

Expedited Type 2 Annexations: Petitions By All Property Owners With or Without Consent of Municipality & Township(s)

General Comments

Chapter 5 will deal with “Expedited Type 2 Annexations” — those authorized under ORC 709.023. In Expedited Type 2 Annexations, the petition must include the signatures of all property owners in the territory proposed to be annexed. In addition, the territory annexed is not, at any time, to be excluded from the township(s) under ORC 503.07 (ORC 709.023 (A) & (H)). The territory, thus, remains subject to the township’s real property taxes. The only exception is in the case where an annexation agreement (ORC 709.192) or a cooperative economic development agreement (ORC 701.07) has been entered into that allows some or all of the territory to be excluded or removed from the township(s). Furthermore, the annexation may or may not have the consent of the municipality or township(s).

Special Nature of Annexation Proceedings

Under an Expedited Type 2 Annexation, the annexation proceedings are conducted under ORC 709.02 (C), (D), and (E) and ORC 709.021 and 709.023 to the exclusion of any provision in Chapter 709 of the Revised Code.

However, ORC 709.021 provides that the following ORC Sections apply to the granting of this type of annexation:

- A. 709.014 -- Establishment of fee schedule and delegation of authority to county administrator or clerk. (see Chapter 1)
- B. 709.015 -- Substantial compliance of procedural requirements provision. (see Chapter 1)
- C. 709.04 -- Municipal consideration of annexation petition.
- D. 709.10 -- Annexation effective 30 days after municipality passes resolution/ordinance accepting annexation.
- E. 709.11 -- Annexation petition to be filed in county in which the majority of acreage of the territory is situated. (see Chapter 1)
- F. 709.12 -- Apportioning of indebtedness of annexed territory.

- G. 709.192 -- Annexation agreements. (see Chapter 10)
- H. 709.20 -- Residents in territory have same rights as other municipal residents upon completion of annexation.
- I. 709.21 -- No error in annexation proceeding shall invalidate annexation once it has become final.

Annexed Area Not to Be Excluded From Township

The territory annexed shall not, at any time, be excluded from the township under ORC 503.07. The annexed area, thus, remains subject to the township’s real property taxes.

The only exception to this rule is if the municipality and township have entered into an annexation agreement (ORC 709.192) or a cooperative economic development agreement (ORC 701.07) that would allow such exclusion or removal from the township.

**ORC 709.023
(A) & (H)**

Filing of Petition

Contents of Petition

An Expedited Type 2 Annexation petition must be submitted to the clerk of the board of county commissioners of the county where the territory is located. The petition must specifically request that the board follow ORC 709.023. If the territory is situated in more than one county, the annexation proceedings are to be in the county where the majority of acreage of the territory is located. It must contain the following information:

- A. Signatures of all the property owners in the territory proposed to be annexed. To be a valid signature, it must be the signature of the owner of the property as of the date the petition is filed.
 - 1. The person who signs or the circulator of the petition must write the date the signature was made next to the owner’s name.
 - 2. Any signature obtained more than 180 days before the petition is filed is not a valid signature.
 - 3. Any owner who signed the petition may have the signature removed before the document is filed by delivering a signed statement to the agent for the petitioners asking to have it removed. If the agent receives such a statement, the agent must strike through the signature, deleting it from the petition.
- B. Accurate legal description of the perimeter of the territory proposed to be annexed.
- C. Accurate map or plat of territory.
- D. Name of person or persons to act as the agent for the petitioners. The agent may be an official, employee, or agent of the municipality to which annexation is proposed.

**ORC 709.02 (C)
ORC 709.021 (B)**

Other Information that Must Be Filed With the Petition, But Is Not a Part of the Petition

Other information that must be filed with the petition, but is not a part of the petition includes:

- A. List of all tracts, lots, or parcels in the territory to be annexed, and all tracts, lots, or parcels located adjacent to the territory to be annexed or directly across the road when the road is adjacent to the territory to be annexed.
- B. The list is to include for each tract, lot, or parcel:
 - 1. Name of owner.
 - 2. Mailing address of owner.
 - 3. Permanent parcel number from the county auditor’s permanent parcel numbering system (ORC 319.28).
- C. Any error in the list shall not affect the validity of the petition.

ORC 709.02 (D)
ORC 709.021 (B)

Waiver of Right to Appeal & Special Disclosure Notice on Petition

Under an Expedited Type 2 Annexation, owners who sign the petition requesting the special procedure be used expressly waive their right to appeal, in law or equity, any action taken by the board of county commissioners. The owners also waive any rights they may have to sue on any issue relating to a municipality requiring a buffer and waive any rights to seek a variance that would exempt them from that buffer requirement.

For an Expedited Type 2 Annexation petition to be valid, the petition circulated to collect signatures must contain the following notice in bold face capital letters immediately above the heading of the place for signature on each part of the petition:

ORC 709.021 (B)
ORC 709.023 (A)

“WHOEVER SIGNS THIS PETITION EXPRESSLY WAIVES THEIR RIGHT TO APPEAL IN LAW OR EQUITY FROM THE BOARD OF COUNTY COMMISSIONERS’ ENTRY OF ANY RESOLUTION PERTAINING TO THIS SPECIAL ANNEXATION PROCEDURE, ALTHOUGH A WRIT OF MANDAMUS MAY BE SOUGHT TO COMPEL THE BOARD TO PERFORM ITS DUTIES REQUIRED BY LAW FOR THIS SPECIAL ANNEXATION PROCEDURE.”

Definition of Owner or Owners

The term “owner” or “owners” means any of the following who is seized of a freehold estate in land:

- A. Any adult individual who is legally competent.
- B. The state or any political subdivision as defined in ORC 5713.081.
 - 1. Authorized agent of the state or political subdivision must sign the petition.
 - 2. Authorized agent of the state is the Director of Administrative Services.
 - 3. If an authorized agent does not sign, the state or political subdivision shall not be considered an owner and shall not be included in determining the number of owners needed to sign the petition.
- C. Any firm, trustee, or private corporation. If the owner is a corporation, partnership, business trust, estate, organization, group, institution or society, the petition must be signed by a person authorized to sign for that entity.

ORC 709.02 (E)
ORC 709.021 (B)

In addition, an owner is determined as of the date the petition is filed with the board of county commissioners.

A person who owns more than one parcel of real estate, either individually or as a tenant in common or by survivorship tenancy, shall be counted as one owner.

Ownership Interests Excluded From Definition of Owner or Owners

Items specifically excluded from the definition of “owner” or “owners” include:

- A. Easements.
- B. Any railroad, utility, street or highway rights-of-way held in fee, by easement, or by dedication and acceptance.
- C. Any person, firm, trustee, private corporation, the state, or any political subdivision that has become an owner of real estate if the primary purpose of the conveyance is to affect the number of owners required to sign an annexation petition.

ORC 709.02 (E)
ORC 709.021 (B)

Consideration of Petition

The petition, signed by all the owners of land contiguous to a municipality, may be filed requesting the special procedure in ORC 709.023 be used. The petition is filed with the clerk of the board of county commissioners in which the territory is located. If the territory is situated in more than one county, the annexation proceedings are to be in the county in which the majority of acreage of the territory is located. After the petition is filed, the following steps are involved.

A. *Petition Entered Upon Journal*

The clerk of the board shall cause the petition to be entered upon the journal of the board at its next regular session. This is the first official act of the board on the petition.

ORC 709.023

B. *Notices to Be Sent by Agent for Petitioners*

1. Within 5 days after filing the petition, the agent for the petitioners must notify:
 - a) Clerk of the legislative authority of the municipality to which annexation is proposed.
 - b) Clerk of each township any portion of which is included in the territory proposed to be annexed.
 - c) Clerk of board of county commissioners of any other county if land is located in another county.
 - d) Owners of property adjacent to the territory proposed for annexation or adjacent to a road that is adjacent to that territory and located directly across the road from that territory.
2. The notice must refer to the time and date the petition was filed and the county in which it was filed. The notice must include:
 - a) Copy of the petition.
 - b) Any attachments or documents accompanying the petition as filed.

3. The notice to governmental bodies must be given by certified mail, return receipt requested, or by causing the notice to be personally served on the appropriate governmental officer, with proof of service being by affidavit of the person who delivered the notice.
4. The notice to property owners is sufficient if sent by regular U.S. mail to the tax mailing address listed on the county auditor's records.
5. Proof of service of notice on each governmental official, but not on property owners, must be filed with the board of county commissioners.
6. The law does not provide any time requirement for the proof of service.

C. *Filing Statement of Municipal Services With Board of County Commissioners*

1. Within 20 days after the petition is filed, the municipality to which annexation is proposed must adopt an ordinance or resolution relating to municipal services.
2. The ordinance or resolution must state what services the municipality will provide to the territory proposed for annexation, upon annexation.
3. The ordinance or resolution shall also include an approximate date by which the municipality will provide the services.
4. The ordinance or resolution must be filed with the board within 20 days after the petition was filed.
5. The board shall make the ordinance or resolutions available for public inspection.
6. The municipality is entitled in its sole discretion to provide services in addition to those described in the ordinance or resolution to the territory proposed for annexation, upon annexation.

D. *Filing Municipal Statement on Incompatible Land Uses and Zoning Buffer*

1. Within 20 days after the petition is filed, the municipality to which annexation is proposed must adopt an ordinance or resolution relating to land uses and zoning buffers, if the territory proposed to be annexed is currently subject to either county or township zoning.
2. The ordinance or resolution must state:
 - a) if the territory is annexed, and
 - b) becomes subject to municipal zoning, and
 - c) the municipal zoning permits uses in the annexed territory that the municipality determines are clearly incompatible with uses under current county or township zoning in the adjacent land remaining in the township, from which the territory was annexed,then the municipality will require, in the zoning ordinance permitting the incompatible uses, the owner of the annexed territory to provide a buffer separating the use of the annexed territory and the adjacent land remaining in the township.
3. The ordinance or resolution must be filed with the board within 20 days after the petition is filed.
4. A buffer is defined to include open space, landscaping, fences, walls, or other structured elements; streets and street rights-of-way; and bicycle and pedestrian paths and sidewalks.

5. If the buffer is not in place before any development of the annexed territory, civil action to enforce compliance may be sought by any owner of land that remains in a township and that is adjacent to the territory annexed.

E. *Township or Municipality Consents or Objects*

1. Within 25 days after the date that the petition is filed, the municipality to which annexation is proposed and each township with land included in the proposed annexation may adopt an ordinance or resolution consenting or objecting to the proposed annexation.
2. An objection to a proposed annexation by a municipality or township(s) must be based solely on the conditions under which commissioners rule on Expedited Type 2 Annexations as specified ORC 709.023 (E). These conditions are listed later in this chapter in the section titled, "Conditions for Annexation in Expedited Type 2 Annexations."
3. Failure by the municipality or township(s) to file an ordinance or resolution within 25 days of the filing of the petition is deemed to constitute consent to the proposed annexation.

F. *Action By County Commissioners When Municipality & Township Consent*

If the municipality and each township file an ordinance or resolution consenting to the annexation within 25 days after the petition was filed, the board at its next regular session shall enter upon its journal a resolution granting the proposed annexation.

G. *Action By County Commissioners When Municipality or Township Objects*

1. If the municipality or any township with territory proposed to be annexed objects to the annexation on the basis of the conditions specified in ORC 709.023 (E), the board must review the petition not less than 30 or more than 45 days after the date that the petition was filed, and determine if each of the conditions for Expedited Type 2 Annexation has been met.
2. If the board determines that each condition has been met, it shall enter upon its journal a resolution granting the annexation.
3. If the board determines that one or more of the conditions have not been met, it shall enter upon its journal a resolution denying the petition and stating which of the conditions have not been met.

H. *Transmittal to Municipality*

If the petition is granted, the clerk is to deliver a certified copy of the entire record of the annexation proceeding to the auditor or clerk of the municipality. The entire record includes:

1. All resolutions of the board, signed by a majority of the members of the board.
2. The petition.
3. The map.
4. All other papers on file.
5. The recording of the proceedings if a copy is available. However, no hearing recording or hearing exhibits would be involved, since no hearing is statutorily required.

If the petition is denied, the statute gives no direction on notification to the parties; however, notification should probably be made.

Conditions for Annexation in Expedited Type 2 Annexations

The following conditions must be met to approve an Expedited Type 2 Annexation:

- A. The petition meets all the requirements set forth in, and was filed in the manner provided in, ORC 709.021. (see technical checklist in Appendix N) (ORC 709.023 (E) (1))
- B. The persons who signed the petition are owners of property located in the territory proposed to be annexed, and they constitute all owners in the territory. (ORC 709.023 (E) (2))
- C. The territory proposed to be annexed does not exceed 500 acres. (ORC 709.023 (E) (3))
- D. The territory proposed to be annexed shares a contiguous boundary with the municipality for a continuous length of at least 5% of the perimeter of the territory proposed to be annexed. (ORC 709.023 (E) (4))
- E. The annexation will not create an unincorporated area of the township that is completely surrounded by the territory proposed to be annexed. (ORC 709.023 (E) (5))
- F. The municipality has agreed to provide the territory proposed to be annexed the services specified in the municipal services statement. (ORC 709.023 (E) (6))
- G. If a street or highway will be divided or segmented by the boundary line between the municipality and township as to create a road maintenance problem, the municipality has agreed as a condition of annexation to assume maintenance of that street or highway or to otherwise correct the problem. (ORC 709.023 (E) (7))

ORC 709.023 (E)

Appeals and Mandamus Actions

Under Expedited Type 2 Annexation there is no appeal in law or equity from the board's decision. Any party may, however, seek a writ of mandamus to compel the board to perform its duties under this special procedure. It should be noted that the term "party" is not defined by the Ohio Revised Code for Section 709.023 -- Expedited Type 2 Annexation.

ORC 709.023 (G)

Enforcement of Municipal Buffer Zones

The board of county commissioners is not involved in the enforcement of municipal buffer zones. Enforcement is by civil action. Any owner of land remaining in the township that is adjacent to territory annexed under this special procedure and who is directly affected by failure of the municipality to enforce a buffer zone may commence a civil action in common pleas court. The action is against the owner who is not in compliance with the buffer requirement whenever the required buffer is not in place before any development of the annexed territory begins.

ORC 709.023 (I)

Commentary on Statutory Ambiguities and Other Issues

- A. The "review" required if the municipality or township(s) object to the petition is not technically a hearing, and the statute gives no guidance as to how the "review" should be conducted. Therefore, CCAO recommends the following procedure:

1. Conduct the “review” during a meeting of the board in open session.
 2. Invite the municipality, township(s), and agent to the meeting and offer them the opportunity to present a statement regarding the proposed annexation and answer questions that the board might have.
 3. Request the municipality to send a representative to the meeting to verify that it agrees to provide the services it has outlined in its resolution/ordinance which it has filed with the commissioners.
 4. Prior to the review, the board may choose to examine the map to consider whether a road maintenance problem may be created. If the board believes that such a problem will be created, and it was not stated in an objection, the board may request that representatives from the municipality and the township(s) be present at the meeting to discuss the issue.
- B. The law does not provide for any involvement or public comment regarding the petition. However, since all sessions of the board are open to the public, CCAO believes it is within the discretion of the board to accept public comment during any meeting on the petition.
- C. There is no specific statutory authority given for the board to refer the legal description and map/plat to the county engineer for review. It is suggested that such action is inherent in the statutory language that the petition must contain an accurate legal description and plat/map. (ORC 709.02 (C) (2))
- D. It should be noted that unlike Expedited Type 1 (ORC 709.022) and Expedited Type 3 (ORC 709.024) Annexations statutes, Expedited Type 2 (ORC 709.023) Annexation statute includes no definition of “party” as do the other two expedited annexations. ORC 709.021 (D) defines a “party” to be the municipality, township(s), and agent, but only as it related to the other two expedited processes.
- E. Under an Expedited Type 2 Annexation, a hearing is not required. If both the municipality and township(s) consent to the annexation, the commissioners proceed as required by law. If either the municipality or any township objects, the commissioners must “review” the petition, but this does not involve a hearing. Since in either case there is no hearing, commissioners should take special care to assure that the petition is a valid petition and the required conditions for annexation have been met. Such special care is advised by CCAO because in the absence of a hearing, the opportunity for parties to point out problems with the petition will be more limited than when a hearing is conducted.

For the petition to be valid, it must conform with all of the statutory requirements as outlined in this chapter. These include the petition and attachments being accurate and complete; the petition contains the language waiving the right to appeal; the land is contiguous to the municipality; and, the owners who sign the petition are “owners” as now defined in ORC 709.02. In addition, commissioners should assure that the statement of municipal services and statement of incompatible land uses and zoning buffer have been filed. Finally, commissioners must assure that all of the conditions for an Expedited Type 2 Annexation have been met.

Refer to Appendix for Flow Chart and Check Lists

In the Appendix of this manual, the following appendices may be helpful in processing an Expedited Type 2 Annexation:

Appendix L	Procedural Flow Chart for Expedited Type 2 Annexations
Appendix M	Procedural Checklist for Expedited Type 2 Annexations
Appendix N	Technical Checklist for Expedited Type 2 Annexations