



City of Clearfield Petition for Incorporation Process Review

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DISCLAIMER!

THIS IS AN OVERVIEW AND SUMMARY OF THE LAW
APPLICABLE TO THE INCORPORATION OF CITIES

IN CASE OF CONFLICT OR OMISSION,
KANSAS STATUTES ARE CONTROLLING



Incorporation of Cities

K.S.A. 15-115, *et seq.*

Petition for Incorporation

- The Petition:
 - Signed by 50 or more electors of the territory; and
 - Describes metes and bounds of the proposed City; and
 - Requests the incorporation of the “City of _____”
- Proposed City must have:
 - 250 or more inhabitants; or
 - 250 or more platted lots each of which is served by water and sewer lines owned by a nonprofit corporation

Petition for Incorporation

- The Petition must also state:
 - Quantity of land embraced, platted and unplatted;
 - A brief description of existing facilities and services currently received by the area, including water supply, sewage disposal, fire and police protection; and
 - The reasons for desiring city government and services.
- Map of the territory:
 - Showing location of the City within the county and the more densely built up areas, designating in general platted and unplatted areas

Petition for Incorporation

- Petition will also state:
 - the assessed valuation of the platted real property and improvements and unplatted real property and improvements; and
 - the assessed valuation or an estimate thereof of the tangible personal property for each county in which any area lies, certified by the county clerk or county assessor.

Process for Incorporation: Role of County Clerk

- Process:
 - County Clerk examines the Petition and, if it is complete and in proper form, the Clerk so reports to the Board of County Commissioners at its next regular meeting.
 - The Commission designates a time and place for a hearing on the petition, such time to be not less than 30 nor more than 90 days from the date the petition was filed. The place of the hearing shall be at a place convenient for most of the inhabitants of the territory.

Notice by County Clerk

Notice to Public

The county clerk shall cause a copy of the petition, without the signatures, and a notice of the time and place of the hearing to be published once in the official county newspaper of each county in which any of the territory lies and the publication shall be not less than fifteen (15) days before the hearing. Notice of the hearing shall also be posted in not less than three (3) public places in the territory not less than fifteen (15) days before the hearing.

Notice by County Clerk

Notice to Surrounding Cities and Commissions

The county clerk shall, not less than 15 days before the hearing, send notices of the hearing with a copy of the petition, without the signatures, to:

- the county clerk of any other county in which any part of the territory lies;
- to the clerk, secretary or chairperson of any duly constituted city, county, regional or metropolitan planning commission exercising planning authority over all or part of the territory;
- to the director of the division of community development of the department of economic development; and
- to the city clerk of any city, any portion of whose area is within five miles of the nearest boundary of the territory as described in the petition.

Hearing Procedures

The Hearing before the Board of County Commissioners

- The hearing shall be conducted in such manner as the board of county commissioners deems best suited to the occasion.
- All persons residing within the territory, owners of property within the territory whether residing there or not, all persons, agencies, and representatives of governmental units notified as provided in K.S.A. 15-119, shall be entitled to be heard and to present documentary information and briefs.
- The hearing may be adjourned from time to time.

Factors to Be Considered, Generally

Factors to be considered:

As a guide in determining the advisability of incorporating the territory, the board or joint board of county commissioners shall consider the following factors, among others:

- Population and population density of the area within the boundaries of the territory;
- land area, topography, natural boundaries, and drainage basin;
- area of platted land relative to unplatted and assessed value of platted land relative to assessed value of unplatted areas;

Factors to Be Considered, Generally

Factors to be considered (cont'd):

- extent of business, commercial, and industrial development;
- past expansion in terms of population and construction;
- likelihood of significant growth in the area, and in adjacent areas, during the next ten (10) years;
- the present cost and adequacy of governmental services and controls in the area and the probable effect of the proposed action and of alternative courses of action on the cost of adequacy of local governmental services and regulation in the area and in adjacent areas;
- effect of the proposed action, and of alternative actions, on adjacent areas, and on the local governmental structure of the entire urban community.

Factors to Be Considered, Proximity to Other Cities

Proximity to other cities:

If the territory or any part thereof is within five (5) miles of an existing city, the board or joint board of county commissioners shall take into consideration:

- The size and population of such city;
- its growth in population, business and industry during the past ten (10) years;
- the extension of its boundaries during the past ten (10) years;

Factors to Be Considered, Proximity to Other Cities

Proximity to other cities, factors (cont'd):

- the probability of its growth toward the territory during the ensuing ten (10) years, taking into consideration natural barriers and other reasons which might influence growth toward the territory;
- the willingness of the city to annex the territory and its ability to provide city services in case of annexation;
- the general effect upon the entire community, should there be additional cities in the area; all of these and other considerations having to do with the overall orderly and economic development of the area and to prevent an unreasonable multiplicity of independent municipal governments.

Additional Powers of Board

Consultants, witnesses, records, expenses

Board has authority to:

- hire expert consultants to provide information and assistance and gather information as required;
- to issue subpoenas, and compel the attendance and testimony of witnesses, and the production of papers, books and documents; and
- to cause a stenographic or other record made of the proceedings.

The expense shall be a proper charge against the county general fund

After the Hearing, Decision to Grant or Deny

After Hearing:

- After the hearing has been adjourned sine die, the board of county commissioners shall consider the matter.
- Board may request the director of the division of community development of the department of economic development to make a study of the general area in which the territory is located, information in possession of the county board and other sources, and render an opinion as to the advisability of the proposed incorporation.

After the Hearing, Decision to Grant or Deny

After the Hearing (cont'd)

- The petition for incorporation shall be denied if it is determined that present or future annexation to an adjacent city, or the creation of an authorized special service district, or districts, would better serve the interest of the area or that the proposed incorporation would be otherwise contrary to the public interest.
- If the board or joint board determines that the territory should not be incorporated, it shall make an order so stating.
- In addition to other requirements, if any of the territory wholly within one county is within five miles of an existing city, the territory shall not be incorporated except by the unanimous vote of the commissioners.

After the Hearing, Decision to Grant or Deny

If the board or joint board determines that the territory should be incorporated:

- it shall prepare an order or joint order incorporating the territory as a city by the name of "the city of _____" as stated in the petition and describing the metes and bounds thereof.
- When the order has been adopted, the inhabitants within such bounds and such further territory as from time to time may be lawfully added thereto shall be a body politic and corporate by that name, and they and their successors (except such corporation be lawfully dissolved) shall have perpetual succession.
- The order shall be adopted at the next regular meeting of the board.

Post-approval elections and other matters

Post-approval elections and other matters

- The order or joint order so incorporating the city shall order the first election in the city for city officers.
- The order or joint order shall be entered at length upon the journal of the proceedings of the board or boards of county commissioners and shall be published once in some newspaper printed or in general circulation in the city at least one week before the city election.
- Nomination papers for candidates for city office shall be filed with the county election officer of the county where the petition for incorporation was filed and the county election officer shall conduct such election.

Post-approval elections and other matters

Post-approval elections and other matters (cont'd)

- The city, regardless of the number of inhabitants at the time of incorporation, shall operate as a mayor-council city of the third class and the statutes relating thereto and home rule powers under the constitution until such time as by proper proceedings the class is changed or form of government changed.

Summary: Current Action Items

Set Hearing, Provide Notice

Now:

- Hearing date should be set—not less than 30 days, nor more than 90 days, from the date the Petition was filed.
- Designate place of hearing.

Later, but soon:

- Clerk publishes copy of Petition and Notice of Hearing, not less than 15 days prior to hearing
- Clerk posts notice in 3 public places in the proposed city territory, not less than 15 days prior to hearing
- Clerk provides notice to surrounding Cities and Commissions

Summary, Future Action Items

Future action items

- Consider whether to hire expert consultants to assist with evaluation
- Consider issuance of subpoenas for witnesses or documents
- Consider whether to make a stenographic record of the proceedings
- Consider whether to request the director of division of community development to make a study and render an opinion on advisability of proposed incorporation
- Review factors relevant to decision whether to approve or deny; prepare to receive and evaluate evidence on those factors and any other relevant considerations.



City Incorporation Process Review

Questions?