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MTAS Answer Line: (888) 667-6827**Countywide Growth Planning, Annexation, and Boundary Adjustments  
Under Tennessee Law***Presentation to the Maryville City Council  
August 23, 2001***Countywide Growth Planning**

The Growth Plan Law passed by the Tennessee General Assembly in 1998 (Public Acts of 1998, Chapter 1101) is now the governing law for city annexation, incorporation and dissolution. The law calls for a comprehensive growth policy plan in each county that outlines anticipated new development during the next 20 years. A coordinating committee whose members include representatives from the county, cities, utilities, schools, chambers of commerce, the soil conservation districts, and other entities formulates the initial draft of the growth plan. The county and cities may propose boundaries for inclusion in the plan. After the growth plan is developed, the committee conducts public hearings and submits the plan to each city and county government for ratification. The committee may revise the plan upon objection from these local governments. If the governmental entities cannot agree on a plan, any one of them may petition the secretary of state to appoint a dispute resolution panel of administrative law judges to settle the conflict. Once adopted by the July 1, 2001 deadline, a plan may not be amended for three years except in unusual circumstances. The amendment process is the same as that for initial adoption (T.C.A. § 6-58-104).

The plan identifies three distinct types of areas:

- Urban Growth Boundaries (UGB) — areas that contain the corporate limits of a municipality and the adjoining territory where growth is expected;
- Planned Growth Areas — areas outside incorporated municipalities where growth is expected (if there are such areas in the county), and where new incorporations may occur; and
- Rural Areas — territory not within one of the other two categories that is to be preserved for agriculture, recreation, forest, wildlife, and uses other than high-density commercial or residential development (T.C.A. § 6-58-101).

## **Annexation**

Municipalities are empowered to annex territory by ordinance or referendum (T.C.A. §§ 6-51-101-114). Public Acts 1998, Chapter 1101, made some changes to the law governing annexation. Some of those changes were applicable only before the adoption of the countywide growth plan. The following discussion omits those temporary provisions.

### **Annexation By Ordinance**

Annexation by ordinance is preserved with certain limitations that generally relate to the right to contest annexations, which are noted in the following section. Any annexation by ordinance can occur only within a city's Urban Growth Boundary.

### **Annexation By A City Within Its Urban Growth Boundary (UGB)**

With an adopted and approved growth plan, the county has no standing to contest annexations.

Within its UGB, a city may use any of the annexation methods provided by Tennessee's annexation law contained in T.C.A. Title 6, Chapter 51. This includes annexation by ordinance and by referendum, as modified by the new law. As provided in those statutes, aggrieved owners of property that borders on or lies within the territory annexed have 30 days to challenge an annexation.

NOTE: Notwithstanding the statutory language that gives abutting landowners the right to challenge an annexation, *State ex. rel. Cordova Areas Residents for the Env't v. City of Memphis*, 862 S.W.2d 525 (Tenn. App.1992), held that part of the statute unconstitutional. For that reason, only the owners of property that lies within the territory proposed for annexation have standing to challenge the annexation.

The following rules govern the challenges to annexations within the urban growth boundary:

- Jury Trial: Chancellor or circuit court judge without a jury tries Cases.
- Burden of Proof: Burden of proof is on the plaintiff to prove that the annexation is "...unreasonable for the overall well-being of the communities involved," or that "the health, safety, and welfare of the citizens and property owners of the municipality and [the annexed] territory will not be materially retarded in the absence of such annexation."

### **Annexation By Referendum**

Cities are still entitled to annex by referendum under T.C.A. §§ 6-51-104 and 105. However, if there are no residents in the territory, annexation by ordinance must be used.

### **Annexation By A City Outside Its Urban Growth Boundary (UGB)**

A city may annex territory outside its UGB in either of two ways:

- (a) By obtaining approval of an amendment to its UGB in the same way that the original growth plan was established, or
- (b) By referendum, under T.C.A. §§ 6-51-104 and 105.

### **No Restrictions On Corridor Annexations**

With a countywide growth plan in place there are no restrictions on corridor annexations. There was language included in the Growth Plan law that set conditions on how and when corridor annexations could occur, but that language, at TCA § 6-58-18((b)(4), does not apply after a growth plan has been adopted.

However, generally, T.C.A. §§ 6-51-101 *et seq.*, authorizes challenges to annexation ordinances by *quo warranto* suits on the grounds of the unreasonableness of the ordinance, and requires that such challenges must be brought within 30 days of the passage of the ordinance. But in *State of Tennessee ex rel. Earhardt v. City of Bristol*, 970 S.W.2d 948 (Tenn. 1998), the State Supreme Court held that the 30 day limitation “does not apply to suits contesting the validity of an ordinance which purports to annex an area that does not include people, private property, or commercial activity and is, therefore, void.” In that case, the plaintiffs were permitted on constitutional grounds to challenge certain “strip” annexations done in 1989, to which the plaintiff’s property was joined to the city by annexation done in 1995.

### **Annexation by a City in More Than One County (T.C.A. § 6-58-108(e))**

A city may annex by ordinance upon its own initiative only territory within the county in which the city hall is located. There are three main exceptions:

- A municipality located in two or more counties as of Nov. 25, 1997, may annex in all such counties unless the percentage of the city population residing in the county or counties other than the one in which the city hall is located is less than 7 percent of the total population of the municipality; or
- A municipality may annex in the second county if the legislative body of the county in which the territory proposed for annexation is located approves the annexation by resolution; or
- The city may annex in any county in which, on Jan. 1, 1998, it provided sanitary sewer service to 100 or more residential and/or commercial customers.

These restrictions do not apply to annexation by referendum. Any annexation must also conform to the provisions of the growth plans in both counties.

### **Plan of Services (T.C.A. § 6-51-102)**

The plan of services requirements below apply to annexation ordinances that were not final on Nov. 25, 1997.

#### **Scope Of The Plan Of Services**

The governing body of the annexing city must adopt a plan of services that outlines the services to be provided and their timing. The plan must be "reasonable" with respect to both the scope of services and to the implementation schedule. The implementation schedule must provide for delivery of services in the new territory that are comparable to those provided to all citizens of the city. The plan must address the following services, whether or not the city currently provides those services:

- police and fire protection;
- water, electrical, and sanitary services;
- road and street construction and repair;
- recreational facilities and programs;
- street lighting;
- zoning services.

The plan may exclude services that are provided by another public or private agency, other than those services provided by the county. The city may include services in addition to those required.

#### **Submission To Planning Commission**

Before adoption, the plan must be submitted to the planning commission, which must issue a written report on it within 90 days. The city's governing body is required to hold a public hearing on the plan after giving 15 days notice in a newspaper of general circulation in the city. The notice must include the locations where at least three copies of the plan are available for public inspection. If the city is in default on any other plan of services it may not annex any other territory.

#### **Progress Report**

Six months after the plan is adopted and annually until it is fully implemented, the city must publish a report on its progress toward fulfilling the plan, and must hold a public

hearing on the report. These reporting and hearing requirements apply to any plan of services not fully implemented.

### **Amending A Plan Of Services**

A plan of services may be amended under limited conditions:

- an occurrence such as a natural disaster, an act of war, terrorism, or other unforeseen circumstances beyond the city's control;
- the amendment does not substantially or materially decrease the type or level of services, or delay the provisions of such services; or
- the amendment has received the approval in writing of a majority of the property owners by parcel in the annexed area.

Before any amendment is adopted, the city must hold a public hearing preceded by at least 15 days notice.

### **Challenging A Plan Of Services**

The county loses its right to challenge the reasonableness of the plan of services after the adoption of the growth plan. T.C.A. § 6-51-102 does not make it clear whether property owners within the annexed territory have the right to challenge the reasonableness of a plan of services after the adoption of the growth plan. However, because they have the right to challenge the reasonableness of annexations, presumably, they could argue that the annexation is unreasonable on the ground that the plan of services is unreasonable. But it is clear that any aggrieved property owner may sue the city to enforce the plan of services after 180 days following the date the annexation ordinance takes effect. The right to sue ends when the plan of services has been fulfilled. A property owner may also challenge the legality of an amendment to the plan of services within 30 days following the adoption of the amendment. If an amendment is found unlawful, it is void and the previous plan of services is reinstated.

### **Court's Powers With Respect To Plan Of Services**

If the court finds the plan of services to be unreasonable or outside the city's powers conferred by law, the city has 30 days to submit a revised plan of services. However, the city may request by motion to abandon the plan of services. In that case, it may not annex by ordinance any part of the territory originally proposed for annexation for 24 months. The city may not annex any territory by ordinance where the court has issued a decision adverse to a plan of services until the court determines whether the city is in compliance.

The court has a duty to issue a writ of mandamus to compel the city to comply with the plan of services, to establish written timetables for the provision of services, and to enjoin the city from further annexations until the services called for in the plan of services have

been provided to its satisfaction. The city must pay the costs of the suit if the court finds the city has unlawfully amended a plan or failed without cause to comply with a plan.

### **Tax Revenue Implications Of Annexation**

When a city annexes territory, the county is "held harmless" for the loss of a portion of tax revenue that was distributed to cities under previous law. Revenue amounts generated in the annexed area by local option sales taxes and wholesale beer taxes that had been received by the county prior to the annexation continue to go to the county for 15 years after the date of the annexation. The annexing municipality retains any increases in these revenues generated in the annexed area. (Note that this does not affect the distribution of the first half of the local option sales tax, which continues to go to education funding.) If commercial activity in the annexed area decreases due to business closures or relocations, a city may petition the Department of Revenue to adjust the payments it makes to the county (T.C.A. § 6-51-115).

### **Lawsuit Venue**

A suit contesting an annexation of territory in a county other than the one in which the municipality's city hall is located shall be filed in the county where the city hall is located. The chancellor must then change the venue to a county adjacent to either the county where the city hall is located or the county where the proposed annexed territory is located (T.C.A. § 6-51-103(g)).

### **Effect Of Annexation On Existing Utilities**

When a city annexes territory that is served by a non-municipal utility, the city has to contend with both state and federal restrictions.

The state code says a city may not extend its utility service within the boundaries of a utility district "... unless and until it shall have been established that the public convenience and necessity requires other or additional services. ..." The code does not include a universal procedure for making this determination (T.C.A. § 7-82-301).

When a city annexes part of a district's territory, the state code gives the city power to take over the utility district's facilities in the annexed area under agreed terms or as determined by arbitration. If so much of a utility district is annexed that operating the remainder outside the city is economically unfeasible, a city probably would have to choose between taking all or none of the district (T.C.A. § 6-51-111).

However, 7 U.S.C. § 1926(b) and court decisions interpreting this federal statute limit this state grant of power. Almost all utility districts built rural water lines funded with Farmers Home Administration (FmHA) loans. 7 U.S.C. § 1926(b) has provisions protecting the borrowing district's ability to pay back FmHA those loans. Courts have interpreted those provisions to give districts an absolute ability to refuse to transfer utility service rights to a municipality that annexes part or all of their service area.

### **Boundary Adjustment**

Two contiguous cities may adjust a common boundary by contract to eliminate confusion and uncertainty about its location or to conform the boundary to a terrain feature; several compliance conditions are contained in T.C.A. § 6-51-302.

### **Contraction Of Boundaries**

A city may contract its boundaries by ordinance after notice and public hearing, providing such action is approved by a majority of the total membership of its governing body. If 10 percent of the voters in the deannexed area sign a protest petition, a referendum must be held in the area within 75 days. A majority vote determines the result. Another procedure for contraction requires approval by a three-fourths majority in a referendum, but whether this is to be held in the entire city or only the area affected is not specified (T.C.A. §§ 6-51-201 – 204).