

CITY COUNCIL COMMUNICATION FORM

FROM: Dan Foote, City Attorney

THROUGH: N/A

DATE: September 13, 2022

ITEM: Annexation 101. (Foote)

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| <u> </u> | X | DIRECTION |
| <u> </u> | X | INFORMATION |
| <u> </u> | | ORDINANCE |
| <u> </u> | | MOTION |
| <u> </u> | | RESOLUTION |
| <u> </u> | | PROCLAMATION |

I. REQUEST/ISSUE & BACKGROUND INFORMATION:

This item is an informational item to introduce the basic elements of the annexation process. Annexation proceedings in Steamboat Springs follow two sets of rules, one created by state law and one created by City ordinance.

CONSTITUTIONAL/STATUTORY ANNEXATION PROCEDURES

The state annexation process is governed by two bodies of law. The first is Article II, Section 20 of the Colorado Constitution. This section was the product of a 1980 constitutional amendment by the voters of the State of Colorado known as Poundstone II. Poundstone II requires that Colorado municipalities seeking to annex obtain the consent of voters and landowners in the area to be annexed. (Poundstone I was adopted in 1974 and applies a similar requirement to counties).

Consent can be obtained in one of two ways: by an election of the landowners and registered voters in the area to be annexed or by a petition signed by the owners of 50% or more of the real property in the area to be annexed.

There is also an exception to the consent requirement where the annexing municipality is the property owner or the area to be annexed is an "enclave", i.e. entirely surrounded by the annexing municipality.

The second source of state law is the Municipal Annexation Act ("MAA"), which is codified at C.R.S. 31-12-101, et.seq. The MAA incorporates the Poundstone II requirements, so the entire state law process is set forth in the MAA.

If and when Brown Ranch is to be annexed, the process will commence with a petition by the property owner. The other alternative, annexation by election, is more common in situations where developed property is to be annexed and the registered electors and landowners are too numerous to proceed with a petition. Because Brown Ranch is owned by a single landowner, there would be little point in proceeding by election.

The MAA annexation process requires Council to approve two resolutions prior to adopting an annexation ordinance that completes the annexation process. The MAA does not require an annexation agreement.

Substantial Compliance Resolution

Once the City Clerk receives the annexation petition, they will schedule a hearing on the first of the two required resolutions. The first hearing will be for the purpose of determining whether the content of the petition substantially complies with the MAA.

The petition must include signatures and addresses of property owners, identify their property, request annexation, state that it is desirable, etc. It must also include a map of the area to be annexed. If the petition contains all the statutorily required elements, the City Council will adopt a resolution determining that the petition substantially complies with the statute. This resolution is known as the "Substantial Compliance Resolution".

Eligibility Resolution

Council will also schedule a hearing on the second resolution. The second resolution will determine whether the subject property is eligible for annexation. It will be referred to as the "Eligibility Resolution". The second hearing must be scheduled between thirty (30) and sixty (60) days from the date of the hearing on the Substantial Compliance Resolution.

There are a number of notice requirements for the hearing on the Eligibility Resolution:

- 1) The City must publish notice of the hearing for four consecutive weeks with the first publication occurring at least thirty (30) days in advance of the hearing.

- 2) The City must mail notice of the hearing to the Board of County Commissioners ("BCC"), the County Attorney, the RE-II School District, Steamboat Spring Rural Fire Protection District, and the Steamboat II Metro District at least twenty-five (25) days in advance of the hearing.
- 3) The City must prepare and submit to the BCC an Annexation Impact Report at least twenty-five (25) days in advance of the hearing.

At the hearing the Council will determine whether the property is eligible for annexation. The eligibility requirements are as follows:

- 1) Contiguity, which means that one sixth of the perimeter of the area to be annexed must be contiguous to the existing boundary of the City;
- 2) A community of interest exists between the City and the area to be annexed;
- 3) The area to be annexed is urban or is urbanizing;
- 4) The area to be annexed is integrated with or is capable of being integrated with the City.

Contiguity, as described above, is in and of itself a sufficient basis to make the other three findings. The Council *may* consider the City's ability to provide municipal services to the area to be annexed in making these findings and *must* make findings regarding the adequacy of the City's water supply to serve the area to be annexed.

The City may not extend its boundaries more than three (3) miles in a year and the City must have in place a planning document in the three (3) mile area called a "Three Mile Plan." There are also technical requirements as to establishing boundaries, not splitting parcels, and the effect of streets and waterbodies on the boundary and contiguity requirements, none of which would be likely to be relevant to an annexation of Brown Ranch.

Annexation Ordinance

Once the Eligibility Resolution is approved, the Council may proceed to complete the annexation by adopting an Annexation Ordinance unless an election is required. There are no special notice requirements or deadlines for the Annexation Ordinance.

Elections

As noted above, the property owner(s) consent to the annexation by signing the annexation petition. However, if during the annexation process the City elects to impose conditions on the annexation, then the annexation must be referred to *an election of the landowners and registered electors in the area to*

be annexed. This is because the conditions are not part of the annexation petition and the landowners do not consent to the conditions by signing the annexation petition.

Conditions that are included in an annexation agreement, on the other hand, form a contract between the landowner(s) and the City and do not trigger the election requirement.

An election can also be triggered by a referendum petition. An annexation ordinance is a legislative act that is subject to the City Charter's referendum process. A referendum petition would trigger an *election of the registered electors of the City*. A referendum petition would have to be filed within thirty (30) days of the effective date of the annexation ordinance. The current signature requirement for an annexation ordinance is 1,126 signatures. That number will change after the November 8 election.

Zoning and Subdivisions

The property owner seeking annexation may submit zoning and subdivision applications after approval of the Substantial Compliance Resolution. However, the City may not finally approve either type of application until the annexation is complete.

COMMUNITY DEVELOPMENT CODE ("CDC") ANNEXATION PROCEDURES

The CDC provides a review process for annexations that is the same as the process used for other land use applications. The petition is reviewed by staff and then referred to Planning Commission for a recommendation prior to City Council hearings. City Council would approve the annexation by ordinance.

The CDC establishes the following criteria for approval:

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.

In addition, the CDC requires that the City enter into an annexation agreement with the petitioners prior to approving an annexation petition.

Although the review process for an annexation proposal is the same as for other types of land use applications, annexation is fundamentally different because annexation is a legislative act instead of a quasi-judicial act. This means that the Council is never required to approve an annexation. This is true even if the proposal satisfies the approval criteria.

ANNEXATION AGREEMENT

As noted above, state law does not require an annexing municipality to enter into an annexation agreement prior to approving an annexation. However, annexation agreements are commonly used in connection with annexations. The reason for this is that an annexation agreement provides a greater degree of control over development of area to be annexed than the annexing municipality would otherwise have. Annexation agreements also provide some certainty to the annexing property owner as to the requirements that the annexing municipality will impose during the development process.

In the absence of an annexation agreement, development of the area to be annexed is subject to CDC regulations. The scope of municipal planning and zoning authority is limited by various constitutional and statutory restrictions. These restrictions are particularly relevant to the power of the City to require a property owner to contribute to the improvement of offsite infrastructure.

The general rule is that a property owner can be required to contribute to necessary improvements to offsite infrastructure to the extent necessary to offset the impact of development. A property owner cannot be required to contribute to improvements that are necessary to correct existing deficiencies or inadequacies.

Typically, what these rules mean is that some sort of engineering study will calculate the property owner's proportional share of the demand (traffic, water usage, stormwater generation, etc.) generated by the development. This share will frequently translate into a cash contribution to the City to be used for the eventual (but not necessarily immediate) construction of the required improvements. This result can be undesirable for the City because development can make an unsatisfactory condition worse without providing a timely solution.

The City has a greater degree of flexibility to address infrastructure issues when negotiating an annexation agreement. The principal reason for this is that if the City Council determines that development resulting from annexation will create undesirable impacts, the City can withhold approval of the annexation and annexation agreement if the party seeking annexation does not agree to a mitigation plan that is satisfactory to the City. The City does not have the same power with respect to development applications for property that is already part of the City.

In addition, the CDC gives the City no authority to require property owner funding of maintenance costs of public infrastructure in the area to be annexed. If the annexing municipality wishes to impose a fee to fund maintenance and operations costs, the annexation agreement provides an avenue to implement that policy.

Timing

A minimum of approximately eighteen weeks is required to complete statutory annexation process. This estimate assumes that critical dates do not fall in gaps in the Council's meeting schedule or that, if so, Council would schedule a special meeting or meetings. This schedule also assumes that the annexation ordinance is not challenged in court or subject to a referendum petition.

The CDC process would run concurrently with the statutory process and would almost certainly take less time than the statutory process.

The wild card in this timeline is the annexation agreement. Annexation agreement negotiations can take months if not years. It is likely that if Brown Ranch is annexed, the timing will be principally determined by annexation agreement negotiations.

A chart showing the relationship of the various processes is attached as Attachment 1.

Court challenges

State statute provides limited opportunities for parties to challenge a municipal annexation decision. The principal limitation is standing, i.e. only a very small group of parties have the legal right to challenge an annexation by the City. Those parties are:

- i) Routt County,
- ii) any owner of property that is to be annexed, or

- iii) any registered elector in the area to be annexed. Residents of the City do not have the authority to challenge an annexation other than through the referendum process.

An individual with standing who wishes to sue must i) request reconsideration of the annexation ordinance within ten (10) days of its effective date and ii) file in District Court within sixty (60) days of the effective date of the annexation ordinance.

II. SUMMARY AND ALTERNATIVES:

N/A. This item is information only.

III. STAFF RECOMMENDATION:

N/A. This item is information only.

IV. FISCAL IMPACT:

N/A. This item is information only.

V. LEGAL ISSUES:

N/A. This item is information only.

VI. CONFLICTS OR ENVIRONMENTAL ISSUES:

N/A. This item is information only.

VII. CONSISTENCY WITH COUNCIL GOALS AND POLICIES:

N/A. This item is information only.

ATTACHMENTS:

Attachment 1: Annexation Process Flowchart.

Attachment 2: Annexation 101 PowerPoint.