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Minnesota House of Representatives

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TO: Government Operations Committee
FROM: Deborah A. Dyson, Legislative Analyst
RE: Municipal Boundary Adjustments

Below is background information on boundary adjustments that may be of use in preparing for the October 15, 2013, committee hearing on annexation in St. Cloud.

Municipal boundary adjustments include:

- *incorporation* of township area into a city;
- *annexation* of unincorporated (township) area by a city, adding land to its jurisdiction;
- *consolidation* of two or more cities;
- *detachment* of part of a city that is returned to the township—the unincorporated area; and
- *concurrent detachment and annexation*, in which an area from one city is detached and added to an abutting city.

Minnesota Statutes, chapter 414, and related rules adopted by the Office of Administrative Hearings in Minnesota Rules chapter 6000, govern municipal boundary adjustments.

For the statutes, the web address is: <https://www.revisor.mn.gov/statutes/?id=414&view=chapter>

For the rules, the web address is: <https://www.revisor.mn.gov/rules/?id=6000&view=chapter>

History

In 1957, the legislature requested a study of annexation issues and recommendations for changes. The 1958 *Report of the Commission on Municipal Annexation and Consolidation* proposed the creation of the quasi-judicial Minnesota Municipal Commission (later called the Minnesota Municipal Board) and new laws to govern municipal boundary changes. It had found that the then-existing statutes were inadequate and inconsistent and could not ensure orderly and efficient urban growth. The report cited races between villages to be the first to file to annex an area, with the first filing winning, without regard to the best interests of the communities. It cited

incorporations solely for the purpose of getting liquor licenses and defensive incorporations of areas too small to adequately provide municipal services. It cited annexations only to preempt tax base, islands of unincorporated areas surrounded by cities, gerrymandered city boundaries that had created “ludicrous” configurations. Cases were stalled in courts while litigants jockeyed for position, leaving confusion as to the governmental status of the affected area.

As a result of the 1958 report, Minnesota Statutes, chapter 414, was enacted in 1959 and has governed municipal incorporation, annexation, consolidation, detachment, and concurrent detachment and annexation since then. (For more information on the history of the administration of boundary adjustments, see the Municipal Boundary Adjustments Unit of the Office of Administrative Hearings’ website: <http://www.mba.state.mn.us/>)

Since 2005, the chief administrative law judge of the Office of Administrative Hearings has been responsible for municipal boundary adjustment matters. Minnesota Statutes, section 414.01, subdivision 1, states that the chief administrative law judge “shall conduct proceedings, make determinations, and issue orders for the creation of a municipality, the combination of two or more governmental units, or the alteration of a municipal boundary.”

State Policy Governing Municipal Boundary Adjustments

The 1958 report also served, as a practical matter, as the policy basis for Minnesota Statutes, chapter 414. In 1969, the legislature added “findings” that reflect a state policy supporting planning, orderliness of change, and efficiency in providing the right level of governmental services. Minnesota Statutes, 2013, section 414.01, subdivision 1a, states:

The legislature finds that:

- (1) sound urban development and preservation of agricultural land and open spaces through land use planning is essential to the continued economic growth of this state;
- (2) municipal government most efficiently provides governmental services in areas intensively developed for residential, commercial, industrial, and governmental purposes; and township government most efficiently provides governmental services in areas used or developed for agricultural, open space, and rural residential purposes;
- (3) the public interest requires that municipalities be formed when there exists or will likely exist the necessary resources to provide for their economical and efficient operation;
- (4) annexation to existing municipalities of unincorporated areas unable to supply municipal services should be facilitated; and
- (5) joint resolutions for orderly annexation, consolidation of municipalities, mergers of towns and municipalities, long-range joint powers planning or other cooperative efforts among counties, cities, and towns should be encouraged.

Under subdivision 1b of the statute, the chief administrative law judge may promote and regulate development of municipalities:

- (1) to provide for the extension of municipal government to areas which are developed or are in the process of being developed for intensive use for residential, commercial, industrial, institutional, and governmental purposes or are needed for such purposes;
- (2) to protect the stability of unincorporated areas which are used or developed for agricultural, open space, and rural residential purposes and are not presently needed for more intensive uses; and
- (3) to protect the integrity of land use planning in municipalities and unincorporated areas so that the public interest in efficient local government will be properly recognized and served.

Three Statutory Processes for Annexation

There are three types of annexation proceedings under chapter 414: annexation by order, orderly annexation, and annexation by ordinance.

Annexation by order (Minn. Stat. § 414.031) is begun by submitting to the chief administrative law judge and the township one of the following:

- (1) a resolution of the annexing municipality;
- (2) a resolution of the township containing the area proposed for annexation;
- (3) a petition of 20 percent of the property owners or 100 property owners, whichever is less, in the area to be annexed; or
- (4) a resolution of the municipal council together with a resolution of the township board stating their desire to have the entire township annexed to the municipality.

The petition or resolution must provide the boundaries of the territory proposed for annexation, the names of all parties entitled to notice, and the reasons for requesting annexation. If the proceeding is initiated by a petition of property owners, the petition must be accompanied by a resolution of the annexing municipality supporting the petition.

After a hearing and considering the factors listed in statute, which are provided at the end of this document, the presiding administrative law judge *may order* the annexation on finding:

- (1) that the subject area is now, or is about to become, urban or suburban in character;
- (2) that municipal government in the area proposed for annexation is required to protect the public health, safety, and welfare; or
- (3) that the annexation would be in the best interest of the subject area.

The presiding administrative law judge *must deny* the annexation on finding that the increase in revenues for the annexing municipality bears no reasonable relation to the monetary value of benefits conferred upon the annexed area. The presiding administrative law judge *may deny* the annexation on finding (1) that annexation of all or a part of the property to an adjacent

municipality would better serve the interests of the residents of the property, or (2) that the remainder of the township would suffer undue hardship.

Finally, the presiding administrative law judge may alter the boundaries of the area to be annexed.

Orderly annexation (Minn. Stat. § 414.0325) is begun when one or more townships and one or more municipalities, by joint resolution, designate an unincorporated area as in need of orderly annexation. The joint resolution has to describe the designated area and the reasons for designation.

Once there is an agreement in place, an annexation of any part of the designated area may be initiated by submitting to the chief administrative law judge a resolution of any signatory to the joint resolution, or by the chief administrative law judge.

If a state agency, other than the Pollution Control Agency, orders a municipality to extend a municipal service to an area, the chief administrative law judge may designate the area for orderly annexation.

If a joint resolution designates an area as in need of orderly annexation and states that no alteration of its stated boundaries is appropriate, the chief administrative law judge may review and comment, but may not alter the boundaries.

If a joint resolution designates an area as in need of orderly annexation, provides for the conditions for its annexation, and states that no consideration by the chief administrative law judge is necessary, the chief administrative law judge may review and comment, but must order the annexation in accordance with the terms of the resolution.

An orderly annexation agreement is a binding contract upon all parties to the agreement and is enforceable in the district court in the county in which the unincorporated property is located. The provisions of an orderly annexation agreement are not preempted by any provision of chapter 414 unless the agreement specifically provides so. If an orderly annexation agreement provides the exclusive procedures by which the unincorporated property identified in the agreement may be annexed to the municipality, the municipality cannot annex that property by any other procedure.

Annexation by ordinance (Minn. Stat. § 414.033) is when a city council by ordinance declares land annexed to the city. (This is the procedure involved in the Ortonville case.) Among the provisions in law, a city may annex property by ordinance if:

- (1) the land is owned by the municipality;
- (2) the land is completely surrounded by land within the municipal limits;
- (3) the land abuts the municipality and the area to be annexed is 120 acres or less, and the area to be annexed is not presently served by public wastewater facilities or public wastewater facilities are not otherwise available, and the municipality receives a petition

for annexation from all the property owners of the land. Except as provided for by an orderly annexation agreement, this clause may not be used to annex any property contiguous to any property previously annexed under this clause within the preceding 12 months if the property is owned by the same owners and annexation would cumulatively exceed 120 acres; or

(4) the land has been approved after August 1, 1995, by a preliminary plat or final plat for subdivision to provide residential lots that average 21,780 square feet or less in area and the land is located within two miles of the municipal limits.

In addition, if the Pollution Control Agency determines that a city must provide or extend a governmental service (e.g., sewer service) through a contract to an unincorporated area, the city may in the alternative annex the area by ordinance. Minn. Stat. § 414.0335.

Finally, chapter 414 provides the procedures that must be followed with regard to notice, hearings, and other matters. Orders of the administrative law judge can be appealed to the district court. Minn. Stat. § 414.07. The statute lists the basis on which an appeal to district court can be made.

The Statutory Factors That Must be Considered in Any Annexation

Minnesota Statutes, section 414.031, subdivision 4, provides the following factors to be considered in an annexation:

- (1) recordings and public documents from joint informational meetings under section 414.0333 relevant to other factors listed in this subdivision;
- (2) present population and number of households, past population and projected population growth of the annexing municipality, and subject area and adjacent units of local government;
- (3) quantity of land within the subject area and adjacent units of local government; and natural terrain including recognizable physical features, general topography, major watersheds, soil conditions and such natural features as rivers, lakes, and major bluffs;
- (4) degree of contiguity of the boundaries between the annexing municipality and the subject area;
- (5) present pattern of physical development, planning, and intended land uses in the subject area and the annexing municipality including residential, industrial, commercial, agricultural, and institutional land uses and the impact of the proposed action on those land uses;
- (6) the present transportation network and potential transportation issues, including proposed highway development;
- (7) land use controls and planning presently being utilized in the annexing municipality and the subject area, including comprehensive plans for development in the area and

plans and policies of the Metropolitan Council, and whether there are inconsistencies between proposed development and existing land use controls and the reasons therefore;

(8) existing levels of governmental services being provided in the annexing municipality and the subject area, including water and sewer service, fire rating and protection, law enforcement, street improvements and maintenance, administrative services, and recreational facilities and the impact of the proposed action on the delivery of said services;

(9) the implementation of previous annexation agreements and orders;

(10) existing or potential environmental problems and whether the proposed action is likely to improve or resolve these problems;

(11) plans and programs by the annexing municipality for providing needed and enhanced governmental services to the subject area in a cost-effective and feasible manner within a reasonable time from the date of the annexation;

(12) an analysis of the fiscal impact on the annexing municipality, the subject area, and adjacent units of local government, including net tax capacity and the present bonded indebtedness, and the local tax rates of the county, school district, and township;

(13) relationship and effect of the proposed action on affected and adjacent school districts and communities;

(14) adequacy of town government to deliver services to the subject area;

(15) analysis of whether necessary governmental services can best be provided through the proposed action or another type of boundary adjustment;

(16) if only a part of a township is annexed, the ability of the remainder of the township to continue or the feasibility of it being incorporated separately or being annexed to another municipality; and

(17) information received by the presiding administrative law judge from the tour required under subdivision 3a.