

COMMONWEALTH OF VIRGINIA



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SENATE

Relevant Virginia Constitutional and Code Language Governing Incorporation of a Town

Virginia Constitution, Article VII, Section 2

Section 2. Organization and government.

The General Assembly shall provide by general law for the organization, powers, change of boundaries, consolidation, and dissolution of counties, cities, towns, and regional governments. The General Assembly may also provide by general law optional plans of government for counties, cities, or towns to be effective if approved by a majority vote of the qualified voters voting on any such plan in any such county, city, or town.

The General Assembly may also provide by special act for the organization, government, and powers of any county, city, town, or regional government, including such powers of legislation, taxation, and assessment as the General Assembly may determine, but no such special act shall be adopted which provides for the extension or contraction of boundaries of any county, city, or town.+

Virginia Code Requirements for Creating a Town

§ 15.2-3600. Petition for incorporation of community; appointment of special court.

A petition signed by 100 voters of any community may be presented to the circuit court for the county in which such community, or the greater part thereof, is situated, requesting that the community be incorporated as a town. A plat showing the boundaries of the community shall be attached to the petition. The circuit court with which the petition is filed shall notify the Supreme Court, which shall appoint a special court to hear the case as prescribed by Chapter 30 (§ 15.2-3000 et seq.) of this title. The plat shall be prepared by a registered surveyor in a form suitable for recording in the clerk's office of the circuit court. A copy of the petition shall be served upon the county attorney or, if there is no county attorney, the attorney for the Commonwealth, and each member of the governing body of the county or counties wherein the area sought to be incorporated lies. The governing body at its option may become a party to the proceeding. The petition shall be accompanied by proof that: 1. The petition has been available for public inspection in the office of the clerk of the circuit court; and 2. The following have been published once a week for four successive weeks in a newspaper having general circulation in the county: a. Notice of the time and place the petition would be presented; and b. The text of the petition in full; or c. A descriptive summary of the petition and notice that the petition may be inspected at the circuit court clerk's office.

§ 15.2-3601. Hearing before Commission on Local Government; notice; parties; finding of Commission.

Upon request of the special court, the Commission on Local Government shall conduct a hearing to determine whether the criteria in § 15.2-3602 have been satisfied. The hearing shall be set no less than thirty days after receipt of the petition by the Commission. All interested parties may present evidence before the Commission, and any county in which is located the area proposed for incorporation shall be made parties to the Commission's hearing.

§ 15.2-3602. Proof required and order for incorporation.

A. The special court shall order that the proposed town be incorporated upon proof that:

1. It will be in the interest of the inhabitants within the proposed town;
2. The prayer of the petition is reasonable;
3. The general good of the community will be promoted;
4. The number of inhabitants of the proposed town exceeds 1,000;
5. The area of land designated to be embraced within the town is not excessive;
6. The population density of the county in which such community is located does not exceed 200 persons per square mile according to the last preceding United States census, or other census directed by the court; and
7. The services required by the community cannot be provided by the establishment of a sanitary district, or under other arrangements provided by law, or through extension of existing services provided by the county in which the community is located.

B. The order shall recite the substance of the petition and the due publication thereof, and that the requirements of subsection A have been met. The order shall (i) be entered upon the court's common-law order book, (ii) decree that the community is incorporated as a town by the name of "The Town of(naming it)," and (iii) designate the metes and bounds of the town or incorporate by reference the recorded plat. Thereafter the inhabitants within such bounds shall be a body politic and corporate, with all the powers, privileges and duties conferred upon and appertaining to towns under the general law. However, such town shall perform no municipal services or contract any debt until its governing body is elected, qualifies and takes office. A copy of the order shall be certified by the court to the Secretary of the Commonwealth, who shall certify it to all proper officers of the Commonwealth, who shall certify it to all proper officers of the Commonwealth. No town created under this section subsequent to January 1, 1972, and no city formed from such town shall consolidate with any county or portion thereof under the provisions of Article 2 (§ 15.2-3520 et seq.) of Chapter 35 of this title.

§ 15.2-3603. Request for charter.

At the session of the General Assembly following its incorporation, the town shall request the General Assembly to grant it a charter. No judge shall grant a town a charter. Until a town is granted a charter by the General Assembly, the town's affairs shall be conducted exclusively under the provisions of general law.

§ 15.2-3604. How first election ordered and held.

An order incorporating a town under this chapter shall order the first election of town officers and shall designate the time and place where the election shall be held in the town. The election shall be at least 90 days from the date of the order and not within 120 days of a general election. The electoral board of the county within which the town, or the greater part thereof, is situated shall, not less than 90 days before the election, determine the qualified voters within the town, and the general registrar for the county shall provide the appropriate notice, in accordance with § 24.2-114. At any time the books are not closed pursuant to § 24.2-416, any person residing in the town who has not registered shall be entitled to register and vote in the town if he would have been entitled to register and vote in the county. Five members of council shall be elected and shall serve until their successors, elected pursuant to charter provisions, qualify and take office. The officers of election shall comply with the requirements of Title 24.2. If, for any cause no election is held on the day fixed in the order, the court may, by an order entered in its common-law order book, fix another day for the election, which shall be held as required by this section.

§ 15.2-3605. How appeals granted and heard.

An appeal may be granted by the Supreme Court or any justice thereof. Court costs shall be awarded as the Supreme Court determines. The costs in the Supreme Court shall be awarded to the party substantially prevailing.

Urban County Executive Form of Government (i.e. Fairfax County) - Prohibition on New Towns

§ 15.2-817. No unincorporated area to be incorporated after adoption of urban county form of government.

After the date of adoption of the urban county executive form of government, no unincorporated area within the limits of such county shall be incorporated as a separate town or city within the limits of such county, whether by judicial proceedings or otherwise.