

TOWN OF KERSEY LAND USE CODE

TABLE OF CONTENTS

ARTICLE 13- ANNEXATION REGULATIONS

13.1	Purpose.....	13-1
13.2	Annexation Application Process.....	13-1
13.3	Annexation Review Criteria	13-6
13.4	Responsibilities of the Applicant.....	13-8
13.5	Annexation of Enclaves, Partly Surrounded Land and Municipally Owned Land	13-8

13.1 Annexation Purpose

- A. **Purpose.** The purpose of this Article is to establish a procedure to bring land under the jurisdiction of the Town of Kersey in compliance with the Colorado Municipal Annexation Act of 1965, as amended. This Article, in part, provides supplemental requirements for annexation pursuant to the Colorado Municipal Annexation Act of 1965, and is not to be construed as altering, modifying, eliminating or replacing any requirement set forth in that act, or any requirements set forth in other portions of the Municipal Code. In the event of a conflict between the act, the provisions of this Article or any requirements set forth in other portions of the Municipal Code, it is the expressed intent of the Board of Trustees that the more stringent provision shall control.

13.2 Annexation Application Process

- A. Step 1: Preapplication Conference. The applicant shall schedule a preapplication conference with the Town Clerk to discuss any special conditions pertaining to the annexation and to obtain an annexation petition.
- B. Step 2: Annexation Application Submittal. At least fifteen (15) days prior to the presentation of any annexation petition to the Board of Trustees, the petitioner shall submit (two) 2 copies of the following information to the Town:
1. *Land Use Application Form.*
 2. *Application Fee and Fee Agreement.* A nonrefundable fee is collected to cover the cost of review by the Town Attorney, Town Engineer, Town Planner and any other expert whom the Town may wish to employ; and notice and publication expenses. Actual costs may exceed the deposit; in this case, the applicant is liable for costs in excess of the application fee according to the fee agreement. The Town shall provide the applicant with a copy of the most current fee schedule and fee agreement form.
 3. *Annexation Technical Criteria Form (see Workbook).*
 4. *Annexation Map.* All annexation maps shall be made with an engineer's scale, minimum scale to be one (1) inch represents one hundred (100) feet, and shall be on a reproducible medium with outer dimensions of twenty-four (24) by thirty-six (36) inches. The annexation map shall contain the following information:
 - a. The date of preparation, the scale and a symbol designating true north.
 - b. The name of the annexation.
 - c. The names and addresses of the applicant and the firm or person responsible for preparing the annexation map.
 - d. The written legal description provided on magnetic disk or CD in MSWord or WordPerfect format.

- e. Distinction of the boundary that is contiguous to the Town and the length of the same.
 - f. Lot and block numbers if the area is already platted.
 - g. Existing and proposed easements and rights-of-way.
 - h. Existing and requested zoning and acreage of each requested zone.
 - i. Ownership of all parcels within and adjacent to the annexation.
 - j. Appropriate certification blocks as directed by the Planning Department.
5. *Annexation Map Checklist (see Workbook).*
6. *Concept Plan.* All concept plans shall be made with an engineer's scale, minimum scale to be one (1) inch represents one hundred (100) feet, and shall be on a reproducible medium with outer dimensions of twenty-four (24) by thirty-six (36) inches. The concept plan shall contain the following information:
- a. The date of preparation, the scale and a symbol designating true north.
 - b. The name of the annexation.
 - c. The names, addresses and phone numbers of the applicant and the firm or person responsible for preparing the concept plan.
 - d. Existing and proposed easements and rights-of-way.
 - e. Block numbers and lot numbers with approximate dimensions (if known).
 - f. Location and approximate acreage of proposed land uses including open space and public sites to be dedicated.
 - g. Existing watercourses with adequate easements for flood control.
 - h. Land Use Table that includes land uses (including oil and gas), approximate acreage of each land use, percentage of each land use, proposed density or floor area ratio, and proposed number of dwelling units.
 - i. USGS topographic contours.
 - j. Proposed zoning.
7. *Annexation Petition (refer to the Kersey Workbook).*
8. *Description Of Soil Types and Their Limitations.*
9. *Ownership Report.* Such report must have an effective date less than thirty (30) days prior to the date of the submittal of the annexation petition.
10. *Mailing Lists and Envelopes.* The applicant shall provide the Town Clerk with two (2) sets of stamped, addressed, certified (return receipt requested) envelopes. The envelopes shall have the Town's address as the return address and the envelopes shall be addressed to the surrounding property owners (within three hundred [300] feet of the property), mineral interest owners of record, mineral and oil and gas lessees for the property, and the appropriate referral agencies (including Weld County, Special Districts, and irrigation ditch companies).

11. *Description of Consistency with the Comprehensive Plan.* The applicant shall provide a narrative discussing how the project relates to the goals, policies and strategies set forth in the Comprehensive Plan.
12. *Water Rights.* The applicant shall provide a Water Rights Report for the property prepared by a qualified water engineer or water attorney detailing the water rights appurtenant to and severed from the property to be annexed and their historical use. The report must include both surface and subsurface (tributary and nontributary groundwater). In addition, the applicant shall provide a deed transferring any water in the Dawson, Denver, Arapahoe or Laramie-Fox Hills aquifers to the Town as authorized by Title 37 Article 90 Colorado Revised Statutes.
13. *Zoning of Property to be Annexed.* If zoning is requested simultaneously with annexation, the petitioner must submit a completed zoning application form and a zoning map. If zoning is not requested simultaneously with annexation, the property is required by statute to be zoned within ninety (90) days of the completion of the annexation process.
14. *Current Property Tax Statement.*
15. *Vicinity Map* with a radius of one and one-half (1½) miles, at a minimum scale of one (1) inch represents two thousand (2,000) feet and at a size of 8-1/2" x 11".
16. *Statement of Community Need for Proposed Annexation and Zoning.*
17. *School District Impact.* For all annexations in excess of ten (10) acres, the applicant shall obtain from the school district governing the area to be annexed a statement of the effect of the annexation upon the school district, including an estimate of the number of students generated by the proposed annexation and the capital construction required to educate such students.
18. *Annexation Impact Report (For Annexations Greater Than 10 Acres).*
 - a. For all annexations greater than 10 acres, the Town shall review the impact report prepared by the applicant regarding the proposed annexation not less than twenty-five (25) days before the date of the annexation hearing. The Town Clerk must file this report within five (5) days after the report is prepared (see Step 4).
 - b. The annexation impact report shall include the following:
 - i. A map or maps of the Town and adjacent territory showing the following information:
 - a) The present and proposed boundaries of the Town in the vicinity of the proposed annexation.
 - b) The present streets, major trunk water lines, sewer interceptors and outfalls, other utility lines and ditches

- and the proposed extension of such streets and utility lines in the vicinity of the proposed annexation.
- c) The existing and proposed land use pattern in the areas to be annexed.
 - ii. A copy of any draft or final preannexation agreement, if available.
 - iii. A statement of the Town's plans for extending or providing for municipal services within the area to be annexed.
 - iv. A statement of the Town's plans for the financing of municipal services to be extended into the area to be annexed.
 - v. A statement identifying all existing districts within the area to be annexed.
 - vi. A statement of the effect of the annexation upon the school district governing the area to be annexed, including the estimated number of students generated and the capital construction required to educate such students.
- C. Step 3: Staff Certifies Application is Complete. Within a reasonable period of time, Staff shall either certify that the application is complete and in compliance with all submittal requirements or reject it as incomplete and notify the applicant of any deficiencies. The applicant shall then correct any deficiencies in the application package, if necessary, and submit the required number of copies of the application (as specified by the Town Planner) to the Town Clerk. The original application and all documents requiring a signature shall be signed in blue ink. If all documents are complete and accurate, the Planning Department shall submit the annexation petition to the Town Clerk.
- D. Step 4: Annexation Petition Referral to the Board of Trustees. The Town Clerk shall present the annexation petition and a resolution initiating annexation proceedings to the Board of Trustees, which shall thereafter establish a date for a public hearing.
- E. Step 5: Publish Public Notice. At least 30 days prior to the public hearing, the Town Clerk shall publish notice of the date, time and place that the Board of Trustees will be holding the public hearing. The notice must be published once a week for four successive weeks.
- F. Step 6 Clerk Refers Annexation Petition to the County and Special Districts. Upon the establishment of a public hearing date, the Town Clerk shall send copies of the published notice, annexation petition and the resolution initiating the annexation procedure by certified mail to the Clerk of the Board of Weld County Commissioners, the Weld County Attorney, the school district and special districts having territory within the annexed area. These copies shall be sent at least twenty-five (25) days prior to the public hearing.
- G. Step 7: Town Clerk Files Annexation Impact Report. The Town Clerk shall file one (1) copy of the impact report shall be filed with the Board of County Commissioners governing the area proposed to be annexed at least 20 days before the date of the Public Hearing. The preparation and filing of the annexation impact report may be waived upon approval of the Town and the Board of Weld County Commissioners.
- H. Step 8: Applicant Posts Signs on Property and Provides Signed Affidavit (see Workbook) to Town. The applicant shall post a sign on the property notifying the public of the hearing

dates at least fourteen (14) days prior to the hearing. The sign shall include the time and place of the public hearing and the applicant's name. The applicant shall submit an affidavit certifying they posted the property. Refer to the *Workbook* for details on the sign and for a sample affidavit.

- I. Step 9: Planning Department Refers the Annexation Application to Interested Parties. Upon acceptance of the annexation petition by the Board of Trustees, Staff shall send copies of the annexation map and the concept by regular mail to additional interested entities as determined by the Planning Department in its sole discretion. Such entities shall be advised by the Planning Department of the scheduled hearing date and shall further be notified that any objections to the annexation and master plan must be submitted to the Town in writing no later than seven (7) days after receipt of the annexation map and concept plan.
- J. Step 10: Planning Commission Review and Recommendation.
1. The Planning Commission shall consider the annexation application at a regular or special meeting to be held prior to the date of the public hearing before the Board of Trustees. If zoning of the property is requested at the time of annexation, the Planning Commission shall hold a public hearing on the zoning of the property at the same meeting. Notice of the public hearing on zoning shall be given in accordance with the requirements for an amendment to the zoning map set forth in Article 3 of this Code.
 2. The Planning Commission shall by resolution, recommend approval of the petition for annexation with or without modifications and/or conditions, or recommend denial. If zoning of the property is requested at the time of annexation, the Planning Commission shall by resolution recommend approval with or without modifications and/or conditions, or recommend denial of the requested zoning. The Planning Commission shall refer any such recommendation to the Board of Trustees.
- K. Step 11: Board of Trustees Public Hearing. Upon the submission of documentation in accordance with this Article and upon compliance with the notice and hearing requirements as set forth in the Colorado Municipal Annexation Act of 1965, as amended, the Board of Trustees may consider the approval of an ordinance annexing the subject property to the Town. If the Board of Trustees, in its sole discretion, finds that the annexation is not in the best interest of the Town, it may deny the petition by resolution, stating the grounds for such denial. In the event the Board of Trustees considers and disapproves such ordinance, no similar request may be heard for a period of one (1) year from the date of denial.
- L. Step 12 Final Submission. In the event the Board of Trustees approves an annexation ordinance, the applicant shall submit to the Town Clerk two (2) Mylars of the final annexation map and three (3) bond copies of the concept plan within ten (10) days of the effective date of the annexation ordinance.

- M. Step 13 Record Annexation Map. The Town Clerk shall record two certified copies of the annexation ordinance and map with the Weld County Clerk and Recorder.

13.3 Annexation Review Criteria
--

- A. It shall be the general policy of the Town with respect to annexations and the consideration of annexation petitions that:
1. Annexation is a discretionary act. With the exception of an initiated petition for the annexation of an enclave, the Board of Trustees shall exercise its sole discretion in the annexation of territory to the Town.
 2. The property is eligible for annexation if:
 - a. Not less than one-sixth of the perimeter of the area proposed to be annexed is "contiguous" with the Town. Contiguity is not affected by the existence of streets, alleys, rights-of-way, public lands (except country-owned open space), or water bodies between the Town and the land proposed to be annexed. (The one-sixth contiguity of the perimeter may be achieved by the annexation of one or more parcels in a series, which can be considered simultaneously for the purpose of the public hearing.)
 - b. A community of interest exists between the territory proposed to be annexed and the Town.
 - c. The territory proposed to be annexed is urban or will be urbanized in the near future and is integrated or is capable of being integrated with the Town. Existence of requirement a. above is a basis for a finding of requirements b., and c., unless the Board of Trustees at public hearing finds that at least two of the following exist:
 - i. Less than 50 percent of adult residents of the area proposed to be annexed use any of the recreational, civic, social, religious, industrial, or commercial facilities of the Town and less than 25 percent of these adult residents are employed in the annexing Town;
 - ii. At least one-half of the land proposed to be annexed its agricultural, and landowners constituting at least one-half of the total area express, under oath, an intention to devote the land to such agricultural use for at least five years; and
 - iii. It is impractical to extend to the proposed area those urban services the Town provides to all its citizens and upon the same conditions. This standard does not apply to the extent that any portion of an area proposed to be annexed is, or will be within the reasonably near future, being provided with service by a quasi-municipal corporation (such as a special district).

3. The land to be annexed and the uses proposed for the land shall contribute to the orderly growth of the Town and shall generally conform to the goals and policies of the Comprehensive Plan.
4. Certain public facilities and amenities are necessary and must be constructed as part of any territory annexed to the Town in order that the public needs may be served by such facilities. These facilities include, but not by way of limitation, arterial streets, bridges, public parks and recreation areas, school sites, fire and police station sites, and storm drainage facilities. The annexation of lands to the Town shall be shown not to create any additional cost or burden on the then-existing residents of the Town to provide such public facilities in any newly annexed area.
5. The petitioner for annexation shall be responsible for paying the Town's full cost for processing the annexation petition, from initial discussion with Town staff before submittal of the petition, through the approval and recording of the final annexation documents, unless otherwise approved by the Board of Trustees.
6. Annexed areas will not divide tracts of land to prevent further annexation of adjoining parcels. (For example, leaving a "gap" or a "strip" of land between property to be annexed and the adjoining property.)
7. All subsurface (nontributary) water rights (water in the Dawson, Denver, Arapahoe and Laramie-Fox Hills aquifers) shall be deeded to the Town at the time of annexation as authorized by Title 37 Article 90 Colorado Revised Statutes.
8. No land held in identical ownership may be divided into separate parcels for annexation without written consent of the landowner, unless the parcels are separated by a dedicated street, road, or other public way. (This applies even when the federal government owns the land, although federal and state public lands may be ignored for purposes of contiguity).
9. No land in identical ownership that comprises 20 acres and that has improvements with an assessed value in excess of \$200,000 for *ad valorem* tax purposes may be included in the annexation without written consent of the owner, unless the parcel is located entirely within the outer boundaries of the Town as they exist at the time of annexation.
10. No annexation resolution pursuant to Section 13.5 (annexation of enclaves, partly surrounded land and municipally owned land) and no annexation petition or petition for an annexation election is valid when annexation proceedings have been initiated for the annexation of part of such territory by another Town. (In that case, other provisions apply see C.R.S. Section 31-12-114.)

11. If an annexation will result in the detachment of area from a school district and its removal to another school district, the annexation petition or petition for annexation election must be accompanied by a resolution of the board of directors of the school district *to which* such area will be attached, approving the annexation.
12. The parcel annexed must not have the effect of extending the Town's boundary more than three miles in any direction in any one year.
13. If a portion of a *platted* street or alley is to be annexed, the entire width of the street or alley must be included within the area annexed.
14. The Town may not deny "reasonable access" to landowners or owners of easements or franchises adjoining a platted street or alley that the Town has annexed but that is bounded on one or both sides by unincorporated property.

13.4 Responsibilities of Applicant

- A. In addition to other duties imposed upon all applicants by this Code and the Colorado Municipal Annexation Act of 1965, as amended, all applicants shall have the following responsibilities: The applicant is responsible for having a representative at all meetings where the request is reviewed. Failure to have a representative present will be cause to have the item withdrawn from the agenda of that meeting.
- B. The applicant shall consult with the Planning Department to discuss any special conditions pertaining to the annexation and to obtain an annexation petition.

13.5 Annexation of Enclaves, Partly Surrounded Land, and Municipally Owned Land

When an unincorporated area has been entirely contained within the Town's boundaries for at least three years, the Town may annex the property by ordinance without regard to the review criteria in Section 13.3 or the hearing requirements of Section 13.2. Public notice under Section 132 must still be given. (This enclave annexation ability is not available if any boundary of the enclave consists, at the time of annexation, *solely* of a public right-of-way that has been annexed by the Town. Instead, the Town must truly surround the enclave with other real property.)