



## Legislation Text

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**TO:** Mayor and Members of City Council

**THRU:** Jay Reinstein, Assistant City Manager

**FROM:** David Nash, AICP, - Senior Planner  
Gerald Newton, AICP, - Director, Development Services Department

**DATE:** October 1, 2018

**RE:**  
Update on MSD Options for Concentrated Retail Areas - Target For Action

**COUNCIL DISTRICT(S):**  
9 & 7

**Relationship To Strategic Plan:**

High Quality Built Environment  
Desirable Place to Live, Work, and Recreate

**Executive Summary:**

This report provides the City Council with data and services for a proposed Municipal Service District (MSD) in the proximity of Cross Creek Mall and concentrated retail areas. The target area consists of 286 parcels along Skibo Road, N. McPherson Church Road, Yadkin Road, Morganton Road and Lake Valley Drive.

The issue for the City Council to now determine is if this new FY 2019 Strategic Plan, Target for Action (TFA) should continue. The TFA states, "Develop Municipal Service District options for concentrated retail areas." This activity is complete. The decision to stop or proceed rests with the City Council. Information of work accomplished this first quarter of the fiscal year follows.

**Background:**

Definition - A Municipal Service District is a defined geographic area within a city in which the city council levies an additional property tax. The additional tax is used to provide extra services or projects that benefit the properties in the district. Appendix A provides information on the processes for establishing an MSD in North Carolina.

Request from City Council -The City Council has expressed an interest in examining options for a new MSD in an area of concentrated retail as one of the new Targets for Action in FY19. Staff efforts

so far have focused on the establishment of an “urban area” MSD in the Cross Creek Mall area and generating potential projects within that area that are at a higher level than other parts of the city.

### **Overview of Six Tasks**

Six tasks were established to complete the work. Any issue with any task became a decision point to continue to stop the project. The first three items, shown and detailed below, were completed. Task 4 is now the in front of the city council for a decision.

**Task 1:** Determine if the City is allowed to use and define an “urban area” type of MSD.

**Task 2:** Determine if an area around Cross Creek Mall meets the criteria for designation as an “urban area” MSD.

**Task 3:** Evaluate services currently being provided in the proposed district and determine if the district is in need of the services listed in G.S. 160A-536 to a demonstrably greater extent than the remainder of the city.

**Task 4:** Provide update to City Council and seek consensus from City Council on whether to proceed.

**Task 5:** Prepare report.

**Task 6:** City Council to hold a public hearing and consider adoption of an ordinance creating the new MSD.

### **Tasks**

**Task 1: Determine if the City is allowed to use and define an “urban area” type of MSD.**

Most MSDs established in cities within North Carolina have done so primarily in downtown areas, and are often known as “Business Improvement Districts.” According to materials prepared by the City of Charlotte in 1999, the Charlotte City Council asked the General Assembly to amend the MSD law to allow cities to establish an MSD for “urban area revitalization projects.” Based on this new type of MSD, Charlotte established the South End urban area MSD in May of 2000.

According to an article written by Karen Millonzi of the UNC School of Government, “A Guide to Business Improvement Districts in North Carolina,” in 2009, the General Assembly expanded this urban area authority to apply to all municipalities. Prior to the change in 2009, the urban area MSD applied only to a city whose population exceeds 150,000.

Based on this information from Charlotte and the UNC School of Government, Staff believes that the City of Fayetteville is allowed to use and define an “urban area” type of MSD.

**Task 2: Determine if an area around Cross Creek Mall meets the criteria for designation as an “urban area” MSD.**

G.S.160A-536(c) sets forth the criteria for designating an “urban area” MSD. To determine if an area around Cross Creek Mall meets the criteria for designation as an “urban area,” Staff utilized tax

parcel data that could be included in the proposed “urban area.” As of this date, staff has selected 286 tax parcels for the study. These parcels are shown in Maps 1-3 (see attachments).

As shown on the attached maps, the proposed area is in the proximity of the Cross Creek Mall, but extends northward along Skibo Road to the Wal-Mart/Sam’s Club area, and it extends southward along Skibo Road to the Target/Home Depot area. The area extends eastward to include Westwood Shopping Center and nonresidential properties along the eastern side of N. McPherson Church Road. The area extends westward to include the Marketfair area, site of Gander Mountain and the AMC Market Fair 15 Theater.

The maps also illustrates the three parcels which make up the current Lake Valley Drive MSD (with purple lines).

Statutory Criteria - G.S.160A-536(c) sets forth the criteria for designating an “urban area.” An “urban area” means an area that (i) is located within a city **and** (ii) meets **one or more of** four conditions.

Regarding part (i) of the criteria, that the area is located within a city: the area is positioned within a city. All parcels selected for the study are in Fayetteville. One tract, located behind Bullard Furniture Company, is not in the municipality’s limit, but this parcel is not included in the lots selected for the study.

Regarding part (ii) of the criteria for being an “urban area,” that the area meet one or more of four conditions: as shown below, the area meets two of the four (4) conditions.

- (1) It is the central business district of the city. **Does not meet condition.**
- (2) It consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses. **Meets condition.**
- (3) It is located in or along a major transportation corridor and does not include any residential parcels (that are not, at their closest point, within 150 feet of the major transportation corridor right-of-way) or non-residentially zoned parcels (that are not, at their closest point, within 1,500 feet of the major transportation corridor right-of-way). The area is located along several major transportation corridors, such as Skibo Road, Morganton Road, Cliffdale Road, Glensford Drive, the All-American Freeway, McPherson Church Road/Yadkin Road, Lake Valley Drive, and Sycamore Dairy Road. It is assumed that any residential parcels or non-residentially zoned parcels meet the distance requirements in the statute. **Meets condition**
- (4) It has as its center and focus a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and healthcare facilities, or governmental facilities. **Does not meet this condition.**

Since the area meets part (i) and part (ii) of the criteria, Staff believes the area meets the criteria for designation as an “urban area,” and assumes that this information will need to be shown in the report.

**Task 3: Evaluate services currently being provided in the proposed district and determine if the district is in need of the services listed in G.S. 160A-536 to a demonstrably greater extent than the remainder of the city.**

This is the finding that must be made in order for City Council to define a new MSD of any type.

According to G.S.160A-536(c), the term “urban area revitalization projects” includes “the provision within an urban area of any service or facility that may be provided in a downtown area as a downtown revitalization project...” So, we must go to the definition of “downtown revitalization projects” as specified in 160A-536(b).

G.S. 160A-536(b) states, “downtown revitalization projects” are “improvements, services, functions, promotions, and developmental activities intended to further the public health, safety, welfare, convenience, and economic well-being of the central city or downtown area.” This section goes on to list numerous examples of “downtown revitalization projects.” Examples include:

- (1) Improvements to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights-of-way and easements.
- (2) Construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and off-street.
- (3) Construction of public buildings, restrooms, docks, visitor centers, and tourism facilities.
- (4) Improvements to relieve traffic congestion in the central city and improve pedestrian and vehicular access to it.
- (5) Improvements to reduce the incidence of crime in the central city.
- (6) Providing city services or functions in addition to or to a greater extent than those provided or maintained for the entire city.
- (7) Sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area.

The challenge has been evaluating whether the proposed Cross Creek Mall MSD is in need of one or more of the services, facilities, or functions listed in G.S. 160A-536 “to a demonstrably greater extent than the remainder of the city.”

Here is a summary of services evaluated so far:

**Improvements to intersections and sidewalks** - The recently adopted Fayetteville Comprehensive Pedestrian Plan provides a review of pedestrian needs in the City. The Plan cited three examples of high-profile areas in the City that are emblematic of the kinds of problems that are found across the City. One of the three (3) examples was the Cross Creek Mall area.

According to the Pedestrian Plan, “The Cross Creek area is a large shopping center on Skibo Road, packed with many retail stores and restaurants. Walking in this area is extremely difficult due to the lack of facilities and the extremely high amounts of traffic. A majority of the intersections have dual turning lanes as well as through lanes. Traffic conflicts and minimal crossing assistance often contribute to accidents, which are frequent here.”....” Many sidewalks are present along the surrounding roadways, but facilities are lacking at intersections and smaller connecting roads that

can provide alternate access from larger corridors like Skibo Road and Morganton Road” (Pedestrian Plan, Draft, April 2018, page 21).

The Pedestrian Plan identifies intersection improvements and sidewalks needed in the designated area. These improvements are classified in terms of priority. Short-term projects are those which should be built first. Mid-term projects are those which should be built next, and long-term projects are those, which should be built last. Map 4 illustrates the intersection improvements and sidewalks which are recommended for the Cross Creek Mall area.

**Improvements to Relieve Traffic Congestion** - The Cross Creek Mall area has a lot of traffic congestion. Some of the highest traffic counts in the City occurs in the area. High traffic volumes are often associated with high volumes of traffic accidents. See the attached Map of NCDOT Bicyclist and Pedestrian Crashes.

The North Carolina Department of Transportation (NCDOT) maintains an accident database for intersections. The Fayetteville Area Metropolitan Planning Organization (FAMPO) staff has extracted accident reports for intersections throughout the City for the period June 1, 2016 through May 31, 2018. According to the FAMPO report, there were a total of 5,951 accidents at intersections in the city of Fayetteville during the study period. Out of these, 953 occurred at intersections in the Cross Creek Mall area. This represented 16-percent of all accidents in the city.

Out of the top 30 accident intersections in the City between June 1, 2016 and May 31, 2018, nine (9) were located in the Cross Creek Mall area. The intersection of Morganton Road and Skibo Road ranked #1 on the list, with a total of 109 accidents. Other intersections in the Cross Creek Mall area also ranked high in terms of accidents. For example, the intersection of Cliffdale Road and Skibo Road ranked #3, with 87 accidents. The intersection of All-American and Skibo Road ranked #6, with 70 accidents.

This accident data suggests that improvements to relieve traffic congestion are needed in the area.

**Transit Services** - As shown on two attached maps dealing with transit service, Cross Creek Mall is currently served by nine (9) Fayetteville Area System of Transit (FAST) routes. There is a major transfer hub in the parking lot of the mall near the food court and the eastern entrance to JC Penney. Years ago, FAST tried to offer a shuttle bus service during the Thanksgiving to Christmas season. However, it was reported that few people used the service. Due to the lack of patrons, it was not tried again.

**Stormwater Services** - The attached Map of Natural Features shows the watershed boundaries in the Cross Creek Mall area. The staff of the City’s Stormwater Division reports that the subareas designated for the proposed Cross Creek Mall MSD are covered by large sections of impervious surfaces. Many of the subareas were developed prior to the City’s Stormwater Ordinance and lack onsite quality treatment and quantity retention. Some of the more recent developments, such as the Freedom Town Center, have been held to more stringent stormwater control measures to not adversely affect downstream areas with known flooding areas (i.e. Chestnutt Hills). Because of the high density of impervious area, land in the proposed MSD generates a relatively high quantity of stormwater, disproportionate to most areas of the City. Additionally, because of the high concentration of parking areas, it is suspected that this area contributes a higher than average level of pollutants (oil, metals, trash, etc.) than an equally sized area in other parts of the City.

Within the area, there are multiple privately maintained Stormwater Control Measures (SCMs) as a result of development or redevelopment since the implementation of the City's Stormwater Ordinance. SCMs require inspections by City staff and often times are not properly maintained by owners. Inspections place an additional burden on the City stormwater program and lack of maintenance results in quality and quantity problems downstream.

Treating the proposed MSD as a unique area for stormwater could allow for opportunities such as private/public retro-fits to account for future economic development, reducing costs to future business owners.

Within the proposed MSD, there are only four (4) roads maintained by the City of Fayetteville: Sycamore Dairy Road, McPherson Church Road, Red Tip Road, and Campground Road. The remaining thoroughfares are NCDOT maintained roads. If there were to be improvements to existing City maintained stormwater infrastructure, it would require a partnership and approval with stakeholders at the NCDOT since many systems drain into the State's infrastructure.

The main drawback of using MSD funds for stormwater service enhancements is that properties with impervious surfaces are already being assessed the stormwater fee. It is likely that owners of these properties already paying a stormwater fee would object to the additional tax imposed by the establishment of an MSD.

**Improvements to Reduce the Incidence of Crime and Accidents**-Data on crimes and accidents can be used to assess the need for improvements in Police services in the MSD Study Area. The staff of the Fayetteville Police Department has analyzed the incidence of certain crimes in the proposed MSD Study Area for the past five years (2014 through mid-August of 2018). The staff has also analyzed the accidents responded to by Police officers during the same time period. (See the attached Report on Crimes and Accidents from 2014 to 2018.)

For each year and for each type of crime (or accident), the report provides the number of incidents City Wide, the number of incidents in the MSD Study Area, and the percentage of incidents City Wide occurring in the Study Area. It can be assumed that the higher the percentage, the more concentrated an incident is in the MSD Study Area. It should be noted that the proposed MSD Study Area makes up about 1.79% of the area of the City (without Fort Bragg).

**Crime Data**-The attached report provides data on two broad categories: Property Crimes and Violent Crimes. In terms of Property Crimes, in 2018, the two crime types with the highest percentages in the MSD Study Area are: Stolen Property (with 26.80% of all crimes in the City), and Shoplifting (with 21.82% of all crimes in the City). For both of these crime types, the 2018 percentages are less than in previous years. It should be noted that these two types of crimes tend to occur in commercial areas.

In terms of Violent Crimes, in 2018, the two crime types with the highest percentages in the MSD Study Area are: Robbery (with 13.55% of all crimes in the City), and Drugs (with 6.48% of all crimes in the City). For Robberies, the 2018 percentage is higher than in the other four years. For Drugs, the 2018 percentage is lower than in the previous two years.

**Accident Data**-The attached report from the Police Department also provides data on the number and percentage of accidents responded to by Police officers. For 2018, 14.16% of accidents City

Wide occurred in the proposed MSD Study Area. This percentage is slightly higher than in the previous four years.

**Task 4: Provide update to City Council and seek consensus from City Council on whether to proceed.**

This is where we are now in the process. As shown in the Option section, the decision to proceed with the City Council initiated TFA is now up to the City Council. The work session offers the opportunity for the council to think through if this is an action of the January developed Strategic Plan to move forward on to the creation of a municipal service district or to stop the effort as the examination of an MSD is complete. Any further action involves the next two actions.

**Task 5: Prepare report.**

If the City Council expresses an interest in proceeding with this study, Staff will need to prepare a report as called for in G.S. 160A-537(b). This report will need to be available for public inspection in the office of the city clerk four weeks prior to the public hearing. It will need to include a map of the proposed district, a statement showing that the proposed district meets the standards set out in 160A-537(a), and a plan for providing in the district one or more of the services listed in G.S. 160A-536. This plan will need to include a funding plan to implement. It is assumed the report will also need to include a statement showing that the proposed area meets the criteria for an “urban area” outlined in G.S. 160A-536(c).

Note: The attached Tax Value Summary Table shows that the total taxable value of the 286 parcels selected so far is \$747,359,733. This information should be useful in preparing the revenue forecast for the funding plan.

**Task 6: City Council to hold public hearing and consider adoption of ordinance creating the new MSD.**

G.S. 160A-537(f) states that no ordinance defining a service district as provided in this section shall be finally adopted until it has been passed at two meetings of the city council by majority vote of the voting members present. G.S. 160A-537(d) states that the ordinance shall take effect at the beginning of a fiscal year commencing after its passage.

**Issues/Analysis:**

Assuming that City Council wants to proceed with this project, several issues arise:

1. Which services does City Council wish to enhance in the proposed MSD area?
2. How much will service enhancements cost?
3. How much revenue can be raised, based on the amount of tax base in the area?

Regarding the first issue of which services should be enhanced, this analysis will assume that City Council wishes to focus on improvements to intersections and sidewalks. The Draft Fayetteville Comprehensive Pedestrian Plan made numerous recommendations for projects in the proposed MSD area. (See Map 4.)

Regarding the second issue of costs, the Draft Plan provided cost estimates for sidewalks but not for intersection improvements. The Draft Plan recommended six short-term sidewalk projects that are located either completely or partially in the proposed MSD area. However, one of these (the project between Chason Ridge Drive and Raeford Road) has already been built. The costs of the remaining five projects is \$352,056. The Draft Plan recommends three mid-term sidewalk projects that are located either completely or partially in the proposed MSD area. The costs of these three projects is \$752,928. The total for all eight sidewalk projects is estimated as \$1,104,984.

Even though the Draft Plan recommended 14 intersection projects in the area (1 short-term and 13 mid-term), the Draft Plan did not include any cost estimates for the intersection improvements. The Traffic Services staff believes that each will cost around \$100,000. Based on that figure, the total for all 14 intersection projects is \$1,400,000.

The grand total costs for sidewalk and intersection improvements is \$2,504,984.

Regarding the third issue of revenues, if the same tax rate in the Downtown MSD (\$.10 per \$100 value) were applied to the tax value of the parcels in the proposed MSD (\$747,359,733), it is projected that revenue would be \$747,360 per year. This would be enough money to complete the sidewalk and intersection improvements in 3.35 years.

### **Budget Impact:**

It is assumed that the creation of an MSD in the Cross Creek Mall area would not have an impact on the regular City budget. Costs for providing services and revenues collected would be contained in a separate fund.

### **Options:**

The overall decision in front of the City Council to determine is if the above information of potential activities, costs, and additional taxing within an MSD is what the council wishes to pursue. The options, therefore, are continue, defer, or stop the effort.

1. City Council decides to proceed with creation of an MSD in the Cross Creek Mall area.
2. City Council decides to not proceed with the creation of an MSD in the Cross Creek Mall area.
3. City Council decides to defer action on the creation of an MSD in the Cross Creek Mall area.

### **Recommended Action:**

The report is an update and now a decision point for the City Council. No further staff analysis will be made until the council determines the course of action to be followed. As one of the city's new FY 2019 Targets for Action (TFA), the planning division has completed enough information for the council to determine if, collectively, there is a desire to continue or if the developing of options is now complete for the TFA.

While there are certain benefits to be derived by continuing the process of preparing a report, the City Council should determine if this effort of continued staff time will lead to the results the council

envisioned for the area being generally considered for the new MSD.

If the City Council decided on Option 1 (proceed with creation of an MSD in the Cross Creek Mall area) then Development Service's Planning Division will continue in the work as required by statute. This does not mean that an MSD would be created at this time. This could also lead to the advertising and holding of a public hearing. Eventually this leads to City Council's consideration of adopting an ordinance creating the new MSD.

If items two or three are determined by the City Council then the work that has been completed will be available as base information for a later effort and action of the City Council.

As this is a City Council directive to "Develop Municipal Service District Options for concentrated retail areas," any of the three actions can be viewed by the City Council as completing the Target for Action of the FY 2019 Strategic Plan.

**Attachments:**

Attachment A-Processes for Establishing an MSD

Attachment B-Information About Three Maps

Map 1-Parcels Selected for the MSD Study

Map 2-Subareas Designated for the MSD Study

Map 3-Land Use Categories Assigned for the MSD Study

Attachment C-Information About Tax Value Data

Summary of Tax Value Data

Map 4-Pedestrian Plan Recommendations

Map of NCDOT Bicyclist and Pedestrian Crashes

Map of FAST System Routes

Map of Transit Routes at Cross Creek Mall

Map of Natural Features in the Cross Creek Mall Area-With Watershed Boundaries

Report on Crimes and Accidents from 2014 to 2018