

# OFFICE OF THE CITY ATTORNEY

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## Legal Opinion 2021-015

**TO:** Mayor John Engen, Dale Bickell, Eran Pehan, Mary McCrea, Dave DeGrandpre, Alex Edam; Cassandra Tripard, Kaitlin McCafferty, Jeremy Keene, Eric Anderson, Kevin Slovarp, Troy Monroe, Marty Rehbein, Leigh Griffing

**CC:** Department Attorney

**FROM:** Jim Nugent, City Attorney

**DATE** August 20, 2021

**RE:** Pursuant to title 7, chapter 2, part 46 MCA, “ANNEXATION BY PETITION”, there are at least three separate independent petition methods of annexation.

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### FACTS:

Recently there has been some staff discussion pertaining to a potential proposed city annexation that includes real property connected to at least one city municipal public utility where real property owner waivers of protest to annexation have been located; but actual petitions to annex have not yet been located. Petitions to annex do exist for more than 50% of the lands proposed for annexation as well as waivers of protest to annexation for all the lands.

### ISSUE(S):

May the real property for which only waivers of protest have been located; be included in the larger area petition to annex annexation boundaries?

### CONCLUSION(S):

Yes, the land area for which only waivers of protest have been located, may be included in a larger proposed annexation that is based on petitions to annex pursuant to section 7-2-4601 MCA. Pursuant to title 7, chapter 2, part 46 MCA h “ANNEXATION BY PETITION”, there are least three (3) separate independent petition methods of annexation.

### LEGAL DISCUSSION:

Pursuant to title 7, chapter 2, part 46 MCA “ANNEXATION BY PETITION” sets forth at least three (3) separate independent methods of petition annexation. The following separate independent petition methods of annexation exist in title 7, chapter 2, part 46 entitled “ANNEXATION BY PETITION”.

- (1) Signed written petitions to annex, signed by “more than 50% of the resident electors owning real property in the area to be annexed”, subsection 7-2-4601(3)(a)(i) MCA; or
- (2) Signed written petitions to annex, signed by owners of real property representing 50% or more of the total area to be annexed; subsection 7-2-4601(3)(a)(ii) MCA; or
- (3) A majority of voters approve the annexation. Section 7-2-4606.

With respect to the first two identified petition methods of annexation; subsection 7-2-4601(3)(b) MCA provides:

“(b) The governing body may approve or disapprove a petition submitted under the provisions of subsection (3)(a) on its merits. When the governing body approves the petition, it shall pass a resolution providing for the annexation.”

**CONCLUSION(S):**

Yes, the land area for which only waivers of protest have been located, may be included in a larger proposed annexation that is based on petitions to annex pursuant to section 7-2-4601 MCA. Pursuant to title 7, chapter 2, part 46 MCA “ANNEXATION BY PETITION”, there are at least three (3) separate independent petition methods of annexation.

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/s/

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Jim Nugent, City Attorney

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