



Annexation Handbook

Report No. 19 (Revised June 1995)

**MUNICIPAL
& RESEARCH
& SERVICES
CENTER**
OF WASHINGTON

Annexation Handbook

**Municipal Research & Services Center
of Washington**

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Preface

This publication is designed to address the general topic of municipal annexation and to provide assistance with the statutory procedures for annexation for the various classes of cities and for towns in Washington State. It also provides answers to some of the recurring legal questions on annexation.

This is the third revision of the original *Annexation Handbook for Cities and Towns in Washington State*, published by the Municipal Research & Services Center in 1979. This version is current with the 1995 Revised Code of Washington (RCW). Although there have been few significant changes in statutory annexation procedures since our 1991 revision of this publication, the framework within which annexations are addressed has been notably altered by the impact of the Growth Management Act (GMA), which is now in effect in 29 of the state's 39 counties. The GMA serves to integrate annexations with municipal land use planning policies, and, although it imposes significant territorial limitations on a city's ability to annex territory, it should eliminate most competition among cities and towns for unincorporated territory in counties in which it is in effect.

We caution that subsequent state legislatures may make major changes to the statutory annexation procedures, and readers should be aware of this as future legislatures complete their business. There is certainly room for clarification and change in the annexation laws. Readers should also be aware that not all the questions and problems that may arise in any given annexation can be anticipated and addressed in a publication such as this.

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Why Annex?

I. Introduction

Proper annexation of areas adjacent to cities¹ is often crucial to establishing and maintaining urban order and effective government. Rapid development and population growth frequently occur just outside city boundaries where property is cheaper and zoning laws may be less restrictive. Small and large cities alike are surrounded by “fringe” areas. With the development of fringe communities come the problems that concentrations of people create—increased traffic congestion on inadequate roads, the need for improved police and fire protection, and inadequate land use planning resulting in disorderly growth.

These problems, unfortunately, cross boundary lines and become a city's problem too. Lack of safe streets spreads traffic congestion into the city. Lack of necessary police protection encourages the spread of crime throughout the entire urban community. Lack of proper planning and land use control allows uses that may threaten the social and economic life and cohesiveness of the community.

The growth of separate fringe areas may produce a complex pattern of government by multiple jurisdictions—city, county, and special districts—that can lead to administrative confusion, inefficiency, duplication, and excessive costs. The urban community can become a tangle of small competitive governmental units that lack the administrative, jurisdictional, or financial ability to provide the essential services and facilities necessary for sound development. Once this complex pattern becomes established, vested interests and sectional jealousies make change difficult, if not impossible.

At the same time, economic and social ties between cities and their fringe areas can be strong. Outlying areas benefit in many ways from city parks and recreational facilities, streets, utilities, and other facilities and programs, often without contributing a proportionate share of the cost to the city. Moreover, suburban people may request services equivalent to those provided within the city and may recognize that their taxes and other costs (including utility costs and fire insurance premiums) in an unincorporated area are not necessarily lower and are often equal to, or greater than, those within the city.

A logical solution may be annexation. Properly used, annexation preserves a growing urban area as a unified whole. It enables urbanized and urbanizing areas to unite with the core city to which the fringe is socially and economically related. It facilitates the full utilization of existing municipal resources. City administrative and technical personnel are able to address the fringe area's municipal needs, and do this in a manner consistent with policies of the annexing city. Annexation is often preferable to the incorporation of new cities, since new incorporations in urban areas may cause conflicts of authority, the absence of cooperation, duplication of facilities, and an imbalance between taxable resources and municipal needs. Industrial, commercial, and high-income residential areas may offer a high level of urban services, while the low and moderate income residential satellite city may strain to provide minimal services. In both instances, satellite city residents draw on the resources of the core city without contributing toward the cost of these resources.

Annexation, therefore, may be appropriate when the central city is surrounded by a growing area, when the need for orderly planning and governmental services in fringe areas increases, and when needed

¹Throughout this publication, the term “city,” when used alone, refers also to towns, unless otherwise specified.

services can best be supplied by the central city. In general, annexation is a solution in instances when a central city is able to address emerging fringe area concerns.

Knowledgeable local government officials have long recognized that what is “urban” should be “municipal”. Urban growth without central planning and control becomes urban sprawl. If cities are to continue to be effective units for urban services, they must be allowed to follow natural growth patterns into those fringe areas where there is urban development. They must be able to guide development in an orderly manner, and avoid the need to extend costly urban services to distant and scattered “pockets” of development. Annexation can guarantee to a city a measure of responsible control over its future.

II. Growth Management Act and Annexations

The 1990 Growth Management Act (GMA), recognizing many of the above considerations, imposes limitations on and establishes a territorial framework for the annexation authority of cities located in counties subject to GMA requirements.² A major goal of the GMA is to reduce urban sprawl by encouraging development in urban areas where adequate public facilities already exist or where such facilities can be more efficiently provided. RCW 36.70A.020(1), (2). To help implement this goal, the GMA requires that counties designate urban growth areas “within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature.” RCW 36.70A.110(1). Urban growth areas are to include territory sufficient to accommodate the twenty-year population growth projected for the county. RCW 36.70A.110(2). Every city must be included within an urban growth area. Urban growth areas may include territory outside of cities if that territory “already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth.” RCW 36.70A.110(1). Significantly, the GMA further states that “it is appropriate that urban government services be provided by cities, and urban government services should not be provided in rural areas.” RCW 36.70A.110(3).

Consistent with this goal of controlling the spread of urban growth, the GMA limits the territory that a city may annex to that which lies within its urban growth area. RCW 35.13.005, 35A.14.005. Nevertheless, while limiting the territorial extent of annexations, the GMA facilitates the process of annexation through the comprehensive planning process it mandates.³ A city's comprehensive plan should address planning policies within its urban growth area. As such, a city subject to the GMA forms its annexation policy and planning in the context of complying with the GMA. The local and regional planning requirements of the GMA thus serve to integrate city annexations into a county-wide or regional planning scheme.

The ultimate effect of the GMA on annexation procedures is that the statutory procedures for review of a city's decision to annex (by boundary review boards, county annexation review boards for code cities, or ad hoc annexation review boards)⁴ will no longer be needed to assess the suitability of annexations. The GMA expressly recognizes this effect, at least in part, by allowing a county to disband the boundary

²As of the date of this publication, 29 of the state's 39 counties are subject to GMA requirements.

³However, the GMA would not facilitate annexation where a city's urban growth boundary is designated as its existing city boundaries; rather, it would prevent annexation unless and until the urban growth boundaries are expanded beyond the city boundaries.. According to the Central Puget Sound Growth Planning Hearings Board, urban growth areas “should not be drawn outside existing incorporated areas if the cities are capable of accommodating the twenty-year population growth projected for the county.” *Association of Rural Residents v. Kitsap County*, CPSGPHB Case No. 93-3-0010, at 437 (1994).

⁴See Chapter Seven, “Review Boards.”

review board after the county and the cities and towns within it have adopted comprehensive plans and consistent development regulations that comply with the GMA.⁵ RCW 36.93.230.

Thus, the GMA makes annexations a part of the overall planning process and essentially eliminates much of the annexation decision-making process in cities within its purview. The annexation issue facing cities in GMA counties will not be so much whether to annex as when to annex. Ultimately, a city will annex to the limits of its urban growth area, assuming that the population projections prove accurate. The timing of that expansion will depend on a number of factors, including population growth within the urban growth area and the city's ability to provide urban-type services in that area.

However, even in the context of the GMA, cities will still need the consent of either property owners or voter/residents within areas they desire to annex. The following discussion of the pro and con arguments will therefore still be relevant to annexations in GMA counties, as well as to those in non-GMA counties.

III. The Pro and Con Arguments

There are certain basic arguments, pro and con, that invariably surface during the course of an annexation attempt. Some of these may be based on fact, such as, “the annexing city, by extending its services to the new area, can avoid duplication of facilities.” Some concerns may be more difficult to demonstrate, such as, “urban areas must develop as a unit because their social and economic parts are interrelated.” Others may be related to partisan interests, such as, “special districts and their attendant influence must be retained.” Still other arguments may reflect fear of change: “the community to be annexed may lose its individuality and identity.” As noted above, however, many of these arguments will no longer be applicable in GMA counties after the establishment of urban growth areas.

The following list of arguments should assist in anticipating issues that may arise during annexation proceedings. City officials may want to carefully consider what facts exist to prove or disprove each argument, what special interests underlie some arguments, and what misconceptions may require correction.

A. Arguments Favoring Annexation

1. After annexation, the new territory will obtain its necessary services from city departments that are professionally staffed and experienced. Duplication of services can be avoided. Considerable economies can result from the coordination of services over a larger area.
2. When the interrelationship between the city and the fringe area is close, there is need for unified planning and zoning. By means of annexation, a city's zoning ordinances can be extended to adjacent areas in a logical manner, thus helping to assure orderly growth. Coordinated action is much easier to achieve if the fringe community becomes part of the city.
3. Annexation gives suburban residents a voice in the government of the larger community in which they live. County dwellers can be substantially affected by actions of the central city, but they have no participation in its affairs.

⁵The GMA does this only in part because it does not allow counties subject to the GMA that do not have a boundary review board (of which there are currently eight) to disband county annexation review boards or, if applicable, to eliminate the role of the ad hoc annexation review board. Presumably, this was merely a legislative oversight that will be corrected in the future.

4. Business, professional, and community leaders who live in the fringe area can have a more direct role in community affairs by being elected or appointed to public office in the city.
5. Annexation eliminates the need to form a new city government with its attendant “start-up costs,” or to continue reliance on costly special districts.
6. Annexation leads to a unified community and can prevent the fragmentation of local governmental authority among a large number of special districts. Fragmentation may cause “conflicts of authority and the absence of cooperation, political irresponsibility, a long ballot, duplication of services, inadequate service levels, lack of effective area-wide planning and programming, financial inequities and other problems.”⁶
7. Political boundaries will, after annexation, more nearly reflect the true and existing sociological, economic, cultural, and physical boundaries of the city. The fringe and the city are inextricably bound together.
8. Annexation increases a city's size and population, and in some instances raises its level of political influence, its prestige, and its ability to attract desirable commercial development. It may also increase its ability to attract grant assistance.
9. Annexation can protect, or enhance, a city's tax base. The increased valuation of the city will result in a greater bonding capacity.
10. Annexation may force new industry to develop in the city, and thus create additional jobs, revenues, and commercial opportunities.
11. Unified political representation, sound economic development, enhancement of property values, and high service levels at minimum costs can best come from total comprehensive planning that avoids duplication and conflict of authority.
12. City and county boundaries can be squared off and made orderly and logical, eliminating a hodgepodge and resulting confusion as to whether a particular parcel should look to a city or to the county to obtain services. Fire and police departments, in particular, can determine whether calls are within their respective jurisdictions.
13. Annexation may bring about lower utility rates, since city utility surcharges to unincorporated territory would be lifted. Annexation also often results in lower fire insurance premiums. As more improvements and urban utilities are made available, real estate values and marketability may improve.
14. Additional services may become available, such as sewer, water, ambulance, transit, and drainage control.

⁶Edward H. Hobbs, “A Problem-Fragmentation; One Answer-Annexation,” *National Civic Review*, Vol. 61, No. 8, (November, 1971), p. 431.

B. Arguments Opposing Annexation

1. Annexation may be considered unnecessary if the community's needs, or resources, are limited. It may be unwise if the community is not physically, economically, or socially related to the annexing city.
2. Residents outside the city may argue that they chose to build and live there in order to avoid taxes for services they do not want. Industry and commercial businesses may state that they located outside the city to avoid certain business and property taxes.
3. Residents may wish to retain the community's "rural" character and, for this reason, may oppose annexation as a step toward greater urbanization. There may, for example, be a strong opposition to municipal animal controls—both leash laws and restrictions on large animals.
4. The city's ordinances, regulations, and license requirements may not be appropriate for a particular fringe community.
5. Residents may desire a higher degree of community identity than they believe they will enjoy as part of a large city. They may want to retain special districts and their attendant influence. A larger municipal government may be less accessible to the people.
6. There may be distrust of the government and politics of the city to which annexation is proposed.
7. The city may not be able to finance the additional services expected by residents of the area proposed for annexation, and territory that is annexed to a city may be a financial drain upon it for many years. Services may not be available for extension without adversely affecting in-city service levels or without utility rate increases. Existing police or fire forces may be overextended, reducing the level of protection to the entire community.
8. There may be fear that annexation may lead to a geometric progression of municipal problems. It cannot be presumed that it will be more economical for a city to provide services to a larger area. Extending the service area may cost much more for each unit than the existing per unit cost.
9. Since most annexations are very small, annexation does not satisfactorily address community and regional concerns.
10. Interest in annexation may be limited to a select group of citizens and not shared at the grass roots level.

The Evaluation of Annexation Proposals

I. Evaluation in the Context of Growth Management Planning

As discussed in Chapter One, the Growth Management Act (GMA) imposes planning requirements that influence the ability of a city to annex and the territorial extent of its authority to annex. As part of its comprehensive planning responsibilities under the GMA, a city must have adopted, or will need to adopt, policies dealing with land use, housing, capital facilities, utilities, and transportation. RCW 36.70A.070. These policies must address lands within the city's urban growth area, because the city will be the provider of urban-type services in that area upon annexation to the city. As the Central Puget Sound Growth Planning Hearings Board emphasized, “cities are the focal points of urban growth, governmental service delivery, and governance within UGAs [urban growth areas].” *Association of Rural Residents v. Kitsap County*, CPSGPHB Case No. 93-3-0010, at 433 (1994).

Consequently, cities in GMA counties will “evaluate” annexation in the context of their GMA comprehensive planning responsibilities. Some cities include in their comprehensive plans an “annexation element” to provide policy guidance for annexation of territory within urban growth areas.

II. The Statement of Annexation Goals and Policies (Non-GMA Cities)

It is desirable for individual cities to prepare written guidelines for the logical direction of future growth and addressing how annexation proposals will be evaluated. This is recommended for non-GMA cities that do not address annexation issues in the context of comprehensive planning. A statement of annexation goals and policies may be particularly desirable for cities experiencing growth pressure. Annexation policies should be considered by a city apart from specific annexation requests. They should be developed after a city has considered its goals for growth in light of its ability to provide municipal services to additional areas of land. Such a statement can settle in the minds of suburban residents the question of whether or not a city is willing to serve the entire metropolitan area when needed. A statement that supports the promise of annexation may weaken the desire exhibited in some areas toward alternative service arrangements, such as special districts or incorporation. The objective of written criteria should not be to annex land simply to become larger in size than neighboring municipalities. Rather, a statement of annexation goals and policies should seek to delineate what the city considers to be its “sphere of influence,” and under what conditions it will be interested in pursuing particular annexation proposals.

The following elements should be considered in determining the components of a statement of annexation goals and policies:

- Identification of a city's “sphere of influence” area, which will establish boundaries of logical expansion and minimize potential conflicts with neighboring cities and with the county.
- Adoption of a meaningful set of goals and policies that will inform citizens and organized groups regarding the city's position and philosophy concerning annexation.
- Development of policies that will benefit residents of both the city and the fringe area.

- Development of goals that will preserve individual area identity and citizen participation in city government.
- Provision for departmental staff review and development of cost figures for any area showing an interest in annexation.
- Reappraisal of annexation goals and policies on a continuing basis.
- Maintenance of an awareness of the needs and problems that exist within suburban areas.
- Support of state legislation beneficial to orderly growth through annexation.

An important element of an annexation policy statement is an indication of the city's policies on the three key items which, when applicable, must be included in annexation petitions, resolutions, or ordinances. These items are: (a) the simultaneous adoption of a comprehensive plan and/or a zoning regulation, (b) the assumption of a proportionate share of the outstanding city indebtedness, and (c) the formation of a community municipal corporation. These matters are separately provided for in state law and are addressed individually in this publication. A written policy on these key elements assists city legislative bodies and officials considering annexation to apply consistent principles to actual annexation proposals.

MRSC has assembled a compilation of annexation materials, available on loan, that includes several written annexation policies, including annexation elements from comprehensive plans of GMA cities.

III. Guidelines for Evaluating Proposed Annexations

Whether or not a city has formally adopted an annexation policy statement, it is important to establish criteria for evaluating specific annexation proposals. City policymakers should be consistent in dealing with annexation interests, and apply uniform standards when making decisions regarding annexation. City officials should be particularly concerned about the consequences of accepting an annexation proposal. In some fringe areas, the problems of utilities, sanitation, traffic, and law enforcement are so severe that solving them may place a great strain on the city's resources and may result in increased costs to all residents. Once again, GMA cities should address these issues in the context of comprehensive plan policies.

To be certain that each annexation is in the city's best interest, city officials should establish a set of guidelines by which to review and measure every proposed annexation.

These basic principles should be carefully considered in the selection of any area for annexation:

- The boundaries of the annexation area should be drawn in accordance with the ability (both from a geographic and economic standpoint) of the city to provide services. The need for services should be taken into account. The general terrain of the area should allow for expansion of utilities without prohibitive costs.
- The population and assessed valuation of the area should be sufficient to allow the area to pay its fair share of the cost of providing services.
- The area should contribute to the logical growth pattern of the city and should encourage orderly growth. Where possible, irregular boundaries should be avoided.

- It should be no larger than what the city is able to service adequately with capital improvements and services within a reasonable time.
- The area should be adaptable to anticipated expansion requirements of the city for residential or commercial/industrial purposes.
- The boundaries of an area should be drawn to include residents who are generally favorable toward annexation or where annexation can be demonstrated to be advantageous to the residents of both the fringe area and the city.
- In drawing boundaries of an annexation area, due regard should be given to special districts in the area. (See Chapter Four, Section I, on the consequences of annexation on special districts.)

If a proposed annexation can meet all or most of these criteria, the chances of a successful completion of the annexation will be greatly increased and the effect upon the city will be positive.

IV. The Annexation Study

After the general guidelines for a municipality's annexation policy have been established, a city will be in a better position to evaluate individual annexations. When residents of a fringe area indicate an interest in annexing to a city, or the city itself considers the area part of its natural growth pattern and desires to guide its development, a careful and thorough study of the area should be made, particularly for larger annexations. Such a study should gather information on these major points:

A. Statistical Data

Necessary facts including acreage, number of residential units, businesses, industries, estimated population, street mileage, assessed valuations, existing utility services, existing parks and playgrounds, schools, and public buildings.

B. Maps

Preparation of maps to show present and proposed city boundaries, general land use patterns, existing and proposed zoning, present major trunk water mains and proposed extensions, present sewer interceptors and proposed extensions, existing streets, and existing public areas such as playgrounds and schools.

C. Existing Public Services

Public services to the area's residents should be surveyed and evaluated. The methods of providing such services should be described, and their costs determined. These would include: police protection, fire protection, water service, sewage collection and disposal, garbage disposal, street maintenance, street lighting, storm sewers, animal control, planning, building inspection, public health protection, recreation, and library services.

D. Urban Service Needs

Estimates of urban service needs should be made. The extent to which such services are already being provided within the area will determine the degree to which additional services may be required. The city should determine the service shortages in the area proposed for annexation.

Service needs should be evaluated by priority of importance. In determining such priorities, prevailing sentiments of residents in the area should be seriously considered.

In GMA cities, service needs, including those within urban growth areas eligible for annexation, should be addressed in the comprehensive plan. The mandatory capital facilities plan element must include, among other things, “a forecast of the future needs for such capital facilities,” the proposed locations of new capital facilities, and at least a six-year plan for financing the future capital facilities. Thus, if a city anticipates annexation of all or part of its urban growth area within the six-year period addressed by the capital facilities plan element, that element should identify needed facilities within the area or areas that the city anticipates annexing.

Similarly, the utilities element and the transportation element should consider needs in a city's urban growth area. Importantly, the transportation element must contain level of service standards to implement the requirement of concurrency with respect to city streets. See RCW 36.70A.070(6). That concurrency requirement mandates that the transportation element identify “specific actions and requirements for bringing into compliance any facilities or services that are below an established level of service standard.” Thus, a GMA city may not be able to approve new development if current service levels in the area are deficient. Before a city annexes territory within its urban growth area, it should therefore analyze how services in that area measure up to level of service standards and how the city can address any identified deficiencies. (Under the GMA, a city may not require developers to finance improvements to address existing system deficiencies.) A city may not wish to annex territory until it has the capacity to correct service deficiencies.

E. Service Requirement Costs

The cost of extending or improving services should be determined. Anticipated expenditures should be contrasted with anticipated revenues that would be derived from the area. Considerations of service costs should include:

1. Police protection (additional personnel, equipment, police stations);
2. Fire protection (additional personnel, equipment, hydrants, fire stations);
3. Public works (additional street lighting, maintenance, construction, storm drainage, garbage collection);
4. Parks and recreation (additional park acreage, recreational programs, new facilities);
5. Water (water main construction, maintenance, replacement of old lines); and
6. Sewers (new interceptor lines, additional treatment plant capacity, pump stations).

The difference between revenues and expenditures required in the extension of urban services may be stated as the city's service liability. The question that logically follows is whether or not the city has the physical and financial capability to provide the required services in areas to be annexed.

F. Estimate of Revenues

A complete estimate of potential revenues to accrue from the area should be made. All existing methods of raising revenue that the city now has should be applied to the area being considered for annexation. These would include property taxes, state shared revenues, sales taxes, business and occupation taxes, and inspection and license fees.

G. Social and Economic Characteristics

It is important to know the character of the fringe area, for this will indicate much about present needs and potential future problems. Is it an industrial area with blue collar workers? Is it a bedroom community of management and professional people? Is it an area of unstable population with an unusual number of vacant housing units?

H. Special Problems

In making an inventory of existing services, an annexing city should also be certain that it knows what special problems might exist. What is the condition of utility lines? Will the pipe size fit in with the city's system? Is the drainage system adequate or lacking entirely? Are there special police problems, such as a tavern with a bad reputation?

The annexation study should be thorough and accurate so as to allow the city officials to make sound decisions on the proposed annexation. If annexation is attempted, the study will furnish information by which both citizens and city officials may evaluate the relative advantages and disadvantages of the proposal.

V. The Plan of Service

An annexation study should serve as a basis for preparing a "Plan of Service." Such a plan should identify those municipal services proposed to be extended, and establish a time schedule for so doing. People in an annexed area are to be treated in all respects like other residents of the city as soon as is reasonably possible.

The first step is to consider the cost of extending all services being provided in the city. If the full package of services exceeds the city's financial capability, relative priorities should be established and each service should be extended when it is financially possible. The proposed date for doing this should be shown in a time schedule.

Services that will require no extensive capital outlay, such as street maintenance and cleaning, may be provided within a short time. Police protection should be provided immediately, even though this might require spreading out existing manpower and equipment. Fire protection should also be provided as soon as possible; either by the city or by arrangement with the applicable fire protection district.⁷ Providing the desired level of fire protection may require an additional fire station, fire truck, and other equipment and personnel.

With respect to other services involving capital outlays, such as streets and utilities, it should be remembered that: (1) extension of improvements should be commensurate with that in other parts of the city and related to the needs of present settlement and future growth, and (2) extensions should be

⁷The annexation of territory that is part of a fire district causes the automatic withdrawal of that territory from the fire district. See Chapter Four, Section I.A.

based on previously approved policies and standards. For example, if water and sewer lines, streets, or sidewalks are built by local improvement districts with a contribution by the city, this policy should be applied to the annexed area.

Residents in the annexed area do not expect to be taxed without benefits, but they should also not expect disproportionate improvements at the expense of the other residents. Thus, the service plan should take into consideration the tax contribution of the property owners in the area of need, as well as other sources of revenue, to determine the amount of annual expenditures to be made in the annexed area.

The service plan should be scheduled over several years. It should serve to accurately advise people in the annexation area, who must approve the annexation, when they can expect to receive the new or improved services they desire. It should also point out very clearly when the city will require direct payments from property owners in the annexation area to receive the services desired. If property owners in the annexed area are to assume their proportionate share of the city's bonded indebtedness, the report should so state. Reference should also be made to preplanning and zoning of the area, if this is a condition of annexation. (See Chapter Five of this report for details of Washington law as they relate to these subjects.)

Another matter which should be clearly stated in the Plan of Service is whether, or the extent to which, the city will subsidize the introduction of a new service or the improvement of an existing one in the annexed area. Such subsidization might be desirable or necessary if there is a serious service deficiency requiring immediate capital expenditures. Or, it may be politically desirable for the city to assume the cost of immediate improvements in certain services if it is confident that over a longer period of time the costs will prove to be a good investment for the city. However, the decision to subsidize any need of the annexed area should be approached with caution.

CHAPTER THREE

The Annexation Information Program

The success of an annexation program is often directly dependent on public attitudes. Accordingly, it is important that members of the public be fully informed on the issues involved so that the final decision truly reflects the general will. An annexation information program can help to dispel false rumors, misunderstandings, and incorrect information. Annexations can then be more readily judged on their own merits.

Public Relations. A carefully planned public relations program is essential in communicating annexation facts to the public. *However, when an election is involved, caution must be exercised not to use public facilities for promoting the ballot proposition, in violation of state law. Specific statutory provisions will be discussed below.*

The public relations program can be initiated by sharing factual information pertaining to the annexation proposal with local newspapers, radio stations, and television stations. A speakers' bureau, which might include city officials and other civic leaders, could furnish speakers to service clubs, business groups, and professional organizations.

An effective way to reach the people is through a coffee hour on each block, where one or several city officials (other than the governing body) can sit down with a group of residents and answer direct questions. To the extent that the meeting is a one-to-one exchange, it will be far more influential than large public meetings.

When the annexation involves a considerable residential population or an annexation election, a committee of "citizens for annexation" is desirable. The residents of the area will be less likely to feel that the big city is trying to "gobble them up" if their own friends are sponsoring the annexation. Any printed material for distribution would be prepared and signed by such a committee.

Cost/Benefit. There are two very important questions for which the people in the annexation area will want answers: (1) what benefits will the annexation provide? and (2) what will it cost? These questions require clear and definitive answers. Persons contemplating annexation normally base their final decision on their understanding of the answers to these questions. While many benefits are quantifiable, others are difficult or impossible to measure in terms of dollars. For example, improved police protection may reduce property loss and bodily injury which in turn results in savings on medical expense and loss of wages. It would be unrealistic to attempt to predetermine a dollar value for such possible losses.

The Fact Sheet. A fact sheet, a pamphlet describing the annexation and its consequences, is helpful. The pamphlet should have at least a map of the annexation area, a list of the benefits and improvements that will result from annexation, and a clear statement of the financial implications of the annexation. The financial statement should include a simple chart showing comparative costs for residents in the fringe area and in the city, listing such differences as property tax rates, utility costs, fire insurance rates, and service charges. These costs should be computed at the time the annexation is proposed, and should be so labeled, since costs may vary over time.

Examples of brief fact sheets and cost comparisons are reproduced in the compilation prepared to supplement this report. Several cities and interested citizen groups have also prepared extensive information pamphlets on annexation. Due to their length, they are not included in this publication. Examples may be obtained on a loan basis from the Municipal Research & Services Center at the address listed on the cover page.

Community Identity. Community organizations such as improvement clubs, service clubs, and social clubs may also be valuable in informing residents of annexation issues. Such organizations often promote community spirit and provide arenas for involvement in local issues and affairs. The support or opposition of such organizations can be very important to a city's annexation program.

Apprehension is often expressed that once an area annexes it will lose its identity. Therefore, some city officials dispel such concern by publicly supporting individual area identity and group citizen involvement. The community municipal corporation might be a possible answer to this apprehension in some areas, as examined in detail in Chapter Five of this publication.

How ambitious the public relations effort needs to be will depend, of course, on the size and character of the population involved. In any annexation publicity program, however, the two most effective elements are ready access to cost/benefit information and the direct public encounter, preferably with small groups of people in neighborhood homes.

Caution Applicable to Election Method. If the election method of annexation is to be used, a word of caution is necessary. Since a ballot proposition is involved, the public information program must be tailored to comply with RCW 42.17.130:⁸

No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency: PROVIDED, That the foregoing provisions of this section shall not apply to the following activities:

- (1) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;
- (2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;
- (3) Activities which are part of the normal and regular conduct of the office or agency.

The state's Public Disclosure Commission has adopted administrative regulations aimed at clarifying the intent of the statute:

WAC 390-05-271 General Applications of RCW 42.17.130. (1) RCW 42.17.130 does not restrict the right of any individual to express his or her own personal views concerning, supporting, or opposing any candidate or ballot proposition, if such expression does not involve a use of the facilities of a public office or agency.

⁸For legal analysis of this statute in the context of ballot propositions, see AGO 1975 No. 23; AGO 1973 No. 14; and AGO 1973 No. 26. See also *King County Council v. Public Disclosure Commission*, 93 Wn.2d 559 (1980).

(2) RCW 42.17.130 does not prevent a public office or agency from (a) making facilities available on a nondiscriminatory, equal access basis for political uses or (b) making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency.

WAC 390-05-273 Definition of Normal and Regular Conduct. Normal and regular conduct of a public office or agency, as that term is used in the proviso to RCW 42.17.130, means conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

The conclusion to be drawn from these regulations is that *cities and towns should not publish promotional material urging a favorable vote in an annexation election*. City employees should not use city facilities and resources to actively attempt to influence voter response.

However, a distinction may be drawn between promoting an annexation and merely providing factual information directed at enabling voters to make their own decisions based on factual data, rather than uninformed speculation. The annexation statutes specifically authorize a city or town to “provide factual public information on the effects of a pending annexation.” See RCW 35.13.350, 35.21.890, 35A.14.550, and WAC 390-05-271, -273, reproduced above.

If a private citizen group is involved, any legal ambiguities as to the information that can be provided may be avoided when the citizens group, rather than the city, prepares, finances, publishes, and distributes the annexation information pamphlets. Citizen groups may not only provide factual information, but also advocate positions. Any such group would be well advised to check with the Public Disclosure Commission (403 Evergreen Plaza, Olympia, WA 98504; telephone (206) 753-1111; SCAN 234-1111) early in its formation stages, to learn whether any campaign financing information or forms will be expected of the committee.

Consequences of Annexation

I. Special Districts

Anticipating the consequences of annexations on special districts requires careful analysis on a district by district basis, since there are few general rules that apply to all districts. Some districts are not affected by annexations, others continue exercising jurisdiction only over areas not annexed, and still others may go out of existence altogether when all or parts of their territory are absorbed by cities.

In beginning such an analysis, it is desirable to prepare a list of the special districts that function in the area proposed for annexation. Among the major special districts to be considered are:

- Fire protection districts
- Water and sewer districts
- School districts
- Road districts
- Port districts
- Public utility districts
- Cemetery districts
- Hospital districts
- Library districts

Because of the many differences in the statutes and legal precedents governing each kind of district, this publication will individually review the consequences of annexation on these major districts.

There are numerous other special purpose districts and limited governmental entities that may have been established in an area proposed for annexation, and accordingly should be included in a special district analysis, such as: flood control districts, ferry districts, park and recreation districts, county airport districts, mosquito control districts, and metropolitan municipal corporations. Since only a few of each of these types of districts operate within Washington State, the consequences of an annexation on them are not addressed in this report.

Working with a list of special districts, one can outline what the consequences of annexation will be for each district, what boundary changes will occur, whether and when the city will be responsible for the provision of new services, whether assets and liabilities of the districts will be subject to distribution, and other relevant matters.

All issues on the consequences of city annexation on special districts are not fully resolved by statutes, case law, or opinions of the Attorney General. Therefore, it may be helpful early in the annexation process for city officials to meet with administrators of potentially affected districts to resolve as many of these issues as possible and to reach an understanding, consistent with law, as to how the transfer of jurisdiction, if required, will occur.

Remaining issues may be appropriate to bring before a boundary review board, if one has been established within the county, or otherwise an annexation review board, if review is required. In addition to changes in city, town, and special district boundaries, a boundary review board is authorized to review the “assumption by any city or town of all or part of the assets, facilities, or indebtedness of a special

purpose district which lies partially within such city or town.” RCW 36.93.090(2). Moreover, the board considers the delivery of municipal services as a factor in its review of proposals. RCW 36.93.170. More details on the boundary review board process are contained in Chapter Eight.

One matter that is never an issue in a municipal annexation is whether property removed from special district jurisdiction remains subject to that district's outstanding bonded indebtedness. It is generally true for all types of districts that the annexed property remains liable for retiring such indebtedness just as if the annexation had not taken place. Some statutes also require annexed property to remain subject to other, non-bonded, indebtedness. These statutes protect the integrity of bonds and the ability of a special district to retire indebtedness. If a district tax base were subject to shrinkage, districts could find themselves unable to meet their responsibilities. Future issues of bonds would then not be marketable, since repayment would not be assured.

Specific statutes relating to indebtedness, along with information helpful to analyzing the consequences of an annexation on each of the major districts, follows.

A. Fire Protection Districts

1. Automatic Removal of Territory

Annexation to a city automatically removes territory from a fire protection district and renders the annexing city responsible for fire protection in the annexed area. RCW 52.08.025⁹ A fire protection district continues to service what remains of its district outside of the city. However, since the territory within the newly annexed area is obligated to pay the property taxes that have already been levied for a particular year by the fire protection district, statutes provide that when less than 60 percent of the real property valuation of the district is annexed, the district is to continue to provide fire protection to the annexed area as long as it continues to receive the regular property taxes it levied in the annexed area. RCW 35.02.200 and RCW 35A.14.400.

If the area annexed includes all of a fire protection district, the fire protection district, for purposes of imposing regular property taxes, continues in existence until January 1st of the year in which the annexing city or town will collect property taxes imposed on the newly annexed area. The members of the city or town or governing body must act as the board of commissioners to impose, receive, and expend the property taxes. RCW 52.08.025.

Even after a district no longer receives property tax revenue from property annexed to the city, it may still provide fire protection to an annexed area by agreement between the district and the annexing city. Likewise, a city by contract may provide fire protection to the remainder of the district outside the city. The Interlocal Cooperation Act, chapter 39.34 RCW, contains a very broad grant of authority to cities and special districts to reach agreements with each other that best meet both of their needs. (See also RCW 52.12.031(3), which contains similar authority.)

⁹Accord, AGO 61-62 No. 170. However a city or town may itself annex to a contiguous fire protection district pursuant to RCW 52.04.061 - .081. Approval by the legislative authorities and voters of both the city or town and the fire protection district would be required.

2. Effect on District Assets

Since after annexation the annexing city becomes responsible for fire protection within the annexed area, statutes provide for an equitable division of the net assets,¹⁰ and in some cases liabilities, of the fire protection district based upon the percentage of the annexed value of the district that has been annexed to the city. If 60 percent or more of the assessed real property valuation of a fire district is annexed to a city, the city will own all of the district's assets after it pays the district a sum equal to the percentage of the value of the real property in the entire district that remains outside the annexed area. (However, if the annexing city or town has been itself annexed by another fire protection district, that other district will be vested with ownership of the assets.) The payment is to be made within one year of the annexation, in cash, property, or contracts for fire protection services. RCW 35.02.190 and RCW 35A.14.380. The fire protection district may elect by a vote of the persons residing outside the annexed area to require the annexing city (or fire protection district) to assume responsibility for providing fire protection and for operating and maintaining district property, facilities, and equipment. If such an election is approved, the district must pay a reasonable fee to the city (or district) for the services it provides.

Also, under this 60 percent or more scenario, a proportionate share of the liabilities of the fire district at the time of the annexation, equal to the percentage of the total value of real property of the district that is annexed, must be transferred to the city. RCW 35.02.190.

If all of a fire protection district is included in the annexing city, all of the assets and liabilities of the district are to be transferred to the city (or fire protection district, if the district has annexed the city) upon annexation. *Id.*

If five percent or more but less than 60 percent of the area of a fire district is annexed to a city, the district maintains ownership of its assets. However, the district is to pay the city (in cash, properties, or contracts for fire protection services) a percentage of the value of its assets equal to the percentage of the value of the real property in the district that has been annexed into the city. This payment is to be made within one year, or within the time the district continues to collect taxes in the annexed area. RCW 35.02.200 and 35A.14.400.

If less than five percent of the *area* of the fire protection district is included in the area annexed, no payment is due the annexing city from the district, except in certain circumstances. RCW 35.02.205, RCW 35A.14.400. A transfer of assets must occur if, within 60 days of the annexation, the city or town adopts a resolution with a finding that it will incur a significant increase in fire suppression responsibilities, with a corresponding reduction of district responsibilities, as a result of the annexation, and the district concurs in the finding. An agreement for the transfer of assets must be entered into within 90 days of the district's concurrence. The agreement will take the increase and decrease of responsibilities into account, and will consider the impact of any debt obligation of the annexed or incorporated area. If the district does not concur

¹⁰The word "assets" means the total assets of the fire district, reduced by its liabilities, including bonded indebtedness, as determined by accepted accounting methods. The amount of the liability is to be determined by reference to the fire district's balance sheet, produced in the regular course of business nearest in time to the annexation. RCW 35.02.200.

in the city's finding, or if an agreement is not reached within 90 days of the district's concurrence in the finding, the matter will be decided in arbitration. The arbitrators will decide whether a significant increase and decrease in responsibilities occurred and, if so, the percentage of district assets that will be transferred to the city or town. RCW 35.02.205.

As indicated above, the outstanding indebtedness of the fire protection district, bonded or otherwise, remains an obligation of the taxable property annexed to the city, just as if the annexation had not occurred. RCW 35.13.249 and RCW 35A.14.500.

3. Transfer of District Employees

Annexation of any portion of the territory of a fire district triggers requirements concerning employment of fire district employees that are terminated as a direct consequence of the annexation. Any such employee may transfer to the civil service system of the city if he or she can perform the duties and meet the minimum qualifications of the position to be filled. This transfer is subject to the requirements and limitations in RCW 35.13.225 and .235, which are applicable to all cities and towns.

B. Water and/or Sewer Districts

Unlike the situation involving fire protection districts, there are no automatic consequences when a city annexes an area that includes all or part of a water or sewer district or a combination of both.¹¹ Upon annexation, the city may either allow the district to continue operations as before, or it may assume jurisdiction over the district in whole or in part, depending upon the circumstances. Ch. 35.13A RCW. Of course, a city may assume jurisdiction over a water and/or sewer district any time after annexation. Since assumption of jurisdiction over a water and/or sewer district is not a consequence of annexation, it will not be addressed in this publication. See chapter 35.13A RCW for procedures to assume jurisdiction.

C. School Districts

In most annexations, no school district boundary changes result. The school district statutes specify several categories of annexations that may result in school district boundary changes, but they also allow for a great deal of discretion in making any changes, so that school district boundaries will be structured to reflect community needs. Even when school district boundary changes occur, it is another school district that assumes educational responsibilities. Cities do not assume school district functions.

A school district boundary change may occur when a city located in one school district annexes territory in a second school district, when the second school is very small (i.e., it operates a school or schools on one site only or operates only elementary schools on two or more sites). When this happens, the educational service district superintendent declares the newly annexed territory that had been included in the second school district to be part of the school district containing the city. If the territory that changes school districts contains a school building of

¹¹A water district may merge into a sewer district, and the resulting sewer district may then exercise the authority given to water districts, in addition to those granted to sewer districts. Ch. 56.36 RCW. Similarly, a sewer district may merge into a water district and the resulting water district may also exercise the authority granted to a sewer district. Ch. 57.40 RCW.

the second school district, then the educational service district superintendent also presents a proposal to the regional school districting committee for the disposition of some or all of the remaining territory of the second school district. RCW 28A.315.250.

Another instance in which there may be a change in school district boundaries arises when the annexation involves a town, and the school district in the area annexed to the town operates, on more than one site, one or more elementary schools and one or more junior high schools or high schools. In this case, the regional school districting committee, in its discretion, is to prepare proposals for the school district, which includes the town, to annex the territory that the town has annexed. The school districting committee is also to prepare proposals for any or all of the territory remaining in the second school district to be annexed to the school district in which the town is located or to another school district. Alternatively, if 75 percent of the registered voters in the annexed territory petition for the transfer of the annexed territory to the school district in which the town is located (and no school or school site is located within the territory), the educational service district superintendent is to declare the territory to be part of the school district containing the town. RCW 28A.315.250.

School district statutes also provide for the transfer of territory between school districts or the annexation of part or all of a school district by another district. RCW 28A.315.160 et seq. Thus, if an annexation by a city is not one of the small classes of annexations that otherwise leads to a school district boundary change but yet leads to the need for an adjustment of school district lines, procedures are available for such adjustments to be made.

The educational service district superintendent may be contacted for additional information on how laws on school district boundaries may apply in particular instances. As previously stated, however, in the overwhelming number of annexations, school district boundaries do not change as a result.

D. Road Districts

County road districts are established by county legislative bodies to aid in the administration of the county road construction and maintenance program. By statute, county road districts embrace territory outside of cities. RCW 36.75.060.

When a county road is part of an area annexed by a city, the road becomes a city street and the city assumes full responsibility for it. *Evergreen Trailways, Inc. v. Renton*, 38 Wn.2d 82 (1951). The city also becomes entitled to receive, when collected, the road district taxes that have been levied but not yet collected on property within the annexed territory. When collected by the county treasurer, these funds are to be paid to the city and placed in the city street fund. RCW 35.13.270, RCW 35A.14.801, and AGO 61-62 No. 16. This payment of road district taxes to the city upon collection applies both to current taxes and to delinquent taxes that were levied but uncollected at the time of annexation. AGO 51-53 No. 316.

A code city does not receive the portion of the county road district property taxes that are attributable to special assessments due on behalf of annexed property. RCW 35A.14.801. The statutes are silent on the disposition of special assessments collected from territory annexed to other classes of cities, but it may be presumed that these funds would also be retained by the county for purposes of retiring the outstanding indebtedness.

E. **Port Districts**

Port district boundaries may be either coextensive with the county's boundaries, or may include an area less than the entire county. State law does not require city and town boundaries to be observed when port district boundaries are established or altered. Thus, when a port district is coextensive with a county, all cities and towns in the county are within the port district. Where an area less than the entire county comprises the port district, the district boundaries may or may not include particular cities and towns. See chapter 53.04 RCW.

A city annexation does not alter port district boundaries. However, where a port district has been established in an area less than the entire county, a city annexation may result in part of a city being included within the district, while the remainder of the municipality is excluded. As a consequence, some city property owners would be responsible for paying the port's property tax assessment, while others would not. To correct this situation, state law provides a procedure to add territory to an established port district. The procedure requires a favorable majority of the votes cast in an election in the area proposed for inclusion. RCW 53.04.080 - .100. However, the statutes do not provide an expeditious procedure for territory to be removed from a port district.

F. **Public Utility Districts**

Statutes, court decisions, and opinions of the attorney general deal directly with some of the questions that arise with respect to public utility districts (PUDs) as a consequence of annexation, but they leave other questions unanswered. Generally, a municipal annexation will not cause changes in PUD jurisdiction. When a PUD already includes both the annexing city and the territory to be annexed, no changes occur due to the annexation. Likewise, when a city that operates its own electric utility annexes territory served by a county-wide PUD, the district may continue to serve the annexed territory. See AGO 65-66 No. 33. This is true even though the annexing city also has the right to provide the same service in the same territory.

A PUD may be established county-wide, in which case it includes all of the cities within the county (even though city property in cities having their own utilities may not be subject to all or some of the PUD property tax). PUDs may also be established in areas smaller than an entire county. In this case, their precise boundaries should be ascertained as a preliminary step in analyzing whether a municipal annexation will impact a PUD.

Laws governing PUDs are ambiguous on some issues that arise in an annexation. However, the courts and the attorney general's office have addressed some questions concerning city and PUD interrelationships. The state supreme court held in *PUD No. 1 of Pend Oreille County v. Town of Newport*, 38 Wn.2d 221 (1951), that two municipal corporations may serve the same geographic area simultaneously in the exercise of proprietary functions, such as providing electrical service. However, another case has held that when a city had established, owned, and operated its own utilities before the establishment of a county-wide PUD, property within the city could not be subjected to the portion of the PUD property tax used to provide duplicate utilities for the remainder of the PUD. *PUD No. 1 of Whatcom County v. Superior Court*, 199 Wash. 146 (1939). A 1948 attorney general's opinion concluded that, under the laws in effect at the time, "no means exist by which an area once properly included within a public utility district may withdraw therefrom." Thus, an area served by a private power company remained subject to the public utility district's property tax levy, even though it did not receive benefit from the district. AGO 1948 No. 101.

The statutes do not directly provide for changes in PUD boundaries because of a city annexation. However, should a municipal annexation bring about the need for PUD boundary changes, existing PUD boundary change statutes could be invoked. For example, PUDs may add additional territory and may consolidate with other PUDs. RCW 54.32.010. Complete disincorporation is also possible. RCW 54.08.080. However, as stated above, annexation by a city will generally not bring about any changes in PUD boundaries and functions.

G. Cemetery Districts

Cemetery districts may include any city with a population of less than 10,000. RCW 68.52.210. When both an annexing city and an area proposed for annexation are included in a cemetery district, the annexation will have no consequences on the district boundaries.¹²

However, when either an annexing city or the area proposed for annexation is included in a cemetery district, but the other is not within the district, questions may arise for which there are no ready answers. The statutes do not contain provisions as to (1) property within a cemetery district annexing to a city not within a cemetery district, or (2) the reverse situation, i.e. property not within a cemetery district annexing to a city that is part of a cemetery district. Moreover, the statutes do not contain provisions for cemetery districts to expand or to delete territory, even when an annexation is not in the picture. Because of the absence of authority to the contrary, the practice has been that a municipal annexation does not result in changes to a cemetery district, and the existence of the district has no bearing on the city's annexation.

If review of an annexation is required, either by a boundary review board, ad hoc annexation review board, or county annexation review board for code cities, then issues involving a cemetery district may be appropriate to bring before it. Otherwise, pending the enactment of legislation to clarify these consequences of annexation, judicial proceedings appear to be the readiest means for ascertaining the impact of an annexation on a cemetery district.

H. Public Hospital Districts

Public hospital districts can include or exclude cities, and may be comprised of several counties, be coextensive with a county's boundaries, or be less than an entire county. RCW 70.44.020 - .035.

The statutes governing public hospital districts are much the same as those for cemetery districts. They do not directly deal with many of the questions that arise when a city annexes

¹²Annexation of part of a junior taxing district (such as a hospital or cemetery district) by a city may theoretically have an impact on the amount of the authorized levy of that district. This is true because the state constitution (article 7, section 1) and statutes require the levy to be uniform throughout an entire taxing district without regard to whether the taxing district is in incorporated or unincorporated territory. The statutes also place a lid on the combined total of the property taxes of the state, county, county road district, city, school district, and other special districts (except for port and public utility districts). See RCW 84.52.043. If the levies of all of the taxing districts total more than this amount, the levies of the junior taxing districts are subject to reduction pursuant to RCW 84.52.010. Theoretically, when a junior taxing district includes parts of both a city and a county, the levies of the other entities in the city or the county may be high enough to force a reduction of a junior taxing district levy. If this happens for part of a district (i.e., either the portion in the city or the portion in the county), then the levy amount collected in the remainder of the junior taxing district must also be reduced so that the levy is uniform throughout the entire district.

This situation does not often, if at all, arise in annexations, but it is a theoretical possibility—particularly in the case of cemetery and hospital districts.

territory situated within a public hospital district. Because of this lack of authority, it is generally understood that a municipal annexation will have no impact on hospital district boundaries. The result of an annexation can be that only part of the city is included in a district, or that two public hospital districts each have jurisdiction over portions of one city.

I. **Library Districts**

Upon annexation of territory consisting of all or part of a library district to a city or town, that territory automatically is withdrawn from the district. See AGO 1949 No. 54. Library services in the area annexed then become the responsibility of the city or town. A city may, however, contract with a library district for library services in part or in all of the city, or it may annex to the library district. (If a city annexes to a library district, its levy lid becomes \$3.60 per thousand dollars of assessed value (up from \$3.375 per thousand), less any regular levy (up to \$.50 per thousand dollars assessed value) of the library district. RCW 27.12.390.)

Summary

Annexation to cities and towns will result in boundary changes for fire protection district, road district, and library district boundaries. Changes in water and sewer district boundaries do not result directly from an annexation. It is probable that no boundary alterations will result to school, port, public utility, cemetery, and hospital districts. Yet, due to the complexity of state statutes and the variety of local circumstances, cities and towns contemplating annexation may want to review the situations involving the special districts that potentially may be affected by an annexation.

II. **Franchises**

As of the effective date of an annexation, a franchise or permit authorizing or permitting the operation within the annexed territory of any public transportation, garbage collection and/or disposal, or other similar public service business or facility is automatically canceled. However, the annexing city must grant the holder of a canceled franchise or permit another franchise to continue the business within the annexed territory for a term of at least five years.¹³ The annexing city may not allow the extension of similar or competing services to the annexed territory, unless it can show that the preexisting franchise or permit holder is unable or has refused to adequately service the annexed territory at a reasonable price. RCW 35.13.280 and 35A.14.900.

The city does have the option of purchasing the franchise or business either by a negotiated sale or by condemnation. The payment through the condemnation process would include an amount to cover the damages for the loss of the franchise. *Id.*

Another statute may also impact franchises or permits in annexations subject to review by a boundary review board. RCW 36.93.190 provides:

For a period of ten years from the date of the final decision [of the boundary review board], no proceeding, approval, action, or decision on a proposal or an alternative shall be deemed to cancel any franchise or permit theretofore granted by the authorities

¹³Many cities attempt to sign a new franchise/permit on or very soon after the effective date of an annexation to minimize future issues, and to make certain that the five year duration commences at the effective date of the annexation. An example of a garbage collection permit issued by the City of Spokane pursuant to RCW 35.13.280 is contained in the MRSC compilation prepared to supplement the publication.

governing the territory to be annexed, nor shall it be deemed to supersede the application as to any territory to be annexed, of such construction codes and ordinances (including but not limited to fire, electrical, and plumbing codes and ordinances) as shall have been adopted by the authorities governing the territory to be annexed and in force at the time of the decision.

It is unclear what construction should be placed on this statute in light of seemingly contrary statutes summarized above. The appellate courts have not yet construed this statute.

III. Transfer of County Sheriff's Employees

Statutes enacted in 1993 require and establish procedures for the lateral transfer to a city of qualified county sheriff's office employees who would otherwise be laid off as a result of the annexation of unincorporated territory into that city. RCW 35.13.360, .370, .380, .390, .400. As discussed below, the requirements do not, however, mean that the city must immediately put on the police department payroll all transferring employees. These requirements and procedures apply to all cities and towns.

A. When Authorized (RCW 35.13.370)

A sheriff's office employee may transfer his or her employment to the police department of a city annexing unincorporated territory in the county if the employee:

1. Was, at the time of the annexation, employed exclusively or principally in performing the powers, duties, and functions of the county sheriff's office;
2. Will, as a direct consequence of the annexation, be terminated from county employment; and
3. Can perform the duties and meet the city's minimum standards and qualifications of the position to be filled within the city police department.

B. Procedure for Transfer (RCW 35.13.380(1), RCW 35.13.400)

An eligible employee of the county sheriff's office may transfer into the city's civil service system by doing the following:

1. Filing a written request with the civil service commission of the city, within 90 days of the effective date of the annexation; and
2. Giving written notice to the county legislative authority.

Upon city receipt of the request, the transfer to the city's civil service system must be made.

C. City Responsibilities (RCW 35.13.380(2))

1. The city is not required to put all transferring employees on the police department payroll. It is required to put on the payroll only as many employees as the city determines are needed to provide an adequate level of law enforcement service. It is within the city's discretion to determine what is an adequate level of law enforcement service.

2. The employees needed by the city and placed on the city payroll must be taken in order of seniority.
3. Transferring employees who are not immediately placed on the city payroll are placed in order of seniority at the top of the list of their respective class or job listing, regardless of rank in the civil service system, so that they must be hired first as vacancies arise. The city retains the right to select its police chief regardless of seniority.
4. Transferring employees not immediately placed on the city payroll must be placed on the city reemployment list for a period not to exceed 36 months, unless a longer period is authorized in a collective bargaining agreement between representatives of the police department and sheriff's office employees and the police department and sheriff's office. The 36-month period begins on the effective date of the annexation.
5. The city civil service commission must enact rules necessary for the orderly integration of county sheriff's office employees who transfer to the city as a consequence of annexation. RCW 35.13.390.

D. County Responsibilities (RCW 35.13.380)

1. When an unincorporated area is annexed to a city and layoffs in the county sheriff's office will result, the sheriff's office must notify affected employees of their right to transfer.
2. Upon receipt of the employee's notice concerning transfer to the city police department, the county must transfer to the city civil service commission a record of the employee's service with the county, which must be credited by the city to the employee as part of his or her period of employment with the police department.
3. The county is responsible for compensating the employee for benefits accrued while employed by the sheriff's office, unless a different agreement is reached between the county and the city.
4. The county sheriff's office must rehire former employees placed on the city's reemployment list before it can hire anyone else to perform the same duties previously performed by the laid-off employees.

E. Conditions of Transfer (RCW 35.13.380(1))

The transferring employee who is placed on the city police department payroll will:

1. Be on probation for the same period as are new employees in the same classification;
2. Be eligible for promotion after completing the probationary period in compliance with civil service rules pertaining to lateral transfer based upon combined service time;¹⁴

¹⁴However, for purposes of layoffs by the city, only the service time accrued with the city will count, unless an agreement is reached between the collective bargaining representatives of the police department and sheriff's office employees and the police department and sheriff's office. RCW 35.13.380(1).

3. Receive a salary at least equal to that of other new employees in the same classification; and,
4. Have all the rights, privileges, and benefits (e.g., sick leave and vacation) within the civil service system that he or she would have been entitled to had he or she been a member of the police department from the beginning of his or her employment with the county.

IV. Financial Impacts

Every annexation will have some financial impact on the annexing city. It may be positive (anticipated new revenues are greater than the additional service costs) or negative. It may be small (in which case it will not weigh heavily in the decisionmaking process) or it may be large. As part of an annexation study, every city needs to do at least a “back of the envelope” calculation to determine whether an additional, more detailed analysis should be done.

A. Revenue

The revenue increases that will come to the city treasury because of an annexation depend substantially on the character of the area to be annexed. Factors such as the population of the area, its assessed valuation, and current and future land use patterns will affect most of the city's current revenue sources. In making its estimates, the city finance department needs to be aware of two important issues. First, the date chosen for the annexation will have an impact on when new revenues are received and, in some cases, how much is received. This date is particularly important for property tax revenues and sales and use tax equalization payments. Second, the increasing number of annexations and incorporations in recent years has begun to negatively affect the funds that will be available from state-shared revenues and sales tax equalization.

1. Timing of Property Tax Receipts

The property tax has the longest lag between annexation and the receipt of the first tax revenues. The boundaries of a city for property tax purposes are the “officially established boundaries” that exist on March 1 of the year in which the property taxes are levied.¹⁵ RCW 84.09.030. *Thus, a city may levy taxes during the current year for receipt during the next year for any annexation that is officially completed by March 1. If the annexation is completed after March 1, the city will have to wait until the following year to levy the tax to apply in the annexed area.* For example, if an annexation is completed by March 1 of Year 1, the city can levy taxes in November of Year 1 and receive its first substantial property tax revenue after April 30 of Year 2. If the annexation is not completed until March 2 (or later) of Year 1, the city will have to wait until November of Year 2 to levy its property tax and will not receive its first revenues until the spring of Year 3. Upon annexation, the city does receive the revenue from the levied but uncollected county road district taxes (RCW 35.13.270, 35A.14.801), but this may be less money than the city would get if it were levying its own tax. Also, the road district tax revenues must be placed in the city street fund

¹⁵The statutes do not define when a boundary change brought about by an annexation is “officially established.” However, the annexation statutes provide, for all annexation methods, that the effective date of an annexation is that which is stated in the annexation ordinance as the effective date. Thus, it is likely that the date stated in the annexation ordinance would be considered as the date on which the new city boundaries are officially established.

rather than the general fund, and the city might find that a drawback. For property tax purposes, it definitely pays to plan ahead when considering an annexation.

2. Timing of State-Shared Revenues

The state-shared revenues (gasoline tax, the motor vehicle excise tax, liquor board profits, and the liquor excise tax) are distributed to cities on the basis of population. For a city to have its population adjusted for an annexation for purposes of state-shared revenue distributions, the Office of Financial Management (OFM) must certify the annexation, after which it will notify the appropriate state agencies of the population change. For purposes of state shared revenues, the revised city boundaries and the new population are not recognized until the date that OFM approves the annexation certificate submitted to it by the city.

To initiate this certification process, a city must send an annexation certificate and certain required supplemental documents¹⁶ within 30 days of the annexation to OFM's Forecasting Division. See RCW 35.13.260; 35A.14.700. (See Chapter Six, Section I.O., or Chapter Seven, Section I.M. for the needed address and telephone number.) OFM then processes the documents for certification and, following certification, informs the state agencies that make revenue distributions to cities what population figures to use in the next quarter's distributions. The relevant quarterly periods begin on January 1, April 1, July 1, and October 1.

However, in order for a city or town to receive state-shared revenues in the coming quarter that reflect its new population, OFM and the relevant state agencies need to know about the annexation population addition well *before* the beginning of these quarterly periods. OFM must notify the other agencies more than 30 days prior to the beginning of a quarterly period for the population of the annexed area to be included for purposes of revenue distributions. RCW 35.13.260; 35A.14.700. The state agencies must thus be notified, as the case may be, by November 30, February 28, May 31, or August 31. For OFM to make timely notification to the other agencies, it must receive the annexation certificate and required supplemental documents even sooner. OFM has indicated that, for an annexation of less than 100 people, one week before this notification date is probably soon enough. For annexations of 100 to 500 people, OFM wants two weeks notice. For annexations of 500 to 10,000 people, OFM must be notified at least a month before the notification date. For those with a population of over 10,000, OFM must receive the necessary paperwork at least six months before.

An example may be helpful. Assume that an annexation involves 2,000 people and the city submits the necessary annexation documents to OFM on January 28. That gives OFM a month to work with the city before the February 28 date by which OFM needs to notify the other state agencies. The city should receive its additional state-shared revenues beginning in the second quarter of the year, which begins April 1. If OFM does not receive the annexation documents until February 5, say, chances are that, since the annexation is greater than 500 people, OFM will not be able to include it by the

¹⁶OFM requires submission of the following documents for the certification process: (1) the signed annexation certificate, in triplicate (certificate form obtained from OFM); (2) three copies of the annexation ordinance containing the legal description of the area annexed; (3) three maps of the annexed area, in conformance with OFM map requirements; and (4) the original (hand-written) Special Population Census Sheets used to enumerate the population and housing of the annexed area. OFM will send specific instructions upon request.

February 28 “deadline,” and the city will have to wait until the third quarter to begin receiving its additional distributions for the annexed area.

3. Timing of Sales and Use Tax Receipts

A city or town should inform the Department of Revenue, Local Sales Tax Section, at the following address, about an annexation, so that the department can make certain that the city receives its proper amount in the local distribution of the sales and use tax:

Local Tax Supervisor
Department of Revenue
General Administration Building
PO Box 47476
Olympia, WA 98504-7476

Telephone: (360) 902-7010

The information that a city should provide includes:

- The effective date of the annexation;
- A legal description of the area;
- A map of the annexed area; and
- A copy of the annexation ordinance.

The city is responsible for informing the businesses in the annexed area about their new tax code and new tax rate. The city should give the department as much information as possible on the names of businesses in the annexed area, their addresses, and their unified business identifier (UBI). This information will assist the department in checking its records to make certain that the businesses are reporting properly and that the city is getting the proper amount of taxes from the annexed area.

In most cases, if a city chooses an annexation date that is after the first of the month, the department will not credit its account with sales tax revenues until the beginning of the following month.¹⁷ Because reports of sales tax revenues collected in one month are not due to the department until the 25th day of the following month and the revenues are not distributed until the last day of the next month after that, there is a considerable lag in the receipt of these revenues.

For example, if a city annexes territory on the 15th day of April, the department begins (with the exception noted in footnote 17) crediting sales tax to the city's account on May 1. The May taxes are due to the department on June 25 and distributions of these monies would be made to the city on July 31. This lag in the receipt of sales tax revenues is simply a function of the time it takes to collect and distribute the money. The city's choice of an annexation date has little effect on it.

¹⁷Most firms report their taxable retail sales as a single amount for the entire month. The Department of Revenue has no way of knowing what sales were made for the part of the month before the annexation and the part after. However, if a firm does report its retail sales as separate amounts before and after the annexation date, the department will credit the annexing city with sales tax revenue for a partial month. If there are any large retailers in the area to be annexed, city officials may wish to contact them and request that they report the before and after annexation sales separately.

4. Timing of Sales and Use Tax Equalization Payments

Each January, the Department of Revenue calculates the amount of sales and use tax equalization that each city is qualified to receive during the coming year. To qualify for sales and use tax equalization in any year, the sales and use tax received in a city in the prior year **from the first half cent of the tax**, on a per capita basis, must have been less than 70 percent of the state-wide average in incorporated areas in the prior year. For example, for 1995 equalization payments, the state-wide per capita average (\$78.47) was based on the amount of sales and use tax received by the incorporated areas from the first half cent in 1994 (\$218,811,709) divided by the April 1, 1994 incorporated population¹⁸ (2,788,488). Each city's per capita average was determined by its 1994 sales tax and use tax receipts from the first half cent divided by its April 1, 1994 population. If a city's per capita average was less than \$54.93 (\$78.47 x .7), it qualified for equalization in an amount equal to the difference between \$54.93 and its average multiplied by its population. If a city levied the second half cent of the sales and use tax in 1994, it will receive a second payment in 1995 that is equal to the first.

Why is it important that the population figure used is from April 1 of the prior year? If a city qualifies for equalization payments, it probably wants to get the additional equalization revenues from the annexed area as soon as possible. As with state-shared revenues, OFM needs some lead time (the same as for state-shared revenues) in order to make certain it has all the necessary information about the annexation. For an annexation to be included in the April 1, 1994 population figure, a city had to notify OFM at least one week, two weeks, four weeks, or six weeks before April 1, 1994, depending on the size of the annexation. Any city that did so would receive equalization revenues, based on its new population, beginning in January 1995. But any jurisdiction that did not meet OFM's time requirements will have to wait until 1996 to get equalization payments for its annexed population. **This is another reason to time the annexation so that it is completed before March 1. By doing so, the city gets an additional year's worth of equalization receipts based on the sales and use tax and the population from the annexed area.**

5. The Future of State-Shared Revenue and Sales and Use Tax Equalization Payments

The recent increase in the state's population living in incorporated areas resulting from annexations and, in particular, incorporations, has had a negative impact on every city's stated-shared revenue receipts. At least for a while, that trend will likely continue. For per capita distributions of state-shared revenues to grow from one year to the next, the numerator (the state-shared revenue source) must grow faster than the denominator (incorporated population). The Department of Licensing predicts about an annual five percent increase in the motor vehicle excise tax for the next few years. The Department of Transportation foresees about a two percent annual increase in total gas taxes. The liquor-based revenues have barely been growing at all. Therefore, every annexation and incorporation puts downward pressure on per capita receipts. By themselves, the incorporations of Shoreline and University Place, which will take place in 1996, will

¹⁸RCW 43.62.030 requires OFM to annually determine, as of April 1, the populations of all cities and towns in the state. OFM must then, on or before July 1 of each year, file with the secretary of state its population determinations, which will be used as the basis for the allocation of state funds to cities and towns. When territory is annexed to a city, OFM forwards a revised determination to the appropriate state agencies. The revised figures due to an annexation do not, however, affect the equalization payments until the next year.

add almost three percent to the incorporated population. Historically, the incorporated population, after adjusting for annexations and incorporations, has been growing at about two percent a year. Together, these add up to a five percent population increase (and maybe more, if other incorporations and annexations take place) in 1996. That means that per capita motor vehicle excise taxes will at best remain constant (five percent growth in both the numerator and denominator), and other per capita state-shared revenues will fall. Eventually, of course, the pace of annexations and incorporations must taper off. But until that time, the growth rate of per capita distributions will be lower than in the past, and maybe even negative.

Cities that receive sales and use tax equalization will be particularly affected by annexations and incorporations. From the time that equalization payments began in 1983 until the present time, the municipal sales and use tax equalization account has always had enough money to fully fund the cities that qualify under all the sections of RCW 82.14.210. In fact, every year, there has been a surplus of funds distributed to every city and town on the basis of its population. Beginning in 1996, however, MRSC predicts that the funding source (4.75 percent of the motor vehicle excise tax collections) will be insufficient to continue the full level of funding.

The problem arises because the recently incorporated cities (and, to some extent, new annexations) encompass territories that have a relatively small retail sales tax base. They all qualify for sales and use tax equalization. When added to the amounts that existing cities qualify for, the “demand” for equalization payments will be greater than the supply. There will be enough money to fully fund the payment that cities receive to equalize their first half cent sales and use tax (RCW 82.14.210(3)). However, the equalization that cities receive on their second half cent will be reduced to match the available funds. As this publication goes to press, MRSC estimates that the reduction will be 42 percent. If one averages the full payment on the first half cent and the reduced payment on the second half cent, cities who levy both half cents will see their equalization payments fall by approximately 21 percent in 1996.

Whether equalization payments continue to fall will depend on whether the “demand” for equalization grows as fast, less fast, or at a rate equal to that of the funding source, the motor vehicle excise tax. In large part, this will be determined by the number of incorporations and annexations that take place and the character of the retail sales tax base in those areas.

B. Costs of Annexation

Analyzing annexation costs to a municipality is, at best, difficult. There are no magic formulas that can be easily manipulated to arrive at an accurate prediction for all annexations of what the costs will be—either in the short term or the long term. Each annexation has unique characteristics. Short term costs tend to vary with the immediate need for services, such as the anticipated costs of police, fire, planning, utility, and street maintenance. Long term costs may include the capital improvement obligations a city may assume after an annexation. The current status of land development has substantial bearing on the cost element, together with size, character of the population, and unique municipal concerns, if any, of the area to be annexed.

To anticipate total annexation costs, city department heads are typically asked to develop estimates of what the increased cost, if any, will be to the department when it properly integrates services to the annexed area into the existing program. This should be done both on a short term and a long term basis, taking the Plan of Service (Chapter Two, Section V) into account.

These cost estimates may be particularly useful when the department heads have surveyed the area and are well acquainted with its unique characteristics. For example, the chief of police may be able to estimate, based on professional experience, whether additional police officers or patrol cars will be required. Existing patrol cars may be adequate to serve the annexed area in the short term, but the additional duty may require equipment replacement sooner than otherwise anticipated. Likewise, the parks and recreation director may estimate that a short term consequence of annexation may be more participants in recreation programs, but a long term consequence will be the need to procure and develop a new city park to meet the needs of the area annexed. The city engineer may provide estimates on the routine costs of street and utility maintenance, and also on the cost of major capital improvements such as street paving or utility installation. Costs of providing other municipal services may be similarly analyzed. Not only does this approach to anticipating annexation costs result in knowledgeable cost estimates, but department heads can begin planning for provision of services after the annexation is complete.

Another, perhaps less accurate, method of systematically analyzing the cost of annexation is to take the adopted city budget for the current year, and analyze for each item whether the needs of the territory considered for annexation will increase previous allocations. However, estimating requirements solely on population or area may be inaccurate, unless local conditions are also considered. Applying established formulas to cost calculations may yield only approximate information.

V. Costs of Not Annexing

Although the costs of annexation may be substantial, the costs of not annexing territory that comprises part of a core city's urban area may also be surprisingly high. A study published in July, 1973, entitled "Economic Implications of Fringe Developments Adjacent to Major Cities"¹⁹ analyzed the cost to the city of Eugene, Oregon, of services it provided to an unincorporated fringe area known as River Road, a contiguous community having 7.8 percent of the total Eugene urbanized area population. In doing so, the study developed a methodology for analyzing these types of costs that could be applicable in other communities. The conclusion was that the City of Eugene was providing a subsidy to the River Road community in six of the seven services studied. The subsidies were through the following:

- Fire department (providing fire protection at a contractual price which was less than actual cost)
- Police department (providing crime protection/prevention to fringe residents working in and using city; cost of arresting and processing fringe residents committing crimes in city)
- Library (in spite of a charge for out-of-city book borrowers, library operating expenses allocated to the out-of-city library users exceeded revenues collected from them)
- Special care centers, such as detoxification halfway house, socio-medical aid stations (cost of providing services to fringe community residents)

¹⁹"Economic Implications (An Annexation Planning Procedure) - Development of an Analytical Procedure for Determining the Economic Implications of Serving Fringe Development Adjacent to Major Incorporated Cities," prepared by the staff of the Lane County Local Government Boundary Commission and Marlett and Associates, Economic Consultants, 921 S.W. Washington Street, Portland, Oregon, 97205, as part of a study for the State of Oregon Local Government Relations Division (1973).

- Park and recreation facilities (use of city parks and recreation programs, as fringe area had not developed its own facilities)
- Public works department (oversizing utilities to meet future growth needs)

The one service area not reporting a subsidy was the city airport, since user fees covered costs. However, it was thought that when additional capital expenditures were made, funded by the city, the city would then be subsidizing the fringe community in this service also.

Thus, not only is annexation sometimes expensive to a core city, non-annexation may be equally costly. This may be true particularly when a city is bordered by an urban area that draws upon the services and facilities of the core city, even when the fringe area pays for some of the benefits it receives. All of the services and facilities provided by a core city simply cannot be billed to fringe residents; it is difficult to collect actual expenditures for those services that do lend themselves to some cost recovery.

Thus, the cost issue in an annexation is complex. It is generally agreed that cities should not annex territory solely because the area may provide additional city revenue. On the other hand, municipal officials may easily justify an annexation on grounds unrelated to cost in instances in which it is anticipated that the annexed area may not initially pay its own way. While the cost issue is certainly important to an annexing city, it is by no means the only issue to be considered in determining the ultimate question of whether or not an area should be annexed to a city or town.

Preliminary Matters

I. State Environmental Policy Act

The 1994 legislature eliminated the requirement that annexations are subject to review under the State Environmental Policy Act (SEPA). RCW 43.21C.222. Nevertheless, zoning decisions made in conjunction with an annexation would still be subject to SEPA review.

II. Comprehensive Planning/Zoning

Different considerations are involved for a city with respect to planning and zoning for areas to be annexed or potentially annexed depending upon whether or not the city is required to plan under the Growth Management Act (GMA), chapter 36.70A RCW.

A. Cities Subject to the GMA: Comprehensive Planning for Annexation Areas

As noted in Chapter One, GMA counties must designate urban growth areas (UGAs) that, among other things, define the territorial extent of annexation by cities within the counties. Since the GMA contemplates that cities will generally be the providers of urban-type services and that urban-type services will be provided within urban growth areas in conjunction with urban growth, GMA cities must include within their comprehensive planning process areas of potential annexation, i.e. their UGAs. However, since the UGAs will consist of unincorporated territory, the counties still retain jurisdiction. Consequently, the GMA requires that counties adopt, in cooperation with the cities in the counties, county-wide planning policies that must include, among other things, “policies for joint county and city planning within urban growth areas.” RCW 36.70A.210(3)(f). The Department of Economic, Trade, and Community Development (formerly the Department of Community Development) recommends that cities and counties enter into interlocal agreements to establish joint planning responsibilities within UGAs. Such agreements should address key issues such as:

- Sewer system connection and septic tank policies;
- Water rights, water system connection policies, and water supply for various uses;
- Zoning, subdivision, and development design standards;
- Development review procedures;
- Water and sewer service areas;
- Stormwater management practices;
- Transportation concurrency and level of service;
- Capital facilities planning and financing;

- Densities within and outside UGAs;
- Relationship to special districts;
- Joint planning;
- Annexation policy;
- Relationship to Indian tribes, if appropriate;
- Critical areas and resource lands protection; and
- Neighborhood preservation.²⁰

The comprehensive planning process under the GMA should, thus, provide for the coordination of a city's planning and annexation policies and a framework for a city's annexation efforts.²¹

B. Cities Not Subject to the GMA: Comprehensive Planning for Annexation Areas

Cities are authorized under RCW 35.13.177 and 35.13.178 (RCW 35A.14.330 and 35A.14.340 for code cities) to prepare a comprehensive land use plan and/or zoning regulation²² for areas that the city might reasonably expect to annex at any future time. Preparation of the comprehensive plan or zoning regulations for future annexations is essential in a city that will want to adopt meaningful zoning measures for its new territory simultaneously with annexation. If appropriate zoning provisions are not adopted at the time of annexation, it is possible that uses of land may become established in a newly annexed territory that are incompatible with neighboring uses and with sound land use management in the city.

Although the statutes speak of adopting a comprehensive plan for areas that may be annexed in the future, the comprehensive planning for future annexations should be integrated with the existing city comprehensive plan. The statutes (RCW 35.13.177 and RCW 35A.14.330) do provide a list of matters (not included here) that may be included within a comprehensive plan or, for code cities, a zoning regulation for future annexation areas. However, these do not differ appreciably from those matters identified in the planning enabling acts (chapters 35.63 and

²⁰*Working Together: A Guide to Intergovernmental Coordination under the Growth Management Act*, State of Washington Department of Community Development (now the Department of Economic, Trade, and Community Development) (July 1992).

²¹GMA cities that have UGAs established outside their boundaries may find increasing need and use for “preannexation agreements” with property owners within UGAs to whom the city extends utility services. These agreements require, as a condition of the city extending utility services, that the property owner agree to sign a petition or other document concerning annexation of the property to the city when it is proposed. The state supreme court upheld the validity of preannexation agreements in *Fire Protection District v. Yakima*, 122 Wn.2d 371 (1993).

²²The statutes governing first and second class cities and towns are identical to those governing code cities (RCW 35A.14.330 - 340), except for two words. The former refer to preparation of a “comprehensive plan,” while the latter refers to a “zoning regulation.” Whether the difference in terminology has any substantive effect is an open question; they are both identically described in terms of possible included elements. It is thought that the change in terminology was made in the more recent code city statutes to better reflect the actual nature of the regulation, since planning is an essential first step before zoning can be accomplished.

35A.63 RCW), and they should not be interpreted as imposing any different comprehensive planning or zoning requirements for future annexations.

However, the statutes authorizing planning and zoning in future annexation areas allow cities to provide in the plan or regulations for a time interval following an annexation during which the ordinance or resolution adopting the plan or regulations must remain in effect before they may be amended, supplemented, or modified.²³

C. Procedure for Adoption of Comprehensive Plans and/or Zoning Regulations for Future Annexation Areas - All Cities

The annexation statutes establish specific procedures for adoption of comprehensive plans and/or zoning regulation for areas to be annexed in the future. These requirements supersede those that apply generally to adoption of plans or regulations that are identified in the planning statutes, but they actually differ only with respect to the number of hearings and to filing requirements. Thus, if a city is adopting a new comprehensive plan under the GMA that addresses territory included in the UGAs, it is advisable that the adoption procedures comply with those identified below.

1. Hearings (RCW 35.13.178, RCW 35A.14.340)

After a proposed comprehensive plan or zoning regulation is prepared, the legislative body of the city must hold at least *two* public hearings on it. These hearings must be held at least 30 days apart.

2. Notice (RCW 35.13.178, RCW 35A.14.340)

Notice of each hearing must be published in a newspaper of general circulation in the annexing city and in the area to be annexed. The notice must give the time and place of hearing.

3. Filing, Certification, and Recording (RCW 35.13.178, RCW 35A.14.340, RCW 35.63.100, RCW 35A.63.072)

A copy of the ordinance or resolution adopting the proposed plan, any part of the proposed plan, or any amendment, together with any map referred to or adopted by the ordinance or resolution, must be filed with the county auditor and the city clerk (or, in code cities, other “appropriate official”).

The ordinance, resolution, and map must be duly certified as a true copy by the clerk of the annexing city.

The county auditor is to record the ordinance or resolution and keep the map on file.

²³This authorization applies also to GMA cities. However, they are also subject to the GMA limitation that the comprehensive plan may be amended no more frequently than once a year, with an exception for emergencies. RCW 36.70A.130(2).

D. Coordination of Adoption Procedures with Other Annexation Procedures

Questions frequently arise as to how the foregoing procedure may be coordinated with other sections of the annexation laws. These questions arise in situations where an annexation is proposed and the city involved has not previously provided for comprehensive planning and zoning regulations to apply to the proposed annexation area. While each situation must be individually analyzed, there is a time, fairly soon after an annexation is initiated, when the annexation procedures are too far advanced to allow for a “time-out” during which a comprehensive plan/zoning regulation for the area proposed for annexation can be prepared. For example, if the petition method is used for an annexation (which is the case in a large majority of annexations), the statutes require the legislative body to set a date, not later than 60 days after the filing of the initial ten percent notice of intent to commence annexation procedures, for a meeting with the parties initiating the annexation. RCW 35.13.125 and RCW 35A.14.120. The governing body at this meeting makes a preliminary decision as to whether it is interested in the proposed annexation and, if so, whether it will require the simultaneous adoption of a comprehensive plan/zoning regulation *if* one has been previously prepared and filed. Thus, under a strict interpretation of the statutes, the preplanning/prezoning must have been completed prior to the first meeting between the initiators of the annexation and the legislative body.

However, as noted above, prezoning statutes require at least two public hearings, at least 30 days apart, with proper notice of the hearing published in a newspaper before the hearings are held. If a comprehensive plan/zoning regulation has not been prepared and filed before the annexation is initiated, the city must take immediate action after receipt of the annexation notice of intent to prepare the plan/zoning proposal, schedule and give notice of the first hearing, hold the hearing, schedule and give notice of the second hearing, hold the hearing (at least 30 days after the first hearing), adopt the comprehensive plan/zoning regulation, and file it. This is all to be done before the legislative body meets with the initiators of the annexation, which is to be within 60 days after the filing of their notice of intent. It is highly unlikely that a city could comply with this timeline.

Cities can avoid this problem by preplanning and prezoning for all areas surrounding their boundaries that are logical growth directions of the city. GMA cities are essentially required to do this. The statutes on preplanning and prezoning permit the utilization of the procedures outlined above for “any area which might reasonably be expected to be annexed by the city or town at any future time.” RCW 35.13.177; see also RCW 35A.14.330. There is no requirement that an annexation proposal be imminent before consideration is given to planning and zoning. The most satisfactory use of the prezoning authority permits completing orderly planning and zoning before specific annexation proposals are presented.

E. Zoning for Annexation in Areas Not “Prezoned”

The foregoing procedures are directed at having proper zoning prepared prior to annexation, to be in place simultaneously with annexation. However, frequently the procedure outlined is not utilized, since the time requirements of the various statutes may be impossible to reconcile in individual cases. What happens in these cases? Cities now take several approaches to zoning newly annexed areas that have not been preplanned and prezoned. (Presumably, GMA cities that have complied with the planning and zoning requirements of the GMA will have no need for these approaches.)

Some cities provide, by ordinance, that all newly annexed territory that is not otherwise zoned shall be automatically zoned into the city's least dense residential zone, or into a general

“holding” zone. This approach avoids having property being annexed into a city with no zoning designation. An example is § 17.88.010 of the Gig Harbor Municipal Code.²⁴

Any lands annexed to the city...shall be deemed to be included in the zoning map as being in the R-1 residential district Within 60 days following annexation, the planning commission shall hold a public hearing to determine the best application of this title to the annexed territory. Following the hearing, the commission shall make its recommendation to the city council for the zoning of the area; provided, however, any land which has been or is included in a comprehensive land use plan provided for in the following provision and adopted pursuant to RCW 35.13.177 and RCW 35.13.178 shall be annexed with the zoning district classification as provided for in such comprehensive land use plan.

An ordinance such as this has the advantage of avoiding a time period in which no zoning is applicable to a newly annexed area. Moreover, it requires the city to take action soon after annexation to properly commence the zoning process.

However, automatic designation of a temporary zone may also have significant drawbacks. Any one zone may be entirely inappropriate to a particular tract, although that fact may not present a problem if the city acts quickly after annexation to change the zone to one more appropriate. Another drawback is that the automatic change from previous county zoning effectively constitutes a rezone, subject to specific legal, procedural requirements. The guidance of the city attorney is important in dealing with these issues.

Another approach to the question of temporary zoning following annexation is to provide, by ordinance, that the zoning regulations of the county shall remain applicable pending further review and rezoning in due course by the city. Again, a time limitation on the duration of the county zoning carry-over is desirable, since it requires the city to take action almost immediately to bring the annexed area under its own zoning ordinance. This approach avoids rezoning at the time of annexation.

Nevertheless, there are also potential legal problems with this approach. First, it is not specifically authorized by state law. Second, if the county's zoning regulation is to become part of the city's ordinance and is to be enforced by city personnel, even temporarily, it may be argued that the actual zoning provisions of the county code should be incorporated into the city ordinances. This can be done by adopting the applicable county zoning provisions pursuant to the adoption by reference statutes (RCW 35A.12.140, RCW 35A.13.180 and RCW 35.21.180). The alternative would be to enact an ordinance containing, word-for-word, each relevant provision of the county zoning regulation. In any event, an ordinance adopting prior county zoning should stress the temporary, and perhaps emergency nature of the regulation. The city attorney's advice and assistance should be obtained.

Another approach to zoning newly annexed territory that has not been planned and zoned prior to annexation is to automatically zone newly annexed territory into the city or town zone which is most similar to the prior county zone.²⁵ While this technique may result in a more appropriate temporary designation, it may still be challenged on grounds similar to those mentioned above.

²⁴See also Bellingham Zoning Ordinance Sec. 20.10.020.

²⁵See, e.g., Edmonds Community Development Code Sec. 17.00.020.

Pending statutory or judicial guidance, any of the foregoing temporary methods may be more desirable than the complete absence of a zoning provision when territory is annexed to a city. However, all of these temporary measures still require appropriate zoning to be provided soon after annexation. The inadequacies of each of these methods of zoning newly annexed territory make a strong case for utilizing the procedures outlined above for appropriate planning and zoning of an area *prior* to annexation.

III. Assumption of Indebtedness

The annexation statutes authorize the city council to require property in an area being annexed to assume, as a condition of annexation, a pro rata share of the annexing city's then outstanding indebtedness that had been approved by the voters, contracted, or incurred prior to, or existing at, the date of annexation.

In each city there will be different factors that should be considered in deciding whether to require debt assumption. Some of the issues a city should examine in reaching a decision on this question are:

- Was the outstanding indebtedness incurred to finance an improvement or facility that will benefit the newly annexed area?
- Will assumption of a proportionate share of the city's outstanding indebtedness place an excessive financial burden on annexed property in light of other indebtedness previously placed on the property through the county or special districts, which will remain on the property after annexation?
- Will the property to be annexed be forming an expensive LID for special improvements, such that requiring assumption of the outstanding indebtedness would not be equitable?
- To what extent does the annexing city desire to encourage (or subsidize) the annexation?

Most cities do require the assumption of indebtedness as a condition of annexation, unless in a particular circumstance this would not be equitable. This issue may be addressed in a city's annexation goals and policies, so that the city is consistent in its requirements, and all potential annexation areas are aware of them.

IV. Community Municipal Corporations

Chapter 35.14 RCW authorizes the formation of community municipal corporations in certain annexed territory for the purpose of preserving the community identity of the annexed territory. This purpose is to be accomplished by allowing the community municipal corporation to have an effective “veto” power with respect to application of city planning and land use laws to the area it encompasses. To qualify to organize as a community municipal corporation, the area must have one of the following characteristics:

- It would be eligible for incorporation as a city or town,²⁶ or

²⁶The 1994 legislature increased the threshold population necessary to incorporate from 300 to 1500. RCW 35.02.010.

- It has a population of at least 300, and it has at least ten percent of the population of the annexing city, or
- It has a minimum population of 1,000 inhabitants.

RCW 35.14.010. Community municipal corporations may be formed *only* through the election methods of annexation.

Formation of a community municipal corporation is the exception, rather than the rule, when cities annex territory. Often, annexations are not of sufficient size to allow for establishment of these organizations, or the area annexed is not sufficiently cohesive. Currently, community municipal corporations exist only in the cities of Bellevue (which has two), Kirkland, and Des Moines.

Moreover, cities generally do not encourage the formation of community municipal corporations. The statutes purport to give these bodies the authority to “veto” city council enactments relating to land use matters within the community municipal corporation service area. In theory, the result of a community municipal corporation's veto authority with respect to land use matters could be two or more different planning, zoning, or subdivision standards within one city.

With the passage of the Growth Management Act (GMA), an issue has been raised concerning the continued authority of community municipal corporations in GMA counties to veto city land use enactments. Cooperative and coordinated planning is a basic GMA policy. Moreover, the GMA requires consistency between comprehensive plans of cities and counties that have common borders. Consistency is also required between a city's comprehensive plan and its zoning regulations. The disapproval authority of a community municipal corporation is contrary to and can frustrate this basic policy of consistency and coordination in land use planning. The city attorneys of both Bellevue and Kirkland opined shortly after passage of the GMA that a community municipal corporation no longer has the authority to disapprove a comprehensive plan provision or zoning regulation enacted for the purpose of complying with GMA mandates of coordination and consistency.

There are other legal issues with respect to community municipal corporations, including whether the statutory scheme for them is even constitutional. A number of arguments can be made to challenge community municipal corporations, including the lack of standards and procedures in the statute, the lack of a clear legislative intent that the corporation should have more than advisory authority, violation of the equal protection clause of the state constitution, and the conflict with other statutes on the authority of the city legislative body, city planning commission, and the board of adjustment. On the other hand, the courts apply a presumption of constitutionality to legislative enactments. Anyone challenging community municipal corporation statutes would have the burden of convincing a court of the alleged constitutional infirmity.

The validity of the community municipal corporation laws may not be resolved until this issue is squarely addressed by a state appellate court. However, any group forming a community municipal corporation should be aware of the potential for legal challenge.

Statutory procedures for forming and operating a community municipal corporation are outlined below. Due to the infrequent formation of community municipal corporations, the statutes governing them, contained in chapter 35.14 RCW, are only briefly summarized.

- The community municipal corporation is to be governed by a community council composed of five members, who are qualified electors residing within the service area of the corporation. They are to be elected at the same election at which the annexation is decided.

A. Procedures of Governing Body (Community Council) (RCW 35.14.030)

1. Voting:

A community municipal corporation takes action by resolution, approved by a vote of the majority of all community council members.

2. Meetings:

Meetings are held at the times and places as provided in the community council's rules.

3. Expenses:

The city budgets and pays for the necessary expenses of a community council; the city provides clerical and technical assistance.

B. Jurisdiction/Authority (RCW 35.14.040)

Subject to the above reservations, the community municipal corporation has jurisdiction over the adoption, amendment, or granting of the following by the city council or planning commission with respect to land, buildings, or structures within the corporation's service area:

1. Comprehensive plan
2. Zoning ordinance
3. Conditional use permit, special exception, or variance
4. Subdivision ordinance
5. Subdivision plat
6. Planned unit development

C. Procedures for Action (RCW 35.14.040)

Any enactment of the city council or commission on these matters is to be effective within the community municipal corporation,

1. On approval by the community council, or
2. By failure of the community council to disapprove it within 60 days of its final enactment.

(Disapproval does not affect the application of any ordinance or resolution outside the community municipal corporation.)

D. Advisory Powers and Duties (RCW 35.14.050)

The community municipal corporation, through its community council, may also:

1. Make recommendations concerning any proposed comprehensive plan or other proposal which directly or indirectly affects the use of property within the service area;
2. Provide a forum for consideration of the conservation, improvement, or development of property or land within the service area; and
3. Advise, consult, and cooperate with the legislative authority of the city on any local matters directly or indirectly affecting the service area.

E. Term of Existence (RCW 35.14.060)

1. The original term of a community municipal corporation is at least four years, and until the first Monday in January following the next regular municipal election in the city.
2. The term of the community municipal corporation may be extended for four-year periods pursuant to voter approval at an election. The election may be held if:
 - a. A resolution petitioning continuation of the community municipal corporation is adopted by the community council and filed with the city legislative body at least seven months before the end of its term; or
 - b. A petition for continuation, signed by at least ten percent of the registered voters within the service area, is filed with the city legislative body at least six months before the end of the term.
3. Successive members of the community council are to be elected at the election involving continuation of the corporation.
4. Additional technical details on election procedures are contained in RCW 35.14.060.

F. Public Disclosure

Candidates for positions on the community municipal corporation council must file financial disclosure and campaign registration statements with the Public Disclosure Commission in most instances. Annual filing of financial disclosure forms would also be required of corporation community council members.

Methods of Annexation in First and Second Class Cities and in Towns

Of the five methods of annexation available to first and second class cities and towns, the 75 percent petition method is, by far, the most frequently used. Cities have found the election method to be extremely cumbersome. Because of this and the expense of conducting an election, annexation elections are infrequent. Statutes authorizing summary annexations for municipal purposes are much more straightforward, but may be utilized only when a legitimate municipal reason for annexation can be shown, such as the use of the annexed land for a city park or water tower. Finally, the statutes authorizing the annexation of federal areas are of very limited application. The statutes relating to each of the methods of annexation are summarized in detail below.

I. Election Method, Initiated by Twenty Percent Petition

The annexation of contiguous,²⁷ unincorporated territory may be initiated by a petition signed by 20 percent of the number of voters living in the area to be annexed who voted in the last election.²⁸

A. Contents of Petition - Mandatory (RCW 35.13.030)

The petition must:

1. Describe in detail the boundaries of the area proposed to be annexed;
2. State the number of voters in that area as nearly as possible;
3. State any provisions as to the assumption of debt by the owners of property of the area proposed to be annexed, and as to the simultaneous adoption of a comprehensive plan for the area to be annexed; and
4. Petition for the calling of an annexation election among the qualified voters in the area to be annexed.

B. Contents of Petition - Optional (RCW 35.13.020, RCW 35.13.030)

The petition *may* also provide for the simultaneous creation of a community municipal corporation and for the election of community council members pursuant to RCW 35.14.010 - 060. If the petition does so provide, it must also describe the boundaries of the proposed service

²⁷The statutes do not define the term “contiguous.” Resort to the common, dictionary definition is therefore necessary. *Webster's New World Dictionary*, 3rd College Edition (1988), defines contiguous as meaning “in physical contact; touching along all or most of one side” or “near, next, or adjacent.” In the legal context of annexations, however, actual contact or touching is necessary; near is not sufficient. AGO 49-51 No. 202 (January 23, 1950). The contact must nevertheless be significant; contact only at a common corner does not make property contiguous. *Id.*

²⁸Under the Growth Management Act (GMA), cities in counties subject to its requirements may annex territory only if it is located in urban growth area. RCW 35.13.005. See Chapter One, Section II of this publication.

area, state the number of voters residing in that area as nearly as possible, and ask for the election of community council members by the qualified voters residing in the service area.

C. Signing of the Petition (RCW 35.13.020)

The petition must be signed by qualified voters residing in the area proposed for annexation equal in number to 20 percent of the votes cast in the last election.

D. Review by Prosecuting Attorney (RCW 35.13.020)

The petition is first submitted to the county prosecuting attorney for review. The prosecuting attorney has twenty-one days after submission to certify or refuse to certify the petition.

E. Approval by City Council²⁹

1. Prior Approval Required (RCW 35.13.020, RCW 35.13.040)

Once the petition has been certified by the prosecuting attorney, it is to be filed with the city council. The council must either approve or reject the proposed annexation by resolution within 60 days of the date it was filed, and, also within this 60-day period, notify the petitioners of its action either by mail or by publishing notice once each week for at least two weeks in a newspaper of general circulation in the area proposed to be annexed. City council approval is required for any annexation. A formal public hearing is optional. *Meek v. Thurston County*, 60 Wn.2d 461 (1962).

2. Additional Conditions to Annexation (RCW 35.13.020)

The city council, in approving the proposed annexation, may also require that any or all of the following provisions be submitted to the voters in the territory to be annexed:

- a. Whether property in the area proposed for annexation will be assessed and taxed at the same rate and on the same basis as is property in the annexing city and will be required to assume all or any portion of existing city indebtedness.
- b. Whether the city will require the simultaneous adoption of a comprehensive plan for the annexation area, if one has been completed and filed as provided in RCW 35.13.177 and RCW 35.13.178.

F. Petition Filed with County Governing Body and Review Board (RCW 35.13.020, RCW 35.13.030, and RCW 35.13.040)

After city council approval, the petition is to be filed in the office of the county governing body. Notice of the proposed annexation must be given to the boundary review board, if one has been established in the county. RCW 36.93.090. Otherwise, the ad hoc annexation review board is to be convened by the mayor within 30 days after the filing of the petition with the county. RCW 35.13.171. See Chapter Eight for a detailed discussion of review boards and their procedures.

²⁹The term “council” will be used here, for convenience, in place of the statutory term “legislative body,” and it refers also to a city commission.

G. County Governing Body - Hearing on Petition

1. Date (RCW 35.13.040)

Upon the filing of the approval by the applicable review board, the county governing body at its next meeting is to set a date for the hearing on the petition. The hearing must be held not less than two weeks nor more than four weeks from the date of the meeting.

2. Notice (RCW 35.13.040)

The *petitioners* must give notice of the hearing by publication once each week at least two weeks prior to the hearing in a newspaper of general circulation in the area proposed to be annexed.

3. Hearing and Determination (RCW 35.13.040)

The county governing body is to conduct the hearing on the date scheduled. If the petition complies with legal requirements and has been approved by the review board, the county governing body must grant the petition. (“The [county has] no alternative but to grant the petition if the board of review has approved the annexation and the petition complies with the statutes.” *Meek v. Thurston County*, 60 Wn.2d 461, 467 (1962); Accord, AGO 57-58 No. 19.)

H. Limitation on Consideration of Conflicting Petitions or Resolutions (RCW 35.13.050)

After the filing of a petition for an annexation election with the county governing body, and pending its final disposition, that body may not consider any other petition or resolution involving any of the territory addressed by the filed petition. However, the petition may be withdrawn or another petition may be substituted for it by a majority of the signers of the petition.

I. Effect of Competing City Incorporation Proposal (RCW 35.02.155)

1. Annexation Resolution Adopted Within 90 Days of Filing of Incorporation Petition with County

In this circumstance, when the city incorporation petition and the annexation resolution include any of the same territory, the annexation will still go to a vote and the city can annex the territory involved, which would then be removed from the incorporation proposal.

2. Annexation Resolution Adopted More than 90 Days after Filing of Incorporation Petition with County

In this circumstance, again where the two proposals contain some of the same territory, the annexation effort may not proceed to an election and be approved by the voters unless the boundary review board modifies the proposed incorporation to remove the territory that is proposed for annexation, the boundary review board rejects the incorporation and the proposal is for a city of less than 7500 population, or the voters reject the proposed incorporation. In counties where there is no boundary review board,

the incorporation proposal, if legally sufficient, will go to the voters, who must reject it before the annexation can proceed.

J. Election on Annexation³⁰

1. Date of Election (RCW 35.13.060, RCW 29.13.020)

If the petition is granted and is certified as sufficient, RCW 35.13.060 requires that the city council indicate its preference to the county auditor for an election date on the annexation. The date must be one of the special election dates in RCW 29.13.020 and is to be held 60 or more days after the date the city's preference is indicated.

RCW 29.13.020 provides for special elections to be held on:

- a. The first Tuesday after the first Monday in February;
- b. The second Tuesday in March;
- c. The first Tuesday after the first Monday in April;
- d. The third Tuesday in May;
- e. The day of the primary election; or
- f. The first Tuesday after the first Monday in November.

The county auditor must call the special election on the date indicated by the city council.

2. Cost of Election (RCW 35.13.020)

The city to which annexation is proposed must bear the cost of the election.

3. Election Laws Applicable (RCW 35.13.070)

The election is to be held in accordance with state general election laws.

4. Residency Requirements for Voting (RCW 35.13.070)

The statute provides that only registered voters who have resided in the area proposed to be annexed for 90 days immediately preceding the election may vote in the election. As noted in the footnote, this statute is probably unconstitutional.³¹

³⁰For cities with a population greater than 400,000 (i.e., Seattle), annexation proceedings may be terminated if a sufficient petition is submitted pursuant to RCW 35.13.165 at any time before the date is set for the annexation election.

³¹It is probable that a 90-day durational residency requirement for voting in an annexation election, if challenged, would be held to violate the state and federal constitutions. See article 6, section 1 of the state constitution and *Moen v. Erlandson*, 80 Wn.2d 755, 757 (1972). The code city statute that imposed the same 90-day residency requirement was repealed by the 1994 legislature. Presumably, it was only through inadvertence that the same legislature did not also repeal RCW 35.13.070.

5. Notice of Annexation Election (RCW 35.13.080, RCW 29.27.080)
 - a. Notice must be posted for at least two weeks prior to the election date in four public places within the area proposed to be annexed, and
 - b. Notice must be published in compliance with the requirements in RCW 29.27.080³² (i.e. at least one publication not more than ten nor less than three days prior to the election in one or more newspapers of general circulation in the area proposed to be annexed).
 - c. The notice of election must:
 - (1) State the hours during which the polls will be open;
 - (2) Contain a statement that the election will be held in the regular polling places in each precinct, giving the address of each polling place;
 - (3) Describe the boundaries of the area proposed to be annexed;
 - (4) If the petition provides for the simultaneous creation of a community municipal corporation, describe the boundaries of the proposed service area, and inform voters that they will be asked to cast ballots for candidates for positions on the council;
 - (5) State the purpose of the election as stated in the petition or resolution; and
 - (6) Contain the following ballot language:

For annexation
Against annexation

or

For annexation and adoption of comprehensive plan
Against annexation and adoption of comprehensive plan

or

For creation of a community municipal corporation
Against creation of a community municipal corporation

or

³²The notice requirements of RCW 35.13.080 (posting) are not superseded by the language of RCW 29.27.080(1), even though language of the latter statute arguably would supersede any provision to the contrary. The attorney general has concluded that an annexation election is not a “state, county, district, or municipal general or special election, as is referenced by RCW 29.27.080.” AGO 1959-60 No. 103. Thus, reference should be made both to RCW 35.13.080 and RCW 29.27.080 for determining what notice is required.

For annexation and creation of community municipal corporation

Against annexation and creation of community municipal corporation

If the creation of a community municipal corporation is included in the resolution or petition, the ballot language in the notice must provide for the casting of ballots for candidates for positions on the community council.

If the assumption of indebtedness provision is included in the petition, this proposition must be voted upon as a separate item, and the notice of election must indicate the format:

For assumption of indebtedness

Against assumption of indebtedness

K. Canvass of Election Returns

1. Duties of County Canvassing Board³³ (RCW 35.13.090, 35.13.095)

On the Monday after the annexation election, the county canvassing board must:

- a. Canvass the returns; and
- b. Submit a statement of canvass to the county governing body.

2. Minimum Vote Required for Approval of Annexation (RCW 35.13.090)

- a. The propositions for or against annexation, or for or against adoption of the comprehensive plan, or for or against creation of a community municipal corporation (or any combination of these, as the case may be) may be approved by a majority of the votes cast on the proposition.
- b. A proposition for or against the assumption of all or any portion of indebtedness may be approved by at least 60 percent of those voting in the area proposed for annexation, if the number of persons voting is at least 40 percent of the total number of votes cast in the area at the last preceding general election.
- c. The propositions to annex and to assume indebtedness may be combined on the same ballot. If the measures are combined, the annexation and the assumption of indebtedness will be approved only if at least 60 percent of the voters vote in favor and the number of persons voting is at least 40 percent of

³³RCW 29.01.008 defines “canvassing” as follows:

“Canvassing” means the process of examining ballots or groups of ballots, subtotals, and cumulative totals in order to determine the official returns of and prepare the certification for a primary or general election and includes the tabulation of any votes for that primary or election that were not tabulated at the precinct or in a counting center on the day of the primary or election.

the total number of votes cast in the area at the last preceding general election. However, the city council may adopt a resolution accepting the annexation, without the assumption of debt, where the combined ballot proposition is approved by a simple majority of the voters voting.

L. Duty of County Governing Body (RCW 35.13.090)

If any of the propositions are approved by the electors, the county governing body is required to:

1. Enter in its minutes a finding to that effect; and
2. Transmit and file with the city clerk the following:
 - a. a certified copy of its minutes, and
 - b. a certified abstract of the vote, showing:
 - (1) the number who voted at the election,
 - (2) the number of votes cast for and against each proposition submitted to the voters,
 - (3) a statement of the number of votes cast in the territory at the last preceding general election.

If a proposition for the creation of a community municipal corporation was submitted and approved, the abstract must include the number of votes cast for the candidates for community council positions. (Certificates of election are to be issued to the successful candidates. They are to assume office within ten days after the election.)

M. Duty of City or Town Upon Receipt of Abstract of Vote (RCW 35.13.100)

1. The city clerk is to transmit the certified copy of the finding of the county governing body to the city council at its next regular meeting or as soon thereafter as practicable.
2. The city council must then adopt ordinances providing for annexation and adoption of the comprehensive plan, and/or the creation of a community municipal corporation, as is appropriate. If the voters approved an assumption of debt, the ordinance should also provide for that. If the debt assumption proposition did not receive the necessary vote, then the council must decide whether to enact an annexation ordinance without that assumption of debt, or to decline to annex the territory.

N. Effective Date of Annexation (RCW 35.13.110)

The annexation is effective on the date fixed in the annexation ordinance. The statute does not specify any date by which the annexation must be made effective. **Note, however, that there are important timing issues as to when an annexation occurs with respect to when the city's property tax levy can be effective in the newly annexed area and with respect to receipt of state-shared revenues, sales tax, and, if applicable, sales tax equalization payments. See Chapter Four, Section IV.A.**

O. Notice of Annexation

1. Notice to State (OFM Certification) (RCW 35.13.260)

The city must submit an annexation certificate and additional supporting documents to the state Office of Financial Management (OFM) within 30 days of the effective date of annexation. See Chapter Four, Section IV.A. Certificate forms and additional information are available from that office:

Office of Financial Management
Forecasting Division
450 Insurance Building
PO Box 43113
Olympia, WA 98504-3113

Telephone: (360) 753-1853

OFM requires submission of the following documents for the annexation certification process: (1) the signed annexation certificate, in triplicate (certificate form obtained from OFM); (2) three copies of the annexation ordinance containing the legal description of the area annexed; (3) three maps of the annexed area, in conformance with OFM map requirements; and (4) the original (hand-written) Special Population Census Sheets used to enumerate the population and housing of the annexed area. OFM will send specific instructions upon request. The certificate is to be signed by the mayor and attested by the clerk. Filing of the certificate and the supporting documents is essential for a city to receive credit for increased population. This is important for the allocation and distribution of state funds to cities. See Chapter Four, Section IV.A.

The resident population of the newly annexed area, as of the effective date of the annexation, is to be determined by or under the direction of the mayor in accordance with OFM policies. OFM requires that the city conduct an annexation census within 30 days of the effective date of the annexation, but the actual enumeration should not begin until the effective date unless pre-approved by OFM. Contact the Forecasting Division at OFM for information on the annexation census.

Upon certification of the annexation, OFM forwards revised population information to each state official or department responsible for making allocations or payments to cities and towns. However, if the revised certificate is forwarded 30 days or less prior to the commencement of the next quarter, then the population of the newly annexed area is not considered until the following quarter.

2. Notice to County (RCW 84.09.030)

RCW 35.13.150 requires that a certified copy of the annexation ordinance be filed with the county governing body. It is advisable to also file a notice of annexation (including the official boundaries and a map) with the county auditor, assessor, engineer, and other county departments that have requested notice. (In some counties, the county governing body will notify other county departments upon receipt of three copies of an annexation notice.)

3. Notice to Department of Revenue

See Chapter Four, Section IV.A.3., Timing of Sales and Use Tax Receipts.

4. Notice to City Departments

Although any annexation will impact some city departments more than others, all should be advised of the annexation using the communication procedure that has proven most effective for the city.

II. Election Method, Initiated by Resolution

The annexation of contiguous, unincorporated territory may also be initiated by city council resolution. With the exception of the first few steps, the procedure is identical to that for the election method of annexation initiated by the 20 percent petition.

A. Contents of Resolution (RCW 35.13.015)

The city council may initiate an election on an annexation proposal by enacting a resolution that:

1. Provides that the council has determined that the best interests and general welfare of the city would be served by the annexation;
2. Describes the boundaries of the area to be annexed;
3. States the number of voters in the area as nearly as possible;
4. Petitions for an election on the annexation question among the qualified voters in the area; and
5. States that the city will pay the cost of the annexation election.

A formal public hearing by the city council is optional.

B. Contents of Resolution - Optional (RCW 35.13.015)

The council must also decide whether any of the following optional provisions will be included in the resolution, to be effective if the annexation is approved by the voters:

1. That all property within the area annexed shall, upon annexation, be assessed and taxed at the same rate and on the same basis as the property of the annexing city to pay for all or any portion of the then outstanding indebtedness of the annexing city that was approved by the voters, contracted, or incurred prior to or existing at the date of annexation.
2. If the city council has completed and filed a proposed comprehensive plan for the area proposed to be annexed pursuant to RCW 35.13.177 - .178, the resolution may provide that the plan will be simultaneously adopted at the time of annexation.
3. A community municipal corporation may also be simultaneously created upon annexation, if the resolution calls for its creation and the election of community council

members as provided in RCW 35.14.010 - .060. See Chapter Five, Section IV. This proposition may be submitted as part of the annexation proposition, or separately.

C. Filing of Resolution with County Governing Body and Review Board (RCW 35.13.015)

A certified copy of the resolution is to be filed with the county governing body of the county in which the territory is located. Notice of the proposed annexation must be given to the boundary review board if one has been established in the county. Otherwise, the ad hoc annexation review board is to be convened by the mayor. RCW 35.13.171. Review procedures are outlined in Chapter Eight.

The county governing body is not required to conduct a public hearing prior to the election. AGO 61-62 No. 90.

D. Limitation on Consideration of Conflicting Petitions or Resolutions (RCW 35.13.050)

After the filing of an annexation resolution with the county and pending its final disposition, no other annexation petition or resolution or incorporation petition that includes any of the same territory included in the council resolution may be acted upon by any public official or body. However, the resolution may be withdrawn or another resolution may be substituted for it by a majority of the city council.

E. Effect of Competing City Incorporation Proposal (RCW 35.02.155)

1. Annexation Resolution Adopted Within 90 Days of Filing of Incorporation Petition with County

In this circumstance, when the city incorporation petition and the annexation resolution include any of the same territory, the annexation will still go to a vote and the city can annex the territory involved, which would then be removed from the incorporation proposal.

2. Annexation Resolution Adopted More than 90 Days after Filing of Incorporation Petition with County

In this circumstance, again where the two proposals contain some of the same territory, the annexation effort may not proceed to an election and be approved by the voters unless the boundary review board modifies the proposed incorporation to remove the territory that is proposed for annexation, the boundary review board rejects the incorporation and the proposal is for a city of less than 7500 population, or the voters reject the proposed incorporation. In counties where there is no boundary review board, the proposal, if legally sufficient, will go to the voters, who must reject it before the annexation can proceed.

F. Election on Annexation, Canvass of Returns, Notice of Annexation, Etc.

For information on elections, notice, canvass of returns, date of annexation, notice of annexation, etc., see discussion in Sections I.J. through O. of this chapter.

III. Seventy-Five Percent Petition Annexation Method

The most frequently used method of annexing territory in first and second class cities and in towns is by petition of the owners of at least 75 percent of the property value in the area, computed according to the assessed valuation of the property in the proposed annexation area for general taxation purposes.

A. Initiation of the 75 Percent Petition Annexation (RCW 35.13.125)

A petition annexation is initiated by written notice to the city council of the intention to commence annexation proceedings. This notice may be signed by either:

1. Not less than ten percent of the residents of the area proposed to be annexed;
2. Owners of not less than ten percent of the value of the property for which annexation is petitioned, according to the assessed valuation for general taxation purposes; or
3. The board of directors of a school district.³⁴ RCW 28A.335.110.

B. Meeting on the Annexation Proposal (RCW 35.13.125)

After being notified of the proposed annexation, the city council is to set a date (within 60 days after the filing of the notice) for a meeting with the initiating parties to determine:

1. Whether the city will accept, reject, or geographically modify the proposed annexation;
2. Whether it will require the simultaneous adoption of a comprehensive plan, if such a plan has been prepared and filed as provided for in RCW 35.13.177 and 35.13.178; and
3. Whether it will require the assumption of all or any portion of existing city indebtedness by the area to be annexed.

If the council requires simultaneous adoption of a comprehensive plan or the assumption of indebtedness, it is to record this action in its meeting minutes.

The decision of the council whether to “accept” the proposed annexation is entirely within the council's discretion. By accepting the proposed annexation, the council is not committing itself to ultimately annexing the territory proposed when a sufficient petition is presented to it. The decision to accept merely allows the annexation to go forward procedurally. If the council rejects the proposed annexation, the initiating parties have no right of appeal.

C. Petition Requirements (RCW 35.13.130)

If the city council accepts the initial annexation proposal, the initiating parties may draft and circulate a petition for signatures. The petition must:

1. Be in writing and be addressed to the city council;

³⁴The school district board may initiate an annexation under this method only if school property constitutes all of the property for which annexation is being proposed. RCW 28A.335.110.

2. Describe the property according to government legal subdivisions or legal plats;
3. Be accompanied by a plat that outlines the boundaries of the property sought to be annexed;
4. If the city council is requiring the assumption of all or any portion of city or town indebtedness and/or the adoption of a comprehensive plan for the area to be annexed, state those facts, with a quotation from the meeting minutes where the council imposed such requirements;
5. Be signed by the owners of not less than 75 percent in value, according to the assessed valuation for general taxation, of the property for which annexation is petitioned; and
6. Be filed with the city council.

D. Legal Sufficiency of the Petition

Although RCW 35.13.140 does not require the council to determine the legal sufficiency of the petition (it states that the council “may” require proof that the petition meets legal requirements), the council should, as a practical matter, have city staff determine that the signatures are valid and that they represent sufficient property.³⁵

E. Hearing on Petition (RCW 35.13.140)

When a legally sufficient petition is filed with a city council, the council *may* consider it (it is not required to), and:

1. Fix a date for a public hearing, and
2. Provide notice of the hearing by:
 - a. Publishing notice in one issue of a newspaper of general circulation in the city, and
 - b. Posting notice in three public places within the territory proposed for annexation. The notice must specify the time and place of hearing, and it must invite interested persons to appear and voice approval or disapproval of the annexation.

The petition signers are responsible for the expenses of notice publication and posting. RCW 35.13.140. Of course, as a practical matter (particularly where there are a lot of signers), the initiating parties would presumably pay for this notice.

F. Limitation on Competing Annexation Proposals (RCW 35.13.176)

After an annexation petition is filed with the city council, no territory included in the petition may be annexed by another city or be incorporated into a new city unless the city council or the

³⁵The code city statutes specifically require a determination of petition sufficiency. See RCW 35A.14.130, 35A.01.040(4).

electorate or a boundary review board, as the case may be, rejects the annexation or the boundary review board modifies the annexation proposal to remove the territory.

G. Effect of Competing City Incorporation Proposal (RCW 35.02.155)

1. Annexation Petition Filed Within 90 Days of Filing of Incorporation Petition with County

In this circumstance, when the city incorporation petition and the annexation petition include any of the same territory, the city may still proceed to annex the territory involved, which would then be removed from the incorporation proposal.

2. Annexation Petition Filed More than 90 Days after Filing of Incorporation Petition with County

In this circumstance, again where the two proposals contain some of the same territory, the annexation effort may not proceed and may not be approved unless the boundary review board modifies the proposed incorporation to remove the territory that is proposed for annexation, the boundary review board rejects the incorporation and the proposal is for a city of less than 7500 population, or the voters reject the proposed incorporation. In counties where there is no boundary review board, the incorporation proposal, if legally sufficient, will go to the voters, who must reject it before the annexation can proceed.

H. Decision (RCW 35.13.150)

1. Cities in Counties Without Boundary Review Boards³⁶

Following the hearing (though not necessarily immediately), the city council decides whether to approve the annexation. If it decides to approve, it must enact an ordinance to annex the territory. RCW 35.13.150. It may annex all or any portion of the area proposed for annexation, but may not include any property not described in the annexation petition. *Id.*

2. Cities in Counties Having Boundary Review Boards

Since a city in a county with a boundary review board may not annex territory without prior review board approval (unless the board determines, for certain proposals, that review is not necessary, or the board's jurisdiction is not invoked),³⁷ an annexation ordinance passed following a hearing but before board review cannot yet be effective. Consequently, cities in counties requiring action by a boundary review board, when they have not previously received review board approval, often first pass a motion or resolution of intent to annex. If the review board approves the annexation, the formal ordinance is adopted.

³⁶See Section I.2. of this chapter below.

³⁷See Chapter Eight, Section II.

3. Conflict Between RCW 35.13.150 and Boundary Review Board Statutes

An area where the boundary review board statutes and the annexation statutes present a conflict concerns the ability of the city council, under RCW 35.13.150, to pass an ordinance annexing “all or any portion of the proposed area” but not “any property not described in the petition.” Under RCW 36.93.150(2), the boundary review board may add or delete territory from a proposed annexation, and, under RCW 36.93.155, a city may not approve an annexation other than that which receives board approval. Thus, if the board adds territory to that included in the petition, one statute says a city may not annex property not included in the petition, and another says that the city must annex, if at all, all the territory that the board approved for annexation, which, in this circumstance, would be more than was included in the petition.

In this situation, at least according to an attorney general's memorandum, the boundary review board statutes control. See November 7, 1994 memo from Nancy Sloane Schoepflin, Assistant Attorney General, to Susan Winchell, Planner for the Spokane County Boundary Review Board.³⁸ The boundaries of a proposed annexation are therefore set as of the date of the boundary review board decision, and the annexation initiators need not gather more petition signatures.³⁹ The city council, after holding the required hearing, may decide to annex the territory as approved by the board. *Id.*

If the boundary review board were to delete territory from that included in the petition, the city council would have the authority to approve that territory for annexation. However, the council's authority in a county with a boundary review board, under RCW 35.13.150, to independently approve an annexation of an area smaller than that included in the petition appears to be illusory.

I. Review

1. Boundary Review Board⁴⁰ (RCW 36.93.100)

If a boundary review board has been established within the county, the annexation initiators must file a notice of intention with the board within 180 days of when the annexation is proposed.

The board may assume jurisdiction over the annexation if, within 45 days of filing the notice of intention, a request for review is made by:

³⁸This memo is available upon request from MRSC.

³⁹Of course, the attorney general's memo is not determinative on this issue. Although the boundary review board statutes may control over the city annexation statutes, the safest course of action for a city council in the situation where the boundary review board approves an annexation after adding territory to that included in the petition, and where the city council desires to annex the area as expanded by the board, is for the city council to meet again with the annexation initiators and require them to revise their petition to describe the territory consistent with the board's approval and again obtain the necessary signatures. After another hearing on the matter, the council could pass an ordinance approving the annexation as described in the petition, without having to again obtain board approval (because the board has already approved the annexation authorized by the ordinance).

⁴⁰See Chapter Seven, Section 1.

- a. The city to which the annexation is proposed, the county within which the annexation is proposed, or any other affected governmental unit; or
- b. Petition of registered voters or property owners.

If jurisdiction is not invoked within 45 days, the proposed annexation is deemed approved.

The board must act within 120 days of the review request, unless the board and the annexation initiators agree to an extension. If no decision is made within 120 days and no extension is granted, the proposal is deemed approved.

2. Ad Hoc Annexation Review Board

Whether review is required by an ad hoc annexation review board in counties which do not have a boundary review board is problematical. The state supreme court held in *State ex rel Thigpen v. Kent*, 64 Wn.2d 823 (1964), that approval by an ad hoc annexation review board is not a condition precedent to a city council's approval of a 75 percent petition annexation. In light of this case, the legislature in 1973 attempted to remove altogether the requirement of convening the ad hoc annexation review board for the 75 percent petition annexation. Unfortunately, due to legislative oversight, reference to the 75 percent petition annexation was not removed from RCW 35.13.171, relating to the ad hoc annexation review board. It was, however, removed from the companion statutes, namely, RCW 35.13.172 (as amended by Ch. 164, Sec. 15, Laws of 1973, 1st Ex. Sess., but not as amended by Ch. 195, Sec. 14, Laws of 1973, 1st Ex. Sess.) and RCW 35.13.173. (RCW 35.13.171 was amended in 1985 (Sec. 2, Ch. 6, Laws of 1985); the amendment, however, was only technical in nature, changing the name of a renamed state agency). Some city attorneys advise convening this board to preclude the possibility of legal challenge on this basis; others advise against convening it, taking the position that a city could successfully withstand a challenge to an annexation based on the failure to convene this board. In any event, under *Thigpen*, cited above, any decision of the ad hoc annexation review board would be only advisory to the city legislative body.

J. **Effective Date of Annexation (RCW 35.13.160)**

The annexation, together with any provisions for the assumption of indebtedness or adoption of a comprehensive plan, takes effect on the date set in the annexation ordinance.

K. **Notice of Annexation**

For information on the notice that should be given once an annexation has been approved, see discussion set out in Section I.M. of this chapter.

IV. **Annexation for Municipal Purposes (RCW 35.13.180)**

Second class cities and towns⁴¹ are authorized to annex territory outside the city or town limits for municipal purposes, regardless of whether the territory is contiguous to the annexing city or town. A

⁴¹First class cities probably may also utilize this annexation method under the omnibus grant of powers to first class cities by RCW 35.22.570.

condition of this method of annexation is that either the property to be annexed must be owned by the city or town or all of the owners of the property must give their written consent to the annexation. The annexation requires enactment of an ordinance by majority vote of the city council.

The authorizing statutes indicate that this method is appropriate for annexing city or town parks, cemeteries, and for other municipal purposes. Proposed annexations under this method should be examined to make certain the territory will be used for legitimate municipal purposes.

Annexations of areas owned by a city or town for municipal purposes are exempt from boundary review board review *if* they are contiguous to the city or town. RCW 36.93.090(1). Review by the ad hoc annexation review board is not necessary in counties without a boundary review board.

Upon passage of an annexation ordinance under this method, notice of annexation must be given. RCW 35.13.260. See discussion in Section I.O. of this chapter for information on notice.

V. Annexation of Federally Owned Areas

A. First Class Cities (RCW 35.13.185)

A first class city may annex any contiguous federally-owned area which the federal government has given, granted, or leased to the city or over which the federal government has ceded jurisdiction, giving the city the right to occupy or control it. The city must by ordinance “accept” the gift, grant, lease, or cessation of jurisdiction.

B. Second Class Cities and Towns (RCW 35.13.190)

A second class city or a town may annex by ordinance any contiguous federally-owned area by accepting a gift, grant, or lease from the federal government of the right to occupy, control, improve, or sublet it for commercial, manufacturing, or industrial purposes. The area to be annexed may not, however, include any area more than four miles from the existing city or town boundary.

1. The Annexation Ordinance (RCW 35.13.200)

When annexing pursuant to gift, grant, or lease from the federal government, a city or town may in its ordinance:

- a. Include tide and shore lands that may be necessary or convenient for the use of the gift, grant, or lease;
- b. Accept the terms and conditions attached to the gift, grant, or lease; and/or
- c. Provide that the annexed territory be a separate ward of the city or town, or part or parts of adjacent wards.

2. Authority over Annexed Territory (RCW 35.13.210)

The city or town may:

- a. Survey, subdivide, and plat the property into lots, blocks, or tracts and lay out, reserve for public use, and improve streets, roads, alleys, slips, and other public places;

- b. Grant or sublet any lot, block, or tract for commercial, manufacturing, or industrial purposes and reserve, receive, and collect rents; and
- c. Use rents received from the property to make and maintain public improvements in the area and transfer any surplus remaining at the end of any fiscal year to the city or town current expense fund.

C. Review

When a boundary review board has been established in the county, a notice of intent to annex must be filed with it. See procedures outlined in Chapter Eight. Review by the ad hoc annexation review board is not necessary in counties without a boundary review board.

D. Notice of Annexation

For information regarding the notice that should be given once annexation has been approved, see discussion in Section I.O. of this chapter.

VI. Boundary Line Adjustments

Legislation enacted in 1989 establishes a process for adjusting existing or proposed city boundary lines to avoid a situation where a common boundary line is or would be located within a right-of-way of a public street, road, or highway. RCW 35.13.300 - .340. The process also applies to the situation where two cities are separated or would be separated only by the right-of-way of a public street, road, or highway, other than where a boundary line runs from one edge to the other edge of the right-of-way. RCW 35.13.300. The process is available to all cities and towns, including code cities.⁴² *Id.* Boundary adjustments can also be made where a portion of a parcel of land is located partially within and partially without city boundaries. RCW 35.13.340.

A. Adjustments Between Two Cities That Share Common Boundary Within Right-of-Way

- 1. The process is initiated by the councils of the two cities entering into an agreement to alter their boundaries to create a new common boundary on either edge of the right-of-way. The agreement may only include those adjustments necessary to eliminate the right-of-way boundary line problem. This process is not subject to review by the boundary review board. RCW 35.13.310.
- 2. If the boundary line adjustment is necessitated by a proposed annexation, the adjustment is similarly made by agreement between the two cities. The agreement is not effective unless the annexation is enacted. If an agreement is not reached, the annexation still proceeds. However, the boundaries are to be adjusted by agreement between the cities within 180 days of the annexation, or the county legislative body must make the adjustment within 60 days after the 180 day period ends. This adjustment is not subject to boundary review board review. RCW 35.13.320.
- 3. If a boundary adjustment is necessitated by the incorporation of a new city, the adjustment is to be made by agreement between the boundary review board that is reviewing the proposed incorporation and the existing city whose boundary would be

⁴²Where the boundary line within a right-of-way is common between a city and a county, there is no procedure, except for one available to code cities (RCW 35A.21.210), to adjust the boundary line.

adjusted. The incorporation process would proceed even if an agreement is not initially reached, although the two cities must reach agreement within 180 days of the official date of incorporation. If no agreement is reached within 180 days, the county legislative authority adjusts the boundary within 60 days. A boundary line adjustment is not subject to boundary review board review. RCW 35.13.330.

B. Adjustments Involving Parcels of Property Located Partially Within and Partially Without a City's Boundaries (RCW 35.13.340)

1. Parcel Located Partially Within a City and Partially Within the Unincorporated County

Where the common boundary between a city and a county splits a parcel of property, that boundary may be adjusted to include the parcel either wholly within the city or the county. The adjustment is initiated by a petition signed by the owner of the property split by the boundary line. A council resolution is then necessary to approve the adjustment. The adjustment is not subject to boundary review board review if it is approved by a resolution of the county legislative authority or in writing by a county official or employee designated by county ordinance to make such approvals.

2. Parcel Located Partially Within One City and Partially Within Adjacent City

An adjustment may be made so that the entire parcel is located within either of the cities. The process is begun by petition of the property owner, then approved by both cities involved. That approval may be by council resolution or by the written approval of an officer or employee designated by ordinance as having authority to make such approvals. The adjustment is not subject to boundary review board review.

If the parcel involved includes a public right-of-way, the boundary adjustment must be made in a manner to either include all or none of that right-of-way within the boundaries of the city.

Methods of Annexation in Code Cities

Six methods of annexation are available to code cities. The 60 percent petition method is, by far, the most common. As discussed earlier, cities have found the election method, whether initiated by resolution or by petition, to be extremely cumbersome. Because of this and the expense of conducting an election, annexation elections are infrequent. Statutes authorizing annexations for municipal purposes are much more straightforward, but they apply only when a legitimate municipal reason for the annexation can be demonstrated. Statutes authorizing the annexation of federal areas are of even more limited application. Finally, code cities have available one additional annexation method not available to other classes of cities, allowing for the annexation of unincorporated islands within code cities. While this latter method is useful in particular situations, code cities are often cautious before initiating the annexation of an unincorporated island. The very existence of an island sometimes indicates that its property owners are opposed to joining the city and might petition for an election to reject the annexation.

I. Election Method, Initiated by Ten Percent Petition

The annexation of contiguous⁴³, unincorporated territory may be initiated by a petition signed by voters living in the area to be annexed.

A. Contents of Petition (RCW 35A.14.020)

The petition must:

1. Comply with the technical rules for petitions in RCW 35A.01.040 (See Appendix);
2. Call for an election to vote upon the annexation;
3. Describe the boundaries of the area proposed to be annexed;
4. State the number of voters residing in that area as nearly as possible; and
5. State any provisions relating to the assumption of debt by the owners of property of the area proposed to be annexed, the simultaneous adoption of a proposed zoning regulation for the area to be annexed, or the creation of a community municipal corporation.

The petition must be signed by qualified electors resident in the area proposed for annexation equal to ten percent of the votes cast at the last state general election in that area. (A qualified elector is a person 18 years of age or over, a citizen of the United States, and a resident for at

⁴³The statutes do not define the term “contiguous.” Resort to the common, dictionary definition is therefore necessary. *Webster's New World Dictionary*, 3rd. College Edition (1988), defines contiguous as meaning “in physical contact; touching along all or most of one side” or “near, next, or adjacent.” In the legal context of annexations, however, actual contact or touching is necessary; near is not sufficient. AGO 49-51 No. 202 (January 23, 1950). The contact must nevertheless be significant; contact only at a common corner does not make property contiguous.

least 30 days. A qualified elector need not actually have registered to vote. AGLO 1974 No. 55.)

B. Contents of Petition - Optional (RCW 35A.14.025)

The petition *may* also provide for the simultaneous creation of a community municipal corporation and for the election of community council members pursuant to RCW 35.14.010 - 060, or for the simultaneous inclusion of the annexed area into a named existing community municipal corporation. If the petition provides for the creation of a new community municipal corporation, it must also describe the boundaries of the proposed service area, state the number of voters residing in that area as nearly as possible, and ask for the election of community council members by the qualified voters residing in the service area. See Chapter Five, Section IV. on community municipal corporations.

C. Approval By City Council

1. Filing of Petition (RCW 35A.14.020)

The petition is to be filed with the county auditor, and a copy must be filed with the city council. The county auditor certifies the sufficiency of the petition to the city council. If there are sufficient valid signatures, the council must pass a resolution within 60 days notifying the petitioners of its approval or rejection either by mail or by publishing a notice once a week for at least two weeks in one or more newspapers of general circulation in the city and in one or more newspapers of general circulation within the area proposed to be annexed. Council approval is a condition precedent to further proceedings on the petition. A formal public hearing is optional.

2. Additional Conditions to Annexation (RCW 35A.14.020)

The city council, in approving the annexation, may also require that any or all of these provisions be submitted to the electorate of the territory to be annexed:

- a. Whether property in the area proposed for annexation will be assessed and taxed at the same rate and on the same basis as is property in the annexing city and will be required to assume all or any portion of existing city indebtedness.
- b. Whether the city will require the simultaneous adoption of a proposed zoning regulation, if one has been approved and filed as provided in RCW 35A.14.330 and .340.

These questions, relating to the assumption of indebtedness and the adoption of zoning, may be submitted to the voters either separately or as a single proposition.

D. Petition Filed with County Legislative Authority and Applicable Review Board (RCW 35A.14.030, 35A.14.220)

After city council approval, the petition is to be filed with the legislative authority of the county in which the territory is located, along with a statement of the provisions on assumption of debt and/or the simultaneous adoption of a proposed zoning regulation. A copy of the petition and statement, if any, is also to be filed with the boundary review board, if one has been established, or otherwise with the county annexation review board for code cities, unless the annexation is exempt from review. An annexation of less than 50 acres or less than \$2 million in assessed

valuation is not subject to review, except in counties with a boundary review board. (An area of less than ten acres and less than \$2 million in assessed valuation need not be reviewed by the boundary review board if the chair of the board states in writing that review is not necessary. See RCW 36.93.110.)

See Chapter Eight for a detailed description of review boards and their procedures.

E. Limitations on Consideration of Conflicting Petitions and Resolutions

After the city council has adopted a resolution proposing the annexation of territory, no territory included in the proposed annexation may be annexed by another city unless: (1) the boundary review board or annexation review board modifies the annexation proposal and removes the territory; (2) the boundary review board or annexation review board rejects the annexation; or (3) the city council or the voters, as the case may be, reject the proposed annexation. RCW 35A.14.231.

If a city incorporation has been proposed by the filing of a petition with the county auditor under RCW 35.02.020, an existing city may still annex territory included within the proposed incorporation if, within 90 days of that filing, a resolution proposing the annexation of that territory is adopted. Territory that is ultimately annexed to a city will be withdrawn from the incorporation proposal. RCW 35.02.155.

If an annexation is proposed by resolution more than 90 days after the filing of an incorporation petition that includes territory proposed for annexation, the annexation must “be held in abeyance” and may not occur unless: (1) the boundary review board modifies the proposed incorporation to remove the territory proposed for annexation; (2) the boundary review board rejects the proposed incorporation and the proposed city has a population of less than 7,500; or (3) the voters reject the proposed incorporation. RCW 35.02.155.

F. Decision of Review Board (RCW 35A.14.050)

The review board, whether a boundary review board or county annexation review board, has the following options with respect to an annexation proposal:

1. Approve the proposal as submitted;
2. Modify the boundaries of the proposal and approve as modified (there are different limitations on boundary modification, depending upon the review board; see Chapter Eight); or
3. Disapprove the proposal.

If the review board disapproves the proposed annexation, no further action may be taken on the proposal and no other proposal for annexation of the same or substantially the same territory (as determined by the board) may be initiated or considered for 12 months.

G. Decision Filed with County Legislative Authority (RCW 35A.14.050)

Upon review board approval (with or without modifications), the city council must indicate to the county auditor its preference for a special election date for submitting the proposal to the voters of the territory proposed to be annexed. The city council must indicate that preference at its next regular meeting, if that meeting is to be held within 30 days of its receipt of the

review board decision, or at a special meeting to be held within that 30-day period. The county legislative authority must set the election date on the date indicated by the city.

H. **Election on Annexation**

1. Date of Election (RCW 35A.14.050, 29.13.020)

The special election on the proposed annexation must occur on one of the dates provided under RCW 29.13.020 that is 60 or more days after the preference is indicated.

Special election dates available under RCW 29.13.020 are:

- a. The first Tuesday after the first Monday in February;
- b. The second Tuesday in March;
- c. The first Tuesday after the first Monday in April;
- d. The third Tuesday in May;
- e. The day of the primary election; or
- f. The first Tuesday after the first Monday in November.

2. Conduct of Election (RCW 35.29.151)

The election must comply with general election law (Title 29 RCW).

3. Cost of Election (RCW 35A.14.020)

The city is responsible for the election costs.

4. Notice of Election (RCW 35A.14.070, RCW 35A.14.025)

- a. The notice must be posted for at least two weeks prior to the election date in four public places within the area proposed to be annexed, and
- b. It must be published at least once a week for two weeks prior to the election in one or more newspapers of general circulation within the territory proposed to be annexed. One publication must also be from three to ten days prior to the election.
- c. The notice of election must:
 - (1) Describe the boundaries of the proposed annexation (as may have been modified by the review board);
 - (2) State the purpose of the election (as in the petition);
 - (3) Require voters to cast ballots containing, as the case may be, words equivalent to:

For annexation
Against annexation

or

For annexation and adoption of proposed zoning regulation

Against annexation and adoption of proposed zoning regulation

or

For creation of a community municipal corporation
Against creation of a community municipal corporation

or

For annexation and creation of community municipal corporation

Against annexation and creation of community municipal corporation

or

For inclusion in [a named existing community municipal corporation]

Against inclusion in [a named existing community municipal corporation]

or

For annexation and inclusion in [a named existing community municipal corporation]

Against annexation and inclusion in [a named existing community municipal corporation]

If the creation of a community municipal corporation is included in the resolution or petition, the ballot language in the notice must provide for voting on candidates for positions on the community council.

If assumption of all or a portion of indebtedness is proposed, the notice and ballot must contain an appropriate, separate proposition for or against the assumption of the portion of indebtedness that the city requires to be assumed.

- (4) The notice must, in compliance with general election law, also contain the ballot title of measures to be voted upon at the election, the day

and hours during which the polls will be open, and the address of each polling place. RCW 35A.29.151, RCW 29.27.080.

I. Canvass of Election Returns (RCW 35A.14.080)

1. Duties of County Canvassing Board⁴⁴ (RCW 35A.14.080)

On the Monday after the annexation election, the county canvassing board must:

- a. Canvass the returns; and
- b. Submit a “statement of canvass” to the county legislative authority.

2. Minimum Vote Required for Approval of Annexation (RCW 35A.14.080, 35A.14.085)

- a. The proposition for or against annexation, or for or against adoption of the proposed zoning regulation, or for or against creation of a community municipal corporation (or any combination of these, as the case may be) may be approved by majority vote.
- b. A proposition for or against the assumption of all or any portion of indebtedness is approved by a 60 percent majority of those voting on the proposition, and the number of persons voting is not less than 40 percent of the total number of votes cast in the area at the last preceding general election.
- c. The annexation proposition may be submitted on the same ballot as the question to authorize an assumption of indebtedness. If the measures are combined, the annexation and assumption are approved only if the proposition is approved by a 60 percent majority of the voters voting and the turnout represents at least 40 percent of the total number of votes cast in the area at the last preceding general election. However, the city council may adopt a resolution accepting the annexation, but without the assumption of indebtedness, if the combined proposition is approved by a simple majority.

J. Duty of County Legislative Authority (RCW 35A.14.080)

If the voters approve any of the propositions, the county legislative authority must:

1. Enter in its minutes a finding to that effect;
2. Transmit and file a certified copy of its minutes to the city clerk; and

⁴⁴RCW 29.01.008 defines “canvassing” as follows:

“Canvassing” means the process of examining ballots or groups of ballots, subtotals, and cumulative totals in order to determine the official returns of and prepare the certification for a primary or general election and includes the tabulation of any votes for that primary or election that were not tabulated at the precinct or in a counting center on the day of the primary or election.

3. Transmit to the city clerk a certified abstract of the vote, showing:
 - a. The number who voted at the election;
 - b. The number of votes cast for and against the proposition; and
 - c. A statement of the number of votes cast in the area at the last preceding general election (if a proposition for assumption of indebtedness was voted on).

If a proposition for the creation of a community municipal corporation was submitted and approved, the abstract must include the number of votes cast for the candidates for community council positions. (Certificates of election are to be issued to the successful candidates. They are to assume office within ten days after the election.)

K. Duty of City Upon Receipt of Abstract of Vote (RCW 35A.14.090)

1. The city clerk must transmit the certified copy of the finding of the county legislative authority to the city council at its next regular meeting or as soon thereafter as practicable.
2. The city council must then adopt ordinances providing for annexation, the adoption of the proposed zoning regulation, the assumption of indebtedness, and/or creation of a community municipal corporation, as is appropriate. If the voters rejected a proposition on assumption of indebtedness, the council may refuse to annex the territory.

L. Effective Date of Annexation (RCW 35A.14.100)

The annexation and any propositions relating to zoning and assumption of indebtedness are effective on the date fixed in the annexation ordinance(s). Note, however, that there are important timing issues as to when an annexation occurs with respect to when the city's property tax levy can be effective in the newly annexed area and with respect to receipt of state-shared revenues, sales tax, and, if applicable, sales tax equalization payments. See Chapter Four, Section IV.

M. Notice of Annexation

1. Notice to State (RCW 35A.14.700)

The city must submit an annexation certificate and additional supporting documents to the state Office of Financial Management (OFM) within 30 days of the effective date of annexation. See Chapter Four, Section IV.A. Certificate forms and additional information are available from that office:

Office of Financial Management
Forecasting Division
450 Insurance Building
PO Box 43113
Olympia, WA 98504-3113

Telephone: (360) 753-1853

OFM requires submission of the following documents for the annexation certification process: (1) the signed annexation certificate, in triplicate (certificate form obtained from OFM); (2) three copies of the annexation ordinance containing the legal description of the area annexed; (3) three maps of the annexed area, conforming with OFM map requirements; and (4) the original (hand-written) Special Population Census Sheets used to enumerate the population and housing of the annexed area. OFM will send specific instructions upon request. The certificate is to be signed by the mayor and attested by the clerk. Filing of the certificate and the supporting documents is essential for a city to receive credit for increased population. This is important for the allocation and distribution of state funds to cities. See Chapter Four, Section IV.A.

The resident population of the newly annexed area, as of the effective date of the annexation, is to be determined by or under the direction of the mayor in accordance with OFM policies. OFM requires that the city conduct an annexation census within 30 days of the effective date of the annexation, but the actual enumeration should not begin until the effective date unless pre-approved by OFM. Contact the Forecasting Division at OFM for information on the annexation census.

Upon certification of the annexation, OFM forwards revised population information to each state official or department responsible for making allocations or payments to cities and towns. However, if the revised certificate is forwarded 30 days or less prior to the commencement of the next quarter, then the population of the newly annexed area is not considered until the following quarter.

2. Other Notice

For information regarding the notice that should be given to the county, the Department of Revenue, and city departments, see discussion in Section I.O. of Chapter Six.

II. Election Method, Initiated by Resolution

The annexation of contiguous, unincorporated territory may also be initiated by city council resolution. After the annexation is properly initiated by resolution, the election procedures under this method are identical to those used in the election method initiated by the ten percent petition.

A. **Legislative Determination (RCW 35A.14.015)**

Initially, the city council must determine that the best interests and general welfare of the city would be served by the annexation.

B. **Contents of Resolution**

1. **Mandatory Provisions (RCW 35A.14.015)**

The resolution must:

- a. Call for an election to be held to submit the annexation proposal to the voters in the territory proposed to be annexed;
- b. Describe the boundaries of the area to be annexed;
- c. State the number of voters in the area to be annexed as nearly as possible; and

- d. State that the city will pay the cost of the election.

A formal public hearing is optional.

2. **Optional Provisions (RCW 35A.14.015)**

The city council should also decide whether any of the following optional provisions will be included in the resolution:

- a. Requiring the voters in the area to vote on the assumption of all or any portion of existing city indebtedness.
- b. Requiring the simultaneous adoption of proposed zoning regulations, prepared under RCW 35A.14.340, upon approval of the annexation.
- c. Requiring simultaneous inclusion of the area in a named existing community municipal corporation upon annexation. This proposition must be submitted to the voters as part of the annexation proposition, not separately. RCW 35.13.015.
- d. If there is no existing community municipal corporation, a community municipal corporation may be created simultaneously upon annexation, if the resolution calls for its creation and the election of community council members as provided in chapter 35.14 RCW. RCW 35A.14.025. (See Chapter Five, Section IV. of this publication.) This proposition may be submitted to the voters as part of the annexation proposition, or separately.

- C. **Filing of Resolution with County Legislative Authority and Applicable Review Board (RCW 35A.14.015)**

A certified copy of the resolution is to be filed with:

1. The legislative authority of the county in which the proposed annexation is located; and
2. The boundary review board if one has been established; or
3. If a boundary review board has not been established, with the county annexation review board for code cities, unless the annexation is not subject to review under RCW 35A.14.220 (i.e. less than 50 acres or less than \$2 million in assessed valuation). RCW 35A.14.015

- D. **Limitations on Consideration of Conflicting Petitions and Resolutions (RCW 35A.14.231, 35.02.155)**

See Section I.E. of this chapter.

- E. **Decision of Review Board (RCW 35A.14.050)**

The review board, whether a boundary review board or county annexation review board, has the following options with respect to an annexation proposal:

1. Approve the proposal as submitted;

2. Modify the boundaries of the proposal and approve as modified (there are different limitations on boundary modification, depending upon the review board; see Chapter Eight); or
3. Disapprove the proposal.

If the review board disapproves the proposal, no further action may be taken on the proposal and no other proposal for annexation of the same or substantially the same territory (as determined by the board) may be initiated or considered for 12 months.

F. Decisions Filed with County Legislative Authority (RCW 35A.14.050)

Upon review board approval (with or without modification), the city council must indicate to the county auditor its preference for a special election date for submitting the proposal (with any modifications made by the review board) to the voters of the territory proposed to be annexed. The city council must indicate that preference at its next regular meeting, if that meeting is to be held within 30 days of its receipt of the review board decision, or at a special meeting to be held within that 30-day period. The county legislative authority must set the election date on the date indicated by the city.

G. Election, Canvass of Vote, Effective Date, Notice, Etc.

For information on the election process, canvassing of the vote, effective date of annexation, and the required notice, see discussion in Sections I.H. to I.M. of this chapter.

III. The Sixty Percent Petition Annexation Method

The most frequently used method of annexing unincorporated territory is by petition of the owners of at least 60 percent of the property value in the area, computed according to the assessed valuation of the property for general taxation purposes.

A. Initiation of the 60 Percent Petition Annexation (RCW 35A.14.120)

Prior to circulating a petition for annexation, the initiating party or parties (the owners of property representing not less than ten percent of the assessed value of the property for which annexation is sought) must give written notice to the city council of their intention to commence annexation proceedings.

B. Meeting with Initiators on the Annexation Proposal (RCW 35A.14.120)

The city council is to set a date (not later than 60 days after the filing of the notice) for a meeting with the initiating parties to determine:

1. Whether the city will accept, reject, or geographically modify the proposed annexation;
2. Whether it will require the simultaneous adoption of a proposed zoning regulation, if such a proposal has been prepared and filed (as provided for in RCW 35A.14.330, and RCW 35A.14.340); and
3. Whether it will require the assumption of all or any portion of existing city indebtedness by the area to be annexed.

If the legislative body requires the adoption of a proposed zoning regulation and/or the assumption of all or any portion of indebtedness as conditions to annexation, it is to record this action in its minutes.

Council acceptance is a condition precedent to circulation of the petition. There is no appeal from the council decision.

C. Contents of Petition (RCW 35A.14.120)

If the city council accepts the initial annexation proposal, the petition may be drafted and circulated.⁴⁵ The petition must:

1. Describe the property according to government legal subdivisions or legal plats.
2. Be accompanied by a map that outlines the boundaries of the property sought to be annexed.
3. If the council has required the assumption of all or any portion of city indebtedness and/or the adoption of a proposed zoning regulation for the area to be annexed, set forth these facts clearly, together with a quotation of the minute entry of that requirement.
4. Be signed by the owners of not less than 60 percent of the assessed value⁴⁶ of the property for which annexation is petitioned. “Owners” eligible to sign are defined in RCW 35A.01.040(9)(a) through (e).⁴⁷ (See Appendix, which reproduces the provisions of RCW 35A.01.040.)
5. Comply with the rules for petitions in RCW 35A.01.040. (See Appendix.) RCW 35A.14.130.

D. Filing of Petition; Determination of Sufficiency

1. The petition is to be filed with the city council. RCW 35A.14.120. Although there is no time limit specified in the annexation statutes as to when a petition need be filed with the council after it has begun circulating for signatures, the signatures on a petition are valid only if signed no later than six months prior to the filing date. Any signatures older than six months are to be stricken from the petition by the officer certifying petition sufficiency. RCW 35A.01.040(8).

⁴⁵The discretionary decision to “accept” the annexation proposal does not commit the city council to ultimately approving the annexation. This decision only means that the council will allow the annexation proposal to proceed through the petition process.

⁴⁶If the petition is for an area with at least 80 percent of its boundaries contiguous to the code city, excluding any portion of the boundary that is coterminous with a portion of the boundary between two counties, the petition need only be signed by the owners representing not less than 50 percent of the assessed value of the property for which annexation is sought.

⁴⁷Although the statute refers to subsections “(a)-(d)”, it is assumed that reference was intended to be made to subsections “(a)-(e)”.

2. The petition must be certified as sufficient (i.e., as having valid signatures representing the required 60 percent of property value). Within three working days of the filing of the petition, the officer responsible for certifying the petition must begin determining its sufficiency and must file with the officer receiving the petition for filing a certificate stating the date the determination of sufficiency was begun. The officer determining petition sufficiency must do so “with reasonable promptness.” RCW 35A.01.040(4).

E. Hearing on Petition (RCW 35A.14.130)

When a legally sufficient petition is filed, the city council may consider it⁴⁸ and:

1. Fix a date for a public hearing, and
2. Provide notice specifying the time and place of the hearing and inviting interested persons to appear and voice approval or disapproval of the annexation. The notice is to be:
 - a. Published in one or more issues of a newspaper of general circulation in the city; and
 - b. Posted in three public places within the territory proposed for annexation.

There are no statutory requirements concerning the actual hearing, other than to give proponents and opponents an opportunity to speak.

F. Limitation on Consideration of Conflicting Petitions and Resolutions (RCW 35A.14.231, 35.02.155)

After an annexation petition has been filed with the city proposing the annexation of territory, no territory included in the proposed annexation may be annexed by another city or town unless: (1) the boundary review board or annexation review board modifies the annexation proposal and removes the territory; (2) the boundary review board or annexation review board rejects the annexation; or (3) the city council or the voters, as the case may be, reject the proposed annexation. RCW 35A.14.231. This rule does not prevent a city, after an annexation petition has been filed with it, from considering a different annexation proposal embracing some of the same territory.

If a city incorporation has been proposed by the filing of a petition with the county auditor under RCW 35.02.020, an existing city may still annex territory included within the proposed incorporation if, within 90 days of that filing, a petition proposing the annexation of that territory is filed. Territory that is ultimately annexed to a city will be withdrawn from the incorporation proposal. RCW 35.02.155.

If an annexation is proposed by petition more than 90 days after the filing of an incorporation petition that includes territory proposed for annexation, the annexation must “be held in abeyance” and may not occur unless: (1) the boundary review board modifies the proposed incorporation to remove the territory proposed for annexation; (2) the boundary review board rejects the proposed incorporation and the proposed city has a population of less than 7500; or (3) the voters reject the proposed incorporation. RCW 35.02.155.

⁴⁸The city council is not required to consider the petition and hold a public hearing.

G. Decision (RCW 35A.14.140)

1. Cities in Counties Without Boundary Review Boards

Following the hearing (though not necessarily immediately), the city council decides whether to approve the annexation. If it decides to approve, it must enact an ordinance to annex the territory. RCW 35A.14.140. It may annex all or any portion of the area proposed for annexation, but may not include any property not described in the annexation petition. *Id.* The county annexation review board does not review annexations under the 60 percent petition method. RCW 35A.14.220.

2. Cities in Counties Having Boundary Review Boards

Since a code city in a county with a boundary review board may not annex territory without prior board approval (unless the board determines, for certain proposals, that review is not necessary, or the board's jurisdiction is not invoked),⁴⁹ an annexation ordinance passed following a hearing but before board review cannot yet be effective. Consequently, cities in counties requiring action by a boundary review board, when they have not previously received review board approval, often first pass a motion or resolution of intent to annex. After review board approval, the formal ordinance is adopted.

3. Conflict between RCW 35A.14.140 and Boundary Review Board Statutes

An area where the boundary review board statutes and the annexation statutes present a conflict concerns the ability of the city council, under RCW 35A.14.140, to pass an ordinance annexing “all or any portion of the proposed area” but not “any property not described in the petition.” Under RCW 36.93.150(2), the boundary review board may add or delete territory from a proposed annexation, and, under RCW 36.93.155, a city may not approve an annexation other than that which receives board approval. Thus, if the board adds territory to that included in the petition, one statute says a city may not annex property not included in the petition, and another says that the city must annex, if at all, all the territory that the board approved for annexation, which, in this circumstance, would be more than was included in the petition. MRSC is not aware of a city having confronted this type of situation, but it could occur.

In this situation, at least according to an attorney general's memorandum, the boundary review board statutes control. See November 7, 1994 memo from Nancy Sloane Schoepflin, Assistant Attorney General, to Susan Winchell, Planner for the Spokane County Boundary Review Board (available from MRSC). The boundaries of a proposed annexation are therefore set as of the date of the boundary review board decision, and the annexation initiators need not gather more petition signatures.⁵⁰ The

⁴⁹See Chapter Eight, Section II.

⁵⁰Of course, the attorney general's memo is not determinative on this issue. Although the boundary review board statutes may control over the city annexation statutes, the safest course of action for a city council in the situation where the boundary review board approves an annexation after adding territory to that included in the petition, and where the city council desires to annex the area as expanded by the board, is for the city council to meet again with the annexation initiators and require them to revise their petition to describe the territory consistent with the board's approval and again obtain the necessary signatures. After another hearing on the matter, the council could pass an ordinance approving the annexation as described in the petition, without having to again obtain board approval (because the board has already approved the

city council, after holding the required hearing may decide to annex the territory as approved by the board. *Id.*

If the boundary review board were to delete territory from that included in the petition, the city council would have the authority to approve that territory for annexation. However, the council's authority in a county with a boundary review board, under RCW 35A.14.140, to independently approve an annexation of an area smaller than that included in the petition appears to be illusory.

H. **Review**⁵¹

1. **Boundary Review Board (RCW 36.93.090, .100)**

If a boundary review board has been established within the county, the annexation initiators must file a “notice of intention” with the board within 180 days of when the annexation is proposed.

The board may assume jurisdiction over the annexation if, within 45 days of filing the notice of intention, a request for review is made by:

- a. The city to which the annexation is proposed, the county within which the annexation is proposed, or any other affected governmental unit; or
- b. Petition of registered voters or property owners.

If jurisdiction is not invoked within 45 days, the proposed annexation is deemed approved.

The board must act within 120 days of the review request, unless the board and the annexation initiators agree to an extension. If no decision is made within 120 days and no extension is granted, the proposal is deemed approved.

2. **County Annexation Review Board for Code Cities (RCW 35A.14.220)**

The county annexation review board for code cities does not review annexations under the 60 percent petition method.

I. **Effective Date of Annexation (RCW 35A.14.150)**

The annexation, together with any provision relating to application of a proposed zoning regulation, is effective on the date fixed in the ordinance. Note, however, that there are important timing issues as to when an annexation occurs with respect to when the city's property tax levy can be effective in the newly annexed area and with respect to receipt of state-shared revenues, sales tax, and, if applicable, sales tax equalization payments. See Chapter Four, Section IV.

J. **Notice of Annexation (RCW 35A.14.150, RCW 84.09.030)**

annexation authorized by the ordinance).

⁵¹See Chapter Eight, “Review Boards.”

For information on the notice that should be given following completion of the annexation process, see discussion in Section I.M. of this chapter.

IV. Annexation for Municipal Purposes (RCW 35A.14.300)

A code city may, by majority vote of the council, annex territory outside its limits for any municipal purpose, if the territory is owned by the city. This may be done regardless of whether the territory is contiguous or noncontiguous.

Review by the boundary review board or by the county annexation review board for code cities is not necessary *if* the property being annexed for municipal purpose is contiguous to the city. RCW 35A.14.220 and RCW 36.93.090.

For information on the notice that should be given once the territory is annexed, see discussion in Section I.M. of this chapter.

V. Annexation of Federally Owned Areas

A code city may annex any contiguous, unincorporated area within four miles of its corporate limits by an ordinance accepting a gift, grant, or lease from the U.S. government of the right to occupy, control, improve, or sublet it for commercial, manufacturing, or industrial purposes. RCW 35A.14.310.

A. The Annexation Ordinance (RCW 35A.14.320)

When annexing such territory, a city may in its annexation ordinance:

1. Include such tidelands and shorelands as may be necessary or convenient for the use of the gift, grant, or lease, and
2. Accept the terms and conditions attached to the gift, grant, or lease.

B. Authority Over Annexed Territory (RCW 35A.14.320)

The city may:

1. Survey, subdivide, and plat the property into lots, blocks, or tracts and lay out, reserve for public use, and improve streets, roads, alleys, slips, and other public places;
2. Grant or sublet any lot, block, or tract for commercial, manufacturing, or industrial purposes and reserve, receive, and collect rents; and
3. Expend rents received from the property to make and maintain public improvements in the area, and transfer any surplus remaining at the end of any fiscal year to the city current expense fund.

C. Review

When a boundary review board has been established in the county, a notice of intent to annex must be filed with it. See procedures outlined in Chapter Eight, Section II. Review by the county annexation review board for code cities is not required in counties without a boundary review board. RCW 35A.14.220

D. Notice of Annexation

For information on the notice that should be given once the area is annexed, see discussion in Section I.M. of this chapter.

VI. Annexation of Unincorporated Islands

The code city annexation statutes provide for an abbreviated procedure to annex unincorporated islands or pockets of property within a city. When there is an unincorporated area containing less than 100 acres of which at least 80 percent of the boundaries are contiguous to a code city, the city council may initiate annexation proceedings by resolution. However, annexation by this method is potentially subject to a referendum election within the unincorporated territory.

A. Contents of Resolution (RCW 35A.14.295)

A resolution for annexation of an unincorporated island must:

1. Describe the boundaries of the area to be annexed;
2. State the number of voters residing in the area as nearly as possible; and
3. Set a date for a public hearing on the resolution.

B. Notice of Hearing (RCW 35A.14.295)

Notice of the hearing on the annexation resolution is to be given by publication of the resolution at least once a week for two weeks prior to the date of the hearing, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the area to be annexed. However, it is likely that one newspaper would be generally circulated both within the city and in the area proposed for annexation.

C. Hearing (RCW 35A.14.297)

Residents and property owners of the area described in the resolution are to be afforded an opportunity to be heard.

D. Adoption of Annexation Ordinance (RCW 35A.14.297)

After the hearing, the city council may by ordinance annex the territory described in the resolution, although it may be necessary to first obtain review board approval, as discussed below. The ordinance may also provide for the adoption of a proposed zoning regulation or for the assumption of indebtedness by the area to be annexed. The effective date of the annexation ordinance may not be less than 45 days after passage, to allow for the referendum period discussed below.

E. Notice of Annexation (RCW 35A.14.297)

Notice of the proposed effective date of annexation, including a description of the property to be annexed, is to be published at least once a week for two weeks after the passage of the ordinance in one or more newspapers of general circulation within the city and within the area to be annexed. If the annexation ordinance provides for adoption of a proposed zoning

regulation or for the assumption of indebtedness, the notice must include a statement of these requirements.

F. Review

1. Boundary Review Board

Notice of intent to annex must also be filed with the boundary review board, if one has been established in the county. Since procedures can vary among counties, it is advisable to contact the appropriate review board for specific procedures. (See Chapter Eight, Section II.) Boundary review board clearance is necessary before the annexation may be effective.

2. County Annexation Review Board for Code Cities

Review by the county annexation review board for code cities is not necessary in counties without a boundary review board. RCW 35A.14.220.

G. Referendum (RCW 35A.14.297, RCW 35A.14.299)

The annexation ordinance is subject to potential referendum for 45 days after passage. To initiate a referendum on the annexation, a referendum petition must be signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general state election in the area to be annexed. If a timely and sufficient referendum petition is filed with the city council, the question of annexation is to be submitted to the voters.

H. Election

1. Date of Election (RCW 35A.14.299, RCW 29.13.020)

The date is to be at the next general election, if one is to be held within 90 days, or at a special election called not less than 45 days nor more than 90 days after the filing of the petition. See Section I.H. of this chapter for special election dates.

2. Conduct of Election (RCW 35A.29.151)

The election is to be held in compliance with general election law.

3. Notice of Election (RCW 35A.14.299, RCW 35A.14.070)

a. The notice must be posted for at least two weeks prior to the date of election in four public places within the area proposed to be annexed, and

b. Published at least once a week for two weeks prior to the election in one or more newspapers of general circulation within the area proposed to be annexed. One publication must also be not more than ten nor less than three days prior to the election.

c. The notice of election must:

(1) Describe the boundaries of the area proposed to be annexed,

- (2) State the purpose of the election as stated in the resolution,
- (3) Require voters to cast ballots containing the words equivalent to:

For annexation
Against annexation

or

For annexation and adoption of proposed zoning regulation

Against annexation and adoption of proposed zoning regulation

If assumption of indebtedness is proposed, the notice and ballot shall contain a separate proposition:

For assumption of indebtedness
Against assumption of indebtedness

- (4) Also contain the ballot title of measures to be voted upon at the election, the day and hours during which the polls will be open, and the address of each polling place in each precinct. RCW 35A.29.140.

I. Approval of Annexation (RCW 35A.14.297, RCW 35A.14.299)

If clearance is received from the boundary review board (if any), and if no sufficient referendum petition is filed within 45 days from of passage of the annexation ordinance (excluding the date of passage), the annexation will be effective upon the date fixed in the ordinance. If a sufficient petition is filed and an election held, the annexation will be decided by majority vote.

J. Notice of Annexation

For information on the notice that should be given after the annexation becomes effective, see discussion in Section I.M. of this chapter. See also, RCW 35A.14.700.

VII. Boundary Line Adjustments

Legislation adopted in 1989 provides a process whereby a code city's boundaries may be adjusted to include (or exclude) area located within a public street, or where one parcel is located both within and without the city's limits. See RCW 35.13.300 - .340. The process for such adjustments applicable to code cities is the same as that applicable to other cities and towns and is discussed in Chapter Six, Section VI.

CHAPTER EIGHT

Review Boards

I. Introduction

The state legislature created review boards to ease the problems that may arise from the “rapid proliferation of municipalities and haphazard extension of and competition to extend municipal boundaries.” See RCW 36.93.010. The boards are to promote the logical growth of local governments, reduce municipal competition for unincorporated territory, and preserve property values and consistent land use planning.

However, in counties in which the Growth Management Act (GMA) applies, the responsibility to effect such policies now primarily resides with city and county governments.⁵² In apparent recognition of this shift of responsibility in GMA counties, the legislature has authorized any GMA county, at its discretion, to disband its boundary review board (if any) after the county and the cities and towns within it have adopted comprehensive plans and consistent development regulations that comply with GMA requirements. RCW 36.93.230. This authorization does not apply, however, to counties with other types of review boards.

There are three different types of review boards that review annexations. The appropriate review board for a particular annexation depends upon: (1) the county in which the annexing city is located; (2) the class of the annexing city; and (3) the method of annexation. See table on following page.

All annexations by cities and towns located in counties in which boundary review boards have been established are subject to review only by the boundary review board. Boundary review boards have been established in the following 21 counties:

Benton	Grant	Skamania
Chelan	King	Snohomish
Clallam	Kitsap	Spokane
Clark	Kittitas	Thurston
Cowlitz	Pacific	Walla Walla
Douglas	Pierce	Whatcom
Franklin	Skagit	Yakima

Annexations by cities in other counties may be subject to review by an ad hoc annexation review board (first and second class cities and towns) or by the county annexation review board for code cities (code cities only). The ad hoc review board reviews annexations under the election method; it is unclear

⁵²For example, RCW 36.70A.100 requires that the comprehensive plans of each county and city be “coordinated with, and consistent with, the comprehensive plans . . . of other counties or cities with which the county or city has, in part, common borders or related regional issues.” RCW 36.70A.210 requires the development of county-wide planning policies, to be used for establishing a framework for ensuring that plans are consistent as required by RCW 36.70A.100.

Moreover, the GMA intends to eliminate municipal competition for unincorporated territory by requiring for each city in a GMA county the establishment of urban growth areas that define the extent to which each city may annex unincorporated territory. RCW 36.70A.110, 35.13.005, 35A.14.005.

whether these boards review annexations under the 75 percent petition method. The county annexation review board for code cities only reviews annexations by code cities under the election method, except where statutorily exempt. Specific procedures for each of these methods are outlined in the following table.

Method of Annexation	Subject to Review By		
	Boundary Review Board ¹	Ad Hoc Annexation Review Board ²	County Annexation Review Board for Code Cities ³
Election method, initiated by petition	Yes ⁴	Yes ⁷	Yes ⁶
Election method, initiated by resolution	Yes ⁴	Yes ⁷	Yes ⁶
Direct petition method (60 or 75 percent)	Yes ⁵	Unclear ⁸	No
Annexation for municipal purposes	No	No	No
Annexation of federally-owned areas	Yes	No	No
Boundary line adjustments	No	No	No
Annexation of unincorporated islands	Yes	No	No

¹Boundary review boards currently exist in 21 counties. If a boundaryreview board has been created, any required review would be by that board; no other board would be created in the county.

²An ad hoc annexation review board is created in those counties that do not have boundary review boards; the ad hoc board reviews annexation requests involving first and second class cities and towns.

³A county annexation review board for code cities would only be created in those counties not having a boundary review board; the code city board only considers annexation proposals involving code cities.

⁴Review may be dispensed with if the proposed annexation is for an area of less than ten acres and \$2 million assessed valuation, if the board chair declares in writing that review is not necessary.

⁵Review only required if request made by board members, an affected governmental unit, or by petition of voters or property owners.

⁶Review is not required if proposed annexation is for area less than 50 acres, or less than \$2 million in assessed valuation.

⁷Review is not required if proposed annexation is for area less than ten acres and less than \$800,000 in assessed valuation.

⁸Whether review is required is unclear. If review is sought, the board's decision would be advisory only. See *State ex rel. Thigpen v. Kent*, 64 Wn.2d 823 (1964).

The statutory requirements for each type of review board follows:

II. The Statutory Boundary Review Board

Boundary review boards are created by RCW 36.93.030 in each county with a population of 210,000 or more (King, Pierce, Snohomish, and Spokane Counties). Boundary review boards may be established in other counties either by a resolution adopted by majority vote of the county governing body or by a petition signed by persons equal in number to at least five percent of the votes cast in the county at the last county general election.

A. Review Procedures

1. Notice of Intention

Initiators of all types of annexations, other than a city council, must file a notice of intention with the board within 180 days of when the annexation is proposed.⁵³ When a city council initiates an annexation, the council may file a notice of intention immediately following its first acceptance or approval of the annexation. RCW 36.93.090.

The notice of intention must, under RCW 36.93.130, contain the following information:

- a. The nature of the action sought;
- b. A brief statement of the reasons for the proposed annexation;
- c. A legal description of the boundaries of the proposed annexation area (the description, if erroneous, may be altered under certain circumstances); and
- d. A county assessor's map on which the boundaries of the proposed annexation are designated. The board has the discretion to accept a map other than the county assessor's map.

2. Filing Fee (RCW 36.93.120)

A \$50 fee must be paid by the initiators of an annexation.

3. Initiation of Review (RCW 36.93.100)

Board review is not automatic upon the filing of a notice of intention. To initiate board review, one of the following must occur within 45 days of the filing of the notice of intention:

⁵³The statute does not specify when an annexation is “proposed” for purposes of triggering the 180-day period within which the notice of intention must be filed. Presumably, for 60 and 75 percent petition method annexations, the annexation is proposed when the initiators notify the city council of their intention to commence annexation proceedings. For election annexations initiated by petition, the annexation would presumably be considered proposed when a petition is filed with the county auditor (for code city annexations) or the county legislative body (for non-code cities).

- a. A governmental unit affected by the proposed annexation, including the city for which the annexation is proposed or the county within which the annexation is proposed, files a request for review;
- c. A petition requesting review is filed and signed by:
 - (1) Five percent of registered voters in the proposed annexation area, or
 - (2) The owner(s) of five percent of the assessed valuation of the area; or
- d. A majority of board members concur with a request for review when a petition requesting the review is filed by five percent of the registered voters who deem themselves affected by the proposed annexation and reside within one-quarter mile of the proposed annexation area but not within the city proposing the action.

The persons or entity seeking review must pay a \$200 fee to the county treasurer (for the county current expense fund). RCW 36.93.120.

The proposed action is deemed approved if the board's jurisdiction is not invoked within the 45-day period.

4. Time Limitation on Board Decision (RCW 36.93.100)

If review of a proposal has been requested, the board must make its decision in writing within 120 days after the filing of the request for review. If no decision has been made within 120 days, the proposal is deemed approved unless the board and the person(s) who submitted the proposal agree to an extension.

5. Exemption from Review (RCW 36.93.110)

The board may decide not to review an annexation of less than ten acres and \$2 million assessed valuation. This decision is accomplished when the chair of the board issues a written statement declaring that review is not necessary for the protection of the interests of affected parties.

6. Simultaneous Consideration of Incorporation and Annexation Proposals or of Conflicting Annexation Proposals

a. Incorporation and Annexation Proposals Involving Some or All of the Same Territory (RCW 36.93.116)

Municipal incorporation proceedings are formally initiated by the filing of an incorporation petition with the county auditor. If a resolution or a petition initiating an annexation involving any of the same territory as the incorporation proposal is adopted (by the city council) or filed (with the city) within 90 days of an incorporation petition being filed with the county auditor, the board may consider both matters simultaneously. In doing so, the board could remove some or all of the territory proposed for annexation from the incorporation proposal, or it could decide to approve the incorporation as proposed, thus precluding annexation of any territory within the proposed city (unless the voters reject the proposed new city).

b. Annexation Proposals by Another City Involving Some or All of the Same Territory

In counties subject to the GMA, there should not be competition among cities for territory to annex, because each city will be limited to annexing territory within its separate urban growth area.⁵⁴ In non-GMA counties with a boundary review board,⁵⁵ that competition may exist. However, once an annexation petition is filed with a city or an annexation resolution is adopted by a city council, another city may not annex any of the territory included in the petition or resolution, unless the board rejects the proposed annexation or modifies it and removes the territory. RCW 35.13.176, RCW 35A.14.231. These statutes, however, do not preclude a board from considering other annexation petitions or resolutions. But, a board must act upon the petition or resolution that was first filed with or adopted by a city, before it may act upon a subsequent annexation proposal from another city.

7. Preparation for Hearing on Annexation (RCW 36.93.160)

a. Date, Time, and Place (RCW 36.93.160(1))

When the jurisdiction of the board is invoked, the board must set a date, time, and place for a public hearing on the proposal, and must provide notice of the hearing.

b. Written Notice (RCW 36.93.160(1))

At least 30 days' advance written notice of the date, time, and place of the hearing on the proposed annexation must be given to:

- (1) The governing body of each governmental unit that has jurisdiction within the boundaries of the territory proposed to be annexed;
- (2) The council of each city and town within three miles of the exterior boundaries of the area proposed to be annexed; and
- (3) The proponent of the annexation.

c. Published Notice (RCW 36.93.160(1))

Notice must be published at least three times in a newspaper of general circulation in the area of the proposed annexation. The last publication is to be not less than five days before the hearing.

⁵⁴In areas such as metropolitan King County, where a number of cities lie within one large urban growth boundary, there may not be separate urban growth areas. King County has, however, designated “Potential Annexation Areas” that define the extent to which the cities within this large urban growth area may annex territory, without conflicting with a nearby city's potential annexations.

⁵⁵As of the date of this publication, there are only two counties having boundary review boards that are not subject to the GMA. These counties are Cowlitz and Skamania.

d. Posted Notice (RCW 36.93.160(1))

When the area proposed for annexation is ten acres or more, notice must also be posted in ten public places in that area for at least five days.

When the area proposed for annexation is less than ten acres, notice must be posted in five public places in the area for at least five days.

8. Record (RCW 36.93.160(2))

A verbatim record must be made of all testimony presented at the hearing. A copy of the transcript of the testimony must be provided to any person or governmental unit that requests it and pays its reasonable cost.

9. Factors to be Considered in Decision (RCW 36.93.170)

In reaching a decision on an annexation proposal, the board must consider certain factors affecting the proposal, including:

- a. Population and territory;
- b. Population density;
- c. Land area and land uses;
- d. Comprehensive plans and zoning;
- e. Per capita assessed valuation;
- f. Topography, natural boundaries, and drainage basins;
- g. Proximity to other populated areas;
- h. Existence and preservation of prime agricultural soils and productive agricultural uses;
- i. Likelihood of significant growth in the area and in adjacent incorporated and unincorporated areas during the next ten years;
- j. Location and most desirable future location of community facilities;
- k. Municipal services and the need for municipal services;
- l. Effect of ordinances, governmental codes, and regulations on existing uses;
- m. Present cost and adequacy of governmental services and controls in area;
- n. Prospects of governmental services from other sources;
- o. Probable future needs for such services and controls;

- p. Probable effect of annexation or alternative on cost and adequacy of services and controls in area and adjacent area;
- q. Effect on the finances, debt structure, and contractual obligations and rights of all affected governmental units;
- r. Effect of the annexation on adjacent areas, on mutual economic and social interests, and on the local governmental structure of the county.

In GMA counties, the comprehensive planning process will address and deal with many of the above factors.

10. Objectives of the Board (RCW 36.93.180)

The boundary review board is directed by RCW 36.93.180 to “attempt to achieve” the following objectives with respect to an annexation:⁵⁶

- a. Preservation of natural neighborhoods and communities;⁵⁷
- b. Use of physical boundaries,⁵⁸ including but not limited to bodies of water, highways, and land contours;
- c. Creation and preservation of logical service areas;
- d. Prevention of abnormally irregular boundaries;⁵⁹
- e. Discouragement of multiple incorporations of small cities and encouragement of incorporation of cities in excess of 10,000 population in heavily populated urban areas;
- f. Adjustment of impractical boundaries;
- g. Incorporation as cities or towns or annexation to cities or towns of unincorporated areas that are urban in character;

⁵⁶The requirement that the board “attempt to achieve” the objectives is more than an aspiration, but the board need not achieve all or even most of the objectives. *Spokane County Fire Protection District v. Spokane County Boundary Review Board*, 97 Wn.2d 922, 926 (1982). If the board fails to achieve any of these objectives in its decision, that decision would be reversed on appeal. *Id.* However, achieving only one objective may not be sufficient to support a board decision. *King County v. Boundary Review Board*, 122 Wn.2d 648, 674 (1993).

⁵⁷“Natural neighborhoods or communities” means either “distinct geographical areas or socially and locationally distinct groups of residents.” *Spokane County Fire Protection District*, 97 Wn.2d at 927 n.2.

⁵⁸The term “physical boundaries” does not mean legal boundaries such as lot lines. Thus, an annexation that solely follows legal boundaries does not further this objective. *King County v. Boundary Review Board*, 122 Wn.2d at 677.

⁵⁹“The focus of this objective . . . is not on whether the annexation boundaries are straight or crooked, but rather whether a proposed annexation causes or prevents unnatural projections or odd, impractical shapes.” *King County v. Boundary Review Board*, 122 Wn.2d at 678.

- h. Protection of agricultural and rural lands that are designated for long term productive agricultural and resource use by a comprehensive plan adopted by the county legislative authority.

11. Decision (RCW 36.93.160, RCW 36.93.150)

- a. Within 40 days of the conclusion of the final hearing, the board must issue its written decision and file it with the county legislative body and with the clerk of each governmental unit directly affected. Its decision with respect to an annexation may do any of the following:
 - (1) Approve the proposal as submitted;
 - (2) Disapprove the proposal; or
 - (3) Modify the proposal by adding or deleting territory and approve it as modified. If the annexation is by a town, the board may not add additional territory in an amount greater than that included in the original proposal. The addition or deletion of property by the board will not invalidate a petition that had previously satisfied the sufficiency of signature provisions. RCW 36.93.150. No modification may interfere with the authority of a city or town to require or not require preannexation agreements, covenants, or petitions; and
 - (4) Determine, where applicable, a division of assets and liabilities between the city and another governmental unit (e.g., a fire protection district).
- b. The board may not modify or disapprove a proposed annexation unless there is evidence on the record to support a conclusion that the annexation as proposed is inconsistent with one or more of the objectives under RCW 36.93.180. Any such decision must be supported by written findings and conclusions. RCW 36.93.150.
- c. The written decision must indicate the action taken, and, if a proposal is modified, it must indicate the terms of the modification. The decision need not include specific data on every factor required to be considered, but it must indicate that all factors were considered. RCW 36.93.160
- d. Dissenting members of the board have a right to have their written dissents included as part of the decision. RCW 36.93.160
- e. If the board disapproves an annexation proposal, no annexation proposal for the same or substantially the same territory may be initiated or considered for 12 months. RCW 36.93.150.

12. Appeal of Board Decisions

a. Appeal to the Board (RCW 36.93.160)

A “decision of the board” is one made by the majority of board members or by unanimous vote of a board hearing panel.⁶⁰ Such decisions are not appealable to the whole board. Other decisions⁶¹ are appealable to the entire board within ten days. An appeal to the entire board is to be on the record, which is to be furnished by the appellant. The board may in its discretion permit the introduction of additional evidence and argument.

b. Appeal to Superior Court (RCW 36.93.160)

The decision of the board may be appealed to the superior court within 30 days. A governmental unit affected by the decision or any person owning real property or residing in the area affected by the decision may file the notice of appeal.

The filing of a timely appeal in superior court will stay the effective date of the board's decision, until the appeal is adjudicated or withdrawn.

The superior court may not consider any evidence other than that contained in the record of hearing before the board.

c. Superior Court Decision (RCW 36.93.160(6))

The superior court's decision may:

- (1) Affirm the board's decision;
- (2) Remand the case to the board for further proceedings; or
- (3) Reverse the board's decision if any substantial rights have been prejudiced because the “administrative findings, inferences, conclusions, or decisions” are:
 - (a) In violation of constitutional provisions; or
 - (b) In excess of the statutory authority or jurisdiction of the board; or
 - (c) Made upon unlawful procedure; or
 - (d) Affected by other error of law; or

⁶⁰Boundary review boards may, under RCW 36.93.070, authorize panels of the board consisting of not less than five board members to hear proposals.

⁶¹These “other” decisions would be less than unanimous decisions of a board panel and decisions by less than a majority of all board members. The latter is possible because a majority of a quorum of the board (which may be less than a majority of all board members) may make decisions. RCW 36.93.070.

- (e) Unsupported by material and substantial evidence in view of the entire record as submitted; or
- (f) Clearly erroneous.⁶²

III. The Ad Hoc Annexation Review Board

A. Formation of Annexation Review Board (RCW 35.13.171)

An ad hoc annexation review board is to be formed, as the need arises, in counties that do not have a boundary review board to review annexations under the election method and occasionally annexations under the 75 percent petition method in first and second class cities and towns (but not code cities). See RCW 35.13.171 - .173. The board is to be composed of the following:

1. The mayor of the city involved with the annexation or someone designated by the mayor;
2. The chairperson of the county legislative body or a person designated by the chairperson;
3. The director of the state Department of Community, Trade, and Economic Development or someone designated by the director;
4. A resident property owner, of the city who is designated by the mayor; and
5. A resident property owner, or a resident or property owner if there is no resident property owner, of the area proposed for annexation who is designated by the chairperson of the county legislative body.

B. Convening of Board - Annexations Subject to Review (RCW 35.13.171, RCW 35.13.172)

The mayor is to convene the ad hoc annexation review board within 30 days of any of the following:

1. The filing with the county legislative body of a resolution for an annexation election by the city council under RCW 35.13.015; or
2. The filing with the county legislative body of a voter petition calling for an annexation election under RCW 35.13.020.

A third type of annexation, that initiated by a 75 percent petition, *may* be subject to review such that the ad hoc annexation review board would need to be convened.⁶³

⁶²Under the clearly erroneous standard, a reviewing court will overturn a board decision if, after reviewing all the evidence on the record, it is left with “a definite and firm conviction” that a mistake has been made. *King County v. Boundary Review Board*, 122 Wn.2d at 661.

⁶³Whether review is required by an ad hoc annexation review board in a county that does not have a boundary review board is unclear. See discussion in Chapter Six, Section III.I.2.

However, the board does not review any of the above types of annexations involving an area of less than ten acres and less than \$800,000 in assessed valuation.

C. Annexations Not Subject to Review

1. Annexations for municipal purposes under RCW 35.13.180, and
2. Annexations of gifts, grants, or leases of federal land under RCW 35.13.185 and RCW 35.13.190.

D. Hearing

The review board is to give public notice of its meeting and provide an open hearing. *Meek v. Thurston County*, 60 Wn.2d 461 (1962). These should comply with the Open Public Meetings Act, chapter 42.30 RCW, and any other applicable law.

E. Factors to be Considered in Decision (RCW 35.13.173)

In making a decision on an annexation proposal, the board is to determine whether the property proposed to be annexed is of such character that the annexation would be in the public interest and for the public welfare, and in the best interest of the city, county, and the other political subdivisions affected. Some of the factors the board must consider are:

1. The immediate and prospective populations of the area to be annexed;
2. The assessed valuation of the area to be annexed, and its relationship to population;
3. The history of and prospects for construction of improvements in the area to be annexed;
4. The needs and possibilities for geographical expansion of the city;
5. The present and anticipated need for governmental services in the area proposed to be annexed, including but not limited to water supply, sewage and garbage disposal, zoning, streets and alleys, curbs, sidewalks, police and fire protection, playgrounds, parks, other municipal services, transportation, and drainage;
6. The relative capabilities of the city, county, and other political subdivisions to provide governmental services when the need arises;
7. The existence of special districts, except school districts, within the area proposed to be annexed, and the impact of annexation upon such districts;
8. The elimination of isolated unincorporated areas existing without adequate economical governmental services;
9. The immediate and potential revenues that would be derived by the city as a result of annexation, and their relation to the cost of providing services to the area.

F. Cooperation of Other Governmental Units (RCW 35.13.173)

The officials of a city, town, county, and other political subdivisions are to assist the review board as much as possible. They are to furnish all relevant information and records to the review board.

G. Decision (RCW 35.13.173)

The board's decision either for or against the annexation is to be made within three months⁶⁴ and is to be filed with the county legislative body.

In AGO 61-62 No. 178, the attorney general's office concluded that the review board has the authority to delete property from a proposed annexation, but only when the deletion would be in the public interest.

The board's decision must be in writing and must include the reasons for the decision and its findings concerning the specified factors and any "other material considerations." The findings need not include specific data on every factor, but they are to indicate that all the factors were considered.

If the decision is favorable, the county legislative authority under the election method of annexation is to fix a date for the election, as set out in the outline in Chapter Six of this publication for the appropriate annexation method. If the board votes against the annexation, the proposal does not go forward to an election.

IV. The County Annexation Review Board for Code Cities

A. Formation and Composition of Board (RCW 35A.14.160 - .190)

A county annexation review board for code cities is to be established in each county containing one or more code cities when a boundary review board has not been formed.⁶⁵ Its function is to review annexations by code cities within the county.

1. Membership of Board (RCW 35A.14.160)

The governor is to appoint, supposedly within 45 days of the first code city having been established in the county, a five-member board as follows:

- a. Two members selected independently by the governor;
- b. One member selected by the governor from nominees of the individual members of the board of county commissioners;

⁶⁴The statute, RCW 35.13.173, does not specify what begins the three-month period. Presumably, the triggering event is the convening of the board.

⁶⁵As of the date of this publication, the following counties should have a county annexation review board for code cities: Grays Harbor, Mason, Pacific, Lewis, Klickitat, Okanogan, Ferry, Pend Oreille, Lincoln, Adams, Whitman, and Asotin. MRSC does not have information as to which of these counties actually have such boards.

- c. One member selected by the governor from nominees of the individual mayors of charter code cities in the county; and
- d. One member selected by the governor from nominees of the individual mayors of noncharter code cities in the county.

Each of the above three sources (b - d) is to nominate at least two persons. If fewer than two persons are nominated from a particular source, the governor may appoint the person for that position independently. Since there is currently only one charter code city (Kelso) in a county with a boundary review board, the governor would appoint the member from that category independently. The governor is to appoint persons “familiar with municipal government and administration by experience and/or training.” See RCW 35A.14.170 for the timing with respect to submitting nominations and for the filling of vacancies on the board.

- 2. Terms of Board Members (See RCW 35A.14.180)
- 3. Organization and Rules of Board (See RCW 35A.190)

B. Annexations Subject to Review (RCW 35A.14.220)

- 1. Those initiated by resolution of the city council for an election under RCW 35A.14.015, and
- 2. Those initiated by voter petition for an election under RCW 35A.14.020.

However, review is not required for annexations of less than 50 acres or less than \$2 million in assessed valuation.

C. Annexations Not Subject to Review by the Board (RCW 35A.14.220)

- 1. Annexations initiated by a 60 percent petition under RCW 35A.14.120,
- 2. Annexations of unincorporated islands under RCW 35A.14.295 and RCW 35A.14.297,
- 3. Annexations for municipal purposes under RCW 35A.14.300, and
- 4. Annexations of gifts, grants, or leases of federal land under RCW 35A.14.310 and RCW 35A.14.320.

D. Annexation Review Procedures

- 1. Jurisdiction (RCW 35A.14.200)

The jurisdiction of the county annexation review board is invoked when either of the following is filed with the board:

- a. A resolution for an annexation election under RCW 35A.14.015; or
- b. A petition for an annexation election under RCW 35A.14.020.

2. Meeting to Fix Hearing Date (RCW 35A.14.040)

- a. Within ten days of the filing of a resolution or petition calling for an election on the question of annexation, the board is required to meet and determine whether the proposed annexation complies with legal requirements. The meeting must comply with the notice provisions of the Open Public Meetings Act, chapter 42.30 RCW.
- b. If the board determines that the proposed annexation complies with legal requirements, it must fix a date, time, and place (within the city) for a public hearing, to be held not less than 15 days nor more than 30 days from the date of the meeting. The board, in its discretion, may authorize its chief clerk to request or subpoena any public officer or employee, including employees of the county or city planning department, to appear at the hearing and present testimony before the board. RCW 35A.14.190

Although the statute does not address what happens if the board determines that the resolution or petition does not comply with the legal requirements, the procedures of several boards require the board to return it to the person, group, or governmental entity that submitted it, together with a statement of the reason.

3. Notice of Hearing on Annexation Proposal (RCW 35A.14.040)

After the board establishes the hearing date, the city provides the following notice:

- a. Publication at least once a week for two weeks prior to the hearing, in one or more newspapers of general circulation within the city and within the area proposed to be annexed.
- b. (Optional but desirable.) Mailed notice to the governing body of each governmental unit that has jurisdiction in or near the boundaries of the territory proposed for annexation and to any other entities that have requested this information.

4. Hearing

a. Participants (RCW 35A.14.040)

- (1) A representative of the city, who must make a brief presentation explaining the annexation and its benefits;
- (2) The annexation petitioners;
- (3) Any resident of the city or of the area proposed to be annexed;
- (4) Neighboring landowners (see *Tukwila v. King County*, 78 Wn.2d 34, 469 P.2d 878 (1970)); and
- (5) Those persons who have been requested or subpoenaed to appear by the board or chief clerk.

b. Record (RCW 35A.14.200)

A verbatim record must be made of all testimony presented at the hearing. A copy of the transcript of the testimony must be provided to any person or governmental unit that requests it and pays its reasonable cost.

c. Continuances (RCW 35A.14.040)

The hearing may be adjourned from time to time in the board's discretion, not to exceed 30 days from the commencement of the hearing.

5. Factors to be Considered in Decision (RCW 35A.14.200)

In making a decision on an annexation proposal, the board is to determine whether the proposed annexation is in the public interest and for the public welfare. Some of the factors that must be considered are:

- a. Population of the area to be annexed, both immediate and prospective;
- b. Configuration and topography of the area;
- c. Land use;
- d. Comprehensive land use plans and zoning;
- e. Per capita assessed valuation;
- f. Natural boundaries and drainage basins;
- g. Likelihood of significant growth in the area and in adjacent incorporated and unincorporated areas during the next ten years;
- h. Location and coordination of community facilities and services;
- i. Need for municipal services and available municipal services;
- j. Effect of ordinances and governmental codes and regulations on existing uses;
- k. Present cost and adequacy of governmental services and controls;
- l. Probable future needs for governmental services and controls;
- m. Probable effect of annexation or alternatives on cost and adequacy of services and controls in area and adjacent area;
- n. Effect on finances, debt structure, and contractual obligations and rights of all affected governmental units; and
- o. Effect of annexation or alternatives on adjacent areas, on mutual economic and social interests, and on the local governmental structure of the county.

6. Decision (RCW 35A.14.050)

- a. Within 30 days after the final day of hearing, the board must take one of the following actions:
 - (1) Approve the proposal as submitted;
 - (2) Modify the proposal and approve it as modified. The board may delete territory, or add territory if it does not increase the total area by more than five percent and if residents and property owners of the additional territory are afforded an opportunity to be heard; or
 - (3) Disapprove the proposal.
- b. The board must issue a written decision, including written findings and conclusions. The findings need not include specific data on all of the factors listed above, but they must indicate that all factors were considered. RCW 35A.14.200. If an annexation proposal is modified by the board, the modification must be fully set forth in the written decision. RCW 35A.14.050.
- c. Dissenting members of the board have a right to have their written dissents included as part of the decision.
- d. The board must file its written decision with the county legislative body and with the city council. RCW 35A.14.050
- e. If the board disapproves the proposal, no further action is taken, and no proposal for annexation of the same or substantially the same territory may be initiated or considered for 12 months. RCW 35A.14.050

7. Appeal (RCW 35A.14.210)

a. Time and Place

Appeal is to superior court, and it must be filed within ten days of the date of the decision.

b. Who May Appeal

A governmental unit affected by the decision or any person owning real property or residing in the area proposed to be annexed may file a notice of appeal.

c. Effect of Appeal

The filing of a timely notice of appeal will stay the effective date of the board's decision, until the appeal is adjudicated or withdrawn.

d. Review Confined to Record

The superior court may not take any evidence other than that contained in the record of the hearing before the board.

e. Decision

The superior court may:

- (1) Affirm the board's decision;
- (2) Remand the case for further proceedings; or
- (3) Reverse the decision and remand it, if the court finds that substantial rights have been prejudiced because the findings, conclusions, or decision of the board are:
 - (a) In violation of constitutional provisions; or
 - (b) In excess of the statutory authority or jurisdiction of the board; or
 - (c) Made upon unlawful procedure; or
 - (d) Affected by other error of law; or
 - (e) Unsupported by material and substantial evidence in view of the entire record as submitted; or
 - (f) Arbitrary or capricious.⁶⁶

⁶⁶The courts have defined arbitrary and capricious conduct as an unreasoning decision made without consideration of and in disregard of the facts. See, e.g., *Leavitt v. Jefferson County*, 74 Wn. App. 668, 678 (1994).

CHAPTER NINE

Annexation Questions and Answers

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Boundaries

1. **Question:** Is there a limit on the amount of territory that a city or town may annex?

Answer: The only statutory limitation is applicable to towns. Towns with a population of 1,500 or less and towns located in counties with a population of one million or more are limited to two square miles in total area. Towns of more than 1,500 population in counties with less than one million population are limited to three square miles in total area. RCW 35.21.010.

In addition, towns may not annex more than 20 acres of unplatted land belonging to any one person without the consent of the owner. RCW 35.21.010. (This limitation applies to state-owned lands as well as privately held lands. AGO 57-58 No. 107.)

Towns that change their classification to become code cities are no longer under these limitations.

2. **Question:** May a city annex property lying in another county?

Answer: There is no enabling legislation that specifically allows cities and towns to annex territory located in another county, although RCW 35A.14.020, relating to the election method of annexation in code cities, sets out a process for reviewing petitions where the territory in question is located in more than one county. This lack of specific statutory authority has led to some confusion as to whether such an annexation is legal, and the issue may not be definitely answered until either enabling legislation is enacted by the legislature or until the issue is decided by the state supreme court.

However, the stronger argument appears to be that in favor of a city's authority to annex across county lines. In AGO 59-60 No. 37, the attorney general's office concluded that a first class city "lying wholly within one county can annex contiguous territory in another county." This opinion was based not upon the broad authority granted first class cities by statute, but upon the broad powers granted all cities with respect to annexation. The opinion notes that crossing county boundary lines is not prohibited by any section of annexation law, and that the state legislature has specifically authorized the incorporation of any area lying in two or more counties. See, e.g., RCW 35.02.001, 35.02.015.

The cities of Woodland, Milton, and Bothell, and the town of Coulee Dam include territory in two or more counties.

3. **Question:** May a city annex across a river, a body of water, tidelands, or shorelands?

Answer: An area proposed to be annexed to a city is to be deemed contiguous to the city even though separated by water, tidelands, or shorelands (shores of a lake or river, not subject to tidal flow). The statute applicable to code cities also provides that, upon annexation of such an area, the intervening water and/or tideland or shoreland is to become a part of the annexing city. RCW 35.13.010, RCW 35A.14.010.

4. **Question:** May a city annex a very narrow strip of land (such as a road right-of-way) leading to a larger tract of land? (This practice is known as a "shoestring" or "corridor" annexation, and the narrow strip of land is intended to make the larger tract at its end "contiguous" to the annexing city.)

Answer: A shoestring annexation probably would be invalidated, if challenged within a reasonable period of time. In *Long v. City of Olympia*, 72 Wn.2d 85 (1967) the state supreme court recognized precedent in other states overturning shoestring annexations as not being properly contiguous to the annexing municipality. However, the court in *Long* upheld an annexation in which the annexed area was roughly

shaped like an hour glass, the bottom of the glass abutted to the annexing city, and the top of the glass “substantially” abutted it.

The King County Superior Court has in two decisions invalidated shoestring annexations as not sufficient to satisfy statutory requirements of contiguity. *State ex rel. Jonson v. Carroll*, Superior Court for King County, Cause No. 508550 (1957), and *State ex rel. Carroll v. Town of Houghton*, Superior Court for King County, Cause No. 512321 (1957). These decisions were not appealed.

On the other hand, the Attorney General concluded in an old opinion that a city could annex the right-of-way of a state highway and privately owned property situated one-half mile from the city abutting on the highway. AGO 51-53, No. 269. Given the more recent precedents cited above, however, the continuing validity of this opinion may be questioned.

In connection with this issue, a 1964 informal attorney general's opinion (April 14, 1964, to State Senator Don L. Talley) is relevant. In this opinion, the attorney general's office concluded that additional property may be annexed to the “shoestring” portion of a “shoestring annexation,” where the original shoestring annexation was properly accomplished under the municipal purposes method of annexation.

5. **Question:** Where territory proposed for annexation and the city touch only at corners, and a person cannot pass from one to the other without passing outside the municipal boundaries, is that territory considered contiguous?

Answer: Probably not. While this issue has not been addressed by the Washington State Supreme Court, other state courts have not permitted annexations that touch cities only at corners. See Comment, *Annexation by Municipal Corporations*, 37 Wash. L. Rev. 404, 408 (1962).

Election Method

6. **Question:** May the election method of annexation be used where there are no residents in an area proposed for annexation?

Answer: No. See AGO 55-57 No. 214. There cannot be an election where there are no voters or electors residing in the area in which the election would be conducted.

7. **Question:** Should a city council hold a formal public hearing (after giving notice) for an election method annexation?

Answer: The statutes governing the election method do not require a public hearing. *Meek v. Thurston County*, 60 Wn.2d 461, 465 (1962).

8. **Question:** What election is used as the basis for determining how many signatures are necessary on a petition to initiate an annexation by the election method for first and second class cities and for towns?

Answer: RCW 35.13.020 provides that a petition for annexation must be signed by the residents in the area equal in number to 20 percent of the votes cast “at the last election.” Unlike some of the other annexation statutes, RCW 35.13.020 does not refer to the “last state general election” or the “last preceding general election;” it merely refers to the “last election.” “Election” is defined in RCW 29.01.050 to mean “a general election except where the context indicates that a special election is included.” Thus, the “last election” refers to the last general election (which is held in November).

Petition Method

9. **Question:** May owners of tax-exempt property, such as cities and special districts, sign annexation petitions?

Answer: Yes, owners of tax-exempt property may sign annexation petitions just as owners of taxable property may. See *Johnson v. Spokane*, 19 Wn. App. 722 (1978), *review denied*, 90 Wn.2d 1026 (1978). See also *Parosa v. Tacoma*, 57 Wn.2d 409 (1960), concluding that the Port of Tacoma had authority to petition the City of Tacoma for annexation of its property, since one of the attributes of land ownership is the right to petition for annexation to a city.

10. **Question:** Is property owned by a school district that is considered for annexation by a first or second class city or by a town under the 75 percent petition method treated any differently?

Answer: There is a statute that relates specifically to this type of annexation. RCW 28A.335.110 authorizes a school district board of directors to sign an annexation petition under the 75 percent petition method to first or second class city or a town when the school district property is all of the property included in the annexation petition. This statute may serve as a limitation on school districts, requiring that school district property be the only property included in a 75 percent petition for annexation to a first or second class city or a town. By its terms, the statute does not apply to other methods of annexation, or to code city annexations.

11. **Question:** May state-owned land be annexed?

Answer: Yes. However, two attorney general opinions (AGO 1947-48 p. 22 and AGO 57-58 No. 107) cast doubt on the authority of state officials to *sign* annexation petitions absent specific legislative authorization applicable to the state agency involved. However, since one of the attributes of real property ownership is the right to petition for annexation to a city (see *Johnson* and *Parosa*, cited in Question 9 above), it is arguable that a state agency with authority to own land would have similar authority to petition for annexation if it desired to do so.

Alternatively, state land could be annexed by a method that does not require a petition to be signed on behalf of the state property, such as the election method initiated by resolution, or the petition method where enough signatures are obtained from private property owners to meet the percentage requirement.

12. **Question:** Must both a husband and wife sign an annexation petition?

Answer: In first and second class cities and in towns, both the husband and wife should sign an annexation petition when property is community property or is owned jointly by them. In code cities, the signature of a record owner is sufficient without the signature of his or her spouse. RCW 35A.01.040(9)(a). However, it still may be advisable for both spouses to sign the petition.

13. **Question:** If two or more individuals jointly own property, must all sign the petition?

Answer: Although there is no specific legal authority on this question, it would appear that all the individual owners should sign the petition in order for the property to be considered as part of the percentage required for a sufficient petition.

14. **Question:** Who should sign an annexation petition when property is being sold under contract?

Answer: The “safest” practice is to have both the contract vendor and vendee sign an annexation petition when property is being sold in first and second class cities and in towns. However, under *Committee of Protesting Citizens v. Val Vue Sewer District*, 14 Wn. App. 838 (1976), the signature of the vendee (purchaser) is sufficient when a real estate contract is of record in the office of the county auditor.

For code cities, RCW 35A.01.040(9)(c) provides that the signature of the contract purchaser, as shown by the records of the county auditor, is sufficient (without the signature of his or her spouse).

15. **Question:** Once property owners have signed an annexation petition, may they withdraw their names from it if they change their minds?

Answer: Yes. For non-code cities, names may be withdrawn from petitions at any time prior to the city assuming jurisdiction over the petition. The state supreme court has held that jurisdiction is assumed in the 75 percent petition method of annexation when the council formally entertains the petition and fixes a day for the public hearing. *McAlmond v. Bremerton*, 60 Wn.2d 383 (1962).

For code cities, RCW 35A.01.040(4) requires that a certificate be filed by the officer who will determine the sufficiency of the petition. This certificate is to contain the date on which the determination of the sufficiency of the petition is begun. This is known as the “terminal date.” A signature may be withdrawn by a written request that is filed prior to the terminal date. The written request must describe the petition sufficiently so identification of the person and petition is certain. The name of the person seeking to withdraw is to be signed exactly as is signed in the petition.

16. **Question:** After property owners withdraw their names from a petition, may they change their minds once more and revoke the withdrawal?

Answer: Yes, as long as they take this action before the city has assumed jurisdiction over the petition. *McAlmond v. Bremerton*, 60 Wn.2d 383 (1962).

In code cities, the action would be required to be taken before the terminal date, as explained in the preceding question.

17. **Question:** Is a petition signature valid if the property represented by that signature is sold prior to the filing of the petition?

Answer: No. A signature is not valid if it is not by the owner of property in the area proposed for annexation. Since the validity of signatures and the sufficiency of a petition is determined after it is filed, a signature by a person that, at the time of petition filing, no longer owns the property for which he or she signed would not be a valid signature. See January 11, 1993 letter from Senior Assistant Attorney General James K. Pharris to Senator Dean Sutherland, available from MRSC.

18. **Question:** May neighboring landowners located outside of both the annexing city and the proposed annexation area participate in public hearings on the annexation?

Answer: Yes. The state supreme court concluded in *Tukwila v. King County*, 78 Wn.2d 34, 39 (1970), that neighboring landowners should be notified of annexations in the general vicinity of their property and be given a chance to appear and be heard.

19. **Question:** May a city use its facilities and staff to help solicit signatures for an annexation petition or otherwise promote an annexation using the petition method?

Answer: Yes. Since petition method annexations do not involve ballot propositions, the prohibition in RCW 42.17.130 against the use of city facilities and staff in support of a ballot proposition does not apply. Also, since annexation questions have impacts on almost all aspects of city operations, it would be a proper municipal purpose to use city facilities and staff in this manner. See January 11, 1993 letter from Senior Assistant Attorney General James K. Pharris to Senator Dean Sutherland, available from MRSC.

20. **Question:** May a city recover the expenses it incurs in handling annexation requests using the petition method?

Answer: It is probable that cities, particularly first class and code cities, have the authority to charge fees for handling and processing annexation petitions. A number of cities charge fees for this purpose. However, it is unlikely that the fees charged will in most cases actually cover all the costs associated with a petition method annexation.

Municipal Purposes Method

21. **Question:** Must a first or second class city or a town own the property it seeks to annex for municipal purposes under RCW 35.13.180?

Answer: No, although all the property owners in the area must give their written assent to the annexation. Of course, the city or town would, as a practical matter, need to acquire a sufficient interest in the property, if not outright ownership, to be able to make use of the property for municipal purposes. (Code cities must own the property to annex it for municipal purposes under RCW 35A.14.300.)

22. **Question:** Must a city actually use land annexed for municipal purposes for the purpose for which it was annexed?

Answer: In an informal opinion dated July 19, 1966, the attorney general's office concluded that a municipal purposes annexation could be successfully challenged if a city annexed the area with a preconceived intention to use it for a purpose not contemplated by the statute. (The attorney general's office was analyzing the municipal purposes method under RCW 35.13.180, but the reasoning of the opinion should be equally applicable to municipal purposes annexations by code cities under RCW 35A.14.300.)

However, proceedings resulting in annexations are presumptively valid. Unforeseen changes of circumstances would probably be recognized as sufficient to support a change in use if the city's original intention becomes impossible to accomplish or if there is a reasonable basis for the city to determine that the municipal purpose use can no longer be continued.

23. **Question:** Is noncontiguous property annexed by a city for municipal purposes subject to city or county zoning?

Answer: After annexation, noncontiguous land becomes part of the city and is subject to the city's zoning authority just as if it were contiguous. (See Informal Opinion of the Attorney General to the Chelan County Prosecuting Attorney, dated July 19, 1966.)

24. **Question:** May a city that is subject to the Growth Management Act annex territory for municipal purposes that lies outside its urban growth area?

Answer: No. The statutory prohibition on annexing territory outside an urban growth area is all-inclusive. It makes no exception for municipal purpose annexations, even though there may be valid policy reasons to exclude such annexations from this prohibition.

Unincorporated Islands Method

25. **Question:** Is there a method by which first and second class cities and towns may annex “islands” of unincorporated territory which they substantially surround?

Answer: No. Although code cities may annex unincorporated islands under the procedure outlined in Chapter Seven, a similar procedure is not now available to the other classes of cities and towns. Unincorporated islands must be annexed under one of the other available methods.

Legal Challenges to Proceedings

26. **Question:** How can a city know whether the legal description on an annexation petition is adequate?

Answer: The adequacy of a legal description of territory proposed for annexation is judged by whether a competent surveyor, either with or without the aid of extrinsic evidence, could ascertain the property in question. *Long v. City of Olympia*, 72 Wn.2d 85 (1967); *McAlmond v. City of Bremerton*, 60 Wn.2d 383 (1962). After review by the city engineer, many cities forward legal descriptions of proposed annexations to the county engineer early in the annexation process, requesting comments on adequacy.

27. **Question:** What if an annexation ordinance for a petition method annexation inadvertently describes an area that is larger than that contained in the petition?

Answer: An Attorney General opinion concluded that where an annexing ordinance described a larger parcel of property than that contained in the annexation petition, it is void. However, the annexation ordinance could be reenacted based upon the original annexing petition and hearing, where there was an inadvertent misdescription, as long as conditions had not materially changed to make the annexation less advantageous either to the city or property owners. AGO 53-55 No. 173.

28. **Question:** Will a minor error in an annexation notice invalidate an annexation proceeding?

Answer: Not necessarily. A footnote to the decision of the state supreme court in *Tukwila v. King County*, 78 Wn.2d 34 (1970), states that a minor error in notice does not mean the automatic invalidation of the annexation proceedings. In this case, the court upheld an annexation even though portions of a legal description were garbled as a result of a drafting or typographical error, because all of the property owners within the proposed annexation knew of and attended the annexation hearing and because the property was treated as a part of the city for the next four and one half years.

Slight deviation from statutory election notice timetables has also been permitted where much publicity on the annexation occurred through radio and news accounts and through the distribution of printed literature. *Long v. City of Olympia*, 72 Wn.2d 85 (1967).

Of course, a significant error, such as a major flaw in a legal description, would cause a court to invalidate an annexation. *State ex. rel Great Northern Railway v. Herschberger*, 117 Wash. 275 (1921). The courts have invalidated an annexation election when formal notice was published in a newspaper that was not circulated in the area proposed for annexation. *Davis v. Gibbs*, 30 Wn.2d 481 (1951).

29. **Question:** Is there a limitation on challenging annexation proceedings in second class cities?

Answer: RCW 35.23.545, known as a “curative” statute, requires legal challenges to annexation proceedings in second class cities to be made through a quo warranto action within one year. After one year, any errors or defects in the annexation cannot be a basis for invalidating the annexation.

30. **Question:** Is an annexation ordinance subject to a referendum?

Answer: Under *State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673 (1965), an annexation ordinance under the petition method of annexation is not subject to a referendum. See also *Leonard v. Bothell*, 87 Wn.2d 847 (1976). The election method is, of course, equivalent to a referendum procedure.

Consequences of Annexation

31. **Question:** When will the ordinances of the annexing city be effective in the annexed area?

Answer: The laws of the annexing city apply to the annexed area as of the effective date of the annexation. *Hoops v. Burlington Northern, Inc.*, 83 Wn.2d 396 (1974).

32. **Question:** If a city annexes land adjacent to a navigable river, does it have any jurisdiction in the water area?

Answer: Under RCW 35.21.160 and RCW 35A.21.090, a city acquires jurisdiction for tax purposes to the center of a navigable river when it annexes the bank of the river. AGO 59-60 No. 60.

33. **Question:** When an annexation becomes effective within 30 days of the date scheduled for a city election, may residents of the newly annexed area vote in the election when they are otherwise qualified even though they technically have not resided within the city or town for 30 days?

Answer: A qualified elector of an area that is annexed to a city may vote at a city election even though the annexation's effective date is within 30 days of the election. AGO 1951-53 No. 248.

Other Issues

34. **Question:** May a city annex or consolidate with a neighboring city or town?

Answer: Yes, a city may annex a contiguous city or town, or two (or more) cities may consolidate with each other. See procedures under chapter 35.10 RCW. Since these procedures are rarely attempted, they are not addressed in this publication.

35. **Question:** May a city require owners of property located outside of a city or town to sign an “outside utility agreement” or “preannexation agreement” as a condition of extending city utilities? An “outside utility agreement” or “preannexation agreement” typically provides that owners of property outside of the city agree, as a condition of receiving utility service from the city, to sign an annexation petition when the city wants to annex the land at some point in the future.

Answer: The state supreme court upheld the validity of such agreements in *Fire Protection District v. Yakima*, 122 Wn.2d 371 (1993).

APPENDIX

Chapter 35A.01 RCW INTERPRETATION OF TERMS

RCW 35A.01.040 Sufficiency of petition. Wherever in this title petitions are required to be signed and filed, the following rules shall govern the sufficiency thereof:

(1) A petition may include any page or group of pages containing an identical text or prayer intended by the circulators, signers or sponsors to be presented and considered as one petition and containing the following essential elements when applicable, except that the elements referred to in subdivisions (d) and (e) hereof are essential for petitions referring or initiating legislative matters to the voters, but are directory as to other petitions:

(a) The text or prayer of the petition which shall be a concise statement of the action or relief sought by petitioners;

(b) If the petition initiates or refers an ordinance, a true copy thereof;

(c) If the petition seeks the annexation, incorporation, withdrawal, or reduction of an area for any purpose, an accurate legal description of the area proposed for such action;

(d) Numbered lines for signatures with space provided beside each signature for the date of signing and the address of the signer;

(e) The warning statement prescribed in subsection (2) of this section.

(2) Petitions shall be printed or typed on single sheets of white paper of good quality and each sheet of petition paper having a space thereon for signatures shall contain the text or prayer of the petition and the following warning:

WARNING

Every person who signs this petition with any other than his true name, or who knowingly sign more than one of these petitions, or signs a petition seeking an election when he is not a legal voter, or signs a petition when he is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

Each signature shall be executed in ink or indelible pencil and shall be followed by the date of signing and the address of the signer.

(3) The term “signer” means any person who signs his own name to the petition.

(4) To be sufficient a petition must contain valid signatures of qualified electors or property owners, as the case may be, in the number required by the applicable statute or ordinance. Within three working days after the filing of a petition, the officer or officers whose duty it is to determine the sufficiency of the petition shall proceed to make such a determination with reasonable promptness and shall file with the officer receiving the petition for filing a certificate stating the date upon which such determination was begun, which date shall

be referred to as the terminal date. Additional pages of one or more signatures may be added to the petition by filing the same with the appropriate filing officer prior to such terminal date. Any signer of a filed petition may withdraw his or her signature by a written request for withdrawal filed with the receiving officer prior to such terminal date. Such written request shall so sufficiently describe the petition as to make identification of the person and petition certain. The name of any person seeking to withdraw shall be signed exactly the same as contained on the petition and, after the filing of such request for withdrawal, prior to the terminal date, the signature of any person seeking such withdrawal shall be deemed withdrawn.

(5) Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.

(6) A variation on petitions between the signatures on the petition and that on the voter’s permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.

(7) Signatures, including the original, of any person who has signed a petition two or more times shall be stricken.

(8) Signatures followed by a date of signing which is more than six months prior to the date of filing of the petition shall be stricken.

(9) When petitions are required to be signed by the owners of the property, the following shall apply:

(a) The signature of a record owner, as determined by the records of the county auditor, shall be sufficient without the signature of his or her spouse;

(b) In the case of mortgaged property, the signature of the mortgagor shall be sufficient, without the signature of his or her spouse;

(c) In the case of property purchased on contract, the signature of the contract purchaser, as shown by the records of the county auditor, shall be deemed sufficient, without the signature of his or her spouse;

(d) Any officer of a corporation owning land within the area involved who is duly authorized to execute deeds of encumbrances on behalf of the corporation, may sign on behalf of such corporation, and shall attach to the petition a certified excerpt from the bylaws of such corporation showing such authority;

(e) When property stands in the name of a deceased person or any person for whom a guardian has been appointed, the signature of the executor, administrator, or guardian, as the case may be, shall be equivalent to the signature of the owner of the property. [1985 c 281 § 26; 1967 ex.s. c 119 § 35A.01.040.]

Severability—1985 c 281: See RCW 35.10.905.