

# MEMORANDUM

**To: Mel Copen**  
**From: Subcommittee on Governance Opportunities**  
**Date: June 12, 2009**  
**Re: Choices for Unincorporated Communities in Arizona**

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Sources of information employed in this summary:

- **Choices for Unincorporated Communities, Author Nicole Fyffe, University of Arizona, 2001**
- **Report on Annexation and Incorporation, Bill Bookwalter, Alan Buckley, Maribeth Carlile, 2000**
- **Arizona Revised Statutes, Title 9 -- Cities and Towns**

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***PLEASE NOTE THAT:***

- a) MOST OF THIS SUMMARY IS TAKEN DIRECTLY FROM THESE SOURCES;***
  - b) VERY LITTLE OF THIS DOCUMENT IS THE AUTHOR'S ORIGINAL MATERIAL; and***
  - c) NO EFFORT HAS BEEN MADE TO ENSURE THAT STATEMENTS MADE IN THE REPORTS DATING FROM 2000 AND 2001 ARE ACCURATE TODAY AND CONFORM TO THE ARIZONA REVISED STATUTES, ASSUMING THAT THIS IS BEYOND THE SCOPE OF THE CURRENT ASSIGNMENT.***
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One million citizens of Arizona, or about 20% of the state's population, live in areas that are not within the boundaries of either a city or a town. These communities depend on their counties for governmental services, and some common questions frequently arise:

- Do you want the types of services a city provides?
- Do you want to ensure that the taxes you pay are spent in the community?
- Do you want a local government that is closer and perhaps more responsive?
- Do you want the county to do more about growth control in the community?
- Are you concerned about the community losing its identity?
- Are you satisfied with county governance?
- Are you willing to pay more taxes for more services?
- Are you concerned that a nearby city or town will annex the community?

These questions may lead community residents to consider changing the status of the community. For unincorporated communities, there are few options to county governance. These options include

- a) forming a new county (described in an attachment)
- b) incorporation
- c) annexation
- d) creating a special district
- e) establishing community councils (what we have today in the BPRCC), or
- f) getting designated as a colonia (only available to communities within 150 miles of the border with Mexico)

These options are summarized briefly in the text of this document, and are discussed in greater detail in the Attachments to the main document.

## Background on Counties’ Mandated Services, and on Sources and Uses of Funds

Mandated Services	Optional Services
Law enforcement	Planning and zoning
Prosecution	Economic development
Indigent defense	Community development
Courts/Probation	Parks and recreation
Detention	Libraries
Indigent healthcare	Animal control
Long-term health care	Airports
Recording	Hospitals
Elections	Solid waste
Assessing	
Tax collecting	
Roads, bridges	

County government has three main sources of revenue:

- property taxes
- sales taxes, and
- state-shared revenues.

Other sources of revenue include user fees, charges, and grants.

### State-Shared Revenue

State-shared revenues are an important source of income for counties. In Arizona, about one-third of counties’ revenues are made up of state-shared revenues. Counties receive a portion of state-shared revenue based on a formula that considers the county’s population and several other factors. State-shared revenues come from a portion of the state sales tax (transaction privilege tax), highway user revenue funds, and the vehicle license tax.

### User Fee

User fees are a growing source of revenue for counties. User fees are charges to people or other governments for the use of certain services. For example, a user fee is a payment to stay at a county campground. They also include court fees, landfill use fees, recorder’s fees, recreational fees, and planning and zoning fees. Counties also charge other governments for use of county services. For example, counties charge cities and towns for use of their correctional facilities.

### Sales Tax

An additional source of revenue for counties in Arizona is the county sales tax. Thirteen counties in Arizona have enacted a county sales tax. Twelve counties levy a one-half cent tax, and one, Mohave County, levies a one-quarter cent sales tax. (Maricopa County is restricted from collecting a general county sales tax, and Pima County has not adopted one.)

### Distribution of Tax Revenue

As a resident of an unincorporated area, where do the county taxes go? The revenue from the county property taxes, sales taxes, and user fees is spent in the county to finance services and operations throughout the entire county. County property taxes are collected from unincorporated and incorporated

residents, and these revenues fund county services delivered in cities and towns as well as in unincorporated areas, such as prosecution, adjudication, juvenile court, and indigent health care.

One concern of residents in unincorporated areas is that the taxes they pay the state are not spent in their communities as much as they are in municipalities. What do residents mean when they talk about "lost revenues?" While a portion of state-shared revenues, including the state sales tax, vehicle license and gasoline tax, are redistributed to counties, the state income tax is not. If the community is unincorporated, it does not receive a share of the state income tax as do municipalities. The lost revenue argument is often given as a reason why an unincorporated community should incorporate or be annexed into an existing city or town.

Greater detail on county formation appears on Page 9 of the Attachments.

Following is a brief description of the other options listed on Page 1.

### **If Your Choice is Municipal Incorporation.....**

One option for unincorporated communities is to incorporate into a city or town. Communities often consider incorporation because they want additional services or an increased level of services that the county cannot provide. They may also want more control over growth and land-use planning, or more local representation. Incorporation is also often considered a way to fend off annexation attempts by adjacent municipalities.

### **What is Municipal Incorporation?**

Municipal incorporation is the process by which a new city or town is formed. This process shifts local control and responsibility for services and governance from the jurisdiction of the county to the newly-formed city or town government.

### **The Structure of Cities and Towns in Arizona**

There are 87 cities and towns in Arizona. About 78 percent of Arizona's population live in these 87 cities and towns. Cities and towns are general-purpose governments, which means that they provide multiple and varied services to their residents. In Arizona, a city can operate under "general law" or under a "home rule charter." The Arizona Constitution and ARS dictate the structure and governing authority of those operating under general law. Cities that adopt a charter have more flexibility in their structure and governing authority because they follow a charter written and approved by the city's residents. Charter cities, however, are still restricted by certain constitutional and statutory laws. Twenty of Arizona's 44 cities have framed and adopted a charter.

### **City or Town?**

There are two designations for a municipality in Arizona: city or town. What is the difference between a city and a town? According to The League of Arizona Cities and Towns, there is not much of a difference between the two. A community can incorporate as a city or town depending on its population. To incorporate as a city, the community must have a population of at least 3,000. To incorporate as a town, a community must have a population of at least 1,500. A city with a population of 3,500 or more has the right to adopt a charter and a ward system, while a town does not.

### **The Legal Requirements for Incorporation**

The following section summarizes the basic legal requirements for incorporation in Arizona. Please note that there are alternative methods and legal requirements pertaining to incorporation for certain types of communities. For example, there are specific laws on

incorporating communities with boundaries in more than one county, and for communities with particular special districts. To incorporate in Arizona, the community must meet the following requirements:

- Population of 1,500 or more, within proposed boundaries, based on the most recent federal census [ARS 9-101]
- Proposed boundaries must be at least six miles from an incorporated city or town with a population of 5,000 or more, or three miles from an incorporated city or town with a population of less than 5,000. If not, the existing incorporated city or town must approve the proposed incorporation of the community. Or the community must request to be annexed by the existing incorporated city or town; it has 120 days to pass a resolution annexing the area, and if it does not annex the area in that time period, the community will meet the legal requirements for incorporation [ARS 9-101.01]
- Must be a community and be "urban in nature"; urban in nature is defined as an area that does not include large areas of uninhabited, rural or farm lands [ARS 9-101]

## **The Incorporation Process**

In Arizona there are two basic methods for incorporating a community: petition with an election and petition without an election [ARS 9-101]. These methods are discussed in detail in the attachment.

### **Petition with an Election**

For this method, signatures must be collected from 10 percent of qualified electors residing in the area to be incorporated. Qualified electors are those who are registered to vote. If the board of supervisors finds that the area to be incorporated meets all legal requirements, including signatures from 10 percent of the qualified electors, then it must call for an election. If a majority of qualified electors residing in the proposed incorporation area vote for incorporation, the board must then declare the area incorporated.

### **Petition without an Election**

For this method, signatures must be collected from two-thirds of qualified electors residing in the area to be incorporated. Signatures must be collected within 180 days from the date the blank petition was filed.

### **Additional Requirements**

If the area's proposed boundaries are within six miles of an incorporated city or town with a population of 5,000 or more, or within three miles of an incorporated city or town with a population of less than 5,000, these two procedures apply:

- A resolution from nearby incorporated city(s) or town(s) approving the proposed incorporation must be filed with the signed petition for incorporation at the clerk of the board [ARS 9-101.01].
- No additional forms are necessary if the proposed incorporation has presented a petition(s) to the incorporated city(s) or town(s) requesting annexation, and the city(s) or town(s) does not pass a resolution approving the annexation of the proposed area within 120 days [ARS 9-101.01].

## **Pros and Cons of Incorporation**

Common arguments for and against incorporation include:

### **For incorporation:**

- Local control over the provision of services
- Local representation: a city or town council will be more responsive and more accessible because it will be closer

- Preserve the community's identity
- Greater control of growth and land-use through planning and zoning powers
- City or town will receive state-shared revenues directly
- Eliminate the threat of annexation or other boundary intrusions from surrounding cities and towns
- Better representation in regional issues, as well as better representation in county, state and federal governments

**Against incorporation:**

- Increased taxes. All 87 incorporated cities and towns in Arizona adopted a sales tax after incorporating, typically 2 percent or 3 percent. In addition, more than half of the cities and towns adopted a primary property tax, and more than a quarter adopted a secondary property tax.
- Inadequate revenue base with which to operate a city or town, in relation to population and service needs. For example, if the community is a bedroom community; that is, a community in which residents live but commute to a larger, urban city or town for jobs, shopping, or entertainment, it may lack a sufficient revenue base. In this case, being annexed to the larger, urban city or town may be more preferable. Also, a community with a small, dispersed population and limited growth potential may experience a high cost for services in relation to its population.
- Duplication of costs: paying twice for services, once to the county and once to the new city or town.
- More bureaucracy because of additional layers of government. Some also argue that this makes government more accessible to special interests.
- Community is small and part of a larger metropolitan area. Incorporation could result in duplication of services, a lack of coordination in dealing with growth and growth-related issues, and a lower level of services than could be received if the community was instead annexed to an existing city or town in the metro area.
- Community is rural in nature and wants to incorporate to control higher density growth. Incorporation could actually encourage unwanted growth and urbanization.
- Community lacks political experience and leadership, has low levels of public participation, and lacks a community identity. This may be discovered after beginning the incorporation drive. For example, does the incorporation drive have weak leadership or lack community participation? Do residents tend to identify with a larger, metropolitan area?
- Incorporation will adversely affect surrounding communities, cities or towns, or the region as a whole. This is a common argument against incorporation given by adjacent large cities and towns.
- Fear of the unknown. Examples include uncertainty over who will govern the town and what decisions they will make, what services will be provided, and what taxes will be levied.

A detailed discussion begins on Page 10.

**If Your Choice is Municipal Annexation.....**

Another option for unincorporated communities which are adjacent to an incorporated city or town is to be annexed by the existing city or town. Annexation has often been the method used by cities and towns to control growth and development occurring adjacent to their boundaries. By annexing these areas, cities and towns can choose to extend municipal services and infrastructure, thereby increasing the developability of the area, or limiting growth through various growth control methods. Cities and towns annex areas that will generate increased revenue. In this guide, annexation is discussed from the point of view of the unincorporated community.

Annexation can be initiated by the annexing city or town or by residents of an unincorporated community. Either way, residents of the unincorporated community are still faced with similar questions about the implications of being annexed. Those who support annexation will often argue that it will increase the level and availability of municipal services to their area, that growth and development will be controlled to a greater extent than in the county, and that annexation will provide more local representation.

On the other hand, those who oppose annexation often argue that it will bring higher taxes to the community, destroy the community's identity, and perhaps even increase the community's rate of growth and development.

One important point to remember is that annexation cannot be forced upon an unincorporated community. The annexing city or town is required by law to collect signatures in support of annexation from owners representing more than 50 percent of the assessed value of the area and more than half of the property owners in the area.

According to a report published by the Morrison Institute for Public Policy, Arizona law favors annexation of unincorporated communities adjacent to existing cities and towns over incorporation. ARS 9-101.01 requires unincorporated communities within three miles of a city or town that has less than 5,000 people, or within six miles of a city or town that has 5,000 or more people, to get permission from the city(s) or town(s) to incorporate. Because it is more likely that an existing city or town will agree to annex an unincorporated area, as opposed to giving the area permission to incorporate, unincorporated communities are encouraged by the law's structure to request annexation into these existing cities and towns to get services.

The annexation process is discussed in the Attachments.

### **Pros and Cons of Annexation**

Common arguments for supporting annexation include:

- Increase in level and quantity of municipal services (faster emergency response times, improvement of infrastructure)
- Increase in accessibility of city services
- Increase in local government representation and accessibility of representation
- More flexibility in land use regulations
- More rigid land use regulations
- Becoming part of the community that you probably already shop and work in

Common arguments for opposing annexation include:

- Additional layer of government
- Increase in taxes and service-related costs
- Increase in growth and development due to extension of city services and infrastructure
- More rigid land use regulations
- Loss of community identity
- Annexing city or town has different political views from that of the community
- Overall fear of what will happen to the community if it is annexed
- Preference for rural community

A detailed discussion begins on Page 18.

### **If Your Choice is a Special District.....**

If residents in an unincorporated community just want one particular service, such as fire protection, flood control, water delivery, or a library, forming a special district may be the preferable option. Special districts are known as limited-purpose local governments because they only provide a single service. Examples of Special Districts in Arizona include: the Central AZ Project, Domestic Water Improvement, Electric, Fire, Flood Control, Health Care, Holiday Lighting, Hospital Improvement, Irrigation, Pest Control, Power, Road, Sanitary, Wastewater Improvement, Water Conservation and Water Delivery.

Noteworthy is the absence of any special district for police and public safety.

There are five ways to form a special district in Arizona; these are discussed in the Attachments beginning on Page 22.

**If Your Choice is a Community Council.....**

If the community wants better representation with county, state, or regional governments but prefers not to incorporate or be annexed, forming a community council may be the best option. Community councils in Arizona usually have some type of elected council or board, as well as various committees, and hold regular meetings. The purpose of most of these councils is to act as a voice for the community, represent the community’s interests at the county, state, and regional levels, and work with governments to accomplish projects in their community. Most have limited resources and depend on volunteer time and donations, while some have membership fees. Members range from individuals, households, and businesses in the community to homeowners' associations. Some are formed by residents of the unincorporated community, while others are formed under the encouragement of county supervisors. Some communities use community councils as a stepping stone to incorporation.

Our Big Park Regional Coordinating Council is an example of this form of local government.

Detailed discussion begins on Page 23.

**If Your Choice is to Form a Colonia.....**

Lower income communities that are lacking in infrastructure and located within 150 miles of the U.S.-Mexico border can become designated as a colonia. Once a community is designated as a colonia, it is eligible for Community Development Block Grants (CDBG) set aside by the State of Arizona specifically for colonias. There are approximately 80 designated colonias in Arizona, including certain Native American reservations.

Detailed discussion begins on Page 24.

**Choices: Selecting an Option**

Unincorporated communities in Arizona have several options to pursue to enhance their community through stronger local governance. These include incorporation, annexation, special districts, community councils, colonias, and maintaining the status quo. To decide which option is most appropriate for the community, an understanding of the community’s needs is important. If the community is relatively small and most residents want only fire protection, then choosing may be an easy task. But if the community is more complex, residents may want to have a needs assessment conducted. Often university students, or perhaps even the county, are willing to undertake a project like this.

Once residents have determined the needs of the community, one can consider the various options that would meet these needs, as well as which options are available to the community. A matrix such as the one below can help match community needs with appropriate options.

**Status Quo**

After gathering information on the needs of the community, residents may decide that their community is satisfied with the county services and representation that it already receives. In this case, remaining unincorporated may be the best option.

# **ATTACHMENTS**



## **Choices: Forming a New County**

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A county may be formed by legislative enactment, by statewide initiative or by county initiative.

### **Legal Requirements for County Formation**

Each proposed county must have:

- At least three-fourths of 1 percent of the total state assessed valuation and no less than the statewide average per capita assessed valuation
- A population of at least three-fourths of 1 percent of the total state population according to the most recent United States decennial census
- At least 100 square miles of privately-owned land
- Common boundaries with at least three other existing or proposed counties, or with at least two other existing or proposed counties and the state boundary
- The boundaries of a proposed county cannot pass through or divide an incorporated city or town. If possible, the boundaries shall be set along existing survey lines or political or administrative boundaries [ARS 11-136]

### **Process of County Formation**

The proposed county petitions the secretary of state describing the boundaries of the proposed county subject to review and final determination by the county formation commission. Data to be provided: (1) Assessed valuation in the area (2) Approximate population (3) Approximate total land area and privately owned land area in sq. miles (4) Request to begin proceeding for the formation of a new county. The petition signed by qualified electors equal in number to at least 20 per cent of the number of registered voters of each affected county as of Jan. 1 following the last general election.

The petition requires certification of the secretary of state (timing of filings determination if requirements have been satisfied as specified in ARS 11-135)

Establishment of county formation commission appointed by the governor consisting of three members, none of whom may reside in an affected county and no more than two of whom may be members of the same political party. Specific qualifications listed in 11-136 section A. This section details the considerations involved in governance of a new entity.

Section 11-137 on formation of new counties details procedures to be followed in conducting an election setting time periods and dates to be met by the secretary of state as well as providing rules on accepting positions pro and con to an election being held. The proposition to form a new county is validated only if a majority of the votes cast in each proposed new county favors the proposition.

The above information is based on Arizona Revised Statutes Title 9. Additional topics on forming a county government, precincts and governance are addressed in the section and can be listed as needed for follow-up.

## **Choices: Municipal Incorporation**

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One option for unincorporated communities is to incorporate into a city or town. Communities considering incorporation are faced with many questions about the process, the pros and cons, and the feasibility of such an option. There are also many misconceptions surrounding the incorporation process and its outcomes. While incorporation can be a time consuming, expensive, and often frustrating process, it can also be a rewarding alternative to the status quo, new county formation or annexation. Communities often consider incorporation because they want additional services or an increased level of services that the county cannot provide. They may also want more control over growth and land-use planning, or more local representation. Incorporation is also often considered a way to fend off annexation attempts by adjacent municipalities.

### **What is Municipal Incorporation?**

Municipal incorporation is the process by which a new city or town is formed. This process shifts local control and responsibility for services and governance from the jurisdiction of the county to the newly-formed city or town government. Incorporated cities and towns can only be created by residents of the unincorporated community. The most recent incorporations in Arizona include the Town of Sahuarita, Pima County, in 1994; the towns of Queen Creek and Fountain Hills, Maricopa County, in 1989; and the Town of Quartzsite, La Paz County, in 1989.

### **The Structure of Cities and Towns in Arizona**

There are 87 cities and towns in Arizona. About 78 percent of Arizona's population live in these 87 cities and towns. Cities and towns are general-purpose governments, which means that they provide multiple and varied services to their residents. In Arizona, a city can operate under "general law" or under a "home rule charter." The Arizona Constitution and ARS dictate the structure and governing authority of those operating under general law. Cities that adopt a charter have more flexibility in their structure and governing authority because they follow a charter written and approved by the city's residents. Charter cities, however, are still restricted by certain constitutional and statutory laws. Twenty of Arizona's 44 cities have framed and adopted a charter.

Most city and town councils comprise seven members who run in nonpartisan elections for two or four-year terms. Governing bodies have no term limits. Out of Arizona's 67 general law cities and towns, 36 have directly-elected mayors and 31 have mayors that are selected from within the council by fellow council members. Seventy-five cities and towns use the council manager form of government. Other forms of government used in Arizona include the weak and strong mayor-council form.

### **City or Town?**

There are two designations for a municipality in Arizona: city or town. What is the difference between a city and a town? According to The League of Arizona Cities and Towns, there is not much of a difference between the two. A community can incorporate as a city or town depending on its population. To incorporate as a city, the community must have a population of at least 3,000. To incorporate as a town, a community must have a population of at least 1,500. A city with a population of 3,500 or more has the right to adopt a charter and a ward system, while a town does not.

## **The Legal Requirements for Incorporation**

The following section summarizes the basic legal requirements for incorporation in Arizona. Please note that there are alternative methods and legal requirements pertaining to incorporation for certain types of communities. For example, there are specific laws on incorporating communities with boundaries in more than one county, and for communities with particular special districts. To incorporate in Arizona, the community must meet the following requirements:

- Population of 1,500 or more, within proposed boundaries, based on the most recent federal census [ARS 9-101]
- Proposed boundaries must be at least six miles from an incorporated city or town with a population of 5,000 or more, or three miles from an incorporated city or town with a population of less than 5,000. If not, the existing incorporated city or town must approve the proposed incorporation of the community. Or the community must request to be annexed by the existing incorporated city or town; it has 120 days to pass a resolution annexing the area, and if it does not annex the area in that time period, the community will meet the legal requirements for incorporation [ARS 9-101.01]
- Must be a community and be "urban in nature"; urban in nature is defined as an area that does not include large areas of uninhabited, rural or farm lands [ARS 9-101]

## **The Incorporation Process**

In Arizona there are two basic methods for incorporating a community: petition with an election and petition without an election [ARS 9-101]. It is also important to include a map of the proposed area to be incorporated along with the petition so that those who sign it can easily see the proposed city or town boundaries. Please note that before the collection of signatures begins, the following must be filed with the county recorder or the county elections department: a blank petition for incorporation, a map of the proposed boundaries, and, if necessary, notice stating the adjacent city's or town's resolutions granting consent for the incorporation.

### **Petition with an Election**

For this method, signatures must be collected from 10 percent of qualified electors residing in the area to be incorporated. Qualified electors are those who are registered to vote. Signatures must be collected within 180 days from the date the blank petition was filed. The county recorder can provide a list of qualified electors in the proposed incorporation area. Once the signatures have been collected, the signed petition must be filed with the clerk of the county board of supervisors during regular business hours. The board then has 60 days after the date of filing to verify the signatures on the petition and verify that the area to be incorporated meets all other legal requirements.

If the board finds that the area to be incorporated meets all legal requirements, including signatures from 10 percent of the qualified electors, then it must call for an election. The election must be called for within the 60 days stated above. The date of the election must be within 120 days of filing the signed petition. If a majority of qualified electors residing in the proposed incorporation area vote for incorporation, the board must then declare the area incorporated. At this time the board will also appoint seven people from the incorporated community to serve on the city's or town's first council. But if a majority votes against incorporation, the area remains unincorporated and another election cannot be held for one year.

### **Petition without an Election**

For this method, signatures must be collected from two-thirds of qualified electors

residing in the area to be incorporated. Signatures must be collected within 180 days from the date the blank petition was filed. As stated above, the county recorder can provide a list of qualified electors in the proposed incorporation area. Once the signatures have been collected, the signed petition must be filed with the clerk of the county board of supervisors during regular business hours. At any time after the filing of the signed petition, the board may verify the signatures and verify that the area to be incorporated meets all other legal requirements. If the board finds that the area to be incorporated meets all legal requirements, including signatures from two-thirds of the qualified electors, then the board must declare the area incorporated. The board will then appoint seven people from the new incorporation to serve on the first council.

### **Additional Requirements**

If the area's proposed boundaries are within six miles of an incorporated city or town with a population of 5,000 or more, or within three miles of an incorporated city or town with a population of less than 5,000, these two procedures apply:

- A resolution from nearby incorporated city(s) or town(s) approving the proposed incorporation must be filed with the signed petition for incorporation at the clerk of the board [ARS 9-101.01].
- No additional forms are necessary if the proposed incorporation has presented a petition(s) to the incorporated city(s) or town(s) requesting annexation, and the city(s) or town(s) does not pass a resolution approving the annexation of the proposed area within 120 days [ARS 9-101.01].

### **PROCESS FOR PETITIONING TO INCORPORATE**

- Create a petition to incorporate and a map of the area with metes and bounds description
- Within 180 days, collect signatures from two-thirds of qualified electors residing in the area to be incorporated
- Within 180 days, collect signatures from 10 percent of qualified electors residing in the area to be incorporated
- File signed petition with the clerk of the county board of supervisors during regular business hours
- Board verifies signatures
- If board approves signatures from at least two-thirds of qualified electors residing in the area to be incorporated, and determines that the area to be incorporated meets all other legal requirements, the board must then declare the area incorporated File signed petition with the clerk of the county board of supervisors during regular business hours
- Board has 60 days after filing of petition to verify signatures, to verify that all legal requirements have been met, and to call for an election on incorporation
- The election must be held within 120 days of filing the petition
- If a majority of qualified electors residing in the proposed incorporation area vote for incorporation, the board must then declare the area incorporated
- If a majority of qualified electors vote against incorporation, another election cannot be held for one year
- Before circulating the petition for signatures, file a copy of the petition and a map of the area with metes and bounds description, with the county recorder or the county elections department

### **The Need for a Community Assessment**

Before starting an incorporation effort, it is important that the unincorporated community conduct a thorough community assessment. While there is no legal requirement to conduct a community assessment, the decision whether to incorporate should be a well-informed one. The information

accumulated during this step can later be used to justify support for or opposition to incorporation, and to inform voters. If the community does incorporate, then this information can be useful to the first town council. What to include in a community assessment:

- Analyze the reasons both for incorporating and for not incorporating.
- Analyze any past efforts to incorporate or change governmental forms and boundaries.
- Decide where the boundaries will fall.
- Analyze the community's characteristics, strengths, weaknesses, and major issues.
- Analyze existing services and governing arrangements.
- Estimate potential revenues.
- Estimate potential expenditures, including what services the town wants to provide and how they will be provided.
- Analyze alternatives to incorporation: status quo, county formation, annexation, special districts, community councils, and colonias.

### **Analyzing the Reasons For and Against Incorporating a Community**

It is extremely important to begin by considering arguments for and against incorporation. This will identify residents' expectations and concerns after incorporation, and clarify important community issues that will have to be dealt with if the community becomes a city or town. This step can also help to identify community needs and whether those needs would be best met through incorporation or another option. Common arguments for and against incorporation include:

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#### **For incorporation:**

- Local control over the provision of services
- Local representation: a city or town council will be more responsive and more accessible because it will be closer
- Preserve the community's identity
- Greater control of growth and land-use through planning and zoning powers
- City or town will receive state-shared revenues directly
- Eliminate the threat of annexation or other boundary intrusions from surrounding cities and towns
- Better representation in regional issues, as well as better representation in county, state and federal governments

#### **Against incorporation:**

- Increased taxes. All 87 incorporated cities and towns in Arizona adopted a sales tax after incorporating, typically 2 percent or 3 percent. In addition, more than half of the cities and towns adopted a primary property tax, and more than a quarter adopted a secondary property tax.
- Inadequate revenue base with which to operate a city or town, in relation to population and service needs. For example, if the community is a bedroom community; that is, a community in which residents live but commute to a larger, urban city or town for jobs, shopping, or entertainment, it may lack a sufficient revenue base. In this case, being annexed to the larger, urban city or town may be more preferable. Also, a community with a small, dispersed population and limited growth potential may experience a high cost for services in relation to its population.
- Duplication of costs: paying twice for services, once to the county and once to the new city or town.
- More bureaucracy because of additional layers of government. Some also argue that this makes government more accessible to special interests.
- Community is small and part of a larger metropolitan area. Incorporation could result in duplication of services, a lack of coordination in dealing with growth and growth-related issues, and a lower level of services than could be received if the community was instead annexed to an existing city or town in the metro area.
- Community is rural in nature and wants to incorporate to control higher density growth. Incorporation could actually encourage unwanted growth and urbanization.
- Community lacks political experience and leadership, has low levels of public participation,

and lacks a community identity. This may be discovered after beginning the incorporation drive. For example, does the incorporation drive have weak leadership or lack community participation? Do residents tend to identify with a larger, metropolitan area?

- Incorporation will adversely affect surrounding communities, cities or towns, or the region as a whole. This is a common argument against incorporation given by adjacent large cities and towns.
- Fear of the unknown. Examples include uncertainty over who will govern the town and what decisions they will make, what services will be provided, and what taxes will be levied.

## **Analyzing the Community's Characteristics, Strengths, Weaknesses, and Major Issues**

Determining what the community looks like now will help residents decide if it is suitable for incorporation, as well as make them aware of the needs of the community and the community's strengths. Again, this information can be used not only in this community assessment, but also to help the first city or town council govern, if the community successfully incorporates.

What information should be collected and analyzed? Here is a list from a municipal incorporation guide assembled for Washington State by the Municipal Research and Services Center in 1992:

- Current estimate of population and future population projection
- Proximity to other populated areas
- Existing land uses and housing
- Identification of prime and productive agricultural areas
- Per capita assessed valuation
- Physical characteristics (e.g., topography, natural boundaries, drainage basins)
- Community profile, including nature of local economy, assessed value, income and employment, and community identity

Remember when looking at population estimates and future projections, consider that various age groups have different needs and concerns, and will pose separate concerns for a future city or town.

## **Analyzing Existing Services and Governing Arrangements**

During an incorporation process, objectives most likely focused on what the community could look like in the future. However, first it is essential to prepare an inventory of existing services and governing arrangements. This provides a benchmark for considering future services to be provided by the new city or town. It will also provide a realistic idea of future services and their costs.

## **Estimating Potential Revenues**

Estimating revenues is an extremely important step in the community assessment of the community. A municipality provides services to its residents and these services are not free. The community must have a sufficient revenue base in order to operate a municipality and provide its residents with an adequate level of services. It is critical to understand the sources of revenue traditionally available to Arizona cities and towns, and those that are most used. Arizona cities and towns receive revenue from three sources: locally-collected revenues, state shared revenues, and federal revenues. An accurate population estimate is critical in order to calculate potential revenues. Municipal sources of revenue include:

Locally-Collected Revenues

State-Shared Revenues

Federal Revenues

Sales tax

State income tax Community

Property tax

State sale tax Development  
 Utility or user fees  
 Highway User Revenue Block Grants (CDBG)  
 Business and occupational Fund (HURF)  
 License taxes  
 Vehicle License Tax (VLT)  
 Fines and forfeitures  
 Local Transportation  
 Franchise fees  
 Assistance Fund  
 Permit and inspection fees  
 Development fees

***Locally-Collected Revenue***

**Sales Tax**

The sales tax (or transaction privilege tax) is often the largest source of local revenue for cities and towns in Arizona. While the state imposes its own 5 percent sales tax, cities and towns may also levy an additional sales tax on the gross revenues of business sales within the city or town limits. Sales taxes levied by Arizona cities and towns range from 1 percent to 3 percent. All 87 cities and towns have a sales tax, with most rates ranging from 2 percent to 3 percent. City and town councils do not need voter approval to levy a sales tax.

**Property Tax**

The property tax is another source of local revenue for municipalities. In many states this is the largest source of local revenue for municipalities, but its importance for municipalities in Arizona varies. Over half of Arizona’s cities and towns enact a primary property tax, and over one-third levy a secondary property tax. Municipal primary property tax rates range from \$.0086 to \$15.07. The average rate is \$1.36 (per \$100 of assessed value.) A further explanation of property taxes is found in the section on counties.

**Utility and User Fee**

Utility fees or user fees are collected by cities and towns to fund utility operations such as water, sewer, and trash, and to fund public golf courses, swimming pools, and similar public facilities. They are charged only to people who use the service, usually on a pay-as-you-go basis.

***State-Shared Revenue***

All of Arizona’s cities and towns receive a portion of various revenues collected by the state. State-shared revenues are also adjusted yearly by the state legislature. Statewide estimates for FY 2000-2001 equaled \$288 for every person living in an incorporated municipality. This \$288 is made up of the following revenues and funds: state sales tax, state income tax, highway user revenue fund, vehicle license tax, and local transportation assistance fund.

**Misconception:** *The county will decrease county property taxes if a community incorporates.*

**Reality:** *As an incorporated city or town, you will pay the **same** county property tax rate as you did when the community was unincorporated. The county property tax is a single rate levied uniformly throughout the county.*

**AVERAGE PER CAPITA STATE-SHARED REVENUE ESTIMATES FY 00-01**

Sales Tax	\$90.94
Income Tax	\$116.30
Highway User Revenue Fund	\$41.22
Vehicle License Tax	\$33.73
Local Transportation Assistance Fund	<u>\$5.92</u>
Total	\$288.11

Source: The League of Arizona Cities and Towns

The state's sales tax revenue allocations are based on a city's or town's percentage of total incorporated population. The distribution of state sales tax revenue to a newly-incorporated city or town will begin by the first month after the official census number is generated.

The state's income tax revenue allocations are also based on a city's or town's percentage of total incorporated population. Fifteen percent of state income tax revenues are shared with cities and towns. Income tax sharing with new cities and towns begins the first full fiscal year following incorporation, and are then distributed on a monthly basis.

The Highway User Revenue Fund (HURF) is made up of a portion of revenues from gasoline, diesel, and transportation-related taxes collected by the state. Half of these revenues is distributed based on a city's or town's percentage of total incorporated population, and the other half is distributed based on the county's total gasoline sales. Unlike other types of state-shared revenues, highway user revenue funds may only be spent on street-related projects. The distribution of HURF to a newly-incorporated city or town begins by the first month after the official census number is generated.

The vehicle license tax is levied on the registration of motor vehicles and is collected by counties. The revenues are then distributed to cities and towns based on their percentage of the county's total incorporated population. Distribution dates vary from county to county.

The local transportation assistance fund (LTAF) is made up of revenue collected from the state lottery. To receive this revenue, cities and towns must apply for it on an annual basis. The revenues are then distributed based on a city's or town's population as a percentage of the total population of all cities and towns that apply for the funds that year. Cities and towns receive a minimum of \$10,000. Funds may only be spent on transportation-related projects. These revenues are distributed beginning the first full fiscal year following incorporation.

***Misconception:** A city or town can be operated on only state-shared revenues without instituting any local taxes.*

***Reality:** All cities and towns in Arizona have a local sales tax, 47 cities and towns have a primary property tax, and 28 have a secondary property tax. While a few cities and towns survived their first few years without instituting local taxes, all eventually levied sales taxes.*

## ***Federal Revenue***

Community Development Block Grants (CDBG) are federal grants available to cities, towns and counties. These grants are to be used for a variety of community development projects only and do not serve as a steady source of revenue.

## **Estimating Potential Expenditures**

Expenditures include:

- Services
- Staffing
- Mandates

What services do the residents in our community want, and how do they want them provided? Residents may want the same services they are receiving from the county, but at an increased level or quality; or, residents may want additional services that the county does not offer. If incorporated, should the city or town produce the services itself or should it contract for them with the county, private companies or special districts? How many employees will the city or town need, and how many will be part time or full time? Will the council be paid? What state and federal mandates exist, and how much will it cost to comply with these mandates? These are all questions that need to be answered during this step of the community assessment.



The costs of various services must be determined. If the plan is to contract for services, now is the time to ask the potential service providers how much they would charge for the services. Costs are negotiable. Some new municipalities also looked at the costs of services for similarly-sized cities or towns. It is important to be aware of the many hidden costs in other city or town budgets so that the true costs of operating a city or town are not underestimated.

**Misconception:** *If an incorporated city or town contracts for services with the county, the county will subsidize the costs of these services.*

**Reality:** *The county is not obligated to subsidize these costs. Incorporated cities or towns may have to pay the total costs of any services contracted. [ARS 11-251.06]*

### **Analyzing the Alternatives to Incorporation**

While incorporation may seem feasible, the following options should be considered: remaining under the governance of the county, forming a new county, being annexed by an adjacent jurisdiction, forming special districts, forming a community council, or getting designated as a colonia (see the Colonia section). Even if the community decides to proceed with an incorporation drive, it may be needed to justify to voters why incorporation is better for the community than the other options. Completing this last step will provide that information.

## Choices: Municipal Annexation

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Another option for unincorporated communities which are adjacent to an incorporated city or town is to be annexed by the existing city or town. Annexation has often been the method used by cities and towns to control growth and development occurring adjacent to their boundaries. By annexing these areas, cities and towns can choose to extend municipal services and infrastructure, thereby increasing the developability of the area, or limiting growth through various growth control methods. Cities and towns annex areas that will generate increased revenue. In this guide, annexation is discussed from the point of view of the unincorporated community.

Annexation can be initiated by the annexing city or town or by residents of an unincorporated community. Either way, residents of the unincorporated community are still faced with similar questions about the implications of being annexed. Those who support annexation will often argue that it will increase the level and availability of municipal services to their area, that growth and development will be controlled to a greater extent than in the county, and that annexation will provide more local representation.

On the other hand, those who oppose annexation often argue that it will bring higher taxes to the community, destroy the community's identity, and perhaps even increase the community's rate of growth and development.

One important point to remember is that annexation cannot be forced upon an unincorporated community. The annexing city or town is required by law to collect signatures in support of annexation from owners representing more than 50 percent of the assessed value of the area and more than half of the property owners in the area.

### What is Municipal Annexation?

The League of Arizona Cities and Towns defines municipal annexation as “the process by which a city or town may assume jurisdiction over unincorporated territory adjacent to its boundaries.” This process shifts local control and responsibility for most of the area's services and governance from the jurisdiction of the county to that of the annexing city or town government.

### The Legal Requirements for Annexation

The following describes the basic legal requirements for annexation in Arizona. Please note that there are additional requirements pertaining to annexing certain types of areas. For example, annexations that include state lands or Indian reservation lands are subject to additional requirements. The first three requirements do not apply if the city or town surrounds territory to be annexed on at least three sides [ARS 9-471 K].

To be annexed in Arizona, the community must meet the following requirements:

- At least 300 feet of the territory to be annexed must adjoin the annexing city or town boundary [ARS 9-471 H].
- Territory to be annexed must be at least 200 feet wide at all points, not including rights-of-way and roadways [ARS 9-471 H].
- Length of the territory, measured from where the territory adjoins the boundary of the annexing city or town, cannot be more than twice the maximum width of the territory to be annexed [ARS 9-741 H].
- Territory to be annexed must be unincorporated [*Colquhoun v. City of Tucson*, 55 Ariz. 451, 103 P.2d 269 (1940) and General Counsel Opinion May 30, 1989].
- A city or town cannot annex territory if the annexation results in unincorporated territory surrounded on all sides by the annexing city or town [ARS 9-471 I].

According to a report published by the Morrison Institute for Public Policy, Arizona law favors annexation of unincorporated communities adjacent to existing cities and towns over incorporation. ARS 9-101.01 requires unincorporated communities within three miles of a city or town that has less than 5,000 people, or within six miles of a city or town that has 5,000 or more people, to get permission from the city(s) or town(s) to incorporate. Because it is more likely that an existing city or town will agree to annex an unincorporated area, as opposed to giving the area permission to incorporate, unincorporated communities are encouraged by the law's structure to request annexation into these existing cities and towns to get services.

## **The Annexation Process**

The annexation process can be initiated by residents of an unincorporated area or by the adjacent city or town. A city or town may have an annexation plan that lays out the unincorporated areas that it plans to annex in the next year or so. How do residents of an unincorporated area request annexation? According to Alice Western, the annexation coordinator for the City of Tucson, residents simply call the annexation office requesting annexation. Her office gets about three calls a week from citizens requesting annexation or information about the process and policies. When Western gets a request, she first determines if the area meets the legal requirements for annexation, and then reviews the properties and service issues that may be involved. After this information is discussed with the resident who made the request, she then sends the request to all city departments to determine the service costs and revenue analysis for the area. If the city then decides to go ahead with the requested annexation, she begins the legal process.

How do cities and towns decide if it is in their interest to annex an area? As an example, the City of Tucson uses the following criteria:

- Annex areas that are cost effective on a five-year basis
- Annex areas that are located in close proximity to city operations that possess excess service capacity levels, thereby promoting economies of scale for operations
- Prioritize and annex areas according to the quality of existing infrastructure, population density, and the development potential of underutilized and vacant land
- Prioritize and annex areas that promote a cross section of the community and economic and social heterogeneity and diversity

Cities in the Phoenix metropolitan area list the following top reasons for annexing territory:

- To control the quality and cost impacts of growth in nearby unincorporated areas
- To manage developers' threats to build in the county where there are fewer land use and zoning regulations
- To obtain additional sales tax and property tax revenues and water resources

## **Steps Toward Annexation**

- First, the city or town will send a request to the county assessor and the Department of Revenue for a complete list of the property owners in the area proposed for annexation.
- The city or town then files an annexation petition with the county recorder. The petition includes an accurate description and map of the exterior boundaries of the area to be annexed.
- At the same time, the city or town files a sworn affidavit verifying that the area proposed for annexation is not subject to an earlier filing for annexation.
- Copies of this filing are then sent to the clerk of the board of supervisors and the county assessor.
- The city or town waits 30 days after the petition is filed to begin circulating petitions for signatures.
- The city or town holds a public hearing on the subject of the proposed annexation during the last 10 days of this waiting period.

- The city or town then has one year after the 30-day waiting period to collect signatures from qualified electors. Qualified electors are those who are registered voters in the area proposed for annexation.
- More than 50 percent of the real and personal property owners in the area proposed for annexation who also represent more than 50 percent of the assessed value, must sign the petition for the annexation to be successful. Real and personal property is defined as property that would be subject to taxation by the annexing city or town, as shown by the most recent assessment of the property.
- The petitions are then filed with the county recorder and a copy filed with the city or town clerk.
- It is then at the city or town council’s discretion to pass an ordinance annexing the area. The annexation does not become final until after a 30-day waiting period in which any interested parties may question the validity of the annexation.

Statutes now require that on or before the date the council adopts the ordinance annexing the area, it must have approved a plan, policy or procedure to provide the annexed area with appropriate levels of infrastructure and services to serve anticipated new development within 10 years after the date when the annexation becomes final [ARS 9-471 O].

### **Pros and Cons of Annexation for an Unincorporated Community**

Residents favor or oppose annexation for many reasons. Common arguments for supporting annexation include:

- Increase in level and quantity of municipal services (faster emergency response times, improvement of infrastructure)
- Increase in accessibility of city services
- Increase in local government representation and accessibility of representation
- More flexibility in land use regulations
- More rigid land use regulations
- Becoming part of the community that you probably already shop and work in

Common arguments for opposing annexation include:

- Additional layer of government
- Increase in taxes and service-related costs
- Increase in growth and development due to extension of city services and infrastructure
- More rigid land use regulations
- Loss of community identity
- Annexing city or town has different political views from that of the community
- Overall fear of what will happen to the community if it is annexed
- Preference for rural community

When considering annexation, unincorporated residents are faced with many questions”

- How will we be affected financially?
- What plans does the annexing city have for our area?
- Will annexation increase development in our area?
- Will zoning and other land use regulations be changed?
- What services will we gain or lose?
- What will happen to our community’s identity?
- Which council members will represent our area on the city/town council?

Many of these questions can be answered by calling the annexing city or town. Someone should be able to provide an estimate of any additional taxes if annexed, describe the city services, tell if the planning or development office has any plans to alter land use in the area, and tell who will represent the area on the

city/town council. If the city or town has an annexation department, call it first. If not, call the city's or town's planning office or economic development office.

## **Choices: Special Districts**

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If residents in an unincorporated community just want one particular service, such as fire protection, flood control, water delivery, or a library, forming a special district may be the preferable option. Special districts are known as limited-purpose local governments because they only provide a single service. This section briefly summarizes the five ways to form a special district and lists examples of special districts found in Arizona.

### **Forming a Special District**

Special districts can be formed in the following ways [See ARS 48-271, for example]:

- The state legislature can mandate the formation of a special district.
- The county board of supervisors can pass a resolution to form a special district.
- The county board of supervisors can pass a resolution, subject to voter approval.
- Residents or landowners can petition the county board of supervisors, which then declares the special district formed.
- Residents or landowners can petition the county board of supervisors to hold an election on the formation of a special district.

### **Examples of Special Districts in Arizona**

There are in Arizona 312 special districts with separately-elected governing boards with taxing authority. [Fire districts are the most numerous, followed by water improvement districts, irrigation districts, and water delivery districts.] Counties and municipalities also govern thousands more special districts, also called benefit service districts. They include street lighting and other neighborhood improvement projects.

- Central AZ Project
- Domestic Water Improvement
- Electric
- Fire
- Flood Control
- Health Care
- Holiday Lighting
- Hospital
- Improvement
- Irrigation
- Pest Control
- Power
- Road
- Sanitary
- Wastewater Improvement
- Water Conservation
- Water Delivery

Noteworthy is the absence of any special district for police and public safety.

## **Choices: Community Councils**

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If the community wants better representation with county, state, or regional governments but prefers not to incorporate or be annexed, forming a community council may be the best option. Community councils in Arizona usually have some type of elected council or board, as well as various committees, and hold regular meetings. The purpose of most of these councils is to act as a voice for the community, represent the community's interests at the county, state, and regional levels, and work with governments to accomplish projects in their community. Most have limited resources and depend on volunteer time and donations, while some have membership fees. Members range from individuals, households, and businesses in the community to homeowners' associations. Some are formed by residents of the unincorporated community, while others are formed under the encouragement of county supervisors. Some communities use community councils as a stepping stone to incorporation. In the Town of Sahuarita and the unincorporated communities of Gold Canyon and Green Valley, the community councils researched incorporation as an option. By forming a community council first, community residents may be better able to assess the degrees of leadership and community participation that exist. Limited community identity and political immaturity are stated as reasons that a community may not be ready for incorporation.<sup>39</sup> Community councils can also provide an open forum for debates about many other issues concerning the community.

## **Choices: Colonias**

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Lower income communities that are lacking in infrastructure and located within 150 miles of the U.S.-Mexico border can become designated as a colonia. Once a community is designated as a colonia, it is eligible for Community Development Block Grants (CDBG) set aside by the State of Arizona specifically for colonias.

### **What is a Colonia?**

The U.S. Department of Housing and Urban Development (HUD) defines a colonia as “any identifiable community in the U.S.-Mexico border regions of Arizona, California, New Mexico, and Texas that is determined to be a colonia on the basis of objective criteria, including lack of a potable water supply, inadequate sewage systems, and a shortage of decent, safe, and sanitary housing. The border region means the area within 150 miles of the U.S.-Mexico border excluding Metropolitan Statistical Areas with populations exceeding one million.”

There are approximately 80 designated colonias in Arizona, including certain Native American reservations.