



## Legislation Text

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**File #:** CPC ZC 17-00082, **Version:** 2

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Ordinance No. 18-63 amending the zoning map of the City of Colorado Springs pertaining to 85.94 acres located northeast of the intersection of Marksheffel Road and Constitution Avenue establishing the R1-6000/DFOZ/AO/SS (Single-Family Residential with Design Flexibility, Airport and Streamside Overlays) zone district.

(Legislative)

Related Files: CPC A 17-00004, CPC A 17-00005, CPC A 17-00006, CPC A 17-00007, CPC ZC 17-00081, CPC ZC 17-00082, CPC ZC 17-00083

**Presenter:**

Peter Wysocki, Director, Planning and Community Development  
Catherine Carleo, Principal Planner, Planning and Community Development

**Summary:**

Applicant: Thomas and Thomas  
Owner: Lorson South Land Corp. and Babcock Land Corp.  
Location: Northeast corner of Marksheffel Road and Constitution Avenue

This project includes concurrent applications for annexation, master plan, zoning, and concept plan for the associated 140.61 acres located northeast of the intersection of Marksheffel Road and Constitution Avenue. The associated master plan and concept plan illustrate the proposed land use configuration, access and circulation, intended infrastructure and overall intent.

The proposed zoning will establish three zone districts; 17.58 acres as M-1/AO/SS (Light Industrial with Airport Overlay and Streamside Overlay); 85.94 acres as R1-6000/DFOZ/AO/SS (Single-Family Residential with Design Flexibility Overlay, Airport Overlay and Streamside Overlay); and 10.79 acres as PBC/AO/SS (Planned Business Center with Airport Overlay and Streamside Overlay).

**Previous Council Action:**

The City Council accepted the petition and referred the annexation to staff on May 23, 2017.

The City Council approved a resolution setting the public hearing date for May 22, 2018, at their regular meeting held on April 10, 2018.

On May 22, 2018, the associated ordinances were approved on first reading on a 7:2 vote with Councilors Murray and Gaebler opposing. At this hearing, City Council gave staff further direction to complete work on a final Intergovernmental Agreement to accompany the annexation agreement that was to be heard on June 12, 2018, for final decision.

The following City Council hearing, June 12, 2018, would have heard the second reading of the proposed annexation; all associated items were postponed at that time to the June 26, 2018 hearing date. Prior to this hearing staff completed the accompanying Intergovernmental Agreement for the proposed changes to The Sands Metropolitan District.

**UPDATE JULY 3, 2018**

**The IGA has not changed from the draft that was provided to council on May 22, 2018. This IGA was executed by the owner and approved by the Sands Districts' Board on June 6, 2018, a copy of this resolution is included with the IGA. Previous discussions on the IGA raised questions in regards to the section discussing eminent domain. Section 5 of the IGA reads, in part: "Notwithstanding the Service Plan, The Sands Districts 1-3 agree that, from and after the date of this Agreement, they will not exercise either eminent domain or dominant eminent domain without the prior written approval of the City except as otherwise provided in this Section 5." The requirement for written approval of the City is standard language from the City's Model Service Plan. A copy of the final executed IGA is enclosed.**

**Furthermore at the City Council hearing held on June 26, 2018 a motion was approved to postpone this item for further clarification from the Cherokee Metropolitan District and the pending appeal of the decision to release the property associated with this annexation from the Cherokee Metropolitan District. A special meeting was held on July 2, 2018, by the Cherokee Metropolitan District to address the Sands Annexation and appeal to district court. All board of directors were in attendance and voted 4:1 (Dave Mattes in opposition) on a resolution authorizing filing of stipulated motion to set aside findings of fact, conclusion of law and order, and dismiss the appeal. This executed resolution from the Cherokee Metropolitan District is enclosed.**

**In addition at the special meeting held July 2, 2018, the Cherokee Metropolitan District approved a motion unanimously to approve exclusion of the Sands annexation area from Cherokee Metropolitan District in order that Colorado Springs Utilities shall provide services.**

**With these actions Colorado Springs Utilities is no longer requesting additional language to the annexation agreement. The previously proposed addendum to the annexation agreement is no longer valid and will not be part of the annexation agreement. The agreement as first proposed on May 22, 2018, is unchanged and remains in its originally proposed form with no changes. Council previously requested language differences be highlighted, but to reaffirm there is no highlighted language as there are no changes to the initially proposed agreement. The agreement changes and addendum that was proposed at the June 26, 2018 hearing have all been removed and are no longer valid.**

**Background:**

This annexation application contains four serial annexations.

The Sands Addition No. 1 will annex 38.67 acres;  
The Sands Addition No. 2 will annex 23.90 acres;  
The Sands Addition No. 3 will annex 24.74 acres; and  
The Sands Addition No. 4 will annex 53.29 acres.

The total annexations consist of 140.61 acres.

The area is intended for a mix of industrial, commercial and residential development in the City. The annexation area will also annex Marksheffel Road along the property boundary as well as the remaining portion of Constitution Avenue from this property east to current city limits. As the City has expanded, enclaves have remained within the jurisdiction of unincorporated El Paso County. City Comprehensive Plan Policy as well as the 2006 City Annexation Plan supports the elimination of enclaves and thus closing the gap to services being provided. This site is part of a larger enclave within the City, Cimarron Hills.

With this annexation is the accompanying adoption of The Sands Master Plan and The Sands Concept Plan to further detail proposed land use patterns within the project area. The associated proposed zoning designations will support the future development of industrial, commercial and residential uses. Per the owner's proposed master plan the envisioned land use will include 17.58 acres for Light Industrial in the northeast corner of the site; 10.79 acres for Commercial development near the southwest corner of the site along Constitution across from current El Paso County commercial; and 85.94 acres for Single-Family residential development within the remainder of the project site.

This item supports the City's strategic goal relating to promoting job creation, investing in infrastructure and building community and collaborative relationships. This development proposal integrates variety into the neighborhood and generates opportunities and choices for households, while ensuring this area develops as a well-functioning neighborhood. This project will support the future creation of employment opportunities and maintain prospects for strengthening the Colorado Springs economy through the orderly growth of the corridor and the development of addition roof-tops, which ultimately will support the critical development of commercial uses. The attached City Planning Commission staff report summarizes the project in more detail.

As required under Section 31-12-108.5 C.R.S., an Annexation Impact Report must be prepared and submitted to the Clerk of the County Commissioners of El Paso County 25 days prior to an annexation hearing. Staff prepared these documents and they were submitted on April 27, 2018 to the Clerk.

This project was introduced to the City Council at the April 9, 2018 Work Session. Although this is not a typical process for an annexation into the City, this step was undertaken to allow discussions related to the existing Sands Metropolitan Districts and details related to how these existing districts would be associated to the annexation.

The properties being petitioned for annexation are located within the boundaries of the Sands Metropolitan Districts. These Districts were authorized by and are subject to a service plan approved by El Paso County Board of County Commissioners. More particularly, the area proposed to be annexed fully encompasses the current boundaries of Sands Metropolitan Districts Numbers 1-3, but not the boundaries of the fourth district which is part of this consolidated service plan (Sands Metropolitan District Number 4). District 4 would remain in the unincorporated County, and is not currently eligible for annexation because the area is not contiguous to City limits. Colorado Revised Statutes do not allow metropolitan districts to request a municipality assume the role of "approving authority" when the boundaries of all related districts are not located entirely within City limits. In addition, the current County approved service plan for the Sands Metropolitan Districts follows a

different model from the Colorado Springs Model Service Plan, including differences in both authorities and limitations. In particular, the County service plan allows for higher aggregate mill levies for residential districts. With the annexation of this property and no further action taken in regards to the current Sands Metropolitan Districts, this property would be annexed into the City and remain within the Sands Metropolitan Districts service plan, to include that the approving authority would be held by El Paso Board of County Commissioners.

These circumstances and potential options have been discussed with the petitioners, their District counsel, the City Attorney's Office and City Planning staff. The City Council Budget Committee was briefed on this matter at their March 13, 2018 meeting. Based on feedback and comments from City Council Work Session, staff and the petitioners have been pursuing an intergovernmental agreement (IGA) option whereby the Districts and the City would mutually agree to provisions satisfactory to the City, with which would allow the annexation decision to proceed expeditiously. Since the April 9, 2018 Council Work Session the petitioner has met with individual Council members to discuss the terms to be included in the IGA. Based on Council comments, the petitioner submitted a draft IGA which is attached to this memo as Exhibit 1. In summary, the terms of the IGA include the following:

- (1) Within 3 years of the effective date of the annexations, the District and the City shall transfer the approval authority from El Paso County to the City;
- (2) The maximum debt mill levy will be reduced from the authorized 50 mills to 40 mills starting with fiscal year commencing on January 1, 2019;
- (3) The operational mill levy authorized up to 10 mills shall remain up to 10 mills starting with fiscal year commencing on January 1, 2019;
- (4) The authorized special purpose mill levy of up to 5 mills will be effectively eliminated starting with fiscal year commencing on January 2, 2019;
- (5) The maximum combined mill levy will be reduced from 65 mills to 50 mills; and
- (6) The District agrees not to exercise either eminent domain or dominant eminent domain without prior written authorization by the City; and the City agrees to assist in acquisition of easements or property if deemed appropriate by the City.

The final language of the IGA has not yet been approved by City staff, but City staff supports the IGA in concept. Should the Council wish to modify the IGA or if there are changes made by staff, the final IGA can be approved by Council concurrently with the second reading of the annexation ordinances at the June 12, 2018 Council meeting.

### **Financial Implications:**

The City Finance Department completed a Fiscal Impact Analysis (FIA) report on October 30, 2017 for the associated annexations. The FIA states most departments indicated there were no identifiable costs of providing services to this development, as the area is currently being serviced by public safety agencies, and the surrounding infrastructure and roadways are already being maintained by the City as they fall within the service area of surrounding parcels. Some agencies as reported in the FIA identified marginal increases in operation costs annually. The result of the FIA is a positive

cumulative cash flow for the City during the 10-year timeframe.  
The full report is attached as Figure 9 to the City Planning Commission staff report.

**Board/Commission Recommendation:**

These items were heard before the City Planning Commission on February 15, 2018 at which the board voted 6-0-3 in favor of these annexations. (Absent: Henninger, Satchell-Smith, and Raughton). It should be noted that the Planning Commission purposefully was not briefed on, and did not take the Sands Metropolitan Districts issues into consideration, as part of their recommendation.

Please reference the minutes from the hearing for a detailed record.

**Stakeholder Process:**

The public process included posting the site and sending postcards to 237 property owners within a 1000-foot buffer at application submittal. A second mailing was sent to a 1,000-foot buffer prior to the Planning Commission hearing. No written comments were received.

Staff sent plans to the standard internal and external review agencies for comments. All comments received from the review agencies are addressed. Commenting agencies included Colorado Springs Utilities, City Engineering, City Traffic, City Fire, School District 49, Police and E-911, and El Paso County Development Services. This site is within the Airport Overlay and was seen by the Airport Advisory Committee and approved on June 28, 2017. The site is outside of the buffer for review by Peterson Air Force. Further discussion of stakeholder involvement with El Paso County Development Services and School District 49 are included in detail as part of the Planning Commission staff report.

**Alternatives:**

1. Uphold the action of the City Planning Commission;
2. Modify the decision of the City Planning Commission;
3. Reverse the action of the City Planning Commission; or
4. Refer the matter back to the City Planning Commission for further consideration

**Proposed Motion:**

Adopt an ordinance for the establishment of the R1-6000/DFOZ/AO/SS (Single-Family Residential with Design Flexibility Overlay, Airport Overlay and Streamside Overlay) zone district, based upon the findings that the change of zoning request complies with the three (3) criteria for granting of zone changes as set forth in City Code Section 7.5.603(B).

An ordinance amending the Zoning Map of the City of Colorado Springs pertaining to 85.94 acres located near the northeast corner of Marksheffel Road and Constitution Avenue establishing the R1-6000/ DFOZ/ AO/ SS (Single-family Residential with Design Flexibility, Airport, and Streamside Overlays) zone district.