

# Municipal Incorporation

So your area may want to incorporate. Why? And why not? These are the first questions you should ask.

## Providing a Higher Level of Service

First of all, there is really only one reason to incorporate. That reason should always be because the residents want to provide a higher level of service than can be obtained under the existing arrangement, which is usually a county government. If there are any other reasons behind the incorporation, it's almost guaranteed there will be many problems as the new city tries to survive.

Provided it meets specific criteria, establishing a certain area as a city will allow citizens to provide services that can be tailored to meet the specific needs of the area. Some of these needs include better police and fire protection; sewer services; orderly development of the community through zoning, subdivision regulations and the adoption of building codes; improved parks and recreation services; trash collection; streets and traffic improvements; and control of nuisances such as junk and debris, stray animals, loud noise, etcetera.

With these opportunities, however, come constraints. These are usually in the form of limited resources. Remember, although citizens in your area may want a higher level of service, they will also have to be willing to pay for it. Though some revenues will come to you by mere virtue of your status as an incorporated city, other revenues will have to be generated locally.

## Impact on other Government Entities

One way counties are funded is through local sales taxes. One-half of these taxes automatically goes to the local school system. The other half is distributed to the local government in which the sales tax was generated. In newly incorporated cities, the county is held harmless for 15 years with the base amount of the local sales tax generated in the incorporated territory continued to be paid to the county. However, any growth in sales tax above the base amount is retained by the city, and after 15 years, all of the sales tax is retained by the city. For this reason, counties are financially impacted when an incorporation takes place. And any county resident who doesn't live in the new city will have to pay for existing services in another way with this loss of revenue, or county services must be curtailed or reduced.

In addition, all cities receive state-shared revenues from the state of Tennessee. These are distributed on a per capita basis, and come from dollars generated by a variety of sources including the state sales tax, motor fuel taxes, and miscellaneous sources such as TVA in lieu of taxes. The 'pie' containing these revenues does not increase in size when a new city incorporates. Instead, the new city's share must be pulled from the limited sources that already exists, thus decreasing the share of revenues that would otherwise flow to existing cities. More simply, any time a new city incorporates, all existing cities receive proportionately fewer state-shared

revenues. Therefore, all cities are hurt each time a new city is created.

### Fixed Costs

There are many state and federal laws that must be complied with regardless of the size of the city. One only needs to look at the Fair Labor Standards Act (FLSA) or the Americans with Disabilities Act (ADA) to understand the financial effect mandatory laws can have on cities. Many times, these considerations are overlooked when a new city incorporates.

A new city will also have many fixed costs. For example, there will be insurance for errors and omissions, liability insurance, advertising of public meetings, office space, a city recorder, a city attorney, recordkeeping, elections, and the list goes on. It goes without saying that a larger city has more citizens and thus, a larger tax base in which to share these obligations. Conversely, smaller cities have fewer citizens and each must share a greater portion of these fixed costs. In other words, there is an economy of scale associated with both providing services and meeting fixed-cost obligations. Many new cities drastically underestimate these costs and find that fewer dollars are available to provide basic services such as street repair, public safety, and other services.

### Provisions of Services

Many new cities think they can simply contract with the county to continue providing the same services provided before the incorporation. However, it's not that simple. First, counties are under no obligation to provide these services to the new city. If the county says "no" to a new city's request to contract for services, the new city will be left to provide services from day one of its existence. Second, counties are only authorized to provide certain services to cities under contractual arrangements. And many counties soon realize that the true cost of providing services is higher than expected. Over time, county attitudes can change. You don't have to look too far to understand the adversarial relationship that many times exists between cities and counties. This is to be expected, given the city-county boundary that delineates "who does what" and "who pays for what." Over time, a new city should not expect the county to provide services without adequate compensation, if at all.

Many new cities think they can simply become a "city" and not provide any additional services. However, circumstances change, and it's not realistic to think that things will continue as they have in the past. This is also why you must take a long-range view when considering incorporation. Sooner or later, enough residents will come forward with complaints. They don't want a run-down mobile home moving next door; or a vicious, loose dog attacking their child; or a neighbor inadvertently draining water on their property creating a stagnant pond; or loud parties being held at the neighboring house every Saturday night. But they may want a new street constructed or a traffic signal installed - not to mention the inevitable demands for water or sewer service, or increased police or fire protection.

Many, many issues and requests for services will arise over time, and city residents will expect action. The need for new dollars to pay for services is almost inevitable. That's why most cities in Tennessee have enacted a local property tax - and all newly incorporating territories must have

a property tax. This is not an option – the statute mandates it that it be at least equal in amount to the portion of state-shared taxes to be received. But as many cities have found, the amount of property tax revenue will be significantly greater to meet the service demands of the community.

### Level of Commitment

For these and many other reasons, incorporation should only be considered if residents want, and are willing to pay for, a higher level of service. Operating a city is very difficult and it can't be done without commitment from qualified elected officials, commitment from quality employees, and most of all, commitment from citizens who are willing to shoulder the responsibility associated with becoming city residents.

Far too many times citizens consider incorporation because of the threat, real or perceived, of annexation by a neighboring city. This is ill-founded logic. In order to avoid becoming part of a city, it makes no sense to become a city - and become a city you will. As mentioned above, if incorporation is successful, many demands for services will make their way to your agenda. Over time, you will have to respond to these demands.

This is not to say that incorporation should never occur. In fact, many incorporations are very successful because of the desire and need for a greater level of service, combined with the willingness to pay for and accept responsibility for providing these services. However, becoming a city is not something to be taken lightly.

### Alternatives to Incorporation

Before deciding if incorporation is the best way to deliver a higher level of service to the residents, there are a few alternatives to incorporation worth considering:

- Ask your county commissioners or utility district to provide the service(s) that residents in your area need.
- Request annexation by a neighboring city. It may be that the services your resident's desire can be delivered more efficiently by another city.

### Concluding Comments

Incorporation is a serious step for any community. Remember, incorporation should only occur in order to provide a higher level of service than you now have. The University of Tennessee's Municipal Technical Advisory Service (MTAS) can provide only limited assistance through the incorporation process due to state law that stipulates that MTAS is to work with "municipalities." And until the incorporation is complete, you are not a municipality. Once you have incorporated, MTAS will be available to assist your city in any way possible.