

LEGAL MEMORANDUM

TO: Parametrix, Inc.
Terrebonne Sanitary District Board of Directors

FROM: Marika E. Sitz
Steven L. Shropshire

DATE: December 19, 2023

RE: Annexation by Resolution Pathway
File No. 55843-79847

INTRODUCTION

ORS Chapter 198 identifies multiple ways that an existing special district, including a sanitary district organized under ORS Chapter 450, can annex territory into the existing special district. One such pathway is known as the “annexation by resolution” process, which allows a special district to identify territory that should be annexed into the district and develop its own resolution for submission to the Board of County Commissioners (“County Board”).

ORS 198.850(3) is the specific statute that authorizes the annexation by resolution process. However, ORS 198.850(3) itself relies on references to various other statutes within ORS Chapter 198 to define the process, many of which are formation statutes. In order to help the Terrebonne Sanitary District Board of Directors (“TSD Board”) better understand the annexation by resolution process that is contemplated under ORS 198.850(3), we have developed the chart below. This chart identifies the key steps in the annexation by resolution process and ties the steps to a specific statutory reference.

In order to clarify how the referenced statutes apply to an annexation process, we have stricken formation-specific language and replaced it with the language that applies to annexation. This replacement language signifies our conclusion as to how the referenced statute should be applied in the context of annexation, and the replacement language is shown in **blue text** in the chart. We have also flagged some language in the “Notes” column of the chart that is particularly ambiguous and should be discussed with Deschutes County (the “County”) to ensure the County has the same understanding of the language as the TSD Board.

ANNEXATION BY RESOLUTION PROCESS

STEP	ORS	STATUTORY TEXT	NOTES
<p>STEP 1. TSD Board develops an annexation resolution.</p>	<p>198.850(3)</p>	<p>In lieu of a petition [by electors in a district], annexation may be initiated by resolution of the district board...<i>[language regarding county board and public agency initiation omitted].</i></p>	
	<p>198.850(3)</p>	<p>If proceedings are initiated by the district board, a resolution setting forth the matters described by ORS 198.835 shall be filed with the county board.</p>	
	<p>198.835</p>	<p>(1) The county board district board may initiate the formation of a district, annexation into a District to be located entirely within the county, by an order a resolution setting forth:</p> <p>(a) The intention of the county district board to initiate the formation of annexation into a district and citing the principal Act.</p> <p>(b) The name and boundaries of the proposed district area to be annexed</p> <p>(c) The date, time and place of a public hearing on the proposal.</p> <p>(3) Except as otherwise provided by the principal Act, if any part of the territory subject to formation of annexation by a district under this section is within a city, the order shall be accompanied by a certified copy of a resolution of the governing body of the city approving the order.</p> <p><i>ORS 198.835(2) and ORS 198.835(4) have been omitted from this analysis because they apply to county service districts.</i></p>	<p>Based upon the direction in ORS 198.850(3), an annexation resolution should contain the same information contained in a formation order, listed here.</p> <p>The TSD Board should confirm that the County has the same understanding of the required information for an annexation resolution as identified here. The TSD Board will also need to coordinate with the County to schedule the date, time, and place for the public hearing as required in ORS 198.835(1)(c).</p>
<p>STEP 2. After preparing an annexation resolution using the information described in Step 1, the TSD Board will submit it to the County Board.</p>	<p>198.850(3)</p>	<p>If proceedings are initiated by the district board, a resolution setting forth the matters described by ORS 198.835 shall be filed with the county board.</p>	

<p>STEP 3. The County Board will carry out the notice and hearing process.</p>	<p>198.850(3)</p>	<p>The proceeding thereafter shall be conducted as provided by ORS 198.835 to 198.845.</p> <p>However, when determining whether to approve the resolution, the county board, in lieu of the criteria prescribed by ORS 198.805(1) and 199.462, shall consider the local comprehensive plan for the area and any service agreement executed between a local government and the affected district.</p>	<p>We interpret “proceeding” for purposes of ORS 198.850(3) to mean the process the County Board must go through to evaluate and either approve or deny the annexation resolution.</p>
<p>N/A</p>	<p>198.835</p>	<p><i>The ORS 198.835 requirements are captured above in the annexation resolution requirements.</i></p>	
<p>STEP 3a. The County Board will carry out the notice process.</p>	<p>198.840</p>	<p>Notice of the hearing set by the order shall be given in the manner provided by ORS 198.800 except that the notice shall state that the county board has entered an order declaring its intention to initiate formation initiate an annexation process.</p>	
	<p>198.800</p>	<p>(1) <i>[Inapplicable formation and boundary commission language omitted]</i>...the county board shall...(b) Set a date for a hearing on the petition. The hearing may not be held less than 30 days or more than 50 days after the date the petition resolution is filed.</p> <p>(2) The county board shall cause notice of the hearing to be posted in at least three public places and published by two insertions in a newspaper. The notice shall state:</p> <ul style="list-style-type: none"> (a) The purpose of the annexation for which the district is to be formed. (b) The name and boundaries of the proposed annexation resolution district. (c) The time and place of the hearing on the petition resolution. (d) That all interested persons may appear and be heard. <p><i>ORS 198.800(3) has been omitted from this analysis because it relates to local boundary commissions and is not applicable.</i></p>	

<p>STEP 3b. The County Board will hold a hearing on the question of annexation.</p>	<p>198.840</p>	<p>The hearing and election on the annexation proposal, and election of board members, shall be conducted as provided by ORS 198.800 to 198.825</p>	
	<p>198.800</p>	<p><i>The ORS 198.800 requirements are captured above related to hearing notice.</i></p>	
	<p>198.805</p>	<p>(1) At the time stated in the notice, the county board shall hear the petition and determine, in accordance with the criteria prescribed by ORS 199.462 local comprehensive plan for the area and any service agreement executed between a local government and the affected district, pursuant to ORS 198.850(3), whether the area could be benefited by being annexed into the formation of the district. The county board may adjourn the hearing from time to time, but not exceeding four weeks in all unless additional notice is given. The county board may alter the boundaries set forth in the petition to either include or exclude territory. The board may not modify the boundaries to: (a) Exclude from the proposed district land that, in the judgment of the board, could be benefited by inclusion in the proposed district; or (b) Include in the proposed district land that, in the judgment of the board, could not be benefited by inclusion in the proposed district. (2) If the county board determines that any land has been improperly omitted from the proposed district and that the owner has not appeared at the hearing, the board shall continue the hearing and shall order notice given to the nonappearing owner requiring the owner to appear before it and show cause, if any, why the land of the owner should not be included in the proposed district. The notice shall be given either by posting and publication, in the same manner as notice of the original hearing and for the same period, or by personal service on each nonappearing owner. If notice is given by personal service, service shall be made at least 10 days prior to the date fixed for the further hearing. ORS 198.805(3) has been omitted because it applies to county service districts.</p>	<p>ORS 198.840 is clear that ORS 198.805—198.825 guide how the hearing and election should be conducted. As such, ORS 198.805’s provisions regarding the County Board’s ability to change the proposed boundary of the formation are likely not relevant because they do not relate to the process for the hearing. However, the TSD Board should confirm that the County has the same understanding.</p>

<p style="text-align: center;">STEP 4. The County Board will enter an order and set a time for a final hearing. The final hearing will include the opportunity to request an election.</p>	<p>198.810</p>	<p>(1) The county board shall approve, modify or reject a petition for formation an annexation resolution using only the criteria set forth in ORS 198.805 by considering the local comprehensive plan for the area and any service agreement executed between a local government and the affected district (pursuant to 198.850(3)).</p> <p>(2) If the county board approves the petition for formation annexation resolution, as presented or as modified,... the county board shall enter an order so declaring. The order shall set forth the name of the district and the boundaries of the area to be annexed as determined by the board or by the boundary commission. The order shall also fix a place, and a time not less than 20 nor more than 50 days after the date of the order, for a final hearing on the petition annexation resolution. The order shall declare that if written requests for an election are not filed as provided by subsection (3) of this section, the board, at the time of the final hearing, will enter its order creating the district. The board shall cause notice of the hearing to be given by publication.</p> <p>(3) An election may not be held unless written requests for an election are filed at or before the hearing by not less than 15 percent of the electors or 100 electors, whichever is the lesser number, registered in either the proposed district existing district or the area to be annexed.</p>	<p>In the context of an annexation process, it is not clear what is meant by electors registered in the “proposed district” per ORS 198.810(3).</p> <p>The TSD Board should work with the County to confirm whether the County interprets this provision to mean a petition for an election from electors within the existing district and/or a petition for an election from electors within the property proposed to be annexed.</p>
<p style="text-align: center;">N/A</p>	<p>198.813</p>	<p><i>ORS 198.813 relates to the formation of county service districts and is not applicable.</i></p>	

<p>STEP 5. An election may be held if the statutory signature minimum is met.</p>	<p>198.815</p>	<p>(1) If the required number of written requests for an election are filed with the county board on or before the date of the final hearing...the board shall provide by order for the holding of an election to submit to the electors the question of forming the district annexation. The board shall cause notice of the election to be published by two insertions [in a newspaper]. If requests for an election are filed by less than the required number of persons and no permanent rate limit for operating taxes is included in the petition, the county board shall dismiss the requests and enter an order creating the district.</p> <p>(2) The order calling an election shall fix the date of the election on the next available election date in ORS 255.345 for which the filing deadline can be met...<i>[inapplicable language omitted]</i>.</p> <p>(3) The order calling the election shall require the county official in charge of elections to include with the ballot for the election a map or other description of the boundaries of the proposed district annexation using streets and other generally recognized features Such statement shall comply with the requirements of ORS 250.035. The map or other description and statement required by this subsection shall be supplied by the county board.</p> <p><i>198.815(4) and 198.815(5) have been omitted because they apply to permanent rate limits and are not applicable.</i></p>	<p>This step applies only if the County Board receives an adequate number of election requests. If no election is requested, skip to Step 6 below.</p> <p>The TSD Board should confirm with the County whether an election on the question of annexation will be held within the boundaries of the existing district only, or within district boundaries <i>and</i> in the territory proposed for annexation.</p>
	<p>198.820</p>	<p>(1) After the election if any is held, if it is determined by the county board that the majority of the votes cast were in favor of formation annexation of the district, the board shall enter an order approving annexation establishing and forming the district. If a majority of the votes cast oppose the annexation formation of the district, the board shall enter an order dismissing the petition resolution. The</p>	<p>This step applies only if the County Board receives adequate election requests. If no election is requested, skip to Step 6 below.</p>

		<p>order shall be entered within 30 days after the date of the election...<i>[language related to district board members omitted]</i>.</p> <p>(2) After the date of the formation annexation order, the inhabitants of the territory within the district annexed area shall be a municipal corporation to be known by the name specified in the order become part of the existing district subject to ORS 198.860., and as such shall have perpetual succession, and by such name shall exercise and carry out the corporate powers and objects conferred by the principal Act of the district.</p>	
<p>STEP 6. The County Board will issue an order approving annexation.</p>	<p>198.820</p>	<p>(3) An order approving annexation creating a district, whether the approval occurs the district is formed with or without an election, shall state the name and purpose of the district, describe its boundaries the area to be annexed, and declare the annexation approved the district formed. From the date of the formation order the area to be annexed shall be considered part of the district district shall be considered established.</p>	<p>If annexation is approved by an election or by unilateral action of the County Board when no election is necessary, the County Board will issue an order in the form identified here.</p>
<p>N/A</p>	<p>198.825</p>	<p>ORS 198.825 relates to the election of the first board members and is not applicable.</p>	
<p>N/A</p>	<p>198.845</p>	<p>The county shall bear the cost of formation or attempted formation of a district under ORS 198.835 to 198.845. However, if a district is formed, the district shall reimburse the county for any expenses incurred by the county in making necessary preliminary engineering studies and surveys in connection with the formation of the district.</p>	<p>Although ORS 198.580(3) references ORS 198.845, ORS 198.580(3), it specifically provides that the “proceeding thereafter shall be conducted as provided by ORS 198.835 to 198.845” (emphasis added). The cost component is not clearly procedural, so it likely does not apply here. However, the TSD Board should confirm that the County has the same interpretation.</p>
<p>EFFECTIVE DATE</p>	<p>198.850(3)</p>	<p>An annexation initiated by the district board may include an effective date that is not later than 10 years after the date of the order declaring the annexation.</p>	