

A Summary of the Municipal Incorporation Process in Tennessee

Charter Options

There are three (3) general law charters that are available to a territory proceeding with an incorporation referendum in Tennessee:

- Mayor - Aldermanic charter (T.C.A. § 6-1-201)
- Manager - Commission charter (T.C.A. § 6-18-103)
- Modified City Manager - Council charter (T.C.A. § 6-30-103)

These general law charters can be viewed online at <http://www.lexisnexis.com/hottopics/tncode/>.

Threshold Requirements

A minimum threshold requirement is established in order for an incorporation referendum to proceed:

- Mayor - Aldermanic charter: 1,500 persons
- Manager - Commission charter: 1,500 persons
- Modified City Manager – Council charter: 5,000 persons.

In addition, the new municipality cannot be incorporated unless it is a minimum of three (3) miles from another incorporated city/town or five (5) miles from a city with a population in excess of 100,000, unless said municipality indicates no desire to annex the territory by passage of a resolution with a 2/3rds majority. As discussed further below, the territory of a new municipality must also be in an approved Planned Growth Area in conformity with T.C.A. § 6-58-104.

Even if all of the criteria noted above are met, the proposed incorporation must still receive the approval of the county commission in the county where the incorporation is proposed. The county commission must approve the corporate limits and urban growth boundary of the proposed incorporation before the election to incorporate may be held.

Procedures

1. Petition - The first step in incorporating a city is to prepare a written petition requesting that the county election commission hold an election for the purpose of determining whether the charter shall become effective. The petition must contain the signatures of thirty-three and one-third percent (33 1/3%) of the registered voters of the territory proposed for incorporation. The petition must include a current list of the registered voters who live within the proposed territory. The petition must state in a sufficient manner the boundaries of the proposed municipal corporation.
2. Hearing - Prior to filing the petition with the election commission, a public hearing on the question of whether or not to incorporate under the charter and plan of services must be conducted. The hearing must be advertised in a newspaper of general circulation for two

consecutive weeks prior to the hearing.

3. Election - Upon receipt of the petition, the county election commission examines the petition to determine the validity of the signatures. The county election commission has 20 days to certify whether the petition has the sufficient number of signatures of registered voters. If the petition is sufficient to call for an election on the issue of incorporation, the county election commission is required to hold an election not less than forty-five (45) days nor more than sixty (60) days after the petition is certified. If the date for an election falls within 30 days of an upcoming regular primary or general election being held in the jurisdiction voting on the question, the commission may reset the date of the election to coincide with the regular primary or general election, even though this may be outside of the time period. All dates dependent on the date of the election shall be adjusted accordingly and any acts required to be done by these dates shall be performed timely if done in accordance with the adjusted dates.

The county election commission shall, in addition to other notices required by law, publish one (1) notice of the election in a newspaper of general circulation within the territory of the proposed municipality, and post the notice in at least three (3) places in the territory.

A cash bond equivalent to the costs of the election to incorporate under the charter shall be filed by the petitioners with the county election commission together with the petition for incorporation.

Incorporation Petition

Form of Petition - The petition for incorporation shall be substantially in compliance with the following form.

PETITION FOR INCORPORATION ELECTION FOR
TOWN/CITY OF _____ TENNESSEE

To: The County Election Commission
_____ County, Tennessee

We the undersigned, being registered voters and residents of the territory herein proposed for incorporation, and being in number in excess of thirty-three and one-third percent (33 1/3%) of the registered voters of the herein described territory, hereby request the county election commission to hold an election on the question of whether or not the herein described territory shall be incorporated under the terms of Tennessee Code Annotated, title __, chapters _____, and be known by the name and style of the [*Specify whether the new incorporation is to be called a city or a town*] _____, Tennessee, all as prescribed in Tennessee Code Annotated, title __, chapters ____.

The territory in question, being part of the _____ Civil District(s) of
County, Tennessee, is further described as:

[Insert a description of boundaries with references to tax maps]

Content of Petition - The petition shall include a plan of services setting forth the identification and projected timing of municipal services proposed to be provided and the revenue from purely local sources to be payable annually. The plan of services shall include, but not be limited to, police protection, fire protection, water service, sanitary sewage system, solid waste disposal, road and street construction and repair, recreational facilities, a proposed five-year operational budget, including projected revenues and expenditures, and a property tax rate to be annually levied upon all taxable property in the area to be incorporated. Boundary descriptions shall contain references to tax maps kept in the office of the county assessor.

Projected timing refers to a reasonable amount of time to implement the services. Five years might, for example, be reasonable for providing sanitary sewer service if the new city plans to design and construct a treatment plant and collection system. Some services would be provided immediately such as police services and street repair. TCA 6-58-112 (c) provides that cities incorporated after May 19, 1998, shall impose a property tax that raises an amount of revenue not less than the amount of the annual revenues derived by the city from state-shared taxes. The city must collect the property tax before the city may receive state-shared taxes.

Within six months of incorporation, the city is required to adopt by ordinance a plan of services that the city proposed to deliver. The plan of services sets forth the city's commitment to provide services to the newly annexed area and tells citizens what they can expect as the result of the incorporation. A hearing on the status of the plan of services is required annually until the plan is fulfilled.

Election

Qualification and Certification. All registered voters of the territory proposed for incorporation are eligible to vote in the election. The county election commission shall determine and declare the result of the election and shall certify the result within forty-eight (48) hours after the election. It shall publish the results in a newspaper of general circulation in the city or territory and shall file the results with the legislative body of the city at its first meeting after the certification. The results shall be entered at large on the minutes of the body with which it is filed. [TCA 6-1-204].

Effect of Vote. If the majority of the voters are in favor of the adoption of the charter, it shall be deemed to have been adopted. The newly adopted charter shall not be effective until the first board takes office. The board may take office immediately after the election is certified. Following the defeat of an incorporation in the election, no new petition for an election may be filed until after the expiration of four (4) years.

New Municipalities

T.C.A. § 6-58-112, effective July 10, 2015, provides as follows:

- A new municipality may only be created in territory approved as a planned growth area in conformity with § 6-58-104
- A municipality shall impose a property tax that raises an amount of revenue not less than

- the amount of the annual revenues derived by the municipality from state-shared taxes
- The municipality shall levy and provide for the administration and collection of a property tax in the required amount before the municipality may receive state-shared taxes.
 - If the residents of a planned growth area petition to have an election of incorporation, the county legislative body shall approve the corporate limits and the urban growth boundary of the proposed municipality before the election to incorporate may be held.
 - Within six (6) months of the incorporation election, the municipality shall adopt by ordinance a plan of services for the services the municipality proposes to deliver.

The statute authorizes a county may provide or contract for the provision of services within a planned growth area and set a separate tax rate specifically for the services provided within a planned growth area. In addition, a county may establish separate zoning regulations within a planned growth area, for territory within an urban growth boundary or within a rural area.

Municipal Finances

As discussed above, a new municipality must levy a property tax at least equal to its portion of state-shared revenue. State-shared revenue is distributed annually by the Tennessee Department of Revenue to all municipalities based on population. State-shared revenues include:

- State sales tax
- State beer tax
- Special petroleum products tax
- Gross receipts tax (TVA in lieu of taxes)
- Gasoline and motor fuel taxes

For Fiscal 2016, state-shared taxes are estimated at approximately \$116.00 per capita.

For 15 years following its incorporation, the newly incorporated city must give the county the same amount of local option sales tax and wholesale beer tax the county was collecting on the date of incorporation. Any increase in the base amount is retained by the municipality.