

# Arizona Revised Statute Noticing

## February 18, 2020 Planning Commission Work Session

### 9-462.04. Public hearing required; definition

A. If the municipality has a planning commission or a hearing officer, the planning commission or hearing officer shall hold a public hearing on any zoning ordinance. **Notice** of the time and place of the hearing including a general explanation of the matter to be considered and including a general description of the area affected shall be given at least fifteen days before the hearing in the following manner:

1. The **notice** shall be published at least once in a newspaper of general circulation published or circulated in the municipality, or if there is none, it shall be posted on the affected property in such a manner as to be legible from the public right-of-way and in at least ten public places in the municipality. A posted **notice** shall be printed so that the following are visible from a distance of one hundred feet: the word "zoning", the present zoning district classification, the proposed zoning district classification and the date and time of the hearing.

2. In proceedings involving rezoning of land that abuts other municipalities or unincorporated areas of the county or a combination of a municipality and an unincorporated area, copies of the **notice** of public hearing shall be transmitted to the planning agency of the governmental unit abutting such land. In proceedings involving rezoning of land that is located within the territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the municipality shall send copies of the **notice** of public hearing by first class mail to the military airport. In addition to **notice** by publication, a municipality may give **notice** of the hearing in any other manner that the municipality deems necessary or desirable.

3. In proceedings that are not initiated by the property owner involving rezoning of land that may change the zoning classification, **notice** by first class mail shall be sent to each real property owner, as shown on the last assessment of the property, of the area to be rezoned and all property owners, as shown on the last assessment of the property, within three hundred feet of the property to be rezoned.

4. In proceedings involving one or more of the following proposed changes or related series of changes in the standards governing land uses, **notice** shall be provided in the manner prescribed by paragraph 5 of this subsection:

(a) A ten percent or more increase or decrease in the number of square feet or units that may be developed.

(b) A ten percent or more increase or reduction in the allowable height of buildings.

(c) An increase or reduction in the allowable number of stories of buildings.

(d) A ten percent or more increase or decrease in setback or open space requirements.

(e) An increase or reduction in permitted uses.

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5. In proceedings governed by paragraph 4 of this subsection, the municipality shall provide **notice** to real property owners pursuant to at least one of the following notification procedures:

(a) **Notice** shall be sent by first class mail to each real property owner, as shown on the last assessment, whose real property is directly governed by the changes.

(b) If the municipality issues utility bills or other mass mailings that periodically include notices or other informational or advertising materials, the municipality shall include **notice** of the changes with such utility bills or other mailings.

(c) The municipality shall publish the changes before the first hearing on such changes in a newspaper of general circulation in the municipality. The changes shall be published in a "display ad" covering not less than one-eighth of a full page.

6. If **notice** is provided pursuant to paragraph 5, subdivision (b) or (c) of this subsection, the municipality shall also send **notice** by first class mail to persons who register their names and addresses with the municipality as being interested in receiving such **notice**. The municipality may charge a fee not to exceed \$5 per year for providing this service and may adopt procedures to implement this paragraph.

7. Notwithstanding the **notice** requirements in paragraph 4 of this subsection, the failure of any person or entity to receive **notice** does not constitute grounds for any court to invalidate the actions of a municipality for which the **notice** was given.

B. If the matter to be considered applies to territory in a high noise or accident potential zone as defined in section 28-8461, the **notice** prescribed in subsection A of this section shall include a general statement that the matter applies to property located in the high noise or accident potential zone.

C. After the hearing, the planning commission or hearing officer shall render a decision in the form of a written recommendation to the governing body. The recommendation shall include the reasons for the recommendation and be transmitted to the governing body in the form and manner prescribed by the governing body.

D. If the planning commission or hearing officer has held a public hearing, the governing body may adopt the recommendations of the planning commission or hearing officer without holding a second public hearing if there is no objection, request for public hearing or other protest. The governing body shall hold a public hearing if requested by the party aggrieved or any member of the public or of the governing body, or, in any case, if a public hearing has not been held by the planning commission or hearing officer. The governing body may consider the testimony of any party aggrieved when making its decision. In municipalities with territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the governing body shall hold a public hearing if, after **notice** is transmitted to the military airport pursuant to subsection A of this section and before the public hearing, the military airport provides comments or analysis concerning the compatibility of the proposed rezoning with the high noise or accident potential generated by military airport or ancillary military facility operations that may have an adverse impact on public health and safety, and the governing body shall consider and analyze the comments

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or analysis before making a final determination. **Notice** of the time and place of the hearing shall be given in the time and manner provided for the giving of **notice** of the hearing by the planning commission as specified in subsection A of this section. A municipality may give additional **notice** of the hearing in any other manner as the municipality deems necessary or desirable. For the purposes of this subsection, "party aggrieved" means any property owner within the notification area prescribed by subsection A, paragraph 3 of this section.

E. A municipality may enact an ordinance authorizing county zoning to continue in effect until municipal zoning is applied to land previously zoned by the county and annexed by the municipality, but not longer than six months after the annexation.

F. A municipality is not required to adopt a general plan before the adoption of a zoning ordinance.

G. If there is no planning commission or hearing officer, the governing body of the municipality shall perform the functions assigned to the planning commission or hearing officer.

H. If the owners of twenty percent or more of the property by area and number of lots, tracts and condominium units within the zoning area of the affected property file a protest in writing against a proposed amendment, the change shall not become effective except by the favorable vote of three-fourths of all members of the governing body of the municipality. If any members of the governing body are unable to vote on such a question because of a conflict of interest, then the required number of votes for passage of the question shall be three-fourths of the remaining membership of the governing body, provided that such required number of votes shall not be less than a majority of the full membership of the legally established governing body. For the purposes of this subsection, the vote shall be rounded to the nearest whole number. A protest filed pursuant to this subsection shall be signed by the property owners opposing the proposed amendment and filed in the office of the clerk of the municipality not later than 12:00 noon one business day before the date on which the governing body will vote on the proposed amendment or on an earlier time and date established by the governing body.

I. In applying an open space element or a growth element of a general plan, a parcel of land shall not be rezoned for open space, recreation, conservation or agriculture unless the owner of the land consents to the rezoning in writing.

J. Notwithstanding section 19-142, subsection B, a decision by the governing body involving rezoning of land that is not owned by the municipality and that changes the zoning classification of such land may not be enacted as an emergency measure and the change shall not be effective for at least thirty days after final approval of the change in classification by the governing body.

K. For the purposes of this section, "zoning area" means both of the following:

1. The area within one hundred fifty feet, including all rights-of-way, of the affected property subject to the proposed amendment or change.
2. The area of the proposed amendment or change.

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#### 9-461.06. Adoption and amendment of general plan; expiration and readoption

A. In municipalities that have territory in a high noise or accident potential zone as defined in section 28-8461, the legislature finds that in general plans and amendments to general plans land use compatibility with the continued operation of a military airport or ancillary military facility as defined in section 28-8461 is a matter of statewide concern.

B. The general plan and any amendment to such plan shall be adopted or readopted in the manner provided in this article.

C. The governing body shall:

1. Adopt written procedures to provide effective, early and continuous public participation in the development and major amendment of general plans from all geographic, ethnic and economic areas of the municipality. The procedures shall provide for:

(a) The broad dissemination of proposals and alternatives.

(b) The opportunity for written comments.

(c) Public hearings after effective **notice**.

(d) Open discussions, communications programs and information services.

(e) Consideration of public comments.

2. Consult with, advise and provide an opportunity for official comment by public officials and agencies, the county, school districts, associations of governments, public land management agencies, the military airport if the municipality has territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, other appropriate government jurisdictions, public utility companies, civic, educational, professional and other organizations, property owners and citizens generally to secure maximum coordination of plans and to indicate properly located sites for all public purposes on the general plan.

D. At least sixty days before the general plan or an element or major amendment of a general plan is noticed pursuant to subsection E of this section, the planning agency shall transmit the proposal to the planning commission, if any, and the governing body and shall submit a copy for review and further comment to:

1. The planning agency of the county in which the municipality is located.

2. Each county or municipality that is contiguous to the corporate limits of the municipality or its area of extraterritorial jurisdiction.

3. The regional planning agency within which the municipality is located.

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4. The Arizona commerce authority or any other state agency that is subsequently designated as the general planning agency for this state.

5. The department of water resources for review and comment on the water resources element, if a water resources element is required.

6. If the general plan or an element or amendment of the general plan is applicable to territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, the military airport.

7. If the general plan or an element or major amendment of the general plan is applicable to property in the high noise or accident potential zone of a military airport or ancillary military facility as defined in section 28-8461, the attorney general. For the purposes of this paragraph, "major amendment" means a substantial alteration of the municipality's land use mixture or balance as established in the municipality's existing general plan land use element.

8. Any person or entity that requests in writing to receive a review copy of the proposal.

E. If the municipality has a planning commission, after considering any recommendations from the review required under subsection D of this section the planning commission shall hold at least one public hearing before approving a general plan or any amendment to such plan. When the general plan or any major amendment is being adopted, planning commissions in municipalities having populations over twenty-five thousand persons shall hold two or more public hearings at different locations within the municipality to promote citizen participation. **Notice** of the time and place of a hearing and availability of studies and summaries related to the hearing shall be given at least fifteen and not more than thirty calendar days before the hearing by:

1. Publication at least once in a newspaper of general circulation published or circulated in the municipality, or if there is none, the **notice** shall be posted in at least ten public places in the municipality.

2. Such other manner in addition to publication as the municipality may deem necessary or desirable.

F. Action by the planning commission on the general plan or any amendment to the plan shall be transmitted to the governing body of the municipality.

G. Before adopting the general plan, or any amendment to it, the governing body shall hold at least one public hearing. **Notice** of the time and place of the hearing shall be given in the time and manner provided for the giving of **notice** of the hearing by the planning commission as specified in subsection E of this section.

H. The adoption or readoption of the general plan or any amendment to such plan shall be by resolution of the governing body of the municipality, after **notice** as provided for in subsection E of this section. The adoption or readoption of or a major amendment to the general plan shall be approved by affirmative vote of at least two-thirds of the members of the governing body of the municipality. All major amendments to the general plan proposed

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for adoption by the governing body of a municipality shall be presented at a single public hearing during the calendar year the proposal is made. The general plan, or any amendment to the plan, shall be endorsed in the manner provided by the governing body to show that it has been adopted by the governing body. If the municipality includes property in the high noise or accident potential zone of a military airport or ancillary military facility as defined in section 28-8461, the governing body of the municipality shall send **notice** of the approval, adoption or readoption of the general plan or major amendment to the general plan to the attorney general by certified mail, return receipt requested, within three business days after the approval, adoption or readoption. If the attorney general determines the approval, adoption or readoption of the general plan or major amendment to the general plan is not in compliance with section 28-8481, subsection J, the attorney general shall notify the municipality by certified mail, return receipt requested, of the determination of noncompliance. The municipality shall receive the **notice** from the attorney general within twenty-five days after the **notice** from the municipality to the attorney general is mailed pursuant to this subsection. The effective date of any approval, adoption or readoption of, or major amendment to, the general plan shall be thirty days after the governing body's receipt of the attorney general's determination of noncompliance. Within thirty days after the receipt of a determination of noncompliance by the attorney general as prescribed by this section, the governing body of the municipality shall reconsider any approval, adoption or readoption of, or major amendment to, the general plan that impacts property in the high noise or accident potential zone of a military airport or ancillary military facility as defined in section 28-8461. If the governing body reaffirms a prior action subject to an attorney general's determination of noncompliance pursuant to this section, the attorney general may institute a civil action pursuant to section 28-8481, subsection L. If the governing body timely sends **notice** pursuant to this subsection and the attorney general fails to timely notify the governing body of a determination of noncompliance, the general plan or major amendment to the general plan shall be deemed to comply with section 28-8481, subsection J. If the motion to adopt or readopt a general plan or an amendment to the general plan fails to pass, the governing body may reconsider the motion in any manner allowed by the governing body's rules of procedure, but any subsequent motion for the adoption or readoption of the general plan or a major amendment to the general plan must be approved by an affirmative vote of at least two-thirds of the members of the governing body. For the purposes of this subsection, "major amendment" means a substantial alteration of the municipality's land use mixture or balance as established in the municipality's existing general plan land use element. The municipality's general plan shall define the criteria to determine if a proposed amendment to the general plan effects a substantial alteration of the municipality's land use mixture or balance as established in the municipality's existing general plan land use element.

I. If the municipality does not have a planning commission, the only procedural steps required for the adoption of the general plan, or any amendment to such plan, shall be those provided in this article for action by the governing body.

J. A copy of the adopted general plan of a municipality shall be sent to the planning agency of the county within which the municipality is located, and such plan or any portion of the plan may be adopted as a part of the county general plan.

K. A general plan, with any amendments, is effective for up to ten years from the date the plan was initially adopted and ratified pursuant to subsection M of this section, or until the

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plan is readopted pursuant to this subsection and ratified pursuant to subsection M of this section or a new plan is adopted pursuant to this subsection and ratified pursuant to subsection M of this section, and becomes effective. On or before the tenth anniversary of the plan's most recent adoption, the governing body of the municipality shall either readopt the existing plan for an additional term of up to ten years or shall adopt a new general plan as provided by this article.

L. Except for general plans that are required to be submitted to the voters for ratification pursuant to subsection M of this section, the adoption or readoption of a general plan, and any amendment to a general plan, shall not be enacted as an emergency measure and is subject to referendum as provided by article IV, part 1, section 1, subsection (8), Constitution of Arizona, and title 19, chapter 1, article 4.

M. The governing body of a city or town having a population of more than two thousand five hundred persons but less than ten thousand persons and whose population growth rate exceeded an average of two per cent per year for the ten year period before the most recent United States decennial census, and any city or town having a population of ten thousand or more persons, shall submit each new general plan adopted pursuant to subsection K of this section to the voters for ratification at the next regularly scheduled municipal election or at a special election scheduled at least one hundred twenty days after the governing body adopted the plan pursuant to section 16-204. The governing body shall include a general description of the plan and its elements in the municipal election pamphlet and shall provide public copies of the plan in at least two locations that are easily accessible to the public and may include posting on the municipality's official internet website. If a majority of the qualified electors voting on the proposition approves the new plan, it shall become effective as provided by law. If a majority of the qualified electors voting on the proposition fails to approve the new plan, the current plan remains in effect until a new plan is approved by the voters pursuant to this subsection. The governing body shall either resubmit the proposed new plan, or revise the new plan as provided by this section, for subsequent submission to the voters at the next regularly scheduled municipal election or at a special election scheduled at least one hundred twenty days after the governing body readopted the new or revised new plan. All subsequent adoptions and submissions of the new plan or revised plans must comply with the procedures prescribed by this section until the plan is ratified.

N. In applying an open space element or a growth element of a general plan a municipality shall not designate private land or state trust land as open space, recreation, conservation or agriculture unless the municipality receives the written consent of the landowner or provides an alternative, economically viable designation in the general plan or zoning ordinance, allowing at least one residential dwelling per acre. If the landowner is the prevailing party in any action brought to enforce this subsection, a court shall award fees and other expenses to the landowner. A municipality may designate land as open space without complying with the requirements of this subsection if the land was zoned as open space and used as a golf course pursuant to a zoning ordinance adopted pursuant to article 6.1 of this chapter before May 1, 2000 and the designation does not impose additional conditions, limitations or restrictions on the golf course, unless the land is state trust land that was not planned and zoned as open space pursuant to title 37, chapter 2, article 5.1.

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O. A person, after having participated in the public hearing pursuant to subsection H of this section, may file a petition for special action in superior court to review the governing body's decision that does not comply with the mandatory requirement prescribed in section 9-461.05, subsection C, paragraph 1, subdivision (g) within thirty days after the governing body has rendered its decision. The court may affirm, reverse or remand to the governing body, in whole or in part, the decision reviewed for further action that is necessary to comply with the mandatory requirements prescribed in section 9-461.05, subsection C, paragraph 1, subdivision (g).



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9-471. [Annexation of territory; procedures; notice; petitions; access to information; restrictions](#)

A. The following procedures are required to extend and increase the corporate limits of a city or town by annexation:

1. A city or town shall file in the office of the county recorder of the county in which the annexation is proposed a blank petition required by paragraph 4 of this subsection setting forth a description and an accurate map of all the exterior boundaries of the territory contiguous to the city or town proposed to be annexed, except that a city or town shall not file an annexation petition that includes any territory for which an unsuccessful annexation was attempted by the same city or town until at least forty-five days after completion of the unsuccessful attempt. A property owner may waive the forty-five day waiting period for the owner's property that was part of the original unsuccessful annexation. **Notice** and a copy of the filing shall be given to the clerk of the board of supervisors and to the county assessor. The accurate map shall include all county rights-of-way and roadways that are within or contiguous to the exterior boundaries of the area of the proposed annexation. If state land, other than state land utilized as state rights-of-way or land held by the state by tax deed, is included in the territory, written approval of the state land commissioner and the selection board established by section 37-202 shall also be filed. The description shall identify the entity, if any, that will be responsible for maintaining the existing rights-of-way and roadways that are within or contiguous to the exterior boundaries of the area of the proposed annexation. For the purposes of this paragraph, "unsuccessful annexation" means an annexation attempt that was withdrawn or that was not completed pursuant to this section.

2. Signatures on petitions filed for annexation shall not be obtained for a waiting period of thirty days after filing the blank petition.

3. After filing the blank petition pursuant to paragraph 1 of this subsection, the governing body of the city or town shall hold a public hearing within the last ten days of the thirty-day waiting period to discuss the annexation proposal. The public hearing shall be held in accordance with title 38, chapter 3, article 3.1, except that, notwithstanding section 38-431.02, subsections C and D, the following notices of the public hearing to discuss the annexation proposal shall be given at least six days before the hearing:

(a) Publication at least once in a newspaper of general circulation, which is published or circulated in the city or town and the territory proposed to be annexed, at least fifteen days before the end of the waiting period.

(b) Posting in at least three conspicuous public places in the territory proposed to be annexed.

(c) **Notice** by first class mail sent to the chairman of the board of supervisors of the county in which the territory proposed to be annexed is located.

(d) **Notice** by first class mail with an accurate map of the territory proposed to be annexed sent to each owner of the real and personal property as shown on the statement furnished pursuant to subsection G of this section that would be subject to taxation by the city or town

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in the event of annexation in the territory proposed to be annexed. For the purposes of this subdivision, "real and personal property" includes mobile, modular and manufactured homes and trailers only if the owner also owns the underlying real property.

4. Within one year after the last day of the thirty-day waiting period a petition in writing signed by the owners of one-half or more in value of the real and personal property and more than one-half of the persons owning real and personal property that would be subject to taxation by the city or town in the event of annexation, as shown by the last assessment of the property, may be circulated and filed in the office of the county recorder. For the purposes of this paragraph, "real and personal property" includes mobile, modular and manufactured homes and trailers only if the owner also owns the underlying real property.

5. Alterations increasing or reducing the territory sought to be annexed shall not be made after a petition has been signed by a property owner.

6. The petitioner shall determine and submit a sworn affidavit verifying that no part of the territory for which the filing is made is already subject to an earlier filing for annexation. The county recorder shall not accept a filing for annexation without the sworn affidavit.

B. All information contained in the filings, the notices, the petition, the tax and property rolls and other matters regarding a proposed or final annexation shall be made available by the appropriate official for public inspection during regular office hours.

C. Any city or town, the attorney general, the county attorney or any other interested party within the territory to be annexed may on verified petition move to question the validity of the annexation for failure to comply with this section. The petition shall set forth the manner in which it is alleged the annexation procedure was not in compliance with this section and shall be filed within thirty days after adoption of the ordinance annexing the territory by the governing body of the city or town and not otherwise. The burden of proof shall be on the petitioner to prove the material allegations of the verified petition. An action shall not be brought to question the validity of an annexation ordinance unless brought within the time and for the reasons provided in this subsection. All hearings provided by this section and all appeals therefrom shall be preferred and heard and determined in preference to all other civil matters, except election actions. In the event more than one petition questioning the validity of an annexation ordinance is filed, all such petitions shall be consolidated for hearing. If two or more cities or towns show the court that they have demonstrated an active interest in annexing any or all of the area proposed for annexation, the court shall consider any oral or written agreements or understandings between or among the cities and towns in making its determination pursuant to this subsection.

D. The annexation shall become final after the expiration of thirty days after the adoption of the ordinance annexing the territory by the city or town governing body, provided the annexation ordinance has been finally adopted in accordance with procedures established by statute, charter provisions or local ordinances, whichever is applicable, subject to the review of the court to determine the validity of the annexation ordinance if petitions in objection have been filed. After adoption of the annexation ordinance, the clerk of the city or town shall provide a copy of the adopted annexation ordinance to the clerk of the board of supervisors of each county that has jurisdiction over the annexed area within sixty days after the annexation becomes final.

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E. For the purpose of determining the sufficiency of the percentage of the value of property under this section, the values of property shall be determined as follows:

1. In the case of property assessed by the county assessor, values shall be the same as shown by the last assessment of the property.
2. In the case of property valued by the department of revenue, values shall be appraised by the department in the manner provided by law for municipal assessment purposes.

F. For the purpose of determining the sufficiency of the percentage of persons owning property under this section, the number of persons owning property shall be determined as follows:

1. In the case of property assessed by the county assessor, the number of persons owning property shall be as shown on the last assessment of the property.
2. In the case of property valued by the department of revenue, the number of persons owning property shall be as shown on the last valuation of the property.
3. If an undivided parcel of property is owned by multiple owners, those owners are deemed as one owner for the purposes of this section.
4. If a person owns multiple parcels of property, that owner is deemed as one owner for the purposes of this section.

G. The county assessor and the department of revenue, respectively, shall furnish to the city or town proposing an annexation, within thirty days after a request, a statement in writing showing the owner, the address of each owner and the appraisal and assessment of all such property.

H. Territory is not contiguous for the purposes of subsection A, paragraph 1 of this section unless:

1. It adjoins the exterior boundary of the annexing city or town for at least three hundred feet.
2. It is, at all points, at least two hundred feet in width, excluding rights-of-way and roadways.
3. The distance from the existing boundary of the annexing city or town where it adjoins the annexed territory to the furthest point of the annexed territory from that boundary is not more than twice the maximum width of the annexed territory.

I. A city or town shall not annex territory if as a result of that annexation unincorporated territory is completely surrounded by the annexing city or town.

J. Notwithstanding any provisions of this article to the contrary, any town incorporated before 1950 that had a population of less than two thousand persons by the 1970 census and that is bordered on at least three sides by Indian lands may annex by ordinance

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territory owned by the state within the same county for a new townsite that is not contiguous to the existing boundaries of the town.

K. Subsections H and I of this section do not apply to territory that is surrounded by the same city or town or that is bordered by the same city or town on at least three sides.

L. A city or town annexing an area shall adopt zoning classifications that permit densities and uses not greater than those permitted by the county immediately before annexation. Subsequent changes in zoning of the annexed territory shall be made according to existing procedures established by the city or town for the rezoning of land.

M. The annexation of territory within six miles of territory included in a pending incorporation petition filed with the county recorder pursuant to section 9-101.01, subsection D shall not cause an urbanized area to exist pursuant to section 9-101.01 that did not exist before the annexation.

N. As an alternative to the procedures established in this section, a county right-of-way or roadway may be transferred to an adjacent city or town by mutual consent of the governing bodies of the county and city or town if the property transferred is adjacent to the receiving city or town and if the city or town and county each approve the proposed transfer as a published agenda item at a regular public meeting of their governing bodies. A transfer of property made pursuant to this subsection shall be treated by the receiving city or town as if the transferred property was newly annexed territory.

O. On or before the date the governing body adopts the ordinance annexing territory, the governing body shall have approved a plan, policy or procedure to provide the annexed territory with appropriate levels of infrastructure and services to serve anticipated new development within ten years after the date when the annexation becomes final pursuant to subsection D of this section.

P. If a property owner prevails in any action to challenge the annexation of the property owner's property, the court shall allow the property owner reasonable attorney fees and costs relating to the action from the annexing municipality.

Q. A city or town may annex territory that is a county-owned park or a park operated on public lands by a county as part of a management agreement if otherwise agreed to by the board of supervisors. If the board of supervisors does not agree to the annexation, the county-owned park or park operated on public lands by a county as part of a management agreement shall be excluded from the annexation area, notwithstanding subsections H and I of this section. A county-owned park or park operated on public lands by a county as part of a management agreement that is excluded from the annexation area pursuant to this subsection may subsequently be annexed with the permission of the board of supervisors notwithstanding any other provision of this section. For the purposes of this subsection, "public lands":

1. Has the same meaning prescribed in section 37-901.
2. Does not include lands owned by a flood control district.

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R. Notwithstanding subsection H of this section, territory is considered contiguous for the purposes of subsection A, paragraph 1 of this section if all of the real property in the territory is owned by one person, the city or town and the owner of the real property agree to the annexation and the territory adjoins the exterior boundary of the annexing city or town for at least three hundred feet.

#### 9-462.06. Board of adjustment

A. The legislative body, by ordinance, shall establish a board of adjustment, which shall consist of at least five but no more than seven members appointed by the legislative body in accordance with provisions of the ordinance, except that the ordinance may establish the legislative body as the board of adjustment. The legislative body may, by ordinance, delegate to a hearing officer the authority to hear and decide on matters within the jurisdiction of the board of adjustment as provided by this section, except that the right of appeal from the decision of a hearing officer to the board of adjustment shall be preserved.

B. The ordinance shall provide for public meetings of the board, for a chairperson with the power to administer oaths and take evidence, and that minutes of its proceedings showing the vote of each member and records of its examinations and other official actions be filed in the office of the board as a public record.

C. A board of adjustment shall hear and decide appeals from the decisions of the zoning administrator, shall exercise other powers as may be granted by the ordinance and adopt all rules and procedures necessary or convenient for the conduct of its business.

D. Appeals to the board of adjustment may be taken by persons aggrieved or by any officer, department, board or bureau of the municipality affected by a decision of the zoning administrator, within a reasonable time, by filing with the zoning administrator and with the board a **notice** of appeal specifying the grounds of the appeal. The zoning administrator shall immediately transmit all records pertaining to the action appealed from to the board.

E. An appeal to the board stays all proceedings in the matter appealed from, unless the zoning administrator certifies to the board that, in the zoning administrator's opinion by the facts stated in the certificate, a stay would cause imminent peril to life or property. On the certification proceedings shall not be stayed, except by restraining order granted by the board or by a court of record on application and **notice** to the zoning administrator. Proceedings shall not be stayed if the appeal requests relief that has previously been denied by the board except pursuant to a special action in superior court as provided in subsection K of this section.

F. The board shall fix a reasonable time for hearing the appeal, and shall give **notice** of hearing by both publication in a newspaper of general circulation in accordance with section 9-462.04 and posting the **notice** in conspicuous places close to the property affected.

G. A board of adjustment shall:

1. Hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the zoning administrator in the enforcement of a zoning ordinance adopted pursuant to this article.

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2. Hear and decide appeals for variances from the terms of the zoning ordinance only if, because of special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, the strict application of the zoning ordinance will deprive the property of privileges enjoyed by other property of the same classification in the same zoning district. Any variance granted is subject to conditions as will assure that the adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which the property is located.

3. Reverse or affirm, in whole or in part, or modify the order, requirement or decision of the zoning administrator appealed from, and make the order, requirement, decision or determination as necessary.

H. A board of adjustment may not:

1. Make any changes in the uses permitted in any zoning classification or zoning district, or make any changes in the terms of the zoning ordinance provided the restriction in this paragraph shall not affect the authority to grant variances pursuant to this article.

2. Grant a variance if the special circumstances applicable to the property are self-imposed by the property owner.

I. If the legislative body is established as the board of adjustment, it shall exercise all of the functions and duties of the board of adjustment in the same manner and to the same effect as provided in this section.

J. In a municipality with a population of more than one hundred thousand persons, the legislative body, by ordinance, may provide that a person aggrieved by a decision of the board or a taxpayer who owns or leases the adjacent property or a property within three hundred feet from the boundary of the immediately adjacent property, an officer or a department of the municipality affected by a decision of the board, at any time within fifteen days after the board has rendered its decision, may file an appeal with the clerk of the legislative body. The legislative body shall hear the appeal in accordance with procedures adopted by the legislative body and may affirm or reverse, in whole or in part, or modify the board's decision.

K. A person aggrieved by a decision of the legislative body or board or a taxpayer who owns or leases the adjacent property or a property within three hundred feet from the boundary of the immediately adjacent property, an officer or a department of the municipality affected by a decision of the legislative body or board, at any time within thirty days after the board, or the legislative body, if the board decision was appealed pursuant to subsection J of this section, has rendered its decision, may file a complaint for special action in the superior court to review the legislative body or board decision. Filing the complaint does not stay proceedings on the decision sought to be reviewed, but the court may, on application, grant a stay and on final hearing may affirm or reverse, in whole or in part, or modify the decision reviewed.

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**9-461.09. Procedure for adoption of specific plans and regulations**

A. If a municipality has a planning commission, the planning commission shall hold at least one public hearing on a specific plan or regulation prior to any hearing by the legislative body. **Notice** of the time and place of such hearing shall be given at least fifteen and not more than thirty calendar days before the hearing by:

1. Publication at least once in a newspaper of general circulation published or circulated in the municipality, or if there is none, by posting in at least ten public places in the municipality.

2. Such other manner in addition to publication as the municipality may deem necessary or desirable.

B. A copy of any specific plan, regulation or amendment together with the recommendation of the planning commission shall be submitted to the legislative body accompanied by a statement of the planning commission's reasons for such recommendation.

C. Upon receipt of a copy of any proposed specific plan, regulation or amendment of such plan or regulation, the legislative body may by ordinance or resolution adopt the plan or regulation. Before adopting the proposed specific plan or regulation, the legislative body shall hold at least one public hearing. **Notice** of the time and place of such hearing shall be given in the time and manner provided for the giving of **notice** of the hearing by the planning commission as provided in subsection A. The specific plan or regulation, as adopted, shall be designated as a specific plan or regulation.

D. If the municipality does not have a planning commission, the only procedural steps required for the adoption of a specific plan, regulation or any amendment to a specific plan or regulation are those provided in this article for action by the legislative body.