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STATE BOUNDARY COMMISSION

PROCEDURE FOR THE INCORPORATION OF A HOME RULE VILLAGE

All of the following have a role in the incorporation of a home rule village:

- State Boundary Commission
- Petitioners
- Petition Circulator
- Voters of the area approved for incorporation
- Referendum petitioners
- Charter commission candidates
- County clerk
- Each village and township clerk
- Village, township or county board of canvassers
- Charter Commission
- County Prosecuting Attorney
- Governor
- Secretary of State
- De Facto Officer
- Electors
- Election Inspectors

NOTE – In the following procedure unless it is otherwise noted, the annotations refer to the Home Rule Village Act or the Boundary Commission Act.

Example 1 – [78.4] refers to the Home Rule Village Act, which is Public Act 278 of 1909, section 4, as amended.

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Example 2 – [123.1007] refers to the Boundary Commission Act, which is Public Act 191 of 1968, section 7, has amended.

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

DEFINITIONS:

Affected district: The whole of each village or township from which territory is to be taken.

Qualified electors: Persons eligible to register to vote in the area:

- residents
- at least 18 years old
- U.S. citizens
- need not be registered voters

Registered voters: Persons actually registered to vote in the area.

Freeholders * : Persons holding:

- (1) Equitable title (MCL 554.5)
 - as vendees under a recorded land contract; or
 - as vendees under a memorandum of land contract
- (2) Record legal title (deed); or (MCL554.5)
- (3) Life estates (e.g., dower's rights) (MCL 558.1)

With regard to village incorporation statutes, the term only applies to requests for a special census.

PETITION REQUIREMENTS

Source: Home Rule Villages Act, PA 278 of 1909, as amended.

Signatures: (MCL 78.2) Petition to be signed by qualified electors residing in the villages or townships to be affected thereby, as follows:

- at least 1% of the population (according to the last preceding U.S. census) of the affected territory must sign;
- at last 100 people must sign;
- if there are any recorded plats in the proposed incorporation district at the county register of deeds' office, then the petition must be signed by:
 - o qualified electors in each subdivision
 - o at least 1% of the population of each subdivision **
 - o qualified electors in the unsplit portion of the district

* "Freehold", an estate in land held for life or with the right to pass on through inheritance; distinguished from "leasehold", "rental" or "at sufferance".

** Determined as of the date on which the first petition signature is obtained.

- at least 1% of the population of the unincorporated portion** of the district;
- Provided further
 - if a summer resort association
 - has been incorporated under P A 230 of 1897, as amended;
 - has existed for 2 consecutive years under this act; and
 - has at least 30 legal voters residing within such territory;
 - then it may petition for incorporation as a home rule village.

Other Contents: (MCL 78.3) Accurate description of the proposed village boundaries.

Statement that the territory contains at least 150 inhabitants and an average density of at least 100 inhabitants per square mile.

Note: Only the electors residing within the territory proposed to be incorporated shall vote in the incorporated election.

** Determined as of the date on which the first petition signature is obtained.

PROCEDURE

Petitioners

1. Accurately describe the boundaries of the proposed village. [78.3]
2. Attach a map or drawing to the petition clearly showing the territory to be incorporated. [R123.25]
3. Represent in the petition that the territory described contains: [78.3]
 - (a.) Not less than 150 inhabitants, and
 - (b.) An average of not less than 100 inhabitants per square mile.

Petition circulator

4. Circulate petition signatures [78.2 and R123.25-27]
5. Shows map or drawing to each person before obtaining their signature on the petition. [R123.25 (2)]

Petitioners

6. Attach an affidavit signed by one or more petitioners.
7. File the petition with the State Boundary Commission. [123.1007(3) & R123.21 (1)]

8. Send official application to:

State Boundary Commission
 Department of Licensing and Regulatory Affairs
 2501 Woodlake Circle
 P.O. Box 30254
 Lansing, MI 48911

Boundary Commission

8. Reviews the petition for conformance to Act 278 and to the rules and regulations of the commission, and: [123.1008]
- (1.) Rejects the petition for:
 - (a) Nonconformance with the Act and/or the commission's rules.
 - (b) Containing incorrect statements.

And
 - (2.) Returns the petition to the petitioners, together with their reasons.
- Or
- (3.) Declares the petition legally sufficient and orders a public hearing on the petition.
9. Notifies the clerks of each affected county, city, village, or township of the hearing by certified mail at least 30 days before the date of the public hearing. [123.1008(4)]
10. Publishes notice of the public hearing at least 7 days before the date of the hearing in a newspaper of general circulation in the local area. [123.1008(4)]
11. Conducts a public hearing on the petition.[123.1008(3)]
- (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 some convenient location in the area proposed to be incorporated.

12. Considers the reasonableness of the proposed incorporation, based on the criteria established in Section 9. [123.1009]
13. Determines whether the petition for incorporation should be: [123.1010]
 - (a.) Approved.
 - (b.) Denied.
 - (c.) Revised. Alter the boundaries set forth in the petition and approve, giving its reasons for the revisions and approval.
14. Recommend the Director either: [123.1010]
 - (a.) Deny the petition giving its reasons for the denial.
 - (b.) Approve the petition giving its reasons for the approval.
 - (c.) Revise the boundaries set forth in the petition and approve, giving its reasons for the revisions and approval.
15. Sends a certified copy of its denial order to the petitioner and to each affected county, city, village or township clerk. [123.1010(2)]
16. Notifies the petitioner and each affected county, city, village or township clerk of its approval order and date. [123.1010 (3)]
 - (1) The Director's approved 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.
 - (2) The following steps #17 through #22 could apply should residents wish to file a referendum petition.
17. May circulate a petition asking for a referendum on the the incorporation question. [123.1010 (3)]

**Voters of the Area Approved
For Incorporation**

Note - This petition must be signed by at least 5% of the registered electors residing in the area approved for incorporation by the Commission.

Referendum Petitioners

18. File the referendum petition with the commission within 45 days of the commission's approval order. [123.1010 (3)]

Boundary Commissioners

19. Verifies the validity of the referendum petition. [123.1010 (4)]
20. Consults with the affected clerks to determine a possible referendum election date.
21. Orders an election to be held in the area approved for incorporation. [123.1010 (4)]
22. Specifies a date after the election on which the commission's approval order shall become final if the proposal is approved by the voters. [123.1010(4)]

Note - Should the voters approve the proposed incorporation, or should no referendum petition be filed, the following steps would apply:

23. Sends a certified copy of the Director's approval order to the petitioner and the clerk of each affected county, city, village, or township and to the Secretary of State. [123.1010 (5)]
25. Orders a special election for the election of 5 charter commissioners if a general election is not to be held within 90 days. [(78.4), (78.11)]
26. Directs the clerk of each affected municipality to immediately issue public notice of:
- (a.) The election of a charter commission.
 - (b.) The qualification for charter commissioners.
 - (c.) The last day for filing nominating petitions for the office.
 - (d.) Number of signatures required.
 - (e.) Where to obtain nominating petition forms.

Each charter commission candidate

27. Files a petition with the county clerk on or before 4 P.M., EST, of the same day of the week, 7 weeks prior to the day of the election. (OAG No. 1165, Biennial Report 49-50, p. 516; MSA 6.1551)
- (1) A candidate must be an elector of the territory proposed to be incorporated. [78.11]
 - (2) The petition must be signed by 20 qualified electors residing in the territory proposed to be incorporated. [78.11]

Boundary Commission

28. Requests the county clerk to have the ballots printed in accordance with the Boundary Commission's prescribed form. [78.11]
29. Prepares the ballot for charter commissioners and places at the head of the ballot the statement, "candidates for members of the charter commission". [78.11]

Each village & township clerk

30. Arranges for the election of the charter commissioners. [78.6], [78.11]
31. Gives notice of the date and purpose of the election, as follows: [78.6]
- (a.) Publishes in 1 or more newspapers published within the district at least once each 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

32. Vote for charter commissioners. [123.1010], [78.11]

Election Inspectors

33. Make returns to the local clerk(s) who then take the returns to the county clerk the day after the election. (MSA 6.1809)

Note - "In local elections to be canvassed by the board of county canvassers which are not held in conjunction with a county or state election the election inspectors shall deliver both sealed envelopes to the local clerk who shall deliver them to the county clerk prior to 11 A.M., on the day following the election." (MSA 6.1809)

34. Make returns to the county clerk where the greater part of the proposed village is located if in more than 1 county. [78.8]

Village, township or county

35. Canvasses the vote for charter commissioners on the first Thursday following the election. [78.8]

Note - Public Act No. 65 of 1968 [MSA 6.1020 (1)] established a 4 member board of canvassers in every city and township having more than 5 precincts, in each county with less than 1 million population, notwithstanding any statutory or charter provisions or any other rule or law to the contrary.

36. Certifies the election of the 5 persons receiving the highest vote to the successful candidates and the Boundary Commission. [78.11]

Boundary Commission

37. Serves notice on charter commission to convene within 10 days. [R123.75]

Charter Commission

38. Convenes within 10 days after the election and takes the constitutional oath of office. [78.11]

39. Certifies to the Boundary Commission that the first meeting has taken place. [R123.75]

40. Chooses its own officers. [78.11]

41. Establishes the rules for its proceedings. [78.11]

(1) The charter commission has the power to fill vacancies in its membership.

(2) Three or more of its members shall constitute a quorum.

42. Keeps a journal and when requested by a member enters roll call votes in the journal. [78.11]

Note - Although [78.11] provides that the charter commission shall frame a charter within 60 days of convening, this is not deemed to be a mandatory limit, but is directory only. (OAG No. 2367, 1955, Vol. 1, p. 776; OAG Biennial Reports, 1914, p. 70)

County prosecuting attorney

43. Advises the charter commission as to whether proposed charters conform to the laws and constitution of the state and gives such other information as they may require. [78.18]

Charter Commission

44. Drafts a proposed charter.
45. Sends the proposed charter to the Governor for his approval. [78.18]

Governor

46. Reviews and approves the proposed charter, signs it and returns it to the charter commission, [78.18]
OR

47. Returns the proposed charter to the charter commission with a statement of his objections and any information or recommendations he sees fit to submit. [78.18]

Note – Steps 48 through 50 would apply only when the Governor has expressed objections to the proposed charter.

Charter Commission

48. Spreads the reasons for the Governor's objections and any information or recommendations he may have submitted upon its records. [78.18]
49. Reconsiders the charter. [78.18]
50. Presents the charter if 2/3 of its members agree to pass it on reconsideration. [78.18]
51. Provides the manner of nominating the candidates for the first elective officers provided in the proposed charter. [78.11]

Note - Steps 51 through 57 should be set forth and provided in the schedule portion of the proposed charter.

52. Fixes the date of the first village election and referendum on the proposed charter. [78.11]
53. Publishes the proposed charter at least once in 1 or more newspapers published in the proposed village or in the same adjoining county, not less than 2 weeks and not more than 4 weeks preceding the election. [78.11]

(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.) Assures that the elective officers provided for in the charter will be elected on the same date.

54. Posts notices of the election in at least 10 public places within the proposed village, not less than 10 days prior to the election. [78.11]

55. Provides 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. [78.11]

56. Appoints the election inspectors. [78.11]

Note – Election procedures shall follow the requirements of state election laws.

57. Submits the prepared charter to the electors of the affected territory for their approval or rejection. [78.11]

Electors

58. Approve or disapprove the proposed charter.

Note – The territory constituting the proposed new village shall remain under the control and management of the township(s) from which it was taken and the authority of the officers of such township (s) shall continue until a charter of the proposed village has been adopted and the officers have been elected and qualified as provided in the charter. [78.13]

Election Inspectors

59. Makes returns to the local clerk(s). [MSA 6.1809]

Local clerk(s)

60. Take the returns to the county clerk the day after the election. [MSA 6.1809]

Note – See note under step 33.

**Township or county
Board of Canvassers**

61. Canvass the vote for and against the charter. [MSA 6.1030 (1)]

ONLY IF CHARTER IS APPROVED: THEN FOLLOW STEPS 62 - 66.

Charter Commission

62. Files a copy of the approved charter with the Boundary Commission

Charter Commission & Boundary Commission

63. Secure certificates from the boards of canvassers showing: [78.9]

(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 village's first elective officers.

64. Attach to the initiatory petition every resolution, affidavit or certificate necessarily following the petition including the certificates of step 63. [78.9]

65. File the initiatory petition and its attachments along with 2 copies of the charter with the county clerk or clerks and the Secretary of State. [78.9], [78.20]

(a.) Upon the filing of these documents the village shall be duly and legally incorporated under and by the name designated in the petition.

(b.) When incorporation has been accomplished the new village shall reimburse the county for the printing of ballots. [78.11]

County Clerk(s) and Secretary of State

66. Each record the copies of the petition and its attachments in a book to be kept for that purpose. [78.9]

(1) Either of such records or certified copies shall be prima facie evidence of the incorporation.

(2) Should the proposed charter be rejected, the person receiving the most votes for president serves as a de facto officer until a president is elected and qualified pursuant to a charter approved by the electors. In such, steps 67 through 69 may be taken.

De Facto Officer

68. After 10 days requires the Charter Commission to reconvene and revise the proposed charter for resubmission to the electors. [78.12]

69. Resubmits the proposed charter to the electors. [78.12]

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 2 years following the date the commission's order becomes final or if within the 2 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

70. May petition the de facto president for an election to select a new charter commission by filing the signatures of any 100 electors of the proposed village. [78.13]

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

De Facto Officer

71. Certifies upon the petition that it contains the required number of signatures. [78.13]

72. Files the petition with the Boundary Commission. [78.13]

Boundary Commission

73. Gives notice of the filing of the petition by passing a resolution calling for the election of 5 charter commissioners. [78.13]

Electors of the Affected Territory

74. Repeat the procedure of electing a charter commission, drafting a charter, and voting on the proposed charter. [78.13]