

Frequently Asked Legal Questions on TVF&R Annexation:

Q: What is the mechanism for a city to annex to a district?

A: Oregon Revised Statutes (state law) governs the process, specifically ORS 198.866. Under this statute, the governing body of a city may propose annexation to a district for the purpose of receiving service from the district. Once a city proposes annexation, most other decisions are left to the board of the district. This applies to all special districts, including fire districts.

Q: Is the procedure different for the Newberg Rural Fire Protection District to annex?

A: Yes, the statutes provide different procedures for a city to annex into a fire district, versus an existing fire district to come under the jurisdiction of a different fire district.

Q: Is this statute new?

A: The statute has been in place since 2003, but it is relatively rare for a city to annex into a special district. It is more common for a city to annex land being served by a special district.

Q: What decisions are made by the district board?

A: The district board will approve or disapprove the city's annexation proposal. If approved, the district board shall call an election in the district, unless an election is not required under specific exceptions.

Q: What are the exceptions to the election requirement?

A: There are two exceptions in the statute; one of the two applies to Newberg. If the population of the city is less than 20 percent of the population of the district, the district board is not required to call an election. Newberg's population (~ 24,000) is approximately five percent (~ 5.33%) of the TVF&R district population (~ 450,000).

Q: What happens if the district board does not call an election?

A: The district board will adopt an order or resolution approving the annexation and certify that to the city. No additional steps are required of the city council or district board, but there are approval steps at the county and state level to acknowledge the annexation.

Q: What happens if the district board calls for an election?

A: The district board will set an election date for voters in the district. The city is required to call an election in the city on the same date specified by the district board. This would be a special election. According to the Yamhill County Clerk's Office, a special election would cost approximately \$50,000.

Q: Can the electors of the city force a vote?

A: The statute provides that the electors of the district can request an election by petition, triggering both a vote in the district and a parallel vote in the city. There is no mechanism in the statute for the electors of the city to separately petition for a vote.

City Council Meeting
Date: 3/27/17
Re: FAOS
Topic: NFRB Annexation

Q: Can the city hold an advisory vote within the city, without the vote in the district?

A: Yes, a non-binding, advisory vote could be held by the city without a vote in the district. Again, this would be a special election and the cost to hold such a vote would be approximately \$50,000.

Q: If the council adopts a resolution proposing annexation and no vote occurs, is there a way to legally challenge the resolution?

A: The adoption of a resolution, as an administrative action by the council, is generally not subject to review by the courts, except when such action is contrary to the law. This means that a court would only examine if the action was allowed or disallowed by law, not whether a decision was a good idea or not. That being said, the law in Oregon on review of governmental actions has been described by the Oregon Supreme Court as “unpredictable” and the Court noted that “the most intelligent lawyer rarely can advise the client with any measure of confidence” how to proceed.

Oregon Revised Statute -

198.866 Annexation of city to district; approval of annexation proposal; election.

- (1) The governing body of a city may adopt a resolution or motion to propose annexation to a district for the purpose of receiving service from the district. Upon adoption of an annexation proposal, the governing body of the city shall certify to the district board a copy of the proposal.
- (2) The district board shall approve or disapprove the city’s annexation proposal. If the district board approves the proposal, the district board shall adopt an order or resolution to call an election in the district unless otherwise provided in subsection (3) of this section.
- (3) The district board is not required to call an election if:
 - (a) The population of the city is less than 20 percent of the population of the district; or
 - (b) The entire boundary of the city is encompassed within the boundary of the district.
- (4) Notwithstanding subsection (3) of this section, if 10 percent of the electors or 100 electors of the district, whichever is less, sign and present to the county board a petition requesting an election, the board shall call an election in the district. The petition shall be in conformity, to the greatest extent practicable, with ORS 198.750, 198.760, 198.765 and 198.770.
- (5) The order or resolution of the district board shall include the applicable matters specified in ORS 198.745. In addition the order or resolution may contain a plan for zoning or subdistricting the district as enlarged by the annexation if the principal Act for the district provides for election or representation by zone or subdistrict.
- (6) The district board shall certify a copy of the resolution or order to the governing body of the city.
- (7) Upon receipt of the resolution or order of the district board, the governing body of the city shall call an election in the city on the date specified in the order or resolution of the district board.
- (8) An election under this section shall be held on a date specified in ORS 255.345 that is not sooner than the 90th day after the date of the district order or resolution calling the election. [1983 c.142 §2 (enacted in lieu of 198.865); 1993 c.417 §1; 2003 c.219 §1]