

Effective 5/12/2015

**Part 3
Incorporation of a Town**

10-2a-301 Title.

This part is known as "Incorporation of a Town."

Enacted by Chapter 352, 2015 General Session

10-2a-302 Incorporation of a town -- Petition.

(1) As used in this section:

- (a) "Assessed value," with respect to agricultural land, means the value at which the land would be assessed without regard to a valuation for agricultural use under Section 59-2-503.
- (b) "Feasibility consultant" means a person or firm:
 - (i) with expertise in the processes and economics of local government; and
 - (ii) who is independent of and not affiliated with a county or sponsor of a petition to incorporate.
- (c) "Financial feasibility study" means a study described in Subsection (7).
- (d) "Municipal service" means a publicly provided service that is not provided on a countywide basis.
- (e) "Nonurban" means having a residential density of less than one unit per acre.

(2)

- (a)
 - (i) A contiguous area of a county not within a municipality, with a population of at least 100 but less than 1,000, may incorporate as a town as provided in this section.
 - (ii) An area within a county of the first class is not contiguous for purposes of Subsection (2)(a)
 - (i) if:
 - (A) the area includes a strip of land that connects geographically separate areas; and
 - (B) the distance between the geographically separate areas is greater than the average width of the strip of land connecting the geographically separate areas.
- (b) The population figure under Subsection (2)(a) shall be determined:
 - (i) as of the date the incorporation petition is filed; and
 - (ii) by the Utah Population Estimates Committee within 20 days after the county clerk's certification under Subsection (6) of a petition filed under Subsection (4).

(3)

- (a) The process to incorporate an area as a town is initiated by filing a petition to incorporate the area as a town with the Office of the Lieutenant Governor.
- (b) A petition under Subsection (3)(a) shall:
 - (i) be signed by:
 - (A) the owners of private real property that:
 - (I) is located within the area proposed to be incorporated; and
 - (II) is equal in assessed value to more than 1/5 of the assessed value of all private real property within the area; and
 - (B) 1/5 of all registered voters within the area proposed to be incorporated as a town, according to the official voter registration list maintained by the county on the date the petition is filed;

- (ii) designate as sponsors at least five of the property owners who have signed the petition, one of whom shall be designated as the contact sponsor, with the mailing address of each owner signing as a sponsor;
- (iii) be accompanied by and circulated with an accurate map or plat, prepared by a licensed surveyor, showing a legal description of the boundary of the proposed town; and
- (iv) substantially comply with and be circulated in the following form:

PETITION FOR INCORPORATION OF (insert the proposed name of the proposed town)

To the Honorable Lieutenant Governor:

We, the undersigned owners of real property and registered voters within the area described in this petition, respectfully petition the lieutenant governor to direct the county legislative body to submit to the registered voters residing within the area described in this petition, at the next regular general election, the question of whether the area should incorporate as a town. Each of the undersigned affirms that each has personally signed this petition and is an owner of real property or a registered voter residing within the described area, and that the current residence address of each is correctly written after the signer's name. The area proposed to be incorporated as a town is described as follows: (insert an accurate description of the area proposed to be incorporated).

- (c) A petition under this Subsection (3) may not describe an area that includes some or all of an area proposed for annexation in an annexation petition under Section 10-2-403 that:
 - (i) was filed before the filing of the petition; and
 - (ii) is still pending on the date the petition is filed.
- (d) A petition may not be filed under this section if the private real property owned by the petition sponsors, designated under Subsection (3)(b)(ii), cumulatively exceeds 40% of the total private land area within the area proposed to be incorporated as a town.
- (e) A signer of a petition under this Subsection (3) may withdraw or, after withdrawn, reinstate the signer's signature on the petition:
 - (i) at any time until the lieutenant governor certifies the petition under Subsection (5); and
 - (ii) by filing a signed, written withdrawal or reinstatement with the lieutenant governor.
- (4)
 - (a) If a petition is filed under Subsection (3)(a) proposing to incorporate as a town an area located within a county of the first class, the lieutenant governor shall deliver written notice of the proposed incorporation:
 - (i) to each owner of private real property owning more than 1% of the assessed value of all private real property within the area proposed to be incorporated as a town; and
 - (ii) within seven calendar days after the date on which the petition is filed.
 - (b) A private real property owner described in Subsection (4)(a)(i) may exclude all or part of the owner's property from the area proposed to be incorporated as a town by filing a notice of exclusion:
 - (i) with the lieutenant governor; and
 - (ii) within 10 calendar days after receiving the clerk's notice under Subsection (4)(a).
 - (c) The lieutenant governor shall exclude from the area proposed to be incorporated as a town the property identified in the notice of exclusion under Subsection (4)(b) if:
 - (i) the property:
 - (A) is nonurban; and
 - (B) does not and will not require a municipal service; and
 - (ii) exclusion will not leave an unincorporated island within the proposed town.

- (d) If the lieutenant governor excludes property from the area proposed to be incorporated as a town, the lieutenant governor shall send written notice of the exclusion to the contact sponsor within five days after the exclusion.
- (5) No later than 20 days after the filing of a petition under Subsection (3), the lieutenant governor shall:
 - (a) with the assistance of other county officers of the county in which the incorporation is proposed from whom the lieutenant governor requests assistance, determine whether the petition complies with the requirements of Subsection (3); and
 - (b)
 - (i) if the lieutenant governor determines that the petition complies with those requirements:
 - (A) certify the petition; and
 - (B) mail or deliver written notification of the certification to:
 - (I) the contact sponsor; and
 - (II) the Utah Population Estimates Committee; or
 - (ii) if the lieutenant governor determines that the petition fails to comply with any of those requirements, reject the petition and notify the contact sponsor in writing of the rejection and the reasons for the rejection.
- (6)
 - (a)
 - (i) A petition that is rejected under Subsection (5)(b)(ii) may be amended to correct a deficiency for which it was rejected and then refiled with the lieutenant governor.
 - (ii) A valid signature on a petition filed under Subsection (3)(a) may be used toward fulfilling the signature requirement of Subsection (3)(b) for the same petition that is amended under Subsection (6)(a)(i) and then refiled with the lieutenant governor.
 - (b) If a petition is amended and refiled under Subsection (6)(a)(i) after having been rejected by the lieutenant governor under Subsection (5)(b)(ii):
 - (i) the amended petition shall be considered as a newly filed petition; and
 - (ii) the amended petition's processing priority is determined by the date on which it is refiled.
- (7)
 - (a)
 - (i) If a petition is filed under Subsection (4) and certified under Subsection (6), the lieutenant governor shall commission and pay for a financial feasibility study.
 - (ii) The feasibility consultant shall be chosen:
 - (A)
 - (I) by the contact sponsor of the incorporation petition, as described in Subsection (3)(b)(ii), with the consent of the lieutenant governor; or
 - (II) by the lieutenant governor if the contact sponsor states, in writing, that the sponsor defers selection of the feasibility consultant to the lieutenant governor; and
 - (B) in accordance with applicable county procurement procedure.
 - (iii) The lieutenant governor shall require the feasibility consultant to complete the financial feasibility study and submit written results of the study to the lieutenant governor no later than 30 days after the feasibility consultant is engaged to conduct the financial feasibility study.
 - (b) The financial feasibility study shall consider the:
 - (i) population and population density within the area proposed for incorporation and the surrounding area;

- (ii) current and five-year projections of demographics and economic base in the proposed town and surrounding area, including household size and income, commercial and industrial development, and public facilities;
 - (iii) projected growth in the proposed town and in adjacent areas during the next five years;
 - (iv) subject to Subsection (7)(c), the present and five-year projections of the cost, including overhead, of governmental services in the proposed town, including:
 - (A) culinary water;
 - (B) secondary water;
 - (C) sewer;
 - (D) law enforcement;
 - (E) fire protection;
 - (F) roads and public works;
 - (G) garbage;
 - (H) weeds; and
 - (I) government offices;
 - (v) assuming the same tax categories and tax rates as currently imposed by the county and all other current service providers, the present and five-year projected revenue for the proposed town; and
 - (vi) a projection of any new taxes per household that may be levied within the incorporated area within five years of incorporation.
- (c)
- (i) For purposes of Subsection (7)(b)(iv), the feasibility consultant shall assume a level and quality of governmental services to be provided to the proposed town in the future that fairly and reasonably approximate the level and quality of governmental services being provided to the proposed town at the time of the feasibility study.
 - (ii) In determining the present cost of a governmental service, the feasibility consultant shall consider:
 - (A) the amount it would cost the proposed town to provide governmental service for the first five years after incorporation; and
 - (B) the county's present and five-year projected cost of providing governmental service.
 - (iii) The costs calculated under Subsection (7)(b)(iv), shall take into account inflation and anticipated growth.
- (d) If the five year projected revenues under Subsection (7)(b)(v) exceed the five-year projected costs under Subsection (7)(b)(iv) by more than 10%, the feasibility consultant shall project and report the expected annual revenue surplus to the contact sponsor and the lieutenant governor.
- (e) The lieutenant governor shall post a copy of the feasibility study on the lieutenant governor's website and make a copy available for public review at the Office of the Lieutenant Governor.
- (f) The lieutenant governor shall approve a certified petition proposing the incorporation of a town and hold a public hearing as provided in Section 10-2a-303.

Amended by Chapter 157, 2015 General Session

Renumbered and Amended by Chapter 352, 2015 General Session

10-2a-303 Incorporation of a town -- Public hearing on feasibility.

- (1) If, in accordance with Section 10-2a-302, the lieutenant governor certifies a petition for incorporation or an amended petition for incorporation, the lieutenant governor shall, after completion of the feasibility study, schedule a public hearing to:

- (a) be held no later than 60 days after the day on which the feasibility study is completed; and
 - (b) consider, in accordance with Subsection (3)(b), the feasibility of incorporation for the proposed town.
- (2)
- (a) The lieutenant governor shall give notice of the public hearing on the proposed incorporation by:
 - (i)
 - (A) publishing notice of the public hearing at least once a week for two consecutive weeks in a newspaper of general circulation within the proposed town; or
 - (B) if there is no newspaper of general circulation within the proposed town, posting notice of the public hearing in at least five conspicuous public places within the proposed town; and
 - (ii) publishing notice of the public hearing on the Utah Public Notice Website created in Section 63F-1-701.
 - (b) The county in which the incorporation is proposed shall post the notice described in Subsection (2)(a)(ii) on the county's website, if the county has a website, for at least two consecutive weeks before the day of the public hearing.
- (3) At the public hearing scheduled in accordance with Subsection (1), the lieutenant governor shall:
- (a)
 - (i) provide a copy of the feasibility study; and
 - (ii) present the results of the feasibility study to the public; and
 - (b) allow the public to:
 - (i) review the map or plat of the boundary of the proposed town;
 - (ii) ask questions and become informed about the proposed incorporation; and
 - (iii) express its views about the proposed incorporation, including their views about the boundary of the area proposed to be incorporated.
- (4) A county under the direction of the lieutenant governor may not hold an election on the incorporation of a town in accordance with Section 10-2a-304 if the results of the feasibility study show that the five-year projected revenues under Subsection 10-2a-302(7)(b)(v) exceed the five-year projected costs under Subsection 10-2a-302(7)(b)(iv) by more than 10%.

Amended by Chapter 157, 2015 General Session

Renumbered and Amended by Chapter 352, 2015 General Session

10-2a-304 Incorporation of a town -- Election to incorporate -- Ballot form.

- (1)
- (a) Upon receipt of a certified petition or a certified amended petition under Section 10-2a-302, the lieutenant governor shall:
 - (i) determine and set an election date for the incorporation election that is:
 - (A) on a regular general election date under Section 20A-1-201 or on a local special election date under Section 20A-1-203; and
 - (B) at least 65 days after the day that the legislative body receives the certified petition; and
 - (ii) direct the county legislative body of the county in which the incorporation is proposed to hold the election on the date determined by the lieutenant governor in accordance with Subsection (1)(a)(i).
 - (b) The county shall hold the election as directed by the lieutenant governor in accordance with Subsection (1)(a)(ii).

- (c) Unless a person is a registered voter who resides, as defined in Section 20A-1-102, within the boundaries of the proposed town, the person may not vote on the proposed incorporation.
- (2)
 - (a) The county clerk shall publish notice of the election:
 - (i) in a newspaper of general circulation, within the area proposed to be incorporated, at least once a week for three successive weeks; and
 - (ii) in accordance with Section 45-1-101 for three weeks.
 - (b) The notice required by Subsection (2)(a) shall contain:
 - (i) a statement of the contents of the petition;
 - (ii) a description of the area proposed to be incorporated as a town;
 - (iii) a statement of the date and time of the election and the location of polling places; and
 - (iv) the lieutenant governor's Internet website address, if applicable, and the address of the Office of the Lieutenant Governor where the feasibility study is available for review.
 - (c) The last publication of notice required under Subsection (2)(a) shall occur at least one day but no more than seven days before the election.
 - (d)
 - (i) In accordance with Subsection (2)(a)(i), if there is no newspaper of general circulation within the proposed town, the county clerk shall post at least one notice of the election per 100 population in conspicuous places within the proposed town that are most likely to give notice of the election to the voters of the proposed town.
 - (ii) The clerk shall post the notices under Subsection (2)(d)(i) at least seven days before the election under Subsection (1)(a).
- (3) The ballot at the incorporation election shall pose the incorporation question substantially as follows: Shall the area described as (insert a description of the proposed town) be incorporated as the town of (insert the proposed name of the proposed town)?
- (4) The ballot shall provide a space for the voter to answer yes or no to the question in Subsection (3).
- (5) If a majority of those casting votes within the area boundaries of the proposed town vote to incorporate as a town, the area shall incorporate.

Amended by Chapter 96, 2015 General Session

Amended by Chapter 111, 2015 General Session

Amended by Chapter 157, 2015 General Session

Renumbered and Amended by Chapter 352, 2015 General Session

Amended by Chapter 352, 2015 General Session, (Coordination Clause)

10-2a-305 Form of government -- Determination of council officer terms -- Hearings and notice.

- (1) A newly incorporated town shall operate under the five-member council form of government as defined in Section 10-3b-102.
- (2) If the incorporation proposal passes, the petition sponsors shall, within 25 days of the canvass of the election under Section 10-2a-304:
 - (a) determine the initial terms of the mayor and members of the city council so that:
 - (i) the mayor and approximately half the members of the town council are elected to serve an initial term, of no less than one year, that allows their successors to serve a full four-year term that coincides with the schedule established in Subsection 10-3-205(1); and

- (ii) the remaining members of the town council are elected to serve an initial term, of no less than one year, that allows their successors to serve a full four-year term that coincides with the schedule established in Subsection 10-3-205(2); and
 - (b) submit in writing to the county legislative body the results of the sponsors' determinations under Subsection (2)(a).
- (3)
- (a) Before making a determination under Subsection (2)(a), the petition sponsors shall hold a public hearing within the future town on the applicable issues under Subsections (2)(a)(i) and (ii).
 - (b)
 - (i) The petition sponsors shall publish notice of the public hearing under Subsection (3)(a):
 - (A) in a newspaper of general circulation within the future town at least once a week for two successive weeks before the day of the hearing; and
 - (B) on the Utah Public Notice Website, created in Section 63F-1-701, for two weeks before the day of the hearing.
 - (ii) The last publication of notice under Subsection (3)(b)(i)(A) shall be at least three days before the day of the public hearing under Subsection (3)(a).
 - (c)
 - (i) In accordance with Subsection (3)(b)(i)(A), if there is no newspaper of general circulation within the future town, the petition sponsors shall post at least one notice of the hearing per 1,000 population in conspicuous places within the future town that are most likely to give notice of the hearing to the residents of the future town.
 - (ii) The petition sponsors shall post the notices under Subsection (3)(c)(i) at least seven days before the day that the hearing is held under Subsection (3)(a).

Repealed and Re-enacted by Chapter 111, 2015 General Session
Renumbered and Amended by Chapter 352, 2015 General Session

10-2a-305.1 Notice of number of council members to be elected and of district boundaries -- Declaration of candidacy for city office -- Occupation of office.

- (1)
- (a) Within 20 days of the county legislative body's receipt of the information under Subsection 10-2a-305(2)(b), the county clerk shall publish, in accordance with Subsection (1)(b), notice containing:
 - (i) information about the deadline for filing a declaration of candidacy for those seeking to become candidates for mayor or town council; and
 - (ii) information about the length of the initial term of each of the town officers, as determined by the petition sponsors under Subsection 10-2a-305(2)(a).
 - (b) The notice under Subsection (1)(a) shall be published:
 - (i) in a newspaper of general circulation within the future town at least once a week for two successive weeks; and
 - (ii) in accordance with Section 45-1-101 for two weeks.
 - (c)
 - (i) In accordance with Subsection (1)(b)(i), if there is no newspaper of general circulation within the future city, the county clerk shall post at least one notice per 1,000 population in conspicuous places within the future town that are most likely to give notice to the residents of the future town.

- (ii) The notice under Subsection (1)(c)(i) shall contain the information required under Subsection (1)(a).
- (iii) The petition sponsors shall post the notices under Subsection (1)(c)(i) at least seven days before the deadline for filing a declaration of candidacy under Subsection (2).
- (2) Notwithstanding Subsection 20A-9-203(2)(a), each person seeking to become a candidate for mayor or town council of a town incorporating under this part shall, within 45 days of the incorporation election under Section 10-2a-304, file a declaration of candidacy with the clerk of the county in which the future town is located.

Enacted by Chapter 111, 2015 General Session

Amended by Chapter 352, 2015 General Session, (Coordination Clause)

10-2a-305.2 Election of officers of new town -- Primary and final election dates -- County clerk duties -- Candidate duties -- Occupation of office.

- (1) For the election of town officers, the county legislative body shall:
 - (a) unless a primary election is prohibited by Subsection 20A-9-404(2), hold a primary election; and
 - (b) hold a final election unless the election may be cancelled in accordance with Section 20A-1-206.
- (2) Each election under Subsection (1) shall be consistent with the petition sponsors' determination of the length of each council member's initial term.
- (3)
 - (a) Subject to Subsection (3)(b), the primary election under Subsection (1)(a) shall be held on one of the following election dates:
 - (i) notwithstanding Subsection 20A-1-201.5(2), regular general election under Section 20A-1-201;
 - (ii) notwithstanding Subsection 20A-1-201.5(2), regular primary election under Subsection 20A-1-201.5(1);
 - (iii) municipal primary election under Section 20A-9-404; or
 - (iv) notwithstanding Subsection 20A-1-201.5(2), municipal general election under Section 20A-1-202.
 - (b) The county shall hold the primary election, if necessary, at the earliest of the next election date listed in Subsection (3)(a)(i), (ii), (iii), or (iv) that is at least:
 - (i) 75 days after the incorporation election under Section 10-2a-304; and
 - (ii) 65 days after the last day of the candidate filing period.
- (4)
 - (a) Subject to Subsection (4)(b), the county shall hold the final election under Subsection (1)(b) on one of the following election dates:
 - (i) regular general election under Section 20A-1-201;
 - (ii) municipal primary election under Section 20A-9-404;
 - (iii) municipal general election under Section 20A-1-202; or
 - (iv) regular primary election under Section 20A-1-201.5.
 - (b) The county shall hold the final election on the next earliest election date listed in Subsection (4)(a)(i), (ii), (iii), or (iv):
 - (i) that is after a primary election; or
 - (ii) if there is no primary election, that is at least:
 - (A) 75 days after the incorporation election under Section 10-2a-210; and
 - (B) 65 days after the candidate filing period.

- (5)
 - (a)
 - (i) The county clerk shall publish notice of an election under this section:
 - (A) at least once a week for two successive weeks in a newspaper of general circulation within the future town; and
 - (B) in accordance with Section 45-1-101 for two weeks.
 - (ii) The later notice under Subsection (5)(a)(i) shall be at least one day but no more than seven days before the election.
 - (b)
 - (i) In accordance with Subsection (5)(a)(i)(A), if there is no newspaper of general circulation within the future town, the county clerk shall post at least one notice of the election per 1,000 population in conspicuous places within the future town that are most likely to give notice of the election to the voters.
 - (ii) The county clerk shall post the notices under Subsection (5)(b)(i) at least seven days before an election under Subsection (1)(a) or (b).
- (6)
 - (a) Until the town is incorporated, the county clerk:
 - (i) is the election officer for all purposes in an election of officers of the town approved at an incorporation election; and
 - (ii) may, as necessary, determine appropriate deadlines, procedures, and instructions that are not otherwise contrary to law.
 - (b) The county clerk shall require and determine deadlines for the filing of campaign financial disclosures of town officer candidates in accordance with Section 10-3-208.
 - (c) The county clerk is responsible to ensure that:
 - (i) a primary or final election for the officials of a newly incorporated town is held on a date authorized by this section; and
 - (ii) the ballot for the election includes each office that is required to be included in the election for officers of the newly incorporated town and the term of each office.
- (7) A person who has filed as a candidate for an office described in this section shall comply with the campaign finance disclosure requirements of Section 10-3-208 and requirements and deadlines as lawfully set forth by the county clerk.
- (8) Notwithstanding Section 10-3-201, the officers elected at a final election described in Subsection (4)(a) shall take office:
 - (a) after taking the oath of office; and
 - (b) at noon on the first Monday following the day on which the election official transmits a certificate of nomination or election under the officer's seal to each elected candidate in accordance with Subsection 20A-4-304(2)(c)(ii).

Enacted by Chapter 111, 2015 General Session

Amended by Chapter 352, 2015 General Session, (Coordination Clause)

10-2a-306 Notice to lieutenant governor -- Effective date of incorporation -- Effect of recording documents.

- (1) The mayor of the future town shall:
 - (a) within 30 days after the canvass of the election of town officers under Section 10-2a-305.2, file with the lieutenant governor:
 - (i) a copy of a notice of an impending boundary action, as defined in Section 67-1a-6.5, that meets the requirements of Subsection 67-1a-6.5(3); and

- (ii) a copy of an approved final local entity plat, as defined in Section 67-1a-6.5; and
 - (b) upon the lieutenant governor's issuance of a certificate of incorporation under Section 67-1a-6.5:
 - (i) if the town is located within the boundary of a single county, submit to the recorder of that county the original:
 - (A) notice of an impending boundary action;
 - (B) certificate of incorporation; and
 - (C) approved final local entity plat; or
 - (ii) if the town is located within the boundaries of more than a single county, submit the original of the documents listed in Subsections (1)(b)(i)(A), (B), and (C) to one of those counties and a certified copy of those documents to each other county.
- (2)
- (a) A new town is incorporated:
 - (i) on December 31 of the year in which the lieutenant governor issues a certificate of incorporation under Section 67-1a-6.5, if the election of town officers under Section 10-2a-305.2 is held on a regular general or municipal general election date; or
 - (ii) on the last day of the month during which the lieutenant governor issues a certificate of incorporation under Section 67-1a-6.5, if the election of town officers under Section 10-2a-305.2 is held on any other date.
 - (b)
 - (i) The effective date of an incorporation for purposes of assessing property within the new town is governed by Section 59-2-305.5.
 - (ii) Until the documents listed in Subsection (1)(b)(i) are recorded in the office of the recorder of each county in which the property is located, a newly incorporated town may not:
 - (A) levy or collect a property tax on property within the town;
 - (B) levy or collect an assessment on property within the town; or
 - (C) charge or collect a fee for service provided to property within the town.

Amended by Chapter 111, 2015 General Session

Renumbered and Amended by Chapter 352, 2015 General Session

10-2a-307 Costs of town incorporation -- Fees established by lieutenant governor.

- (1)
- (a) The lieutenant governor shall establish a fee in accordance with Section 63J-1-504 for a cost of an incorporation proceeding, including:
 - (i) a request certification;
 - (ii) a feasibility study;
 - (iii) a petition certification;
 - (iv) publication of notices;
 - (v) public hearings;
 - (vi) all other incorporation activities occurring after the elections; and
 - (vii) any other cost incurred by the lieutenant governor in relation to an incorporation proceeding.
 - (b) A cost under Subsection (1)(a) does not include a cost incurred by a county for holding an election under Section 10-2a-304.
- (2) Subject to Subsection (3)(a), the lieutenant governor shall, by supplemental appropriations, pay for a cost described in Subsections (1)(a)(i) through (vii).
- (3) If incorporation occurs, the new town shall pay:

- (a) to the lieutenant governor each fee established under Subsection (1) for each incurred cost described in Subsections (1)(a)(i) through (vii); and
- (b) the county for a cost described in Subsection (1)(b).

Enacted by Chapter 157, 2015 General Session

Amended by Chapter 352, 2015 General Session, (Coordination Clause)