



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
BUREAU OF CONSTRUCTION CODES  
IRVIN J. POKE  
DIRECTOR

STEVEN H. HILFINGER  
DIRECTOR

## **STATE BOUNDARY COMMISSION**

### **PROCEDURE FOR INCORPORATION AS A HOME RULE CITY**

**NOTE:** Under Executive Order 1996-2, the Director of the Department of Licensing and Regulatory Affairs makes the final decision on whether to approve or deny an incorporation petition or a referendum petition. Therefore, in the following procedure, all references to a decision by the State Boundary Commission to approve or deny petitions should be interpreted to mean a recommendation of approval or denial to the Director of the Department of Licensing and Regulatory Affairs.

**NOTE:** The following procedure is intended as a guideline only and must be read and followed in conjunction with the State Boundary Commission Act and Administrative Rules and the Home Rule City Act. Petitioners are encouraged to seek professional assistance (i.e. legal counsel, Professional Surveyor, etc.), as deemed appropriate by the petitioner.

**NOTE:** In the following procedure, unless it is otherwise noted, the annotations refer to:

*Example 1:* [117.6] refers to Section 6 of the *Home Rule City Act* (Public Act 279 of 1909, as amended).

*Example 2:* [123.1007] refers to Section 7 of the *State Boundary Commission Act* (Public Act 191 of 1968, as amended).

*Example 3:* [R123.25] refers to Rule 25 of the State Boundary Commission Administrative Rules.

*Example 4:* [168.809] refers to Section 809 of the *Michigan Election Law* (Public Act 116 of 1954, as amended)

*Example 5:* [OAG] refers to a numbered Opinion of the Michigan Attorney General.

*Example 6:* [EO 1996-2] refers to executive reorganization order number 1996-2.

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***Petitioners***

1. Accurately map and describe in the petition the boundaries of the proposed city. [117.7 & R123.25]
2. Attach the map or drawing to the petition, clearly showing the territory to be incorporated. [117.6 & R123.25]
3. Represent in the petition that the territory meets the population conditions for incorporation. [117.7]

***Circulator of Petition***

4. Show map or drawing to each person before obtaining their signature on the petition.[117.6]

***Petitioners***

5. Attach an affidavit signed by one or more petitioners. [117.6 & 117.11]
6. Address and file the petition with the State Boundary Commission, Office of Land Survey & Remonumentation, Bureau of Construction Codes, Department of Licensing and Regulatory Affairs P.O. Box 30254, Lansing, MI 48909. [123.1007(3) & R123.21 (1)]

***County Chief Probate Judge***

7. Appoints two members to the Commission from the county where the proposed incorporation is to take place. [123.1005]

***Boundary Commission***

8. Sends notice of a petition being filed within 10 days of filing to affected local and county clerks. [R.123.46 (1)]
9. Reviews the petition for legal sufficiency (i.e. conformance to the statutes and rules of the Boundary Commission.) [123.1008 & R123.25]
  - a. Rejects the petition for:
    - i. Nonconformance with the Boundary Commission Act and Rules.
    - ii. Containing incorrect statements or descriptions. And
    - iii. Return the petition to the petitioners, together with their reasons and certificate of rejection, **OR**
  - b. Declares the petition legally sufficient and orders a public hearing.

10. Notifies the local clerks of the affected units of government of the public hearing by certified mail at least 30 days before the date of the public hearing. [123.1008(4)]
11. Gives notice of the public hearing at least 7 days before the date by publication in a newspaper of general circulation in the area. [123.1008(4)]
12. Holds a public hearing on the petition and receives evidence and testimony from citizens and other interested parties. [123.1008(3)]
  - a. Not less than 60 or more than 220 days after the filing.
  - b. At some convenient place in the area proposed to be incorporated.
13. Mails copies of, or a listing of, materials received at the public hearing and in the 30 days following the public hearing to the designated parties for the petitioner, city and township(s). [R123.68(2)]

***Designated Parties:***

14. Submit information rebutting the material during a 7-day period designated by the Manager of the Boundary Commission. [R123.68 (4)]

***Boundary Commission:***

15. Consider the reasonableness of the proposed incorporation after considering the criteria established in section 9 of the State Boundary Commission Act. [123.1008(3)]
16. Determine whether to recommend that the Director: [123.1010(1) & R123.71]
  - a. Deny the proposed incorporation.
  - b. Approve the petition as submitted.
  - c. Approve the petition with a revised boundary.
17. Adopt Findings of Fact to recommend to the Director to: [EO 1996-2, R123.71 and 123.1010(1)]
  - a. Deny the petition, giving its reasons for denial, **or**
  - b. Approve the petition, giving its reasons for approval, **or**
  - c. Revise the boundaries set forth in the petition and approve, giving its reasons for revisions and approval.
18. If denied, send a copy of the denial order to the petitioner and to each affected city, village or township clerk. [123.1010(2)]
19. If approved, or approved with boundary revisions, notify the petitioner and each affected county, city, village or township clerk and the secretary of state of the approval order and date if a referendum petition is not filed within 45 days. [123.1010(3)]

Note 1: The Department's approval order is final 45 days after the date of the order unless a proper petition requesting a referendum is filed with the Commission within this 45 day period.

Note 2: The following steps 20 through 28 could apply if residents wish to file a referendum petition on the incorporation question.

***Voters in Area Approved for Incorporation may:***

20. Circulate a petition to request a referendum on the incorporation question containing valid signatures of the registered electors in the area proposed for incorporation, as described in the Department Director's Order. [123.1010(3)]

***Referendum Petitioners***

21. File the referendum petition with the Boundary Commission Office within 45 days of the date in which the Order was signed by the Department Director. [123.1010(3) and EO 1996-2]

***Boundary Commission***

22. Determine legal sufficiency of the referendum petition. [123.1010(4)]
23. If the referendum petition is legally sufficient, instruct Commission staff to consult with the affected clerks to determine a possible referendum election date and deadline for submitting ballot language to county clerk.
24. Transmits an order to the department director for signature that approves a referendum election to be held in the area proposed for incorporation [123.1010(4) and EO 1996-2]
25. Specifies a date after the referendum election in which the Department's approval order shall become final if the referendum proposal is approved by a majority of the voters. [123.1010(4)]
26. Send a certified copy of the Department's approval order for a referendum election to the petitioner and the clerk of each affected county, city, village or township and to the Secretary of State. [123.1010(5)]

***Affected Village/Township/County Clerks***

27. Places the referendum asking the registered electors residing in the area proposed to be incorporated whether the city incorporation process should continue on the ballot. [MCL 123.1010(4)]

***Electorate of the area proposed to be incorporated***

28. Votes on the question of continuing the incorporation process. [MCL 123.1010(5)]
  - a. If a majority of the electorate votes to end the incorporation process than the incorporation proceedings shall end.
  - b. If a majority of the electorate votes to continue the incorporation process than the incorporation proceedings shall continue.

***Boundary Commission***

29. After a referendum vote approving the continuation of the incorporation process by the electors of the area proposed to be incorporated, or if no valid petition requesting a referendum is filed, the boundary commission shall direct the clerk of each affected municipality to provide for the election of nine charter commissioners [117.15] in accordance with Michigan Election Law. [186.1 et. seq.]

***Each Charter Commission Candidate***

30. Must reside in the territory proposed for incorporation. [117.15(1)]
31. The nominating petition must be signed by 20 qualified electors residing in the territory proposed to be incorporated. [117.15(2)]

***Affected Village/Township/County Clerks***

32. Prepares the ballot for charter commissioners and places at the head of the ballot the statement, "Candidates for the members of the Charter Commission." [117.15]
33. Give notice of election proceedings for charter commissioners and referendum petition, if applicable. [117.10; 117.11(4) & 123.1010(5)]
  - a. Publishes in 1 or more newspapers published within the district at least once a week for 4 weeks before the election.
  - b. Posts like notice in at least 10 public places in the district not less than 10 days before the election.

***Electors***

34. Vote for charter commissioners. [117.15 & 123.1010(5)]

***Board of Canvassers (Village, Township or County)***

35. Make returns to the local clerk(s) who then take the returns to the county clerk the day after the election. [168.809]
36. Certify the election of the persons receiving the highest vote to the 9 successful candidates and to the Boundary Commission. [117.15(2)]

***Boundary Commission***

37. Serve notice on charter commissioners to convene within 10 days after the election. [117.15(3) & R123.75]

***Charter Commission***

38. All business shall be conducted at a public meeting, in compliance with 1976 PA 267. [117.15(3)]
39. Shall:
  - a. Take a constitutional oath of office. [117.15(2)]
  - b. Choose its own officers. [117.15(3)]
  - c. Establish rules for its proceedings. [117.15(3)]
  - d. Maintain a business journal. [117.15(3)]
  - e. Fix the date of the first city election and the election on the draft charter. [117.15(3)]
    - i. This election may be held in conjunction with the election on the proposed charter.
  - f. Establish the manner and provide all other things that are necessary for nominating candidates and holding the elections for the first elective officers provided in the proposed charter. [117.15(3)]
  - g. Certify to the Boundary Commission that the first meeting has taken place. [R123.75]

Note 1: The charter commission has the power to fill vacancies in its membership. [117.15(2)]

Note 2: Five or more of its members shall constitute a quorum. [117.15(2)]

40. Draft a proposed charter within 90 days after the first meeting. [117.15(3)]

Note: Although this section provides that the charter commission shall frame a charter within 90 days after the first meeting, this is not deemed to be a mandatory limit, but directory only. (***OAG No. 2367, 1955, Vol. 1, p. 776; OAG Biennial Reports, 1914, p. 70***)

41. Fix a date for placing the draft charter on the ballot. [117.15(3)]
42. Transmit the proposed charter to the Governor. [117.22]

***Governor***

43. Either approve the proposed charter and return it to the charter commission, or return it with a statement of objections. [117.22]

***Charter Commission***

44. Record the statement of objections from the Governor in the business journal. [117.22]
45. Reconsider charter based on Governor's objections (if applicable). [117.22]
46. Publish the proposed charter at least once in 1 or more newspapers published in the proposed city, not less than 2 weeks or more than 4 weeks preceding the election. [117.15(3)]
  - a. Include a notice of the election and that on the date fixed the question of adopting the proposed charter will be voted on.
  - b. Assure that the elective officers provided for in the charter will be elected on the same date.
47. Post notice of the election in at least 10 public places within the proposed city, not less than 10 days prior to the election. [117.15(3)]
48. Provide 1 or more polling places for the election and posts notices of their location in at least 10 public places not less than 10 days prior to the election. [117.15(3)]
49. Appoint the election inspectors. [117.15(3)]
50. Submit the prepared charter to the electors of the affected territory for their approval or rejection. [117.23]

***Electors***

51. Approve or disapprove the proposed charter. [117.15(3) & 117.23]

***Election Inspectors***

52. Make returns to the local clerk(s). [168.809]

***Local Clerks***

53. Take the returns to the county clerk the day after the election. (168.809)

***County Board of Canvassers***

54. Canvass the vote for and against the charter. [117.13 & 117.15(3)]

**NOTE: FOLLOW STEPS 55 THROUGH 59 ONLY IF CHARTER IS APPROVED**

***Charter Commission***

55. File a copy of the approved charter with the Boundary Commission.

***Charter Commission and Boundary Commission***

56. Secure certificates from the boards of canvassers showing: (117.13)
- a. The total number of votes cast if a referendum election on the question of incorporation was held, including the votes cast for and against the question.
  - b. The votes for and against the charter.
  - c. The votes for all candidates for the new city's first elective officers.
57. Attach to the initiatory petition every resolution, affidavit or certificate necessarily following the petition, including the certificates of step 61, if applicable. (117.13)
58. File the initiatory petition and its attachments along with 2 printed copies of the charter with the county clerk and the Secretary of State within 30 days after the vote is taken. (117.13 and 117.24)

***County Clerk(s) and Secretary of State***

59. Each records the copies of the petition and its attachments in a book to be kept for that purpose. (117. 13)

Note 1: Either of such records or certified copies shall be prima facie evidence of the incorporation. Upon filing with the Secretary of State, the charter becomes law unless a different date is specified in the charter.

Note 2: Should the proposed charter be rejected, the person receiving the most votes for mayor, serves as de facto officer until a mayor is elected and qualified pursuant to a charter approved by the electors. (117.16(1)) In such event, steps 60 through 68 may be taken.

***De Facto Officer***

60. Reconvene the charter commission if no petition is filed for election of a new charter commission. (117.16(1))

***Charter Commission***

61. Revise the proposed charter for resubmission to the electors. (117.16(1))
62. Resubmit the proposed charter to the electors. (117.16(2))

Note: If, on submission of a second charter, a favorable vote is not obtained, the incorporation proceedings shall be ended. If a charter has not been adopted within a period of 3 years following the date of the department's final order, or if within the 3 year period the charter commission does not reconvene within 90 days after the defeat of the first proposed charter, the incorporation proceedings are ended. (123.1010(6))

***Qualified Electors***

63. May petition the de facto mayor for an election to select a new charter commission, by filing the signatures of 300 qualified electors if a proposed charter is not approved. (117.17)

Note: Must be filed within 10 days of the canvass of the vote on the charter.

***De Facto Officer***

64. Certify upon the petition that it contains the required number of signatures. (117.17)
65. File the petition with the Boundary Commission.

***Boundary Commission***

66. Give notice of the filing of the petition in the same manner as upon the filing of the original incorporation petition. (117.17)
67. Order the election of a new charter commission in the same manner as the first charter commission.

***Electors of the Affected Territory***

68. Repeat the procedures of electing a charter commission, drafting a charter and voting on the proposed charter. (117.17)

**ALL ELECTION PROCEDURES MUST FOLLOW MICHIGAN ELECTION LAW.**