

Municipal Incorporation Handbook

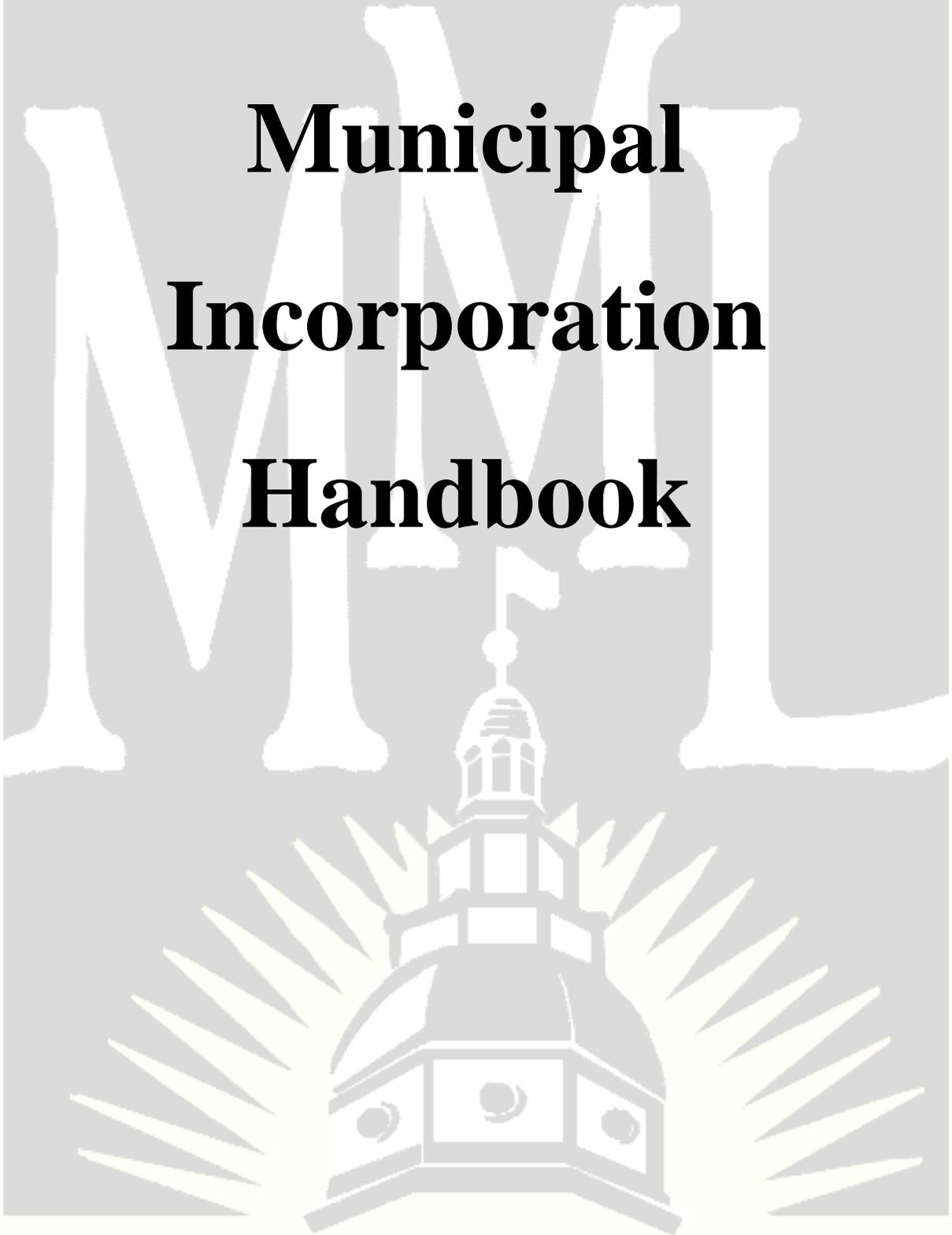


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Municipal Incorporation

Introduction

This handbook has been prepared by the staff of the Maryland Municipal League to provide guidance to individuals and communities on procedures and considerations associated with municipal incorporation in Maryland. League staff members are also available to answer any questions persons may have relating to this issue. Individuals wishing to arrange for presentations on municipal incorporation to community groups may do so by contacting the member services or research departments at the League office in Annapolis.

Background

Municipal corporations under Maryland state law are cities, towns or villages created under any general or special law of this state for general governmental purposes. They are subject to the provisions of Article 11-E of the Constitution of Maryland and the Local Government Article of the *Annotated Code of Maryland*. They possess legislative, administrative and police powers for the general exercise of municipal functions, and carry out such functions under the direction and oversight of elected and appointed public officials.

It is the existence of the legal status through a charter (the local equivalent of a state or federal constitution) and well defined boundaries that distinguishes an incorporated city or town from an unincorporated area. Indeed in Maryland some areas frequently thought to be cities or towns are not; examples include Silver Spring, Towson, Columbia, and Glen Burnie. County government is directly responsible for providing all local services to these areas.

It is difficult to define a typical incorporated city or town in Maryland. That is because of the great diversity that exists in the size and number and level of service offerings of the 156 incorporated Maryland municipalities (other than Baltimore City which in most respects is treated as a county under state law). Over 900,000 people—or approximately 15% of the state's total population—live in incorporated cities and towns other than Baltimore. In fact, more people live in each of the five most populous cities (Frederick, Rockville, Gaithersburg, Bowie and Hagerstown) than in one-third of the state's counties. Municipalities in Maryland vary in population from almost 70,000 (Rockville) to less than 20 (Port Tobacco). The median municipal population is 1,800.

Population however is not always an indicator of the number and level of services that are provided by small cities in the state. Frequently, relatively small rural municipal governments provide to their citizens a full range of services from water, sewer and refuse collection to police, roads and planning and zoning. Yet there are a number of larger cities in the Washington metropolitan area that may provide fewer services either because some services are provided by regional entities (such as the Maryland National Capital Park and Planning Commission and the Washington Suburban Sanitary Commission) or because, in exercising their home rule powers, the municipal governments have chosen not to provide certain services.

By way of example, some 87 Maryland cities and towns provide water to their residents while 75 provide sewer service. Over 100 incorporated municipalities exercise planning and zoning authority, while there are just four that operate municipal airports. All but 17 provide refuse collection services and all but nine provide for street maintenance. Eighty-eight municipal governments provide police protection, but only eleven provide bus service. Half a dozen even provide social services. Except for education, most health and social services, and prisons and detention centers, municipal governments provide similar types as and sometimes even greater numbers of services than do the counties in Maryland.

As a result of the diversity in population size and the mix and level of services provided, there is of course great variation in the yearly expenditures of Maryland's municipal governments. While total expenditures for all incorporated municipalities in Maryland exceeds \$1.2 billion and the mean average for city and town expenditures is over \$3 million, the range varies from less than \$5,000 to over \$100 million. The majority of municipal governments in Maryland have total expenditures of less than \$1 million. Less than a quarter have total expenditures exceeding \$3 million.

Authority

Constitution of Maryland

Maryland's 156 municipalities operate by the authority granted them in Article XI-E of the Constitution of Maryland, ratified by the voters of the state in November, 1954. The General Assembly has been restricted since that time to passing general laws relating to all municipalities or to all municipalities of a single class.

Article XI-E, Section 2 of the Constitution provides that the General Assembly shall by law classify all such municipal corporations by grouping them into one to four classifications based upon population. In 1955 the General Assembly enacted legislation establishing just one class of municipal corporations.

Annotated Code of Maryland—Title 4 of the Local Government Article and Article 23B (Repealed)

Legal procedures for incorporation, disincorporation, charter adoption and amendment, annexation and other general municipal functions are provided for in Title 4 of the Local Government Article of the *Annotated Code of Maryland*. The internal affairs of a municipal government—including conduct of elections, form of government and duties of officers—are structured by the specific municipal charter adopted by the town's citizens. The provisions of Title 4 specifying the required procedures for municipal incorporation are included within this handbook. An abbreviated incorporation procedures checklist, along with a flow chart detailing the procedures, has also been provided for your use.

Since 1954, many municipalities repealed earlier charters and adopted in large part the "Model Municipal Charter" created by the General Assembly as Article 23B of the *Annotated Code of Maryland*. The article was repealed by the General Assembly in 1994. This was done in large part because court actions over time had made portions of the article obsolete and because of its limitations in providing a framework for forms of municipal government other than a strong mayor-council form. Though contained within the code of Maryland laws, Article 23B actually had no force of law and served only as an example of the types of provisions that may go into a municipal government charter. Much of the basic language of old Article 23B still serves as the basis around which Maryland municipal charters were reformulated since 1954 and currently exist. An index of typical charter provisions is contained within this handbook for your information.

Many municipalities have had custom-tailored charters written to satisfy their particular needs. Under the home rule provisions of Article XI-E of the Constitution and Title 4 of the Local Government Article of the *Annotated Code of Maryland*, municipal corporations have full authority to adopt unique charter documents as long as they are in accord with any statutory limitations imposed by the General Assembly, such as in the areas of taxation, planning, and water and sewer.

As a result of the home rule provisions which grant municipal residents the power to draft and amend their charters, no two Maryland municipal governments are exactly alike in structure or operation. Each municipality has the power to change its structure and to shape the contents of its charter to meet the needs and desires of its citizens.

The incorporation of a municipality is accomplished solely through the efforts of citizens who wish to incorporate, with the approval of the county government. A municipality is by nature a voluntary governmental corporation which must maintain the majority support of its citizenry. Upon petition and referendum of eligible voters, any municipality in the state, except Baltimore, may be dissolved.

Procedures

I. Minimum Population

At least 300 bona fide residents must be encompassed by the proposed municipal corporate limits.

II. Petition

A. *Qualified Signers*—Petitions must be signed by at least 20% of the persons residing within the area to be incorporated who are registered to vote in county elections and by the owners of at least 25% of the assessed valuation of the real property within the area. Alternatively a petition may be signed by 25% of the registered voters within the area to be incorporated without any involvement of property owners.

B. *Format*—The petition must include a detailed description of the proposed municipal boundaries, the name of the proposed municipality, and a copy of the proposed charter as a supplement to the petition.

III. County Commission/Council Role

The role of the county governing body in this process is significant. Not only is discretion clear in the language of the law—that is, that a county "may" rather than "shall" schedule an incorporation referendum—but full and final authority has been granted to the county in matters of incorporation.

A. *Verification of Signatures*—Upon receiving the incorporation petition, the county governing body must verify that every person who signed the petition is a resident of the area proposed for incorporation and is registered to vote in county elections. The county must also confirm that the requirements for minimum percentage of qualified voter signers (and, where applicable, owners of property) are met

B. Denial of Referendum Petition

1. If the county governing board denies the referendum petition, the reasons for rejecting the referendum request must be in writing and must be made available to the general public.

2. Procedures must be established for reconsideration of the referendum request, including providing an opportunity for a public hearing with sufficient advance public notice.

C. Approval of Referendum Petition

1. If the petition complies with the law's requirements, the county governing body passes a resolution specifying the day and hours for the election. The referendum must take place not less than 40 nor more than 60 days after the passage of the resolution.
2. The referendum is submitted only to the registered voters of the area proposed for incorporation and is conducted as any other county-wide election. The vote is taken on the question of incorporation and approval of the proposed charter.
3. If a majority of those voting on the question vote for the incorporation, the area proposed shall become an incorporated municipality under the charter posted during the referendum. The cost of the election will be borne by the new municipality.
4. If a majority of those voting on the question vote against incorporation, the incorporation fails and the cost of the referendum will be borne by the county.

Historical Success

Since the ratification of the home rule amendment in 1954, there have been five referenda held for areas to become municipal corporations—all within Montgomery County; four of those referenda resulted in the creation of new municipalities. Chevy Chase, Section 3 and Chevy Chase, Section 5 were incorporated in 1982, Martin's Additions was incorporated in 1985, Chevy Chase View was incorporated in 1993 and North Chevy Chase was incorporated in 1996.

Friendship Heights (Montgomery County) successfully petitioned to referendum for incorporation in 1991, but the electorate rejected incorporation in the referendum election. Largo petitioned to referendum for incorporation in 2002, but the Prince George's County Council declined to call for a referendum on the question. Similarly, in 2007 the Montgomery County Council rejected an incorporation petition by the voters of Rollingwood.

Incorporation Considerations

Why incorporate? - What are the advantages of incorporation?

- To have direct local control over finances—city elected officials determine local revenue and expenditure needs and set the local tax rate and service charge levels.
- To exercise direct control of level and types of growth in and around the community through the exercise of planning and zoning authority (except in Prince George's County and Montgomery County) and by annexation.
- To locally determine the variety and levels of services provided to the community.
- To exercise broad police powers and code enforcement authority by enacting and enforcing local laws to meet locally determined needs.
- To make local government more accessible, accountable and responsive to citizen needs and desires because of smaller size and more direct access to local officials.
- To return a portion of income taxes paid to directly benefit community taxpayers as municipal governments receive a portion of the local piggyback income tax receipts generated from their taxpayers.
- To create direct access for the local community to various state shared revenues and state and federal grants.
- To foster a sense of community in an ill-defined place otherwise clearly identifiable only by a common zip code.
- To ensure that a community is not split into separate districts during decennial redistricting but is retained within a single district—a protection other communities currently lack—a guiding principle used by the state in redistricting is to locate any municipality within a single district when establishing a redistricting plan.

- In the case of homeowners' associations, to convert current fees paid to the association into property taxes which are tax deductible for income tax purposes for property tax payers.
- In the case of homeowners' associations, to reduce debt service payments because bonds issued by a municipality would be tax exempt and would generally carry a lower interest rate.
- In the case of homeowners' associations, to reduce insurance costs—liability exposure for municipalities is capped under state law—not so for homeowner's associations.

Why not incorporate? - What are the possible drawbacks of incorporation?

- There are costs in both time and money to incorporate.
- A higher level of taxation would ensue in most cases of incorporation to pay for the costs of new public services.
- An added level of government is sometimes seen as unnecessary or duplicative.
- With municipal incorporation comes the responsibility to provide desired levels and types of services.
- Local service provision gives rise to liability exposure and the risk of litigation for a municipal government and its public officials.
- Committed volunteers are needed to serve as public officials on various municipal boards and commissions.
- Economies of scale which county governments enjoy may in some cases reduce the costs of local services.
- There are difficulties set forth in law in achieving a successful incorporation, including receiving county government approval to incorporate and attaining necessary voter approval through an incorporation referendum.

Municipal Government Finances

Statewide, the largest portion of municipal revenues is derived from property taxes; property taxes make up about a third of all revenues for incorporated cities and towns. Service user fees and charges is the second leading municipal revenue source. Together these two revenues make up almost two-thirds of the monies municipal governments take in. Other significant sources include income taxes, state shared revenues, state and federal grants and frequently county aid. These sources are illustrated in the pie chart on municipal revenues within this handbook. Note well however that a great deal of diversity exists in the revenue makeup of the various 156 municipal governments in the state. By way of example, property taxes as a percentage of total municipal budget in a typical year vary from as low as 3% to more than 80%. Municipal service charges as a percent of budget may range from 0% to 75%. As state shared revenues and state administered local revenues are an important revenue source for many cities and towns, detailed information on them is also provided within this handbook.

A chart detailing typical municipal expenditures statewide is also included within this handbook. Note again that the nature and level of expenditures also varies wildly from one municipal government to the next. Decisions relating to what services a newly incorporated community intends to provide and at what levels will determine what and how monies are expended by that municipality. Ability to pay for desired services along with the results of negotiations with the county as to who will provide what services will also determine the make-up of the expenditure picture for a newly incorporated municipal government.

State Shared Revenues and State Administered Local Revenues

Each year Maryland's cities and towns (except for Baltimore) share over \$100 million in revenues raised or administered by the State and returned to municipal governments. State administered local revenues and state shared revenues available to newly incorporated cities and towns include the following:

State Shared Revenues

- Highway User Revenues (HUR's) is the largest municipal source of state shared funds, accounting for some \$20 million dollars to cities and towns in a typical year. A formula based on road mileage and registered vehicles is used to apportion HUR among cities and counties. These revenues are special purpose funds and may be used only for specified transportation related needs.

- **State Aid for Police Protection** is also a significant source of state shared revenues for 88 municipalities that provide police protection. Eligible cities and towns, employing at least one full-time officer, shared several million dollars each year. These special purpose funds must be expended for police protection only.
- **Business License Fees (Traders Licenses)** are also general purpose funds collected by the State, a small portion of which is returned to cities and towns. These revenues amounting to less than \$2 million in most years, arise from fees for licenses issued for pool tables, bowling alleys, vending machines, restaurants, peddlers, and other specified business activities.
- **State Aid for Fire, Rescue and Ambulance Services**, allocated for the first time in FY 86, is distributed by the State to counties. County distribution is then made to municipalities which expend more than \$25,000 from municipal sources for fire protection. The funds may be used for non-personnel expenditures.

State Administered Local Revenues

- The piggy-back income tax is one of two state administered local revenues, accounting for tens of millions of dollars to municipal governments in a typical year. Municipalities receive 8.5% of each resident's State income tax liability. This is equivalent to 17% of the local piggy-back income tax paid by municipal residents. Income tax revenues are general purpose funds and may be expended for any public purpose.
- Admissions and Amusement Tax is another source of general purpose funds which returns over \$5 million to municipal governments in a typical year. Each city and town may levy a tax of up to 10% on the gross receipts of a wide variety of entertainment and amusement activities including athletic events, concerts, night club entertainment, and the use of coin-operated video games. The State collects the tax and rebates the amount, less an administrative fee, to municipalities.

Eligibility standards for each of the State administered local revenues and State shared revenues vary. All require the filing of reports with appropriate State agencies. A requirement for receipt of Business License Fees is that a municipality must levy a tax of at least one dollar per capita. For police protection aid, of course, a city or town must expend monies for police protection purposes. Fire protection services aid requires the expenditure of minimum funds for fire protection. All municipalities, however, may at their discretion levy a tax on admissions and amusements.

Predicting State shared revenues for incorporated areas is usually not difficult, since municipal officials may base estimates on prior-year data and projections made available by State agencies. For an unincorporated community considering incorporation, reliable estimates are more difficult to obtain. Still, by using budgets from existing towns of similar population, size, and wealth to the unincorporated community, a rough estimate is possible.

A booklet describing each source of funding, the formula for distribution, conditions of eligibility, and a contact person with the appropriate State agency is available from the League.

Planning and Zoning Issues

For a newly created municipality that is eligible to exercise planning and zoning authority, it must work cooperatively with the county in developing the initial comprehensive land use plan for the city or town. Also, Maryland municipal incorporation law provides that initial zoning designations of a newly created municipality may not permit for a period of five years a substantially different land use than is permitted under the existing county master plan. This prohibition may be waived with the express approval of the county governing board.

Incorporation Chart

Incorporation Chart

Tips for Successful Incorporation

Most efforts to incorporate as a city or town usually fail within six months to a year—well before the actual municipal incorporation process, required by State law, begins. The initiative to effect real change is generally short-lived as community activists come and go or become involved with other issues. Much preparation needs to take place before a community can determine if municipal incorporation is the best course of action and the formal process begins. Without laying the proper groundwork, there is little chance of sustaining the momentum necessary to see a community through the rigorous incorporation process.

Chief Justice Marshall, in McCulloch v. Maryland (1819), said that, “No city was ever built with the sole object of being incorporated, but is incorporated as affording the best means of being well governed.”

There are no short cuts to determining the best means of being well governed and municipal incorporation may not be the best means to address a community’s needs. The following is a list of steps that should be taken before considering municipal incorporation.

- Survey every neighborhood and influential organization to see if the desire for change is as widespread as you think it is and what the issues are that are driving the need for incorporation. You will likely get varied opinions. You may even be surprised to find that your original thoughts about needs and goals may look very different after an extensive survey.
- Draft a vision statement or set of goals that everyone can generally agree upon. This will be the hardest task.
- Make sure you can then identify clearly and concisely what the community’s needs are.
- Decide how best to realize the community’s vision or achieve community goals. It may be that the optimal way to accomplish your objectives is through municipal incorporation.

Following these steps will take some time, but will also build support for whatever direction you decide to pursue. It is very important that the whole community feels that it has been involved in the decision making process from the beginning.

Code of Maryland
Local Government Article
Title 4, Subtitle 2
Municipal Incorporation

§4-201. Definitions

- (a) In this subtitle the following words have the meanings indicated.
- (b) “County liaison” means a county official, or the designee of the county official, who coordinates communication between the organizing committee and the county.
- (c) “Organizing committee” means the group of individuals from the organizing community that works with the county commissioners or county council on the proposed municipal incorporation after a petition for incorporation is verified.
- (d) “Organizing community” means individuals residing in an unincorporated area who are interested in forming a municipality.

§4-202. Application

This subtitle governs municipal incorporation.

§4-203. Minimum Population Requirement

An area proposed to be incorporated shall contain at least 300 residents before the organizing community may proceed under this subtitle.

§4-204. Petition to Incorporate

- (a) A proposal to incorporate an area as a municipality is initiated when a valid petition is presented to the county commissioners or county council of a county by:
 - (1) at least 25% of the registered voters who are residents of the area proposed to be incorporated; or
 - (2) at least 20% of the registered voters who are residents of the area proposed to be incorporated, together with the owners of at least 25% of the assessed valuation of the real property of the area proposed to be incorporated.
- (b) The Office of the Attorney General shall:
 - (1) create a standard petition form for use by an organizing community; and
 - (2) provide the board of elections of each county with the form for distribution to an organizing community.
- (c) A petition presented under subsection (a) of this section shall:

(1) express the interest of the subscribing individuals in the incorporation of the area;

(2) contain a detailed description of the boundaries of the area proposed to be incorporated, including a survey of courses and distances or general landmarks and place names;

(3) state the name of the new municipality, which may not be the same as a name used by a municipality or county in the State; and

(4) state the names of the individuals who will initially represent the organizing community on the organizing committee.

(d) The organizing community shall obtain the minimum number of valid signatures required under subsection (a) of this section within 18 months after the organizing community receives the standard petition form from the county board of elections.

(e) Each person signing the petition shall indicate on the petition:

(1) the person's name and residence address; and

(2) if the petition is intended to be presented under subsection (a)(2) of this section and the person signing the petition owns real property in the area proposed to be incorporated, the location and assessed valuation of the property.

(f) Within 60 days after receiving a petition, the county commissioners or county council shall:

(1) verify that each person who signed the petition:

(i) resides in the area proposed to be incorporated;

(ii) is registered to vote in the elections of that county; and

(iii) if applicable, owns real property within the area proposed to be incorporated;

(2) verify that the petition meets the requirements of this section; and

(3) appoint a county liaison if the petition meets the requirements of this section.

(g) A petition, when received, becomes the property of the county commissioners or county council and may not be used to initiate another incorporation.

(h) A proposal to incorporate a municipality and to adopt a municipal charter may not be rescinded after the formal submission of the proposal in a manner other than that of a formal charter repeal as provided in §§ 4-313 and 4-314 of this title.

§4-205. Organizing Committee Report

(a) (1) Within 90 days after the county commissioners or county council has verified that a petition presented under § 4-204 of this subtitle is valid, the organizing committee shall:

- (i) actively seek information and input from the county;
- (ii) hold a public meeting to collect testimony on the proposed incorporation; and
- (iii) provide the county commissioners or county council with a report on issues related to the proposed incorporation.

(2) During the 90-day period, the county shall cooperate fully with the organizing committee.

(b) The organizing committee shall:

(1) notify the county liaison of all meetings and deliberations of the organizing committee; and

(2) give the county liaison full opportunity to participate in all meetings and deliberations of the organizing committee.

(c) Within 45 days after receiving the report required under subsection (a)(1)(iii) of this section, the county commissioners or county council or its designee may review the report and provide comments to the organizing committee on issues relating to the proposed incorporation.

§4-206. Municipal Charter Submittal

(a) The organizing committee shall present to the county commissioners or county council a proposed municipal charter:

(1) within 45 days after receiving the comments submitted to the organizing committee under § 4-205(c) of this subtitle; or

(2) if the county commissioners or county council has not submitted comments, within 90 days after the report is submitted by the organizing committee under § 4-205(a)(1)(iii) of this subtitle.

(b) The organizing committee shall submit statements with the proposed municipal charter describing:

(1) the likely fiscal effect of the proposed incorporation on residents of the proposed municipality, residents in the vicinity of the proposed municipality, and the county;

(2) the services that the proposed municipality is expected to provide; and

(3) the impact that the proposed incorporation is expected to have on property tax rates.

§4-207. Request for Referendum

(a) (1) If the county commissioners or county council approves the referendum request, between 40 and 60 days after it receives the proposed municipal charter, the county commissioners or county council shall specify, by resolution, the day and hours for a vote on the proposed incorporation by the voters of the area to be incorporated.

(2) The resolution shall include the exact text of the proposed municipal charter as submitted by the organizing committee.

(b) (1) If the county commissioners or county council rejects the referendum request, the county commissioners or county council shall:

(i) provide in writing and make available to the public within a reasonable time the reasons for the rejection; and

(ii) establish reasonable procedures by which the county commissioners or county council shall reconsider a referendum request, including an opportunity for a public hearing with sufficient advance public notice.

(2) After the hearing and reconsideration process is completed, the county commissioners or county council, by resolution, shall affirm the rejection or approve the referendum request.

§4–208. Public Notice of Referendum

(a) The county commissioners or county council shall notify the voters of the area proposed to be incorporated by posting and publication of the proposal to incorporate, including a fair summary of the proposed municipal charter.

(b) For at least 4 weeks immediately before the referendum, the county commissioners or county council shall make available an exact copy of the proposed municipal charter for public inspection at its office.

(c) The county commissioners or county council shall publish notice of the referendum, together with a fair summary of the proposed municipal charter, in a newspaper of general circulation in the area proposed to be incorporated at least once a week during the 4 weeks immediately before the referendum.

(d) On the day of the referendum, the county commissioners or county council shall make available an exact copy of the proposed municipal charter for public inspection at each place for voting on the referendum.

§4–209. Referendum Conduct and Results

(a) Except as expressly or necessarily modified by this subtitle, a referendum shall be conducted generally according to the procedures and practices for regular countywide elections.

(b) (1) On the day and during the hours specified for the referendum, the question of incorporation under the proposed municipal charter shall be submitted to the registered voters of the area proposed to be incorporated.

(2) The county board of elections shall arrange for and conduct the referendum.

(3) The wording specified by the county commissioners or county council in the resolution authorizing a referendum on the question of the proposed incorporation shall be placed on the ballots used at the referendum.

(c) Promptly after the canvass is complete, the county board of elections shall certify the results to the county commissioners or county council.

(d) Within 10 days after receiving a certification of the vote on the referendum from the county board of elections:

(1) if a majority of those who voted on the question voted in favor of incorporation under the proposed municipal charter:

(i) the county commissioners or county council publicly shall so proclaim; and

(ii) on the 30th day after the public proclamation, the area proposed to be incorporated shall become a municipality operating under the municipal charter; or

(2) if less than a majority of those who voted on the question voted in favor of incorporation under the proposed municipal charter:

(i) the county commissioners or county council publicly shall so proclaim; and

(ii) the proclamation shall state that the proposed incorporation is not approved.

§4–210. Election of Municipal Governing Body

(a) An election of officers for a proposed municipality shall be conducted at the same time and place as the referendum on the question of incorporation and is subject to the same procedures and practices.

(b) An individual may not be initially nominated or elected to a municipal office unless the individual qualifies under the requirements specified for that office in the proposed municipal charter.

(c) (1) A candidate for an elected office of a proposed municipality shall be nominated by a certificate of nomination filed by the candidate with the county board of elections.

(2) The certificate of nomination shall include:

(i) the name and residence address of the candidate; and

(ii) the office that the candidate seeks.

(d) After certificates of nomination by candidates for municipal office are filed, the county board of elections shall prepare ballots to allow the registered voters of the area proposed to be incorporated to vote on the candidates who are nominated under this section.

§4–211. Election Results

(a) Casting a vote against the proposed incorporation does not prevent the voter from voting for a candidate for a municipal office.

(b) The county board of elections shall:

- (1) tally the votes cast for candidates to a municipal office; and
 - (2) certify the results to the county commissioners or county council.
- (c) If less than a majority of those who voted on the question voted in favor of incorporation under the proposed municipal charter, the votes cast for candidates for a municipal office are void.

§4-212. Proclamation of Election Results

(a) The county commissioners or county council publicly shall proclaim that a candidate who received a plurality of the votes cast for an office has been elected to that office.

(b) A candidate proclaimed by the county commissioners or county council to have been elected to an office shall become an officer of the municipality when the municipal charter takes effect.

(c) (1) If no individual is nominated for a municipal office, a candidate elected to an office is unable to assume the office, or for any other reason no candidate is elected to fill an office, the county commissioners or county council shall appoint a resident of the municipality to the office.

(2) When appointed to an office as provided in paragraph (1) of this subsection, a resident shall hold the office as if elected.

§4-213. Responsibility for Payment of Costs of Referendum and Election

(a) Subject to subsection (b) of this section, the county commissioners or county council shall pay for:

- (1) the referendum;
- (2) the original election of officers required under § 4-210 of this subtitle;

and

(3) the reasonable costs of third party consultants hired by the county commissioners or county council to analyze issues related to the proposed incorporation.

(b) If the referendum results in incorporation, the municipality shall repay the expenses specified in subsection (a) of this section to the county within 1 year after the incorporation takes effect.

(c) After 1 year from the effective date of the incorporation, the county commissioners or county council may withhold any payment due to the municipality to satisfy any unpaid expense specified in subsection (a) of this section.

§4-214. Conveyance of Charter to the Department of Legislative Services

- (a) When the public proclamation under § 4–209(d) of this subtitle is made, the county commissioners or county council shall send the information concerning the municipal charter to the Department of Legislative Services, as provided in § 4–109 of this title.
- (b) The municipal charter is subject to the requirements of §§ 4–310 and 4–311 of this title, including the printing and indexing in the laws enacted by the General Assembly.
- (c) The exact text of the municipal charter, including any amendments, shall be included in any edition or codification of the municipal charter.

§4–215. Local Income Tax Distribution

If a referendum held under this subtitle results in the creation of a new municipality, the local income tax payments authorized under § 2–607 of the Tax – General Article shall be distributed to the municipality as follows, unless the county commissioners or county council agrees to an accelerated payment schedule:

- (1) in the first full fiscal year after the municipal incorporation takes effect, one–third of the distribution otherwise required under § 2–607 of the Tax – General Article;
- (2) in the second fiscal year after the municipal incorporation takes effect, two–thirds of the distribution otherwise required under § 2–607 of the Tax – General Article; and
- (3) in the third fiscal year after the municipal incorporation takes effect and each subsequent fiscal year, all of the distribution required under § 2–607 of the Tax – General Article.

§4–216. Exercise of Planning and Zoning Authority

- (a) A new municipality that is eligible to assume planning and zoning authority and the county commissioners or county council shall cooperate in developing the first comprehensive land use plan of the municipality.
- (b) Unless the county commissioners or county council expressly approves otherwise, the initial zoning designations used by the municipality shall comply with §§ 4–104(e) and 4–516 of this title, including the 5–year zoning classification restriction.

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26. Board of supervisors of elections.

27. Same—Removal of members.

28. Same—Duties.

29. Notice of registration days and elections.

30. Registration.

31. Appeal from action of board of supervisors of elections.

32. Filing certificate of nomination.

33. Primary election; municipal meeting or convention.

34. Election of mayor and councilmen.

35. Conduct of elections generally.

36. Special elections.

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37. Vote count.

38. Preservation of ballots.

39. Vacancies.

40. Women.

41. Regulation and control by council.

42. Penalties.

Finance

43. Clerk-treasurer.

44. Same—Powers and duties.

45. Same—Bond.

46. Fiscal year.

47. Budget.

48. Same—Adoption.

49. Appropriations.

50. Transfer of funds.

- 51. Overexpenditures forbidden.
- 52. Appropriations lapse after one year.
- 53. Checks.
- 54. Taxable property.
- 55. Budget authorizes levy.
- 56. Notice of tax levy.
- 57. When taxes are overdue.
- 58. Sale of tax-delinquent property.
- 59. Fees.
- 60. Audit.
- 61. Tax anticipation borrowing; sale of municipal bonds or notes.
- 62. Payment of indebtedness.
- 63. Previous issues.
- 64. Purchasing and contracts.

Personnel

- 65. Clerk to council.
- 66. Town attorney.
- 67. Authority to employ personnel.
- 68. Merit system authorized.
- 69. Unclassified and classified service.
- 70. Prohibitions and penalties.
- 71. Retirement system.
- 72. Compensation of employees.
- 73. Employee benefit programs.

- 79. Placing structures in public ways.
- 80. Obstructions.
- 81. Entering on county public ways.
- 82. Connections.
- 83. Same—Charge.
- 84. Changes in plumbing, etc., to prevent waste or improper use.
- 85. Private systems.
- 86. Extensions beyond boundaries.
- 87. Right of entry.
- 88. Pollution of water supply.
- 89. Contracts for service.
- 90. Charges.
- 91. Exception.

Special Assessments

- 92. Power of town to levy special assessments.
- 93. Procedure.

Town Property

- 94. Acquisition, possession and disposal.
- 95. Condemnation.
- 96. Town buildings.
- 97. Protection of town property.

Public Ways and Sidewalks 25

- 74. Definition of public ways.
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- 75. Control of public ways.
- 76. Powers of town as to public ways.
- 77. Powers of town as to sidewalks.

Water and Sewer

- 78. Powers of town.

General Provisions

- 98. Oath of office.
- 99. Official bonds.
- 100. Prior rights and obligations.
- 101. Misdemeanors.
- 102. Effect of charter on existing ordinances.
- 103. Separability.
- 104. [Repealed].

*Note that Article 23B served only as a model charter. Modifications to Article 23B were generally made to suit the specific needs and desires of individual municipal governments.

Incorporation Checklist

_____ At least 300 residents must be encompassed by proposed municipal limits

and

_____ Petition for incorporation must be signed by at least 20% of qualified voters and 25% of owners of assessed property

or

_____ Petition signed by at least 25% of the qualified voters (without property owners).

_____ County governing body receives petition and verifies signatures. If petition does not meet requirements it is invalid and incorporation fails.

_____ If petition is valid, within 60 days the county governing board must pass resolution specifying date for incorporation referendum

or

_____ County governing board may reject incorporation petition.

If County Governing Board Approves Referendum Request

_____ Public notice of referendum on incorporation must be given for four weeks prior to election in newspapers of general circulation.

_____ Within 40 to 60 days after resolution's passage, referendum is held and votes certified.

_____ Within 10 days County governing board proclaims incorporation approved by referendum and registers with Legislative Reference,

or

County governing board proclaims incorporation referendum failed.

If County Board Rejects Incorporation Petition

_____ County governing board must provide written reasons for rejection.

_____ County board must establish procedures for reconsideration of referendum requests.

_____ Reconsideration hearing given advance public notice and held.

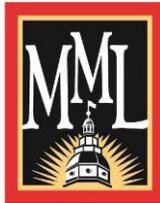
_____ County governing board grants referendum request by resolution

or

County governing board affirms rejection of request by resolution and incorporation fails.

The Maryland Municipal League

The Maryland Municipal League, founded in 1936, represents 157 municipal governments and two special taxing districts throughout the State. A voluntary, nonprofit, nonpartisan association controlled and maintained by city and town governments, the League works to strengthen the role and capacity of municipal government through research, legislation, technical assistance, training, and the dissemination of information for its members. Through its membership in the National League of Cities, the League offers legislative representation in Washington, urban research programs, and a national municipal government information exchange.



Maryland Municipal League *an association of cities and towns*

1212 West Street
Annapolis, MD 21401-3610

410/268-5514
800/492-7121
FAX 410/268-7004

E-mail – mml@mdmunicipal.org
WEB URL – www.mdmunicipal.org