# Annexation Handbook

Municipal Association of South Carolina

# Foreword

This manual is a guide for interpretation and implementation of the statutes authorizing municipal annexation in South Carolina. Checklists and sample forms are provided where appropriate.

The General Assembly significantly amended the South Carolina annexation laws in 2000, after federal court decisions declared election methods of incorporation and annexation initiated by freeholder petition to be unconstitutional as a denial of equal protection to electors. The amendments in 2000 remedied the problem by authorizing qualified elector petitions for elections to incorporate or annex property to municipalities.

Municipalities have three methods available for annexing privately-owned property: 100% freeholder petition and ordinance method; 75% freeholder petition and ordinance method; and the 25% elector petition and election method.

The Municipal Association of SC offers a separate handbook detailing incorporation procedures.

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*Unless the context clearly indicates otherwise, wherever a masculine pronoun is used in this publication, the same is intended, and shall be understood and interpreted to include all individuals, of any gender, or those who do not identify with any gender.*

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# INTRODUCTION: AUTHORIZED METHODS OF BOUNDARY ADJUSTMENT

*SC Code Secs. 5-3-10 through 5-3-315* establish the methods to change the corporate limits of a municipality. A municipality may reduce its corporate limits by de-annexing land, or it may increase its corporate limits by consolidating with another political subdivision or by annexing land. De-annexing and consolidation are relatively uncommon, given the procedural difficulties of the processes. Annexing land, on the other hand, is quite common. This handbook briefly addresses de-annexation and consolidation, but focuses primarily on ordinary annexation.

**Applicability of Federal and State Constitutions to Boundary Adjustment**

The South Carolina Constitution specifically addresses municipal boundary adjustment. See *SC Constitution Art. VIII, Sec. 8*, which states: "The General Assembly shall provide by general law the criteria and the procedures ... for the readjustment of municipal boundaries.... No local or special laws shall be enacted for these purposes; provided, that the General Assembly may vary such provisions among the alternative forms of government."

The plain meaning of this constitutional provision is that readjustment of municipal boundaries is a purely legislative matter, subject to general laws passed by the South Carolina General Assembly. Citizens have nonetheless challenged municipal boundary adjustments as violating the United States and South Carolina constitutions. For example, in *Hunter v. Pittsburgh*, 207 U.S. 161 (1907), the City of Allegheny, Pennsylvania, and several Allegheny residents challenged an election that resulted in the consolidation of Pittsburgh and Allegheny. The plaintiffs asserted violations of the United States Constitution, including that the consolidation impaired a contract between Allegheny and its residents and deprived the Due Process rights of Allegheny residents. The United States Supreme Court rejected these claims and upheld the consolidation:

> Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them.... The state, therefore, at its pleasure, may modify or withdraw all such powers ... expand or contract the territorial area, [or] unite the whole or a part of it with another municipality.... All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest.

*Hunter*, 207 U.S. at 178–79; *see also Berry v. Bourne*, 588 F.2d 422 (4th Cir. 1978) (the 75% petition and ordinance method does not violate Equal Protection by allowing a municipality to annex land without an election and without consent of all landowners).

As an example of the same reasoning in South Carolina, the City of Greer proposed to annex an area adjacent to the city in 1972. A corporation owned virtually all the property but was not deemed a resident of the area, and was therefore not entitled to vote in the annexation election. The corporation sued to invalidate the annexation, claiming it would be subject to additional taxation without the right to vote. The Court, quoting a legal treatise, rejected the corporation's challenge: "In the absence of constitutional limitations it is generally considered that the power of a state legislature over the boundaries of the municipalities of the state is absolute and that the legislature has power to extend the boundaries of a municipal corporation, or to authorize an extension of its boundaries, without the consent of its inhabitants of the territory annexed, or the municipality to which it is annexed, or even against their expressed protest." *Gen. Battery Corp. v. City of Greer*, 263 SC 533, 541–42, 211 S.E.2d 659, 663 (1975) (quotations omitted).

In short, municipal boundary adjustment is purely a legislative matter, entirely within the power of the state legislature to regulate.

**Reduction of Corporate Limits**

A municipality may remove property it owns from its corporate limits by ordinance. *SC Code Sec. 5-3-285.* A municipality may remove property owned entirely by a county or jointly by a county and the municipality from its corporate limits by ordinance and a resolution of the county requesting removal. *SC Code Sec. 5-3-285*.

Any other reduction of corporate limits requires that a majority of resident freeholders petition the municipality requesting the reduction. *SC Code Sec. 5-3-280*. Upon receipt of such a petition, the municipality must order an election on the question of reducing the corporate limits as described in the petition. If a majority of the qualified electors voting in the election approve the reduction, the municipality must adopt an ordinance declaring the territory no longer part of the municipality. Under *SC Code Sec. 5-3-280*, specifically applicable to reductions of corporate limits, council must notify the South Carolina Secretary of State of the action. Council should, however, also notify the SC Department of Transportation, the SC Department of Public Safety, and the SC Revenue and Fiscal Affairs Office pursuant to the statutes applicable to increases in municipal territory. See "**Filing Notice of Annexations**" below.

The existing process for de-annexation may be unconstitutional in that it requires a petition signed by resident freeholders. *See Hayward v. Clay*, 573 F.2d 187 (4th Cir. 1978), and 2008 WL 2614988 (S.C.A.G. June 5, 2008). The annexation laws define "freeholder" to mean a landowner that will be affected by the boundary adjustment. See the discussion under "**Freeholder Definition**" below. In *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969), the United States Supreme Court held that it was unconstitutional to restrict the right to vote to landowners. Courts have extended this holding to petition requirements for elections; like elections themselves, pre-election petitions cannot be restricted to landowners.

The question is whether a court would sever a petition requirement from the election requirement. For example, in *Sojourner v. Town of St. George*, 383 S.C. 171 (2009), the South Carolina Supreme Court found that a resident freeholder petition requirement prior to sale of a municipal sewer system was unconstitutional and not severable from the rest of the act. The Supreme Court therefore concluded that no election was required at all. On the other hand, in the *Hayward* case cited above, the federal Fourth Circuit Court of Appeals found that a freeholder election requirement was severable from a registered voter election. It is not clear whether a court, if it found the resident freeholder petition requirement in *SC Code Sec. 5-3-280* unconstitutional, would follow *Sojourner*, meaning that no election is required, or *Hayward*, meaning that an election but no petition is required.

**Consolidation**

State law provides two methods by which municipalities may consolidate. First, the councils of the municipalities desiring to consolidate may call for an election by ordinance; no petition is required. *SC Code Sec. 5-3-30*. Second, consolidation may be accomplished, after a public hearing, by ordinance of each municipality involved. *SC Code Sec. 5-3-40*. Although this code section does not on its face call for an election, at least one of the predecessor municipalities will reduce its corporate limits in connection with the consolidation and therefore must hold an election under *SC Code Sec. 5-3-280*. See the discussion below.

*SC Code Sec. 5-3-40* also allows two adjacent municipalities to adjust their common boundaries by ordinance. The ordinance must include terms of the boundary adjustment.

In 2019, the South Carolina Attorney General's office opined that a boundary adjustment under *SC Code Sec. 5-3-40* that reduces the corporate limits of either municipality (and therefore, presumably, a consolidation as well) would require an election under *SC Code Sec. 5-3-280*. 2019 WL 6244758 (S.C.A.G. Nov. 6, 2019). See the discussion of "**Reduction of Corporate Limits**" above. That is, the Attorney General's office believes that notwithstanding the grant of authority to adjust boundaries by ordinance in *SC Code Sec. 5-3-40*, if the adjustment reduces the corporate limits of either municipality, an election in that municipality may be required.

**Annexation**

The South Carolina Code authorizes three methods to annex privately owned property:

- 100% freeholder petition and ordinance method, *see SC Code Sec. 5-3-150(3)*.
- 75% freeholder petition and ordinance method, *see SC Code Sec. 5-3-150(1)*.
- 25% elector petition and election method, *see SC Code Sec. 5-3-300*.

Special provisions apply to annexations in each of the following situations, which are described more fully in "**ANNEXATION OF CERTAIN PROPERTIES**" below:

- Real property owned by a professional sports team, *see SC Code Sec. 5-3-20*.
- Property owned by the annexing municipality or the county in which it is located, *see SC Code Sec. 5-3-100*.
- The right-of-way area of public streets, *see SC Code Sec. 5-3-110*.
- Property within a multicounty park that is owned by the State, *see SC Code Sec. 5-3-115*.
- Entire area to be annexed is owned by a corporation, s*ee SC Code Sec. 5-3-120*.
- Entire area to be annexed is owned by a school district, *see SC Code Sec. 5-3-130*.
- Entire area to be annexed is owned by federal or state government, *see SC Code Sec. 5-3-140*.
- A manmade industrial peninsula more than 12 miles from the Atlantic Ocean, *see SC Code Sec. 5-3-155*.
- Cemeteries, *see SC Code Sec. 5-3-250*.
- Property owned by a church or religious group, *see SC Code Sec. 5-3-260.*

This handbook describes each authorized annexation method individually, including the legal and procedural requirements, a checklist of steps necessary to complete the process, and sample forms. Following this technical and procedural overview, this handbook describes the general requirements applicable to annexations and special rules applicable to certain types of properties. Finally, this handbook offers policy considerations for municipal annexation policies.

## ANNEXATION BY FREEHOLDER PETITION AND ORDINANCE

*SC Code Sec. 5-3-150* authorizes annexation by ordinance upon presentation to council of a petition signed by (a) all owners of the property to be annexed, or (b) 75% or more of the freeholders owning at least 75% of the assessed value of the property to be annexed. Because there is no election involved in the 100% and 75% freeholder petition and ordinance methods, the constitutional problems of freeholder petition and election methods do not arise. *Muller v. Curran*, 889 F.2d 54 (4th Cir. 1989). Meanwhile, Act 250 of 2000 corrected the constitutional problem with the 25% petition and election method by conditioning the election on a petition of 25% of registered electors (rather than freeholders).

**100% Petition and Ordinance Method**

A municipality may annex any contiguous area or property upon receipt of a petition signed by all persons owning real estate in the area requesting annexation. Upon agreement to accept the petition and annex the area and enactment of an ordinance by the governing body declaring the area annexed, the annexation is complete. *SC Code Sec. 5-3-150(3)*. No member of the governing body who owns property or stock in a corporation owning property in the area proposed to be annexed is eligible to vote on the ordinance.

Suggested forms for completing a 100% petition and ordinance annexation are included in this handbook as Appendix A.

**Procedure for 100% Petition Annexation**

*SC Code Sec. 5-3-150(3)* prescribes the following steps for a 100% petition and ordinance annexation:

1. Submit a petition signed by 100% of the owners of the property to be annexed.
2. Upon acceptance of the petition, the governing body adopts an ordinance declaring the area annexed to the municipality.
3. The governing body must follow *SC Code Sec. 5-3-310 et seq*. if the property to be annexed is in a special purpose district.
4. After the annexation is complete, the governing body must file notice with the SC Secretary of State, the SC Department of Transportation, the SC Department of Public Safety, and the SC Revenue and Fiscal Affairs Office.

*SC Code Sec. 5-3-150(3)* uses the term "persons owning real estate" rather than "freeholders" as provided for by the 75% method in *SC Code Sec. 5-3-150(1)*. For many years, the question remained open of whether the term "persons owning real estate" for 100% petition and ordinance annexations was equivalent to the term "freeholders" for 75% petition and ordinance annexations. In 2011, the South Carolina Supreme Court ruled that the terms are not synonymous. *See State ex rel. Wilson v. Town of Yemassee*, 391 S.C. 565, 707 S.E.2d 402 (2011). In that case, the state was presumptive owner of marshlands involved in the annexation but was not listed as owner on the county tax records, and was thus not a "freeholder" under *SC Code Sec. 5-3-240*. The court concluded that the state was a person owning real estate but *not* a freeholder: "The term 'freeholder' is not included in subsection (3), and we decline Respondents' invitation to read it in. The phrase 'all persons owning real estate,' as it is commonly understood, does not carry with it the various requirements of 'freeholder' status." *State ex. Rel. Wilson*, 391 S.C. at 576, S.E.2d at 408.

In other words, the term "persons owning real estate" in 100% annexations is broader than the term "freeholder" in 75% annexations, and more signatures may be required to accomplish a 100% annexation. Specifically, as noted in the *Yemassee* case, a 100% petition and ordinance annexation including state-owned lands, or using such lands to establish contiguity, will require the signature of the state.

**75% Petition and Ordinance Method**

A municipality may annex any contiguous area or property upon receipt of a petition signed by 75% or more of the freeholders owning at least 75% of the assessed value of property in the area to be annexed. Upon agreement to accept the petition and annex the area, compliance with required procedures, and enactment of an ordinance by the governing body declaring the area annexed, the annexation is complete. *SC Code Sec. 5-3-150(1).* No member of the governing body who owns property or stock in a corporation owning property in the area proposed to be annexed is eligible to vote on the ordinance. The 75% method is subject to specified procedures. *SC Code Sec. 5-3-150(1)*.

Suggested forms for completing a 75% petition and ordinance annexation are included in this handbook as Appendix B.

**Procedure for 75% Petition Annexation**

*SC Code Sec. 5-3-150(1)* prescribes the following steps for a 75% petition and ordinance annexation:

1. The petition must be dated before the first signature is affixed. All necessary signatures must be obtained within six months from the date of the petition.

2. The petition and all signatures are open for public inspection at any time.
3. The petition must state the code section under which annexation is sought, SC Code Sec. 5-3-150(1).
4. The petition must contain a description and plat of the area to be annexed.
5. A suit to challenge the annexation may be filed by the municipality, any resident of the municipality, or any resident or owner of property in the area to be annexed.
6. At least 30 days before acting on an annexation petition, the municipality must give notice of a public hearing:
    - in a newspaper of general circulation in the community;
    - by posting on the municipal bulletin board;
    - by written notification to taxpayers of record of properties in area to be annexed;
    - to the chief administrative officer of the county;
    - to all public service or special purpose districts; and
    - to all fire departments, whether volunteer or full time.

    The notice must also include a projected timetable for provision or assumption of services

    The statute fails to specify which public service districts or special purpose districts must receive notice. The Attorney General has concluded that, although "it was probably the intent of the General Assembly to limit the necessary notice requirement to interested, or affected, special purpose or public service districts, it is impossible to advise in the abstract exactly which districts this includes. The safest course of action to prevent any future challenges based on lack of notice to any entity would be to notify *all special purpose districts and public service districts in the county*." 2000 WL 1478803, at *3 (S.C.A.G. Sept. 20, 2000) (emphasis added).

    To calculate the 30-day notice period, the municipality should consult *SC Code Sec. § 15-29-10*, which provides that "[t]he time for publication of legal notices shall be computed so as to exclude the first day of publication and include the day on which the act or event, of which notice is given, is to happen or which completes the full period required for publication." The Supreme Court has rejected an argument that a municipality may vary this calculation methodology by local rule, or may calculate "days" by reference to 24-hour periods. See *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 662 S.E.2d 40 (2008).
7. At the public hearing, the municipality must provide:
    - a map and complete legal description of the area to be annexed;
    - a statement of public services to be assumed or provided by the municipality; and
    - taxes and fees required for these services.
8. After all procedural requirements are met, the governing body must:
    - adopt an ordinance declaring the area annexed to the municipality;
    - undertake the process described in *SC Code Secs. 5-3-310 et seq*., if the annexed property is in a special purpose district; and
    - file notice with the SC Secretary of State, SC Department of Transportation, SC Department of Public Safety, and SC Revenue and Fiscal Affairs Office.

# ANNEXATION BY ELECTOR PETITION AND ELECTION

**25% Petition and Election Method**

Prior to Act 250 of 2000, *SC Code Sec. 5-3-300* conditioned the 25% petition and election method of annexation on submission of a freeholder petition. As noted elsewhere in this handbook, the United States Supreme Court has held it unconstitutional to restrict the right to vote to landowners or freeholders. *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969). Accordingly, Act 250 of 2000 deleted the freeholder petition requirement and replaced it with a requirement that 25% of qualified electors residing in the area to be annexed sign the petition. As amended, the 25% petition and election procedure is constitutional and available for use by municipalities in appropriate circumstances. Municipalities must carefully follow the statutory procedures to successfully use this method.

When voters within the municipality or within the territory proposed to be annexed defeat an annexation, the municipality may not schedule another annexation election in the territory within 24 months after the election. *SC Code Sec. 5-3-210.*

Suggested forms for completing a 25% petition and election annexation are included in this handbook as Appendix C.

**Procedure for 25% Petition Annexation**

*SC Code Sec. 5-3-300* prescribes the following steps for annexation:

1. At least 25% of the qualified electors who are residents in the area to be annexed must sign a petition and file it with the municipality's council. The petition must contain a description of the area to be annexed, the signatures of the requisite number of qualified electors, the address of residence of each signatory, and the code section pursuant to which the proposed annexation is to be accomplished. *SC Code Sec. 5-3-300*.

2. If council finds that at least 25% of the qualified resident electors have signed the petition, it may certify that fact to the county election commission by resolution.

3. Upon receipt of the certification resolution, the county election commission must order an election to be held within the area proposed to be annexed.

    a. The election is a special election and must be conducted under the provisions of Chapters 13 and 17 of Title 7, SC Code of Laws.
    b. The election commission must give at least 30 days' notice of the election in a newspaper of general circulation in the area to be annexed.
    c. At the election, the registered qualified electors residing within the area proposed to be annexed may vote at a location within such area as provided by the county election commission.
    d. The election commission must certify the election result to the municipal council.

4. If a majority of the voters approve the annexation, the council must publish the results of the election.

5. After declaring the election results by resolution, the municipal council must publish in newspaper of general circulation within the municipality a notice containing:

    a. A description of the area to be annexed;
    b. The code section under which the proposed annexation is to be accomplished;
    c. A statement that the qualified electors in the area voted to be annexed; and

d. A statement that the council will approve the annexation, unless at least 5% of the qualified electors within the municipality present a petition to the council within 30 days after the date of the notice requesting that an election be held within the municipality on the annexation.

6. If a 5% petition is not presented to council, the annexation may be completed by enacting an ordinance not less than 30 days after publication of the notice.

7. If a 5% petition is presented to council, the council must delay final reading of the annexation ordinance, certify the petition to the municipal election commission, and order an election.

   a. The election is a municipal election and must be conducted under the provisions of Chapters 13 and 17 of Title 7, SC Code of Laws.
   b. The election commission must give at least 30 days' notice of the election in a newspaper of general circulation in the municipality.
   c. If a majority of the voters approve the annexation, council shall give final reading to the ordinance declaring the area annexed.

8. If an annexation election is defeated (either by the voters inside the territory proposed to be annexed or by the voters in the municipality), no further annexation election within the territory proposed to be annexed shall be initiated within twenty-four months after the date upon which the voting took place.

9. If the governing body adopts an ordinance declaring the area annexed to the municipality, it should then:

   a. follow *SC. Code Sec. 5-3-310 et seq*., if property within a special purpose district is annexed; and
   b. file notice with the SC Secretary of State, SC Department of Transportation, SC Department of Public Safety, and SC Revenue and Fiscal Affairs Office.

10. The 25% petition and election method contains opt-out provisions for freeholders that own at least 25% of the total assessed value of property to be annexed and for freeholders that own at least 10 acres of agricultural real property.

    a. The municipal clerk must give such freeholders written notice of the proposed annexation by certified mail, return receipt requested. No time for this notice is specified, but it should be sent at the time the petition is certified by resolution.
    b. If the freeholder does not reply at least 10 days before the election, the area must be included in the area to be annexed.
    c. If the freeholder files a written notice with the municipal clerk objecting to the annexation, the freeholder's property must be excluded from the area to be annexed.
    d. See *SC Code Sec. 5-3-300(l)* for the definition of "agricultural real property."

As with the 75% petition and ordinance method, to calculate the notice periods, the municipality should consult *SC Code Sec. § 15-29-10*, which provides that "[t]he time for publication of legal notices shall be computed so as to exclude the first day of publication and include the day on which the act or event, of which notice is given, is to happen or which completes the full period required for publication."

# GENERAL REQUIREMENTS

**Petition**

Each form of annexation requires a petition. The 75% petition and ordinance method and the 25% petition and election method establish specific statutory requirements for the petition. *See SC Code Sec. 5-3-150(1)* (for the 75% method) and *SC Code Sec. 5-3-300(B)* (for the 25% method). The 100% petition and ordinance method, however, contains no explicit statutory requirements for the form of the petition.

***Minimum Form of All Petitions***. In *Vicary v. Town of Awendaw*, 427 S.C. 48, 828 S.E.2d 229 (Ct. App. 2019), the town attempted to use a 10-year-old letter from a United States Forest Service representative, stating that the Forest Service had "no objection" to annexation of certain property that it owned, as part of a 100% petition. When challenged, the town argued that *SC Code Sec. 5-3-150(3)* (governing 100% annexations) does not require any particular form of petition, and that the court should not "superimpose certain requirements that are expressly confined to § 5-3-150(1)" (relating to 75% annexations). *Vicary*, 427 S.C. at 54, 828 S.E.2d at 232. The Court of Appeals rejected this argument, concluding that no petition existed with respect to the property owned by the Forest Service.

The Court first noted that "an annexation is complete only upon the acceptance of a petition *requesting* annexation." *Vicary*, 427 S.C. at 55, 828 S.E.2d at 233 (emphasis in original). In other words, a statement that the landowner has "no objection" is not a request for annexation; instead, the petition must *request* annexation. The Court further explained that *any* form of annexation requires "that an actual petition for annexation exist and that the petition at the very least identify the property proposed for annexation." *Id.*

***Resubmission of Petitions***. In 2003, the Bluffton Town Council received but did not act upon a 25% petition. Specifically, a councilmember moved for approval of the petition, but the motion failed for lack of a second. Several months later, the petitioners asked the town if they could resubmit the petition. The Attorney General concluded that the petitioners could resubmit the same petition. 2004 WL 113632 (S.C.A.G. Jan. 12, 2004).

***Defects in Petition***. The South Carolina Supreme Court has held that a municipality may correct technical defects in a petition by subsequent ordinance, but may not correct substantive defects. *Bostick v. City of Beaufort*, 307 S.C. 347, 415 S.E.2d 389 (1992). In that case, the court held that omission of dates in a petition was a technical defect, but failure to describe all or part of the property to be annexed was a substantive defect.

***Amendment of Petitions***. The Attorney General has concluded that "a map or description of an area to be annexed to a municipality cannot be materially amended after the signature of a qualified elector has been affixed to a petition requesting annexation." 2003 WL 21691877, at *3 (S.C.A.G. June 25, 2003). The policy reason for this conclusion is clear; the petitioners signed the petition based on the proposed map or description, and any change to the map of description might have affected their decision to sign. On the other hand, the Attorney General recognized that the petitioners could ratify the change by subsequent signature or documentation.

**Description of the Property to be Annexed**

Each method of annexation requires some level of description of the property or territory to be annexed; the requirements are not always consistent. For example, in 75% petition and ordinance annexations the petition must include "a description of the area to be annexed" and "a plat of the area to be annexed." *SC Code Sec. 5-3-150(1)*. The required public hearing for a 75% annexation, however, must include "a map of the proposed annexation area [and] a complete legal description of the proposed annexation area." *Id*. The statute does not clarify whether the plat required in the petition can also be used as the map for the public hearing, or whether the description required in the petition is sufficient as a "complete legal description" for the public hearing. Similar ambiguities exist for 100% petition and ordinance annexations and for 25% petition and election annexations.

The forms included in Appendices A, B and C hereto specify, in each form, the required and recommended descriptions of the property to be annexed. The best practice is to describe the property to be annexed as specifically as possible.

In *General Battery Corp. v. City of Greer*, 263 S.C. 533, 211 S.E.2d 659 (1975), the plaintiff challenged the description of property to be annexed. The word description contained certain errors, including a failure to close the described boundaries. The court, noting that no witness claimed to have been misled, concluded that the word description was adequate. "[T]he sufficiency of the description ... seems to us to be quite sufficient to enable a person of ordinary reason and intelligence to identify the property involved . . . the references to roads, drives, highways and adjacent boundaries are so clearly expressed that we do not think the adequacy of the description may be properly impugned." *General Battery Corp*., 263 S.C. at 540, 211 S.E.2d at 662 (quotations omitted).

In describing property to be annexed, the municipality should keep this standard in mind and offer a description that is "sufficient to enable a person of ordinary reason and intelligence to identify the property." As noted in the Appendices, the available descriptive tools (in addition to any required plat or map) include legal descriptions from deeds to the properties; narrative descriptions using known landmarks, streets, or natural features; tax map numbers; and street addresses. Note that, particularly in 75% and 25% annexations, the description should describe not only the individual properties but also the overall territory to be annexed.

**Contiguity**

Property annexed pursuant to *SC Code Secs. 5-3-150 or 5-3-300* must be contiguous to the annexing municipality. Some of the specific annexation provisions are silent in this regard or use the terms "abutting" or "adjacent." *See, e.g. SC Code Secs. 5-3-110 (right-of-way area of a street must be abutting) and 5-3-140 (federal or state lands must be adjacent)*. However, the courts and the Attorney General have routinely concluded that all annexations, regardless of form or method, must comply with the contiguity requirements in *SC Code Sec. 5-3-305*:

> "[C]ontiguous" means property which is adjacent to a municipality and shares a continuous border. Contiguity is not established by a road, waterway, right-of-way, easement, railroad track, marshland, or utility line which connects one property to another; however, if the connecting road, waterway, easement, railroad track, marshland, or utility line intervenes between two properties, which but for the intervening connector would be adjacent and share a continuous border, the intervening connector does not destroy contiguity.

For example, in 2005 the Attorney General applied this provision to require contiguity for an annexation under *SC Code 5-3-100*, allowing annexation of property owned by and "adjacent" to the municipality. *See* 2005 WL 292230 (S.C.A.G. Jan. 18, 2005). The South Carolina courts have considered whether a given property is contiguous to the municipality in many cases.

***Intervening Public or Non-Annexable Property***. Prior to 2000, the contiguity question often turned on the presence of some intervening, special type of property. *See, e.g., Glaze v. Grooms*, 324 S.C. 249, 478 S.E.2d 841 (1996) (recognizing that "contiguity is not destroyed by water or marshlands which

separate parcels of highland"); *Tovey v. City of Charleston*, 237 S.C. 475, 117 S.E.2d 872 (1961) (finding that the Ashley River did not destroy contiguity between two areas on either side of the river). Act 250 of 2000, now codified at *S.C. Code Sec. 5-3-305*, conclusively settled these questions by providing that a "road, waterway, right-of-way, easement, railroad track, marshland, or utility line" can neither establish nor defeat contiguity. In other words, as provided in Act 250, the question is whether the property to be annexed, "but for the intervening connector[,] would be adjacent and share a continuous border" with the municipality.

***Requirements Other Than Contiguity***. Some states require that annexed properties not only be contiguous but also share certain additional features, such as "unity, a substantial physical touching, a common boundary, ready access, and contribution to the homogeneity, unity, and compactness of the city." *See Bryant v. City of Charleston*, 295 S.C. 408, 410–11, 368 S.E.2d 899, 900 (1988). The South Carolina courts have rejected this approach and require only contiguity, as now defined in the statute. *See, e.g., Bryant*, 295 S.C. at 411, 368 S.E.2d at 901; *St. Andrews Pub. Serv. Dist. v. City Council of the City of Charleston*, 339 S.C. 320, 324–25, 529 S.E.2d 64, 66 (Ct. App. 2000), *reversed on other grounds by* 349 S.C. 602, 564 S.E.2d 647 (2002). This interpretation, together with the generally restrictive annexation laws, results in many South Carolina municipalities having irregular boundaries and so-called "doughnut holes" of non-annexed properties within the outer limits of the municipality.

***Shoestring Annexations***. Municipalities often seek to establish contiguity by annexing or purchasing a narrow strip of land (a "shoestring") that connects the municipality to the property to be annexed. For example, in 1989 the City of Columbia purchased a five-foot-wide strip of land, approximately one-half mile long, that bordered the Broad River north of Interstate Highway 20. Then, based on the strip's alleged contiguity to other lands, the city sought to annex those lands. The State of South Carolina, through the Budget and Control Board, challenged the annexation. *See State v. City of Columbia*, 308 S.C. 487, 419 S.E.2d 229 (1992). The South Carolina Supreme Court did not address the merits of the annexation, but instead decided that the Budget and Control Board did not have standing to make the challenge. Unfortunately, the South Carolina courts have resolved virtually all challenges to shoestring annexations on grounds other than contiguity. *See, e.g., State ex rel. Wilson*, 391 S.C. 565, 707 S.E.2d 402 (2011), *Vicary v. Town of Awendaw*, 427 S.C. 48, 828 S.E.2d 229 (Ct. App. 2019).

In *St. Andrews Pub. Serv. Dist. v. City Council of Charleston*, 349 S.C. 602, 564 S.E.2d 647 (2002) ("*St. Andrews II*"), however, the Supreme Court ruled that a connecting roadway was sufficient to establish contiguity. As described in the lower court's opinion, the City of Charleston sought "to establish contiguity ... by annexing the length of a road to establish a common boundary ... it argues that because the City's current property abuts a roadway, any parcel that abuts the same roadway is necessarily contiguous if the roadway is also annexed." *St. Andrews Pub. Serv. Dist. v. City Council of Charleston*, 339 S.C. 320, 326, 529 S.E.2d 64, 67 (Ct. App. 2000). Given these facts, the South Carolina Supreme Court ruled, "We find contiguity here.... The fact that the City and the properties share a common boundary is sufficient to establish contiguity." *St. Andrews II*, 349 S.C. at 606, 564 S.E.2d at 649.

Act No. 250 of 2000, now codified at *SC Code Sec. 5-3-305*, amended the definition of "contiguous" to overrule the result in *St Andrews II*, but only insofar as a roadway may no longer be used to establish contiguity. It contains no other requirement of compactness or regularity of shape. In short, the *St. Andrews II* court recognized that contiguity requires only a "common boundary," and not any additional substantive analysis of compactness, regularity, or substantiality. The General Assembly has created an explicit and limited exception to this rule, that no "road, waterway, right-of-way, easement, railroad track, marshland, or utility line" may be used to establish that common boundary.

Act 250 of 2000 and the South Carolina Supreme Court's rejection of any requirements other than contiguity strongly suggest that shoestring annexations are valid in South Carolina. The Municipal Association has therefore, for many years, advised its members that contiguity may be established by even narrow strips of land. Note, however, that under *SC Code Sec. 5-3-305*, the connecting strip cannot be a ""road, waterway, right-of-way, easement, railroad track, marshland, or utility line."

***Point Contiguity***. The definition of contiguity requires that the annexed property "share a continuous border" with the municipality. *SC Code Sec.* 5-3-305. A question that sometimes arises is whether such contiguity may be established when the parcels touch only at a point. For example, are the states of Arizona and Colorado – which touch only at the Four Corners – contiguous? As with shoestring annexations, the South Carolina courts have not definitively answered this question. The better argument, however, is that point contiguity is sufficient to allow annexation. First, many cases suggest that the bottom line is whether the parcels are "touching." *See, e.g., Bryant v. City of Charleston*, 295 S.C. 408, 368 S.E.2d 899 ("[t]he statutory word 'contiguous' must be afforded its ordinary meaning of 'touching'"). Parcels that connect only at a point are "touching." Second, in a non-annexation case interpreting the term "contiguous," the South Carolina Supreme Court stated that "[i]n terms of secondary sources, 'contiguous' commonly means, 'being in actual contact: *touching along a boundary or at a point*; adjacent; next or near in time or sequence.'" *Sonoco Prod. Co. v. S.C. Dep't of Revenue*, 378 S.C. 385, 391, 662 S.E.2d 599, 602 (2008) (emphasis added).

**Freeholder Definition**

For the 75% petition, 100% petition and 25% petition and election annexation methods, as well as for reduction of municipal boundaries under *SC Code Sec. 5-3-280*, a freeholder is any person at least 18 years of age and any firm or corporation, who or which owns legal title to a present possessory interest in real estate equal to a life estate or greater (expressly excluding leaseholds, easements, equitable interests, inchoate rights, dower rights and future interests) and who owns, at the date of the petition or of the referendum, at least an undivided one-tenth interest in a single tract and whose name appears on the county tax records as an owner of real estate. *SC Code Sec. 5-3-240.*

A property owner is counted as one freeholder regardless of the number of parcels of land owned by that freeholder in the area to be annexed.

As noted above in "**Reduction of Corporate Limits**," the courts have held that it is generally illegal to condition the right to vote on ownership of property. Prior to 2000, the annexation laws conditioned multiple boundary adjustment methods on the petition or vote of freeholders. In Act 250 of 2000, the General Assembly deleted all methods of election in which only freeholders could vote, and substituted qualified electors for freeholders in the petition requirements. The definition of freeholder remains relevant in limited contexts. For example, the 75% petition method – which does not require an election – remains subject to freeholder approval. In addition, as noted under "**Reduction of Corporate Limits**" above, an election to reduce the corporate limits remains subject to a freeholder petition requirement. This provision is of questionable legality.

**Assessed Value of Real Property**

***25% Method*.** When a municipality seeks annexation by the 25% petition and election method, the assessed value of the real property of any single freeholder within the area to be annexed shall not exceed 25% of the assessed value of real property of the existing area of the municipality. *SC Code Sec. 5-3-235.* This limitation does not apply to any other method of annexation.

In addition, *SC Code Sec. 5-3-300(I)* contains opt-out provisions for owners of 25% or more of the assessed value of land in the area to be annexed and for the owners of agricultural property. *See notice form in Appendix C.* Note that the calculation methods are different. The prohibition on annexation in *SC Code Sec. 5-3-235* turns on the assessed value of the annexing municipality, while the opt-out provision in *SC Code Sec. 5-3-300* turns on the assessed value or the area to be annexed.

***75% Method; Tax-Exempt Property***. In calculating the assessed value of tax-exempt property for a 75% petition and ordinance annexation, the municipality is not required to impute any value based on appraised or fair market value. In *St. Andrews Pub. Serv. Dist. v. City of Charleston*, 294 S.C. 92, 362 S.E.2d 877 (1987), the city sought to include school district property in a 75% annexation and to assign it an assessed value of zero. The Court sustained this approach: "The school district property therefore has

an assessed value of zero. The trial judge was not required to impute some value to it for purposes of determining total ownership in the area to be annexed." *St. Andrews*, 294 S.C. at 94, 362 S.E.2d at 878–79.

***75% Method; Reassessment*.** The 75% petition and ordinance method in *SC Code Sec. 5-3-150(1)* requires signatures of 75% or more of the freeholders owning at least 75% of assessed value of property in the area to be annexed. When reassessment occurs after the petition is started but before it is acted upon, it appears from the definition of freeholder in *SC Code Sec. 5-3-240* that the municipality should use the assessed value as of the date of the petition for calculating the required percentages.

***Multicounty Parks***. Multicounty park property is considered to have the same assessed valuation it would have if the multicounty park did not exist. *SC Code Sec. 5-3-150(5).* For property within a multicounty park that is owned by the state or another political subdivision, the municipality may annex such property only with the prior written consent of the government entity holding title.

***Fee in Lieu of Taxes Transaction*.** For purposes of the 75% petition and ordinance method pursuant to *SC Code Sec. 5-3-150*, real property owned by a governmental entity and leased to any other entity pursuant to a fee-in-lieu transaction under *SC Code Secs. 4-29-67 or 4-29-69* has an assessed valuation equal to the original cost of the real property as determined under *SC Code Sec. 4-29-67(D)*. For purposes of the annexation procedures, the lessee is the freeholder of the property. *SC Code Sec. 5-3-150(4).*

**Zoning or Rezoning of Annexed Parcels**

Questions often arise with respect to the zoning classification of newly annexed property. For example, petitioners often request or require that annexed property be rezoned as a condition of annexation. In other cases, the property is not zoned when annexed, either because the county has no zoning or the property is in an unzoned area of the county. Finally, the existing county zoning designation may not correspond to any existing zoning designation in the municipality.

State law does not provide a method for zoning or rezoning property at the time of annexation. Zoning is a legislative function and cannot be delegated or contracted away by the governing body. Because territorial jurisdiction over the property is not obtained until it is annexed, some zoning ordinances provide for assignment of an interim zoning district designation in the annexation ordinance. The designation is confirmed through the full zoning amendment procedures specified in *SC Code Sec. 6-29-760* after annexation.

In certain cases — for example, when the owner will not consent to annexation without a firm commitment to a specific zoning designation — the municipality may conduct the annexation and zoning processes concurrently. In this procedure, the municipality would seek a recommendation from the planning commission, notice and conduct a public hearing, and give first reading to the rezoning ordinance *before* the municipality has territorial jurisdiction over the property. The annexation and planning laws, however, support the reading that so long as territorial jurisdiction exists when the municipality gives final reading to the rezoning ordinance, the procedure is valid. Note that the municipality must give final reading to the annexation ordinance *before* giving final reading to the rezoning ordinance. Provided that the municipality has taken all necessary prior actions (including any required public hearing), these readings can occur sequentially at the same meeting of council.

In any case, the municipality should consult with its municipal attorney, and the zoning ordinance should address the subject of zoning or rezoning of newly annexed properties.

**Competing Annexations**

In some cases, two municipalities attempt to annex the same land at approximately the same time. *See, e.g., Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 662 S.E.2d 40 (2008); *City of Columbia v. Town of Irmo*, 316 S.C. 193, 447 S.E.2d 855 (1994). This question is unsettled under South Carolina law. Some states use a "prior pending proceedings rule," which provides that "where two municipalities

attempt to annex the same area at approximately the same time, the legal proceedings first instituted, if valid, have priority." *City of Columbia*, 316 S.C. at 196, 447 S.E.2d at 857. The South Carolina courts have neither accepted nor rejected this rule. *Id*.

**Special Purpose Districts**

When a special purpose district provides one or more public services within the territory to be annexed, the annexation may result in overlapping service areas and, potentially, double taxation for the same service. The question, then, is which entity has the right to serve and/or tax the annexed property. Before 2000, the annexation laws addressed annexation of property within a special purpose district only for 25% petition and election annexations. In Act 250 of 2000, the General Assembly corrected the problem by amending *SC Code Sec. 5-3-310* to apply to all methods of annexation, including 100% and 75% petition and ordinance annexations.

*SC Code Secs. 5-3-310 through 5-3-315* provide a procedure to formulate a plan that balances the interests of the special purpose district and of the residents, taxpayers, and bondholders of the area to be annexed. *SC Code Sec. 5-3-311* provides that, if "the district and municipality do not agree on such a plan within ninety days following a favorable vote at the last referendum election required to be held to authorize the annexation, " then a three-member committee must be appointed to formulate a plan. The "referendum election" language is a holdover from the pre-2000 version of the annexation laws, which applied the procedures for annexing property within a special purpose district only to 25% petition and election annexations. This language creates an ambiguity, however, when the annexation does not require an election. Despite the ambiguity, the Attorney General concluded in 2020 that the "reference to an election [does not] make the provisions of section 5-3-310 or 5-3-311 inapplicable to annexations performed under the [100% or 75%] method[s]." 2020 WL 7000977, at *4 (S.C.A.G. Nov. 12, 2020). On the other hand, the Attorney General admitted that "the timing of when the committee must be formed is not entirely clear as the statute bases it on the timing of the last referendum." *Id.*

**Standing**

Legal standing refers to the capacity of a given party to sue in court. In the annexation context, only certain persons or entities have the right to challenge an annexation. Many annexation cases turn on this question, and the South Carolina courts have been quite willing to reject annexation challenges on the grounds that the plaintiff lacks standing. *See, e.g., Beaufort Cty. v. Trask*, 349 S.C. 522, 563 S.E.2d 660 (Ct. App. 2002) (finding that the county lacked standing to challenge an annexation because it could not "show that there has been an infringement of its own proprietary interests or statutory rights"); *see also Lexington County v. City of Columbia*, 303 S.C. 300, 400 S.E.2d 146 (1991). In 2002, the South Carolina Supreme Court made clear that only parties specifically authorized by the annexation statutes to sue may do so, holding that "the only non-statutory party which may challenge a municipal annexation is the State, through a *quo warranto* action." *St. Andrews Pub. Serv. Dist. v. City Council of City of Charleston*, 349 S.C. 602, 605, 564 S.E.2d 647, 648 (2002).

The standing rules are complex and beyond the scope of this handbook. When subjected to an annexation challenge, however, municipalities should be sure to analyze (and, if appropriate, contest) the legal standing of the challenger.

**Statute of Limitations**

The statute of limitations to challenge an annexation is short and is generally enforced despite the surrounding circumstances. *SC Code Sec. 5-3-270* provides that no person may contest an annexation unless (a) within 60 days, the person files with both the municipal clerk and the clerk of court a notice of intention to contest; and (b) within 90 days, the person commences an action by filing a summons and complaint with the clerk of court.

***Both Filings Required***. In *Moon v. City of Greer*, 348 S.C. 184, 558 S.E.2d 527 (Ct. App. 2002), the plaintiff failed to timely file notice of intention to contest with the city clerk and the clerk of court, but did commence an action within 90 days by filing a summons and complaint. In seeking to avoid the statute of limitations, the plaintiff argued that the requirements were disjunctive and could be satisfied by timely making either filing. The Court disagreed: "A party wishing to challenge the adoption of an annexation ordinance must first, as a condition precedent, timely file a notice of intent to challenge the annexation.... Only when the required notice is given does an aggrieved party have leave to initiate a lawsuit, which must be filed within the ninety-day limitations period." *Moon*, 348 S.C. at 190–91, 558 S.E.2d at 530–31.

***Discovery Rule***. In *Ex rel. Wilson v. Town of Yemassee*, 391 S.C. 565, 707 S.E.2d 402 (2011), private parties contested an annexation by the town. Fifteen months after completion of the annexation, the state moved to intervene in the action on behalf of the private parties. When the town claimed that the statute of limitations prevented the state's motion, the state argued that it had not known about the annexation when it occurred and that a discovery rule should apply. In brief, a discovery rule means the statute of limitations does not begin to run against a party until that party becomes aware of the act subject to the limitations period. The Court rejected this argument and found that the state's motion was untimely. "On balance, while we recognize the State's lack of actual notice of the annexation, we assign greater importance to the policy of finality of an annexation, with its attendant consequences. We believe this policy is reflected in the abbreviated statute of limitations in section 5–3–270." *Ex rel. Wilson*, 391 S.C. at 578, 707 S.E.2d at 409.

***Fraud or Deceit***. In *Vicary v. Town of Awendaw*, 427 S.C. 48, 828 S.E.2d 229 (Ct. App. 2019), discussed above under the heading "**Petition**," the town argued that the statute of limitations barred the plaintiffs' action. The Court held that the town could not benefit from the statute of limitations because of its "deceitful conduct" and its "false statement that it had received a petition from the Forest Service." *Vicary*, 427 S.C. at 56, 828 S.E.2d at 234. The limits of this holding are not clear, in that the Court explained the result by noting that "the passage of time cannot transform a void annexation into a valid one." *Id*. In other words, the application of the statute of limitations in future cases will turn on whether the contested annexation was absolutely void or simply defective in some way. To minimize the risk identified in the *Vicary* case, municipalities should be careful to timely and accurately notify all parties entitled to notice under the annexation laws.

**Filing Notice of Annexation**

In summary, municipalities must notify four state departments or agencies of each annexation: the Secretary of State, the Department of Transportation, the Department of Public Safety, and the Revenue and Fiscal Affairs Office.

Under the general annexation laws, after completing an annexation, the municipality must file a notice with the Secretary of State, the Department of Transportation, and the Department of Public Safety, which notice must contain a written description of the boundary and a map or plat clearly defining the new territory. *SC Code Sec. 5-3-90.* The office of the Secretary of State is the repository for incorporation records and boundary adjustment records. The Department of Transportation produces highway maps that reflect municipal boundaries. The Department of Public Safety uses the information to determine who has law enforcement jurisdiction.

The Department of Transportation requires tax map numbers, a surveyor's plat or written description, a tie point identified on a map, statement of portions of Department of Transportation rights-of-way included or excluded, and a summary listing of parcels annexed by ordinance numbers and tax map numbers. The Department of Transportation does not require annexation petitions, zoning information, council meeting minutes, notices, or demographic information.

Pursuant to the Transportation Network Company Act (Act 88 of 2015), in addition to the requirements of *SC Code Sec. 5-3-90*, municipalities must provide annexation information to the Revenue and Fiscal Affairs Office within 30 days after the annexation is complete. Such information must include

a written description of the boundary, along with a map or plat which clearly defines the new territory added. *SC Code Sec. 58-23-1700(J)*.

Although not required by the annexation statutes, the municipality should file an annexation notice with other interested or affected agencies, including the following:

- all municipal departments, municipal judges, and the chief magistrate;
- county administration, sheriff, clerk of court, assessor, auditor, and treasurer;
- 911 and emergency services;
- the South Carolina Law Enforcement Division;
- county boards of voter registration, and county and municipal election commissions;
- school districts and special purpose districts;
- private service providers;
- utility franchisees;
- Department of Transportation district engineer and county engineer; and
- other interested agencies.

**Voting Rights Act: Section 5 Preclearance**

Section 5 of the Voting Rights Act of 1965 *(42 U.S.C.A. Sec. 1973*), among other things, prohibits states and political subdivisions in certain "covered jurisdictions" from implementing a change in any standard, practice, or procedure that might affect voting rights without first obtaining approval from the United States Department of Justice. This requirement is commonly known as preclearance. Section 4(b) of the Voting Rights Act contains a coverage formula to determine the jurisdictions subject to preclearance requirement. South Carolina and its political subdivisions were included in the covered jurisdictions. Applicable law and United States Supreme Court decisions established that the preclearance requirements applied to municipal annexations. *Perkins v. Matthews*, 400 U.S. 369 (1971); *George v. United States*, 422 U.S. 358 (1975); *28 C.F.R. Section 51.13(e)*. Accordingly, until 2013, all annexations in South Carolina required preclearance.

On June 25, 2013, the United States Supreme Court held that it is unconstitutional to use the coverage formula to determine which jurisdictions are subject to the preclearance requirements. *See Shelby County v. Holder*, 570 U.S. 529 (2013). In other words, the *Shelby County* decision means that the jurisdictions identified by the coverage formula in Section 4(b) no longer need to seek preclearance for annexations or other changes affecting voting, unless they are covered by a separate court order.

Earlier editions of this handbook contained detailed guidance on the preclearance process. Given that annexations no longer require preclearance, this handbook omits that guidance. Future changes in law may reintroduce preclearance requirements, but as of this date of this handbook such reintroduction seems unlikely.

# ANNEXATION OF CERTAIN PROPERTY TYPES

**Municipal Property**

When an entire area is owned by a municipality and is adjacent thereto, the territory may be annexed by resolution of the council and passage of an ordinance to that effect. *SC Code Sec. 5-3-100*. This statute presents an ambiguity in providing that "the territory may be annexed *by resolution* of the governing body of the municipality," but that "[u]pon the adoption of the resolutions required by this section and *the passage of an ordinance* to that effect by the municipality, the annexation is complete." In other words, it appears to require that the municipality pass *both* a resolution and an ordinance. Presumably the resolution would represent the municipality's consent to annexation as property owner, while the ordinance would represent the municipality's acceptance and completion of the annexation as a sovereign government. It would seem that a single ordinance could satisfy both purposes, but the more prudent course would be strictly to comply with the statute by passing both a resolution and an ordinance.

**County Property**

When an entire area is owned by the county in which the municipality is located and is adjacent thereto, it may be annexed by resolution of both the municipal and county councils. As with annexation of property owned by the municipality, the statute provides that "[u]pon the adoption of the resolutions required by this section and the *passage of an ordinance* to that effect by the municipality, the annexation is complete." *SC Code Sec. 5-3-100*. At a minimum, then, such annexation requires a resolution of the county council and both an ordinance and a resolution of the municipal council. No election is required under this procedure.

**School Property**

If the area to be annexed is owned by a school district, it may be annexed upon the petition of the school district's board of trustees to the council. Upon agreement of the council to accept the petition and the passage of an ordinance to that effect, the annexation is complete. No election is required. *SC Code Sec. 5-3-130.*

**State Property**

If the territory to be annexed is owned by the state and is adjacent to the municipality, it may be annexed upon petition executed by the State Fiscal Accountability Authority. Upon agreement of the council to accept the petition and the passage of an ordinance to that effect, the annexation is complete. No election is required. *SC Code Sec. 5-3-140.*

**Federal Property**

Territory owned entirely by the federal government may be annexed upon petition of the federal government and passage of an ordinance by the council. *SC Code Sec. 5-3-140.*

**Airport Districts**

A municipality may not annex property owned by an airport district composed of more than one county without prior written approval of the district's governing body. *SC Code Sec. 5-3-15.*

**Multicounty Park**

Property in a multicounty park and owned by the state may be annexed only with prior written consent of the state. Property in a multicounty park and owned by a political subdivision may be annexed only with prior written consent of the governing body of the political subdivision holding title. In other words, publicly owned property in a multicounty park cannot be annexed by the 75% petition and ordinance method without consent of the owner. *SC Code Sec. 5-3-150(5)*.

**Manmade Industrial Peninsula**

By legislation enacted in 1979, the General Assembly provided that a municipality may annex "[a] n area in this State located more than twelve miles from the Atlantic Ocean, which is a peninsula being predominately industrial in character, separating a freshwater reservoir from a body of brackish water subject to tidal influences, and created by the construction of a manmade canal and manmade dam" only by the 100% or 75% petition and ordinance methods. *See SC Code Sec. 5-3-155*.

**Professional Sports Teams**

In connection with the recruitment of the Carolina Panthers to build a practice facility in South Carolina, Act 83 of 2019 (now codified at *SC Code Sec. 5-3-20*) established that no municipality may annex any real property owned by a professional sports team without prior written consent of the professional sports team.

**Cemeteries**

By ordinance, a municipality may extend its corporate limits to include any cemetery adjoining the municipality, for the purposes of police and sanitary measures only. The municipality cannot tax the cemetery in any manner. *SC Code Sec. 5-3-250*.

**Church Property**

Any area owned by an established church or religious group that is contiguous to a municipality may be annexed to the municipality upon petition by the church or religious group. Upon agreement of the council to accept the petition and passage of an ordinance, the annexation is complete. No election is required. *SC Code Sec. 5-3-260*.

**Corporate Property**

If a corporation owns the entire area to be annexed, the property may be annexed on the petition of the stockholders. Upon agreement by the council to accept the petition and the passage of an ordinance to that effect, the annexation is complete. No election is required. *SC Code Sec. 5-3-120*

*SC Code Sec. 5-3-120* was adopted prior to the 75% and 100% petition methods authorized by *SC Code Sec. 5-3-150*. Corporate property may be annexed by those methods upon petition of an authorized corporate officer, as well as by the 25% petition and election method.

**Highways and Streets**

Whenever the whole or any part of a street, roadway, or highway has been accepted for and is under permanent public maintenance by a municipality, a county, or the state Department of Transportation, that portion of any right-of-way not exceeding the width thereof lying beyond but abutting on the corporate limits of the municipality may be annexed to the municipality by adoption of an ordinance, without an election, upon prior consent in writing of any public agency other than the municipality

engaged in maintenance of the right-of-way area to be annexed. The director may give consent on behalf of the Department of Transportation. County council gives consent on behalf of any county. *SC Code Sec. 5-3-110.*

Roads within an area to be annexed or a road which separates the annexed area from the municipal limits may be included in the description of the area and annexed without consent. The consent requirement applies when an adjacent road right-of-way is the only area being annexed. The director of the Department of Transportation has historically concurred with this interpretation of *SC Code Sec. 5-3-110*.

An intervening road does not destroy contiguity as defined in *SC Code Sec. 5-3-305* when the property would be contiguous but for the road. However, a road connecting one property to another does not provide contiguity. Annexation of a road to reach property that is not directly across the road from municipal limits is not authorized. *SC Code Sec. 5-3-305* ("[c]ontiguity is not established by a road, waterway, right-of-way, easement, railroad track, marshland, or utility line which connects one property to another").

**Easements**

Under the definition of contiguous in *SC Code Sec. 5-3-305*, an intervening road, waterway, right-of-way, easement, railroad track, marshland or utility line does not destroy contiguity between properties that would share a continuous boundary but for the intervening connector. On the other hand, such a connector of properties does not establish contiguity between properties that would not share a boundary without the existence of the connector. Therefore, municipalities may not use the length of an easement, road, or other connector to establish contiguity between otherwise noncontiguous properties.

## POLICY CONSIDERATIONS

A municipality can best undertake annexations by establishing and following an annexation policy that guides initiation of and response to petitions for annexation. Council could include the policy in the municipality's Comprehensive Plan, or it could promulgate the policy in a separate resolution or ordinance. The policy should include priorities for areas to be annexed based on the interests of owners and the municipality. This handbook discusses some factors to consider when adopting an annexation policy below.

**Best Interest of Municipality**

Council's primary concern should be whether a proposed annexation would be in the best interest of the municipality and its residents. Growth by annexation is generally a net positive because it expands services in urban areas, expands the tax base, increases population and involves more people in the political processes that determine the level of services they receive.

In some cases, however, the revenues, taxes and fees derived from an annexed area are inadequate to offset the financial burden of furnishing services to the area. In such cases, annexation would place an additional burden on existing municipal residents to expand services. In many cases, the long-range benefits outweigh the short-term additional burdens. The council has the duty to weigh all the relevant factors and make an informed decision on each proposed annexation.

An annexation policy that identifies the factors of concern and provides a method for evaluating the impact is helpful.

**Initiation of Petition by Municipality**

All annexation petitions require the signatures of electors and/or freeholders, and a municipality cannot initiate the annexation process itself except with respect to property it owns. There is nothing in statutory law, however, that prohibits a municipality from promoting and financing the circulation of an annexation petition. *See Tovey v. City of Charleston*, 237 S.C. 475, 117 S.E.2d 872 (1961).

**Annexation Requirement for Services and Nonresident Rates**

Many municipalities in this state and around the nation have a policy of extending municipal utility and fire services (a) to contiguous areas only if the residents agree to be annexed, and (b) to noncontiguous areas only if the owners execute an agreement to annex the property when it becomes contiguous. Some municipalities require annexation agreements be recorded in the county land records.

In 2010, the Circuit Court for the Sixteenth Judicial Circuit upheld an annexation agreement requiring landowners to file annexation petitions with the municipality. *See Grigg v. City of Rock Hill*, Order Granting Defendant's Motion for Summary Judgment, C.A. No. 10-CP-46-4072 (16th Judicial Cir. Ct. December 17, 2010). In that case, in 1998 the City of Rock Hill required the developer of Miller Pond subdivision to sign and record an annexation agreement as a condition of receiving municipal utility service. Twelve years later, when the property became contiguous to the municipal limits, the city presented annexation petitions to the then-current landowners in the Miller Pond and required that they sign them. The landowners sued, claiming that the annexation agreements were unenforceable against them as subsequent purchasers.

The court found that the annexation agreements were restrictive covenants that ran with the land and were enforceable against the subsequent landowners. The landowners took title to their property with legal notice of the agreement. The court further found that horizontal privity is not a required element of restrictive covenants in South Carolina and that, even if it were, the city satisfied it. The court also held that the covenants sufficiently touched and concerned the land, as they significantly affected all parties' property interests. *Grigg* therefore establishes both that annexation agreements are enforceable and that the agreements themselves should be recorded in the chain of title as restrictive covenants.

Cases in other states have upheld similar annexation policies against due process, equal protection, and First Amendment attacks. In *Blackwell v. City of St. Charles*, 726 F. Supp. 256 (E.D. Mo. 1989), the court held that an annexation requirement was "a reasonable means of promoting a legitimate public interest" by promoting orderly development within the immediate planning area, avoiding fragmented corporate limits, and furthering the primary purpose of providing municipal services to its own tax paying citizens. The court ruled that the policy was "a rational requirement of assent to a particular proposition in order to obtain a benefit to which the would-be recipient has no legal entitlement." The court noted there was a "distinction between governmental compulsion and conditions relating to governmental benefits." The nonresident is free to agree to or reject the required assent; there is no compulsion.

There is clear statutory and case law in this state which authorizes a municipality to furnish services to nonresidents by contract on such terms as council deems in the best interest of municipal residents. *SC Code Sec. 5-7-60; Childs v. City of Columbia*, 87 S.C. 566, 70 S.E. 296 (1911); *Childs v. City of Columbia*, 87 S.C. 573, 70 S.E. 299 (1911); and *Calcaterra v. City of Columbia*, 315 S.C. 196, 432 S.E.2d 498 (Ct. App. 1993). In each of these cases, the Court ruled that a municipality does not owe a public duty to nonresidents to provide services to them on reasonable terms. However, surplus services may be provided on terms determined by the sole discretion of council to be "for the sole benefit of the city at the highest rates obtainable." A nonresident has only such rights as are acquired by contract with the municipality.

It is common practice in South Carolina to charge nonresidents double the in-city rate for water and sewer services. In *Sloan v. City of Conway*, 347 S.C. 324, 555 S.E.2d 684 (2001), the court upheld out-of-city rates that were double the in-city rates. Likewise, the *Calcaterra* case upheld the City of Columbia's approximately double rates charged nonresidents. In the *Childs* cases, the rate upheld was four times the in-city rate. Nothing prohibits a municipality from using higher nonresident rates to encourage annexation. Municipalities may make a profit on the sale of services to nonresidents. *Sossamon v. Greater Gaffney Metropolitan Utilities Area*, 236 S.C. 173, 113 S.E.2d 534 (1960).

The United States Supreme Court, in *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60 (1978), ruled that nonresidents had no claim under the equal protection and due process clauses of the Constitution merely because they could not vote for the municipal officials who set the policy affecting nonresidents. The nonresident has no property interest in or right to municipal service.

In framing an annexation policy applicable to nonresidents, it would be prudent to make a record of the basis for the classification of property to be affected and the public purposes for the policy. The policy should be uniformly applied within a classification.

Unless there are existing contractual obligations to the contrary, a newly adopted policy could be applied to nonresidents already receiving service. Service contracts with no specified term are terminable at the will of either party upon reasonable notice. *Childs v. City of Columbia, supra.*

**Feasibility Study**

The 75% petition and ordinance method of annexation, *SC Code Sec. 5-3-150(1)*, requires the annexing municipality to conduct a public hearing. During the public hearing, the municipality must present a statement addressing what public services the municipality will assume or provide, the taxes and fees required for those services, and a timetable for services. No other annexation method has this requirement. However, the feasibility of providing services is an important consideration for any proposed annexation.

Council should analyze and consider the costs, benefits, and estimated revenues of a proposed annexation before acting on the petition. The analysis should include these elements:

- an inventory of existing outside services;
- an identification of the provider of each service and its contractual obligations, including availability of the service if desired after annexation;
- an identification of services to be assumed or provided by the annexing municipality;
- an identification of efficient service areas and areas that cannot be fully served;
- a determination of the level of additional services needed;
- a determination of the most cost-effective way to provide services to the area;
- a projected timetable for provision of services;
- the revenues needed to support services;
- the estimated revenues from current taxes, fees, and service charges;
- the projected level of taxes and fees required to support services;
- a comparison of costs to property owners before and after the annexation; and
- an identification of the burdens and benefits of annexation.

It is not unusual to discover that revenues from an annexed area will not offset the cost of providing services, particularly in residential areas. In such cases, the municipality might well forego the annexation.

**Potential Benefits of Annexation**

In discussing a potential annexation with property owners, and in considering a possible annexation, a municipality should be aware of the potential benefits to both the property owners and the municipality. Benefits to annexed property owners may include these points:

- improved services,
- additional services such as utilities and street lights,
- lower service charges,
- a higher level of fire protection and law enforcement,
- lower property insurance premiums,
- planning, zoning, and land use regulation, and
- participation in municipal government.

Benefits to the annexing municipality may include these points:

- more individuals participating in municipal government,
- economy of scale in providing services,
- increased revenue sharing and revenue base to support services,
- better planning for the urban area, and
- stronger corporate community of individuals with similar needs.

**Public Relations**

The word “annexation” produces widely different reactions from property owners. Those who need and want municipal government and services support annexation. Those who do not want to be in a municipality sometimes vigorously oppose it. Those who want municipal services without municipal government are often the most difficult audience.

A good public relations program is essential to promote annexation. It is critical to provide accurate information on service capability and timetables, realistic estimates when hard information is unavailable, and a clear picture of benefits and costs, including taxes and service charges. A straightforward educational campaign can correct misinformation and misunderstandings. Information should be inclusive, “warts and all,” to avoid any hint of misleading anyone.

Find key property owners who support annexation and enlist their help in presenting annexation in the best possible light to those who are opposed or undecided. Provide them with all the information needed to give clear answers to questions. Invite them to circulate petitions. Elected municipal officials should be actively involved in annexation efforts.

If appropriate, council should conduct public hearings after providing appropriate notice. As noted above, annexation by the 75% petition and ordinance method requires a public hearing after giving a 30-day newspaper notice, posting on the municipal bulletin board, and providing written notification to the taxpayers of record of all properties within the proposed annexed area. The information provided at the public hearing for the 75% method must include a map and complete legal description of the proposed annexation area, a statement of public services to be assumed or provided by the municipality, and the taxes and fees required for these services. The notice must include a projected timetable for providing or assuming these services.

**Priorities**

A municipal annexation policy should address setting priorities concerning geographic areas for annexation and the time frame to make the annexation economically feasible.

When setting priorities, council should weigh the added burdens to resident taxpayers against the long-term benefits to the municipality.

A format for identifying the municipal factors in support of and against an annexation and weight given to those factors could be useful. The feasibility study could include the setting of priorities.

**Strategy**

Developing a logical annexation policy includes creating a strategy for promoting annexation. Base the strategy on a positive, straightforward, enlightening and friendly approach. Stimulate interest without being too aggressive. The municipality should strive to make outside residents feel that they are needed to strengthen the urban community. Present the benefits as well as the burdens. Emphasize the role new residents can have in making the city a better place to live and work. The mayor and council should be actively involved in issuing the invitation for annexation, providing information and assisting nonresidents who are considering coming into the city.

In addition, there should be a strategy for dealing with opponents. Often, municipalities are accused of forcing annexation through service policies and rates. There should be a clear explanation of the policies and the municipality's role in providing services. Nonresidents need to understand they have no legal right to municipal services. Extending the services to promote growth of the municipality is consistent with the council's fiduciary responsibility.

**Tax Relief and Incentives**

Commercial or industrial property owners who consider annexation often request property tax relief, exemption from business license taxes and permit fees, or direct aid in the form of funding or gift of property. The annexation policy could address these matters. There are, however, legal limitations on the incentives that a council can offer.

***Property Taxes*.** *SC Const. Art. X, Sec. 1* requires property taxes to be levied on uniform assessments in the classifications established in that section. A municipality has no authority to exempt property from *ad valorem* taxes except pursuant to *SC Const. Art. X, Sec. 3*. The state constitution allows a municipality, by ordinance, to exempt the following for a period of not more than five years:

- all new manufacturing establishments;
- all additions to existing manufacturing establishments, including additional machinery and equipment costing more than fifty thousand dollars;
- all new corporate headquarters, corporate office facilities, distribution facilities, and additions to such facilities; and
- all facilities of new enterprises engaged in research and development activities, and additions to such facilities.

***Business License Taxes*.** There is no authorization for exempting an annexed business from business license taxes. *SC Code Sec. 5-21-60* requires business license taxes to be prorated for an annexed business for the number of months it is in the municipality. The Business License Standardization Act, *SC Code Secs. 6-1-400 through -420*, allows a municipality, upon a finding of a rational basis and by a positive majority vote of council, to provide by ordinance for reasonable subclassifications based upon particularized considerations as needed for economic stimulus. In theory, annexation may serve economic stimulus. However, Fourteenth Amendment equal protection guarantees require that all members who are or should be within the class be treated equally. Exemption of one business in a class while taxing others could be challenged as a denial of equal protection. Classifying businesses solely based on annexation is questionable, and the courts have yet to consider the issue.

***Grants and Loans*.** *SC Const. Art. X, Sec. 11* prohibits municipalities from pledging or loaning their credit to benefit any individual, company, association, corporation, or religious or private education

institution. This section further prohibits political subdivisions from becoming joint owners or stockholders in any company, association, or corporation. All municipal funds are held in trust for use for public purposes.

***Real Property*.** There is some flexibility for disposing of real property owned by a municipality. The courts have ruled that fair compensation for public property is a matter of discretion exercised by elected officials. The courts will not interfere with that determination if there is no illegality, fraud or clear abuse of authority. *See Bobo v. City of Spartanburg*, 230 S.C. 396, 96 S.E.2d 67 (1957); and *Cooper v. South Carolina Pub. Svc. Auth.*, 264 S.C. 332, 215 S.E.2d 197 (1975). Attorney General Opinion No. 1986-117 states that city council could convey property for less than fair market value (in effect donating the property for industrial development) to a company that would then locate a major distribution center resulting in providing many jobs. Conveyance of municipal property requires an ordinance, see *SC Code Secs. 5-7-40 and 5-7-260*. The sale of municipal property may be negotiated, and public auction is not required.

***Service Fees*.** Municipalities may use service fees only for the services for which the fees are paid, and may be required to keep such fees in a fund separate from the general fund. *SC Code Sec. 6-1-330*. Service charges must be uniform. *Section 5-7-30*. Therefore, exempting some recipients of the service, but not others, could be challenged as a violation of the uniformity requirement.

***Permit Fees*.** Exempting the owner of or contractor for a newly annexed project from permit and inspection fees raises questions under the equal protection guarantees of the federal and state constitutions.

# APPENDIX A: 100% ANNEXATION FORMS

**Although no requirements for the form or content of the petition are prescribed, certain minimum information is necessary as suggested in the following two forms.**

## Form of Petition for 100% Annexation

**TO THE MAYOR AND COUNCIL OF THE CITY/TOWN OF _____:**

The undersigned, being 100% of the freeholders owning 100% of the assessed value of the property in the contiguous territory described below and shown on the attached plat or map, hereby petition for annexation of said territory to the City/Town by ordinance effective as soon hereafter as possible, pursuant to South Carolina Code Section 5-3-150(3).

The territory to be annexed is described as follows:

[**Required:** Insert description of territory. The description may be taken from deeds or may be drawn to cover multiple parcels using known landmarks. It should be definitive enough to accurately fix the location.]

[**Recommended:** The property is designated as follows on the County tax maps: *insert tax map numbers and street addresses.*]

[**Recommended:** A plat or map of the area should be attached. A tax map may be adequate.]

[**Optional:** It is requested that the property be zoned as follows: _____]

| _____ | _____ | _____ |
|---|---|---|
| Signature | Street Address, City | Date |

[Add signature lines as necessary.]

**For Municipal Use:**

Petition received by: _____ Date: _____

Description and Ownership verified by: _____ Date: _____

Recommendation: _____

By: _____ Date: _____

## Form of Ordinance for 100% Annexation

**WHEREAS**, a proper petition has been filed with the City/Town Council by 100% of the freeholders owning 100% of the assessed value of the contiguous property hereinafter described petitioning for annexation of the property to the City/Town under the provisions of SC Code Section 5-3-150(3); and

**WHEREAS**, it appears to Council that annexation would be in the best interest of the property owners and the City/Town;

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the City/Town of _____, South Carolina, this ___ day of _____, 20___ that the property herein described is hereby annexed to and becomes a party of the City/Town of _____ effective _____, 20___.

[*Insert description of property as it appears in the petition*.)

The property shall be zoned _____ pending confirmation or rezoning pursuant to the Zoning Ordinance.

First reading: _____

Final reading: _____

_____

Mayor

Attest:

_____

Clerk

# APPENDIX B: 75% ANNEXATION FORMS

**The following three forms may be used to comply with procedural requirements for annexation by the 75% petition and ordinance method.**

## Form of Petition for 75% Annexation

**TO THE MAYOR AND COUNCIL OF THE CITY/TOWN OF _____:**

The undersigned, being at least 75% of the freeholders owning at least 75% of the assessed value of the property in the contiguous territory described below and shown on the attached plat, hereby petition for annexation of said territory to the City/Town by ordinance effective as soon hereafter as possible, pursuant to SC Code Section 5-3-150(1).

The territory to be annexed is described as follows:

[**Required:** Insert description of territory.]

[**Recommended:** The property is designated as follows on the County tax maps: [*insert tax map numbers and street addresses*]

[**Required:** A plat of the area must be attached.]

The first signature was affixed on this Petition on _____.

[**Required:** The Petition must be dated before the first signature is affixed, and all signatures must be obtained within six months of that date.]

| _____ | _____ | _____ |
|---|---|---|
| Signature | Street Address, City | Date |

[Add signature lines as necessary.]

**For Municipal Use:**

Petition received by: _____ Date: _____

Description and Ownership verified by: _____ Date: _____

Recommendation: _____

By: _____ Date: _____

## Form of Notice of Public Hearing for 75% Annexation

The Mayor and Council of the City/Town of _____ will conduct a public hearing at _____ on _____, 20___, at _____ o'clock [a.m./p.m.] pursuant to SC Code Section 5-3-150(1) on a petition for annexation of the following property:

[*Insert property description from petition. It is not necessary to publish a map in the newspaper; however, it is recommended that a map be posted with the notice on the municipal bulletin board and sent to all those entitled to notice listed in Section 5-3-150(1)*]

The following services for the area will be assumed or provided by the City/Town on the following timetable: [*List services to be assumed or provided and a timetable*.]

**[Optional]** The taxes and fees required for these services are: [*List taxes and fees with details*.]

The petition requests that the property be zoned _____.

The petition is available for public inspection at the Municipal Clerk's office in City/Town Hall during normal business hours.

==========

**Publication checklist – 30 days prior to hearing:**

- Publish in a newspaper of general circulation in the community.
- Post on the municipal bulletin board.
- Mail copy of notice to taxpayers of record of properties in area to be annexed.
- Mail to the chief administrative officer of the county.
- Mail to all public service or special purpose districts in the area to be annexed.
- Mail to all fire departments, whether volunteer or full time, in the area to be annexed.

## Form of Ordinance for 75% Annexation

**WHEREAS**, a proper petition has been filed with the City/Town Council by at least 75% of the freeholders owning at least 75% of the assessed value of the contiguous property hereinafter described petitioning for annexation of the property to the City/Town under the provisions of SC Code Section 5-3-150(1); and

**WHEREAS**, it appears to Council that annexation would be in the best interest of the property owners and the City/Town; and

**WHEREAS**, notice and public hearing requirements of SC Code Section 5-3-150(1) have been complied with;

**NOW, THEREFORE, BE IT ORDAINED** by the Mayor and Council of the City/Town of _____, South Carolina, this ___ day of _____, 20___, that the property herein described is hereby annexed to and becomes a part of the City/Town of _____ effective _____, 20___.

[*Insert description of property as it appears in the petition*.]

The property shall be zoned _____ pending confirmation or rezoning pursuant to the Zoning Ordinance.

First reading: _____

Final reading: _____

_____

Mayor

Attest:

_____

Clerk

# APPENDIX C: 25% ANNEXATION FORMS

**The following forms may be useful in annexing territory pursuant to the 25% petition and election method.**

**Note: The county election commission conducts the election in the area to be annexed. Unless there is an agreement for the county election commission to conduct municipal elections pursuant to SC Code Section 5-15-145, the municipal election commission conducts the election within the municipality initiated pursuant to Section 5-3-300(F), (G) and (H) by petition of 5% of municipal electors. Because it is unlikely this procedure will be used, forms for an election within the municipality are not provided. Forms for the county election commission procedure may be adapted for this purpose when needed.**

## Form of Petition for 25% Petition Form

**TO THE MAYOR AND COUNCIL OF THE CITY/TOWN OF _____:**

The undersigned qualified electors resident within the territory described below hereby petition for an election in said territory pursuant to SC Code Section 5-3-300 on the question of extension of the corporate limits of the municipality by annexation of the described territory.

The territory to be annexed is described as follows:

[***Required:*** *Insert description of territory. The description may be taken from deeds or may be drawn to cover multiple parcels using known landmarks. It should be definitive enough to accurately fix the location*.]

[**Recommended:** The property is designated as follows on the County tax maps: *insert tax map numbers and street addresses.*]

[**Recommended:** A plat or map of the area should be attached. A tax map may be adequate.]

[**Optional:** It is requested that the property be zoned as follows: _____]

| _____ | _____ | _____ |
|---|---|---|
| Signature | Street Address, City | Date |

[Add signature lines as necessary.]

**For Municipal Use:**

Petition received by: _____ Date: _____

Description and Ownership verified by: _____ Date: _____

Recommendation: _____

By: _____ Date: _____

## Form of Resolution Certifying Petition for 25% Annexation

**BE IT RESOLVED** by the Mayor and Council of the City/Town of _____, South Carolina, this ___ day of _____, 20___, as follows:

It is hereby certified that the City/Town of _____ has received petitions signed by 25% or more of the qualified electors resident within the area described below which is proposed to be annexed to the City/ Town pursuant to SC Code Section 5-3-300 and the County Election Commission is hereby requested to conduct an election to be held on _____, 20___, within the area proposed to be annexed on the question of extension of the corporate limits of the municipality by annexation of the following described area:

[Insert description as it appears in the petition.)

The County Election Commission is requested to certify the results of the election to City/Town Council.

_____

Mayor

Attest: _____

City/Town Clerk

## Form of Letter to County Election Commission Requesting 25% Annexation Election

**To: County Commissioners of Election**

We enclose a copy of the Resolution adopted by the Council of the City/Town of _____ on _____, 20___, certifying that a proper petition has been received asking for annexation of the area described in the resolution generally known as _____ and requesting a special election in the described area on _____, 20___, pursuant to SC Code Section 5-3-300 on the question of the annexation.

The election is not a municipal election, but it is a special county election which must be conducted pursuant to SC Code Title 7, Chapters 13 and 17, as provided by SC Code Section 5-3-300(D).

We also enclose a Notice of Election for your convenience in giving the necessary notice by newspaper at least 30 days prior to the date set for the election in accordance with SC Code Section 5-3-300(D), and a form which you may use to report the results of the election.

Yours very truly,

_____

City/Town Clerk

cc: Municipal Attorney

County Attorney

## Form of Notice to Owners of Property Eligible for Exclusion from 25% Annexation

**To: Owners of 25% of assessed value of property to be annexed and owners of agricultural property in area to be annexed**

Pursuant to SC Code Section 5-3-300(I), please take notice that the area described in the enclosed Resolution of the Council of the City/Town of _____ has been proposed for annexation to the municipality upon favorable vote of electors in the area in an election to be held on _____, 20___.

You may be a freeholder of property eligible for exclusion from the annexation. Written notice of your objection to the annexation of your property must be filed with the undersigned municipal clerk at least ten (10) days prior to the election.

Please refer to SC Code Section 5-3-300(I) to determine eligibility for exclusion. A copy is enclosed.

Date mailed: _____ _____

City/Town Clerk

**Certified Mail**

**Return Receipt Requested**

## Form of Notice of 25% Annexation Election

In accordance with the certificate of the Council of the City/Town of _____, South Carolina, and pursuant to SC Code Section 5-3-300, a special election will be held in the territory described below on _____, 20___, for the purpose of determining whether said territory shall be annexed to the City/ Town of _____, South Carolina.

The territory proposed to be annexed is described as follows: [Insert description of area proposed to be annexed.]

Polling places where registered voters residing in the described area may vote are located at:

[List locations of polls.]

The polls will be open from 7:00 AM to 7:00 PM.

_____

Chairman, _____ County Election Commission

Date: _____

## Form of Certification of Election Results by County Election Commission

To: Mayor and Council

City/Town of _____

Re: Annexation Election

Area: _____

Pursuant to SC Code Section 5-3-300(D), the results of the annexation election conducted this date in the above area described in the Resolution Certifying the 25% Annexation Petition are certified to be as follows:

In favor of annexation: _____ votes

Opposed to annexation: _____ votes

Contested ballots: _____ votes

**Total Ballots:** _____

_____ County Election Commission

Date: _____ By: _____

## Form of Resolution Publishing Election Results

**BE IT RESOLVED** by the Mayor and Council of the City/Town of _____ this ___ day of _____, 20___, as follows:

Pursuant to SC Code Section 5-3-300, an annexation election was held in the area described in the attached notice by the _____ County Election Commission which has reported the attached results of election which are hereby published.

The City/Town Clerk is hereby directed to publish the newspaper notice of intent to annex attached hereto as required by SC Code Section 5-3-300(E).

_____

Mayor

Attest:

_____

City/Town Clerk

## Form of Notice of Intent to Complete 25% Annexation

Pursuant to SC Code Section 5-3-300, the qualified electors of the area described below voted in an election on _____, 20___, to be annexed to the City/Town of _____. City/Town Council intends to approve the annexation by ordinance 30 days hereafter unless a petition signed by 5% or more of the electors within the City/Town of _____ is presented to City/Town Council within 30 days from the date of publication of this notice requesting an election within the City/Town of _____ on the question of annexation of the following area:

[Insert description of area to be annexed.]

[**Note:** This notice must be run in a newspaper of general circulation within the city after the results of the annexation election are published by written resolution of city council. If a petition is received, an election within the city must be held pursuant to SC Code Section 5-3-300(G), and annexation must be approved by majority vote.]

Municipal Association of South Carolina
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Columbia, SC 29211
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