



HOME RULE CITY INCORPORATION PROCEDURE

State Boundary Commission
Office of Land Survey and Remonumentation
Bureau of Construction Codes

The Director of the Department of Licensing and Regulatory Affairs (“LARA”) makes the final decision on whether to approve or deny an incorporation petition. In the following procedure, all references to a “decision” by the State Boundary Commission (“SBC”) to approve or deny incorporation petitions should be interpreted to mean a “recommendation of approval or denial” to the Director of LARA (“Director”).

The State Boundary Commission Act, 1968 PA 191, takes precedence over the Home Rule City Act, 1909 PA 279, regarding filing and processing incorporation and consolidation petitions, effective dates of department orders, ordering elections, and time periods for charter adoption. [117.9(1)]

Petitioners are encouraged to seek professional assistance, i.e., legal counsel, Professional Surveyor, etc., as deemed appropriate by the petitioner.

If the remaining portion of a township resides in the village to be included in the incorporation of a city, the SBC would not be involved. Review MCL 123.1010a for conditions and procedure.

NOTE: Unless otherwise noted, annotations in the following procedure refer to:

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

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

Example 3: [168.809] refers to Section 809 of the Michigan Election Law (Public Act 116 of 1954)

Example 4: [OAG] refers to a numbered Opinion of the Michigan Attorney General.

Example 5: [ERO 1996-2] refers to Executive Reorganization Order 1996-2.

Definitions

Qualified electors - Persons eligible to register to vote in the area must be:

- At least 18 years old [US Constitution: Amendment 26, Section 1]
- Residents for at least 30 days [168.10 (1); 168.11]
- U.S. citizens [State Constitution: Article 2, Section 1]

Only the electors residing within the territory proposed to be incorporated shall vote in elections held under the procedures outlined below.

Procedure

Please note this is a working document and will be updated as needed – Last updated July 1, 2020

Petitioner(s)

1. Obtain petition forms from the Michigan Department of State – Bureau of Elections, Richard H. Austin Building – First Floor, 430 West Allegan Street, Lansing, MI 48918, or by calling 517-373-2540
2. Accurately map and describe in the petition the boundaries of the proposed city. [117.7]
3. Attach the map or drawing to the petition showing the territory to be incorporated. [117.6]
4. Represent in the petition that the territory meets the population conditions for incorporation. To incorporate to a Home Rule City requires at least 2000 citizens. To incorporate as a fifth-class city, the population must be between 750 and 2000 citizens. There must also be no less than 500 people per square mile. Population requirements do not apply to an incorporated village in which a county seat is located. [117.7]

Petition Circulator

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

Petitioner(s)

6. Attach an affidavit (oath) signed by one or more petitioners. [117.6]
7. [123.1007 (3)] File the petition signature sheets, description and maps shown to the signatories, and the cover letter with the SBC. Scanned images can be emailed to OLSR (Office of Land Survey and Remonumentation) at bccolsr@michigan.gov, and the original petition signature sheets delivered or sent to:

In Person:
 State Boundary Commission
 Office of Land Survey and Remonumentation
 Bureau of Construction Codes/LARA
 611 West Ottawa Street
 Lansing, MI 48909

Mail to:
 State Boundary Commission
 Office of Land Survey and Remonumentation
 Bureau of Construction Codes/LARA
 P.O. Box 30254
 Lansing, MI 48909

OLSR

8. Upon receipt, the petition is assigned a number and placed on the next available agenda. A notice will be sent to affected village, township and county clerks within 10 days of filing with the date and location of the SBC meeting. Any legal counsel identified by the petitioner, city, township and county clerks will also be included on the email. A link to a questionnaire will be provided to the effected parties and be completed and returned within 10 days.
9. The township clerk will be supplied with a copy of the petitions to verify the names are qualified electors.

10. [123.1008(3)] The township and village clerks will be contacted to supply at least three possible public hearing dates and locations for consideration by the SBC within a specific timeframe.
 - a. The public hearing is held not less than 60 nor more than 220 days after the date the petition was filed with the Boundary Commission.
 - b. The public hearing is held at a convenient location in the area proposed to be incorporated.

Boundary Commission Legal Sufficiency Meeting

11. Review the petition for legal sufficiency (i.e. conformance to the statutes of the SBC) and do one of the following: [123.1008(2)]
 - a. Declare the petition legally sufficient and order a public hearing. The hearing dates are discussed and one is chosen.
 - b. Reject the petition for nonconformance with the Acts and/or containing incorrect statements or descriptions.
 - i. Return the petition to the petitioners, including reasons for rejection and a certificate of rejection.

OLSR

12. [123.1005] Notify the County Chief Probate Judge requesting the appointment of four members (two members and two alternates) to the SBC from the county where the proposed incorporation is to take place.
 - a. One member and one alternate must reside in a township.
 - b. One member and one alternate must reside in a city.
13. [123.1008(4)] Notify the clerks of each affected county, village and township along with any identified counsel of the hearing by certified mail at least 30 days before the date of the public hearing
14. [123.1008(4)] Publish the public hearing notice at least 7 days before the date of the hearing in a newspaper of general circulation in the local area proposed for incorporation.
15. Begin collecting written comments received from the conclusion of the legal sufficiency meeting until the close of the public hearing.
16. Hold a public hearing on the petition and receive evidence and comments from citizens and other interested parties. [123.1008(3)]
17. Within 7 days of the conclusion of the public hearing, all written correspondence is scanned and provided to the stakeholders listed in the cover letter. The stakeholders have 30 days to respond in writing. At the end of the 30 days, all correspondence and stakeholder comments are provided to the commissioners for their review.

SBC Recommendation Meeting:

18. [123.1009] Consider the reasonableness of the proposed incorporation after considering the criteria established in section 9 of the State Boundary Commission Act.

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19. [123.1010; ERO 1996-2] Recommend that the Director either:
- a. Deny the proposed incorporation, giving reasons for denial,
 - b. Approve the petition as submitted, giving reasons for approval, or
 - c. Revise the boundaries set forth in the petition and approve, giving reasons for the revisions and approval

OLSR

11. After the Recommendation meeting, the OLSR will:
- a. Assemble a cover memo and Final Order reflecting the outcome of the SBC and including the description of the land to be annexed to the city.
 - b. Assemble a document listing the summary of procedure, findings and conclusions. It will include:
 - 1) A timeline of what was done and when;
 - 2) A summary of the findings discussed at the Recommendations meeting;
 - 3) A summary of the conclusions made by the SBC at the meeting;
 - 4) The description of the property included in the annexation, matching what was provided in the original petition;
 - 5) The map provided in the original petition;
 - 6) The questionnaires completed by the city and the township; and
 - 7) A draft copy of the Recommendation meeting minutes.
 - c. Forward the cover memo, SBC Recommended Final Order and the procedure, findings and conclusions to the Director for consideration.

LARA Director

21. [123.1010(1); EO 1996-2] The Director will sign the final order to:
- a. Approve the petition,
 - i. [123.1010(3)] The Director'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.
 - b. Deny the petition, or
 - c. Revise the boundaries in the petition and the approve petition with revised boundaries.

OLSR

22. [123.1010(2)] If denied, OLSR will send a copy of the denial order to the affected county, village and township clerks along with any defined counsel.
23. [123.1010(3)] If approved, or approved with boundary revisions, OLSR will notify the affected county, village and township clerk of the approval order and date if a referendum petition is not filed within 45 days. Any defined counsel will also be notified.
- a. 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. The Secretary of State will be emailed the order for recording with the Office of the Great Seal.

The following steps 24 through 31 would apply if residents wish to file a referendum petition on the incorporation question.

Referendum Petitioners

24. [123.1010 (3)] Voters may circulate a petition requesting a referendum on continuing the incorporation question. The referendum petition must be signed by at least 5% of the registered electors residing in the area approved for incorporation by the Director. The signature collection and petition construction are the same as outlined in steps 1-7 of this document.
25. [123.1010(3) and EO 1996-2] 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.

OLSR

26. Provide notice and verification as outlined in steps 8 - 9 of this document.
27. [123.1010(4)] The county clerk will be contacted to supply at least three possible referendum election dates and locations for consideration by the SBC within a specific timeframe.

SBC Referendum Validity Meeting

28. [123.1010(4)] Determine legal sufficiency of the referendum petition.
29. If the referendum petition is legally sufficient, an order will be drafted with the following contents:
 - a. List a specific date of the referendum election.
 - b. List the date the approval order will become final if the referendum passes.
 - c. Recommend that the Director instruct the county clerk to add the language to the ballot as outlined in MCL 117.15 (1) and set the election date.
30. [123.1010(4) and EO 1996-2] OLSR to transmit an order to the Director for signature that approves a referendum election to be held in the area proposed for incorporation
31. OLSR to send a certified copy of the Director's signed approval order for a referendum election to the petitioner and the clerk of each affected county, city, village or township.

Affected Village/Township/County Clerks

32. [123.1010; 117.15] The clerk of each affected municipality is to arrange for the election of the charter commissioners and immediately issue public notice of:
 - a. The election of a 9-person charter commission.
 - b. The qualification for charter commissioners.
 - c. The last day for filing nominating petitions for the office.
 - d. Number of signatures required for nomination.
 - e. Where to obtain nominating petition forms.

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- f. If directed by the LARA Director, add the question of referendum.
33. [117.15(2)] Prepare the ballot for charter commissioners and places at the head of the ballot the statement, “Candidates for the members of the Charter Commission.”
 34. [117.10; 117.15(1)] Give notice of election proceedings for charter commissioners.
 - a. Publish in 1 or more newspapers published within the district at least once a week for 4 weeks before the election.
 - b. Post a similar notice in at least 10 public places in the district not less than 10 days before the election.

Charter Commission Candidates

35. [117.15(1)] Must reside in the territory proposed for incorporation.
36. [117.15(2)] The nominating petition must be signed by 20 qualified electors residing in the territory proposed to be incorporated.

Electors

37. [117.15 & 123.1010(5)] Vote on the question of continuing the incorporation process and for charter commissioners.
 - a. If most of the electorate votes to end the incorporation process then the incorporation proceedings shall end
 - b. If a majority of the electorate votes to continue the incorporation process then the votes for the charter commission candidates are then counted.

Village, Township, or County Board of Canvassers

38. [168.809] Take returns to the local clerk(s) who then takes the returns to the county clerk the day after the election.
39. [117.15(2)] Certify the election of the 9 persons receiving the highest number of votes cast to the Boundary Commission.

Charter Commission

40. [117.15(3)] All business shall be conducted at a public meeting, in compliance with the Open Meetings Act 1976 PA 267.
41. Shall:
 - a. [117.15(2)] Take a constitutional oath of office.
 - b. [117.15(3)] Choose its own officers.
 - c. [117.15(3)] Establish rules for its proceedings.
 - d. [117.15(3)] Maintain a business journal.

- e. [117.15(3)] 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.
- f. [117.15(2)] Have the power to fill vacancies in its membership.
- g. [117.15(2)] Five or more of its members shall constitute a quorum.

42. [117.15(3)] Draft a proposed charter within 90 days after the first meeting.

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)

43. [117.22] Transmit the proposed charter to the Governor.

Governor

44. [117.22] Either approves the proposed charter and returns it to the charter commission or returns it with a statement of objections.

Charter Commission

45. [117.22] Record the statement of objections from the Governor in the business journal.

46. [117.22] Reconsider charter based on Governor's objections (if applicable).

47. [117.15(3)] 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.

- 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.

48. [117.15(3)] Post notice of the election in at least 10 public places within the proposed city, not less than 10 days prior to the election.

49. [117.15(3)] 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.

50. [117.15(3)] Appoint the election inspectors.

51. [117.23] Submit the prepared charter to the electors of the affected territory for their approval or rejection, along with the candidates for the city officers provided for in the charter.

Electors

52. [117.15(3) & 117.23] Approve or disapprove the proposed charter and vote on the elected officials of the proposed city.

Election Inspectors

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53. [168.809] Take returns to the local clerk(s).

Local Clerks

54. [168.809] Take the returns to the county clerk the day after the election.

County Board of Canvassers

55. [117.23 & 117.15] Canvass the vote for and against the charter.

Charter Commission

56. [117.13] Secure certificates from the boards of canvassers showing:

- 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. [117.13] Attach to the initiatory petition every resolution, affidavit or certificate necessarily following the petition.

58. [117.13 and 117.24] 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.

County Clerk(s) and Secretary of State

59. [117. 13] Record the copies of the petition and its attachments in a book to be kept for that purpose. 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.

If the charter vote fails:

60. [117.16(1)] 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. In such event, steps 66 through 70 may be taken.

De Facto Officer

61. [117.16(1); 123.1010 (6)] Reconvene the charter commission within 90 days if no petition is filed for election of a new charter commission.

Charter Commission

62. [117.16(1)] Revise the proposed charter for resubmission to the electors.

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63. [117.16(2)] Resubmit the proposed charter to the electors.

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

64. [117.17] 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. This petition must be filed within 10 days of the canvass of the vote rejecting a proposed charter. The de facto mayor certifies the petition and files it with either the county clerk or the secretary of state, depending on where the original petition was filed. Return to step 32.

De Facto Officer

65. [117.17] Certify upon the petition that it contains the required number of signatures.

66. [123.1007 (3)] File the petition with the SBC.

Boundary Commission

67. [117.17] Give notice of the filing of the petition in the same manner as upon the filing of the original incorporation petition in Step 8.

68. Order the election of a new charter commission in the same manner as the first charter commission.

Electors of the Affected Territory

69. [117.17] Repeat the procedures of electing a charter commission, drafting a charter and voting on the proposed charter. See steps 32 – 60.

ALL ELECTION PROCEDURES MUST FOLLOW MICHIGAN ELECTION LAW.