

General Law or Charter Township?

The Decision is Yours . . .



Prepared by the
**Michigan Townships
Association**
512 Westshire Drive
Lansing, MI 48917

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Michigan Townships Association

512 Westshire Drive, Lansing, MI 48917

Ph: (517) 321-6467

Fax: (517) 321-8908

www.michigantownships.org

Introduction

The Charter Township Act, Public Act 359 of 1947, is an example of progressive legislation affecting Michigan townships. The Michigan Legislature recognized that there are townships which provide additional services and need additional laws to provide for better administration of township affairs. Since its passage in 1947, there have been several amendments to the act to meet the changing needs of townships.

A general law township having a minimum population of 2,000 inhabitants is authorized to adopt the Charter Township Act and incorporate as a charter township. A township is not authorized to develop its own charter; the Charter Township Act is the charter of the township. The act's provisions are uniform for all Michigan townships, and they cannot be altered by a particular township.

Charter townships and general law townships are similar in organizational structure and powers except for specific differences provided for in the Charter Township Act. In particular, the act grants charter townships additional flexibility in their organizational structure, boundary protection against annexation and enhances the unit's general tax authority.

Should your township incorporate as a charter township? The decision belongs to your township alone. To help you make an informed decision, the following information spells out some differences and similarities between a charter township and a general law township.

Organizational Structure

In a charter township, all legislative authority and powers are vested in a seven-member township board comprised of a supervisor, clerk, treasurer and four trustees. A quorum of four members must be present at a meeting to conduct business.

Organization changes in the act affect the offices of the supervisor and trustee. There are no substantive changes in the duties of the township clerk and treasurer if a township incorporates under the act.

The Supervisor and Superintendent

In general law and charter townships, the supervisor is an officer of the township board and has an equal voice and vote in township board proceedings. In a general law township, the township board retains most of the administrative authority. The Charter Township Act grants a charter township supervisor more authority over the day-to-day operations of the township.

The township board of a charter township is authorized to hire a superintendent. (MCL 42.11) If the township board appoints a superintendent, the board may delegate any or all of the following statutory duties to that official:

- Oversee enforcement of township ordinances and laws;
- Manage public improvement projects; oversee construction, repair, maintenance, lighting and cleaning of township property, including streets, sidewalks, bridges, and sewers;

- Manage construction, repair, maintenance of sidewalks, streets, bridges, sewers, pavements of all public buildings and other township property;
- Oversee operation of township utilities and maintenance of township property, tools and appliances;
- Oversee terms and conditions of township contracts;
- Attend township board meetings and take part in discussions, but without the right to vote;
- Serve as ex-officio member of all township board committees;
- Prepare and administer the annual budget under township board direction and apprise the township board of the township's financial status;
- Make recommendations to the township board as necessary;
- Administer all township departments;
- Serve as the purchasing agent for the township or delegate this responsibility to some other officer or employee;
- Conduct authorized sales of township personal property;
- Serve as personnel director or delegate this duty to some other officer or employee, and
- Perform any other duties delegated to him/her which are not assigned to some other official. (MCL 42.10)

If these duties are not delegated to the superintendent, they become the responsibility of the township supervisor. In effect, this provides additional authority to a charter township supervisor beyond that accorded a supervisor of a general law township.

If a board appoints a superintendent, he or she serves at the pleasure of the township board. State law provides that the township board determines the superintendent's salary, and the appointee must become a township resident within 90 days of assuming the position, unless the board waives the requirement by resolution adopted by 2/3 of the members of the board. The act also provides that the appointee must be selected on the basis of training and ability without regard to political or religious preferences. (MCL 42.11)

If a township has not appointed a township superintendent under MCL 42.10, the township board may employ a township manager to perform duties lawfully delegated to the manager by the township board. The duties may include those that are delegated by law to another township official if written consent has been granted by that official. MCL42.10a)

State law does not specify the duties of a township manager. MTA's position is that a township manager can be delegated the same duties as a superintendent.

Trustees

A charter township board must have four trustees. If a township becomes chartered with only two trustees, the additional two trustees must be elected at the first general election held following incorporation.

The duties of a charter township trustee are identical to those of a general law township trustee. He or she possesses an equal voice and vote in township affairs. The trustee is responsible for attending township board meetings and takes part in all decisions. Trustees are the “pure” legislators on the board and should have an understanding of all aspects of township board affairs.

Other Officials

What about hiring other township officials? There is no difference in the ability of a general law township or a charter township to hire the necessary personnel to properly and efficiently operate the township. The act enables a township board, by resolution, to establish additional offices to administer township affairs, such as a public works administrator or personnel director, or combine any administrative offices, so long as it does not conflict with state law. The newly created offices cannot replace, abolish or diminish the statutory duties of the clerk’s or treasurer’s office. (MCL 42.9)

Annexation Protection

The Charter Township Act grants enhanced protection from annexation to townships that provide police and fire protection, water and sewer services, and other services. In the 1970s, many general law townships incorporated as charter townships because of the annexation protection offered by the act.

If a township became chartered prior to June 15, 1978, the township is generally protected from annexation.

A charter township that incorporated on or after June 15, 1978, is generally protected from annexation to any adjacent city or village if it meets certain statutory criteria:

- State equalized valuation of at least \$25 million;
- Minimum population density of 150 persons per square mile;
- Provides fire and police protection, solid waste disposal, and water and/or sewer services by contract or some other method;
- Has a comprehensive zoning ordinance or master plan. (MCL 42.34)

Michigan Supreme Court decisions indicate a township must provide more than minimum service to obtain greater protection from annexation.

However, the exemption from annexation is not complete immunity. Although the authority of the State Boundary Commission over charter township land is lessened by the act, the commission may order a portion(s) of the township to be annexed to straighten boundaries and avoid instances in which portions of a township are completely surrounded by the annexing city. Township territory can also be annexed if the action is initiated by the citizens themselves.

Financial Matters

Fiscal Year

A charter township may adopt one of two fiscal years: January 1 to December 31 or April 1 to March 31. This differs from general law townships, which can choose either April 1 to March 31 or July 1 to June 30. An annual audit is required.

Budget

Each township official prepares a department budget and delivers it to the supervisor or superintendent on or before 150 days prior to the fiscal year commencement. The supervisor or superintendent must submit a complete itemized budget to the township board no later than 120 days prior to the beginning of the fiscal year. (MCL 42.24)

Prior to the new fiscal year, the township board must pass a resolution adopting the budget for the new fiscal year, make an appropriation of the money needed for township purposes, and provide for a levy of taxes upon real and personal property. If a township operates on a calendar-year budget cycle, a public hearing on the proposed budget must be held no later than December 15, and the budget must be adopted no later than December 31. (MCL 42.27)

The supervisor or superintendent must prepare quarterly reports that disclose estimated and actual expenditures and revenues to date. (MCL 42.29)

Within 60 days after a township becomes chartered, the board must pass a resolution adopting an interim budget until the next fiscal year. (MCL 42.27)

Taxing Authority

The Charter Township Act offers enhanced taxing authority. However, the act does not require a township to levy any or all of the additional mills available to it under the act.

If a township became chartered by township board resolution before 1978 or by direct voter approval after 1978, the township board may choose to automatically levy up to five mills without voter approval. The township may with voter approval levy up to five additional mills (for a total of 10 mills).

Townships that incorporated after 1978 by board resolution have the same authorization rate they enjoyed as a general law township and can levy up to 10 mills only with voter approval.

Borrowing Powers

The act limits a charter township's borrowing ability to a total outstanding net indebtedness of not more than 10 percent of its assessed value with certain specified exceptions. A charter township must have prior voter approval to issue bonds except for special assessment bonds, bonds issued for the township portion of local improvements, and specific statutory bonds which do not require voter approval. (MCL 42.14a)

A charter township that does not levy the full mills available to it shows bond purchasers that the township has surplus taxing authority. Consequently, the township could have greater ability to borrow at a reduced interest rate (within the 10 percent limit) than a general law township.

Compensation

Setting Salaries

How are compensation levels set in a charter township? Salary levels can be set in one of two ways: 1) by township board resolution subject to citizen referendum or 2) by a compensation commission established by ordinance. (MCL 42.6a)

If a general law or charter township does not conduct an annual meeting and does not have a compensation commission, the township board shall, by resolution, set the salaries of township board members. The board's resolution to increase a salary is subject to referendum if a citizen petition is filed with the township clerk. (MCL 41.95(3))

If a compensation commission is established, the township board cannot set the salaries for any township official.

Trustees

The act provides that "A trustee may receive, in addition to other emoluments provided by law for his service to the township, a sum per meeting of the township board meetings actually attended by him, as established by the township board to be paid upon authorization of the board." (MCL 42.6) MTA interprets this provision to allow a trustee to be paid on a per meeting basis for attending township board meetings in addition to an annual salary. The act specifically prohibits a supervisor, clerk and treasurer from receiving additional compensation for attending township board meetings.

Decreases in Salary

The Charter Township Act provides that the salary of an elected township official cannot be decreased during the official's term of office unless the responsibilities and requirements of that office are diminished and the official consents in writing to the salary reduction. If the township hires a superintendent (or manager under MCL 42.10a) the board can not reduce the supervisor's salary designated for performing non-assessing supervisor duties unless the supervisor consents in writing to the salary reduction. (MCL 42.6a)

The act specifically addresses reducing the salary of a supervisor who is compensated for performing assessing duties but fails to perform those duties. A township board can reduce the supervisor's portion of the salary designated for assessing duties without the official's consent in writing. (MCL 42.6a)

Township Board Meetings

A general law township board is required to meet once every three months and at additional times as necessary. The township board of a charter township is required to meet at least once a month. Each member of a charter township is required to vote, if present, on any issues presented to the board, unless the official is excused by the unanimous consent of board members who are present. (MCL 42.7)

There is one exception to this requirement. Under Public Act 15 of 1992, a charter township board member may abstain from voting without the other board members' consent when voting to fill a vacancy on the charter township board and the board member abstaining states that he or she desires to be appointed to fill that vacancy. (MCL 42.7)

Board Authority

Acquiring and Disposing of Township Property

A charter township board is authorized to purchase, sell or long-term lease real or personal property without authorization from the inhabitants. Under Public Act 16 of 1992, a general law township board, by resolution, has the same authority.

Police and Fire Departments

General law townships and charter townships may have a police and fire department. In a charter township, the officers are appointed by the supervisor or superintendent, if that duty has been delegated, with the approval of the township board. (MCL 42.13) In a general law township, the township board appoints police and fire officers.

Ordinance Authority

Charter townships are authorized to adopt ordinances to protect the health, safety and general welfare of township inhabitants and property. Ordinances in effect when a general law township incorporates as a charter township remain in effect unless they are repealed or amended. (MCL 42.19)

A charter township can operate in essentially the same manner as a general law township without any additional costs, with the exception of adopting ordinances. State law requires additional publication of an ordinance before and after it is adopted. A charter township is authorized to adopt any state law as an ordinance by reference. In general law townships, only certain ordinances, such as the Uniform Traffic Code, may be adopted by reference.

Public Improvements

Public improvements are managed in the same manner in both charter townships and general law townships. Both general law and charter townships can create special assessment districts and issue special assessment bonds to finance authorized improvements (MCL 42.31).

Citizen Expectations

Another significant difference for charter townships, not found in any law book, is that citizens may have increased expectations for services when a township incorporates as a charter township. Because a charter township is often viewed as an “urbanized” form of township government, citizens may expect additional and improved services beyond that which the township currently provides.

Annual Meeting of the Electors

Charter townships are not required to conduct an annual meeting of the electors unless a majority of the township board determines to do so by resolution.

How to Become a Charter Township

In order to incorporate under the Charter Township Act, a township must meet certain population requirements and follow the procedures set forth in the act.

After each federal, state or special census, the Secretary of State's office will notify the township clerk of each township that meets the minimum population requirement of 2,000, excluding the population of any incorporated village, that it may incorporate as a charter township.

The process to incorporate as a charter township can be initiated in one of two ways: 1) by township board resolution or 2) by citizen petition.

After the Secretary of State's office has notified a township that it has met the population requirement, the township board may adopt, by majority vote, a resolution opposed to incorporation; a resolution of intent to incorporate, or a resolution to place the question of incorporation on the ballot at the next regular or special election. (MCL 42.3a)

Whether or not the township passes a resolution of intent to incorporate as a charter township, the township clerk must publish the notice of right to referendum in a generally circulated newspaper in the township within 15 days of notification from the Secretary of State's office. A second notice must be published seven days after the first notice.

If a citizen petition is filed within 60 days requesting a referendum on the question, the township clerk is required to take appropriate steps to place the question on the ballot.

The second method for initiating incorporation under the act is citizen petition. If a township has a minimum population of 2,000, a citizen petition can be filed with the clerk requesting that the necessary steps be taken to place the question on the ballot.

The proposal to incorporate must be submitted on or before August 30 if the question is to be put on the ballot at a general election or at least 60 days in advance of a special election. (MCL 42.3) **However**, note that the Michigan Election Law states that, for elections in which state officers are to be elected, ballot proposals must be certified to the local or county clerk at least 70 days before the election. Townships must use the Election Law filing deadline of 70 days for elections at which state officers are to be elected. (MCL 168.646a)

An election, if conducted, must be in compliance with the general election laws. **The ballot language is as follows:**

*"Shall the Township of _____ incorporate as a charter township, which shall be a municipal corporation subject to the provisions of Public Act 359 of 1947, as amended, which act shall constitute the charter of such municipal corporation?
Yes () No ()"*

If the voters approve the ballot proposal, the township clerk files a copy of the initiating petition or township board resolution and other specified documents with the county clerk's and the Secretary of State's Office of the Great Seal. Township officials, elected

or appointed, serve the balance of their term until their elected successors qualify for and assume the office.

Can a charter township disincorporate?

Yes, the act provides the method for disincorporation as a charter township. An election to disincorporate cannot be held until four years after the charter township first incorporated, and no more than every four years after that. (MCL 42.2)

Conclusion

Should your township become a charter township? It is a value judgment which can only be determined by your township. It is a complicated issue. We recommend that township board officials and citizens familiarize themselves with the facets and implications of the Charter Township Act to make an informed decision.

Under the Campaign Finance Act (MCL 169.201, *et seq*), township board cannot use general fund monies to campaign for or against becoming a charter township. It is permissible to provide information, such as a newsletter article, that is unbiased and provides both pros and cons of becoming a charter township. (MCL 169.257)

The Michigan Townships Association is available to offer advice and sample forms which a township may adapt to meet its particular needs. In addition, your township should contact legal counsel experienced in township law to assist you throughout the process.

Duties of the Township Clerk When Township is Notified of Eligibility to Incorporate:

1. Publish Notice of Eligibility to Incorporate

MCL 42.3a(3) sets forth duties of the township clerk following receipt of notification from the Secretary of State as:

- 1) Prepare a notice for publication in a newspaper of local circulation.
- 2) The notice must be published within 15 days following receipt of notification from the Secretary of State.
- 3) A second notice, reiterating the material presented in the first notice, must be published seven (7) days following publication of the first notice.

NOTICE OF ELIGIBILITY TO INCORPORATE AS A CHARTER TOWNSHIP AND RIGHT TO REFERENDUM

Official certification has been received from the Michigan Secretary of State that the township of _____ has a population of 2,000 or more and the township board has the right to exercise one of three options concerning status as a charter township under the provisions of Public Act 359 of 1947, as amended:

1. Adopt by majority vote a resolution opposed to incorporation as a charter township.
2. Adopt by majority vote a resolution of intent to approve incorporation as a charter township.
3. Adopt by majority vote a resolution to place before the electorate at the next regular or special township election the question of incorporation as a charter township.

If Option 2 is adopted by the township board, the citizens of the township have the right to file a "Right to Referendum Petition." This petition must be filed within the 60 days which must lapse between passage of a resolution of intent to incorporate and final passage of the resolution to incorporate as a charter township.

The petition will follow, in general form, the nominating petition form as prescribed in the Michigan Election Law (MCL 168.488), and in the heading will indicate "Disagreement of Intent to Incorporate as a Charter Township." The petition must be signed by not less than 10% of the registered voters of the township based on the vote cast for all candidates for supervisor at the last election at which a supervisor was elected.

If the petition is successful, the question of incorporation will be placed on the ballot at the next general or special township election.

Resolution of Intent to Become a Charter Township

_____ Township
_____ County, Michigan

WHEREAS, the Township Clerk has been notified by the Secretary of State of the State of Michigan that _____ Township has a population of 2,000 or more inhabitants, excluding the population of any incorporated village, notice of which notification was duly published in the as required by law, and

WHEREAS, under the provisions of 1976 PA 90, the Township is accordingly eligible to be incorporated as a charter township by resolution of the Township Board of its intent to so incorporate and a subsequent resolution of said Township Board at least 60 days after the adoption of the first resolution to be incorporate, and

WHEREAS, if no petition for referendum on the question of such incorporation is received by the Township Clerk signed by not less than 10 percent of the number of electors of the township voting for Township Supervisor at the last election, said township shall be incorporated as a charter township on the date of said second resolution.

NOW, THEREFORE, in consideration of the foregoing, **IT IS HEREBY RESOLVED** that the Township Board does hereby declare its intent, by resolution to be adopted not less than 60 days from the date hereof, to incorporate _____ Township as a charter township unless the aforesaid petition of this agreement to so incorporate is filed with the Township Clerk prior to the passage of such final resolution.

Motion was made by _____, seconded by _____, to adopt the foregoing resolution.

Upon roll call vote, the following voted "Aye":

The following voted "Nay":

The chairman declared the motion carried and the resolution duly adopted.

Township Clerk

CERTIFICATE

The undersigned, being the duly elected and acting Clerk of the Township of _____ hereby certifies that the foregoing resolution was duly adopted at a regular meeting of the Township Board at which a quorum was present on the ___ day of _____, 20___, and that the members voted thereon as hereinbefore set forth.

Township Clerk

**Resolution Incorporating as the
Charter Township of _____.**

At a regular meeting of the _____ Township Board, _____ County, Michigan, held on the ___ day of _____, 20__, at the _____ Township Hall, _____, Michigan, in said township.

Members Present: Members Absent:

The following preamble and resolution were offered by _____ and supported by _____.

WHEREAS, the _____ Township Board on the ___ day of _____, 20__, by motion duly made, second and passed, adopted the resolution of Intent to Incorporate _____ Township, _____ County, Michigan, as the Charter Township of _____, _____ County, Michigan, under Public Act 359 of 1947, as amended; and

WHEREAS, notice of adoption of said resolution was published in the _____, a newspaper of general circulation in _____ Township, on _____, 20__, and again on _____, 20__, and considerable publicity has been given this matter; and

WHEREAS, more than sixty (60) days has elapsed since adoption of said resolution and no Petition of Disagreement to the Intent of Incorporate as Charter Township has been filed as in said act provided;

NOW THEREFORE, BE IT RESOLVED that the Township of _____, _____ County, Michigan, being qualified, having completed all necessary action preliminary thereto hereby does INCORPORATE AS THE CHARTER TOWNSHIP OF _____, _____ COUNTY, MICHIGAN, a municipal corporation pursuant to PA 359 of 1947, as amended, which act shall constitute the charter of this charter township.

BE IT FURTHER RESOLVED, that the CHARTER TOWNSHIP OF _____, _____ COUNTY, MICHIGAN, shall, as provided by law, succeed to and be vested with all of the property, real and personal, money, rights, credits and causes of action belonging to _____ Township as it formerly existed, and all debts and liabilities of _____ Township and all taxes and assessments levied and uncollected as of the date of this Resolution of Incorporation shall stand until discharged or collected.

BE IT FURTHER RESOLVED, that the Clerk is hereby directed to file certified copies of this resolution with the Secretary of State for the State of Michigan, and with the Clerk for _____ County.

BE IT FURTHER RESOLVED, that this resolution shall take effect as of this date.

AYES: _____ NAYS: _____ ABSENT: _____

RESOLUTION DECLARED ADOPTED THIS ___ day of _____, 20__.

Township Clerk

CERTIFICATE

I hereby certify that the foregoing constitutes a true and correct copy of a resolution adopted by the Township Board of the Charter Township of _____, _____ County, Michigan, at a Regular Meeting held on _____, 20__.

Township Clerk

2. When a Petition for Referendum is Submitted

MCL 42.3a(3) sets forth duties of the township clerk if petitions for referendum are submitted as follows:

1. Upon accepting for filing a petition seeking referendum on the charter township question, the township clerk shall check the petition signatures against the registered electors' signatures.

2. If the petition contains the proper number of valid signatures, the clerk will make all provisions for submitting the question of incorporation as a charter township to the registered electors of the township.

3. The question shall be placed on the ballot at the next regular or special township election which allows the clerk the necessary time to provide for an orderly conduct of the election.

4. If a special election is contemplated for the purpose of submitting the question, the proposed date will be presented to the county scheduling committee for approval.

5. The wording on the ballot shall read as follows:

"Shall the township of _____ incorporate as a charter township which shall be a municipal corporation subject to the provisions of Act No. 359 of the Public Acts of 1947, as amended, which act shall constitute the charter of such municipal corporation?"

Yes _____ No _____ "

3. File Documents with the Office of the Great Seal and Registration Section, Michigan Department of State

1. If the township board adopts a resolution opposed to incorporation as a charter township, a copy of the resolution should be filed for informational purposes.

2. If the township board adopts a resolution of intent to approve incorporation as a charter township, and no petitions of disagreement are filed, the following documents would be filed:
 - [a] Affidavit of publication of required notices;
 - [b] Resolution of Intent;
 - [c] Certificate of township clerk that no petitions were filed within the 60 day period;
 - [d] Resolution approving incorporation.

3. If the township board adopts a resolution of intent to approve incorporation as a charter township, there are petitions of disagreement filed, an election is held, and the proposition is approved, the following documents would be filed:
 - [a] Affidavit of publication of required notices;
 - [b] Resolution of Intent;
 - [c] Certificate of township clerk that petitions were filed within the 60 day period and date set for election;
 - [d] Copy of ballot;
 - [e] Board of Canvassers certificate showing total votes cast and number of votes cast for and against incorporation as a charter township;

4. If the township board adopts a resolution to place the question of incorporation as a charter township before the electorate, an election is held, and the proposition is approved, the following documents would be filed:
 - [a] Affidavit of publication of required notices;
 - [b] Resolution of township board,
 - [c] Copy of ballot;
 - [d] Board of Canvassers certificate showing total votes cast and number of votes cast for and against incorporation as a charter township.

5. If the proposition to incorporate as a charter township is defeated at an election held under 3 or 4 above, the township clerk may file only a copy of the Board of Canvassers certificate showing the proposition did not pass.

Office of the Great Seal

110 W. Michigan Ave.
Suite 100
Lansing, MI 48918-1750
(517) 373-2531 (Main Office)
(517) 373-3706 (Facsimile)