

12-521. Petition to county commissioners for annexation of certain lands; contents; service extension plans; reports, contents; hearing, time and place; publication notice; notice to landowners; sketch of area; procedure at hearing; criteria to be considered; granting of order; entry in journal, effect; mail ballot election required appeals to district court. (a) Whenever the governing body of any city deems it advisable to annex land which such city is not permitted to annex under K.S.A. 12-520, and amendments thereto, or if the governing body of any city is permitted to annex land under K.S.A. 12-520, and amendments thereto, but deems it advisable not to annex thereunder, the governing body may annex such land as provided by this section. The governing body, in the name of the city, may present a petition to the board of county commissioners of the county in which the land sought to be annexed is located. The petition shall set forth a legal description of the land sought to be annexed and request a public hearing on the advisability of such annexation. The governing body of such city shall make plans for the extension of services to the tract of land proposed to be annexed and shall file a copy thereof with the board of county commissioners at the time of presentation of the petition. Such report shall include:

(1) A sketch clearly delineating the land proposed to be annexed and the area of the city adjacent thereto to show the following information:

- (A) The present and proposed boundaries of the city affected by such proposed annexation;
- (B) the present streets, water mains, sewers and other city utility lines, and the proposed extension thereto; and
- (C) the general land use pattern in the areas to be annexed.

(2) A statement setting forth a plan of sufficient detail to provide a reasonable person with a full and complete understanding of the intentions of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city and area proposed to be annexed at the time of annexation and the estimated cost of providing such services. The plan shall state the estimated cost impact of providing such services to the residents of the city and the residents of the area proposed to be annexed. The plan shall state the method by which the city plans to finance the extension of such services to such area. The plan shall include a timetable for the extension of major municipal services to the area proposed to be annexed. The plan shall state the means by which the services currently provided by a township or special district in the area to be annexed shall be maintained by the city at a level which is equal to or better than the level of services provided prior to annexation. The plan shall state those services which shall be provided immediately upon annexation and those services which may be provided upon petition of the landowners to create a benefit district.

(b) The date fixed for the public hearing shall be not less than 60 nor more than 70 days following the date of the presentation of the petition requesting such hearing. Notice of the time and place of the hearing, together with a legal description of the land sought to be annexed and the names of the owners thereof, shall be published in a newspaper of general circulation in the city not less than one week and not more than two weeks preceding the date fixed for such hearing.

A copy of the notice providing for the public hearing shall be mailed by certified mail to each owner of the land proposed to be annexed not more than 10 days following the date of the presentation of the petition requesting such hearing.

A sketch clearly delineating the area in such detail as may be necessary to advise the reader of the particular land proposed to be annexed shall be published with such notice and a copy thereof mailed to the owner of the property with such notice.

The board for good cause shown may continue the hearing beyond the time specified in the notice without further publication.

(c) On the day set for hearing, the board of county commissioners shall hear testimony as to the advisability of such annexation, and a representative of the city shall present the city's proposal for annexation, including the plan of the city for the extension of services to the area proposed to be annexed.

The action of the board of county commissioners shall be quasi-judicial in nature. The board of county commissioners shall consider the impact of approving or disapproving the annexation on the entire community involved, including the city and the land proposed to be annexed, in order to insure the orderly growth and development of the community. The board shall make specific written findings of fact and conclusions determining whether such annexation or the annexation of a lesser amount of such area causes manifest injury to the owners of any land proposed to be annexed, or to the owners of land in areas near or adjacent to the land proposed to be annexed or to the city if the annexation is disapproved. The findings and conclusions shall be based upon the preponderance of evidence presented to the board. In determining whether manifest injury would result from the annexation, the board's considerations shall include, but not be limited to, the extent to which the following criteria may affect the city, the area to be annexed, the residents of the city and the area to be annexed, other governmental units providing services to the area to be annexed, the utilities providing services to the area to be annexed, and any other public or private person, firm or corporation which may be affected thereby:

- (1) Extent to which any of the area is land devoted to agricultural use;
- (2) area of platted land relative to unplatted land;
- (3) topography, natural boundaries, storm and sanitary sewers, drainage basins, transportation links or any other physical characteristics which may be an indication of the existence or absence of common interest of the city and the area proposed to be annexed;
- (4) extent and age of residential development in the area to be annexed and adjacent land within the city's boundaries;
- (5) present population in the area to be annexed and the projected population growth during the next five years in the area proposed to be annexed;
- (6) the extent of business, commercial and industrial development in the area;
- (7) the present cost, methods and adequacy of governmental services and regulatory controls in the area;
- (8) the proposed cost, extent and the necessity of governmental services to be provided by the city proposing annexation and the plan and schedule to extend such services;
- (9) tax impact upon property in the city and the area;
- (10) extent to which the residents of the area are directly or indirectly dependent upon the city for governmental services and for social, economic, employment, cultural and recreational opportunities and resources;
- (11) effect of the proposed annexation on the city and other adjacent areas, including, but not limited to, other cities, sewer and water districts, improvement districts, townships or industrial districts and, subject to the provisions of K.S.A. 12-521a, and amendments thereto, fire districts;
- (12) existing petitions for incorporation of the area as a new city or for the creation of a special district;
- (13) likelihood of significant growth in the area and in adjacent areas during the next five years; and
- (14) effect of annexation upon the utilities providing services to the area and the ability of those utilities to provide those services shown in the detailed plan.

(d) The board of county commissioners shall render a judgment within seven days after the hearing has been adjourned sine die. If two-thirds of the members of the board of county commissioners concludes that the annexation or any part thereof should be allowed, the board shall so find and grant the annexation by order; and thereupon the city may annex the land by ordinance. When an order denying a petition or part thereof is issued, it shall be by resolution, which shall be sent by certified mail to the city proposing the annexation. All orders of the board of county commissioners granting or denying petitions for annexation shall be spread at length upon the journal of proceedings of the board. The failure of such board to spread an order granting annexation upon the journal shall not invalidate such order.

(e) Within 10 days following the rendering of the judgment of the board of county commissioners granting all or a part thereof of any annexation involving 40 acres or more as provided in subsection (c)[d], the city clerk shall certify to the county election officer a legal description and a map of the area outside the corporate limits of the city proposed to be annexed and the addresses of all qualified electors as defined in K.S.A. 12-519, and amendments thereto, located therein. The county election officer shall conduct a mail ballot election under the provisions of K.S.A. 25-431 et seq., and amendments thereto, within 60 days of such certification. If a majority of the qualified electors voting thereon approve the annexation, the city may annex the land by passage of an ordinance. If a majority of the qualified electors reject the annexation, the lands shall not be annexed and the city may not propose the annexation of any such lands in the proposed area for at least four years from the date of the election, unless the proposed annexation is authorized by paragraphs (2), (3) or (7) of subsection (a) of K.S.A. 12-520, and amendments thereto. If the area proposed to be annexed is less than 40 acres, then the board may render a judgment on the petition unless the board has previously granted three annexations of adjoining tracts within a 60-month period.

(f) Any owner of land annexed pursuant to this section or the city aggrieved by the decision of the board of county commissioners may appeal the decision of the board to the district court of the same county in the manner and method set forth in K.S.A. 19-223, and amendments thereto. Nothing in this subsection shall be construed as granting the owner of land in areas near or adjacent to land annexed pursuant to this section the right to appeal the decision of the board of county commissioners. Any city so appealing shall not be required to execute the bond prescribed therein.

History: L. 1967, ch. 98, § 3; L. 1974, ch. 56, § 6; L. 1987, ch. 66, § 5; L. 1993, ch. 147, § 3; L. 2011, ch. 101, § 7; June 2.