

ANNEXATION OVERVIEW

The annexation of territory to a city is governed both statutory requirements and the administrative rules of the City Development Board. There are both substantive and procedural requirements relative to annexation.

Iowa law effectively recognizes two major types of annexation. The first type is voluntary annexation. The underlying premise of voluntary annexation is the property owners request annexation to a particular city.

The second type of annexation is involuntary annexation. Involuntary annexation means a city requests territory to be annexed to the city without the need for consent of the property owners.

Although there are two basic types of annexation, there are four distinct annexation procedures. Every annexation falls into one of these four categories. These annexation procedures are:

- Voluntary annexation
- Voluntary annexation within the urbanized of another city
- Non-consenting voluntary annexation
- Involuntary annexation

Regardless of the type of annexation procedure, there are two basic substantive requirements relative to annexation. The substantive requirements are:

- The new territory must be contiguous. This requirement must mean the newly annexed territory must adjoin the existing corporate limits of the city. For purposes of defining contiguity, the new territory must adjoin the existing corporate limits for a minimum width of 50 feet. If the new territory and the existing city join by less than 50 feet, or do not join at all, the contiguity test is not satisfied.
- No islands can be created. This requirement means as a result of annexation there can be no territory that is left unincorporated that is surrounded by a city or a combination of cities. For purposes of determining whether there is the creation of an island, any unincorporated property that does not connect to the other unincorporated areas with a strip of a minimum of 50 feet wide is considered to be an island.

A voluntary annexation can be completed by the city with no additional action. Each of the other three types of annexation requires the approval of the City Development Board. The City Development Board is a 5-member state board appointed by the governor and confirmed by the Legislature. The 5-members must meet certain requirements and include both representatives of both cities and non-city interests. The City Development Board has a relatively small staff that assists in administering its activities.

The voluntary annexation within the urbanized area of another city, non-consenting voluntary annexation and involuntary annexation all require some form of approval by the City Development Board. The standards and type of approval required varies with each annexation procedure.

While the outcome of an annexation procedure is identical for each of the four methods, there are significant procedural differences for each of the four types of annexation. From an implementation perspective the annexation procedures range from the voluntary annexation being the simplest and most efficient to the involuntary annexation being the most difficult and time consuming.

Voluntary Annexation

A voluntary annexation is one where the owners of 100% of the property to be annexed apply to the city for annexation. This type of annexation can be used where all of the property owners ask to be annexed and the property to be annexed is not within the urbanized area of another city. The urbanized area of a city is the area with 2 miles of its corporate limits.

If a city receives a voluntary annexation application, the city must make sure the property is contiguous and does not create an island. If the property meets these two tests, the city can act on the applications. If the proposed annexation is not contiguous or creates an island, the city cannot act on the annexation application even though the request is voluntary.

Once a city receives the applications and determines the property can be annexed, there is a requirement for a public hearing. Following the public hearing the city council must approve the annexation. Following city council approval there are filing requirements with state and county agencies for the purpose of notifying state and county agencies of the annexation. Once these steps have been completed, the annexation is complete and no additional action is required.

The voluntary annexation not within the urbanized area of another city is the only annexation that is completely handled by the city and does not involve the City Development Board.

Historically, the City of Muscatine has used the voluntary annexation procedure to add territory to its corporate limits.

Voluntary Annexation Within the Urbanized Area of Another City

This procedure is used when the owners of 100% of the property requesting annexation voluntarily apply to be annexed. This procedure must be used when some, or all, of the annexing property is located within the urbanized area of another city. For example, annexations that occur northerly or westerly of the City of Muscatine would not be within 2 miles of another city and this procedure would not be applicable. Annexations that may occur in the southerly area of the City within 2 miles of Fruitland would require this procedure.

The city must review the application to ensure the territory is contiguous and no islands are created. It is noted that an island can be created if property is surrounded by more than one city. For example, an island could be created by property surrounded by Muscatine and Fruitland even though that particular property would not be completely surrounded by the City of Muscatine.

The city must conduct a public hearing. Following the public hearing the city council must take action to approve the annexation.

Following city council approval the voluntary annexation within the urbanized area of another city must be submitted to the City Development Board for review and approval. To be effective a voluntary annexation within the urbanized area of another city must have a simple majority approval of the City Development Board. Following City Development Board approval there are certain filing requirements that must be satisfied. After the filing requirements have been met, the voluntary annexation is effective.

The City Development Board meets monthly. The City Development Board review typically takes 1 or 2 months to complete. Typically the approval of a voluntary annexation within the urbanized area of another city would be placed on the next meeting agenda of the City Development Board and the action of the City Development Board would occur at that meeting. If there are questions or objections that are raised, the City Development Board may extend the approval process.

There is a presumption in favor of the voluntary annexation process. Because there is a presumption in favor of the voluntary annexation procedure it is difficult for either another city to successfully object to this type of annexation. Because 100% of the property petitioned for annexation, these types of annexations rarely have comment at the City Development Board, unless an adjoining city wishes to express its objections.

The approval rate for this type of application is nearly 100%. The only time this type of application would not be approved is if there are competing annexation efforts for the same territory.

Non-consenting Voluntary Annexation

The third type of voluntary annexation is referred to as non-consenting voluntary annexation. It is sometimes referred to as an 80/20 Annexation.

Under the non-consenting voluntary annexation not more than 20% of the area to be annexed can be annexed without the consent of the owners. This requirement is often stated as at least 80% of the property must consent to the annexation. It is these percentages that give rise to the colloquial term "80/20 Annexation".

The non-consenting voluntary annexation starts with a city receiving voluntary annexation applications for at least 80% of the area to be annexed. If a city receives this level of annexation application, but does not have applications from 100% of the property, the city can move forward under this procedure.

The non-consenting voluntary annexation procedure has a number of preliminary steps that must be satisfied. These steps include notifications and consultations. Care must be taken in following these preliminary steps as they can be raised as a basis for objecting to the annexation once it reaches the City Development Board.

After the city has completed the preliminary steps there is a public hearing on the annexation. Following the public hearing the city can take action to approve the annexation. The annexation application is then filed with the City Development Board for its review and approval.

Iowa law provides that within the 5 days following the action by the city to approve the annexation, the property owners can withdraw their application, unless there is a written agreement between the city and the property owner. This procedure added to the annexation process a few years ago is a potential pitfall. If property owners withdraw their applications following the public hearing and those withdrawals reduce the consenting level to less than 80%, the annexation effort will fail and not be approvable.

To avoid this potential if a non-consenting voluntary annexation procedure is to be considered, it is critical for cities to consider entering into some form of written agreement with the annexation applicant. State law does not spell out what needs to be in these agreements. The general understanding is the agreement has to be something more than the city council simply approving the application. There needs to be some form of consideration to create the agreement. The agreements related to annexation vary significantly. Some of the more common things promised by the city to convert the application to an agreement include:

- agreement to provide phase-in of property tax differential
- agreement on certain zoning requirements
- agreement on the providing of municipal infrastructure
- agreeing on other financial matters related to the annexation.

It is the agreement, and not the substance of the agreement, that is necessary to prohibit the withdrawal of the application.

Assuming the application survives the withdrawal period and is submitted to the City Development Board, the application will be placed on the next available meeting of the City Development Board. At that meeting the City Development Board would review the application to determine if it is procedurally correct.

This includes a review to ensure it is contiguous, does it avoid the creation of an island, meets the 80% threshold and includes all of the required submittal documentation. Unlike a voluntary annexation, a non-consenting voluntary annexation application must include additional information relative to the city and its ability to provide services to the territory being proposed for annexation. There is a basic amount of information that must be required and the City Development Board has the authority to request a greater amount of information.

If the City Development Board determines at its initial review the procedural requirements have been satisfied, the next step is for the City Development Board to set a public hearing. The public hearing would be held in the City of Muscatine and would normally be held just before or after a monthly City Development Board meeting. Typically the non-consenting voluntary annexation public hearing would be set 1 month to 2 months later, depending on the workload and location of the city in relationship to City Development Board meetings.

At the public hearing the City Development Board will receive comments from the city, receive comments from other cities and receive comments from the property owners and other potentially affected by the annexation. After the public hearing the City Development board must take action to approve or not approve the application. A four-fifths vote, or four positive votes, is required for approval. This is a relatively stringent test given there are only five members of the City Development Board and they have varying levels of support for annexation in general.

Normally a non-consenting voluntary annexation will be approved if it falls within the general approach of the City Development Board in what the members believe to be an appropriate annexation. The City Development Board is looking for annexations that are logical and related to the city's future requirements for territory. They are looking for the annexation not be over reaching or too large. The City Development Board is looking for the ability of the city to provide services to the area.

For a non-consenting voluntary annexation the city can be required to provide services to the area within 3 or 6 years following the annexation. The City Development Board typically looks to ensure the city has the financial capability to provide those infrastructure services. It is noted there is a provision that allows the territory to be severed from the city if it fails to meet requirements for public services. This provision is relatively new and was added as a result of a number of cities annexing territory and not providing services within a reasonable period of time.

Although the City Development Board can take action immediately following the public hearing, this is becoming a relatively uncommon procedure. Normally, the matter will be set for a decision at the next meeting of the City Development Board. If there are a number of objectors, particularly an organized group represented by legal counsel, the decision meeting may be more than 1 month after the public hearing.

When the City Development Board considers a non-consenting voluntary annexation there is still the presumption that favors voluntary annexation. However, the City Development Board can look at substantive factors such as the scope and extent of the annexation, logical planning and the ability to provide services.

Several members of the City Development Board currently or previously represented municipalities, and have a fairly good understanding of these fundamental tenants. The percentage of success for a non-consenting voluntary annexation is relatively high, but is not 100%. Typically a non-consenting voluntary annexation that is not approved by the City Development Board does not meet one of the concepts that appear to be a fundamental premise of the City Development Board's approval.

Involuntary Annexation

The involuntary annexation procedure is one in which the city seeks to annex territory to the city without the consent of the property owners. Although the city can seek annexation applications within the involuntary annexation territory, it is not a requirement. Many observers believe the City Development Board looks more favorably on involuntary annexations where there is a relatively high percentage of voluntary annexations within the territory even though it does not reach the 80% level that would be necessary for a non-consenting voluntary annexation.

There are a number of procedural requirements for notification and consultation in the early stages of an involuntary annexation. These procedures are similar to, but distinct from those required for a non-consenting voluntary annexation.

After the procedural requirements the city must conduct a public hearing. After the public hearing the city council must approve the petition to the City Development Board. The petition is then submitted to the City Development Board for consideration.

The involuntary annexation does not have the presumption in favor of the City. Rather, an involuntary application is a petition to the City Development Board to determine whether the proposed annexation is in the best interest of the public. Unlike the voluntary annexation, the City Development Board must make its own substantive determination whether the annexation is in the best interest of the public. The burden is generally on the city to prove the annexation is in the best interest of the public.

When the city submit the petition to the City Development Board there are a number of requirements for material that must accompany the petition. The information can be quite extensive and the material deals with the city's need for the territory and the city's ability to provide services to the territory.

In undertaking an involuntary annexation, a city must be very careful to ensure all of the requirements prior to the petition submittal are satisfied. Even the slightest flaw or omission can result in the petition not being considered by the City Development Board.

After the City Development Board first receives the petition, the matter will generally set for the next meeting of the City Development Board. At that meeting the City Development Board will review the submittal and procedures to determine if the petition is in order. This process can sometimes take more than one meeting if there are objections or potential areas of concern.

Once the City Development Board determines the procedural requirements have been satisfied, there is a committee appointed to consider the petition. The committee consists of the City Development Board, a representative appointed by the city and a representative appointed by the Board of Supervisors to represent the area to be annexed.

The committee will schedule a public hearing in the City of Muscatine to receive comments. Following the hearing the committee will normally provide a time for submittal of supplemental information by the city and potential objectors.

The committee will eventually schedule a decision meeting to consider the petition. If the committee is not in favor of the petition, the voluntary annexation fails. If the committee votes in favor of the involuntary annexation, the next step in the process is a referendum.

The referendum includes the city and the territory to be annexed. To be successful the referendum must receive more than 50% of the votes in the affirmative. If the referendum is in the affirmative, the involuntary annexation is essentially approved. If the referendum fails, the involuntary annexation fails.

The involuntary annexation procedure is a much longer process than any of the other annexation processes. The procedure can range from as short as about 6 months to some procedures that have extended nearly 10 years. A typical involuntary annexation procedure lasts between 1 year and 2 years.

The success rate of an involuntary annexation is still somewhat greater than 50%, but much lower than the other types of annexation.

Appeal Process

For any annexation procedure requiring approval of the City Development Board there is a final determination by the City Development Board. This starts an appeal period during which an interested party can file a lawsuit in District Court to challenge the action of the City Development Board. If there is no litigation filed within the appeal period, the action of the City Development Board becomes final. If there is litigation the annexation effect date is stayed until the resolution of the litigation.

It is not common for a voluntary annexation within the urbanized area of another city to be appealed. It is not uncommon for a non-consenting voluntary annexation to be challenged. It is typically the larger annexation actions in the vicinity of another city that are appealed.

It is fairly common practice for any significant involuntary annexation to be appealed. In undertaking an involuntary annexation a city should anticipate the high likelihood of an appeal, especially if a relatively significant number of people are affected by the action.

Other Issues

In addition to the procedural requirements for annexation, there are a number of ancillary issues that may need to be addressed. Some of the more common issues that arise relative to annexation are as follows:

- **Phase in of Property Tax Differential.** Iowa laws allows a city to phase in the differential tax rate between county taxes and city taxes over a 10 year period. The phase in is in accordance with a prescribed scale. A city can decide whether to offer the phase in. In doing so a city should be prepared to offer the same phase in to all property owners. Historically, cities have used the availability of the property tax phase in as a means of enticing the voluntary annexation applications. The City Development Board does not look favorably on this approach and it is now generally required if any property owners are offered the phase in it would be available to all property owners.

This requirement does not appear to negate that an offer to provide the phase in of the differential is still a valid basis for an agreement under the non-consenting voluntary annexation.

Use of the property tax differential phase in has become much more widespread in the last 5 years. While originally resisted by many cities, there is now a general understanding the phase in is the most effective tool available to blunt the argument of the cost of annexation.

- **Zoning and Other Regulations.** One of the common objections to annexation is that city zoning and other levels of regulation are more stringent and restrictive than the level of regulation in an unincorporated area. This can particularly be an issue if the city does not have zoning districts that fit the types of rural areas that are typically annexed.

In considering annexation of rural subdivisions and agricultural property, the city may wish to consider whether some special zoning districts or regulation can be relaxed or changed to better fit the use of the property.

This is particularly an issue with respect to agricultural property and zoning regulation. Under Iowa law agricultural activities are exempt from zoning regulations in unincorporated areas. That exemption does not apply to municipal zoning.

Many agricultural property owners are concerned the level of regulation within the city may be too stifling. This is particularly the case if agricultural activities are not widely allowed within agricultural zoning districts within a city.

In addition to zoning, two other areas often are cited as a basis for objection to annexation. These areas are open burning and the discharge of firearms.

- **Municipal Infrastructure and Services.** For both a non-consenting voluntary annexation and an involuntary annexation, the city must show it has the capability to provide municipal infrastructure to the annexed area. There is no such requirement for a voluntary annexation. Nonetheless, annexation without a plan to provide municipal infrastructure is often an area of future conflict, even if it is not an issue during annexation.

A city undertaking annexation should develop a sound plan for providing municipal infrastructure to ensure that it can be provided in an appropriate and timely manner. It is noted this does not mean the city is required to provide the services at no cost. The city can implement procedures such as connection fee districts and assessments to allocate the cost of the infrastructure to the benefitted areas.

One of the issues that often arises in annexation is the responsibility for streets and roads within the annexation area. The City of Muscatine would be responsible for any public streets and roads located within the annexation area. This responsibility would include routine maintenance and the responsibility for future improvements.

Annexation does not affect the status of private streets and roads. Following annexation the private streets and roads remain in private ownership. A city does not acquire any responsibility for private streets and roads through the annexation process. For example the City would not be responsible for plowing snow on private streets.

It is not uncommon for the residents of rural subdivisions to raise the issue of a city taking over responsibility of private streets and roads. That decision would be entirely within the discretion of the City of Muscatine.

The other two utilities that most often arise in the context of annexation are water and sanitary sewer. The non-consenting voluntary annexation and the involuntary annexation generally include a requirement to provide municipal services within a specified period of time. One of the services that is most often noted in this category is municipal water service.

For purposes of annexation, Muscatine Power & Water would be considered the City of Muscatine. Although Muscatine Power & Water is governed by a separate board of trustees, it is the municipal water utility "of" the City of Muscatine. In developing an annexation approach, it is advisable to ensure that Muscatine Power & Water is in agreement with the strategic approach relative to the providing of municipal services.

It is noted that Muscatine Power & Water currently provides services to some of the potential areas of annexation. Although the availability of water service to the area is not a specific issue in the annexation process, the providing of services is generally viewed as somewhat favorable.

The providing of sanitary sewer service to potential annexation areas is often the most costly service issue to address. In some respects the obligations to provide sanitary sewer service to annexing territory is the least defined of the service requirements. Generally, annexed territory falls into one of two general categories as it relates to the issue of sanitary sewer service.

For undeveloped or lightly developed areas the city is probably not obligated to provide more than basic trunk sewer service availability to the watershed. Unless there is development a city is generally not required to extend sewers to serve individual properties within the basin. Generally the only obligation is to ensure there is basic sewer service available within a reasonable distance of the property.

For existing rural subdivisions the issue of sanitary sewer service is somewhat more challenging. Rural unsewered subdivisions are rarely configured in a manner that would be considered conducive to gravity sewer service. The length of gravity sewer necessary to extend from the existing sewer system to rural subdivisions is frequently a significant cost issue.

While gravity sanitary sewer service is still considered the best level of sanitary sewer service, other alternatives to consider for providing sanitary sewer service. The most common alternative to gravity sewer service is low pressure sewer service. Under a low pressure sewer system each house has an individual grinder pump. The grinder pumps are connected to small diameter force mains. The force mains can be laid through the rural subdivisions and extend to the gravity sewer system.

The combination of the small diameter pipe and the ability to construct the sewer as a pressure conduit significantly reduces the cost for a city to provide basic sanitary sewer service to areas that are remote from the sanitary sewer system and areas that have topographic challenges that would make gravity sewer service cost prohibitive. It is not uncommon for the cost of the public component of a low pressure sewer system to be less than one-quarter the cost for providing traditional gravity sewers to serve a similar area.

In addition to the public low pressure pipes, each residence must install a grinder pump. The cost of the grinder pump is typically between \$3,000 and \$5,000. In most cities the cost for the grinder pump would be considered the property owner's cost. However some cities will contribute to the cost or use special assessments as a method of spreading the cost to the property owner over a longer period of time.

Strategy Issues

While annexation can sound like a potential nightmare, there is a clear recognition that many cities need to expand their territory to provide for current and future needs. Most cities are successful in pursuing well planned and logical annexation actions. On the other hand, cities that pursue annexation without the financial ability to provide services or pursue overreaching annexation will generally fail. The key to success is to pursue annexation in a logical manner that is strategically sound from both a financial and policy perspective.

In considering annexation it is generally advisable for a city to determine in advance the types of annexation procedure that it would be willing to undertake. Almost all cities will determine it is appropriate to pursue any of the three types of voluntary annexation, including the non-consenting voluntary annexation. A number of cities will determine in advance that pursuing involuntary annexation is not appropriate. The reasons for not considering involuntary annexation may be financial or may be policy based.

In developing a strategy for annexation it is generally preferable to know in advance what types of annexation a city council would be willing to pursue. Determining the types of procedures provides direction to city staff in their development of annexation strategies.

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The attached Excel file includes two separate worksheets on taxable property valuations and tax revenues if these areas would be considered for annexation. The first area is generally along Highway 22 east of the City; it also includes the Heatherlynn condominiums. The second worksheet includes a larger area north of the Bypass. These are the same general areas that were reviewed in 2008 for potential annexation. While there may be some boundary differences between the 2008 analysis and the current areas, the taxable valuations and estimated taxes for both years are included in the attached file for comparison purposes.

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