DISTRICT COURT, JEFFERSON COUNTY, COLORADO First Judicial District Court Jefferson Combined Court 100 Jefferson County Parkway Golden, CO 80401-6002	DATE FILED: September 8, 2017 3:34 PM CASE NUMBER: 2017CV30542
Plaintiff: LONGS PEAK METROPOLITAN DISTRICT, **v.** **Defendant:** CITY OF WHEAT RIDGE, and **Potentially Interested Parties:** WHEAT RIDGE URBAN RENEWAL AUTHORITY and CYNTHIA H. COFFMAN.	**▲COURT USE ONLY▲** Case No. 17CV30542 Division: 8 Courtroom: 4D

ORDER RE: PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT

THIS MATTER comes before the Court on the Plaintiff Longs Peak Metropolitan District's Motion for Summary Judgment, filed on June 26, 2017, and the Defendant City of Wheat Ridge's Cross-Motion for Summary Judgment, filed on July 17, 2017. Both the Motion and the Cross-Motion have been fully briefed. Having reviewed the parties' briefs, the Court's file, and the applicable law, the Court now FINDS and ORDERS as follows:

FACTUAL BACKGROUND

The material facts in this case are undisputed. On November 3, 2015, the voters of the City of Wheat Ridge (the "City" or "Defendant") were presented with Ballot Question 300 ("BQ300"), which would amend the City's charter to include approval procedures for tax increment financing ("TIF"), revenue sharing or cost sharing arrangements. Compl. ¶ 27; City Answer ¶ 27. BQ300 sought approval for the following amendment to the Wheat Ridge City Charter:

> Any action by an agency, agent, authority, commission, committee, City Council, department, employee or official of the City of Wheat Ridge, approving or changing a sales or property tax increment financing (TIF), revenue sharing or cost sharing arrangement pursuant to Part 1 of the Colorado Urban Renewal Law, must be ratified by the Wheat Ridge City Council via a vote on a formal agenda item, at a regularly scheduled business meeting, that is advertised as a hearing. If the value of the said sales or property tax increment financing (TIF), revenue sharing or cost sharing exceeds $2.5 million, the City Council action of approval must be ratified by the registered electors of the City of Wheat Ridge at a special or regular election. The base amount for voter approval of any sales or property tax increment financing (TIF) will be any financing exceeding $2.5 million. To account for inflation and/or increased construction costs, every third year after March 1, 2015, the base amount will be increased by 5%. Effective Date: This amendment will take effect and apply to all actions undertaken by an agency, agent, authority, commission, committee, City Council, department, employee or Official of the City of Wheat Ridge subsequent to March 1, 2015 and thereafter.

BQ300 was approved by a majority of Wheat Ridge voters and codified by the City in Chapter XII, Section 12.10 of the City's charter. Compl. ¶ 28; City Answer ¶ 28.

In this action, Longs Peak Metropolitan District (the "District" or "Plaintiff") brings two alternative claims for declaratory relief that challenge the validity of BQ300. Plaintiff's first claim alleges that BQ300 is invalid because it addresses, at a local level, matters of statewide concern, without a constitutional or statutory grant of power permitting such local regulation. Compl. ¶¶ 36-41. The Plaintiff's second claim asserts that BQ300 is invalid because it addresses matters of mixed statewide and local concern in a manner that is preempted by Colorado's Urban Renewal Law. See id. ¶¶ 42-55. As stated above, the District and the City filed opposing motions for summary judgment.

LEGAL STANDARD

Summary judgment is appropriate when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." C.R.C.P. 56(c); Martini v. Smith, 42 P.3d 629, 632 (Colo. 2002). A material fact is one that will affect the outcome of the case. Peterson v. Halsted, 829 P.2d 373, 375 (Colo. 1992). The nonmoving party is entitled to the benefit of all favorable inferences that may be drawn from the undisputed facts, and all doubts as to the existence of a triable issue of fact must be resolved against the moving party. Martini, 42 P.3d at 632. "The trial court may not assess

the weight of the evidence or the credibility of witnesses in determining a motion for summary judgment." Meyer v. Haskett, 251 P.3d 1287, 1290 (Colo. App. 2010).

The moving party bears the initial burden of demonstrating the absence of any genuine issue of material fact. Cont'l Airlines, Inc. v. Keenan, 731 P.2d 708, 712 (Colo. 1987). If the moving party meets its burden, the nonmoving party "must demonstrate by relevant and specific facts that a real controversy exists." Knittle v. Miller, 709 P.2d 32, 35 (Colo. App. 1985). An adverse party may not rely on allegations or denials in its pleadings, but must bring specific facts through affidavits or discovery responses showing the existence of a genuine issue for trial. Id. If the nonmoving party fails to establish a genuine issue for trial, then summary judgment may be entered in favor of the moving party, if the moving party has met its ultimate burden of persuasion. Sanderson v. Am. Family Mut. Ins. Co., 251 P.3d 1213, 1216 (Colo. App. 2010).

LEGAL ANALYSIS

1. Justiciability of the District's Claims

Standing, mootness, and ripeness are all threshold issues that affect the subject matter jurisdiction of this Court. See Ainscough v. Owens, 90 P.3d 851, 855 (Colo. 2004) (standing is a threshold issue); see also Stell v. Boulder Cnty. Dept. of Social Servs., 92 P.3d 910, 914 (Colo. 2004) (considering mootness and ripeness as threshold issues). Accordingly, the Court will first consider whether, as the City argues in its Cross-Motion, the District lacks standing or has alleged claims that are moot or unripe. Cross-Mot. ¶ 27.

a. Standing

To establish standing, a plaintiff must allege an injury-in-fact to a legally protected or cognizable interest. Bd. of Cnty. Comm'rs, La Plata Cnty. v. Bowen/Edwards Assocs., 830 P.2d 1045, 1052 (Colo. 1992). The Court must accept allegations in the Plaintiff's complaint as true for purposes of determining whether the Plaintiff has demonstrated an injury-in-fact. Ainscough, 90 P.3d at 857. "The injury-in-fact element of standing is established when the allegations of the complaint, along with any other evidence submitted on the issue of standing, establishes that the regulatory scheme threatens to cause injury to the plaintiff's present or imminent activities." Bowen/Edwards, 830 P.2d at 1053. The Plaintiff has an interest that is legally protected if it "emanates from a constitutional, statutory, or judicially created rule of law that entitles the plaintiff to some form of judicial relief." Id.

Here, the District seeks to redevelop and thereby eliminate or mitigate blight in an area of Wheat Ridge designated Clear Creek Crossing, and alleges that construction of the public infrastructure within such redevelopment will require more than $2.5 million in property tax increment financing (TIF) (as well as additional funds) to finance. Compl. ¶¶ 13-15, 23. The District and the Wheat Ridge Urban Renewal Authority ("the WRURA") previously entered into a Cooperation Agreement requiring the WRURA to remit a portion of the TIF on property located within the District back to the District in order to help finance the construction in Clear Creek Crossing. Id. ¶ 19. The District has also sought (and will continue to seek) a Redevelopment Agreement with the WRURA wherein additional property and sales tax TIF funds would provide additional financing for the construction of the public infrastructure they assert is necessary to eliminate blight in that development area. Id. ¶ 19. Because the revenue sharing under the Cooperation Agreement and the Redevelopment Agreement will each exceed $2.5 million, application of the elector ratification provision of BQ300, the District alleges, would operate to invalidate the Cooperation Agreement absent future voter approval and potentially invalidate or preclude any future Redevelopment Agreement (again absent such approval). Id. ¶¶ 31-32, 34. The District also argues that it has suffered an injury-in-fact because obtaining approval of the Redevelopment Agreement and future agreements will now require additional time, effort, and money. Cross-Mot. Resp. 17.

A legally protected interest may arise out of a contract, and the District seeks a determination that BQ300 is invalid (in whole or in part) if implementation of its requirement for voter approval would or could negate the Cooperation Agreement with the WRURA. See Ainscough, 90 P.3d at 856. The Court notes that both urban renewal authorities (such as the WRURA) and special districts (such as the District) are statutorily empowered to enter into contracts. C.R.S. § 31-25-105(1)(b); C.R.S. § 32-1-1001(1)(d)(I). As with any other contracting parties, urban renewal authorities and special districts are entitled to seek enforcement of those contracts in court. The Court finds that the District's ability to enforce the Cooperation Agreement and its future capacity to enter into additional agreements relating to the redevelopment of the Clear Creek Crossing property are both legally protected interests.

Because the purpose of declaratory judgment is to afford parties judicial relief from uncertainty and insecurity in their legal relations, the injury-in-fact element of standing is "somewhat relaxed" in declaratory judgment actions. Wainscott v. Centura Health Corp., 351

P.3d 513, 518–19 (Colo. App. 2014). Thus, a plaintiff seeking declaratory relief on the validity of a regulatory scheme need only demonstrate "that there is an existing legal controversy that can be effectively resolved by a declaratory judgment and not a mere possibility of a future legal dispute over some issue." Bowen/Edwards, 830 P.2d at 1053 (citations omitted).

In Bowen/Edwards, the Colorado Supreme Court considered whether the plaintiff had standing to challenge county land-use regulations that required county approval for the construction or installation of oil or gas facilities. Id. at 1048, 1050. Even though the plaintiff did not apply for a county permit prior to challenging the regulations, the Bowen/Edwards Court held that the plaintiff had made an adequate showing of an injury-in-fact insofar as the county's requirements would "undoubtedly force [the plaintiff] to expend additional time and money in seeking county approval of their present or imminent activities." Id. at 1053.

The District and the WRURA have already entered into a Cooperation Agreement and the District continues to seek a Redevelopment Agreement. The Cooperation Agreement is currently unenforceable and could be invalidated pursuant to the ratification provisions of BQ300, and obtaining final approval of that Agreement and any future Redevelopment Agreement will require the expenditure of additional time, effort, and money. This is clearly analogous to the situation presented in Bowen/Edwards. While the City argues that BQ300 does not require City or voter approval of the Cooperation Agreement, and may or may not require such approval of any future Redevelopment Agreement, the Court finds that this uncertainty as to the applicability of BQ300 to the Cooperation Agreement and to a potential Redevelopment Agreement underscores the need for declaratory relief in this case. Cross-Mot. 11. Simply put, the uncertainty presents an "existing legal controversy that can be effectively resolved by a declaratory judgment." Bowen/Edwards, 830 P.2d at 1053. Thus, the Court finds that the District's allegations sufficiently establish an injury-in-fact to its "present or imminent activities." Id. Because the District has sufficiently established an injury in fact to a legally protected interest, the Court finds that the District has standing to seek declaratory relief.

b. Mootness and ripeness

A case is moot when judicial relief "would not have a practical effect upon an actual and existing controversy." Stell v. Boulder Cnty. Dept. of Social Servs., 92 P.3d 910, 914 (Colo. 2004). A case is ripe when an alleged injury is "sufficiently immediate and real in order to warrant adjudication." Id. Without further argument or citation to legal authority, the City

argues that the District's claims are moot because "there is no relief which could be granted by this Court that would have a practical effect on any actual and existing controversy involving the City." Cross-Mot. ¶ 27. The City also argues that the District's claims are not ripe because "there is no injury which is sufficiently immediate and real in order to warrant adjudication." Id.

The Court disagrees and instead finds that the District's claims are neither moot nor unripe. The declaratory relief requested would resolve two existing controversies: 1) whether BQ300 impacts and/or invalidates the District's and the WRURA's current and prospective agreements; and 2) whether BQ300 is preempted by state law. The claims are ripe because the District has already entered into a Cooperation Agreement in relation to the development of Clear Creek Crossing and has taken steps to enter into additional agreements. And, as the Court will explain below, the Cooperation Agreement and the proposed Redevelopment Agreement as described would require City Council and voter approval pursuant to the provisions of BQ300.

2. Preemption Analysis of BQ300

To determine if a local regulation is preempted by state law, courts must determine if the issue regulated "is one of local, statewide, or mixed local and statewide concern." Ryals v. City of Englewood, 364 P.3d 900, 904 (Colo. 2016). In matters of purely local concern, a home-rule city's regulation controls over conflicting state statutes. Webb v. City of Black Hawk, 295 P.3d 480, 486 (Colo. 2013). In matters of statewide concern, home-rule cities may regulate "only if the constitution or statute authorizes such legislation." Id. "For matters that involve mixed state and local concerns, a home-rule regulation may coexist with a state regulation only as long as there is no conflict." Id.

a. Whether a matter is of state, mixed state and local, or purely local concern

In determining whether a regulated matter is of statewide, mixed statewide and local, or purely local concern, courts consider a number of factors including "(1) the need for statewide uniformity of regulation; (2) the extraterritorial impact of local regulation; (3) whether the matter has traditionally been regulated at the state or local level; and (4) whether the Colorado Constitution specifically commits the matter to state or local regulation." Id. Courts make this determination under the totality of the circumstances, after considering the enumerated and any other relevant factors. Id. at 486-87. "Although not conclusive in itself, a determination by the General Assembly that a matter is of statewide concern is relevant." Id. at 486.

Here, the parties dispute the characterization of BQ300's regulated subject matter. The District characterizes BQ300 as "regulation of the URA Law's administrative framework and delegation of authority." Mot. 17. The City characterizes BQ300 as regulating the "internal financial controls of the City." Cross-Mot. ¶ 29. When determining if a matter is of statewide, mixed, or local concern, courts must categorize the actual issue being regulated and not the manner or method of regulation. See, e.g., Ryals, 364 P.3d at 904 ("we ask whether the issue the ordinance regulates is one of local, statewide, or mixed local and statewide concern"); see also City of Northglenn v. Ibarra, 62 P.3d 151, 156 (Colo. 2003) ("When we consider these factors, we are weighing the respective interests of the locality and the state in regulating a particular matter"). This Court finds that BQ300 does not provide a regulatory framework for the "internal financial controls of the City," but rather regulates urban blight and/or TIF arrangements.

The Supreme Court has held that urban blight is a matter of both statewide and local concern. Denver Urban Renewal Authority v. Byrne, 618 P.2d 1374, 1385 (Colo. 1980). Since BQ300 regulates urban blight, the Colorado Supreme Court's characterization in Byrne is dispositive: BQ300 regulates a matter of mixed statewide and local concern.

Similarly, this Court finds that BQ300's regulation of TIF administration under the Urban Renewal Law is a matter of mixed statewide and local concern. Given that urban blight has been declared to be a matter of both statewide and local concern, this Court discerns no reason to find that the specific statutory means devised to finance the ability to combat urban blight (e.g., urban renewal plans financed by TIF) are not also a matter of mixed statewide and local concern. See id. This finding is particularly appropriate since the Urban Renewal Law, while declaring prevention of urban blight to be a matter of "statewide concern," expressly solicits the aid of local governments in the approval of TIF arrangements and authorizes cooperation with urban renewal authorities. C.R.S. §§ 31-25-102(1), -107, -112.

Nonetheless, the Court will also consider each of the four enumerated factors articulated in Webb v. City of Black Hawk. Courts have found statewide uniformity necessary "when it achieves and maintains specific state goals." City of Northglenn v. Ibarra, 62 P.3d 151, 160 (Colo. 2003). Here, the Court finds that the ability of urban renewal authorities to uniformly access the TIF scheme set forth in the statewide Urban Renewal Law achieves the specific state goal of "prevention and elimination of slums and blight." See C.R.S. § 31-25-102(1). If an urban renewal plan provides for the use of property or sales tax TIF to finance the project, then

that TIF must be paid into a special fund created for the appropriate urban renewal authority. See C.R.S. § 31-25-107(9). Any local ordinances requiring an additional layer of local government and/or voter approval with regard to TIF deposited into the urban renewal authority's special fund necessarily restrict (and potentially eliminate) that authority's access to the funds intended to combat slums and blight. Thus, uniform access to the TIF deposited into special funds without the additional burden of local regulation "achieves and maintains" the specific state goal of preventing and eliminating urban blight. See Ibarra, 62 P.3d at 160. Accordingly, the Court finds that the "uniformity" factor weighs in favor of finding that the TIF financing scheme set forth in the Urban Renewal Law is a matter of statewide concern.

Courts have defined extraterritorial impacts "as those involving the expectations of state residents . . . as well as those that create a ripple effect impacting state residents outside the municipality." Webb v. City of Black Hawk, 295 P.3d 480, 490 (Colo. 2013) (citations omitted). A "ripple effect" can be created when one municipality restricts or bans a certain activity, thereby pushing that activity into neighboring communities that may in turn impose their own bans or restrictions. See id. (holding that Black Hawk's bicycling ban could cause a "ripple effect" leading to bicycling bans in other communities). The Court finds that the risk of a "ripple effect" exists with respect to local restrictions on approval of TIF arrangements and remediation of urban blight. Specifically, whenever developers might be deterred by a local TIF restriction such as BQ300 from building something considered "less desirable," those developers may attempt to relocate in neighboring communities, resulting in those communities taking steps to adopt their own restrictions.[1] In addition, the inability to remediate areas of urban blight (BQ300 restricts larger projects in particular as it requires ratification by the City's electors for TIF arrangements that exceed $2.5 million) would clearly impact communities that neighbor such blight. See id.

Furthermore, the Court finds that the expectations of state residents outside the City would be frustrated by local regulation of TIF arrangements. In Webb, although the bicyclists who challenged a bicycling ban enforced by the City of Black Hawk were not Black Hawk residents, the Colorado Supreme Court held that "persons not from Black Hawk would not

[1] The District asserts in passing that the original purpose of BQ300 "was to drive Walmart to locations outside the City's boundaries." Mot. 13 n.5. Though no such intent to drive away particular developers or projects has been alleged in this case, the potential to deter developers or projects that some residents might consider undesirable does demonstrate the risk of some TIF restrictions creating a "ripple effect."

expect to be unable to bicycle through Black Hawk on the only route connecting it to Central City and beyond," demonstrating that the ban had an effect on Colorado residents in general. Id. Similarly, although the District has failed to identify a specific portion of the state population whose expectations would be frustrated by local restriction of TIF arrangements, this Court finds that the general population would have a reasonable expectation that all Colorado communities would address urban blight, thereby improving the quality of life for all Colorado residents.

Regarding the "tradition of regulation" of TIF arrangements, such arrangements would not exist absent the state legislature's enactment of the Urban Renewal Law, which provides for the creation and allocation of tax increment financing. See Denver Urban Renewal Authority v. Byrne, 618 P.2d 1374, 1387 (Colo. 1980) (TIF allocated to an authority's special fund would not have existed but for the urban renewal project undertaken pursuant to statute). However, TIF arrangements also could not exist absent local regulation because urban renewal plans and any plan modifications that create TIF must be approved by the "governing body" of the municipality within which a renewal authority has been established. C.R.S. § 31-25-107(4), (7); see also C.R.S. § 31-25-103(3.7) (defining "governing body"). Furthermore, the Urban Renewal Law equips municipalities with numerous powers "for the purpose of aiding an authority in or in connection with the planning or undertaking . . . of any plans, projects, programs, works, operations, or activities of such authority." Id. § 31-25-112(1). Accordingly, the Court finds that the tradition of regulating TIF arrangements as set forth in the Urban Renewal Law supports a finding that such arrangements are a matter of mixed statewide and local concern.

The Colorado Constitution does not specifically commit TIF arrangements to state or local regulation. The City recites many of the powers granted to home-rule municipalities by Article XX of the Colorado Constitution, including the powers to legislate upon "the powers, duties, qualifications and terms or tenure of all municipal officers, agents and employees," "the issuance, refunding and liquidation of all kinds of municipal obligations, including bonds," and "the assessment of property in such city or town for municipal taxation in the levy and collection of taxes"; the power to "assume and pay all bonds, obligations, and indebtedness"; and "all other powers necessary, requisite or proper for the government and administration of its local and municipal matters" in support of its position. Colo. Const. art. XX, §§ 1, 6 (cited by the City at Cross-Mot. ¶ 32 and Cross-Mot. Reply 4, 6). However, none of these provisions specifically address TIF arrangements; rather, a home-rule municipality's specific powers and duties with

respect to TIF are set forth in the Urban Renewal Law. To the extent that the City relies on the general powers recited above to regulate TIF arrangements, a general constitutional assignment of power to a home-rule municipality "does not necessarily mean that the matter is a strictly local issue." City of Commerce City v. State, 40 P.3d 1273, 1284 (Colo. 2002).

Having considered the four enumerated factors, this Court concludes, under the totality of the circumstances, that TIF arrangements as well as remediation of urban blight are matters of mixed statewide and local concern. See Webb v. City of Black Hawk, 295 P.3d 480, 486 (Colo. 2013).

b. Whether BQ300 conflicts with state law

Local regulation may be preempted by state law expressly, impliedly, or by operational conflict. City of Longmont v. Colo. Oil & Gas Ass'n, 369 P.3d 573, 582 (Colo. 2016). "Express preemption applies when the legislature clearly and unequivocally states its intent to prohibit a local government from exercising its authority over the subject matter at issue." Id. Implied preemption occurs "when a state statute 'impliedly evinces a legislative intent to completely occupy a given field by reason of a dominant state interest.'" Id. (citation omitted). A local regulation is preempted by operational conflict "when the operational effect of the local law conflicts with the application of the state law." Id. The District does not argue for express preemption, and this Court finds none. The Court similarly finds that the Urban Renewal law does not evince a legislative intent to "occupy the field." Id.

However, the Court concludes that BQ300 is preempted to the extent that it creates an operational conflict with Colorado's Urban Renewal Law. Courts determine if an operational conflict exists "by considering whether the effectuation of a local interest would materially impede or destroy a state interest, recognizing that a local ordinance that authorizes what state law forbids or that forbids what state law authorizes will necessarily satisfy this standard." Colo. Oil & Gas Ass'n, 369 P.3d at 583. "In virtually all cases, this analysis will involve a facial evaluation of the respective statutory and regulatory schemes, not a factual inquiry as to the effect of those schemes 'on the ground.'" Id. When the language of a charter provision is clear, a court construes the provision according to its plain meaning. North Avenue Center, LLC v. City of Grand Junction, 140 P.3d 308, 311 (Colo. App. 2006). In so doing, courts "presume that the legislative body meant what it clearly said." City of Colorado Springs v. SecurCare Self Storage, Inc., 10 P.3d 1244, 1249 (Colo. 2000).

BQ300 explicitly applies broadly to "[a]ny action . . . approving or changing a sales or property tax increment financing (TIF), revenue sharing or cost sharing arrangement pursuant to Part 1 of the Colorado Urban Renewal Law."[2] Wheat Ridge Charter § 12.10. As explained below, the Court finds that this provision extends to urban renewal plans and plan modifications that approve or change a TIF arrangement. It also encompasses, *inter alia*, agreements entered into by an urban renewal authority that approve or change an arrangement for the disposition of TIF that has already been paid or will be paid into the authority's special fund pursuant to an urban renewal plan or plan modification.

The Court acknowledges that Colorado's Urban Renewal Law already requires that any urban renewal plan or plan modification must be approved by the governing body of the municipality within which the relevant renewal authority has been established. See C.R.S. § 31-25-107(4), (7) (approval requirement for plans and plan modifications); see also C.R.S. § 31-25-103(3.7) (defining "governing body"). "Urban renewal plan" is defined by statute to mean the following:

> a plan, as it exists from time to time, for an urban renewal project, which plan conforms to a general or master plan for the physical development of the municipality as a whole and which is sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

Id. § 31-25-103(9). An urban renewal plan or plan modification may contain a provision for the creation of property or sales tax TIF. Id. § 31-25-107(9)(a). The parties do not dispute that the City Council is the City's "governing body." See Compl. ¶ 8; Cross-Mot. ¶¶ 36-37; Cross-Mot. Reply 7. Thus, the City Council is required to approve any urban renewal plan or plan modification that includes a provision for TIF under both state law and BQ300.

Apart from urban renewal plans or modifications thereto, Colorado's Urban Renewal Law empowers renewal authorities to enter other types of agreements concerning the disposition of the TIF in the authority's special fund, without obtaining the approval of the governing body.

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[2] Pursuant to section 31-25-101, C.R.S., "This part 1 [of article 25, title 31] shall be known and may be cited as the 'Urban Renewal Law'." Thus, it appears that BQ300 was intended to reference the entirety of the Urban Renewal Law and not merely a portion thereof.

See, e.g., C.R.S. § 31-25-107(9.5), (11). Namely, the Urban Renewal Law empowers authorities to "make and execute any and all contracts and other instruments which it may deem necessary or convenient to the exercise of its powers under [the Law]." Id. § 31-25-105(1)(b). And authorities are also empowered to enter into an agreement with any taxing entity whose property taxes "will be subject to allocation pursuant to subsection (9) of this section [i.e., subject to allocation as TIF]." Id. § 31-25-107(11). The Urban Renewal Law further empowers public bodies to enter into agreements with authorities "respecting action to be taken pursuant to any of the powers set forth in [the Law], including agreements respecting the planning or undertaking of any such plans, projects, programs, works, operations, or activities which such public body is otherwise empowered to undertake." Id. § 31-25-112(1)(d). Each of these agreements would fall under the ratification requirements of BQ300, by its express terms. Thus, this Court finds that BQ300, by its express terms, encompasses current and prospective agreements of the WRURA (pursuant to the WRURA's statutory power to enter such agreements) that approve or change an arrangement for the sharing of TIF (that has already been paid or will be paid into the authority's special fund pursuant to an urban renewal plan or plan modification), including the District's Cooperation Agreement (which requires the WRURA to "remit back to the District that portion of the property tax increment generated from the District's property tax mill levy on parcels within the District's Boundaries that is deposited into the special fund of the Authority"). Cooperation Agreement (District's Mot. Exh. C) ¶ 1.

The City argues that BQ300 does not apply to the Cooperation Agreement between the District and the WRURA because the WRURA is a "separate legal entity" not subject to the City's Charter and because the City is not a party to the Agreement. Cross-Mot. Reply 7-10. The Court finds that the City's arguments do not comport with the plain language of BQ300. BQ300 expressly applies to "[a]ny action by an . . . authority . . . of the City of Wheat Ridge approving or changing a sales or property tax increment financing (TIF), revenue sharing or cost sharing arrangement . . . ." The WRURA is an urban renewal authority organized by the City pursuant to the Urban Renewal Law. Compl. ¶ 3; City Answer ¶ 3; Wheat Ridge City Code § 25-23. Though the WRURA may well be a separate legal entity, the City makes no showing that the WRURA is anything other than an "authority . . . of the City of Wheat Ridge." Thus, the plain language of BQ300 must be read to extend to the Cooperation Agreement between the District and WRURA. The City's current arguments notwithstanding, this Court must presume

that the electorate "meant what it clearly said" in voting to approve BQ300. See City of Colorado Springs v. SecurCare Self Storage, Inc., 10 P.3d 1244, 1249 (Colo. 2000).

Assuming, *arguendo*, that BQ300 does not apply to the Cooperation Agreement (or any other agreement impacting TIF to which the City is not a party), the Court's "facial evaluation of the respective statutory and regulatory schemes" reveals that BQ300 nonetheless conflicts with Colorado's Urban Renewal Law in several respects. See Colo. Oil & Gas Ass'n, 369 P.3d at 583. First, its provisions provide a mechanism for the City Council and/or the City's electors to invalidate TIF arrangements entered into by an "authority . . . of the City of Wheat Ridge" that would otherwise be acceptable under the Urban Renewal Law. Wheat Ridge Charter § 12.10. Thus, BQ300 potentially "forbids what state law authorizes." Colo. Oil & Gas Ass'n, 369 P.3d at 583. Second, BQ300 "materially impede[s]" the state's interest in combating urban blight by imposing additional procedural costs (regardless of how those costs manifest themselves) for an "authority . . . of the City of Wheat Ridge" to obtain approval of contracts that include TIF arrangements. Id.; Wheat Ridge Charter § 12.10. Finally, BQ300 "materially impede[s]" the state's interest in combating urban blight by delegating to the City's Council or its electors the ability to negate an urban renewal authority's statutory powers to enter into contracts regarding TIF arrangements. Colo. Oil & Gas Ass'n, 369 P.3d at 583.

The City cites East Grand County School District No. 2 v. Town of Winter Park, 739 P.2d 862 (Colo. App. 1987), as an example of a city council submitting an urban renewal plan to the electorate for approval. Cross-Mot. Reply 5. That case is clearly distinguishable and actually supports this court's findings. The issue in that case was whether the city council could, by voluntarily submitting an ordinance concerning urban renewal to its electorate, eliminate its obligation to hold public hearings, make required statutory findings, and render the final decision on the urban renewal plan as the "governing body." The appellate court held that it could not; the ultimate authority remained with the city council. See E. Grand Cnty. School Dist., 739 P.2d at 865.

Thus, this Court finds that BQ300 is preempted to the extent that it could operate to nullify the District's Cooperation Agreement or any other future agreement between the District and WRURA (that would not otherwise require Council approval as an urban renewal plan or plan modification pursuant to section 31-25-107, C.R.S.). In addition (and as explained below), BQ300's delegation of final authority to the electorate to approve or disapprove the remediation

of urban blight under the enumerated circumstances also runs afoul of the state's Urban Renewal Law.

However, the Court finds that BQ300's prescription of the method of City Council approval of "urban renewal plans" and plan "modifications" involving TIF (which already require approval by the City's "governing body" pursuant to section 31-25-107, C.R.S. and Wheat Ridge Charter section 12.10 (Council approval required "via a vote on a formal agenda item, at a regularly scheduled business meeting, that is advertised as a hearing")) is not in contravention of state law and thus is not preempted thereby. BQ300's requirement for City Council approval as to those plans and modifications does not offend the approval provisions of the Colorado Urban Renewal law.

Concerning all "urban renewal plans" and plan "modifications" involving TIF that would require further ratification by the City's electors under BQ300, however, the Court finds that BQ300 "forbids what state law authorizes" to the extent that it provides a mechanism for the City's electors to reject plans and plan modifications that have already met with approval by the City's governing body. Colo. Oil & Gas Ass'n, 369 P.3d at 583; Wheat Ridge Charter § 12.10 ("the City Council action of approval must be ratified by the registered electors"). The elector ratification provision also "materially impede[s]" the state's interest in combating urban blight to the extent that it imposes additional procedural costs before Council-approved plans or plan modifications can be given effect. Colo. Oil & Gas Ass'n, 369 P.3d at 583.

With respect to any other agreements (which do not qualify as an "urban renewal plan" or plan "modification") entered into by an agency, agent, authority, commission, committee, department, employee or official of the City of Wheat Ridge, concerning TIF paid into the authority's special fund, the Court finds that both the City Council and voter approval provisions of BQ300 are preempted by state law.

However, as stated above, this Court finds BQ300 to be preempted only to the extent that this Court has found it to be in conflict with state law. See Bd. of Cnty. Comm'rs of Cnty. of Boulder v. Martin, 856 P.2d 62, 67 (Colo. App. 1993) (invalidating local zoning policy "to the extent that" its provisions forbid what the state statute permitted). Thus, summary judgment declaring BQ300 altogether "invalid and unenforceable" is not appropriate.

In summary, Summary Judgment is GRANTED IN PART in favor of the District as to its Second Claim for Relief but only to the extent that this Court has found that BQ300 is preempted

by state law; all non-preempted provisions remain in full force and effect. As to the District's First Claim (which alleges that the procedural requirements of BQ300 are matters of statewide concern), the District's Motion for Summary Judgment is denied and summary judgment is granted in favor of the City, albeit for reasons apart from those argued in the Cross-Motion (because the subject matter being regulated is a matter of mixed statewide and local concern. See Colo. Oil & Gas Ass'n, 369 P.3d at 579-80.

THEREFORE, the District's Motion for Summary Judgment and the City's Cross-Motion for Summary Judgment are both GRANTED IN PART in accordance with this Order. Trial is VACATED.

SO ORDERED this 8 day of September 2017.

BY THE COURT:

MARGIE ENQUIST
District Court Judge