



Compliance with 31-12-104 Eligibility for Annexation and 31-12-105 Limitations

Ackard Annexation

Commerce City, CO

4/14/2025

31-12-104 Eligibility for Annexation:

1) No unincorporated area may be annexed to a municipality unless one of the conditions set forth in section 30 (1) of article II of the state constitution first has been met. An area is eligible for annexation if the provisions of section 30 of article II of the state constitution have been complied with and the governing body, at a hearing as provided in section 31-12-109, finds and determines:

(a) That not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the annexing municipality. Contiguity shall not be affected by the existence of a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, public lands, whether owned by the state, the United States, or an agency thereof, except county-owned open space, or a lake, reservoir, stream, or other natural or artificial waterway between the annexing municipality and the land proposed to be annexed. Subject to the requirements imposed by section 31-12-105(1)(e), contiguity may be established by the annexation of one or more parcels in a series, which annexations may be completed simultaneously and considered together for the purposes of the public hearing required by sections 31-12-108 and 31-12-109 and the annexation impact report required by section 31-12-108.5.

Compliance: Yes, this site meets the requirements for at least one-sixth contiguity per the Annexation Map:

Total perimeter of area considered for annexation = 16,585.19'



One-sixth of total perimeter of area = 2,764.75'

Perimeter of the area contiguous with existing city limits = 4099.17'

That total contiguous perimeter is 24.72% which meets or exceeds the 1/6 area required.

(b) That a community of interest exists between the area proposed to be annexed and the annexing municipality; that said area is urban or will be urbanized in the near future; and that said area is integrated with or is capable of being integrated with the annexing municipality.

Compliance:

- There exists a community of interest between the proposed area to be annexed and the annexing municipality. The development of the annexation property will require Commerce City's infrastructure services for development. In turn, the property will contribute as an economic and employment base for the City.
- The area will be urbanized in the near future; The property is within Commerce City's growth urban boundary.
- And the area will be integrated with the annexing municipality by generally complying with the City's Comprehensive Plans, as outlined in this project annexation narrative.

The fact that the area proposed to be annexed has the contiguity with the annexing municipality required by paragraph (a) of this subsection (1) shall be a basis for a finding of compliance with these requirements unless the governing body, upon the basis of competent evidence presented at the hearing provided for in section 31-12-109, finds that at least two of the following are shown to exist:



- (i) Less than fifty percent of the adult residents of the area proposed to be annexed make use of part or all of the following types of facilities of the annexing municipality: Recreational, civic, social, religious, industrial, or commercial; and less than twenty-five percent of said area's adult residents are employed in the annexing municipality. If there are no adult residents at the time of the hearing, this standard shall not apply.

Compliance: Not Applicable. There are no residents on the property.

- (ii) One-half or more of the land in the area proposed to be annexed (including streets) is agricultural, and the landowners of such agricultural land, under oath, express an intention to devote the land to such agricultural use for a period of not less than five years.

Compliance: Not Applicable. Although the land has been used for agriculture in the past, the landowner intends to rezone the property to I-1 and develop it.

- (iii) It is not physically practicable to extend to the area proposed to be annexed those urban services which the annexing municipality provides in common to all of its citizens on the same terms and conditions as such services are made available to such citizens. This standard shall not apply to the extent that any portion of an area proposed to be annexed is provided or will within the reasonably near future be provided with any service by or through a quasi-municipal corporation.



Compliance: Not applicable. Urban services already exist or are under construction on adjacent properties, and may be reasonably extended in the near future for the project site.

(2)

(a) The contiguity required by paragraph (a) of subsection (1) of this section may not be established by use of any boundary of an area which was previously annexed to the annexing municipality if the area, at the time of its annexation, was not contiguous at any point with the boundary of the annexing municipality, was not otherwise in compliance with paragraph (a) of subsection (1) of this section, and was located more than three miles from the nearest boundary of the annexing municipality, nor may such contiguity be established by use of any boundary of territory which is subsequently annexed directly to, or which is indirectly connected through subsequent annexations to, such an area.

Compliance: Not applicable. There are not contiguity issues with adjacent properties.

(b) Because the creation or expansion of disconnected municipal satellites, which are sought to be prohibited by this subsection (2), violates both the purposes of this article as expressed in section 31-12-102 and the limitations of this article, any annexation which uses any boundary in violation of this subsection (2) may be declared by a court of competent jurisdiction to be void ab initio in addition to other remedies which may be provided. The provisions of section 31-12-116(2) and (4) and section 31-12-117 shall not apply to such an annexation. Judicial review of such an annexation may be sought by any municipality having a plan in place pursuant to section 31-12-105(1)(e) directly affected by such annexation, in addition to those



described in section 31-12-116(1). Such review may be, but need not be, instituted prior to the effective date of the annexing ordinance and may include injunctive relief. Such review shall be brought no later than sixty days after the effective date of the annexing ordinance or shall forever be barred.

Compliance: Not applicable. The project site will not be a “disconnected municipal satellite.”

(c) Contiguity is hereby declared to be a fundamental element in any annexation, and this subsection (2) shall not in any way be construed as having the effect of legitimizing in any way any noncontiguous annexation.

Compliance: Acknowledged. Contiguity considerations are met for the project site.

Compliance with 31-12-105 Limitations

(1) Notwithstanding any provisions of this part 1 to the contrary, the following limitations apply to all annexations:

(a) In establishing the boundaries of any territory to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, shall be divided into separate parts or parcels without the written consent of the landowners thereof unless such tracts or parcels are separated by a dedicated street, road, or other public way.

Compliance: Not applicable. The territory to be annexed represents a single, contiguous parcel and the entirety of the landowner’s property.

(b) In establishing the boundaries of any area proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising twenty acres or more (which, together with the buildings and



improvements situated thereon has a valuation for assessment in excess of two hundred thousand dollars for ad valorem tax purposes for the year next preceding the annexation) shall be included under this part 1 without the written consent of the landowners unless such tract of land is situated entirely within the outer boundaries of the annexing municipality as they exist at the time of annexation. In the application of this paragraph (b), contiguity shall not be affected by a dedicated street, road, or other public way.

Compliance: Not applicable. The landowner represents 100% of the ownership interest in the area proposed to be annexed and has requested this annexation.

(c) No annexation pursuant to [section 31-12-106](#) and no annexation petition or petition for an annexation election pursuant to [section 31-12-107](#) shall be valid when annexation proceedings have been commenced for the annexation of part or all of such territory to another municipality, except in accordance with the provisions of [section 31-12-114](#). For the purpose of this section, proceedings are commenced when the petition is filed with the clerk of the annexing municipality or when the resolution of intent is adopted by the governing body of the annexing municipality if action on the acceptance of such petition or on the resolution of intent by the setting of the hearing in accordance with [section 31-12-108](#) is taken within ninety days after the said filings if an annexation procedure initiated by petition for annexation is then completed within the one hundred fifty days next following the effective date of the resolution accepting the petition and setting the hearing date and if an annexation procedure initiated by resolution of intent or by petition for an annexation election is prosecuted without unreasonable delay after the effective date of the resolution setting the hearing date.

Compliance: Not applicable. Landowner has not commenced annexation proceedings with any other municipality.



(d) As to any annexation which will result in the detachment of area from any school district and the attachment of the same to another school district, no annexation pursuant to [section 31-12-106](#) or annexation petition or petition for an annexation election pursuant to [section 31-12-107](#) is valid unless accompanied by a resolution of the board of directors of the school district to which such area will be attached approving such annexation.

Compliance: Not applicable. Landowner does not propose any changes to school district boundaries.

(e)(i) Except as otherwise provided in this paragraph (e), no annexation may take place that would have the effect of extending a municipal boundary more than three miles in any direction from any point of such municipal boundary in any one year. Within said three-mile area, the contiguity required by [section 31-12-104\(1\)\(a\)](#) may be achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway. Prior to completion of any annexation within the three-mile area, the municipality shall have in place a plan for that area that generally describes the proposed location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities, and terminals for water, light, sanitation, transportation, and power to be provided by the municipality and the proposed land uses for the area. Such plan shall be updated at least once annually. Such three-mile limit may be exceeded if such limit would have the effect of dividing a parcel of property held in identical ownership if at least fifty percent of the property is within the three-mile limit. In such event, the entire property held in identical ownership may be annexed in any one year without regard to such mileage limitation. Such three-mile limit may also be exceeded for the annexation of an enterprise zone.



Compliance: Not applicable. The extent of the territory to be annexed represents far less than three miles along an existing municipal boundary which has remained unchanged for decades.

(II) Prior to completion of an annexation in which the contiguity required by [section 31-12-104\(1\)\(a\)](#) is achieved pursuant to subparagraph (I) of this paragraph (e), the municipality shall annex any of the following parcels that abut a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, where the parcel satisfies all of the eligibility requirements pursuant to [section 31-12-104](#) and for which an annexation petition has been received by the municipality no later than forty-five days prior to the date of the hearing set pursuant to [section 31-12-108\(1\)](#):

- (A) Any parcel of property that has an individual schedule number for county tax filing purposes upon the petition of the owner of such parcel;
- (B) Any subdivision that consists of only one subdivision filing upon the petition of the requisite number of property owners within the subdivision as determined pursuant to [section 31-12-107](#); and
- (C) Any subdivision filing within a subdivision that consists of more than one subdivision filing upon the petition of the requisite number of property owners within the subdivision filing as determined pursuant to [section 31-12-107](#).

Compliance: Not applicable. As previously indicated, subparagraph (I) does not apply in this case because the extent of the territory to be annexed represents far less than three miles.

(e.1) The parcels described in subparagraph (II) of paragraph (e) of this subsection (1) shall be annexed under the same or substantially similar terms and conditions and considered at the same hearing and in the



same impact report as the initial annexation in which the contiguity required by [section 31-12-104\(1\)\(a\)](#) is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway. Impacts of the annexation upon the parcels described in subparagraph (II) of paragraph (e) of this subsection (1) that abut such platted street or alley, public or private right-of-way, public or private transportation right-of-way or area, or lake, reservoir, stream, or other natural or artificial waterway shall be considered in the impact report required by [section 31-12-108.5](#). As part of the same hearing, the municipality shall consider and decide upon any petition for annexation of any parcel of property having an individual schedule number for county tax filing purposes, which petition was received not later than forty-five days prior to the hearing date, where the parcel abuts any parcel described in subparagraph (II) of paragraph (e) of this subsection (1) and where the parcel otherwise satisfies all of the eligibility requirements of [section 31-12-104](#).

Compliance: Not applicable as previously indicated.

(e.3) In connection with any annexation in which the contiguity required by [section 31-12-104\(1\)\(a\)](#) is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, upon the latter of ninety days prior to the date of the hearing set pursuant to [section 31-12-108](#) or upon the filing of the annexation petition, the municipality shall provide, by regular mail to the owner of any abutting parcel as reflected in the records of the county assessor, written notice of the annexation and of the landowner's right to petition for annexation pursuant to [section 31-12-107](#). Inadvertent failure to provide such notice



shall neither create a cause of action in favor of any landowner nor invalidate any annexation proceeding.

Compliance: Not applicable. Contiguity for the territory to be annexed already exists and does not require annexing a platted street or alley, a public or private right-of-way, etc.

(f) In establishing the boundaries of any area proposed to be annexed, if a portion of a platted street or alley is annexed, the entire width of said street or alley shall be included within the area annexed.

Compliance: Acknowledged.

(g) Notwithstanding the provisions of paragraph (f) of this subsection (1), a municipality shall not deny reasonable access to landowners, owner of an easement, or the owner of a franchise adjoining a platted street or alley which has been annexed by the municipality but is not bounded on both sides by the municipality.

Compliance: Acknowledged.

(h) The execution by any municipality of a power of attorney for real estate located within an unincorporated area shall not be construed to comply with the election provisions of this article for purposes of annexing such unincorporated area. Such annexation shall be valid only upon compliance with the procedures set forth in this article.

Compliance: Acknowledged.

(i) For any annexation that will result in annexation of lands within the exterior boundaries of a reservation of a federally recognized Indian tribe located within the state, no annexation pursuant to [section 31-](#)



[12-106](#) or annexation petition or petition for an annexation election pursuant to [section 31-12-107](#) is valid unless accompanied by a resolution or ordinance of the tribal council or other governing body of the federally recognized Indian tribe within whose reservation the annexation will occur approving the annexation. This subsection (1)(i) applies to annexation of all lands within the exterior boundaries of a reservation of a federally recognized Indian tribe located within the state regardless of the status of the lands sought to be annexed.

Compliance: Not applicable. The territory to be annexed is not located within the exterior boundaries of a reservation.