

# HOW TO DO AN ANNEXATION

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The Utah State Legislature completely changed the annexation procedures for Utah in the last legislative session. This memo is an attempt to summarize those changes. You should not rely on this memo in doing an annexation. Please also refer to the State law as this memo is true only in so far as the state law has been interpreted correctly.

The significant changes from the previous law include the following:

1. There is no longer any such thing as a required annexation policy declaration.
2. The required petitioners have been changed.
3. There is no required super majority vote of the city's legislative body.
4. Property owners near the proposed annexation area can now protest.
5. The boundary commissions now get involved before the annexation is completed rather than after the vote to annex.
6. You can no longer annex developed property for "profit."
7. The city's one half mile extra territorial control has been repealed.
8. The role of the city recorder or town clerk has been clarified.

## Steps to Annexation

The following steps, which are described in more detail below, are the required annexation procedure.

1. A petition is filed with the municipality.
2. The petition must be either accepted or rejected by the municipal legislative body.
3. If accepted, then the city recorder or town clerk certifies the petition.
4. If certified, then the municipality gives public notices of intent to annex.
5. A protest (if any) is submitted to the boundary commission.
6. If no protest is submitted, or if the boundary commission approves the annexation, then the municipal legislative body must hold a public hearing.
7. If approve, an ordinance of annexation is passed.
8. The plat is filed with the county recorder.

## What Happens to the Petition?

If no protest is filed

– 7 days notice of public hearing of the municipal legislative body

If ordinance is passed

- Within 30 days of passing the ordinance of annexation, the plat must be filed with the county.

If a protest is filed

- Within 45 days boundary commission chooses a feasibility consultant
- Within 75 days of being hired the consultant must submit findings
- Within 30 days of receipt of study, boundary commission must hold a public hearing
- Within 20 days of decision of boundary commission, appeals can be made to District Court

### Suggestions:

The following are suggestions as to how I am approaching annexations under the new law.

Many cities bargain with people who want to annex about fees, development rights, actions, and other matters. I believe the best time to negotiate these agreements is immediately after the petition is filed and before acceptance by the city legislative body. The law does not state a specific time by which the city must accept or reject the petition but once a petition is accepted the clock for the process begins to run. If the agreements are negotiated at the front end there will not be pressure to get an agreement done before a deadline is missed.

I also believe that if the municipality wishes to involve their planning commission in the annexation process this involvement should take place at the front end—after petitions are filed but before the municipal legislative body votes to accept or reject the petitions. Involvement of the planning commission is not required by the State law. If planning commission recommendations are desired by the municipal legislative body these seem to me to be more relevant at the beginning of the process before too much time and money is expended.

One potential problem area is that there is no definition of undeveloped property in the law. Since the procedure for annexing undeveloped property is much easier there may be a temptation to stretch this definition. I advise against this. I believe the intent is to allow annexations of “raw ground” for future development not to allow “the short form” annexation of what we may believe is underdeveloped property or property in need of redevelopment.

The process to annex an unincorporated area to a municipality is begun by filing a petition with the city recorder (or town clerk). A municipality may not annex an unincorporated area unless a petition is filed requesting annexation. The area must be a contiguous area, which is contiguous to the municipality, and will not leave or create an unincorporated island or peninsula. The petition must contain the signatures of the owners of private real property that covers a majority of the private land area within the area proposed for annexation, and is equal in value to at least 1/3 of the value of all private real property within the area proposed. This is a change from the old law which

required more than 50 percent of total owners to sign the petitions without regard as to how much property was represented by the petitions.

The definition of owners has been clarified to take care of the problem of how to count corporate entities, joint ownership, and ownership in estates or trusts. Ownership is now determined from the records of the county recorder and not the assessor's rolls. A parcel of property in multiple ownership is counted for the annexation if the petition is signed by a majority of those owning the parcel.

The petition must be accompanied by a plat or map (prepared by a licensed surveyor) of the area proposed, and show signers of the petition as sponsors (indicating their mailing addresses) one of which will be designated as the contact sponsor. The petition may not propose areas which were included in a previously filed petition, which has not yet been denied or granted, or areas which are being included in any feasibility study. Boundaries of the proposed area should be along already existing special district boundaries for sewer, water, schools, and other services, if practical and feasible. On the date of filing the petition, sponsors must deliver or mail a copy to the clerk of the county in which the proposed area is located.

#### Acceptance or Rejection

After receiving the petition, the municipality may deny it (if denied, notice is mailed to the sponsors and the county clerk within five days of the denial), or accept it. This is a decision for the municipal legislative body. The state law does not require this to be a vote of more than a majority of the legislative body.

#### Certification

Within 30 days of acceptance, the city recorder (with the help of the county recorder, surveyor, clerk and city attorney) will determine if the petition complies with the above requirements and will notify the municipality and the contact sponsor. This certification should be fairly formal as it begins the protest periods. If the petition fails the above requirements, then notification will be given to the municipality and the contact sponsor as to the reasons for rejection; and the petition may then be modified and refiled. In such case, it will be treated as a new petition.

#### Notices

Within 20 days of being notified of certification, the municipality will send written notice to the legislative body of the county, the boards of all special districts, the legislative bodies of all municipalities within ½ mile of the proposed area, and school districts in the proposed area. All of these entities may file a protest to the proposed annexation. The municipality will also publish notice in a newspaper of general circulation (at least once a week for three consecutive weeks not later than 10 days after receipt of the notice of certification) or post notice if there is no newspaper.

These notices must state that a petition has been filed, and include the date of receipt of the certification, describe the area, state that the petition is available for inspection at the city recorder's office, and state that the municipality may grant the petition if no protests are filed with the county boundary commission (with a copy sent to the city recorder.) The notice must state the specific date by which protests must be filed. The published notice will also state that property owners may protest if their property includes 25% of the private land area within ½ mile of the proposed area, and is equal in value to 14% of all real property within ½ mile of the proposed area.

### Protest

A protest must state each reason for the protest and be filed with the county boundary commission no later than 60 days after the municipality has received the certification notice (or 30 days if the proposed area is undeveloped and less than 5% of total private real property of the annexing municipality). A copy must also be delivered or mailed to the city recorder on the same day. If property owners within ½ mile of the proposed area are protesting, they must include the name and address of each signer and designate one as the contact person. If a protest is filed, the municipality may deny the annexation petition, in which case notice will be sent within five days, or it may take no further action until receipt of the county commission's decision on the protest. If no protest is filed, the municipality may annex the area after holding a public hearing, for which at least seven days published notice is given.

### Boundary Commission Hearing

Within 45 days of receiving a protest of an annexation of already developed property, the county boundary commission will engage a feasibility consultant who will complete a study on the proposed area. The study will be completed within 75 days and will then be presented at a public hearing. The depth of the study may depend on the size of the area, the size of the annexing municipality, development, expected development, and the number and type of protests. The study must include:

Population and density; geography and natural boundaries; whether the annexation would eliminate or create an unincorporated island or peninsula; whether the annexation would hinder a future, more beneficial annexation; the fiscal impact on the other incorporated areas around it; current and five year economic projections (including household size and income, development, and public facilities); projected five year growth; present and five year projections of the cost of governmental services in the proposed area; present and five year projected revenue to the annexing municipality; impact on five year projected property taxes of proposed area and annexing municipality extensions in the past 10 years of nearby municipalities; willingness and probability that another municipality would annex the same area within 5 years if it was not annexed at this time; history, culture and social aspects of the proposed area; how municipal type services have been provided in the past and

whether it would be feasible for the municipality to provide these services in the future; and the effect on any school districts.

A proposed annexation cannot be approved unless the study shows that the average annual amount of projected revenue to the municipality does not exceed the annual amount of projected costs of governmental services by more than 5%. The feasibility consultant may make boundary recommendations to comply with this requirement. If this is the case, a modified annexation petition may be filed with the city recorder within 45 days of the results of the study. On the day of filing, the petition sponsors must deliver or mail a copy of the modified petition to the county clerk. The newly affected entities will be notified and a supplemental study will be done.

Within 30 days of receiving the study results (which must meet the above requirement), the boundary commission will hold a public hearing where the results will be presented. Those present will be able to ask the feasibility consultant questions and speak on the issue. The public will receive notice in the newspaper. Written notice will be sent to the petition contact sponsor, the annexing municipality, and each entity that filed a protest. Within 20 days after the hearing, the boundary commission may approve the annexation (with or without conditions, or minor modifications) or disapprove of the proposed annexation. They will send their written decision to the legislative body of the county, the legislative body of the annexing municipality, the petition contact sponsor, and each protest entity. A review of the commission's decision may be sought in the proper district court within 20 days. They shall affirm the decision unless it is arbitrary or capricious.

If the annexation is of undeveloped property smaller than 5% of the private land area of municipality the boundary commission may not do a feasibility study and the prohibition against annexing property which will generate more than 105% of needed revenue does not apply. The boundary commission's role on these annexations of undeveloped property is to determine if the annexation law has been complied with.

### Public Hearing and Decision

After receiving the boundary commission's decision on a protest, or if no protest was filed within the applicable protest period, the municipality may deny the annexation, or (if approved by the commission) grant the petition and annex the area by ordinance. Prior to annexing the area the municipal legislative body must hold a public hearing. Notice of the public hearing must be published at least seven days prior to the public hearing in a newspaper of general circulation. Within 30 days of annexing, the municipality must file a plat or map (by a licensed surveyor) with the county recorder showing the new boundaries. An area shall be conclusively presumed to have been validly annexed if property taxes have been paid to the municipality for more than one year after annexation, and no resident of the area has contested the annexation in court during the year following annexation.

## TIME LINE

### The time line for annexations of undeveloped property is as follows:

Petition filed with city

--acceptance or denial by the city within no set time period

If denied

--notice to sponsors within five days

--if accepted, 30 days for recorder to certify the petition

If certified then

--within 10 days published notice of intent to annex

--and within 20 days mailed notice of intent to annex

--then 30 day protest period from receipt of notice of certification

If a protest is filed

--boundary commission must hold a public hearing

--within 20 days of decision of boundary commission appeals can be made to  
District Court

If no protest is filed

--7 days notice of public hearing of the municipal legislative body

If ordinance is passed

--within 30 days of passing the ordinance of annexation the plat must be filed with  
the county

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--within 10 days published notice of intent to annex

--and within 20 days mailed notice of intent to annex

--then 60 day protest period from receipt of notice of certification