

CITY DEVELOPMENT BOARD[263]

Adopted and Filed

Rulemaking related to voluntary annexation

The City Development Board hereby rescinds Chapter 7, “Voluntary Annexation,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 368.10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 368.

Purpose and Summary

Pursuant to Executive Order 10, the Board rescinds Chapter 7 and adopts a new chapter in lieu thereof. The new chapter omits repetition of statutory language and consolidates other redundant language that was previously repeated in multiple rules within the chapter. Additionally, the new chapter clarifies Board policies and procedures.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7137C**. Public hearings were held on January 2, 2024, and January 9, 2024. No one attended the public hearings. One comment was received. Board staff could not identify the relevance of the comment to the rules or rulemaking. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on February 14, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 263—Chapter 6.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on April 10, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 263—Chapter 7 and adopt the following new chapter in lieu thereof:

CHAPTER 7
VOLUNTARY ANNEXATION

263—7.1(368) Purpose and scope. This chapter addresses the requirements and processes for city development board approval of voluntary annexation within another city’s urbanized area; voluntary annexation, including property without the owner’s consent; and boundary adjustments between cities by petition and consent. Such requests for board approval shall be initiated pursuant to Iowa Code section 368.7 or 368.25A and this chapter. A city’s request for board approval of such actions will be referred to in this chapter as a petition.

263—7.2(368) Contents of petition. This rule describes the information and documentation a city is required to include in its petition.

7.2(1) Landowner application requirements. The board will verify that each landowner’s application for annexation includes the items required by Iowa Code section 368.7(1) “c” and is dated and signed by all owners of record or their authorized representatives. If voluntary annexation is requested for a parcel of land being sold on contract, the contract seller and the contract buyer should both approve the application. If voluntary annexation is requested for property owned by a business organization or entity other than a natural person or persons, the applicant should provide documentation establishing authorization to act on behalf of the owner entity.

7.2(2) City requirements. In addition to any applicable landowner applications submitted in compliance with subrule 7.2(1), a city’s petition must include all of the following:

a. A general statement of the proposed annexation, briefly describing the current and expected use of the annexation territory, any services that the city currently provides to the territory, and the reasons for a landowner’s request for annexation, if known.

b. A statement indicating whether the city is a party to an existing moratorium agreement entered pursuant to Iowa Code section 368.4 and, if so, whether the proposed annexation is consistent with the terms of that agreement.

c. A complete legal description of the territory proposed to be annexed, including the right-of-way to the center line of all secondary roads adjoining the territory. If the applicable county and city have entered an agreement pursuant to Iowa Code chapter 28E that allows exclusion of the right-of-way, a copy of the agreement shall be included with the petition.

d. Documentation that the county auditor has verified the accuracy and completeness of the legal description of all territory proposed to be annexed and verified current ownership of the parcel(s) included in the proposed territory. If the auditor fails to respond to the city’s request for verification within 14 days, the city may provide a copy of the request and a statement indicating that no response was received.

e. A map clearly showing the entire boundary of the existing city, all territory proposed to be annexed, adjacent roadways, and the relationship of the territory to the petitioning 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 information required by this paragraph.

f. A statement indicating whether state-owned property or county-owned road right-of-way has been included in the proposed annexation and, if so, certification that the city has complied with the notice requirements of Iowa Code section 368.5. If the territory proposed for annexation includes right-of-way for a state highway, documentation of consultation with the Iowa department of transportation should also be included.

g. Certification that the city has complied with all applicable notice and hearing requirements of Iowa Code section 368.7, including proof of mailing of the application and affidavit of publication of the required public notice. If railway right-of-way or public land is included without the written consent of the owner or agency with jurisdiction over the public land, the city shall certify notice was given to the owner or agency as required by Iowa Code section 368.7(1) “c.” For purposes of calculating the required period of notice, business days include Monday through Friday of each week, except legal holidays as set forth in Iowa Code section 4.1(34).

h. A city council resolution approving the landowner’s application, including, if applicable, the terms of the transition of city taxes as provided by Iowa Code sections 368.7(5) and 368.11(3) “m.”

7.2(3) Additional information for petitions, including nonconsenting landowners. In addition to the information to be included pursuant to subrule 7.2(2), a petition that includes property without the consent of the owner(s) must provide the additional information indicated in this subrule.

a. 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. Documentation submitted pursuant to paragraph 7.2(2) “d” relating to county auditor verification, including verification of the legal description of land owned by each nonconsenting owner.

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 Iowa Code section 368.7(1) “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.

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. The city council’s resolution approving the annexation submitted pursuant to paragraph 7.2(2) “h” that must set forth the reason(s) that land is included without the consent of the owner(s).

263—7.3(368) Filing. A city shall send two copies of its petition, including all supporting documentation, to the board. The petition will be deemed filed with the board on the date it is received by board staff. Board staff will acknowledge receipt of a petition.

263—7.4(368) Staff review. Within two weeks of receiving a petition filed pursuant to this chapter, board staff will review the petition to determine whether the city has included all required information. If the petition is incomplete, staff shall notify the petitioning city, identifying the required item(s) omitted and offering the city an opportunity to provide the omitted information prior to submission of the petition to the board.

263—7.5(368) Submission to the board—notice.

7.5(1) A petition filed pursuant to this chapter will be considered by the board at the first board meeting conducted 31 or more days after the petition is filed. The board shall provide notice of all meetings at which the board will consider a petition to the petitioning city and the entities required by Iowa Code section 368.7(3) to receive notice of an application. Such notices will be provided by regular mail.

7.5(2) If rule 263—7.8(368) applies, the board may proceed as described in that rule at a board meeting less than 31 days after the petition is filed, at the request of the petitioning city. However, if the board considers a petition pursuant to this subrule, the filings to complete an annexation approved by the board will only be made if no other petition for any or all of the applicable territory is filed with the board within 30 days of the filing of the petition.

263—7.6(368) Amendment of petition.

7.6(1) After a petition has been filed with the board, it may not be amended to include additional territory.

7.6(2) A city may, upon its own motion or at the request of the board, seek amendment to delete one or more parcels included in the territory proposed for annexation.

a. A motion to amend a petition may be made at any time prior to issuance of the board order approving or denying the petition.

b. The board shall provide notice of a proposed amendment to all owners of land included in the petition, the entities required by Iowa Code section 368.7(3) to receive notice of an application, and all other parties of record in the board proceeding. Such notices will be provided by regular mail.

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 provided pursuant to paragraph 7.6(2) “*b.*”

d. The board may grant a motion to amend a petition if it determines that the amendment serves the public interest.

263—7.7(368) Initial board review.

7.7(1) The board shall review all petitions filed pursuant to this chapter to determine compliance with the requirements of Iowa Code chapter 368 and this chapter. If a petition is incomplete or otherwise not in compliance with the requirements of Iowa Code chapter 368 or this chapter, the board may request further information from a landowner or city or may dismiss the petition.

7.7(2) If the annexation requested in the petition is barred pursuant to Iowa Code section 368.17, the board shall deny the petition, stating in its order the reason(s) for the denial.

263—7.8(368) Board proceedings on unanimous petitions when no conflicting petition is received within 30 days.

7.8(1) Applicability. Petitions will be considered pursuant to this rule when all territory proposed for annexation 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.

7.8(2) Information considered. Any interested person or party may submit written comment prior to or at the time of board consideration of the petition. The board may:

a. Allow an opportunity for oral comment;

b. Consider public documents; or

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 pursuant to Iowa Code section 368.11(3).

7.8(3) Criteria. The board shall consider whether the proposed annexation serves the public interest and may consider the criteria for approval of involuntary city development actions, as set forth in Iowa Code section 368.16.

263—7.9(368) Board proceedings on petitions which include nonconsenting landowners.

7.9(1) Applicability. Petitions will be considered pursuant to this rule when not more than 20 percent of the land area of the territory proposed for annexation is included without the consent of the owner, pursuant to Iowa Code section 368.7(1) “*a.*”

7.9(2) Hearing and information considered.

a. If a petition to which this rule applies is complete and in proper form, the board will conduct a public hearing on the petition. The board shall provide notice of the hearing to all owners of land included in the petition, the petitioning city, the entities required by Iowa Code section 368.7(3) to receive notice of an application, and the state department of transportation. Such notice shall be provided by regular mail sent at least ten days prior to the hearing.

b. The board hearing will be conducted informally. Representatives of the petitioning city shall be given an opportunity to explain the proposed annexation, the city’s reason for including nonconsenting landowners, and any other information the city believes will assist the board in acting on the petition.

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 during the hearing or in writing prior to the hearing.

c. 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 pursuant to Iowa Code section 368.11(3).

7.9(3) Criteria. The board shall consider the same criteria as set forth in subrule 7.8(3). The board may not approve a petition considered pursuant to this rule unless the board finds that the land of the nonconsenting owners was included to avoid creating an island or create more uniform boundaries. A petition considered pursuant to this rule shall not be approved unless four members of the board vote in favor of approving the petition.

263—7.10(368) Board proceedings when one or more conflicting petitions are received within 30 days.

7.10(1) Applicability. Petitions will be considered pursuant to this rule if any other petitions containing common territory are submitted to the board pursuant to Iowa Code chapter 368 within 30 days. If all conflicting petitions are validly dismissed or denied by the board, the board will proceed on a remaining petition as if no conflicting petition had been filed.

7.10(2) Hearing and information considered. If conflicting petition(s) are complete and in proper form, the board shall consider any petitions, including voluntary application(s) submitted by a landowner pursuant to Iowa Code section 368.7(4), and shall conduct a public hearing pursuant to the procedure set forth in subrule 7.9(2).

7.10(3) Criteria. Within 90 days of receipt of the petition, the board or a committee appointed by the board shall meet to assess the petition, including voluntary application(s) submitted by a landowner and any evidence received at the public hearing. If the petition meets the applicable requirements of Iowa Code chapter 368, the board or committee shall approve the petition unless the board makes an applicable finding as described in Iowa Code section 368.7(4) “a.”

7.10(4) Conversion to an involuntary petition. If the petition is not approved, the board shall issue an order setting forth its reason(s) for failing to approve the petition and requiring conversion of the petition into an involuntary petition. Within 30 days of the board’s order issued pursuant to this subrule, the city shall withdraw its petition or convert its petition into an involuntary petition containing all information required by Iowa Code section 368.11 and any rules adopted by the board applicable to involuntary petitions.

7.10(5) Local committee. Following conversion to an involuntary petition, the board shall order appointment of a special local committee to consider all pending petitions for annexation of common territory, pursuant to Iowa Code section 368.14A and rule 263—8.10(368). The special local committee shall conduct a public hearing to receive evidence and comment on all petitions pending before it. The committee will determine the order of presentation prior to commencement of the hearing. The committee will conduct the hearing pursuant to 263—Chapter 9.

7.10(6) Committee action. 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 petitions before it.

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

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 any applicable rules adopted by the board.

c. A petition converted to an involuntary petition pursuant to subrule 7.10(4) that contains some land without the consent of the owner 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 approval.

d. 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.

7.10(7) Board action. Upon receipt of a committee decision approving all or a portion of a petition pursuant to subrule 7.10(6), the board shall proceed in acting on the decision pursuant to 263—Chapter 10.

263—7.11(368) Board proceedings when a conflicting involuntary petition was filed more than 30 days before a voluntary petition.

7.11(1) Applicability. Petitions will be considered pursuant to this rule if a petition that includes voluntary application(s) submitted by a landowner is filed more than 30 days following filing of a conflicting involuntary petition filed pursuant to Iowa Code section 368.11 and 263—Chapter 8.

7.11(2) Delay. The board will receive the petition including voluntary application(s) submitted by a landowner and table action on it until processing of the petition for involuntary annexation is complete.

7.11(3) Same city. If the petition including voluntary application(s) submitted by a landowner proposes to annex territory to the same city filing the involuntary petition, the board may proceed on the voluntary petition pursuant to rule 263—7.8(368).

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

7.12(1) Petition. A petition to sever real property from one city and to annex the same real property to another city shall be initiated pursuant to Iowa Code section 368.25A. The petition pursuant to this rule shall be in substantially the same form as a petition submitted pursuant to Iowa Code section 368.7 and rule 263—7.2(368).

7.12(2) Hearing and information considered. If the petition is complete and in proper form, the board shall hold a public hearing on the severance, annexation, and any agreement between the cities pursuant to the procedure set forth in subrule 7.9(2). The board shall give notice of the public hearing in the same manner as notice given pursuant to Iowa Code section 368.11(5). 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 pursuant to Iowa Code section 368.11(3).

7.12(3) Criteria. The board shall consider the same criteria as set forth in subrule 7.8(3).

263—7.13(368) Board decisions—costs.

7.13(1) Board approval. If the board approves a petition considered pursuant to this chapter, the board shall issue a written decision and provide a copy of the decision to the clerk of the annexing city; the entities required by Iowa Code section 368.7(3) to receive notice of an application; the state department of transportation; and any other parties of record in the board's proceeding, including, if applicable, a city from which territory is severed pursuant to rule 263—7.12(368). 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). The cost of recording the board order shall be paid by the city to which territory is annexed.

7.13(2) Board denial. If the board denies a petition considered pursuant to this chapter, the board shall issue an order setting forth the reasons for the denial. A copy of the order shall be provided to the clerk of any impacted city, the entities required by Iowa Code section 368.7(3) to receive notice

of an application, the state department of transportation, and any other party of record in the board's proceeding.

These rules are intended to implement Iowa Code chapter 368.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/6/24.