

**CITY OF CENTRAL, COLORADO
ORDINANCE NO. 13-07**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CENTRAL,
COLORADO REPEALING AND REPLACING CHAPTER 15 OF THE
MUNICIPAL CODE IN ITS ENTIRETY; SPECIFICALLY TO ADOPT
ANNEXATION POLICIES AND PROCEDURES AND TO ADOPT
REGULATIONS PERTAINING TO DISCONNECTION**

WHEREAS, the City of Central (“City”) is authorized under its home rule charter and Title 31 of the Colorado Revised Statutes to adopt and amend ordinances in furtherance of governmental administration and the City’s police powers; and

WHEREAS, Article XX of the Colorado Constitution provides that the people of the City of Central are vested with all powers necessary, requisite or proper for the government and administration of its local and municipal matters; and

WHEREAS, Section 2.2 of the Central City Home Rule Charter expressly provides that the city shall have all powers, functions, rights and privileges in the operation of a municipality except those expressly forbidden to home rule municipal corporations and cities by the Constitution or statute; and

WHEREAS, the Colorado Municipal Annexation Act of 1965 found at Sections 31-12-101 et seq., C.R.S., is not a legislatively declared matter of statewide concern and the courts of the state have not found annexation to be a matter of purely statewide concern; and

WHEREAS, the City Council finds that the annexation of property and the method and manner of extending the boundaries of its community is a matter of local concern or, if not purely local, then annexation is a matter of mixed state and local; and

WHEREAS, annexation is recognized by the Colorado courts as a legislative and discretionary act by the municipality and that a municipality may deny or reject an annexation for no reason. *City of Colorado Springs v. Kitty Hawk Development Co.*, 392 P.2d 467 (Colo. 1964); and

WHEREAS, parts 5 and 6 of Article 12, Title 31, C.R.S., (the “Disconnection Provisions”) provide for two statutory procedures to disconnect property from a municipality; and

WHEREAS, disconnection of lands from a municipality is not a legislatively declared matter of statewide concern and the courts of the state have not found disconnection to be a matter of purely statewide concern; and

WHEREAS, the Disconnection Provisions are not stated as exclusive means for the disconnection of property; and

WHEREAS, the Colorado Court of Appeals in *Allely v. City of Evans*, 124 P.3d 911 (Colo. App. 2005) found that the process of statutory disconnection of lands within cities does not apply to home rule municipalities; and

WHEREAS, the disconnection of land from a municipality is a legislative act. *Allely v. City of Evans*, 124 P.3d 911 (Colo. App. 2005); and

WHEREAS, the City Council finds that the disconnection of property and the method and manner of reducing the boundaries of its community is a matter of local concern and there exists no statutory or constitutional laws governing the legislative act of disconnection of land from a home rule municipality; and

WHEREAS, the City Council finds that disconnection should be limited to circumstances where the disconnection makes rational sense in terms of the efficient and cost-effective delivery of municipal services, creating readily recognizable and logical boundaries to the municipality, and equitable distribution of service responsibility by governments that deliver municipal services; and

WHEREAS, the City Council has determined, based on the evidence and testimony presented at the public hearing, that the Code, as may be amended herein, will further the health, safety and welfare of the inhabitants of the City.

BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF CENTRAL, COLORADO:

Section 1. Chapter 15 of the Central City Municipal Code, titled “Annexations” is hereby repealed in its entirety and replaced to read in full as follows:

CHAPTER 15
Annexation and Disconnection

Article I Annexation Policies and Procedures

Sec. 15-1	Title
Sec. 15-2	Authority
Sec. 15-3	Acknowledgment, purpose and interpretation.
Sec. 15-4	Definitions
Sec. 15-5	Three-mile limitation and Three-Mile Plan
Sec. 15-6	Fees and charges for annexation petitions
Sec. 15-7	Annexation process; ordinance
Sec. 15-8	Referral to City Planning Commission
Sec. 15-9	Annexed property subject to all laws
Sec. 15-10	Annexation agreements

Article II Disconnection

Sec. 15-21	Title
Sec. 15-22	Authority
Sec. 15-23	Purpose
Sec. 15-24	Method of petition for disconnection
Sec. 15-25	Petition for disconnection by City Council
Sec. 15-26	Processing of disconnection petition
Sec. 15-27	Standard for approval of disconnection

Sec. 15-28 Lands subject to tax for prior indebtedness

ARTICLE I

Annexation Policies And Procedures

Sec. 15-1. Title.

The provisions of this Article shall be known and cited as the "Central City Annexation Policies and Procedures."

Sec. 15-2. Authority.

This Article is authorized pursuant to the powers of the City of Central as a home rule municipal corporation conferred by Article XX of the Colorado Constitution. Section 1.2 of the City Home Rule Charter authorizes the City to annex property in accordance with the Colorado Municipal Annexation Act of 1965.

Sec. 15-3. Acknowledgement, purpose and interpretation.

(a) The City acknowledges the applicability of the Colorado Municipal Annexation Act of 1965, Sections 31-12-101, et seq., C.R.S. for annexations to the City of Central except to the extent otherwise permitted by law or as may be modified pursuant to the City's home rule authority conferred by Article XX of the Colorado Constitution.

(b) This Article is intended to implement and supplement the Colorado Municipal Annexation Act of 1965 and shall be liberally construed for the following purposes:

- (1) To encourage a natural and well-ordered development of the City;
- (2) To distribute fairly and equitably the costs of municipal services among those persons who benefit from such services;
- (3) To extend municipality, services, and facilities to eligible areas which form a part of the whole community;
- (4) To simplify governmental structure in urban areas;
- (5) To provide an orderly system for extending municipal regulations to newly annexed areas;
- (6) To reduce friction among contiguous or neighboring municipalities;
- (7) To increase the ability of municipalities in urban areas to provide their citizens with the services they require; and
- (8) To exercise to the greatest extent possible the City's powers conferred by Article XX of the Colorado Constitution.

Sec. 15-4. Definitions.

The meaning of words and phrases contained in this Chapter 15 shall have the meanings ascribed to them by Section 31-12-103, C.R.S. unless the context clearly indicates a different meaning.

Sec. 15-5. Three-Mile Limitation and Three-Mile Plan.

(a) Except as otherwise provided in this section, no annexation may take place that would have the effect of extending the City's municipal boundary more than three miles in any direction from any point of such municipal boundary in any one year. Within the three-mile area, the contiguity required by Section 31-12-104(1)(a), C.R.S., 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. 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 (1) year without regard to such mileage limitation.

(b) The City of Central Comprehensive Development Plan, as amended, shall serve as and shall constitute the "plan in place" referenced in Section 31-12-105(1)(e), C.R.S., unless a different plan, supplement, or revision is expressly adopted to serve as a plan in place. The plan in place may also be commonly referred to as the "Three-Mile Plan" and such plan shall be deemed automatically updated annually on January 1 of each year without further action by the City unless a change or modification is necessary and is adopted by resolution or ordinance by the City Council. The absence of a specific reference in such plan to a particular parcel of land proposed for annexation shall not be interpreted as a statement of intent to not annex such parcel of land; it is the plan and intent of the City Council to evaluate and to consider for potential annexation all property within three miles of the City's then existing municipal boundaries upon submission of a petition or as otherwise permitted by this Article and the Colorado Municipal Annexation Act of 1965. The absence in the plan of a specific reference to any character or 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 City and the proposed land uses for the area shall not be interpreted as a failure to comply with Section 31-12-105(1)(e), C.R.S., but shall be interpreted as a plan by the City to determine the appropriate character or extent of land uses and services through the City's applicable processes of annexation, planning, and development approvals on a case by case basis. The plan in place may also be amended or modified to more specifically identify the character or extent of land uses and services at any time or contemporaneously with any annexation.

Sec. 15-6. Fees and charges for annexation petitions.

(a) The City Manager may administratively establish and modify as needed application and consultant reimbursement fees for the processing of an annexation petition. In setting such fees, the City Manager shall consider the costs incurred by the City in reviewing and processing the annexation and obtaining necessary data, studies, and reports. No petition shall be processed

unless accompanied by the applicable application and consultant reimbursement fees and such petition shall be deemed incomplete until such fees are paid in full.

(b) The City may require as a condition of annexation the payment of additional amounts by the petitioners or others deemed necessary, beneficial, or advantageous by the City, including but not limited to payments to offset anticipated costs or expenses of providing services to the annexed property or residents of the annexed area, mitigate anticipated impacts to the annexed area or to surrounding lands, to upgrade infrastructure within the City, and/or to defray any costs or expenses of the City.

(c) The City may waive all or any portion of a fee or charge for annexation where the City Council administratively finds in its sole discretion that the proposed annexation will provide substantial benefits or advance important economic or other goals and objectives of the City.

Sec. 15-7. Annexation process; ordinance.

All annexations shall be accomplished in general accordance with the procedures set forth in the Colorado Municipal Annexation Act, as amended, through an ordinance duly adopted by the City Council. Any petitions for annexation or petitions for annexation election shall contain the information required by the Municipal Annexation Act of 1965, as the same may be amended from time to time. The city may institute the procedure to zone land proposed for annexation on or after the submittal of an annexation petition, provided that the proposed zoning ordinance shall not be passed on final reading prior to the date when the annexation ordinance is adopted on final reading.

Sec. 15-8. Referral to City Planning Commission.

Following the date on which any petition for annexation or petition for annexation election has been submitted to the City, the City Council shall refer the proposed annexation to the Planning Commission for its review and recommendation. The Planning Commission shall submit its written recommendation regarding the proposed annexation to City Council on or before the date of the eligibility hearing scheduled pursuant to Section 31-12-108, C.R.S.

Sec. 15-9. Annexed property subject to all laws.

Unless otherwise provided by an agreement or by ordinance governing the annexation of property into the City, the ordinances, resolutions, rules, and regulations of the City shall remain fully valid and effective as to any property annexed into the City.

Sec. 15-10. Annexation agreements.

(a) The City is authorized to enter into one or more agreements with property owners memorializing understandings of the landowner and the City and/or imposing terms, conditions, obligations, and rights upon annexation mutually acceptable to the parties. An annexation agreement is not required as a condition of all annexations. Nothing contained in such agreement shall supersede any provision of any ordinance, resolution, rule, or regulation of the City unless:

(1) such agreement explicitly identifies a provision of an ordinance, resolution, rule or regulation of the City that is intended to be superseded by the agreement; or

(2) a provision of such agreement directly and irreconcilably conflicts with obligations and rights of the parties otherwise made applicable by a provision of an ordinance, resolution, rule, or regulation of the City.

(b) Annexation agreements shall be approved by ordinance.

ARTICLE II

Disconnection

Sec. 15-21. Title.

The provisions of this Article shall be known and cited as the "Central City Disconnection Policies and Procedures."

Sec. 15-22. Authority.

This Article is authorized pursuant to the powers of the City of Central as a home rule municipal corporation conferred by Article XX of the Colorado Constitution.

Sec. 15-23. Purpose.

This Article is intended to provide for policies and procedures for the disconnection of lands from the corporate boundaries of the City. This Article shall be liberally construed for the following purposes:

(1) To create logical, uniform, and identifiable boundaries for the City;

(2) To best organize and manage lands within the City to ensure efficient and cost effective delivery of municipal services;

(3) To reasonably demarcate the locations at which the City's responsibility for the delivery of municipal services begin and end as a means of reducing confusion among the citizens and to provide for reasonable City identity; and

(4) To distribute fairly and equitably the costs of City services among those persons who most directly use City resources and most directly benefit from such services.

Sec. 15-24. Method of petition for disconnection.

Proceedings for disconnection may be initiated only by petition of the City Council. Disconnection is a legislative act and the City Council shall exercise its sole discretion in the disconnection of land.

Sec. 15-25. Petition for disconnection by City Council.

A petition for disconnection shall meet or satisfy the following requirements:

(1) The petition shall propose disconnection of land contiguous to the border or boundaries of the City; and

(2) Where land proposed for disconnection is not owned or controlled by the City, the written consent of the owner of record shall be required as a condition of disconnection; and

(3) The petition shall be signed by a majority of the members of the City Council and shall state the reason or reasons justifying the proposed disconnection.

Sec. 15-26. Processing of disconnection petition.

(a) Following submission of a completed petition from the City Council, the City Clerk shall cause to be published a notice of a public meeting at which the City Council shall consider such petition and determine whether such disconnection should be approved. No other notice shall be required. Notice shall be published at least ten (10) days prior to the public meeting. Persons interested in such disconnection may submit written comments and such comments shall be provided to the City Council if received by the City at or prior to the meeting. The City Council may, at its discretion, accept comments at the public meeting from interested parties.

(b) Approval of any disconnection shall be made by ordinance. No disconnection shall be approved by emergency ordinance.

(c) Following approval of an ordinance disconnecting land from the City, the City Clerk shall cause to be mailed or otherwise delivered the following:

(1) Two (2) certified copies of the disconnection ordinance to the county clerk and recorder of the county in which the disconnected property is located, together with instruction to the county clerk to file one copy with the Colorado division of local government in the department of local affairs pursuant to Section 24-32-109, C.R.S.

(2) A copy of the ordinance to the county assessor of the county in which the disconnected property lies;

(3) A copy of the ordinance to the county surveyor of the county in which the disconnected property lies; and

(4) A certified copy of the ordinance to the Colorado division of local government in the department of local affairs.

Mailing of the disconnection ordinance shall not be a pre-condition to the effective date of the ordinance or the disconnection of the property described in the disconnection ordinance.

Sec. 15-27. Standard for approval of disconnection.

Approval of disconnection shall require a finding by the City Council that:

(a) The petition for disconnection meets the purposes and requirements of this Article; and

(b) The disconnection is in the best interests of the City.

Sec. 15-28. Lands subject to tax for prior indebtedness.

Land disconnected in accordance with this Article shall not be exempt from the payment of any taxes lawfully assessed against it for the purpose of paying any indebtedness lawfully contracted by the City while such land was within the limits of the City and which remains unpaid and for the payment of which said land could be lawfully taxed.

Section 2. Severability. Should any one or more sections or provisions of this Ordinance be judicially determined invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Ordinance, the intention being that the various sections and provisions are severable.

Section 3. Repeal. Any and all ordinances or codes or parts thereof in conflict or inconsistent herewith are, to the extent of such conflict or inconsistency, hereby repealed; provided, however, that the repeal of any such ordinance or code or part thereof shall not revive any other section or part of any ordinance or code heretofore repealed or superseded and this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the effective date of this Ordinance.

Section 4. Effective Date. This Ordinance shall become effective immediately following publication, public hearing and the approval of City Council following second reading in accordance with Sections 5.9 and 5.10 of the City Charter.

INTRODUCED AND READ by title only on first reading at the regular meeting of the City Council of the City of Central on the 4th day of June, 2013, at Central City, Colorado.

CITY OF CENTRAL, COLORADO

Ronald E. Engels, Mayor

Approved as to form:

Marcus McAskin, City Attorney

ATTEST:

Reba Bechtel, City Clerk

PASSED AND ADOPTED on second reading, at the regular meeting of the City Council of the City of Central on the 2nd day of July, 2013.

CITY OF CENTRAL, COLORADO

Ronald E. Engels, Mayor

ATTEST:

Reba Bechtel, City Clerk

POSTED IN FULL AND PUBLISHED BY TITLE AND SUMMARY in the Weekly Register Call newspaper on June 6, 2013.

POSTED AND PUBLISHED BY TITLE [AND SUMMARY IF AMENDED ON SECOND READING] in the Weekly Register Call newspaper on July 4, 2013.

CITY OF CENTRAL, COLORADO

Ronald E. Engels, Mayor

ATTEST:

Reba Bechtel City Clerk