

§ 31-12-107. Petitions for annexation and for annexation elections.

Colorado Statutes

Title 31. GOVERNMENT - MUNICIPAL

ANNEXATION - CONSOLIDATION - DISCONNECTION

Article 12. Annexation - Consolidation - Disconnection

Part 1. MUNICIPAL ANNEXATION ACT OF 1965

Current through the 2019 Legislative Session

§ 31-12-107. Petitions for annexation and for annexation elections

- (1) Petition for annexation in accordance with section 30 (1)(b) of article II of the state constitution:
 - (a) Persons comprising more than fifty percent of the landowners in the area and owning more than fifty percent of the area, excluding public streets and alleys and any land owned by the annexing municipality, meeting the requirements of sections 31-12-104 and 31-12-105 may petition the governing body of any municipality for the annexation of such territory.
 - (b) The petition shall be filed with the clerk.
 - (c) The petition shall contain the following:
 - (I) An allegation that it is desirable and necessary that such area be annexed to the municipality;
 - (II) An allegation that the requirements of sections 31-12-104 and 31-12-105 exist or have been met;
 - (III) An allegation that the signers of the petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed, excluding public streets and alleys and any land owned by the annexing municipality;
 - (IV) A request that the annexing municipality approve the annexation of the area proposed to be annexed;
 - (V) The signatures of such landowners;
 - (VI) The mailing address of each such signer;

(VII The legal description of the land owned by such signer;
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(VII The date of signing of each signature; and
I)

(IX) The affidavit of each circulator of such petition, whether consisting of one or more sheets, that each signature therein is the signature of the person whose name it purports to be.

(d) Accompanying the petition shall be four copies of an annexation map containing the following information:

(I) A written legal description of the boundaries of the area proposed to be annexed;

(II) A map showing the boundary of the area proposed to be annexed;

(III) Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks;

(IV) Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the annexing municipality and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

(e) No signature on the petition is valid if it is dated more than one hundred eighty days prior to the date of filing the petition for annexation with the clerk. All petitions which substantially comply with the requirements set forth in paragraphs (b) to (d) of this subsection (1) shall be deemed sufficient. No person signing a petition for annexation shall be permitted to withdraw his signature from the petition after the petition has been filed with the clerk, except as such right of withdrawal is otherwise set forth in the petition.

(f) The clerk shall refer the petition to the governing body as a communication. The governing body, without undue delay, shall then take appropriate steps to determine if the petition so filed is substantially in compliance with this subsection (1).

(g) If the petition is found to be in substantial compliance with this subsection (1), the procedure outlined in sections 31-12-108 to 31-12-110 shall then be followed. If it is not in substantial compliance, no further action shall be taken.

(2) Petition for annexation election in accordance with section 30 (1)(a) of article II of the state constitution:

- (a) The registered electors may petition the governing body of any municipality to commence proceedings for the holding of an annexation election in the area proposed to be annexed. This petition shall meet the standards described in paragraphs (c) and (d) of this subsection (2) and either:
 - (I) Shall be signed by at least seventy-five registered electors or ten percent of said electors, whichever is less, if such area is located in a county of more than twenty-five thousand inhabitants; or
 - (II) Shall be signed by at least forty registered electors or ten percent of said electors, whichever is less, if such area is located in a county of twenty-five thousand inhabitants or less.
 - (b) The petition shall be filed with the clerk.
 - (c) The petition for annexation election shall comply with the provisions of paragraph (c) of subsection (1) of this section; except that:
 - (I) Rather than an allegation of any certain percentage of land owned, it shall contain an allegation that the signers of the petition are qualified electors resident in and landowners of the area proposed to be annexed; and
 - (II) The petition shall request the annexing municipality to commence proceedings for the holding of an annexation election in accordance with section 30 (1)(a) of article II of the state constitution.
 - (d) The requirements and procedures provided for in paragraphs (e) and (f) of subsection (1) of this section shall be met and followed in a proceeding under this subsection (2).
 - (e) If the petition is found to be in substantial compliance with this subsection (2), the procedure outlined in sections 31-12-108 to 31-12-110 shall then be followed, subject thereafter to an annexation election to be held in accordance with section 31-12-112. If the petition for an annexation election is not found to be in substantial compliance, no further action shall be taken; except that the governing body shall make such determination by resolution.
- (3) Procedures alternative: The procedures set forth in subsections (1) and (2) of this section are alternative to each other and to any procedure set forth in section 31-12-106 ; except that a petition for annexation election filed pursuant to subsection (2) of this section shall take precedence over an annexation petition involving the same territory and filed pursuant to subsection (1) of this section if such petition for annexation election is filed at least ten days prior to the hearing date set for the annexation petition filed pursuant to subsection (1) of this section.
- (4) Additional terms and conditions on the annexation: Additional terms and conditions may

be imposed by the governing body in accordance with section 31-12-112.

- (5) If a petition is filed pursuant to subsection (1) or (2) of this section and the territory sought to be annexed meets the specifications of section 31-12-106(1), the governing body of the municipality with which the petition is filed shall thereupon initiate annexation proceedings pursuant to the appropriate provisions of section 31-12-106(1). In the event that any governing body fails to initiate such annexation proceedings within a period of one year from the time that such petition is filed, annexation may be effected by an action in the nature of mandamus to the district court of the county where the land to be annexed is located, and the petitioner's court costs and attorney fees incident to such action shall be borne by the municipality.
- (6) No proceedings for annexation to a municipality may be initiated in any area which is the same or substantially the same area in which an election for annexation to the same municipality has been held within the preceding twelve months.
- (7) For the purpose of determining the compliance with the petition requirements in this section, a signature by any landowner shall be sufficient so long as any other owner in fee of an undivided interest in the same area of land does not object in writing to the governing body of the annexing municipality within fourteen days after the filing of the petition for annexation or annexation election. The entire area of the land signed for shall be computed as petitioning for annexation if such signing landowner has become liable for taxes in the last preceding calendar year or is exempt by law from payment of taxes. One who is purchasing land under a written contract duly recorded shall be deemed the owner of the land which is subject to the contract if he has paid the taxes thereon for the next preceding tax year. The signers for an area owned by a corporation, whether profit or nonprofit, shall be the same persons as those authorized to convey land for such corporation.
- (8) No power of attorney providing the consent of a landowner to be annexed by a municipality pursuant to this section shall be valid for a term of more than five years, and no such power of attorney executed before May 27, 1997, shall be valid for a term of more than five years after May 27, 1997.

Cite as C.R.S. § 31-12-107

History. L. 75: Entire title R&RE, p. 1080, § 1, effective July 1; (1)(d)(IV) amended, p. 1452, § 12, effective July 1. L. 87: (1)(e) and (1)(g) amended, p. 1219, § 3, effective May 28. L. 97: (5) amended and (8) added, p. 995, § 3, effective May 27. L. 2010: IP(1), (1)(a), (1)(c)(III), (1)(g), IP(2), (2)(a), (2)(c)(II), and (2)(e) amended, (HB 10-1259), ch. 211, p. 914, §5, effective August 11.

Editor's Note:

This section is similar to former §§ 31-8-103 and 31-8-107 as they existed prior to 1975.

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "One Year Review of Constitutional Law", see 40 Den. L. Ctr. J. 134 (1963). For article, "Annexation: Today's Gamble for Tomorrow's Gain -- Parts I and II", see 17 Colo. Law. 603 (1988). For article, "ADR Techniques in Municipal Annexations", see 18 Colo. Law. 901 (1989).

Annotator's note. Since § 31-12-107 is similar to former § 31-8-107 prior to the 1975 repeal and reenactment of this title, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The 1965 annexation act provided for alternate methods of annexing land. Breternitz v. City of Arvada, 174 Colo. 56, 482 P.2d 955 (1971).

Procedures detailed. This section detailed procedures relating to petitions by those owners residing within or only owning land within the area to be annexed. Tanner v. City of Boulder, 151 Colo. 283, 377 P.2d 945 (1962).

Differentiation of petitioner qualifications. Except for differences regarding the qualifications of the petitioners, the procedures under this section are substantially the same. City of Aspen v. Howell, 170 Colo. 82, 459 P.2d 764 (1969).

The article contains no express prohibition against any person becoming the circulator of a petition. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

This section requires an affidavit that each signature thereon is the signature of the person whose name it purports to be. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

The streets and public ways in the area are not to be included in calculating the area to be annexed. City & County of Denver v. Holmes, 156 Colo. 586, 400 P.2d 901 (1965).

Applied in Bd. of County Comm'rs v. City & County of Denver, 190 Colo. 8, 543 P.2d 521 (1975); Slack v. City of Colo. Springs, 655 P.2d 376 (Colo. 1982).

II. PETITION FOR ANNEXATION.

Legislative intent in subsection (1)(g). The general assembly clearly intended to distinguish between petitions for annexation signed by 100 percent of the owners of the land proposed for annexation and petitions signed by a lesser number by enacting this section. Bd. of County Comm'rs v. City & County of Denver, 194 Colo. 252, 571 P.2d 1094 (1977).

The legislative limitation applies to the entire part, and not merely to this section. Bd. of County Comm'rs v. City & County of Denver, 194 Colo. 252, 571 P.2d 1094 (1977).

Initiation of proceedings by petition. This section provides that annexation proceedings of eligible territory shall be initiated by written petition presented to the legislative body of the city, city and county, or incorporated town to which it is proposed to annex such territory. People ex rel. City & County of Denver v. County Court, 137 Colo. 436, 326 P.2d 372 (1958); City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

Land ownership and tax liability proponent and opponent prerequisites. The requirements of ownership in fee and the liability for taxes were both prerequisites for participation as a proponent of the annexation, and the same requirements confronted an opponent of the annexation. City & County of Denver v. Holmes, 156 Colo. 586, 400 P.2d 901 (1965).

Owners of land in joint tenancy are entitled to sign and to be counted with the resident landowners, because each joint tenant owns an interest and is in his own right a landowner. Rice v. City of Englewood, 147 Colo. 33, 362 P.2d 557 (1961).

Petition signed by executor. The petition for annexation was signed by the "owner" of 100 percent of the territory annexed where it was signed by an executor to whom was given full power to manage and sell estate property as well as authority to do any act or carry out any agreement respecting the property even though title was not in him. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 211, 565 P.2d 212 (1977).

Where an annexation petition was signed by a tenant-in-common holding an undivided interest in the land annexed, the requirements of subsection (1)(g) were met and no notice, hearing, or election was necessary. Bd. of County Comm'rs v. City & County of Denver, 193 Colo. 325, 566 P.2d 335 (1977).

Where signers of the annexation petition owned well over 50% of the land proposed to be annexed, but at the same time five of the nine resident signers were favorable to the annexation, the fact that these resident owners represented a percentage of property less than 50% is inconsequential since much more than 50% of the area was represented by resident and nonresident owners. Rice v. City of Englewood, 147 Colo. 33, 362 P.2d 557 (1961).

Notice and hearing are not required when 100% of the landowners sign the annexation petition. Bd. of County Comm'rs v. City & County of Denver, 194 Colo. 252, 571 P.2d 1094 (1977).

Streets and roadways are excluded when considering whether all of the landowners in an area proposed to be annexed have signed an annexation petition, and, if all other owners are signatories, there are no notice, hearing, or election requirements. Bd. of County Comm'rs v. City & County of Denver, 40 Colo. App. 281, 573 P.2d 568 (1977).

Immaterial who obtains consent. With regard to petitions for annexation, so long as the requisite number of landowners freely consent to the annexation it is wholly immaterial who obtains that consent. City of Englewood v. Daily, 158 Colo. 356, 407 P.2d 325 (1965).

Such as city officials. Nowhere does this article prohibit, either expressly or by necessary implication, the annexing city's officials from participating in the circulation of annexation petitions. *City of Englewood v. Daily*, 158 Colo. 356, 407 P.2d 325 (1965).

The fact that city councilmen must "find" that the form of the petition meets the statutory requirements when it is presented to the annexing city's council does not disqualify the councilmen from acting as circulators of the petitions. *City of Englewood v. Daily*, 158 Colo. 356, 407 P.2d 325 (1965).

"Finding" is administrative conclusion. The "finding" of compliance with the section, as a preliminary step in annexation proceedings, is no more than an administrative or ministerial conclusion of fact upon which the legislative power to act is dependent, and this "finding" would necessarily be made by the legislative body whether this section required it or not. *City of Englewood v. Daily*, 158 Colo. 356, 407 P.2d 325 (1965).

An obvious typographical error in the signature page of an annexation petition considered in context was insubstantial and did not invalidate the petition. *Bd. of County Comm'rs v. City & County of Denver*, 193 Colo. 325, 566 P.2d 335 (1977).

An annexation petition was sufficient even though the signature pages failed to set out the date of each signature, where the dates on the verifications accompanying the signatures showed that signing took place prior to filing the documents, and there was no allegation that prejudice resulted or that any of the signatures were stale. *Bd. of County Comm'rs v. City & County of Denver*, 193 Colo. 325, 566 P.2d 335 (1977).

There is substantial compliance with the requirement of subsection (1)(d) that copies of the annexation map accompany the petition where the map is available to the city council whether or not it is physically attached to the petition. *Bd. of County Comm'rs v. City & County of Denver*, 193 Colo. 325, 566 P.2d 335 (1977).

Where, in its resolution, the city council recited that the annexation petition was accompanied by a map and school board resolution, and these documents were available on file with the Denver clerk and recorder for the city council's inspection and consideration prior to passage of the annexation ordinance, there was substantial compliance with the requirements that the documents accompany the petition. *Bd. of County Comm'rs v. City & County of Denver*, 193 Colo. 325, 566 P.2d 335 (1977).

When no substantial compliance with subsection (1)(g). The standard of substantial compliance under subsection (1)(g) is not met where the ownership of the land to be annexed does not clearly appear. *Bd. of County Comm'rs v. City & County of Denver*, 193 Colo. 321, 566 P.2d 340 (1977).

The standard of substantial compliance under subsection (1)(g) is not met where the description of the area to be annexed is so confused and contradictory that the area to be annexed cannot be determined from the petition and its attachments. *Bd. of County Comm'rs v. City & County of Denver*, 193 Colo. 321, 566 P.2d 340 (1977).

Where city owned 50-foot strip in land to be annexed. Since the city council must decide whether annexation will be approved under subsection (1)(g) where owners of 100% of the land to be annexed had signed the petition, no

purpose would be served by requiring the city, as owner of a 50-foot contiguous strip in the land to be annexed, to sign a petition addressed to itself. *Bd. of County Comm'rs v. City & County of Denver*, 38 Colo. App. 171, 556 P.2d 486 (1976), *aff'd*, 194 Colo. 252, 571 P.2d 1094 (1977).

III. PETITION FOR ANNEXATION ELECTION.

This section provides for the electorate to have a veto power over annexation when it commands that an election petition take precedence over any petition filed with city council by petitioners who own more than 50% of the land. *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

Compliance with subsection (1)(c)(III) not required. When a petition for annexation election is filed pursuant to subsection (2), the signers, if they comprise the requisite number or percentage and are qualified electors and resident landowners in the territory, need not also comply with subsection (1)(c)(II). *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

The general assembly intended that subsection (1)(c)(III) of this section requiring signatures of more than 50% of the landowners be excepted, i.e., "taken out" and excluded from consideration when the requisite number of petitioners sought annexation by the election alternative. *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

If the provision of subsection (2) that either 75 electors or 10%, whichever is the lesser, can petition for an election in which the majority vote will control, it simply does not make sense to add the additional requirement that these same petitioners be owners of more than 50% of the land. *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

Corporate or nonresident owners have no voice in election. Subsection (2), if it is to be given life and meaning, was intended to provide for a voice in the annexation process to be given to people living in the area as opposed to corporate or nonresident owners of larger segments of the land. *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

Except corporate owner may petition. By giving full force and effect to the subsection (2) alternative, one corporate owner, or two, or half a dozen owners of more than 50% of the land cannot impose their annexation whims on other resident-electors who own the balance or less than 50% of the territory, but the latter may nevertheless petition for an election if 75 electors or 10% wish to put the matter to a vote. *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).

Suspension of actions on annexation petition. The provision that a petition for annexation election shall take precedence over an annexation petition does not require that, when the election petition was filed, all actions under the annexation petition should have been abandoned, and a new procedure should have been initiated under subsection (2). *City of Aspen v. Howell*, 170 Colo. 82, 459 P.2d 764 (1969).

Findings as to qualifications of signers proper. Where there was testimony that the signers of the petition were registered voters, that each signer stated under oath that he was a landowner, and that an examination of the county records disclosed them all to be landowners, and the petition recited that the signers were qualified electors, residents

in and landowners of the area proposed to be annexed, and there is nothing in the record to indicate that less than 75 of the signers were not qualified to sign, the finding of the city council as to the qualifications of the signers is proper. *Breternitz v. City of Arvada*, 174 Colo. 56, 482 P.2d 955 (1971).