

TONOPAH INCORPORATION QUESTIONS & ANSWERS

Why incorporate Tonopah?

The Tonopah community is unincorporated, which means that the community does not have any local decision-making ability or the ability to control and shape its future. Decisions that affect the Tonopah community are made 50 miles away at the Maricopa County Board of Supervisors, Sheriff's Department, Air Quality Department, Planning and Development, and Transportation Department with little or no input from Tonopah residents. If we want a say in our future to provide better services, make local decisions, and develop Tonopah in a way that is consistent with the residents vision while preserving Tonopah's character, charm, and spirit, we must incorporate.

- Incorporation will enable Tonopah to address its problems and supply necessary services such as police protection and road maintenance.
- The members of the Tonopah city or town council will be closer to the residents and can react more quickly to their requests.
- Tonopah will receive state shared revenues, which do not currently flow into Tonopah.
- We will be able to plan future growth by adopting regulations for land use. This will protect the community against undesirable land uses.
- Residents will be able to decide to retain our uniqueness.
- As a city or town, Tonopah will be represented in transactions with the county, state and federal governments.
- We will be able to promote tourism, develop a local economy, and a place for our children to stay, work, and play.
- As a city or town, we can protect the investments Tonopah residents have in their homes and properties.

What are the Pros & Cons of Incorporation?

The League of Arizona Cities and Towns developed a publication titled Municipal Incorporation in Arizona (July 2019)*, where the section on Pros and Cons of Incorporation states:

PROS AND CONS OF INCORPORATION

In any incorporation movement, careful consideration must be given both to the advantages and disadvantages of this process. Based on our experience with communities considering incorporation, the following is a summary of important arguments, both pro and con, that should be examined carefully before making a final decision.

THE PROS

The most common arguments in favor of incorporation are as follows:

1. Incorporation establishes a city or town government through which a community can express itself, address its problems, and supply necessary services to the area. The community can exercise self-determination with regard to the nature and level of local services.
2. Municipal government is more responsive to the people living within the community. The members of the city and town council are closer to the people and, as a result, react more quickly to the community's requests.
3. A city or town government will receive substantial amounts of state revenues which do not flow to an unincorporated community.
4. An incorporated city or town has additional powers not found in an unincorporated community. An unincorporated community is under the jurisdiction of the county and, as a result, does not have much control over the level of services provided to the residents. The county must provide services as uniformly as possible throughout the unincorporated areas of the county. On the other hand, a city or town council has the authority to intensify services within the community.

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5. An incorporated city or town is able to plan for the future growth of the community by adopting planning and zoning regulations which will provide for controlled land use. This regulation protects the community against undesirable land use patterns. In addition, incorporated cities and towns may adopt building, plumbing, mechanical and electrical codes in the interest of public health, safety and welfare.
6. A separate city or town preserves the unity and pride of a particular community and maintains local individuality.
7. As a governmental unit, the city or town can better represent its citizens in transactions with the county, the State and Federal governments. In addition, local government may be used as a vehicle for positive progress in the community.
8. Municipalities may be the instrumentality for providing numerous utility services such as water, sewer, garbage and trash collection, gas and electrical service if the council decides to enter into these operations.

THE CONS

The following are the most common arguments against incorporation:

1. Incorporation is unnecessary because the particular needs of the community are limited in scope. The residents of the community may prefer to organize a special district to meet these limited needs. For example, the community may create a rural fire district to satisfy the necessity for fire protection, or a special district may be formed to fulfill other particular needs such as sewer service. As a result, the special district approach may be more appropriate if the residents of an area want to incorporate only to provide one specific service. However, a special district is not a substitute for incorporation, and the residents of a community should be careful in creating more than one in the same area. The creation of a number of special districts for one area leads to unnecessary levels of government if the area is incorporated at some later date.
2. The separate incorporation of an area which is economically and physically part of a larger community will produce what is known as a "rump" incorporation. This situation can produce an incorporated city or town with inadequate resources or physical facilities necessary to meet its needs. This is particularly true if the character of the community is predominantly residential. A "residential community" may discover after incorporation that its tax base can only maintain a minimal level of public service. In this case, it might be to the community's advantage to be annexed into an existing city or town or remain unincorporated.
3. The community is too small in either land area or population to serve as an efficient and effective unit of government. It may be difficult, if not impossible, in extremely small areas to provide for an adequate level of services. It may be more advantageous for an area of this nature to receive services from the county.
4. The incorporation of a small area which is an integral part of a larger metropolitan area will create a costly duplication of local services. This situation can lead to a lack of coordinated and orderly urban growth as well as a lower level of such vital services as police, fire, water, and sanitation.
5. The area possesses certain rural or farm characteristics which it wishes to retain, and incorporation is an undesirable step towards urbanization.
6. The most common argument against incorporation is that it will increase taxes. Every incorporated city and town has imposed some additional taxation, most often a local sales tax.

In summary, the question of incorporation requires a thorough study by the community. It is to the advantage of all involved if pro and con arguments are fully explained and weighed against each other before the final decision is made.

* Reference: <https://www.azleague.org/ArchiveCenter/ViewFile/Item/382>

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How does a community like Tonopah incorporate?

The entire incorporation process is detailed in state law (Arizona Revised Statutes 9-101). The League of Arizona Cities and Towns has a publication, Municipal Incorporation in Arizona that describes the incorporation process. It can be found at www.azleague.org. This publication and the assistance of a lawyer familiar with incorporation guided a group of Tonopah residents to ask, should we incorporate?

Before starting the incorporation process for an area like Tonopah, there has to be a community containing a population of fifteen hundred or more inhabitants. A “community” is defined as “a locality in which a body of people resides in more or less proximity having common interests in such services as public health, public protection, fire protection and water which bind together the people of the area, and where the people are acquainted and mingle in business, social, educational and recreational activities.” Tonopah meets the definition of “community” and has approximately 6,000 people.

To incorporate a petition is made to the County Board of Supervisors, setting forth the metes and bounds of the community, and the name under which the petitioners desire to be incorporated, and praying for the incorporation of the community into a city or town. The petition must be filed with the County Recorder. Then if ten percent of the qualified electors within the proposed incorporated area sign the petition, the County Board of Supervisors call for an election. If a majority of qualified electors voting thereon votes for incorporation, then the board of supervisors shall, by an order entered of record, declare the community incorporated as a city or town.

Another way to incorporate is when two-thirds of the qualified electors sign the incorporation petition. When the County Board of Supervisors is satisfied that two-thirds of the qualified electors residing in the community have signed the petition, it shall, by an order entered of record, declare the community incorporated as a city or town.

Does being next to the City of Buckeye affect Tonopah’s incorporation process?

Yes, when a community wants to incorporate within six miles of incorporated town or city, the community must have a resolution adopted by the city or town approving the proposed incorporation. See Arizona Revised Statute 9-101.01 Incorporation; urbanized area. For the Tonopah community to incorporate the area from approximately 331st Avenue to 379th Avenue, a resolution would have to be obtained from the City of Buckeye. 379th Avenue is the Wintersburg Road alignment north of Lower Buckeye Road.

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Can the City of Buckeye annex my property?

After incorporation, cities and towns can annex adjacent properties to expand their city/town limits. The detailed process for a city or town to extend and increase its corporate limits is found at Arizona Revised Statutes 9-471 [Annexation of territory; procedures; notice; petitions; access to information; restrictions](#)¹. The following is a summary of the process:

- 1) City/Town must file a petition with the county recorder describing the property contiguous to the city or town,
- 2) Notice of annexation must be posted/published and sent to county board of supervisors and landowners,
- 3) A Public Hearing must be held,
- 4) A petition signed by owners of one-half or more in value of the real and personal property and more than one-half of the persons owning real and personal property that would be subject to taxation by the city or town must be filed with the county recorder, and
- 5) The annexation shall become final after the adoption of the ordinance annexing the territory by the city or town governing body.

So YES, the City of Buckeye can annex your property if it is contiguous with Buckeye's city limits and you make a request.

There is also a scenario where your property could be annexed against your wishes. Say that you have two neighbors and everyone owns 10 acres of land of equal value. If your two neighbors petitioned to be annexed along with your property, the criteria (½ of property value & ½ of persons owning property) would be met, so your property might also become annexed into a city or town. The annexation process does provide a means for you to challenge the annexation.

Note that there are also special processes for annexation, such as a county island, that are described in the Arizona Revised Statutes.

- 1) <https://www.azleg.gov/viewDocument/?docName=http://www.azleg.gov/ars/9/00471.htm>

Does the City of Buckeye have any plans for the Tonopah area?

The City of Buckeye has historically not incorporated property west of the Hassayampa River with the exemption of the Douglas Ranch master planned community, which was done years ago. However, in a meeting with the City of Buckeye officials on January 5, 2022, they indicated that they want to annex along the I-10 corridor and the new I-11 corridor. Their preference would be to incorporate the Belmont master planned community, too.

Additionally, the City of Buckeye intends to help EPCOR construct a pipeline to pump CAP water from Harquahala Valley to a treatment plant south of I-10 and west of Highway 85.

The City of Buckeye has developed a 2040 General Plan* and in the Introduction section on page 1-1 the bottom paragraph reads:

The imagine Buckeye 2040 General Plan covers all land within Buckeye's Municipal Planning Area (MPA), approximately 639 square miles, which is inclusive of the existing City limits as well as unincorporated land within the MPA, (see Figure 1-1). The boundary of the MPA is generally defined by Perryville Road on the east, 379th Avenue on the west, Woods Road on the south and Black Mountain Road on the north.

379th Avenue is the Wintersburg Road alignment. It looks like Buckeye does have plans for a large area of Tonopah.

* <https://www.buckeyeaz.gov/home/showpublisheddocument/6300/637157202046800000>

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If a community becomes incorporated, how is the initial town or city council formed?

Arizona Revised State Statute 9-231 Common Council describes the process:

A. The corporate powers of a town incorporated under section 9-101 shall be vested in a common council. The first common council shall be appointed by the board of supervisors, on declaring the town incorporated, and the members shall continue in office until their successors are elected and qualified. The successors shall be elected by qualified electors residing in the town at an election held for that purpose on the third Tuesday in May following, and on the third Tuesday in May each two years thereafter, pursuant to section 16-204.

B. The common council of every town shall consist of five members if the population is fifteen hundred persons or less, or seven members if the population exceeds fifteen hundred persons at the time of incorporation. If thereafter the population of the town exceeds fifteen hundred persons as determined by the latest official United States census, the council may pass an ordinance increasing the membership to seven, with the additional two members to be elected at the first election subsequent to the passage of the ordinance.

If Tonopah incorporates, what services must be provided?

If Tonopah incorporates, it must establish a location (i.e., a city hall) where citizens can interact with the municipal government. The League of Arizona Cities and Towns describes what must be provided in their *Municipal Incorporation In Arizona* (2019)¹ document:

“After a community incorporates, the county will discontinue a number of services it previously provided on July 1 following incorporation or at an earlier date if the city or town, by resolution or ordinance, assumes these county responsibilities.²⁴

There are certain services that must be provided by an incorporated city or town according to state law. Some of these are explicitly required in statute and others are only implicit in functioning as a local government.

The newly incorporated city or town must provide its own police protection through employment of a police force or by contract with another law enforcement agency (i.e. the county sheriff’s department or another city/town police department).

The city or town will be required to maintain the public streets which have been dedicated to the county within the newly formed corporate limits. All county roads become city/town roads upon incorporation, and the county will not have the responsibility to provide street/road maintenance after June 30 following incorporation. On the other hand, the Arizona Department of Transportation (ADOT) will continue to provide maintenance on any portion of a state highway inside the corporate limits.

In addition to the two items above, the newly incorporated area must provide its own administrative organization.²⁵ This responsibility includes but is not limited to various state budgeting and financial reporting requirements as well as elections responsibility within the new city or town. These positions may be filled with part-time employees or by contract if necessary.

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Although there are only a few requirements spelled out in law, the following are a few other things that can't be ignored when calculating the costs of establishing a new city or town:

First and foremost, it will be necessary to employ or retain an attorney. The legal requirements of being an incorporated local government are numerous and competent legal advice is necessary for success.

One of the reasons many communities incorporate is to have greater control over their own future. This often includes a desire to have a planning and zoning function. All cities and towns are required to adopt a general plan and all adopt a zoning code pursuant to that plan. This activity requires resources, staff or contract, to accomplish.

Along with the planning and zoning function, there is also the need to implement and administer building codes and issue various types of building permits.

Because cities or towns take over responsibility for streets, roads and police protection at a minimum, they assume the liability for those as well. This creates a need for liability insurance. There are affordable options even for the smallest jurisdictions for such insurance through the League endorsed insurance pool (Arizona Municipal Risk Retention Pool www.amrrp.org) where the cities and towns come together to pool their risk to provide workers' comp and property/liability coverage.

The items mentioned above are the basic components of the cost to operate a municipality.”

Note that a city or town is **not** required to provide service like: fire department, trash/garbage pickup, drinking water, wastewater treatment, parks & recreation, economic development, etc.

¹ <http://azleague.org/ArchiveCenter/ViewFile/Item/382>

²⁴ A.R.S. § 9-104

²⁵ A.R.S. §§ 9-237, 9-238

What assistance does a newly incorporated town or city get from the County?

Arizona Revised Statute 9-104 County services for newly incorporated city or town describes the assistance:

A. When county territory is included within the boundaries of a newly incorporated city or town, all codes, rules and regulations made, established, adopted or enacted by such county, relating to zoning, building, plumbing, mechanical, electrical and health and sanitation shall apply within such newly incorporated city or town and shall be enforced by county officers from and after the date of such incorporation until July 1 next following such incorporation or until such time prior to the expiration of such fiscal year as the governing body of such city or town, by resolution or conflicting ordinance, supersedes such county code, rules or regulations.

B. All county services previously provided within such territory, including, but not limited to, law enforcement, public safety, maintenance of streets and public improvements, drainage, sewers and sewage disposal shall be continued through county officers and at county expense during the period from and after the date of such incorporation until July 1 next following such incorporation or until such time prior to the end of such fiscal year as the governing body of such city or town, by resolution or conflicting ordinances, provides such services.

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Where does a city or town get its money to operate?

The majority of a municipalities' revenue comes from State Shared Revenue, which consists of the following tax types:

- Vehicle License
- Highway User Revenue Fund
- State Transaction Privilege Tax
- State Income Tax

The following describes the type of tax and how it is distributed to municipalities:

Vehicle License Tax (VLT) – Approximately 20% of the revenues collected by the Arizona Department of Transportation (ADOT) for the licensing of motor vehicles are distributed to cities and towns. A city or town receives its share of the vehicle license tax collections base on its population in relation to the total incorporated population of the county. These monies are distributed on a monthly basis and may be expended for any municipal public purpose.

Highway User Revenue Fund (HURF) – This is sometimes referred as the gas tax, but there are a number of additional transportation related fees, including a portion of the VLT revenues that are placed in the Highway User Revenue Fund. HURF money can only be used for street and highway expenditures. Cities and towns receive 27.5% of the total collections. One-half of the monies that a city or town receives under this formula is distributed on the basis of the municipality's population in relation to the population of all incorporated cities and towns. The remaining half is allocated on the basis of "county of origin" of gasoline sales and the relation of a municipality's population to the population of all incorporated cities and town in their county. These monies are distributed on a monthly basis.

State Transaction Privilege Tax (TPT) – Cities and towns share in a portion of the state TPT collection total. Each tax classification has a designated sharing percentage that goes into the distribution base, and cities receive 25% of the base. A municipality receives its share of the state shared sales tax based on the relation of its population to the total population of all incorporated cities and towns. Shared TPT is distributed on a semi-monthly basis and may be expended for any municipal public purpose.

State Income Tax (URS) – Cities and towns receive 15% of the total state income tax collected in a fiscal year. URS is distributed monthly and can be used for any municipal purpose. This money is distributed to a city or town based on its population in relation to the total population of all incorporated cities and towns. The annual amount of urban revenue sharing money distributed is based on income tax collections during the fiscal year town years prior to the year in which the city or town receives the funds.

Examples of other sources of revenue available to a municipality are:

- Arizona Transaction Privilege Tax (i.e., sales tax, business license)
- Property tax
- Impact fees
- Construction permit fee
- Restaurant/Hotel tax
- Car rental tax

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If Tonopah Incorporates Will there be Property and Sales Taxes?

The League of Arizona Cities and Towns developed a publication titled Municipal Incorporation in Arizona (July 2019)¹⁾, where a section of the document addresses Property and Sales Taxes:

PROPERTY AND SALES TAXES

The methods for implementing local sales and property taxes are among the most often-asked questions asked during the incorporation process. Each of these taxes involves a different procedure for implementation. To establish a primary property tax a city or town must submit the proposed amount to be raised from the tax to the voters at an election to be held on the third Tuesday in May. This amount will constitute the base for all future levies. If the voters approve the tax, the city or town council may levy the amount approved for the fiscal year immediately following the election. If the voters disapprove the levy, the council may not levy a primary property tax for that year nor may they levy one in the future unless the voters first approve the levy²⁾.

In addition, a city or town that incorporates must give proper notice before levying a property tax in the next fiscal year. State law requires that notice must be given to the Department of Revenue and the appropriate county assessor. A map showing the boundaries of the newly incorporated area should be included along with the report. This notice must be given by November 1 of the year prior to the fiscal year when the tax will be levied.

A common concern among communities which are considering incorporation is that a local property tax will automatically follow. This has not been the case; out of the sixteen cities and towns incorporated during the period from 1980 to 2010, two have initiated a primary property tax. Two of the cities and towns incorporated during this period have adopted a secondary property tax, a tax which may only be used to pay the principal and interest charges on voter- approved bonds. Less than sixty percent of all the incorporated cities and towns have a local primary property tax, twenty-five percent have a local secondary property tax and forty-four percent have neither a primary or secondary property tax. The primary property tax rates in 2010 range from a high of \$6.30 to a low of a penny and the secondary rates range from a high of \$1.46 to a low of \$.12.

A local sales tax can be passed by ordinance by the city or town council. Authority for a local sales tax is contained in state law; a vote of the people to initiate a sales tax is not required. All cities and towns including those recently incorporated have enacted a local sales tax, and the sales tax rates range from 1.5% to 4%. Some of the explanation for the difference between the use of the sales tax versus the property tax by these newly incorporated communities is that the sales tax is a method of taxation where the burden does not lie solely with the residents of the community as out of town visitors must also pay the tax.

¹⁾ Reference: <https://www.azleague.org/ArchiveCenter/ViewFile/Item/382>

²⁾ Reference: Arizona Revised Statute § 42-17056

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Can a City Raise Sales Tax?

Currently Tonopah does not have a city sales tax (because we are not incorporated) but we pay a city sales tax whenever we shop in other cities and towns. According to the League of Cities and Towns manual, Municipal Incorporation in Arizona,¹⁾ here is how it will be done if we become a city:

“A local sales tax can be passed by ordinance by the city or town council. Authority for a local sales tax is contained in state law; a vote of the people to initiate a sales tax is not required. All cities and towns including those recently incorporated have enacted a local sales tax, and the sales tax ranged from 1.5% to 4%. Some of the explanation for the difference between the use of the sales tax versus the property tax by these newly incorporated communities is that the sales tax is a method of taxation where the burden does not lie solely with the residents of the community as out of town visitors must pay the tax.”

Here’s a summary of local municipality sales taxes²⁾:

Municipality	Sales Tax
Buckeye	3.00%
Goodyear	2.50%
Avondale	2.50%
Tolleson	2.30%
Surprise	2.20%
Wickenburg	2.20%
Gila Bend	3.50%
Quartzsite	2.50%

¹⁾ Azleagueorg/archivecenter/viewfile/item/382

²⁾ salestaxhandbook.com

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What Items Are Subject to Sales Tax?

Sales tax (Transaction Privilege Tax) is imposed by Arizona State, counties, and cities & towns may impose an additional sales tax within their corporate limits. All cities and towns in Arizona have a local sales tax.

The *2022 Arizona Sales Tax Handbook*¹ gives all the details of collecting sales taxes and more. The following is a list of common items that have sale taxes:

- Tangible, physical products being sold to a consumer
- Clothing
- Prepared food
- Catered food and meals
- Prescription drugs
- Gasoline
- Alcohol
- Cigarettes
- Cars
- Boats
- Real estate
- Motor vehicle rents & leases
- Newspapers & magazines

The following is a list of common items that are **exempt** from sales tax:

- Groceries
- Non-prescription drugs
- Medical devices
- Medical services
- Goods purchased for resale, improvement or as raw materials
- Machinery and chemicals used in research and development
- Shipping & handling if the charge is stated separately on the invoice
- The vast majority of services performed are not taxed

¹ <https://www.salestaxhandbook.com/arizona/sales-tax-taxability#general>

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Does incorporation mean there is more government?

County board of supervisors, who create and modify regulations and codes, govern unincorporated areas in Arizona. Once an unincorporated area becomes a city or town, the elected city council and the residents are able to determine what if any local governmental changes are made.

What this means for Tonopah, is that many Maricopa County ordinances, regulations, and codes no longer apply and the Tonopah City council would replace those ordinances, regulations, and codes with input from the community. For example, the Maricopa County Zoning Ordinance¹⁾ consists of 321 pages and the neighboring Town of Gila Bend has a Zoning Ordinance²⁾ of 150 pages.

Incorporation means that there will be a local government that Tonopah residents elect, not a county government that the entire county elects. The elected local government, a city council, will make decisions that are best for the Tonopah and will be held directly accountable to the Tonopah community. With the residents voting to elect the city council members the residents will maintain control and have the ability to determine the future of Tonopah City.

Will incorporation mean there is more government? Much of it will be depend on the city council members that the Tonopah citizens elect.

- 1) <https://www.maricopa.gov/DocumentCenter/View/4785/Maricopa-County-Zoning-Ordinance-PDF>
- 2) <https://www.gilabendaz.org/DocumentCenter/View/11/Gila-Bend-Zoning-Code?bidId=>

Does incorporation mean there will be more growth?

Growth will happen with or without incorporation. A look around our community today reveals a growth spurt occurring. There are a variety of reasons to move to an area like Tonopah. Incorporating Tonopah will give its residents a say in how to manage growth. There can be a planning and development commission making recommendations to the city council regarding growth and development. There are already 18 planned communities filed with Maricopa County Planning & Development between Hassayampa River and Saddle Mountain. Tonopah will have a city hall with easy access for residents to voice their concerns.

If Tonopah incorporates, does that mean that there will be homeowners' associations?

Incorporation of cities or towns **does not** cause communities to have Homeowners' Associations (HOAs). HOAs are established by a developer that plan and builds a master planned community or a subdivision. There are numerous master planned communities and subdivisions throughout the Tonopah area. For an example, Saddle Vista subdivision has the ability to establish an HOA as defined in the property deed's covenant, conditions, and restrictions (CC&R). CC&Rs describe the requirements and limitations that a property owner can do with their property. The goal of CC&Rs is to protect, preserve, and enhance property values.

Again, incorporation of Tonopah would not cause HOAs to happen. HOAs are independent of town and city governance and are established and governed by Arizona Revised Statutes Title 33 – Property, Chapter 16 – Planned Communities and Chapter 18 – Homeowners' Dwelling Actions.

Reference: <https://www.azleg.gov/arsDetail/?title=33>