

A PROCLAMATION AND ORDER OF THE PRESIDENT
OF THE BOARD OF TOWN COMMISSIONERS OF
THE TOWN OF UPPER MARLBORO

Guidelines for Validation and Verification of Referendum Petitions and Signatures Submitted Pursuant to the Local Government Article of the Md. Ann. Code for Annexation Areas Regarding Annexation Resolution 01-2021, and Interpretive Rules for the Conduct and Administration of any Referendum Election

Recitals:

WHEREAS, the President of the Board of Town Commissioners (the “Board”) finds that Article XI-E of the Constitution of Maryland and the Local Government Article of Md. Ann. Code (formally Article 23A, Section 19), are the primary sources of the delegated referendum power at the municipal level, and that the right to a municipal referendum is a delegated, not a reserved power retained by the people in the State Constitution; and

WHEREAS, the Court of Appeals of Maryland has held that a municipal charter is the equivalent to a constitution on the local level, *See Cheeks v. Cedlair Corp.*, 287 Md. 595, 606 (1980); *See also* 87 OAG 99 (1981); and

WHEREAS, the Constitution of Maryland in Art. 16, § 4 (Form of petition) states that “[a] petition may consist of several papers, but each paper shall contain the full text, or an accurate summary approved by the Attorney General, of the Act or part of Act petitioned...[and]...There shall be attached to each paper of signatures filed with a petition an affidavit of the person procuring those signatures that the signatures were affixed in his presence and that, based upon the person's best knowledge and belief, every signature on the paper is genuine and bona fide and that the signers are registered voters at the address set opposite or below their names...[and]...The General Assembly shall prescribe by law the form of the petition, the manner for verifying its authenticity, and other administrative procedures which facilitate the petition process and which are not in conflict with this Article;” and

WHEREAS, Section 82–53. (Authorization To Borrow Money) of the Town Charter provides that in the event the Board considers it desirable to borrow in excess of the 2% limitation aforesaid, the ordinance proposing such exercise of borrowing power shall provide therein for a referendum if the same is petitioned by 20% of the qualified voters within 40 days of the adoption of said ordinance; and Section 82–26. (Candidates) calls for petition to be filed in order to certify a candidate for elective office; and

WHEREAS, Sec. 4-412 of the LG Art. authorizes a municipality to pass ordinances or regulations to conduct and tabulate a referendum; and

WHEREAS, the Local Government Article generally governs annexation and referenda petitions and further provides verification of compliance with requirements for petitions for

referendum by residents (or, if applicable, property owners) of an area to be annexed by stating that “[a]fter a petition is presented to the chief executive and administrative officer, the officer shall verify: (1) the signatures on the petition; and (2) that the petition meets the requirements of subsection (a) of this section [4-408];” and

WHEREAS, the requirements of Subsection (a) of Section 4-408 of the LG Art. provides that subject to § 4-413 [the Right of property owners to participate] of this subtitle, at any time within 45 days after enactment of an annexation resolution, at least 20% of the registered voters who are residents in the area to be annexed may petition the chief executive and administrative officer of the municipality in writing for a referendum on the resolution; and

WHEREAS, Section 4-413 of the LG Art. provides that “If fewer than 20 residents in an area to be annexed are eligible to sign a petition for annexation and vote in a referendum under this subtitle, any person, including the two or more joint owners of jointly owned property, who owns real property in the area to be annexed may sign the petition and vote in the referendum (emphasis added);” and

WHEREAS, Section § 1-101 (Definitions), Subsection (h) of the LG Art. defines a “Person” to mean an individual, receiver, trustee, guardian, personal representative, fiduciary, representative of any kind, partnership, firm, association, corporation, or other entity; and

WHEREAS, the President, with the guidance of the Town Attorney, further finds that in Maryland, joint owners of real property have three options for owning or “holding title” to real property including tenancy in common, joint tenancy and tenancy by the entirety; and

WHEREAS, the President, with the guidance of the Town Attorney, further finds that the legislative intent of Section 4-413 as previously codified in Art. 23A, Sec. 19(k) of the State Code was to define the word "person" as including an association, the two or more joint owners of jointly-owned property, a firm or corporation,” (emphasis added), which means that the property owners as persons in the area proposed to be annexed, in this context, should be limited (as defined singularly) to one vote per parcel or lot, regardless of the number of joint (e.g., one or more joint tenants, one or more tenants in common or a tenancy by the entirety (i.e., a married couple)), corporate (i.e., one or more stockholders or members) or associated owners (i.e., directors) of a single tract of real property; and

WHEREAS, the President, with the guidance of the Town Attorney, further finds that it is appropriate to apply by analogy to annexation resolutions her finding that LG Art., § 4-305 (Initiation of charter amendment by petition of voters) in subsection (a)(1) states “[b]y a petition presented to the legislative body of a municipality, at least 20% of the qualified voters for the municipal general election may initiate a proposed amendment to the municipal charter” [and] “(2) Each individual signing the petition shall indicate on the petition the individual's name and residence address (emphasis added);” and

WHEREAS, the President, with the guidance of the Town Attorney, finds that like a charter amendment resolution, an annexation resolution also amends the municipal charter by

inserting therein the new municipal boundaries and further recognizes LG Art., § 4-303 (Form of proposed charter amendment) wherein it states that “(a) In conformity with the requirement imposed on the General Assembly under Article III, § 29 (Style of laws; single subject per law) of the Maryland Constitution: (1) a resolution or petition to amend a municipal charter shall contain the exact text of the proposed charter amendment, prepared so that each provision is shown as the provision would read when amended or enacted; (2) except as provided in subsection (e)(2) [Format] of this section, a provision of a municipal charter may not be amended by reference to its title or citation only; and (3) a municipal charter amendment shall: (i) embrace one subject only; and (ii) describe the subject in its title (emphasis added);” and.

WHEREAS, LG Art., § 4-307 (Referendum on charter amendment) in subsection (b) states “[e]xcept as otherwise provided in this subtitle, the referendum shall be conducted generally according to the procedures for regular municipal elections” [and] “[t]he official who conducts the regular municipal election shall perform the same duties for the referendum;” and

WHEREAS, the President, with the guidance of the Town Attorney, finds that analogous to a petition’s fair summary that LG Art., § 4-412 (Referendum Ballots) of Md. Ann. Code requires that the referendum “ballot shall: (1) contain a summary of the annexation resolution; and (2) provide for the voter to indicate a choice for or against the annexation resolution....; (emphasis added)” and

WHEREAS, the Court of Appeals in *Town of La Plata v. Faison-Rosewick, LLC*, No 68, 2013 WL 5354355 (Md. Sep. 25, 2013), held that a chief administrative and executive officer of a municipal government may voluntarily incorporate regulatory safeguards and make necessary rules regarding the verification of petitions for referenda, and

WHEREAS, in the *La Plata* case, the court found that “[u]nder the basic definition of ‘verification,’ therefore, the [chief executive’s] responsibility was to cause to be made’ an authentication (i.e., the process or action of proving or showing something to be true, genuine, or valid) of the signatures presented to him on the petition and confirm that the signatures represented enough qualified voters for a referendum election to take place.”

NOW, THEREFORE, BE IT ORDERED, PROCLAIMED, AND APPROVED BY THE PRESIDENT OF THE TOWN BOARD OF COMMISSIONERS AS FOLLOWS:

These procedures shall establish the process and criteria to guide the President in the validation and verification of signatures on an annexation referendum petition for the purpose of submitting the annexation question to the voters. Included in these procedures, the above recitals, which are incorporated herein by reference, are guidelines on the filing, acceptance and preliminary review of the petitions, signature removal, signature validation and reporting results.

Furthermore, the following shall be the interpretive rules, guidelines and regulations used by the President of the Board of Commissioners of the Town of Upper Marlboro to perform their statutory duties in verifying the referendum petitions for Annexation Res. 01-2021 and by the Town Board of Supervisors of Elections to conduct the special or referendum election if needed.

If the President determines that a given petition form is not legally sufficient, they will reject the petition. Alternatively, if the form of the petition is determined to be legally sufficient, or if the President/Mayor determines that the legal sufficiency of the petition cannot reasonably be determined, that verification of the petition is in the interest of the orderly management of the election and referendum process, the President may begin to validate the signatures. The President reserves the right to modify the procedures and guidelines on an as-needed basis.

I. Petitions

1. The President, with the guidance of the Town Attorney, finds that State Common Law and other provisions of the LG Article of the Md. Ann. Code are applicable to the municipal land annexation referendum process.
2. Is the petition form legally sufficient, and should it be rejected; or alternatively, if the form of the petition is determined not to be legally sufficient, should it be verified and subject to a legal challenge by anyone with proper standing to do so? If the President determines that the legal sufficiency of the petition cannot reasonably be determined, after conferring with legal counsel, and that verification of the petition is in the interest of the orderly management of the election and referendum process, the President may validate the signatures. If the petition appears to be insufficient on its face, it will be rejected and not verified. The petition may be deemed to be invalid on its face for several different reasons (e.g., missing the proper number of signatures, missing the dates of signature, missing the full text of the referred legislation, or an accurate summary thereof, or missing all of the names of joint landowners of a single tract of land who are allowed by law to participate, etc.).
3. After an initial analysis or facial review as to the form of the petition, the President may verify the petition or any signature's authenticity by contacting the named person and asking the person to confirm their signature on the petition and status as a registered voter, which may be corroborated by the County Board of Elections, and/or the landowner, which may be corroborated by the officials of the County Land Records Office or other public agency or official. The status of a registered voter residing at the applicable address will be authenticated or verified, and any landowner signing a petition may be requested to supply proof of ownership or co-ownership in the form of a deed, will or other legal instrument.
4. Is the petition being submitted based on registered voters or property owners?
 - a. If it is registered voters or property owners, they must certify that they are either one or both of these classes of petitioners.
 - b. The registered voters and the requisite numbers thereof will be certified and verified with the Prince George's County Board of Elections.

5. Can the person's status as a registered voter and resident of the property be verified through Prince George's County voter registration records?
 - a. The County Board of Election Supervisors will certify the status as a registered voter.
 - b. If not a registered voter, the petitioner (signer), as an owner, must provide proof of ownership by providing a deed, valid will, corporate charter or other instrument evidencing fee simple ownership or joint ownership.
 - c. The petition shall include the following information, printed or typed, in the spaces provided: (i) the signer's name as it was signed; (ii) the signer's address; (iii) the date of signing.
 - d. Inactive voters shall be included in the calculation of whether or not sufficient signatures have been gathered. Inactive voters are permitted to sign petitions and vote.
6. Can the true and actual property owner(s) be verified via the SDAT Real property data search or via deed records recorded in the Land Records of Prince George's County? See above. If not, then the owner must provide proof of relevant legal instruments to verify joint or sole ownership or the title ownership by a business entity of taxable property.
7. Does an annexation agreement prevent or invalidate their signature on the petition? If so, then the President or staff will contact the petitioner or signatory informing them of the agreement and ascertain their intent or request to obtain a withdrawal or removal of the signature by consent form, prior to verification of the petition by the President.
8. Can it be verified that the person signing the petition or petition form had the text or a fair and accurate summary of the annexation resolution?
 - a. The petition must be complete enough to convey an intelligent idea of the scope and import of the annexation resolution. It ought not to be clouded by undue detail as not to be readily understandable. It ought to be free from any misleading tendency, whether of amplification, or omission. It must in every particular be fair to the voter to the end that intelligent and enlightened judgment may be exercised by the ordinary person in deciding how to mark the ballot. These criteria should apply to the language, in a referendum petition, summarizing the contested provisions of an ordinance [or resolution], that is, that language must "be free from misleading tendency, amplification, or omission" to permit voters to exercise "intelligent and enlightened judgment" as to whether to sign the referendum petition. In short, it must be, ...fair and accurate." *Gray v. Howard Cnty. Bd. of Elections*, 218 Md. App. 654 (2014).

- b. The petition form must include the relevant text or a fair summary of the applicable referred legislation, or severable portion therein, which means the written title or fair summary of the annexation resolution, or relevant portion of the resolution including the annexation area described in the title thereof, as found at the heading/title, or relevant portion thereof, of the subject annexation resolution. The petition must contain either the full text, or an accurate summary of the resolution or part of the resolution petitioned. A mere reference to the Annexation Resolution's sequential number or citation and/or an annexation area number alone will not suffice.
 - c. If the Annexation Resolution's sequential number or citation is what is referenced on the signature page of the petition, the full text, or a fair and accurate summary of the relevant and substantive provisions of the resolution must appear on the back of the petition, and the full text of the annexation resolution or portion thereof (i.e., separate annexation area summary) must be immediately available, and certified as such, from the petition circulator or procurer, which may be the signatory. If there is no title or fair summary printed on the petition form, there must be some attestation or certification that the procurer or signer of the petition had a copy contemporaneously available to them or was shown the annexation resolution or relevant portion thereof in order to ascertain the applicability and nature of the proposed legislation at the time of signature.
 - d. Recognizing that out-of-town (nonmunicipal) residents may not be aware of local municipal legislation, the title or fair summary must be printed on the petition or must put the reader on notice as to the contents of the legislation so that a reasonable Town or non-Town resident, as applicable, or landowner can fairly determine whether their property or residence (e.g., lot or parcel number, tract of land, tax identification number, street address, legal description, subdivision, metes and bounds, bound area, etc.) is actually located within the relevant described annexation area. This does not mean that the title or summary must include all of the details of the annexation resolution, but the title or summary must provide a fair indication and description of the annexation area, without the signer having to further research or request a copy of the subject annexation resolution, so as to place a petition signer on notice of their right to participate as a resident or owner in the annexation referendum process.
9. Does the petition form include an original physical signature or is it notarized?
 - a. If notarized it must be done so by a duly appointed Notary Public.
 - b. If it is an electronic signature, electronic signatures must be allowed by Town policy.
10. Was the petition filed with the President prior to the statutory deadline? The petition or petitions for a particular annexation resolution shall be timely.

11. Does the petition contain the necessary signatures and meet the requirements of Section 4-408 of the LG Article of Md. Ann. Code. The petitions must conform to the requirements of the law.
12. How old are the signatures? Signatures must be affixed on a municipal annexation referendum petition after the referred resolution is passed and not before that date. *Koste v. Town of Oxford*, 431 Md. 14, 38, 63 (2013). The court noted that, if the General Assembly wished to permit earlier signature-gathering, it could do so by amending the annexation statute, article 23A, section 19. Id.
13. Can signatures be removed from the petition? A signature may be removed by the signer upon written application to the President, if the application is received by the Town prior to the verification of that signature, or a signature may be removed by the petitioner, petition sponsor or procurer prior to filing of the signature by the circulator who attested to it, or by the sponsor (procurer) or signatory, if it is concluded that the signature does not satisfy the requirements of the law including a validly binding annexation agreement.
14. The President reserves the right to promulgate further guidelines or rules for petition verification prior to said verification.
15. After verifying under oath or affidavit compliance with the law for one or both of the petitions, the President shall schedule an election in each area to be conducted by the Board of Election Supervisors within 15 to 90 days from date of official verification.

II. Special Rules and Guidelines Applicable to the Referendum Election to be ratified by the Board of Commissioners prior to final verification of the petitions.

1. The President finds and declares that residents in an annexation area are not permitted to vote by absentee ballot because they are not qualified voters. Pursuant to Section 4-101 of the LG Art., “Qualified voter” means an individual authorized under a municipal charter to vote in elections in the municipality.
2. The Board of Commissioners may choose to allow absentee voting by ordinance if it so wishes.
3. The Board of Commissioners reserves the right to promulgate further guidelines or rules for the conduct of referenda elections as needed.

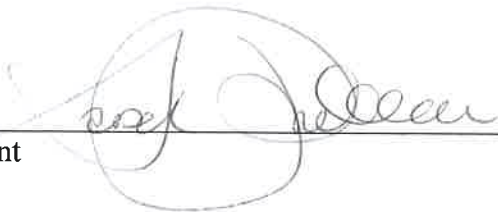
Pursuant to the Common Law of Md., the Town is under no obligation to inform the public of the precise standards the President might employ in validating a referendum petition but may do so for the benefit of the public. Therefore, the undersigned having elected to do so, these “Guidelines for Validation and Verification of Referendum Petitions and Signatures Submitted Pursuant to the Local Government Article of the Md. Ann. Code for Annexation Areas Regarding Annexation Resolution 01-2021” shall be published on the Town’s website and posted in a conspicuous place

in Town Hall and shall be mailed, first class, U.S. Mail to each procurer, circulator or petitioner/signatory.

The public including non-residents of the Town shall be afforded the opportunity to provide comments for a period of five (5) calendar days following the promulgation of these interpretive rules and guidelines. The President may modify said "Guidelines" including shortening or eliminating the time for comments at any time prior to final verification of compliance with requirements for any referendum petition. Subject to possible revision based on comments from the public as stated above, the above guidelines and rules are hereby approved and ordered by the President of the Board of Commissioners of the Town of Upper Marlboro.

THE TOWN OF UPPER MARLBORO

By: _____
President



Date: 3/8/22

Attest: _____
Town Clerk



Date: 3/8/22

