissioner Koenig
E. Dauer, Esq.
M. Barrasso
MEMORANDUM

TO: City of Boulder, City of Boulder Colorado Library Commission, David Farnan


DATE: October 15, 2018

RE: Response to Questions Regarding Report on Library District Formation and Operations

You requested a report on the formation and operations of library district under the Colorado Library Law, C.R.S. § 24-90-101, et. seq. with responses to specific questions. We provided responsive correspondence on October 5, 2018. The following is a list of questions generated from your review of the correspondence followed by our responses in italics.

1. If a library district is initiated by a citizen petition, does the Board of County commissioners have any discretion about whether to place it on the ballot or not? Could they choose to place only the formation question and not the tax question on the ballot?

   C.R.S. § 24-90-107 (3)(d) provides that upon receipt of the petition, the legislative body or bodies shall either establish the District through an ordinance/resolution or submit the question of the establishment of the District to a vote at the earliest election permitted by law. Upon adoption of the resolution/ordinance or the successful formation election, the law requires that the establishing entities provide for the district’s financial support by January 1 of the year following the election or the passage of the ordinance/resolution.

   Accordingly, (1) the county commissioners must certify the formation question upon receipt of a proper petition; and, (2) the establishing entities must then provide financial support by some means, typically this would be accomplished by a tax question rather than through the entities’ budgets.

2. I.A.2.a.: With regard to the establishing entity and board of trustees. Is there a difference if it is formed by city/county or petition?

   There is no difference in the appointment process or composition of the Board of Trustees, whether it is formed the city/county or by petition. A petition, like the establishing resolution, must identify the establishing entities. The establishing entity or entities then have the duty and authority to appoint the Board of Trustees.
3. Can a combination of city council and county commissioners be established as the board of trustees?

A combination of the city council and county commissioners cannot be established ex officio as the board of trustees.

There is nothing in the Library Law or Colorado law that prohibits an individual resident of the district who is also a commissioner or city council member from being appointed to the library board. However, the appointment process established in the Library Law would not allow the establishing entities to provide that any trustee position is filled by a commissioner or city council member by virtue of holding (ex officio) that county or city office.

4. B.1 Boundaries. What section of Colorado library law spells this out? Or is there a specific case wherein a boundary has been drawn that did not overlap a county line, or school district or some other previously established boundary?

The Library Law utilizes the phrase “legal service area” instead of legal boundary. Petitioners or establishing entities may draw any legal service area for the library district they deem appropriate.

Statutes define the library’s legal service area as the geographic area for which a public library has been established to offer services and from which, or on behalf of which, the library derives income. The area in which the district will offer services and the area needed to derive sufficient income are the considerations that should determine the library district boundary.

Once an appropriate boundary is determined, we recommend looking at established entity boundaries to avoid the cost of mapping and the time needed to acquire population, voter and other data. There are many small governments, special districts and administrative areas already overlapping one another in Colorado. Each has established boundaries for which a great deal of information already exists. The boundaries of these entities can be pieced together to approximate the boundary that you deem appropriate for the library district.

Library districts have been formed that do not overlap another entity or that overlap portions of many different entities. The Arapahoe Library District boundaries contain a portion of Adams County and the City and County of Denver, and exclude portions of the City of Aurora. Poudre River Regional Library District generally overlaps the boundaries of a fire district but excludes portions of the fire district that are in the Estes Valley Library District. Rangeview Library District includes all of Adams County but excludes portions of Westminster that are in the county. There are many other examples.
5. Case studies: Are there libraries in Colorado that have determined a district was not in their best interest and maintained as a municipal library?

The Jefferson County Public Library explored the possibility of forming a district, but the board of county commissioners chose to keep the library as part of the county. There have been enquiries from other entities but JCPL was the only entity we are aware of that formally determined not to convert the county library to a district. We can discuss that with you at our meeting on October 18th if you wish.

6. 2.A. Since the county and city would appoint the board members. Can they appoint a council member or county commissioner to be on the board? [In accounting rules interlocking boards or commissions is one of the main determinates of if a governmental organization must be reported on as a component unit and is included in the CAFR of the appointing organizations. The reason I mention it is accounting requirements are separate from legal requirement. It has been several years since I have been involved in this type of discussion, so I do not know for sure that my concerns are correct (that is, the accounting requirements have changed). It would be best to have this researched and determined up front with the independent auditors of the city and county.]

See response to No. 3 as to the appointment of city council members and commissioners. The library district is a quasi-municipal corporation and political subdivision of the state of Colorado. It is not a component unit of the establishing entity or entities.

7. II B. 3 states TABOR is the same as the city and county. I would suggest we spend more time on this and make sure there are no TABOR issues. The city is home rule and the county is statutory. On the revenue side voters have de-bruced property tax for both entities so it should not be a concern - just something we need to be aware of and follow up to make sure there are not unknown issues due to differences between the two governments.

The district is subject to TABOR as an autonomous government and subdivision of the state. The district must submit its own ballot question to De-Bruce its own revenues. Under most conditions, the district will not assume the voter authorizations of its establishing entities and its mill levy, revenue and TABOR concerns have no affect on those of the city or county.

8. II C 1 q - Receive copies of all school district collective bargaining ...... Not sure why they would need to receive school district collective bargaining contracts. Should it be city collective bargaining agreement?

C.R.S. § 24-90-109 lists the powers and duties of the Board of Trustees. Specifically, C.R.S. § 24-90-109 (1)(q) provides that the Trustees shall “receive the true and correct copies of all school district collective bargaining agreements submitted pursuant to the “Colorado School Collective Bargaining Agreement Sunshine Act”, Section 22-32-109.4, C.R.S., and create an electronic or physical repository for all of said current
collective bargaining agreements at the library that is available to the public for inspection during regular business hours in a convenient and identified location.”

9. Case studies: are you aware of any Colorado libraries that transitioned from Municipal to District wherein a sizable portion of the employees were members of a municipal employees’ union?

No. This would simply be another organization to consult during the preparation of the Intergovernmental Agreement.

10. Timing of starting up a district: Is this January 1 following a successful election to either establish a district or to fund a district (that has already been established by resolution)?

When formed by petition, January 1 following the election is the deadline to fund a district after a successful formation election. See C.R.S. § 24-90-107(3)(g). This is easily accomplished because a mill levy question would be included in the November election.

When forming by resolution or ordinance, the legislative bodies shall establish the public library and provide for its financial support beginning on or before January 1 of the year following the adoption of the resolution or ordinance or, if any amount of tax levy not previously established by resolution or ordinance nor previously approved by the electors is to provide the financial support, following elector approval of that levy. C.R.S.§ 24-90-107 (2)(d).

Therefore, there is not a deadline in the statute to hold a TABOR election to set the mill levy. However, the law seems to imply that establishment and funding should be accomplished within a reasonable timeline, where possible. We have interpreted this to mean that an establishing entity may “provide for its financial support” by certifying a mill levy election for the library district.

11. If a petition is submitted to the County Commissioners, and they decide to create a district by resolution, is there a deadline for the Commissioners to take action in either adopting the resolution or putting the question on the ballot?

After submittal of a petition, the deadline to place the question of district formation on the ballot is the date of the next biennial general election or the first Tuesday in November of odd years, whichever is earliest. C.R.S.§ 24-90-(d)(II). In the present case, November 5, 2019.

It is unclear whether the above deadline would apply to an election setting the mill levy, but, when reading the statute as a whole, it suggests that the establishment of the district and the mill levy should be accomplished forthwith. Further, we would advise against holding two separate elections (formation and funding) based upon the cost of holding two separate elections and the problems created if one question passes but the other does not.
12. It's clear from the memo that once a district is created by resolution, there is no firm deadline to set an election for funding. If the County and City agree to establish a district by resolution but delay action to put funding on the ballot do petitioners have any recourse?

This is a correct observation. See question 10 for further clarification. The district board can request a mill levy election. We have addressed a reluctant board of commissioners in the past and it was determined that the certification of the mill levy question is a ministerial act that must be performed by the commissioners. It is not within the board’s discretion.

13. Do the establishing entities have any say in future funding for the library district once it is established and successfully funded? See memo II.C.1.t which seems to suggest that approval from the City is needed for "alternations" to the tax levied. (Page 7)

II.C.1.t references C.R.S. 24-90-109(4). The Board of Trustees of a district have the authority to request of the BOCC that an election be held to alter the maximum tax levied to support the district, in which case, the BOCC shall cause the vote to be held.

The BOCC action is a ministerial act that does not permit the BOCC to exercise discretion whether to place a mill levy increase question on the ballot. See also 24-90-112(1)(b)(III).

14. We were concerned by I.A.1.a. saying that the BPL is “governed by a Board (advisory in Boulder)…” and we noticed that the authority of a Library Board per CRS is very different than what is described in charter as the authority of the Library Commission. Some clarity around CRS vs. the city’s charter (and if charter changes would be required) would be helpful and also consider modifying the language in the memo – the City Council functions more like the Board (per CRS).

We noted some discrepancy but were not engaged to address such concerns. We will obtain a copy of the charter and other documents establishing the municipal library and can address these concerns in the future.

15. Regarding the process for forming a district by ordinance/resolution or petition, it would be helpful to have timelines developed. What happens if multiple governmental units need to agree - city and county - and deadlines aren’t met and there isn’t mutual agreement to extend the deadlines.

We will prepare a draft timeline for distribution at the meeting on October 18th for discussion. These concerns should not sidetrack the effort at this time.
In one instance we engaged in a petition process while negotiating the ordinance/resolution and IGA in order to provide an incentive and demonstrate a political will to timely complete the necessary steps.

16. If initiated by petition, the only funding mechanism is the mill levy? Is there no obligation by any governmental unit to apply/dedicate other assets?

The primary funding mechanism is the mill levy. The District may also receive specific ownership taxes, apply for grants etc. The statutes also provide that a “dedicated mill levy” of the establishing entity[ies] can be transferred to the library district. I have legal concerns about this process but it is provided for in the statutes.

17. If formed via a petition - is the County compelled to be the "governmental unit establishing the library district"? Does the city have the choice whether to participate or not?

The petition is required to identify the governmental unit(s) establishing the library district. C.R.S.§ 24-90-107(3)(a). The Petition would be addressed to the BOCC, but the governmental units establishing the district would be limited to those named in the petition. The city could choose to participate if not named.

18. Can they provide more detail on how boundaries are established when formed by resolution/ordinance or petition? Who can participate in influencing those boundaries?

Please see response to No. 4. The petition promoters or the establishing entities would participate in the process. They could allow for participation by anyone they choose.

19. It appears if there are multiple governmental units establishing the library district that most of the details are worked out through the IGA – can we have more details around this process, who typically participates in the negotiations, how long it has taken to come to agreement?

This observation is correct. The negotiation of the IGA will essentially determine whether and how the district formation will go forward. The participating entities here will be the Library Commission, City Council and governing body of any other establishing entity. Once all of the issues that need to be addressed are determined, it has been relatively easy to obtain consensus in the past. We have always taken the lead in the process incorporating all of the establishing entities. This will be a 6-7 month process.

20. We agree with Bob’s comment that we need to better understand TABOR implications and whether a district can “de-bruce” as the city has.

TABOR applies to Districts in the same manner as the City. The proposed District may “De-Bruce” upon the passage of an election question authorizing same. We would likely draft the initial debt authorization question to include the language to “De-Bruce.”
21. In II.B.2. it states that “…some control and mutual benefits can be determined and fixed in the IGA.” Are there examples of cases where control over mutual financial benefits are shared?

_We are not certain what “mutual financial benefits” might mean; however, several of our libraries obtained their own mill levy which then reduced the burden on the city/county budget. In addition, some districts pay the city/county for services like janitorial, building maintenance, personnel, accounting, procurement etc. Each of these arrangements was negotiated with knowledge of the cost of obtaining the services from other sources and was deemed beneficial to all parties. Some of these arrangements were temporary and in others they have endured for 15-20 years, so far._

22. Do you have sample copies of any of the IGAs mentioned in the memo that you could share with us?

_Yes. We will bring copies with us to the meeting on the 18th and can walk through them with you if there is no objection from the clients involved._

23. I.A.1.b. refers to 24-90-109(2)(a) and I couldn’t find a (2)(a) in that section of CRS.

_The correct citation is C.R.S. § 24-90-108(2)(a)._  

24. I.A.2. refers to 24-90-104(6) and I couldn’t find a (6) in that section of CRS.

_The correct citation is C.R.S. § 24-90-103(6)._