



# A GUIDE FOR ANNEXATION

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# FOREWORD

This manual has been prepared for the use of Arizona's local government officials involved in the annexation process.

The publication is designed to provide a step-by-step guide to the annexation of land and to set forth the statutory requirements and applicable court decisions on the subject. This manual replaces three previous editions and reflects recent court cases and additional requirements for conducting annexations as adopted by the Legislature. As always, we recommend consultation with your city or town attorney before proceeding with an annexation.

The information contained in this booklet will, we hope, make it a useful reference document. Any comments, suggestions, or criticisms regarding the content of this publication will be appreciated.

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## INTRODUCTION

Annexation is the process by which a city or town may assume jurisdiction over unincorporated territory adjacent to its boundaries. As such, annexation represents a serious step in the overall growth of a city or town. In Arizona, annexation requires the consent of the owners of at least one-half of the value of the real and personal property **and** more than one-half by number of the property owners in the territory to be annexed as shown by the last assessment. In addition, the consent of the city or town council is required.

Cities and towns have taken different approaches to annexation. Some wait until residents of an area request annexation before becoming involved, while other cities and towns have developed an annexation policy to provide for balanced growth in conformance with city or town standards. No matter which approach is taken, there are certain procedural requirements set forth in state law. The purpose of this manual is to provide a step-by-step review of those requirements which must be followed by a city or town in annexation proceedings.

There are many pro and con arguments which have been advanced regarding annexations. The basic arguments for annexation are that residents receive the benefits of a higher level of municipal services and that development is subject to municipal building codes, subdivision requirements, and zoning ordinances. Additionally, residents of the annexed area are permitted a voice in community affairs that affect them.

Local officials should also be aware of some of the common arguments against annexation. Opponents of annexation contend that those residents outside the city or town limits chose to build and live there to avoid taxes and services they do not want and, perhaps, to enjoy certain rural amenities. In addition, some opponents of annexation feel that the very act of bringing fringe areas into an established city or town will hasten the growth of such areas.

In any annexation decision, the practical consequences and costs of providing services to the area to be annexed must be considered. A plan, policy, or procedure is required by law to be in place prior to adoption of the annexation ordinance to provide the annexed territory with appropriate levels of infrastructure and services to serve anticipated new development in the annexed area within ten years of when the annexation becomes final. In addition to these specific plans, policies, or procedures, some cities and towns adopt a general annexation policy that serves as a guide to staff and to residents in unincorporated areas contiguous to the city or town. This type of policy could be adopted following a study of the various factors involved in annexation. While the annexation of territory may mean additional state shared revenue will flow to the municipality, the additional revenue to be gained must be considered in light of the necessary additional expenditures to provide services to the annexed area.

**Since annexation is subject to challenge on procedural grounds, your city or town attorney should be involved throughout every phase of annexation from the planning stage to the completion of the annexation. This manual is in no way a substitute for such essential consultation with your local city or town attorney.**

## SECTION I - CAN YOU LEGALLY ANNEX THE PROPERTY?

Annexation proceedings are usually initiated either by the city or town government or by a group of interested citizens residing immediately outside the corporate limits. As discussed in the introduction, there are several motivating forces behind annexation drives, but the initial consideration by the municipality should be careful review of the desirability of annexing the proposed territory. The time to consider any problem which might result from annexing an area is at the very beginning of the annexation procedure.

Once the desirability of annexing a particular area has been considered, the next issue is whether the proposed area meets the legal requirements which govern the characteristics of the territory which may be annexed.

These legal requirements, as interpreted by the courts, are described below.

### CONTIGUITY, SIZE, AND SHAPE

Arizona law requires that the territory to be annexed shall adjoin the boundary of the annexing city or town for at least 300 feet. This provision does not apply if the territory considered for annexation was already completely surrounded by the same city or town or a combination of cities and towns.<sup>1</sup>

The size and shape of the parcel to be annexed must be a minimum of 200 feet in width at all points, exclusive of rights-of-way and roadways. The length of the parcel is measured from where the territory adjoins the annexing city or town to the furthest point of the parcel and cannot be more than twice the maximum width of the annexed territory. These length and width requirements do not apply if the territory considered for annexation is surrounded by the annexing city on at least three sides.<sup>2</sup>

Also, if a series of annexations is under consideration, each annexation must independently meet the length and width requirements described above. In other words, a series of annexations in combination with each other cannot be used to satisfy the length and width requirements. Each annexed parcel must individually have a length that is no more than twice the width pursuant to Attorney General Opinion, 87-160.

<sup>1</sup> A.R.S. §9-471 (H), (K); See Appendix B.

<sup>2</sup> *Cornman Tweedy 560 Llc v. City of Casa Grande*, 213 Ariz. 1, 137 P.3d 309 (Ct. App. 2006); *Meaning of "Width" in A.R.S. §9-471(H)(3)*, Memorandum from J. LaMar Shelley, Gen. Couns., League of Ariz. Cities & Towns, to Catherine F. Connolly, Asst. Dir., League of Ariz. Cities & Towns (May 27, 1987).

The courts have ruled that these requirements—contiguity, size, and shape—must be strictly complied with.<sup>3</sup>

### UNINCORPORATED AREA

A city or town may annex only unincorporated territory. It may not annex another incorporated city or town, nor may it annex any territory lying within the boundaries of another incorporated city or town.<sup>4</sup> The fact that a city may be furnishing services outside its corporate limits to an unincorporated area does not preclude another city from annexing such territory.

### CREATING COUNTY ISLANDS

A city or town may not annex territory if, because of that annexation, unincorporated territory is completely surrounded by the annexing city or town or a combination of the annexing city or town and other cities and towns<sup>5</sup> unless the annexation was approved by a selection board established in 37-202 prior to August 25, 2020.<sup>6</sup>

In other words, an annexation cannot result in the creation of a new county island. If a county island already exists, a *portion* of territory can be annexed if it already completely surrounded by the same city or town (or a combination of cities and towns).<sup>7</sup>

### NUMBER OF TRACTS TO BE ANNEXED

It appears that a municipality in Arizona may annex two or more separate areas contiguous to the municipality with one annexation ordinance if the owners of at least one-half of the assessed value of the real and personal property and more than one-half of all the property owners in each area have petitioned for annexation. In most cases, areas annexed individually are less likely to be contested, and the use of separate ordinances appears advisable. In a case where two tracts which had been annexed under one ordinance went to an Arizona court, the legality of annexing two tracts with one ordinance was not questioned.<sup>8</sup> However, the court did confirm that the tracts must both be contiguous to the annexing municipality. In other words, the fact that one tract was contiguous to the annexing municipality did not constitute contiguity for both tracts.<sup>9</sup>

If one ordinance is used to annex multiple territories, it is advisable to use a separate petition for each parcel.<sup>10</sup>

### CROSSING COUNTY BOUNDARIES

In some instances, the annexation for a city or town crosses the county boundary. The statutes provide that “any incorporated city or town may annex territory in an adjacent county pursuant to the provisions of A.R.S. §9-471”.<sup>11</sup>

### COUNTY PARKS OR COUNTY RIGHTS-OF-WAY

There is a special procedure for the annexation of county parks. A city or town may annex a county-owned park or a park operated on public lands by a county as part of a management agreement but only if agreed to by the board of supervisors. If the board of supervisors does not agree to the annexation, the county-owned park or park operated on public lands by a county as part of a management agreement must be excluded from the annexation area.<sup>12</sup>

A county right-of-way adjacent to a city or town may be annexed to the city or town by mutual consent of the applicable county board of supervisors and city or town council. For this to occur, the right-of way must be adjacent to the city or town for the entire length of the annexation and each of the governing bodies are required to approve the proposed annexation as a published agenda item at a regular public meeting of each governing body. No petitions or public hearings are required for such an annexation. Following adoption of the ordinance for such an annexation by the city, the county then passes a similar ordinance. After both governments have adopted the ordinance, the annexation must be recorded with the county recorder and then copies sent to the distribution list (See Appendix F). Pre-clearance of annexations and deannexations are no longer required unless your city or town is covered by a separate court order entered under Section 3(c) of the Voting Rights Act.<sup>13</sup> You should check with your county to determine if they have any special procedures for these right-of-way annexations also called short annexations. At least one county, for example, wants to record the annexation rather than the city performing this function.

3 *Town of Miami v. City of Globe*, 195 Ariz. 176, 985 P.2d 1035 (App. 1998).

4 *Colquhoun v. City of Tucson*, 55 Ariz. 451, 103 P.2d 269 (1940); *Whether One City Can Annex Territory Inside Another City*, Memorandum from J. LaMar Shelley, Gen. Couns., League of Ariz. Cities & Towns, to Catherine F. Connolly, Asst. Dir., League of Ariz. Cities & Towns (May 30, 1989).

5 A.R.S. §9-471 (I).

6 This exception was added by the legislature in 2021. See SB 1336. <https://www.azleg.gov/legtext/55leg/1R/laws/0216.htm>.

7 A.R.S. §9-471 (K); *Roberts v. City of Mesa*, 158 Ariz. 42, 760 P.2d 1091 (App. 1988).

8 *Gorman v. City of Phoenix*, 70 Ariz. 59, 216 P.2d 400 (1950).

9 *Id.*

10 *Whether Two Separate Territories, Not Contiguous To Each Other, May Be Proposed For Annexation in the Same Petition*. Memorandum from J. LaMar Shelley, Gen. Couns., League of Ariz. Cities & Towns, to Town Attorney (January 4, 1991).

11 A.R.S. §9-134.

12 A.R.S. §9-471(Q).

13 28 C.F.R. §51.61 subjects annexations and deannexations to section 5 of the Voting Rights Act; however, in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), the Court held that the coverage formula in Section 4(b) of the Voting Rights Act is unconstitutional and the preclearance provision in Section 5 is not in effect until a new formula is enacted or if a city or town is required to submit for preclearance because it is covered by a separate court order under Section 3(c) of the Voting Rights Act.





In both cases, if there is personal property on these county lands, such property must be annexed using the regular annexation process.

### STATE LANDS

Approval of the state land commissioner and state lands selection board is required for any state lands included in an annexation, except for state land utilized as state right-of-way or state land held by tax deed.<sup>14</sup> This approval must be filed at the time the blank petition and map are filed with the county recorder to initiate the annexation process. The annexation must benefit the state land, and a pre-annexation and development agreement is required by the department. In addition to departmental approval, the annexation must be approved by the state land selection board which does not meet on a regular basis. The Planning & Engineering Section of the Real Estate Division is the agency's lead on annexations. The following is the contact information for the state land department:

Office of State Land Commissioner  
State Land Department  
1616 West Adams  
Phoenix, Arizona 85007  
602.542.4631

### FEDERAL LANDS

Annexation of federal lands (i.e., Forest Service lands, Bureau of Land Management lands, etc.) is allowed and does not require approval by the federal agency.<sup>15</sup> These properties are not counted as parcels in the annexation because of their tax exempt status. We do recommend that if a local office administers land included in a proposed annexation, that contact should be made with that local office to apprise them of the desired annexation. Remember that there may be personal property which is subject to taxation on federal lands such as utility lines and that property needs to be considered in determining whether the annexation petition is sufficient. Annexation of federal lands does not mean that the city has total jurisdiction in zoning, taxation, law enforcement, and other authority over the area. Federal preemption will apply where the local law conflicts with federal law. It is the opinion of the League General Counsel that since federal property is exempt from taxation, there must be at least one parcel of taxable real or personal property included in the annexation so that a property owner's signature appears on the annexation petition.<sup>16</sup>

### TERRITORY SUBJECT TO EARLIER FILING

The city or town must determine that the territory to be annexed is not subject to an earlier filing for annexation. To verify this determination, a sworn affidavit by the city or town must be filed with the county recorder at the time of the initial filing of the blank petition. A sample affidavit can be found in Appendix D.

<sup>14</sup> A.R.S. §9-471 (A).

<sup>15</sup> *Surplus Trading Co. v. Cook*, 281 U.S. 647, 50 S. Ct. 455, 74 L. Ed. 1091 (1930); *Howard v. Comm'r of Sinking Fund of City of Louisville*, 344 U.S. 624, 73 S. Ct. 465, 97 L. Ed. 617 (1953).

<sup>16</sup> *Annexation of Federal Land*, Memorandum from David R. Merkel, Gen. Couns., League of Ariz. Cities & Towns, to Ken Strobeck, Exec. Dir., League of Ariz. Cities & Towns (October 28, 2009).

## Section II - THE ANNEXATION PROCESS

Either prior to the beginning of the official annexation process or during the preliminary stages of the process a plan, policy, or procedure needs to be developed to provide the annexed territory with appropriate levels of infrastructure and services to serve anticipated new development in the annexed area within ten years of when the annexation becomes final.<sup>17</sup> The council must adopt the plan, policy, or procedure at the same time or prior to the adoption of the annexation ordinance.<sup>18</sup>

Once the decision has been made to proceed with annexation of a given area, annexation petitions must be prepared. The petitions are usually printed by the city or town. State law prescribes several requirements governing the form of petitions. First, the territory to be annexed must be accurately and completely described on the petition. This means that a complete description of the exterior boundaries of the area proposed to be annexed must be on the petitions. The description also must identify the entity, if any, that will be responsible for maintaining the existing rights-of-way and roadways that are within or contiguous to the exterior boundaries of the area of the proposed annexation.<sup>19</sup> In addition, an accurate map of the territory to be annexed must be attached to each petition, including all county rights-of-way and roadways with no taxable value within or contiguous to the exterior boundaries of the area of the proposed annexation. Most cities and towns place this map on the back of their petitions since this arrangement avoids having the map and petition separated. A sample petition is included in Appendix C.

The territory to be annexed must be drawn very carefully—the area cannot be altered to reduce or increase the territory once the petition is signed.<sup>20</sup> Although state law states that no alterations increasing or reducing the territory sought to be annexed shall be made after a petition has been signed by a property owner, and thus implies that alterations may be made after the blank petition has been filed in the office of the county recorder and before a signature is obtained, it is our opinion that if an alteration is needed the safest approach is to start the process over again beginning with the filing of the annexation petition and map with the county recorder. We feel it is important to begin again if changes are made because the petition and annexation map, as well as notices, must be consistent throughout the process.

Immediately upon determining the area to be annexed, a request should be sent to the county assessor and the Department of Revenue for a list of the real and personal property owners in the area to be annexed. These agencies are required to furnish this information to you within thirty days, however, some cities and towns have found that this process takes considerably longer,

<sup>17</sup> *Encanterra Residents Against Annexation v. Town of Queen Creek*, 2 CA-CV 2020-0002, 2020 WL 1157024, at \*9 (App. Mar. 9, 2020) (unpublished), review denied (Aug. 25, 2020) (holding the Town Council substantially complied with A.R.S. §9-471(O) by expressly adopting an ordinance affirming that it would provide the necessary and appropriate infrastructure and services to Encanterra within the statutory timeframe).

<sup>18</sup> A.R.S. §9-471 (O).

<sup>19</sup> A.R.S. §9-471 (A)(1).

<sup>20</sup> A.R.S. §9-471 (A)(5).

<sup>21</sup> A.R.S. §9-471 (G).

<sup>22</sup> *Goodyear Farms v. City of Avondale*, 148 Ariz. 216, 714 P.2d 386 (1986).

<sup>23</sup> A.R.S. §9-471 (A).

and it has been recommended that sixty days be allowed. This request must be made prior to beginning the petition process in order to meet the notice requirements outlined below.<sup>21</sup>

There is a waiting period to begin an annexation process following an unsuccessful annexation attempt which is defined as an annexation attempt that was withdrawn or that was not completed. A city or town is prohibited from filing an annexation petition that includes any territory for which an unsuccessful annexation was attempted by the same city or town until at least forty-five days after completion of the unsuccessful attempt. A property owner may waive the forty-five-day waiting period for the owner's property that was part of the original unsuccessful annexation.

As a special note on the annexation process, the Arizona Supreme Court has upheld the constitutionality of the petition process for annexation.<sup>22</sup> It was challenged on the basis that this method violated the equal protection clause of the United States and Arizona Constitutions.

### STEPS IN THE ANNEXATION PROCESS (See Appendix A for a timeline)

Once the petitions are prepared, a blank copy including the map and description of the territory to be annexed must be filed with the county recorder. In addition, a sworn affidavit verifying that the territory is not subject to an earlier filing for annexation must also be filed at this time. A sample affidavit can be found in Appendix D. Notice and copies of the filing also need to be sent to the clerk of the board of supervisors and the county assessor. If state land other than state rights-of-way or land held by the state by tax deed is included in the area which is to be annexed, written approval of the state land commissioner and the state land selection board must also be filed at this time.<sup>23</sup>

Before petitions may be circulated for signatures there is a thirty-day waiting period after filing the petition and map with the county recorder. Within the last ten days of the thirty-day waiting period, the city or town must hold a public hearing to discuss the annexation proposal. Notice of the hearing must be given as follows.

A. Publish notice of the hearing once in a newspaper of general circulation, which is published or circulated in the city or town and the territory proposed to be annexed, at least fifteen days before the end of the thirty-day waiting period and at least six days before the hearing.

B. Post notice of the hearing in at least three conspicuous places in the territory to be annexed at least six days before the hearing.

C. At least six days before the hearing send notice of such hearing by first class mail to every real and personal property owner as identified on the lists obtained from the county assessor and the Department of Revenue in the territory to be annexed. The annexation statute includes as real and personal property mobile, modular and manufactured homes, and trailers only if the owner also owns the underlying real property. The annexation map must be included with this notice.

D. Send notice of the hearing by first class mail at least six days prior to the hearing to the chairman of the board of supervisors of the county in which the territory proposed to be annexed is located.

Once all notice requirements have been met, including open meeting law requirements, a public hearing must be held within the last ten days of the thirty-day waiting period to discuss the annexation proposal. Following the hearing, and after the end of the thirty-day waiting period, petitions may be circulated for signatures.

After all signatures have been collected, the petition containing the signatures must be filed with the county recorder. There is some ambiguity in A.R.S. §9-471 (A) on whether the original of the petition must be filed with the county recorder. However, we suggest you file the petition in this manner to be on the safe side in complying with the procedures for annexation. A copy of the petition must also be filed with the city or town clerk.

It is recommended that you contact the county if any non-road annexation can potentially be approved by your council or become effective within 90 days of an election date. Early notification to the county will help ensure that new municipal electors will be able to properly access the ballot for the city or town election. Please consult with your attorney because your municipality's intergovernmental agreement with the county for election services may include specific notification requirements.

The final step in the annexation process is to adopt the ordinance. Again, no alteration increasing or reducing the territory sought to be annexed may be made. The ordinance will not become final until thirty days after adoption. (For further information on council action see Section IV).

#### **TIME PERIOD TO OBTAIN REQUIRED SIGNATURES**

The annexation statute provides that completed petitions must be filed with the county recorder within one year after the last day of the thirty-day waiting period. If you miss this deadline and the

city or town still wishes to annex the property, the entire process must begin again with the filing of the blank petition and map with the county.

#### **OBTAINING A LIST OF PROPERTY OWNERS**

To determine the sufficiency of the signatures to be obtained on the petition, the city or town must request documentation from the county assessor and the Department of Revenue on the real and personal property in the area proposed to be annexed. In order to meet the notice requirements for conducting an annexation, this information must be requested well in advance. The county assessor and Department of Revenue have thirty days to furnish this information, however, you should anticipate at least sixty days for receipt of the information.

The following procedures should be followed in requesting this information.

A. In the case of property assessed by the county assessor, values and the number of persons owning property in the proposed area to be annexed must be the same as shown by the last assessment of the property.<sup>24</sup> The city or town should forward the prepared map of the area and a legal description of the property to be annexed to the county assessor. The list from the county assessor must include owners of mobile, modular and manufactured homes if the owner also owns the underlying real property.

B. In the case of property valued by the Department of Revenue, principally the utilities in the area to be annexed, values must be appraised by the Department of Revenue in the manner provided by law for municipal assessment purposes. Also, for the purpose of determining the number of persons owning property, if such property is valued by the Department of Revenue, such number shall be as shown by the last valuation. To obtain such information from the Department of Revenue, eight copies of the map of the area to be annexed and its legal description should be forwarded to the Department of Revenue, Property Valuation and Equalization Division, 1600 West Monroe, Phoenix, Arizona 85007.

If a particular property is the subject of a pre-annexation agreement, this may impact the signature requirements and calculations.<sup>25</sup> A property that is the subject to a pre-annexation agreement should be discussed with the city or town attorney to determine the applicable legal requirements.

#### **NOTICE TO VIDEO SERVICE PROVIDERS**

For each proposed change to the boundaries of a city or town, the city or town must provide timely written notice to each video service provider that operates within the boundaries.<sup>26</sup> The written notice must be provided by certified mail, email, or personal delivery to the contact person and address specified by the video service provider.<sup>27</sup>

<sup>24</sup> *Glick v. Town of Gilbert*, 123 Ariz. 395, 599 P.2d 848 (App. 1979).

<sup>25</sup> See A.R.S. §9-471 (T) (regarding pre-annexation agreements that consent to a future annexation).

<sup>26</sup> A.R.S. §9-1418.

<sup>27</sup> The video service provider is responsible for providing the name and address of this designated contact person (and provide written notice of any change to the governing body of the city or town).

#### Points to Remember:

- Your annexation petition form should be reviewed to make sure it conforms to annexation requirements. See model annexation petition, Appendix C.
- Requests to the county assessor and the Department of Revenue for a list of property owners will have to be made before the blank petitions are filed in order to meet the notice requirements.
- If state land is included in the area to be annexed, approval of the state land commissioner and the state land selection board must be obtained and filed with the blank petition. If state rights-of-way or land held by the state by tax deed are included in the annexation, approval is not required.
- All information associated with the annexation such as filings, notices, petitions and tax rolls must be made available for public inspection during regular business hours.
- If the area of the proposed annexation is to be altered, it is our opinion that the safest approach is to start the process over again with the filing of the blank petition and map with the county recorder.

For at least thirty days after the municipality's notification of a boundary change, the video service provider cannot be required to pay license fees on gross revenues as prescribed in A.R.S. §9-1443 within the area encompassed by a boundary change.

#### INSPECTION OF PETITIONS

A city must allow the inspection of information on an annexation by interested citizens during regular office hours once the blank petition is filed. All information contained in the filings, notices, petitions, tax, and property rolls and other matters regarding the annexation must be made available for public inspection.

#### ZONING & ANNEXATION

Once the annexation ordinance has been adopted, city zoning must be adopted. However, the zoning classification which is adopted cannot permit densities or uses greater than those permitted by the county immediately before annexation. Following this adoption, the property can be rezoned by following the procedures outlined in state law and your zoning ordinance, which procedures include a public hearing after the required notice is given.<sup>28</sup> A court has ruled that a rezoning can be initiated before the annexation is final under certain circumstances.<sup>29</sup> However, we recommend that the annexation be final before rezoning actions begin.

A rezoning ordinance which changes the zoning classification of the land may not be passed as an emergency measure. Therefore, any changes to zoning classifications will not be effective for at least thirty days after approval. If a rezoning of land which may

change the zoning classification and which is not initiated by the property owner is to be considered, additional notice by first class mail must be sent to each real property owner as shown on the last assessment of property of the area to be rezoned and all property owners within 300 feet of the property to be rezoned. At the public hearing, the governing body may consider the testimony of any property owner within the notification area ("aggrieved party") when making its decision.<sup>30</sup>

#### NOTICE TO FIRE DISTRICTS

At least thirty days before a city or town completes the annexation of any part of a fire district, the city or town must notify any affected fire district in writing of the proposed annexation. The city or town and the district may enter into an intergovernmental agreement to mitigate any detrimental effects on fire district services to the remaining population in the district as a result of the annexation.<sup>31</sup>

#### Section III - GETTING THE SIGNATURES

Once the requirement of the public hearing and thirty day waiting period have been met, the petitions may then be circulated among the owners of real and personal property in the area to be annexed. These petitions may be circulated by the interested property owners in the area to be annexed or by other individuals chosen by the annexing city or town. In some cases, the city or town has paid individuals to circulate petitions in the area to be annexed. Although contested, the use of paid circulators has been upheld by Arizona courts. The court ruled "the use of paid city employees to secure the signatures on the petitions is not prohibited" by the annexation statute.<sup>32</sup> Further, petition circulators are not required to be property owners. Regardless of who circulates the annexation petitions, it is advisable to provide some preliminary instruction either at a meeting or through preparation of an information sheet or other device for those circulating the petitions. Although there is no statutory requirement to provide such instruction, the petition circulators may be more successful in obtaining signatures if they have some basic knowledge about the city or town and the effect of annexation on the property owners. In other words, it is good public relations to have the petition circulators possess a reasonable knowledge of why they are asking property owners to sign the petition. Completed petitions must be filed with the county recorder within one year after the last day of the thirty-day waiting period.

#### ELIGIBLE SIGNATURES

Owners of at least one-half of the value of the real or personal property and more than one-half of all property owners in the area proposed for annexation as shown on the last assessment roll must sign the annexation petition. Arizona courts have defined the eligibility of specific types of "owners" as follows.<sup>33</sup>

28 A.R.S. §9-471 (L).

29 *Blanchard v. Show Low Planning and Zoning Comm'n*, 196 Ariz. 114, 993 P.2d 1078 (App. 1999).

30 A.R.S. §9-462.04.

31 A.R.S. §48-813.

32 *Swift v. City of Phoenix*, 90 Ariz. 331, 367 P.2d 791 (1961).

33 *City of Phoenix v. State*, 60 Ariz. 369, 137 P.2d 783 (1943) ("The word 'owner' has no technical meaning, but its definition will contract or expand according to the subject matter to which it is applied.")

### **Personal Representative of an Estate**

The personal representative, executor, administrator, or guardian of an estate cannot sign the petition since he or she is not the “owner” of the property. Nor can the personal representative authorize someone else to sign the petition. Therefore, a signature of a personal representative is improperly on the petition and the property and signature cannot be counted.<sup>34</sup>

### **Agent**

An agent who is authorized in some manner by the owner to sign an annexation petition is a qualified signer, and, as a result, the signature for the property owner can be counted.<sup>35</sup> It is recommended that if an agent is authorized to sign, the authorization from the owner be put in writing.

### **Commander of Veteran’s Organization**

The commander of a veteran’s organization is not authorized to sign an annexation petition as commander of the organization when the constitution of the organization does not give express or implied authority to do so. The property of the organization in this case is not counted.<sup>36</sup>

### **Corporation Owners**

When all the owners of issued and outstanding stock of a corporation sign an annexation petition, their signatures are valid and should be counted.<sup>37</sup> This is one method for obtaining a valid signature and the value of the corporation property should be counted. In some instances, a plant manager may also sign for the corporation owners. This provision is discussed below.

### **Equitable Owners**

A purchaser of real property who is in possession of the property can sign the annexation petition, and the value of such property is counted, even though the purchaser has not yet secured a final deed.<sup>38</sup>

### **Husband/Wife**

Either the husband or wife may sign a petition for their community property to be properly counted except when the property is held in joint tenancy. Regarding community property situations, the courts presume that one spouse has the authority to bind the other unless it is shown otherwise. One spouse may sign and indicate that the signature is by both spouses. However, it is preferable that both spouses sign. When the property is held in joint tenancy, the courts have found that a spouse does not have authority to bind the other and both signatures are required to count the full value of the property.<sup>39</sup>

### **Manager**

A local plant manager may sign a petition. This action can take place without authorization of the board of directors (unless company policy is to the contrary), since consenting to become part of a municipality is not the equivalent of alienating or encumbering the property.<sup>40</sup>

### **Owners of Mobile Homes**

The annexation statute includes as owners of real and personal property owners of mobile, modular and manufactured homes and trailers only if the person also owns the underlying real property.

### **Owner Not Shown on Assessment Roll**

If the assessment rolls show that one person owned a certain piece of property at the time of assessment and property is represented by the signature of another on the annexation petition, this does not establish the invalidity of the signature.<sup>41</sup> To challenge the validity of the signature, it must be shown that the signer was not the owner of property or an authorized agent of the owner at the time of signing the petition.

### **Veterans or Widows**

Veterans or widows are “owners” and authorized to sign an annexation petition notwithstanding the fact that the exemption permitted by the Constitution of Arizona (art. IX §2) is claimed.

### **Property Subject to a Pre-annexation Agreement**

If a property is the subject of a pre-annexation agreement, the agreement may impact the signature requirements and the manner of calculating the calculations.<sup>42</sup> As a result, please discuss the legal requirements that apply to any property that is the subject of a pre-annexation agreement. A city, town or developer may enter into a pre-annexation agreement with a property owner in which the property owner agrees to future annexation of an area that includes the property owner’s property. A property owner who has entered into a pre-annexation agreement is not required to sign the petition pursuant to A.R.S. §9-471(A)(4). Whether or not the property owner signs the petition, the property and property owner are included for purposes of calculating the one-half or more in value of the real and personal property and more than one-half of the persons owning real and personal property that would be subject to taxation by the city or town in the event of the annexation, as required pursuant to A.R.S. §9-471(A)(4).<sup>43</sup>

### **TAX EXEMPT PROPERTY**

Arizona courts have made it clear that there are two types of tax-exempt property. One type cannot be taxed under any

34 *Id.*

35 *McCune v. City of Phoenix*, 83 Ariz. 98, 317 P.2d 537 (1957).

36 *Id.*

37 *Id.*

38 *City of Phoenix v. State ex rel. Harless*, 60 Ariz. 369, 137 P.2d 783 (1943).

39 *Nw. Fire District v. City of Tucson*, 185 Ariz. 102, 912 P.2d 1331 (App. 1995).

40 *Gorman v. City of Phoenix*, 76 Ariz. 35, 258 P.2d 424 (1953).

41 *McCune v. City of Phoenix*, 83 Ariz. 98 (1957).

42 See A.R.S. §9-471 (T) (regarding pre-annexation agreements that consent to a future annexation).

43 A.R.S. §9-471(T).

circumstances and has no legal place on the tax assessment rolls. This type includes property of the United States (i.e. Forest Service lands, Bureau of Land Management lands, etc.), the State, a county, a municipality, school district, or special district.<sup>44</sup> Such property is not counted in determining the sufficiency of annexation petitions and owners of such property are not eligible to sign such petitions since “it is not to be presumed that the Legislature intended that property which could not bear any of the burdens of annexation should be entitled to be heard on the question.”<sup>45</sup> It is the opinion of the League General Counsel that this applies to properties that have been seized by the government as the government is considered to be the legal owner of that property upon taking possession of it.<sup>46</sup>

The other type of tax-exempt property may, under some circumstances, be subject to taxation and therefore appear on the tax assessment rolls. For example, an exemption of a widow’s or veteran’s property must be claimed to be effective. Such property is counted in determining the sufficiency of annexation petitions and owners of such property are eligible to sign such petitions since “widows and soldiers (veterans) must be treated as a class in determining their right to sign, and since some of them have only a partial exemption, others none at all, we think they may all sign.”<sup>47</sup>

There is also the question of the tax-exempt status of the property of a church, educational, or charitable institution. Such properties, as well as inventories, are exempt under the provisions of Article IX, Section 2, of the State Constitution. They must now be exempted by affidavits just as that of widows and veterans. Consequently, if property owned by a church, educational or charitable institution or inventory property is on the tax rolls and taxes are being paid, it appears that it should be included as eligible property on an annexation petition.<sup>48</sup>

### CONDITIONAL SIGNATURES

Signatures of owners of real and personal property cannot be qualified or conditioned in any manner on annexation petitions. In the court case responsible for this ruling, owners of the major utilities of the town had signed annexation petitions with the following condition: “This petition is being signed with the understanding and condition upon the assurance that owners of more than 50% of the property in the above described area, exclusive of property owned by public utilities, have also signed petitions for the annexation of said area.”<sup>49</sup> The court ruled that the statute governing annexation does not provide for a conditional petition being presented to the

governing body of the city or town by public utilities, private corporations, or individual property owners.

### WITHDRAWAL OF SIGNATURE

A property owner who has signed an annexation petition may withdraw his signature from such petition any time prior to five o’clock on the date the petition is actually filed with the county recorder. A signature withdrawn prior to the filing of the signed petitions shall not be counted in determining the legal sufficiency of the petition. To withdraw a petition signature a person may do the following:

- A. Verify the withdrawal by signing a simple statement of intent to withdraw his name at the office of the city clerk.
- B. Mail a signed, notarized statement of intent to withdraw his name to the office of the city clerk.
- C. Draw a line through the signature and printed name on the petition.<sup>50</sup>

### REVIEW AND TABULATION OF SIGNATURES

To determine if a sufficient percentage of signatures of persons has been collected, the city or town must request documentation on the real and personal property from the county assessor and Department of Revenue. The city or town should use the guidelines below.

To determine the sufficiency of the percentage of value of real and personal property, such values shall be determined as follows.

- In the case of property assessed by the county assessor, values shall be the same as shown on the last assessment of the property.
- In the case of property valued by the Department of Revenue, values shall be as appraised by the Department of Revenue for municipal assessment purposes.
- When property is held by the owners in joint tenancy, all of the signatures of the joint tenants are needed to count the full assessed value of the real and personal property. If one joint tenant signs the petition, only that joint tenant’s proportionate undivided interest may be included in determining whether the petition has been signed by the owners of property whose assessed valuation is at least one-half of the valuation of the area sought to be annexed.<sup>51</sup>
- The value of any property can be counted only once. Therefore, care should be exercised in counting the valuations on a petition, particularly to ensure that two

44 *Annexation of SRP Property*, Memorandum from J. LaMar Shelley, Gen. Couns., League of Ariz. Cities & Towns, to City Attorney (January 7, 1980).

45 *City of Phoenix v. State ex rel. Harless*, 58 Ariz. 8 (1941).

46 *Property Condemned by U.S. Government*, Memorandum from J. LaMar Shelley, Gen. Couns., League of Ariz. Cities & Towns, to Catherine F. Connolly, Asst. Dir., League of Ariz. Cities & Towns (October 11, 1994).

47 *City of Phoenix v. State ex rel. Harless*, 60 Ariz. 369, 137 P.2d 783 (1943).

48 *Fry v. Mayor & City Council of Sierra Vista*, 11 Ariz. App. 490, 466 P.2d 41 (1970).

49 *Town of Scottsdale v. State ex rel. Pickrell*, 98 Ariz. 382, 405 P.2d 871 (1965).

50 A.R.S. §19-113.

51 *Ferree v. City of Yuma*, 124 Ariz. 225, 603 P.2d 117 (App. 1979).

or more signatures do not represent the same property. If two signatures on an annexation petition are for the same property, the valuation represented by one signature if counted twice should be deducted.<sup>52</sup>

For the purpose of determining the sufficiency of the percentage of persons owning real and personal property, the number of persons owning property shall be determined as follows.

- In the case of property assessed by the county assessor, the number of persons owning property shall be as shown on the last assessment of the property.
- In the case of property valued by the Department of Revenue, the number of persons owning property shall be as shown on the last valuation of the property.
- When property is held by owners in joint tenancy, such owners shall be counted together as one owner and each owner can only sign for their proportional share of the property to be counted.<sup>53</sup>
- If a person owns multiple parcels of property, such owner shall be counted as one owner.<sup>54</sup>

The Arizona Court of Appeals has determined that the required number of signatures on a petition for annexation is to be based on the assessed value of property (as opposed to its full cash value).<sup>55</sup>

The tabulation of signatures must be done very carefully to ensure that the correct number of signatures, as statutorily required, is on the annexation petition. These signatures should be checked against the guidelines above.

Once it has been determined that enough signatures appear on the petitions, the city or town is ready for council action on the annexation.

## Section IV - COUNCIL ACTION

When all notice and public hearing requirements have been complied with and an annexation petition has been signed by the required number of property owners in the area to be annexed and filed with the county recorder, the council should make the final determination of both the eligibility and the desirability of the annexation. The fact that petitions have been presented does not mean that the area must be annexed. The petition merely gives the council discretion as to whether the area should become a part of the municipality. The decision to annex lies solely with the city or town council.<sup>56</sup>

Before any council action is taken on the petition, it must be determined whether the municipality has jurisdiction to annex the unincorporated territory under consideration. A sworn affidavit verifying that no part of the territory proposing to be annexed is already subject to an earlier annexation must have been filed at the same time as the initial petitions were filed with the county recorder. The county recorder cannot accept the filing without the affidavit.

Arizona statute also provides for instances where a community is proposing to incorporate lands subject to an annexation petition. The board of supervisors is required to exclude from the community proposed to be incorporated any territory which has been included in an annexation ordinance adopted by a city or town pursuant to law after the incorporation petition has been filed.<sup>57</sup> Furthermore, A.R.S. §9-101.01 bars the incorporation of an area within six miles of an incorporated city with a population of 5,000 or more and within three miles of a city or town with a population of less than 5,000, unless the existing city or town grants permission for such incorporation. The effect of this statute is to allow cities and towns to determine whether nearby communities may incorporate. Once a petition for incorporation has been taken out, however, an annexation which brings a city to within the six-mile limit will not give such a city the authority to determine if the community may incorporate.<sup>58</sup>

If the council decides to annex the area covered by the annexation petition, the council may not make any changes, including reductions or increases in territory, to the map of the proposed annexation once the first property owner has signed the petition. (In our opinion, the process must begin again with the filing of the annexation petition and map with the county recorder if any changes are made to the territory proposed for annexation.) It will be necessary for the council to make a final determination as to whether the petition is sufficient. Generally, this information has already been provided to the council with proper documentation. However, the council should establish to its satisfaction that enough property owners in the area to be annexed have signed the petitions.

After these preliminary steps, the council may then pass an ordinance annexing the territory.<sup>59</sup> All the proceedings surrounding the adoption of the annexation ordinance must be regular. For example, the Supreme Court voided an annexation ordinance which was not passed at a council meeting open to the public within the corporate limits of the town.<sup>60</sup> Also the court has held that an annexation ordinance

52 *McCune v. City of Phoenix*, 83 Ariz. 98, 317 P.2d 537 (1957).

53 *Nw. Fire District v. City of Tucson*, 185 Ariz. 102, 912 P.2d 1331 (App. 1995).

54 A.R.S. §9-471 (F).

55 *City of Phoenix v. Town of Cave Creek*, 167 Ariz. 227, 805 P.2d 1048 (App.1990).

56 *Kempton v. City of Safford*, 140 Ariz. 539 (App. 1984); *Goodyear Farms v. City of Avondale*, 148 Ariz. 216 (1986); *Roberts v. City of Mesa*, 158 Ariz. 42 (App. 1988).

57 A.R.S. §9-101(H).

58 A.R.S. §9-471(M).

59 See Appendix D for sample annexation ordinance.

60 *Town of Paradise Valley v. Acker*, 100 Ariz. 62 (1966).

was void because the provisions of the open meeting law had not been complied with in its adoption.<sup>61</sup>

The annexation ordinance is subject to the same requirements pertaining to publication as other ordinances. In charter cities with publication requirements set forth in the charter for the purpose of making the ordinance effective, it has been held by the Supreme Court that failure to publish the ordinance, pursuant to the charter requirements voids the ordinance.<sup>62</sup> While the statutes do not state that the map must also be published, the Arizona Supreme Court implied (*City of Phoenix v. Lockwood* cited below) that the publication of the map is necessary in stating that “the only step remaining to be taken...was the publication of the ordinance and map in the official newspaper of the city as is required for all ordinances before they become effective and operative.” It is the consensus of most municipal attorneys that the map is a part of the ordinance and is therefore subject to the same publication requirements as the ordinance. The issue of invalidating an annexation because of an inaccurate map has been tested in court. The court ruled that a mistake in the “calls” in the metes and bounds description was not enough to invalidate the annexation proceedings.<sup>63</sup>

The annexation becomes final after the expiration of thirty days from the adoption of the ordinance if the annexation ordinance has been finally adopted in accordance with procedures established by statute, charter provisions, or local ordinances, whichever is applicable. However, if an action has been filed to contest the validity of the annexation within the thirty-day period, its finality is subject to the review of the court. The court has said, “A municipality cannot enact an annexation statute as an emergency measure.”<sup>64</sup> Annexation ordinances are subject to referendum, and the court has clarified that the final adoption of the annexation ordinance is the referable event.<sup>65</sup>

At times, an annexation ordinance is adopted with an emergency clause. The courts have ruled that the statutes provide private citizens a right to contest an annexation and that a municipality cannot interfere with this right. Therefore, annexation ordinances may be adopted as an emergency measure, but the thirty-day period for citizens to contest is not shortened.

### PROTEST OR CONTEST

An annexation may or may not be desired by all the people involved. If it is not desired, there is the likelihood of protest and perhaps there may be a contest. In view of these possibilities, it is important to be aware of the statutes and court decisions to be prepared for such an eventuality.

There is a basic difference between a protest and contest. A protest is an objection lodged with the governing body. A contest

is a legal procedure to question the validity of an annexation for failure to comply with state law.

If a protest is evident while the council is deciding on the question of annexing any territory, the council is under no statutory obligation to hear such protest from inhabitants in the area involved. From a public relations standpoint, however, councils usually hear any interested party who wishes to protest.

A contest involving court action on the annexation is provided for in A.R.S. §9-471, which governs the annexation of territory. Any city or town’s annexation action, after the adoption of the ordinance, may be contested by any city or town (at least those cities or towns that are geographically close and are interested parties), the attorney general, the county attorney, or any other interested party within the territory to be annexed by filing a verified petition questioning the validity of the annexation for failure to comply with A.R.S. §9-471. The verified petition questioning the annexation must be filed within thirty days after the adoption of the annexation ordinance, and the burden is placed on the petitioner to prove that the municipality attempting the annexation has failed to comply with the law. To preclude a long delay in hearing the action, a petition of this nature has priority over all other civil matters except elections. If no contest is made within the thirty-day period, the annexation is deemed final and conclusive. A property owner that prevails in an action to challenge an annexation of their property is entitled to reasonable attorney fees and costs.<sup>66</sup>

State law also provides that if two or more cities and towns demonstrate an active interest in annexing any or all the area proposed for annexation, the court shall consider oral and written agreements or understandings between the cities in making its determination.<sup>67</sup>

## Section V - AFTER THE ANNEXATION

### TRANSMITTAL OF ANNEXATION ORDINANCE

It is important that the annexation ordinance, the legal description, and a map of the annexed property be mailed to selected individuals. There is a specific requirement that the city/town clerk provide a copy of the adopted annexation ordinance to the clerk of the board of supervisors of each county with jurisdiction over the annexed area within sixty days of the annexation becoming final.

It is particularly important that the annexation be reported by filing the legal description and a record copy of the ordinance with the Department of Revenue. Statutes provide that this must be accomplished on or before November 1 of the year preceding the year in which assessments or taxes are to be levied. The same

61 *Carefree Improvement Ass’n v. City of Scottsdale*, 133 Ariz. 106 (App. 1982).

62 *City of Phoenix v. Lockwood*, 76 Ariz. 46 (1953).

63 *City of Douglas v. City of Sierra Vista*, 21 Ariz. App. 71 (1973).

64 *Salt River Project Agr. Imp. & Power Dist. v. City of St. Johns*, 149 Ariz. 282 (1986).

65 *Israel v. Town of Cave Creek*, 196 Ariz. 150 (App. 1999).

66 A.R.S. § 9-471 (P).

67 A.R.S. § 9-471 (C); *Town of Miami v. City of Globe*, 195 Ariz. 176 (App. 1999).

information must be supplied to the county assessor on or before November 1. The change in the boundaries affected by the annexation will not be effective for assessment and tax levying purposes for the next tax year unless notice has been given before November 1 as stipulated above.<sup>68</sup> This deadline may be extended by the director of the Department of Revenue upon receipt of a request for extension on or before December 31 of the year prior to the year in which taxes are to be levied. The deadline may not be extended beyond February 15 of the year taxes are to be levied.

Additionally, cities or towns annexing property must also report the annexation to the U.S. Department of Justice due to its possible applicability under the Voting Rights Act to municipal elections. The League's *Municipal Election Manual* can be consulted for the exact procedures of such notification.

### **EFFECT OF ANNEXATION**

Upon the annexation of territory, the city or town acquires the right to exercise all political and governmental powers delegated to it by law over the property and inhabitants in the annexed territory.<sup>69</sup> The city or town, by annexation, acquires no rights and assumes no liabilities of a territory not of a political or governmental nature. Our courts have ruled that recording a subdivision without subsequently improving the property does not give the owner a vested right to develop in accordance with the recorded plat. Therefore, annexation may affect an unimproved property owner's right to develop, even if the property has been subdivided, if the municipal ordinances differ from the county ordinances.<sup>70</sup>

Upon annexation of territory to the city or town, the title and jurisdiction of the county streets and alleys in the annexed territory are vested in the city or town for all purposes.<sup>71</sup> All territory annexed to a city or town becomes a part of the council district of the city or town adjoining the annexed territory, if the members of your council are elected by district.<sup>72</sup>

There are special provisions governing the impact of annexation when there is a fire district operating within the annexed area. If the entire territory of a fire district is annexed, the fire district and all its assets, including personnel, and liabilities are merged and become a part of the fire department of the annexing city or town upon the date the city or town elects to provide fire protection services to such area. This includes all books and records belonging to the fire fighters' relief and pension fund of the fire district, and the annexing city or town is responsible for making pension payments to those eligible. Procedures are also specified for any firefighter who is employed on a full-time basis by a fire district and who becomes employed

as a firefighter by the annexing city or town within sixty days after the date the city or town elects to provide fire protection services to such area.<sup>73</sup>

Regardless of whether the annexation includes all or just part of a fire district, the territory remains a part of the district until the next July 1 following the time when the city or town elects to provide regular fire department services to the annexed area. The annexed area remains subject to taxes levied for bonds of the fire district outstanding at the time of filing of the petition seeking annexation until final payment on the bonds and is subject to taxes levied by the district until the termination date.

If a city or town provides regular fire protection to its residents and is unable to provide equal fire protection to annexed territory, the city or town may contract with a fire district in proximity to the annexed territory for the purpose of supplying fire protection until the city or town is able to provide equal fire protection to the annexed territory. If only a part of the district is annexed, all assets of the district remain the property of the district.<sup>74</sup>

A highway within the annexed territory does not have any truck restriction before being annexed or transferred by a city or town, the highway cannot be incorporated into existing truck restrictions that were adopted on or after January 1st, 2020, unless the highway meets the requirements of A.R.S. §28-1106.

### **EXPENDITURE LIMITATION ADJUSTMENTS**

Cities and towns should report all annexations to the State Demographer in the Office of Economic Opportunity, Arizona Population Division of the State Department of Administration.<sup>75</sup> The population in the annexed area will be considered when developing the population estimate which is used in determining the expenditure limitations by the Economic Estimates Commission (EEC).

Annexations occurring after the EEC determines your expenditure limit (on or before April 1) but before the beginning of the fiscal year can also be used to adjust your population estimate for that year if they are submitted in time for both the Population Statistics Unit and the EEC to act. The EEC requires that requests for such adjustments be provided to them at least three weeks prior to the adoption of that city's tentative budget. Also, prior to action by the EEC, the Population Statistics Unit must review the requested population increase. The necessary materials should be provided to the Unit with sufficient lead time for their review.

68 A.R.S. §42-17257.

69 *Blount v. MacDonald*, 18 Ariz. 1 (1916).

70 *Dawe v. City of Scottsdale*, 119 Ariz. 486 (1978).

71 *Collins v. Wayland*, 59 Ariz. 340 (1942), *cert. denied*, 318 U.S. 767, 63 S. Ct. 760 (1943).

72 A.R.S. §9-472.

73 A.R.S. §48-812.

74 A.R.S. §48-813.

75 State Demographer's Office, Phone: 602-771-2222, Email: pop.info@oeo.az.gov.

## STATE SHARED REVENUES

After the annexation ordinance has been passed, you may want to obtain a certified population count of the number of people in the annexed area from the U. S. Census Bureau to receive credit for the additional population for state shared revenue purposes.<sup>76</sup> The Census Bureau may be able to give you a certified count almost immediately if the annexed area coincides with census tracts. Even if this is not the case, the Census Bureau will provide you with an estimate of the population in the annexed area to be credited for state shared revenue purposes. This estimate will be based on the most recent Census. Once a certified population count of the number of people in the annexed area has been determined, it should be submitted to the Department of Revenue who will then adjust the share of the state sales tax and state income tax and to the Department of Transportation for the distribution of Highway User Revenue Funds and vehicle license taxes to reflect the annexation.

A city or town needs to make sure that the Council of Governments which represents the cities and towns in their region on the population estimate committee is fully aware of the annexation in order to have it reflected in the population for expenditure limitation purposes.

## Section VI - DEANNEXATION

The Legislature has provided a procedure for deannexation of land from one municipality and annexation to another incorporated city or town. The procedure for accomplishing such deannexation has been clearly detailed in A.R.S. §9-471.02 and is the only method provided for a city or town to reduce the land area within its boundaries short of special legislation. There is an additional special provision for the deannexation of county parks which is explained at the end of this Section.

For any deannexation not involving a county park, the responsibilities of the city or town wishing to deannex land are as follows:

- A. The council must pass an ordinance setting forth the legal description of the territory to be deannexed. The area must be contiguous to the annexing municipality.
- B. This ordinance must be filed with the county board of supervisors who shall set a hearing date not less than thirty nor more than sixty days from the date of the filing of the ordinance. The board of supervisors must notify the city or town of the hearing date at least thirty days prior to the scheduled hearing.
- C. The city or town council must notify by letter the owners of any real property in the territory to be deannexed at least twenty days before the hearing by the board of supervisors. This letter must contain the following information:
  1. The area which is to be deannexed and annexed by another city or town.

2. Notification that such property shall continue to be subject to any tax lawfully assessed against it for the purpose of paying indebtedness contracted by the city or town while the property was within the corporate limits.
3. Statement that the property owner may protest the deannexation action by letter to the board of supervisors prior to the hearing or in person at the hearing.

The city or town wishing to annex the territory must comply with the following requirements:

- A. Passage of an ordinance setting forth the legal description of the territory and declaring the annexation of the property contingent upon affirmative action by the board of supervisors.
- B. Filing of the above ordinance with the county board of supervisors. The same requirements regarding hearing date and notification by the board of supervisors to the city or town as explained above apply to the city or town wishing to annex the territory.

At the hearing called by the county board of supervisors, if property owners of fifty-one percent or more of the real and personal property to be deannexed protest the action, either by letter or in person at the hearing, then the board of supervisors is statutorily required to deny the deannexation, and therefore the subsequent annexation by another city or town. There is also a one-year moratorium on resubmitting the deannexation question to the board.

If no protest is made by property owners of the action or if less than the required number of the affected property owners object, then after the hearing, the board of supervisors is required to order that the territory be deannexed as requested from the city or town and that the same territory be annexed to the other municipality.

A copy of the order of the board of supervisors ordering the deannexation and annexation of the property involved is certified by the clerk of the court and then filed in the recorder's office of the county in which such land is situated.

## STATUS OF DEANNEXED LAND FOR TAXATION PURPOSES

The provisions of A.R.S. §9-471.02 authorizing such deannexation and subsequent annexation by another municipality clearly state that the property involved in such a transaction is not exempt from the payment of any taxes lawfully assessed against it for the purpose of paying indebtedness remaining on that property at the time of deannexation.

Further, even if the land has already been deannexed and the council levies a tax upon the property within the city or town for the purpose of paying indebtedness incurred before deannexation, the council does have the authority to levy a tax at the same rate and for the same purpose on the deannexed land.

<sup>76</sup> In the past for a period directly before and after the decennial census count, the Census Bureau has suspended these types of annexation population certifications.

## **DEANNEXATION OF COUNTY PARKS**

There is a special procedure specified for the deannexation of county owned land such as parks. That procedure specifies that territory may be deannexed, severed and returned to the county by a city or town if the territory is a county owned park, a park operated on public lands by a county as part of a management agreement or land owned by a flood control district. The city or town council wishing to deannex the land adopts by ordinance the legal description of the territory and declares the deannexation. The board of supervisors of the county that intends to receive the returned territory also adopts an ordinance containing the legal description of the territory and schedules a public hearing not less than thirty nor more than sixty days after the date the ordinance is filed. On the holding of the public hearing, the board of supervisors may order that the territory be returned as specified in the ordinance authorized by the city or town.<sup>77</sup>

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<sup>77</sup> A.R.S. §9-471.03.

## Appendix A

### ANNEXATION TIMELINE

Listed below is a chronology of events that must occur for the annexation of property.

<u>DAY</u>	<u>ACTION STEPS</u>	<u>DEADLINE SET BY LAW</u>
	<p>Prepare map of area proposed for annexation. Careful review of the boundaries and the description is suggested to make sure it meets contiguity, size and shape requirements.</p> <p>Prepare a plan, policy, or procedure to demonstrate how services and infrastructure are to be provided to anticipated development within the annexed area in the next ten years.</p> <p>If state land, other than state right-of-way or land held by the state by tax deed is included in the proposed annexation, prepare information required by state land department and request approval of state lands selection board and state land commissioner.</p> <p>It is recommended that you contact the county if any non-road annexation can potentially be to approved by your council or become effective within 90 days of an election date. Early notification to the county will help ensure that new municipal electors will be able to properly access the ballot for the city or town election. Please consult with your attorney because your municipality's intergovernmental agreement with the county for election services may include specific notification requirements.</p>	<p>None</p> <p>Prior to the adoption of the final annexation ordinance.</p> <p>None</p> <p>None</p>

<u>DAY</u>	<u>ACTION STEPS</u>	<u>DEADLINE SET BY LAW</u>
1	Request from the county assessor's office and the Arizona Department of Revenue (DOR) the name and address of each owner and the assessed value of all property within the boundaries of the proposed annexation (both offices have a maximum of 30 days to respond). The request should include a letter and map of the area. DOR requests 8 copies of the submittal.	None
15	Waiting Period - city will file in the county recorder's office a blank petition setting forth a description, an accurate map of all the exterior boundaries of the territory that is proposed for annexation and a sworn affidavit verifying that territory is not subject to an earlier filing for annexation. State lands selection board and state land commissioner approval will be filed if applicable. Send notice and copies of filings to Clerk of the Board of Supervisors and county assessor.	County holds blank petition for 30 days
30	City will advertise in local paper the area proposed to be annexed. Newspaper must be published or circulated in the city or town and the territory proposed to be annexed.	15 days before the end of the waiting period

<u>DAY</u>	<u>ACTION STEPS</u>	<u>DEADLINE SET BY LAW</u>
30	<p>City receives value data from the county assessor and Department of Revenue.</p> <p>A. Post notice of the public hearing in at least three conspicuous public places in the territory proposed to be annexed.</p> <p>B. Notice by mail to chairperson of county board of supervisors.</p> <p>C. Notice by mail to each owner of real and personal property within territory proposed to be annexed. Include proposed map.</p>	<p>6 days prior to the hearing</p> <p>6 days prior to the hearing</p> <p>6 days prior to the hearing</p>
36	City council has public hearing to discuss the annexation proposal.	Within the last 10 days of the 30-day waiting period
46	<p>Obtain signatures on annexation petitions:</p> <p>A. One-half or more of the persons owning real and personal property that would be subject to taxation by the city in the event of annexation. (assessed valuation).</p> <p>B. More than one-half of the persons owning real and personal property that would be subject to taxation by the city in the event of annexation. (ownership).</p>	Within one year of the last day of the waiting period
60	Petition complete. Signed petition, copy filed with city clerk - original filed in the office of the county recorder.	Within one year of the last day of the waiting period
61	City posts public notice of special city council meeting for reading of annexation ordinance (need minimum of 24 hours' notice).	24 hours before meeting

<u>DAY</u>	<u>ACTION STEPS</u>	<u>DEADLINE SET BY LAW</u>
63	City council adopts annexation ordinance. (timeframe for this step depends on ordinance adoption procedure such as number of readings, optional public hearing, etc.	
	Annexation protest/contest period ends and annexation becomes final.  Clerk files copy of annexation ordinance with clerk of the board of supervisors.	30 days after the adoption of the annexation ordinance  60 days after annexation ordinance becomes final

## Appendix B

### STATE LAW PROVISIONS RELATED TO ANNEXATIONS

#### 9-134. Annexation

Any incorporated city or town may annex territory in an adjacent county pursuant to the provisions of section 9-471.

#### 9-101. Incorporation; definitions

A. If two-thirds of the qualified electors residing in a community containing a population of fifteen hundred or more inhabitants or in a community within ten miles of the boundary of a national park or monument that contains a population of five hundred or more persons petition the board of supervisors, setting forth the metes and bounds of the community, and the name under which the petitioners desire to be incorporated, and praying for the incorporation of the community into a city or town, and the board is satisfied that two-thirds of the qualified electors residing in the community have signed the petition, it shall declare, by an order entered of record, the community incorporated as a city or town.

B. If ten percent of the qualified electors residing in a community containing a population of fifteen hundred or more persons or in a community within ten miles of the boundary of a national park or monument that contains a population of five hundred or more persons petition the board of supervisors in the manner prescribed in subsection A of this section, praying for the calling of an election with the express intent to incorporate the community as a city or town, the board, within sixty days after the map and petition, complete with signatures, are filed with the board, shall call the election. The map and petition shall be filed simultaneously or within twenty-four hours of each other. The election shall take place on a date prescribed by section 16-204 but not more than one hundred eighty days after the petition has been filed with the board, complete with signatures, except that an election shall not be called within twelve months after the date of a previous election for incorporation of substantially the same territory. Only qualified electors of the community shall vote on this question. If a majority of qualified electors voting thereon votes for incorporation, then the board, by an order entered of record, shall declare the community incorporated as a city or town.

C. Before obtaining any signatures on a petition required by subsection A or B of this section, the petitioners shall do the following:

1. At least six months before publishing a copy of the petition for incorporation of a community pursuant to paragraph 2 of this subsection, provide to the board written notice of their intention to publish a copy of the petition for incorporation of the community. The written notice shall also be published for two consecutive weeks in a newspaper of general circulation in the area to be affected.

2. Publish a copy of the petition, setting forth the metes and bounds of the community to be incorporated, in a newspaper of general circulation in the area to be affected for two consecutive weeks at least six months after providing written notice to the board pursuant to paragraph 1 of this subsection. Members of the public may request modifications to the metes and bounds of the community by presenting alternatives to the petitioners.

3. Not less than sixty days after publishing the notice pursuant to paragraph 2 of this subsection, submit a copy of the petition to the county recorder or the county elections department. The petition shall state its purpose clearly and concisely and shall be in the form and signed and verified as generally provided for initiative petitions. The petition shall set forth the metes and bounds of the community and shall state that petition signers desire for the community to become incorporated as a city or town. The petitioners shall also submit a copy of the notice published pursuant to paragraph 2 of this subsection.

D. Not later than the next regularly scheduled board meeting following the submission of the proper and legal petition to the county recorder or county elections department but within thirty days after submission of the

petition, the board shall authorize the circulation of the petition. Petitioners have one hundred eighty days after the date of the meeting at which the circulation of the petition is approved to obtain the required number of signatures.

E. By whichever proceeding the incorporation of a city or town is accomplished, the order shall designate the name of the city or town, and its metes and bounds, and thereafter the inhabitants within the area so defined shall be a body politic and corporate by the name designated.

F. An area to be incorporated shall not include large areas of uninhabited, rural or farm lands, but it shall be urban in nature unless either:

1. The uninhabited, rural or farm lands have been platted and approved by the board of supervisors for housing or commercial development before filing a petition pursuant to subsection A or B of this section.
2. The current owner of the uninhabited, rural or farm lands agrees to include the property in the proposed incorporation area and provides to the petitioners a written, notarized statement supporting including the property in the proposed incorporation area with an attached copy of a map of the proposed incorporation area.

G. Territory shall not be incorporated if, as a result of such incorporation, unincorporated territory is completely surrounded by incorporated areas nor shall an area to be incorporated exclude interior county streets and roads, unless the board of supervisors approves the exclusion of such territory, streets and roads.

H. The board shall exclude from the community proposed to be incorporated pursuant to subsection A or B of this section any territory that has been included in an annexation ordinance adopted by a city or town pursuant to law after the incorporation petition has been submitted pursuant to subsection C of this section. If the remaining community fails to meet the qualifications for incorporation, the board of supervisors shall reject the petition.

I. For the purposes of this section, metes and bounds may be described by roads that make up the boundaries of the community.

J. For the purposes of this section:

1. "Community" means a locality in which a body of people resides in more or less proximity having common interests in such services as public health, public protection, fire protection and water that bind together the people of the area, and where the people are acquainted and mingle in business, social, educational and recreational activities.
2. "Uninhabited" includes land owned by a mining or metallurgical company.

#### **9-471. Annexation of territory; procedures; notice; petitions; access to information; pre-annexation agreements; restrictions**

A. The following procedures are required to extend and increase the corporate limits of a city or town by annexation:

1. A city or town shall file in the office of the county recorder of the county in which the annexation is proposed a blank petition required by paragraph 4 of this subsection setting forth a description and an accurate map of all the exterior boundaries of the territory contiguous to the city or town proposed to be annexed, except that a city or town shall not file an annexation petition that includes any territory for which an unsuccessful annexation was attempted by the same city or town until at least forty-five days after completion of the unsuccessful attempt. A property owner may waive the forty-five-day waiting period for the owner's property that was part of the original unsuccessful annexation. Notice and a copy of the filing shall be

given to the clerk of the board of supervisors and to the county assessor. The accurate map shall include all county rights-of-way and roadways that are within or contiguous to the exterior boundaries of the area of the proposed annexation. If state land, other than state land used as state rights-of-way or land held by the state by tax deed, is included in the territory, written approval of the state land commissioner and the selection board established by section 37-202 shall also be filed. The description shall identify the entity, if any, that will be responsible for maintaining the existing rights-of-way and roadways that are within or contiguous to the exterior boundaries of the area of the proposed annexation. For the purposes of this paragraph, “unsuccessful annexation” means an annexation attempt that was withdrawn or that was not completed pursuant to this section.

2. Signatures on petitions filed for annexation shall not be obtained for a waiting period of thirty days after filing the blank petition.

3. After filing the blank petition pursuant to paragraph 1 of this subsection, the governing body of the city or town shall hold a public hearing within the last ten days of the thirty-day waiting period to discuss the annexation proposal. The public hearing shall be held in accordance with title 38, chapter 3, article 3.1, except that, notwithstanding section 38-431.02, subsections C and D, the following notices of the public hearing to discuss the annexation proposal shall be given at least six days before the hearing:

(a) Publication at least once in a newspaper of general circulation, which is published or circulated in the city or town and the territory proposed to be annexed, at least fifteen days before the end of the waiting period.

(b) Posting in at least three conspicuous public places in the territory proposed to be annexed.

(c) Notice by first class mail sent to the chairperson of the board of supervisors of the county in which the territory proposed to be annexed is located.

(d) Notice by first class mail with an accurate map of the territory proposed to be annexed sent to each owner of the real and personal property as shown on the statement furnished pursuant to subsection G of this section that would be subject to taxation by the city or town in the event of annexation in the territory proposed to be annexed. For the purposes of this subdivision, “real and personal property” includes mobile, modular and manufactured homes and trailers only if the owner also owns the underlying real property.

4. Within one year after the last day of the thirty-day waiting period, a petition in writing signed by the owners of one-half or more in value of the real and personal property and more than one-half of the persons owning real and personal property that would be subject to taxation by the city or town in the event of annexation, as shown by the last assessment of the property, may be circulated and filed in the office of the county recorder. For the purposes of this paragraph, “real and personal property” includes mobile, modular and manufactured homes and trailers only if the owner also owns the underlying real property.

5. Alterations increasing or reducing the territory sought to be annexed shall not be made after a petition has been signed by a property owner.

6. The petitioner shall determine and submit a sworn affidavit verifying that no part of the territory for which the filing is made is already subject to an earlier filing for annexation. The county recorder shall not accept a filing for annexation without the sworn affidavit.

B. All information contained in the filings, the notices, the petition, the tax and property rolls and other matters regarding a proposed or final annexation shall be made available by the appropriate official for public inspection during regular office hours.

C. Any city or town, the attorney general, the county attorney or any other interested party within the territory to be annexed may on verified petition move to question the validity of the annexation for failure to comply with this section. The petition shall set forth the manner in which it is alleged the annexation procedure was not in compliance with this section and shall be filed within thirty days after adoption of the ordinance annexing the territory by the governing body of the city or town and not otherwise. The burden

of proof shall be on the petitioner to prove the material allegations of the verified petition. An action shall not be brought to question the validity of an annexation ordinance unless brought within the time and for the reasons provided in this subsection. All hearings provided by this section and all appeals therefrom shall be preferred and heard and determined in preference to all other civil matters, except election actions. If more than one petition questioning the validity of an annexation ordinance is filed, all such petitions shall be consolidated for hearing. If two or more cities or towns show the court that they have demonstrated an active interest in annexing any or all of the area proposed for annexation, the court shall consider any oral or written agreements or understandings between or among the cities and towns in making its determination pursuant to this subsection.

D. The annexation shall become final after the expiration of thirty days after the adoption of the ordinance annexing the territory by the city or town governing body, provided the annexation ordinance has been finally adopted in accordance with procedures established by statute, charter provisions or local ordinances, whichever is applicable, subject to the review of the court to determine the validity of the annexation ordinance if petitions in objection have been filed. After adoption of the annexation ordinance, the clerk of the city or town shall provide a copy of the adopted annexation ordinance to the clerk of the board of supervisors of each county that has jurisdiction over the annexed area within sixty days after the annexation becomes final.

E. For the purpose of determining the sufficiency of the percentage of the value of property under this section, the values of property shall be determined as follows:

1. In the case of property assessed by the county assessor, values shall be the same as shown by the last assessment of the property.
2. In the case of property valued by the department of revenue, values shall be appraised by the department in the manner provided by law for municipal assessment purposes.

F. For the purpose of determining the sufficiency of the percentage of persons owning property under this section, the number of persons owning property shall be determined as follows:

1. In the case of property assessed by the county assessor, the number of persons owning property shall be as shown on the last assessment of the property.
2. In the case of property valued by the department of revenue, the number of persons owning property shall be as shown on the last valuation of the property.
3. If an undivided parcel of property is owned by multiple owners, those owners are deemed one owner for the purposes of this section.
4. If a person owns multiple parcels of property, that owner is deemed one owner for the purposes of this section.

G. The county assessor and the department of revenue, respectively, shall furnish to the city or town proposing an annexation, within thirty days after a request, a statement in writing showing the owner, the address of each owner and the appraisal and assessment of all such property.

H. Territory is not contiguous for the purposes of subsection A, paragraph 1 of this section unless:

1. It adjoins the exterior boundary of the annexing city or town for at least three hundred feet.
2. It is, at all points, at least two hundred feet in width, excluding rights-of-way and roadways.
3. The distance from the existing boundary of the annexing city or town where it adjoins the annexed territory to the furthest point of the annexed territory from that boundary is not more than twice the maximum width of the annexed territory.

I. A city or town shall not annex territory if, as a result of that annexation, unincorporated territory is completely surrounded by the annexing city or town or a combination of the annexing city or town and other cities or towns.

J. Notwithstanding any provisions of this article to the contrary, any town incorporated before 1950 that had a population of less than two thousand persons by the 1970 census and that is bordered on at least three sides by Indian lands may annex by ordinance territory owned by the state within the same county for a new townsite that is not contiguous to the existing boundaries of the town.

K. Subsections H and I of this section do not apply to territory that at the time of the annexation was already completely surrounded by the same city or town or a combination of cities and towns.

L. Subsection I of this section does not apply to annexations that were approved by the selection board established in section 37-202 before August 25, 2020.

M. A city or town annexing an area shall adopt zoning classifications that permit densities and uses not greater than those permitted by the county immediately before annexation. Subsequent changes in zoning of the annexed territory shall be made according to existing procedures established by the city or town for the rezoning of land.

N. The annexation of territory within six miles of territory included in a pending incorporation petition filed with the county recorder pursuant to section 9-101.01, subsection D shall not cause an urbanized area to exist pursuant to section 9-101.01 that did not exist before the annexation.

O. As an alternative to the procedures established in this section, a county right-of-way or roadway may be transferred to an adjacent city or town by mutual consent of the governing bodies of the county and city or town if the property transferred is adjacent to the receiving city or town and if the city or town and county each approve the proposed transfer as a published agenda item at a regular public meeting of their governing bodies. A transfer of property made pursuant to this subsection shall be treated by the receiving city or town as if the transferred property was newly annexed territory.

P. On or before the date the governing body adopts the ordinance annexing territory, the governing body shall have approved a plan, policy or procedure to provide the annexed territory with appropriate levels of infrastructure and services to serve anticipated new development within ten years after the date the annexation becomes final pursuant to subsection D of this section.

Q. If a property owner prevails in any action to challenge the annexation of the property owner's property, the court shall allow the property owner reasonable attorney fees and costs relating to the action from the annexing municipality.

R. A city or town may annex territory that is a county-owned park or a park operated on public lands by a county as part of a management agreement if otherwise agreed to by the board of supervisors. If the board of supervisors does not agree to the annexation, the county-owned park or park operated on public lands by a county as part of a management agreement shall be excluded from the annexation area, notwithstanding subsections H and I of this section. A county-owned park or park operated on public lands by a county as part of a management agreement that is excluded from the annexation area pursuant to this subsection may subsequently be annexed with the permission of the board of supervisors notwithstanding any other provision of this section. For the purposes of this subsection, "public lands":

1. Has the same meaning prescribed in section 37-901.
2. Does not include lands owned by a flood control district.

S. Notwithstanding subsection H of this section, territory is considered contiguous for the purposes of subsection A, paragraph 1 of this section if all of the real property in the territory is owned by one person, the city or town and the owner of the real property agree to the annexation and the territory adjoins the exterior boundary of the annexing city or town for at least three hundred feet.

T. A city, town or developer may enter into a pre-annexation agreement with a property owner in which the property owner agrees to future annexation of an area that includes the property owner's property. A property owner who has entered into a pre-annexation agreement is not required to sign the petition pursuant to subsection A, paragraph 4 of this section. Whether or not the property owner signs the petition, the property and property owner are included for purposes of calculating the one-half or more in value of the real and personal property and more than one-half of the persons owning real and personal property that would be subject to taxation by the city or town in the event of the annexation, as required pursuant to subsection A, paragraph 4 of this section.

#### **9-471.01. Dates of signatures on petition; time limitation for validity of signatures**

A. Each person signing a petition for the annexation of territory to a city or town shall, at the time he signs, write upon the petition the date on which he signs the petition.

B. A signature on a petition for annexation shall not be valid if the petition has not been filed or accepted for filing within two years after the date the signature was placed on the petition.

#### **9-471.02. Deannexation of land from one municipality and annexation to another municipality; deannexation of right-of-way from a municipality to a county**

A. Notwithstanding any other law, territory may be deannexed and severed from one city or town and annexed to another city or town under this section if the territory that is deannexed is contiguous to the city or town that annexes the territory.

B. The governing body of a city or town that intends to deannex the territory shall by ordinance set forth the legal description of the territory and shall declare the deannexation of the territory contingent on the fulfillment of the conditions of this section.

C. The governing body of the city or town that intends to annex the territory shall by ordinance set forth the legal description of the territory and shall declare the annexation of the territory contingent on fulfillment of the conditions of this section.

D. The ordinance passed by each governing body shall be filed with the county board of supervisors which shall set a hearing date of not less than thirty nor more than sixty days from the date of the filing of the ordinances and shall notify the governing body of each city or town of the hearing date at least thirty days prior to the date.

E. The governing body of the city or town desiring to deannex territory shall notify by letter the owner of any real property in the territory to be deannexed at least twenty days before the hearing by the county board of supervisors. The notification shall specify that the area is to be deannexed and annexed to another city or town and that the property shall continue to be subject to any tax lawfully assessed against it for the purpose of paying any indebtedness lawfully contracted by the governing body of the city or town while the property was within the corporate limits. The letter shall state that the property owner may protest the action by letter to the county board of supervisors before the hearing or in person at the hearing. If property owners of fifty-one per cent or more of the land area of the territory to be deannexed protest the action, the county board of supervisors shall deny the deannexation of the territory. If the action is denied it may not be resubmitted to the county board of supervisors for at least one year following the denial.

F. On determining that the requirements of this section have been satisfied, on the holding of the public hearing and on determination that the protests filed are insufficient as defined by this section, the county board of supervisors shall order that the territory be deannexed from one city or town and that the same territory be annexed to another city or town as specified in the two ordinances authorized by this section.

G. The land deannexed and annexed shall not be exempt from the payment of any taxes lawfully assessed against it for the purpose of paying any indebtedness lawfully contracted by the corporate authorities of the city or town while the land was within the limits of the city or town and that remains unpaid, and for the payment of which the land could be lawfully taxed.

H. If the governing body of the city or town that has deannexed territory levies a tax on the property within the city or town for the purpose of paying indebtedness incurred before the deannexation, or any part thereof, and interest thereon, the governing body may levy a tax at the same rate and for the same purpose on the deannexed territory. If the owner of any deannexed territory pays off and discharges a portion of the indebtedness equal in amount to the same proportion of the indebtedness that the assessed value of the owner's land bears to the entire assessed value of all the property subject to taxation for the payment of the indebtedness, calculated according to the last assessment previous to the payment, the land shall be exempted from further taxation to pay the indebtedness. On payment being made, the canceled bonds or other evidences of payment of the portion of the indebtedness shall be deposited with the clerk of the city or town and a certificate shall be given by the clerk stating that the payment has been made.

I. Notwithstanding any other law, a public right-of-way that is partially located within a city or town and partially located within the unincorporated area of a county may be deannexed and severed from the city or town and returned to the county pursuant to section 9-471.03. The county board of supervisors shall notify the city or town if the order of the county board of supervisors ordering the deannexation of the public right-of-way is approved.

J. A copy of the order of the county board of supervisors ordering the deannexation and annexation of any land described in any city or town, certified by the clerk of the board, shall be filed for record in the recorder's office of the county in which the land is situated. The record, or a copy of the order or decree, certified by the clerk of the board, shall be proof of the deannexation and annexation of the land.

### **9-471.03. Return of certain land to county; procedures**

A. Notwithstanding any other law, territory may be deannexed, severed and returned to the county by a city or town if the territory is a county owned park, a park operated on public lands by a county as part of a management agreement or land owned by a flood control district.

B. Notwithstanding any other law, a public right-of-way that is partially located within a city or town and partially located within the unincorporated area of a county may be deannexed and severed from the city or town and returned to the county.

C. The governing body of a city or town that intends to return the territory or public right-of-way to a county shall set forth by ordinance the legal description of the territory or public right-of-way and shall declare the deannexation and return of the territory or public right-of-way contingent on the fulfillment of the conditions of this section.

D. The board of supervisors that intends to receive the territory or public right-of-way shall set a public hearing to determine if the public interest is served. The determination must include an analysis of the impacts of the requested deannexation.

E. If the board of supervisors that intends to receive the territory or public right-of-way determines that the public interest is served by receiving the territory or public right-of-way, the board of supervisors shall set

forth by ordinance the legal description of the territory or public right-of-way and shall declare the return of the territory or public right-of-way contingent on fulfillment of the conditions of this section.

F. The board of supervisors shall set a public hearing not less than thirty nor more than sixty days after the date the ordinance is filed. The board of supervisors shall notify by certified mail each owner of real property subject to taxation adjacent to the territory or public right-of-way that is proposed to be deannexed at least twenty days before the hearing. On the holding of the public hearing, the board of supervisors may order that the territory or public right-of-way be returned as specified in the ordinance authorized by the city or town.

#### **9-471.04. Annexation of territory partially or completely surrounded by city or town; definition**

A. Notwithstanding any other provision of this article:

1. A city or town located in a county with a population of more than three hundred fifty thousand persons may annex any territory within an area that is surrounded by the city or town or that is bordered by the city or town on at least three sides if the landowner has submitted a request to the federal government to take ownership of the territory or hold the territory in trust.

2. The annexation of territory pursuant to this section is valid if approved by a majority vote of the governing body of the city or town. The annexation becomes immediately operative if it is approved by at least two-thirds of the governing body of the city or town.

B. For the purposes of this section, “submitted a request to the federal government” means the landowner has made an application to the federal government as required by a specific federal statute or regulation.

#### **9-500.05. Development agreements; public safety; definitions**

A. A municipality, by resolution or ordinance, may enter into development agreements relating to property in the municipality and to property located outside the incorporated area of the municipality. If the development agreement relates to property located outside the incorporated area of the municipality, the development agreement does not become operative unless annexation proceedings to annex the property to the municipality are completed within the period of time specified by the development agreement or any extension of such time.

B. A development agreement shall be consistent with the municipality’s general plan or specific plan, if any, as defined in section 9-461, applicable to the property on the date the development agreement is executed.

C. A development agreement may be amended, or cancelled in whole or in part, by mutual consent of the parties to the development agreement or by their successors in interest or assigns.

D. No later than ten days after a municipality enters into a development agreement, the municipality shall record a copy of the agreement with the county recorder of the county in which the property subject to the development agreement is located, and the recordation constitutes notice of the development agreement to all persons. The burdens of the development agreement are binding on, and the benefits of the development agreement inure to, the parties to the agreement and to all their successors in interest and assigns.

E. Section 32-2181 does not apply to development agreements under this section.

F. Notwithstanding any other law, a municipality may provide by resolution or ordinance for public safety purposes, and with the written consent of an owner of property that has been granted a development agreement pursuant to this section, an owner of a protected development right pursuant to chapter 11 of this title or the owner of any other residential or commercial development subject to the supervision of a municipality pursuant to this title, for the application and enforcement of speed limits, vehicle weight restrictions or other

safety measures on a private road that is located in any development in the municipality and that is open to and used by the public. A municipality may require payment from the property owner of the actual cost of signs for speed limits or other restrictions applicable on the private road, before their installation.

G. Notwithstanding section 19-142, subsection B, a decision by the governing body involving a development agreement may not be enacted as an emergency measure and that decision is not effective for at least thirty days after final approval of the development agreement.

H. In this section, unless the context otherwise requires:

1. "Development agreement" means an agreement between a municipality and a community facilities district pursuant to section 48-709, a landowner or any other person having an interest in real property that may specify or otherwise relate to any of the following:

(a) The duration of the development agreement.

(b) The permitted uses of property subject to the development agreement.

(c) The density and intensity of uses and the maximum height and size of proposed buildings within such property.

(d) Provisions for reservation or dedication of land for public purposes and provisions to protect environmentally sensitive lands.

(e) Provisions for preservation and restoration of historic structures.

(f) The phasing or time of construction or development on property subject to the development agreement.

(g) Conditions, terms, restrictions and requirements for public infrastructure and the financing of public infrastructure and subsequent reimbursements over time.

(h) Conditions, terms, restrictions and requirements for annexation of property by the municipality and the phasing or timing of annexation of property by the municipality.

(i) Conditions, terms, restrictions and requirements of deannexation of property from one municipality to another municipality and the phasing or timing of deannexation of property from one municipality to another municipality.

(j) Conditions, terms, restrictions and requirements relating to the governing body's intent to form a special taxing district pursuant to title 48.

(k) Any other matters relating to the development of the property.

2. "Governing body" means the body or board which by law is constituted as the legislative body of the municipality.

3. "Municipality" means an incorporated city or town.

#### **9-462.04. Public hearing required; definition**

A. If the municipality has a planning commission or a hearing officer, the planning commission or hearing officer shall hold a public hearing on any zoning ordinance. Notice of the time and place of the hearing, including a general explanation of the matter to be considered and a general description of the area affected, shall be given at least fifteen days before the hearing in the following manner:

1. The notice shall be published at least once in a newspaper of general circulation published or circulated in the municipality, or if there is none, it shall be posted on the affected property in such a manner as to be legible from the public right-of-way and in at least ten public places in the municipality. A posted notice shall

be printed so that the following are visible from a distance of one hundred feet: the word “zoning”, the present zoning district classification, the proposed zoning district classification and the date and time of the hearing.

2. In proceedings involving rezoning of land that abuts other municipalities or unincorporated areas of the county or a combination of a municipality and an unincorporated area, copies of the notice of public hearing shall be transmitted to the planning agency of the governmental unit abutting such land. In proceedings involving rezoning of land that is located within the territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461 or within the influence area of a military installation or range or Arizona national guard site, the municipality shall send copies of the notice of public hearing by first class mail to the military airport or military installation or range or Arizona national guard site. In addition to notice by publication, a municipality may give notice of the hearing in any other manner that the municipality deems necessary or desirable. For the purposes of this paragraph, “influence area” and “military installation or range or Arizona national guard site” have the same meanings prescribed in section 9-500.50.

3. In proceedings that are not initiated by the property owner involving rezoning of land that may change the zoning classification, notice by first class mail shall be sent to each real property owner, as shown on the last assessment of the property, of the area to be rezoned and all property owners, as shown on the last assessment of the property, within three hundred feet of the property to be rezoned.

4. In proceedings involving one or more of the following proposed changes or related series of changes in the standards governing land uses, notice shall be provided in the manner prescribed by paragraph 5 of this subsection:

- (a) A ten percent or more increase or decrease in the number of square feet or units that may be developed.
- (b) A ten percent or more increase or reduction in the allowable height of buildings.
- (c) An increase or reduction in the allowable number of stories of buildings.
- (d) A ten percent or more increase or decrease in setback or open space requirements.
- (e) An increase or reduction in permitted uses.

5. In proceedings governed by paragraph 4 of this subsection, the municipality shall provide notice to real property owners pursuant to at least one of the following notification procedures:

- (a) Notice shall be sent by first class mail to each real property owner, as shown on the last assessment, whose real property is directly governed by the changes.
- (b) If the municipality issues utility bills or other mass mailings that periodically include notices or other informational or advertising materials, the municipality shall include notice of the changes with such utility bills or other mailings.
- (c) The municipality shall publish the changes before the first hearing on such changes in a newspaper of general circulation in the municipality. The changes shall be published in a “display ad” covering not less than one-eighth of a full page.

6. If notice is provided pursuant to paragraph 5, subdivision (b) or (c) of this subsection, the municipality shall also send notice by first class mail to persons who register their names and addresses with the municipality as being interested in receiving such notice. The municipality may charge a fee not to exceed \$5 per year for providing this service and may adopt procedures to implement this paragraph.

7. Notwithstanding the notice requirements in paragraph 4 of this subsection, the failure of any person or entity to receive notice does not constitute grounds for any court to invalidate the actions of a municipality for which the notice was given.

B. If the matter to be considered applies to territory in a high noise or accident potential zone as defined in section 28-8461, the notice prescribed in subsection A of this section shall include a general statement that the matter applies to property located in the high noise or accident potential zone.

C. After the hearing, the planning commission or hearing officer shall render a decision in the form of a written recommendation to the governing body. The recommendation shall include the reasons for the recommendation and be transmitted to the governing body in the form and manner prescribed by the governing body.

D. If the planning commission or hearing officer has held a public hearing, the governing body may adopt the recommendations of the planning commission or hearing officer without holding a second public hearing if there is no objection, request for public hearing or other protest. The governing body shall hold a public hearing if requested by the party aggrieved or any member of the public or of the governing body, or, in any case, if a public hearing has not been held by the planning commission or hearing officer. The governing body may consider the testimony of any party aggrieved when making its decision. In municipalities with territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the governing body shall hold a public hearing if, after notice is transmitted to the military airport pursuant to subsection A of this section and before the public hearing, the military airport provides comments or analysis concerning the compatibility of the proposed rezoning with the high noise or accident potential generated by military airport or ancillary military facility operations that may have an adverse impact on public health and safety, and the governing body shall consider and analyze the comments or analysis before making a final determination. Notice of the time and place of the hearing shall be given in the time and manner provided for giving notice of the hearing by the planning commission as specified in subsection A of this section. A municipality may give additional notice of the hearing in any other manner as the municipality deems necessary or desirable. For the purposes of this subsection, "party aggrieved" means any property owner within the notification area prescribed by subsection A, paragraph 3 of this section.

E. A municipality may enact an ordinance authorizing county zoning to continue in effect until municipal zoning is applied to land previously zoned by the county and annexed by the municipality, but not longer than six months after the annexation.

F. A municipality is not required to adopt a general plan before the adoption of a zoning ordinance.

G. If there is no planning commission or hearing officer, the governing body of the municipality shall perform the functions assigned to the planning commission or hearing officer.

H. If the owners of twenty percent or more of the property by area and number of lots, tracts and condominium units within the zoning area of the affected property, excluding government-owned property, file a protest in writing against a proposed amendment, the change shall not become effective except by the favorable vote of three-fourths of all members of the governing body of the municipality. If any members of the governing body are unable to vote on such a question because of a conflict of interest, then the required number of votes for passage of the question shall be three-fourths of the remaining membership of the governing body, if such required number of votes is not less than a majority of the full membership of the legally established governing body. For the purposes of this subsection, the vote shall be rounded to the nearest whole number. A protest filed pursuant to this subsection shall be signed by the property owners, excluding government-owned property, opposing the proposed amendment and filed in the office of the clerk of the municipality not later than 12:00 noon one business day before the date on which the governing body will vote on the proposed amendment or on an earlier time and date established by the governing body.

I. In applying an open space element or a growth element of a general plan, a parcel of land shall not be rezoned for open space, recreation, conservation or agriculture unless the owner of the land consents to the rezoning in writing.

J. Notwithstanding section 19-142, subsection B, a decision by the governing body involving rezoning of land that is not owned by the municipality and that changes the zoning classification of such land may not be enacted as an emergency measure and the change shall not be effective for at least thirty days after final approval of the change in classification by the governing body.

K. For the purposes of this section, “zoning area” means both of the following:

1. The area within one hundred fifty feet, including all rights-of-way, of the affected property subject to the proposed amendment or change.
2. The area of the proposed amendment or change.

#### **11-269.07. Annexation to city or town; small county islands**

A board of supervisors may require annexation to a city or town of any territory of the county that consists of an entire parcel that is ten acres or less and that is completely surrounded by the city or town in accordance with the following procedures:

1. Written notice of the proposed annexation and the public hearing required by paragraph 2, together with a document setting forth a description and an accurate map of the exterior boundaries of the territory to be annexed, shall be given to the city or town and mailed by first class mail to each owner of real property in the territory proposed for annexation. Notice to each owner of railroad property must be mailed to the address on file with the county assessor’s office for property tax purposes. The notice shall also be posted in three conspicuous public places in the territory proposed for annexation.
2. Unless a petition is filed pursuant to paragraph 3 or a resolution is passed pursuant to paragraph 4, the board of supervisors shall hold a public hearing not less than ninety days after the notices are provided pursuant to paragraph 1 and the annexation shall become final after an affirmative vote of two-thirds or more of the board members to annex the territory.
3. If a majority of the real property owners in the territory proposed for annexation file a written petition containing their signatures and objecting to the annexation within sixty days after the notices are provided pursuant to paragraph 1, the annexation shall not proceed.
4. If an affected city or town passes a resolution objecting to the annexation within sixty days of the mailing required by paragraph 1 of this section, the annexation shall not proceed. If a city or town passes a resolution objecting to the annexation, the city or town shall file with the clerk of the board of supervisors a copy of the resolution and shall notify the real property owners in the territory by first class mail that the annexation shall not proceed.

**Appendix C**

**MODEL ANNEXATION PETITION**

TO THE HONORABLE MAYOR AND COUNCIL OF THE (CITY/TOWN) OF \_\_\_\_\_, ARIZONA:

We, the undersigned, the owners of one-half or more in value of the real and personal property and more than one-half of the persons owning real and personal property that would be subject to taxation by the (City/Town) of \_\_\_\_\_ in the event of annexation within the territory proposed to be annexed, which is hereafter described, said territory being contiguous to the corporate limits of the (City/Town) of \_\_\_\_\_, with the exterior boundaries of the territory proposed to be annexed shown on the map attached hereto, marked Exhibit "A" and made a part hereof, request the (City/Town) of \_\_\_\_\_ to annex the following described territory, provided that the requirements of A.R.S. §9-471, and amendments thereto are fully observed.

The description of the territory proposed to be annexed, not already within the present limits of the (City/Town) of \_\_\_\_\_ and located in \_\_\_\_\_ County, Arizona, is as follows:

(Description)

<u>DATE</u>	<u>NAME OF PROPERTY OWNER</u>	<u>MAILING ADDRESS</u>	<u>PHONE</u>	<u>PARCEL NUMBER OR LEGAL DESCRIPTION</u>

## Appendix D

### MODEL AFFIDAVIT REGARDING ANNEXATION

Personally appears before me, \_\_\_\_\_, who, first being duly sworn, deposes and says as follows:

1. I make this affidavit of my own personal knowledge.
2. I am the duly appointed \_\_\_\_\_ of the City/Town of \_\_\_\_\_, Arizona and I am qualified to make this affidavit on behalf of and for the City/Town.
3. I have made a diligent search of the records of the Office of the Clerk of the City/Town and of the Office of the \_\_\_\_\_ County Recorder for any annexation filing which might involve territory sought to be annexed in the City/Town Annexation Petition, which is filed herewith, with exhibits, in the Office of the \_\_\_\_\_ County Recorder.
4. I hereby affirm, pursuant to A.R.S. §9-471(A)(6), that no part of the territory for which the attached Annexation Petition is filed is already subject to an earlier filing for annexation.

FURTHER AFFIANT SAYETH NOT.

\_\_\_\_\_  
(Name and Title)

SWORN TO AND SUBSCRIBED before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public for the State of Arizona

My commission expires: \_\_\_\_\_

D-

## Appendix E

### A MODEL ANNEXATION ORDINANCE

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE EXTENDING AND INCREASING THE CORPORATE LIMITS OF THE (CITY/TOWN) OF \_\_\_\_\_, \_\_\_\_\_ COUNTY, STATE OF ARIZONA, PURSUANT TO THE PROVISIONS OF TITLE 9, CHAPTER 4, ARTICLE 7, ARIZONA REVISED STATUTES AND AMENDMENTS THERETO, BY ANNEXING THERETO CERTAIN TERRITORY CONTIGUOUS TO THE EXISTING (CITY/TOWN) LIMITS OF THE (CITY/TOWN) OF \_\_\_\_\_.

WHEREAS, a petition in writing, accompanied by a map or plot of said real property, having been filed and presented to the Mayor and Council of the (City/Town) of \_\_\_\_\_, Arizona, signed by the owners of more than one-half in value of the real and personal property and more than one-half of the persons owning real and personal property as would be subject to taxation by the (City/Town) of \_\_\_\_\_ in the event of annexation within the territory and land hereinafter described as shown by the last assessment of said property, which said territory is contiguous to the (City/Town) of \_\_\_\_\_, and not now embraced within its limits, asking that the property more particularly hereinafter described be annexed to the (City/Town) of \_\_\_\_\_, and to extend and increase the corporate limits of the (City/Town) of \_\_\_\_\_ so as to embrace the same; and

WHEREAS, the Mayor and Council of the (City/Town) of \_\_\_\_\_, Arizona, are desirous of complying with said petition and extending and increasing the corporate limits of the (City/Town) of \_\_\_\_\_ to include said territory; and

WHEREAS, the said petition sets forth a true and correct description of all the exterior boundaries of the entire area proposed to be annexed to the (City/Town) of \_\_\_\_\_, and had attached thereto at all times an accurate map of the territory desired to be annexed; and

WHEREAS, no alterations increasing or reducing the territory sought to be annexed have been made after the said petition had been signed by any owner of real and personal property in such territory; and

WHEREAS, the provisions of A.R.S. §9-471, and amendments thereto, have been fully observed; and

WHEREAS, proper and sufficient certification and proof of the foregoing facts are now on file in the office of the (City/Town) Clerk of the (City/Town) of \_\_\_\_\_, Arizona, together with a true and correct copy of the original petition referred to herein, which is on file in the office of the county recorder;

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE (CITY/TOWN) OF \_\_\_\_\_, ARIZONA, AS FOLLOWS:

SECTION 1. That the following described territory be, and the same hereby is, annexed to the (City/Town) of \_\_\_\_\_, and that the present corporate limits be, and the same hereby are, extended and increased to include the following described territory contiguous to the present (City/Town) limits, to wit:

(Legal description of area to be annexed may be description by lot and block, or legal description of perimeter of area to be annexed.)

SECTION 2. That a copy of this ordinance, together with an accurate map of the territory hereby annexed to the (City/Town) of \_\_\_\_\_, certified by the Mayor of said (City/Town), be forthwith filed and recorded in the office of the County Recorder of \_\_\_\_\_ County, Arizona and that a copy of this ordinance be provided to the Clerk of the Board of Supervisors of \_\_\_\_\_ County, Arizona.

SECTION 3. WHEREAS, it is necessary for the preservation of the peace, health, and safety of the (City/Town) of \_\_\_\_\_ that this ordinance become immediately effective, an emergency is declared to exist, and this ordinance shall be effective immediately upon its passage and adoption.

PASSED AND ADOPTED by the Mayor and Common Council of the (City/Town) of \_\_\_\_\_, Arizona, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk

APPROVED AS TO FORM:

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Attorney

Note: A map of the area annexed along with the certification of the map must be included with the ordinance and published with the ordinance. The certification appears on the next page.

# CERTIFICATION OF MAP

## MAP OF AREA TO BE ANNEXED

I, \_\_\_\_\_, Mayor of the (City/Town) of \_\_\_\_\_, Arizona, do hereby certify that the foregoing map is a true and correct map of the territory annexed under and by virtue of the petition of the real and personal property owners in the said territory and by Ordinance No. \_\_\_\_\_, annexing the territory described in Ordinance No. \_\_\_\_\_ and as shown on said map as a part of the territory to be included within the corporate limits of the (City/Town) of \_\_\_\_\_, Arizona.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk

## Appendix F

### ANNEXATION MAP DISTRIBUTION

The following list of agencies has been compiled to provide some direction on the distribution of the annexation map and, when applicable, the annexation ordinance as well. Such notifications vary considerably across the State, but this list may be helpful to you in preparing your own mailing list.

- A. County Offices
  - 1. Recorder
  - 2. Assessor
  - 3. Clerk of the Board of Supervisors
  - 4. Engineer
  - 5. Highway Department
  - 6. Planning and Zoning Commission
  - 7. Election Department
  
- B. Gas, Electric, Telephone, Cable and other utilities serving the city/town
  
- C. Arizona Department of Transportation  
206 South 17th Avenue  
Phoenix, Arizona 85007
  
- D. Department of Revenue (annexation ordinance and map)  
1600 West Monroe  
Phoenix, Arizona 85007
  
- E. Office of Economic Opportunity  
State Demographer's Office  
100 North 15th Ave, Suite 103  
Phoenix, Arizona 85007
  
- F. Postmaster
  
- G. Chief, Voting Section  
Civil Rights Division  
Room 7254 - NWB  
Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530

- H. U.S. Census Bureau  
Geography Division  
Boundary and Annexation  
Washington, D.C. 20233-7400  
or  
e-mail to [geo.bas@census.gov](mailto:geo.bas@census.gov) (Census Bureau prefers e-mail transmittal)
- I. Regional Council of Governments (see address in back of League directory)

Each city or town may need to send ordinances to other agencies affected by such annexation.