

Chapter Seventeen

Boundary Adjustments: Annexation and Detachment

§17-1. Boundary Adjustments

As discussed in Chapter 2, Congress commissioned a survey to establish congressional townships boundaries in Minnesota. In most cases these boundaries became the jurisdictional boundaries of the organized town. The Minnesota Legislature confirmed that the boundaries of towns as they existed on March 1, 1906, remain their boundaries unless the county board changes them as provided in law. Minn. Stat. § 365.01. Additionally, the Legislature provided a town's boundaries can be changed through a process called annexation. This section will discuss the methods for changing town boundaries.

A township may not be divided to contain less than 36 square miles unless certain criteria are met. However, County boards may act on petitions from voters to change the boundaries of one or more towns. The counties' powers are to divide, consolidate, or shift towns or unorganized territory with another town. Minn. Stat. § 379.02. Counties have no role in boundary adjustments between towns and cities. These petitions are rare enough that most counties need to research the process before responding to a Chapter 379 boundary adjustment petition.

*This chapter provides a basic overview of annexation law. The legal processes and details of each annexation procedure are not included here. **Towns facing annexation issues should contact MAT or their town attorney when facing annexation matters.** This is usually not a matter town boards can manage without professional legal help.*

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§17-2 Annexation

The more common procedure used to change town boundaries is the annexation process, set out in Minnesota Statutes Chapter 414. Annexation involves transferring land and the associated tax base from a town to a city. It is easy to see why annexation can lead to controversy for townships, because the law is structured to allow cities to annex and grow and towns to lose property and shrink.

Annexation can be accomplished by agreement between the city and town, or by statutory powers that sometimes lead to a bitterly fought case. Annexation disputes can cost each party tens of thousands, if not hundreds of thousands, of taxpayer dollars. The Minnesota Association of Townships and many towns, particularly those that have experienced contested annexations, have very strong opinions about the annexation process and the need to bring balance to the process by giving town boards and town residents a greater voice in the process.

There are three general categories of annexation in Minn. Stat. Chap. 414, which are:

1. Annexation by Ordinance
2. Orderly Annexation Agreement
3. Contested Case Annexations

The appropriate procedure depends on the ownership, size, and other characteristics of the land under consideration.

§17-3. Annexation by Ordinance

Most annexations are accomplished through the adoption of an ordinance by the annexing city under Minn. Stat. § 414.033. There are actually seven different annexation by ordinance methods. Some methods allow the town to challenge the annexation, some require hearings, some require the annexed parcel to be urban or suburban in character, and some require the parcel being annexed to abut, or touch, the city limits. There is no clear defini-

tion of “urban or suburban” in the statutes, so this may be left to interpretation by each party. In all instances the city must adopt an ordinance to annex the land.

The seven methods are:

1. **City-Owned Land:** Minn. Stat. § 414.033, subd 2(1). The city may annex property it owns in the township, if the property is deemed to be urban or suburban or is about to become so. The city’s land must abut the city’s boundary to use this power. The city does not need to conduct a hearing to annex land under this provision. The town has no power to object.
2. **Surrounded:** Minn. Stat. § 414.033, subd. 2 (2). A city may annex if: (1) the property is deemed urban or suburban in nature or is about to become so; and (2) the property is surrounded by land within the city limits. The town has no power to object.
3. **120-Acre Method:** Minn. Stat. § 414.033, subd. 2(3). A city may annex up to 120 acres by ordinance if:
 - a. The land abuts the city’s boundary.
 - b. Public wastewater facilities do not serve the land and are not otherwise available.
 - c. All the owners of the properties to be annexed must petition the city and request the annexation.
 - d. The land to be annexed must not be contiguous to any land owned by the same owners that was annexed under this statutory provision in the preceding 12 months, and which would cumulatively exceed 120 acres. This prevents a city from exceeding the acreage limit by adopting multiple ordinances for land owned by one owner. The town has no power to object.
4. **Annexation of Small Lots:** Minn. Stat. § 414.033, subd. 2(4). The following requirements must be met:

- a. The land has been approved after August 1, 1995, by a preliminary plat or final plat for subdivision.
- b. The land must consist of residential lots that average 21,780 square feet or less in area.
- c. The land must be within two miles of the city's limits.

This method does not require abutment. The town has no power to object.

Hearings: Methods 2-4 require the city to hold a hearing and give at least 30 days' written notice by certified mail to the following individuals or entities:

- town or towns affected;
- all owners of the land to be annexed; and
- all owners of the land contiguous to the area to be annexed.

There are two methods of annexation by ordinance that gives the town board the authority to object:

5. **Platted or Unplatted Land containing 200 acres or less:** Minn. Stat. § 414.033, subd. 5. A city may annex up to 200 acres of unplatted land, or an unlimited amount of platted land, if a majority of owners petition to have the land annexed to the city. The land must abut the city. The town may object to the annexation.

Within 10 days of filing the petition with the city, the petition must be filed with the chief administrative law judge, the town board, the county board, and the council of any other city that borders the land to be annexed. Within 90 days of being served the petition, the town board or council of an abutting city may submit written objections to the chief administrative law judge and the annexing city. If there is an objection, the case becomes a contested annexation case under Minn. Stat. § 414.031, subs. 3 and 4. If the petition was not signed by all the owners of the land being annexed, the city needs to hold a hearing. The city must give at least 30 days' mailed notice of the hearing to all of the property

owners. If there are no objections, the city can annex the land by ordinance if all of the owners signed the petition. The city must determine if the land to be annexed is now, or is about to become, urban or suburban in character.

6. **40 Acres, 60% Surrounded:** Minn. Stat. § 414.033, subd. 3. If a property is at least 60% surrounded by city limits and is no more than 40 acres in size, then the city may annex the property based only on these two physical characteristics. The city must serve notice of intent to annex under this provision upon the town board and the chief administrative law judge, unless the area is appropriate for annexation by ordinance under Minn. Stat. § 414.033, subd. 2 (3). Within 90 days of being served the petition, the town board may submit written objections to the chief administrative law judge. There is no statutory requirement to serve the objection on the city, but it is a good practice. A timely objection will trigger the chief administrative law judge to call and hold a hearing as set forth in Minnesota Stat. § 414.031, subs. 3 and 4.
7. **MPCA Order for Water Quality:** Minn. Stat. § 414.0335. Sometimes, the Minnesota Pollution Control Agency (MPCA) decides cooperation between a city and township is required to address a water pollution issue, leading the MPCA to order the city and town to connect certain parcels to city wastewater services. The services can be provided by contract, but as an alternative, the city can demand the affected parcels be annexed into the city rather than provide services by contract.

The city must act within the 90-day period provided in Minn. Stat. § 115.49 to develop an agreement for the extension of services under the statute to annex the land instead of entering into the agreement. The land that may be annexed under this authority is limited to the land identified in the MPCA's order. The city must adopt an ordinance to annex the land and submit it to the chief

administrative law judge. The chief administrative law judge must approve the annexation within 30 days of receipt. Once the land is annexed, the city must amend its comprehensive plan and official controls.

A. Reimbursement of Lost Tax Revenue

An annexation order must provide reimbursement of property taxes to the town. Minn. Stat. § 414.036. The amount of tax reimbursement is set by the court's annexation order unless the town and city agree to the proper amount of tax reimbursement. The reimbursement must include all special assessments and the portion of debt attributable to the annexed property. If the ordinance is passed after August 1, the town may continue to levy on the annexed area for that levy year.

In issuing an order to annex property by ordinance, the chief judge does not consider the annexation factors contained in Minn. Stat. §§ 414.01 or 414.031. See *Gilbert v. Minnesota State Office of Strategic and Long-Range Planning*, 2002 WL 109313 (Minn. Ct. App. 2002). The review by the chief administrative law judge is to confirm the annexation is based on one of the authorities in Minn. Stat. § 414.033 and that the proper procedures are followed.

§ 17-4. Orderly Annexation Agreement

Orderly Annexation is annexation by contract between the town and city. Negotiations allow the town and city to agree on an annexation process, hence an orderly annexation. Because these annexations are mutually agreed to between the city and town, they are generally preferred over the other methods of annexation. Minn. Stat. § 414.0325. Cities benefit from the process because they save money. Towns benefit by having a set of expectations for annexation and removing surprise annexations by ordinance.

The property subject to an orderly annexation agreement can be small or can encompass the entire town. Since the contracts can encompass a large part of a town, the agreements are usually part of a long-range plan to address where, when, and under what conditions the city may annex land from the town. Agreements maybe more detailed than the statutes about timing, providing additional infrastructure, tax reimbursements, joint zoning, and other topics important to the parties. Town boards should work with an attorney familiar with annexation to negotiate an orderly annexation agreement.

The following elements may be included in an orderly agreement:

1. **Eligibility.** The agreement must set the conditions under which the land will become eligible for annexation. Some agreements designate different areas and indicate a date when the city may annex land from each area. Other agreements contain detailed conditions describing when property is eligible for annexation.
2. **Process.** The agreement should set the process the parties will use to annex land. The procedure may be unique to each agreement.
3. **Contact.** Orderly annexation agreements are binding contracts and they are not preempted by the other annexation laws, unless the parties agree otherwise. See Minn. Stat. § 414.0325, subd. 6. An agreement can indicate it provides the exclusive procedures for annexing property from the designated area. The agreement should say the agreement is a binding contract, and it provides the exclusive method for annexing land within the designated area. This prevents any confusion regarding the use of other forms of annexation.
4. **Zoning.** The parties can set land use policy within the areas that may be annexed. Options include:

- a. **Joint Powers Board:** The parties can establish a Joint Powers Board to exercise some or all land use powers within some or all of the area included in the orderly annexation agreement. Minn. Stat. § 414.0325, subd. 5(a).
 - b. **Delegation:** The agreement may delegate planning and zoning authority over the designated area to the city or town.
 - c. **Other Arrangement:** The statute allows the parties to “establish some other process within the orderly annexation agreement to accomplish planning and land use control of the designated area.” Minn. Stat. § 414.0325, subd. 5 (a).
 - d. **Default:** If the agreement does not address planning and zoning using one of the options listed above, the statute provides for a default process. Minn. Stat. § 414.0325, subd. 5(d).
 - e. **City Extends Regulations.** If the county and town exclude an area designated by the orderly annexation agreement from their zoning controls, the city may extend its zoning and subdivision regulations to the designated area. Minn. Stat. 414.0325, subd. 5(d)(l).
 - f. **Three-Member Committee.** If the county and town refuse to exclude the designated area from their zoning and subdivision regulations, a three-member committee must be established to control zoning and subdivision regulations within the designated area. Minn. Stat. § 414.0325, subd. 5(d) (2)
5. **Public Improvements.** The parties should address public improvements needed or expected within the area subject to the agreement. The parties should establish a process for addressing requests for improvements before the land is annexed.
 6. **Differential Taxation.** The agreement may provide a method for increasing the tax

rate from the town's rate to the city's rate. Such a provision is not subject to the limitations imposed in Minnesota Statutes § 414.035, when differential taxation is made part of a contested case order under Minnesota Statutes § 414.031.

7. **Provision of Services.** The feasibility and timing of the delivery of city services should be part of negotiating an agreement. An agreement may address this issue in a variety of ways including a timeline for the delivery of services.
8. **Roads and Streets.** Parties should plan for the transfer of responsibilities for road maintenance and town-city line agreements after property is annexed.
9. **Effective Date.** Minn. Stat. § 414.0325, subd. 4 requires an effective date of the agreement.
10. **Termination/Expiration.** Some agreements contain a provision providing for the termination or expiration of the agreement.

A. Procedure to Develop and File an Agreement.

Before the town and city may enter the orderly annexation agreement, they must publish notice of their intent to include the designated land as an orderly annexation area at least 10 days *before* they act to adopt the agreement. Minn. Stat. § 414.0325, subd. 1(b). The notice must be published in a newspaper of general circulation in both the town and city and must clearly identify the boundaries of the designated area. The notice should be included in the agreement.

The town board and city council each must approve the joint resolution/agreement. The agreement must be filed with the Chief Administrative Law Judge. If the parties do not limit the role of the chief judge in the agreement, the chief judge must hear and decide whether to approve the requested annexation using the same factors used to determine a contested case annexation. Minn. Stat. §414.0325, subd. 2 and 3.

If the annexation is effective before August 1, the city may levy taxes on the annexed property in the same year as annexation. Minn. Stat. § 414.031, subd. 8. If the annexation is effective after August 1, the town remains the levying authority in the year of annexation.

§ 17-5. Contested Case Annexations

Contested case annexations are annexation by court proceeding rather than ordinance or agreement. They can be started by a city, town, or by a petition of 20 percent, or 100 property owners, whichever is less. Minn. Stat. § 414.031. There are no acreage limits on such annexations and the state must conduct a hearing on all proposed annexations under this method. Hearings for these types of disputes are heard by an Administrative Law Judge.

Contested case annexations are rare, but they can have a dramatic impact on the town and its residents. Proposals to annex thousands of acres or an entire township are pursued by contested case annexation.

When hearing a contested case annexation, the courts consider 13 factors set out in Minn. Stat. § 414.031(3). The judge's decision can be very different than either party's expectation.

If a city appears to be considering annexation, the town board should contact its attorney and the city council on the issue rather than to wait for the city to come to the town.

Early involvement in the process may give a better understanding of the city's objectives and be more likely to reach an agreeable outcome.

§ 17-6. Detachment

Another method of boundary adjustment is the detachment of property from a city into a town. Detachment may be thought of as a reverse annexation, but without similar powers granted to towns. The process is set out in Minn. Stat. § 414.06. Detachment of property from a city may be started by the city or by the owners of the property requesting detachment. The property must be adjacent to the city's boundary (i.e., an island of property within a city may not be detached to a town). If the proposal is to detach into a town, the town board is asked to pass a resolution to support, oppose, or to stay neutral as to the request. Minn. Stat. § 414.06, subd. 1a. Failure to submit a resolution creates a presumption of neutrality. If the town takes an affirmative position that is contrary to the city's position, the town becomes a party to the action and is required to share in the costs of the proceeding. A hearing is required before an administrative law judge. If there is agreement between the city and town, a hearing is not needed.

For additional information on annexation, refer to the Municipal Boundary Adjustment unit's website within the Office of Administrative Hearings

(<http://www.mba.state.mn.us>).