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.

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.
(8) The election division.

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; P.L.216-2015, SEC.43.

IC 36-5-1-9
Denied petition; resubmittal

Sec. 9. This section 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; P.L.5-2015, SEC.66.

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.