

MINNESOTA CODE OF AGENCY RULES

RULES OF THE MINNESOTA MUNICIPAL BOARD

1982 Reprint



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Prepared by

**THE OFFICE OF REVISOR OF STATUTES
Room 3, State Capitol, St. Paul, Minnesota 55155**

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MINNESOTA MUNICIPAL BOARD

Rules of Practice

MMC 6	Commencement of petition: title.
MMC 7	Parties; petition to intervene; appearance.
MMC 8	Representation.
MMC 9	Pleadings.
MMC 10	Amendments.
MMC 11	Service.
MMC 12	Continuances and extension of time.
MMC 13	Stipulations.
MMC 14	Dockets.
MMC 15	Hearings.
MMC 16	Witnesses.
MMC 17	Briefs and oral arguments.
MMC 18	Decision and orders.
MMC 19	Petitions for further hearing, rehearing, amendment, vacation, reconsideration or reargument.
10 MCAR S 4.020	Schedule of Filing Fees.
10 MCAR S 4.021	Orderly Annexation

CHAPTER TWO: MMC 6-20 RULES OF PRACTICE

MMC 6 Commencement of Petition: Title

(a) **Petition.** A "petition" as the term is used in these rules, may be initiated in accordance with Minnesota Statutes, Chapter 414 (1971) by the required number of persons or by the municipality, town, or by the Commission as provided in such sections. Where the petition is filed by residents or property owners, the signatures of the required number of petitioners must be attached to the petition and the petition must clearly show on its face the number of petitioners required to sign such petition to commence proceedings for incorporation, consolidation, annexation or detachment, as the case may be, and the method of computing the number of petitioning signatures required. Where the petition is commenced by a municipality, or town, such petition must show the appropriate action by the governing body, including the citation to the resolution, ordinance or Notice of Intent.

(b) **Title.** The municipality, town, or the persons commencing a petition shall be designated as the "petitioner" or "petitioners." The petition shall be designated as follows:

In the matter of the Petition of Certain Persons (or the City or Town of blank) for (incorporation, consolidation, annexation or detachment as the case may be)

followed by a brief description of the subject matter to which the petition relates. No petition shall be dismissed, impaired or prejudiced because incorrectly entitled, or the parties thereto incorrectly designated but opportunity shall be given in such cases to correct the error by amendment, giving due consideration to any person who may have been misled by the error.

MMC 7 Parties; Petition to Intervene; Appearance. Petitioners specifically named as such in any pleading are parties to the proceeding. No other person shall become a party to the proceeding except by appearing at the hearing on such petition and entering an appearance of record, and in writing on a form to be provided by the Commission, and a showing that he is a resident or taxpayer of the affected area or that he is specifically deemed by statute to be interested in the particular type of matter involved or that he is specifically deemed by statute to be an interested party to the particular type of proceeding involved or that by the outcome of the proceeding he will be bound and affected either favorably or adversely with respect to an asserted interest peculiar to him as distinguished from an interest common to the public or other taxpayers in general. The Commission may hear the facts or evidence of any person or organization as to the subject matter, but no person shall become or shall be deemed to have become a party to the proceeding, by

reason of such participation in the hearing. Any person may enter an appearance in any proceeding, but no person shall become or shall be deemed to have become a party to the proceeding by reason of having entered an appearance therein.

MMC 8 Representation. The parties may appear either in person or by attorney. A corporation cannot appear in person.

MMC 9 Pleadings

(a) Pleadings. The pleadings before the Commission shall be the petition. No answer, Reply, Protest or Petition to Intervene is necessary to become a party of record to the proceeding. A petition may be amended upon motion to the Commission. A party may in writing notify the Commission of an interest in the petition for the purpose of obtaining a copy of any proposed Findings of Fact or other documents or any final Order required to be served by statute or by the Commission Rules of Procedure.

(b) Petition. The petition shall contain a statement of all the facts which must be found by the Commission before the Commission can enter an Order pursuant to Minnesota Statutes, Chapter 414 (1971). If these facts are not controverted by opposing parties at the hearing on the petition, the petition shall be prima facie evidence of such facts except that the Commission may from appropriate public records or documents determine whether or not such are the facts. The petitioners shall prove such facts by competent evidence. Public records are admissible without foundation except proof that they are public records in establishing the facts required in Minnesota Statutes, Chapter 414 (1971).

MMC 10 Amendments. Formal petitions may be amended at any time before the record has been closed after public hearings required by law upon motion and upon notice to all parties to the proceeding (which may be done at public hearings) except that where the petition is by property owners the petition cannot be amended to include an area different than the one described in the petition signed by such property owners (Subject to the statutory authority of the Commission to alter the boundaries proposed in the petition.)

MMC 11 Service. Any petition pursuant to Minnesota Statutes, Chapter 414 (1971) must be filed with the Commission together with the following:

(a) Filing Fee (See Rule MMC 20)

(1) No petition will be accepted or acted upon unless the filing fee is received.

(b) A certification showing that the petition was served upon the proper parties when the statute indicates such necessity and the date filed.

(1) Under the section for Annexation by Ordinance, the Commission will accept a waiver from the township stating they have no objections to a proposed annexation and waiving the 60-days before an ordinance can be adopted.

(c) A map showing the property proposed for consideration and its relationship to any surrounding municipality. All distance references should be

given by both length and points of beginning should be definite land survey monuments with care to close the boundaries of the description. References to roads or railroads should be to survey lines such as centerline or known right-of-way line. The intent to include or exclude highway, railroad and street right-of-ways surrounding platted blocks or lots should be carefully considered and clearly stated.

(d) The petitioner is required to provide and pay for any necessary publication of Notices of Hearing pursuant to the appropriate section of the statute.

(e) Any proposed amendments to the petition must be served upon all attorneys and parties of record. When any party has appeared by an attorney, service upon such attorney shall be deemed service upon the party.

MMC 12 Continuances and Extension of Time. For cause shown, continuances and extensions of time will be granted or denied by the Commission in its discretion. Where a motion for continuance or extension of time is made other than at a public hearing, if such motion is granted, the public hearing shall nevertheless convene for the purpose of announcing the date to which such hearing is continued.

MMC 13 Stipulations. Parties may, by stipulation in writing filed with the Commission or presented at the hearing, agree upon any facts involved in the proceedings. It is desired that the facts be thus agreed upon so far as and whenever practicable. Where facts are stipulated, any party entering an appearance of record subsequent to the stipulation may controvert such facts by evidence, but it shall be the obligation of such party to determine what facts have been stipulated, but where any person or municipality becomes a party of record subsequent to any stipulation of facts does not appear from the record that such facts have been stipulated or does not controvert them by evidence, the Commission may find such to be the facts in entering its final Order.

MMC 14 Dockets

(a) Open to Public Inspection. The Commission shall establish and maintain in the office of the secretary the dockets which shall be open to public inspection but any person wishing to inspect any record of the Commission must first make application to the secretary of the Commission.

(b) Filing of all papers required. Copies of all petitions and all papers in any manner relating to or affecting any petition or jurisdiction of the Commission or which are intended for the information of or action by the Commission must be first filed in the office of the secretary thereof, and thereafter the same shall be preserved therein as public records.

(c) Docket Number. The secretary, upon the filing with the Commission of any matter within the jurisdiction of the Commission, will enter such matter on the docket, giving it then a consecutive number therein.

MMC 15 Hearings

(a) When Held. Public hearings shall be held by the Commission as to any petition filed pursuant to Minnesota Statutes, Chapter 414 (1971) in accordance with the provisions as to hearings of such section.

(b) **Examination of Witnesses: Cross-examination; rebuttal.** Witnesses will be examined orally before the Commission. Such examination shall be conducted in the first instance by the attorney appearing for the party calling such witness. Any witness may be examined by the Commission. Every party to a contested case shall have the right of cross-examination of a witness who testified, and shall have the right to submit rebuttal evidence. Where such cross-examination is sought by a party not an attorney, such party shall submit his questions on cross-examination to the Chairman of the Commission or the presiding officer who will then propound the question to the witness if it is deemed admissible.

(c) **Exhibits.** Unless the Chairman or presiding officer shall otherwise direct, exhibits offered to the Commission at any hearing or conference in a contested case shall be one copy only, and a reasonable number of copies shall be furnished to parties in attendance.

(d) **Order of Procedure.**

(1) Party instituting the petition shall open proof. Unless otherwise directed, the following order of procedure shall apply at all hearings before the Commission: The Chairman or presiding officer shall determine the subsequent order of procedure including the order in which opposing parties shall present proof. Neutral parties or parties appearing as their interests may appear, shall generally be heard after opposing parties. Where a person, firm, corporation or municipality seeks to intervene although he is not a resident or taxpayer of the affected area or where the municipality or subdivision of government is not included in the affected area, the Chairman or presiding officer may determine whether such intervention shall be permitted and in what order such party may introduce proof.

(2) **Failure to Appear.** If a petitioner fails to appear at a proceeding, the hearing may be dismissed with or without prejudice at the discretion of the Commission; or the Commission may, in its discretion, approve the petition requested upon the basis of a verified statement of proof and affidavits, if any, filed in the case, which in all cases shall be considered as having been offered in evidence at the hearing by the petitioner but the Commission shall not approve the petition upon such a showing if any person appearing at the hearing who qualifies as a party to the proceeding shall object thereto.

(e) **Admission of Evidence.** In a contested case, the Commission may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable, prudent men in the conduct of their affairs. It shall give effect to rules of privilege recognized by law. It may exclude incompetent, irrelevant, immaterial and repetitious evidence.

(f) **Documentary evidence.** In a contested case, documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.

(g) **Evidence must be offered.** All evidence in a contested case, including records and documents in the possession of the Commission of which it desires to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case except that the Commission may take notice of appropriate public documents or records of a general scientific or technical nature by appropriate notice to all parties of record limiting the

time within which such parties may object to the accuracy of the facts sought to be proved from such documents or records.

(h) Official notice. In a contested case, the Commission may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified in writing either before or during hearing, or by reference in preliminary reports or otherwise, or by oral statement in the record, of the material so noticed, and they shall be afforded opportunity to contest the facts so noticed.

(i) Record of proceeding. The Commission shall prepare an official record of all contested proceedings, including testimony and exhibits. Testimony before the Commission shall be taken in shorthand by official reporters designated by the Commission or by mechanical recording device. A transcript shall be furnished upon application at the expense of the applicant, otherwise the preparation of a transcript shall be at the discretion of the Commission.

MMC 16 Witnesses

(a) Witnesses and subpoenas: who may appear. Subpoenas requiring the attendance of witnesses at any designated place of hearing within the State of Minnesota may be issued by the Commission pursuant to Minnesota Statutes, Chapter 414 (1971), but subpoenas for the production of books, papers, or documents, unless directed by the Commission upon its own motion, will issue only upon application to the Commission in writing. Application to require parties to produce documentary evidence must be verified and must specify as nearly as may be possible the books, papers, or documents desired and the facts to be proven by them.

(b) Fees of Witnesses. Witnesses who are subpoenaed are entitled to the same fees as are paid for like service in the district courts of the State of Minnesota, such fees to be paid by the party at whose instance the testimony is to be taken.

(c) Service of Subpoenas. Service of subpoenas shall be made in like manner as provided by law for service of subpoenas in the district courts of this state.

MMC 17 Briefs and Oral Arguments

(a) Requests for briefs or oral arguments. If briefs or oral arguments are desired by any of the parties to the proceeding, they shall notify the Chairman or presiding officer before or at the hearing. If such request is made, the presiding officer shall allow all parties to file briefs or make oral arguments, or he may permit both. He shall also prescribe the time for service and filing of briefs or making of oral argument.

(b) Filing and service of briefs. All briefs for presentation to the Commission must be filed with the secretary accompanied by written evidence of service upon opposing counsel, party or parties.

(c) Recording and transcribing oral argument. Oral argument shall be recorded and transcribed only if the Commission so orders; when transcribed it shall be bound with a transcript of the testimony (if the testimony has been transcribed), and will be available to the Commission for consideration in deciding the matter.

MMC 18 Decision and Orders

(a) Filing; content; service. Decisions and orders of the Commission when made shall be filed with the secretary, who shall notify by mail all parties to the proceeding of such filing. Every decision or order adverse to a party in a contested case shall be in writing or stated in the record and shall be accompanied by a statement of the reasons therefor. The statement of reasons shall consist of a concise statement of the conclusions upon each contested issue of fact necessary to the decision. A copy of the decision or order and accompanying statement of reasons, together with a certificate of service, if requested, shall be delivered or mailed to each party, or his attorney of record.

(b) Proposal for decision or order. Whenever in a contested case a majority of the commissioners has not heard or read the evidence, before making a decision or order adverse to a party, the Commission shall serve by mailing to each party a copy of a proposal for decision or order, including a statement of reasons therefor.

(1) Exceptions. Within 10 days after such service of the proposal for decision or order, any party may file and serve exceptions thereto and reasons in support thereof.

(2) Form of exceptions; reply. Exceptions with respect to statements of fact or matters of law must be specific and must be stated and numbered separately. When exception is taken to a statement of fact, a corrected statement must be incorporated. If exception is taken to conclusions in the report, the points relied upon to support the exception must be stated and numbered separately. A reply to exceptions may be filed and served, but is not required, by any party within 10 days after service of the exceptions to which reply is made.

(3) Argument. Exceptions and replies thereto shall contain written arguments in support of the position taken by the party filing such exceptions or reply. Oral argument before a majority of the commissioners may be permitted all parties, in the discretion of the Commission, in the event that any party at the time of filing his exceptions or reply requests oral argument.

MMC 19 Petitions for Further Hearing, Rehearing, Amendment, Vacation, Reconsideration or Reargument

(a) Further hearing. Before the final submission of any proceeding, any party thereto desiring a further hearing may file a petition therefore with the Commission, which said petition shall clearly set forth the grounds relied upon for a further hearing; and if it is proposed to produce additional testimony, the testimony so to be produced shall be briefly summarized. No further hearing will be granted where it appears that the evidence to be adduced will be merely cumulative. Such petition shall be served upon all parties to the proceeding. An adverse party shall have 10 days from the date of the service of such petition within which to answer thereto. No reply to such answer will be permitted. The Commission may grant or deny such petition without hearing or, in its discretion, set a hearing on such petition.

(b) Rehearing, amendment, vacation, reconsideration, reargument. Within 10 days from the date of the mailing by the secretary of the final decision or order, any party may petition for a rehearing, or for an amendment or vacation of the findings of fact, decision or order, or for reconsider-

ation or reargument. If such petition be for a further hearing, rehearing, vacation, reconsideration, or reargument, the grounds relied upon shall be specifically set forth and the claimed errors clearly stated. If such petition be for an amendment of the findings of fact, decision, order, such petition shall contain the desired proposed amendments, and the reasons therefor shall be clearly stated. Such petition shall be served upon all parties to the proceeding. An adverse party shall have 10 days from the date of the service of such petition to answer thereto, and no reply will be permitted. The Commission may grant or deny such petition without a hearing, or in its discretion set a hearing thereon. Pending the decision of the Commission on such petition, the Commission may vacate and set aside said decision or order. No such petition will extend the time of appeal from said decision or order.

(c) Amendment of effective date of order or decision. Petitions for amendment of orders or decisions which seek only a change in the date when they shall take effect, or in the period of notice or other period or date thereby prescribed, must be made by petition reasonably filed and served in like manner as other petitions under this rule, except that, in case of unforeseen emergency satisfactorily shown by the petitioner which requires relief within three days, such relief may be sought informally, by telegram or otherwise, upon notice thereof to all parties to the proceeding.

(d) Second petition upon same ground not entertained. A second petition for further hearing, rehearing, amendment or vacation of any findings of fact, decision or order, reconsideration or reargument by the same party or parties and upon the same grounds as a former petition which has been considered and denied, will not be entertained.

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10 MCAR S 4.020 Schedule of filing fees.

A. Incorporation of a municipality. A petition for incorporation of a municipality must be accompanied by a filing fee of \$600 when filed with the board.

B. Consolidation proceedings; municipality and town. A petition for consolidation of a municipality and town must be accompanied by a filing fee of \$200.

C. Annexation of unincorporated property. A filing fee of \$4 per acre must accompany a petition to annex unincorporated property. The minimum fee is \$100 and the maximum is \$600. Where the petition is initiated by property owners, the filing fee will be reimbursed by the annexing municipality if annexation is successful.

D. Orderly annexations within a designated area. A filing fee of \$1 per acre must accompany the joint resolution or petition for designation. The minimum fee is \$25 and the maximum is \$200. Thereafter requests for the initiation of annexation of any part of the designated area shall be accompanied by a filing fee of \$1 per acre with a minimum of \$25 and a maximum of \$200.

E. Annexation by ordinance. A filing fee of \$4 per acre must accompany the initial petition, resolution, or ordinance submitted to the board (with a minimum of \$100 and a maximum of \$600) before a file will be opened on the proceeding.

F. Consolidation of two or more municipalities. A fee of \$200 must accompany a petition for consolidation of a municipality or municipalities to an adjoining municipality when filed with the board.

G. Detachment of property from a municipality. A filing fee of \$4 per acre must accompany a petition to detach property from a municipality. The minimum fee is \$100 and the maximum is \$600.

H. Concurrent detachment and annexation of incorporated land. A filing fee of \$4 per acre must accompany the concurrent resolutions with a minimum fee of \$100 and a maximum of \$600.

MINNESOTA MUNICIPAL BOARD

§ 4.021 Orderly annexation.

A. Acceptance by the board. An orderly annexation joint agreement shall be accepted and filed by the board if its terms are consistent with applicable state law and in the best interests of the parties and affected persons.

B. Initiating an annexation within the orderly annexation area. If any provision of the orderly annexation joint resolution resolves to annex an area designated for orderly annexation upon the effective date of the joint resolution, the board shall, after accepting the joint resolution, treat this provision as a separate resolution initiating annexation.

C. Evidentiary requirements for annexation within the designated area. The party proposing an annexation with the designated area shall demonstrate whether or not the proposed annexation is consistent with the joint agreement.

D. Reporting requirements. One year after the joint agreement has been accepted by the board, and every year thereafter, for as long as the joint resolution is in effect, the parties shall inform the board of any changed conditions, which would mandate action by the terms of the agreement within the area designated for orderly annexation.

E. Amending the joint agreement. The joint agreement can only be amended by joint resolution submitted to the board by all of the parties to the joint agreement. The board shall accept the amendment, subject to proper notice and hearing as set forth in Minn. Stat. § 414.09, if it is consistent with applicable state law and the remainder of the joint agreement and in the best interests of the parties and affected persons.