



## Legislation Text

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**File #:** ID-35-20, **Version:** 1

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### *Department of Community Development*

Reference: Marrone Trucking Annexation

**To:** Mayor Gregory Mills and Members of City Council

**Through:** Marv Falconburg, AICP, Acting City Manager

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**Prepared By:** Mike Tylka, AICP, Senior Planner

**Date Prepared:** January 6, 2020

### **PURPOSE**

In order to proceed with annexation of the Marrone Trucking Property ("Property"), the Council must conduct a public hearing, approve a resolution for annexation eligibility, and complete the first reading of the annexation ordinance. Annexation is regulated by the *Colorado Revised Statutes* and is a four step process with the steps as follows:

- 1.) Petition Accepted by City Council via a Substantial Compliance Resolution
- 2.) Findings of Fact via an Annexation Eligibility Resolution
- 3.) 1<sup>st</sup> Reading of an Annexation Ordinance with a Public Hearing
- 4.) 2<sup>nd</sup> Reading of an Annexation Ordinance
  - An Annexation Agreement may be approved via a Resolution at this time

A Petition for Annexation ("Petition") was accepted by the City Council at a regular meeting held on December 3, 2019 and City Council found that the Petition was in substantial compliance with the applicable laws of the State of Colorado. See the attached City Council Resolution #2019-120 for further information. Via this Resolution, City Council set the public hearing for this annexation for January 21, 2020.

City Council must now hold a public hearing and make a determination on a resolution for annexation eligibility and on the first reading of an annexation ordinance.

### **NEW CODE TRANSITION STATEMENT**

In the City's transition to the newly adopted code, applications submitted prior to the effective date of January 1, 2020, were reviewed by staff using the previous *Land Use and Development Code* and such sections and criteria are referenced in this report.

### **STRATEGIC FOCUS AREAS**

- Recognizable and Well-Planned Community
- Supportive, Sustainable Infrastructure

### **BACKGROUND**

The Property is approximately 20.00 acres and is generally located east of Fulton Avenue approximately one-quarter mile south from its intersection with Bromley Lane. It is owned by Mr. Kenneth M. Marrone and Marrone EAT, LLC ("Owners"). EnviroFinance Group, LLC ("Applicant") is acting as the applicant on behalf of the Marrone Family.

The Property is and is currently zoned "I-1" (Industrial-1 District) through Adams County and the Applicant has submitted for a City zoning designation. The Property is 81.27% contiguous with the existing Brighton city limits. The City of Brighton's Comprehensive Plan, designates the Property as Industrial.

Annexation is the first step in the land development process with the City (*Annexation > Rezoning > Platting > Site Plan Review > Permits*). A separate application to rezone the Property to a City zone district is also before the City Council. At the next scheduled meeting after approval on first reading, if granted, an annexation agreement will be brought before the City Council in addition to the second reading of the annexation ordinance. In the future, a plat and development agreement will be brought before City Council as this project was submitted before the effective date of January 1, 2020 of the new *Land Use and Development Code*.

#### CRITERIA BY WHICH COUNCIL MUST CONSIDER THE ITEM

- **Comprehensive Plan (Be Brighton):** The annexation of this parcel is consistent with the Comprehensive Plan, which designates this parcel as being located within the "Industrial" area.
- **Land Use and Development Code:** Section 17-8-40 outlines the below six approval criteria.
  1. Approval criteria. All annexations shall be reviewed for compliance with the following criteria. However, annexation is a discretionary, legislative act. The City shall never be compelled to annex, unless otherwise required by state law, even if all these approval criteria have been satisfied.
    - a. The annexation is in compliance with the Municipal Annexation Act, Section 31-12-101, et seq., Colorado Revised Statutes ("C.R.S.");
    - b. The annexation is in accord with the Comprehensive Plan and other master plans of the City and the best interests of the City would be served by annexation of such property;
    - c. The property is capable of being integrated into the City and developed in compliance with all applicable provisions of the Brighton Municipal Code;
    - d. Municipal and governmental services and facilities will be extended to such areas which form a part of the whole City;
    - e. At the time any development of the area proposed to be annexed is completed, there will be capacity to adequately serve residents of such area with all necessary utilities and facilities; and
    - f. The annexation will encourage well-ordered development of the City.
- **Colorado Revised Statutes:** The City Council must determine whether the Annexation complies with the following statutory requirements set forth in the *Colorado Revised Statutes*:

#### Section 31-12-104

The following statutory limitations apply for eligibility for annexation:

- a. Not less than 1/6<sup>th</sup> of the perimeter of the area to be annexed is contiguous with the City of Brighton;
- b. A "community of interest" exists between the municipality;
- c. The area to be annexed and said area is urban or is to be urbanized;
- d. The area is integrated or capable of integration within the municipality.
- e. If the contiguity requirement is met, the "community of interest" requirement is presumed unless two of the following exist:
  - Less than 50% of the adult residents use facilities of the municipality (recreation, social, church, commercial, etc.), and less than 25% of the adults are employed in the municipality; or
  - One-half of more of the land is agricultural and the owners say it will stay agricultural for at least

- five years; or
- It is not physically practicable to extend urban services on the same terms and conditions as other citizens of the municipality.

#### Section 31-12-105

The following statutory limitations apply to the proposed annexation:

- a. Cannot separate property held in identical ownership;
- b. Cannot annex property more than 20 acres and more than \$200,000 in assessed value without the written consent of the owners, unless entirely within the municipality;
- c. No resolution or petition is valid if annexation proceedings have commenced for another municipality;
- d. Cannot extend municipal boundaries more than three miles in one year;
- e. There must be a plan in place regarding services and land uses;
- f. If annexation includes a portion of a street or an alley, all of the street or alley must be annexed; and
- g. Cannot deny reasonable access to adjoining landowners as a result of proposed annexation.

#### Section 31-12-108

The following statutory requirements regarding notice are applicable to annexations:

- a. Publication of the date, time, and place of the public hearing must be published once a week for four successive weeks;
- b. The first publication must be at least thirty days before the hearing;
- c. Copy of the notice, resolution, and petition must be sent by registered mail to the County Commissioners, County Attorney, special districts, and the school district at least twenty-five days before the hearing.  
*(Notice to special districts and school district does not confer right of review)*

#### Section 31-12-108.5

The statutes relating to annexations require an Annexation Impact Report for areas in excess of 10 acres to include the following:

- a. The municipality must prepare the Impact Report;
- b. A map showing present and proposed boundaries, utility infrastructure, streets, and land uses;
- c. Addresses, the provision of municipal services, the method of financing, effect on school districts, etc.;
- d. It must be filed twenty-five days before the hearing;
- e. One copy of the Annexation Impact Report must be filed with the County Commissioners within five days;
- f. Not required for annexation of ten acres or less, or if the County Commissioners agree to waive the report.

#### Section 31-12-109

The annexation statutes provide the following provisions regarding the public hearing on the annexation:

- a. Any person may appear and present evidence;
- b. All proceedings must be recorded.

#### Section 31-12-110

After the hearing, the governing body must set forth findings of fact and conclusion in a resolution regarding:

- a. Whether Sections 31-12-104 and 105 C.R.S have been met;
- b. Whether an election is required;
- c. Whether additional terms and conditions are to be imposed;
- d. A finding that the proposed annexation does not comply with Sections 31-12-104 and 105 shall terminate the proceedings.

### **STAFF ANALYSIS**

The Marrone Trucking Annexation complies with the C.R.S. §31-12-104 through 110. The Property is 81.27% contiguous

with the City of Brighton city limits, so the “Community of Interest” provision is presumed. The Property is set to be urbanized and is capable of integration within the City of Brighton. Utility lines are adjacent to the Property.

### **PUBLIC NOTICE AND INQUIRY**

Publication of the public hearing and notification of the public hearing, have been provided to all applicable entities as required by C.R.S. §31-12-108.5. The notice of public hearing was published in the Brighton Standard Blade on December 11<sup>th</sup>, 18<sup>th</sup>, 25<sup>th</sup> of 2019, and January 1<sup>st</sup> of 2020. A copy of the published notice, resolution of substantial compliance and petition as filed were sent via registered mail to the Board of County Commissioners of Adams County, the County Attorney and School District 27J. As of the date of this report, the Planning Division has not received any formal comments regarding the proposed annexation.

### **STAFF RECOMMENDATION**

City staff finds that the request for annexation complies with the requirements of the Municipal Annexation Act, C.R.S. §31-12-101 et seq. and that the request for annexation complies with the Comprehensive Plan.

### **OPTIONS FOR COUNCIL CONSIDERATION**

The City Council has the following two items before it, each with four options:

#### **Resolution of Annexation Eligibility**

City Council may:

- 1.) Approve the Resolution as drafted;
- 2.) Approve a modified Resolution;
- 3.) Deny the Resolution with specific findings to justify the denial; or
- 4.) Continue the item to be heard at a later, specified date if the Council feels it needs additional information to ensure compliance with the approval criteria.

#### **Annexation Ordinance**

If the Resolution of Annexation Eligibility is approved, City Council may:

- 1.) Approve the Annexation via ordinance as drafted;
- 2.) Approve the Annexation via a modified ordinance;
- 3.) Deny the Annexation via ordinance with specific findings to justify the denial; or
- 4.) Continue the item to be heard at a later, specified date if the Council feels it needs additional information to ensure compliance with the approval criteria.

Note: A second reading of the ordinance, if approved, will be required at a future meeting.

### **ATTACHMENTS**

- Draft Annexation Ordinance
- Aerial Map by City Staff
- Annexation Map by Applicant
- Newspaper Proof of Publication
- Resolution 2019-120 (Substantial Compliance)
- Draft City Staff Presentation