

# Chapter 17

## Annexation

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### A. OVERVIEW

Annexation is the process of changing municipal boundaries to bring adjacent unincorporated areas into an existing city, typically to provide urban services not presently available to those residents or businesses outside of the municipality. Proper annexation of areas adjacent to cities is often crucial to establishing and maintaining urban order and effective government. Rapid development and population growth frequently occurs just outside city boundaries where property is cheaper and zoning laws may be less restrictive or non-existent. Small and large cities alike are surrounded by “fringe” areas, and with the development of fringe areas 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 multiple governmental jurisdictions, which 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 amenities, streets, utilities, and other facilities and programs, often without contributing a proportionate share to the cost of those services and benefits.

A logical solution may be annexation. Properly used, annexation preserves a growing area as a unified whole. It enables areas to unite with the core city to which fringe communities are 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 so in a consistent manner. Annexation, therefore, may be appropriate for a growing area, when the need for orderly planning and governmental services in fringe areas increase, and when services can best be supplied by the surrounding central city. In general, annexation is a solution in instances when a central city is able to address emerging fringe area concerns.

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

## B. GOALS AND ACTIONS

The goals and actions pertaining to Annexation have been developed to promote the orderly growth of the City of Fairmont while recognizing the need of providing essential services to growing fringe areas surrounding the City.

### Goal:

*The City of Fairmont should seek to annex unincorporated territory where growth and development can occur and where there is a need for municipal services to be provided.*

### Actions:

- Annex unincorporated properties contiguous to the existing City of Fairmont corporate boundaries.
- Annex unincorporated properties along the I-79 corridor.
- Annex unincorporated properties where there is a need for municipal services to be provided.
- Annex unincorporated properties where the benefits are mutual to the property owners and the City of Fairmont.
- Promote the benefits and advantages afforded to property owners within the City of Fairmont.

## C. EXISTING CONDITIONS

There are eleven municipal corporations within Marion County; the Town of Barrackville, the City of Fairmont, the Town of Fairview, the Town of Farmington, the Town of Grant Town, the City of Mannington, the Town of Monongah, the City of Pleasant Valley, the Town of Rivesville, the Town of Whitehall and the Town of Worthington. The City of Fairmont is the largest of the municipalities in the County with a population of 19,097 according to the 2000 Census and encompasses approximately 8.8 square miles. The City of Fairmont is a Class II city, governed by a Mayor and Council and operates under the City Manager form of government. The City provides professional Police, Fire, Public Works, Engineering, Water and Sewer, Building Inspection / Code Enforcement, and Planning Departments.

Several annexations have been undertaken throughout the history of the City of Fairmont, most of the annexations have brought contiguous unincorporated properties into the corporate limits of the City of Fairmont. The notable exceptions included the annexation of the property now occupied by the I-79 Technology Park, properties located adjacent to I-79 off of Stoney Road, the Sallyfield Estates subdivision and Morris Park, which is owned by the City of Fairmont.

The incorporation of the City of Pleasant Valley and the Town of Whitehall in 1995 along with the incorporation of the Town of Barrackville in 1968, limits the possibilities for annexation of

growth and development areas by the City of Fairmont to the East, South and the West respectively.

## D. BASIC ISSUES

Similar to the negative connotations associated with land use planning, annexation is often viewed as an infringement to one's rights – the right to choose where they live. Annexation procedures in West Virginia are governed by §8-6-1 of the WV State Code. A summary of these procedures and other facets of the annexation process have been compiled by the WV Municipal League and are provided here as general reference:

### **WV Municipal League: Municipal Annexation Procedures in West Virginia Reference WV Code Chapter 8, Article 6, Sections 1-6**

Methods of annexation in West Virginia:

1. By election.
2. Without an election.
3. By minor boundary adjustment.

### **ANNEXATION BY ELECTION CHAPTER 8, ARTICLE 6, SECTION 2**

#### **How is a boundary change initiated?**

- A verified petition outlining by a metes and bounds description of a proposed boundary change and signed by at least five percent of the resident freeholders of the municipality must be filed with City Council. The petition must be accompanied by an accurate survey showing the territory to be included within the boundaries and request a vote.

#### **What kind of territory may be added?**

The additional territory may be of any type, urban, rural or in-between. Additionally, the population density requirement has been removed. The Circuit Court retains jurisdiction to review the conduct of the election.

#### **What is required of council?**

Upon receipt of a proper petition and survey, council is required to submit the question of boundary change to the voters. The petitioners must furnish bond as determined by council in order to guarantee payment of the costs of the election. The bond shall be forfeited if a majority of the vote's cast are against the proposed annexation. Council then orders an election on the proposal to be held not less than twenty nor more than thirty days from the date of the order. Publication, at municipal cost, as a Class II-0 legal advertisement in the municipality and the additional territory with the first

publication at least fourteen days before the vote is to be taken is required. Publication shall contain an accurate description by metes and bounds of the additional territory proposed to be annexed, a summary of the municipality's plan for providing services to the additional territory and, if practicable, contain a popular description of the additional territory.

## Who may vote on the proposal?

A. Any individual who is a qualified voter and freeholder of the municipality or the additional territory is entitled to vote but only once. Any freeholder who is a firm or corporation may vote by its manager, president or executive officer duly designated in writing by such firm or corporation.

B. For the purposes of this section, the term "qualified voter of the additional territory" includes a firm or corporation in the additional territory regardless of whether the firm or corporation is a freeholder. In instances where the freeholder leases or rents real property to a firm or corporation the freeholder and the renting or leasing firm shall determine between themselves which entity is entitled to vote in the annexation election.

## What is required for approval?

A majority of votes cast within the municipality and a majority of votes cast within the territory to be added must be in favor of the proposal.

## How is the change in boundary certified?

Council certifies the results of the election to the County Commission and if the majority of the votes are in favor of such annexation, the Commission enters an order describing the new corporate boundaries. In addition thereto, the description and action of Council shall be sent to the County Assessor upon the effective date of such annexation. *See Code 8-6-6.*

## When a proposal is rejected, when may another election be held?

Another election relating to the same territory or any part thereof shall not be held for a period of one year.

### ANNEXATION WITHOUT AN ELECTION CHAPTER 8, ARTICLE 6, SECTION 4

The City Council may by ordinance, provide for the annexation of additional territory without ordering a vote on the question (1) if a petition is filed with City Council by a majority of the qualified voters of the additional territory to be annexed **and** (2) a petition to be annexed is filed by the majority of all freeholders of the additional territory whether they reside or have a place of business therein or not.

The definitions for who may sign the petitions are the same as for those authorized to vote under *Code 8-6-2. (See "Annexation with Election-Who may vote on the proposal")*. Someone who is both a freeholder and a qualified voter can sign only one petition. If all freeholders are qualified voters, only a voter's petition is required.

No requirement for population density.

The City Council, upon its determination that the petitions are sufficient enters such fact on its journal and forwards a copy to the County Commission, which Commission is required to enter an order to such effect confirming the additional territory, as part of the municipality. In addition, as in the case with annexation by election, thereafter notice of the annexation is given to the County Assessor in compliance with Code 8-6-6.

## MINOR BOUNDARY ADJUSTMENT CHAPTER 8, ARTICLE 6, SECTION 5

### How is minor boundary adjustment initiated?

An application containing the following information is to be filed by the municipality with the County Commission:

1. The number of businesses located in and persons residing in the additional territory.
2. An accurate map showing metes and bounds of the additional territory.
3. A statement setting forth the municipality's plan for providing the additional territory with all applicable public services such as police and fire protection, solid waste collection, public water and sewer services and street maintenance services, including to what extent the public services are or will be provided by a private solid waste collection service or a public service district.
4. A statement of the impact of the annexation on any private solid waste collection service or public service district currently doing business in the territory proposed for annexation in the event the municipality should choose not to utilize the current service providers.
5. A statement of the impact of the annexation on fire protection and fire insurance rates in the territory proposed for annexation.
6. A statement of how the proposed annexation will affect the municipality's finances and services.
7. A statement that the annexation meets all of the foregoing requirements.

### What is the responsibility of the county commission?

The County Commission may or may not require an application form. If the Commission is satisfied that the application meets the foregoing threshold requirements including whether the annexation could efficiently and cost effectively be accomplished under Code 8-6-2 and 8-6-4, shall order publication of a notice as a Class II-0 publication that the annexation has been proposed setting a time for hearing on the question and post the same in five public places within the area proposed to be annexed. In making its decision that such application is sufficient, the County Commission must consider the following:

1. Whether territory is contiguous to corporate limits. For the purpose of this section, contiguous means that at the time the application for annexation is submitted, the territory proposed for annexation either abuts directly on the municipal boundary or is separated from the municipal boundary by an unincorporated street or highway, or street or highway right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, or lands owned by the state or federal government.
2. Whether the proposed annexation is limited solely to a division of highways right-of-way or whether the division of highways holds title to the property in fee.

3. Whether affected parties (freeholders, firms, corporations and qualified voters in the proposed territory and in the municipality) support the proposed annexation.
4. Whether the proposed annexation consists of a street or highway as defined in Code 17C-1-35 and one or more freeholders.
5. Whether the proposed annexation consists of a street or highway as defined in Code 17C-1-35 which does not include a freeholder but which is necessary for the provision of emergency services in the territory being annexed.
6. Whether another municipality has made application to annex the same or substantially the same territory.
7. Whether the proposed annexation is in the best interest of the county as a whole.

This set of criteria vests broad discretion in County Commissions.

### Who pays the cost of the proceedings?

The municipality pays the full cost of the proceedings.

### What is the procedure upon denial?

Municipality may attempt to make modifications to the proposed annexation to meet Commission objections and the Commission must order a new public hearing if significant modifications are proposed. The municipality or any affected party may appeal the Commission's final order to the Circuit Court. The statute does not specify a standard of review. The County Commission may participate in any appeal from its order in the same manner and to the same extent as a party to the appeal. Interestingly, the new law, in contrast to the old law does not provide any direction as to the completion of the attempt to annex if the County Commission finds in favor of such application to annex. One would assume that in line with the old law the Commission would, if so inclined, enter an order reflecting its findings concerning all of the foregoing requirements and order that such application is approved with the concurrent requirement to file such order with the County Assessor in compliance with Code 8-6-6.

While the WV State Code does make provisions for the freeholders of property to have their views heard during the annexation process, it is important to note that the municipality also needs to be cognizant of the costs associated with annexing additional property into the corporate limits. The municipality must consider the financial and physical implications associated with street maintenance (lighting, signage, sweeping, paving, and snow removal), police and fire protection, and code enforcement, building inspection land use planning.

## E. RECOMMENDATIONS

### 1. Short Range (2005-2008)

- a. Identify unincorporated areas contiguous to the City of Fairmont and develop Annexation Plans for those territories.
- b. Identify unincorporated areas along the I-79 Corridor and develop Annexation Plans for those territories.
- c. Develop an Annexation Information Program
- d. Market the advantages and benefits afforded to property owners in the City of Fairmont through promotional materials and public meetings.

## 2. Medium Range (2008-2011)

- a. Initiate annexation procedures for three contiguous unincorporated areas where the benefits are mutual for the property owners and the City of Fairmont.
- b. Initiate annexation procedures for three unincorporated areas along the I-79 Corridor where the benefits are mutual for the property owners and the City of Fairmont.
- c. Identify unincorporated areas where there is a need for municipal services to be provided and develop Cost/Benefit studies for those territories.

## 3. Long Range (2011-2015)

- a. Initiate annexation procedures for remaining unincorporated areas that are contiguous to the City of Fairmont.
- b. Initiate annexation procedures for the remaining unincorporated areas along the I-79 Corridor.
- c. Develop Annexation Plans for the unincorporated areas where municipal services are needed and identified as having a high benefit ratio to the City of Fairmont.