

# Municipal Incorporation In Arizona



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Prepared by

THE LEAGUE OF ARIZONA CITIES AND TOWNS

1820 West Washington Street

Phoenix, Arizona 85007

## **FOREWORD**

This publication was originally developed in response to a large number of requests for information about municipal incorporation. The League continues to receive inquiries about incorporation ranging from specific legal requirements to the philosophical reasons behind the question of municipal incorporation. The number of requests, as well as the nature of the information requested, produced an original publication on this subject, just as recent changes in state law have necessitated the revisions and updating of this current publication.

As far as the policy position of the League of Arizona Cities and Towns, the League neither advocates nor opposes incorporation efforts in any particular community. Incorporation is strictly a matter of local determination. Only the people living within the area considering incorporation should make the decision of whether incorporation is appropriate at any particular time.

It is our hope the information contained in this publication will make a useful reference document for persons concerned with the question of incorporation. Any comments, suggestions or criticisms regarding the content of the publication will be appreciated.

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## INTRODUCTION

In a very narrow sense, municipal incorporation is simply a process whereby a local governmental unit is established by the people of a community to deliver certain public services. However, municipal incorporation has its roots in the much broader principle of self-government. This is the same principle espoused by the founders of our national government. While few will argue that self-government was not a good step for our nation, it does not follow that municipal incorporation is **always** good for **all** local communities. Only the people of each individual community can decide whether incorporation is good or bad for their community.

There does, however, seem to be a positive element that develops from **every** incorporation movement, and it can be found in the questions which are raised by the community during this process. When a community is examining incorporation, it is asking basic questions about its past, its present and, most importantly, where it wants to go and what it wants to accomplish in the future. These are important questions and the answers to these questions can be valuable to a community regardless of its final decision about incorporation. This is an important point to remember in an incorporation process because incorporation is often a controversial issue which can severely divide a community into factions. There will always be very vocal and emotional arguments surrounding incorporation, but it should be emphasized that policy debate is a healthy and natural characteristic of our system of government.

This publication provides basic information for a community examining the entire question of incorporation. The contents include sections on the legal requirements for incorporation, the methods of incorporation, the financial aspects, pro and con arguments and a brief section discussing the common questions that arise in this process. In addition, the publication contains a reprint of the state law provisions on municipal incorporation. Finally, there is a brief explanation about the League of Arizona Cities and Towns and the types of services available from our organization.

This publication does not represent a substitution for the counsel, guidance or opinion of an attorney. In fact, it is strongly suggested that an attorney be consulted for interpretation of the law as applied to the question of incorporation. This is especially true of any community that is about to circulate petitions to either incorporate or call an election on the question of incorporation. This is an extremely technical area, and legal advice should be sought.

## LEGAL REQUIREMENTS OF INCORPORATION

The entire incorporation process is detailed in state law. The State Legislature has established the legal, geographic and population requirements for incorporation. Acting under this state law authority, the county board of supervisors has been designated as the administrative agency which actually grants the final incorporation. The board acts only after the people in the community have clearly expressed their opinion about incorporation either through direct petition or an election.

There are two basic legal requirements for incorporation. First, a community considering incorporation must have a population of at least 1,500 people. This figure includes men, women and children.<sup>1</sup> There is an increasing emphasis on meeting the basic population requirements. One community was taken to court and subsequently declared unincorporated on the basis of insufficient population through action taken by the attorney general.<sup>2</sup> If there is not official federal census data available which substantiates a population of at least 1,500, a community should advance with great care.

A community with a population of at least 1,500 but not more than 3,000 incorporates with the status of a "town". A community also has the option to incorporate with a status of "city" if it has a population of 3,000 or more. There really is no difference in the authority exercised by a city or a town, except that a city may adopt a charter. If a community incorporates as a town but has or attains a population level above 3,000, it may later change its status to a city with approval of the voters.

The second basic legal requirement necessary for incorporation is that the area must be a "community". A community is defined in state law as:

. . . a locality in which a body of people resides in more or less proximity having common interests in such services as public health, public protection, fire protection and water which bind together the people of the area, and where the people are acquainted and mingle in business, social, educational and recreational activities.<sup>3</sup>

In addition to the requirement of a community, state law stipulates that an area considering incorporation:

. . . shall not include large areas of uninhabited, rural or farm lands, but it shall be urban in nature.<sup>4</sup>

The **final** determination of whether an area considering incorporation is a community and urban in nature rests within the jurisdiction of the Arizona courts.<sup>5</sup> As a result, the county board of supervisors may determine that a community exists which is urban in nature, but this determination is subject to review by Arizona courts.<sup>6</sup>

Incorporation can be and has been challenged in court on the basis that it does not meet the basic statutory requirements. The Arizona Supreme Court has clarified the definition of the term "community" when it held that a body of several hundred people living in an area of a few square miles and having a common interest in public health, public protection and water is, in fact, a community. The Court further ruled that it was not necessary for the services mentioned to be in existence at the time of incorporation or for the community to have a shopping center or business district.<sup>7</sup> While the courts can review the actions of a board of supervisors in the incorporation process, a court cannot substitute its own authority for that of a board of supervisors and actually incorporate an area.<sup>8</sup>

## **METHODS OF INCORPORATION**

The incorporation of a community is an action that must be taken by the citizens residing in the community itself, and there are two basic methods which the community can use to incorporate. These methods, explained below, are petition without election and petition with election.

### **PETITION WITHOUT ELECTION**

This method of incorporation requires the signatures of two-thirds of the qualified electors (registered voters) residing within the area proposed for incorporation on a petition addressed to the county board of supervisors. The petition must be filed with the clerk of the county board of supervisors during regular business hours and not at a meeting of the board. The act of filing the petition gives the board of supervisors jurisdiction at any time after the petition is filed to act upon the request.<sup>9</sup> If the board is satisfied that two-thirds of the qualified electors residing in the area have signed the petition and that the area meets the population and community requirements, the board orders the area incorporated. It is important to note that once the board has made the determination that all the legal requirements have been met, it is mandatory for the board to declare the community incorporated. Also, the board of supervisors is not required to give any special notice of its action to consider the petition.<sup>10</sup>

### **PETITION WITH ELECTION**

The second method of incorporation requires that ten percent of the qualified electors residing within the area proposed for incorporation petition the board of supervisors to call an election on the question of incorporation. Again, the petition must be filed with the clerk of the board. If the supervisors are satisfied that ten percent of the qualified electors residing within the area have signed the petition and the area meets the legal requirements of population and community, then the board, within sixty days after the filing of the petition, calls an election on the question of incorporation. The actual election must be held not later than one hundred eighty days after the filing of the petition on one of the four consolidated election dates.<sup>11</sup> Only qualified electors living within the area proposed for incorporation may vote at the election. If a majority of the qualified electors voting at the election favor incorporation, the board of supervisors declares the community incorporated.<sup>12</sup> If a majority of the qualified electors voting at the election vote against the proposed incorporation, no further action will be taken by the supervisors and the area remains under the jurisdiction of the county. If the community turns down the incorporation, another election cannot be held for one year.<sup>13</sup>

### **PRIOR SUBMISSION OF PETITIONS - TIME LIMIT ON SIGNATURE VALIDITY**

Before circulating incorporation petitions, a copy of the petition must be filed with the county recorder or, if the county in which the community is located has a county elections department, with the county elections department. After this filing you have 180 days to gather signatures. Although the law does not specify, it appears that any signatures dated after the 180 day deadline would not be counted.

### **PETITION FORM**

State law requires that an incorporation petition state its purpose clearly and concisely. Incorporation petitions must be in a form similar to that of initiative petitions, signed by the circulator and verified by a notary public. Sample initiative petitions may be obtained from the Office of the Secretary of State. However, we strongly recommend that the incorporation petition be prepared or approved by an attorney prior to circulation.

## **INCORPORATION OF A COMMUNITY IN MORE THAN ONE COUNTY**

A community wishing to incorporate may encompass an area that is within more than one county. State law specifically provides a method for the incorporation of an area in this unique situation. The basic requirements are the same as those for a community located in only one county except that both boards of supervisors are involved in the process and petitioners from each county must sign. The process is described in detail in state law.<sup>14</sup>

## **INCORPORATION IN URBAN AREAS**

There are certain unincorporated areas that must meet additional requirements before they can be incorporated. The conditions are above and beyond the legal requirements of population and community. Such areas are located in what may be called urbanized areas surrounding existing cities and towns. Specifically, the law states that no territory may be incorporated, unless certain conditions are met, if it is located within:

1. Six miles of an incorporated city or town having a population of 5,000 or more; or within
2. Three miles of an incorporated city or town having a population of less than 5,000 as shown by the most recent Federal census.<sup>15</sup>

The county board of supervisors does not have jurisdiction to take action upon a petition for incorporation in an urbanized area unless each city or town within the three or six mile vicinity has passed a resolution approving the proposed incorporation. The resolution approving the proposed incorporation must be submitted along with the petition for incorporation to the county board of supervisors. It should be noted that the resolution approving the proposed incorporation is in effect only for the ensuing incorporation election. Therefore, if the incorporation election fails, a new resolution must be obtained and submitted with any future petition for incorporation.<sup>16</sup> In some instances, it may be necessary to secure permission of more than one city or town. As one exception to this rule, an urbanized area may become incorporated without having to obtain a resolution from a neighboring municipality, if that area presents a petition requesting annexation to the city or town and that petition has not been approved by a valid ordinance within one hundred twenty days of its presentation.<sup>17</sup>

## **ANNEXATION OF TERRITORY INCLUDED IN AN INCORPORATION PETITION**

If a city or town annexes territory which is already included in a proposed incorporation petition filed with the county, the territory which has been annexed will be excluded from the incorporation petition by the board of supervisors. If the remaining area does not meet the qualifications for incorporation, the board of supervisors will reject the incorporation petition.

## **THE FIRST COUNCIL**

When the county board of supervisors issues the order for incorporation, it will also appoint seven persons from the community to serve as the first city or town council. This appointed council serves until a new council is elected in May following the incorporation. Within twenty days after their appointment, the council is required to assemble and choose a mayor from among the seven council members.

There are no specific provisions in state law that determine the method to be used by the board of supervisors in appointing the members of the first city or town council. The method used by the boards has varied from one county to the next.



## FINANCIAL ASPECTS OF INCORPORATION

Any community examining municipal incorporation should carefully consider the financial impact on the community. The community should begin by estimating the area's potential revenues from state shared revenues and proposed local taxes. This information should in turn be compared with financial information from other incorporated cities and towns in the state. The following summarizes the Federal, state and local sources of revenue available to an incorporated municipality in Arizona. The League will provide assistance in calculating the State shared revenues a municipality could anticipate upon incorporation.

### FEDERAL REVENUES

Prior to the 1980's, substantial amounts of federal revenues were available to cities and towns. However, these programs have been gradually phased out and are no longer a steady source of income for cities and towns.

One program still available to cities and towns is the Community Development Block Grant (CDBG). This program provides funding for a variety of local housing, public works and physical construction projects on a competitive grant basis. Cities and towns must spend CDBG monies within this broadly defined area. The amount available from the CDBG program is limited, however, and the distribution of monies is based on a complex formula which includes population and measures of need.

In the final analysis, when estimating revenues, federal funds should not be included in the amount that a city or town can expect to receive following incorporation.

### STATE REVENUES

In comparison to other states, Arizona has a fairly progressive State shared revenue program for cities and towns. A newly incorporated city is not immediately eligible for all of the state shared revenues. The state sales tax distributions and the highway user revenue fund monies will begin the first month after an official census number is available with payments retroactive to the first full month after incorporation. The urban revenue sharing (income tax) and local transportation assistance fund (lottery) monies do not begin until the beginning of the first full fiscal year following incorporation. Municipalities share in the following State collected revenues.

**Urban Revenue Sharing.** The state is required to maintain an urban revenue sharing fund, consisting of a percentage of the net proceeds of the state income tax, to be distributed directly to cities and towns. The funds are distributed each month based on the individual municipality's population in relation to the total incorporated population of the state.<sup>18</sup>

**State Sales Tax.** Incorporated cities and towns in the state are entitled to receive a portion of the state sales tax collections. The distribution of these funds is based strictly on the population of the incorporated city or town as a percentage of the total population of all incorporated cities and towns in the state.<sup>19</sup>

**Highway User Revenue Fund.** Cities and towns are also entitled to receive a portion of the highway user revenues collected by the state. The highway user revenues consist of the gasoline and diesel fuel taxes as well as other transportation related fees. This money is distributed on a two-part formula. One half of the money is distributed on the basis of the population of an incorporated city or town as a percentage of the total of all incorporated cities and towns in the state. The remaining half of the money is distributed based on the level of gasoline sales in the

county in which the municipality is located and the population of each city and town in the county.<sup>20</sup> Highway user revenue funds may only be used for street and highway purposes.

**Vehicle License Tax (VLT).** Cities and towns are entitled to receive a share of the money collected from tax payments for the registration of motor vehicles. The vehicle license tax is a state tax returned through the counties to the incorporated municipalities within each county. (A percentage of the total revenue from this source is also deposited in the highway user revenue fund and the state highway fund.) These revenues are distributed on the basis of the population of a city or town in relation to the total incorporated population of the county.<sup>21</sup>

**Local Transportation Assistance Fund (LTAF).** This state shared revenue is generated by the state lottery. Distribution is based upon the population of the city or town in relation to the total population of all cities and towns. Each city and town is entitled to receive a minimum of \$10,000. A maximum of \$23 million (if that amount is generated by the lottery) is distributed each year to cities and towns. The principal use of these funds is restricted to transportation purposes. If the fund does reach the \$23 million amount, then 10% of the local transportation assistance fund monies received by each community may be used for cultural, educational, historical, recreational or scientific facilities or programs. This portion of the lottery monies may also be used for programs or services for non-residential outpatients who are developmentally disabled. Before this percentage may be spent, an equal match must be obtained from non-public monies.<sup>22</sup> A secondary LTAF has also been established with some multi-state lottery (Powerball) money combined with some VLT money from the state highway fund. This secondary LTAF is designated strictly for transit projects and is distributed using a grant process.

## LOCAL REVENUES

In addition to state revenues, nearly all cities and towns have instituted one or more forms of local taxation to meet the costs of municipal government. The following is a brief description of the common forms of local revenue.

**Sales Tax (Transaction Privilege Tax).** In addition to the state sales tax, cities and towns in Arizona may impose local sales taxes on the gross receipts of sales within the corporate limits of the city or town. In enacting the sales tax, cities and towns must comply with the Model City Tax Code. The Model City Tax Code was developed by cities and towns and is maintained by the League. At present, all of the cities and towns in Arizona have a local sales tax. This tax is the most important source of local revenue for most municipalities.

The average local sales tax rate is approximately two percent of gross sales. Rates range from one percent to three percent. The collection totals from a local sales tax can be estimated by obtaining a rough estimate of the amount of gross retail sales within the community and then multiplying this amount by the percentage of the sales tax. The Arizona Department of Revenue can assist you in calculating such an estimate using state sales tax collections from your area. This tax can be imposed by ordinance of the city or town council; no election is required.

**Property Tax.** The property tax has been a traditional means of financing city and town services. While the importance of the property tax has been decreasing in recent years due to the increased revenues from excise taxes, it still is an important source of local revenue for a majority of Arizona cities and towns. The property tax has also been one of the most stable sources of revenue, because it is not subject to the same fluctuations sometimes experienced with excise taxes. In estimating the amount of revenue which may be derived in a community from a property tax, there are two important factors to be considered: 1) the assessed valuation of the property in the community, and 2) the tax rate necessary to meet expected costs.

The assessed valuation of an area is the value of all real and personal property within the community. Assessed valuation figures should be available in the respective county assessor offices. Once the assessed valuation figures have been obtained, the community can estimate the tax rate necessary to meet expenses. The tax rate is the dollar amount charged by a city or town for each one hundred dollars of assessed valuation for all real and personal property. Estimating property tax collections can be done by dividing the total assessed valuation of the community by one hundred and then multiplying this number by the tax rate.

Property tax levies are divided into a primary property tax levy and a secondary property tax levy. A secondary property tax may only be levied to pay the principal and interest charges on voter-approved bonds. The primary property tax levy is for all other purposes, and there are strict limits placed on the primary property tax. Prior to the imposition of a primary property tax, an election must be held on the third Tuesday in May setting forth the proposed levy. If the voters approve, the levy is instituted in the fiscal year immediately following the election. If the voters do not approve, the city or town may not levy a primary property tax for that year or until voters do approve a levy.

**Business and Occupational License Taxes.** Business license taxes may be instituted by a municipality for regulatory purposes and for raising revenue. Cities and towns are authorized to issue and determine the amount of license taxes "for carrying on any business, game or amusement, calling, profession or occupation". No license can be granted for more than one year and not less than \$10 or more than \$5,000 can be charged annually for any one license.

**Utility Franchise Taxes.** Utility franchise taxes are imposed by cities and towns in payment for the use of streets and alleys within the corporate limits by public utility companies. The traditional tax payment for a franchise is two percent of the gross receipts of utility sales within the corporate limits. A city or town is limited in granting a franchise for a period of more than twenty-five years, and this franchise cannot be exclusive. Prior to the granting of a franchise, an election must be held to obtain voter approval of the franchise. In practice, utilities usually desire to have a franchise agreement with a municipality and may request an arrangement of this nature. The advice of an attorney may be useful in determining the exact status of franchises in light of the particular local situation.

**Development Fees.** Cities and towns may also charge for building permits and fees for mechanical, gas and plumbing inspections. Impact fees are paid by new development to offset the costs of providing necessary infrastructure (streets, water, sewer, police, fire, parks, etc.) to those areas. Revenue available from these sources can be estimated by examining budgets from other cities and towns with similar characteristics and anticipated building levels.

**Fines and Forfeitures.** A city or town receives fines and forfeitures imposed by its local magistrate court following citations by local police officers for violations of state or municipal law occurring within the corporate limits. Estimates of revenues from this source can be based on information from the county sheriff relating to the level of misdemeanors and traffic infractions in the community.

**Municipal Utility Operations.** Many cities and towns maintain utilities, such as water, sewer, trash and garbage. Such services may be operated on a "pay-as-you-go-basis" with fees for the service approximately equal to the operating costs. Any surplus from utility operations can be transferred to the general fund and defray other city and town expenses.

## COST OF INCORPORATION

The cost of city and town government is contingent upon the level and the type of service desired by the citizens in the area. The greater number and higher quality of services will automatically mean increased costs. In estimating the costs, however, you should consider the following items.

- < After a community incorporates, the county will discontinue a number of services it previously provided on July 1 following incorporation or at an earlier date if the city or town, by resolution or ordinance, assumes these county responsibilities.<sup>23</sup>
- < There are certain services that must be provided according to state law. Some of these are explicitly required in statute and others are only implicit in functioning as a local government.
  - < There are several responsibilities that are specified in law. They are as follows:
    - < The newly incorporated city or town must provide its own police protection through employment of a police force or by contract with another law enforcement agency (ie. the county sheriff's department or another city/town police department).
    - < The city or town will be required to maintain the streets within the newly formed corporate limits. All county roads become city/town roads upon incorporation, and the county will not have the responsibility to provide street/road maintenance after June 30 following incorporation. On the other hand, the Arizona Department of Transportation (ADOT) will continue to provide maintenance on any portion of a state highway inside the corporate limits.
    - < In addition to the two items above, the newly incorporated area must provide its own administrative organization.<sup>24</sup> This responsibility includes but isn't limited to various state budgeting and financial reporting requirements as well as elections responsibility within the new city or town.<sup>25</sup> These positions may be filled with part-time employees or by contract if necessary.
  - < Although there are only a few requirements spelled out in law, the following are a few other things that can't be ignored when calculating the costs of establishing a new city or town:
    - < First and foremost, it will be necessary to employ or retain an attorney. The legal requirements of being an incorporated local government are numerous and competent legal advice is necessary for success.
    - < One of the reasons many communities incorporate is to have greater control over their own future. This often includes a desire to have a planning and zoning function. This activity requires resources, staff or contract, to accomplish.
    - < Along with the planning and zoning function, there is also the need to implement and administer building codes and issue various types of building permits.
    - < Because cities or towns take over responsibility for streets, roads and police protection at a minimum, they assume the liability for those as well. This creates a need for insurance. There are affordable options even for the smallest jurisdictions. One of those being an insurance pool established by the league and now run by an independent board where about 70 percent of the cities and towns come together to pool their risk.

The items mentioned above are the basic components of the cost to operate a municipality. At this point, a note of caution should be added. When comparing the cost of local government among cities and towns, it is impossible to get an accurate comparison without detailed knowledge of the nature of the services provided by a particular municipality. This point is demonstrated by giving an example of how two cities might fund similar programs through two different revenue sources. For instance, one city might not levy a separate garbage collection charge because revenues for the operation of the garbage collection system are derived from the general property tax. Another city, on the other hand, might levy a separate garbage collection charge, charging only those served by the garbage collection system. Consequently, while the city with the garbage collection charge may have a lower property

tax, the individual costs to the particular homeowner will be more than just the basic property tax rate because of the garbage collection charge which is imposed by the city.

Therefore, in comparing the relative costs of two local governments, it would be rather easy to arrive at an incorrect conclusion if there was no consideration of the special charges and assessments that are levied by a city for various services. A thorough working knowledge of municipal operations should be obtained before the publication or discussion of any cost figures for local government in your community.

## **PROS AND CONS OF INCORPORATION**

In any incorporation movement, careful consideration must be given both to the advantages and disadvantages of this process. Based on our experience with communities considering incorporation, the following is a summary of important arguments, both pro and con, that should be examined carefully before making a final decision.

### **THE PROS**

The most common arguments in favor of incorporation are as follows:

1. Incorporation establishes a city or town government through which a community can express itself, address its problems and supply necessary services to the area. The community can exercise self-determination with regard to the nature and level of local services.
2. Municipal government is more responsive to the people living within the community. The members of the city and town council are closer to the people and, as a result, react more quickly to the community's requests.
3. A city or town government will receive substantial amounts of state revenues which do not flow to an unincorporated community.
4. An incorporated city or town has additional powers not found in an unincorporated community. An unincorporated community is under the jurisdiction of the county and, as a result, does not have much control over the level of services provided to the residents. The county must provide services as uniformly as possible throughout the unincorporated areas of the county. On the other hand, a city or town council has the authority to intensify services within the community.
5. An incorporated city or town is able to plan for the future growth of the community by adopting planning and zoning regulations which will provide for controlled land use. This regulation protects the community against undesirable land use patterns. In addition, incorporated cities and towns may adopt building, plumbing, mechanical and electrical codes in the interest of public health, safety and welfare.
6. A separate city or town preserves the unity and pride of a particular community and maintains local individuality.
7. As a governmental unit, the city or town can better represent its citizens in transactions with the county, the State and Federal governments. In addition, local government may be used as a vehicle for positive progress in the community.
8. Municipalities may be the instrumentality for providing numerous utility services such as water, sewer, garbage and trash collection, gas and electrical service if the council decides to enter into these operations.

## THE CONS

The following are the most common arguments against incorporation:

1. Incorporation is unnecessary because the particular needs of the community are limited in scope. The residents of the community may prefer to organize a special district to meet these limited needs. For example, the community may create a rural fire district to satisfy the necessity for fire protection, or a special district may be formed to fulfill other particular needs such as sewer service. As a result, the special district approach may be more appropriate if the residents of an area want to incorporate only to provide one specific service. However, a special district is not a substitute for incorporation, and the residents of a community should be careful in creating more than one in the same area. The creation of a number of special districts for one area leads to unnecessary levels of government if the area is incorporated at some later date.
2. The separate incorporation of an area which is economically and physically part of a larger community will produce what is known as a "rump" incorporation. This situation can produce an incorporated city or town with inadequate resources or physical facilities necessary to meet its needs. This is particularly true if the character of the community is predominantly residential. A "residential community" may discover after incorporation that its tax base can only maintain a minimal level of public service. In this case, it might be to the community's advantage to be annexed into an existing city or town or remain unincorporated.
3. The community is too small in either land area or population to serve as an efficient and effective unit of government. It may be difficult, if not impossible, in extremely small areas to provide for an adequate level of services. It may be more advantageous for an area of this nature to receive services from the county.
4. The incorporation of a small area which is an integral part of a larger metropolitan area will create a costly duplication of local services. This situation can lead to a lack of coordinated and orderly urban growth as well as a lower level of such vital services as police, fire, water and sanitation.
5. The area possesses certain rural or farm characteristics which it wishes to retain, and incorporation is an undesirable step towards urbanization.
6. The most common argument against incorporation is that it will increase taxes.

In summary, the question of incorporation requires a thorough study by the community. It is to the advantage of all involved if pro and con arguments are fully explained and weighed against each other before the final decision is made.

## COMMON QUESTIONS

In each incorporation process there are a number of common, identifiable questions. The following is a brief summary of some of the questions most frequently asked by the residents of a community discussing incorporation.

### **BONDING**

A concern is often expressed that the governing body of an incorporated area will be able to pass bond issues without the consent of the municipality's citizens. This idea is false. A city or town council may pass a resolution calling for an election on bonds for improvements which might include, as an example, the construction of a sewage system. However, the council is without authority to float the bond issue until a majority of the qualified electors voting at an election within the city or town approve the bond issue in an election. In other words, an incorporated municipality cannot enter into debt without the approval of the voters of the community.

### **PROPERTY AND SALES TAXES**

The methods for implementing local sales and property taxes are among the most common questions asked during the incorporation process. Each of these taxes involves a different procedure for implementation. To establish a primary property tax a city or town must submit the proposed amount to be raised from the tax to the voters at an election to be held on the third Tuesday in May. This amount will constitute the base for all future levies. If the voters approve the tax, the city or town council may levy the amount approved for the fiscal year immediately following the election. If the voters disapprove the levy, the council may not levy a primary property tax for that year nor may they levy one in the future unless the voters first approve the levy.<sup>26</sup>

In addition, a city or town that incorporates must give proper notice before levying a property tax in the next fiscal year. State law requires that notice must be given to the Department of Revenue and the appropriate county assessor. A map showing the boundaries of the newly incorporated area should be included along with the report. This notice must be given by November 1 of the year prior to the fiscal year when the tax will be levied.

A common concern among communities which are considering incorporation is that a local property tax will automatically follow. This has not been the case; no city or town out of the twelve incorporated during the period from 1984 to 1994 has initiated a primary property tax. Only two of the cities and towns incorporated during this period have adopted a secondary property tax; a tax which may only be used to pay the principal and interest charges on voter-approved bonds. Less than sixty percent of all the incorporated cities and towns have a local primary property tax, thirty percent have a local secondary property tax and forty percent have neither a primary or secondary property tax.

A local sales tax can be passed by ordinance by the city or town council. Authority for a local sales tax is contained in state law; a vote of the people to initiate a sales tax is not required. Of the same twelve cities or towns incorporated between 1984-1994, ALL twelve of them have enacted a local sales tax. All of the eighty-seven incorporated cities and towns have chosen to initiate such a tax, and the average rate is approximately two percent. Some of the explanation for the difference between the use of the sales tax versus the property tax by these newly incorporated communities is that the sales tax is a method of taxation where the burden does not lie solely with the residents of the community as out of town visitors must also pay the tax.



## **CITIZEN INVOLVEMENT**

It is often the contention that citizens of a newly incorporated community have no means of controlling a city or town council which passes unpopular laws or taxes. There are, however, the methods of referendum, initiative and recall that guarantee direct access of the citizens into the city or town council legislative process.

Through the initiative process, the electors within any city or town may initiate a local law or ordinance by securing sufficient signatures on a petition to force the city or town council to consider the enactment of the ordinance or place it before the voters for their consideration.

Using the referendum procedure, the citizens of a community may file a petition against an objectionable ordinance passed by the city or town council and require that an election be held to consider the ordinance. A referendum petition can only be filed against an ordinance within a thirty day period after its passage. An ordinance with an emergency clause (requires a 3/4 vote of the council) is not, however, subject to a referendum petition.

Citizens can also use the recall to voice their opinions about council actions. The recall guarantees the citizens a method to remove an elected official from office before the end of his or her normal term of office. The recall is initiated through petitions directed at a council member or members. If the petitions meet all of the legal requirements and the elected official or officials being challenged do not resign, an election is called for the voters to either reinstate the present council member or elect a challenger to office.

## **POLICE SERVICE**

One of the most immediate concerns after incorporation is the provision of local police services. A city or town is not required to provide police protection for the municipality until the next July 1 after the incorporation date. From the date of incorporation until July 1, police services for the municipality remain the responsibility of the county sheriff. After July 1, the municipality is directly responsible for this service, however, the expense of a police force prohibits most newly incorporated communities from establishing a local police department immediately after incorporation. It has been a common practice for a newly incorporated municipality to contract with the county sheriff until it can afford to provide police services on its own. Some continue to contract for this service long after incorporation.

## **IMPROVEMENT DISTRICTS**

Another frequently asked question relates to the formation of improvement districts. The local governing body may order a public improvement district if the council determines that it is in the public interest and convenience.<sup>27</sup> However, a public improvement district cannot be initiated until the city or town council passes a resolution of intention describing the improvement and specifying the boundaries of the assessment district.<sup>28</sup> A notice of this resolution must be posted within the assessment district described in the resolution.<sup>29</sup> Additionally, the city or town council is required to publish the resolution of intention in a newspaper as required by law.

Once a notice has been posted within the assessment district and publication of the resolution of intention has been made as required by law, the property owners have a fifteen day period during which they may file a written protest with the city or town clerk. If property owners representing fifty-one percent of the property fronting on the streets or parts of the streets within the assessment

district sign and present a protest petition, no further action may be taken under the resolution of intention to create the improvement district.<sup>30</sup> The council may only proceed to create the improvement district if the number of protests filed are less than a majority of the frontage of the property fronting on the streets or parts of the streets within the assessment district.<sup>31</sup>

## **ORDINANCES**

Many people are uncertain about the actual nature of a municipal ordinance. Ordinances are local laws enacted by a city or town council. Like other laws, an ordinance is subject to the referendum process. If any ordinance is passed by the council, there is a thirty day period in which a referendum petition may qualify against the ordinance. However, there is one exception to this rule. If an emergency clause is added to an ordinance, the ordinance becomes law immediately upon passage. An extraordinary majority (three-fourths of the council) is necessary to pass an ordinance carrying an emergency clause.<sup>32</sup>

## **FIRE DISTRICTS**

The impact of incorporation on a previously formed rural fire district is one of the more frequent questions encountered in the incorporation process. There are actually several alternatives available to a newly incorporated community for fire protection services. If the new city or town encompasses all of a previous fire district, then the district and all its assets may be taken over by the newly incorporated community. In this situation, the city or town would provide direct fire protection services.<sup>33</sup> There is, however, nothing to require the assumption of fire protection services by the city or town; the fire district can continue to operate as a separate entity even if the boundaries are the same.

If the new city or town does not encompass all of the fire protection district, and if it desires to provide fire protection, it may do so on its own, and that portion of the fire district within the newly incorporated limits would automatically be excluded from the fire protection district. The assets and liabilities of the fire protection district would continue to be the property of the fire district, and that portion lying outside the incorporated limits would compose the new boundaries of the fire district.

If the newly incorporated city or town does not wish to provide fire protection, the fire district may continue to operate and provide fire protection both inside and outside the incorporated limits of the city or town. The district would then continue to levy taxes for the support of the district.

## **DISINCORPORATION**

A city or town in Arizona has the option to disincorporate if two-thirds of the qualified electors petition their board of supervisors. The board then has the option of disincorporating and appointing a trustee to close operations, or it may call for an election to be held at which time the electorate will decide the issue. There have been few actual disincorporations in Arizona and none have occurred within the last three decades.<sup>34</sup> If the decision to disincorporate is made, a trustee is appointed by the board of supervisors to wind up the affairs of the corporation, sell and convey property, real and personal, and pay debts. Disincorporation is not a method to escape financial responsibilities or the debt of a city or town. These debts, which would include such items as outstanding bonds, remain the responsibility of the community and must be paid by the community. If, after all payments are complete and there is money remaining, it will be used for community purposes.<sup>35</sup>

## **CHARTER GOVERNMENT**

Another frequently asked question concerns the ability of a newly incorporated city or town to adopt a city charter. Only a city with a population of 3,500 or more people may adopt a charter. Historically, even those cities which might have qualified to adopt a charter immediately after incorporation have not rushed into that process. In fact, over the past three decades, no city has adopted a charter until at least ten years after incorporation. It has been our experience that newly incorporated communities are so occupied with their new responsibilities that it takes some time before they are ready for the complexities of charter adoption. This time of charter adoption is the opportunity to address the desire for an alternative form of government (strong mayor, etc.) and other unique requirements (limits on taxation, etc.).

## **CONCLUSION**

This manual has attempted to present the overall process involved in the incorporation of a community. However, each community considering incorporation must weigh the individual merits of incorporation efforts against:

- 1) the community's potential resources and
- 2) the community's desire for the services of local government.

The final question of incorporation can be resolved only by the residents of the area, and all questions should be given full consideration prior to making a decision with respect to incorporation.

## APPENDIX A

### INCORPORATION STATUTES

#### **A.R.S. §9-101. Incorporation; definition**

- A. When two-thirds of the qualified electors residing in a community containing a population of fifteen hundred or more inhabitants petition the board of supervisors, setting forth the metes and bounds of the community, and the name under which the petitioners desire to be incorporated, and praying for the incorporation of the community into a city or town, and the board is satisfied that two-thirds of the qualified electors residing in the community have signed the petition, it shall, by an order entered of record, declare the community incorporated as a city or town.
- B. When ten per cent of the qualified electors residing in a community containing a population of fifteen hundred or more persons petition the board of supervisors in the manner prescribed in subsection A of this section, praying for the calling of an election for the purpose provided in this section, the board shall within sixty days after filing the petition call the election, and the election shall take place on a date prescribed by section 16-204 but not more than one hundred eighty days after the petition is filed, except that no such election shall be called within twelve months from the date of a previous election for incorporation of substantially the same territory. Only qualified electors of the community shall vote on this question. If a majority of qualified electors voting thereon votes for incorporation, then the board of supervisors shall, by an order entered of record, declare the community incorporated as a city or town.
- C. Prior to obtaining any signatures on a petition required by subsection A or B of this section, a copy of such petition shall be filed with the county recorder or, in a county having an elections department, with the county elections department. The petition shall state its purpose clearly and concisely and shall be in the form and signed and verified as generally provided for initiative petitions. Petitioners shall have one hundred eighty days from the date of such filing to obtain the required number of signatures.
- D. By whichever proceeding the incorporation of a city or town is accomplished, the order shall designate the name of the city or town, and its metes and bounds, and thereafter the inhabitants within the area so defined shall be a body politic and corporate by the name designated.
- E. For the purposes of this section, "community" means a locality in which a body of people resides in more or less proximity having common interests in such services as public health, public protection, fire protection and water which bind together the people of the area, and where the people are acquainted and mingle in business, social, educational and recreational activities.
- F. An area to be incorporated shall not include large areas of uninhabited, rural or farm lands, but it shall be urban in nature.
- G. Territory shall not be incorporated if, as a result of such incorporation, unincorporated territory is completely surrounded by incorporated areas nor shall an area to be incorporated exclude interior county streets and roads, unless the board of supervisors approves the exclusion of such territory, streets and roads.

- H. The board of supervisors shall exclude from the community proposed to be incorporated pursuant to subsection A or B of this section any territory which has been included in an annexation ordinance adopted by a city or town pursuant to law after the incorporation petition has been filed pursuant to subsection C of this section. If the remaining community fails to meet the qualifications for incorporation, the board of supervisors shall reject the petition.

**A.R.S. §9-101.01. Incorporation, urbanized area; definition**

- A. Notwithstanding any other provisions of law to the contrary, all territory within six miles of an incorporated city or town, as the same now exists or may hereafter be established, having a population of five thousand or more as shown by the most recent federal census, and all territory within three miles of any incorporated city or town, as the same now exists or may hereafter be established, having a population of less than five thousand as shown by the most recent federal census is declared to be an urbanized area.
- B. No territory within an urbanized area shall hereafter be incorporated as a city or town, and the board of supervisors shall have no jurisdiction to take any action upon a petition to incorporate a city or town within such area, unless:
1. There is submitted with the petition for incorporation a resolution adopted by the city or town causing the urbanized area to exist approving the proposed incorporation; or
  2. There is filed with the board of supervisors an affidavit stating that a proper and legal petition has been presented to the city or town causing the urbanized area to exist requesting annexation of the area proposed for incorporation and such petition has not been approved by a valid ordinance of annexation within one hundred twenty days of its presentation.
- C. If such resolution or affidavit is filed with the board of supervisors, the board shall proceed with incorporation of the area.
- D. Notwithstanding any other provisions of this section to the contrary, no portion of the territory of any city or town incorporated prior to the effective date of this section shall be declared to be an urbanized area. In the event any such city or town shall be declared to have been unlawfully incorporated by the final judgment of a court of competent jurisdiction after the effective date of this section, all or any portion of the territory thereof may be incorporated without regard to any of the provisions of this section, provided petitions praying for the incorporation thereof or petitions praying for the calling of an election for such purpose shall be filed with the board of supervisors within one year from the date upon which such judgment shall become final.

**A.R.S. §9-104. County services for newly incorporated city or town**

- A. When county territory is included within the boundaries of a newly incorporated city or town, all codes, rules and regulations made, established, adopted or enacted by such county, relating to zoning, building, plumbing, mechanical, electrical and health and sanitation shall apply within such newly incorporated city or town and shall be enforced by county officers from and after the date of such incorporation until July 1 next following such incorporation or until such time prior to the expiration of such fiscal year as the governing body of such city or town, by resolution or conflicting ordinance, supersedes such county code, rules or regulations.

- B. All county services previously provided within such territory, including, but not limited to, law enforcement, public safety, maintenance of streets and public improvements, drainage, sewers and sewage disposal shall be continued through county officers and at county expense during the period from and after the date of such incorporation until July 1 next following such incorporation or until such time prior to the end of such fiscal year as the governing body of such city or town, by resolution or conflicting ordinances, provides such services.
- C. The provisions of this section shall also apply to cities and towns incorporated under article 3 of this chapter.

## **A PROFILE OF THE LEAGUE OF ARIZONA CITIES AND TOWNS**

The League of Arizona Cities and Towns is a voluntary, nonprofit, nonpartisan association of the incorporated cities and towns of Arizona. The League is an instrumentality of Arizona's cities and towns and is owned and governed by them. It is ALSO financed by them through an annual dues assessment.

An Executive Committee, made up of three officers; president, vice-president and treasurer; and twenty-two members, is elected by vote of the cities and towns. This committee determines overall policy for the League and develops the organization's service program. Officers and members of the Committee serve two-year overlapping terms.

The day-to-day program of the League is administered by a full-time Executive Director. The Director appoints a staff to assist in the conduct of the League service program. The major elements of this program are described briefly below.

### **LEGISLATIVE LIAISON AND INFORMATION**

Charged with the responsibility to act as the representative for Arizona's cities and towns during the legislative session, the League, in accordance with the legislative policy set forth in an annual Municipal Policy Statement, assists in developing legislation of special interest to municipal government and in following proposed legislation that affects cities and towns.

An important activity during the legislative session is providing information to municipal officials regarding pending legislation through publication of a *Legislative Bulletin* designed to keep local officials informed on a regular basis of events taking place in the Legislature. During the session, the League also facilitates meetings between legislators and local elected officials to help legislators hear from their constituents and their fellow elected officials.

### **CONFERENCES AND TRAININGS**

Each year the League sponsors or assists in developing many different conferences and training opportunities for elected and appointed municipal officials from across the state. The marquee event is the League Annual Conference held in the fall each year in various locations statewide. The Annual Conference and the other training opportunities are designed to provide local officials with the opportunity to discuss problems of common interest and to learn of new developments and techniques in local government.

An important part of the Annual Conference is the Annual Business Meeting at which the officers and Executive Committee members are elected. The Municipal Policy Statement is also adopted by local officials at the Annual Business Meeting. Each city or town is entitled to one vote at the Business Meeting, making the Policy Statement reflective of the DIVERSE needs and desires of communities throughout the state.

### **MEMBER SERVICES**

#### **PUBLICATIONS**

A significant portion of the League's overall program is devoted to the development of publications in all areas of local governmental concern. Special reports are written when a substantial number of questions have been received on subjects which are of special concern to municipal officials. Generally, if the problem is a recurring one, a manual dealing with the subject in detail is prepared. Annual publications of the League include the *Local Government Directory*, a directory of Arizona city

and town officials, the Salary and Benefit Survey, as well as updating of the *Municipal Election Manual* and the *Municipal Budget and Finance Manual*.

#### **AFFILIATE GROUPS**

The organizational structure of the League includes eighteen affiliate groups representing major areas of municipal activity. These affiliate groups are autonomous and elect their own officers from among their membership; however, they cooperate in the League's program of activities. Each affiliate group is composed of specialists in a particular area of municipal activity who come together to increase the knowledge and ability of their members in their own field. The League affiliate groups include: the Arizona City/County Management Association, the Arizona City Attorneys Association, the Arizona Municipal Clerks' Association, Arizona Chapter of the International Conference of Building Officials, the Arizona Planning Association, the Arizona Association of Chiefs of Police, the Arizona Fire Chiefs' Association, Arizona Chapter of the American Public Works Association, Arizona Parks and Recreation Association, Arizona Magistrates' Association, the Arizona Finance Officers' Association, the Public Libraries Division of the Arizona State Library Association, the Arizona COG Directors' Association, the Arizona Community Action Association, the Arizona Municipal Management Assistants Association, the Arizona Human Resource Directors Association, the Arizona Airports Association and the Association of Rabies/Animal Control Enforcement Agents of Arizona.

#### **INQUIRY SERVICE**

An inquiry answering service is provided for local officials on any subject involving local government. These questions are handled by the technical assistance staff who provide answers to local officials' questions by telephone, memorandum, referrals, special survey or, when appropriate, on-site consultation.

#### **STATE AGENCY LIAISON**

As the relationship between levels of government becomes more complex, the League's efforts in intergovernmental relations have increased. The role of the League as a representative for cities and towns in dealing with the various agencies of the State and Federal government has become increasingly significant in recent years and is expected to play a major part in the organization's future activities.

These program areas have developed in response to specific needs of Arizona's cities and towns. It is expected that as needs change, the type of service program the League provides will change to meet those needs. In this way, the League service program can be of maximum benefit to the cities and towns of Arizona.



## FOOTNOTES

- 1 A.R.S. § 9-101 (A).
- 2 STATE EX REL CORBIN v. SABEL, 138 Ariz. 253, 674 P.2d 316, (1983).
- 3 A.R.S. § 9-101 (E).
- 4 A.R.S. § 9-101 (F).
- 5 PARNELL v. STATE EX REL WILSON, 68 Ariz. 401, 206 P.2d 1047, (1949) and JAY v.  
KREIGH, 110 Ariz. 299, 518 P.2d 122, (1974).
- 6 Ibid.
- 7 STATE v. DOWNEY, 102 Ariz. 360, 430 P.2d 122, (1967).
- 8 IN RE CITY OF PHOENIX, 52 Ariz. 65, 79 Pac. (2d) 347, (1938).
- 9 COLQUHOUN v. CITY OF TUCSON, 55 Ariz. 451, 103 P. 2d 269, (1940).
- 10 FAULKNER v. BOARD OF SUPERVISORS OF GILA COUNTY, 17 Ariz. 139, 149 Pac. 382,  
(1915).
- 11 A.R.S. § 9-101, 16-204.
- 12 Ibid.
- 13 Ibid.
- 14 A.R.S. § 9-131.
- 15 A.R.S. § 9-101.01.
- 16 FOUNTAIN HILLS CIVIC ASSOCIATION, INC. v. CITY OF SCOTTSDALE, 152 Ariz. 569,  
733 P.2d 1152, (1986).
- 17 A.R.S. § 9-101.01.
- 18 A.R.S. § 43-206.
- 19 A.R.S. § 42-~~1344~~5029.
- 20 A.R.S. § 28-6538.
- 21 A.R.S. § 28-5808.
- 22 A.R.S. § 28-8102, 28-8103.
- 23 A.R.S. § 9-104.
- 24 A.R.S. § 9-237, 9-238.
- 25 A.R.S. § 9-237, 9-238.
- 26 A.R.S. § 42-~~301 (D)~~17056.
- 27 A.R.S. § 48-502, 48-572.
- 28 A.R.S. § 48-505, 48-576.
- 29 A.R.S. § 48-506, 48-578.
- 30 A.R.S. § 48-507, 48-579.
- 31 Ibid.
- 32 A.R.S. § 19-142.
- 33 A.R.S. § 48-812, 48-813.
- 34 Arizona City was unicorporated by action of the courts on the basis that the community had  
insufficient population.
- 35 A.R.S. § 9-102.