

Municipal

Incorporation



Chief Justice Marshall, in McCullough 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."



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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 questions persons may have relating to this issue. Individuals with questions or those 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 and villages created under any general or special law of this state for general governmental purposes. They are subject to the provisions of Article XI-E of the Constitution of Maryland and Section 23A 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 and other unincorporated 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 – in this handbook, all references to incorporated municipalities do not include Baltimore City). Over 770,000 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 over 50,000 to well under 100. The median municipal population is about 1,500.

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 83 Maryland cities and towns provide water to their residents while 84 provide sewer service. Over 100 incorporated municipalities exercise planning and zoning authority, while there are just four that operate municipal airports. All but three provide refuse collection services and all but 14 provide for street maintenance. Eighty-three municipal governments provide police protection, but only ten provide bus service. Eleven even provide some form of 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 \$600 million and the mean average for city and town expenditures is over \$4 million, the range varies from less than \$5,000 to over \$50 million. Almost half of municipal governments in Maryland have total expenditures of less than \$1 million. Less than a 20% have total expenditures exceeding \$5 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—Articles 23A and Article 23B (Repealed)

Legal procedures for incorporation, disincorporation, charter adoption and amendment, annexation and other general municipal functions are provided for in Article 23A of the *Annotated Code of Maryland*. The internal affairs of a municipal government—including the conduct of elections, the form of government used and the duties of officers—are structured within the specific municipal charter adopted by a town's citizens. The provisions of Article 23A specifying the required procedures for municipal incorporation are included within this handbook. 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 primarily because court actions over time had made portions of the article obsolete and because of its limitations in providing a framework for the variety of forms of municipal government that exist. 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 language of old Article 23B still serves as the basis from which Maryland municipal charters have been drafted and amended since 1954. 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 Article 23A 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 that 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 the citizens who wish to incorporate, with the approval of the county government. A municipality is by nature a voluntary governmental corporation that 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 people must reside within 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

As required by law, the Attorney General of Maryland has created a standard petition form for use in incorporation drives. The petition must include a description of the proposed municipal boundaries, the name of the proposed municipality, and the names of individuals who will initially represent the organizing community as it attempts to incorporate.

C. Time Constraints

From the time that a community receives the standard petition form, from the respective county election board, it has 18 months to obtain sufficient signatures to incorporate.

III. Organizing Committee

Once a petition is filed, the law requires that a committee be formed to work with the county on the proposed incorporation. With regard to the proposed incorporation, the committee must seek input from the county; report to the county on related issues; and keep the county apprised of meetings, required public hearings and other deliberations. The committee must submit to the county a proposed municipal charter along with information on services the municipality plans to provide and on the likely impact of the incorporation on the citizenry of the county and property tax rates.

IV. County Commission/Council Role

The role of the county governing body in this process is significant. The county has full discretion to respond to a valid incorporation petition by calling for an incorporation referendum or choosing not to do so.

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. Upon verification of the petition, the county must appoint a liaison to coordinate communication between the organizing committee and the county.

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 between 40 and 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 countywide 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 becomes an incorporated municipality under the charter posted during the referendum. The cost of the election and certain analyses conducted by the county are borne by the newly created municipality.
4. If a majority of those voting on the question vote against incorporation, the incorporation fails and the cost of the referendum is borne by the county.

Historical Success

Since the ratification of the home rule amendment in 1954, there have been six referenda held for areas to become municipal corporations—all within Montgomery County; five 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.

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 University of Maryland Institute for Governmental Service study in 1992 estimated one community's incorporation costs to be as much as \$11,000.
- 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 about 60% of the monies municipal governments take in. Other significant sources include income taxes, state shared revenues, state and federal grants and, frequently, county aid. 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 little as 3.0% to more than 80%. Municipal service charges as a percent of budget may range from 0.0% to over 70%. 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.

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 amount and how a municipality will expend money. 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 \$60 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)** are the largest municipal source of state shared funds, accounting for over \$35 million 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 over 80 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.

- **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** is distributed by the State to counties. County distribution is then made to municipalities that expend more than \$25,000 from municipal sources for fire protection. The funds may be used for non-personnel fire and rescue related expenditures.

State Administered Local Revenues

- The 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 17% of the local income tax paid by municipal residents. Income tax revenues are general-purpose funds and may be expended for any public purpose. Income taxes for a newly incorporated municipality are phased in over a three-year period to reduce the potential impact of lost revenues to the county.
- Admissions and Amusement Tax is another source of general-purpose funds that returns over \$6 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, nightclub 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 levy a property 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.

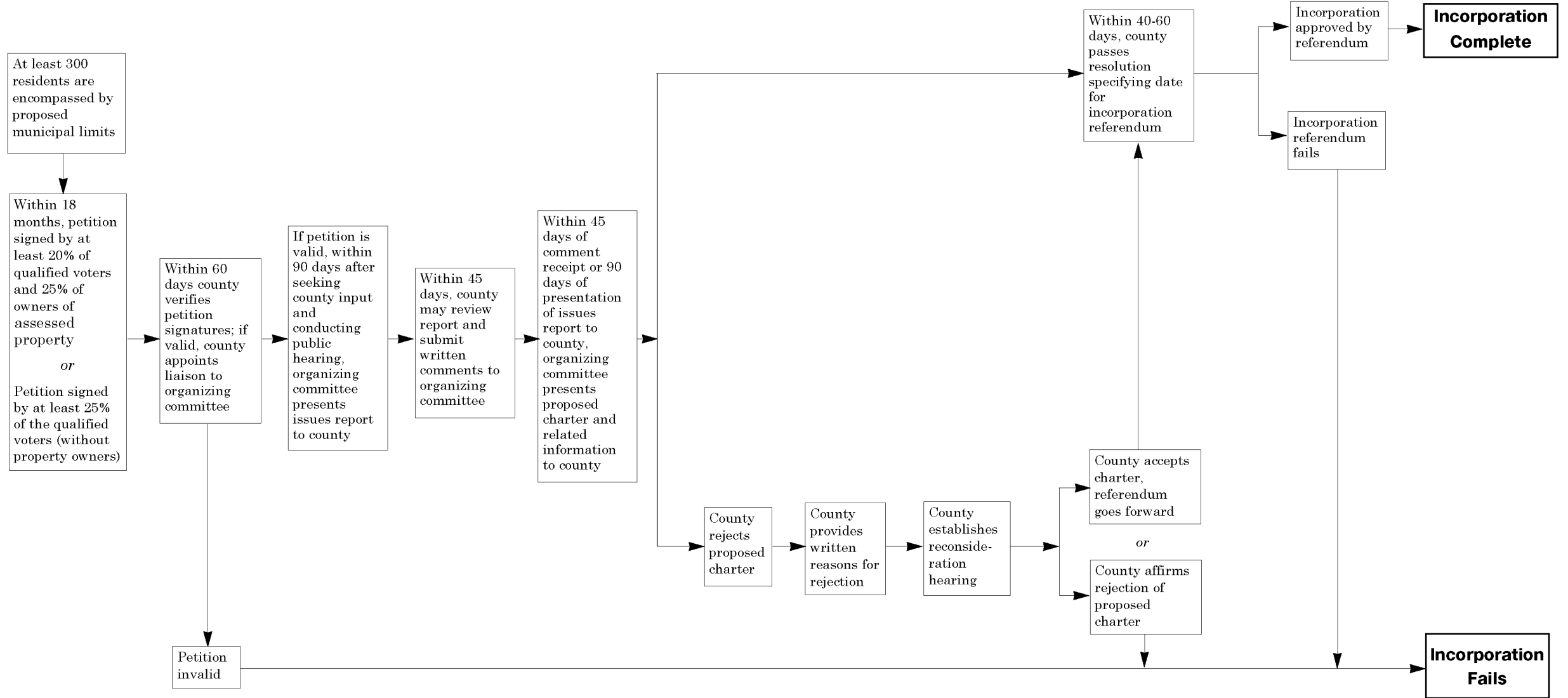
Predicting State shared revenues for incorporated areas is usually not difficult, since municipal officials may base estimates on prior years' data and projections made available by State agencies. For an unincorporated community considering incorporation, reliable estimates are more difficult to obtain. 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.

Maryland Municipal Incorporation Procedures





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 shortlived 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 *McCullough 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 drive 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 visions or achieve community goals. It may be that the only 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.

Annotated Code of Maryland

Art. 23A, §§ 20-30

Incorporation of Municipalities

§ 20. Applicability of subheading.

(a) *Definitions.*

(1) In this subtitle the following words have the meanings indicated.

(2) “County governing body” means the board of county commissioners or county council of a county.

(3) “County liaison” means a county official, or the designee of the county official, who is responsible for coordinating communication between the organizing committee and the county.

(4) “Organizing committee” means the group of individuals from the organizing community that is responsible for working with the county governing body on the proposed municipal incorporation after a petition for incorporation is verified.

(5) “Organizing community” means individuals residing within a particular unincorporated area who are interested in forming a municipal corporation.

(b) *In general.* — This subtitle governs the incorporation of any area and group of individuals, not then existing as a municipal corporation. An area proposed for incorporation shall contain at least 300 bona fide residents before it may proceed under the provisions of this subtitle.

§ 21. Petition for incorporation.

(a) *Initiation of proposal to incorporate — In general.*

(1) At least 20% of the individuals who reside within any particular area in a county and who are registered to vote in county elections, together with the owners of at least 25% of the assessed valuation of the real property of the area to be incorporated, may initiate a proposal to incorporate that area as a municipal corporation, by presenting a valid petition to the county governing body.

(2) At least 25% of the individuals who reside within any particular area in a county and who are registered to vote in county elections may initiate a proposal to incorporate that area as a municipal corporation, by presenting a valid petition to the county governing body.

(b) *Standard petition form.*

(1) The Office of the Attorney General shall create a standard petition form for use by any organizing community within the State.

(2) The Attorney General shall provide the board of supervisors of elections of each county with the form created under paragraph (1) of this subsection for dissemination to any organizing community.

(c) *Resolution providing for submission of question to voters; rejection of referendum request.* —A petition presented under subsection (a) of this section shall:

- (1) Express the interest of the subscribing individuals in the incorporation of their 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 chosen for the new municipal corporation, which may not be the same name as that used by any existing municipal corporation 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) *Deadline for obtaining signatures.* — The organizing community shall obtain the minimum number of required valid signatures within 18 months from the date that the organizing community received the standard petition form from the county board of supervisors of elections.

(e) *Name and address of person signing* — Each person signing the petition shall indicate on the petition the person's name and residential address and the location and assessed valuation of the person's property, if the person owns real property in the area to be incorporated and if the organizing community pursues the incorporation petition under subsection (a) (1) of this section.

(f) *Duties of governing body.* — Within 60 days of receiving a petition, the county governing body:

- (1) Shall verify that each person who signed the petition resides in the particular area to be incorporated, is registered to vote in county elections, and, if applicable, owns real property within the area to be incorporated;
- (2) Shall verify that the petition meets the requirements of this section; and
- (3) If the petition meets the requirements of this section, shall appoint a county liaison.

(g) *Filed petition property of governing body.* — A petition when filed becomes the property of the county governing body and may not be used for the purposes of initiating further referenda.

§ 22. Report of organizing committee.

(a) *Information; public meeting; report* –

- (1) Within 90 days from the verification of a valid petition, the organizing committee shall:
 - (I) Actively seek information and input from the county government; and
 - (ii) Hold a public meeting to collect public testimony on the proposed incorporation
 - (iii) Present the county governing body with a report on issues related to the proposed incorporation
- (2) During the 90-day period required under paragraph (1) of this subsection, the county government shall cooperate fully with the organizing committee.

(3) The organizing committee shall:

(i) Notify the county liaison of all meetings and deliberations of the organizing committee; and

(ii) Ensure that the county liaison is given full opportunity to participate in all meetings and deliberations of the organizing committee.

(b) *Governing body to review report* — Within 45 days of the receipt of the report required under subsection (a) (1) (iii) of this section, the county governing body or its designee may review the report and provide comments to the organizing committee on issues relating to the proposed incorporation.

§ 23. Submission of proposed charter.

(a) *Proposed charter.* – The organizing committee shall present to the county governing body a proposed charter for use in the referendum election:

(1) Within 45 days of receipt of the comments submitted to the organizing committee under § 22 (b) of this subtitle; or

(2) If the county governing body has not submitted comments, no later than 90 days after the report is sent by the organizing committee under § 22 (a) (1) (iii) of this subtitle.

(b) *Proposed charter statements.* – The organizing committee shall also submit with the proposed charter statements that describe:

(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 as a whole;

(2) The services the proposed municipality will provide; and

(3) The impact the proposed incorporation will have on property tax rates.

§ 24. Resolution regarding special referendum.

(a) *Specification of days and hours* – Between 40 and 60 days after the county governing body receives the proposed charter from the organizing committee, the county governing body may specify, by resolution, the day and hours for a special referendum election on the proposed incorporation for the voters of the area to be incorporated.

(b) *Exact wording of proposed charter to be included* – The resolution described in subsection (a) of this section shall contain the exact wording of the proposed charter, as submitted by the organizing committee, to be voted on at the time of the referendum.

(c) *Rejection of referendum request.* –

(1) If the county governing body rejects the referendum request, the county governing body shall provide in writing and make available to the general public within a reasonable time the reasons for rejecting the referendum request.

(2) The county governing body shall establish reasonable procedures by which a reconsideration of a rejection of a referendum request can be undertaken, including an opportunity for a public hearing with sufficient advance public notice.

(3) On completion of the hearing and review process, the county governing body shall by resolution affirm the rejection or grant the referendum request.

§ 25. Posting and publication.

The county governing body shall give notice by posting and publication of the submission of the proposal of incorporation, including a fair summary of the proposed charter, to the voters of the area proposed to be incorporated. For not less than the 4 weeks immediately preceding the election at which the question is to be submitted, a complete and exact copy of the wording of the proposed charter shall be posted or available for public inspection at the office of the county governing body. On the day of the election a copy shall be posted or available for public inspection at the place or places for voting on the question of incorporation. Notice of the election, together with a fair summary of the proposed charter, shall be published in a newspaper or newspapers of general circulation in the particular area proposed to be incorporated not less than once in each of the 4 weeks immediately preceding the election.

§ 26. Referendum; proclamation of result.

(a) *Conduct of election; ballots.* — On the day and during the hours specified for the referendum, the question of incorporation under the proposed charter shall be submitted to the registered voters of the area proposed to be incorporated. The board of supervisors of elections of the county, and its clerks, judges of election and subordinates, shall arrange for and conduct the referendum. It is the intent of this section that the referendum election shall be conducted generally according to the procedures and practices observed for regular countywide elections, except as specifically or necessarily modified by the provisions of this subtitle. The wording specified by the county governing body, in the resolution providing for a referendum on the question of the proposed incorporation, shall be placed on the ballots or voting machines used at the referendum election.

(b) *Tally and certification of results.* — The board of supervisors of elections, and its clerks, judges of election and subordinates, promptly following the closing of the polls shall tally the results thereof, and shall forthwith certify the results of the referendum to the county governing body.

(c) *Proclamation of results; effect of election.* — If a majority of those who vote on any question so submitted to the voters of a particular area, proposing the incorporation thereof, shall cast their votes in favor of the incorporation under the proposed charter, the county governing body shall within 10 days after receiving a certification of the vote from the board of supervisors of elections so proclaim publicly, and on the 30th day following the public proclamation the area specified, and the residents thereof, shall be deemed to be a municipal corporation operating under and in accordance with the charter so proposed, in all respects to be effective and observed as the charter of the municipal corporation. If less than a majority of those who vote on any such question of proposed incorporation shall cast their votes in favor of the incorporation under the proposed charter, the county governing body likewise shall so proclaim, adding to the proclamation the statement that the proposed incorporation is of no effect and that as to the said proposed municipal incorporation the proposed charter is null and void and of no effect whatsoever.

§ 27. Cost of referendum.

(a) *Governing body to defray expenses.* — Subject to the provisions of subsection (b) of this section, the county governing body shall defray the expenses of:

- (1) The referendum election;
- (2) The original election of officers; and
- (3) The reasonable costs of any third party consultants hired by the county governing body to analyze issues related to the proposed incorporation.

(b) *Where incorporation results.* — If the referendum vote results in incorporation, the municipal corporation shall repay the total amount of the expenses specified in subsection (a) of this section to the county governing body, within 1 year following the effective date of the incorporation.

(c) *Withholding of payments.* — After 1 year from the effective date of the incorporation, a county governing body may withhold any payments due to the municipal corporation for purposes of satisfying any unpaid expenses specified in subsection (a) of this section.

§ 28. Registration of charter.

(a) *Information concerning charter to be sent to Department of Legislative Services.* — At the time of making public proclamation as to the vote on the question of incorporation under the proposed charter, the county governing body shall send the information concerning the charter adopted by the municipal corporation to the Department of Legislative Services, as provided in § 9A of this article for municipal officials.

(b) *Rescission* — A proposal to incorporate a municipal corporation and to adopt a charter may not be rescinded after its formal submission, in any manner other than that of a formal charter repeal as provided in the subheading "Repeal of Charter" in this subtitle.

§ 29. Schedule for phasing in local income tax payments; development of first comprehensive land use plan.

(a) *Local income tax payments.* – If the referendum results in the creation of a new municipal corporation, the local income tax payments authorized under § 2-607 of the Tax - General Article shall be distributed to the municipal corporation as follows unless the county governing body agrees to an accelerated payment schedule:

(1) In the first full fiscal year following the effective date of the municipal incorporation, one-third of the distribution otherwise required under § 2-607 of the Tax - General Article;

(2) In the second full fiscal year following the effective date of the municipal incorporation, two-thirds of the distribution otherwise required under § 2-607 of the Tax - General Article; and

(3) In the third full fiscal year following the effective date of the municipal incorporation and each subsequent year, all of the distribution required under § 2-607 of the Tax - General Article.

(b) *Comprehensive land use plan.*

(1) For those municipal corporations that are eligible to assume planning and zoning authority, the county governing body and the municipal corporation shall cooperate in developing the first comprehensive land use plan of the municipal corporation.

(2) The initial zoning designations used by the municipal corporation shall comply with the provisions of § 9(c) of this article, including the 5-year zoning classification restriction, unless the county governing body expressly approves otherwise.

§ 30. Town officers.

(a) *Nomination and election.* — Town officers shall be nominated by a certificate of nomination filed by each candidate, with the county governing body, giving in each instance the name and residence address of the candidate, together with a statement of the particular office to which he aspires. Thereupon, the county governing body, together with the board of supervisors of elections for the county, shall prepare ballots or the voting machines so as to permit the registered voters of the particular area to vote upon the several candidates who are so nominated. The election of officers for the municipal corporation shall be arranged for and conducted at the same time and at the same place or places as the referendum election on the question of incorporation, and subject generally to the same procedures and practices. A vote cast against the proposed incorporation of the municipal corporation shall not be held to bar the voter from expressing his choices among the nominees for the several offices, and if less than a majority of those who vote on the question of incorporation cast their votes in favor thereof, the votes cast for election to the several offices shall be null and void and of no effect whatsoever.

(b) *Tally and certification of results of election.* — The board of supervisors of elections, and its clerks, judges of election and subordinates, shall tally the results of the votes cast for candidates for office, and shall certify them along with the tally on the question of incorporation, to the county governing body.

(c) *Who proclaimed elected; tenure, powers, etc.* — Any person who receives a plurality of the votes cast for any particular office, whether or not he receives a majority of all the votes cast for that office, shall be publicly proclaimed by the county governing body to have been elected thereto. The persons so named by proclamation shall at the effective time for the charter become the several respective officers of the municipal corporation. Each officer shall continue to hold such position until regularly superseded by a new elective officer, elected as may be provided in the charter of the municipal corporation; and during such period he shall be taken and accepted in all respects as the elected officer of the municipal corporation in his respective position, with the powers, authority and duties as set forth and prescribed in the charter.

(d) *When board or council may appoint officer* — If no person is nominated for an office in the government of the municipal corporation, or if a person elected thereto is unable to assume his office, or if for any other reason no person is elected to fill an office, the county governing body shall name a resident of the particular area to the office, and upon assuming it he shall hold it in all respects as if regularly elected thereto as in this section provided.

(e) *Qualifications.* — No person shall be either nominated or elected to any office in the government of the municipal corporation unless he qualifies under whatever requirements may be specified for that office according to the charter proposed for the municipal corporation.

Annotated Code Of Maryland

Article 23B

Municipal Corporation Charter*

Corporate Names and Definitions

Sec.

1. Corporate name.
2. Definitions.

General Corporate Powers

3. General powers.

Corporate Limits

4. Description of corporate boundaries.

The Council

5. Number of councilmen; selection; term.
6. Qualifications of councilmen.
7. Salary of councilmen.
8. Meetings of council.
9. Council to be judge of qualifications of its members
10. President and vice-president of council.
11. Quorum.
12. Rules and order of business, journal.
13. Vacancies in council.
14. Passage of ordinances; publications; effective date.
15. Veto.
16. Referendum.
17. File of ordinances.

The Mayor

18. Selection and term.

Sec.

19. Qualifications.
20. Salary.
21. Powers and duties.

General Powers

22. Powers of council enumerated.
23. Exercise of powers.
24. Enforcement of ordinances.

Registration, Nominations and Elections

25. Qualifications of voters.
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.
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 due.
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 employee personnel.
68. Merit System authorized.
69. Unclassified and classified service.
70. Prohibition and penalties.
71. Retirement System.
72. Compensation of employees.
73. Employee benefit programs.

Public Ways and Sidewalks

74. Definition of public ways.
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.
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 or waste.
85. Extensions beyond boundaries.
86. Right on entry.
87. Pollution of water supply.
88. Contracts for service.
89. Charges.
90. Exception.

Special Assessments

91. Power of town to levy special assessments.
92. Procedure.

Town Property

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

General Provisions

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

* Note that Article 23B serves only as a model charter. Modification to Article 23B are 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).
- ___ Within 60 days, county governing body verifies signatures. If valid, county appoints liaison to work with organizing committee.
- ___ Within 90 days after seeking county input and conducting a public hearing, the organizing committee presents issues report to county governing board.
- ___ Within 45 days, county may review report and submit written comments to the organizing committee.
- ___ Within 45 days of receipt of comments or within 90 days of the presentation of the issues report to the county, the organizing committee presents the proposed charter and related information to the county.
- ___ Within 40 – 60 days, the county must pass a resolution specifying the date for the incorporation referendum.
- ___ *or*
- ___ County governing board may reject proposed charter.

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*

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