

Checklist of decisions to be made preparatory to drafting legislation for the incorporation of towns

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The following list of decisions that will need to be made before the Legal Division of LCB can produce draft legislation is not an exclusive list. The list merely sets forth certain minimum information that LCB will need to know to begin to draft legislation to provide for the creation of incorporated towns. In all likelihood, additional issues will be raised that also need to be considered.

[A] Procedures for incorporation

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(1) Will the procedure begin by petition of the persons who live in the affected area, or by another method? If a petition is to be used:

- (a) How many signatures will be required?
- (b) To what entity will the petition be submitted?

(2) Once the petition (if a petition is used) is submitted to the appropriate entity (e.g., the board of county commissioners), does that entity need to hold a hearing on the matter? If so, what type of notice will be required for the hearing and to whom must such notice be provided?

(3) Does there need to be a mechanism pursuant to which a group of persons in the affected area (for example, a group of persons that constitutes a certain percentage of the population or holds a certain percentage of the assessed valuation) can cause the process of incorporation to be terminated?

(4) Will other local governments need to consent to the incorporation before the incorporation may take place? If actual “consent” is not required, will these other local governments be allowed some lesser form of “input” regarding the process? Regarding both of these questions, should there be criteria to determine whether other local governments will be affected by the proposed incorporation such that they must give their consent or are allowed to submit their input (e.g., within a certain distance of the area to be incorporated)?

(5) Will the local government that handles the procedure of incorporation after the process begins (e.g., the board of county commissioners) be vested with discretion to allow or not allow the incorporation, or is such local government’s role merely “ministerial,” serving only to make sure that the petitioners have complied with the stated procedures? In other words, can the county say “no” to the incorporation even if the petitioners want to incorporate and otherwise comply with the statutory requirements?

(6) Again assuming that a petition is used to begin the process of incorporation, should the process of

incorporation be able to be finalized by vote of the local government that receives the petition (e.g., the board of county commissioners), or will the matter have to go to a public vote? If a public vote is required:

(a) Would the vote be county-wide or only among those persons who live in the area that is proposed for incorporation?

(b) Should the persons proposing the incorporation (the petitioners) be required to pay the costs of holding the election? If the petitioners are required to pay for the election, would they be required to pay those costs in all instances, or only if the petition is unsuccessful?

[B] Prerequisites for incorporation

(1) Before a given area may incorporate, must that area have a certain minimum population and/or a certain minimum assessed valuation? At the 11/8 meeting, certain persons spoke favorably of the concept of a “sliding scale” between minimum population and assessed valuation.

(2) Although this also pertains to “powers,” below, must there be (as Indiana requires) agreement as to the provision of a certain range of services before incorporation is allowed? In other words, would a proposed incorporated town only be allowed to incorporate if that incorporated town was going to provide a certain “range” of services?

(3) Would it be necessary to conduct a survey of the area to be incorporated? If so, would the survey have to be carried out by persons with certain engineering or surveying credentials?

(4) Must the persons desiring incorporation (the petitioners) set forth the manner in which proposed services will be paid for (e.g., from where will the tax revenue come to pay for any proposed services)?

(5) Pursuant to NRS 361.453 (with exceptions provided for certain severe financial emergencies and for certain matters pertaining to hospital districts), the ceiling on property taxes is \$3.64 for every \$100 of assessed valuation. Nev. Art. 10, § 2 absolutely limits ad valorem taxation to \$5.00 for every \$100 of assessed valuation. Would any type of survey or assessment need to take place with respect to the area proposed to be incorporated to ensure that any additional taxes for proposed services would not cause the relevant caps to be exceeded?

(6) In a general sense, will the ability to incorporate be based on the satisfaction of certain criteria (to be judged or assessed, for example, by the board of county commissioners) or will the ability to incorporate be based primarily on the desire to incorporate of the persons in the affected area?

[C] Governmental structure

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(1) Will the legislative body of an incorporated town have members who are elected “at large,” or will there be wards or districts from which such members are elected? How many members will serve on the legislative body?

(2) Other than the main legislative body (e.g., town board or town council), what officers or other officials will an incorporated town have? Should such other officers and officials be mandatory for an incorporated town, or should they be optional depending upon a particular incorporated town’s needs?

(3) Will the legislative body of an incorporated town be required to consult with other local governments in the making of certain decisions (or get the approval of such other local governments), or will an incorporated town function more or less autonomously?

[D] Powers of governing body

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(1) What powers should the governing body of an incorporated town have? Some examples to consider are whether the governing body (or the incorporated town itself, as applicable) should be able to:

- (a) Pass ordinances.
- (b) Levy taxes.
- (c) Exercise control over matters of zoning and land use planning.
- (d) Provide police and/or fire protection/
- (e) Provide for the construction, maintenance and lighting of streets.
- (f) Construct sewers and/or provide sewage and/or garbage service.
- (g) Exercise authority in the area of schools and education.
- (h) Provide or arrange for utility services.

(2) Will there be particular powers that the governing body or the incorporated town is specifically prohibited from exercising?

[E] Consolidation of taxing districts

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(1) Which types of taxing districts would be considered for consolidation upon the incorporation of a town (e.g., general improvement districts, local improvement districts, special improvement districts)?

(2) Would consolidation occur such that the pertinent taxing districts would be absorbed into the

incorporated town, or would the taxing districts be consolidated in some way in which they would remain separate from the incorporated town?

(3) Would consolidation of taxing districts occur simultaneously with the creation of an incorporated town or at some later time?

(4) Would consolidation of taxing districts be mandatory upon the creation of an incorporated town or only optional?

(5) If taxing districts overlap completely in some areas, overlap partially in other areas, and do not overlap at all in other areas (imagine a “Venn diagram” like the Olympic rings logo), what mechanisms will need to be created to ensure that taxing districts are consolidated in a manner such that taxation is fair and equal?

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[F] Miscellaneous issues

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(1) Nev. Art. 4, § 25 requires the Legislature to establish a “system of County and Township Government which shall be uniform throughout the State.” Because of this constitutional provision, legislation allowing the creation of incorporated towns could not provide for the creation of incorporated towns only in certain counties.

(2) Nev. Art. 10, § 1 requires the Legislature to “provide by law for a uniform and equal rate of assessment and taxation.” This is just something to bear in mind regarding the creation/imposition of any taxes that might be necessary to support the services to be provided by an incorporated town.

(3) What procedures will be created (if any) to provide for the disincorporation of an incorporated town?