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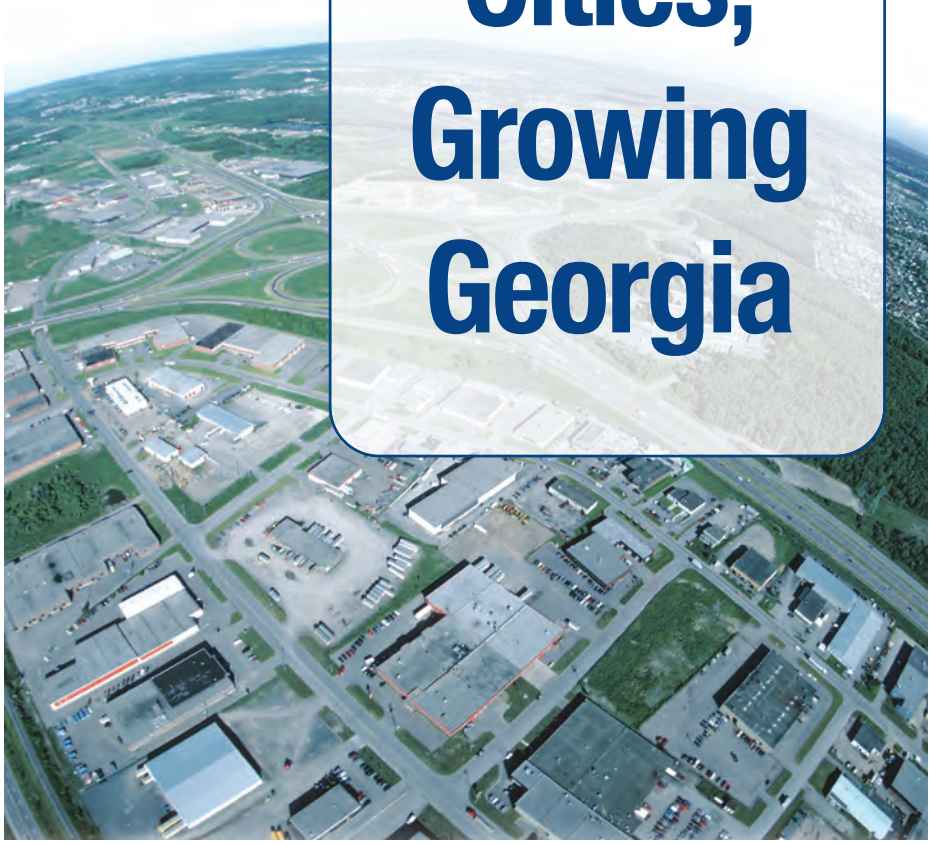
Growing Cities, Growing Georgia



A Georgia Municipal Association Publication

GEORGIA MUNICIPAL ASSOCIATION

Growing Cities, Growing Georgia

A Guide to Georgia's Annexation Law

Sixth Edition

Georgia Municipal Association, Inc.
January 2014

Copies available upon request to GMA members. Non-members will be charged twenty-five cents per page. This publication is also available for free on the GMA website at www.gmanet.com.

FOREWORD

Growing and prosperous Georgia cities create a growing and prosperous Georgia. Although cities comprise only 6.5% of Georgia's land area, approximately 40% of the state's population lives in cities. And that number is growing because Georgia's cities provide value and responsive local government to residents and businesses. Georgia's cities are growing at a faster rate than the state's overall population. Between 2000 and 2007, city population growth was 22% while the state's population growth was only 11%. Georgia cities are home to 55% of the commercial property in the state, 44% of the industrial property in the state and 56% of all tax exempt property in the state. Despite the fact that over half of all tax exempt property in the state is located within cities, the property in cities still generates greater taxing power per acre than property in unincorporated areas. An even more remarkable statistic is that businesses in Georgia's cities generate 84.1% of the state's gross domestic product.

Georgia cities are vital to Georgia's success and annexation is just one way that cities grow and add value to this state. Annexation is essential to the health of Georgia's cities and counties. And, in the vast majority of the state, cities and counties work together to strengthen cities in their area. It is only where counties seek to displace or wholly dominate cities that municipal growth through annexation is turned into a problem unnecessarily. Annexation does not significantly contribute to sprawl and, in fact, accommodating density and growth in areas adjacent to existing city centers actually helps control sprawl and leads to the efficient provision of services. Annexation does not remove property from the county or from the county's tax rolls. In fact, it most often increases the value and use of the property to the economic benefit of both the city and the county.

This year the General Assembly passed annexation legislation and this updated guide incorporates the new legislation. It is our hope that promises made in the 2007 legislative session will be kept and that it will be many years, if ever, that the legislature takes up the issue again. The law on annexation needs time to settle and develop without constant changes to address local political concerns.

The Georgia Municipal Association is pleased to provide this detailed analysis of Georgia's annexation laws. We welcome your comments and suggestions for improvement of the publication as you review its content.

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This handbook was originally drafted in 1992 by Walter Edwin Sumner, GMA General Counsel (1976-2000) with assistance from legal intern Jennifer G.S. Diefenbacher (1992), and subsequent editions with various titles were updated by legal interns Ted Baggett (1998), Collin Brown (2001) and Courtney Miller (2004). A supplement to the second edition was published in 2000 by Susan Moore with assistance from legal intern Cathy Scarver (2000).

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*Article 5 was repealed in the 2003/2004 Session of the General Assembly.

INTRODUCTION

Annexation provides a method to assure the orderly provision of urban services to densely populated or developing areas located on the fringe of a municipality. While it is simplistic to say that a city can choose to grow through annexation or choose a slow erosion of its economic and political viability, there is some truth embodied in the statement. The purpose of this publication is to provide a step-by-step guide to the present annexation laws contained in Title 36 of the Official Code of Georgia Annotated for use by lay persons, city officials, city staff and particularly, local government attorneys.

To aid in that effort, this publication contains checklists which should be helpful as a quick reference for local officials. It also contains sample ordinances, petitions for annexation, notification letters and notice of public hearings that are sometimes required under the law. For ease of use the format we have used provides the statutory language on the left side of the page and commentary on the right side of the page. In addition, we have indicated changes in the law made in 2007. Additions to the Code from the 2007 legislative session are denoted by underlined text; deletions have occurred where text has been ~~stricken~~.

Additionally, included as Appendices are examples from Bainbridge, Rome, Toccoa, and Warner Robins of procedures and letters used to encourage property owners to annex land into a city. These examples can be modified to meet your city's needs.

Article 1 discusses general procedures applicable to annexations, with the following articles addressing each of the various forms of annexation in Georgia. The left-hand column of each page contains the actual statutory language. The right hand column of the page contains a commentary which discusses in more detail the statutory language. Pictorial examples are included at the end of each section to aid in understanding the statutory language. At the end of each chapter describing a particular method of annexation, a checklist for that method is included.

Municipalities and property owners desiring to annex into a city are now required to submit to a mandatory arbitration process if a county properly objects to an annexation that proposes a rezoning of property resulting in a "substantial change in the intensity of the allowable use of the property or a change to a significantly different allowable use".[1] The appointed arbitration panel may establish zoning conditions and the annexation may proceed in accord with those conditions but the property may not be rezoned outside of the panel's zoning conditions for one year. If the annexation is abandoned, the county cannot rezone the property for one year. The exact meaning of the requirements in the new law have yet to be construed by Georgia's courts. As with any law, there are provisions which are subject to more than one interpretation and which may appear confusing at first reading. For this reason we encourage local landowners and city officials who are interested in annexation and rezoning to consult with their local legal counsel about the annexation and rezoning of specific parcels. Note that the previous dispute resolution process, while still in the Code, is not to be used for proceedings initiated on or after September 1, 2007. [2]

City officals should be aware that annexation ordinances no longer need to be precleared under Section 5 of the Voting Rights Act of 1965 by the U.S. Justice Department pursuant to the United States Supreme Court decision in Shelby County, Alabama v. Holder, 133 S.Ct. 2612

[1] O.C.G.A. § 36-36-113.
[2] O.C.G.A. § 36-36-11.

(2013). Although Section 5 of the Act has been rendered inoperable the Court's decision did not affect Sections 2 or 3 of the Voting Rights Act of 1985.

This publication is not intended to provide legal advice. Legal counsel should be consulted for guidance on the appropriate course of action in specific situations.

Annexation Law in Georgia

There are three primary methods of annexation in Georgia.* All three require the consent of a majority of the persons living in an area to be annexed into a city.

100% Method

Property owners of all the land in an area may seek to have their property annexed into an adjacent city by signing a petition.

60% Method

Petitioners owning at least 60% of the property in the area to be annexed, and at least 60% of the voters in an area, may seek to have their property annexed into an adjacent city.

Resolution and Referendum Method

An election may be held in the area proposed for annexation to determine if the area should be annexed. This method requires that an agreement between all the local governments providing services in that area be reached and that a majority of voters in the area to be annexed vote in favor of the annexation.

* There are two other methods of annexation; 1) annexations by the General Assembly through local legislation; and 2) the annexation of unincorporated islands totally surrounded by a city.

Benefits of Annexation

There are numerous reasons why property owners and citizens desire to have their property added to the city limits.

Increased Levels of Service

Many residents are interested in obtaining higher levels of government services than are provided in the unincorporated area.

- better ISO ratings and consequently lower homeowner's insurance rates because of the enhanced response times that municipal fire departments can offer
- higher police officer to resident ratio and smaller patrolling areas
- municipal water service at rates that are more cost efficient for homeowners than paying to pump well water

Livable Communities

Many residents wish to take advantage of the efforts that cities have made to create more livable and prosperous communities.

- active downtowns, a strong sense of community and professional planning
- service coordination and infrastructure improvements like sidewalks and parks
- annexation often results in increased property value

More Responsive Local Government

Many residents enjoy having access to a smaller and more responsive local government. In the metro Atlanta area, where counties contain hundreds of thousands of residents, being able to rely on a Mayor and Council that represent only a few thousand people allows for decision making that respects the needs of individuals and individual neighborhoods.

Annexation Myths

Some have claimed that annexation places a burden on county governments by depriving them of revenue, making land use decisions difficult, or interfering with the provisions of service delivery. These concerns are typically the result of misconceptions about annexation or already have been more than adequately addressed by existing law.

Annexation Does Not Result in Revenue Loss for Counties

- counties do not "lose" property once it is annexed
- counties continue to collect revenue on property that is annexed
- counties are freed from the costs associated with providing services that will be provided by the city

Annexation Does Not Increase Growth Pressures

- counties can require that dispute resolution be entered into between the city and county where the county can substantiate that proposed changes in land use will adversely impact the county

Annexations Does Not Cause Service Delivery Issues

- cities and counties must enter into service delivery strategy agreements in order to work out issues with service duplication
- these agreements can accommodate service delivery changes because of annexation
- counties can raise service delivery concerns with cities about the zoning of recently annexed property
- almost all cities and counties have intergovernmental and mutual aid agreements in place that clearly establish respective roles for service delivery

Georgia's annexation laws work well. In the final analysis, the value of annexation is that it empowers people to choose the government that will provide them with the highest level of municipal services and be responsive to their needs.

ANNEXATION PROCEDURES

Article 1

O.C.G.A. § 36-36-1 through § 36-36-10; § 36-60-11

Summary

The provisions of Article 1 are mainly procedural and apply to all annexation methods authorized by Chapter 36 and purport to apply to annexation by local Act of the General Assembly.[3] Note that the provisions of Code section 36-36-11 no longer apply effective September 1, 2007; this dispute resolution process is replaced by the one starting at Code section 36-36-110.

1. O.C.G.A. § 36-36-1 sets out the scope of the Article's application.
2. O.C.G.A. § 36-36-2 gives the effective date of annexations.
3. O.C.G.A. § 36-36-3 provides for notice of any annexation to be given to the Department of Community Affairs and the governing authority of the county in which the annexed land is located within 30 days after the effective date of the annexation.
4. O.C.G.A. § 36-36-4 prohibits the formation of any new unincorporated islands and authorizes municipalities to provide any service or exercise any function within an unincorporated island when requested to do so by the county governing authority.
5. O.C.G.A. § 36-36-5 has been deleted thus eliminating minimum size requirements for the annexation of unincorporated islands.
6. O.C.G.A. § 36-36-6 requires that the county in which land to be annexed is located be notified of a proposed annexation, whether the annexation is to be accomplished under this Chapter or by local Act of the General Assembly. This notification section does not apply to annexation of unincorporated islands.
7. O.C.G.A. § 36-36-7 addresses concerns over county owned land that is annexed by a city, such as notification, ownership of county property, and ownership, control, and maintenance of county road right of ways. This section also provides for payment of the fair market value for any county property which is no longer usable for service to the unincorporated area of the county due to annexation.
8. O.C.G.A. § 36-36-8 provides that annexation will not invalidate any utility service agreement between a county and an annexing municipality in effect on July 1, 1992.
9. O.C.G.A. § 36-36-9 allows all notices to a municipal or county governing authority required under this Chapter to be sent by certified mail or statutory overnight delivery, return receipt requested.
10. O.C.G.A. § 36-36-10 clarifies the General Assembly's intent to retain its power to annex by local Act.
11. O.C.G.A. § 36-36-11 established process for cities and counties to mediate legitimate, substantiated county objections to municipal rezonings of annexed property. This process allowed a delay of up to 150 days in the rezoning. The new 2007 law requiring the use of an appointed arbitration panel that is empowered to establish zoning conditions is set forth starting at Code section 36-36-110. See page 73 of this guide for more information on the new law.

[3] *But see* Ft. Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186 (1997) Appendix A.

12. O.C.G.A. § 36-60-11 reiterates the former requirement of Section 5 of the federal Voting Rights Act of 1965, requiring that cities, counties, boards of education and other similar governing authorities submit any plans for changes that could potentially affect voting demographics to the the state Attorney General for review if it must be submitted to the United States Department of Justice. However, since the United States Supreme Court decision in Shelby County, Alabama v. Holder, 133 S.Ct. 2612 (2013) renders the federal requirement to submit plans for changes under Section 5 to the United States Department of Justice inoperable, the subsequent requirement for submission to the state Attorney General for review should likewise be rendered inoperable.

Annexation Procedures

Statute

36-36-1

The procedures set forth in this article shall apply to all annexations pursuant to this chapter and to annexation by local Act of the General Assembly.

36-36-2

(a) Except as provided in subsection (c) of this Code section, all annexation other than by local Act shall become effective for ad valorem tax purposes on December 31 of the year during which such annexation occurred and for all other purposes shall become effective on the first day of the month following the month during which the requirements of Article 2, 3, or 4 of this chapter, whichever is applicable, have been met.

(b) Except as provided in subsection (c) of this Code section, annexation by local Act shall become effective for ad valorem tax purposes on December 31 of the year in which such local Act is approved by the Governor or becomes law without such approval and for all other purposes shall become effective at the time such local Act becomes effective or such later date as provided in such local Act.

Commentary

O.C.G.A. § 36-36-1 (Application of Article 1)

The procedures described in Article 1 purport to apply to all annexations, including annexation by local Act of the General Assembly and all methods of annexation by ordinance permitted under this Chapter. However, case law suggests that the General Assembly's power to annex can not be limited by this Article.[4] A common question that has been asked is how to deannex territory. Just like annexation, land may be deannexed from a city at the request of the property owner by the 100% method under procedures outlined in O.C.G.A. § 36-36-22 or by local Act of the General Assembly.

O.C.G.A. § 36-36-2 (Effective Date of Annexation)

(a) This section clarifies the date upon which ad valorem taxes may begin to be assessed by the annexing city. The practical effect of this is that ad valorem taxes are imposed on January 1 of the year after property is annexed.

For all other purposes, except ad valorem taxes levied for educational purposes on property zoned and used for commercial purposes, annexation becomes effective on the first day of the month following the month during which all the applicable annexation requirements were met. Previously, annexation became effective on the last day of the calendar quarter.

Example:
If all applicable annexation requirements are met on January 2, then ad valorem taxes cannot be assessed by the city until December 31 of that year. For all other purposes, except ad valorem taxes levied for educational purposes on property zoned and used for commercial purposes, annexation would be effective on February 1 of the same year as the annexation.

EXCEPTIONS:

(b) The effective date of annexation can be other than the first day of the next month for purposes other than ad valorem taxes if it is specified by local Act of the General Assembly.

[4] *See* Ft. Oglethorpe v. Boger, Appendix A.

Annexation Procedures

Statute	Commentary
(c) (1) Where an independent school system exists within the boundaries of a municipality, other effective dates may be established by the municipality solely for the purpose of determining school enrollment.	(c) (1) Municipalities are allowed to establish different effective dates for the purpose of determining school enrollment.
(2) Unless otherwise agreed in writing by a county governing authority and the municipal governing authority, where property zoned and used for commercial purposes is annexed into a municipality with an independent school system, the effective date for the purposes of ad valorem taxes levied for educational purposes shall be December 31 of the year after the year in which the requirements of Article 2, 3, or 4 of this chapter, whichever is applicable, have been met.	(2) The legislature added this subsection in 2004 in connection with changes in the special purpose local option sales tax (SPLOST) law to provide a default effective date upon which taxes levied for educational purposes can begin to be assessed when property zoned **and** used for commercial purposes is annexed into a municipality with an independent school system. In these circumstances, the annexation is not effective for purposes of changing school taxes until December 31st of the year after the requirements for annexation by the 100%, 60% or petition and referendum method are met. This insures that annexed property without students doesn't change anticipated tax revenues for the respective school systems in the short term. City and county governing authorities can opt out of this default date by executing a written agreement. **Example:** *Unless otherwise agreed, if all applicable annexation requirements are met on January 1, 2008, then ad valorem taxes levied for educational purposes can not be assessed against property zoned and used for commercial purposes by the city until December 31, 2009. Ad valorem taxes for non-educational purposes assessed against property zoned and used for commercial purposes would be effective December 31, 2008, pursuant to O.C.G.A. § 36-36-2(a).*
36-36-3 *(a) The clerk, city attorney, or other person designated by the governing authority of any municipality annexing property shall file a report identifying any property annexed with the Department of Community Affairs and with the county governing authority of the county in which the property being annexed is located. Such reports shall be filed, at a minimum, not more than*	**O.C.G.A. § 36-36-3 (Reporting Requirements)** (a) This subsection requires the city clerk, city attorney, or other person designated by the municipality's governing authority to file a report with the Department of Community Affairs and the county governing authority identifying the property.

Annexation Procedures

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30 days following the last day of the quarter in which the annexation becomes effective but may be filed more frequently. Each report shall include the following:	**EACH REPORT MUST INCLUDE:**
(1) The legal authority under which the annexation was accomplished, which shall be the ordinance or resolution number for any annexation effected pursuant to Article 2, 3, 4, or 6 of this chapter or the Act number if effected by local Act of the General Assembly; and	(1) A citation to the municipal ordinance, municipal resolution, or local act of the General Assembly that annexed the property. This citation must include the ordinance, resolution, or local act number; **AND**
(2) The name of the county in which the property being annexed is located; the enactment date and effective date of the annexation ordinance, resolution, or local Act of the General Assembly; and	(2) The municipality must provide the name of the county in which the property lies and the enactment and effective dates of the annexation ordinance, resolution, or local Act of the General Assembly; **AND**
(3) A letter from the governing authority of any municipality annexing property stating their intent to add the annexed area to maps provided by the United States Bureau of the Census during their next regularly scheduled boundary and annexation survey of the municipality and stating that the survey and map will be completed as instructed and returned to the United States Bureau of the Census.	(3) A letter from the city stating the intent to add the annexed area to Census maps during the next survey and stating that the survey and map will be completed and returned to the Census Bureau. **Note:** Although this section does **not** require that a map be sent to the county, it is probably a good idea to identify the property, in order to avoid confusion.
(b) The submission of a report required under subsection (a) of this Code section shall be made in writing and may also be made in electronic format, at the discretion of the submitting municipality.	(b) The report must be submitted in writing, but the report may also be submitted in electronic format.
(c) *(1) The Department of Community Affairs shall notify the clerk, city attorney, or other person designated by the governing authority of the annexing municipality within 30 days after receipt of a report submitted under subsection (a) of this Code section if it determines the submission to be incomplete. The annexing municipality shall file a corrected report with the department and the county governing authority where the annexed property is located within 45 days from the*	(c) (1) Within 30 days of receiving an annexation report from a municipality, the Department of Community Affairs (DCA) must determine whether the report is complete and, if the report is not complete, notify the clerk, city attorney, or other person designated by the city, of the deficiency. It is then the responsibility of the annexing municipality to file a correct report with DCA and the governing authority of the county where the annexed property is located within 45 days of the notice of deficiency.

date of the notice of any deficiency.

(2) No annexed area shall be added to the state map until such report has been properly submitted to the Department of Community Affairs. The Department of Community Affairs shall not provide a certification of annexation to the United States Census Bureau unless the governing authority of the annexing municipality has filed a completed report as required under subsection (a) of this Code section.

(2) An annexed area will not be added to the official state map and DCA will not certify the annexation to the Census Bureau, until the report required under subsection (a) has been properly submitted to the Department of Community Affairs and DCA certifies the annexation to the United States Census Bureau.

(3) Compliance with the requirements of this Code section shall be construed to be merely ancillary to and not an integral part of the annexation procedure such that an annexation shall, if otherwise authorized by law, become effective even though required filings under this Code section are temporarily delayed.

(3) HOWEVER, a delay in meeting all of the technical mapping and reporting requirements will not make an annexation illegal and such an annexation will still be effective.

(d) The Department of Community Affairs may provide technical assistance to any municipality with respect to the requirements of subsection (a) of this Code section.

(d) The Department of Community Affairs may provide technical assistance to cities upon request with respect to the mapping, survey, and reporting requirements in subsection (a). Cities may also be able to get technical assistance from their regional development centers.

(e) The Department of Community Affairs shall maintain the annexation reports submitted to it pursuant to this Code section for two years. Annexation reports shall be subject to disclosure and inspection under Article 4 of Chapter 18 of Title 50 while maintained in the possession of the Department of Community Affairs. Two years after receipt of an annexation report from a municipality, the Department of Community Affairs shall transfer possession of such report to the Department of Archives and History for permanent retention.

(e) After an annexation report is submitted to the Department of Community Affairs, the annexation report is to be:

1. maintained by DCA for two (2) years;

2. subject to disclosure and inspection under the Open Records Act; **AND**

3. transferred, after two years, to the possession of the Department of Archives and History for permanent retention.

(f) The clerk, city attorney, or other person designated by the governing authority of any municipality annexing property shall also file a copy of the transmittal letter to the United States Department of Justice seeking preclearance, without the attachments to such letter, with the Department of Community Affairs and with the governing authority of the county in which the property being annexed is located. This subsection

(f) The annexing municipality was required to provide to the Department of Community Affairs and the county governing authority a copy of the transmittal letter to the U.S. Department of Justice seeking preclearance of the annexation Importantly, the preclearance requirement is no longer required by federal law in response to the decision rendered in Shelby County, Alabama v. Holder, 133 S.Ct. 2612 (2013). Therefore, the

Statute	Commentary
shall apply so long as a filing with the United States Department of Justice is required.	previous mandate to file a copy of the transmittal letter with the Department of Community Affairs and with the county governing authority is no longer a requirement.
(g) The governing authority of any municipality annexing property shall add all annexed areas to maps provided by the United States Census Bureau during the next regularly scheduled boundary and annexation survey of the municipality, complete the survey and map as instructed, and return them to the United States Census Bureau within the time frame requested.	(g) The city shall add all annexed area to Census maps during the next regularly scheduled municipal boundary and annexation survey. The completed map and survey must be returned to the Census Bureau during the stated timeframe.
36-36-4	**O.C.G.A. § 36-36-4 (Bars the Formation of Unincorporated Islands by Annexation or Deannexation)**
(a) The creation of unincorporated islands as described in paragraph (1), (2), or (3) of this subsection shall be prohibited:	(a) This Code Section bars the formation of unincorporated islands by annexation or deannexation. This is a total bar on annexing or deannexing an area that would create an unincorporated island of any size. Note under the provisions in O.C.G.A. § 36-36-92(a) that "all or any portion" of an unincorporated island may be annexed. There should be no question that such "nibbling" of an unincorporated island does not create a new island.
(1) Annexation or deannexation which would result in the creation of an unincorporated area with its aggregate external boundaries abutting the annexing municipality;	(1) Annexation or deannexation is prohibited if it results in the creation of an unincorporated area which is surrounded on all sides by the annexing municipality.
	***See* figure, page 22.**
(2) Annexation or deannexation which would result in the creation of an unincorporated area with its aggregate external boundaries abutting any combination of the annexing municipality and one or more other municipalities; or	(2) Annexation or deannexation is prohibited if it would result in the creation of an unincorporated area which is surrounded on all sides by the annexing municipality and one or more other municipalities.
	***See* figure, page 22.**
(3) Annexation or deannexation which would result in the creation of an unincorporated area to which the county would have no reasonable means of physical access for the provision of services otherwise provided by the county governing authority solely to the unincorporated area of the county.	(3) Annexation or deannexation is not allowed if it would create an unincorporated area to which the county has no reasonable access to provide services normally provided to unincorporated areas. Examples of annexation prohibited by this provision are very difficult to illustrate. Whether this provision will be applicable to an

Statute	Commentary
	annexation proceeding may depend on the type of county service involved and the alternatives available to the county to access the alleged unincorporated "island." Any allegation that an annexation cannot be accomplished because it violates this provision should be carefully reviewed with the city attorney. Potential application of this section should be taken into account in negotiating and agreeing to service delivery areas and strategies under the Service Delivery Strategy Act, *See* O.C.G.A. § 36-70-20 *et seq*.
	***See* figure, page 23.**
	County representatives have also suggested that an unincorporated island which can only be accessed by a city street has no reasonable means of physical access for the provision of services to the unincorporated area as described under this section. County vehicles, however, are not prohibited from traveling on city streets.
(b) When requested by resolution of the county governing authority, a municipality is authorized to provide any service or exercise any function within an unincorporated island. Such authority shall be in addition to any other authority of the municipality to provide extraterritorial services or function. For purposes of this subsection, "unincorporated island" shall have the same meaning as contained in paragraph (3) of Code Section 36-36-90.	(b) A municipality may provide any service or exercise any function within an unincorporated island (as defined by O.C.G.A. § 36-36-90) if the county governing authority requests that it do so by resolution. This authority is in addition to the authority the municipality already possesses to provide extraterritorial services or functions.
36-36-5	
Reserved.	
36-36-6	**O.C.G.A. § 36-36-6 (Notice Requirements)**
Upon accepting an application for annexation pursuant to Code Section 36-36-21 or a petition for annexation pursuant to Code Section 36-36-32, or upon adopting a resolution calling for an annexation referendum pursuant to Code Section 36-36-57, the governing authority of the annexing municipality shall within five business days give written notice of the proposed annexation to the governing authority of the county wherein the area proposed for annexation is located. Such notice shall include a map or other description of the site proposed to be annexed sufficient to identify the area. Where the proposed annexation is to be	When the governing authority of an annexing municipality accepts an application for annexation under the 100% method, accepts a petition for annexation under the 60% method, or adopts a resolution for annexation under the resolution and referendum method, it must give written notice of the proposed annexation to the governing authority of the county in which the land to be annexed is located within 5 days of accepting the application for annexation. The written notice shall consist of a map or other description of the site of the proposed annexation that is sufficient to identify the area.

Statute	Commentary
effected by a local Act of the General Assembly, a copy of the proposed legislation shall be provided by the governing authority of the municipality to the governing authority of the county in which the property proposed to be annexed is located following the receipt of such notice by the governing authority of the municipality under subsection (b) of Code Section 28-1-14.	This section does not appear to require an annexing municipality to give notice to the county when the municipality uses the Article 6 method of annexation (annexation of unincorporated islands). Although notice is not mandated as a matter of law it may be a prudent and polite step, and lack of notice does not relieve the municipality form the obligation of compensating the county for property or facilities which become no longer accessible as a result of the annexation. Where annexation is to be effected by a local Act of the General Assembly, the city governing authority must provide a copy of the proposed legislation to the governing authority of the county in which the area to be annexed is located upon the city's receipt of notice under subsection (b) of O.C.G.A. § 28-1-14. Under that subsection the legislature is required to send a copy of the previously published notice of their intention to make changes to the city charter within one week of that publication. Thus, once the city gets a copy of the proposed publication either by fax, by mail, or otherwise they are to promptly submit a copy of the proposed legislation to the county governing authority. This section was amended in 2004 to change the effective date upon which a copy of the proposed legislation must be sent to the county from the date of legislative publication to the date of municipal receipt.
36-36-7	**O.C.G.A. § 36-36-7 (County Owned Facilities)**
(a) Upon receiving notice of a proposed annexation pursuant to Code Section 36-36-6, the county governing authority shall notify the governing authority of the municipality within five business days of receipt of such notice if any county owned public facilities are located in the area proposed to be annexed.	(a) When the county governing authority receives notice of a proposed annexation, whether from the municipal governing authority or from the General Assembly, it has 5 business days to notify the municipal governing authority if any county owned public facilities are located in the area proposed to be annexed.
(b) Except as otherwise provided in this Code section, ownership and control of county owned public properties and facilities are not diminished or otherwise affected by annexation of the area in which the county owned public property or facility is located.	(b) Except as otherwise noted in this section, annexation does not affect the ownership or control of county property located in the annexed area in any way.

Annexation Procedures

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(c) Whenever a municipality annexes land on both sides of a county road right of way, the annexing municipality shall assume the ownership, control, care, and maintenance of such right of way unless the municipality and the county agree otherwise by joint resolution.	(c) The annexing municipality assumes the ownership, control, care and maintenance of a county road right-of-way when it annexes land on both sides of the right of way, unless the county and the municipality agree otherwise. It is recommended that the annexation ordinance or Act clearly include the county road right-of-way in the survey describing the land to be annexed.
(d) Whenever county owned property or a county owned facility within an area annexed by a municipality is no longer usable for service to the unincorporated area of the county as a result of the annexation, the annexing municipality shall be required to acquire said property from the county governing authority under the following conditions:	(d) If county owned property or facilities annexed by a municipality become no longer usable for service to the unincorporated area of a county as a result of annexation, the municipality must acquire the property and/or facilities from the county if the conditions listed below are fulfilled. **The following conditions must be met in order for a county to be reimbursed for an annexation which makes its property or facilities no longer usable for service to the unincorporated area:**
(1) The annexation must be final;	(1) Annexation must be final; Annexation is final when it becomes effective (on the first day of the month following the enactment of the ordinance or when the local Act passed by the General Assembly becomes effective).
(2) The county property or facility must be funded by revenues derived from the unincorporated areas of the county and must be used to provide services solely to the unincorporated areas of the county;	(2) The property or facility: a. must be funded by revenues derived from the unincorporated areas of the county; **AND** b. must be used to provide services <u>solely</u> to the unincorporated areas of the county.
(3) The county adopts a resolution declaring that the property or facility is no longer usable for service to the unincorporated area of the county as a result of the annexation; and	(3) The county must adopt a resolution declaring that the property is no longer usable for service to the unincorporated area of the county as a result of the annexation.
(4) Unless otherwise provided by mutual agreement, the county shall be compensated in an amount equal to the fair market value of the property or facility which is no longer usable for service to the unincorporated area. If the county and municipality fail to agree as to the fair market value of the property or facility within 180 days following adoption of the resolution required by paragraph (3) of this subsection, the question of fair market value shall be submitted to a special master appointed by the superior court of the county in which the property or facility is located for	(4) The amount of compensation must be determined. Compensation is determined by either of the following methods: • Compensation is established by mutual agreement between the county and the municipality; **OR** • Compensation shall be in the amount equal to the fair market value of the property or facility that is no longer usable for service to the unincorporated area.

Statute	Commentary
determination of value.	If the county and the municipality cannot agree as to the fair market value within 180 days after the county's resolution declaring that the property or facility is no longer usable (see subparagraph (3) above), the dispute is to be submitted to a special master appointed by the superior court of the county in which the property or facility is located, and the special master is to determine the value.
36-36-8	**O.C.G.A. Section 36-36-8 (Utility Service Agreements)**
No annexation shall invalidate any utility service agreement between a county and an annexing municipality in effect on July 1, 1992, except by mutual written consent.	Annexation does not invalidate any utility service agreements between a county and an annexing municipality in effect as of July 1, 1992 unless there is mutual written consent.
36-36-9	**O.C.G.A. § 36-36-9 (Notice)**
All notices to a municipal or county governing authority required pursuant to this chapter shall be sent by certified mail or statutory overnight delivery, return receipt requested.	Notices sent to a city or county governing authority regarding an annexation must be sent by certified mail or by statutory overnight delivery, with a return receipt requested and received. "Statutory overnight delivery" is defined in O.C.G.A. § 9-10-12 and essentially allows the use of the overnight delivery services of the United States Postal Service or any commercial firm that is regularly engaged in the business of document or document and package delivery. To qualify as "statutory overnight delivery" the sender must request that the document be delivered on the next business day and the sender must receive a receipt signed by the addressee or an agent of the addressee acknowledging that the document was received. The text of O.C.G.A. § 9-10-12 is given at the bottom of the following page.
36-36-10	**O.C.G.A. § 36-36-10 (Legislative Intent)**
It is the express intent of the General Assembly in enacting the provisions of this chapter to provide for alternative methods for annexing or deannexing an area or areas into or from the corporate limits of a municipality. Except as otherwise expressly provided in this chapter, no provision of this chapter relating to annexation or deannexation by any such alternate method is intended to or shall be construed to in any way restrict, limit, or otherwise impair the authority of the General Assembly to annex or deannex by local Act.	This section is intended to make clear the General Assembly's intent that restrictions on the power of municipal governments to annex do not apply to the state. The General Assembly may annex in whatever fashion it chooses through local legislation.
36-36-11	**O.C.G.A. § 36-36-11**
(a) The intent of this Code section is to provide a mechanism to resolve disputes over land use	(a) This section was part of a series of land use amendments negotiated between GMA

Statute	Commentary
arising out of the rezoning of property to a more intense land use in conjunction with or subsequent to annexation in order to facilitate coordinated planning between counties and municipalities particularly with respect to areas contiguous to municipal boundaries; provided, however, that on and after September 1, 2007, such dispute resolutions shall be governed by the provisions of Article 7 of this chapter and the provisions of this Code section shall be limited to proceedings intiitated prior to such date.	and ACCG that the legislature passed in 2004 in conjunction with changes in the special purpose local option sales tax (SPLOST) law. At the insistence of ACCG staff, the primary focus of the land use amendments was to create an opportunity to delay the time it takes for a piece of property to be rezoned contemporaneous with annexation or within one year of annexation when a county interposes a legitimate, substantiated objection to a change in the intensity of the land use. The maximum delay established by these changes was 150 calendar days (five months). This period could be shortened by agreement of the parties or by the failure of the objecting party to move forward with the process in a timely fashion. **Note that the provisions of this Code section no longer apply effective September 1, 2007. Instead the provisions starting at Code section 36-36-110 will apply. Thus, the commentary on O.C.G.A. § 36-36-11 will be abbreviated.**
(b) As used in this Code section, the term "objection" means an objection to a proposed change in land use which results in a substantial change in the intensity of the allowable use of the property or a change to a significantly different allowable use.	(b) This section shortened the defined term "bona fide land use classification objection" to simply "objection," but retains the limitation to objections to proposed changes in land use resulting in either a substantial change in intensity of the allowable use of the property or a change to a significantly different allowable use.
(c)(1) When an initial zoning of property is sought pursuant to subsection (d) of Code Section 36-66-4 or when the rezoning of annexed property is sought within one year of the effective date of the annexation, the municipal corporation shall give notice to the county governing authority within seven calender days of the filing of the application for initial zoning or rezoning. Upon receipt of such notice, the county governing authority shall have seven calendar days to notify the municipality in writing of its intent to raise an objection to the proposed zoning or rezoning of the property and shall specify the basis for the objection. If the county governing authority serves notice of its	(c)(1) The 2004 land use amendments eliminated the requirement formerly provided in O.C.G.A. § 36-70-24[5] that service delivery strategies contain an annexation dispute resolution process. Likewise, the provisions of the 2004 law have been superseded by the 2007 amendments to the law. The law required that a city provide notice to the county of the proposed zoning or rezoning of property annexed or to be annexed within seven days of receiving the completed application for zoning or rezoning. The county governing authority then had seven days to notify the city in writing of their intent to raise an objection to the

[5] 2004 Change to O.C.G.A. § 36-70-24

(4)(A) Local governments within the same county shall, if necessary, amend their land use plans so that such plans are compatible and nonconflicting, or, as an alternative, they shall adopt a single land use plan for the unincorporated and incorporated areas of the county.

(B) The provision of extraterritorial water and sewer services by any jurisdiction shall be consistent with all applicable land use plans and ordinances.

~~*(C) A process shall be established by each county and every municipality located within each county, regardless or population, to resolve land use classification disputes when a county objects to the proposed land use of an area to be annexed into a municipality within the county.*~~

Annexation Procedures

Statute	Commentary
intent to object, then the county governing authority shall have ten calendar days from the date of the county's notice to document in writing the nature of the objection specifically identifying the basis for the objection including any increased service delivery or infrastructure costs. The absence of a written notice of intent to object or failure to document the nature of the objection shall mean the municipal corporation may proceed with the zoning or rezoning and no subsequent objections under this process may be filed for the zoning or rezoning under consideration.	proposed zoning or rezoning and of the basis of that objection; then the county had an additional ten days to document in writing the nature of the objection and specifically identify the basis of the objection. The purpose of requiring the county to specifically identify the basis for their objection including increased service delivery or infrastructure costs was to ensure that the objection asserted by the county is legitimate and substantial and to allow the property owner and the city to begin considering ways to ameliorate legitimate county concerns. If the county should fail to provide either required written notice, the municipality could proceed with the zoning or rezoning and the county will be unable to object to the zoning or rezoning in question in the future.
(2) Commencing with the date of receipt by the municipality of the county's documented objections, representatives of the municipal corporation and the county shall have 21 calendar days to devise mitigating measures to address the county's specific objections to the proposed zoning or rezoning. The governing authority of the municipal corporation and the governing authority of the county may agree on mitigating measures or agree in writing to waive the objections at any time within the 21 calendar day period, in which event the municipal corporation may proceed with the zoning or rezoning in accordance with such agreement; or, where an initial zoning is proposed concurrent with annexation, the municipality may approve, deny, or abandon the annexation of all or parts of the property under review.	(2) Once the requisite written objections had been provided by the county, the city and county had three weeks to attempt to work out mitigating measures.
(3) If the representatives of the municipal corporation and the county fail to reach agreement on the objections and mitigating measures within the 21 calendar day period, either the governing authority of the municipal corporation or the governing authority of the county may insist upon appointment of a mediator within seven calendar days after the end of the 21 day period to assist in resolving the dispute. The mediator shall be mutually selected and appointed within seven calendar days of either party's timely, written insistence on a mediator. The party insisting on use of the mediator shall bear two-thirds of the expense of the mediation and the other party shall bear one-third of the expense of the mediation. If	(3) If the city and county could not reach an agreement within the three weeks, either party could insist on use of a mediator to attempt to reach agreement. The party insisting on the use of the mediator was required to pay 2/3 the expenses of mediation while the other party paid 1/3. If both parties insisted on the mediation, each party paid for 1/2 of the expenses. The mediator had up to four weeks to meet with the parties and assist the parties in resolving the dispute. If an agreement was reached, the city could proceed in accordance with the mediated agreement. Should neither party insist on a mediator, the county effectively waived its objections and the city could move forward with its zoning or rezoning plans.

Statute	Commentary
both the municipality and the county insist on mediation, the expenses of mediation shall be shared equally. The mediator shall have up to 28 calendar days to meet with the parties to develop alternatives to resolve the objections. If the municipal corporation and the county agree on alternatives to resolve the objections, the municipal corporation may proceed in accordance with the mediated agreement.	
(4) If the objections are not resolved by the end of the 28 day period, the municipal governing authority or the county governing authority may, no later than seven calendar days after the conclusion of such 28 day period, request review by a citizen review panel. The citizen review panel shall be an independent body comprised of one resident of the municipal corporation appointed by the municipal governing authority, one resident of the county appointed by the county governing authority, and one nonresident of the county who is a land use planning professional mutually selected by the municipal and county appointees to the citizen review panel. No elected or appointed officials or employees, contractors, or vendors of a municipality or county may serve on the citizen review panel. If a request for review by a citizen review panel is made, the mediator shall make arrangements to appear personally at the first meeting of the panel and brief the panel members regarding the objections and proposed mitigating measures or provide a written presentation of such objections and proposed mitigating measures to the panel members on or before the date of such first meeting, whichever the mediator deems appropriate. The citizen review panel shall meet at least once but may conduct as many meetings as necessary to complete its review within a 21 calendar day period. All meetings of the citizen review panel shall be open to the public pursuant to Chapter 14 of Title 50. Within 21 calendar days of the request for review, the citizen review panel shall complete its review of the evidence submitted by the county and the municipality concerning the objections and proposed mitigating measures and shall issue its own recommendations.	(4) If mediation was not successful within four weeks, either party could insist upon review by an independent citizen review panel within seven days of the end of the four week mediation period. This panel was an independent body consisting of one resident of the city appointed by the city governing authority, one resident of the county appointed by the county governing authority, and one nonresident of the county who is a land use planning professional mutually selected by the city and county appointees to the panel. No member of the panel could be an elected or appointed official or an employee, contractor or vendor of a municipality or county. This restriction was intended to avoid bias or economic pressure.
(5) The citizen review panel shall recommend approval or denial of the zoning or rezoning and address the objections and proposed mitigating measures. Where an initial zoning is proposed concurrent with annexation, the panel may also recommend that the annexation be approved or abandoned. The findings and recommendations of the citizen review panel shall not be binding.	(5) The panel was required to recommend either approval or denial of the zoning or rezoning and address the objections and proposed mitigating measures. In the context of initial zoning concurrent with annexation, the panel could also recommend that the annexation be approved or abandoned. Findings and recommendations of the panel were non-binding.

Annexation Procedures

Statute

(6) Following receipt of the recommendations of the citizen review panel, the municipal corporation may:

(A) Zone or rezone all or parts of the property under review;

(B) Zone or rezone all or parts of the property under review with mitigating measures;

(C) Deny the zoning or rezoning of all or parts of the property under review; or

(D) Any combination of the foregoing.

Where an initial zoning is proposed concurrent with annexation, the municipality may also approve, deny, or abandon the annexation of all or parts of the property under review.

(7) At any time during the process set forth in this Code section, the county or municipality may file a petition in superior court seeking sanctions against a party for any objections or proposed mitigating measures that lack substantial justification or that were interposed for purposes of delay or harassment. Such petition shall be assigned to a judge, pursuant to Code Section 15-1-9.1 or 15-6-13, who is not a judge in the circuit in which the county is located. The judge selected may also be a senior judge pursuant to Code Section 15-1-9.2 who resides in another circuit. The visiting or senior judge shall determine whether any objections or proposed mitigating measures lack substantial justification or were interposed for delay or harassment and shall assess against the party raising such objection or proposing or objecting to such mitigating measures the full cost of attorney fees and other costs incurred by the other party in responding to the objections or proposed mitigating measures.

(8) Unless otherwise agreed, a zoning or rezoning decision made pursuant to this Code section shall not be effective until 28 calendar days following the completion of the process authorized by this Code section and the zoning or rezoning vote by the municipal governing authority.

Commentary

(6) Once the city received the citizen review panel's recommendations, it had several very flexible options. The city could choose to:

(A) Zone or rezone all or parts of the property;

(B) Zone or rezone all or parts of the property with such mitigating measures as the city chooses;

(C) Deny zoning or rezoning of all or parts of the property; or

(D) Any combination of the above – (i.e., rezoning certain parts of the property under review while choosing to deny rezoning to other parts).

(7) Should either a county or city assert objections or offer mitigating measures that lack substantial justification or are intended simply to delay or harass, the other party could petition the Superior Court for sanctions which could include the cost of attorney fees and all other costs incurred by the complaining party in responding to the objections or proposed mitigating measures. Again, this provision was intended to ensure that cities and counties address legitimate, substantiated impacts from a proposed change in land use to a substantially different intensity or significantly different allowable use.

The rezoning dispute resolution process was intended to be a shield against unintended consequences and not a sword to prevent municipal growth or injure those who seek annexation into a city.

(8) Zoning or rezoning decisions made using this review process were not be effective until four weeks following the completion of the process and the zoning or rezoning vote by the municipal governing authority. For example, if the mediation process ended on June 24 and the city council voted that same day on the appropriate zoning of the property, the decisions made using this process would not be effective until July 22. This four week period could be shortened if the city and

Statute	Commentary
	county agreed to an alternative time period.
(9) During the process set forth in this Code section, the municipal corporation may proceed with notice, hearings, and other requirements for zoning or rezoning in accordance with the municipality's zoning ordinance.	(9) During the statutory review process the city could go ahead and commence with notice, hearings, and other requirements for zoning or rezoning in accordance with their zoning ordinance. This subsection was designed to prevent zoning delays beyond those built into the statutory review process.
(d) If the annexation, zoning, or rezoning is denied or abandoned based in whole or in part on the county's objections, the county shall not zone or rezone the property or allow any use of a similar or greater density or intensity to that proposed for the property which had been objected to by the county pursuant to this Code section for a one-year period after the denial or abandonment.	(d) If the annexation or rezoning was abandoned or denied based on the county's objections in whole or in part, then the county government that objected is prohibited from rezoning the property for one year to a similar or greater intensity of use as proposed within the city. This one-year period started at the conclusion of the new zoning dispute resolution process. The purpose of this provision was to keep certain counties from raising frivolous objections or opposing annexations simply because they dislike city growth. This provision was intended to encourage county commissions to carefully consider their objection before asserting it.
(e) The process set forth in subsection (b) of this Code section specifies minimum procedures for addressing objections. However, a county and a municipality may agree to additional procedures by resolution of the county and municipal governing authorities. Notwithstanding subsections (b) and (c) of this Code section, any agreement to resolve county objections to a proposed land use of an area to be annexed into a municipality which agreement was in effect on January 1, 2004, and which includes a provision whereby the county and a municipality agree to be bound by the recommendations of an annexation appeals board shall remain in effect until the parties agree otherwise.	(e) The 2004 law deleted the requirement in the previous law that each city and county have an annexation dispute resolution process and the provision of law giving counties veto power over annexation by delaying the effective date of an annexation until a county's objections had been resolved. However, any annexation dispute resolution process in place as of January 1, 2004, which contained an agreement delegating the decision regarding annexation to an annexation appeals board, would remain in place until otherwise amended by the parties. This exclusion attempting to preserve agreements in select counties appears to have been superseded by the 2007 amendments. See O.C.G.A. § 36-36-11.

Annexation Procedures

9-10-12 **Statutory Overnight Delivery**

(a) Whenever any law, statute, Code section, ordinance, rule, or regulation of this state or any officer, department, agency, municipality, or governmental subdivision thereof provides that a notice shall be given by 'registered mail,' the notice may be given by 'certified mail.'

(b) Whenever any law, statute, Code section, ordinance, rule, or regulation of this state or any officer, department, agency, municipality, or governmental subdivision thereof provides that a notice may be given by 'statutory overnight delivery,' it shall be sufficient compliance if:

(1) Such notice is delivered through the United States Postal Service or through a commercial firm which is regularly engaged in the business of document delivery or document and package delivery;

(2) The terms of the sender's engagement of the services of the United States Postal Service or commercial firm call for the document to be delivered not later than the next business day following the day on which it is received for delivery by the United States Postal Service or the commercial firm; and

(3) The sender receives from the United States Postal Service or the commercial firm a receipt acknowledging receipt of the document which receipt is signed by the addressee or an agent of the addressee.

Annexation Procedures

EXAMPLES

36-36-4(a)(1) Annexation or deannexation is prohibited if it results in the creation of an unincorporated area which is surrounded on all sides by the annexing municipality.

Key:

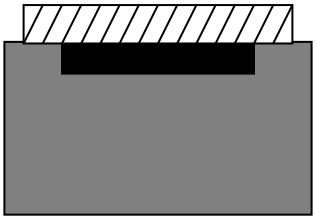
Municipal limits

Area proposed to be annexed by municipality

Island formed by annexation or deannexation

A. *an unincorporated island formed by annexation*:

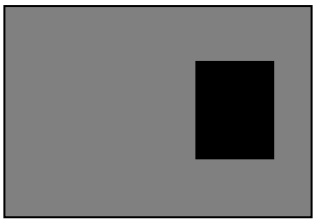
original municipal limits



formation of island by annexation

B. *an unincorporated island formed by deannexation*

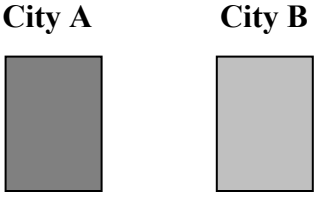
original municipal limits



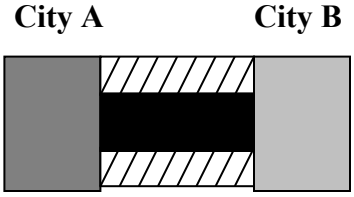
formation of island by deannexation

36-36-4(a)(2) Annexation or deannexation is prohibited if it would result in the creation of an unicorporated area which is surrounded on all sides by the annexing municipality and one or more other municipalities.

A. *an unincorporated island formed by annexation:*

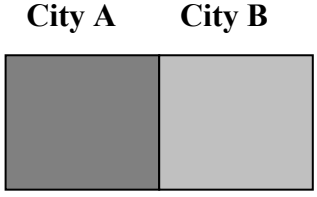


original municipal limits

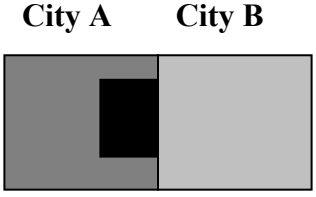


formation of island by annexation

B. *an unincorporated island formed by deannexation*



original municipal limits

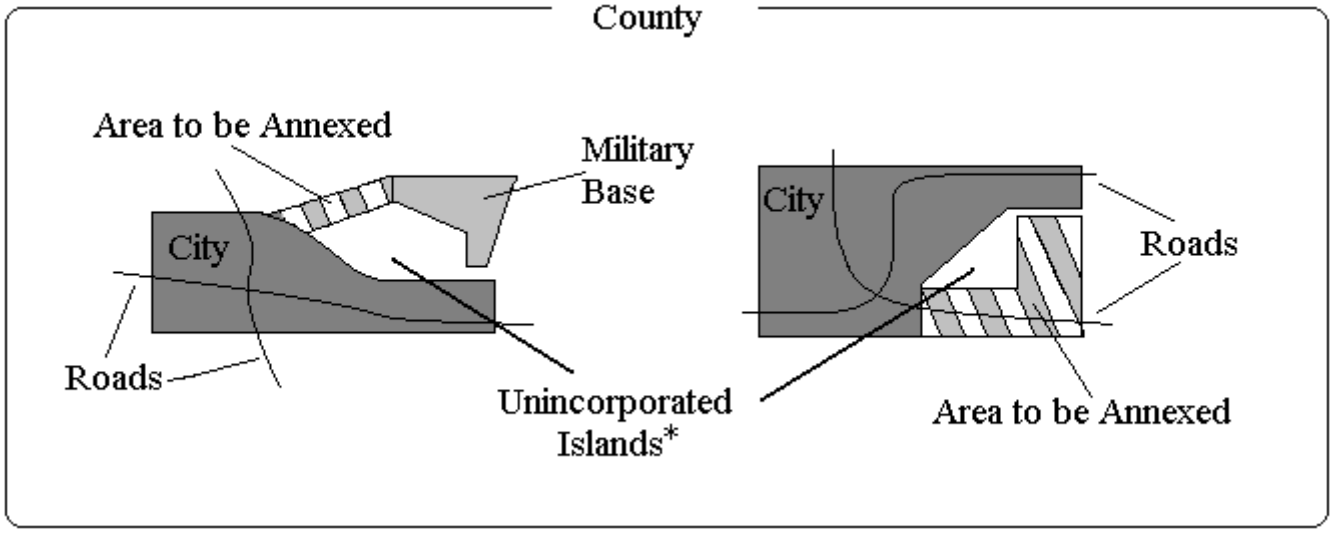


formation of island by deannexation

Annexation Procedures

EXAMPLES

36-36-4(a)(3) Annexation or deannexation which might result in the creation of an unincorporated area to which the county would have no reasonable means of physical access for the provision of services otherwise provided by the county governing authority solely to the unincorporated area of the county.



* Assuming the county has no reasonable means of physical access for the provision of county services.

County representatives have suggested that an unincorporated island which can only be accessed by a city street has no reasonable means of physical access for the provision of services to the unincorporated area as described under this section. County vehicles, however, are not prohibited from traveling on city streets.

VOTING RIGHTS ACT COMPLIANCE

At the time of publication of this guide, Section 5 of the federal Voting Rights Act, which required that all covered jurisdictions submit plans for any changes that affect voting, prerequisites to voting, and procedures affecting voting to the U.S. Department of Justice for preclearance has been rendered inoperable by the United States Supreme Court decision in Shelby County, Alabama v. Holder, 133 S.Ct. 2612 (2013). However, even though Section 5 of the Voting Rights Act has been rendered inoperable, it is important to remember that Section 2 and Section 3 of the Voting Rights Act both remain operable. Significantly, the United States Department of Justice retains its ability to bring actions against jurisdictions with a history of discrimination under these two sections, it simply no longer has the ability to require preclearance for actions affecting voting, prerequisites to voting, and procedures affecting voting.

For more information on the federal Voting Rights Act, see GMA's 2001 Municipal Redistricting Guide, available at our website www.gmanet.com. You can also visit the US Justice Department's website at www.usdoj.gov.

ANNEXATION OR DEANNEXATION BY THE 100% METHOD

Article 2

O.C.G.A. § 36-36-20 through § 36-36-23

Summary

The provisions of Article 2 set up procedures that cities can use to annex or deannex property that is owned by the city or property in which 100% of the land owners request annexation or deannexation.

1. O.C.G.A. § 36-36-20 defines the term "contiguous."
2. O.C.G.A. § 36-36-21 grants authority to municipalities to annex property when 100% of the land owners sign a written application and requires that an identification of the property be filed with the county and the Department of Community Affairs.
3. O.C.G.A. § 36-36-22 treats deannexation just like annexation and grants the authority to municipalities to deannex property when 100% of the landowners sign a written application requesting deannexation. This code section requires that an identification of the property be filed with the county and the Department of Community Affairs.
4. O.C.G.A. § 36-36-23 allows municipalities to annex across adjoining county lines and allows counties to object to annexation by a city for the first time into a county where the city is not already present and allows for the annexing municipality to challenge the objection in court.

Annexation or Deannexation by 100% Method

Statute

36-36-20

(a) As used in this article, the term 'contiguous area' means, at the time the annexation procedures are initiated, any area that meets the following conditions:

(1) At least one-eighth of the aggregate external boundary or 50 feet of the area to be annexed, whichever is less, either abuts directly on the municipal boundary or would directly abut on the municipal boundary if it were not otherwise separated from the municipal boundary by lands owned by the municipal corporation or some other political subdivision, by lands owned by this state, or by the definite width of:

(A) Any street or street right of way;

(B) Any creek or river; or

(C) Any right of way of a railroad or other public service corporation

which divides the municipal boundary and any area proposed to be annexed~~.~~;

Commentary

O.C.G.A. § 36-36-20 (Definition of the term Contiguous)

(a) This section defines the term "contiguous area" for the purposes of the 100% method of annexation. To be considered contiguous, an area to be annexed must abut the municipal boundary; **AND**

(1) The abutting area must be:

- at least 1/8th of the aggregate external boundary, **OR**

***See* figure, page 33.**

- 50 feet of the area to be annexed, whichever is less.

***See* figure, page 33.**

An area is considered to abut the municipal boundary if it does not touch the municipal boundary, but would directly touch the municipal boundary if not separated from it by:

- land owned by the municipal corporation or some other political subdivision;

(Land owned by a "political subdivision" includes, for example, land owned by a county, school district, housing or hospital authority.)

- lands owned by the State of Georgia;

- the definite WIDTH of:

A) any street or street right of way;
B) any creek or river;
C) any right-of-way of a railroad or other public service corporation;

which divides the municipal boundary and any area proposed to be annexed;

Note for C) above that the property must be right-of-way of the railroad or utility and not property owned in fee simple by a railroad or other public service corporation. *See* City of Buford v. Gwinnett County, (Appendix A).

***See* figures, pages 33 and 35.**

Statute	Commentary
(2) The entire parcel or parcels of real property owned by the person seeking annexation is being annexed; provided, however, that lots shall not be subdivided in an effort to evade the requirements of this paragraph; and	(2) The entire parcel or parcels of land owned by the person seeking annexation is being annexed. Lots cannot be subdivided to avoid this requirement. While this is the general rule, case law indicates that the entire parcel requirement is flexible. The Georgia Court of Appeals has approved subdivision of property to avoid creation of unincorporated islands. See Fayette County v. Kenneth Steele (Appendix A).
(3) The private property annexed, excluding any right of way of a railroad or other public service corporation, complies with the annexing municipality's minimum size requirements, if any, to construct a building or structure occupiable by persons or property under the policies or regulations of the municipal development, zoning, or subdivision ordinances.	(3) Annexed parcels must be of sufficient size to meet the annexing municipality's minimum size requirements for construction of a building or structure. **Exceptions:** This subsection does not apply to the right-of-way of railroads or other public service corporations.
(b) Notwithstanding the limitations of subsection (a) of this Code section, an area may be annexed by agreement between the municipal corporation and the governing body of the county in which the territory proposed to be annexed is located.	(b) Any private property can be annexed with the agreement of the landowner, the city, and the county regardless of whether the property meets the contiguity requirements, the minimum size requirements, or the requirement that the entire parcel of the land must be annexed. Note that this provision allowing annexation upon agreement of the city and county governing authorities does not apply to the limitations contained in subsection (c) of this code section with respect to annexing municipally owned property. But see City of Fort Oglethorpe v. City of Ringgold (Appendix A).
(c) If, at the time annexation procedures are initiated, the entire area to be annexed is owned by the municipal governing authority to which the area is to be annexed and if the annexation of municipally owned property is approved by resolution of the governing authority of the county wherein the property is located, then the term 'contiguous area' shall mean any area which, at the time annexation procedures are initiated, abuts directly on the municipal boundary or which would directly abut on the municipal boundary if it were not otherwise separated from the municipal boundary by lands owned by the municipal corporation or some other political subdivision, by lands owned by this state, or by the definite width or by the length of: *(1) Any street or street right of way;*	(c) This subsection provides that if the entire area to be annexed is owned by the municipal governing authority which proposes to annex the area and if the annexation is approved by resolution of the governing authority of the county in which the property is located, "contiguous area" would include areas which: (1) directly abut the municipal boundary; **OR** (2) do not directly abut the municipal boundary, but would directly abut the municipal boundary if not separated from it by: • land owned by the municipal corporation or some other

Statute

(2) Any creek or river; or

(3) Any right of way of a railroad or other public service corporation

which divides the municipal boundary and any area proposed to be annexed.

Commentary

political subdivision;

- lands owned by the State of Georgia; OR
- the definite WIDTH or LENGTH of:

  i) any street or street right of way;
  ii) any creek or river;
  iii) any right-of-way of a railroad or other public service corporation;

  which divides the municipal boundary and any area proposed to be annexed.

***See* figure, page 34.**

The addition of the word "length" to the definition of "contiguous" as applied to areas owned by municipalities, permits municipalities to annex any area contiguous to the municipal boundary by a "spoke," "stem," or "strip" if the municipality owns the land to be annexed, and if the municipality has obtained the consent of the county in which the area to be annexed is located. But see City of Fort Oglethorpe v. City of Ringgold (Appendix A).

***See* figure, page 34.**

36-36-21

Authority is granted to the governing bodies of the several municipal corporations of this state to annex to the existing corporate limits thereof unincorporated areas contiguous to the existing corporate limits at the time of such annexation, in accordance with the procedures provided in this article and in Article 1 of this chapter, upon the written and signed applications of all of the owners of all of the land, except the owners of any public street, road, highway, or right of way, proposed to be annexed, containing a complete description of the lands to be annexed. Lands to be annexed at any one time shall be treated as one body, regardless of the number of owners, and all parts shall be considered as adjoining the limits of the municipal corporation when any one part of the entire body abuts such limits. When such application is acted upon by the municipal authorities and the land is, by ordinance, annexed

O.C.G.A. § 36-36-21: (Annexation by the 100% Method)

This section grants authority to municipal corporations to annex unincorporated areas which are contiguous to their existing corporate limits when annexation takes place upon the written and signed applications of all of the owners of all of the land to be annexed.

1) The application must contain a complete description of the lands to be annexed.

2) Written and signed applications are not needed from the owners of any public street, road, highway, or right-of-way.

3) All lands to be annexed at any one time shall be treated as one body even if there are different owners petitioning for annexation at the same time.

Statute

to the municipal corporation, an identification of the property so annexed shall be filed with the Department of Community Affairs and with the governing authority of the county in which the property is located in accordance with Code Section 36-36-3. When so annexed, such lands shall constitute a part of the lands within the corporate limits of the municipal corporation as completely and fully as if the limits had been marked and defined by local Act of the General Assembly. Except as provided in subsection (c) of Code Section 36-36-20, nothing in this article shall be construed to authorize annexation of the length of any public right of way except to the extent that such right of way adjoins private property otherwise annexed by the municipal corporation.

36-36-22

Authority is granted to the governing bodies of the several municipal corporations of this state to deannex an area or areas of the existing corporate limits thereof, in accordance with the procedures provided in this article and in Article 1 of this chapter, upon the written and signed applications of all of the owners of all of the land, except the owners of any public street, road, highway, or right of way, proposed to be deannexed, containing a complete description of the lands to be deannexed and the adoption of a resolution by the governing authority of the county in which such property is located consenting to such deannexation. Lands to be deannexed at any one time shall be treated as one body, regardless of the number of owners, and all parts shall be considered as adjoining the limits of the municipal corporation when any one part of the entire body abuts such limits. When such application is acted upon by the municipal authorities and the land is, by ordinance, deannexed from the municipal corporation, an identification of the property so deannexed shall be filed with the Department of Community Affairs and with the governing authority of the county in which the property is located in accordance with Code Section 36-36-3. When so deannexed, such lands shall cease to constitute a part of the lands within the corporate limits of the municipal corporation as completely and fully as if the limits had been marked and defined by local Act of the General Assembly.

Commentary

4) All parts of a body of land proposed to be annexed are considered to be adjoining the municipal limits as long as the body is contiguous to the municipal boundary at any point. ***See* figures, page 34 and 35.**

Identification of the annexed land must be filed with DCA and the governing authority of the county.

This subsection also includes a provision which makes clear that the <u>length</u> of any public right-of-way may not be annexed under the 100% method unless the right-of-way adjoins private property annexed by the municipal corporation or is included in an annexation of municipally owned property.

The 100% method can be used in any county in Georgia.

O.C.G.A. § 36-36-22 (Deannexation; Authority; Procedures; Identifications; Status of Lands)

This section establishes a procedure by which a municipal corporation may deannex an area that is currently within the corporate limits. Deannexation is solely within the discretion of the municipal governing authority. The reference to Article 1 is specifically in regards to O.C.G.A. § 36-36-4 which prohibits the creation of unincorporated islands by deannexation.
<u>Requirements</u>:

1) Written and signed applications of all the owners of all of the land. The owners of public lands are not included in this definition. This requirement is effectively the same as in the 100% method of annexation.

2) A complete description of the lands to be deannexed must be attached to the deannexation application.

3) The governing authority of the county in which the property proposed for deannexation is located must adopt a resolution consenting to the deannexation.

4) Lands to be deannexed at any one time will be considered one body, regardless of the number of owners. All parcels will be considered as adjoining the limits of the municipal corporation when any one parcel of the entire area being annexed abuts the municipality's limits. This subsection is the same definition of contiguous area found in

Statute	Commentary
	O.C.G.A. § 36-36-20. 5) After the deannexation ordinance is passed by the municipality, an identification of the property deannexed must be filed with the Department of Community Affairs, **AND** with the governing authority of the county in which the property is located (*see* O.C.G.A. § 36-36-3).
36-36-23 *(a) Annexation pursuant to this article by a municipal corporation into an adjoining county in which the municipality is not already located shall be accomplished in accordance with this Code section. Within ten business days of receiving an application for annexation, the municipal corporation shall provide written notice to the county governing authority of the adjoining county of its intent to annex into the county. Such notice shall include a map or other description of the land proposed for annexation sufficient for the county to identify the location of the proposed annexation. A meeting between the county governing authority and municipal governing authority shall be held to discuss the proposed annexation if the county governing authority files a written request for such meeting with the municipal governing authority within 15 days of receipt of the notice of the proposed annexation. The requested meeting shall be held within 15 days of the request by the county unless otherwise agreed to by the county and the municipality.*	**O.C.G.A. § 36-36-23 (Annexation Across County Line for the First Time)** (a) If a municipality receives an application for annexation under the 100% method from a property owner in a county which adjoins the city, but in which the city is not currently located, then the city must give that adjoining county notice of the annexation request. The notice must describe the land well enough that the county can identify the land proposed for annexation. <u>*Notice Requirement*</u> • must be in written format; • must be sent within 10 business days of receiving an application for annexation; • must include a map, **OR** • a description of the property to be annexed so that the county can identify the property to be annexed. A meeting to discuss the proposed annexation must be held between the governing authority of the county and the governing authority of the municipality if: • the governing authority of the county files a written request with the governing authority of the municipality; **AND** • the written request is filed within 15 days of the county's receipt of the notice of proposed annexation. The meeting must be held within 15 days of the request by the county unless the county and city agree otherwise.
(b) No municipality may annex into an adjoining county in which the municipality is not already located unless otherwise agreed to by the county governing authority of the adjoining county. Such annexation shall be deemed approved, unless the county governing authority adopts a resolution opposing the annexation within 30 days following the earlier of:	(b) This subsection allows a county to object to a city's first time annexation into a county in which the city is not located. If the county does not adopt a resolution objecting to the proposed annexation within the specified time limits **then the county is deemed to have approved of the annexation.** If the county objects to the annexation, the county

Statute	Commentary
(1) The completion of the meeting between the municipal and county governing authorities, if any, pursuant to subsection (a) of this Code Section; or *(2) Thirty days after notice of the proposed annexation from the municipal corporation to the county governing authority, if no meeting is requested by the county governing authority.*	governing authority must pass a resolution opposing the annexation within 30 days of the earliest of: (1) the completion of the subsection (a) meeting between the governing authorities of the county and the municipality; **OR** (2) 30 days after receiving notice of the proposed annexation from the governing authority of the municipality. *This choice only applies if a subsection (a) meeting is not requested.* While it is not completely clear whether a county would have 30 days or 60 days to adopt a resolution objecting to the annexation after receiving the notice of proposed annexation from the city, it is GMA's understanding that the intent of this section was to allow the county a total of 30 days in which to object. This reading is bolstered by the requirement in O.C.G.A. § 36-36-23(a) that the county request a meeting within 15 days of receiving notice of the proposed annexation and that such meeting be held within 15 days of the county's request. Thus, within 30 days of being notified of the proposed annexation the county must either meet with the city or object to this annexation.
(c) In making its decision, the county governing authority shall consider the following factors: *(1) Whether the annexation ordinance is reasonable for the long-range economic and overall well-being of the counties, school districts, and municipalities affected by the annexation;* *(2) Whether the health, safety, and welfare of property owners and citizens of the county, municipalities, and area proposed to be annexed will be negatively affected by the annexation;* *(3) Whether the proposed annexation has any negative fiscal impact on the county, school districts, and other municipalities that have not been mitigated by an agreement; and* *(4) The interests of the property owner seeking annexation.*	(c) The governing authority of the county must consider the following factors in making its decision on whether to approve or disapprove the annexation: (1) The annexation's effect on the long-range economic and overall well-being of the affected counties, municipalities, and school districts; (2) Whether the annexation will negatively affect the health, safety, and welfare of property owners and citizens of the county, municipalities, and the proposed property to be annexed; (3) The possible negative fiscal impact on the county, school districts, and other municipalities that have not been addressed by an agreement; **AND** (4) The interests of the property owner seeking annexation.

Annexation or Deannexation by 100% Method

Statute

(d) If the county governing authority disapproves the annexation, the municipal corporation may challenge the disapproval by filing a complaint in the superior court of the adjoining county into which such annexation has been proposed. The challenge shall be heard by either a judge or senior judge who is not from the circuit in which either the county or the municipality is located. If the court finds by a preponderance of the evidence that the determination by the county based upon the factors enumerated in subsection (c) of this Code section is correct, then the denial by the county shall be sustained. If the denial is not sustained, the annexation may proceed.

Commentary

(d) If the governing authority of the adjoining county disapproves the proposed annexation, the municipality may challenge the disapproval as follows:

1. The municipality may file a complaint in the superior court of the county where the property to be annexed is located.

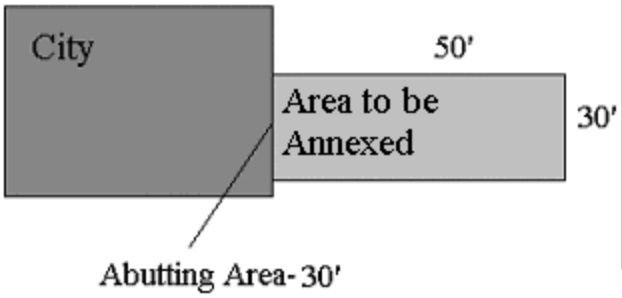
2. The complaint must be heard by a judge who is not from the circuit where the county or municipality involved in the annexation is located.

3. In deciding the case, the judge should determine whether the county's decision, based on the factors the county was required to consider, was correct. If the judge finds that it is more likely than not that the county's decision to deny annexation was correct, the court must allow the county's decision to deny annexation to stand. If the court finds it was more likely not that the county's decision to deny annexation was incorrect, it should allow the annexation to proceed.

Annexation or Deannexation by 100% Method

EXAMPLES

36-36-20(a)(1) The abutting area must be: at least 1/8th of the aggregate external boundary.

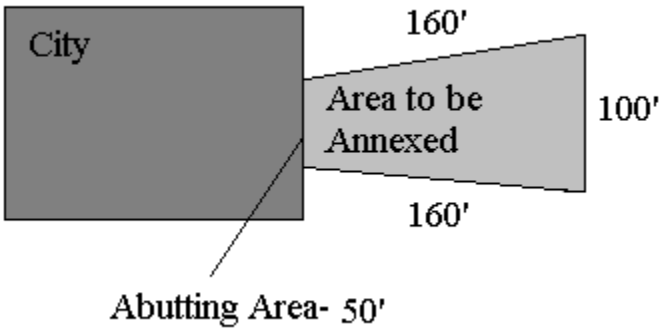


Total Boundary=160'
1/8 of 160=20'
Abutting Area=30'

More than 1/8 (30>20) of the total boundary abuts the municipal boundary, so the parcel can be annexed.

OR

The abutting area has to be 50 feet of the area to be annexed, whichever is less.

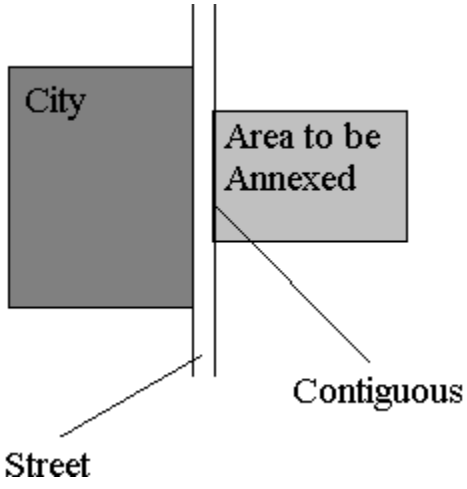


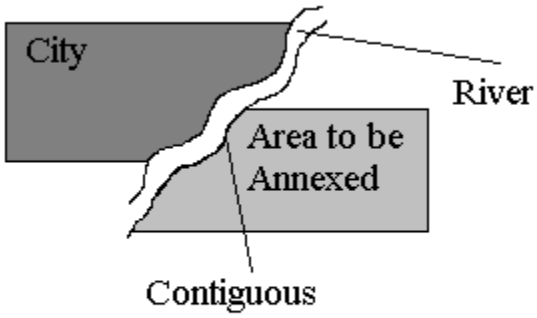
Total Boundary=470'
1/8 of 470=58.75'
Abutting Area=50'

Even though 50' is less than 1/8 of the total boundary (50<58.75), the area can still be annexed because there is an abutting area of 50'.

36-36-20(a)(1) An area is still considered to abut the municipal boundary if it does not touch the municipal boundary, but would directly touch the municipal boundary if not separated from it by the definite WIDTH of:

i) any street or street right of way;
ii) any creek or river;
iii) any right-of-way of a railroad or other public service corporation.





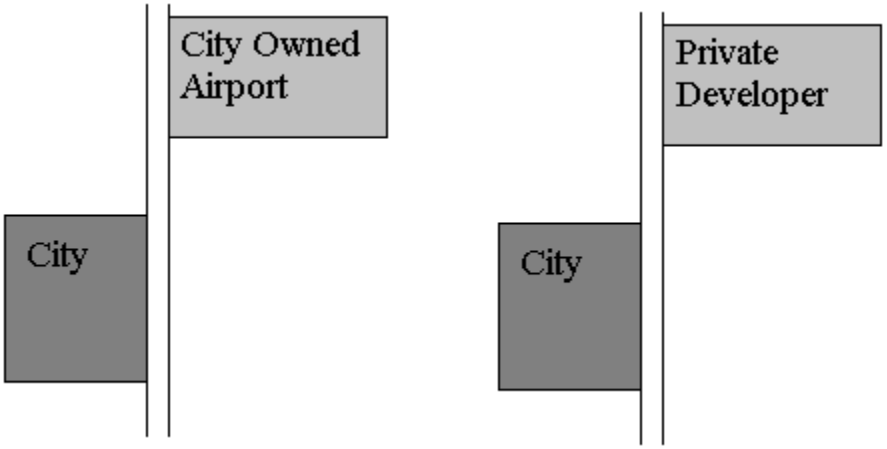
Annexation or Deannexation by 100% Method

EXAMPLES

36-36-20(c) If the entire area to be annexed is owned by the municipal authority, "contiguous area" would include areas which: do not directly abut the municipal boundary, but would directly abut the municipal boundary if not separated from it by the definite **WIDTH <u>or</u> LENGTH** of:

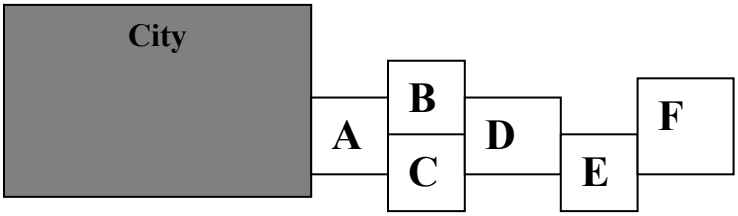
i) any street or street right of way;
ii) any creek or river; or
iii) any right-of-way of a railroad or other public service corporation;

which divides the municipal boundary and any area proposed to be annexed.



*The city airport **can** be annexed with county approval. The private developer's land **cannot** be annexed.*

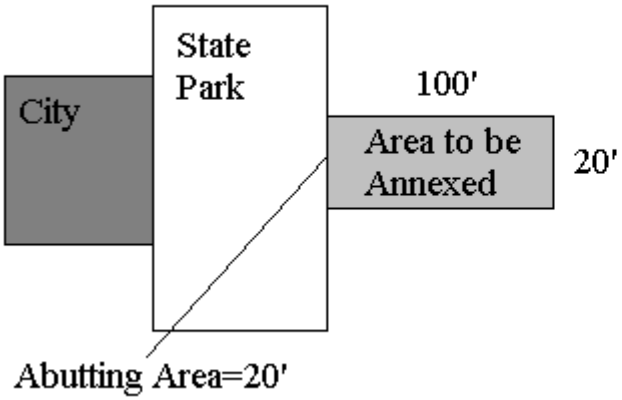
36-36-21 Lands to be annexed at any one time shall be treated as one body, regardless of the number of owners, and all parts shall be considered as adjoining the limits of the municipal corporation when any one part of the entire body abuts such limits.



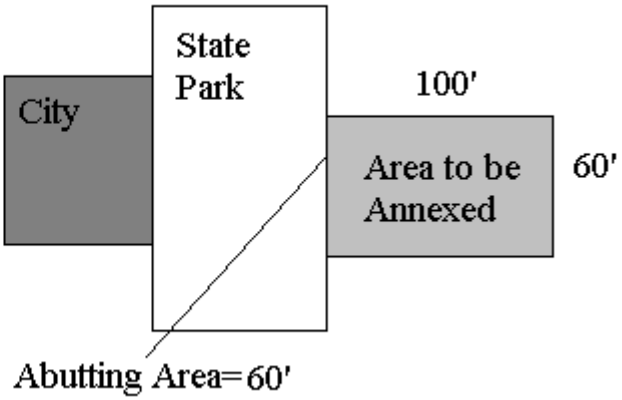
Landowners of parcels A, B, C, D, E, and F can have their parcels annexed to the city under the 100% method at the same time because parcel A is contiguous to the city.

Annexation or Deannexation by 100% Method

EXAMPLES



Total Boundary = 240
1/8 of 240 = 30
***Less** than 1/8 (20<30) of total boundary is contiguous, so the area **cannot** be annexed.*



Total Boundary = 320
1/8 of 320=40
***More** than 1/8 (60>40) of the total boundary is contiguous, so the area **can** be annexed.*

CHECKLIST FOR ANNEXATION UNDER THE 100% METHOD

(O.C.G.A. § 36-36-20 through § 36-36-23)

_____ 1. The territory to be annexed is contiguous to the city and annexation will not create an unincorporated island. O.C.G.A. §§ 36-36-4; 36-36-20.

_____ 2.a. Owners of land to be annexed have signed written applications requesting annexation and have submitted them together with a description of the land to be annexed to the governing body of the annexing municipal corporation. O.C.G.A. § 36-36-21. **OR**

_____ 2.b. If the annexing municipality owns all of the land to be annexed, the county governing authority has approved the proposed annexation by resolution. O.C.G.A. § 36-36-20(c).

_____ 3. The municipal governing authority has notified* the county governing authority of any proposed annexation within the county within 5 business days of receipt of the annexation application. Notification to the county at that time or shortly thereafter includes a copy of the annexation petition and the proposed zoning and land use for the area to be annexed. This notification must be made by certified mail or statutory overnight delivery. O.C.G.A. § 36-36-6; 36-36-111.

_____ 4. If the county has properly delivered to the city a valid objection within 30 days of the county receiving a copy of the annexation petition and notice of the zoning and land use, then see the checklist on page 85.

_____ 5. If the county has property or facilities in the area to be annexed, it has notified* the municipality of that fact within 5 business days of receipt of the municipality's notice. O.C.G.A. § 36-36-7(a).

_____ 6. If the annexation is into a county in which the city is not already located, the municipality has provided written notice to the county of the proposed annexation; O.C.G.A. § 36-36-23. **AND**

_____ 6.a. Within 30 days of receiving notice from the city of the proposed annexation, the county governing authority has not adopted a resolution objecting to the proposed annexation; O.C.G.A. § 36-36-23(b) **OR**

_____ 6.b. Within 15 days of receiving notice of the proposed annexation, the county has requested a meeting with the city and such meeting has been held within 15 days of the county's request or at another time mutually agreed to by the city and county; O.C.G.A. § 36-36-23 (a) **AND**

_____ 6.c. Within 30 days of such meeting, the county governing authority has not adopted a resolution objecting to the proposed annexation. O.C.G.A. § 36-36-23 (b)

_____ 7. The municipality has acted upon the application and has annexed the land, by ordinance, to the municipal corporation. O.C.G.A. § 36-36-21.

_____ 8. The municipality has filed an identification of the annexed property with the Department of Community Affairs and the county governing authority within 30 days of the last day of the quarter in which the annexation becomes effective. O.C.G.A. §§ 36-36-2; 36-36-3.

* Notice must be sent by certified mail or statutory overnight delivery, return receipt requested. O.C.G.A. § 36-36-9.

ANNEXATION BY THE 60% METHOD

ARTICLE 3

O.C.G.A. § 36-36-30 through O.C.G.A. § 36-36-40

Summary

The provisions of Article 3 set up procedures by which municipalities may annex property where 60% of the electors and 60% of the landowners sign written applications requesting annexation.

1. O.C.G.A. § 36-36-30 defines "municipal corporations," and requires that to meet the definition, cities have at least 200 residents.

2. O.C.G.A. § 36-36-31 defines the term "contiguous area" to mean any area of which at least 1/8 of the external boundaries abut the municipality or would abut the municipality but for land owned by local or state governments.

3. O.C.G.A. § 36-36-32 grants municipalities the authority to annex areas that are contiguous and for which 60% of the land owners and 60% of the electors sign a written application for annexation.

4. O.C.G.A. § 36-36-33 prohibits municipalities from annexing territory in counties where the city does not already reside.

5. O.C.G.A. § 36-36-34 requires the municipality to examine the application for annexation and prescribes the procedures upon a finding of validity or invalidity.

6. O.C.G.A. § 36-36-35 requires the annexing municipality to make plans for extending services to the proposed area of annexation and prepare a report outlining those plans. The plans must be made public 14 days prior to a mandated public hearing on the proposed annexation.

7. O.C.G.A. § 36-36-36 mandates a public hearing on the proposed annexation, which must take place 15 to 45 days from the time at which municipality decides that the annexation application meets the legal requirements. This section also prescribes the notice required for the hearing.

8. O.C.G.A. § 36-36-37 grants municipal corporations the power to adopt an annexation ordinance after having received a valid application and after having held the required public hearing.

9. O.C.G.A. § 36-36-38 requires the municipality to file an identification of the property with the Department of Community Affairs and the county in which the annexation took place and states that municipal ad valorem taxes shall not apply until January 1 of the year following the annexation. (*See also* O.C.G.A. § 36-36-2 regarding the effective date of taxing authority.)

10. O.C.G.A. § 36-36-39 creates a mechanism by which interested parties may petition for a declaratory judgment challenging the validity of the ordinance annexing land within 30 days of the effective date of the annexation.

11. O.C.G.A. § 36-36-40 grants municipalities the power to insist that residents of the newly annexed area use city utility services.

Annexation by the 60% Method

Statute

36-36-30

As used in this article, the term "municipal corporation" means a municipal corporation which has a population of 200 or more persons according to the United States decennial census of 1960 or any future such census.

36-36-31

(a) As used in this article, the term "contiguous area" means any area of which at least one-eight of the aggregate external boundary, at the time annexation procedures are initiated, directly abuts the municipal boundary. Any area shall also be a "contiguous area" if at least one-eighth of its aggregate external boundary would directly abut the municipal boundary if not otherwise separated, in whole or in part, from the municipal boundary by lands owned by the municipal corporation, by lands owned by a county, or by lands owned by this state or by the definite width of (1) any street or street right of way, (2) any creek or river, or (3) any right of way of a railroad or other public service corporation.

Commentary

O.C.G.A. § 36-36-30 (Defines "Municipal Corporation")

This section defines the term "municipal corporation" to include only those municipal corporations which have populations of 200 or more persons according to the United States decennial census of 1960 or any future census.

O.C.G.A. § 36-36-31 (Definitions)

This section defines the term "contiguous area" as it applies to the 60% method and it defines what is included in an area's aggregate external boundary.

(a) "Contiguous area" includes:

1. Any area of which at least one-eighth of the total boundary of the land to be annexed directly abuts the municipal boundary at the time annexation procedures are initiated. **OR**

***See* figures, pages 33 and 50.**

2. Any area of which at least one-eighth of its total boundary would directly abut the municipal boundary if it was not otherwise separated from the municipal boundary in whole or part:

- land owned by the municipal corporation;
- land owned by a county;
- land owned by the State of Georgia;
- the definite WIDTH of:
  - i) any street or street;
  - ii) any creek or river;
  - iii) any right-of-way of a railroad or other public service corporation.

***See* figures, pages 33 and .35**

In City of Buford v. Gwinnett County, [6] the Georgia Court of Appeals interpreted O.C.G.A. § 36-36-31(a) as allowing for "stacking" of parcels (i.e., finding contiguity over entirely separate parcels). As long as each parcel in question falls within the exceptions laid out in the code section, annexation is allowed. The court also made an important distinction between public service corporation rights-of-way and land owned by a public service corporation in fee simple, allowing annexation over the first but not the second, pursuant to this exception.

[6] *See* City of Buford v. Gwinnett County, Appendix A.

Statute	Commentary
(b) For purposes of determining an area's aggregate external boundary, all real property which, at the time annexation procedures are initiated, (1) is owned by the same person who owns real property in the area to be annexed, (2) adjoins to any extent such owner's real property in the area to be annexed, (3) is in the same county as the real property in the area to be annexed, and (4) is not included within the boundaries of any municipal corporation shall have its area included in determining the aggregate external boundary of the area to be annexed.	(b) An area's aggregate external boundary includes: 1. The boundary of the area to be annexed; and 2. The boundary of any other property owned by the person whose property is to be annexed which lies outside the area to be annexed if such property: i) adjoins to any extent the property to be annexed; ii) is in the same county as the property to be annexed; **AND** iii) is not included in the boundaries of any municipal corporation. This section prevents a landowner from meeting the 1/8th contiguity requirement by dividing a large parcel of land into smaller parcels that individually would meet the 1/8th contiguity requirement. ***See* figures, pages 49 and 50.**
36-36-32 *(a) Authority is granted to the governing bodies of the several municipal corporations of this state to annex to the existing corporate limits thereof unincorporated areas which are contiguous to the existing corporate limits at the time of such annexation, in accordance with the procedures provided in this article and in Article 1 of this chapter, upon the written and signed application of not less than 60 percent of the electors resident in the area included in any such application and of the owners of not less than 60 percent of the land area, by acreage, included in such application. The authority granted in this Code section is in addition to existing authority and is intended to provide a cumulative method of annexing territory to municipal corporations in addition to those methods provided by present law.*	**O.C.G.A. § 36-36-32 (Authorization and Procedures)** (a) This subsection allows the governing authorities of Georgia municipal corporations to annex contiguous unincorporated areas to their existing corporate limits: 1. In accordance with the procedures provided in this article and in Article 1 of this chapter; 2. Upon the written and signed application of at least 60% of the electors resident in the area included in the application; [7] 3. Upon the written and signed application of the owners of at least 60% of the land area to be included in the application. The power given to municipal corporations to annex contiguous unincorporated areas by this article is in addition to any existing power they possess to do so.

[7] *See* City Council of Augusta v. Richmond County, included in Appendix A, discussing validating signatures of electors.

Annexation by the 60% Method

Statute	Commentary
(b) Each such application shall contain a complete description of the land proposed to be annexed. Lands to be annexed at any one time shall be treated as one body, regardless of the number of owners, and all parts shall be considered as adjoining the limits of the municipal corporation when any one part of the entire body abuts such limits.	(b) This subsection sets out the requirements for the application required in (a) above: 1. The application must include a complete description of the land proposed to be annexed; 2. Lands to be annexed at the same time are to be treated as one body no matter how many owners are involved; and 3. All parts of the body of land to be annexed are considered as adjoining the limits of the municipal corporation when any one part of the entire body abuts the municipal limits. (The 1/8th contiguity requirement must still be met.)
(c) Each person signing an application for annexation shall also print or type thereon his name, address, and the date of signature. In addition, he shall indicate whether he is a landowner within the area to be annexed, an elector, or both.	(c) This subsection requires each person signing an application for annexation to: 1. print or type his or her name, address, and the date of signature on the application; **AND** 2. indicate on the application whether he or she is a landowner, elector, or both, of the area to be annexed.
(d) For the purpose of determining the percentage of electors signing such application, the municipal governing body shall obtain a list of electors residing in such area from the board of registrars of the county or counties in which the area lies. The list shall be compiled by the board of registrars and provided to the municipal governing body in accordance with Code Section 21-2-227. The municipal governing body shall bear the expense of the preparation of the list in the manner prescribed by such Code section.	(d) This subsection provides for a municipality to obtain the list of electors from the county. (O.C.G.A. § 21-2-227 requires the board of registrars of the county to promptly prepare and furnish the list of electors to the municipality at no charge upon the municipality's request.)
(e) For the purpose of determining ownership of the property included within such application, the record titleholder of the fee simple title or his legal representative shall be considered the "owner" of the property.	(e) This subsection describes how to determine ownership of the property included in an annexation application. A person is considered an owner of the property to be annexed, and therefore will be included in the total percentage of owners signing the application, if he or she is the record titleholder of the fee simple title or the record titleholder's representative.

Statute	Commentary
(f) Signatures of owners of public roads and other public land within the area to be annexed shall not be required in satisfying the requirements of subsection (a) of this Code section and the acreage of such public properties shall be excluded from acreage calculations pertaining to the landowner approval required by said subsection (a). This subsection applies only where the public properties are included in the area to be annexed.	(f) This subsection waives the signature requirement in (a) above as to owners of public roads and lands. It is not necessary for the owners of public roads and other public land within the area to be annexed to sign the application for annexation. Also, the acreage of public roads and land is not to be included in the determination of 60% of the ownership of the land to be annexed. Thus, the true calculation of ownership and acreage is of private landowners and privately owned acreage.
(g) The necessary number of signatures of landowners and electors shall be obtained within one calendar year following the date of the first signature obtained. Failure to collect the required number within the one-year period shall invalidate previously collected signatures. Nothing in this subsection shall prohibit collection of signatures from the same persons on subsequent applications for annexation.	(g) This subsection sets forth a one year time limitation for obtaining the signatures required in (a) above. The percentage requirements listed above must be fulfilled within one year after the first signature on the application for annexation is obtained. If the requirements are not fulfilled, all the signatures on the application are invalid and the procedure must be started all over again. If this is the case, signatures for a subsequent application may still be obtained from those who signed an invalid application.[8]
36-36-33 *There shall be no annexation across the boundary lines of any county under this article.*	**O.C.G.A. § 36-36-33 (Prohibits Annexation Across County Boundary Lines)** Under the 60% method of annexation a municipal corporation can only annex land in the county or counties in which it is located.
36-36-34 *Whenever the governing body of a municipal corporation receives an application pursuant to Code Section 36-36-32, it shall, after investigation, determine whether such application complies with the requirements of this article. If it is determined that the application does not comply with this article, the governing body shall notify in writing the persons presenting the application, stating wherein the application is deficient. If it is determined that the application does comply with this article, the municipal governing body shall proceed to act on the application in accordance with Code Section 36-36-36.*	**O.C.G.A. § 36-36-34 (Validity of Annexation Applications)** This section describes how a municipality determines the validity of an application for annexation under the 60% method and what action it should take if it finds the application to be valid or invalid. 1. If the application requirements are not met, the governing body of the municipal corporation must notify in writing the persons presenting the application and inform them as to why the application is deficient. 2. If the application complies with the requirements of this section, the municipal governing body must proceed to act on the application in accordance with O.C.G.A. § 36-36-36.

[8] *See* Id.

Statute

36-36-35

(a) A municipal corporation exercising authority under this article shall make plans for the extension of services to the area proposed to be annexed and, prior to the public hearing provided for in Code Section 36-36-36, shall prepare a report setting forth its plans to provide services to the area.

(b) The report required in subsection (a) of this Code section shall include:

(1) A map or maps of the municipality and adjacent territory, showing the present and proposed boundaries of the municipal corporation, the present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in paragraph (2) of subsection (c) of this Code section; and

(2) A statement setting forth the plans of the municipal corporation for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.

(c) The plans required in subsection (a) of this Code section shall:

(1) Provide for extending police protection, fire protection, garbage collection, and street maintenance services to the area to be annexed, on the date of annexation, on substantially the same basis and in the same manner as such services are provided within the rest of the municipal corporation prior to annexation; but if a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as water lines are made available in the area under existing municipal policies for the extension of water lines; and

(2) Provide for extension of major trunk water

Commentary

O.C.G.A. § 36-36-35 (Extension of Services to Annexed Areas)

(a) This subsection requires municipal corporations annexing under the 60% method to make plans to extend services to the area proposed to be annexed and prepare a report outlining these plans prior to the public hearing required by O.C.G.A. § 36-36-36.

In City of Riverdale v. Clayton County, [9] the court read this language to require "detailed plans for the extension of services" rather than "conclusory statements from department heads." Furthermore, the court required that the record show that council members had determined that annexation is in the best interests of the city as well as the area to be annexed and its residents.

(b) The report required in (a) must include the following:

(1) A map or maps of the municipality and the area to be annexed which shows:

i) the present and the proposed boundaries of the municipal corporation;
ii) the present major trunk water mains and sewer interceptors and outfalls; **AND**
iii) the proposed extensions of water and sewer mains and outfalls.

AND

(2) A statement setting out city plans to extend all major municipal services provided at the time of annexation into the area to be annexed.

(c) This subsection provides that the plans required in (a) above are to provide for extending certain municipal services available to the rest of the municipality to the newly annexed area on the same basis and in the same manner as such services are provided within the rest of the municipal corporation.

(1) Services such as police and fire protection, garbage collection, and street maintenance services should be available to the annexed area on the date of annexation. The availability of these services should not be a problem. However, if a water distribution system is not available to the area to be annexed, this section provides that reasonably effective fire protection services must be provided for in the plan until water lines are available.

(2) The extension of major trunk water mains

[9] *See* City of Riverdale v. Clayton County, in Appendix A.

Statute	Commentary
mains and sewer outfall lines into the area to be annexed within 12 months of the effective date of annexation, so that when such lines are constructed property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipal corporation for extending water and sewer lines to individual lots or subdivisions.	and sewer outfall lines into the annexed area must be completed within twelve months of the effective date of annexation under this subsection. However, twelve months may be an unrealistic timetable. In order to extend this deadline an argument can be made that the wording "according to the policy in effect in such municipal corporation for extending water and sewer lines to individual lots or subdivisions" provides an exception to the twelve-month deadline. [10]
(*d) The report required in subsection (a) of this Code section shall be prepared and made available to the public at least 14 days prior to the public hearing required by Code section 36-36-36.*	(d) This subsection provides that the report on plans to extend services required in subsection (a) must be made available to the public at least 14 days prior to the public hearing required by O.C.G.A. § 36-36-36.
36-36-36	**O.C.G.A. § 36-36-36 (Public Hearing Requirement/Withdrawal)**
(a) The municipal governing body shall hold a public hearing on any application which has been determined to meet the requirements of this article. The hearing shall be held not less than 15 nor more than 45 days from the time the governing body makes a determination that the petition is valid. Notice of the time and place of the hearing shall be given in writing to the persons presenting the application and shall be advertised once a week for two consecutive weeks immediately preceding the hearing in a newspaper of general circulation in the municipal corporation and in the area proposed for annexation.	(a) This subsection requires municipal governing authorities to hold a public hearing not less than 15 nor more than 45 days from the time it determines that the annexation application meets the requirements of this article. NOTICE of time and place of the hearing is: 1. to be given to the persons presenting the application for annexation; **AND** 2. to be advertised once a week for two consecutive weeks immediately preceding the hearing in a newspaper of general circulation in the municipal corporation and in the area proposed for annexation.
(b) At the public hearing all persons resident or owning property in the municipal corporation or in the area proposed for annexation may be heard on the question of the annexation of the area by the municipal corporation.	(b) This subsection permits all persons resident in or who own land in either the municipal corporation or the area to be annexed to participate in the public meeting on the proposed annexation.
(c) Any property owner or elector may withdraw his consent in writing postmarked or received within three business days after the public hearing required by this Code section.	(c) This subsection allows a property owner or elector who had previously consented to the proposed annexation to withdraw that consent within three business days after the public hearing. A property owner or elector may withdraw his or her consent by sending a written notice of withdrawal to the municipality. Such notice must be postmarked or received within three business days after the public hearing required by this section.

[10] The Service Delivery Strategy law may impact policies for water and sewer service extension. *See* O.C.G.A. § 36-70-20 *et seq*.

Annexation by the 60% Method

Statute	Commentary
36-36-37	**O.C.G.A. § 36-36-37 (Adoption of the Annexation Ordinance)**
(a) If, after the public hearing, the governing body determines that the annexation to the municipal corporation of the area proposed in the application would be in the best interest of the residents and property owners of the area proposed for annexation and of the citizens of the municipal corporation, the area may be annexed to the municipal corporation by the adoption of an annexing ordinance.	(a) After the public hearing required above, the governing body of the municipal corporation has the discretion to decide whether or not the proposed annexation would be in the best interest of the residents and property owners of both the area of the proposed annexation and the citizens of the municipal corporation. If it determines that the annexation is in the interest of both groups, the municipal governing body may then annex the area by adopting an annexing ordinance. The wording of this provision implies that the governing body is not required to adopt an annexing ordinance.
(b) The annexing ordinance authorized by subsection (a) of this Code section shall be adopted within 60 days following validation of the signature of the applicants.	(b) This provision requires the governing body of the municipal corporation to adopt the annexation ordinance within 60 days of validation of the signatures of the applicants if it does decide to annex the area.
36-36-38	**O.C.G.A. § 36-36-38 (Notice; Taxes)**
(a) When an application pursuant to Code Section 36-36-32 is acted upon by the municipal authorities and the land, by ordinance, is annexed to the municipal corporation, an identification of the annexed property shall be filed with the Department of Community Affairs and with the county in which the property is located in accordance with Code Section 36-36-3.	(a) Once land is annexed to the municipal corporation by ordinance, the annexing municipality must file an identification of the property with the Department of Community Affairs and the county in which the annexed property is located. The filing of the identification must be done in accordance with O.C.G.A. § 36-36-3.
(b) Municipal ad valorem taxes shall not apply to property within the annexed territory until January 1 of the following year.	(b) Municipal ad valorem taxes shall not apply to property within the annexed territory until January 1 of the following year.[11] **Example**: *An area which is annexed March 31, 2008 and an area that is annexed December 31, 2008 will both be subject to municipal ad valorem taxes on January 1, 2009.*
(c) When so annexed, such lands shall constitute a part of the lands within the corporate limits of the municipal corporation as completely and fully as if the limits had been marked and defined by local Act of the General Assembly.	(c) This subsection provides that land annexed using the 60% method is as completely and fully a part of the municipal corporation as land annexed by local Act of the General Assembly.

[11] Cities with independent school systems should refer to O.C.G.A. § 36-36-2(c).

Annexation by the 60% Method

Statute	Commentary
36-36-39	**O.C.G.A. § 36-36-39 (Right to Bring Petition for Declaratory Judgment)**
(a) Within 30 days of the effective date of the ordinance annexing land to the municipal corporation, any resident elector of the area so annexed or of the municipal corporation or any property owner of such area or of the municipal corporation may bring a petition for declaratory judgment, in the superior court of the county of the legal situs of the annexing municipal corporation, to determine the validity, in accordance with this article, of the application and the municipal corporation's action thereon. Whenever such a petition is filed, the municipal governing body shall file with the court the record of their official actions in regard to such application and a certified copy of the annexing ordinance.	(a) This subsection vests certain interested parties with the power to bring a petition for declaratory judgment as to the validity of the ordinance annexing land. Such a petition must be brought in the superior court of the county in which the land is annexed within 30 days of the effective date of the annexation. Parties who can bring a declaratory judgment action include: 1. any resident elector of the area annexed; 2. any resident elector of the municipal corporation; 3. any property owner of the area annexed; **OR** 4. any property owner of the municipal corporation. If a petition is filed under this section, the municipal governing authority must file with the court: 1. a record of their official actions in regard to the annexing application; **AND** 2. a certified copy of the annexing ordinance.
(b) The judgment of the court on any such petition may declare the annexation ordinance null and void upon a finding that the application and the municipal corporation's action thereon are not in substantial compliance with this article. Upon a finding that procedural defects or defects in the plan for service to the annexed area exist, the court, where possible, shall frame a judgment to perfect such defect and uphold the ordinance.	(b) This subsection authorizes the court hearing a petition for a declaratory judgment to declare the annexation ordinance null and void if it finds that the municipal corporation's actions were not in substantial compliance with this Article. If the defects are procedural or in the plan for service to the annexed area, the court is instructed to try to perfect the defect and uphold the ordinance. This provision emphasizes the fact that the framers of the statute were not as concerned with procedural defects as they were with substantive defects. Therefore, if the court finds a procedural defect it should still try to uphold the validity of the ordinance.
(c) Actions provided for in this Code section shall be in accordance with Chapter 4 of Title 9.	(c) This subsection requires any action provided for in this section to be in accordance with Chapter 4 of Title 9, which authorizes relief by declaratory judgment.
(d) Any aggrieved party may obtain a review of a final judgment under this Code section as is provided by law in other cases.	(d) This section grants aggrieved parties a right to appellate court review of a final judgment as provided by law in other cases.

Annexation by the 60% Method

Statute	Commentary
36-36-40	**O.C.G.A. § 36-36-40 (Utilities)**
Nothing within this article shall prohibit the municipal corporation from requiring the residents of the newly annexed area to use utilities owned by the municipal corporation when they are available.	Under this Article, a municipal corporation may require the residents of the newly annexed area to use utilities owned by the municipal corporation if such utilities are available.

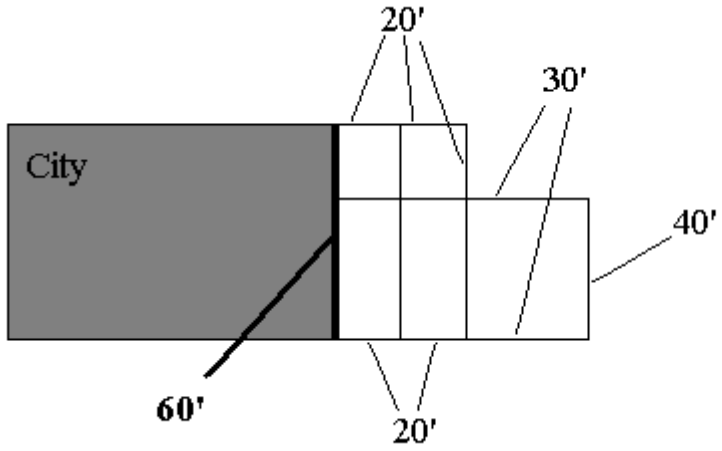
Annexation by the 60% Method

EXAMPLES

36-36-31(a) For examples of contiguity requirements, *see* page 33.

36-36-31(b) Examples of adjoining parcels owned by a single landowner:

1. A single landowner owns several adjoining parcels and 1/8th or more of the total aggregate boundary of all the adjoining parcels is contiguous to the municipal boundary.

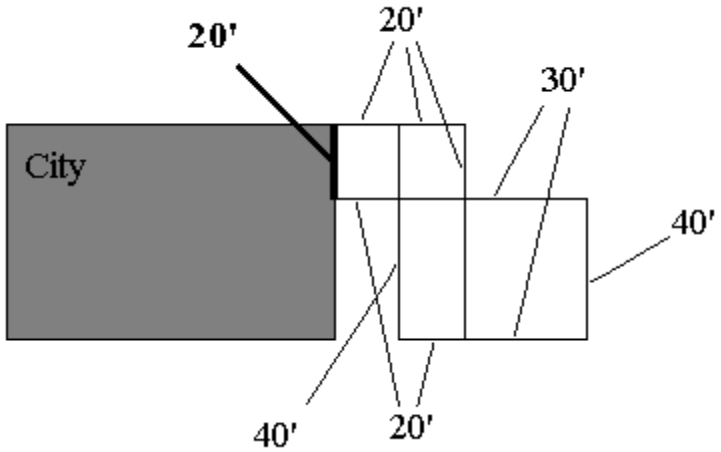


Total Boundary=260'
Contiguous Boundary=60'
1/8 of 260=32.5'

More than 1/8 of the total boundary is contiguous to the municipal limits (60>32.5).

ALL of the adjoining parcels may be annexed at one time.

2. A single landowner owns several adjoining parcels and less than 1/8th of the total aggregate boundary of all the adjoining parcels is contiguous to the municipal boundary. The total boundary is the same as in the previous example; however, there is not enough contiguity.



Total Boundary=260'
Contiguous Boundary=20'
1/8 of 260=32.5

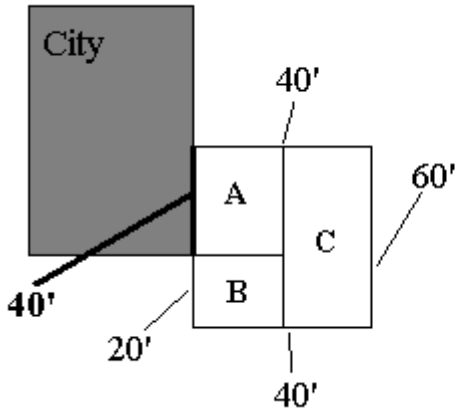
Less than 1/8 of the total boundary is contiguous to the municipal limits (20<32.5).

NONE of the adjoining parcels may be annexed by the 60% method as long as they are all owned by the same person.

Annexation by the 60% Method

EXAMPLES

Example of adjoining parcels owned by multiple landowners:



Parcels A, B, and C are owned by different owners.

Total Boundary=200'
Contiguous Boundary=40'
1/8 of 200'=25'

More than 1/8 of the total boundary is contiguous to the municipal limits (40>25).

ALL of the parcels may be annexed at one time.

CHECKLIST FOR ANNEXATION UNDER THE 60% METHOD

(O.C.G.A. § 36-36-30 through § 36-36-40)

_____ 1. The territory to be annexed is contiguous to the city O.C.G.A. § 36-36-31 and annexation will not create any islands. O.C.G.A. § 36-36-4.

_____ 2. 60% of the resident electors and the owners of 60% of the total acreage of the land to be annexed have signed written applications and have submitted them and a complete description of the land to be annexed, together with their names, addresses, date of signature, and an indication of whether they are landowners, electors or both, to the city. O.C.G.A. § 36-36-32.

_____ 3. The city has notified* the county of any proposed annexation within the county within 5 business days of receipt of an annexation application. O.C.G.A. § 36-36-6. Notification to the county at that time or shortly thereafter includes a copy of the annexation petition and the proposed zoning and land use for the area to be annexed. This notification must be made by certified mail or statutory overnight delivery. O.C.G.A. § 36-36-111.

_____ 4. If the county has properly delivered to the city a valid objection within 30 days of the county receiving a copy of the annexation petition and notice of the zoning and land use, then see the checklist on page 85.

_____ 5. The county has notified* the city of the existence of any county property or facilities located within the area proposed to be annexed within 5 business days of receipt of notice from the municipality. O.C.G.A. § 36-36-7(a).

_____ 6. If the application was found to be valid, the city has notified the persons presenting the application of the public hearing, has placed an ad giving notice of a hearing in the newspaper, and has held a public hearing on the annexation issue not less than 15 nor more than 45 days from the time of the validity determination. O.C.G.A. § 36-36-36.

_____ 7. The city has made plans and has prepared a detailed report on these plans for extending services to the area to be annexed, and has made the report available to the public at least 14 days prior to the public hearing. O.C.G.A. § 36-36-35(d).

_____ 8. The annexation ordinance, which contains a statement that the annexation is in the best interest of the residents and property owners of the area proposed for annexation and of the citizens of the city, is adopted within 60 days of the validation of signatures of the applicants. O.C.G.A. § 36-36-37(b).

_____ 9. The city has filed an identification of the annexed land with the Department of Community Affairs and the county within 30 days of the last day of the quarter during which the annexation becomes effective. O.C.G.A. § 36-36-3 and § 36-36-38.

_____ 10. Neither resident electors nor property owners have challenged the validity of the annexation application and the city's actions thereon within 30 days of the effective date of annexation. O.C.G.A. § 36-36-39.

* Notice must be sent by certified mail, return receipt requested. O.C.G.A. § 36-36-9.

ANNEXATION BY RESOLUTION AND REFERENDUM

ARTICLE 4

O.C.G.A. § 36-36-50 through § 36-36-61

Summary

This Article establishes procedures and conditions for annexation by resolution of the municipal governing authority and referendum of the qualified voters in the area to be annexed.

1. O.C.G.A. § 36-36-50 preserves the authority of the General Assembly to legislate in the area of annexation.

2. O.C.G.A. § 36-36-51 declares the policy of the General Assembly with regard to annexation.

3. O.C.G.A. § 36-36-52 defines the term "contiguous area" to mean any area of which at least 1/8 of the external boundaries abut the municipality or would abut the municipality but for land owned by local or state governments and the phrase "used for residential purposes" to mean any lot or tract five acres or less in size on which is located a habitable dwelling unit.

4. O.C.G.A. § 36-36-53 grants authority to municipal corporations to utilize the resolution and referendum method of annexation.

5. O.C.G.A. § 36-36-54 requires that the land to be annexed be adjacent to the city's boundaries on at least 1/8 of its external boundary, that the land to be annexed must be developed for urban purposes or that the non-urban area share at least 60% of its boundaries with the combined boundary of the city and the urban area to be annexed.

6. O.C.G.A. § 36-36-55 declares that the superior court shall rely on estimates provided by the municipality to settle disputes between counties and cities, provided the city's estimates meet certain standards.

7. O.C.G.A. § 36-36-57 requires that passage of a resolution by the annexing municipality and a public hearing to be held between 30 and 60 days after the passage of the resolution, and requires that the city approve a service extension report at least 14 days prior to the public hearing.

8. O.C.G.A. § 36-36-58 requires the city to call for a referendum in the area to be annexed, which must be held between 30 and 60 days after the public hearing.

9. O.C.G.A. § 36-36-59 requires the municipality to file an identification of the property with the Department of Community Affairs and the county in which the annexation took place.

10. O.C.G.A. § 36-36-60 authorizes the city to expend funds to study areas being considered for annexation under this article and to extend water and sewer service to the annexed area before annexation becomes effective.

11. O.C.G.A. § 36-36-61 exempts property that was deannexed or in the process of deannexation from June 30, 1967 to June 30, 1970 from the applicability of the article.

Annexation by Resolution and Referendum

Statute

36-36-50

It is declared to be the intention of the General Assembly in enacting this article to provide a method for annexing to municipal corporations areas which meet the legislative standards established by Code Section 36-36-54. This article is not intended to affect or restrict the present authority of the General Assembly to legislate regarding the annexation of any area contiguous to any municipal corporation in this state, nor to limit in any way the authority of the General Assembly to provide alternative methods for extending municipal boundaries. This article shall not affect legislation pending on July 1, 1970.

36-36-51

It is declared to be the policy in this state:

(1) That municipal corporations are created for the purpose of providing local governmental services and for ensuring the health, safety, and welfare of persons and the protection of property in areas being used primarily for residential, commercial, industrial, and institutional purposes;

(2) That the orderly growth of municipal corporations, based on the need for municipal services and the ability of the municipal corporation to serve, is essential to the economic progress of the state and to the well-being of its urban citizens;

(3) That the extension of municipal boundaries to accomplish orderly growth should be in accordance with standards established by the General Assembly; and

(4) That any areas included within municipal boundaries under this article should receive all services provided by the annexing municipal corporation as soon as possible after coming within its boundaries.

Commentary

O.C.G.A. § 36-36-50 (Through Resolution and Referendum)

This article allows cities to annex areas through resolution and referendum. This section does not place any limitations on the other methods of annexation, or the ability of the General Assembly to annex by local Act.

O.C.G.A. § 36-36-51 (Policy)

(1) Cities are created to provide services and promote the general welfare of persons and property within their boundaries.

(2) Expansion of municipalities and the services provided by them is essential to the economic growth of the state and the well being of its citizens.

(3) The annexation of areas by a municipality must be guided by the standards set forth by the General Assembly.

(4) All services provided by a municipality should be provided to areas annexed under this article as soon as possible. According to this paragraph newly annexed areas must receive all of the services the city normally provides. However, it is unclear how soon these services must be provided since "as soon as possible," is somewhat ambiguous.

Annexation by Resolution and Referendum

Statute

36-36-52

As used in this article, the term:

(1) "Contiguous area" means any area which, at the time annexation procedures are initiated, either abuts directly on the municipal boundary or is separated from the municipal boundary by a street or street right of way, a creek or river, the right of way of a railroad or other public service corporation, lands owned by the municipal corporation or some other political subdivision, or lands owned by this state.

(2) "Used for residential purposes" refers to any lot or tract five acres or less in size on which is constructed a habitable dwelling unit.

36-36-53

The governing body of any municipal corporation may extend the corporate limits of the municipal corporation to include any area which meets the standards of Code Section 36-36-56, under the conditions and procedure provided in this article and in accordance with the procedures provided in Article 1 of this chapter.

36-36-54

(a) A municipal governing body may extend the municipal corporate limits to include any area:

Commentary

O.C.G.A. § 36-36-52 (Definitions)

(1) This section defines the term "contiguous area" for the purposes of the resolution and referendum method of annexation. To be considered contiguous, an area to be annexed must abut the municipal boundary.

An area is still considered to abut the municipal boundary if it does not touch the municipal boundary, but would directly touch the municipal boundary if not separated from it by:

- land owned by the municipal corporation or some other political subdivision;

(Land owned by a "political subdivision" includes, for example, land owned by a county, a school district, a housing or hospital authority.)

- lands owned by the State of Georgia;

- the definite WIDTH of:

i) any street or street;
ii) any creek or river;
iii) any right-of-way of a railroad or other public service corporation;

which divides the municipal boundary and any area proposed to be annexed.

***See* figure, page 33.**

(2) Defines "used for residential purposes," as a parcel of land no greater than five acres that contains a "habitable dwelling unit."

O.C.G.A. § 36-36-53 (Authorization of Annexation)

This section grants specific statutory authority to cities to utilize this method of annexation.

O.C.G.A. § 36-36-54 (Requirements for Annexation)

(a) A municipality may annex an area that meets the general standards of subsection (b) and every

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	part of the requirements of subsection (c) or (d) of this Code section.
(1) Which meets the general standards of subsection (b) of this Code section; and	
(2) Every part of which meets the requirements of either subsection (c) or subsection (d) of this Code section.	
(b) The total area to be annexed must meet the following standards on the date of the adoption of the resolution:	(b) Additionally, all of the land to be annexed must meet the following requirements on or before the date the resolution is adopted.
(1) It must be adjacent or contiguous to the municipal corporation's boundaries at the time the annexation proceeding is begun;	(1) The area must be adjacent or contiguous to the city's boundaries at the time the annexation procedures start.
(2) At least one-eighth of the aggregate external boundaries of the area must coincide with the municipal boundary;	(2) At least one-eighth of the aggregate external boundaries of the area must coincide with the municipal boundary; presumably the word "coincide" has the same meaning as "abut."
(3) No part of the area shall be included within the boundary of another municipal corporation or county; and	(3) None of the area to be annexed can be within the boundaries of another city or county.
(4) No part of the area shall, at the time notice of public hearing is given in accordance with Code Section 36-36-57, be receiving either water service or sewer service, or both, and also either police protection or fire protection from any unit of government other than the municipal corporation proposing annexation. This requirement may be waived by written agreement of the municipal corporation proposing annexation and of the other unit of government affected. Where a waiver of this requirement is applicable, a copy of the agreement shall be made a part of the report required by Code Section 36-36-56. Where contracts exist between counties and municipal corporations, both government entities must agree by mutual consent prior to annexation.	(4) At the time the notice of public hearing is given, no portion of the area can be receiving water, sewer, fire, or police services from another government entity. A municipality may be exempted from this requirement if a written agreement is made between the annexing municipality and the entity providing the services. This agreement must be included in the report for the extension of city services that is required by O.C.G.A. § 36-36-56 below. Note: Due to the requirement of securing agreement from other government entities providing certain services and the absence of an annexation petition in this method of annexation, it is unlikely that the county objection provisions starting at O.C.G.A. § 36-36-110 will be applicable to this method of annexation
(c) Except as provided in subsection (d) of this Code section, the area to be annexed must be developed for urban purposes. An area developed for urban purposes is defined as any area which, on the date of the adoption of the annexation	(c) The area being annexed must be developed for urban purposes. To meet this requirement, on the date the resolution is adopted:

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resolution, has a total resident population equal to at least two persons for each acre of land included within its boundaries and is subdivided into lots and tracts such that at least 60 percent of the total acreage consists of lots and tracts five acres or less in size and such that at least 60 percent of the total number of lots and tracts are one acre or less in size.	1. the **population density** of the area must be at least two persons per acre; 2. 60 percent of the **total acreage** should be divided into tracts of five acres or less; **AND** 3. 60 percent of the **total number of lots** are one acre or less.
(d) In addition to areas developed for urban purposes, a governing body may include in the area to be annexed any area which does not meet the requirements of subsection (c) of this Code section if such area lies between the municipal boundary and an area developed for urban purposes such that the area developed for urban purposes is either not adjacent to the municipal boundary or cannot be served by the municipal corporation without extending services and water and sewer lines through the sparsely developed area and, if such area is adjacent, on at least 60 percent of its external boundary to any combination of the municipal boundary and the boundary of an area or areas developed for urban purposes as defined in subsection (c) of this Code section.	(d) If an area does not satisfy the requirements of O.C.G.A. § 36-36-54(c) above, a city may still include the "non-urban" area in the area to be annexed if the "non-urban" area lies between the annexing municipality's boundary and an area developed for urban purposes as defined in section (c) above; **AND** at least 60 percent of the area's external boundary is adjacent to any combination of the municipal boundary and the boundary of an area developed for urban purposes as defined in section (c) above; **IF** 1) the separated urban area is not adjacent to the municipal boundary; **OR** 2. the separated urban area cannot be served by the municipality without extending services and water and sewer lines through the non-urban area.
(e) In fixing new municipal boundaries, a municipal governing body shall, wherever practical, use natural topographic features, such as ridge lines, streams, and creeks, as boundaries. If a street is used as a boundary, the governing body shall, wherever practical, include within the municipal corporation land on both sides of the street; such outside boundary may not extend more than 200 feet beyond the right of way of the street, except to include all of a lot or parcel of land partially within 200 feet of the right of way	(e) In determining what will be the post-annexation municipal boundaries, the city should use natural features as boundaries "whenever practical." Also, if a street is used as a boundary, the city should include the land on either side of the street, up to 200 feet, "whenever practical." In a Court of Appeals decision, the Court held that the "whenever practical" language indicates that this is not a mandatory requirement and held that an annexation did not violate this section when a municipality refrained from including the sides of the streets that were used as borders.[12]
36-36-55 *In determining population and degree of land subdivision for purposes of meeting the requirements of Code Section 36-36-54, the municipal corporation shall use methods calculated to provide reasonably accurate results. In determining, on appeal to the superior court, whether the standards set forth in Code Section 36-36-54 have been met, the reviewing court shall*	**O.C.G.A. § 36-36-55 (Determination of Compliance with Requirements)** The methods used by the city to determine population and degree of land subdivision must be calculated to provide reasonably accurate results. If there is a dispute regarding compliance with the standards set forth in O.C.G.A. § 36-36-54, the Superior Court shall rely on the estimates provided by the municipality as long as the following

[12] *See* H-B Properties, Ltd. v. City of Roswell, 247 Ga.App. 851, 545 S.E.2d 37 (2001), included in Appendix A.

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accept the estimates of the municipal corporation:	methods of calculation are used:
(1) As to population, if the estimate is based on the number of dwelling units in the area multiplied by the average family size in the area or in the county or counties of which the area is a part, as determined by the last preceding federal census or based on a new enumeration carried out under reasonable rules and regulations by the annexing municipal corporation, provided that the court shall not accept such estimates if the petitioner on appeal demonstrates that the estimates are in error in the amount of 10 percent or more;	(1) To estimate population, the number of housing units should be multiplied by the average family size in the area as reported by the last Census or based on a new enumeration based carried out by the municipality. # of Housing Units x Average Family Size = Population In order to calculate the per acre population density, the population estimate should be divided by the total acreage of the area to be annexed. Population / Total Number of Acres = Density **Note:** A density of 2 or greater is required to qualify as an area developed for urban purposes according to O.C.G.A. § 36-36-54(c). **Note:** The Superior Court will not accept the population density estimates of the municipality if a petitioner demonstrates that the estimates are in error by 10% or more.
(2) As to total area, if the estimate is based on an actual survey, on county tax maps or records, on aerial photographs, or on some other reasonably reliable map used for official purposes by a governmental agency, unless the petitioner on appeal demonstrates that the estimates are in error in the amount of 5 percent or more; and	(2) To estimate total area, the municipality should use surveys, tax maps, aerial photos, or other maps used officially for government purposes. **Note:** The Superior Court will not accept the area estimates of the municipality if the a petitioner demonstrates that the estimates are in error by 5% or more.
(3) As to degree of land subdivision, if the estimates are based on an actual survey, on county tax maps or records, on aerial photographs, or on some other reasonably reliable source, unless the petitioner on appeal shows that the estimates are in error in the amount of 5 percent or more.	(3) To estimate the degree of land subdivision, the municipality should use surveys, tax maps, aerial photos, or other reliable sources. **Note:** The Superior Court will not accept the land subdivision stimates of the municipality if a petitioner demonstrates that the estimates are in error by 5% or more.
36-36-56	**O.C.G.A. § 36-36-56**
(a) A municipal corporation exercising authority under this article shall make plans for the extension of services to the area proposed to be annexed and, prior to the public hearing provided for in Code Section 36-36-57, shall prepare a report setting forth its plans to provide services to such area.	(a) A municipality that annexes an area using the resolution and referendum method must plan to extend city services into the annexed area, a report on the service extension plan must be prepared prior to the public hearing.

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(b) The report required in subsection (a) of this Code section shall include:	(b) The service extension report will include the following:
(1) A map or maps of the municipal corporation and adjacent territory, showing the present and proposed boundaries of the municipal corporation, the present major trunk water mains and sewer interceptors and outfalls, the proposed extensions of such mains and outfalls as required in paragraph (3) of this subsection, and the general land use pattern in the area to be annexed;	(1) Maps showing the current and proposed boundaries of the municipal corporation as well as the present location of water and sewer lines and the proposed extension of those systems as required by paragraph (3) below. Maps must also include the general land use pattern in the area to be annexed; **AND**
(2) A statement showing that the area to be annexed meets the requirements of Code Section 36-36-54; and	(2) A statement showing that the area to be annexed meets the requirements of O.C.G.A. § 36-36-54, which requires that the area to be annexed: • is contiguous or adjacent to the municipal boundary; • 1/8 of the area's aggregate external boundary coincides with the municipal boundary; • is not within the boundary of another municipality; is contiguous or adjacent to the municipal boundary; • is not receiving water, sewer, fire, or police services from another government entity without an applicable waiver; • is developed for urban purposes as defined by O.C.G.A. § 36-36-54(c) or falls within the exception allowed by O.C.G.A. § 36-36-54(d). **AND**
(3) A statement setting forth the plans of the municipal corporation for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation.	(3) A statement stating the city's plan to extend every major municipal service it provides at the time of the annexation into the area to be annexed. It is unclear which municipal services are considered major services and therefore required to be included in the statement.
(c) The plans required in subsection (a) of this Code section shall:	(c) The plans must:
(1) Provide for extending police protection, fire protection, garbage collection, and street maintenance services to the area to be annexed, on the date of annexation, on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. If a water distribution system is not available in the area to be annexed, the	(1) Provide for police, fire, garbage, and street maintenance services to be operational in the area to be annexed on the date of annexation. These services should be provided in the same manner and on the same basis as they are provided to the municipality prior to the annexation. If a water system is not available in the area to

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plans must call for reasonable, effective fire protection services until such time as water lines are made available in such area under existing municipal policies for the extension of water lines;	be annexed, the plans must provide for reasonable, effective fire protection until water lines are made available. **AND**
(2) Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are constructed property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions;	(2) Provide for water and sewer mains to be extended into the area so that property owners in the area may receive public water and sewer service. The extension must be in accordance with the municipal policies for the extension of those services to lots and subdivisions; **AND**
(3) If extension of major trunk water mains and sewer outfall lines into the area to be annexed is necessary, set forth a proposed timetable for construction of such mains and outfalls as soon as possible following the effective date of annexation. In any event, the plans shall call for contracts to be let and construction to begin within 18 months following the effective date of annexation; and	(3) If water and sewer services will be extended into the area to be annexed, a timetable must be set for the construction of those lines. The timetable must call for construction to begin within 18 months of the effective date of annexation; **AND**
(4) Set forth the methods under which the municipal corporation plans to finance extension of services into the area to be annexed.	(4) Set out the methods that the municipality plans to use in order to finance the extension of services.
36-36-57 *(a) Any municipal governing body desiring to annex territory pursuant to this article shall first pass a resolution stating the intent of the municipal corporation to consider annexation. The resolution shall describe the boundaries of the area under consideration and fix a date for a public hearing on the question of annexation. The date for the public hearing shall be not less than 30 days and not more than 60 days following passage of the resolution. The notice of the public hearing shall (1) fix the date, hour, and place of a public hearing, (2) describe clearly the boundaries of the area under consideration, and (3) state that the report required in Code Section 36-36-56 will be available at the office of the municipal clerk at least 14 days prior to the date of the public hearing. The notice shall be given by publication in a newspaper having general circulation in the municipality once a week for three successive weeks prior to the date of the hearing. The date of the last publication shall be not more than seven days preceding the date of public hearing. If there*	**O.C.G.A. § 36-36-57 (Adoption of Annexation Resolution: Procedure, Contents, and Services Report)** (a) A municipality that intends to annex an area using the resolution and referendum method must first pass a resolution stating its intent to consider annexation. This resolution should describe the boundaries of the area being considered for annexation and should also set a date for a public hearing regarding the annexation. The date of the public hearing must not be held less than 30 days after the passage of the resolution nor can it be more than 60 days after the passage of the resolution. Notice of the Public Hearing Shall: (1) set the date, hour and location of the hearing; (2) describe the boundaries of the area;

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is no such newspaper, the municipal corporation shall post the notice in at least three public places within the municipality and in at least three public places in the area to be annexed for 30 days prior to the date of the public hearing.	(3) state that the report on the extension of services is available at the city clerk's office at least 14 days prior to the date of the public hearing; (4) be published in a newspaper having general circulation in the municipality. i.) the notice should run once a week for three consecutive weeks prior to the date of the hearing; ii.) the date of the last publication shall be not more than seven days preceding the date of public hearing; (5) if there is no newspaper that meets the requirements above, the notice should be posted at three places in the municipality and three places within the area to be annexed for 30 days prior to the date of the hearing.
(b) At least 14 days before the date of the public hearing, the governing body shall approve the report provided for in Code Section 36-36-56 and shall make it available to the public at the office of the municipal clerk. In addition, the municipal corporation may prepare a summary of the full report for public distribution.	(b) At least 14 days prior to the date of the public hearing, the municipality must approve the service extension report. The report should then be made available to the public at the office of the city clerk 14 days prior to the public hearing. The municipality may prepare a summary of the report for distribution.
(c) At the public hearing, a representative of the municipal corporation shall first make an explanation of the report required in Code Section 36-36-56. Following such explanation, all persons resident or owning property in the territory described in the notice of public hearing and all residents of the municipality shall be given an opportunity to be heard.	(c) At the public hearing, a city representative will first explain the service extension report. After this explanation, all residents or property owners of the area described in the notice must be given the opportunity to be heard.
36-36-58	**O.C.G.A. § 36-36-58**
The municipal corporation shall issue a call for a referendum to ratify or reject the adoption of the annexation resolution. The referendum shall be held not less than 30 days nor more than 60 days after the date of the public hearing required by Code Section 36-36-57. The referendum shall be held, insofar as possible, under the procedures set forth in Chapter 2 of Title 21 for special elections. Only those persons registered to vote for members of the General Assembly residing, on the date of the adoption of the resolution, in the proposed area to be annexed shall vote in the referendum. If a majority of those voting vote in favor of annexation, the area shall become a part of the corporate limits of the municipality, but not	The municipality must issue a call for a referendum to ratify or reject the annexation resolution. This referendum may not be held less than 30 days nor more than 60 days after the date of the public hearing. The referendum shall be held according to the procedures of O.C.G.A. § 21-2-540 et seq. Voting is limited to those persons who reside in the area to be annexed on the date of the adoption of the resolution and that are registered to vote for members of the General Assembly. If a majority of those voting cast votes in favor of the annexation, the area will become part of the municipality.

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otherwise. If a majority of those voting vote against the annexation, a period of two years must elapse before annexation of the same area or any portion thereof may be attempted again under authority of this article.	If a majority of those voting cast votes against the annexation, the area will not become part of the municipality and a period of 2 years must elapse before any portion of the area may be brought up for annexation again.
36-36-59	**O.C.G.A. § 36-36-59**
Whenever the limits of a municipal corporation are enlarged in accordance with this article, it shall be the duty of the clerk, city attorney, or other person designated by the governing authority of the municipal corporation to cause an identification of the annexed territory to be filed with the Department of Community Affairs and with the governing authority of the county in which the property is located in accordance with Code Section36-36-3.	After the annexation is completed, an identification of the property annexed must be filed with the Department of Community Affairs, **AND** with the governing authority of the county in which the property is located (*see* O.C.G.A. § 36-36-3).
36-36-60	**O.C.G.A. § 36-36-60**
Any municipal corporation initiating annexation under this article is authorized to make expenditures for surveys required to describe the property under consideration or for any other purpose necessary to plan for the study and annexation of unincorporated territory adjacent to the municipal corporation. In addition, following final passage of the annexation ordinance, the annexing municipal corporation shall have authority to proceed with expenditures for construction of water and sewer lines and other capital facilities and for any other purpose calculated to bring services into the annexed area in an effective and expeditious manner prior to the effective date of annexation.	The city may expend funds to study adjacent territory under consideration for annexation. After the passage of the annexation ordinance, the city may expend funds to build water and sewer lines and other capital facilities to bring services into the annexed area prior to the effective date of the annexation. **Note:** This section is permissive, not mandatory.
36-36-61	**O.C.G.A. § 36-36-61**
This article shall not apply to any territory which has been a part of a municipal corporation for three years immediately preceding July 1, 1970, and which has been or is in the process of being deannexed from the corporate limits of any such municipal corporation.	This method may not be used to annex territory that was deannexed or in the process of being deannexed from June 30, 1967 to June 30, 1970.

CHECKLIST FOR ANNEXATION BY RESOLUTION AND REFERENDUM

(O.C.G.A. § 36-36-52, § 36-36-54, § 36-36-56, 36-36-57, § 36-36-58, § 36-36-59)

_____ 1. The area to be annexed meets the necessary contiguity requirements. O.C.G.A. § 36-36-52, § 36-36-54, § 36-36-55.

_____ 2. A report has been prepared concerning plans to extend services to the area to be annexed. The report includes a map showing the current and proposed boundaries of the municipal corporation as well as the current and proposed water and sewer lines and the general land use patterns in the area to be annexed. The report must also include a statement that the area to be annexed meets the requirements of O.C.G.A. § 36-36-54 and setting forth the plans for extending to the area to be annexed each major municipal service performed within the city at the time of annexation. O.C.G.A. § 36-36-56.

_____ 3. Written agreements with any other affected units of government providing services to the area have been executed. O.C.G.A. § 36-36-54(b)(4).

_____ 4. The municipality has passed a resolution stating the intent of the city to consider annexation, which shall describe the boundaries of the area under consideration and fix a date for a public hearing. O.C.G.A. § 36-36-57. (While it is quite possible that the procedures starting at O.C.G.A. § 36-36-110 do not apply to this method of annexation since there is no annexation petition to trigger the process and the consent of the county will usually have already been obtained in step #3 above, if your legal counsel deems it prudent or applicable, see the dispute resolution checklist on page 85).

_____ 5. The notice of the public hearing fixes the date, hour, and place of the public hearing, describes clearly the boundaries of the area under consideration, and states that the report required under O.C.G.A. § 36-36-56 shall be available at the office of the clerk at least 14 days prior to the date of the public hearing. The notice must have been posted in a newspaper of general circulation in the city once a week for three successive weeks prior to the date of the hearing. The date of the last publication was not more than seven days preceding the date of the public hearing. O.C.G.A. § 36-36-57.

_____ 6. The public hearing was held between 30 and 60 days following the passage of the resolution. O.C.G.A. § 36-36-57.

_____ 7. The municipality approved the service extension report and made it available to the public at least 14 days prior to the date of the public hearing. O.C.G.A. § 36-36-57.

_____ 8. A representative of the municipality made a report at the public hearing explaining the report. O.C.G.A. § 36-36-57.

_____ 9. All persons resident or owning property in the area proposed to be annexed were given the opportunity to be heard at the public hearing following the explanation of the report. O.C.G.A. § 36-36-57.

_____ 10. The voters in the area proposed to be annexed municipality approved of the annexation in a referendum held between 30 and 60 days after the date of the public hearing. O.C.G.A. § 36-36-58.

_____ 11. The city has filed an identification of the annexed land with the Department of Community Affairs and the county within 30 days of the last day of the quarter during which the annexation becomes effective. O.C.G.A. § 36-36-3 and § 36-36-38.

ANNEXATION OF UNICORPORATED ISLANDS

ARTICLE 6

O.C.G.A. § 36-36-90 through § 36-36-92

Summary

This Article authorizes the unilateral annexation of unincorporated islands. The legislative purpose behind this section was to prevent service delivery confusion and, in conjunction with O.C.G.A. § 36-36-4, to prevent the formation of new islands while eliminating existing unincorporated islands.

1. O.C.G.A. § 36-36-90 defines the terms "contiguous," "municipal corporation," and "unincorporated island" as they apply to annexation of unincorporated islands.

2. O.C.G.A. § 36-36-91 describes how to determine the aggregate external boundary of an unincorporated area.

3. O.C.G.A. § 36-36-92 grants municipal governing bodies the authority to annex unincorporated islands contiguous to their existing municipal limits and describes how this is to be accomplished.

Annexation of Unincorporated Islands

Statute

36-36-90

As used in this article, the term:

(1) "Contiguous area" means any unincorporated area which, on or after January 1, 1999, had an aggregate external boundary directly abutting a municipal boundary. Any area shall be considered 'contiguous' if the aggregate external boundary would directly abut the municipal boundary if not otherwise separated, in whole or in part, from the municipal boundary by lands owned by the municipal corporation, by lands owned by a county, or by lands owned by this state or by the definite width of:

(A) Any street or street right of way;

(B) Any creek or river; or

(C) Any right of way of a railroad or other public service corporation.

(2) "Municipal corporation" means a municipal corporation which has a population of 200 or more persons according to the United States decennial census of 1980 or any future such census.

(3) 'Unincorporated island' means:

Commentary

O.C.G.A. § 36-36-90: (Definitions)

This section defines the terms "contiguous," "municipal corporation," and "unincorporated island" as they apply to annexation of unincorporated islands.

(1) This subsection defines "contiguous area" as any unincorporated area which, on or after January 1, 1999.

a. has an aggregate external boundary directly abutting a municipal boundary;

OR

b. would have an aggregate external boundary directly abutting a municipal boundary if not separated in whole or in part from the municipal boundary by:

- land owned by the municipal corporation;
- land owned by a county;
- land owned by the State of Georgia;
- the definite WIDTH of:

A) any street or street right of way;
B) any creek or river;
C) any right-of-way of a railroad or other public service corporation.

***See* figure, page 71.**

(2) This subsection defines "municipal corporation" to mean a municipal corporation that has 200 or more persons according to the 1980 or any future U.S. decennial census.

(3) This subsection defines three types of unincorporated islands. The changes merely remove the 50-acre or less limitation on annexing these islands. These three types of islands must have been in existence as of January 1, 1991[13].

[13] The reason for this date limitation is that the Georgia General Assembly first passed legislation allowing municipal annexation of unincorporated islands in the 1992 session. To prevent cities from creating islands that they could then annex under the 1992 legislation, the General Assembly required that the island already be in existence over a year before that legislation took effect.

Annexation of Unincorporated Islands

Statute

(A) An unincorporated area in existence on January 1, 1991, with its aggregate external boundaries abutting the annexing municipality;

(B) An unincorporated area in existence as of January 1, 1991 with its aggregate external boundaries abutting any combination of the annexing municipality and one or more other municipalities; or

(C) An unincorporated area in existence as of January 1, 1991, which the county governing authority has by resolution adopted not later than 90 days following July 1, 1992, that identifies any unincorporated area of the county to which the county has no reasonable means of physical access for the provision of services otherwise provided by the county governing authority solely to the unincorporated area of the county.

36-36-91

For the purposes of determining the aggregate external boundary of an unincorporated area, all real property in the area to be annexed, which at the time the annexation procedures are initiated,

(1) is unincorporated, and

(2) is in the same county as the annexing municipal corporation, shall have its area included in determining the aggregate external boundary.

36-36-92

(a) The governing body of each municipal corporation of the state may annex to the existing corporate limits thereof all or any portion of unincorporated islands which are contiguous to the existing limits at the time of such annexation upon compliance with the procedures set forth in this article and in accordance with the procedures provided in Article 1 of this chapter.

Commentary

The 3 types of unincorporated islands which can be annexed under this article include:

***See* figures, page 71.**

(A) Any area whose aggregate external boundaries abut the annexing municipality.

(B) Any area whose aggregate external boundaries abut any combination of the annexing municipality and one or more other municipalities.

(C) Any area where the county governing authority has adopted a resolution not later than 90 days following July 1, 1992 that identifies that unincorporated area of the county to which the county has no reasonable means of physical access for the provision of services otherwise provided by the county governing authority solely to the unincorporated area of the county.

O.C.G.A. § 36-36-91: (Determination of Aggregate External Boundary)

This section describes how to determine the aggregate external boundary of an unincorporated island. An aggregate external boundary consists of the aggregate external boundary of all real property in the area to be annexed at the time the annexation procedures are initiated:

(1) is unincorporated; **AND**

(2) is in the same county as the annexing municipal corporation.

O.C.G.A. § 36-36-92: (Authorization and Procedure)

(a) This subsection grants municipal governing bodies the authority to annex *all or any portion* of unincorporated islands contiguous to their existing municipal limits upon compliance with the procedures set forth in this Article and Article 1. The ability to annex a portion of an unincorporated island makes it clear that annexing part of an existing unincorporated island does not "create" a new unincorporated island.

Statute

(b) Annexation of unincorporated islands as authorized in subsection (a) of this Code section shall be accomplished by ordinance at a regular meeting of the municipal governing authority within 30 days after written notice of intent to annex such property is mailed to the owner of such property at the last known address for such owner as it appears on the ad valorem tax records of the county in which such property is located. After the adoption of the annexation ordinance, an identification of the property annexed shall be filed with the Department of Community Affairs and with the governing authority of the county in which the property is located, in accordance with Code Section 36-36-3.

(c) Annexation of an unincorporated island as authorized by subsection (a) of this Code section, which unincorporated island directly abuts more than one municipality, shall be by the municipality which abuts the unincorporated island along the greatest percentage of its external boundary as provided in this Code section, unless otherwise agreed to be the affected municipalities.

(d) Annexations under this article shall be at the sole discretion of the governing body of each municipality.

(e) Municipal services to the annexed area shall be provided on substantially the same basis and in the same manner as such services are provided within the rest of the municipal corporation; provided, however, the extension of water and sewer services shall be according to the policies in effect in such municipal corporation for extending water and sewer lines to individual lots and subdivisions.

Commentary

(b) This subsection explains how annexation of unincorporated islands is to be accomplished.

1. Once written notice of intent to annex property is mailed to the owner of such property at the last known address of the owner as it appears on the ad valorem tax records of the county in which such property is located, an ordinance must be adopted at a regular meeting of the municipal governing authority within 30 days.

Note: that unlike the 60% or 100% methods of annexation, no petition requesting annexation is necessary. Annexation may occur simply from an act of the municipality.

Note: Due to the absence of an annexation petition in this method of annexation, it is unlikely that the county objection provisions starting at O.C.G.A. § 36-36-110 will be applicable to this method of annexation. However, out of an abundance of caution, a city may want to serve notice on the county by certified mail or statutory overnight delivery.

2. After the ordinance is adopted, an identification of the annexed property is to be filed with:

> (i) the Department of Community Affairs; **AND**
> (ii) the governing authority of the county in which the land is located; in accordance with O.C.G.A. § 36-36-3.

(c) This subsection designates which municipality can annex an island that is contiguous to two or more municipalities. If this is the case, the municipality, which abuts the unincorporated island along the greatest percentage of its external boundary, is entitled to annex the unincorporated island unless otherwise agreed to by the municipality affected.

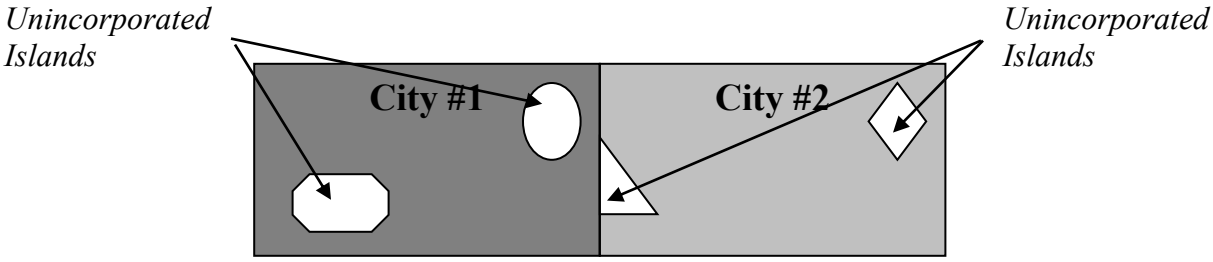
(d) Municipal corporations have the discretion to annex unincorporated islands if they want, but are not required to annex unincorporated islands under this Article.

(e) This Section provides for the extension of municipal services to annexed unincorporated islands on substantially the same basis and in the same manner as such services are provided within the annexing municipality. Unlike Article 3, this Article does not require municipal services to be provided to the unincorporated area on the effective date of annexation or within any specific time period. Water and sewer services are to be

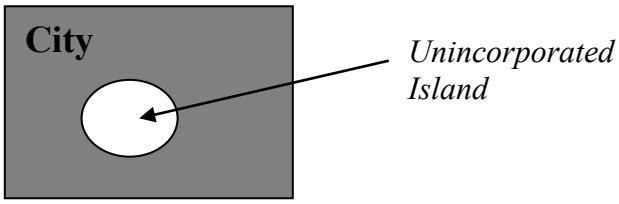
Statute	Commentary
	extended according to the policies in effect in the municipal corporation at the time of annexation. This language gives the annexing municipal corporation discretion over how and when it extends water and sewer services to the annexed island.
(f) The provisions of this article with regard to annexation of unincorporated islands is severable as to each city and to the annexation of each unincorporated island therein. The implementation of each annexation pursuant to this article is contingent upon preclearance of each annexation by the U.S. Justice Department pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973 (c). Any city annexing an unincorporated island pursuant to this article shall submit such annexation to the U.S. Justice Department for preclearance not later than 90 days following the date of adoption of the annexation ordinance by the municipal governing authority.	(f) The deadline for submission to the U.S. Justice Department of the annexation for preclearance under the Voting Rights Act was 90 days. The United States Supreme Court decision in Shelby County, Alabama v. Holder, 133 S.Ct. 2612 (2013) has rendered the preclearance requirement under Section 5 of the Voting Rights Act inoperable which, in turn, should make this requirement of Georgia law inoperable.[14]

[14] The federal regulations require that the annexation be submitted "as soon as possible." 28 C.F.R. Part 51.21.

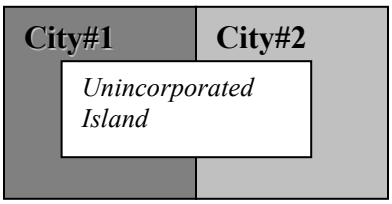
Annexation of Unincorporated Islands

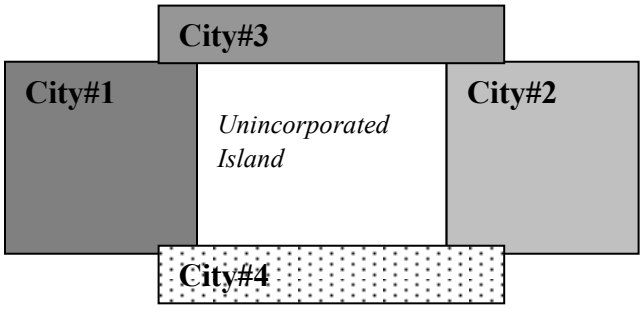


36-36-90(3)(A) All external boundaries abut the annexing municipality

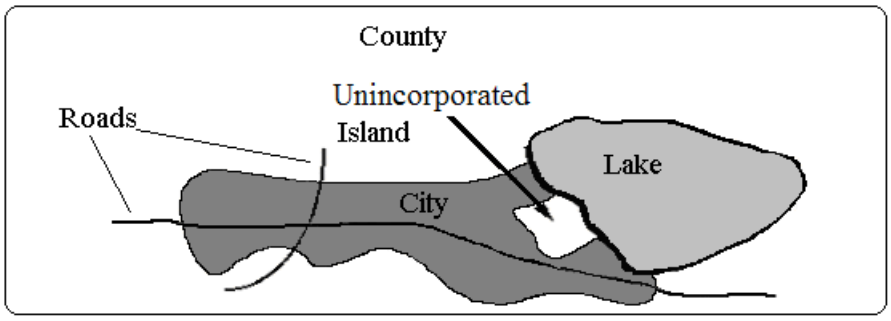


36-36-90(3)(B) Aggregate external boundaries abut any combination of the annexing municipality and one or more other municipalities.





36-36-90(3)(C) Any area where the county governing authority has adopted a resolution not later than 90 days following July 1, 1992 that identifies that unincorporated area of the county to which the county has no reasonable means of physical access for the provision of services otherwise provided by the county governing authority solely to the unincorporated area of the county.



CHECKLIST FOR ANNEXATION OF UNINCORPORATED ISLANDS

(O.C.G.A. § 36-36-3, § 36-36-90, and § 36-36-92)

_____ 1. The property to be annexed is contiguous to the city. O.C.G.A. § 36-36-92(a).

_____ 2. The municipality has sent a written notice of intent to annex the island to the owner(s) of the land comprising the island at the owner's last known address (as it appears on the ad valorem tax records of the county in which such property is located). O.C.G.A. § 36-36-92(b). (Although there is no annexation petition to trigger the county objection procedure in Article 7, the city may decide it is prudent to serve notice of the annexation on the county by certified mail or statutory overnight delivery at this point in the process.)

_____ 3. The municipality has annexed the island to the municipal corporation by ordinance at a regular meeting of the municipal governing authority within 30 days of sending the notice to the owner(s). O.C.G.A. § 36-36-92(b).

_____ 4. The municipality has filed a report with the Department of Community Affairs and the county governing authority identifying the authority under which the annexation was accomplished, including the ordinance or resolution number, the name of the county in which the property being annexed is located, the enactment date and the effective date of the annexation ordinance or resolution.

_____ 5. A letter from the governing authority has been sent stating its intent to add the annexed area to maps provided by the United States Bureau of the Census during their next regular survey of the municipality stating that the survey and map will be completed and returned to the United States Bureau of the Census within 30 days of the last day of the calendar quarter during which the annexation became effective to the Department of Community Affairs and the county governing authority. O.C.G.A. § 36-36-2, § 36-36-3 and § 36-36-92(b).

COUNTY OBJECTION PROCEDURE

Article 7

O.C.G.A. § 36-36-110 through § 36-36-119

Summary

Effective September 1, 2007 state law provides for an arbitration panel whose findings will be binding and for judicial review of those decisions in certain circumstances. A county objection must be based on either a change in zoning, a proposed increase in density, or infrastructure demands related to the proposed change in zoning.

1. O.C.G.A § 36-36-110 states that the procedures of this article apply to all annexations except those by local act of the General Assembly. However, due to the purpose and process used for annexation of unincorporated islands and annexation by resolution and referendum, it does not make sense to attempt to shoehorn this procedure into those methods of annexation.

2. O.C.G.A. § 36-36-111 states that when a municipality receives a petition for annexation, it must provide a copy to the county, along with the proposed zoning and land use of such area, by certified mail or overnight delivery and take no further action on the annexation.

3. O.C.G.A. § 36-36-112 notes that if no valid and timely objection is received from the county the city may proceed with the annexation and rezone the property. The city is not to rezone the property to a more intense density for one year after the effective date of the annexation absent a change in the service delivery strategy agreement or comprehensive plan adopted by the affected city and county.

4. O.C.G.A. § 36-36-113 spells out the timeline and requirements for a valid county objection. The county has 30 calendar days to respond to the notification of annexation. If the county objects, the majority of the county commissioners must be on record with the objection. The objection must be based upon "a material increase in burden" upon the county as related to one or more of the following:

   - Proposed change in zoning or land use;
   - Proposed increase in density; or
   - Infrastructure demands related to the proposed change in zoning or land use.

   Delivery of service may not be a basis for valid objection but may be used to support valid objection.

   In the county's objection, the county is required to document the nature of the objection, and specifically provide any evidence of financial impact that forms the basis of an objection.

   In order for an objection to be valid, the proposed change in zoning or land use must:

   - Result in a substantial change in the intensity of allowable use of the property or a change to a significantly different allowable use; or

- Significantly increases the net cost of infrastructure or significantly diminishes the value or useful life of the capital outlay which is furnished by the county to the area to be annexed; AND

- Differ substantially from the existing uses suggested for the property by the county's comprehensive land use plan or permitted for the property pursuant to the county's zoning ordinance or its land use ordinances.

5. O.C.G.A. § 36-36-114 requires the appointment of an arbitration panel not later than 15 days after the city receives the county's objection. The arbitration panel is comprised of 5 members. This code section sets out requirements for service as an arbitrator and the method of selecting them.

6. O.C.G.A. § 36-36-115 requires the arbitration panel to render a binding decision within 60 days of appointment and sets forth the factors that the arbitration panel is to consider in rendering their decision. The county is required to provide supporting evidence that its objection is consistent with its land use plan and the pattern of existing land uses and zonings in the area of the proposed annexation. If the panel rules on zoning, land use or density conditions, its findings will be recorded in the deed records of the subject property. The arbitration panel will dissolve 10 days after it discloses its findings. The county will pay 75% of the cost of the arbitration, including the costs incurred by the city and property owner. The arbitration panel will apportion the remaining 25% between the affected parties.

7. O.C.G.A. § 36-36-116 provides for an appeal of the decision of the arbitration panel by the municipal or county governing authority or an applicant for annexation by filing in superior court. A judge will be assigned that is not a judge in the county where the appeal is filed. The court will have 20 days to rule on the appeal. The appeal has to be based on error of fact or law, an arbitrator that is biased or engaged in misconduct, or the panel's abuse of discretion.

8. O.C.G.A. § 36-36-117 requires that after final resolution of any objection, whether by agreement of the parties, act of the panel, or any appeal from the panel's decision, the terms of the arbitration panel's decision will remain valid for a one year period. The annexation may proceed at any time during the one year time period without any further right of objection of by the county. Following the annexation and zoning in accord with the panel's decision, the municipal government cannot change the zoning, land use, or density of the annexed property for one year.

9. O.C.G.A. § 36-36-118 prohibits the county from changing the zoning, land use, or density of the property proposed for annexation for one year if the proposed annexation is abandoned.

10. O.C.G.A. § 36-36-119 If an agreement is reached by the parties during the arbitration, that agreement shall be the adopted as the findings of the panel. If an agreement is reached during the appeal, the agreement will be reflected as part of the court's order.

County Objection Procedure

Statute

36-36-110.
The procedures of this article shall apply to all annexations pursuant to this chapter but shall not apply to annexations by local Acts of the General Assembly.

36-36-111.
Upon receipt of a petition of annexation, a municipal corporation shall notify the governing authority of the county in which the territory to be annexed is located by certified mail or by statutory overnight delivery. Such notice shall include a copy of the annexation petition which shall include the proposed zoning and land use for such area. The municipal corporation shall take no final action on such annexation except as otherwise provided in this article.

36-36-112.
If no objection is received as provided in Code Section 36-36-113, the annexation may proceed as otherwise provided by law; provided, however, that as a condition of the annexation the municipal corporation shall not change the zoning or land use plan relating to the annexed property to a more intense density than that stated in the notice provided for in Code Section 36-36-111 for one year after the effective date of the annexation unless such change is made in the service delivery agreement or comprehensive plan and is adopted by the affected city and county and all required parties.

Commentary

O.C.G.A. 36-36-110 (Applicability)

Although this code section purports to apply these new procedures to all annexations except those by local Act, the procedures are not logically applicable to the annexation of unincorporated islands or annexation by the resolution and referendum method. Neither of these forms of annexation are initiated by the filing of an annexation petition which is the trigger for the procedures in this article. Additionally, island annexations do not implicate the alleged service delivery issues that would form a valid objection. Finally, the resolution and referendum method of annexation will typically already require county consent thus making the procedures in this article duplicative and unnecessary.

O.C.G.A. § 36-36-111 (City Notice to County)

This code section requires that the city provide to the county by certified mail or statutory overnight delivery a copy of the annexation petition and the proposed zoning and land use for the area proposed for annexation. Be certain to provide notice in the correct way and carefully consider the actual, appropriate zoning and land use for the property prior to giving notice. This is because for a period of one year the city may be bound to permit only the stated zoning or land use for the property or a less intense one. See O.C.G.A. § 36-36-112.

Note: Another provision of state law (O.C.G.A. § 36-36-6) already requires that the city provide notice to the county within five days of receiving an annexation petition or adopting an annexations resolution under the resolution and referendum method.

O.C.G.A. § 36-36-112 (City Re-zoning of Property Limited)

This provision allows the city to proceed with annexation and rezoning of the property if the county does not timely file a valid objection. As noted above, this provision also attempts to tie a property owner and the city to a use of the property no more intense than the initial zoning or land use proposed for the property in the notice provided to the county by the city. The zoning or land use could be made more intense only pursuant to a change in the service delivery agreement or the comprehensive plan signed off on by both the city and the affected county. Whether this attempted substantive restriction on rezoning will survive constitutional scrutiny is another matter.

County Objection Procedure

Statute

36-36-113.

(a) The county governing authority may by majority vote object to the annexation because of a material increase in burden upon the county directly related to any one or more of the following:

(1) The proposed change in zoning or land use;

(2) Proposed increase in density; and

(3) Infrastructure demands related to the proposed change in zoning or land use.

(b) Delivery of services may not be a basis for a valid objection but may be used in support of a valid objection if directly related to one or more of the subjects enumerated in paragraphs (1), (2), and (3) of subsection (a) of this Code section.

Commentary

O.C.G.A. § 36-36-113(a) (Criteria and Procedures for County Objection)

(a) Note at the outset that the language of this statute contains many ambiguous terms and phrases such as "material increase in burden", "substantial change", "significantly different", "directly related", "significantly increases" and "significantly decreases." The actual meaning of these phrases in the context of this statute will not be known until they have been litigated and we have received direction from the courts. However, the inclusion of this language was carefully negotiated in the crafting of this statute as a mechanism to ensure that annexation objections are legitimately based on real and substantial burdens the county would not otherwise face absent the annexation and proposed change in land use.

To lodge an objection to an annexation, the county governing authority must take an open official, recorded vote to do so. An objection cannot be made by staff delegated that responsibility by the county commission. The purpose of this requirement is to encourage the county commissioners to consider how they would zone and otherwise treat this property if it were not being annexed and force them to examine whether their objections are to the actual proposed land use or mere hostility to cities and annexation.

An objection may only be made if as to the property being annexed, there is a "material increase in burden upon the county directly related to" a proposed change in the zoning or land use or a proposed increase in density. Note that (a)(1) and (a)(3) are largely the same as they both rely upon a proposed change in land use or zoning. What is considered a proposed change in "land use" remains to be seen. And what is a "material increase in burden?" As demonstrated by the language in O.C.G.A. § 36-36-113(c) below requiring the county to document the financial basis of the objection, the term means a "material increase in *financial* burden."

(b) This section states that the delivery of services alone can not be the basis for an objection, but may be used as supporting evidence of an otherwise valid objection.

Presumably, the intent here was to clarify that if services were being provided or were to be provided by a county regardless of the annexation or the attendant changes in permissible land use associated with the annexation, then the county will not have a valid objection on that basis. Thus,

Statute	Commentary
	if annexed property could have been legally developed in a way that would have placed a service "burden" on the county while located in the unincorporated area, this section prohibits the county commission from making an objection. Furthermore, the language suggests that counties may not raise objections based on their inability to provide services or to continue providing services to the annexed area because of any attendant revenue loss associated with providing services that will now be provided by the city. Cities should be careful to document cost savings they will provide to counties by virtue of providing services to the annexed area, and the increased revenues accruing to the county by virtue of increased property value (and thus increased ad valorem taxes for the county) of the annexed property. Cities should also take care to document or estimate where possible the extent that changes in the allowable land use of annexed property may create more revenue or be revenue neutral in the long run for counties by virtue of their providing services. Finally, it is essential for cities to note whether the proposed development of the annexed property could have occurred under the county's ordinances when it was in the unincorporated area.
(c) The objection provided for in subsection (a) of this Code section shall document the nature of the objection specifically providing evidence of any financial impact forming the basis of the objection and shall be delivered to the municipal governing authority by certified mail or statutory overnight delivery to be received not later than the end of the thirtieth calendar day following receipt of the notice provided for in Code Section 36-36-111.	(c) A general statement of objection is not sufficient. The county's objection must provide documentation of the actual nature of the objection and its financial impact. Failure to provide this at the time of initial objection would mean that the objection is not complete and is invalid. The purpose of the documentation requirement again was to prevent objections based on speculation and unfounded fears and to limit objections to situations causing real, major financial hardship to the county. The previous dispute resolution procedure, still found at O.C.G.A. § 36-36-11, provided the county with seven days to provide notice of its objection and then an additional ten days to document the objection. Some counties found this time too short to properly evaluate a proposed change in land use and its impact on the county. Thus, the time to object was lengthened but the requirement to provide evidence of any alleged financial impact was strengthened. Note also the required method of giving notice by certified mail or statutory overnight delivery. Failure to comply with this requirement should also invalidate an objection.

Statute	Commentary
(d) In order for an objection pursuant to this Code section to be valid, the proposed change in zoning or land use must:	(d)(1) For an objection to be valid, in addition to meeting the criteria already laid out above, it must provide evidence that the proposed change in zoning or land use will result in a significantly increased net cost in infrastructure, a significantly diminished value or useful life of a capital outlay project, a substantial change intensity with respect to how the property is used, or a use significantly different from its current allowable use. The second half of (d)(1)(A) is very much like (d)(2) thus the other requirements in (d) may be rarely used and of limited utility in evaluating the actual impact of a change in land use.
(1) Result in: *(A) A substantial change in the intensity of the allowable use of the property or a change to a significantly different allowable use; or* *(B) A use which significantly increases the net cost of infrastructure or significantly diminishes the value or useful life of a capital outlay project, as such term is defined in Code Section 48-8-110, which is furnished by the county to the area to be annexed; and*	The term "capital outlay project" references the definition in the special purpose local option sales tax law and is a very broad term. However, note that the infrastructure or capital outlay project at issue must be something that is or will be furnished by the county to the area to be annexed. If the county will not provide to the annexed area the service utilizing such infrastructure or capital outlay project, it cannot be the basis for a valid objection under (d)(1)(B). The intent of this subsection was to recognize the actual, net increased financial impact of increased density on things such as sewer infrastructure or fire trucks serving the area of the proposed change in land use.
(2) Differ substantially from the existing uses suggested for the property by the county's comprehensive land use plan or permitted for the property pursuant to the county's zoning ordinance or its land use ordinances.	(d)(2) A valid objection starts from the premise that the proposed change in zoning or land use in conjunction with the annexation is substantially different from what is allowed or permitted under the county's own ordinances or land use plan. IF this is not so, the objection is not valid.
36-36-114. *(a) Not later than the fifteenth calendar day following the date the municipal corporation received the first objection provided for in Code Section 36-36-113, an arbitration panel shall be appointed as provided in this Code section.*	**O.C.G.A. § 36-36-114 (Arbitration Panel Eligibility and Appointment)** (a) If the city and county have not been able to agree on measures to address any validly raised and legitimate objections within fifteen days of the county properly delivering their objections to the city, then the arbitration panel is to be appointed. The reference in this subsection to a "first objection" indicates that the county may interpose more than one objection so long as they are all timely delivered within the thirty day period and are otherwise valid and complete.
(b) The arbitration panel shall be composed of five members to be selected as provided in this subsection. The Department of Community Affairs shall develop three pools of arbitrators, one pool which consists of persons who are currently or	(b) This code section requires DCA to develop and maintain three sufficiently large pools of persons qualified to serve on the arbitration panel. There is one pool of current or recent city elected officials, one poof of current or recent county

Statute	Commentary
within the previous six years have been municipal elected officials, one pool which consists of persons who are currently or within the previous six years have been county elected officials, and one pool which consists of persons with a master's degree or higher in public administration or planning and who are currently employed by an institution of higher learning in this state, other than the Carl Vinson Institute of Government. The pool shall be sufficiently large to ensure as nearly as practicable that no person shall be required to serve on more than two panels in any one calendar year and serve on no more than one panel in any given county in any one calendar year. The department is authorized to coordinate with the Georgia Municipal Association, the Association County Commissioners of Georgia, the Council of Local Governments, and similar organizations in developing and maintaining such pools.	elected officials, and one pool of academics that have an advanced degree in public administration or planning and serve at an institution of higher learning in Georgia except for the CVIOG. The reason that persons employed at the CVIOG were excluded is that the CVIOG is charged with developing the training program for the potential arbitrators. The intent of this section is to have experienced, knowledgeable people serve as arbitrators and to have a sufficient number of arbitrators on each panel and statewide to provide as wide an array of diverse viewpoints as possible and avoid concentrating decision-making ability in the hands of a very few people statewide. Note that the county pool requires that the pool members be or have been county elected officials. Does this include officials elected county-wide other than the county commissioners, such as sheriffs and judges?
(c) Upon receiving notice of a disputed annexation, the department shall choose at random four names from the pool of municipal officials, four names from the pool of county officials, and three names from the pool of academics; provided, however, that none of such selections shall include a person who is a resident of the county which has interposed the objection or any municipal corporation located wholly or partially in such county. The municipal corporation shall be permitted to strike or excuse two of the names chosen from the county officials pool; the county shall be permitted to strike or excuse two of the names chosen from the municipal officials pool; and the county and municipal corporation shall each be permitted to strike or excuse one of the names chosen from the academic pool.	(c) This code section directs DCA to randomly select from the three pools names of individuals to serve as arbitrators. This selection is to occur upon the department receiving notice of a disputed annexation but the statute does not make clear who is to give this notice or when it is to be given. However, reading this provision with the rest of the statute and its timelines indicates that the most logical way for DCA to receive notice is for the county to provide it with notice at the time that it delivers its objection to the city. The city certainly has no duty to deliver such notice but may do so to move the arbitration process along. The arbitrators to serve on the panel are chosen in a manner similar to selecting jurors. Each side is permitted to strike the names of certain persons until the requisite five member panel is achieved. Note that the arbitration panel is to be fully selected by the fifteenth calendar day following the city's receipt of the county's first objection. Thus, it is quite likely that arbitrator selection will be going on while the city and county are discussing the county's objection.
(d) Prior to being eligible to serve on any of the three pools, persons interested in serving on such panels shall receive joint training in alternative dispute resolution together with zoning and land use training, which may be designed and overseen by the Carl Vinson Institute of Government in conjunction with the Association County Commissioners of Georgia and the Georgia Municipal Association, provided such training is available.	(d) Although this subsection appears to require training for the potential arbitrators, it contains the important caveat that the arbitrators shall receive such training "provided such training is available."

Statute	Commentary
(e) At the time any person is selected to serve on a panel for any particular annexation dispute, he or she shall sign the following oath: 'I do solemnly swear or affirm that I will faithfully perform my duties as an arbitrator in a fair and impartial manner without favor or affection to any party, and that I have not and will not have any ex parte communication regarding the facts and circumstances of the matters to be determined, other than communications with my fellow arbitrators, and will only consider, in making my determination, those matters which may lawfully come before me.'	(e) Arbitrators are expected to serve with impartiality and, to that end, are required to sign an oath pledging such impartial conduct prior to service on each particular case.
36-36-115. *(a)(1) The arbitration panel appointed pursuant to Code Section 36-36-114 shall meet as soon after appointment as practicable and shall receive evidence and argument from the municipal corporation, the county, and the applicant or property owner and shall by majority vote render a decision which shall be binding on all parties to the dispute as provided for in this article not later than the sixtieth day following such appointment. The meetings of the panel in which evidence is submitted or arguments of the parties are made shall be open to the public pursuant to Chapter 14 of Title 50. The panel shall first determine the validity of the grounds for objection as specified in the objection. If an objection involves the financial impact on the county as a result of a change in zoning or land use or the provision of maintenance of infrastructure, the panel shall quantify such impact in terms of cost. As to any objection which the panel has determined to be valid, the panel, in its findings, may establish reasonable zoning, land use, or density conditions applicable to the annexation and propose any reasonable mitigating measures as to an objection pertaining to infrastructure demands.*	**O.C.G.A. § 36-36-115 (Arbitration Panel Duties and Expenses)** (a)(1) The arbitration panel meets in an open meeting, receives evidence, hears argument and renders a decision within 60 days of their appointment. The panel's first order of business is to determine whether the county's objection is valid. This is a condition precedent to reaching any other matters. If the county alleges a financial impact, the panel is to quantify the financial impact based on the evidence presented to it. This code section presumes to give to the arbitration panel the power to establish zoning conditions. Given that these zoning and other land use conditions established by the panel are, pursuant to other sections of this statute, to be binding on the property for a period of one year regardless of whether the property is actually annexed or not, the constitutional validity of this grant of power remains in doubt until ruled on by a court of competent jurisdiction. What would constitute "reasonable mitigating measures as to an objection pertaining to infrastructure demands" is unclear. Could the arbitration panel demand payment to the county from the property owner of what is essentially a development impact fee if the county has not adopted a development impact fee ordinance? Could the arbitration panel try to demand payment by the city to the county even though the expanded infrastructure might primarily benefit a private party or unincorporated area residents? These are issues that may be litigated as this law is developed.
(2) In arriving at its determination, the panel shall consider: *(A) The existing comprehensive land use plans of*	(a)(2) The panel's decision is to be based on the existing land use plans of the city and county as well as the more specific land use patterns and zoning patterns of both the city and county in the

Statute	Commentary
both the county and city; *(B) The existing land use patterns in the area of the subject property;* *(C) The existing zoning patterns in the area of the subject property;* *(D) Each jurisdiction's provision of infrastructure to the area of the subject property;* *(E) Whether the county has approved similar changes in intensity or allowable uses on similar developments in other unincorporated areas of the county;* *(F) Whether the county has approved similar developments in other unincorporated areas of the county which have a similar impact on infrastructure as complained of by the county in its objection; and* *(G) Whether the infrastructure or capital outlay project which is claimed adversely impacted by the county in its objection was funded by a county-wide tax.*	area of the property to be annexed. Also, the panel should look at which government will be responsible for providing infrastructure to the area. Additionally, the county is expected to treat areas eligible or proposed for annexation in the same manner as they treat areas of the unincorporated area, thus the panel is charged to consider whether the county has approved similar uses or levels of development in unincorporated areas of the county. Subsection (F) directs the panel to look at whether the county has approved of development with the same infrastructure impact when the development is in the unincorporated area of the county. Subsection (G) reminds the panel that city residents are still county residents paying county property taxes and county-wide sales taxes. Where a county-wide tax is used to fund the infrastructure or capital outlay, the county's objection should be discounted because the city residents are already paying for that project through their county taxes and should not be double-taxed to receive the same benefits as unincorporated area residents.
(3) The county shall provide supporting evidence that its objection is consistent with its land use plan and the pattern of existing land uses and zonings in the area of the subject property.	(a)(3) This again is to guard against "do as I say, not as I do." The county cannot rest on conclusory statements that its objection is consistent with its own land use plan and pattern of development. Instead, as the objecting party, the county has the burden of producing evidence that its objection is consistent with its land use plan and the land use and zonings in the area around the property proposed for annexation.
(4) The county shall bear at least 75 percent of the cost of the arbitration. The panel shall apportion the remaining 25 percent of the cost of the arbitration equitably between the city and the county as the facts of the appeal warrant; provided, however, that if the panel determines that any party has advanced a position that is substantially frivolous, the costs shall be borne by the party that has advanced such position.	(a)(4) To prevent counties from filing objections lacking in merit, thus wasting the time and resources of the city, the county and the property owner, the law requires the county to bear 75% of the cost of the arbitration. The remaining 25% is to be apportioned equitably between the city and county which means that the arbitrators should take into account the relative wealth and other resources of each party as well as the merit of their position and may take into account other factors. The law specifically notes that any party that advances a frivolous position should bear the full load of that 25%. Note that the "cost of arbitration" may include other expenses such as meeting space as well as the amounts paid to or for the arbitrators.
(5) The reasonable costs of participation in the arbitration process of the property owner or	(a)(5) Because the property owner is being caused expense by the county's objection, the cost of the

Statute	Commentary
owners whose property is at issue shall be borne by the county and the city in the same proportion as costs are apportioned under paragraph (4) of this subsection.	property owner's participation in the arbitration process is to be borne 75% by the county. The remaining 25% of the property owner's cost is to be equitably divided between the city and the county. During negotiations on this point, the counties at the last minute sought to cap their responsibility for the property owner's costs but this was rejected on the premise that responsibility for the property owner's expenses would discourage county objections that lack merit or that are made to harass or delay.
(6) The panel shall deliver its findings and recommendations to the parties by certified mail or statutory overnight delivery.	(a)(6) This provision simply reiterates that the decision of the arbitration panel is to be delivered to the city, county and annexation applicant by certified mail or a commercial overnight delivery service. This requirement recurs throughout the statute to ensure that there is a paper trail showing when notices were mailed and when they were received.
(b) If the decision of the panel contains zoning, land use, or density conditions, the findings and recommendations of the panel shall be recorded in the deed records of the county with a caption describing the name of the current owner of the property, recording reference of the current owner's acquisition deed and a general description of the property, and plainly showing the expiration date of any restrictions or conditions.	(b) This code section authorizes and directs the arbitration panel to record their zoning and land use conditions in the deed records of the county, presumably to try to ensure that such conditions run with the land.
(c) The arbitration panel shall be dissolved on the tenth day after it renders its findings and recommendations but may be reconvened as provided in Code Section 36-36-116.	(c) The arbitration panel is dissolved on the tenth day after rendering its decision but may be reconvened if a court remands the panel's decision.
(d) The members of the arbitration panel shall receive the same per diem, expenses, and allowances for their service on the committee as is authorized by law for members of interim legislative study committees.	(d) According to sources at the legislature, the current 2007 amounts are 48.5¢ per mile, $173.00 per diem, plus an allowance to cover actual lodging and meal expenses.
(e) If the panel so agrees, any one or more additional annexation disputes which may arise between the parties prior to the panel's initial meeting may be consolidated for the purpose of judicial economy if there are similar issues of location or similar objections raised to such other annexations or the property to be annexed in such other annexations is within 2,500 feet of the subject property.	(e) This section allows an arbitration panel that has been selected but has not yet met to also serve as the panel for other disputes between the same city and county if the property in both cases is similarly located, there are similar objections or the properties at issue are within 2,500 feet of each other. It is not clear how these additional matters are "assigned" to the arbitration panel in the window of time from appointment until the panel's first meeting.

County Objection Procedure

Statute

36-36-116.
The municipal or county governing authority or an applicant for annexation may appeal the decision of the arbitration panel by filing an action in the superior court of the county within ten calendar days from receipt of the panel's findings and recommendations. The sole grounds for appeal shall be to correct errors of fact or of law, the bias or misconduct of an arbitrator, or the panel's abuse of discretion. The superior court shall schedule an expedited appeal and shall render a decision within 20 days from the date of filing. If the court finds that an error of fact or law has been made, that an arbitrator was biased or engaged in misconduct, or that the panel has abused its discretion, the court shall issue such orders governing the proposed annexation as the circumstances may require, including remand to the panel. Any unappealed order shall be binding upon the parties. The appeal shall be assigned to a judge who is not a judge in the circuit in which the county is located.

36-36-117.
If the annexation is completed after final resolution of any objection, whether by agreement of the parties, act of the panel, or court order as a result of an appeal, the municipal corporation shall not change the zoning, land use, or density of the annexed property for a period of one year unless such change is made in the service delivery agreement or comprehensive plan and adopted by the affected city and county and all required parties. Following the conclusion of the dispute resolution process outlined in this article, the municipal corporation and an applicant for annexation may either accept the recommendations of the arbitration panel and proceed with the remaining annexation process or abandon the annexation proceeding. A violation of the conditions set forth in this Code section may be enforced thereafter at law or in equity until such conditions have expired as provided in this Code section.

36-36-118.
If at any time during the proceedings the municipal corporation or applicant abandons the proposed annexation, the county shall not change the zoning, land use, or density affecting the property for a period of one year unless such change is made in the service delivery agreement or comprehensive plan and adopted by the affected city and county and all required parties. A violation of the conditions set forth in this Code section may be

Commentary

O.C.G.A. § 36-36-116 (Appeal of Arbitration Decision)

An appeal of the arbitration panel's decision may be filed by the city governing authority, the county governing authority or the annexation applicant (the property owner). The appeal must be filed within ten calendar days of receiving the panel's decision. The grounds for appeal are limited. The appeal must be assigned to a judge who is not from the judicial circuit in which the county is located. The judge must schedule an expedited appeal and render a decision within 20 days of the date the appeal is filed. The judge may enter an appropriate order concerning the annexation including remand to the arbitration panel for reconsideration. Presumably remand would not be ordered in the event of arbitrator bias or misconduct.

O.C.G.A. § 36-36-117 (City Rezoning Restricted)

After the annexation and initial zoning of the property in accord with the decision of the arbitrators or the court or agreement of the city, county and property owner, this provision purports to prohibit a city from substantively rezoning or otherwise changing the land use or density of the annexed property for one year. Such a rezoning can only occur in the service delivery agreement or the comprehensive plan and requires the agreement of the city and the affected county. Presumably the one year limit is triggered by the initial annexation and rezoning. The final sentence of this section states that a cause of action is created but is silent as to who has standing to bring such an action.

O.C.G.A. § 36-36-118 (County Rezoning Restricted)

If the city or the annexation petitioner drops the proposed annexation, the county is prohibited from changing the zoning, land use or density of the property for one year. It is not clear what triggers this one year limit but the only logical point of commencement is written notice provided to the county by the city or provided to the city and the

Statute

enforced thereafter at law or in equity until such period has expired. After final resolution of any objection, whether by agreement of the parties, act of the panel, or any appeal from the panel's decision, the terms of such decision shall remain valid for the one-year period and such annexation may proceed at any time during the one year without any further action or without any further right of objection by the county.

36-36-119.
The county, the municipal governing authorities, and the property owner or owners shall negotiate in good faith throughout the annexation proceedings provided by this article and may at any time enter into a written agreement governing the annexation. If such agreement is reached after the arbitration panel has been appointed and before its dissolution, such agreement shall be adopted by the panel as its findings and recommendations. If such agreement is reached after an appeal is filed in the superior court and before the court issues an order, such agreement shall be made a part of the court's order. Any agreement reached as provided in this Code section shall be recorded as provided in Code Section 36-36-115.

Commentary

county by the applicant. A change in zoning, land use or density within the one year period is only supposed to occur through a change to the service delivery agreement or the comprehensive plan signed off on by both the city and the county. This code section also creates a cause of action to enforce the prohibition on county rezoning but is also silent as to who may bring such an action. Would a neighbor who is adversely affected by a rezoning or change in land use be able to enforce this provision?

An important provision of this section is the last sentence which states that following a final resolution of the dispute whether by arbitrator or court decision or agreement of the parties, the annexation may proceed at any time during the one-year period that, presumably, follows that resolution. The county cannot object to the annexation any further in that one year period so long as the terms of the decision or agreement are observed.

O.C.G.A. § 36-36-119 (Negotiated Agreement)

This section of the law allows the county, the city and the property owner to enter into an agreement and have the agreement treated as the arbitration decision or made part of the court's order on appeal. Such an agreement is to be recorded in the deed records of the county.

CHECKLIST FOR COUNTY OBJECTION PROCEDURE

_____1. City receives annexation petition from property owner.

_____2. City provides to county, by certified mail or statutory overnight delivery, a copy of the petition and the proposed zoning and land use for the area proposed for annexation. O.C.G.A. § 36-36-111. City is otherwise required by state law to notify county of annexation application within five business days of receiving it. O.C.G.A. § 36-36-6.

_____3. County cannot object to annexation if:
The county has no zoning ordinance and land use plan; or
There is no change in zoning or land use; or
The proposed change in zoning or land use would not cause a material increased burden to the county; or
The proposed zoning or land use is not substantially different from the existing uses for the property suggested by the county's land use plan or permitted by the county's zoning ordinance. O.C.G.A. § 36-36-113.

_____4. County governing authority must vote in open meeting to object to the annexation. O.C.G.A. § 36-36-113(a).

_____5. Not later than the end of the 30th day following the county's receipt of notice from the city of the annexation and the proposed land use, the county may deliver its objection to the city by certified mail or statutory overnight delivery. O.C.G.A. § 36-36-113(c).

_____6. The county's objection must be substantiated with evidence of financial impact forming the basis of the objection AND the objection must be based on a material increase in burden upon the county directly related to:
(1) the proposed change in zoning or land use;
(2) proposed increase in density; or
(3) infrastructure demand related to the proposed change in zoning or land use. O.C.G.A. § 36-36-113(a).

_____7. Additionally, for an objection to be valid, the proposed change in zoning or land use must differ substantially from the uses of the property suggested by the county's comprehensive land use plan or permitted for the property by the county's zoning ordinance AND must result in:
(1) a substantial change in the intensity of the allowable use of the property or a change to a significantly different allowable use; OR
(2) A use which significantly increases the net cost of infrastructure or significantly diminishes the value or useful life of a capital outlay project furnished by the county to the area to be annexed. O.C.G.A. § 36-36-113(d).

_____8. Not later than 15 days after the city receives a valid objection from the county, DCA randomly selects names of trained individuals to serve on an annexation arbitration panel. DCA selects 4 names from pool of city official, 4 names from pool of county officials and 3 names from pool of academics. O.C.G.A. § 36-36-114(c).

_____9. City may excuse two of the persons selected from the county officials pool and the county may excuse two of the names chosen from the municipal officials pool. The city and the county may each excuse one person chosen from the academic pool. O.C.G.A. § 36-36-114(c).

_____10. Panel of five arbitrators is sworn in and meets to receive evidence and hear argument. O.C.G.A. § 36-36115(a)

_____11. Panel of arbitrators must issue decision no later than 60 days following their appointment and shall deliver its findings and recommendations to the parties by certified mail or statutory overnight delivery. O.C.G.A. § 36-36-115(a).

_____12. Arbitration panel decision may be appealed within ten calendar days of receiving it. O.C.G.A. § 36-36-116.

_____13. Appeal is assigned to judge from outside the judicial circuit of the county and the judge renders a decision within 20 days from the date of the filing of the appeal. O.C.G.A § 36-36-116.

PROVISIONS FOR ANNEXATION AND DEANNEXATION BY LOCAL ACT OF THE GENERAL ASSEMBLY

Article 1A

O.C.G.A. § 36-36-1 through § 36-36-9
O.C.G.A. § 28-1-14.1
O.C.G.A. § 36-35-2
O.C.G.A. § 36-36-16 through § 36-36-17

Summary

This article establishes procedural requirements that the General Assembly must follow in order to annex through local Act. This article should be considered in light of O.C.G.A. § 36-36-10 which expresses the General Assembly's intent to retain broad annexation powers.

1. O.C.G.A. § 36-36-1 extends the procedures of article 1 to annexation by local Act.

2. O.C.G.A. § 36-36-15 defines "used for residential purposes" as a parcel of land no greater than five acres that contains a "habitable dwelling unit."

3. O.C.G.A. § 36-36-16 applies to any proposed annexation by local Act of property that is greater than 50 percent residential. The legislation may include a referendum requirement, but must require a referendum if the number of residents in the area to be annexed exceeds 3 percent of the population of the city, or there are at least 500 people in the area to be annexed.

Provisions Which Apply to Annexation and Deannexation by Local Act of the General Assembly

Statute

36-36-1

The procedures set forth in this article shall apply to all annexations pursuant to this chapter and to annexation by local Act of the General Assembly.

36-36-15

As used in this article, the term "used for residential purposes" means any lot or tract five acres or less in size on which is constructed a habitable dwelling unit.

36-36-16

(a) Local Acts of the General Assembly proposing annexation of any area comprised of more than 50 percent by acreage of property used for residential purposes shall be adopted pursuant to the procedures of this article.

(b) Such bill may include a requirement for referendum approval of the annexation under such terms and conditions as specified in such local law; provided, however, if the number of residents in the area to be annexed exceeds 3 percent of the population of the municipal corporation or 500 people, whichever is less, as determined by the most recent United States decennial census, referendum approval shall be required in the area to be annexed. The cost of holding the referendum required by this article shall be paid from funds of the municipality proposing the annexation.

Commentary

O.C.G.A. § 36-36-1 (Application of Article 1)

This section extends the application of Article 1 to annexations by local Act of the General Assembly as well as to the annexation methods described in Chapter 36. Therefore, all the procedural requirements of Article 1 apply equally to the General Assembly. See the summary and commentary to Article 1 of this handbook for a full discussion of its procedural requirements.

O.C.G.A. § 36-36-15 ("Used for residential purposes" defined)

According to the statute "used for residential purposes" means a parcel of land no greater than five acres that contains a "habitable dwelling unit."

O.C.G.A. § 36-36-16 (Procedures for annexation; notice to county; referendum)

(a) This section applies to any proposed annexation by local Act of the General Assembly of any property that is more than 50 percent residential.

(b) This subsection establishes the requirements that must be met if the annexation comes under subsection (a):

1. The bill may include a referendum approval requirement; except,

2. The bill **must** include a referendum approval requirement if:

   i) the number of residents in the area to be annexed exceeds 3 percent of the population of the municipal corporation, **OR**

   ii) there are at least 500 people in the area to be annexed whichever is less.

Example:
If a municipality had a population of 5,000 and there are 200 people in the area to be annexed, referendum approval would be required. [5,000 x 3% = 150, and (200>150)]

The population will be determined by the most recent United States decennial census. The referendum would be held under such terms and conditions as specified in the local Act. Finally, the municipality proposing the annexation must pay the cost of holding the referendum.

Provisions Which Apply to Annexation and Deannexation by Local Act of the General Assembly

Statute	Commentary
	For more information on annexation by way of Local Act of the General Assembly, see O.C.G.A. § 36-36-6 (page 12).

CHECKLIST FOR ANNEXATION AND DEANNEXATION BY LOCAL ACT OF THE GENERAL ASSEMBLY

(O.C.G.A. § 36-36-1, § 36-36-15, § 36-36-16)

_____ 1. Notice of intention to introduce a local Act has been advertised in the newspaper in which the sheriff's advertisements for the locality affected has been published one time before the bill is introduced, but not more than 60 days prior to the convening date of the session at which the bill is introduced. O.C.G.A. § 28-1-14.

_____ 2. A copy of the notice to introduce local legislation, a copy of the bill itself, and a map or description of the property to be annexed has been sent by the author to the governing authority of the county and the municipality affected by the annexation by certified mail at the same time the notice of intent is published. O.C.G.A. § 36-36-6, § 28-1-14, § 28-1-14.1, § 36-36-9.

_____ 3. An affidavit made by the author of the bill stating that the notice above has been given has been attached to the legislation. O.C.G.A. § 28-1-14.

_____ 4. Upon receipt of notice from the General Assembly, the governing authority of the municipality has forwarded a copy of the proposed legislation to the county governing authority. O.C.G.A. § 36-36-6.

_____ 5. If more than 50 percent of the area proposed to be annexed is used for residential purposes, and the area is comprised of at least 500 people or contains more than 3 percent of the population of the affected municipality, a referendum approving the annexation has been held in the area to be annexed. O.C.G.A. § 36-36-16.

_____ 6. The city has filed an identification of the annexed land with the Department of Community Affairs and the county within 30 days of the last day of the quarter during which the annexation becomes effective. O.C.G.A. § 36-36-3, § 36-36-38.

_____ 7. The annexation has been precleared by the U.S. Justice Department pursuant to Section 5 of the Voting Rights Act of 1965.

ZONING PROCEDURES FOR ANNEXED TERRITORY

ZPL
O.C.G.A. § 36-66-4

Summary

The purpose of this provision is to provide procedures for the zoning of property that is to be annexed by a municipality. These procedures should be considered in conjunction with the county objection process mentioned in the introduction and discussed in detail starting on page 73.

1. O.C.G.A. § 36-66-4(d) requires the municipal corporation to complete all the zoning procedures with respect to property to be annexed except for the final vote, including a zoning hearing, prior to adoption of the annexation. This section also requires that the zoning process may not begin until the city has given notice of the proposed annexation to the county.

2. O.C.G.A. § 36-66-4(e) allows municipalities that share a common zoning ordinance with the county with respect to zoning classifications to enact ordinances that maintain the zoning classification annexed property held immediately before annexation.

Zoning Procedures for Annexed Territory

Statute

36-66-4

(d) If the zoning is for property to be annexed into a municipality, then:

(1) Such municipal local government shall complete the procedures required by this chapter for such zoning, except for the final vote of the municipal governing authority, prior to adoption of the annexation ordinance or resolution or the effective date of any local Act but no sooner than the date the notice of the proposed annexation is provided to the governing authority of the county as required under Code Section 36-36-6;

(2) The hearing required by subsection (a) of this Code section shall be conducted prior to the annexation of the subject property into the municipality;

(3) In addition to the other notice requirements of this Code section, the municipality shall cause to be published within a newspaper of general circulation within the territorial boundaries of the county wherein the property to be annexed is located a notice of the hearing as required under the provisions of subsection (a) or (b), as applicable, of this Code section and shall place a sign on the property when required by subsection (b) of this Code section; and

(4) The zoning classification approved by the municipality following the hearing required by this Code section shall become effective on the later of:

(A) The date the zoning is approved by the municipality; or

(B) The date that the annexation becomes effective pursuant to Code Section 36-36-2; or

(C) Where a county has interposed an objection pursuant to Code Section 36-36-11, the date provided for in paragraph (8) of subsection (b) of said Code section.

Commentary

O.C.G.A. § 36-66-4 (Zoning)

(d) (1) This subsection requires the municipal government to complete all of the zoning procedures with respect to a piece of property to be annexed, except for the final vote on zoning, prior to adoption of the annexation ordinance or the effective date of the annexation. The zoning process cannot be started until after the municipal corporation has given notice to the county of the proposed annexation. Thus, it is best practice to send the annexation and zoning notices together.

(2) This subsection mandates that the municipality hold the zoning hearing, required by subsection (a), before the property is annexed.

(3) A notice of the zoning hearing must be published in a newspaper of general circulation within the county where the proposed annexed property is located at least 15, but not more than 45 days before the proposed hearing. The notice must state the time, place, and purpose of the hearing. If the hearing involves consideration of a change in zoning, initiated by a party other than the municipality: The notice in the newspaper must also include the location of the property, the present zoning classification, and the proposed zoning classification. In addition, a sign must be placed in an obvious location on the property to be rezoned, not less than 15 days prior to the date of the hearing.

(4) This subsection states that the effective date of the zoning classification will be the later date of (A), (B), or (C) as follows:

(A) The date the zoning is approved by the municipality,

(B) The date the annexation becomes effective, which is the first day of the month following the month in which all of the annexation requirements were completed, **OR**

(C) The first day after the 4 week waiting period imposed after the resolution of land use disputes and zoning vote by the municipal governing authority pursuant to O.C.G.A. § 36-36-11. At most this date

Statute	Commentary
	should be 150 calendar days from the date on which the city provides notice to the county of the application to zone or rezone the annexed property.
(e) A qualified municipality into which property has been annexed may provide, by the adoption of a zoning ordinance, that all annexed property shall be zoned by the municipality, without further action, for the same use for which that property was zoned immediately prior to such annexation. A qualified county which includes property which has been deannexed by a municipality may provide, by the adoption of a zoning ordinance, that all deannexed property shall be zoned by the county, without further action, for the same use for which that property was zoned immediately prior to such deannexation. A municipality shall be a qualified municipality only if the municipality and the county in which is located the property annexed into such municipality have a common zoning ordinance with respect to zoning classifications. A county shall be a qualified county only if that county and the municipality in which was located the property deannexed have a common zoning ordinance with respect to zoning classifications. A zoning ordinance authorized by this subsection shall be adopted in compliance with the other provisions of this chapter. The operation of such ordinance to zone property which is annexed or deannexed shall not require any further action by the adopting municipality, adopting county, or owner of the property annexed or deannexed. Property which is zoned pursuant to this subsection may have such zoning classification changed upon compliance with the other provisions of this chapter.	(e) This section allows certain municipalities to enact ordinances that would preserve the zoning classifications of property to be annexed without further action, provided that the property annexed maintains the zoning classification it held immediately prior to annexation. In order to utilize this provision, the municipality must share a common zoning ordinance with respect to zoning classifications as the county in which the property to be annexed is located.

APPENDIX A

SUMMARY OF CASES

Hoot Gibson v. Mayor and City Council of the City of Valdosta, Civil Action File No. 2005-CV-1529 (Lowndes County Superior Court, April 26, 2006).

The City of Valdosta began proceedings to annex a number of unincorporated islands and the plaintiffs challenged the constitutionality and validity of the city's annexation ordinance. In this consent order, the court specifically found that the city's island annexations pursuant to O.C.G.A. § 36-36-92 were lawful and valid. The order established a number of conditions addressing school students, non-conforming uses, business licenses, utility service, street paving and water and sewer service.

City of Fort Oglethorpe v. City of Ringgold, Civil Action File No. 05CV00093 (Catoosa County Superior Court, April 2005).

The City of Fort Oglethorpe sued to have declared void an annexation by the City of Ringgold charging that the property was not contiguous under O.C.G.A. § 36-36-20. The City of Ringgold responded by arguing that the subject property was owned by the city and, although not abutting the city limits, annexation was allowed under O.C.G.A. § 36-36-30(b) because the county board of commissioners had agreed to the annexation of the non-contiguous property. The trial court held that subsection (b) of O.C.G.A. 36-36-30 did not eliminate the contiguity requirement of subsection (a) of that code section, it only relaxed that limitation and some form of contiguity, even though less than 50 feet or one-eighth of the aggregate boundary, was still required. Because the property at issue was two miles from the city limits, it did not meet the requirement of subsection (b) as interpreted by the court. Additionally, the property could not be annexed under subsection (c) of that same code section because it was not located such that it would abut the city limits but for being separated by a street, creek, river or right-of-way.

Note that GMA legal staff disagrees with the court's decision particularly with respect to the provisions of subsection (b) completely overriding, rather than merely "relaxing", the contiguity requirements of subsection (a). Additionally, as a superior court decision, the influence of the trial court's decision is limited.

Bradley Plywood Corp. v. Mayor and Aldermen of Savannah, 271 Ga.App. 828, 611 S.E.2d 105 (Ga.App.)(March 2005)

The Court of Appeals affirmed a trial court ruling upholding an annexation of unincorporated island property. Two landowners challenged the annexation of their property alleging that the city had voted to annex them at a special rather than regular meeting and claiming to have not received proper notice. The city's regular meetings take place every other Thursday and the city posts a list of scheduled meetings. In 2002, two regular meetings that fell on November 27 and December 25 were listed on the schedule with an asterisk noting that alternative dates would have to be determined to avoid holidays. In a regular meeting in October, the city voted to hold those meetings on November 26 and December 23, and notices to that affect were posted at city hall. The city sent the plaintiffs two notices of intent to annex their property on November 15 and November 26 and voted to annex at the December 23 meeting. The court rejected the plaintiff's argument that under the Open Meetings Act, the city had no

authority to reschedule a regular meeting. The court found that the meetings were originally scheduled in October and had never been postponed or rescheduled. Furthermore, the court held that the notice sent on November 26 was valid, as O.C.G.A. § 36-36-92(b) provides that annexation shall be accomplished if notice is provided within 30 days of the vote to annex, not thirty days prior.

Cobb County v. City of Smyrna, 270 Ga.App. 471, 606 S.E.2d 667 (Ga.App.) (November 2004)

The Court of Appeals ruled that a city was entitled to access a county water line that was brought inside the city limits through annexation. The City of Smyrna annexed territory in 1992 that contained a county water line. During litigation between the city and county the same year as the annexation, the court determined that the city had the right to deliver water and sewer services to its residents because there was no service agreement in place between the city and county. Since that decision, the county had refused to grant the city access to any of its water lines. In 2001, the largely undeveloped property became the subject of plans for development and the city sued for access to the county water line. The trial court found for the city, holding that the city was authorized by O.C.G.A. § 36-34-5(1) to extend any water system inside its boundaries. The county appealed, arguing that the court had nullified O.C.G.A. § 36-36-7(b) which provides that ownership of county owned facilities is not diminished through annexation and that the trial court's ruling served as an end run around the Service Delivery Strategy Act (SDS). The Court of Appeals read the two statutes at issue in pari materia and concluded that the general statute on county owned property annexed had to yield to the specific statute granting municipalities power to extend water systems in their jurisdiction. The court also agreed with the county's original position on the SDS, finding that the SDS was irrelevant to the question of whether the city could access the county lines. Finally, the court explained that it had reversed and remanded the trial court's order because it was disturbed by the implication that the city could access the county's lines free of charge. The court stated that the city could extend the lines only through use of the three mechanisms identified by O.C.G.A. § 36-34-5, namely gift, purchase, or eminent domain.

Fayette County v. Kenneth Steele, 268 Ga.App. 13, 601 S.E.2d 403 (Ga.App.) (June 2004).

The Court of Appeals affirmed a lower court's decision that the City of Fayetteville's annexation of two parcels of land under the 100% method was valid. At the request of the property owner, the City annexed two parcels of land owned by a private landowner; prior to the annexation the landowner excepted a 10-foot strip of land in order to avoid creating an unincorporated island (the formation of which are prohibited under O.C.G.A. § 36-36-4(a)). The County objected, seeking declaratory judgment on the grounds that by excepting this strip of land the landowner was trying to annex property that was not contiguous with the City's boundary; the County also argued that allowing this annexation effectively violated O.C.G.A. § 36-36-20(a)(2), which requires that a landowner annex all of his property (rather than subdivide it). The court indicated that the "General Assembly intended that a liberal policy apply" in the area of annexation; they affirmed the annexation in part because there was no showing that the landowner subdivided his property in an attempt to evade the entire parcel requirement. The court declined to reach a holding that would leave the landowner unable to annex his property into the city, instead choosing to apply the entire parcel requirement in a manner that does not unduly restrict annexation.

City of Riverdale v. Clayton County, 263 Ga.App. 672, 588 S.E.2d 845 (October 2003).

The Court of Appeals affirmed a lower court's decision to invalidate a municipal annexation accomplished through the 60 percent method. Clayton County sued the City of Riverdale after the city annexed a 134-acre parcel of land pursuant to an annexation petition signed by 60 percent of the voters

and 60 percent of the landowners in the subject area. Riverdale had compiled written statements from department heads who indicated that the city would be capable of providing services to the annexed area and that, in some instances, the city had already provided such services at one time. Additionally, city commissioners testified that they had considered the best interests of the city before voting on the annexation ordinance. The court construed the language of O.C.G.A. § 36-36-37(a) to mean that a city must make a determination of best interests and be able to prove that they had done so if challenged. The court also construed the language of O.C.G.A. § 36-36-35 to require "detailed plans for the extension of services" rather than "conclusory statements from department heads."

City of Buford v. Gwinnett County, 262 Ga.App. 248, 585 S.E.2d 122 (June 2003).

DEC-Mall of Georgia Court, LLC, petitioned the City of Buford to annex its property in Gwinnett County and rezone it in order to allow for construction of a drive-through bank and a restaurant on the property. Upon notification, the county objected to the annexation, in part because it was concerned that the property was not "contiguous" because it was separated from the city boundary by three separate parcels of property. The city passed an ordinance annexing the property; the county petitioned for a declaratory judgment that the city's annexation was void.

The trial court held that the annexation was improper because the annexed property was separated from the city by more than one parcel of land that fell within the exceptions listed in O.C.G.A. § 36-36-31(a). The Court of Appeals overruled the trial court's reasoning, instead interpreting the statute to allow for annexation over multiple parcels so long as each parcel falls within the exceptions listed in 36-36-31(a) (land owned by the municipal corporation, county or state, as well as streets, rivers, and right-of-ways). However, the court also held that the contiguity exception applied only to right-of-way property of a railroad or other public service corporation and not to property owned by such entities in fee simple. Thus, the Court determined that the trial court was correct in declaring the city's annexation void because one of the intervening parcels was owned by Georgia Power in fee simple and thus did not fit the 36-36-31(a) exceptions.

Coweta County v. City of Senoia, 275 Ga. 707, 573 S.E.2d 21 (November 2002).

The Supreme Court affirmed the ruling of a trial court that upheld a municipal annexation in a county's suit based upon language in an annexation agreement. The City of Senoia and Coweta County entered into an agreement pursuant to O.C.G.A. § 36-70-24 4(c), which prior to the 2004 enactment of HB 709 called for an agreement between cities and counties as to how to resolve land use classification disputes over property to be annexed. Under the agreement the county was allowed to impose several "mitigative measures" on municipal annexation. One of the measures required the city to zone residential property along the border with the county to have a minimum lot size of 1.6 acres. The city proposed zoning the property to be annexed with smaller lot sizes, but provided for a 50-foot buffer between the property and the border with the county. The county sued claiming that the city had violated the agreement by not responding in writing to a letter from the county planning director and by not requiring that the lots annexed be zoned to at least 1.6 acres in size. The Supreme Court agreed with the trial court that written responses to the county planning director were not required by the agreement and that because of the buffer, the lots in question were not on the border with the county and therefore need not be zoned to a minimum 1.6-acre lot size. The Court refused to hear county arguments that the city had violated its own ordinances and the Zoning Procedures Law, O.C.G.A. § 36-66-1 *et. seq*., because those arguments had not been raised by the county at the trial level.

City of Smyrna v. Adams, 255 Ga.App. 453, 565 S.E.2d 606 (May 2002).

The Georgia Court of Appeals affirmed a trial court's decision to invalidate two annexations. The City of Smyrna attempted to annex two unincorporated islands that were both bordered on one side by South Cobb Drive. Code Section 36-36-92 permits the annexation of unincorporated islands that are contiguous to the city limits and were contiguous to the city limits on or before January 1, 1991. Residents of the island areas to be incorporated filed a declaratory action in which they argued that the city had not properly annexed South Cobb Drive in 1985, and thus could not validly annex the areas bordering on that road. The city produced evidence that the city council had in 1985 requested and received permission for the annexation from the DOT, verified the signature of Tom Moreland, then Commissioner of the DOT, held a hearing on the proposed annexation and passed an ordinance approving of the annexation.

At the time of the annexation, the available methods for annexation were the 60 percent method, resolution and referendum, and local act of the General Assembly. (The 100 percent method was not available to municipalities located in counties with a population greater than 100,000 in 1985.) The Court noted that there was no evidence that the city had held a referendum or complied with the 60 percent method, which requires the signatures of 60 percent of the resident electors and 60 percent of the landowners. The Court then concluded that since "the DOT does not have the authority to give away state land," the 1985 annexation was invalid, thus rendering the subsequent island annexations invalid.

The Court held that the plaintiffs had standing to bring suit, and that a declaratory judgment was a proper method for challenging an annexation. The Court further ruled that the trial court had not improperly shifted the burden of proof to the city and that laches did not apply because the plaintiff's attack on the 1985 annexation ripened when the city sought to annex their property in the subsequent island annexations.

H-B Properties LTD v. City of Roswell, 247 Ga. App. 851, 545 S.E.2d 37 (2001).

The Court of Appeals affirmed the validity of an annexation made by resolution and referendum. The City of Roswell sought to annex territory on the east side of the city along Holcomb Bridge Road. Fulton County's agreement was secured (since the area had services provided it to it by the county and since the city was using the resolution and referendum method of annexation) by resolution on July 7, 1999. The city adopted its resolution on July 19, 1999. After the adoption of the resolutions, the chairman of the Fulton County Commission asked if a sports bar could be removed from the territory to be annexed and the mayor of Roswell agreed. The public notice referred to a revised map that was created on August 11, 1999 excluding the changes. The voters approved the annexation in the referendum held November 2, 1999.

Plaintiffs brought a declaratory action seeking to invalidate the annexation claiming the annexation was invalid because the resolution and referendum called for the annexation of different portions of unincorporated Fulton County. The Court held that simply taking a small area out of the area to be annexed between the resolutions and the referendum did not invalidate the annexation. The Court noted that the legislative intent in annexation is to grant liberal use of the power to cities. The Court also looked to the fact that the area to be annexed was the same in the map referred to in the public notice and on the ballot. The Court looked to the statutory language of O.C.G.A. § 36-36-57(a) which states that the resolution shall describe the boundaries of the area "under consideration" for annexation as evidence of intent that the resolution and referendum need not involve the exact same area. The Court further found that the city had met the requirements of O.C.G.A. § 36-36-54(c) because the requirement

to follow natural boundaries is directory, not mandatory. Finally, the court did not dismiss the case after the legislature passed a local act annexing the exact same territory as passed in the referendum, since the different effective dates would impact tax liability.

Higdon v. City of Senoia, 273 Ga. 83, 538 S.E.2d 39 (2000).

The Supreme Court held that O.C.G.A. §§ 36-70-24(4)(C) and 36-36-11 (which prior to the 2004 enactment of HB 709 required a dispute resolution process to be established between cities and counties and which allows the county to raise bona fide land use objects to proposed annexations) did not violate the state constitutional grant of zoning power to local governments. Owners of 55 acres of land located in unincorporated Coweta County applied to the City of Senoia for annexation of their property. The owners sought to develop a residential subdivision and requested R-1 single-family residential zoning, which allows minimum lots of one acre. The property was in Coweta County's Rural Reserve Zoning District, which required a minimum lot size of five acres.

Coweta County notified the City of Senoia of its intent to object to the proposed land use on the basis that the requested zoning allows higher density and would result in a substantial increase in intensity of the use of the property. Under the dispute resolution agreement between the city and county adopted pursuant to the Service Delivery Act, the city and the county successfully negotiated the dispute. They agreed to a lot size of 1.6 acres, but could not agree on which government would monitor the agreed upon conditions. The board of annexation appeals, the next stage in the dispute resolution process, called for the county to monitor compliance. The city, hoping to preserve its constitutional responsibility to monitor zoning compliance in its own territory, objected to the board's recommendation. The city filed a declaratory action after the parties were unable to agree upon a mediator. The trial judge declared both the implicated code sections unconstitutional.

The Supreme Court held that the city had a proper case for a declaratory action; however it reversed the holding of the trial court, and found the statutes constitutional. The Court observed that the constitution reserves power in the General Assembly to impose procedures on local zoning decisions, and reasoned that the statutes did not implicate "substantive zoning matters." Finally, the Court rejected the city's argument that the provisions challenged granted the County ultimate control over the city's ability to rezone property. The Court reasoned that the city could not "dictate" how a parcel outside its boundaries was zoned, ignoring the very issue of the case, that the city was trying to retain its ability to monitor compliance in territory it would have annexed and rezoned. Justice Carley noted in his concurrence that an issue remains as to whether the challenged provisions unlawfully delegated the exclusive judicial power of the courts to a dispute resolution process.

City of Byron v. Betancourt, 242 Ga.App. 71, 528 S.E.2d 841 (2000).

Betancourt and others challenged an annexation by the City of Byron, citing the city's failure to abide by the procedural requirements of O.C.G.A. § 36-66-4 (by failing to post notice of the public meeting on each public street side of the subject property and by failing to mail notices to each owner of property abutting the subject property) and O.C.G.A. § 36-36-21. The city had tried to annex certain properties and establish a new zoning district, but the Superior Court held that the annexation was void because it failed to comply with procedural requirements. The Court of Appeals affirmed the decision of the trial court. The Court noted that the appeal was questionable since appeals from zoning decisions require an application for discretionary appeal under O.C.G.A. § 5-6-35. The Court found that in the absence of a complete transcript of the trial court proceedings, it was forced to affirm the trial court's decision voiding the annexation.

Baker v. City of Marietta, 271 Ga. 210, 518 S.E.2d 879 (1999).

The City of Marietta notified Cobb County that the city had accepted an application for annexation into the city of 16 acres of real property and planned to rezone such property from "residential" to "office-institutional" at a July 1 council meeting. The chairman of the county commission sent a letter to the mayor objecting to the annexation and rezoning and insisting that the matter be resolved through the dispute resolution process required by O.C.G.A. §§ 36-36-11, 36-70-24 (subsequently repealed by HB 709). The city and county had not agreed upon a dispute resolution process at that time. On July 8, the city annexed and re-zoned the property, effective August 1. Asserting that the annexation was void because the county's land use objection had not been resolved, the county filed a petition seeking declaratory and injunctive relief. The trial court entered a temporary restraining order. At a later hearing, the trial court ruled that the commission chairman's letter to the mayor was not a valid objection because the county commission as a whole, not merely one member, was required to act in order to object. The court dissolved the temporary restraining order. The court also declared unconstitutional portions of O.C.G.A. §§ 36-36-11 and 36-70-24(C)(4) because they allowed the county to veto all municipal annexation merely by objecting, failed to provide judicial resolution of an impasse between the annexing city and the objecting county, and treated property differently depending upon when rezoning was sought relative to annexation.

Prior to entry of a final order, the Attorney General intervened because the city had alleged that the state statutes were unconstitutional. After a hearing on the constitutionality arguments, the court reiterated its previous rulings and held that the process established by the legislature was unconstitutional because it gave a county the right to interfere in a municipality's zoning. The Attorney General appealed and the city cross-appealed. The county did not appeal.

The Georgia Supreme Court held that, after ruling that the county commission had failed to file a valid objection, the trial court should not have addressed the constitutional issues since it no longer had an actual case or controversy before it. The court held that the trial court lacked the ability to enter a declaratory judgment at that time and vacated the trial court's ruling on those issues.

Social Circle v. Sims, 228 Ga. App. 582, 492 S.E.2d 240 (1997).

Sims sued the City of Social Circle, alleging defects in the road design, maintenance, guardrail, and signage, after she was injured when a car she was riding in drove off a curve on a road inside the city limits. The Court of Appeals affirmed the trial court's denial of the city's summary judgment motion, finding that a question of fact existed with regard to the city's duty to maintain the road. The city had claimed that no duty to maintain the road existed because the county had acquired the property for the road in 1951 and 1952, and that the county and the DOT had constructed the road up to the city limits in 1958. In 1972, however, the General Assembly extended the previous city limits (which had been only one mile in every direction from a public well, to two miles in every direction). The court reiterated that when public highways are in an annexed area and become city streets the city must keep them reasonably safe, even if county authorities make valuable improvements to the road prior to annexation. Because the city's annexation of this road took place in 1972, O.C.G.A. § 36-36-7 was not applicable (because the code section had not been passed until 1981). Issues of material fact existed as to whether the road was part of the city at the time of annexation. *See* Barnes v. City of Atlanta Police Department, 219 Ga. App. 139, 464 S.E.2d 609 (1995), which held that unless otherwise agreed to, a municipality's annexation of land on either side of a county road results in the municipality's assumption of ownership of that road under O.C.G.A. § 36-36-7(c).

City of Fort Oglethorpe v. Boger, 267 Ga. 485, 480 S.E.2d 186 (1997).

Plaintiffs brought suit after 27 acres of property near their home was annexed by the city of Fort Oglethorpe. The city intended to rezone the area so that a truck stop, forbidden under the county's zoning, could be built. (The plaintiffs alleged a potential deprivation of their property value.) The annexed 27 acres was contiguous to an area that had been made part of the city by an act of the General Assembly eleven years before. The original annexation, made by the General Assembly, was non-contiguous to the city of Fort Oglethorpe. The plaintiffs challenged the annexations on the basis that the original annexation was non-contiguous to the city. The Court held that O.C.G.A. § 36-36-50, which prohibits municipalities from annexing non-contiguous territory, does not apply to the General Assembly.

Arcade v. Emmons, 286 Ga. 230, 486 S.E.2d 359 (1997).

Residents of the City of Arcade filed suit to challenge the election for mayor and five council seats on the basis that non-residents of the city had cast votes. Plaintiffs argued that some of the voters were not residents because the city had failed to obtain preclearance for an annexation by the U.S. Department of Justice under the Voting Rights Act and other state municipal annexation laws. The Justice Department validated the plans, but not until after the election had taken place. The trial court vacated the election results, relying on United States Supreme Court case law and holding that after the fact approval does not render the election challenge moot; district courts have discretion to fashion a remedy. The Georgia Supreme Court reversed, stating that elections should not be set aside because of violations of Section 5 of the Federal Voting Rights Act unless serious voting violations or aggravating factors, such as racial discrimination or fraudulent conduct, were present.

City Council of Augusta v. Richmond County, 259 Ga. 161, 377 S.E.2d 851 (1989).

The City of Augusta sought to annex an area of property in Richmond County under the 60 percent method. The city was required to obtain "the written and signed application of not less than 60 percent of the electors resident in the area included in any such application." The list of electors provided by the county to the city included 313 names, however, while soliciting signatures, the city discovered that 34 electors had moved and 2 others were no longer living. The city simply subtracted those 36 names from the total number of electors reducing the overall number of electors to satisfy the 60 percent requirement.

The Richmond County Board of Commissioners sued and the trial court ruled that the city's action violated the legal requirements of the 60 percent method and declared the annexation ordinance void. The Supreme Court of Georgia affirmed the trial court and held that Georgia's annexation laws do not allow a city to simply subtract names from the total supplied by the county board of registrars once it is discovered that they no longer qualify as electors. The court noted two alternatives that the city could have lawfully pursued. The city could have challenged the names of the 36 people and had the names removed from the list, or the city could have sought more signatures from others who qualified as electors of the area.

Niskey Lake Water Works, Inc. v. Garner, 288 Ga. 864, 188 S.E.2d 864 (1972).

The City of Atlanta annexed a parcel of land via the '60% method.' Only one landowner was involved in the annexation; no electors were involved. Garner challenged the annexation on multiple

grounds, contending that despite the city's insistence that this land was annexed via the '60% method' the lack of electors and single landowner condition rendered that impossible; that the 1966 Act providing for the '60% method' was a population act in conflict with the 1965 Home Rule Act which prohibits municipalities from changing their boundaries 'except by local Act of the General Assembly or by such methods as may be provided by general law;' and that the 1966 Act in question was unconstitutional. The Georgia Supreme Court found for the City on all three counts, holding that the fact that there was only one landowner involved in the annexation and no electors involved did not prohibit use of the '60% method' prescribed in the statute; that the 1966 Act was a general law under Nichols v. Pirkle, 202 Ga. 372, 43 S.E.2d 306 (1947) (declaring population statutes that operate uniformly throughout the State to be to general statutes with uniform operation); and that the 1966 Act itself was constitutional under Plantation Pipe Line Co. v. City of Bremen, 227 Ga. 1, 178 S.E.2d 868 (1971).

APPENDIX B

UNOFFICIAL OPINION OF THE ATTORNEY GENERAL

To: Representative District 25

Re: A municipal government may not create rules that make annexations effective prior to the time they are made effective by O.C.G.A. § 36-36-2.

You have requested my opinion in regard to state annexation statutes and their effect on local annexation laws. In particular, you have asked about the effective date of municipal annexations. It is my unofficial opinion that a municipal government may not create rules that make annexations effective prior to the time they are made effective by O.C.G.A. § 36-36-2.

The state statutes dealing with annexations are found in O.C.G.A. §§ 36-36-1 through 36-36-92. The procedures and requirements found in those Code provisions "shall apply to all annexations pursuant to [Title 36, Chapter 36] and to annexation by local Act of the General Assembly." O.C.G.A. 36-36-1. Section 36-36-37 provides for annexations by ordinance. Prior to July 1, 1996, "unless otherwise agreed by joint resolution of the county governing authority and the governing authority of the municipality annexing land," all annexations became effective "on the last day of the calendar quarter during which such annexation occurred." O.C.G.A. § 36-36-2(a) (pre-1996 version). The only exception to this rule involved effective dates for the purposes of school enrollment where an independent school system existed within a municipality. O.C.G.A. § 36-36-2(b) (pre-1996 version). Since July 1, 1996, under state law, annexations "became effective for ad valorem tax purposes on the first day of the month following the month during which [certain requirements] have been met." O.C.G.A. § 36-36-2(a). The same exception for school enrollment purposes still exists. O.C.G.A. § 36-36-2(b). The requirements to which Section 36-36-2(a) refers differ depending on whether the annexation is pursuant to "application by 100 percent of landowners," "application by owners of 60 percent of land and 60 percent of electors, or "resolution and referendum." O.C.G.A. §§ 36-36-20 to 36-36-60.

The Georgia Constitution of 1983 provides:

Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law, except that the General Assembly may be general law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws.

Ga. Const., Art. III, Sec. VI, Para. IV(a). See also Commissioners of Wayne County v. Smith, 240 Ga. 540 (1978); Brophy v. McCranie, 264 Ga. 187 (1994). Local laws and ordinances may not violate or exceed the requirements of state laws. *See, e.g.*, 1997 Op. Att'y Gen. U97-27 (August 21, 1997). Therefore, a municipal government may not create rules that make annexations effective prior to the time they are made effective by O.C.G.A. § 36-36-2.

Prepared by:			Issued January 15, 1998
Dennis Dunn	and	Christopher A. McGraw	Thurbert E. Baker
Deputy Attorney General		Asst. Attorney General	Attorney General

APPENDIX C

100 PERCENT METHOD OF ANNEXATION
SAMPLE PETITION REQUESTING ANNEXATION

_____
(Date of Submission)

To the _____ of _____, Georgia.
(Name of Governing Body) (City)

1. We, the undersigned, all of the owners of all real property of the territory described herein respectfully request that the City Council (*governing body*) annex this territory to the City of _____, Georgia, and extend the city boundaries to include the same.

2. The territory to be annexed is unincorporated and contiguous (as described in O.C.G.A. § 36-36-20) to the existing corporate limits of _____, Georgia, and the description of such territory is as follows:

[*Insert complete description of land to be annexed*.]

Name (Print)	Address	Signature	Date
1.			
2.			
3.			
etc.			

APPENDIX D

60 PERCENT METHOD OF ANNEXATION SAMPLE ANNEXATION & NOTICE

SAMPLE PETITION REQUESTING ANNEXATION

_____
(Date of Submission)

To the _____ of _____, Georgia.
(Name of Governing Body) (City)

1. We, the undersigned, representing not less than 60 percent of the electors resident in the territory described herein and the owners of not less than 60 percent of the real property within the territory described herein, do respectfully request that the City Council (governing body) of _____, Georgia, annex the territory described below to the City of _____, Georgia, said City having a population of 200 or more persons, and extend the city boundaries to include the same.

2. The territory to be annexed is unincorporated and contiguous (as described in O.C.G.A. § 36-36-31) to the existing corporate limits of _____, Georgia, and the description of such territory is as follows:

[*Insert complete description of land to be annexed.*]

LAND OWNERS AND ELECTORS

Name (Print)	Address (Print)	Signature	Date[1] (Print)
1.			
2.			

LAND OWNERS ONLY

Name (Print)	Address (Print)	Signature	Date (Print)
1.			
2.			

RESIDENT ELECTORS ONLY (NON-LAND OWNERS)

Name (Print)	Address (Print)	Signature	Date (Print)
1.			
2.			

[1] All signatures must be collected within one year of the date on which the first signature was obtained. O.C.G.A. § 36-36-32(g).

60 PERCENT METHOD OF ANNEXATION
SAMPLE NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing shall be had on an application to annex the property hereinafter described to the City of _____ pursuant to Article 3, Chapter 36, Title 36, of the Official Code of Georgia Annotated.

Such a hearing shall be held on the _____ day of _____, 19___ at ___ p.m., at the City Hall, _____, Georgia.

At said public hearing all persons resident or owning property in the City of _____ or in the area proposed for annexation may be heard on the question of annexation of such area by the City of _____.

[*Insert complete description of the property to be annexed*:]

APPENDIX E

SAMPLE NOTICES OF INTENT TO ANNEX

SAMPLE NOTICE OF INTENT TO ANNEX UNINCORPORATED ISLANDS

Dear_____:

Pursuant to O.C.G.A. § 36-36-92(b), notice is hereby given that the City of _____, Georgia, by the authority vested in the Mayor and the Council of the City of _____, Georgia by Article 6 of Chapter 36, Title 36, of the Official Code of Georgia Annotated, intends to annex the property hereinafter described by ordinance at a regular meeting of the Mayor and the City Council, to the City of _____ within 30 days after mailing this notice of intent to you, the owner of the property to be annexed, at your last known address as it appears on the ad valorem tax records of the county in which your property is located.

If you have any questions, contact (*name, title and phone number*) at City Hall.

[*Description of the property to be annexed*:]

Sincerely,

_____
Mayor, City Manager, City Clerk,
or other designated officer

SAMPLE LETTER OF NOTIFICATION TO THE COUNTY IN WHICH THE LAND TO BE ANNEXED IS LOCATED[15]

To:

The Board of County Commissioners of _____ County

Dear Commissioners:

Please be advised that the City of _____, Georgia, by the authority vested in the Mayor and the Council of the City of _____, Georgia by Article ___ (*specify 2, 3, 4, or 6*) of Chapter 36, Title 36, of the Official Code of Georgia Annotated, intends to annex the property hereinafter described by ordinance at a regular meeting of the Mayor and the City Council.

This letter has been sent to you by certified mail, return receipt requested, within five (5) business days of acceptance of an application for annexation, a petition for annexation, or upon the adoption of a resolution for annexation by the City of _____, in accordance with O.C.G.A. § 36-36-6 and O.C.G.A. § 36-36-9 and after receipt of the application for zoning pursuant to O.C.G.A. § 36-36-111.

[*Insert description of the property to be annexed and describe proposed zoning and land use for area to be annexed.*]

Pursuant to O.C.G.A. § 36-36-7 and O.C.G.A. § 36-36-9, you must notify [the governing authority of the City of_____], in writing and by certified mail, return receipt requested, of any county facilities or property located within the property to be annexed, within five (5) business days of receipt of this letter.

Pursuant to O.C.G.A. § 36-36-4 a public hearing on zoning of the property to be annexed as (*insert zoning classification*) will be held (*insert time and place*). If the county has an objection under O.C.G.A. § 36-36-113, in accordance with the objection and resolution process, you must notify _____ [*Identify city official*] within thirty (30) calendar days of the receipt of this notice.

Sincerely,

_____
Mayor, City Mgr., City Clerk,
or other designated officer

[15] This letter may require modification in instances where a rezoning is sought within one year of the effective date of an annexation. In instances where the initial zoning application is not received at the same time as the annexation petition, the city may need to send two separate notices.

SAMPLE LETTER OF NOTICE OF INTENT OF THE GENERAL ASSEMBLY TO ANNEX LAND

To:

The County Commissioners of _____ County

Dear Commissioners:

Pleased be advised that the City of _____ has received notice under O.C.G.A. § 28-1-14(b) that the General Assembly of the State of Georgia, by the authority vested in it under the Georgia Constitution, intends to annex by local Act certain property to the City of _____. We have enclosed herewith a copy of the proposed legislation annexing said property to the City of _____ in accordance with O.C.G.A. § 36-36-6. Also enclosed is a copy of the proposed land use and zoning of the area to be annexed.

Pursuant to O.C.G.A. § 36-36-7 and O.C.G.A. § 36-36-9, you must notify [the governing authority of the City of _____], in writing and by certified mail, return receipt requested, of any county facilities or property located within the land to be annexed, within five (5) business days of receipt of this notice.

The copy of the proposed legislation annexing the property described to the City of _____ has been sent to you by certified mail, return receipt requested, in accordance with O.C.G.A. § 36-36-6 and O.C.G.A. § 36-36-9.

Sincerely,

_____
Mayor, City Manager, City Clerk,
Or other designated officer.

Enclosure

APPENDIX F
SAMPLE ANNEXATION ORDINANCE FOR ANNEXATION
UNDER THE 100% OR 60% METHODS

AN ORDINANCE

To annex property into the City of _____, Georgia, pursuant to Chapter 36 of Title 36 of the Official Code of Georgia Annotated; to provide an effective date; and for other purposes.

BE IT ORDAINED BY THE GOVERNING AUTHORITY OF THE CITY OF _____:

Section 1.
[*For annexation under the 100% method*]
The area contiguous to the City of _____ as described in Appendix A, which is attached to and incorporated as part of this ordinance, is hereby annexed into the City of _____ and is made a part of said city. (Include description of the property as an Appendix A and attach it to the ordinance.)

[*For annexation under the 60% method*]
The City of _____ has carefully reviewed service delivery plans contained in the report pursuant to O.C.G.A. § 36-36-35 attached as Appendix A, which is attached to and incorporated as part of this ordinance. The City of _____ finds that the annexation of the area contiguous to the city as hereby described in Appendix B, which is attached to and incorporated as part of this ordinance, is in the best interests of the residents and property owners of the area proposed for annexation and of the citizens of the City of _____. Therefore, the area is hereby annexed into the City of _____ and is made a part of said city. (Include report required pursuant to O.C.G.A. § 36-36-35 as an Appendix A and the description of the property as an Appendix B; attach them to the ordinance.)

Section 2. This ordinance shall become effective on the _____ day of _____ 20 _____.[16]

Section 3. The City Clerk of the City of _____ is instructed to send a report that includes certified copies of this ordinance, the name of the county in which the property being annexed is located and a letter from the city stating the intent to add the annexed area to Census maps during the next survey and stating that the survey map will be completed and returned to the Census Bureau, Department of Community Affairs, and to the governing authority of _____County (the county in which the annexed area is located), within thirty (30) days after the effective date of the annexation as set forth above in Section 2.

Section 4. All ordinances and parts of ordinances in conflict with this ordinance are repealed.
APPROVED this _____ day of _____, 20____ by the Mayor and Council of the City of _____.

ATTEST:

_____ _____
City Clerk Mayor
[SEAL]

[16] All annexations become effective on the first day of the month following the month during which the requirements of Article 2 or 3 of Chapter 36, whichever is applicable, have been met. O.C.G.A. § 36-36-2(a).

APPENDIX G

SAMPLE LETTER GIVING NOTICE OF ANNEXATION OR DEANNEXATION BY ORDINANCE OR BY LOCAL ACT OF THE GENERAL ASSEMBLY TO THE DEPARTMENT OF COMMUNITY AFFAIRS AND THE COUNTY IDENTIFYING THE ANNEXED PROPERTY

To:
[The Department of Community Affairs AND_____ County]

Dear Sir/Madam:

Please be advised that the [City of _____/the General Assembly] by the authority vested in it under [Article ____ of O.C.G.A. Chapter 36, Title 36/the Georgia Constitution], has annexed/deannexed property to the [City of _____ by ordinance/by resolution/by local Act]. [Ordinance/Resolution/Act # ____] was enacted on the ____ day of _____, _____. This [ordinance/resolution/act] shall become effective on the ____ day of _____, _____.[17]

The property to be annexed/deannexed is located in _____ County.

The city intends to add the annexed/deannexed area to Census maps during the next survey, complete and return the maps to the Census Bureau.

The city has included the following:

1. An identification of the property to be annexed/deannexed.

Sincerely,

_____
Mayor, City Mgr., City Clerk
or other designated official

[Note: Only the copy sent to the county must be sent by certified mail. But for purposes of proving that notice was given to the Department of Community Affairs, it does not hurt to send it certified mail, return receipt requested.]

Enclosures

[17] All annexations become effective on the first day of the month following the month during which the requirements of Article 2, 3, or 4 of Chapter 36, whichever is applicable, have been met. O.C.G.A. § 36-36-2(a)

APPENDIX H
CITY OF BAINBRIDGE ANNEXATION INFORMATION

SAMPLE INFORMATION LETTER 1

Dear _____:

A number of neighbors who live in the _____ area have expressed interest in annexing their property into the City Limits of the City of Bainbridge. We are currently giving these property owners and citizens an opportunity to formally petition the City under the 60% rule to have their property become a part of the City of Bainbridge.

I would suggest to you as an owner of property in this area that annexation into the City would have a very positive effect on the value and livability of your property. A few of these advantages are:

1. High quality drinking water.

2. Excellent fire and police protection with the lowest insurance service rating in the county.

3. Garbage and trash pick-up.

4. Mosquito control.

5. Zoning, building and planning protection.

In addition to these advantages, citizenship will afford you the opportunity to be a full participant in the operation of the City and its government.

I have taken the liberty of enclosing a cost comparison of services outside the city to similar services inside the City. After you have evaluated this analysis of services, we hope that you will agree with us that annexation of your property into the City of Bainbridge will be advantageous to you.

If you have any questions, please do not hesitate to call me.

Sincerely,

_____

Enclosures (2)

SAMPLE INFORMATION - LETTER 2

Dear _____:

A number of neighbors who live in the_____ area have expressed interest in annexing their property into the City Limits of the City of Bainbridge. We are currently circulating a petition under the 60% rule to invite people in this area to become a part of the City of Bainbridge and would suggest to you as an owner of vacant property that such annexation would have the effect of immediately improving the value of your vacant property by making it more attractive for development.

The city offers several advantages which, in our opinion, increases the value of property. A few of these advantages are:

1. High quality drinking water.

2. Excellent fire and police protection with the lowest insurance service rating in the county.

3. Garbage and trash pick-up.

4. Mosquito control.

5. Zoning, building and planning protection.

In addition to these advantages, a citizen of the City has the opportunity to be a full participant in the operation of the City and its government.

When you build on your property, you will enjoy all of these benefits. If, however, you choose to sell your vacant property to some other person, the fact that the property is located in the City will surely make it more appealing and increase the value by having available all of the services the City has to offer.

I have taken the liberty of enclosing a cost comparison of services outside the city to similar services inside the City. After you have evaluated this analysis of services, we hope that you will agree with us that annexation of your property into the City of Bainbridge will be advantageous to you.

If you have any questions, please do no hesitate to call me, or if you prefer, any member of the City Council, or the City Manager.

Sincerely,

_____

Enclosures (2)

SAMPLE TAX COST COMPARISON

OWNER: JANE & JOHN SMITH
123 MAIN STREET
BAINBRIDGE, GEORGIA 39817

LOCATION: MAP 69A, PARCEL 12

1989 COUNTY TAX:

HOMESTEAD EXEMPTION:

1989 ASSESSED VALUE: $100,000

The following is a typical analysis of a Decatur County property evaluated for tax purposes at approximately the same value as your property at the above location, currently located outside the corporate limits of the City of Bainbridge. The actual figures may vary somewhat depending upon your insurance company and out of city services you actually use.

SERVICE	IN CITY	OUTSIDE CITY
FIRE RATING	4	8
HOMEOWNER' S INSURANCE	$482	$660
GARBAGE PICK-UP	TWICE WEEKLY	ONCE WEEKLY
	$17.22 PER MONTH	$55 PER QUARTER
	$206.64 PER YEAR	$220 PER YEAR
TRASH PICK-UP	FREE SERVICE	NOT AVAILABLE
WATER (9000 GALLONS AVG. USE)	$11.25 PER MONTH	$14.85 PER MONTH
	$135.00 PER YEAR	$178.20 PER YEAR
FIRE PROTECTION	FREE SERVICE	FREE SERVICE
AVERAGE FIRE RESPONSE TIME	RESPONSE TIME	NOT AVAILABLE
	2.05 MINUTES	
MOSQUITO CONTROL	FREE SERVICE	NOT AVAILABLE
CITY TAXES	$131.20	NOT APPLICABLE
COUNTY TAXES	$866.00	$866.00
TOTAL COSTS	$1,820.84	$1,924.20
* SAVINGS	$103.36	

SAMPLE LETTER WELCOMING NEW CITY RESIDENTS

Dear _____:

It is a pleasure to welcome you as a citizen of the City of Bainbridge. I am most pleased and honored that you have chosen to become a part of our city and appreciate the opportunity to serve you.

Our Public Safety Department has already begun patrolling your area. Please make a note of the Public Safety telephone numbers: Police Division – 248.2038 and Fire Division – 248.2032.

The City will furnish you with our ninety gallon garbage container. Your container will be delivered on _____. Your garbage pick-up days will be _____ and _____. Pick-up in your area will begin on _____. Additional garbage and trash information is enclosed.

If you are a registered voter, you will be eligible to vote in city elections for candidates running in voting District "B" and for the at-large representative. The members of council from district "B" are: _____, _____, and _____. The at-large representative is _____. Your county voting and school districts will remain the same.

Bainbridge is a very progressive community. I look forward to having your help in guiding our future by your active participation in our city government. Your input is solicited and will be most welcome.

Sincerely,

Mayor, City Council Member, or City Manager

APPENDIX I

CITY OF ROME ANNEXATION INFORMATION

SUMMARY OUTLINE FOR CITY SERVICES FOR RESIDENTIAL PROPERTY OWNERS

The following is a summary of City Services provided to all areas that are annexed into the City.

Police: the City Police Department will provide regular patrol services. Additionally, the Detective Division will investigate any serious misdemeanor or felony.

Fire Service and Fire Insurance: the initial response for fire protection will be provided by the Rome Fire Department. There is no charge for emergency calls. Additionally, rescue response for heart attack and other similar emergencies is also provided. Regarding your fire insurance, annexation may move you from a Class 5 Insurance District to a Class 3 Insurance District. You should consult your local homeowner's policy agent to determine the exact amount of this insurance premium reduction. Floyd County fire district tax would be discontinued.

Trash Collections: the City picks up yard waste (limbs, leaves, and brush) and other discarded household items on a regular basis at the curbside. Quantities are limited for free pick-up to 800 lbs. or seven cubic yards.

Street and Drainage Maintenance: street patching and drainage maintenance is provided as a routine service of the Public Works Division. Off-road drainage maintenance is also provided as needed. Streets are evaluated annually and scheduled for repaving as deemed necessary.

Street Lighting: this service is provided by the City. Normally, lighting is provided at each intersection and approximately 500 feet apart on extremely long blocks. Floyd County street light district fees would be discontinued.

Zoning: it is recommended that your area be annexed with the zoning district designation of R (residential district). The zoning will regulate the density of houses per acre. It will also provide for a minimum lot size and a minimum front width. Additionally, this zoning classification prevents the intrusion of industrial areas, commercial developments and similar types of activities from occurring within your neighborhood.

Building Construction Codes: the City has adopted the Standard Building Construction Codes in order to assure proper construction of new or additional buildings. Additionally, all contractors, electricians, and plumbers are required to be licensed by the City and State.

Voter Registration: upon legal approval of an annexation, the voters registrar's office is notified that property has been annexed. Voter registrations are all automatically transferred to the city voter list. Location of polling places may be relocated by petition of the neighborhood to the Floyd County Probate Judge if it contains 20 signatures.

Schools: upon annexation the Rome City Schools will serve your area. The City Superintendent's office (###-####) can provide further information on the specific school district.

Other Issues: the City will be pleased to clarify other issues that may be of concern to the neighborhood.

SAMPLE LETTER VERIFYING THAT PROPERTY HAS BEEN ANNEXED

Date

Name
Address
City

Dear_____:

As you requested, your property at _____, was annexed into the City of Rome. This was done on _____ evening, _____, _____.

By copy of this letter, I am advising the departments of essential service in which you might be immediately interested. If you have any questions, please call me at _____.

Sincerely,

_____
Secretary

cc: Police
Solid Waste
Water & Sewer
City Schools
Public Works
Street Department
Registrar's Office

SAMPLE COST COMPARISON SHEET

City of Rome
RESIDENTIAL PROPERTY - ANNUAL COST COMPARISON
(based on 2006 tax rates)

NOTE: Figures listed below are estimates only based on current information. They are not meant to replace the actual Tax Commissioner's Office computations.

TAX COMPUTATION		COUNTY AREA		CITY AREA				
	SCHOOL M/O & STATE	NET COUNTY M/O, FIRE & Solid Waste	SCHOOL BOND	CITY SCHOOL	CITY M/0	COUNTY M/0, & State	COUNTY SCHOOL BOND	
APPRAISED VALUE	$86,020	$86,020		$86,020	$86,020	$86,020		
40% ASSESSMENT	0.40	0.40		0.40	0.40	0.40		
TAXABLE VALUE	$34,408	$34,408		$34,408	$34,408	$34,408		
HOMESTEAD EXEMPTION	-2,000	-5,000		0	0	$5,000.00		
TAX VALUE USED	$32,408	$29,408		$34,408	$34,408	$29,408		
MILLAGE RATE	0.01925	0.01043		0.016	0.00845	0.008218		
TAX AMOUNT	$591.45	$306.73	$0.00	$550.53	$290.75	$241.67	$0.00	
TOTAL TAXES		$898.18				$1,082.95		($184.77)

ANNUAL COSTS		County				City		Difference

WATER
(Water bills would automatically be reduced by 13% when annexed **if you are served by City water and sewer.**
Total your bills for the past year and reduce by 13% for your actual savings.)

	Minimum	12 Mo. Ave.	Total		Minimum	12 Mo. Ave.	Total	
	$20.76	$132.96	$153.72		$18.00	$117.66	$135.66	$18.06

SEWER
(Sewer bills will automatically reduce 50% when annexation becomes effective **if you are served by City water and sewer.**
Total your bills for the past year and reduce by 50% for your actual savings.)

	Minimum	12 Mo. Ave.	Total		Minimum	12 Mo. Ave.	Total	
	$36.00	$307.44	$343.44		$18.00	$153.72	$171.72	$171.72

GARBAGE FEE

	AVG Monthly	Yearly		AVG Monthly	Yearly	
	$15.00	$180.00		$3.60	$43.20	$136.80
				Or $2.60Base Fee		
				$3.601 can		
				$6.702 cans		
				(0 charge for debris)		
TOTAL COSTS		$1,575.34			$1,433.53	
		County			City	

$141.81

Net Savings/Cost

NOTE

1. To figure your actual costs for taxes, refer to your latest county tax bill or substitute your appraised value on the first line.
2. Rollbacks, veteran's exemptions and exemptions for elderly are not shown. These may affect your actual tax bill from the county.
3. Past 12 month history is used for water/sewer calculations.
4. Adjust garbage fee based on your projected usage.

March 20, 2007

Homeowner
Address
Rome, GA 30161

Re: Annexation of _____

Dear Mr/Ms._____

Your request to annex the property at _____ was approved by the Rome City Commission at their meeting held on _____. The effective date for all annexations is the first day of the following month. Unless otherwise noted, any change in services or fees will begin on the effective date (_____) of your annexation. Please let us take this opportunity to welcome you into the City of Rome. We take great pride in our City. We hope that you will find the following information useful.

Emergency 911 Phone System - Rome and Floyd County operates an emergency dispatch center, which can be reached by dialing **911.** All emergency calls for Police, Fire and Ambulance Service will be handled at the 911 number.

Fire Service (Class 3 Insurance Rating) - Phone 236-4510

Police - Phone 238-5111

Residential Garbage Service - Phone 236-4580 - The City of Rome operates the residential garbage collection on a volume-based can program (Pay As You Throw). The resident pays for the level of service that is sufficient for their household and the City issues a sticker to be placed on each of the cans that is to be serviced. The monthly cost is added to the water and sewer bill. For an occasional overage of garbage, "one time" stickers may be purchased for bags. All recycling, yard waste, trash and garbage are collected on the same day. Contact the Solid Waste Collections Office for the collection day in your area. During the spring and fall months our yard waste collection is off schedule. Amounts are limited to a maximum of five cubic yards or 400 pounds.

APPENDIX J

CITY OF TOCCOA SAMPLE ANNEXATION INFORMATION

SAMPLE INFORMATION LETTER

Date
Name
Address
City, State, Zip Code

Dear _____ :

The City of Toccoa would like to invite you to annex your property located at _____ into the city limits. We would like to give you some reasons why we think you might want to annex your property.

Listed below are some of the benefits the City of Toccoa has to offer:

- Increased Fire Protection (Class 7 to Class 4)
- Lower Fire Insurance Rates
- Additional Police Protection
- Animal Control
- Zoning Protection
- Building Code Enforcement (to prevent substandard construction)
- Street Lights (in areas where 60% of the residents are in the city limits)
- Voting in City Elections
- "Inside City" Rates for Gas and Water
- Street Side Garbage Collection, Once Per Week
- Street Side Brush, Junk, & Debris Collection, Once Per Week
- Street Side Leaf Collection, Once Per Week (In Season)

As you can see there are many advantages in annexing your property into the City. The City of Toccoa does charge its residents a property tax, but this fee is minimal considering the valuable service you will receive. Based on the current assessed value of your property, your property taxes would be approximately $_____ per year.

How do you annex? I have enclosed an annexation application for your convenience. There is no fee to annex. Please return the completed application, along with a copy of the legal description of the property, to this office. If you need assistance in preparing your application, or have any questions, please call _____ or _____ at _____.

Sincerely,

Planning Director
Planning and Downtown Development
City of Toccoa

SAMPLE APPLICATION FOR ANNEXATION

CITY OF TOCCOA

Community Planning & Development Department
203 N. Alexander Street, P.O. Box 579
Toccoa, GA 30577
(706) 282-3232

APPLICATION FOR ANNEXATION

Tax Map Number: _____ Date: _____

Date Annexation will become effective and official: _____

Address of subject property: _____

Owner of Property: _____

Owner's Address: _____

Telephone Number: _____

Housing Units: _____ Other Buildings: _____

Population: White _____ Black _____ Other _____

A. If the owner and the applicant are not the same, please complete Attachment 1.

B. Site Plan - Showing the location of existing buildings and other improvements.

C. Property Description - A legal description and plat.

D. Meeting Dates and Processing of Applications - See Attachment 2.

E. Fee - No fees required.

F. Authorization to Inspect Premises - I hereby authorize the Toccoa City Commission, the Planning Commission and their staff to inspect the premises which is the subject of this annexation application.

G. Petition Requesting Annexation - Owners must complete Attachment 3.

_____ _____

Signature Signature

ATTACHMENT 1

SAMPLE PETITION REQUESTING ANNEXATION

CITY OF TOCCOA, GEORGIA

DATE _____

TO THE HONORABLE CITY COMMISSION OF THE CITY OF TOCCOA, GEORGIA

1. The undersigned, as owner of all real property of the territory described herein, respectfully requests that the City Commission annex this territory to the City of Toccoa, Georgia, and extend the City boundaries to include the same.

2. The territory to be annexed abuts the existing boundary of Toccoa, Georgia, and the description of such territory area is as follows:

Address/Location of Property:

_____

Tax Map Number: _____

See description attached.

3. It is requested that this territory to be annexed shall be zoned: _____

For the following reasons:

_____

_____

WHEREFORE, the Petitioners pray that the City Commission of the City of Toccoa, Georgia, pursuant to the provisions of the Acts of the General Assembly of the State of Georgia, Georgia Laws, 1946, do by proper ordinance annex said property to the City Limits of the City of Toccoa, Georgia.

Respectfully Submitted,

_____

_____
Owner(s)

ATTACHMENT 2

SAMPLE AUTHORIZATION BY PROPERTY OWNER

Application for Annexation

I Swear That I Am The Owner Of The Property Which Is The Subject Matter Of The Attached Application, As Is Shown In The Records Of Stephens County, Georgia. I Authorize The Person Named Below To Act As Applicant In The Pursuit Of An Annexation Request Of This Property.

Name of Applicant: _____

Address: _____

_____

City State Zip Code

Telephone Number: _____

_____

Signature of Owner

ATTACHMENT 3

APPENDIX K

CITY OF WARNER ROBINS ANNEXATION INFORMATION

APPLICATION FOR ANNEXATION

TO THE MAYOR AND COUNCIL OF THE CITY OF WARNER ROBINS:

NOW COMES _____ BEING THE OWNER OF THE FOLLOWING DESCRIBED PROPERTY, CONTIGUOUS TO PRESENT CITY LIMITS:

All that tract or parcel of land situate, lying and being in Land Lot __of the ___ ( )Land District of Houston County, Georgia, and being more particularly described as _____, containing _____ acres, as shown on a plat of survey prepared by _____ , Georgia Registered Land Surveyor, dated _____, and recorded in Plat Book _____, Page _____ , Clerk's Office, Houston Superior Court. Said plat and the recorded copy thereof are hereby made a part of this description by reference for all purposes.

ADDRESS: _____

THIS APPLICATION IS MADE UNDER THE PROVISIONS OF THE OFFICIAL CODE OF GEORGIA ANNOTATED Section 36-36-20 ET SEQ, AND IS MADE FOR THE PURPOSE OF ANNEXING THE ABOVE DESCRIBED LANDS SO THAT THEY MAY, BY ORDINANCE, BE INCLUDED WITHIN THE CORPORATE LIMITS OF SAID MUNICIPALITY AND MADE A PART THEREOF.

SUBMITTED HEREWITH IS A COMPLETE SURVEY BY A COMPETENT SURVEYOR SHOWING THE LOCATION OF SAID PROPERTY WITH REGARD TO THE EXISTING CITY LIMITS AS WELL AS AN ATTORNEY'S CERTIFICATE OF TITLE SHOWING THE UNDERSIGNED TO BE SOLE OWNER(S) OF SAID PROPERTY.

THIS THE ___ DAY OF _____, _____.

HAVE YOU MADE CAMPAIGN CONTRIBUTIONS OR GIVEN ANY GIFTS TO THE MAYOR, ANY MEMBER OF THE CITY COUNCIL, OR ANY MEMBER OF THE PLANNING AND ZONING COMMISSION IN THE AGGREGATE AMOUNT OF $250.OO OR MORE WITHIN THE PAST TWO (2) YEARS? _____

By: _____
As Its: _____

By: _____
As Its: _____

ANNEXATION CHECKLIST

1. Is property contiguous and does not create an illegal island. _____

2. When petitioner returns application check the following:
   - a. Property owner's name/corporate name _____
   - b. Signature of owner/owners _____
   - c. Complete legal description of property _____
   - d. Current address of property _____
   - e. Current zoning and requested zoning _____
   - f. Site plan or property plat from surveyor _____
   - g. Total acreage _____
   - h. Check for $100.00 or letter from Mayor to waive fees _____

   IF APPLICABLE:
   - I. A certificate of title _____
   - j. A lender's acknowledgment and consent to annex. _____

3. Give copy of site plan/survey plat to:
   - City Engineer _____
   - Asst. Engineer _____
   - CAD Operator _____

4. Notify County by certified mail using Mayor's letterhead _____

5. Type Official Notice for publication and submit to newspaper: _____
   Date sent:_____
   Date Published:_____

   Cut from newspaper: _____

6. If Rezoning is requested with annexation:
   - a. Have petitioner submit names and addresses of surrounding Property owners. _____
   - b. Send notification letters to surrounding property owners. _____

7. Enter information in computer. If rezoning applies, enter in rezoning directory also. _____
   Post on Sign List _____
   Post on Agenda List _____

8. Send letter of notification to petitioner ref: date & time of P & Z meeting. _____

9. After P & Z meeting, send letter to petitioner reference P & Z decision . _____

10. Copy all paperwork for our files. _____

11. Send Memo and copy of paperwork to City Attorney _____

12. Send Memo and original paperwork to City Clerk's Office. _____

P & Z MEETING:_____ M & C MEETING:_____

SAMPLE NOTICE OF ANNEXATION AND REZONING
FOR SUBMISSION TO COUNTY COMMISSIONERS

[Insert Date]

Board of Commissioners
Houston County
200 Carl Vinson Parkway
Warner Robins, GA 3l088

Dear Commissioners,

Please be advised that the City of Warner Robins, Georgia, by the authority vested in the Mayor and Council of the City of Warner Robins by Article 2 of Chapter 36, Title 36, O.C.G.A., intends to annex the property hereinafter described by ordinance at a regular meeting of the Mayor and City Council.

This letter has been sent to you by certified mail, return receipt requested, within five (5) business days of acceptance of an application or petition for annexation by the City of Warner Robins in accordance with O.C.G.A. §36-36-6 and §36-36-9. This letter also serves as notice of the application for zoning or rezoning in accordance with O.C.G.A. §36-36-111, of the proposed zoning and land use for such annexed property.

All that tract or parcel of land situate, lying and being in Land Lot __ & __ of the __ Land Districts, _____County, Georgia, and being known and designated as _____
_____
_____
_____ according to a survey prepared by _____ dated _____. Said plat is hereby made a part of this description by reference for all purposes.

Property located at _____.

Proposed zoning for this property within the City of Warner Robins is _____.

Pursuant to O.C.G.A. §36-36-7 and §36-36-9, you must notify the governing authority of the City of Warner Robins in writing and by certified mail, return receipt requested, of any county facilities or property located within the property to be annexed, within five (5) business days of receipt of this letter.

With deepest respect and highest regards,

_____
Mayor

SAMPLE PUBLIC NOTICE OF ANNEXATION AND REZONING

OFFICIAL NOTICE

Notice is hereby given that the Planning and Zoning Commission of the City of Warner Robins, Georgia, will hold a public meeting on _____ at the hour of _____, at the City Hall in the City of Warner Robins, Georgia, for the purpose of hearing objection, if any, to a petition for annexation of Parcel ___ and Parcel ___ consisting of _____ acres, according to a survey prepared by _____, dated _____. This property is presently zoned _____. Application has been filed for zoning this property _____. Following the public meeting, the Planning and Zoning Commission's recommendation will be heard by the Mayor and Council Members for their decision. All parties at interest and citizens shall have the opportunity to be heard at said time and place relative to petition and application for zoning/rezoning by _____.

PLANNING AND ZONING
COMMISSION

BY:_____

ATTEST:

_____
CLERK

APPENDIX L

SAMPLE DEANNEXATION MATERIALS

SAMPLE COUNTY RESOLUTION APPROVING DEANNEXATION

See Appendix B [owners' petition for deannexation].

A RESOLUTION

WHEREAS, certain residents of _____ County desire to deannex their property from the City of _____; and

WHEREAS, the Georgia Code requires county approval as a pre-condition to the voluntary deannexation of land by a municipal governing authority;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of _____ County that the deannexation of the property described below from the corporate boundaries of the City of _____, Georgia is hereby approved.

[Description of Property]

ADOPTED this _____ day of _____, _____.

_____
Chairman
Board of Commissioners
ATTEST:

_____
City Clerk

[SEAL]

Name: _____

Address: _____

_____

Telephone: _____

Name: _____

Address: _____

_____

Telephone: _____

Sworn to and subscribed before me this _____ day of _____, _____, the above individuals who executed said document.

Notary Public: _____

My Commission Expires: _____

SAMPLE PETITION OF ALL THE OWNERS OF ALL OF THE LAND REQUESTING DEANNEXATION

A PETITION

The undersigned owners of the property described in Appendix A [*attach a legal description or other identification of the property*] hereby petition the City of _____ and request that said city deannex the described property from the city limits of said city.

Said owners certify that they are the owners of all of the land identified in Appendix A and that there are no other owners or co-owners of any such property.

Such owners further certify that the governing authority of _____ County has approved such deannexation. A certified copy of the resolution of said County approving deannexation is attached hereto as Appendix B [attach a certified copy of the County resolution approving deannexation and label it Appendix B].

Such owners further certify that the deannexation of the described property will not result in the creation of an unincorporated island in violation of Georgia law.

Owners:

Name: _____

Address: _____

_____

Telephone: _____

Name: _____

Address: _____

_____

Telephone: _____

Name: _____

Address: _____

_____

Telephone: _____

Name: _____

Address: _____

_____

Telephone: _____

SAMPLE DEANNEXATION ORDINANCE

AN ORDINANCE

To deannex property from the city of _____; to repeal conflicting ordinances; and for other purposes.

BE IT ORDAINED BY THE GOVERNING AUTHORITY OF THE CITY OF _____, GEORGIA:

Section 1. The following property described in Appendix A [Include description of the property as an Appendix A and attach it to the ordinance], such appendix being incorporated and made a part of this Ordinance, is hereby deannexed from the corporate limits of the City of _____.

Section 2. The City Clerk is directed to send a certified copy together with an identification of the property deannexed to the Secretary of State and to the governing authority of _____ County.

Section 3. This ordinance shall become effective on the _____ day of _____ 19 _____.

Section 5. All laws and parts of laws in conflict with this Ordinance are repealed.

Ordained this _____ day of _____, _____.

Attest: _____ _____

_____ City Clerk Mayor of _____

[SEAL]