



# Oregon Communities For A Voice In Annexations

Promoting & Protecting Citizen Involvement in Land Use Issues

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## OREGON ANNEXATION PROCEDURES: 2013 UPDATE

### Introduction

There are more than a dozen ways that one public entity can annex territory from another. The most common annexations are those requested by property owners involving relatively small parcels. These are usually routine and not controversial. It is when annexations are forced on those who do not want to be annexed that problems arise.

Oregon annexation law is complex and its application varies depending on the circumstances and even on the location of the public entities involved. The following is intended to be a very brief overview of various annexation methods in use around the state. It is not intended as legal advice and should not be construed as such.

### General Applications

- 1. By Consent of Land Owners & Electors:** A city can annex territory if all the landowners in the territory proposed for annexation and at least 50% of the electors in the territory, if any, consent in writing. No further vote required, except in OCVA-member communities (ORS 222.125)
- 2. By Consent of Electors in the Territory To be Annexed:** A city can annex territory if at least 50% of the electors in the territory approve. The city MAY allow city voters to also vote, separately (i.e., a “double majority”) and is required to give city voters a say in OCVA-member communities. (ORS 222.120)
- 3. By Double Majority of Landowners and Electors:** A city can annex territory if at least 50% of the landowners and at least 50% of the electors consent to the annexation and file a statement of their intent with the governing body. No further vote required except in OCVA-member cities. (ORS 222.170 (2))
- 4. By Double majority of City and Territory Voters:** A city can annex territory by approval of more than 50% of city voters and more than 50% of voters in the territory proposed for annexation. The vote count is separate and either entity has veto power. This method also satisfies OCVA-member city charters. (ORS 222.111 (5))
- 5. By “Triple Majority:”** Allows a city to annex territory by consent of more than half the property owners, owning more than half the land area which also constitutes more than half the assessed value. (ORS 222.170 (2)). No further vote required except in OCVA member communities.

**Controversial Applications**

6. **“Service Provider” Annexations (ORS-195):** Government officials from a city, its county of location and all “service providers” (e.g., fire, water, electricity, etc.) develop an “annexation plan” for a targeted territory within the city’s urban growth boundary. This usually applies to already-developed and urbanized areas of the UGB. The plan is then submitted to the electors in the territory proposed for annexation and, *separately*, to the voters in the city. “Double majority” approval is required. This is a change that OCVA and our allies were able to get through the 2005 Legislature (HB 2484). The League of Oregon Cities had been interpreting the voting provision as meaning a *single, “combined vote”* of the city and the target area. Since city populations typically dwarf those in the target areas, the latter effectively had no voice in the decision under this interpretation. As more cities attempted to implement these plans, major public outcry over the unfairness of the combined vote prompted the Legislature to act.
7. **Island Annexations (ORS 222.750):** A city can annex territory surrounded by city property and/or a body of water – or a city street – without a vote. The “street” annexation was the problem: some cities, notably Eugene, had been intentionally creating “islands” by annexing streets. Those living within the newly-created “islands” can then be annexed without a vote. In the 2007 Legislature, OCVA and our allies were able to place some restrictions on the creation of islands (e.g., streets cannot make up more than 25% of an island’s boundary) and implement at least a 3-year delay in annexing an “island” after the decision has been made (HB 2760). However, we have seen at least one example of a city changing a residential zoning in an attempt to circumvent the 3-year delay requirement. That case is the subject of a LUBA appeal at this writing.
8. **“Hostage” Annexations (ORS 222.115):** As methods for forced annexation become less available through the statutory changes noted, we are seeing more “hostage” annexations. A “hostage” situation occurs when a city is providing a service or services extraterritorially and demands consent to annex in exchange for providing the service(s) or for continuing to provide the service(s). Such action has occurred whether a city is providing its own service(s) or when acting as a proxy for its county in providing county service(s). The most common example of the latter is the issuance of building permits, a task some counties delegate to their cities. A recent example of the former is what occurred in 2012 outside Lincoln City when the city forcibly annexed the “Roads End” subdivision to which it had been providing water service for nearly 3 decades....and charging Roads End residents double the in-city rate for the privilege. However, the city demanded annexation in exchange for continuing to provide water service and forcibly annexed the area.

ORS 222.115 currently allows cities to demand annexation in exchange for providing a city service. OCVA does not wish to prevent such action for a NEW city service delivered extraterritorially, but feels the Lincoln City situation was fundamentally unfair. A Legislative Counsel opinion issued in June, 2005 addressed the proxy situation by stating that “A city may require annexation only for delivering its own services, not for acting as an agent of the appropriate service provider.” However, cities continue to make the demand. OCVA sees “hostage” annexations as the next battlefield in our ongoing effort to bring more fairness to Oregon’s annexation statutes. Our legislative efforts have so far not met with success. That campaign is ongoing.

### **Other Applications**

9. **Health Hazard Abatement:** A city can annex territory without a vote if the Dept. of Environmental Quality determines that a health hazard (e.g., to ground water from failing septic systems) exists. This is a very involved and complex procedure requiring public hearings and extensive review. (ORS 222.840-911)
10. **Annexation of Area(s) by Special Districts:** A district may annex territory through resolution of the district or the county – or by petition from the electors in the district where the same petition provisions of ORS 222.125 apply. Otherwise subject to double majority approval of the district and the territory to be annexed. (ORS 198.850)
11. **Annexation of a City to a Special District:** A city may be annexed to a special district (e.g., as Springfield tried unsuccessfully to annex to the Willakenzie Fire District in 2004) by resolution, followed, at the district’s discretion, by election within the district. Subject to remonstrance by petition of 100 voters or 10% of the district voters, whichever is smaller, if an election is not held. (ORS 198.866). This process can easily run afoul of Comprehensive Plans which generally favor cities as the providers of services. That is the main reason why the Springfield attempt failed.

### **Special Circumstances**

12. **Portland Metropolitan Area Annexations:** Cities within the Metropolitan service district are generally required to use ORS 222 procedures to annex territory (ORS 268.354(4)(a)) and therefore cannot, at present, use the ORS 195 “Service Provider” method.
13. **Lane County Boundary Commission Annexation (ORS 199...no longer applicable – shown for historical reference):** Prior to 2007, the Boundary Commission had sole authority to approve annexations within Lane County. The commission was appointed by the governor and had no direct accountability to the voters. It was the sole remaining boundary commission in the state. The commissioners approved virtually every annexation proposal brought before them, regardless of public input, and consistently displayed arrogance during public testimony. OCVA and its allies had been trying to abolish the commission for nearly a decade. We were finally successful with Senator Vicki Walker’s SB 417 in the 2007 Legislature.
14. **Annexations in OCVA Member Communities:** Citizens in more than 30 cities around the state have implemented, most via initiative, city charter amendments that require city voter approval of discretionary annexations. These were implemented because annexations, especially larger ones, can end up costing a community more than they bring in with additional tax revenue. Citizens in these communities decided to give themselves greater control over the annexation process. Applicable state laws are still used. The city vote is an additional political step. The charter amendments have survived multiple challenges in the courts and in the Legislature.