
Coates' Canons Blog: Voluntary Annexation: An Overview

By Frayda Bluestein

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“Annexation” is the incorporation of new territory into an existing city. North Carolina allows three methods of annexation: 1) city-initiated (“involuntary”), 2) by petition from property-owners or residents (“voluntary”), and 3) by act of the General Assembly (“legislative”). The General Assembly recently made significant changes in the involuntary annexation statutes, which are summarized in my **blog post here**. The new requirement for voter approval of involuntary annexations is widely viewed as likely to make this type of annexation rare, if not extinct. As such, the growth of cities may be more likely to occur through legislative and voluntary annexation. This blog post provides an overview of the voluntary annexation process, and answers some frequently asked questions about how it is used in North Carolina.

What is the basic process for voluntary annexation?

The process starts with a petition signed by all of the owners of the property. The clerk reviews the petition for sufficiency, a public hearing is held, and then the city governing board acts on the petition. In most cases, the decision to annex is completely within the discretion of the board. The annexation is a legislative matter and must be approved by ordinance.

Did the recent annexation reform legislation affect any of the voluntary annexation laws?

The basic procedures were not changed, but there are two new kinds of petitions that are allowed, and there is a new limitation that primarily affects annexations of rights of way.

The **2011 reform legislation** created two new procedures for annexations in high poverty or distressed areas. These changes relax the usual requirement of a petition signed by all owners of the property, and they allow residents, rather than owners, to petition for annexation. Under G.S. **160A-31(b1)**, a petition may be submitted by the owners of 75% of the parcels of property in the area to be annexed if it is a high poverty area as defined in the statute. Under **160A-31(j)** a petition may be submitted by at least one adult resident of at least two-thirds of the resident households in the area to be annexed, if the area is “distressed” as defined in the statute. The law *requires* annexation of areas under (b1), but *allows* annexation under (j). Once annexed, these areas are entitled to receive water and sewer service at no cost for the installation. For more detail on these changes, see my **blog post here**.

Another change limited the ability of cities to annex property by their own petition if they do not own the underlying fee (for example, street rights of way), or other tax-exempt property for which a signature is not required, over the objection of the property owner. This change is discussed in my **blog post here**.

What property qualifies for voluntary annexation?

Property that is annexed by petition must either be contiguous to the primary corporate limits of the city under **G.S. 160A-31**, or must meet the criteria under **G.S. 160A-58.1** for non-contiguous or “satellite” annexation. Those criteria include limits on the distance between the area to be annexed and the primary corporate limits of the city, the proximity of the property to the primary corporate limits of another city, and the size of the property as a percentage of the total size of the city. (Many local governments have obtained local acts exempting them from the size limitation.)

How does the voluntary annexation law define contiguous? Unlike the involuntary annexation statute, which requires at least 1/8 of the annexed property to be contiguous to the primary corporate limits, the voluntary annexation statute does not establish a numerical definition. Property is considered to be contiguous if it abuts directly on the municipal boundary, or is separated by *the width* of a street, creek or river, or the right of way of a railroad, or land owned by the state or

another local government. **G.S. 160A-31(f)**. Based on the language in the statute, as well case law, property should touch or be generally proximate to the annexing city. Petitions that propose annexation of long bridges or shoestrings to create contiguity probably do not meet the requirements under the statute. (As noted below, however, standing to challenge voluntary annexation is limited.)

Why do property owners seek voluntary annexation?

Most typically, property owners seek city services, including utilities, police, road maintenance, and zoning. In “dry” counties, a commercial property owner may seek annexation in order to engage in beer and wine sales. Another motivation might be to avoid annexation by another jurisdiction, although that will be less common under the new involuntary annexation law.

Is it legal for a city to require a property owner to petition for annexation as a condition of receiving services?

For most services, the city has no authority to provide services outside of the city limits, or possibly the city’s extra-territorial jurisdiction. So this question typically comes up in the context of certain public enterprise utilities, which cities are authorized to provide outside the city limits under **G.S. 160A-312(a)**. Since the city is not *obligated* to provide these services outside the city limits, and may charge higher rates and costs for extension, both parties may see a benefit to annexation. Although there is no specific statute addressing this, it is a common practice, and is consistent with the relevant contract and utility cases. For more information about these types of contracts, see David Lawrence’s book, ***Annexation Law in North Carolina, Volume I***, section 4.03.

Is it legal for a city to agree to rezone property in exchange for the property owner’s petition for annexation?

Probably not. This type of agreement is different from the one described above. In the utility context, the city doesn’t agree to annex the property, but instead requires the property owner to request annexation. Cases have held that cities cannot contract away their legislative discretion – they can’t promise to annex or to rezone property in a contract with another party. (This doctrine is discussed in my **blog post here**.) It’s not uncommon, however, for property owners to request a rezoning or development permit as part of a voluntary annexation process. Even though the annexation and rezoning must be considered separately, the two procedures can proceed concurrently. There is some risk to the property owner in that the annexation must occur first as a separate action, followed by the land use approval, as a second, separate action.

Who has standing to challenge a voluntary annexation?

North Carolina courts have adopted a restrictive rule about who has standing to challenge the validity of an annexation. (See generally, ***Annexation Law in North Carolina, Volume I, Chapter 7***.) Although the *involuntary* annexation law specifically grants standing to owners of property in the area that is annexed, the voluntary annexation statutes do not address the issue. Courts have recognized individual property owner standing only for those people who own property in the annexed area. Neighbors, city residents, and even nearby cities, do not have standing, except perhaps a city that is in competition to annex the same property. Since property owners must petition for voluntary annexation, it will be rare for them to challenge it. This can occur if the petition is defective and doesn’t include all property owners, or in a case where a developer agrees to petition for annexation but a subsequent purchaser seeks to withdraw before the annexation is complete. For an example of how this can play out, see, ***Cunningham v. City of Greensboro***, summarized in my **blog post here**.

Where can I find more information about voluntary annexation?

For a comprehensive legal guide to the voluntary annexation process, see the School of Government publication ***Annexation Law in North Carolina, Volume 2- Voluntary Annexation***, by David Lawrence. In addition, the **North Carolina League of Municipalities** publishes *Mechanics of Annexation*, updated in 2012, which provides summaries, guides and forms for annexation.



Links

- canons.sog.unc.edu/?p=6731
- www.ncga.state.nc.us/enactedlegislation/sessionlaws/html/2011-2012/sl2011-396.html
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-31
- canons.sog.unc.edu/?p=4494
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- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-58.1
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-312
- www.sog.unc.edu/publications/books/annexation-law-north-carolina-volume-1-general-topics-second-edition
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- www.nclm.org/resourcelibrary/Shared%20Documents/Handbooks%20and%20Manuals/Mechanics%20of%20Annexation%20updated%20August%202012.pdf#search=mechanics%20of%20annexation