

CHAPTER 7
VOLUNTARY ANNEXATION

263—7.1(368) When board approval required. Applications for voluntary annexation of territory within another city's urbanized area and voluntary annexation requests including some property without the owner's consent must be approved by both the city receiving the territory and the city development board.

263—7.2(368) Contents of request. A request for board approval of an application for voluntary annexation of territory within another city's urbanized area shall be initiated pursuant to Iowa Code section 368.7 and shall include the following:

7.2(1) Landowner's application. Written application(s) for annexation of the territory must include:

a. A request for annexation of identified property, dated and signed by all owners of record or their authorized representatives;

(1) In the event that voluntary annexation is sought for a parcel of land which is being sold on contract, the contract seller and the contract buyer must both approve the annexation application;

(2) In the event that property for which annexation is sought is owned by a business organization or entity other than a natural person or persons, documentation establishing that the applicant is authorized to act on behalf of the owner shall be provided with the application.

b. A legal description of the property for which annexation is sought; and

c. A map of the property for which annexation is sought.

7.2(2) Documentation of the city's approval of the application. The following documentation must be included in a city's request for board approval of a voluntary annexation application:

a. A general statement of the proposal, briefly describing the current and expected use of the annexation territory, any services which the city currently provides to the territory, and the reasons for the property owners' request for annexation, if known.

b. A statement indicating whether the annexation territory is subject to an existing moratorium agreement and, if so, whether the proposed annexation is consistent with the terms of that agreement.

c. A complete legal description of the territory for which application is made, including the right-of-way to the center line of all secondary roads adjoining the annexation territory, unless a 28E agreement between the county and the city allowing exclusion of the right-of-way is in place and a copy of the agreement is included with the application, as required by Iowa Code section 368.1(14).

d. Prior to approval of a voluntary annexation application by the city council, the city shall provide a copy of the landowner's annexation application and the legal description of the entire annexation territory to the county auditor with a request that the auditor verify the accuracy and completeness of the legal description and verify current ownership of the parcel(s) involved. The auditor's response shall be included in the city's filing with the board. If the auditor fails to respond to the request within 14 days, the city may provide a copy of the request and a statement indicating that no response was received in lieu of the auditor's verification.

e. A map clearly showing the entire boundary of the existing city, the entire annexation territory, adjacent roadways, and the relationship of the territory to the annexing city and, if the annexation territory is within the urbanized area of another city, the relationship of the territory to the neighboring city. More than one map may be submitted if necessary to provide all of the required information to the board.

f. A statement indicating whether state-owned property or county-owned road right-of-way has been included in the proposal pursuant to Iowa Code section 368.5 and, if so, certification that the city has complied with the notice requirement of that section.

g. Certification that the city has complied with the notice requirements of Iowa Code section 368.7, including proof of mailing of the application and affidavit of publication of the required public notice, and, if railway right-of-way is included or public land is included without the written consent of the agency with jurisdiction over the public land, certification of notice to the owner as required by Iowa Code section 368.7(1). For purposes of calculating the required period of notice, "business days" shall

include Monday through Friday of each week, excluding “legal holidays” as set forth in Iowa Code section 4.1(34).

h. The city may, but is not required to, include a provision for transition of the imposition of city taxes against property within the annexation territory. The provision shall not allow greater exemption for taxation than the tax exemption formula schedule provided under Iowa Code section 427B.3, subsections 1 through 5, and shall be applied in the levy and collection of taxes. The provision may also allow for the partial provision of city services during the time in which the exemption from taxation is in effect.

i. A resolution of the council of the city to which the application for annexation is directed approving the application. If the council opts to provide for transition of the imposition of city taxes, the terms of the transition shall be included in the resolution.

j. Rescinded IAB 8/10/11, effective 7/20/11.

7.2(3) *Additional information to accompany requests which include land area without the consent of the owner(s).* In addition to the information which must be filed pursuant to subrule 7.2(2), a city’s request that includes property without the consent of the owner(s) must provide the following additional information within the application submitted to the board:

a. The names and addresses of all owners of land included without the owners’ consent and a legal description of all land owned by each nonconsenting owner;

b. Prior to filing the annexation application, the city shall provide a copy of the legal description and map of the annexation territory and the list of property owners identified by the city to the county auditor with a request that the auditor verify the accuracy and completeness of the legal description and verify current ownership of the parcel(s) involved. A copy of the auditor’s response shall be included in the application. If the auditor fails to respond to the request within 14 days, the city may provide a copy of the request and a statement indicating that no response was received in lieu of the auditor’s verification;

c. The acreage of each parcel or parcels owned by each voluntary applicant and nonconsenting landowner, the acreage of any railroad right-of-way included pursuant to Iowa Code section 368.7(1), and the acreage of any state- or county-owned property included pursuant to Iowa Code section 368.5;

d. A calculation showing the percentage of the territory for which voluntary annexation applications have been received by the city and the percentage of territory included without the consent of the owner(s), prepared in a manner consistent with subrule 7.8(2);

e. A map indicating the relationship of the parcels included without the consent of the owner(s) to the rest of the territory and to the city;

f. Certification that the city has complied with the notice and public hearing requirements of Iowa Code section 368.7(1). For purposes of calculating the required period of notice, “business days” shall include Monday through Friday of each week, excluding “legal holidays” as set forth in Iowa Code section 4.1(34); and

g. A statement in the city council’s resolution approving the annexation which sets forth the reason(s) that land is included in the proposal without the consent of the owner(s).

[ARC 9278B, IAB 12/15/10, effective 1/19/11; ARC 9546B, IAB 6/1/11, effective 7/6/11 (See Delay note at end of chapter); ARC 9664B, IAB 8/10/11, effective 7/20/11]

263—7.3(368) Filing of request. A city seeking board approval of a voluntary annexation application shall file the original and 15 copies of its request and all supporting documentation. The request will be deemed filed with the board on the date it is received by board staff. The board shall return a file-stamped copy of the request to the filing city.

263—7.4(368) Staff review of filing. Within two weeks of a city’s filing of a request for approval of a voluntary annexation, board staff shall review the request to determine whether the city has included all of the information required by rule 7.2(368). If the request is found to be incomplete, staff shall notify the filing city, identifying the required item(s) omitted and offering the city an opportunity to provide the omitted information prior to submission of the request to the board.

263—7.5(368) Submission to the board by staff—notice. A request for the voluntary annexation of property within an urbanized area will be submitted to the board for consideration at the first board meeting conducted 31 or more days after the filing of the request. If no other application for voluntary annexation or petition for involuntary annexation containing common territory is filed with the board within 30 days of the filing of the application, the board will proceed under rule 7.7(368). If another application or petition containing common territory is filed with the board within 30 days, the board will proceed under rule 7.9(368). The board shall provide notice of all meetings at which the board will consider the city's request by regular mail to the filing city, each city whose boundary is within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, each affected public utility, and the regional planning authority which includes the territory. At the request of the annexing city, the board may proceed under rule 7.7(368) at a board meeting less than 31 days after the filing of the application, except that the filings to complete an annexation approved by the board will only be made if no other annexation proposal for any or all of the territory is filed with the board within 30 days of the filing of the application. If a proposal for annexation to another city for all or part of the territory is received within 30 days, the board will proceed under rule 7.9(368).

263—7.6(368) Amendment of application.

7.6(1) *No addition of territory.* After a request for approval of an application for voluntary annexation has been filed with the board, it may not be amended to include additional territory.

7.6(2) *Deletion of territory.* A city may, upon its own motion or at the request of the board, seek amendment of an application for voluntary annexation to delete one or more of the parcels included in the proposal as filed with the board.

a. A motion to amend an application for voluntary annexation may be made at any time prior to issuance of the board order approving or denying the application.

b. The board shall provide notice of a proposed amendment by regular mail to all owners of land included in the application, each city whose boundary is within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, each affected public utility, the regional planning authority which includes the territory, and all other parties of record in the board proceeding.

c. A party to the proceeding may file a resistance to the motion to amend within 14 days of the date of service of notice of the proposed amendment.

d. The board may grant a request to amend an application if it determines that the request serves the public interest.

263—7.7(368) Board proceedings on unanimous voluntary applications when no voluntary application or petition for involuntary annexation or incorporation of common territory is received within 30 days of the initial filing.

7.7(1) *Applicability.* If all territory included within the city's application is included upon application of the owner, by notice to the owner of railway right-of-way pursuant to Iowa Code section 368.7(1), or by notice to the Iowa attorney general or a county attorney pursuant to Iowa Code section 368.5, the application shall be processed pursuant to this rule.

7.7(2) *Initial board review.* The board shall review each request for approval of an application for voluntary annexation of territory within an urbanized area to determine compliance with the requirements of Iowa Code chapter 368 and these rules.

7.7(3) *Information considered.* The board shall provide any interested person or party an opportunity to submit written comment on the application prior to or at the time of board consideration of the request for approval. The board may:

- a.* Allow an opportunity for oral comment on the application;
- b.* Consider public documents; and
- c.* Request additional information from affected cities, counties or persons, including any of the information required to be included in a petition for involuntary city development action.

7.7(4) Criteria. The board may consider the criteria for approval of involuntary city development actions, as set forth in Iowa Code sections 368.16 and 368.17, in acting on an application for voluntary annexation.

7.7(5) If the request is found to be incomplete, the board may request further information from the applicant or the filing city or may dismiss the request, stating in its order the reason(s) for the dismissal.

7.7(6) If annexation of the territory is statutorily barred pursuant to Iowa Code section 368.17, the board shall deny the application, stating in its order the reason(s) for the denial.

7.7(7) If the board approves an application for voluntary annexation of territory within the urbanized area of another city, the board shall issue a written decision and file the decision with the clerk of the annexing city, other cities within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, the regional planning authority, each affected public utility, the state department of transportation, and all other parties of record in the board's proceeding. Upon expiration of the time for appeal, the board shall file with the secretary of state and record with the county recorder of each county containing a portion of the city or territory involved copies of the board's proceedings, as required by Iowa Code section 368.20(2).

7.7(8) If the board denies an application, it shall issue an order setting forth the reason(s) for the denial and shall provide a copy to the filing city.

263—7.8(368) Board proceedings on voluntary annexation requests which include land area without the consent of the landowner(s).

7.8(1) General rule. Territory comprising railway right-of-way or territory comprising not more than 20 percent of the land area may be included without the consent of the owner to avoid creating an island or to create more uniform boundaries.

7.8(2) Calculation of proportion of land area included without the consent of the owner(s).

a. Only contiguous land area may be considered for purposes of calculating the amount of the land area which may be included without the owner's consent.

b. The area of the territory that is public land included without the written consent of the agency with jurisdiction over the public land shall not be used to determine the percentage of territory that is included with the consent of the owner and without the consent of the owner.

7.8(3) Board action on proposal. The board shall review the request to determine compliance with the requirements of Iowa Code chapter 368 and these rules.

a. If the request is found to be incomplete, the board may request further information from the applicant or the filing city or may dismiss the request.

b. If the request is found to be in proper form and to contain all required information, the board will conduct a public hearing on the request, providing notice of the meeting by regular mail sent at least ten days prior to the hearing to all owners of land included in the annexation proposal, the annexing city, other cities within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, the regional planning authority containing a portion of the territory, each affected public utility, and the state department of transportation.

The board hearing shall be conducted informally. Representatives of the city requesting the annexation shall be given an opportunity to explain the proposal, the city's reason for including property without the consent of the owner(s), and any other information the city believes will assist the board in acting on the proposal. The county, all owners of property within the territory proposed for annexation, the regional planning authority, affected public utilities, and any other person affected by the annexation will be provided an opportunity to submit information to the board. The board may request additional information from the city, county or other persons, including any of the information required to be included in a petition for involuntary city development action.

c. The board shall consider whether the proposal serves the public interest and may consider the criteria for approval of involuntary city development actions, as set forth in Iowa Code sections 368.16 and 368.17, in acting on a request for voluntary annexation which includes the property of nonconsenting owners. The board may not approve a request for voluntary annexation of territory which includes the

property of nonconsenting owners unless the board finds that the land of the nonconsenting owners was included in order to (1) avoid creating an island, or (2) create more uniform boundaries.

d. A request for voluntary annexation of territory which includes the property of nonconsenting owners shall not be approved unless four members of the board vote in favor of the proposal.

e. If the board approves a request for voluntary annexation of territory which includes the property of nonconsenting owners, the board shall issue a written decision and file the decision with the clerk of the annexing city, other cities within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, the regional planning authority, each affected public utility, the state department of transportation, and any other party of record in the board proceeding. Upon expiration of the time for appeal, the board shall file with the secretary of state and record with the county recorder of each county containing a portion of the city or territory involved copies of the board's proceedings, as required by Iowa Code section 368.20(2).

f. If the board denies the request, an order shall be issued setting forth the reasons for the denial, and a copy shall be provided to the clerk of the annexing city, other cities within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, the regional planning authority, each affected public utility, the state department of transportation, and any other party of record in the board's proceeding.

[ARC 9278B, IAB 12/15/10, effective 1/19/11]

263—7.9(368) Board proceedings on voluntary applications when one or more voluntary applications or involuntary petitions for annexation of common territory are received within 30 days of the initial filing.

7.9(1) Initial board review. The board shall review the application(s) and petition(s) to determine compliance with the requirements of Iowa Code chapter 368 and these rules.

7.9(2) Dismissal. If an application or petition does not meet the requirements of Iowa Code chapter 368 or these rules, the board may dismiss the application or petition or request additional information from the applicant or petitioner. If only one application or petition remains before the board following such dismissal, the board will proceed on that filing as if no competing application or petition had been filed.

7.9(3) Hearing. If competing application(s) and petition(s) are found to be in proper form, the board will consider the voluntary application(s). The board may appoint a local committee pursuant to Iowa Code section 368.14 and shall conduct a public hearing pursuant to the procedure set forth in paragraph 7.8(3) "b" for hearings on voluntary applications including property without the consent of the owner(s).

7.9(4) Criteria for decision. Within 90 days of receipt of the application, the board or committee shall meet to assess the application and evidence received at the public hearing. If the application meets the applicable requirements of Iowa Code chapter 368, the board or committee shall approve the application unless the board makes one of the following findings by a preponderance of the evidence:

- a.* The application was filed in bad faith;
- b.* The application as filed is contrary to the best interests of the citizens of the urbanized area; or
- c.* The city that received the application cannot, within a reasonable period of time, meet its obligation to provide services to the territory to be annexed sufficient to meet the needs of the territory.

7.9(5) Decision if approved. If the board or committee approves a voluntary application considered under Iowa Code subsection 368.7(4), the board shall issue a written decision and file the decision with the clerk of the annexing city, other cities within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, the regional planning authority, each affected public utility, the state department of transportation, and any other party to the board's proceeding. Upon expiration of the time for appeal, the board shall file with the secretary of state and record with the county recorder of each county containing a portion of the city or territory involved copies of the board's proceedings, as required by Iowa Code section 368.20(2).

7.9(6) Decision if statutorily barred. If annexation of the territory is statutorily barred under Iowa Code section 368.17, the board or committee shall deny the application, stating in its order the reason(s)

for the denial. An annexation request denied pursuant to this rule may not be converted to an involuntary petition, pursuant to subrule 7.9(7).

7.9(7) Action if not approved. If the application is not approved or is denied pursuant to subrule 7.9(6), the board shall issue an order setting forth its reason(s) for failing to approve the application and requiring conversion of the application into an involuntary petition. An application that contains some land without the consent of the owner to avoid the creation of an island or to create more uniform boundaries, that is considered by a committee, shall not be approved unless at least four of the board members and at least one-half of the local representatives vote in favor of the proposal. The city shall within 30 days withdraw its application or convert its application into an involuntary petition containing all information required to be included in such petitions by Iowa Code section 368.11 and these rules.

7.9(8) Following conversion of the application into an involuntary petition, the board shall order appointment of a special local committee to consider the application and all pending petitions for annexation of common territory, pursuant to Iowa Code section 368.14A. Committee appointments shall be made by resolution of the appropriate governing bodies within 45 days of issuance of the board's order. Each resolution shall state that the local representative selected is a qualified elector of the city or territory represented or, if none of the qualified electors of the territory will accept the appointment or the territory has no resident qualified electors, that the representative owns property within the territory. Copies of the resolutions shall be submitted to the board. In the event a city or county fails to timely notify the board of appointment of its local representative, the committee may conduct its proceedings in the absence of that local representative so long as a quorum is present.

7.9(9) The special local committee shall conduct a public hearing to receive evidence and comment on all applications and petitions pending before it. The order of presentation shall be determined by the committee prior to commencement of the hearing. The hearing shall be conducted in accordance with the rules for committee proceedings set forth in 263—Chapter 9.

7.9(10) The committee shall, within a reasonable time following conclusion of the public hearing, meet to determine appropriate means to resolve the common territory issues among the applications and petitions before it.

a. The committee shall resolve common territory issues by amending or denying one or more of the pending proposals.

b. Upon resolution of the common territory issues, the committee shall proceed with consideration of each remaining petition in accordance with Iowa Code sections 368.16 and 368.17 and these rules.

7.9(11) The committee shall issue a separate decision setting forth its findings and conclusions relating to each of the petitions. The committee shall file its decision with the board and promptly notify the parties of the decision, as required by Iowa Code section 368.19.

7.9(12) Upon receipt of a committee decision approving all or a portion of a petition, the board shall complete the procedural steps set forth within 263—Chapter 10.

263—7.10(368) Board proceedings on voluntary annexation applications containing common territory with a petition for involuntary annexation filed more than 30 days after the petition.

7.10(1) The board will receive the application and table action on it until processing of the petition is complete.

7.10(2) Same city. If the application proposes to annex territory to the same city filing the petition, the board may proceed on the application under rule 7.7(368).

263—7.11(368) Costs. The cost of recording the board order, if the annexation is approved, shall be borne by the city to which territory is annexed.

263—7.12(368) Board proceedings on boundary adjustments between cities by petition and consent.

7.12(1) General rule. A request for board approval to sever real property from one city and to annex the same real property to another city shall be initiated pursuant to 2010 Iowa Acts, House File 2376. Contiguous property may be combined within the same request.

7.12(2) Contents of petition. The petition under this rule shall be in substantially the same form as an application under Iowa Code section 368.7 and rule 263—7.2(368). Additionally, if the city council of either city conditioned approval of the petition upon an agreement entered into by the cities providing for the transition of property taxes or the sharing of property tax revenues from the property described in the petition, the agreement shall be filed with the board at the same time the approved petition is filed.

7.12(3) Initial board review. The board shall review each petition to sever real property from one city and to annex the same real property to another city in order to determine compliance with the requirements of Iowa Code section 368.7 and these rules. The board shall notify both cities and the real property owner(s) of the board's initial review of the severance and annexation petition. If the petition does not meet the requirements of Iowa Code section 368.7, the board may request additional information before making a final decision or may dismiss the petition. If the application is found to be in proper form, the board shall hold a public hearing on the severance, annexation, and any agreement between the cities.

7.12(4) Public hearing. The board shall give notice of the public hearing in the same manner as notice of a public meeting under Iowa Code section 368.11, subsection 5. The board shall conduct a public hearing pursuant to the procedure set forth in paragraph 7.8(3) "b" for hearings on voluntary applications.

7.12(5) Decision criteria. The board shall consider whether the request serves the public interest and may consider the criteria for approval of involuntary city development actions as set forth in Iowa Code sections 368.16 and 368.17. The board may approve or deny only the severance and annexation of the real property described in the petition. The board may approve the petition only if the board also approves any agreement entered into by the cities pursuant to 2010 Iowa Acts, House File 2376. The board shall not approve the petition if the severance and annexation creates an island.

7.12(6) Denial. If a petition is denied, the board shall issue an explanation for the denial. A copy of the explanation shall be provided to the clerk of each city involved in the severance and annexation and to any other party of record in the board's proceeding.

7.12(7) Approval. If a petition is approved, the board's order approving the severance and annexation is not subject to approval at an election. The board shall file and provide a copy of the order to the clerk of each city involved in the severance and annexation, the recorder of each county that contains a portion of any city or territory affected by the severance and annexation, and any other party of record in the board's proceeding. Upon expiration of the time for appeal, the board shall file with the Iowa secretary of state and record with the recorder of each county that contains a portion of any city or territory involved copies of the proceedings, including the petition, any agreement between the cities, the board's order approving the petition, proof of service and publication of required notices, and any other material deemed by the board to be of primary importance to the proceeding. The board shall file a map and legal description with the Iowa department of transportation.

[ARC 9278B, IAB 12/15/10, effective 1/19/11]

These rules are intended to implement Iowa Code section 368.7.

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