

CITY DEVELOPMENT BOARD[263]

[Chapters 1 and 2, IAC 7/27/77, superseded by Chapters 1 to 4, effective 4/12/78]
[Prior to 1/9/91, City Development Board[220]]

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CHAPTER 1
ORGANIZATION AND ADMINISTRATION

[Prior to 1/9/91, City Development Board[220] Ch 1]

263—1.1(368) Description. The primary function of the city development board is to supervise city development actions, including annexations, consolidations, discontinuances, incorporations and severances for the state of Iowa, pursuant to the provisions of Iowa Code chapter 368. Detailed information about the board's policies and procedures can be found in Iowa Code chapter 368, in rules adopted by the board, and at www.iowaeda.com/land-planning.

[ARC 7699C, IAB 3/6/24, effective 4/10/24]

263—1.2(368) Office of the board. All official communications, including submissions and requests, may be addressed to City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, or to cdb@iowaeda.com.

[ARC 7699C, IAB 3/6/24, effective 4/10/24]

263—1.3(368) Membership and quorum requirements. The board annually elects from its members a chairperson and vice-chairperson at the first regular meeting of the calendar year. Three members of the board constitute a quorum, and a quorum must be present in order for the board to take action. The affirmative vote of a majority of board members is necessary for action taken by the board.

[ARC 7699C, IAB 3/6/24, effective 4/10/24]

263—1.4(368) Meetings. The board conducts regular meetings at least every other month at 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, or at such other location as the board may designate. The chairperson or the chairperson's designee prepares an agenda for each meeting, listing matters to be addressed. Meetings of the board are subject to the requirements of Iowa Code chapter 21.

[ARC 7699C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code sections 368.9 and 368.10.

[Filed 8/16/73, amended 9/12/73, 11/13/74]

[Filed 10/29/75, Notice 7/14/75—published 11/17/75, effective 12/22/75]

[Filed 7/5/77, Notice 5/18/77—published 7/27/77, effective 8/31/77]

[Filed 2/16/78, Notice 1/11/78—published 3/8/78, effective 4/12/78]

[Filed emergency 3/2/79—published 3/21/79, effective 3/2/79]

[Filed 12/19/90, Notice 10/17/90—published 1/9/91, effective 2/13/91]

[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]

[Editorial change: IAC Supplement 4/21/21]

[Filed ARC 7699C (Notice ARC 7131C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 2
AGENCY PROCEDURE FOR RULEMAKING

263—2.1(17A) Incorporation by reference. The city development board incorporates by this reference all such matters in Iowa Code chapter 17A that relate to procedures for rulemaking.
[ARC 7700C, IAB 3/6/24, effective 4/10/24]

263—2.2(17A) Contact information.

2.2(1) General. Inquiries about board rules and the rulemaking process may be directed to City Development Board, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315.

2.2(2) Comments on proposed rules. Any public comment on a Notice of Intended Action or similar document relating to rules may be directed to City Development Board, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, or as directed in the Notice of Intended Action or similar document.
[ARC 7700C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapter 17A.

[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]

[Editorial change: IAC Supplement 4/21/21]

[Filed ARC 7700C (Notice ARC 7132C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 3
PETITIONS FOR RULEMAKING

The city development board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to petitions for rulemaking, which are published at www.legis.iowa.gov/docs/publications/ACOD/767408.pdf.

[ARC 7701C, IAB 3/6/24, effective 4/10/24]

263—3.1(17A) Petition for rulemaking. In lieu of “(designate office)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

In lieu of “(AGENCY NAME)” as the caption of the petition form, insert “BEFORE THE CITY DEVELOPMENT BOARD”.

[ARC 7701C, IAB 3/6/24, effective 4/10/24]

263—3.3(17A) Inquiries. In lieu of “(designate official by full title and address)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

[ARC 7701C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 17A.7.

[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]

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[Filed ARC 7701C (Notice ARC 7133C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 4
DECLARATORY ORDERS

The city development board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to declaratory orders, which are published at www.legis.iowa.gov/docs/publications/ACOD/767408.pdf.

[ARC 7702C, IAB 3/6/24, effective 4/10/24]

263—4.1(17A) Petition for declaratory order. In lieu of “(designate agency)”, insert “city development board”. In lieu of “(designate office)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

In lieu of “(AGENCY NAME)” as the caption on the petition form, insert “BEFORE THE CITY DEVELOPMENT BOARD”.

[ARC 7702C, IAB 3/6/24, effective 4/10/24]

263—4.2(17A) Notice of petition. In lieu of “ ___ days (15 or less)”, insert “15 days”.

[ARC 7702C, IAB 3/6/24, effective 4/10/24]

263—4.3(17A) Intervention.

4.3(1) In lieu of “ ___ days”, insert “15 days”.

[ARC 7702C, IAB 3/6/24, effective 4/10/24]

263—4.5(17A) Inquiries. In lieu of “(designate official by full title and address)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

[ARC 7702C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 17A.9.

[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]

[Editorial change: IAC Supplement 4/21/21]

[Filed ARC 7702C (Notice ARC 7134C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 5
FAIR INFORMATION PRACTICES

[Prior to 1/9/91, City Development Board[220] Ch 6]

[Prior to 12/11/02, see 263—Ch 6]

The city development board hereby adopts, with the following exceptions and amendments, the Uniform Rules on Agency Procedure relating to fair information practices, which are published at www.legis.iowa.gov/docs/publications/ACOD/767408.pdf.

[ARC 7703C, IAB 3/6/24, effective 4/10/24]

263—5.1(17A,22) Definitions. As used in this chapter:

“Agency.” In lieu of “(official or body issuing these rules)”, insert “city development board”.

[ARC 7703C, IAB 3/6/24, effective 4/10/24]

263—5.3(17A,22) Requests for access to records.

5.3(1) Location of record. In lieu of “(insert agency head)”, insert “city development board”. In lieu of “(insert agency name and address)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

5.3(2) Office hours. In lieu of “(insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays”.

5.3(7) Fees.

c. Supervisory fee. In lieu of “(specify time period)”, insert “two hours”.

[ARC 7703C, IAB 3/6/24, effective 4/10/24]

263—5.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of “(designate office)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

[ARC 7703C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 22.11.

[Filed emergency 9/2/88—published 9/21/88, effective 9/2/88]

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[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]

[Editorial change: IAC Supplement 4/21/21]

[Filed ARC 7703C (Notice ARC 7135C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 6
WAIVER RULES

263—6.1(17A) Definitions.

“*Board*” means the same as defined in Iowa Code section 368.1(3).

“*Petitioner*” means a person who petitions an agency for the waiver of a rule.

“*Waiver*” means the same as defined in Iowa Code section 17A.9A(5) as applied to an action by the board.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.2(17A) Scope. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.3(17A) Applicability. The board may grant a waiver of a rule as permitted by Iowa Code section 17A.9A(1).

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.4(17A) Criteria for waiver. In response to a petition completed pursuant to rule 263—6.6(17A), the board may issue a waiver if the board makes the applicable findings in Iowa Code section 17A.9A(2).

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.5(17A) Filing of petition. A petition for a waiver must be submitted in writing to the board as follows:

6.5(1) Pending matters. If the petition relates to a pending petition or application for city development action, the petition requesting a waiver shall be filed in the pending proceeding, using the caption of that matter.

6.5(2) Other. If the petition does not relate to a pending matter, the petition may be submitted to the board chairperson.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.6(17A) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is requested and the case number of any related city development proceeding.

2. A description and citation of the specific rule from which a waiver is requested.

3. The specific waiver requested, including the precise scope and duration.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in Iowa Code section 17A.9A(2). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the board and the petitioner relating to the activity affected by the proposed waiver, including a description of each related city development action by the requester within the past five years.

6. Any information known to the requester regarding the board’s treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision that might be affected by the granting of a waiver.

8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition, including all parties to the proceeding if the petition relates to a matter pending before the board.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.7(17A) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a meeting between the petitioner and the board's chair, or a committee of the board, or a quorum of the board.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.8(17A) Notice. The board will acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law or who may be impacted by the requested waiver and provide a written statement to the board attesting that notice has been provided.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.9(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings apply to any petition for a waiver filed within a pending city development action pursuant to subrule 6.5(1). If a petition for waiver is filed with the board pursuant to subrule 6.5(2), the provisions of Iowa Code sections 17A.10 to 17A.18A apply to board proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.10(17A) Ruling. Iowa Code section 17A.9A(3) describes certain procedural aspects for considering a petition for waiver and issuing a ruling thereon, including the burden of persuasion; the manner in which a petition for waiver must be evaluated; the limits of the waiver, if one is issued; and the circumstances under which the board may place a condition on the waiver. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons. The board shall have the sole discretion to decide whether to grant a waiver.

6.10(1) Form of ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver, if one is issued.

6.10(2) Time for ruling. The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 90 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a pending city development action, the board shall grant or deny the petition no later than the time at which the final decision in that matter is issued.

6.10(3) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

6.10(4) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

6.10(5) Filing of waiver ruling. Within 60 days of granting or denying a waiver, the board shall submit information as required by Iowa Code section 17A.9A(4).

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.11(17A) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver;
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.12(17A) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

263—6.13(17A) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

[ARC 7704C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 17A.9A.

[Filed 11/20/02, Notice 7/10/02—published 12/11/02, effective 1/15/03]

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[Filed ARC 7704C (Notice ARC 7136C, IAB 12/13/23), IAB 3/6/24, effective 4/10/24]

CHAPTER 7
VOLUNTARY ANNEXATION

263—7.1(368) Purpose and scope. This chapter addresses the requirements and processes for city development board approval of voluntary annexation within another city's urbanized area; voluntary annexation, including property without the owner's consent; and boundary adjustments between cities by petition and consent. Such requests for board approval shall be initiated pursuant to Iowa Code section 368.7 or 368.25A and this chapter. A city's request for board approval of such actions will be referred to in this chapter as a petition.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.2(368) Contents of petition. This rule describes the information and documentation a city is required to include in its petition.

7.2(1) Landowner application requirements. The board will verify that each landowner's application for annexation includes the items required by Iowa Code section 368.7(1) "c" and is dated and signed by all owners of record or their authorized representatives. If voluntary annexation is requested for a parcel of land being sold on contract, the contract seller and the contract buyer should both approve the application. If voluntary annexation is requested for property owned by a business organization or entity other than a natural person or persons, the applicant should provide documentation establishing authorization to act on behalf of the owner entity.

7.2(2) City requirements. In addition to any applicable landowner applications submitted in compliance with subrule 7.2(1), a city's petition must include all of the following:

a. A general statement of the proposed annexation, briefly describing the current and expected use of the annexation territory, any services that the city currently provides to the territory, and the reasons for a landowner's request for annexation, if known.

b. A statement indicating whether the city is a party to an existing moratorium agreement entered pursuant to Iowa Code section 368.4 and, if so, whether the proposed annexation is consistent with the terms of that agreement.

c. A complete legal description of the territory proposed to be annexed, including the right-of-way to the center line of all secondary roads adjoining the territory. If the applicable county and city have entered an agreement pursuant to Iowa Code chapter 28E that allows exclusion of the right-of-way, a copy of the agreement shall be included with the petition.

d. Documentation that the county auditor has verified the accuracy and completeness of the legal description of all territory proposed to be annexed and verified current ownership of the parcel(s) included in the proposed territory. If the auditor fails to respond to the city's request for verification within 14 days, the city may provide a copy of the request and a statement indicating that no response was received.

e. A map clearly showing the entire boundary of the existing city, all territory proposed to be annexed, adjacent roadways, and the relationship of the territory to the petitioning city and, if the annexation territory is within the urbanized area of another city, the relationship of the territory to the neighboring city. More than one map may be submitted if necessary to provide all information required by this paragraph.

f. A statement indicating whether state-owned property or county-owned road right-of-way has been included in the proposed annexation and, if so, certification that the city has complied with the notice requirements of Iowa Code section 368.5. If the territory proposed for annexation includes right-of-way for a state highway, documentation of consultation with the Iowa department of transportation should also be included.

g. Certification that the city has complied with all applicable notice and hearing requirements of Iowa Code section 368.7, including proof of mailing of the application and affidavit of publication of the required public notice. If railway right-of-way or public land is included without the written consent of the owner or agency with jurisdiction over the public land, the city shall certify notice was given to the owner or agency as required by Iowa Code section 368.7(1) "c." For purposes of calculating the required

period of notice, business days include Monday through Friday of each week, except legal holidays as set forth in Iowa Code section 4.1(34).

h. A city council resolution approving the landowner's application, including, if applicable, the terms of the transition of city taxes as provided by Iowa Code sections 368.7(5) and 368.11(3) "m."

7.2(3) Additional information for petitions, including nonconsenting landowners. In addition to the information to be included pursuant to subrule 7.2(2), a petition that includes property without the consent of the owner(s) must provide the additional information indicated in this subrule.

a. Names and addresses of all owners of land included without the owners' consent and a legal description of all land owned by each nonconsenting owner.

b. Documentation submitted pursuant to paragraph 7.2(2) "d" relating to county auditor verification, including verification of the legal description of land owned by each nonconsenting owner.

c. The acreage of each parcel or parcels owned by each voluntary applicant and nonconsenting landowner, the acreage of any railroad right-of-way included pursuant to Iowa Code section 368.7(1), and the acreage of any state- or county-owned property included pursuant to Iowa Code section 368.5.

d. A calculation showing the percentage of the territory for which voluntary annexation applications have been received by the city and the percentage of territory included without the consent of the owner(s), prepared in a manner consistent with Iowa Code section 368.7(1) "a." Only contiguous land area may be considered for purposes of calculating the amount of the land area which may be included without the owner's consent.

e. A map indicating the relationship of the parcels included without the consent of the owner(s) to the rest of the territory and to the city.

f. The city council's resolution approving the annexation submitted pursuant to paragraph 7.2(2) "h" that must set forth the reason(s) that land is included without the consent of the owner(s).

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.3(368) Filing. A city shall send two copies of its petition, including all supporting documentation, to the board. The petition will be deemed filed with the board on the date it is received by board staff. Board staff will acknowledge receipt of a petition.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.4(368) Staff review. Within two weeks of receiving a petition filed pursuant to this chapter, board staff will review the petition to determine whether the city has included all required information. If the petition is incomplete, staff shall notify the petitioning city, identifying the required item(s) omitted and offering the city an opportunity to provide the omitted information prior to submission of the petition to the board.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.5(368) Submission to the board—notice.

7.5(1) A petition filed pursuant to this chapter will be considered by the board at the first board meeting conducted 31 or more days after the petition is filed. The board shall provide notice of all meetings at which the board will consider a petition to the petitioning city and the entities required by Iowa Code section 368.7(3) to receive notice of an application. Such notices will be provided by regular mail.

7.5(2) If rule 263—7.8(368) applies, the board may proceed as described in that rule at a board meeting less than 31 days after the petition is filed, at the request of the petitioning city. However, if the board considers a petition pursuant to this subrule, the filings to complete an annexation approved by the board will only be made if no other petition for any or all of the applicable territory is filed with the board within 30 days of the filing of the petition.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.6(368) Amendment of petition.

7.6(1) After a petition has been filed with the board, it may not be amended to include additional territory.

7.6(2) A city may, upon its own motion or at the request of the board, seek amendment to delete one or more parcels included in the territory proposed for annexation.

a. A motion to amend a petition may be made at any time prior to issuance of the board order approving or denying the petition.

b. The board shall provide notice of a proposed amendment to all owners of land included in the petition, the entities required by Iowa Code section 368.7(3) to receive notice of an application, and all other parties of record in the board proceeding. Such notices will be provided by regular mail.

c. A party to the proceeding may file a resistance to the motion to amend within 14 days of the date of service of notice provided pursuant to paragraph 7.6(2)“*b.*”

d. The board may grant a motion to amend a petition if it determines that the amendment serves the public interest.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.7(368) Initial board review.

7.7(1) The board shall review all petitions filed pursuant to this chapter to determine compliance with the requirements of Iowa Code chapter 368 and this chapter. If a petition is incomplete or otherwise not in compliance with the requirements of Iowa Code chapter 368 or this chapter, the board may request further information from a landowner or city or may dismiss the petition.

7.7(2) If the annexation requested in the petition is barred pursuant to Iowa Code section 368.17, the board shall deny the petition, stating in its order the reason(s) for the denial.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.8(368) Board proceedings on unanimous petitions when no conflicting petition is received within 30 days.

7.8(1) Applicability. Petitions will be considered pursuant to this rule when all territory proposed for annexation is included upon application of the owner, by notice to the owner of railway right-of-way pursuant to Iowa Code section 368.7(1), or by notice to the Iowa attorney general or a county attorney pursuant to Iowa Code section 368.5.

7.8(2) Information considered. Any interested person or party may submit written comment prior to or at the time of board consideration of the petition. The board may:

a. Allow an opportunity for oral comment;

b. Consider public documents; or

c. Request additional information from affected cities, counties or persons, including any of the information required to be included in a petition for involuntary city development action pursuant to Iowa Code section 368.11(3).

7.8(3) Criteria. The board shall consider whether the proposed annexation serves the public interest and may consider the criteria for approval of involuntary city development actions, as set forth in Iowa Code section 368.16.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.9(368) Board proceedings on petitions which include nonconsenting landowners.

7.9(1) Applicability. Petitions will be considered pursuant to this rule when not more than 20 percent of the land area of the territory proposed for annexation is included without the consent of the owner, pursuant to Iowa Code section 368.7(1)“*a.*”

7.9(2) Hearing and information considered.

a. If a petition to which this rule applies is complete and in proper form, the board will conduct a public hearing on the petition. The board shall provide notice of the hearing to all owners of land included in the petition, the petitioning city, the entities required by Iowa Code section 368.7(3) to receive notice of an application, and the state department of transportation. Such notice shall be provided by regular mail sent at least ten days prior to the hearing.

b. The board hearing will be conducted informally. Representatives of the petitioning city shall be given an opportunity to explain the proposed annexation, the city’s reason for including nonconsenting landowners, and any other information the city believes will assist the board in acting on the petition.

The county, all owners of property within the territory proposed for annexation, the regional planning authority, affected public utilities, and any other person affected by the annexation will be provided an opportunity to submit information to the board during the hearing or in writing prior to the hearing.

c. The board may request additional information from the city, county or other persons, including any of the information required to be included in a petition for involuntary city development action pursuant to Iowa Code section 368.11(3).

7.9(3) Criteria. The board shall consider the same criteria as set forth in subrule 7.8(3). The board may not approve a petition considered pursuant to this rule unless the board finds that the land of the nonconsenting owners was included to avoid creating an island or create more uniform boundaries. A petition considered pursuant to this rule shall not be approved unless four members of the board vote in favor of approving the petition.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.10(368) Board proceedings when one or more conflicting petitions are received within 30 days.

7.10(1) Applicability. Petitions will be considered pursuant to this rule if any other petitions containing common territory are submitted to the board pursuant to Iowa Code chapter 368 within 30 days. If all conflicting petitions are validly dismissed or denied by the board, the board will proceed on a remaining petition as if no conflicting petition had been filed.

7.10(2) Hearing and information considered. If conflicting petition(s) are complete and in proper form, the board shall consider any petitions, including voluntary application(s) submitted by a landowner pursuant to Iowa Code section 368.7(4), and shall conduct a public hearing pursuant to the procedure set forth in subrule 7.9(2).

7.10(3) Criteria. Within 90 days of receipt of the petition, the board or a committee appointed by the board shall meet to assess the petition, including voluntary application(s) submitted by a landowner and any evidence received at the public hearing. If the petition meets the applicable requirements of Iowa Code chapter 368, the board or committee shall approve the petition unless the board makes an applicable finding as described in Iowa Code section 368.7(4) "a."

7.10(4) Conversion to an involuntary petition. If the petition is not approved, the board shall issue an order setting forth its reason(s) for failing to approve the petition and requiring conversion of the petition into an involuntary petition. Within 30 days of the board's order issued pursuant to this subrule, the city shall withdraw its petition or convert its petition into an involuntary petition containing all information required by Iowa Code section 368.11 and any rules adopted by the board applicable to involuntary petitions.

7.10(5) Local committee. Following conversion to an involuntary petition, the board shall order appointment of a special local committee to consider all pending petitions for annexation of common territory, pursuant to Iowa Code section 368.14A and rule 263—8.10(368). The special local committee shall conduct a public hearing to receive evidence and comment on all petitions pending before it. The committee will determine the order of presentation prior to commencement of the hearing. The committee will conduct the hearing pursuant to 263—Chapter 9.

7.10(6) Committee action. The committee shall, within a reasonable time following conclusion of the public hearing, meet to determine appropriate means to resolve the common territory issues among the petitions before it.

a. The committee shall resolve common territory issues by amending or denying one or more of the pending petitions.

b. Upon resolution of the common territory issues, the committee shall proceed with consideration of each remaining petition in accordance with Iowa Code sections 368.16 and 368.17 and any applicable rules adopted by the board.

c. A petition converted to an involuntary petition pursuant to subrule 7.10(4) that contains some land without the consent of the owner shall not be approved unless at least four of the board members and at least one-half of the local representatives vote in favor of approval.

d. The committee shall issue a separate decision setting forth its findings and conclusions relating to each of the petitions. The committee shall file its decision with the board and promptly notify the parties of the decision, as required by Iowa Code section 368.19.

7.10(7) Board action. Upon receipt of a committee decision approving all or a portion of a petition pursuant to subrule 7.10(6), the board shall proceed in acting on the decision pursuant to 263—Chapter 10.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.11(368) Board proceedings when a conflicting involuntary petition was filed more than 30 days before a voluntary petition.

7.11(1) Applicability. Petitions will be considered pursuant to this rule if a petition that includes voluntary application(s) submitted by a landowner is filed more than 30 days following filing of a conflicting involuntary petition filed pursuant to Iowa Code section 368.11 and 263—Chapter 8.

7.11(2) Delay. The board will receive the petition including voluntary application(s) submitted by a landowner and table action on it until processing of the petition for involuntary annexation is complete.

7.11(3) Same city. If the petition including voluntary application(s) submitted by a landowner proposes to annex territory to the same city filing the involuntary petition, the board may proceed on the voluntary petition pursuant to rule 263—7.8(368).

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.12(368) Board proceedings on boundary adjustments between cities by petition and consent.

7.12(1) Petition. A petition to sever real property from one city and to annex the same real property to another city shall be initiated pursuant to Iowa Code section 368.25A. The petition pursuant to this rule shall be in substantially the same form as a petition submitted pursuant to Iowa Code section 368.7 and rule 263—7.2(368).

7.12(2) Hearing and information considered. If the petition is complete and in proper form, the board shall hold a public hearing on the severance, annexation, and any agreement between the cities pursuant to the procedure set forth in subrule 7.9(2). The board shall give notice of the public hearing in the same manner as notice given pursuant to Iowa Code section 368.11(5). The board may request additional information from the city, county or other persons, including any of the information required to be included in a petition for involuntary city development action pursuant to Iowa Code section 368.11(3).

7.12(3) Criteria. The board shall consider the same criteria as set forth in subrule 7.8(3).

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

263—7.13(368) Board decisions—costs.

7.13(1) Board approval. If the board approves a petition considered pursuant to this chapter, the board shall issue a written decision and provide a copy of the decision to the clerk of the annexing city; the entities required by Iowa Code section 368.7(3) to receive notice of an application; the state department of transportation; and any other parties of record in the board's proceeding, including, if applicable, a city from which territory is severed pursuant to rule 263—7.12(368). Upon expiration of the time for appeal, the board shall file with the secretary of state and record with the county recorder of each county containing a portion of the city or territory involved copies of the board's proceedings, as required by Iowa Code section 368.20(2). The cost of recording the board order shall be paid by the city to which territory is annexed.

7.13(2) Board denial. If the board denies a petition considered pursuant to this chapter, the board shall issue an order setting forth the reasons for the denial. A copy of the order shall be provided to the clerk of any impacted city, the entities required by Iowa Code section 368.7(3) to receive notice of an application, the state department of transportation, and any other party of record in the board's proceeding.

[ARC 7705C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapter 368.

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¹ July 6, 2011, effective date of 7.2(2)“j” delayed 70 days by the Administrative Rules Review Committee at its meeting held June 14, 2011.

CHAPTER 8
PETITIONS FOR INVOLUNTARY CITY DEVELOPMENT ACTION

[Prior to 12/11/02, see 263—Ch 2]

263—8.1(368) Purpose. This chapter addresses the requirements and processes for city development board approval of petitions for involuntary city development action, including incorporation, discontinuance, annexation, severance, or consolidation. Such petitions shall be initiated pursuant to Iowa Code section 368.11 or 368.13 and this chapter. The body or bodies initiating the petition will be referred to in this chapter as the petitioner.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.2(368) Contents of the petition. This rule describes the information and documentation a petitioner is required to include in its petition.

8.2(1) General requirements. The petition must provide all applicable information required by Iowa Code section 368.11(3). The petition must clearly identify the petitioner, the proposed action, and the name and address of each property owner within the affected territory. Affected territory shall be identified by complete legal description including, if applicable, right-of-way to the center line of secondary roads. The petition shall state that it does not propose any action prohibited by Iowa Code section 368.17. The petition shall include an overview of the proposed action and briefly describe the affected city or cities, the affected territory and the reasons for the proposed action.

8.2(2) Moratorium. The petition shall contain a statement indicating whether an applicable city is a party to an existing moratorium agreement entered pursuant to Iowa Code section 368.4 and, if so, whether the proposed annexation is consistent with the terms of the agreement.

8.2(3) Map. The map or maps included in the petition shall clearly show all boundaries of the affected city or cities and all affected territory, adjacent roadways, the relationship of the affected territory to any city, and all geographic features deemed relevant to the proposed action. If the petition proposes incorporation, the proposed city boundary shall be shown. The board may request that the petitioner provide information demonstrating the existing and anticipated use of the territory.

8.2(4) County auditor verification. The petition shall include documentation that the county auditor has verified the accuracy and completeness of the legal description of all affected territory and verified current ownership of the parcel(s) included. If the auditor fails to respond to the petitioner's request for verification within 14 days, the petitioner may provide a copy of the request and a statement indicating that no response was received.

8.2(5) Assessed valuations. The petition shall include the assessed valuation and classification assigned for tax purposes (agricultural, residential, commercial, etc.) for each parcel of platted and unplatted land within the affected territory. Documentation shall be provided that the information required by this subrule has been verified in writing by the applicable city or county assessor. If the assessor fails to provide the requested verification within 14 days, the petitioner may provide a copy of the request and a statement indicating that the verification was not provided.

8.2(6) Population density. Population density shall be delineated for the existing city, for the territory, and for the resulting city if the proposal is approved. Population density shall be expressed as persons per acre if the petition proposes annexation or persons per square mile if the petition proposes incorporation, discontinuance, severance or consolidation.

8.2(7) Population growth. If the petition seeks annexation, consolidation or incorporation, the petition shall include projected population growth for the city and the territory. Population projections shall be for a 10- or 20-year period and may be taken from an existing comprehensive plan or may be calculated based on relevant data if no comprehensive plan exists.

8.2(8) Regulations and projections. The petition shall include a description of current and proposed zoning regulations that apply to the affected territory. Projected development and land use patterns shall be described as if existing land use regulations will be continued and as if new applicable land use regulations would be applied after annexation, if approved. Residential, commercial, and industrial development projections shall be provided based on population projections for the city and territory.

If the petition proposes annexation, the amount of vacant developable land within the existing corporate limits and within the territory, as well as an estimate of the amount of developable land needed to accommodate future growth, shall be provided.

8.2(9) Topography. Topographical information shall be in map and narrative form. Maps shall include any affected city and the affected territory and shall consist of contour lines at ten-foot intervals as may be taken from contour maps of the United States Geological Survey or any other source acceptable to the board. A narrative description shall identify flood plains, drainage areas, drainage ways, slopes and bluffs. In petitions proposing annexation or incorporation, the narrative shall also address potential impacts of topography on development of urban uses and the extension of municipal services.

8.2(10) Plans. Petitions shall describe plans for disposal of assets, assumption of liabilities, and provision of services as applicable to the action requested in the petition.

a. Petitions for annexation, consolidation and incorporation shall describe existing and proposed municipal services and facilities, including but not limited to water supply, sewage disposal, police and fire protection, and street and road maintenance, and the estimated cost of providing proposed services.

b. Petitions for annexation shall describe the capability of the existing city sewage system; water system; transportation infrastructure; park and recreation system; and police, fire, and public works departments to accommodate the addition of territory and projected development. The petition shall also include an analysis of existing bonding capacity and bonded indebtedness and the assets a city may receive including property tax, increase in municipal bonding capacity, state and federal shared revenues, special assessment policies, revenue bonds, user fees, and federal funds where applicable.

c. Petitions for incorporation shall describe the capability of the proposed city to develop a sewage system; water system; transportation infrastructure; park and recreation system; and police, fire, and public works departments to accommodate the territory proposed for incorporation and an explanation of the assets the proposed city may receive, including property tax, an increase in municipal bonding capacity, state and federal shared revenues, special assessment policies, revenue bonds, user fees, and federal funds where applicable.

d. Petitions for severance and discontinuance shall describe the adequacy of sewage disposal, water supply, police and fire protection, and other municipal services being provided to the territory by the city. Such petitions shall also include a statement of the capability and intent of the county in which the city or territory is located to assume responsibility for police protection, street and road maintenance and repair, and other services and an analysis of the capability of the township fire district to provide fire protection.

e. Petitions for discontinuance shall include an inventory of all real estate, funds, and personal property owned by the city and all existing liabilities of the city, and a proposal for disposition of all assets and satisfaction or assumption of all liabilities.

8.2(11) Committee consideration. The petition shall include documentation to allow assessment of the relevant considerations for committee approval in Iowa Code section 368.16.

8.2(12) Service agreements. The petition shall identify services that may be provided through agreement with township fire districts and rural water and sanitary districts and proposed agreements with any county or city for police protection, ambulance service, or any other service deemed to be of importance to the proposed boundary adjustment and shall present examples of existing service agreements.

8.2(13) Shared roads. The petition shall include a proposed formal agreement between affected municipal corporations and counties for the maintenance and improvement and traffic control of any road that is divided as a result of an incorporation or a boundary adjustment.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.3(368) Preliminary notice and public meeting. A petitioner initiating an involuntary city development proceeding shall comply with the applicable notice, publication, and public meeting requirements contained in Iowa Code section 368.11. For purposes of calculating the required period of notice, business days include Monday through Friday of each week, except legal holidays as set forth in

Iowa Code section 4.1(34). Proof of substantial compliance with these requirements, including copies of certified mail receipts, certification of publication of notice of the meeting, minutes of the public meeting and copies of the documents received at the meeting, shall accompany each petition submitted pursuant to this chapter.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.4(368) Filing and service. The petitioner shall send two copies of a petition, including all supporting documentation, to the board. A petition will be deemed filed with the board on the date it is received by board staff. The board shall acknowledge receipt of the petition. The petitioner shall serve notice of the filing as required by Iowa Code section 368.11(1) within seven days of filing a petition with the board. The petitioner shall file proof of compliance with the service requirement with the board.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.5(368) Costs. All costs that are incurred in drafting a petition, preparing supporting documents, mailing and publishing notices and other preliminary proceedings and the cost of recording, if the proposal is approved, shall be borne by the petitioner.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.6(368) Staff review of petition. Within two weeks of receiving a petition filed pursuant to this chapter, board staff will review the request to determine whether the petitioner has filed all required information. If the petition is incomplete, staff shall notify the petitioner, identifying the required item(s) omitted and offering the petitioner an opportunity to provide the omitted information prior to submission of the petition to the board.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.7(368) Submission of petition to the board—notice. A petition filed pursuant to this chapter will be considered by the board at the first meeting conducted 31 days or more after the petition is filed. The board shall provide the petitioner with notice of all meetings at which the board will consider the petition.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.8(368) Board review of petition—waiver. Upon submission of a petition, the board shall review the petition for substantial compliance with Iowa Code section 368.11 and this chapter. In conducting this review, the board will presume that factual assertions made within the petition are accurate. The board may, however, request and examine appropriate public records or request additional information from the petitioner if deemed necessary to its review. The board may waive any requirement of this chapter upon finding the requirement inapplicable to the petition under review.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.9(368) Board action on petition. The board shall accept for further proceedings any petition that it finds to be in substantial compliance with Iowa Code section 368.11 and this chapter. The board may dismiss a petition pursuant to Iowa Code section 368.12.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

263—8.10(368) Formation of local committee. If the petition is accepted by the board for further proceedings, the board shall direct the appointment of local representatives to a committee as required by Iowa Code section 368.14. Committee appointments shall be made by resolutions of the appropriate governing bodies within 45 days of issuance of the board's order. The resolutions shall state that the local representative selected is qualified to serve on the committee pursuant to Iowa Code section 368.14. Copies of the resolutions and the address and telephone number of each local representative shall be promptly submitted to the board. In the event a city or county fails to timely notify the board of appointment of its local representative, the committee may conduct its proceedings in the absence of that local representative so long as a quorum is present.

[ARC 7706C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapter 368.

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CHAPTER 9
COMMITTEE PROCEEDINGS ON PETITIONS
FOR INVOLUNTARY CITY DEVELOPMENT ACTION
[Prior to 12/11/02, see 263—Ch 3]

263—9.1(368) Formation of committee. A committee formed pursuant to Iowa Code section 368.14 and rule 263—8.10(368) shall conduct proceedings consistent with Iowa Code sections 368.15 through 368.19. The board shall notify all parties that the committee has been formed and direct the parties to file all motions, pleadings, and submissions relating to the petition with the committee, in care of the board. [ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.2(368) Meetings. Meetings of the committee shall be conducted in compliance with Iowa Code chapter 21.

9.2(1) Scheduling. Committee hearings shall be scheduled by the board and may be tentatively scheduled when the board accepts a petition. Board staff shall verify the availability of local representatives to participate on the scheduled hearing date and will notify the board if the local representatives are not all available on the date initially selected by the board.

9.2(2) Quorum. A quorum of the committee, as established by Iowa Code section 368.14, must be present in order for the committee to conduct a meeting or hearing.

9.2(3) Chairperson. The chairperson of the board, or the chairperson's designee, shall serve as chairperson of all committee proceedings.

9.2(4) Notice. Notice of the time, place, and purpose of each meeting shall be provided by regular mail to all parties, posted at the office of the board, and made available to all interested persons upon request. Notice of a committee public hearing will also be published as required by Iowa Code section 368.15.

9.2(5) Meeting format or location. The committee chairperson may, on the chairperson's own motion or as requested by a party, order hearings or argument to be held by electronic means in which all parties have an opportunity to participate. The chairperson will consider convenience of the witnesses or parties, as well as the nature of the case, when a meeting format or location is chosen. Objections, if any, shall be filed with the committee and served on all parties at least three business days in advance of the hearing.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.3(368) Parties to proceedings. An individual or entity may become a party by filing a written appearance identifying one person upon whom the board or committee may serve all orders or correspondence. The written appearance may be filed with the party's initial filing in the proceeding or may be filed after the proceeding has been docketed. If available, the appearance shall include reference to the applicable docket numbers. The city for which the boundary adjustment is proposed, any city whose urbanized area contains the territory, and any county or regional planning authority that contains the territory will be considered a party without filing an appearance.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.4(368) Filing of documents. Each party shall serve any document that it files with the board or committee on all other parties and provide proof of service. The board or committee shall give all parties a copy of any document filed with the board or committee that was not served on all other parties or that was provided by someone other than a party. All parties shall have an opportunity to comment on any such document either orally or in writing as the board or committee so specifies. Except as otherwise provided by law, a document is deemed filed at the time it is received by board staff.

9.4(1) Form of motions.

a. No technical form for motions is required. Prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

b. Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by the committee.

c. In ruling on a motion, the committee may consider a failure to respond within the required time period as evidence of a lack of objection to the motion.

9.4(2) Proof of service.

a. Proof of mailing includes either a legible United States Postal Service nonmetered postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (insert board title) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

b. The committee chairperson may by order permit service or filing of a particular document by email or similar electronic means, unless precluded by a provision of law. In the absence of such an order, electronic transmission shall not satisfy service or filing requirements but may be used to supplement service or filing.

9.4(3) Time requirements.

a. Time shall be computed as provided in Iowa Code section 4.1(34).

b. For good cause, the committee may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the committee shall afford all parties an opportunity to be heard or to file written arguments.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.5(17A) Ex parte communication.

9.5(1) There shall be no communication, direct or indirect, between the committee members that would constitute prohibited ex parte communications pursuant to Iowa Code section 17A.17. Nothing in this provision is intended to preclude the committee members from seeking the advice or help of board staff or persons other than those with a personal interest in, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to a committee member any ex parte communications that those persons have received of a type that the committee member would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

9.5(2) Prohibitions on ex parte communications pursuant to subrule 9.5(1) commence with the receipt of a petition for board members and with appointment to a committee for local representatives and continue for as long as the case is pending.

9.5(3) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate in any communications with the committee. Notice of written communications shall be provided in compliance with rule 263—9.4(368) and may be supplemented by telephone, email or other means of notification. Where permitted, oral communications may be initiated through electronic means as long as those means include all parties or their representatives.

9.5(4) Committee members may communicate with each other without notice or opportunity for parties to participate, provided that a quorum of the committee is not present.

9.5(5) Board staff or other persons may be present in deliberations or otherwise advise the committee members without notice or opportunity for parties to participate as long as the board staff or other persons are not disqualified from participating in the making of a proposed or final decision under any provision of law and the board staff or other persons comply with subrule 9.5(1).

9.5(6) Communications with the committee members involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with committee members when feasible and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 263—9.9(368).

9.5(7) A committee member who receives a prohibited ex parte communication must initially determine if the effect of the communication is so prejudicial as to warrant disqualification pursuant to rule 263—9.6(17A). If disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the committee member received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the committee member determines that disqualification is not warranted, the documents identified in this subrule shall be included in the record of the proceeding and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

9.5(8) Promptly after being assigned to serve as committee member, a committee member shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in a petition or similar document need not be separately disclosed by the committee member as long as such documents have been or will shortly be provided to the parties.

9.5(9) The committee may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the committee.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.6(17A) Disqualification.

9.6(1) A committee member shall withdraw from participation in the making of any proposed or final decision in a proceeding pursuant to this chapter if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated or advocated, in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship who:
 - (1) Is a party to the case, or an officer, director or trustee of a party;
 - (2) Is a lawyer in the case;
 - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
 - (4) Is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

9.6(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information that is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter that culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as committee member in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 9.5(9) and 9.6(3).

9.6(3) If a committee member knows of information that might reasonably be deemed a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit, including a statement of the reasons for the determination that withdrawal is unnecessary.

9.6(4) If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

9.6(5) If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.7(368) Prehearing activities.

9.7(1) Prehearing conference. An informal conference of parties may be ordered at the discretion of the committee chairperson or at the request of any party prior to a hearing in any proceeding. A written request for prehearing conference or an order for prehearing conference on the committee chairperson's own motion shall be filed not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than five business days prior to the hearing date.

a. Notice of a prehearing conference shall be provided as described in subrule 9.2(4).

b. A prehearing conference may be ordered for the purpose of formulating issues and considering the following:

(1) The simplification of issues.

(2) The necessity or desirability of amending the petition or other filings for the purpose of clarification, amplification or limitation.

(3) Stipulations of law or fact or on the admissibility of exhibits.

(4) The procedure at the hearing.

(5) The propriety of prior mutual exchange of prepared testimony and exhibits between or among the parties.

(6) Such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

c. Action agreed upon at the conference shall be made a part of the record in such manner as may be prescribed by the committee chairperson at the close of the conference.

9.7(2) Discovery. Parties involved in involuntary boundary adjustment proceedings shall follow the discovery procedures specified in the Iowa Rules of Civil Procedure. At the public hearings, such evidence may be introduced and entered into the record if the evidence would otherwise be admissible.

a. Discovery procedures applicable in civil actions apply to proceedings conducted pursuant to this chapter. Unless lengthened or shortened by these rules or by order of the committee chairperson, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

b. Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the committee. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 9.4(3). The committee may rule on the basis of the written motion and any response or may order argument on the motion.

c. Interrogatories, depositions and other documents and evidence discovered shall not be submitted to the committee prior to the public hearings. Evidence obtained in discovery may be used in the boundary adjustment proceeding if that evidence would otherwise be admissible in that proceeding.

9.7(3) Subpoenas. Witnesses who are subpoenaed are entitled to the same fees as subpoenaed witnesses in the district court of Iowa. These fees shall be paid by the party at whose insistence the testimony is to be given. Service of subpoenas shall be in like manner as provided by law for service of subpoenas in the district court of Iowa.

a. Board staff shall issue subpoenas upon written request. Subpoenas issued may compel the attendance of witnesses at depositions or hearings and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at depositions or hearings or may be issued separately.

b. A request for a subpoena shall include the following information, as applicable:

- (1) The name, address and telephone number of the person requesting the subpoena;
- (2) The name and address of the person to whom the subpoena shall be directed;
- (3) The date, time and location at which the person shall be commanded to attend and give testimony;

- (4) Whether the testimony is requested in connection with a deposition or hearing;

- (5) A description of the books, papers, records or other real evidence requested;

- (6) The date, time and location for production or inspection and copying.

c. Each subpoena shall contain, as applicable:

- (1) The caption of the case;

- (2) The name, address and telephone number of the person who requested the subpoena;

- (3) The name and address of the person to whom the subpoena is directed;

- (4) The date, time and location at which the person is commanded to appear;

- (5) Whether the testimony is commanded in connection with a deposition or hearing;

- (6) A description of the books, papers, records or other real evidence the person is commanded to produce;

- (7) The date, time, and location for production, or inspection and copying;

- (8) The time within which a motion to quash or modify the subpoena must be filed;

- (9) The signature, address and telephone number of the board's administrator or designee;

- (10) The date of issuance;

- (11) A return of service.

d. Board staff shall mail or provide the subpoenas to the requesting party. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena and providing copies of the subpoena to all parties to the proceeding.

e. Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the committee a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

f. Upon receipt of a timely motion to quash or modify a subpoena, the committee may issue a decision. The committee may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the committee may schedule oral argument or hearing by electronic means or in person.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.8(368) Notice of public hearings. Notices shall comply with subrule 9.2(4).

9.8(1) Notice of the public hearing shall include:

a. A statement of the time, place and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved; and

d. A short and plain statement of the matters asserted.

9.8(2) Notice of the public hearing shall comply with Iowa Code section 362.3 and chapter 21.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.9(368) Continuance. Hearings or proceedings relating to matters that are within the jurisdiction of the committee may be continued by the committee, and notice thereof shall be given to all parties. Prior to the commencement of the hearing or other proceeding, a party may, upon written motion to the committee, request a continuance. Copies of said written motion must include proof of service upon all parties to the proceedings. All parties shall have an opportunity to file resistances to said motion, and

the committee may, in its discretion, allow the parties to present oral arguments relative to the motion pursuant to rule 263—9.4(368). A party may, during said hearing or proceeding, but not ex parte, request a continuance. All parties shall have an opportunity to comment on a request for a continuance made at the hearing either orally or in writing as specified by the committee.

9.9(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

9.9(2) An oral application for a continuance may be made if the committee waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the committee. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible.

9.9(3) In determining whether to grant a continuance, the committee may require documentation of any grounds for continuance, and may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

9.9(4) Board staff may enter an order granting an uncontested application for a continuance. Upon consultation with the committee chairperson or the chairperson's designee, board staff may deny an uncontested application for a continuance or rule on a contested application for continuance.

9.9(5) If a hearing is continued prior to the commencement of the hearing, notice of the continued hearing will be given as required in rule 263—9.8(368).

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.10(368) Public hearings.

9.10(1) *General provisions.*

a. Public hearings shall be held on dates and at locations determined by the committee. The hearing shall be held in a place open to the public.

b. The committee shall, prior to serving notice, make the petition or plan available for public inspection. The committee shall ensure that the petition or plan is available on or before the date of notice and publication.

c. Before testimony is presented, the record shall show the identity of the committee members present, identity of the assistant attorney general and board staff, identity of the primary parties and their representatives, and the fact that all testimony is being recorded. The chairperson may also outline any ground rules and time limitations to allow all parties an opportunity to speak. The committee chairperson or assistant attorney general representing the committee may make a brief opening statement, including a summary of actions taken by the committee prior to the hearing.

d. The committee chairperson shall be in control of the proceedings and have the authority to admit or exclude testimony or other evidence and to rule on all motions and objections.

e. The committee shall listen to testimony and arguments from all those concerned and may ask questions of anyone at any point during any hearing.

f. Legal counsel shall be at the discretion and expense of any party to the proceedings.

g. Parties appearing before the committee should select one or two persons to serve as primary spokespersons for their positions.

h. Any objection with respect to the conduct of the hearing, including an objection to the introduction of evidence, may be stated either orally or in writing, shall be accompanied by a short statement of the grounds of such objections, and shall be included in the record. No such objection shall be deemed waived by further participation by the objector in the hearing or proceeding.

i. The committee may adjourn a hearing for good cause from time to time, upon request of either party or legal counsel representing the committee, for the purpose of a fair hearing.

j. The committee chairperson shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

9.10(2) *Format of public hearings.* The format of the public hearings will generally follow the procedure outlined below. However, the committee chairperson may tailor the format to the nature of the case. The petitioners shall have the burden of proof and shall present their evidence first. Other parties in the case will present their evidence following the petitioners as determined by the committee chairperson. The format will generally permit each party an opportunity to make an opening statement, including the names of any witnesses to be called to explain the party's basic arguments, and to present testimony, evidence and exhibits in support of the party's arguments.

a. After each party's presentation, questions may be asked of the presenters by members of the committee. Then the other parties may ask questions and cross-examine witnesses. Then others who are not parties may ask questions of the presenters.

b. After the cross-examination and questioning are completed, there will be a comment period during which those who are not parties may make comments expressing their views regarding the petition. Those who wish to comment need not preregister with the committee prior to the hearing but need only to sign up at the time of the hearing. The committee chairperson may limit the length of the comments when a large number of people wish to testify.

c. After the comment period, the parties will be offered an opportunity for rebuttal to evidence presented during the hearing. The petitioner will have the final opportunity for rebuttal.

d. At the conclusion of all presentation of evidence, each party shall be permitted an opportunity for a closing statement summarizing its arguments.

e. Failure to appear.

(1) If a party to a hearing fails to appear, that party shall be deemed to have waived opportunity for the hearing or to participate in the hearing unless there is a show of good cause for such failure.

(2) If a petitioner fails to appear at a proceeding, the hearing may be dismissed or postponed at the discretion of the committee or the committee may approve the petition on the basis of verified proof and affidavits, if any, filed in the case, which shall be considered as having been offered in evidence at the hearing by the petitioner.

9.10(3) *Testimony at hearings.* At the public hearing, evidence may be presented in narrative form or question and answer form for each witness at the discretion of the committee chairperson.

a. At the public hearing, all parties shall be allowed the opportunity to cross-examine witnesses and be given an opportunity for rebuttal.

b. The committee members have the right to examine witnesses at any stage of the witnesses' testimony. The committee chairperson may limit questioning in a manner consistent with law.

9.10(4) *Evidence.* Rules of evidence shall be those set forth in Iowa Code section 17A.14.

a. The committee chairperson shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

b. Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The committee chairperson may rule on the objection at the time it is made or may reserve a ruling until the written decision.

c. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the committee chairperson, present the testimony. If the

excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

d. Individuals unable to attend a public hearing may submit written comments to the committee. Written comments shall become part of the permanent file of the hearing.

e. When any material or relevant matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. If, in the judgment of the committee, such immaterial or irrelevant matter would unnecessarily encumber the record, such book, paper or document will not be received in evidence as a whole, but the material or relevant portions thereof, if otherwise admissible, may be read into the record or a true copy thereof supplied in the form of an exhibit.

f. The committee may take note of appropriate public documents and records of a general scientific or technical nature by notice to all parties involved, limiting the time within which such parties may object to the accuracy of the facts sought to be proved from such documents or records.

g. The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. Copies shall also be furnished to members of the committee. All exhibits admitted into evidence shall be appropriately marked, and the original exhibit shall be made part of the record. Written or printed materials shall be in sufficient quantity to supply one copy for each member of the committee and one copy for all other parties to the proceedings.

h. Stipulation of facts is encouraged. The committee chairperson may make decisions based on stipulated facts.

i. At any stage of the hearing or after the close of the hearing but prior to decision, the committee may call for further evidence to be presented by the parties concerned. All parties shall be given a copy of said additional evidence and shall have an opportunity to comment on said evidence either orally or in writing as the committee so specifies.

9.10(5) Record of public hearing.

a. Oral proceedings shall be recorded.

b. Board staff shall prepare an official record of all proceedings, including testimony and exhibits. Testimony taken by a mechanical recording device may be incorporated by reference if a transcript is not made. Transcription of the oral proceedings will be retained by the board for two years following the decision or until the case is resolved, whichever is later.

c. Upon request, the board shall provide a copy of the whole record or any portion of the record. The requesting party may be required to pay the cost of preparing a copy of the record.

9.10(6) Posthearing brief. The committee shall allow ten days after the final public hearing within which the parties may file briefs.

a. Unless otherwise ordered by the committee chairperson, initial briefs shall be filed simultaneously by all parties. Briefs shall contain a concise statement of the case. Arguments shall be based on evidence introduced during the proceeding and shall specify the portions of the record where the evidence is found. No new evidence may be included in the posthearing briefs absent a request from the committee and compliance with paragraph 9.10(4) "i." The initial brief of the party who bears the burden of proof shall include all arguments it intends to offer in its brief in support of its case and against the record case of the adverse party or parties.

b. Reply briefs shall also be filed simultaneously, but only by those parties filing initial briefs, on a schedule set by the committee chairperson. A reply brief shall be confined to refuting arguments made in the brief of an adverse party.

c. A copy of such briefs shall be given to the committee and all parties and shall be accompanied by written evidence of service upon all parties.

d. A party's failure to address an issue by brief shall not be deemed a waiver of that issue and shall not preclude the committee from deciding the issue on the basis of evidence appearing in the record.

e. The committee chairperson may set a date and time for oral argument (including a time limit for argument), either in addition to or in lieu of briefs, when deemed necessary or in the public interest

by the chairperson. Failure to discuss in oral argument points properly made in the briefs shall not be deemed a waiver thereof.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.11(368) Committee decision.

9.11(1) After the final public hearing and filing of briefs, the committee will meet to decide whether or not to approve the petition.

- a.* Notice of the meeting will be provided pursuant to subrule 9.2(4).
- b.* The committee may consider all information and arguments presented at the public hearing and in the briefs that were filed.
- c.* No additional oral or written testimony will be taken or considered.
- d.* The committee may conduct its deliberations in closed session pursuant to Iowa Code section 21.5 but shall announce its decision in open session.
- e.* Within 90 days after the final public hearing, the committee shall approve or disapprove the petition or plan and shall file its written decision for record.
- f.* The committee may amend the petition or plan prior to approving it.
- g.* Decisions shall be in writing and rendered following the hearing. The decision shall include:
 - (1) Identification of parties and basic issues.
 - (2) Summary of findings of fact.
 - (3) Summary of conclusions of law.
 - (4) Ruling.
 - (5) Reasons for ruling.
 - (6) Order for implementation of the decision.

9.11(2) Committee decisions, orders or rulings shall be signed by the chairperson or the chairperson's authorized designee. Copies of the written decision shall be mailed to the parties.

9.11(3) A request for a decision that seeks only a change in the effective date shall be made by motion filed, served and acted upon in a like manner as other motions.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.12(368) Appeal of a committee decision.

9.12(1) An appeal of a committee decision or the legality of an election on the proposed boundary adjustment may be made pursuant to Iowa Code sections 17A.19 and 368.22.

9.12(2) Within 30 days of being notified of the filing of an appeal, board staff shall transmit a certified copy of the entire record of proceedings to the reviewing court. By stipulation of all parties to the appeal, the record of the proceedings may be shortened.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

263—9.13(368) Rehearing procedures.

9.13(1) Any party to a boundary adjustment proceeding may file an application for rehearing of the committee decision to approve or disapprove a proposed boundary adjustment.

9.13(2) The application for rehearing shall be filed within 20 days of the date of the committee decision as specified in the order. If no date is specified in the order, the date of the committee decision is the date it is mailed or the date of delivery if service is by another means.

9.13(3) The party applying for rehearing shall transmit a copy of the application for rehearing to all parties to the proceeding on the date of filing with the committee. If the application does not contain a certificate of service, the board shall file copies of the application on all parties, with the time for response beginning then.

9.13(4) Contents of application.

a. An application for rehearing shall specify the findings of fact and conclusions of law claimed to be erroneous and include a brief statement of the grounds of error.

b. The application shall state whether the applicant desires reconsideration of all or part of the committee decision on the existing record and whether, on the basis of paragraph 9.13(4)“c,” the applicant requests an opportunity to provide additional evidence.

- c.* A party may request the taking of additional evidence only by establishing:
- (1) The facts or other evidence arose after the original proceeding;
 - (2) The party offering such evidence could not reasonably have provided such evidence at the original proceeding; or
 - (3) The party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.
- d.* No further hearing will be granted when it is apparent that the added evidence will merely be cumulative.
- e.* Any party may object to or resist an application for rehearing by filing a resistance with the committee within ten days of the filing of the application.
- f.* The committee may grant or deny an application with or without a hearing on the application.
- (1) The application for rehearing shall be deemed denied unless the committee grants the application within 20 days of its filing.
 - (2) An order granting or denying an application for rehearing is deemed issued on the date it is mailed by the committee or the date it is received if another method of delivery is used.
 - (3) If the committee grants an application for rehearing, the committee may schedule oral argument or rehearing on the application if additional evidence will be received. If additional evidence will not be received, the committee may issue a ruling without oral argument or hearing. The committee may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues.
 - (4) If the committee denies an application, the committee shall proceed as if no application had been filed.

[ARC 7707C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code chapters 17A and 368.

[Filed 8/16/73, amended 9/12/73, 11/13/74]

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CHAPTER 10
BOARD PROCEEDINGS ON PETITIONS FOR INVOLUNTARY BOUNDARY
CHANGE AFTER COMMITTEE APPROVAL

[Prior to 1/9/91, City Development Board[220] Ch 4]

[Prior to 12/11/02, 263—Ch 4]

263—10.1(368) Election. If a petition or plan is approved, the board shall submit the proposal at an election held pursuant to Iowa Code section 368.19, regardless of appeal or applications for rehearing filed pursuant to rule 263—9.13(368).

[ARC 7708C, IAB 3/6/24, effective 4/10/24]

263—10.2(368) Final order. The board will issue an order stating the boundary change is complete in conjunction with the procedure after approval specified in Iowa Code section 368.20 and include such order with documents filed or recorded.

[ARC 7708C, IAB 3/6/24, effective 4/10/24]

263—10.3(368) Record.

10.3(1) The record of an involuntary boundary adjustment proceeding shall include the following as applicable:

- a. The original petition or plan and any amendment;
- b. Proofs of service and publication of required public hearing notices;
- c. All pleadings filed with the board and committee and any answers or rulings on the pleadings;
- d. The public hearing transcript and all evidence received at public hearing;
- e. All briefs and documents filed on the board or committee by parties to the proceedings and all other filings made by those not parties;
- f. Public documents referenced by the board or committee;
- g. The committee's findings of fact, conclusions of law and determination;
- h. The board's election order;
- i. Certification and proof of publication of election results;
- j. The board's final order.

10.3(2) The record shall be opened when a petition is filed with the board and shall be closed when the board has issued its final order.

[ARC 7708C, IAB 3/6/24, effective 4/10/24]

263—10.4(368) Appeal.

10.4(1) When an appeal is filed pursuant to Iowa Code section 368.22, the appellant shall notify the board and provide a copy of the appeal.

10.4(2) Within 30 days after the filing of the petition, the board shall transmit to the reviewing court the original or a certified copy of the entire record of the case that is the subject of the petition. By stipulation of all parties to the review proceedings, the record of such a case may be shortened.

[ARC 7708C, IAB 3/6/24, effective 4/10/24]

263—10.5(368) Board supervision of proposal execution. The board shall proceed accordingly in the following cases:

10.5(1) Discontinuance. The board will supervise discontinuance of a city pursuant to Iowa Code section 368.21. The board shall take control of all city balances, property, and records during the six-month period following the last notice of discontinuance published by the board. Upon the close of the six-month period, the board shall determine the extent of any unpaid allowed claims and such determination shall be verified by a certified public accountant or by the state auditor. In the case of unpaid allowed claims, the board shall approve payment from the discontinued city's account or shall direct the appropriate governing body to levy the necessary taxes.

10.5(2) Boundary adjustment. The board may, upon request of the applicable governing bodies, provide advisory assistance in implementation of an annexation, severance, or consolidation.

10.5(3) Consolidation. After a consolidation has been approved in an election held pursuant to Iowa Code section 368.19, the board may authorize the cities to continue to operate as individual cities until an election of a new city council has been held and the result certified. The election of a new city council shall be held within 90 days of the date of the appeal period authorized by Iowa Code section 368.22.
[ARC 7708C, IAB 3/6/24, effective 4/10/24]

These rules are intended to implement Iowa Code section 17A.19 and chapter 368.

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