



Annexation

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Introduction

Annexation is the legal process that transfers property from an unincorporated unit of government to incorporated one.¹ Putting it another way, it is how territory in a town is transferred to a contiguous city or village. In precise terms, it is how the residents and real property owners change from the jurisdiction of a town as their local government unit to that of a neighboring city or village. The Wisconsin Statutes provide the procedures for making the change from town to city or village by annexation. That makes the process jurisdictional, which means that it is very important to follow the exact process as spelled out in the statutes. If the statutes are not followed, then the annexation could be void.²

Any change can be distressing, and with annexation this is frequently so. In addition to territorial transfer, it adjusts the tax base and the service area of one governmental unit to the neighboring municipality.³ Disruption of service providers, plans and ordinances often accompanies annexation. It is like moving to a new city, without packing or moving vans involved. Territoriality is an ancient instinct that humans retain vestiges of today. Annexation can frequently trigger strong emotional responses.

Due to importance of compliance with the statutes and impacts of annexation, all local government and officials and citizens benefit from having at least a basic understanding of the legal requirements for annexation. This fact sheet will summarize the basics of annexation. It will emphasize the most commonly utilized annexation means, but will touch on the other processes.

Fundamentals of Annexation

The statutes provide orderly and structured procedures to a process that can impact affected local government units, landowners and residents with the anxieties that change, uncertainty and new circumstance often create. Wisconsin Law provides several means to accomplish

annexation. Some steps in the process and terms are common to most modes of annexation. Below are some of the common elements.

- *Annexation petition.* Landowners and residents drive most forms of annexations. The annexation petition is the centerpiece of the process. Not only must a petition contain the requisite number of signatures, but *Wis. Stat. § 66.0127 (1) & (5)*, requires the petition to contain many other elements. It must state the purpose of the petition, such as, “We the undersigned ... respectfully petition the common council of Badger, Wisconsin to annex the territory described below.” Often additional language is added identifying the type of annexation, who the signers are, such as *electors* and *owners*, and in which town the territory is located.

It must contain the *legal description* of the property to be annexed, a scale map and specify the population in the territory. The population figure is based on the last U.S. Census, by population estimate or actual count, but Department of Administration through the office of Municipal Boundary Review must certify the estimate or count as acceptable.⁴ The petition may be in one part or several counter parts.

- *Electors and Owners.* These are the signers of the *annexation petition*. An *elector* is a person residing in the proposed annexation territory having the legal right to vote, but they do not have to be a registered voter to sign. That means they must be a U.S. Citizen of at least 18 years of age and have resided in the election district or ward 28 days.⁵

An *owner* holds record title to real estate in fee simple, life estate or vendee (that is, purchaser) under a land contract. A co-owner is an owner to the extent of his or her interest in the property.⁶

Legal Description. The *petition*, *notice of proposed annexation* and *annexation ordinance* require a complete description of land to be annexed, without any internal references, such as a portion of a parcel reserved out in a deed or other document. The territory to be annexed must be described by metes and bounds, by a recorded and filed subdivision or certified survey map.⁷ The requirements give accuracy when referencing the territory subject to the annexation proceeding.

- *Notice of Intention to Circulate Annexation Petition* or *Notice of Proposed Annexation.* *Direct annexation by one-half approval* and *annexation by referendum* require a “Notice of Intention to Circulate Annexation Petition.”⁸ (See “Types of Annexations, below.) This is a Class I Notice under *Wis. Stat. Chapter 985*, that contains:
 - Statement of intention to circulate an *Annexation Petition*,
 - *Legal Description* of proposed annexation territory with a scale map,
 - The name of the city or village with which annexation is sought,
 - The name of the Town(s) from which the territory will be detached,
 - The name and post office address of the person causing the publication of the notice. This person must be an *elector* or *owner* in the proposed annexation area, and
 - A statement that a copy of the scale maps can be inspected in the office of the clerk of the city or village and town(s) affected by the notice. This implies the person causing the publication of the *Notice of Intention to Circulate Annexation Petition* will provide those maps to the clerks’ offices

Within 5 days of publication, the person causing publication of the *Notice* shall serve a copy of it upon the clerk of each affected municipality and town, including school districts, as well as on each *elector* and *owner* in the town that will be affected by the annexation to the city or village. Service is by either personal service or certified mail with return receipt requested. If a *Public Interest Opinion* is required (*see below*) then the *Notice* shall be mailed to the Wisconsin Department of Administration, Intergovernmental Relations Municipal Boundary Review (DOA).

- *Annexation Ordinance.* Adoption of an *annexation ordinance* puts the annexation into effect. A two-thirds vote of the members elect of the annexing governing body is required to adopt the ordinance, that is two-thirds of all members, not just of those present and voting. Before adopting the *annexation ordinance* the city council or village board shall first review any adverse opinion of the Department of Administration that the annexation is against the public interest.⁹ (See *Public Interest Opinion*, below.)
- *Agreement to Pay Property Taxes.* Unless the town and the municipality have reached a boundary agreement, every annexation must have an agreement that the annexing municipality will pay the Town an amount equal to property taxes levied on property in the annexation territory for five years as that amount is shown on the Town's tax roll for the year the annexation is adopted.¹⁰ This allows some of the adverse revenue effects of the Town to be eased and allows appropriate planning and adjustment by the town. Most agreements occur by the annexing municipality including a provision in the *annexation ordinance* that the municipality will make these required payments.
- *Public Interest Opinion.* Annexations in counties with population exceeding 50,000 are required to obtain an opinion issued by the Department of Administration, Intergovernmental Relations Municipal Boundary Review (DOA).

“Public interest” is defined as a determination of which government entity may better supply services, including zoning—the town or the proposed annexing municipality or some other contiguous municipality which timely asks to be considered in such an opinion. The opinion also considers the shape and homogeneity of the annexation territory to the contiguous annexing municipality or others. The opinion is not binding, but the governing body must review an adverse recommendation before adopting an annexation ordinance.

- *Town Board Approval.* Although not common to all annexations, when the annexing municipality is located in a county different from the proposed annexation territory, the town board(s) where the territory is located must approve the annexation. Otherwise, a town board has no statutory role in the annexation process.¹¹ However, contacting an affected town government prior to annexation may be beneficial, such as fostering a positive cooperative environment and a smoother transition between the local governments.
- *Adjustment of Assets and Liabilities.* *Wis. Stat. § 66.0235*, sets forth the requirements and procedures for apportioning the assets and liabilities of a transfer of territory from a town to a municipality, and the process for determining that apportionment. This process is in addition to the requirement of an *Agreement to Pay Property Taxes*.

Types of Annexations

Direct Annexation by Unanimous Approval - Wis. Stat. § 66.217(2)

As its name implies, a Direct Annexation by Unanimous Approval, requires that the *annexation petition* be signed by all real property *owners* and all the *electors* (if any electors reside in the territory) in the territory proposed for annexation. The territory is then annexed when the city council or village board adopts an annexation ordinance by a vote of two thirds of that body's members. The municipality may also reject the annexation. In any annexation, the filing of an annexation petition does not compel the municipality to annex the territory. It merely brings the annexation request legally before the city council or village board.

There are two unique aspects of Annexation by Unanimous Approval. First, no public notice is required prior to circulating an annexation petition. Other forms of annexation require publication and personal service of a *Notice of Intent to Circulate Annexation Petition*, which carries with it restrictions on when the petition can begin to be circulated and when a completed petition must be filed.

Second, under the unanimous approval annexation a town's ability to contest the annexation is limited. In order to challenge a unanimous annexation, the affected town must first request DOA to review the annexation within thirty days of enactment of the annexation ordinance. The DOA can only review the annexation to determine whether the annexation violates one of the following requirements:

1. Whether the territory is contiguous to the annexing municipality; or
2. If the annexation is of territory in a county different from the annexing municipality, was there a town board resolution from the affected town approving the annexation.

If DOA finds that any of these annexation requirements are not met, only then can the affected town(s) commence a legal action to challenge the annexation in court.¹²

Direct Annexation by one-half approval - Wis. Stat. § 66.0217(3)(a).

Direct annexation by one-half approval is commenced by first publishing and serving a *Notice of Intent to Circulate Annexation Petition*. An *Annexation Petition* cannot start circulation less than 10 days after publication of the *Notice*, nor more than 20 days after publication. The *annexation petition* is void unless it is filed within 6 months of publication of the *Notice*.

The annexation may proceed on filing of an *annexation petition* signed by either:

1. A majority of the *electors* residing in the territory and *owners* of one-half of the land determined either by land area or by assessed value; or
2. If there are no electors residing in the proposed annexation territory, then *owners* of one-half of the land determined either by land area or by assessed value.

The majority is determined by the number of votes cast in the territory in the last gubernatorial election. A resident can sign as both a land *owner* and *elector*. The filing of the petition brings the matter before the municipality and the governing body decides whether to enact an *annexation ordinance* or not. Recall that a 2/3 vote of all members is required. The ordinance

may be enacted not less than 20 days after publication of the *Notice*, and not later than 120 days after the *petition* is filed.

Annexation by Referendum - Wis. Stat. § 66.0217(3)(b) and (7).

After publication and service of a *Notice of Intent to Circulate Annexation Petition*, and the time restrictions are met (*see above*) an *Annexation by Referendum* is commenced by filing with the municipality a petition signed by 20% of the electors residing in the proposed annexation territory and at least one-half of the land owners by area or assessed value in said territory. The 20% proportion is based on the votes cast in the territory at the last gubernatorial election.

When the petition is filed, within 60 days the common council or village board may vote to accept or reject the petition. Passing an annexation ordinance is one way to accept the petition. If the common council or village board accepts the petition, the next steps are to serve notice for a referendum election to the town clerk(s) in the proposed annexation territory and to anyone who has made a written request for notice. If the petition is rejected then no further action may be taken. If no action is taken to either accept or specifically reject the *annexation petition*, then the city or village clerk must proceed to give the notice to the affected town clerk that an *annexation petition* was filed and not rejected within 60 days after filing, and the city or village pays the cost of any referendum in favor of annexation.¹³

There is another way a referendum on an annexation may occur. When a petition for *annexation by one-half approval* is accepted by the city or village governing body, then 20% of the *electors* in the annexation territory may file a petition within 30 days of the annexing municipality's notice to the town clerk that the annexation petition was accepted requesting a referendum on the annexation.¹⁴

If the result of the referendum in either proceeding is against annexation, then all previous annexation proceedings are nullified, including the adoption of an annexation ordinance. *Wis. Stat.* § 66.0217 (7), spells out the procedural steps for conducting the referendum, including cost allocations based on the vote results and the number of electors in the territory, if more than one town is affected.¹⁵ Town officials cannot adversely affect an annexation by failing to literally observe any requirements of the referendum section of the annexation statute.

Annexation of Municipal Owned Land, Annexation of Town Islands & Court-Ordered Referendum Annexation

The Division of Intergovernmental Relations, Municipal Boundary Review team relates that *direct annexation by unanimous approval* and by *one-half approval* are the most common annexation methods.¹⁶ There are three additional forms of annexations.

A city or village may annex land it owns within a town by adopting an annexation ordinance.¹⁷ If the land is not contiguous to the city or village, the use of the land cannot be contrary to any town or county zoning regulation, but it may still be annexed. If the land is not in the same county as the annexing municipality, then the land can only be annexed if the town board and

the county board approve the annexation and the city or village and town enter into a boundary agreement.¹⁸

A “town island” is a town area completely surrounded by a city or village.¹⁹ Since 1973 no city or village annexation may create a town island, and more recently one can be created only if it is part of a statutory cooperative boundary plan.²⁰ Town islands lawfully existed at the time the statute prohibiting them was enacted, and for various reasons may have been created contrary to the statute thereafter. The statute addresses this by permitting a municipality to annex town islands simply by passing an *annexation ordinance*. The requirement of an agreement to pay taxes to the affected town, and restrictions on annexing a town area that is not in the same county as the annexing municipality also apply to Town Island Annexations.

The last type of annexation is the Court-Ordered Referendum Annexation. Under *Wis. Stats. § 66.0219*, a city or village may seek a court order for a referendum to annex town territory. The governing body passes a resolution by 2/3 of its members declaring intent to apply to the circuit court for the order. The resolution is published once in a newspaper having general circulation in the annexation territory and the resolution must contain the same information as a *Notice of Intent to Circulate Annexation Petition* or in an *Annexation Ordinance*.

The circuit court reviews the proposed annexation to determine if it is arbitrary and capricious using the “*Rule of Reason*,” which is explained below.²¹ Upon application to the court, a town whose territory is subject to the annexation is made a party to the court proceedings. *Electors* or *owners*, however, can defeat any court proceeding by filing prior to the hearing required on the resolution a petition protesting annexation signed by a majority of *electors* or by more than one-half the *owners* by assessed value in the territory. Successful annexations using this statute are rare, or nonexistent.

Contiguity Requirement and Rule of Reason

Wis. Stat. § 66.0217(2) & (3), require that territory annexed be *contiguous* to the annexing city or village. That term is not defined in the statute, but one court interpreted it to mean there must be “some physical contact” between the annexed area and the annexing municipality.²² In *Town of Mt. Pleasant v. City of Racine*²³ case, the court said that an annexed area connected only by 1705 foot strip no wider than 306 feet at some points and as narrow as 152 feet at other points was not contiguous. Attempts to use only a small strip to create contiguity with the desired territory has come to be referred to as a “balloon on a string.”²⁴ The *Town of Mt. Pleasant* case concluded the “balloon on a string” in that case was not contiguous, saying that, “application of the rule of reason” compelled the court to reach that conclusion.

The “*Rule of Reason*” is a three part judicial doctrine that courts use to prevent arbitrary and capricious use of annexation powers. It involves a judicial determination that:

1. No arbitrary exclusions or irregularities appear in the boundary lines,
2. Some reasonable or present need exist for the property, and
3. The municipality commits no misuse of discretion in the process.²⁵

When reviewing boundaries, courts give deference to citizen preferences, but boundaries directed by a municipality or where citizens have no interest in the included territories violate the rule. Some technical assistance from the municipality is permitted.²⁶ “Gerrymandering” or “crazy quilt” boundaries violate the regular boundaries requirement.

When reviewing the reasonable need for the territory element of the Rule of Reason, courts consider such things as the necessity of annexation for reasonable and ordinary planning. Population and anticipated growth is another factor considered. The need must be a present and demonstrable need. Other factors include possible need for the areas, such as industrial or residential development, the need of the area for municipal services, avoiding pollution or other preferences and needs of petitioners.²⁷ However, the petitioners’ preferences cannot be the result of improper inducements by the municipality.²⁸ As yet, there have been no court cases on misuse of discretion, the last element of the Rule of Reason.

Court Challenges and the Statute of Limitations

Remember that annexation authority comes from the statute, so there must be strict compliance or the annexation is void.²⁹ Substantial compliance is ineffective.³⁰ Thus it is important all local governments be aware of the requirements for annexation and the Rule of Reason. Cities and villages need to be mindful to be certain annexations are orderly and lawful, and towns need to be aware because annexation affects their interests and they ordinarily are the challengers in court to the validity of annexations.

Yet there are annexations that appear to be gerrymanders, balloons on strings or the result of failed compliance with the statutes. The reason these can occur is that there was no challenge to the annexations or challengers failed to act within the time permitted by statute. There are also the limitations on town challenges to *unanimous annexations*. Annexations are challenged by filing a lawsuit in circuit court. The time allowed for starting a lawsuit to test an annexation is very short: only 90 days from the date the annexation ordinance is adopted.³¹

Affected towns, residents or property owners perhaps unaware of the short window of time to challenge the annexation often lose their opportunity to enforce the statute or the Rule of Reason. The irregularities that may exist in the unchallenged annexation thus remain because no lawsuit can be brought after the 90 days.

Conclusion and Resources

If the process of annexation is to be orderly and lawful, then local government officials, residents and landowners need to be aware of the basic concepts. It should be apparent that petitioners/landowners decide when and how annexation occurs. Municipalities can only approve or disapprove and cannot modify an annexation petition.

This suggests that cities or villages and town neighbors may want to consider intergovernmental processes for boundary change. Cities, villages and towns can seize control of boundary issues

for orderly growth and good relations by considering alternatives to annexations, such as cooperative boundary agreements and plans to assure a more reasoned and structured impact as to changes in municipal boundaries.³²

To learn more about annexation, check these resources:

- Department of Administration, Intergovernmental Relations Municipal Boundary Review: PO Box 1645, Madison, WI 53701
Phone: (608) 264-6102
Current Web Page: <http://www.doa.state.wi.us/section.asp?linkid=132&locid=9>
- Municipal Data System: An online resource of petitions, ordinances, boundary agreements and more: <http://www.doa.state.wi.us/section.asp?linkid=132&locid=9>
- League of Wisconsin Municipalities: 131 W. Wilson St., Suite 505, Madison, WI 53703
Phone: (608) 267-2380; In-Wisconsin: (800) 991-5502
Current Web Page: <http://www.lwm-info.org>
- Office of Secretary of State: P.O. Box 7848, Madison, WI 53707-7848
Current Web Page: <http://www.sos.state.wi.us/record.htm>
- See endnotes below for more.

Acknowledgments

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¹ Robert D. Zeinemann, *The Urban Lawyer* V. 39, N2 (Spring 2007).

² *Town of Madison v. City of Madison*, 269 Wis. 609 (1955); *Town of Greenfield v. City of Milwaukee*, 272 Wis. 610(1956).

³ Under Wisconsin law cities and villages are “incorporated” or “municipal corporations.” Towns and Counties are “quasi-municipal corporations” or “municipal subdivisions.” *Milwaukee v. Sewerage Comm.*, 268 Wis. 342, 349 (1954). For ease of reference, in this Fact Sheet the term “Municipality” will refer to a city or village, unless the context explicitly indicates otherwise.

⁴ *Wis. Stat.* §§ 66.0217(1)(b) & (5).

⁵ *Washington v. Altoona*, 73 Wis. 2d 250; Article III, sec. 1 of the Wisconsin Constitution & *Wis. Stat.* § 6.02.

⁶ *Wis. Stat.* § 66.217(1)(d).

⁷ *Wis. Stat.* § 66.0217(1)(c), contains the detailed requirements for the *legal description*.

⁸ *Wis. Stat.* § 66.0217 (4).

⁹ *Wis. Stat.* § 66.217(8).

¹⁰ *Wis. Stat.* § 66.217(14).

¹¹ *Wis. Stat.* § 66.217(14)(b).

¹² *Wis. Stat. § 66.0217(6)(d) & 66.0217(11)(c).*

¹³ *Wis. Stat. § 66.0217 (7)(a)2.*

¹⁴ *Wis. Stat. § 66.0217 (7)(a)3.*

¹⁵ *Wis. Stat. § 66.0217 (7)(f).*

¹⁶ <http://www.doa.state.wi.us/Default.aspx?Page=90f7c4c2-cd30-49c6-b87e-ae94fda5ec54>

¹⁷ *Wis. Stat. § 66.0223*

¹⁸ *Wis. Stat. § 66.0223(2)*

¹⁹ *Wis. Stat. § 66.0227(1)*

²⁰ *Wis. Stat. § 66.0227(2)*

²¹ *City of Beloit v. Town of Beloit*, 47 Wis. 2d 377 (1970).

²² *Town of Lyons v. City of Lake Geneva*, 56 Wis. 2d 331(1972).

²³ *Town of Mt. Pleasant v. City of Racine*, 24 Wis. 2d 41 (1964).

²⁴ *Town of Waukechon v. City of Shawano*, 53 Wis. 2d 593 (1972).

²⁵ *Town of Sugar Creek v. City of Elkhorn*, 231 Wis. 2d 473 (Ct. App 1999).

²⁶ *Town of Menasha v. City of Menasha*, 170 Wis. 2d 181 (Ct. App 1992).

²⁷ *Town of Pleasant Prairie v. City of Kenosha*, 75 Wis. 322 (1977).

²⁸ *Hoepker v. City of Madison Plan Com'n*, 209 Wis. 2d 633 (1977).

²⁹ *Town of Madison v. City of Madison*, 269 Wis. 609, 615 (1955).

³⁰ *Town of Blooming Grove v. City of Madison*, 70 Wis. 2d 770 (1975).

³¹ *Wis. Stat. § 66.0217(11).*

³² Types of boundary agreements that are authorized by Wisconsin statutes are:

Cooperative boundary agreements - *Wis. Stat. § 66.0307 Wis. Stats.*

General agreements - *Wis. Stat. § 66.0301 Wis. Stats.*

Stipulations & orders - *Wis. Stat. § 66.0225 Wis. Stats.*