

# Section 1: Local Government

## Chapter 4: Boundaries and Annexation

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### Introduction

The boundaries of a municipality affect its tax base, the tax rate of its residents, the level of services provided to residents, and the potential for further development. The guiding principle of law governing boundaries of municipalities is that no municipality or person has any legal right in the boundaries of the municipality.

The changing of municipal boundaries is a legislative function and municipal boundaries can be changed when needed. To that end, the Michigan Legislature has enacted several statutes bearing on the altering of municipal boundaries. Political boundaries are created by incorporation. They are changed by disincorporation, consolidation, annexation, or detachment.

### Incorporation

Villages and cities have separate statutes addressing incorporation. Both statutes have one thing in common. The process for incorporation begins by petitioning the State Boundary Commission (SBC), which is a quasi-judicial body tasked with adjudicating and making recommendations for municipal boundary adjustments. Additional information on the SBC, including detailed incorporation procedure and criteria, can be found on the SBC's website.

In general, the petition must be signed by a sufficient number of qualified electors. It must legally describe the

area to be incorporated and have a survey attached showing the boundaries in relation to surrounding communities. Before submitting the petition, the municipality should meet with the staff of the SBC. They will review the petition and identify any deficiencies that must be corrected. This is important because a petition, once submitted, cannot be amended. It will be rejected if there is any doubt whether it meets all of the statutory requirements.

The SBC will determine the legal sufficiency of the petition. If it is legally sufficient, the SBC will hold a public hearing to determine the reasonableness of the incorporation and, if so found, will approve the petition. Its reasonableness determination is guided by certain criteria set forth by statute. A period of 45 days is then triggered allowing five percent of the population in the area to be incorporated to petition for a referendum. If no petition is filed, or if a referendum is held and the incorporation passes, the SBC then orders an election to be held to elect a charter commission. Upon election, the charter commission drafts a charter and sends it to the governor's office for approval. If approved, an election is then held (1) to approve the charter, and (2) to elect the first slate of municipal officials. If the charter does not secure approval of the electorate, the charter commission has three years within which to submit a new proposed charter to the governor's office.

### **Disincorporation**

Disincorporation in a home rule city begins with the filing of a petition to vacate incorporation signed by at least 25 percent of the city's registered electors as shown on registration lists as of the day of filing. After reviewing the petition signatures, the city clerk sends the petition to the county clerk.

An election upon the question petitioned for is held in the city and any townships affected. Approval requires a 2/3 vote of the city electorate and a majority vote of any townships affected. A home rule village has no statutory mechanism for disincorporation unless its charter permits disincorporation.

### **Consolidation**

The SBC has authority over the consolidation of municipalities. When existing municipalities are consolidated, usually a new municipality is created and takes the place of the old, and the latter ceases to exist. A new city may not be created by the consolidation process unless at least one of the municipalities to be consolidated is an incorporated city. Consolidation begins with the filing of a petition with the SBC signed by five percent of the total population of the two or more consolidating municipalities. The petition is reviewed in the same manner as the processing of petitions for incorporation. If the petition is approved, there is a 45-day period for the filing of a petition for a referendum containing the signatures of at least five percent of the registered electors residing in the area to be consolidated. If a petition for referendum is filed, the proposition is submitted to a vote of the electors of the affected municipalities. In order to be adopted, the proposition to consolidate must receive an affirmative majority vote in

each affected municipality voting separately. When the SBC order approving a proposed consolidation becomes final, the SBC calls for an election of nine charter commissioners. Alternatively, the consolidating municipalities may, by resolution of their respective governing bodies, choose to appoint their charter commissioners. The charter commission drafts the proposed charter. If the governor's office approves the charter, the election is held on the charter and candidates for office to the newly consolidated entity.

### **Annexation**

Annexation is the process of bringing land from one municipality into another municipality and can be accomplished several different ways. There are three rules to consider. First, in order to be annexed, the territory has to be contiguous to the municipal border. Second, the amount of land touching along the boundary line must be somewhat proportional to the size of the territory to be annexed. And third, no islands of township property can be created between the municipality's old boundary and the newly drawn boundary line.

Home rule villages secure permission from the county commission to hold an election to annex property. If the county approves the petition, it passes a resolution ordering an election.

Home rule cities annex property in several ways. If the property is owned by the city and vacant, the city council adopts a simple resolution stating their intent to annex the property. If the township agrees, annexation takes place by the adoption of a joint resolution of the legislative bodies of the

city and the township. If the property is in a charter township, the county is petitioned to hold an election in the city and in the area to be annexed.

Most other annexations are through petition to the SBC. Petitions can be filed by the city, by 75 percent or more of the landowners, by 20 percent of the registered voters in the area to be annexed or by one percent of the entire population of the territory affected.

The petition process consists of:

1. a pre-application review of the petition provided by the SBC containing a legal description of the territory, a survey, a map of the general area in relation to the rest of the city;
2. a determination of the legal sufficiency of the petition by the SBC;
3. a public hearing by the SBC;
4. an adjudicative hearing at which time the SBC reviews their staff reports and responses to questionnaires sent out to the city and township; and
5. approval by the SBC.

If the SBC approves the petition, a 30-day referendum period is required before the annexation becomes final. If 25 percent of the registered voters in the area to be affected file a petition to hold an election on the question of annexation, the election is held. If both the majority of the electors in the annexed area and the majority of the city or township electors voting separately approve the annexation, the decision of the SBC stands. If either group fails to register a majority vote, the SBC decision is overturned.

### **Exemption and Exclusions from Annexation Two Year Rule**

No petition will be accepted by the SBC if filed within two years of a previous determination by the SBC on any portion of the territory included in a current petition.

### **Charter Townships**

If a charter township substantially meets all of the following requirements, property can only be annexed under the provisions set forth in Section 34 of the Charter Township Act. The charter township has:

- a state equalization value greater than \$25 million;
- a minimum density of 150 persons per square mile;
- fire protection services provided directly or by contract;
- a zoning ordinance or master plan;
- solid waste disposal services;
- water or sewer services, or both;
- police protection by contract or otherwise.

All of these services must be provided to the entire charter township.

Annexation of territory from a charter township is still permitted but it is only allowed by:

- election called for by petition of registered voters within the territory to be annexed and the city;
- joint resolution of the city and the township, and
- petition to the SBC to straighten the boundary between the two municipalities or to remove free standing islands of the charter

township completely surrounded by an annexing city.

The Charter Township Act does not provide a means for a property owner to petition for annexation with the SBC.

**Boundary Changes by Agreement**

Two statutes, the “Urban Cooperation Act” and “Act 425,” are often used to approve a boundary change between a city and township.

**Urban Cooperation Act**

The Urban Cooperation Act (1967 PA 7) and the Intergovernmental Transfers of Functions and Responsibilities Act (1967 PA 8) are preferred by cities. The Acts permit two or more local governments to enter into an interlocal agreement to do anything either one of them could do on its own. If the agreement is to provide water and sewer to an area of the township, the consideration would be the sharing of the millage on the property with the township. Each municipality would hold a public hearing on the agreement. Final agreement would not occur until after the expiration of a 45-day referendum period.

To effect a boundary change under an Act 7 or 8 agreement, each municipality would have to adopt mutual resolutions under Section 9 of the home rule cities act agreeing to annexation of property into the city.

**PA 425 Agreements—Conditional Transfer of Property for Economic Development**

1984 PA 425, as amended (Act 425), permits units of government to conditionally transfer municipal jurisdiction over property from one

municipality to another for the purposes of economic development.

An agreement under Act 425 (425 Agreement) must have been entered into for an actual economic development project, and there has to be an actual conditional transfer of property. A 425 Agreement cannot be entered into merely to exchange utility services between the municipalities.

For example, if a developer of an economic development project in the township requires water and sewer, the property is conditionally transferred into the city in order to secure those services. The city shares the taxes it receives from the transferred property with the township for the length of the agreement, at the end of which the property either returns to the township or stays with the city. Each municipality has to hold a public hearing. Finalization of a 425 Agreement does not occur until the expiration of a 30-day referendum period, when it is filed with the county clerk and the secretary of state.

Property within the jurisdiction of an agreement entered into pursuant to Act 425 cannot be annexed during the term of the agreement, so long as the 425 Agreement was not entered into as a sham or “shark-repellant” to block annexation.

**Detachment—Villages**

Detachment of property from a home rule village is initiated by the filing of a petition with the county clerk of one percent of the population of the qualified electors in the village and township. If the petition is legally sufficient, the county approves the petition and orders the election. The votes of the village and township electors are counted collectively. A majority wins. Assets owned by the home rule village in the detached area are sold pursuant to the statute and the proceeds divided proportionately with the township. Debts are likewise divided and shared proportionately with the township.

**Detachment—Home Rule Cities**

The detachment process is started by the circulation and filing of a petition signed by one percent of the registered electors of the city or township with the county clerk. If legally sufficient, the county board approves and orders an election to be held on the question of detachment, with the combined total of all the votes cast in both the city and township being counted together. A simple majority determines the outcome. Any assets that the city may own in the detached territory are then sold under special formula in the home rule city act and divided proportionately between the city and the township. Debts and obligations are also divided proportionately with the township.

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