

# CITY COUNCIL COMMUNICATION FORM

**FROM:** Gary Suiter, City Manager  
Dan Foote, City Attorney

**THROUGH:** N/A

**DATE:** October 10, 2023

**ITEM:** An Ordinance Approving the Annexation to the City of Steamboat Springs of Approximately Four Hundred Acres of Real Property Known as Brown Ranch

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\_\_\_\_\_ DIRECTION  
\_\_\_\_\_ INFORMATION  
 \_\_\_\_\_ ORDINANCE  
\_\_\_\_\_ MOTION  
\_\_\_\_\_ RESOLUTION  
\_\_\_\_\_ PROCLAMATION

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**I. REQUEST/ISSUE & BACKGROUND INFORMATION:**

The City on October 18, 2022 received a petition for the annexation of four hundred-twenty acres of real property owned by the Yampa Valley Housing Authority and known as the Brown Ranch. Three separate bodies of law govern the annexation of real property to the City: Article II, Section 30 of the Colorado Constitution, the Municipal Annexation Act ("MAA"), which is a statute adopted by the state legislature, and the City's Community Development Code. The constitutional requirements have been incorporated into the MAA.

**Constitutional and Municipal Annexation Act Requirements**

Substantial Compliance Resolution

MAA requires the City to review the petition and approve a resolution determining that it substantially complies with the requirements of the MAA regarding the information contained in the petition. The City Council reviewed the petition on Jan. 3, 2023 and adopted Resolution No. 2023-02

determining that the petition contains the required information and substantially complies with the MAA. This resolution is referred to as the "Substantial Compliance Resolution".

### Eligibility Resolution

The next step in the annexation process was setting a hearing between thirty (30) and sixty (60) days after adoption of the Substantial Compliance Resolution to consider a second resolution determining whether Brown Ranch is eligible for annexation.

Eligibility depends on:

- the consent of Brown Ranch property owners;
- contiguity between Brown Ranch and the existing City boundary;
- the existence of a community of interest between Brown Ranch and the City;
- and various technical requirements regarding the drawing of the new City boundary that are intended to protect the interests of property owners in the area to be annexed.

The City Council held hearings on Feb. 14 and April 4, 2023 and adopted Resolution No. 2023-23 ("Eligibility Resolution") determining that Brown Ranch is eligible for annexation.

### Consent to Conditions

If a municipality imposes conditions on an annexation that are not agreed to by all of the owners of the property to be annexed, the annexing municipality must submit the proposed annexation to an election of the property owners and residents of the area to be annexed.

The only conditions imposed on the proposed Brown Ranch annexation are set forth in the Annexation Agreement that has been executed by the parties. Accordingly, there is no requirement for an election of the property owners and residents of the area to be annexed.

The MAA provides that if no election is required and the City has adopted the Substantial Compliance and Eligibility Resolutions, then City Council may annex the subject property by adopting an ordinance. The proposed ordinance would complete City Council's role in the MAA annexation process. The annexation itself would be completed when the City Clerk files the ordinance and annexation map with the County Clerk.

The annexation petition gives YVHA the right to withdraw the petition and terminate the annexation for a forty (40) day period after the effective date of the annexation ordinance. The ordinance accounts for this right of withdrawal by directing the Clerk to wait until this forty (40) day withdrawal right expires or is waived prior to filing the ordinance and annexation map.

### **Community Development Code ("CDC")**

The CDC provides a separate and parallel process for approval of a proposed annexation. The CDC process consists of review by the Development Review Team, Planning Commission, and the City Council. The proposed annexation may not be completed until after execution of an annexation agreement. Please refer to the Planning Commission Staff Report, attached to this Communication Form, for more detailed background, project information, and analysis. The CDC approval criteria for an annexation are as follows:

1. The proposed annexation is compatible with the preferred direction and policies outlined in the Community Plan and other applicable adopted plans.
2. The type, height, massing, appearance, and intensity of development that would be permitted by the proposed annexation will be compatible with surrounding zone districts, land uses, and neighborhood character and will result in a logical and orderly development pattern within the community.
3. The proposed annexation will be consistent with the purpose and standards of the zone district proposed for the land that is subject of the annexation.
4. The advantages of the proposed annexation substantially outweigh the disadvantages to the community or neighborhood.
5. The proposed annexation will minimize any adverse impacts on the natural environment, including water quality, air quality, wildlife habitat, vegetation, wetlands, and natural landforms.
6. The proposed annexation is consistent with any adopted guidelines or requirements for the inclusion of affordable housing in new development or annexation proposals.

The Planning Commission held a public hearing to review the annexation petition on September 28, 2023 and recommended approval by a 6-1 vote. The Planning Commission action completes all CDC pre-requisites to annexation. Council may approve the annexation by adopting the proposed ordinance.

Written public comment on this item is provided as an attachment to the Planning Commission Staff Report. Additional public comment was made at the Planning Commission hearing and is captured in the meeting minutes which are attached to the Zone Map Amendment Communication Form.

### **Annexation Agreement**

The City and YVHA have negotiated an Annexation Agreement. It was approved by the City Council on September 19, 2023 and will be reviewed by the YVHA Board on October 5, 2023.

Since those approvals, YVHA representatives have identified a potential ambiguity in the nature of the City's vesting commitment. Section 2.A of the Annexation Agreement provides that YVHA may construct up to 2,264 residential units. Subsection 13.C of the Annexation Agreement provides that the Framework Regulating Plan to be approved through the City's CDC process will be treated as a vested right as to the densities and uses approved in the plan. YVHA proposes to clarify the reference to "densities" to mean a minimum of 2,264 units by amending the Subsection 13.C language with the addition of the parenthetical clause highlighted below in red:

**"C. Site-Specific Development Plans.** YVHA and the City agree that the Framework Regulating Plan constitutes an approved "site specific development plan" as defined in the Vested Property Rights Statute, and that pursuant thereto, YVHA and its successors and assigns shall have vested rights to undertake and complete the development and use of the Property as to the minimum densities (i.e, the development of up to 2,264 residential units) and uses approved by the Framework Regulating Plan and with the exactions and real property dedications described herein during the vesting term established in Paragraph (b) above. The vesting term shall be memorialized in a Development Agreement in connection with the approval of the Framework Regulating Plan ("Framework Regulating Plan Development Agreement")."

Staff does not object to this revision. It could be implemented via the ordinance or by an amendment to the annexation agreement.

### **Elections**

Annexations may be subject to two types of elections called by the City.

### Election in Area to be Annexed.

The first type of election, referenced above, is an election of the registered electors (if any) and owners of property in the area to be annexed. This type of election is held when there is not unanimous consent to the annexation, or to any conditions relating to the annexation, on the part of the owners of the property to be annexed.

Brown Ranch consists of a single property with a single owner, YVHA, and no residents or registered electors. YVHA consents to the annexation and the conditions imposed via the annexation agreement. Therefore, there is no requirement for an election of the residents/registered electors/owners of the area to be annexed.

The ordinance recitals and Section 3 include findings that no election is required by the Colorado Constitution or the MAA. It is important to note that these findings relate only to the potential for an election of the Brown Ranch property owners and registered electors. This finding does not prevent Council from referring the ordinance to the voters or the submission of a referendum petition as described below.

### City Election – Referendum or Referred Measure

The second type of election is an election of the citizens of the annexing municipality, which in the case of the proposed Brown Ranch annexation would be the voters of the City of Steamboat Springs. This type of election could be called in one of two ways. The City Council could include a provision in the annexation ordinance referring the annexation to the voters at a special election and providing that the annexation ordinance would not take effect until and unless it is approved by the voters. In this situation, the timing of the special election would be entirely up to the City Council: the election could be scheduled at any time, including at the general election in November 2024.

Council's discretion as to the timing of an election is subject to the practical realities of planning an election. If Council were to elect to refer the annexation ordinance to the electorate, staff would recommend a minimum of three months' lead time to prepare for and run an election.

If Council elects not to refer the ordinance to a special election, the annexation ordinance would be subject to the referendum provisions of the City Charter. The Charter provides that a group of five electors may form a petitioners' committee and gather signatures on a petition to force a vote on the annexation ordinance. The petition would have to be filed within thirty (30) days of Council's approval of the annexation ordinance and would have

to contain eleven hundred twenty-five (1,125) signatures of registered voters (i.e. 10% of the number of registered voters at the last regular City election).

Once a petition is submitted, it is reviewed by the City Clerk and the Council to determine whether it is "sufficient", i.e. that it satisfies the requirements of Article 8 of the City's Charter. This review period includes an opportunity for the petitioners' committee to cure certain defects in the petition. The review period could take between two to six weeks. If Council determines that the petition is sufficient, Council would be required either i) to repeal the annexation ordinance or ii) to schedule a special election on a date between thirty (30) and ninety (90) days from the date of the determination that the petition is sufficient.

If a regular election is scheduled during the thirty (30) to ninety (90) day election window, the referendum would be held with the regular election. Otherwise, the Council would schedule a special election. Because the next regular City election will not occur until November, 2025, a referendum election would almost certainly require Council to call a special election.

As noted above, the practical realities of preparing to hold a special election would mean that the election would need to be scheduled very near to the end of the thirty (30) to ninety (90) day election window. This means that if there were to be a successful referendum petition, the special election would be held somewhere between one hundred thirty-five (135) and one hundred sixty-five (165) days after the date the annexation ordinance is adopted.

### Cost

The City's Election Code provides for City elections to be governed by the Uniform Election Code ("UEC"). However, the City could elect to use the Municipal Election Code ("MEC") for a special election. MEC procedures are less rigorous than UEC procedures and an MEC election would be less expensive to run.

The City's most recent special election was conducted in 2019 pursuant to the MEC and cost approximately \$32,000, exclusive of personnel costs. Personnel costs for the 2010 Steamboat 700 special election were \$17,000. These costs have almost certainly increased substantially. The 2024 budget includes a provisional figure of \$60,000 for a 2024 special election.

Englewood and Littleton conducted special elections in 2023 that cost \$138,000 and \$165,000, respectively. Those communities have populations that are 3-4 times the size of the City's so those numbers would likely represent an upper limit for the cost of special election in Steamboat Springs.

The most cost-effective way of conducting an election is to participate in a coordinated election run by the County Clerk. Staff is exploring the feasibility of coordinating a City special election with either the presidential primary election scheduled on March 5, 2024 or the state primary election scheduled on June 25, 2024.

### **Adequacy of Water Supply**

Both the City's Municipal Code and state law require the City to confirm the adequacy of the City's water supply to serve new development prior to approving development. Although these regulations do not require this determination to be made at time of annexation, the parties have negotiated the annexation agreement on the assumption that the City does not intend to annex property if it cannot provide water service.

The water demand analysis prepared by the applicant's engineers, and reviewed by City staff, concludes that the City has adequate raw water rights on the Elk River to supply Brown Ranch at full build out. The Annexation Agreement addresses this by providing a schedule and funding source for the development of the Elk River Water Treatment Plant and related distribution facilities. The annexation agreement also limits the development of Brown Ranch to 800 EQRs until the Elk River Water Treatment Plant is on line.

## **II. SUMMARY AND ALTERNATIVES:**

Annexation is a legislative act that Council may approve or deny in its sole discretion. The previous Council approvals of the Substantial Compliance Resolution, the Eligibility Resolution, and the Annexation Agreement give Council the power to annex Brown Ranch. However, Council is not obligated to annex. Council's options include the following:

- approve the proposed ordinance as drafted;
- approve the proposed ordinance with modifications or with directions to staff to seek modification of the Annexation Agreement;
- delay consideration of the proposed ordinance;
- approve the ordinance and refer it to the voters at a special election; or
- reject the proposed ordinance.

The chief issue of concern is fiscal impact to the City of the capital costs associated with the development of Brown Ranch. The terms of the Annexation Agreement address this issue in that they contemplate the development of the entire Brown Ranch parcel, which in turn drives the overall fiscal impact analysis. The Annexation Agreement provides the City with some control over the sequence and timing of the development of Brown Ranch via the City's authority to decline to issue land use approvals if the City

is unable to fund its share of US Hwy 40 improvements necessary to serve the development of Brown Ranch.

Modification of the Annexation Agreement to address the capital funding issue would require a substantial re-write of the Annexation Agreement, likely by reducing the scope of the project through breaking it up into phases. This task cannot be accomplished on the current schedule for adoption of the annexation ordinance.

Delaying adoption of the annexation ordinance would have pros and cons.

Pros would include:

- Delay would have the advantage of allowing the parties time to evaluate options to address the capital funding issue, either by revising the Annexation Agreement or by identifying City revenue sources and/or reductions to existing services to fund the City's capital responsibilities.
- Delay would also allow City Council to evaluate the proposed annexation in the context of the election results on the ballot question allocating Short-Term Rental tax revenues to YVHA for the development of Brown Ranch infrastructure and housing.

Cons would include:

- Delay would have the disadvantage of creating a corresponding delay in YVHA's commencing development of Brown Ranch.

If Council elects to approve the annexation ordinance, it may do so either with or without a referral of the ordinance to the electors. Referring the annexation ordinance to the electors would give the City Council more control over the date of any special election regarding the annexation ordinance. However, it would also guarantee a three month or longer delay in the annexation ordinance taking effect and a corresponding delay in the development of Brown Ranch.

### **III. STAFF RECOMMENDATION:**

Staff does not recommend the option of approving the ordinance with direction to make any substantial changes to the Annexation Agreement. There is not sufficient time for the parties to undertake any kind of substantial re-negotiations prior to the currently scheduled second reading on October 17.



If Council wishes to have a fuller understanding of its options to fund the City's share of Brown Ranch capital infrastructure prior to adopting the annexation ordinance, staff would recommend delaying approval of the ordinance and scheduling a work session to discuss new taxes, fees, or other revenue sources and/or reduction in existing City services.

**IV. FISCAL IMPACT:**

The fiscal impacts to the City's general fund and capital fund are outlined in Attachments 1 and 2, which are, respectively, the RCLCO evaluation of City operations and the Finance Department assessment of the City's share of capital expenditures and related revenues.

In addition, the proposed annexation will commit 75% of City Short-Term Rental tax revenues through 2042, subject to certain contingencies relating to YVHA's delivery of housing units and identifying funding for YVHA's share of required infrastructure. This commitment is estimated at approximately \$200,000,000. Whether this commitment will be subject to annual appropriation will be determined by the result of the ballot question referred to the voters at the November 7, 2023 regular City election.

**V. LEGAL ISSUES:**

None. The proposed annexation complies with all constitutional, statutory, and CDC requirements.

**VI. CONFLICTS OR ENVIRONMENTAL ISSUES:**

City's Share of Capital Infrastructure

The principal issue remaining for discussion relates to the City's share of costs of constructing capital infrastructure necessary to the development of Brown Ranch. The current analysis shows a deficit net of revenues attributable to or allocated to Brown Ranch (i.e. Building Use Tax, Excise Tax, 50% of City share of STR Tax) of approximately \$52,000,000 over the life of the project. A copy of this document is attached along with the final fiscal impact analysis for operating expenses prepared by YVHA's consultant RCLCO.

The projected deficit is for the most part related to the costs of constructing Community Parks and improvements to US Hwy 40. The City's share of the public safety facility is included in these costs, but the City's share of this project is relatively small.

The capital infrastructure analysis also includes substantial costs in the Utility Fund relating to the Elk River Water Treatment Plant. These costs are less of

a concern because staff believes they will be mostly or entirely funded by Utility Fund revenues and/or debt that can be repaid from utility user fees.

It is important to note that the City's share of capital costs does not represent any kind of legal obligation on the general fund. The Annexation Agreement provides that the City's obligations to provide capital funding for Brown Ranch infrastructure is dependent on the annual appropriation of funds for this purpose by the City Council. The City cannot be forced to fund its share of Brown Ranch infrastructure and this obligation cannot affect the solvency of the City or cause bankruptcy.

Approximately \$46,000,000 of the total costs are attributed to the construction of the Community Parks. It is important to note that under the current interpretation of the purpose of the Short-Term Rental tax that the \$32,500,000 in Short-Term Rental tax revenues can only be used for construction of the Community Parks. These funds cannot be used for the City share of US Hwy 40 improvements or the public safety facility because the City share is directly related to impacts and demand for services that are not created by the development of Brown Ranch.

As a result, if the capital costs were to be considered without including the costs of constructing the Community Parks, the Short-Term Rental tax revenues would also need to be excluded, which would result in a net reduction in the deficit of approximately \$13,500,000, i.e. the difference between the \$46,000,000 in parks construction costs and the \$32,500,000 in Short-Term Rental tax revenues.

This means that there is a deficit of approximately \$38,000,000 (without consideration of Community Parks) to \$52,000,000 (if Community Parks costs are included). Staff would anticipate that some amount of grant funds would become available during the life of the project to defray some of these costs. However, staff is skeptical that grant funding will be sufficient to cover all or even most of the deficit.

As noted above, there is no legal obligation for the City to fund its share of Brown Ranch infrastructure. And the City may decline to approve land use applications if City funding is not available for necessary infrastructure and the Council finds that existing infrastructure is inadequate to support development at Brown Ranch. These provisions give the Council tools necessary to protect the general fund and to ensure that development does not occur without the construction of necessary infrastructure.

However, denying development applications would stall development of affordable and attainable housing at Brown Ranch. It would also extend the unit delivery deadlines established in the Annexation Agreement with respect

to the allocation of Short-Term Rental tax revenues to YVHA. As a result, Brown Ranch would produce no affordable or attainable housing in these circumstances, but the Short-Term Rental tax revenues allocated to YVHA would be idle and unavailable for use by either the City or YVHA for housing purposes.

For the foregoing reasons, staff continues to have serious concerns about proceeding with annexation based on the current understanding of the City's share of capital infrastructure costs and available revenues.

#### Parks

Staff continues to have concerns about the adequacy of the Parks, Open Space, and Trails Plan. These concerns would be exacerbated if the City were unable to fund the construction of the Community Parks included in the Brown Ranch Community Development Plan.

### **VII. CONSISTENCY WITH COUNCIL GOALS AND POLICIES:**

This item directly addresses City Council's adopted goal of pursuing affordable and attainable housing by partnering with the Yampa Valley Housing Authority to annex Brown Ranch as quickly as possible to include a robust public outreach process.

### **ATTACHMENTS:**

**ATTACHMENT 1:** RCLCO Fiscal Impact Analysis

**ATTACHMENT 2:** Brown Ranch Capital Infrastructure Cost and Revenue Projections

**ATTACHMENT 3:** Planning Commission Packet