



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

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## Annexation

Annexation is the expansion of municipal territory through the addition of unincorporated territory (and occasionally, incorporated territory), typically upon petition of the landowner or landowners within that territory. Ohio law allows various types of annexation, including three expedited proceedings created about 20 years ago mainly used by developers annexing unincorporated territory to a municipal corporation.

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### Annexation

This Brief discusses the most common types of annexation, including procedures initiated by landowners and procedures initiated by municipal corporations. The Brief does not address merger (where two municipal corporations merge either via the traditional process or via an expedited process)<sup>1</sup> or detachment (where municipal territory becomes unincorporated territory).<sup>2</sup> Municipal corporations have home rule authority under the Ohio Constitution, which generally allows them to control matters of local self-government and to have police regulations

<sup>1</sup> R.C. 709.43 to 709.48.

<sup>2</sup> R.C. 709.38 to 709.42.

that do not conflict with a general law.<sup>3</sup> However, annexation does not fall within home rule; annexation is a matter of statewide concern and therefore, all municipal corporations must follow the state annexation laws.<sup>4</sup>

### **Landowner-initiated procedures**

There are four types of **landowner-initiated procedures**: the majority owner-approved procedure and three different expedited 100% owner-approved procedures. All four procedures begin with the presentation of a petition to the board of county commissioners of the county where the territory proposed for annexation is situated. The petition must include a legal description of the perimeter and a map or plat of the territory proposed for annexation. The territory must be contiguous to the municipal corporation to which annexation is proposed.<sup>5</sup> Meanwhile, a **municipal corporation** may initiate an annexation of either: (1) contiguous territory owned by the municipal corporation, a county, or the state, or (2) its own territory to another municipal corporation. These procedures are discussed in more detail below.

#### **By majority of owners**

The **majority petition procedure**<sup>6</sup> requires the signatures of only a majority of the landowners in the territory proposed to be annexed. The petition is filed with the board of county commissioners. The board must hold a public hearing between 60 and 90 days after the petition was filed. Notice of the hearing must be provided directly to: the municipal corporation; the township(s); and all owners of property within the territory proposed to be annexed, adjacent to the territory proposed to be annexed, or adjacent to a road that is adjacent to that territory and located directly across that road from that territory. And, notice must be published in a newspaper of general circulation in the county.<sup>7</sup>

The township is a “necessary party” to the hearing, meaning the township can present evidence on each of the six factors that must be satisfied for granting the annexation.<sup>8</sup> Anybody can appear during the hearing to support or contest the proposed annexation. People also can file affidavits in support of or against the petition.<sup>9</sup>

The board of county commissioners must adopt a resolution granting or denying the petition within 30 days after the hearing. The board must grant the annexation if it finds all of the following:

- The petition satisfied legal requirements;

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<sup>3</sup> Ohio Constitution, Article XVIII, Section 3.

<sup>4</sup> *In re Annexation of 118.7 Acres*, 52 Ohio St.3d 124 (1990) and *Beachwood v. Bd. of Elections of Cuyahoga County*, 167 Ohio St. 369 (1958).

<sup>5</sup> R.C. 709.02 and 709.021.

<sup>6</sup> R.C. 709.02 to 709.12 (not including R.C. 709.021, 709.022, 709.023, or 709.024).

<sup>7</sup> R.C. 709.03 and 709.032.

<sup>8</sup> R.C. 709.032(B).

<sup>9</sup> R.C. 709.032(C).

- The signers of the petition are owners at the time of filing and the number of owner signatures constitute a majority of the real estate owners in that territory;
- The municipality to which annexation is proposed has filed an adopted ordinance specifying what services it will provide and an approximate date by which it will provide the services to the territory proposed for annexation;
- The territory proposed to be annexed is not unreasonably large;
- On balance, the general good of the territory proposed to be annexed will be served, and the benefits to the territory and the surrounding area will outweigh the detriments, if the annexation petition is granted;<sup>10</sup>
- No street or highway will be divided or segmented by the boundary line between the township and the municipal corporation that creates a road maintenance problem unless the municipality agrees to assume the maintenance.<sup>11</sup>

Although the township may present evidence at the hearing, the township's approval is not required. But, if the annexation is granted, the township has a right to appeal as do the property owners, the agent for the petitioners,<sup>12</sup> and the municipal corporation to which annexation is proposed. An appeal must be filed within 30 days after the board's decision.<sup>13</sup> After a court decides the appeal, the process proceeds.

If the annexation is granted (either by the board of county commissioners originally or by the board of county commissioners after a court decision via appeal), the board sends notice to the municipal corporation. The municipal corporation must accept or reject the annexation (inaction is considered a rejection).<sup>14</sup> If accepted, the annexation takes effect 30 days later.<sup>15</sup> If the municipal corporation rejects the annexation, the process is over, though a rejection does not bar future action regarding the same territory, as the same territory may be included in a future petition.<sup>16</sup>

### **By all owners – expedited procedures**

Three types of expedited procedures – type I, type II, and type III – were created in 2001.<sup>17</sup> For the expedited procedures, *all property owners* within the territory proposed for annexation

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<sup>10</sup> This “general good” element provides some discretion to the board of county commissioners. The same discretion is not provided under the expedited procedures.

<sup>11</sup> R.C. 709.033.

<sup>12</sup> The petitioners designate a person to act as their agent. See R.C. 709.02(C)(3).

<sup>13</sup> R.C. 709.033(C) and 709.07. This right to appeal does not exist for the expedited procedures.

<sup>14</sup> R.C. 709.04. The law requires the municipal corporation to wait 60 days from when the county sends official notice before considering the annexation.

<sup>15</sup> R.C. 709.021(C) and 709.10. Though if subject to a referendum, the annexation takes effect 30 days after the referendum vote.

<sup>16</sup> R.C. 709.05.

<sup>17</sup> S.B. 5 of the 124<sup>th</sup> General Assembly.

must consent to the annexation. The **expedited type II**<sup>18</sup> procedure is used when all of the property owners consent to the annexation. The **expedited type I**<sup>19</sup> procedure is used when all of the property owners *and the township and municipal corporation* consent to the annexation. The **expedited type III**<sup>20</sup> procedure is used when all of the property owners consent *and the annexation is for the purpose of undertaking a significant economic development project*.

### **Type I**

For an **expedited type I** annexation, the petition must include an annexation agreement<sup>21</sup> or a cooperative economic development agreement<sup>22</sup> between the municipal corporation and township(s). Assuming the petition satisfies legal requirements and includes one of these agreements, the board of county commissioners is required to grant the annexation. No notice is required to be provided to contiguous or nearby landowners. There is no hearing and the board's decision cannot be appealed. This type of annexation occurs only with the township's consent.<sup>23</sup>

### **Types II and III**

The **expedited type II**<sup>24</sup> procedure is used when all of the owners sign the petition; this has become the most common method of annexation since its enactment in 2001. The **expedited type III**<sup>25</sup> procedure is used when all of the owners sign the petition and the annexation is for the purpose of undertaking a significant economic development project. For both types, the owners petitioning for annexation are required to provide notice of the annexation petition to: (1) the municipal corporation and any affected township(s), (2) all owners of property adjacent to the territory proposed for annexation, and (3) all owners adjacent to a road that is adjacent to that territory and located directly across that road from that territory.<sup>26</sup>

If the municipal corporation and township(s) consent to the annexation, the board of county commissioners approves the annexation (inaction is considered consent).<sup>27</sup> If the municipal corporation or a township object, the board must evaluate the following factors and adopt its decision:<sup>28</sup>

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<sup>18</sup> R.C. 709.023.

<sup>19</sup> R.C. 709.022.

<sup>20</sup> R.C. 709.024.

<sup>21</sup> See R.C. 709.192.

<sup>22</sup> See R.C. 701.07.

<sup>23</sup> R.C. 709.022.

<sup>24</sup> R.C. 709.023.

<sup>25</sup> R.C. 709.024.

<sup>26</sup> R.C. 709.023(B) and 709.024(B).

<sup>27</sup> R.C. 709.023(D) and 709.024(C)(1).

<sup>28</sup> For a type III, the board must evaluate the factors during a hearing. A notice about the hearing must be provided to the same recipients of the first notice. The municipal corporation, an affected township, and

- The petition satisfied legal requirements;
- The persons who signed the petition are owners and the number of owner signatures constituted all of the owners of real estate in the territory;
- The municipality to which annexation is proposed has filed an adopted ordinance specifying what services it will provide and an approximate date by which it will provide the services to the territory proposed for annexation;
- No street or highway will be divided or segmented by the boundary line between the township and the municipal corporation that creates a road maintenance problem unless the municipality agrees to assume the maintenance;
- The territory does not exceed 500 acres (type II only);
- The territory shares a contiguous boundary with the municipal corporation for a continuous length of at least 5% of the perimeter of the territory (type II only);
- The annexation will not create an unincorporated area of the township that is completely surrounded by the territory proposed for annexation (type II only);
- The project qualifies as a significant economic development project (type III only).<sup>29</sup>

The board can deny the annexation only if it finds one or more of the factors is not satisfied. If all factors are satisfied, the board must grant the annexation.<sup>30</sup> Either way, the board's decision cannot be appealed (except by a property owner during a type III proceeding, if the board denied the annexation).<sup>31</sup>

With type II and type III annexations, absent an annexation agreement or cooperative economic development agreement providing otherwise, the annexed territory *cannot be removed from the township*. As a result, residents in the territory live in both the municipal corporation and the township; residents vote on officers of each and may be taxed by each political subdivision.<sup>32</sup>

With all expedited proceedings (type I, type II, and type III), the municipal corporation has ultimate authority to accept or reject the annexation.<sup>33</sup> If accepted, the annexation takes effect 30 days later.<sup>34</sup>

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the property owners within the territory proposed for annexation are entitled to appear at the hearing to support or contest the granting of the petition. R.C. 709.024(E).

<sup>29</sup> R.C. 709.023(E) and 709.024(F).

<sup>30</sup> R.C. 709.023(F) and 709.024(F).

<sup>31</sup> R.C. 709.023(G) and 709.024(G).

<sup>32</sup> R.C. 709.023(A) and 709.024(H).

<sup>33</sup> R.C. 709.021(C) and 709.04.

<sup>34</sup> R.C. 709.021(C) and 709.10. Though if subject to a referendum, the annexation takes effect 30 days after the referendum vote.

## Owners

For the landowner annexations, the state or a political subdivision does not count as an owner, unless the state or political subdivision signs the petition. For example, say 10 parcels owned by different people are being annexed, one of which is owned by the state. If the state signs the petition, six owners total must sign the petition (because six is a majority of 10). If the state does not sign the petition, five owners total must sign the petition (because five is a majority of nine). Either way, the petition must be signed by five nongovernmental owners.

A person does not count as an owner if the person became an owner for the primary purpose of affecting the number of owners signing a petition. Finally, easement holders and right-of-ways (railroad, utility, street, and highway) do not count as owners.<sup>35</sup>

## By municipal corporation

A municipal corporation may petition the board of county commissioners to annex *contiguous territory that is owned by the petitioning municipal corporation, a county, or the state*. If the territory is owned by the petitioning municipal corporation, the board must grant the annexation. If the territory is owned by a county, the board may grant or deny the annexation (there are no factors and no specified basis upon which the board makes its decision). If the territory is owned by the state and the Director of Administrative Services consents, the board must grant the annexation. The board has 30 days to grant (or deny, as applicable) the annexation. There is no right to appeal this type of annexation. Territory annexed under this procedure is not excluded from the township. If located within another municipal corporation, that municipal corporation has no authority to object.<sup>36</sup>

A municipal corporation also may annex its own territory<sup>37</sup> to another municipal corporation. The municipal corporation may do this via its legislative authority or by petition of 25% of the electors. The proposed receiving municipal corporation may participate in the process but is not required to unless its electors file a petition. Absent the petition, the municipal corporation may refuse to participate in the process and the process ends. But if petitioned by the electors, the legislative authority of the recipient municipal corporation must proceed. This process includes each municipal corporation appointing three commissioners to negotiate annexation conditions. Then, the matter is submitted to the voters in each municipal corporation and must be approved in both municipal corporations to take effect.<sup>38</sup>

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<sup>35</sup> R.C. 709.02(E).

<sup>36</sup> R.C. 709.14 to 709.16.

<sup>37</sup> It is unclear whether annexation under this process may be of only part of a municipal corporation. Most of the related sections (R.C. 709.22 to 709.34) suggest the entire municipal corporation must be annexed. See, e.g., R.C. 709.34, which states “. . . the two former municipal corporations shall be governed as one, embracing the territory of both, . . .” But see R.C. 709.30, which states “. . . to which the annexation of another city or village *or part thereof* is sought . . .” This section suggests this process may be used to annex only part of a municipal corporation.

<sup>38</sup> R.C. 709.22 to 709.34.

## Annexation and revenues

When an annexation involves township territory, the municipal corporation and township(s) may enter into an agreement to require the municipal corporation to compensate the township for lost tax revenue (otherwise, a payment schedule set forth by law applies if the petition was by a majority of the owners and the territory is excluded from the township).<sup>39</sup> Note that in the case of an expedited type II or III annexation, the territory remains part of the township and the township continues receiving tax revenues within the territory.<sup>40</sup> Finally, when township territory is transferred to a municipal corporation via annexation, depending on the circumstances, a portion of the township's net indebtedness and unencumbered funds may be apportioned to the municipal corporation.<sup>41</sup>

## Annexation and zoning

When township territory is annexed to a municipal corporation, the township zoning regulations (if any) remain in effect until the municipal corporation adopts zoning regulations for that territory.<sup>42</sup>

Specifically regarding expedited type II annexations, an owner may be required to provide a "buffer" between the annexed and unannexed territories. A buffer is required if all of the following apply:

- The annexed territory was subject to county or township zoning regulations;
- The annexed territory becomes subject to municipal zoning;
- The municipal zoning permits uses that the municipal corporation determines are "clearly incompatible" with the uses permitted under the county or township zoning regulations that apply to the adjacent portion of unannexed territory.

Under these circumstances, the municipal corporation must require an owner within the annexed territory to provide a buffer separating the use of the annexed territory and the adjacent unannexed territory. A buffer includes: open space, landscaping, fences, walls, and other

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<sup>39</sup> As its own agreement (R.C. 709.191) or as part of an annexation agreement (R.C. 709.192). See R.C. 709.19 for the detailed payment structure required if there is no applicable agreement (the general provision about the expedited procedures, R.C. 709.021, specifies which sections of Annexation Law apply to expedited procedures; it does not include R.C. 709.19. See division (C) of R.C. 709.021). A municipal corporation is not required to conform the boundaries after an annexation so it is possible to have an annexation by petition of a majority of the owners and the territory *not* excluded from the township. See R.C. 503.07.

<sup>40</sup> R.C. 709.023(A) and 709.024(H) (though the municipal corporation and township can agree to exclude the territory from the township). Note that with a type I, the municipal corporation and township both consent to the annexation initially, so the same prohibition (against conforming the boundaries therefore excluding the territory from the township) is not necessary.

<sup>41</sup> R.C. 709.12.

<sup>42</sup> R.C. 519.18.

structured elements; streets and street rights-of-way; and bicycle and pedestrian paths and sidewalks.<sup>43</sup>

### **Annexation and school district territory**

An annexation may affect the territory of a school district. Generally, whether school district territory is transferred depends on whether all or part of a district's territory is annexed.<sup>44</sup> If all of a school district's territory is within the annexed territory, the district's territory is automatically transferred to the school district that serves the municipal corporation to which the territory was annexed.

If only part of a school district's territory is located in the annexed territory, the transfer of the school district's territory is subject to the State Board of Education's approval. State law authorizes either school district affected by a potential transfer to request the transfer's approval. But that district must make a good faith effort to negotiate the terms of the transfer with the other affected district. Districts may agree to share revenue from property included in the transferred territory, establish cooperative programs, and establish mechanisms for settling future boundary disputes.<sup>45</sup>

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<sup>43</sup> R.C. 709.023(C).

<sup>44</sup> The transfer of territory in the case of annexations affecting Columbus City School District and some of its neighboring suburban school districts are governed by annexation agreements adopted by the districts under separate law (R.C. 3311.06(E) and (F)).

<sup>45</sup> R.C. 3311.06(C) and (D).