

IC 36-5

ARTICLE 5. GOVERNMENT OF TOWNS

IC 36-5-1

Chapter 1. Incorporation; Dissolution

IC 36-5-1-1

Application of chapter

Sec. 1. This chapter applies to all towns except an included town (as defined in IC 36-3-1-7).

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.5-1989, SEC.105.

IC 36-5-1-2

Requirements of petition to incorporate town

Sec. 2. (a) Proceedings to incorporate a town may be instituted by filing a written petition in quadruplicate with the executive of the county that contains all or a majority of the territory sought to be incorporated. The petition must be signed by at least ten percent (10%) of the owners of land in the territory and must state the following:

- (1) The territory is used or will, in the reasonably foreseeable future, be used generally for commercial, industrial, residential, or similar purposes.
- (2) The territory is reasonably compact and contiguous.
- (3) There is enough undeveloped land in the territory to permit reasonable growth of the town.
- (4) Incorporation is in the best interests of the citizens of the territory.
- (5) The name, telephone number, and electronic mail address (if available) of the contact person for the petitioners.
- (6) If the petitioners want the incorporation to be approved by a public question at a special election, that the petitioners agree to pay the costs of the special election.

(b) The signatures of the petitioners must be verified, and the verification must include a statement that the petitioners are owners of land in the territory sought to be incorporated.

(c) In determining the number of petitioners, not more than one (1) person having an interest in a single parcel of land may be counted, and a person owning more than one (1) parcel of land in the area may be counted only once.

(d) The petition filed under subsection (a) must be accompanied by the ordinance of any city required to consent to the incorporation under section 7 of this chapter.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.195-1984, SEC.1; P.L.86-1999, SEC.1; P.L.147-2013, SEC.1.

IC 36-5-1-3

Items to accompany petition

Sec. 3. A petition for incorporation must be accompanied by the

following items to be supplied at the expense of the petitioners:

- (1) A survey, certified by a professional surveyor registered under IC 25-21.5, showing the boundaries of and quantity of land contained in the territory sought to be incorporated.
- (2) An enumeration of the territory's residents and landowners and their mailing addresses, completed not more than thirty (30) days before the time of filing of the petition and verified by the persons supplying it.
- (3) A statement of the assessed valuation of all real property within the territory, certified by the township assessor of the township in which the territory is located, or the county assessor if there is no township assessor for the township.
- (4) A statement of the services to be provided to the residents of the proposed town and the approximate times at which they are to be established.
- (5) A statement of the estimated cost of the services to be provided and the proposed tax rate for the town.
- (6) The name to be given to the proposed town.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.241-1999, SEC.3; P.L.219-2007, SEC.115; P.L.146-2008, SEC.707; P.L.57-2013, SEC.96.

IC 36-5-1-4

Sufficiency of petition; plan commission recommendations

Sec. 4. (a) On receipt of a petition for incorporation, the county executive shall examine the petition to see that the petition meets the requirements of sections 2 and 3 of this chapter. If the county executive rejects the petition, the county executive shall set forth in writing and with specificity the manner in which the petition fails to meet the requirements of sections 2 and 3 of this chapter. If the petition is in order, the executive shall mark it with the date of filing and immediately forward one (1) copy to the plan commission, if any, having jurisdiction.

(b) The commission shall investigate the proposed incorporation and report their recommendations of approval or disapproval to the county executive at least ten (10) days before the hearing required by section 5 of this chapter. In making their investigations, they may use the services of any state or local government agency, and in making their report and recommendations, they shall be guided by the requirements for incorporation set out in section 8 of this chapter.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.24-1995, SEC.25; P.L.147-2013, SEC.2.

IC 36-5-1-5

Public hearing on petition; notice

Sec. 5. The county executive shall hold a public hearing on a petition for incorporation not less than sixty (60) nor more than ninety (90) days after the date of the filing of the petition, and shall require the petitioners to send notice of the hearing by certified mail to:

- (1) the residents and landowners of the territory as listed in the petition;
- (2) the legislative body of each municipality having any corporate boundary within three (3) miles of the perimeter of the proposed new town;
- (3) the executive of any other county in which a part of the proposed new town is located; and
- (4) the executive of a township in which all or a part of the proposed new town is located.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-1-6

Parties entitled to be heard; remonstrance; dismissal of petition

Sec. 6. The recipients of the notice required by section 5 of this chapter are parties to and are entitled to be heard at the public hearing. The petition for incorporation shall be dismissed if at any time during the incorporation proceedings, including an appeal, the county executive or a court hearing an appeal is presented with a verified remonstrance against incorporation, signed by at least:

- (1) fifty-one percent (51%) of the owners of a fee simple interest in real property in the affected territory; or
- (2) the owners of seventy-five percent (75%), in assessed valuation, of the real property in the affected territory.

The executive or court may determine the validity of the remonstrance by submitting it to the county auditor for verification.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-1-7

Petition to incorporate town within certain distance of city boundaries

Sec. 7. (a) The petitioners must obtain the consent by ordinance of the legislative body of a consolidated city before incorporating a town if any part of the proposed town is within four (4) miles of the corporate boundaries of the city. The legislative body of the consolidated city shall:

- (1) consent to the incorporation; or
- (2) deny consent to the incorporation;

not later than ninety (90) days after the legislative body receives the petitioners' written request. If the legislative body fails to act not later than ninety (90) days after the legislative body receives the petitioners' written request, the legislative body is considered to have consented to the petitioners' request for incorporation.

(b) The petitioners must obtain the consent by ordinance of the legislative body of a second or third class city before incorporating a town if any part of the proposed town is within three (3) miles of the corporate boundaries of the city. The legislative body of the city shall:

- (1) consent to the incorporation; or
- (2) deny consent to the incorporation;

not later than ninety (90) days after the legislative body receives the

petitioners' written request. If the legislative body fails to act not later than ninety (90) days after the legislative body receives the petitioners' written request, the legislative body is considered to have consented to the petitioners' request for incorporation.

(c) Subsection (b) does not apply to a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

As added by Acts 1980, P.L.212, SEC.4. Amended by Acts 1982, P.L.1, SEC.58; P.L.195-1984, SEC.2; P.L.5-1988, SEC.212; P.L.12-1992, SEC.161; P.L.147-2013, SEC.3.

IC 36-5-1-7.1

Exemption from city consent requirements

Sec. 7.1. The petitioners of a county having a population of more than seventy thousand (70,000) but less than seventy thousand fifty (70,050) are exempt from:

- (1) the requirements of section 7(a) of this chapter; and
- (2) the requirements of section 7(b) of this chapter if the second or third class city is within a county containing a consolidated city.

As added by Acts 1982, P.L.210, SEC.1. Amended by P.L.12-1992, SEC.162; P.L.170-2002, SEC.145; P.L.119-2012, SEC.191; P.L.147-2013, SEC.4.

IC 36-5-1-8

County executive action on petition; public question

Sec. 8. (a) The county executive may approve a petition for incorporation only if it finds all of the following:

- (1) That the proposed town is used or will, in the reasonably foreseeable future, be used generally for commercial, industrial, residential, or similar purposes.
- (2) That the proposed town is reasonably compact and contiguous.
- (3) That the proposed town includes enough territory to allow for reasonable growth in the foreseeable future.
- (4) That a substantial majority of the property owners in the proposed town have agreed that at least six (6) of the following municipal services should be provided on an adequate basis:
 - (A) Police protection.
 - (B) Fire protection.
 - (C) Street construction, maintenance, and lighting.
 - (D) Sanitary sewers.
 - (E) Storm sewers.
 - (F) Health protection.
 - (G) Parks and recreation.
 - (H) Schools and education.
 - (I) Planning, zoning, and subdivision control.
 - (J) One (1) or more utility services.
 - (K) Stream pollution control or water conservation.
- (5) That the proposed town could finance the proposed

municipal services with a reasonable tax rate, using the current assessed valuation of properties as a basis for calculation.

(6) That incorporation is in the best interest of the territory involved. This finding must include a consideration of:

(A) the expected growth and governmental needs of the area surrounding the proposed town;

(B) the extent to which another unit can more adequately and economically provide essential services and functions; and

(C) the extent to which the incorporators are willing to enter into agreements under IC 36-1-7 with the largest neighboring municipality, if that municipality has proposed such agreements.

(b) If the county executive determines that the petition satisfies the requirements set forth in subsection (a), the county executive may do any of the following:

(1) Adopt an ordinance under section 10.1 of this chapter incorporating the town.

(2) Deny the petition.

(3) Adopt a resolution to place a public question concerning the incorporation on the ballot at an election. The county executive shall request a date for the election as follows:

(A) If the county executive requests the public question be on the same date as a general election or primary election:

(i) the resolution must state that the election is to be on the same date as a general or primary election, and must be certified in accordance with IC 3-10-9-3; and

(ii) the election must be held on the date of the next general election or primary election, whichever is earlier, at which the question can be placed on the ballot under IC 3-10-9-3.

(B) If a petition contains a request for a special election, the county executive may request that the public question concerning the incorporation will be on the ballot of a special election. An election may be considered a special election only if it is conducted on a date other than the date of a general election or primary election. The date of the special election must be:

(i) at least seventy-four (74) and not more than one hundred four (104) days after the notice of the election is filed under IC 3-10-8-4; and

(ii) not later than the next general election or primary election, whichever is earlier, at which the question can be placed on the ballot under IC 3-10-9-3.

If the public question is on the ballot of a special election, the petitioners shall pay the costs of holding the special election.

If the county executive adopts a resolution under this subdivision, the county executive shall file the resolution and the petition with the circuit court clerk of each county that contains any part of the territory sought to be incorporated.

(c) After a resolution is filed with a circuit court clerk under subsection (b)(3), the circuit court clerk shall certify the resolution to the county election board. The county election board shall place the following public question on the ballot:

"Shall (insert a description of the territorial boundaries) be incorporated as a town?"

Only the registered voters residing within the territory of the proposed town may vote on the public question.

(d) Not earlier than sixty (60) days and not later than thirty (30) days before the election, the petitioners shall publish a notice in accordance with IC 5-3-1 in each county where the proposed town is located. The notice must include the following:

(1) A description of the boundaries of the proposed town and the quantity of land contained in the territory of the proposed town.

(2) The information provided under section 3(3) through 3(6) of this chapter.

(3) The name, telephone number, and electronic mail address (if available) of the contact person for the petitioners.

(4) A statement that the petition is available for inspection and copying in the office of the circuit court clerk of each county where the proposed town is located.

The petitioners shall submit proof of publication of the notice to the circuit court clerk of each county in which the proposed town is located. A defect in the form of the notice does not invalidate the petition.

(e) If a majority of the voters residing within the territory of the proposed town:

(1) vote "no" on the public question, the territory is not incorporated as a town, and a new petition for incorporation may not be filed within the period set forth in section 9 of this chapter; or

(2) vote "yes" on the public question, the county executive of each county in which the proposed town is located shall adopt an ordinance under section 10.1 of this chapter.

(f) The circuit court clerk shall certify the results of a public question under this section to the following:

(1) The county executive of each county in which the proposed incorporated territory is located.

(2) The county auditor of each county in which the proposed incorporated territory is located.

(3) The department of local government finance.

(4) The department of state revenue.

(5) The state board of accounts.

(6) The office of the secretary of state.

(7) The office of census data established by IC 2-5-1.1-12.2.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.195-1984, SEC.3; P.L.147-2013, SEC.5; P.L.76-2014, SEC.67.

Denied petition; resubmittal

Sec. 9. (a) This subsection applies only to a petition filed before July 1, 2013. If a petition for incorporation is denied, a petition for incorporation may be refiled under section 8 of this chapter not earlier than one (1) year after the date of final denial. This subsection expires July 1, 2014.

(b) This subsection applies only to a petition filed after June 30, 2013. A petition for incorporation may not be refiled within two (2) years after the date:

(1) the petition was denied under section 8(b)(2) of this chapter;
or

(2) of the election at which a majority of voters voting on the public question vote "no" under section 8 of this chapter.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.147-2013, SEC.6.

IC 36-5-1-10

Repealed

(Repealed by Acts 1980, P.L.2, SEC.20.)

IC 36-5-1-10.1

Adoption of ordinance incorporating town; required provisions to conduct elections; territory not included in any district or in more than one district; effective date of ordinance

Sec. 10.1. (a) If a majority of the voters voting on the public question under section 8 of this chapter vote "yes", the county executive shall adopt an ordinance incorporating the town.

(b) An ordinance adopted under subsection (a) must:

(1) either:

(A) provide that all members of the town legislative body are to be elected at large (if the town would have a population of less than three thousand five hundred (3,500)); or

(B) divide the town into not less than three (3) nor more than seven (7) districts; and

(2) direct the county election board to conduct an election in the town on the date of the next general or municipal election to be held in any precincts in the county.

An election conducted under this section must comply with IC 3 concerning town elections. If the date that an ordinance is adopted under this section is not later than June 1 of a general or municipal election year, the election must be conducted on the date of the next general or municipal election held in any precincts in the county after the election for which absentee balloting is being conducted. However, a primary election may not be conducted before an election conducted under this section, regardless of the population of the town.

(c) Districts established by an ordinance adopted under this section must comply with IC 3-11-1.5.

(d) If any territory in the town is not included in one (1) of the districts established under this section, the territory is included in the

district that:

- (1) is contiguous to that territory; and
- (2) contains the least population of all districts contiguous to that territory.

(e) If any territory in the town is included in more than one (1) of the districts established under this section, the territory is included in the district that:

- (1) is one (1) of the districts in which the territory is described in the ordinance adopted under this section;
- (2) is contiguous to that territory; and
- (3) contains the least population of all districts contiguous to that territory.

(f) Except as provided in subsection (g), an ordinance adopted under this section becomes effective when filed with:

- (1) the office of the secretary of state; and
- (2) the circuit court clerk of each county in which the town is located.

(g) An ordinance incorporating a town under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. An ordinance under this section that would otherwise take effect during the year preceding a year in which a federal decennial census is conducted takes effect January 1 of the year in which a federal decennial census is conducted.

(h) Each county that contains a part of the proposed town must adopt identical ordinances providing for the incorporation of the town.

(i) Notwithstanding subsection (g) as that subsection existed on December 31, 2009, an ordinance that took effect January 2, 2010, because of the application of subsection (g), as that subsection existed on December 31, 2009, is instead considered to take effect January 1, 2010, without the adoption of an ordinance or an amended ordinance or any other additional action being required.

As added by Acts 1980, P.L.2, SEC.16. Amended by P.L.5-1983, SEC.12; P.L.5-1986, SEC.54; P.L.13-1988, SEC.19; P.L.5-1989, SEC.106; P.L.7-1990, SEC.61; P.L.3-1993, SEC.268; P.L.3-1997, SEC.457; P.L.86-1999, SEC.2; P.L.123-2000, SEC.5; P.L.113-2010, SEC.123; P.L.147-2013, SEC.7; P.L.219-2013, SEC.97.

IC 36-5-1-11

Liability for existing indebtedness or other obligations; payment to township

Sec. 11. (a) If the township in which a new town is incorporated is indebted or has outstanding unpaid bonds or other obligations at the time of the incorporation, the town is liable for and shall pay that indebtedness in the same ratio as the assessed valuation of the property in the town bears to the assessed valuation of all property in the township, as shown by the most recent assessment for taxation before the incorporation, unless the assessed property within the town is already liable for the indebtedness.

(b) The town shall pay its indebtedness under this section to the

township executive. If the indebtedness consists of outstanding unpaid bonds or notes of the township, the payments to the township executive shall be made as the principal or interest on the bonds or notes becomes due.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-1-11.5

Localities considered towns for all purposes

Sec. 11.5. A locality that:

- (1) has elected town officers and has governed itself as a town for at least ten (10) years preceding September 1, 1988; or
- (2) has been incorporated under this chapter after August 31, 1988;

is a town for all purposes unless the town has been dissolved under this chapter or IC 36-5-1.1.

As added by P.L.1-1989, SEC.69.

IC 36-5-1-12

Proceedings to dissolve or change name; petition, signatures, and reasons

Sec. 12. (a) Proceedings to dissolve a town may be instituted under either this section or IC 36-5-1.1.

(b) A proceeding under this section may be instituted to either dissolve the town or change its name. The proceeding is instituted by filing a petition with the town clerk. The petition must be signed by at least the number of the voters of the town required to place a candidate on the ballot under IC 3-8-6-3, must be verified by at least one (1) of the petitioners, and must include the reasons for the dissolution or change of name.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.342-1987, SEC.1; P.L.12-1995, SEC.129; P.L.219-2013, SEC.98.

IC 36-5-1-13

Bond for costs and expenses

Sec. 13. A petition filed under section 12 of this chapter must be accompanied by a bond for costs and expenses, payable to and approved by the town legislative body. The petitioners shall pay all costs and expenses incurred under this chapter, including the expenses of an election, if their petition is not successful.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.219-2013, SEC.99.

IC 36-5-1-14

Notice of filing of petition and day of hearing

Sec. 14. When a petition is filed under section 12 of this chapter, the town clerk shall give notice of the filing and of the day of a hearing on the petition, in the manner prescribed by IC 5-3-1.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.219-2013, SEC.100.

IC 36-5-1-15

Hearing; withdrawal of petitioner's name; decision

Sec. 15. (a) On the date named in the notice given under section 14 of this chapter, the town legislative body shall hear and consider:

- (1) the petition; and
- (2) all statements presented in favor of or in opposition to granting the petition.

The legislative body shall then decide whether there is sufficient cause to submit the question of dissolving the town or changing its name to the voters of the town.

(b) A petitioner who wants to withdraw his name from the petition must do so before the legislative body makes its decision. The legislative body may not count names withdrawn from the petition as part of the total required by section 12 of this chapter.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.219-2013, SEC.101.

IC 36-5-1-16

Dissolution or change of name; date of election; notice

Sec. 16. If the town legislative body decides to submit the question of dissolving the town or changing its name to the voters of the town, it shall certify the question to the county election board. The election board shall fix the date of an election for that purpose. The town clerk shall give notice of the election in the manner prescribed by IC 5-3-1.

As added by Acts 1980, P.L.212, SEC.4. Amended by Acts 1981, P.L.45, SEC.15; P.L.3-1987, SEC.559.

IC 36-5-1-17

Election; ballots; clerk's statement of votes cast

Sec. 17. (a) An election under section 16 of this chapter shall be held in the town. The voters shall, by ballot, vote on the question submitted to them. The question shall be placed on the ballot in the form prescribed by IC 3-10-9-4 and must state "Shall the town of _____ dissolve?" or "Shall the town of _____ change its name to _____?".

(b) Within four (4) days after the canvass of the vote by the county election board, the town clerk shall prepare and attest a statement of all the votes cast at the election, to be signed by the members of the county election board and filed with:

- (1) the clerk of the county in which the greatest percentage of the population of the town is located; and
- (2) the office of the secretary of state.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.3-1987, SEC.560; P.L.5-1989, SEC.107; P.L.3-1997, SEC.458; P.L.123-2000, SEC.6.

IC 36-5-1-18

Number of votes and voters required; effective dates of change of

name and dissolution; disposition of property; validity of contracts

Sec. 18. (a) If at least two-thirds (2/3) of the votes cast in an election under section 16 of this chapter are affirmative, the dissolution or change of name takes effect in the manner prescribed by this section.

(b) A change of name takes effect thirty (30) days after the filing of the statement required by section 17 of this chapter.

(c) Except as provided in subsection (d), a dissolution takes effect six (6) months after the filing of the statement required by section 17 of this chapter. The property owned by the town after payment of debts and liabilities shall be disposed of in the manner chosen by a majority of the voters of the town at a special election for that purpose. Dissolution of a town does not affect the validity of a contract to which the town is a party.

(d) A dissolution under this chapter may not take effect during the year preceding a year in which a federal decennial census is conducted. A dissolution that would otherwise take effect during the year preceding a year in which a federal decennial census is conducted takes effect January 1 of the year in which a federal decennial census is conducted.

(e) Notwithstanding subsection (d) as that subsection existed on December 31, 2009, a dissolution that took effect January 2, 2010, because of the application of subsection (d), as that subsection existed on December 31, 2009, is instead considered to take effect January 1, 2010, without any additional action being required.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.5-1989, SEC.108; P.L.113-2010, SEC.124; P.L.219-2013, SEC.102.

IC 36-5-1-19

Aggrieved persons; appeal; procedure

Sec. 19. (a) A person aggrieved by a decision made by the town legislative body under section 15 of this chapter or by the result of an election under section 16 of this chapter may, within thirty (30) days, appeal that decision or result to the circuit court for the county in which the town is located. The appeal is instituted by giving written notice to the town legislative body and filing with the town clerk a bond in the sum of five hundred dollars (\$500), with surety approved by the legislative body. The bond must provide that the appeal will be duly prosecuted and that the appellants will pay all costs if the appeal is decided against them.

(b) When an appeal is instituted, the town clerk shall file with the clerk of the circuit court a transcript of all proceedings in the case, together with all papers filed in the case. The town legislative body may not take further action in the case until the appeal is heard and determined.

(c) An appeal under this section shall be heard by the circuit court without a jury. Change of venue from the judge may be granted, but change of venue from the county may not be granted.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-1-20**Towns not functioning for ten years; hearing; findings; adoption of ordinance or ordering dissolution**

Sec. 20. (a) This section does not apply to a town described by IC 36-5-1-11.5.

(b) A town subject to this chapter may be dissolved if the county election board of the county in which the greatest percentage of population of the town is located conducts a public hearing and finds that the town has not elected town officers or had a functioning town government during the preceding ten (10) years.

(c) The county election board shall certify the board's findings to the county executive, who may adopt an ordinance or (in a county subject to IC 36-2-2.5 or IC 36-2-3.5) issue an order to dissolve the town.

As added by P.L.3-1993, SEC.269. Amended by P.L.77-2014, SEC.21.

IC 36-5-1-21**Approvals of proceedings to incorporate town across county boundaries commenced before July 1, 1999**

Sec. 21. Notwithstanding sections 2 and 10.1 of this chapter, as in effect July 1, 1999, proceedings commenced before July 1, 1999, to incorporate a town across county boundaries is only required to have the approval of the county executive of the county that contains all or a major part of the territory sought to be incorporated.

As added by P.L.220-2011, SEC.653.

IC 36-5-1.1

Chapter 1.1. Dissolution of Small Towns

IC 36-5-1.1-1

Application of chapter

Sec. 1. This chapter applies to:

- (1) towns having a population of less than five hundred (500); and
- (2) included towns (as defined in IC 36-3-1-7).

As added by P.L.342-1987, SEC.2. Amended by P.L.5-1989, SEC.109.

IC 36-5-1.1-2

Institution of proceedings

Sec. 2. (a) Proceedings to dissolve a town may be instituted under section 10.5 or 10.6 of this chapter or by filing with the executive of the county containing more than fifty percent (50%) in assessed valuation of the land in the town:

- (1) a resolution adopted by the town legislative body requesting dissolution; or
- (2) a petition signed by at least twenty-five percent (25%) of the town's voters registered at the last general election.

(b) On receipt of a petition or resolution for dissolution, the county executive shall mark the petition or resolution with the date of filing.

As added by P.L.342-1987, SEC.2. Amended by P.L.5-1989, SEC.110; P.L.4-1991, SEC.143.

IC 36-5-1.1-3

Public hearing; notice

Sec. 3. The county executive shall hold a public hearing on a petition or resolution for dissolution filed under section 2 of this chapter not less than sixty (60) nor more than ninety (90) days after the date of the filing of the petition or resolution. The county executive shall publish notice of the hearing in accordance with IC 5-3-1.

As added by P.L.342-1987, SEC.2.

IC 36-5-1.1-4

Recommendations of plan commission

Sec. 4. (a) The county executive shall forward one (1) copy of the resolution or petition filed under section 2 of this chapter to the plan commission, if any, having jurisdiction.

(b) The plan commission shall submit their written recommendations for approval or disapproval of dissolution to the county executive at least ten (10) days before the hearing required by section 3 of this chapter.

As added by P.L.342-1987, SEC.2. Amended by P.L.24-1995, SEC.26.

IC 36-5-1.1-5

Parties; remonstrance against dissolution; dismissal of petition

Sec. 5. The recipients of the notice required by section 3 of this chapter are parties to and are entitled to be heard at the public hearing. The petition for dissolution shall be dismissed if at any time during the dissolution proceedings, including an appeal, the county executive or a court hearing an appeal is presented with a verified remonstrance against dissolution, signed by at least twenty-five percent (25%) of the town's voters registered at the last general election. The executive or court may determine the validity of the remonstrance by submitting it to the clerk of the circuit court for the county where the voter resides for verification.

As added by P.L.342-1987, SEC.2.

IC 36-5-1.1-6

Decision of county executive

Sec. 6. The county executive shall, on the date fixed under section 3 of this chapter, hear and determine the petition or resolution and render a decision on the question of dissolution.

As added by P.L.342-1987, SEC.2.

IC 36-5-1.1-7

Evidentiary considerations

Sec. 7. At the hearing the county executive shall approve dissolution unless the evidence establishes that:

- (1) the petition requesting dissolution has not been signed by at least twenty-five percent (25%) of the voters;
- (2) there are enough invalid signatures on the petition requesting dissolution to reduce the number of valid signatures to below twenty-five percent (25%) of the voters;
- (3) at least twenty-five percent (25%) of the town's voters have signed a petition under section 5 of this chapter remonstrating against the dissolution; or
- (4) the town legislative body has passed a resolution opposing dissolution.

As added by P.L.342-1987, SEC.2.

IC 36-5-1.1-8

Residents' challenge to sufficiency or validity of petition

Sec. 8. The county executive shall permit the residents of the town to submit evidence challenging the sufficiency or the validity of either:

- (1) a petition or resolution for dissolution; or
- (2) a petition opposed to dissolution.

As added by P.L.342-1987, SEC.2.

IC 36-5-1.1-9

Appeal; notice; bond; transcript; change of venue; effective date of dissolution

Sec. 9. (a) A person aggrieved by a decision made by the county executive under section 6 of this chapter may, within thirty (30) days,

appeal that decision or result to the circuit court for the county containing more than fifty percent (50%) in assessed valuation of the land in the town. The appeal is instituted by giving written notice to the clerk of the circuit court and filing with the county executive a bond for five hundred dollars (\$500), with surety approved by the county executive. The bond must provide:

- (1) that the appeal will be duly prosecuted; and
- (2) that the appellants will pay all costs if the appeal is decided against them.

(b) When an appeal is instituted, the county executive shall file with the clerk of the circuit court a transcript of all proceedings in the case, together with all papers filed in the case. The county executive may not take further action in the case until the appeal is heard and determined.

(c) An appeal under this section shall be heard by the circuit court without a jury. Change of venue from the judge may be granted, but change of venue from the county may not be granted. If the court orders the dissolution to take place, the circuit court clerk shall, immediately after the judgment of the court, certify the judgment of the circuit court to:

- (1) the clerk of the municipality;
- (2) the circuit court clerk of any other county in which the town is located; and
- (3) the office of the secretary of state.

(d) Except as provided in subsection (e), the dissolution takes effect sixty (60) days after the order is certified.

(e) A dissolution under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. A dissolution under this section that would otherwise take effect during the year preceding the year in which the federal decennial census is conducted takes effect January 1 of the year in which a federal decennial census is conducted.

(f) Notwithstanding subsection (e) as that subsection existed on December 31, 2009, a dissolution that took effect January 2, 2010, because of the application of subsection (e), as that subsection existed on December 31, 2009, is instead considered to take effect January 1, 2010, without any additional action being required.

As added by P.L.342-1987, SEC.2. Amended by P.L.5-1989, SEC.111; P.L.3-1997, SEC.459; P.L.123-2000, SEC.7; P.L.113-2010, SEC.125.

IC 36-5-1.1-10

Dissolution ordinance; effective date; disposition of property; validity of contracts; records

Sec. 10. (a) If the county executive approves dissolution under section 6 of this chapter, the county executive shall adopt:

- (1) an ordinance; or
- (2) an order in a county having a consolidated city;

dissolving the town.

(b) Except as provided in subsection (e), a dissolution takes effect:

(1) at least sixty (60) days after the ordinance or order under subsection (a) is adopted; and

(2) when the county auditor files a copy of the ordinance or order with:

(A) the circuit court clerk of each county in which the town is located; and

(B) the office of the secretary of state.

(c) The property owned by the town after payment of debts and liabilities shall be disposed of by the county executive. Any proceeds remaining shall be deposited in the county general fund. Dissolution of a town does not affect the validity of a contract to which the town is a party.

(d) After dissolution, the books and records of the town become the property of the county executive for safekeeping.

(e) A dissolution under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. A dissolution under this section that would otherwise take effect during the year preceding a year in which a federal decennial census is conducted takes effect January 1 of the year in which a federal decennial census is conducted.

(f) Notwithstanding subsection (e) as that subsection existed on December 31, 2009, a dissolution that took effect January 2, 2010, because of the application of subsection (e), as that subsection existed on December 31, 2009, is instead considered to take effect January 1, 2010, without any additional action being required.

As added by P.L.342-1987, SEC.2. Amended by P.L.5-1989, SEC.112; P.L.10-1992, SEC.29; P.L.3-1997, SEC.460; P.L.123-2000, SEC.8; P.L.113-2010, SEC.126.

IC 36-5-1.1-10.5

Dissolution of town; requisites of resolution; notice; hearing; adoption of ordinance; effective date of dissolution; validity of town contracts

Sec. 10.5. (a) This section applies to the dissolution of an included town.

(b) The town legislative body may adopt a resolution to consider dissolution of the town under this section. The resolution must state the following:

(1) That the town legislative body conduct a public hearing at a stated date, place, and time concerning the dissolution of the town.

(2) That the town legislative body will hear all statements presented in favor of or in opposition to dissolution.

(3) That the town legislative body may adopt an ordinance to dissolve the town at the conclusion of the public hearing.

(c) The town clerk shall publish a notice of the public hearing in accordance with IC 5-3-1.

(d) The town legislative body may continue a public hearing under this section. If a hearing is continued, the clerk is not required to publish an additional notice under subsection (c).

(e) The town legislative body may adopt an ordinance following the conclusion of the public hearing under subsection (b). The town clerk shall file a copy of the ordinance with:

- (1) the circuit court clerk of the county; and
- (2) the office of the secretary of state.

(f) Except as provided in subsection (g), the ordinance dissolving the town takes effect:

- (1) at least sixty (60) days after adoption; and
- (2) when the ordinance is filed under subsection (e).

(g) A dissolution under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. A dissolution under this section that would otherwise take effect during the year preceding a year in which the federal decennial census is conducted takes effect January 1 of the year in which a federal decennial census is conducted.

(h) When an ordinance dissolving a town becomes effective:

- (1) the territory included within the town when the ordinance was adopted becomes a part of the consolidated city;
- (2) the books and records of the town become the property of the county executive;
- (3) the property owned by the town after payment of debts and liabilities shall be disposed of by the county executive; and
- (4) the county executive shall deposit any proceeds remaining after payment of debts and liabilities into the county general fund.

(i) The dissolution of a town under this section does not affect the validity of a contract to which the town is a party.

(j) Notwithstanding subsection (g) as that subsection existed on December 31, 2009, a dissolution that took effect January 2, 2010, because of the application of subsection (g), as that subsection existed on December 31, 2009, is instead considered to take effect January 1, 2010, without any additional action being required.

As added by P.L.5-1989, SEC.113. Amended by P.L.3-1997, SEC.461; P.L.123-2000, SEC.9; P.L.113-2010, SEC.127.

IC 36-5-1.1-10.6

Included towns; petition; ballot question; filing certification; time of dissolution; year preceding census year; results of dissolution; contracts

Sec. 10.6. (a) This section applies to included towns.

(b) The dissolution of a town under this section may be instituted by filing a petition with the county board of registration. The petition must be signed by at least the number of the registered voters of the town required to place a candidate on the ballot under IC 3-8-6-3. The petition must be filed not later than June 1 of a year in which a general or municipal election will be held.

(c) If a petition meets the criteria set forth in subsection (b), the county board of registration shall certify the public question to the county election board under IC 3-10-9-3. The county election board shall place the question of dissolution on the ballot provided for

voters in the included town at the first general or municipal election following certification. The question shall be placed on the ballot in the form prescribed by IC 3-10-9-4 and must state "Shall the town of _____ dissolve?".

(d) If the public question is approved by a majority of the voters voting on the question, the county election board shall file a copy of the certification prepared under IC 3-12-4-9 concerning the public question described by this section with the following:

(1) The circuit court clerk of the county.

(2) The office of the secretary of state.

(e) Except as provided in subsection (f), dissolution occurs:

(1) at least sixty (60) days after certification under IC 3-12-4-9; and

(2) when the certification is filed under subsection (d).

(f) A dissolution under this section may not take effect during the year preceding a year in which a federal decennial census is conducted. A dissolution under this section that would otherwise take effect during the year preceding a year in which the federal decennial census is conducted takes effect January 1 of the year in which a federal decennial census is conducted.

(g) When a town is dissolved under this section:

(1) the territory included within the town when the ordinance was adopted becomes a part of the consolidated city;

(2) the books and records of the town become the property of the county executive;

(3) the property owned by the town after payment of debts and liabilities shall be disposed of by the county executive; and

(4) the county executive shall deposit any proceeds remaining after payment of debts and liabilities into the county general fund.

(h) The dissolution of a town under this section does not affect the validity of a contract to which the town is a party.

(i) Notwithstanding subsection (f) as that subsection existed on December 31, 2009, a dissolution that took effect January 2, 2010, because of the application of subsection (f), as that subsection existed on December 31, 2009, is instead considered to take effect January 1, 2010, without any additional action being required.

As added by P.L.4-1991, SEC.144. Amended by P.L.3-1993, SEC.270; P.L.12-1995, SEC.130; P.L.3-1997, SEC.462; P.L.123-2000, SEC.10; P.L.113-2010, SEC.128.

IC 36-5-1.1-11

Limitation

Sec. 11. If a dissolution proceeding under this chapter is unsuccessful, the person seeking dissolution may not attempt a new proceeding under this chapter or IC 36-5-1 for at least one (1) year following the hearing under section 3 or 10.5 of this chapter or the election under section 10.6 of this chapter.

As added by P.L.342-1987, SEC.2. Amended by P.L.5-1989, SEC.114; P.L.4-1991, SEC.145.

IC 36-5-1.1-12

Towns not functioning for ten years; hearing; findings; adoption of ordinance or ordering dissolution

Sec. 12. (a) This section does not apply to a town described by IC 36-5-1-11.5.

(b) A town subject to this chapter may be dissolved if the county election board of the county in which the greatest percentage of population of the town is located conducts a public hearing and finds that the town has not elected town officers or had a functioning town government during the preceding ten (10) years.

(c) The county election board shall certify the board's findings to the county executive, who may adopt an ordinance or (in a county having a consolidated city or subject to IC 36-2-3.5) issue an order to dissolve the town.

As added by P.L.3-1993, SEC.271.

IC 36-5-1.2

Chapter 1.2. Change of Name of a Small Town

IC 36-5-1.2-1

Applicability of chapter; other applicable provisions

Sec. 1. (a) This chapter applies to towns having a population of less than five hundred (500).

(b) A town may change the town's name under this chapter or IC 36-5-1.

As added by P.L.258-1993, SEC.1.

IC 36-5-1.2-2

Petition to change name; conditions; bond

Sec. 2. A proceeding to change the name of a town may be instituted under this chapter by filing with the town clerk-treasurer a petition that meets the following conditions:

(1) The petition must be signed by a majority of the registered voters of the town.

(2) The petition must be verified by at least one (1) of the petitioners.

(3) The petition must contain a statement of the proposed new name of the town and the reasons to change the town's name.

(4) The petitioners agree to pay all costs and expenses incurred by the town if the petition is unsuccessful.

(5) The petition must be accompanied by a bond that meets the following conditions:

(A) The bond is payable to the town.

(B) The bond is for costs and expenses incurred under this chapter if the petitioners do not pay the costs and expenses.

(C) The bond is satisfactory to the town legislative body.

As added by P.L.258-1993, SEC.1.

IC 36-5-1.2-3

Withdrawal from petition

Sec. 3. (a) A petitioner may withdraw from the petition before the town legislative body makes a decision on the petition under section 6 of this chapter.

(b) In determining whether a sufficient number of registered voters have signed the petition, the legislative body may not consider names withdrawn from the petition under this section.

As added by P.L.258-1993, SEC.1.

IC 36-5-1.2-4

Notice of petition filing and hearing

Sec. 4. If a petition is filed under section 2 of this chapter, the town clerk-treasurer shall give notice under IC 5-3-1 of the following:

(1) The filing of the petition.

(2) The day, time, and place of a hearing on the petition.

As added by P.L.258-1993, SEC.1.

IC 36-5-1.2-5

Hearing to consider petition

Sec. 5. On the day and time set in the notice given under section 4 of this chapter, the town legislative body shall hear and consider the petition.

As added by P.L.258-1993, SEC.1.

IC 36-5-1.2-6

Adoption of resolution for name change

Sec. 6. If after the hearing held under section 5 of this chapter, the town legislative body decides to change the name of the town as requested by the petition, the legislative body must, by a majority vote, adopt a resolution to change the name of the town.

As added by P.L.258-1993, SEC.1.

IC 36-5-1.2-7

Appeal of decision; standing

Sec. 7. A person aggrieved by a decision made by the town legislative body under section 6 of this chapter may appeal the decision to the circuit court with jurisdiction in the county in which the town is located.

As added by P.L.258-1993, SEC.1.

IC 36-5-1.2-8

Appeal of decision; notice and bond

Sec. 8. To begin an appeal under section 7 of this chapter, a person must do the following not more than thirty (30) days after adoption of the resolution by the town legislative body:

- (1) Give written notice of the appeal to the legislative body.
- (2) File a bond with the town clerk-treasurer that meets the following conditions:
 - (A) Is in the amount of five hundred dollars (\$500).
 - (B) Has surety on the bond approved by the legislative body.
 - (C) Provides the following:
 - (i) The appeal will be duly prosecuted.
 - (ii) The appellants will pay all costs of the appeal if the appeal is decided against the appellants.

As added by P.L.258-1993, SEC.1.

IC 36-5-1.2-9

Appeal of decision; clerk of court filings

Sec. 9. If section 8 of this chapter is satisfied, the town clerk-treasurer shall file the following with the clerk of the circuit court:

- (1) A transcript of all proceedings in the case.
- (2) All papers filed in the case.

As added by P.L.258-1993, SEC.1.

IC 36-5-1.2-10

Stay of name change

Sec. 10. The town legislative body may not take further action in the case until the appeal is heard and determined.

As added by P.L.258-1993, SEC.1.

IC 36-5-1.2-11

Determination of appeal without jury; change of venue

Sec. 11. (a) The circuit court shall hear an appeal under this chapter without a jury.

(b) Change of venue from the judge may be granted, but change of venue from the county may not be granted.

As added by P.L.258-1993, SEC.1.

IC 36-5-1.2-12

Certification of resolution not appealed

Sec. 12. If an appeal has not been filed, not later than thirty (30) days after adoption of the resolution by the town legislative body, the town clerk-treasurer shall send a certified copy of the resolution to each of the following:

- (1) The clerk of the circuit court of each county in which the town is located.
- (2) The plan commission having jurisdiction, if any.
- (3) The office of the secretary of state.

As added by P.L.258-1993, SEC.1. Amended by P.L.24-1995, SEC.27; P.L.3-1997, SEC.463; P.L.123-2000, SEC.11.

IC 36-5-1.2-13

Effective date of name change

Sec. 13. A change of the town's name takes effect thirty (30) days after the later of the following:

- (1) Adoption of the resolution by the town legislative body under section 6 of this chapter.
- (2) Any appeals under this chapter are determined.

As added by P.L.258-1993, SEC.1.

IC 36-5-2

Chapter 2. Town Legislative Body and Executive

IC 36-5-2-0.1

Application of certain amendments to chapter

Sec. 0.1. The amendments made to sections 9.8 and 10 of this chapter by P.L.335-1985 do not affect a proposal initiated before September 1, 1986, to amend, repeal, or otherwise change a comprehensive plan or zoning ordinance under IC 36-7-4. Such a proposal may be considered, adopted, and approved under the statutes in effect before September 1, 1986, as if P.L.335-1985 had not been enacted.

As added by P.L.220-2011, SEC.654.

IC 36-5-2-1

Application of chapter

Sec. 1. This chapter applies to all towns.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-2-2

Town council; president

Sec. 2. The town council elected under IC 3-10-6 or IC 3-10-7 is the town legislative body. The president of the town council selected under section 7 of this chapter is the town executive.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.5-1986, SEC.55; P.L.8-1989, SEC.97.

IC 36-5-2-3

Term of office of members

Sec. 3. (a) Except as provided in subsection (b), (c), (d), (e), or (f), the term of office of a member of the legislative body is four (4) years, beginning at noon January 1 after the member's election and continuing until the member's successor is elected and qualified.

(b) The term of office of a member of the legislative body appointed to fill a vacancy resulting from an increase in the number of town legislative body members under section 4.2 of this chapter:

(1) begins when the ordinance increasing the number of legislative body members takes effect, or when the member is appointed under IC 3-13-9-4, if the appointment is made after the ordinance takes effect; and

(2) continues until noon January 1 following the next municipal election scheduled under IC 3-10-6-5 or IC 3-10-7-6 and until the member's successor is elected and qualified.

(c) The term of office of a member of the legislative body elected under IC 36-5-1-10.1 following the incorporation of the town:

(1) begins at noon November 30 following the election; and

(2) continues until noon January 1 following the next municipal election scheduled under IC 3-10-6-5 or IC 3-10-7-6 and until the member's successor is elected and qualified.

(d) The term of office of a member of the legislative body subject

to IC 3-10-6-2.5(d)(1) is three (3) years, beginning at noon January 1 after the member's election and continuing until the member's successor is elected and qualified.

(e) The term of office of a member of a legislative body subject to an ordinance described by IC 3-10-6-2.6 is one (1) year, beginning at noon January 1 after the member's election and continuing until the member's successor is elected and qualified.

(f) The term of office of a member of a legislative body subject to an ordinance described by IC 3-10-7-2.7 is:

(1) three (3) years if the member is elected at the next municipal election not conducted in a general election year; and

(2) four (4) years for the successors of a member of a legislative body described in subdivision (1);

beginning noon January 1 after election and continuing until a successor is elected and qualified.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.3-1993, SEC.272; P.L.4-1996, SEC.103.

IC 36-5-2-4

Repealed

(Repealed by Acts 1980, P.L.2, SEC.20.)

IC 36-5-2-4.1

Town legislative body districts; standards; crossing precinct boundaries; appeal; when division to be made; towns of less than 3,500 abolishing districts; ordinances; recertification of districts; filing with circuit court clerk; time for filing; district boundary description prevails over conflicting map

Sec. 4.1. (a) The legislative body may, by ordinance, divide the town into districts for the purpose of conducting elections of town officers.

(b) A town legislative body district must comply with the following standards:

(1) The district must be composed of contiguous territory, except for territory that is not contiguous to any other part of the town.

(2) The district must be reasonably compact.

(3) The district must contain, as nearly as is possible, equal population.

(4) The district may not cross a census block boundary except when following a precinct boundary line or unless the ordinance specifies that the census block has no population and is not likely to ever have population.

(5) The district may not cross precinct lines, except as provided in subsection (c).

(c) The boundary of a town legislative body district established under subsection (a) may cross a precinct boundary line if:

(1) the legislative body provides by ordinance under section 5 of this chapter that all legislative body members are to be elected at large by the voters of the whole town; or

(2) the district would not otherwise contain, as nearly as is possible, equal population.

(d) If any territory in the town is not included in one (1) of the districts established under this section, the territory is included in the district that:

- (1) is contiguous to that territory; and
- (2) contains the least population of all districts contiguous to that territory.

(e) If any territory in the town is included in more than one (1) of the districts established under this section, the territory is included in the district that:

- (1) is one (1) of the districts in which the territory is described in the ordinance adopted under this section;
- (2) is contiguous to that territory; and
- (3) contains the least population of all districts contiguous to that territory.

(f) The ordinance may be appealed in the manner prescribed by IC 34-13-6. If the town is located in two (2) or more counties, the appeal may be filed in the circuit or superior court of any of those counties.

(g) This subsection does not apply to a town with an ordinance described by subsection (h). Except as provided in subsection (k), the division permitted by subsection (a) shall be made:

- (1) during the second year after a year in which a federal decennial census is conducted, subject to IC 3-11-1.5-32; and
- (2) when required to assign annexed territory to a municipal legislative body district.

The division may also be made in any other year.

(h) This subsection applies to a town having a population of less than three thousand five hundred (3,500). The town legislative body may adopt an ordinance providing that:

- (1) town legislative body districts are abolished; and
- (2) all members of the legislative body are elected at large.

(i) An ordinance described by subsection (h):

- (1) may not be adopted or repealed during a year in which a municipal election is scheduled to be conducted in the town under IC 3-10-6 or IC 3-10-7; and
- (2) is effective upon passage.

(j) A copy of the ordinance establishing districts or a recertification under this section must be filed with the circuit court clerk of the county that contains the greatest population of the town not later than thirty (30) days after the ordinance or recertification is adopted. The filing must include a map of the district boundaries:

- (1) adopted under subsection (a); or
- (2) recertified under subsection (k).

(k) This subsection applies during the second year after a year in which a federal decennial census is conducted. If the legislative body determines that a division under subsection (a) is not required, the legislative body shall adopt an ordinance recertifying that the districts as drawn comply with this section.

(l) The limitations set forth in this section are part of the ordinance, but do not have to be specifically set forth in the ordinance. The ordinance must be construed, if possible, to comply with this chapter. If a provision of the ordinance or an application of the ordinance violates this chapter, the invalidity does not affect the other provisions or applications of the ordinance that can be given effect without the invalid provision or application. The provisions of the ordinance are severable.

(m) If a conflict exists between:

- (1) a map showing the boundaries of a district; and
- (2) a description of the boundaries of that district set forth in the ordinance;

the district boundaries are the description of the boundaries set forth in the ordinance, not the boundaries shown on the map, to the extent there is a conflict between the description and the map.

As added by Acts 1980, P.L.2, SEC.17. Amended by P.L.13-1988, SEC.20; P.L.5-1989, SEC.115; P.L.7-1990, SEC.62; P.L.4-1991, SEC.146; P.L.3-1993, SEC.273; P.L.2-1995, SEC.130; P.L.3-1997, SEC.464; P.L.1-1998, SEC.205; P.L.230-2005, SEC.88; P.L.271-2013, SEC.52.

IC 36-5-2-4.2

Change in number of members in legislative body; resolution; implementation

Sec. 4.2. (a) This section applies to the alteration of the number of members of a legislative body.

(b) The legislative body may adopt a resolution to submit a public question on the number of legislative body members to the voters of the town. The resolution must state the following:

- (1) The proposed number of legislative body members, which must be at least three (3) and not more than seven (7).
- (2) The date of the general, municipal, or special election at which the public question will appear on the ballot.
- (3) That the following question will be placed on the ballot in the form provided by IC 3-10-9-4:

"Shall the number of town council members be increased (or decreased, if applicable) from _____ (insert the current number of members provided for) to _____ (insert the number of members proposed in the resolution)?"

(c) IC 3 applies to an election conducted under subsection (b). If the county election board will conduct the election at which the public question will be submitted, the question must be certified to the board under IC 3-10-9-3.

(d) If a majority of the votes cast on the question under subsection (b) are in the negative, the legislative body may not adopt a resolution under subsection (b) for at least one (1) year following the date the prior resolution was adopted.

(e) If a majority of votes cast on the question under subsection (b) are in the affirmative, the legislative body shall adopt an ordinance at its next regular meeting following the election altering the number

of legislative body members to the number specified in the public question. The legislative body may also alter existing districts and establish new districts in the manner prescribed by IC 36-5-1-10.1. An ordinance adopted under this subsection becomes effective January 1 following its adoption.

(f) If the number of legislative body members is increased, the legislative body shall fill any resulting vacancy under IC 3-13-9-4. The legislative body may fill the vacancy before the ordinance described in subsection (e) takes effect. However, a town legislative body member appointed under this subsection does not assume office until the beginning of the term specified in section 3 of this chapter. *As added by P.L.11-1988, SEC.12. Amended by P.L.8-1989, SEC.98; P.L.1-1990, SEC.359; P.L.3-1993, SEC.274.*

IC 36-5-2-4.5

Adoption of ordinances; elections

Sec. 4.5. (a) This section applies to a town if both of the following apply:

(1) The town has a population of more than ten thousand (10,000).

(2) The town legislative body adopts an ordinance adopting the provisions of this section. A town may not adopt an ordinance under this section during a year in which municipal elections are held under IC 3-10-6-5.

(b) A town legislative body has the following members:

(1) Five (5) members, each elected by the voters of a district. The districts are established by ordinance by the town legislative body as provided in this chapter.

(2) Two (2) members elected at large by all the voters of the town.

(c) An ordinance adopted under this section must provide for the following:

(1) Four (4) members of the legislative body are elected during a year that municipal elections are held under IC 3-10-6-5.

(2) Three (3) members of the legislative body are elected either:
(A) during the year before the year described in subdivision (1); or

(B) during the year after the year described in subdivision (1).

The year for elections under this subdivision must be chosen so that during the elections held for the town legislative body under subdivision (4), a member of the town legislative body does not serve a term of more than four (4) years.

(3) The members of the legislative body elected at large may not be elected at the same time.

(4) At the first two (2) elections after the ordinance is adopted, members are elected to serve the following terms:

(A) Two (2) members elected under subdivision (1) are elected to a four (4) year term and two (2) members elected under subdivision (1) are elected to a three (3) year term.

(B) Two (2) members elected under subdivision (2) are elected to a four (4) year term and one (1) member elected under subdivision (2) is elected to a three (3) year term.

The ordinance must provide a random procedure to determine which members serve four (4) year terms and which members serve three (3) year terms.

(5) A member of the town council elected after the elections described in subdivision (4) serves a term of four (4) years.

(6) The term of office of a member begins at noon January 1 after the member's election.

(d) An ordinance adopted under this section may provide that before the first election after adoption of the ordinance, members of the town legislative body added to the legislative body by the ordinance may be appointed to the legislative body by a vote of the current members of the legislative body.

(e) After the first two (2) elections held as described in subsection (c)(4), the town legislative body may adopt an ordinance to do the following:

(1) Divide the town into seven (7) districts.

(2) Provide that the members elected at large are each elected from a district.

An ordinance adopted under this subsection must comply with this chapter in establishing the districts and provide details to provide a transition from electing two (2) members at large to electing all members from districts.

(f) Subject to this section, members of the town legislative body are elected as provided in IC 3-10-6-4.5.

As added by P.L.38-1999, SEC.72. Amended by P.L.14-2000, SEC.81.

IC 36-5-2-5

Representation by district, at large, or both

Sec. 5. (a) The legislative body has:

(1) one (1) member for each district established under:

(A) IC 36-5-1-10.1; or

(B) section 4.1 or 4.2 of this chapter; or

(2) the number of members provided for when the town adopted an ordinance under section 4.1 of this chapter abolishing town legislative body districts.

(b) The legislative body shall provide by ordinance that its members:

(1) are to be elected by the voters of the district in which they reside;

(2) are to be elected at large by the voters of the whole town; or

(3) are to be elected both by districts and at-large.

(c) If a town legislative body adopts an ordinance under this section providing that its members are to be elected both by districts and at-large, the ordinance must:

(1) specify which seats on the legislative body are elected by the voters of a district and which are elected by the voters of the

whole town; and

(2) provide that the ordinance is effective on January 1 following its adoption.

As added by Acts 1980, P.L.212, SEC.4. Amended by Acts 1982, P.L.33, SEC.27; P.L.11-1988, SEC.13; P.L.7-1990, SEC.63.

IC 36-5-2-6

Residency requirement

Sec. 6. (a) A member of the legislative body must reside within:

(1) the town as provided in Article 6, Section 6 of the Constitution of the State of Indiana; and

(2) the district from which the member was elected, if applicable.

(b) A member of the legislative body who is elected by the voters of a district forfeits office if the member ceases to be a resident of the district.

(c) A member of the legislative body who is elected by the voters of the entire town but is elected or selected as a candidate from a district forfeits office if the member ceases to be a resident of the district.

(d) An at-large member of the legislative body forfeits office if the member ceases to be a resident of the town.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.3-1987, SEC.561; P.L.3-1993, SEC.275.

IC 36-5-2-6.5

Circumstances creating a vacancy on the town council

Sec. 6.5. A vacancy on the legislative body is created whenever any of the following circumstances occur:

(1) A member resigns.

(2) A member dies.

(3) A member ceases to be a resident of the town or district as set forth in section 6 of this chapter.

As added by P.L.174-2002, SEC.5.

IC 36-5-2-7

President of legislative body; selection; term

Sec. 7. The legislative body shall select one (1) of its members to be its president for a definite term, which may not exceed his term of office as a member of the legislative body.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-2-8

Town clerk-treasurer as clerk; ex officio member for casting tie breaking vote

Sec. 8. (a) The town clerk-treasurer is the clerk of the legislative body.

(b) The clerk-treasurer is an ex officio member for the purpose of casting the deciding vote to break a tie.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.34-1999,

SEC.3.

IC 36-5-2-9

Powers of legislative body

Sec. 9. The legislative body may:

- (1) adopt ordinances and resolutions for the performance of functions of the town;
- (2) purchase, hold, and convey any interest in property, for the use of the town; and
- (3) adopt and use a common seal.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-2-9.2

Quorum

Sec. 9.2. A majority of all the elected members of the legislative body constitutes a quorum.

As added by Acts 1980, P.L.73, SEC.14.

IC 36-5-2-9.4

Majority vote; two-thirds vote

Sec. 9.4. (a) A requirement that an ordinance, resolution, or other action of the legislative body be passed by a majority vote means at least a majority vote of all the elected members.

(b) A requirement that an ordinance, resolution, or other action of the legislative body be passed by a two-thirds (2/3) vote means at least a two-thirds (2/3) vote of all the elected members.

As added by Acts 1980, P.L.73, SEC.15.

IC 36-5-2-9.6

Majority vote to pass ordinance

Sec. 9.6. A majority vote of the legislative body is required to pass an ordinance, unless a greater vote is required by statute.

As added by Acts 1980, P.L.73, SEC.16.

IC 36-5-2-9.8

Two-thirds vote with unanimous consent of members present

Sec. 9.8. (a) A two-thirds (2/3) vote of all the elected members, after unanimous consent of the members present to consider the ordinance, is required to pass an ordinance of the legislative body on the same day or at the same meeting at which it is introduced.

(b) Subsection (a) does not apply to the following:

- (1) A zoning ordinance or amendment to a zoning ordinance adopted under IC 36-7.
- (2) An ordinance to increase the number of town legislative body members adopted under section 4.2 of this chapter, unless the ordinance also establishes new legislative body districts.

As added by Acts 1980, P.L.73, SEC.17. Amended by Acts 1982, P.L.33, SEC.28; P.L.335-1985, SEC.37; P.L.3-1993, SEC.276.

IC 36-5-2-10

Ordinance, order, or resolution adoption; requirements

Sec. 10. (a) An ordinance, order, or resolution passed by the legislative body is considered adopted when it is signed by the executive. If required by statute, an adopted ordinance, order, or resolution must be promulgated or published before it takes effect.

(b) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

- (1) it is published under subsection (c); or
- (2) it declares an emergency requiring its immediate effectiveness and is posted in:
 - (A) one (1) public place in each district in the town; or
 - (B) a number of public places in the town equal to the number of town legislative body members, if the town has abolished legislative body districts under section 4.1 of this chapter.

(c) Except as provided in subsection (e), if a town publishes any of its ordinances in book or pamphlet form, no other publication is required. If an ordinance prescribing a penalty or forfeiture for a violation is published under this subsection, it takes effect two (2) weeks after the publication of the book or pamphlet. Publication under this subsection, if authorized by the legislative body, constitutes presumptive evidence:

- (1) of the ordinances in the book or pamphlet;
- (2) of the date of adoption of the ordinances; and
- (3) that the ordinances have been properly signed, attested, recorded, and approved.

(d) This section (other than subsection (f)) does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(e) An ordinance increasing a building permit fee on new development must:

- (1) be published:
 - (A) one (1) time in accordance with IC 5-3-1; and
 - (B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and
- (2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

(f) Subject to subsection (j), the legislative body shall:

- (1) subject to subsection (g), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and
- (2) give written notice to the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.

(g) Upon written request by the legislative body, the department

of environmental management may waive the notice requirement of subsection (f)(1).

(h) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (f).

(i) The failure of an environmental restrictive ordinance to comply with subsection (h) does not void the ordinance.

(j) The notice requirements of subsection (f) apply only if the municipal corporation received under IC 13-25-5-8.5(f) written notice that the department is relying on the environmental restrictive ordinance referred to in subsection (f) as part of a risk based remediation proposal:

(1) approved by the department; and

(2) conducted under IC 13-22, IC 13-23, IC 13-24, IC 13-25-4, or IC 13-25-5.

As added by Acts 1980, P.L.212, SEC.4. Amended by Acts 1980, P.L.73, SEC.18; P.L.335-1985, SEC.38; P.L.7-1990, SEC.64; P.L.100-2003, SEC.3; P.L.78-2009, SEC.26; P.L.159-2011, SEC.47; P.L.105-2013, SEC.3.

IC 36-5-2-10.2

Recording of adopted ordinance; presumptive evidence

Sec. 10.2. Within a reasonable time after an ordinance of the legislative body is adopted, the clerk-treasurer shall record it in a book kept for that purpose. The record must include:

(1) the signature of the executive;

(2) the attestation of the clerk-treasurer; and

(3) the date of each recorded item.

The record or a certified copy of it constitutes presumptive evidence of the adoption of the ordinance.

As added by Acts 1980, P.L.73, SEC.19.

IC 36-5-2-11

Bond issuance, purpose, payments, and procedure; short term loans

Sec. 11. (a) The legislative body may issue bonds for the purpose of procuring money to be used in the exercise of the powers of the town and for the payment of town debts. However, a town may not issue bonds to procure money to pay current expenses.

(b) Bonds issued under this section are payable in the amounts and at the times determined by the legislative body.

(c) Bonds issued under this section are subject to the provisions of IC 5-1 and IC 6-1.1-20 relating to the following:

(1) The filing of a petition requesting the issuance of bonds and giving notice of the petition.

(2) The giving of notice of a hearing on the appropriation of the proceeds of bonds.

(3) The right of taxpayers to appear and be heard on the proposed appropriation.

(4) The approval of the appropriation by the department of local

government finance.

(5) The right of:

(A) taxpayers and voters to remonstrate against the issuance of bonds in the case of a proposed bond issue described by IC 6-1.1-20-3.1(a); or

(B) voters to vote on the issuance of bonds in the case of a proposed bond issue described by IC 6-1.1-20-3.5(a).

(6) The sale of bonds at public sale for not less than their par value.

(d) The legislative body may, by ordinance, make loans of money for not more than five (5) years and issue notes for the purpose of refunding those loans. The loans may be made only for the purpose of procuring money to be used in the exercise of the powers of the town, and the total amount of outstanding loans under this subsection may not exceed five percent (5%) of the town's total tax levy in the current year (excluding amounts levied to pay debt service and lease rentals). Loans under this subsection shall be made as follows:

(1) The ordinance authorizing the loans must pledge to their payment a sufficient amount of tax revenues over the ensuing five (5) years to provide for refunding the loans.

(2) The loans must be evidenced by notes of the town in terms designating the nature of the consideration, the time and place payable, and the revenues out of which they will be payable.

(3) The interest accruing on the notes to the date of maturity may be added to and included in their face value or be made payable periodically, as provided in the ordinance.

Notes issued under this subsection are not bonded indebtedness for purposes of IC 6-1.1-18.5.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.37-1988, SEC.24; P.L.90-2002, SEC.471; P.L.219-2007, SEC.116; P.L.146-2008, SEC.708.

IC 36-5-2-12

Loans and notes; procedures; actions to contest validity

Sec. 12. (a) The legislative body may, by ordinance, make loans and issue notes for the purpose of refunding those loans in anticipation of revenues of the town that are anticipated to be levied and collected during the term of the loans. The term of a loan made under this subsection may not be more than five (5) years. Loans under this section shall be made in the same manner as loans made under section 11(b) and 11(c) of this chapter, except that:

(1) the ordinance authorizing the loans must appropriate and pledge to the payment of the loans a sufficient amount of the revenues in anticipation of which the loans are issued and out of which the loans are payable; and

(2) the loans must be evidenced by time warrants of the town in terms designating the nature of the consideration, the time and place payable, and the revenues in anticipation of which the loans are issued and out of which the loans are payable.

(b) An action to contest the validity of a loan made under this

section must be brought within fifteen (15) days from the day on which the ordinance is adopted.

As added by P.L.35-1990, SEC.45. Amended by P.L.40-1996, SEC.11.

IC 36-5-2-13

Removal of town employee

Sec. 13. The town executive must have the approval of a majority of the town council before the executive may discharge, reduce in grade under IC 36-8-3-4, or remove a town employee.

As added by P.L.34-1999, SEC.4.

IC 36-5-3

Chapter 3. Town Budget Procedures and Compensation of Officers and Employees

IC 36-5-3-1

Application of chapter

Sec. 1. This chapter applies to all towns.
As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-3-2

Compensation for officers and employees

Sec. 2. (a) As used in this section, "compensation" means the total of all money paid to an elected town officer for performing duties as a town officer, regardless of the source of funds from which the money is paid.

(b) The town legislative body shall, by ordinance, fix the compensation of its own members, the town clerk-treasurer, and the town marshal. The legislative body shall provide reasonable compensation for other town officers and employees.

(c) The compensation of an elected town officer may not be changed in the year for which it is fixed, nor may it be reduced below the amount fixed for the previous year.

(d) The legislative body may provide that town officers and employees receive additional compensation for services that:

- (1) are performed for the town;
- (2) are not governmental in nature; and
- (3) are connected with the operation of a municipally owned utility or function.

Subject to the approval of the legislative body, the administrative agency operating the utility or function shall fix the amount of the additional compensation, which shall be paid from the revenues of the utility or function.

As added by Acts 1980, P.L.212, SEC.4. Amended by Acts 1981, P.L.17, SEC.26; P.L.351-1983, SEC.1; P.L.15-1993, SEC.4.

IC 36-5-3-3

Formulation of budget estimate

Sec. 3. Before the publication (before January 1, 2015) and before the submission of notice of budget estimates required by IC 6-1.1-17-3, each town shall formulate a budget estimate for the ensuing budget year in the following manner, unless it provides by ordinance for a different manner:

- (1) Each department head shall prepare for the department head's department an estimate of the amount of money required for the ensuing budget year, stating in detail each category and item of expenditure the department head anticipates.
- (2) The town fiscal officer shall prepare an itemized estimate of revenues available for the ensuing budget year, and shall prepare an itemized estimate of expenditures for other purposes above the money proposed to be used by the departments.

(3) The town executive shall meet with the department heads and the fiscal officer to review and revise their various estimates.

(4) After the executive's review and revision, the fiscal officer shall prepare for the executive a report of the estimated department budgets, miscellaneous expenses, and revenues necessary or available to finance the estimates.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.183-2014, SEC.26.

IC 36-5-3-4

Report of budget estimates; ordinances fixing tax rate and appropriations

Sec. 4. The town fiscal officer shall present the report of budget estimates to the town legislative body under IC 6-1.1-17. After reviewing the report, the legislative body shall prepare an ordinance fixing the rate of taxation for the ensuing budget year and an ordinance making appropriations for the estimated department budgets and other town purposes during the ensuing budget year. The legislative body, in the appropriation ordinance, may change any estimated item from the figure submitted in the report of the fiscal officer. The legislative body shall promptly act on the appropriation ordinance.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-3-5

Additional appropriations; decrease; ordinances

Sec. 5. After the passage of the appropriation ordinance, the town legislative body may make further or additional appropriations by ordinance, unless their result is to increase the tax levy set under IC 6-1.1-17. The legislative body may, by ordinance, decrease any appropriation set by ordinance.

As added by Acts 1980, P.L.212, SEC.4. Amended by Acts 1980, P.L.73, SEC.20.

IC 36-5-3-6

Waiver of compensation

Sec. 6. (a) As used in this section, "compensation" means the total of all money paid to an elected town officer for performing duties as a town officer, regardless of the source of funds from which the money is paid. The term includes all employee benefits paid to a town officer, including life insurance, health insurance, disability insurance, retirement benefits, and pension benefits.

(b) A town officer may waive the officer's compensation for any year by filing a notice that satisfies the following:

(1) The notice is in writing.

(2) The notice states in substance all of the following:

(A) The position held by the town officer.

(B) The calendar year covered by the notice.

(C) That the town officer waives compensation under this

section.

(D) That the town officer understands that the notice is irrevocable beginning January 1 of the year covered by the notice.

(3) The notice is signed by the town officer who wants to waive compensation.

(c) A town officer who wants to waive compensation under this section must file the notice with the town clerk-treasurer before January 1 of the year covered by the notice.

(d) A notice filed under this section is irrevocable beginning January 1 of the year covered by the notice.

(e) A town officer who files a notice under this section:

(1) is not entitled to compensation for duties performed in the year covered by the notice; and

(2) may not be paid compensation for duties performed in the year covered by the notice.

As added by P.L.67-2001, SEC.1.

IC 36-5-4

Chapter 4. Miscellaneous Town Fiscal and Administrative Provisions

IC 36-5-4-1

Application of chapter

Sec. 1. This chapter applies to all towns.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-4-2

Appropriations by ordinance

Sec. 2. Unless a statute provides otherwise, town monies may be disbursed only after an appropriation made by ordinance of the town legislative body and recorded in a book kept for that purpose by the legislative body. Each appropriation must be made from the fund against which the expenses arose.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-4-3

Issuance of warrants

Sec. 3. (a) The town legislative body or a board of the town may order the issuance of warrants for payment of money by the town only at a meeting of the legislative body or board.

(b) A town officer who violates this section forfeits his office.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-4-4

Claims against town; allowance; violation

Sec. 4. (a) Except as provided in section 12 of this chapter, the town legislative body or a board of the town may allow a claim:

- (1) only at a meeting of the legislative body or board; and
- (2) only if the claim was filed in the manner prescribed by IC 5-11-10-2 at least five (5) days before the meeting.

(b) A town officer who violates this section forfeits his office.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.32-1992, SEC.5.

IC 36-5-4-5

Repealed

(Repealed by Acts 1980, P.L.73, SEC.23.)

IC 36-5-4-6

Claim defined; issuance of warrant for payment

Sec. 6. (a) As used in this section, "claim" means a bill or an invoice submitted for goods or services.

(b) Except as provided in section 12 of this chapter, a warrant for payment of a claim against a town may be issued only if the claim is:

- (1) supported by a fully itemized invoice or bill under IC 5-11-10-1.6;
- (2) filed with the town fiscal officer;

(3) certified by the fiscal officer before payment that each invoice is true and correct; and

(4) allowed by the town legislative body or by the board of the town having jurisdiction over allowance of the payment of the claim.

(c) The certification by the fiscal officer under subsection (b)(3) must be on a form prescribed by the state board of accounts.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.32-1992, SEC.6; P.L.71-1995, SEC.5; P.L.69-1995, SEC.10.

IC 36-5-4-7

Vacation leave; compensation

Sec. 7. One (1) to three (3) days before the vacation leave period of a town officer or employee begins, the town may pay him the amount of compensation he will earn while he is on vacation leave.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-4-8

Repealed

(Repealed by Acts 1981, P.L.57, SEC.45.)

IC 36-5-4-9

Repealed

(Repealed by Acts 1980, P.L.73, SEC.23.)

IC 36-5-4-10

Delivery of records and property by town officer to successor

Sec. 10. Each town officer shall deliver town records and property in his custody to his successor in office when that successor qualifies.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-4-11

Licenses issued by town; revocation or suspension

Sec. 11. The town executive may revoke or suspend any license issued by the town if the person holding the license has violated the terms or conditions of the license or of the law under which it was issued.

As added by Acts 1981, P.L.11, SEC.165.

IC 36-5-4-12

Preapproved payments of claims

Sec. 12. (a) The legislative body of a town may adopt an ordinance allowing money to be disbursed under this section for lawful town purposes.

(b) Notwithstanding IC 5-11-10, with the prior written approval of the board having jurisdiction over allowance of the claim, a town fiscal officer may make claim payments in advance of a board allowance for the following types of expenses if the town legislative body has adopted an ordinance under subsection (a):

(1) Property or services purchased or leased from:

- (A) the United States government; or
- (B) an agency or a political subdivision of the United States government.
- (2) License fees or permit fees.
- (3) Insurance premiums.
- (4) Utility payments or utility connection charges.
- (5) Federal grant programs if:
 - (A) advance funding is not prohibited; and
 - (B) the contracting party provides sufficient security for the amount advanced.
- (6) Grants of state funds authorized by statute.
- (7) Maintenance agreements or service agreements.
- (8) Lease agreements or rental agreements.
- (9) Principal and interest payments on bonds.
- (10) Payroll.
- (11) State, federal, or county taxes.
- (12) Expenses that must be paid because of emergency circumstances.
- (13) Expenses described in an ordinance.

(c) Each payment of expenses under this section must be supported by a fully itemized invoice or bill and certification by the fiscal officer.

(d) The town legislative body or the board having jurisdiction over the allowance of the claim shall review and allow the claim at the body's or board's next regular or special meeting following the preapproved payment of the expense.

As added by P.L.32-1992, SEC.7. Amended by P.L.69-1995, SEC.11.

IC 36-5-4-13

Transfer between funds

Sec. 13. (a) Except as provided in subsection (c), this subsection applies to a town with a population of five hundred (500) or less. Notwithstanding the provisions of any other statute, a town may transfer money from any town fund to another town fund after the passage of an ordinance or a resolution by the town legislative body specifying the:

- (1) amount of the transfer;
- (2) funds involved;
- (3) date of the transfer; and
- (4) general purpose of the transfer.

(b) Except as provided in subsection (c), this subsection applies to a town having a population of more than five hundred (500) but less than two thousand (2,000). Notwithstanding IC 8-14-1 and IC 8-14-2, a town may transfer money distributed to the town from:

- (1) the motor vehicle highway account under IC 8-14-1;
- (2) the local road and street account under IC 8-14-2; or
- (3) the:

- (A) motor vehicle highway account under IC 8-14-1; and
- (B) local road and street account under IC 8-14-2;

to any other town fund after the passage of an ordinance or a

resolution by the town legislative body that specifies the amount of the transfer, the funds involved, the date of the transfer, and the general purpose of the transfer. However, the total amount of all money transferred by a town under this subsection may not exceed forty thousand dollars (\$40,000).

(c) A:

(1) municipality located in a county having a population of more than fifteen thousand (15,000) but less than fifteen thousand five hundred (15,500); and

(2) town:

(A) located in a county having a population of more than thirty-seven thousand one hundred twenty-five (37,125) but less than thirty-seven thousand five hundred (37,500); and

(B) having a population of less than one thousand (1,000);

may not transfer money under this section to or from a food and beverage tax receipts fund established under IC 6-9.

As added by P.L.17-1995, SEC.21. Amended by P.L.233-1996, SEC.1; P.L.170-2002, SEC.146; P.L.119-2012, SEC.192.

IC 36-5-4-14

Filing copies of agency financial records

Sec. 14. Each town agency, board, commission, district, or other town entity shall file one (1) copy of that agency's, board's, commission's, district's, or entity's financial records with the town fiscal officer.

As added by P.L.98-2000, SEC.23.

IC 36-5-5

Chapter 5. Town Manager

IC 36-5-5-1

Application of chapter

Sec. 1. This chapter applies to all towns.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-5-2

Employment; compensation; tenure

Sec. 2. The town legislative body may employ a town manager to be the administrative head of the town government and may fix his compensation and terms of employment. The manager may be employed to serve:

- (1) at the pleasure of the legislative body; or
- (2) for a definite tenure not to exceed the longest remaining term in office of a member of the legislative body, in which case he may be dismissed only for cause.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-5-3

Legislative body members barred

Sec. 3. The town legislative body may not employ one of its members as the manager.

As added by Acts 1980, P.L.212, SEC.4. Amended by Acts 1980, P.L.73, SEC.22.

IC 36-5-5-4

Joint employment

Sec. 4. The legislative bodies of two (2) or more towns may employ the same person as the manager of their respective towns.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-5-5

Performance bond

Sec. 5. The manager must, in the manner prescribed by IC 5-4-1, execute a bond for the faithful performance of his duties.

As added by Acts 1980, P.L.212, SEC.4. Amended by Acts 1981, P.L.47, SEC.23.

IC 36-5-5-6

Acting manager

Sec. 6. The town legislative body may appoint a qualified person to perform the duties of the manager whenever he is absent or unable to perform his duties.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-5-7

Bonds, notes, or warrants; prohibition

Sec. 7. The town legislative body may not authorize the manager

to issue or execute bonds, notes, or warrants of the town.
As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-5-8

Duties

Sec. 8. The manager, under the direction of the town legislative body, is responsible for the administrative duties of the legislative body. Unless a written order or ordinance of the legislative body provides otherwise, the manager:

- (1) shall attend the meetings of the legislative body and recommend actions he considers advisable;
- (2) shall hire town employees according to the pay schedules and standards fixed by the legislative body or by statute;
- (3) shall suspend, discharge, remove, or transfer town employees, if necessary for the welfare of the town;
- (4) may delegate any of his powers to an employee responsible to him;
- (5) shall administer and enforce all ordinances, orders, and resolutions of the legislative body;
- (6) shall see that all statutes that are required to be administered by the legislative body or a town officer subject to the control of the legislative body are faithfully administered;
- (7) shall prepare budget estimates and submit them to the legislative body when required;
- (8) shall execute contracts on behalf of the town for materials, supplies, services, or improvements, after the completion of the appropriations, notice, and competitive bidding required by statute; and
- (9) may receive service of summons on behalf of the town.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-5-9

Police disciplinary body membership barred

Sec. 9. The manager may not serve as a member of any body that hears disciplinary charges against:

- (1) the town marshal; or
- (2) a member of the town police department.

As added by P.L.343-1987, SEC.1.

IC 36-5-6

Chapter 6. Town Clerk-Treasurer

IC 36-5-6-1

Application of chapter

Sec. 1. This chapter applies to all towns.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-6-2

Clerk and fiscal officer

Sec. 2. The clerk-treasurer elected under this chapter is both the town clerk and the town fiscal officer.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-6-3

Residency; term of office

Sec. 3. (a) The clerk-treasurer must reside within the town as provided in Article 6, Section 6 of the Constitution of the State of Indiana. The clerk-treasurer forfeits office if the clerk-treasurer ceases to be a resident of the town.

(b) Except as provided in subsection (c) or (d), the term of office of the clerk-treasurer is four (4) years, beginning at noon January 1 after election and continuing until a successor is elected and qualified.

(c) The term of office of a clerk-treasurer elected under IC 36-5-1-10.1 following the incorporation of the town:

- (1) begins at noon November 30 following the election; and
- (2) continues until noon January 1 following the next municipal election scheduled under IC 3-10-6-5 or IC 3-10-7-6 and until the clerk-treasurer's successor is elected and qualified.

(d) The term of office of a clerk-treasurer subject to an ordinance described by IC 3-10-6-2.6 is:

- (1) one (1) year if the clerk-treasurer is elected at the next municipal election not conducted in a general election year; and
- (2) four (4) years for the successors of the clerk-treasurer described in subdivision (1);

beginning at noon January 1 after the clerk-treasurer's election and continuing until the clerk-treasurer's successor is elected and qualified.

(e) The term of office of a clerk-treasurer subject to an ordinance described by IC 3-10-7-2.7 is:

- (1) three (3) years if the clerk-treasurer is elected at the next municipal election not conducted in a general election year; and
- (2) four (4) years for the successors of the clerk-treasurer described in subdivision (1);

beginning noon January 1 after the clerk-treasurer's election and continuing until the clerk-treasurer's successor is elected and qualified.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.3-1987, SEC.562; P.L.3-1993, SEC.277; P.L.4-1996, SEC.104.

IC 36-5-6-4

Election

Sec. 4. The clerk-treasurer shall be elected under IC 3-10-6 or IC 3-10-7 by the voters of the whole town.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.5-1986, SEC.56.

IC 36-5-6-5

Oaths, depositions, and acknowledgments

Sec. 5. The clerk-treasurer may administer oaths, take depositions, and take acknowledgments of instruments required by statute to be acknowledged.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-6-5.1

Office space provided

Sec. 5.1. If office space exists in a building owned or leased by the town, the legislative body shall provide suitable office space for the:

- (1) clerk-treasurer; and
- (2) staff and records of the clerk-treasurer.

As added by P.L.69-1995, SEC.12.

IC 36-5-6-6

Powers and duties

Sec. 6. (a) The clerk-treasurer shall do the following:

- (1) Receive and care for all town money and pay the money out only on order of the town legislative body.
- (2) Keep accounts showing when and from what sources the clerk-treasurer has received town money and when and to whom the clerk-treasurer has paid out town money.
- (3) Prescribe payroll and account forms for all town offices.
- (4) Prescribe the manner in which creditors, officers, and employees shall be paid.
- (5) Manage the finances and accounts of the town and make investments of town money.
- (6) Prepare for the legislative body the budget estimates of miscellaneous revenue, financial statements, and the proposed tax rate.
- (7) Maintain custody of the town seal and the records of the legislative body.
- (8) Issue all licenses authorized by statute and collect the fees fixed by ordinance.
- (9) Serve as clerk of the legislative body by attending its meetings and recording its proceedings.
- (10) Administer oaths, take depositions, and take acknowledgment of instruments that are required by statute to be acknowledged, without charging a fee.
- (11) Serve as clerk of the town court under IC 33-35-3-2, if the judge of the court does not serve as clerk of the court or appoint a clerk of the court under IC 33-35-3-1.

(12) Perform all other duties prescribed by statute.

(b) A clerk-treasurer is not liable, in an individual capacity, for any act or omission occurring in connection with the performance of the requirements set forth in subsection (a), unless the act or omission constitutes gross negligence or an intentional disregard of the requirements.

As added by Acts 1980, P.L.212, SEC.4. Amended by Acts 1981, P.L.17, SEC.27; P.L.189-1988, SEC.5; P.L.10-1997, SEC.33; P.L.33-1998, SEC.11; P.L.98-2004, SEC.162.

IC 36-5-6-7

Deputies and employees

Sec. 7. (a) The clerk-treasurer shall appoint the number of deputies and employees needed for the effective operation of the office, with the approval of the town legislative body. The clerk-treasurer's deputies and employees serve at the clerk-treasurer's pleasure.

(b) If a town owns a utility and the clerk-treasurer is directly responsible for the billing and collection of that utility's rates and charges, the clerk-treasurer shall appoint those employees who are also responsible for that billing and collection. These employees serve at the clerk-treasurer's pleasure.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.189-1988, SEC.6.

IC 36-5-6-8

Employment of attorneys or legal research assistants

Sec. 8. (a) A clerk-treasurer may hire or contract with competent attorneys or legal research assistants on terms the clerk-treasurer considers appropriate.

(b) Appropriations for the salaries of attorneys and legal research assistants employed under this section shall be approved in the annual budget.

(c) Appropriations for the salaries of attorneys and legal research assistants employed under this section shall be approved in the annual budget and must be allocated to the clerk-treasurer for the payment of attorneys' and legal research assistants' salaries.

As added by P.L.69-1995, SEC.13. Amended by P.L.98-2000, SEC.24.

IC 36-5-7

Chapter 7. Town Marshal

IC 36-5-7-1

Application of chapter

Sec. 1. This chapter applies to all towns that have not abolished the office of town marshal.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-7-2

Appointment; compensation

Sec. 2. The town legislative body shall appoint a town marshal and fix his compensation.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-7-3

Tenure; termination or suspension; procedures

Sec. 3. The marshal serves at the pleasure of the town legislative body. However, before terminating or suspending a marshal who has been employed by the town for more than six (6) months after completing the minimum basic training requirements adopted by the law enforcement training board under IC 5-2-1-9, the legislative body must conduct the disciplinary removal and appeals procedure prescribed by IC 36-8 for city fire and police departments.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-7-4

Chief police officer; powers and duties

Sec. 4. The marshal is the chief police officer of the town and has the powers of other law enforcement officers in executing the orders of the legislative body and enforcing laws. The marshal or his deputy:

- (1) shall serve all process directed to him by the town court or legislative body;
- (2) shall arrest without process all persons who commit an offense within his view, take them before a court having jurisdiction, and detain them in custody until the cause of the arrest has been investigated;
- (3) shall suppress breaches of the peace;
- (4) may, if necessary, call the power of the town to his aid;
- (5) may execute search warrants and arrest warrants; and
- (6) may pursue and jail persons who commit an offense.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-7-5

Service as street commissioner, chief of fire department, or both

Sec. 5. The town legislative body may require the marshal to serve as street commissioner, chief of the fire department, or both.

As added by Acts 1980, P.L.212, SEC.4.

IC 36-5-7-6

Deputy marshals; appointment; powers and liabilities; bond, compensation, and term; dismissal; procedure

Sec. 6. (a) The town legislative body shall by ordinance fix the number of deputy marshals. The town legislative body may by ordinance authorize the marshal to appoint deputy marshals. Deputy marshals have the powers and liabilities of the marshal in executing the orders of the legislative body or enforcing laws.

(b) One (1) deputy marshal may be designated as the town humane officer. He has the duties prescribed by IC 36-8 for city humane officers.

(c) The legislative body shall fix the amount of bond, compensation, and term of service of deputy marshals. The marshal may dismiss a deputy marshal at any time. However, a deputy marshal who has been employed by the town for more than six (6) months after completing the minimum basic training requirements adopted by the law enforcement training board under IC 5-2-1-9 may be dismissed only if the procedure prescribed by section 3 of this chapter is followed.

As added by Acts 1980, P.L.212, SEC.4. Amended by P.L.51-1999, SEC.1.

IC 36-5-7-7

Body armor

Sec. 7. (a) As used in this section, "body armor" has the meaning set forth in IC 35-47-5-13(a).

(b) After December 31, 2010, a town shall provide the town marshal and active deputy marshals of the town with body armor for the torso. The town shall replace the body armor for the torso according to the replacement period recommended by the manufacturer of the body armor for the torso.

(c) The town marshal and active deputy marshals of the town may not be required to pay for maintenance of the body armor for the torso furnished under this section.

(d) Body armor for the torso provided by a town under this section remains the property of the town. The town may sell the property when it becomes unfit for use, and all money received shall be paid into the general fund of the town.

As added by P.L.34-2010, SEC.5.