

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[Chapters 1 and 2, IAC 7/27/77, superseded by Chapters 1 to 4, effective 4/12/78]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. The board shall receive annexation moratorium agreements filed by cities and accept involuntary petitions and voluntary applications for incorporation, consolidation, discontinuance and boundary adjustment of a city; review these submissions for compliance with statutory and rule requirements; and approve, deny, or dismiss or conduct or initiate further action on each submission. The board shall also accept and act upon petitions for rule making and declaratory orders, pursuant to Iowa Code sections 17A.7 and 17A.9. To this end, the board has adopted these rules, which shall be applicable to all proceedings and transactions of the board, to clarify the board's intent and applicable procedures.

This rule is intended to implement Iowa Code section 368.10.

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

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

263—1.3(368) Membership and quorum requirements. The board is made up of five members appointed by the governor pursuant to Iowa Code section 368.9. The board shall annually elect from its members a chairperson and vice-chairperson at the first regular meeting of the calendar year. A quorum of the board shall be three members, and a quorum must be present in order for the board to take action upon formal motions.

263—1.4(368) Meetings. The board shall conduct regular meetings at least every other month at the offices of the Iowa Economic Development Authority, 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 shall prepare an agenda for each meeting listing matters to be addressed. Copies of the agenda shall be posted at the Iowa economic development authority at least 24 hours prior to each meeting and shall be made available to all interested persons upon request.

Meetings of the board shall be conducted and minutes maintained in compliance with Iowa Code chapter 21.

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

These rules are intended to implement Iowa Code sections 368.10 and 17A.3(1).

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

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[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]

CHAPTER 2
AGENCY PROCEDURE FOR RULE MAKING

The city development board hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code, with the following amendments:

263—2.3(17A) Public rule-making docket.

2.3(2) *Anticipated rule making.* In lieu of the words “(commission, board, council, director)”, insert “city development board”.

263—2.4(17A) Notice of proposed rule making.

2.4(3) *Copies of notices.* In lieu of the words “(specify time period)”, insert “one year”.

263—2.5(17A) Public participation.

2.5(1) *Written comments.* In lieu of the words “(identify office and address)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

2.5(5) *Accessibility.* In lieu of the words “(designate office and phone number)”, insert “the city development board at (515)348-6200”.

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

263—2.6(17A) Regulatory analysis.

2.6(2) *Mailing list.* In lieu of the words “(designate office)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

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

263—2.11(17A) Concise statement of reasons.

2.11(1) *General.* In lieu of the words “(specify the office and address)”, insert “City Development Board, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315”.

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

263—2.13(17A) Agency rule-making record.

2.13(2) *Contents.* In lieu of the words “(agency head)”, insert “city development board”.

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]

CHAPTER 3
PETITIONS FOR RULE MAKING

The city development board hereby adopts, with the following exceptions and amendments, rules of the Governor’s Task Force on Uniform Rules on Agency Procedure relating to petitions for rule making which are printed in the first volume of the Iowa Administrative Code.

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

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

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

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

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

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]

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

CHAPTER 4
DECLARATORY ORDERS

The city development board hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure which are printed in the first volume of the Iowa Administrative Code, with the following amendments:

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

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

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

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

263—4.3(17A) Intervention.

4.3(1) In lieu of the words “__ days”, insert “15 days”.

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

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

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]

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 rules of the Governor’s Task Force on Uniform Rules on Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

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

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

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

5.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “city development board”. In lieu of the words “(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 the words “(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 the words “(specify time period)”, insert “one-half hour”.
[Editorial change: IAC Supplement 4/21/21]

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

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

These rules are intended to implement Iowa Code chapter 22.

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

[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]

CHAPTER 6
WAIVER RULES

263—6.1(17A) Definition. For purposes of this chapter, “waiver” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person or entity on the basis of the particular circumstances of that person or entity.

[ARC 5823C, IAB 8/11/21, effective 9/15/21]

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.

263—6.3(17A) Applicability. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

263—6.4(17A) Criteria for waiver. In response to a petition completed pursuant to rule 6.6(17A), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

[ARC 5823C, IAB 8/11/21, effective 9/15/21]

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.

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 rule 6.4(17A). 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 which 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.

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 telephonic or in-person meeting between the petitioner and the board's executive director, a committee of the board, or a quorum of the board.

263—6.8(17A) Notice. The board shall 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 5823C, IAB 8/11/21, effective 9/15/21]

263—6.9(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a pending city development action, and shall otherwise 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.

263—6.10(17A) 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(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

6.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

6.10(3) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

6.10(4) Administrative deadlines. 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.

6.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable under the existing circumstances.

6.10(6) 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(7) 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(8) 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.

263—6.11(17A) Submission of waiver information. Within 60 days of granting or denying a waiver, the board shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rule(s) for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which granting a waiver has established a precedent for additional waivers and the extent to which the granting of a waiver has affected the general applicability of the rule itself.

[ARC 5823C, IAB 8/11/21, effective 9/15/21]

263—6.12(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 5823C, IAB 8/11/21, effective 9/15/21]

263—6.13(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 5823C, IAB 8/11/21, effective 9/15/21]

263—6.14(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 5823C, IAB 8/11/21, effective 9/15/21]

263—6.15(17A) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

[ARC 5823C, IAB 8/11/21, effective 9/15/21]

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]

[Filed ARC 5823C (Notice ARC 5620C, IAB 5/19/21), IAB 8/11/21, effective 9/15/21]

CHAPTER 7
VOLUNTARY ANNEXATION

263—7.1(368) When board approval required. Applications for voluntary annexation of territory within another city's urbanized area and voluntary annexation requests including some property without the owner's consent must be approved by both the city receiving the territory and the city development board.

263—7.2(368) Contents of request. A request for board approval of an application for voluntary annexation of territory within another city's urbanized area shall be initiated pursuant to Iowa Code section 368.7 and shall include the following:

7.2(1) Landowner's application. Written application(s) for annexation of the territory must include:

a. A request for annexation of identified property, dated and signed by all owners of record or their authorized representatives;

(1) In the event that voluntary annexation is sought for a parcel of land which is being sold on contract, the contract seller and the contract buyer must both approve the annexation application;

(2) In the event that property for which annexation is sought is owned by a business organization or entity other than a natural person or persons, documentation establishing that the applicant is authorized to act on behalf of the owner shall be provided with the application.

b. A legal description of the property for which annexation is sought; and

c. A map of the property for which annexation is sought.

7.2(2) Documentation of the city's approval of the application. The following documentation must be included in a city's request for board approval of a voluntary annexation application:

a. A general statement of the proposal, briefly describing the current and expected use of the annexation territory, any services which the city currently provides to the territory, and the reasons for the property owners' request for annexation, if known.

b. A statement indicating whether the annexation territory is subject to an existing moratorium agreement and, if so, whether the proposed annexation is consistent with the terms of that agreement.

c. A complete legal description of the territory for which application is made, including the right-of-way to the center line of all secondary roads adjoining the annexation territory, unless a 28E agreement between the county and the city allowing exclusion of the right-of-way is in place and a copy of the agreement is included with the application, as required by Iowa Code section 368.1(14).

d. Prior to approval of a voluntary annexation application by the city council, the city shall provide a copy of the landowner's annexation application and the legal description of the entire annexation territory to the county auditor with a request that the auditor verify the accuracy and completeness of the legal description and verify current ownership of the parcel(s) involved. The auditor's response shall be included in the city's filing with the board. If the auditor fails to respond to the request within 14 days, the city may provide a copy of the request and a statement indicating that no response was received in lieu of the auditor's verification.

e. A map clearly showing the entire boundary of the existing city, the entire annexation territory, adjacent roadways, and the relationship of the territory to the annexing 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 of the required information to the board.

f. A statement indicating whether state-owned property or county-owned road right-of-way has been included in the proposal pursuant to Iowa Code section 368.5 and, if so, certification that the city has complied with the notice requirement of that section.

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

include Monday through Friday of each week, excluding “legal holidays” as set forth in Iowa Code section 4.1(34).

h. The city may, but is not required to, include a provision for transition of the imposition of city taxes against property within the annexation territory. The provision shall not allow greater exemption for taxation than the tax exemption formula schedule provided under Iowa Code section 427B.3, subsections 1 through 5, and shall be applied in the levy and collection of taxes. The provision may also allow for the partial provision of city services during the time in which the exemption from taxation is in effect.

i. A resolution of the council of the city to which the application for annexation is directed approving the application. If the council opts to provide for transition of the imposition of city taxes, the terms of the transition shall be included in the resolution.

j. Rescinded IAB 8/10/11, effective 7/20/11.

7.2(3) *Additional information to accompany requests which include land area without the consent of the owner(s).* In addition to the information which must be filed pursuant to subrule 7.2(2), a city’s request that includes property without the consent of the owner(s) must provide the following additional information within the application submitted to the board:

a. The 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. Prior to filing the annexation application, the city shall provide a copy of the legal description and map of the annexation territory and the list of property owners identified by the city to the county auditor with a request that the auditor verify the accuracy and completeness of the legal description and verify current ownership of the parcel(s) involved. A copy of the auditor’s response shall be included in the application. If the auditor fails to respond to the request within 14 days, the city may provide a copy of the request and a statement indicating that no response was received in lieu of the auditor’s verification;

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 subrule 7.8(2);

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. Certification that the city has complied with the notice and public hearing requirements of Iowa Code section 368.7(1). For purposes of calculating the required period of notice, “business days” shall include Monday through Friday of each week, excluding “legal holidays” as set forth in Iowa Code section 4.1(34); and

g. A statement in the city council’s resolution approving the annexation which sets forth the reason(s) that land is included in the proposal without the consent of the owner(s).

[ARC 9278B, IAB 12/15/10, effective 1/19/11; ARC 9546B, IAB 6/1/11, effective 7/6/11 (See Delay note at end of chapter); ARC 9664B, IAB 8/10/11, effective 7/20/11]

263—7.3(368) Filing of request. A city seeking board approval of a voluntary annexation application shall file the original and 15 copies of its request and all supporting documentation. The request will be deemed filed with the board on the date it is received by board staff. The board shall return a file-stamped copy of the request to the filing city.

263—7.4(368) Staff review of filing. Within two weeks of a city’s filing of a request for approval of a voluntary annexation, board staff shall review the request to determine whether the city has included all of the information required by rule 7.2(368). If the request is found to be incomplete, staff shall notify the filing city, identifying the required item(s) omitted and offering the city an opportunity to provide the omitted information prior to submission of the request to the board.

263—7.5(368) Submission to the board by staff—notice. A request for the voluntary annexation of property within an urbanized area will be submitted to the board for consideration at the first board meeting conducted 31 or more days after the filing of the request. If no other application for voluntary annexation or petition for involuntary annexation containing common territory is filed with the board within 30 days of the filing of the application, the board will proceed under rule 7.7(368). If another application or petition containing common territory is filed with the board within 30 days, the board will proceed under rule 7.9(368). The board shall provide notice of all meetings at which the board will consider the city's request by regular mail to the filing city, each city whose boundary is within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, each affected public utility, and the regional planning authority which includes the territory. At the request of the annexing city, the board may proceed under rule 7.7(368) at a board meeting less than 31 days after the filing of the application, except that the filings to complete an annexation approved by the board will only be made if no other annexation proposal for any or all of the territory is filed with the board within 30 days of the filing of the application. If a proposal for annexation to another city for all or part of the territory is received within 30 days, the board will proceed under rule 7.9(368).

263—7.6(368) Amendment of application.

7.6(1) *No addition of territory.* After a request for approval of an application for voluntary annexation has been filed with the board, it may not be amended to include additional territory.

7.6(2) *Deletion of territory.* A city may, upon its own motion or at the request of the board, seek amendment of an application for voluntary annexation to delete one or more of the parcels included in the proposal as filed with the board.

a. A motion to amend an application for voluntary annexation may be made at any time prior to issuance of the board order approving or denying the application.

b. The board shall provide notice of a proposed amendment by regular mail to all owners of land included in the application, each city whose boundary is within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, each affected public utility, the regional planning authority which includes the territory, and all other parties of record in the board proceeding.

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 of the proposed amendment.

d. The board may grant a request to amend an application if it determines that the request serves the public interest.

263—7.7(368) Board proceedings on unanimous voluntary applications when no voluntary application or petition for involuntary annexation or incorporation of common territory is received within 30 days of the initial filing.

7.7(1) *Applicability.* If all territory included within the city's application 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, the application shall be processed pursuant to this rule.

7.7(2) *Initial board review.* The board shall review each request for approval of an application for voluntary annexation of territory within an urbanized area to determine compliance with the requirements of Iowa Code chapter 368 and these rules.

7.7(3) *Information considered.* The board shall provide any interested person or party an opportunity to submit written comment on the application prior to or at the time of board consideration of the request for approval. The board may:

a. Allow an opportunity for oral comment on the application;

b. Consider public documents; and

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.

7.7(4) Criteria. The board may consider the criteria for approval of involuntary city development actions, as set forth in Iowa Code sections 368.16 and 368.17, in acting on an application for voluntary annexation.

7.7(5) If the request is found to be incomplete, the board may request further information from the applicant or the filing city or may dismiss the request, stating in its order the reason(s) for the dismissal.

7.7(6) If annexation of the territory is statutorily barred pursuant to Iowa Code section 368.17, the board shall deny the application, stating in its order the reason(s) for the denial.

7.7(7) If the board approves an application for voluntary annexation of territory within the urbanized area of another city, the board shall issue a written decision and file the decision with the clerk of the annexing city, other cities within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, the regional planning authority, each affected public utility, the state department of transportation, and all other parties of record in the board's proceeding. 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).

7.7(8) If the board denies an application, it shall issue an order setting forth the reason(s) for the denial and shall provide a copy to the filing city.

263—7.8(368) Board proceedings on voluntary annexation requests which include land area without the consent of the landowner(s).

7.8(1) General rule. Territory comprising railway right-of-way or territory comprising not more than 20 percent of the land area may be included without the consent of the owner to avoid creating an island or to create more uniform boundaries.

7.8(2) Calculation of proportion of land area included without the consent of the owner(s).

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.

b. The area of the territory that is public land included without the written consent of the agency with jurisdiction over the public land shall not be used to determine the percentage of territory that is included with the consent of the owner and without the consent of the owner.

7.8(3) Board action on proposal. The board shall review the request to determine compliance with the requirements of Iowa Code chapter 368 and these rules.

a. If the request is found to be incomplete, the board may request further information from the applicant or the filing city or may dismiss the request.

b. If the request is found to be in proper form and to contain all required information, the board will conduct a public hearing on the request, providing notice of the meeting by regular mail sent at least ten days prior to the hearing to all owners of land included in the annexation proposal, the annexing city, other cities within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, the regional planning authority containing a portion of the territory, each affected public utility, and the state department of transportation.

The board hearing shall be conducted informally. Representatives of the city requesting the annexation shall be given an opportunity to explain the proposal, the city's reason for including property without the consent of the owner(s), and any other information the city believes will assist the board in acting on the proposal. 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. 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.

c. The board shall consider whether the proposal serves the public interest and may consider the criteria for approval of involuntary city development actions, as set forth in Iowa Code sections 368.16 and 368.17, in acting on a request for voluntary annexation which includes the property of nonconsenting owners. The board may not approve a request for voluntary annexation of territory which includes the

property of nonconsenting owners unless the board finds that the land of the nonconsenting owners was included in order to (1) avoid creating an island, or (2) create more uniform boundaries.

d. A request for voluntary annexation of territory which includes the property of nonconsenting owners shall not be approved unless four members of the board vote in favor of the proposal.

e. If the board approves a request for voluntary annexation of territory which includes the property of nonconsenting owners, the board shall issue a written decision and file the decision with the clerk of the annexing city, other cities within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, the regional planning authority, each affected public utility, the state department of transportation, and any other party of record in the board proceeding. 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).

f. If the board denies the request, an order shall be issued setting forth the reasons for the denial, and a copy shall be provided to the clerk of the annexing city, other cities within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, the regional planning authority, each affected public utility, the state department of transportation, and any other party of record in the board's proceeding.

[ARC 9278B, IAB 12/15/10, effective 1/19/11]

263—7.9(368) Board proceedings on voluntary applications when one or more voluntary applications or involuntary petitions for annexation of common territory are received within 30 days of the initial filing.

7.9(1) Initial board review. The board shall review the application(s) and petition(s) to determine compliance with the requirements of Iowa Code chapter 368 and these rules.

7.9(2) Dismissal. If an application or petition does not meet the requirements of Iowa Code chapter 368 or these rules, the board may dismiss the application or petition or request additional information from the applicant or petitioner. If only one application or petition remains before the board following such dismissal, the board will proceed on that filing as if no competing application or petition had been filed.

7.9(3) Hearing. If competing application(s) and petition(s) are found to be in proper form, the board will consider the voluntary application(s). The board may appoint a local committee pursuant to Iowa Code section 368.14 and shall conduct a public hearing pursuant to the procedure set forth in paragraph 7.8(3) "b" for hearings on voluntary applications including property without the consent of the owner(s).

7.9(4) Criteria for decision. Within 90 days of receipt of the application, the board or committee shall meet to assess the application and evidence received at the public hearing. If the application meets the applicable requirements of Iowa Code chapter 368, the board or committee shall approve the application unless the board makes one of the following findings by a preponderance of the evidence:

- a.* The application was filed in bad faith;
- b.* The application as filed is contrary to the best interests of the citizens of the urbanized area; or
- c.* The city that received the application cannot, within a reasonable period of time, meet its obligation to provide services to the territory to be annexed sufficient to meet the needs of the territory.

7.9(5) Decision if approved. If the board or committee approves a voluntary application considered under Iowa Code subsection 368.7(4), the board shall issue a written decision and file the decision with the clerk of the annexing city, other cities within two miles of the annexation territory, the board of supervisors of each county containing a portion of the territory, the regional planning authority, each affected public utility, the state department of transportation, and any other party to the board's proceeding. 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).

7.9(6) Decision if statutorily barred. If annexation of the territory is statutorily barred under Iowa Code section 368.17, the board or committee shall deny the application, stating in its order the reason(s)

for the denial. An annexation request denied pursuant to this rule may not be converted to an involuntary petition, pursuant to subrule 7.9(7).

7.9(7) Action if not approved. If the application is not approved or is denied pursuant to subrule 7.9(6), the board shall issue an order setting forth its reason(s) for failing to approve the application and requiring conversion of the application into an involuntary petition. An application that contains some land without the consent of the owner to avoid the creation of an island or to create more uniform boundaries, that is considered by a committee, 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 the proposal. The city shall within 30 days withdraw its application or convert its application into an involuntary petition containing all information required to be included in such petitions by Iowa Code section 368.11 and these rules.

7.9(8) Following conversion of the application into an involuntary petition, the board shall order appointment of a special local committee to consider the application and all pending petitions for annexation of common territory, pursuant to Iowa Code section 368.14A. Committee appointments shall be made by resolution of the appropriate governing bodies within 45 days of issuance of the board's order. Each resolution shall state that the local representative selected is a qualified elector of the city or territory represented or, if none of the qualified electors of the territory will accept the appointment or the territory has no resident qualified electors, that the representative owns property within the territory. Copies of the resolutions shall be 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.

7.9(9) The special local committee shall conduct a public hearing to receive evidence and comment on all applications and petitions pending before it. The order of presentation shall be determined by the committee prior to commencement of the hearing. The hearing shall be conducted in accordance with the rules for committee proceedings set forth in 263—Chapter 9.

7.9(10) 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 applications and petitions before it.

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

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 these rules.

7.9(11) 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.

7.9(12) Upon receipt of a committee decision approving all or a portion of a petition, the board shall complete the procedural steps set forth within 263—Chapter 10.

263—7.10(368) Board proceedings on voluntary annexation applications containing common territory with a petition for involuntary annexation filed more than 30 days after the petition.

7.10(1) The board will receive the application and table action on it until processing of the petition is complete.

7.10(2) Same city. If the application proposes to annex territory to the same city filing the petition, the board may proceed on the application under rule 7.7(368).

263—7.11(368) Costs. The cost of recording the board order, if the annexation is approved, shall be borne by the city to which territory is annexed.

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

7.12(1) General rule. A request for board approval to sever real property from one city and to annex the same real property to another city shall be initiated pursuant to 2010 Iowa Acts, House File 2376. Contiguous property may be combined within the same request.

7.12(2) Contents of petition. The petition under this rule shall be in substantially the same form as an application under Iowa Code section 368.7 and rule 263—7.2(368). Additionally, if the city council of either city conditioned approval of the petition upon an agreement entered into by the cities providing for the transition of property taxes or the sharing of property tax revenues from the property described in the petition, the agreement shall be filed with the board at the same time the approved petition is filed.

7.12(3) Initial board review. The board shall review each petition to sever real property from one city and to annex the same real property to another city in order to determine compliance with the requirements of Iowa Code section 368.7 and these rules. The board shall notify both cities and the real property owner(s) of the board's initial review of the severance and annexation petition. If the petition does not meet the requirements of Iowa Code section 368.7, the board may request additional information before making a final decision or may dismiss the petition. If the application is found to be in proper form, the board shall hold a public hearing on the severance, annexation, and any agreement between the cities.

7.12(4) Public hearing. The board shall give notice of the public hearing in the same manner as notice of a public meeting under Iowa Code section 368.11, subsection 5. The board shall conduct a public hearing pursuant to the procedure set forth in paragraph 7.8(3) "b" for hearings on voluntary applications.

7.12(5) Decision criteria. The board shall consider whether the request serves the public interest and may consider the criteria for approval of involuntary city development actions as set forth in Iowa Code sections 368.16 and 368.17. The board may approve or deny only the severance and annexation of the real property described in the petition. The board may approve the petition only if the board also approves any agreement entered into by the cities pursuant to 2010 Iowa Acts, House File 2376. The board shall not approve the petition if the severance and annexation creates an island.

7.12(6) Denial. If a petition is denied, the board shall issue an explanation for the denial. A copy of the explanation shall be provided to the clerk of each city involved in the severance and annexation and to any other party of record in the board's proceeding.

7.12(7) Approval. If a petition is approved, the board's order approving the severance and annexation is not subject to approval at an election. The board shall file and provide a copy of the order to the clerk of each city involved in the severance and annexation, the recorder of each county that contains a portion of any city or territory affected by the severance and annexation, and any other party of record in the board's proceeding. Upon expiration of the time for appeal, the board shall file with the Iowa secretary of state and record with the recorder of each county that contains a portion of any city or territory involved copies of the proceedings, including the petition, any agreement between the cities, the board's order approving the petition, proof of service and publication of required notices, and any other material deemed by the board to be of primary importance to the proceeding. The board shall file a map and legal description with the Iowa department of transportation.

[ARC 9278B, IAB 12/15/10, effective 1/19/11]

These rules are intended to implement Iowa Code section 368.7.

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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) Board and committee action required. All petitions filed pursuant to Iowa Code section 368.11 requesting involuntary city development action, including incorporation, discontinuance, annexation, severance, or consolidation, must be reviewed by the city development board and, if in proper form, acted upon by a local committee established pursuant to Iowa Code section 368.14 or 368.14A.

263—8.2(368) Initiation of petition. A petition for involuntary city development action may be initiated, pursuant to Iowa Code sections 368.11 and 368.13, by a city council, a county board of supervisors, a regional planning authority, 5 percent of the qualified electors of a city or territory involved in the proposal, or the city development board. When a proposal for city development action is initiated by the city development board, the board may require a city to submit a petition or may formulate its own petition.

263—8.3(368) Contents of the petition. The body or bodies initiating the petition shall be known as the petitioner(s). The petition shall be prefaced by an introductory statement in the following general form:

We, the [city council of _____] [county board of supervisors of _____ county] [regional planning authority for _____] [certain qualified electors of _____] do hereby petition the city development board of the state of Iowa for an [incorporation] [discontinuance] [boundary change], more specifically described as [description of proposed action], and involving land described as [complete legal description].

In addition, the petition shall contain the following information, as required by Iowa Code section 368.11:

8.3(1) General statement of proposal. The general statement of proposal shall be an overview of the proposal, briefly describing the characteristics of the city and territory and the reasons for the corporate boundary change.

8.3(2) Moratorium. The petition shall contain a statement indicating whether a territory proposed for annexation is subject to an existing moratorium agreement and, if so, whether the proposed annexation is consistent with the terms of the agreement.

8.3(3) Map. The map shall clearly show all boundaries of the city and the entire annexation territory, adjacent roadways, the relationship of the territory to the city, and all geographic features deemed relevant to the proposed action. In cases of incorporation, a map of the proposed city boundary shall be provided. In cases of discontinuance or consolidation, a map of the existing city or cities shall be provided. Where land use patterns are expected to be pertinent to consideration of the proposal, the petitioner may be requested to present graphic material representing existing and anticipated use of the territory.

8.3(4) Legal description. The petition shall include a complete legal description of the territory proposed for annexation, severance, incorporation, discontinuance, or consolidation. In cases of annexation, the description of the right-of-way of secondary roads, included as required by Iowa Code section 368.1(14), shall be provided. Prior to filing the petition, the city shall provide a copy of the legal description, map of the territory and list of property owners identified by the city to the county auditor, including the right-of-way of secondary roads, which is included as required by Iowa Code section 368.1(14), with a request that the auditor verify the accuracy and completeness of the legal description and verify current ownership of the parcel(s) involved. The auditor's response shall be included in the petition. If the auditor fails to respond to the request within 14 days, the city may provide a copy of the request and a statement indicating that no response was received in lieu of the auditor's verification.

8.3(5) Assessed valuations. The assessed valuation and classification assigned for tax purposes (agricultural, residential, commercial, etc.) for each parcel of platted and unplatted land within the territory shall be included. This information shall be verified in writing by the city or county assessor. If

upon request by the city, the assessor fails to provide verification of this information within 14 days, the city may provide a copy of the request and a statement indicating that the verification was not provided by the assessor in lieu of the assessor's verification.

8.3(6) Property owners. The name and address of each owner of property within the territory.

8.3(7) Population density. Population density in terms of persons per acre for annexation or persons per square mile for incorporation, discontinuance, severance or consolidation. Population density shall be delineated for the existing city, the territory, and for the resulting city if the proposal is approved.

8.3(8) Potential growth in population. If the petition seeks annexation, consolidation or incorporation, projected population growth for the city and the territory shall be provided. 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.

8.3(9) Residential and commercial development regulation and projections. The petition shall include a description of current and proposed zoning regulations that apply to the annexation territory. Projected development and land use patterns shall be described under the assumption of continuation of existing land use regulations and under the assumption of land use regulations that would be applied after the annexation, if approved. Residential, commercial, and industrial development projections shall be provided based on population projections for the city and territory.

In the case of 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.

8.3(10) Description of topography. Topographical information shall be in map and narrative form. Maps shall include both the city and 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 of the area's topography shall accompany the maps and identify flood plains, drainage areas, drainage ways, slopes and bluffs. In petitions seeking annexation or incorporation, the narrative shall also address topography as it relates to development of urban uses and the extension of municipal services.

8.3(11) Plans for disposal of assets, assumption of liabilities, and provision of services including the following information:

a. Petitions for annexation, consolidation and incorporation shall include a description of existing municipal services and facilities, including but not limited to water supply, sewage disposal, police and fire protection, and street and road maintenance. The petition shall also include information regarding the city's proposal for providing municipal services, including but not limited to water supply, sewage disposal, street and road maintenance, and police and fire protection to the territory, proposed new city, or consolidated city, and the estimated cost of providing said services.

b. In cases of annexation, the petition shall include a statement of 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 increased demand resulting from addition of the territory to the city and the demand which will result from projected development in the territory. The petition shall also include an analysis of existing bonding capacity and bonded indebtedness, and the assets the city may receive that will offset the cost of providing municipal services, 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. In cases of incorporation, a statement of 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 that will offset the cost of providing municipal services, 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.

d. Petitions for severance and discontinuance shall include a statement of the adequacy of sewage disposal, water supply, police and fire protection, and other municipal services being provided to the territory by the city; 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.

8.3(12) Effect of the proposal and possible alternative proposals. At a minimum, the petition shall include a description of the effect that approval of the proposal will have on the cost and adequacy of services and facilities and a description of the effect of disapproval of the proposal on the cost and adequacy of services and facilities.

8.3(13) Effect of proposal on adjacent areas. The petition shall include documentation of the amount of revenue lost or gained by any city, township, or county affected by the proposal. Consideration shall be given to property tax, state shared revenues, federal revenue sharing, and any other major sources of revenue.

8.3(14) Service agreements. The petition shall identify services which may be provided through agreement with township fire districts, 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.

8.3(15) 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.

8.3(16) Name of proposed city. A petition for incorporation or consolidation shall state the name of the proposed resulting city.

8.3(17) Transition of taxation. In cases of annexation the city may, but is not required to, include a provision for transition for the imposition of city taxes against property within the annexation territory. The provision shall not allow greater exemption for taxation than the tax exemption formula schedule provided under Iowa Code section 427B.3, subsections 1 through 5, and shall be applied in the levy and collection of taxes. The provision may also allow for the partial provision of city services during the time in which the exemption from taxation is in effect.

8.3(18) Islands. The petition shall state whether approval of the proposal will create an island of unincorporated area.

8.3(19) Location of the territory. Petitions for annexation, incorporation, and consolidation shall include the following information:

a. Annexation. Petitions for annexation shall state whether the territory is adjoining the city to which annexation is proposed and whether any of the territory is in an existing city.

b. Incorporation. Petitions for incorporation shall state whether any of the territory to be incorporated is in an existing city or within two miles of the boundary of an existing city. If all or a portion of the area proposed for incorporation is within two miles of another city, the petition must include documentation that a petition for annexation of substantially the same territory has been dismissed, disapproved, or voted upon unfavorably within five years prior to filing of the petition.

c. Consolidation. Petitions for consolidation shall state whether all of the affected cities are contiguous.

[ARC 9546B, IAB 6/1/11, effective 7/6/11 (See Delay note at end of chapter); ARC 9664B, IAB 8/10/11, effective 7/20/11]

263—8.4(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” shall include Monday through Friday of each week, excluding “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 for involuntary city development action filed with the board.

263—8.5(368) Filing and service.

8.5(1) Filing. The original and 15 copies of a petition shall be filed with the board. A petition will be deemed filed with the board on the date it is received by board staff. The board shall return a file-stamped copy of the petition to the petitioner.

8.5(2) Service. Within seven days of the filing of a petition with the board the petitioner shall serve notice of the filing, including a copy of the petition, upon the council of each city for which a discontinuance, annexation, severance or consolidation is proposed; the board of supervisors for each county which contains a portion of a city to be discontinued or territory to be incorporated, annexed, or severed; and the regional planning authority for the area involved.

8.5(3) Proof of service. The petitioner shall file proof of compliance with the service requirement of subrule 8.5(2) with the board.

263—8.6(368) Costs. All costs which 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(s).

263—8.7(368) Staff review of petition. Within two weeks of the filing of a petition for involuntary city development action, board staff shall review the request to determine whether the city has filed all of the information required by rule 8.3(368). If the request is found to be 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.

263—8.8(368) Submission of petition to the board—notice. Petitions will be submitted to the board at the first meeting conducted 31 days or more after filing of the petition. The board shall provide the petitioner with notice of all meetings at which the board will consider or act upon the petition.

263—8.9(368) Board review of petition. Upon submission of a petition, the board shall review the petition for substantial compliance with Iowa Code section 368.11 and rules 8.3(368) through 8.5(368). 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 these rules upon finding the requirement inapplicable to the petition under review.

263—8.10(368) Board action on petition. On the basis of its review of the petition, the board shall accept the petition for further proceedings or dismiss the petition.

8.10(1) Acceptance. The board shall accept for further proceedings any petition that it finds to be in substantial compliance with the filing requirements of Iowa Code section 368.11 and these rules and not subject to dismissal pursuant to Iowa Code section 368.12.

8.10(2) Dismissal. A petition may be dismissed by the board only upon finding one of the statutory grounds for dismissal set forth in Iowa Code section 368.12. In cases of dismissal, the board shall issue an order indicating the reasons for the dismissal, providing copies to the petitioner and all parties to the proceeding.

263—8.11(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 serve with the board as a city development 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 a qualified elector of the city or territory represented or, if none of the qualified electors of the territory will accept the appointment or the territory has no resident qualified electors, that the representative owns property within the territory. 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.

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. Following board acceptance of a petition for boundary adjustment and the appointment of local representatives as specified in Iowa Code section 368.14 and rule 263—8.11(368), the board shall expand to a committee which shall have jurisdiction to conduct proceedings consistent with Iowa Code sections 368.16 through 368.19. If all or a portion of the petition is approved by the committee, the board retains concurrent jurisdiction to subpoena witnesses and documents for use in the proceedings and to conduct proceedings consistent with Iowa Code sections 368.19 through 368.21.

The parties shall be notified of the formation of the committee and directed to file all motions, pleadings, and submissions relating to the petition with the committee, in care of the office of the board.

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 at the time the petition is accepted. 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 consists of three board members and one local representative or, if the number of local representatives exceeds two, three board members and at least one-half of the appointed local representatives. A quorum must be present in order for the committee to conduct a meeting or hearing.

9.2(3) Chairperson. The chairperson of the city development 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 city development 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) Minutes. Minutes of all committee meetings shall be kept pursuant to Iowa Code chapter 21. The minutes of any committee meeting, but not including public hearings held pursuant to Iowa Code section 368.15, shall serve as the record of the meeting. The record of public hearing proceedings shall be in accordance with subrule 9.10(5).

9.2(6) Telephone and electronic proceedings. The committee chairperson may, on the chairperson's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The committee chairperson will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when 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.

263—9.3(368) Parties to proceedings. An individual, group, organization or governmental agency may become a party to a case by filing a separate written appearance identifying one person upon whom the board may serve all orders, correspondence, or other documents. 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 filed after docketing, 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 which contains the territory will be considered to be a party without filing an appearance.

263—9.4(368) Filing of documents. Once a party has filed an appearance, it shall serve any document that it files on the board or committee on all other parties and such filing shall contain proof of service. All parties may request reproducible documents to the proceedings that were filed on the board or committee prior to said parties' admittance and shall pay for said documents at a rate of 10 cents for each page. After a party has been admitted, any document filed on the board or committee by that party but not served on all other parties may be taken note of by the board or committee and, if so noted, all parties shall be given a copy of the document and shall have an opportunity to comment on said document either orally or in writing as the board or committee so specifies. Any document filed on the board or committee by those who are not parties or who are not properly seeking to be admitted as parties may be taken note of by the board or committee and, if so noted, all parties shall be given a copy of the document and shall have an opportunity to comment on said document either orally or in writing as the committee so specifies. Those who are not parties or who are not properly seeking to be admitted as parties shall receive reproducible documents to the proceedings only upon written request to the committee chairperson, and the cost of the reproduction may be charged to the requesting party at the rate of 10 cents for each page. Except as otherwise provided by law, a document is deemed filed at the time it is received by the staff of the board.

9.4(1) Form of motions.

a. No technical form for motions is required. However, 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. Electronic service. The committee chairperson may by order permit service or filing of a particular document by facsimile, E-mail or similar electronic means, unless precluded by a provision of law. In the absence of such an order, a facsimile or electronic transmission shall not satisfy service or filing requirements, but may be used to supplement service or filing when rapid notice is desirable.

9.4(3) Time requirements.

a. Time shall be computed as provided in Iowa Code subsection 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.

263—9.5(17A) Ex parte communication.

9.5(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following filing of a petition, there shall be no communication, directly or indirectly, between the board or committee members and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit committee members from communicating with each other. 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 they 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 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) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

9.5(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 263—9.4(368) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

9.5(5) Committee members in a pending contested case 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(6) The board's 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 they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 9.5(1).

9.5(7) 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(8) Disclosure of prohibited communications. A committee member who receives a prohibited ex parte communication during the pendency of a case must initially determine if the effect of the communication is so prejudicial that the committee member should be disqualified. If the committee member determines that 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, such documents shall be submitted for inclusion in the record 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(9) 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(10) 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.

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 contested case 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 that (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 which 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 which 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) In a situation in which a committee member knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

9.6(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 9.6(1), 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.

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 9.2(4).

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

(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) The possibility of making admissions of certain averments of fact or stipulations thereof, for the purpose of avoiding unnecessary proof.

(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. Recordation. 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 are applicable in contested cases. 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 are 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. Subpoenas shall be issued by the board's administrator or designee upon written request. Subpoenas issued may compel the attendance of witnesses at depositions or hearing, 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 deposition or hearing, 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. The board's administrator or designee 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 to the contested case 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 board 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 board may issue a decision. The board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board may schedule oral argument or hearing by telephone or in person.

263—9.8(368) Notice of public hearings. Notices shall comply with 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 Iowa Code chapter 21.

263—9.9(368) Continuance. Hearings or proceedings relating to matters which 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) The board's administrator may enter an order granting an uncontested application for a continuance. Upon consultation with the committee chairperson or the chairperson's designee, the board's administrator 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).

263—9.10(368) Public hearings.

9.10(1) General provisions.

a. Public hearings shall be held on dates and locations determined by the board. However, whenever possible, the public hearings shall be held in or near the locale so affected. The hearing shall be held in a place open to the public.

b. The board shall, prior to serving notice, designate a suitable place to make the petition or plan available for public inspection. The board 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, which may include a summary of actions taken by the committee prior to the hearing.

d. The committee chairperson shall be in control of the proceedings and shall 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 shall be free to 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. Decorum. 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.

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

d. 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 the Iowa administrative procedure Act. The committee shall observe the rules of privilege recognized by law. It may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

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. Documentary evidence. 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. Recording of oral proceedings. Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters.

b. Any party requesting a certified shorthand or court reporter shall make arrangements for such attendance and expense.

c. The board administrator 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. Tapes, stenographic notes, or transcription of the oral proceedings will be retained by the board for five years following the decision or until the case is resolved, whichever is later.

d. Upon request, the board shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. A reasonable amount will be charged to cover the cost of providing a duplicate tape to the requesting party. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

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 board 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 in the chairperson’s discretion to do so is deemed necessary or in the public interest. Failure to discuss in oral argument points properly made in the briefs shall not be deemed a waiver thereof.

263—9.11(368) Committee decision.

9.11(1) Deliberation. After the final public hearing and filing of briefs, the committee will meet to decide whether or not to approve the petition. The meeting will be an open meeting pursuant to Iowa Code section 21.3.

a. Notice of the meeting will be provided pursuant to 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, 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 always be in writing and rendered at a time 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. Any city development board staff person authorized by the chairperson may sign decisions, orders, or rulings of the board or committee after the chairperson has reviewed the decision, order or ruling and has given consent to sign. Copies of the written decision shall be transmitted to the parties by certified mail.

9.11(3) A request for a decision which 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.

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 initiated by any party to the proceedings or any resident or owner of land in the territory or the city for which the boundary adjustment is proposed by filing a petition seeking judicial review of the decision pursuant to Iowa Code sections 17A.19 and 368.22.

9.12(2) A petition challenging the committee's decision must be filed within 30 days of the date of the committee's decision to approve or disapprove the boundary adjustment. A petition challenging the legality of the election must be filed within 30 days of the publication of the election results.

9.12(3) Appeal of approval of a petition or plan does not stay the election.

9.12(4) Within 30 days of being notified of the filing of an appeal, the board's staff shall transmit a certified copy of the agency record to the reviewing court. 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 evidence received or considered and all other submissions;
- f.* All briefs and documents filed on the board or committee by parties to the proceedings and all other filings made by those who are not parties;
- g.* Public documents taken note of by the board or committee;
- h.* The committee's findings of fact, conclusions of law and determination;
- i.* The board's election order;
- j.* Certification and proof of publication of election results;
- k.* The board's final order.

By stipulation of all parties to the appeal, the record of the case may be shortened.

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. The date of the committee decision is the date it is mailed or the date of delivery if service is by another means, unless the date is specified in the order.

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. Disposition of an application for rehearing. 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.

These rules are intended to implement Iowa Code sections 17A.11, 17A.17 and 368.14 to 368.17.

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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 on a date specified in Iowa Code section 39.2, subsection 4, paragraph “a” or “b,” whichever is applicable, and the county commissioner of elections shall conduct the election. The board shall proceed with establishing a date for an election on the proposal regardless of appeal or applications filed pursuant to rule 263—9.13(368). Appeal of a committee decision does not stay the election. After the county commissioner of elections has certified the results to the board, the board shall serve and publish notice of the results as provided in Iowa Code section 362.3.

This rule is intended to implement Iowa Code section 368.19.
[ARC 9278B, IAB 12/15/10, effective 1/19/11]

263—10.2(368) Final order. Documents filed pursuant to Iowa Code section 368.20(2) shall be officially recorded. Upon the final filing of documents as specified in Iowa Code section 368.20(2), the board shall issue an order stating the boundary change is complete. A copy of the order shall accompany the documents and be officially recorded. Copies of the order shall also be served on the county auditor and any city involved in the change.

This rule is intended to implement Iowa Code section 368.20.

263—10.3(368) Record. The record of an involuntary boundary adjustment proceeding shall include the following as applicable:

1. The original petition or plan and any amendment;
2. Proofs of service and publication of required public hearing notices;
3. All pleadings filed with the board and committee and any answers or rulings on the pleadings;
4. The public hearing transcript and all evidence received at public hearing;
5. All briefs and documents filed on the board or committee by parties to the proceedings and all other filings made by those not parties but taken note of by the board or committee;
6. Public documents taken note of by the board or committee;
7. The committee’s findings of fact, conclusions of law and determination;
8. The board’s election order;
9. Certification and proof of publication of election results;
10. The board’s final order.

The record shall be opened when a petition for boundary adjustment is filed with the board and shall be closed when the board has issued its final order.

This rule is intended to implement Iowa Code section 17A.19.

263—10.4(368) Appeal. A city or a resident or property owner in the territory or city whose urbanized area contains all or part of the territory may appeal a decision of the board or a committee, or the legality of an election, to the district court of a county which contains a portion of any city or territory involved. Appeal must be filed within 30 days of the filing of a decision or the second publication of notice of the result of an election. Appeal of an approval of a petition or plan does not stay the election. When an appeal is filed, the board shall be so notified and provided with a copy of the appeal.

Within 30 days after 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 which is the subject of the petition. By stipulation of all parties to the review proceedings, the record of such a case may be shortened.

This rule is intended to implement Iowa Code sections 368.22 and 17A.19.

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

10.5(1) *Discontinuance.* Meaning the termination of a city; the board shall publish two notices as provided in Iowa Code section 368.15 that it will receive and adjudicate claims against a discontinued city for a period of six months from publication of last notice. The board shall take control of all city balances, property, and records during the six-month period. 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 as provided for by section 368.21. After all allowed claims have been paid, any remaining balances in the discontinued city's account shall be deposited in the general fund of the county where the former city was located and all property and records of the discontinued city shall be deposited with the county auditor of the county designated by the board.

10.5(2) *Boundary adjustment.* Meaning annexation, severance or consolidation; at the discretion of the board, and upon request of the governing bodies involved, advisory assistance may be provided in implementation of a boundary adjustment.

10.5(3) *Consolidation.* Meaning the consolidation of two or more adjoining cities into one city; after the electorates have approved the consolidation, 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 thereof 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.

This rule is intended to implement Iowa Code section 368.21.

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CHAPTER 11
ISLANDS—IDENTIFICATION AND ANNEXATION
[Prior to 12/11/02, 263—Ch 5]

263—11.1(368) Definitions. The following definitions shall be applicable to the rules contained within this chapter:

Island. An “island” is land which is not part of a city and which is completely surrounded by the corporate boundaries of one or more cities. However, land will be treated as an island even though it is not completely surrounded by incorporated territory if it is completely surrounded by the corporate boundaries of one or more cities and a boundary of the state, a river, or similar natural barrier which prevents service access from an adjoining area of land outside the boundaries of a city.

Majority of landowners of an island. A “majority of landowners of an island” equals owners representing more than one-half of the number of parcels of property within the island.

263—11.2(368) Identification of existing islands. Islands are to be identified by the board of supervisors of each county and verified by the city development board.

11.2(1) Board of supervisors’ notification. The board of supervisors of each county shall notify the city development board of the existence of all islands within the county that were not a part of a city by annexation or incorporation as of January 15, 1992. Notification shall include a legal description of the island, a listing of the name and mailing address of all owners of property within the island, and a map showing the island’s location in relationship to the city or cities surrounding the island.

11.2(2) Verification of island status. In order to verify each county’s identification of islands, the city development board shall:

a. Give notice of the island identification and right to contest existence of the island or identify additional islands to each city within whose boundaries an island has been identified. If an identified island is bordered by more than one city, each city whose boundaries border the island shall be notified.

b. Allow each city the opportunity to contest the island designation by providing written objection to the designation to the city development board within 30 days of the date of receipt of the board’s notice and to identify islands omitted from the listing provided by the county board of supervisors. A city’s identification of additional islands shall include all of the information required by subrule 11.2(1).

c. If a city does not contest the island designation, the board will presume the designation is accurate.

d. If a city does contest the designation or identifies additional islands, or if information is presented to the board by a resident of the island, city, or county challenging the island designation, the board shall contact the auditor of the county or counties within which the property is located to verify the current tax status of the territory identified as an island and all contiguous properties. The board will rely upon certification of the status of the territory by the county auditor as conclusive evidence of the nature of the territory and will, in cases where a contest or challenge is raised, base its determination of the existence of the island on this certification.

263—11.3(368) Notice to property owners; protests to annexation of existing islands. Following verification of the status of an island, the board shall initiate proceedings for annexation of the island.

11.3(1) Notice to property owners. Following verification of the existence of an island, the city development board shall provide notice of pending annexation of the island by certified mail to all owners of property within the island, as identified pursuant to subrule 11.2(1) or paragraph 11.2(2)“*b.*” The board’s notice shall include:

- a.* The legal description of the property at issue;
- b.* A map showing the relationship of the island within which the property is contained to the surrounding city or cities;
- c.* Notice that the county or city has identified the property as being within an island;

d. Notice that, pursuant to 1991 Iowa Acts, chapter 187, the city development board has been directed to cause all existing islands to be annexed into the surrounding city or cities unless a majority of the landowners of the island protest the annexation;

e. The number of parcels of land within the island; and

f. An explanation of the procedure and deadline for the filing of a protest to annexation of the island.

11.3(2) *Protest form, content, and timing.* Landowners wishing to protest annexation of an island may file protests to the annexation individually or as a group. Protests must be in writing, must be signed by the record owner(s) of property located within the island, must include the legal description of the property owned and identification of the island within which the property is contained, and must be received by board staff within 30 days of the date of issuance of the board's notice of annexation.

11.3(3) *Lack of protest.* If the board does not receive timely written protests from a majority of the landowners of the island, the board shall proceed with annexation of the island pursuant to rule 11.4(368).

11.3(4) *Notice of protest.* If the board receives timely written protests from a majority of the landowners of the island, the board shall notify all landowners of the island, the city(ies), county(ies) and council of government(s) within which the island is located that the annexation process will be discontinued unless the board finds that residents of the island do not have adequate fire protection, police protection, emergency medical services, and road construction and maintenance services.

11.3(5) *Opportunity to provide evidence regarding adequacy of services.*

a. Any person or governmental entity interested in the annexation may, within 30 days of the date of issuance of the board's notice of protest, provide to the board written comments or evidence regarding the adequacy of fire, police, emergency medical, road construction and road maintenance services to the island.

b. Any interested person or governmental entity may request an appearance or hearing before the board to facilitate the receipt of evidence by the board.

11.3(6) *Board consideration of protest.* The board will consider all comments and evidence received in making its finding as to the adequacy of services to residents of the island. The board may, in its discretion, request additional evidence from landowners, the city(ies), county(ies), or council of government(s); may allow or request any person or entity submitting evidence to appear before the board; and may schedule a public hearing to receive further evidence regarding the adequacy of services to the area. If a public hearing is scheduled, notice shall be given and the hearing shall be conducted in the manner as provided in subrule 11.4(2) for islands surrounded by more than one city. The board may, in its discretion, combine hearings conducted pursuant to this rule and subrule 11.4(2).

11.3(7) *Resolution of protest.* Based upon all evidence received, the board shall issue findings of fact regarding the adequacy of fire, police, emergency medical, road construction and road maintenance services to the island. In determining whether the residents of an island are receiving adequate fire, police, emergency medical, road maintenance and road construction services, the board will examine the nature and source of services provided and consider whether the services are reliably delivered in a manner sufficient to protect the health, safety and welfare of the residents of the island. If the services are found to be adequate, annexation of the island will be discontinued. If the services are found to be inadequate, the board will proceed with annexation of the island.

263—11.4(368) Annexation of islands. The board shall proceed with annexation of all islands identified pursuant to rule 11.2(368) for which protests are not received or, in the case of protest, if services are found to be inadequate.

11.4(1) *Islands surrounded by only one city.* Islands within the boundaries of only one city shall be annexed into that city as follows:

a. The board shall verify that the territory is an island pursuant to subrule 11.2(2);

b. The board shall provide notice to all landowners within the island of the impending annexation and their right to protest the annexation pursuant to subrule 11.3(1);

c. Upon expiration of the protest period without receipt of a protest from a majority of the landowners or rejection of a protest upon a finding that services to the area are inadequate pursuant

to subrule 11.3(7), the board shall certify the verification to the city and declare the island annexed to the city. The annexation is completed when the board has filed and recorded copies of the certification pursuant to Iowa Code section 368.20, subsection 2.

11.4(2) Islands surrounded by more than one city. Islands surrounded by the boundaries of more than one city shall be annexed as follows:

a. The board shall verify that the territory is an island pursuant to subrule 11.2(2);

b. The board shall provide notice to all landowners within the island of the impending annexation and their right to protest the annexation pursuant to subrule 11.3(1);

c. Upon expiration of the protest period without receipt of a protest from a majority of the landowners or rejection of a protest upon finding services to the area are inadequate pursuant to subrule 11.3(7), the board shall schedule a hearing to determine to which city the island should be annexed. The board may divide the island among the cities surrounding it.

d. The board shall provide notice of the time, place, and purpose of scheduled hearing by:

(1) Mailing notice to the cities surrounding the island and the county(ies) and council of government(s) containing the island;

(2) Publishing notice pursuant to Iowa Code section 362.3, subsection 2.

e. The hearing shall be conducted informally. Representatives of the cities surrounding the island, county(ies) or council of government(s) containing the island, and members of the public may present evidence or comment regarding appropriate distribution of the island. Written arguments may be submitted to the board within ten days following conclusion of the hearing.

f. In determining appropriate distribution of the island for annexation, the following factors will be considered by the board:

(1) The terms of existing agreements between the surrounding cities which address division of the island among the cities for annexation;

(2) The desires of the affected cities, county(ies), council of government(s), and residents of the island;

(3) The availability of services to the territory;

(4) Geographical or topographical features of the territory affecting the delivery of services; and

(5) The comparative efficiency with which the surrounding cities can provide services to the territory.

g. Within 90 days of the conclusion of the hearing, the board shall certify a declaration of annexation of the island to each surrounding city. The declaration shall indicate whether the island will be divided for annexation and, if so, shall include a description of how the island is divided. The annexation is completed when the board has filed and recorded copies of the certification pursuant to Iowa Code section 368.20, subsection 2.

These rules are intended to implement Iowa Code chapter 368.

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