

Changes and New Directions in NC Planning Laws:

Annexation

Kimberly S. Hibbard
NCLM General Counsel

November 9, 2011

Annexation Process Prior to Reform...

Four methods:

- Voluntary contiguous (100% petition)
- Voluntary satellite (100% petition)
- City-initiated by cities under 5,000 and by cities of 5,000 or more (slightly different urbanization standards/service requirements based on population)
- Legislative annexation (or deannexation) by local act of the General Assembly

Annexation Reform Bills 2011

- HB 845 - Annexation Reform Act of 2011
(SL 2011-396)
- HB 168 - Farms Exempt from City Annexation
(SL 2011-363)
- HB 171 - Municipal Self-Annexations
(SL 2011-57)
- HB 56 - Local Annexations Subject to 60% Petition
(SL 2011-177)
- SB 27 - Local Annexations Subject to 60% Petition
(SL 2011-173)

Procedural Changes to City-Initiated Process

- ✓ Eliminates separate standards based on population – former large city urbanization tests apply to all, no difference in water/sewer requirements.
- ✓ Process must begin with resolution of consideration. Mail notice and notice by publication required.
- ✓ No parcel-splitting. No shoestrings using streets.
- ✓ Doughnut holes do not have to meet urbanization standards.
- ✓ Effective date must be first or second June 30 after adoption.

Major Changes to City-Initiated Process

- ✓ A “bona fide farm” may not be annexed unless owner consents.
- ✓ Adds new “opt-in” process to determine whether water and sewer must be provided at city’s cost.
- ✓ Imposes “veto petition” process that allows owners of 60% of property in the area to invalidate the annexation.

Exemption for Farms

Land used for **bona fide farm purposes** may not be annexed without the owner's written consent.

- Eliminates previous provisions regarding delayed annexation of present use value properties.
- Definition of farm purposes is extremely broad.
- If consent is obtained, property is considered to be in the city for all purposes upon annexation.

Water and Sewer “Opt In”

- ✓ If owners of majority of properties in the area request service, city must extend **at no cost to the owner** other than user fees.
- ✓ Extension is **to the structure**, not just the property line – installment easement must be given and owner takes over maintenance/repair.
- ✓ Must complete construction **within 3.5 years** of effective date.
- ✓ If opt-in threshold is met, must notify owners who declined of a second opportunity to sign up.
- ✓ Owners who request services during next 5 years may only be charged based on statutory sliding scale. After that, according to city’s policy.

W/S Opt In

- ✓ If opt-in threshold is not met, city has no obligation to provide water and sewer in the annexation.
- ✓ City is barred from imposing capacity fee, availability fee or similar charges to owners in annexed area who are not customers of the system.
- ✓ Applies if city provides water or sewer to customers within existing city boundaries.
 - If another public system provides the service, city is only obligated to provide the no-cost extensions if that is part of its agreement with the other public system.

Veto Petition

- Annexation is denied upon petition from owners of 60% of the property in the affected area.
 - If multiple owners, majority must sign.
 - Veto petition does not apply to property owners in “doughnut holes.”
- After ordinance adopted, county tax assessor prepares list based on tax records and county board of elections mails petitions.
- Signature process closes 130 days after ordinance adopted.
- If denied, annexation terminates and city may not adopt resolution of consideration for area for at least 36 months.

Applicability of Changes

- Most major changes, including veto petition, were effective as to city-initiated annexations for which no ordinance had been adopted as of July 1, 2011.
- Two local acts required completed annexations to go through the veto petition process.

Asheville, Fayetteville, Goldsboro, Kinston, Lexington, Marvin, Rocky Mount, Southport, Wilmington

Implications

Extending water/sewer “to the house”



Water and sewer within 3.5 years



Can't annex farm land



60% veto petition



Questions to ask **before** beginning a city-initiated annexation process:

- How will city “sell” this annexation?
 - What does the city offer? How will property owners benefit?
 - Services?
 - Savings?
- Does city have appropriate policies in place?
 - Extensions?
 - User fees?

Changes to Voluntary Contiguous Annexation

Two new methods for “distressed” areas to be annexed with less than 100% petition.

Distressed area = 51% of households have incomes 200% or less than the current federal poverty threshold.

1. **Allows** city to annex with petition by adult resident of 2/3 of households in distressed area. Decision remains discretionary.

- If annexed, must provide water and sewer by same process as in city-initiated (opt-in, extension to home, at city’s cost, 3.5 years).

2. Requires city to annex with petition by 75% of property owners in distressed area.

- Area must have 1/8 contiguity.
- Area may not exceed 10% of existing population.
- Must provide water and sewer by same process as in city-initiated (opt-in, extension to home, at city's cost, 3.5 years).
- LGC can relieve obligation if cost of providing services exceeds capacity as defined in the statute.

Changes to Voluntary Contiguous and Satellite Annexation

- For both satellite and voluntary contiguous, city is prohibited from adopting a resolution or petitioning itself to annex property it has no legal interest in.
 - City has no legal interest in state-maintained street, unless city owns the fee and not an easement.

Changes to Legislative Annexation

Legislative annexation (or deannexation) is always possible, based on broad powers in state constitution.

NC Const., Article VIII, Section 1:

“The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions...”

Resources

- ✓ NCLM memorandum on annexation changes:
<http://www.nclm.org/legislative-advocacy/Pages/resources.aspx>
- ✓ UNC School of Government blog posts on annexation and related issues:
<http://sogweb.sog.unc.edu/blogs/localgovt/>
- ✓ Future collaboration between NCLM and SOG on additional materials and sample forms.