

ANNEXATION PROCEDURE
PRE-ANNEXATION AGREEMENTS

Some annexations require that an annexation election be conducted, specifically where an annexation is going to be approved with terms and conditions that may be attached to the annexation itself. (See 31-12-107(1)(g) and 31-12-112(1), C.R.S., as amended.) This is true even though the proposed annexation petition is signed by 100% of the owners of the area proposed to be annexed. Consequently, due to the fact there may be a number of additional terms and conditions which should be imposed, rather than proceed to the expensive method of holding an election, pre-annexation agreements are entered into when the annexing petitioner is the 100% owner of the area to be annexed or there is more than one petitioner and 100% of the petitioners agree to enter into a pre-annexation agreement.

Attached to this document is an excerpt from the 1991 edition of the booklet entitled “Annexation in Colorado”, published by the Colorado Municipal League, from Chapter V. Special Annexation Considerations, pages 33, 34, and 35. This document sets forth an informative introduction and a legal authority basis for pre-annexation agreements, and in addition sets forth under paragraph 3 on page 33, the contents of pre-annexation agreements. The terminology for the agreement itself is “Pre-Annexation Agreement”, because the agreement should be entered between the City and the annexation petitioners prior to the recording of the annexation ordinance.

Additionally, because a subdivision ordinance and a zoning ordinance need to be passed before 90 days from the effective date of the annexing ordinance, certain elements regarding subdivision and zoning need to be referenced specifically in a pre-annexation agreement. Due to the fact that the Planning Commission examines the subdivision and zoning matters, the processing procedure for both subdivision and zoning must occur at the same time for purposes of incorporating a number of things in a pre-annexation agreement. Hence, the pre-annexation process becomes an integral part of the Planning Commission’s action for recommendation on the pre-annexation agreement to the City Council.

Several more specific items which need to be included in every pre-annexation agreement are items that in some instances have taken care of by staff. However, due to the fact that they should appear in the agreement itself, they are enumerated here for part of the recommendation

from Planning Commission to City Council, for City Council's appraisal of specific things that require consideration.

Sec. 18-9 of the Subdivision Chapter provides as follows:

“Regulation of the subdivision of land and the attachment of reasonable conditions to land subdivision is an exercise of valid police power delegated by the state constitution to the city. The developer has the duty of compliance with reasonable conditions laid down by the planning commission for design, dedication, improvement and restrictive use of the land so as to conform to the physical and economical development of the municipality and to the safety and general welfare of the future plot owners in the subdivision and of the community at large.”

Sec. 21-64 of the City Code provides for water rights to be dedicated to the City by conveyance, and in the absence of same, a cash equivalent to be determined pursuant to formula.

The second item deals with tap fees and plant investment fees, which are an up-front charge prior to hookup. In many instances, the rates are set by resolution of City Council that a determination is based upon specific dollar amounts, but in other instances, namely by zoning, other than classification for residential units, upon time and materials or the demand put on the City's system. These are found in the following sections of the Sterling City Code: 21-93, 21-94, 21-164 and 21-165.

The following subdivision requirements of a specific nature that need to be examined are as follows: 18-103(a) drainage and storm sewers, including the general requirements under that section and subsection (b) storm water facilities, which refers to meeting the requirements of Chapter 8 on flood drainage prevention requirements in some instances; 18-106 relative to sidewalks; 107(b) location of utilities and requirements for dedication of easements when required; 18-108 public uses, such as for parks, playgrounds, recreational areas, etc.

The above list is not exhaustive and there may be additional items of more specific nature which should be added to the list of those items which should be included in a pre-annexation agreement, following consideration by the Planning Commission and the City Council.