



MEMORANDUM

Date: September 27, 2022

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: Jan Leshner 
County Administrator

Re: **County's Role in City or Town Incorporation, and Changes to Services, Regulations and Revenues**

Background

My office has been contacted by two groups that are evaluating the possibility of pursuing the incorporation of areas within Vail and the Rincon and Tanque Verde valleys into towns. This is not unusual. Prior to the pandemic, a group in the Catalina Foothills requested information from the County for the same purpose. Groups in Vail have considered this option a few times, and went as far as meeting the necessary requirements to place the item on a ballot in 2013. Voters rejected the proposal to incorporate, 55 percent to 44 percent. Groups in Green Valley have pursued incorporation a number of times. In 1997, after State legislation temporarily removed a key obstacle to incorporation within Pima County, the Towns of Tortolita and Casas Adobes incorporated, while voters said no to the incorporation of the Catalina Foothills. The incorporation of Casas Adobes and Tortolita was later nullified in court when the law used to create them was overturned. The most recent successful incorporation within Pima County occurred with the formation of the Town of Sahuarita in 1994.

This memorandum is to inform the Board of Supervisors of the role of Pima County and the Board regarding incorporation efforts, and changes in services, regulations and revenues that would occur if a community successfully incorporates. More details regarding these two specific incorporation efforts will be provided to the Board at a later date.

To be clear up front, the Board's role in this process is ministerial in nature; meaning so long as the Board determines that those seeking incorporation have followed the legal requirements in State statute, the Board is required to approve each next step.

Overview of Legal Requirements for Pursuing Incorporation

The applicable legal requirements for pursuing incorporation are outlined in State statute, [A.R.S. §§ 9-101, 9-101.01](#), and were amended this past legislative session. The amendments will be effective September 24, 2022. The overview contained in this memorandum focuses on the most likely scenarios and does not attempt to address every specific scenario outlined in State statute.

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Those interested in pursuing incorporation are required to:

- Identify the boundary of the proposed city or town;
- Meet certain population requirements as to the population within that boundary;
- Ensure the area meets the legal definition of a "community" and is "urban in nature"; and
- Submit to the County a petition with signatures of either (1) two-thirds of registered voters residing in the boundary for incorporation without an election, or (2) 10 percent of the registered voters residing in the boundary for incorporation subject to an election.

A community with a population of 1,500 to 3,000 incorporates with the status of "Town." If the community has a population greater than 3,000, it can incorporate as a City or Town. Communities within 10 miles of a national park or monument may pursue incorporation with a population of only 500.

Before obtaining any signatures, those seeking incorporation are first required to provide written notice to the Board of Supervisors of their intention to publish a copy of the petition. No sooner than six months later, those seeking incorporation must publish a copy of the petition in a newspaper of general circulation. Members of the public then have at least 60 days to request boundary changes to those seeking incorporation. No sooner than 60 days after publishing the petition, those seeking incorporation must submit a copy of the petition to the County Recorder or County Elections Department. At the next Board meeting, and within 30 days, the Board is required to authorize circulation of the petition so long as the petition is found to be proper and legal. Those seeking incorporation then have 180 days to collect signatures before submitting signed petitions to the Board.

Additional information must be submitted to the Board before collecting signatures if the boundary includes large areas of uninhabited, rural, or farm lands; or if the proposed boundary of the new city or town is within six miles of an existing incorporated city or town having a population of 5,000 or more. Those within six miles of an existing city or town must provide the Board with a resolution from that city or town supporting incorporation, or an affidavit stating that annexation had been denied by that city or town.

After submittal of signed petitions, planned communities still under the period of declarant control (meaning the developer still has operational control over the planned community) can request the Board exclude the planned community from the boundaries, and the Board is required to comply with the request. If the request to exclude the planned community reduces the remaining population below the required minimum for incorporation, then the Board is required to reject the petition.

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If the Board determines that the signature requirements have been met for petitions that include two-thirds of registered voters within the proposed boundary, the Board is required to order the community incorporated as a city or town.

If the Board determines that the signature requirements have been met for petitions that include 10 percent of registered voters within the proposed boundary, the Board is required to call an incorporation election within 60 days of the petition being filed with the Board, and the election is to take place not more than 180 days after being called.

If incorporation is successful, the Board is required at the same time it issues the order of incorporation to appoint seven individuals from the community to serve as the first Mayor and Council until the city or town holds an election for Mayor and Council.

Impact to Pima County Services and Regulations if Incorporation is Successful

The legal requirements for county services for newly incorporated cities and towns are also outlined in State statute, [A.R.S. § 9-104](#). All county codes, rules and regulations apply within the city or town until July 1 following incorporation, or until superseded by those adopted by the city or town if that occurs before July 1. Similarly, all county services will continue to be provided until July 1 unless the city or town begins providing those services before July 1.

Regarding the codes, rules and regulations, this means that after July 1, the County would relinquish authority over land use planning, changes and rezonings, as well as all building permitting and site instruments.

- Land use decisions will be in the hands of the newly incorporated city or town
In the case of Pima County, implementation of conservation-related land use ordinances and policies such as the Buffer Overlay Zone and Conservation Lands System intended to protect County and Federal public lands from the effects of higher intensity land uses and the general area's biological diversity, will no longer apply. The County can encourage the new city/town council adopt similar ordinances, guidelines and policies.
- Private development will lose access to Endangered Species Act protections via the Certificate of Coverage Program
The County's Certificate of Coverage Program provides private development within unincorporated areas, at little or no cost, a streamlined method to comply with the Endangered Species Act. Absence of this opportunity is significant given that there are a variety of federally listed plant and animal species that occur in both of these areas (as well as species that may become listed in the future) that are currently covered by Pima County's Section 10 Endangered Species Incidental Take Permit. The County can encourage the new city/town pursue its own incidental take permit or discuss the possibility of adjoining Pima County's.

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- The integrity of lands allocated as Section 10 Endangered Species Act mitigation land will be subject to new city/town decisions
Cienega Creek Natural Preserve has been formally designated as Section 10 mitigation land and the County's ability to continue to use the preserve as Section 10 mitigation is dependent upon maintaining the existing conservation values. Decisions and actions taken by the County to protect these values by minimizing groundwater withdrawals on private land near the Creek and preserving the ecological functionality of Cienega Creek could be compromised if a city or town made land use decisions that result in increased groundwater withdrawals and higher land use intensity levels near the creek. The County can encourage the new city/town council take similar water conservation and land use actions.
- The integrity of County ranches could be impacted.
Conservation values of County ranches could be impacted if State grazing leases held by the County were sold by the State Land Department for development. The threat of this occurring may be greater if such leased lands were included in an incorporated city or town that advocates for higher land use intensities on those lands compared to the County. The County can request these County ranch lease lands be excluded from the boundary prior to the start of incorporation efforts.

It is common for those seeking incorporation to explore the option of contracting with the County or another city or town for certain non-regionally provided services for a year or two after July 1, until they can provide such services directly. Some incorporated cities and towns in Arizona continue to contract with counties for services long after incorporation.

The Tanque Verde and Vail groups who are currently exploring the option of incorporation have requested cost estimates from Pima County to contract for law enforcement, transportation, elections and development services. Estimates are currently being developed and will be shared with the Board when they are finalized, along with the draft boundaries of the cities and towns used to estimate the costs of service.

The only County asset automatically transferred to a new city or town are the roads. County or Regional Flood Control District (RFCD) owned or leased property will remain owned by Pima County or RFCD. This includes land owned or leased for parks and conservation areas, community centers, libraries, public health clinics, etc. Any property right the County or RFCD has before incorporation will remain the same after incorporation, unless the County and new city or town mutually agree to pursue alternatives.

Fiscal Impacts to Pima County

Pima County would no longer fund non-regionally provided services such as law enforcement, justice courts, new neighborhood level parks, and the overhead associated with such services,

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within the newly incorporated city or town, which would likely result in a cost savings to Pima County. The County would receive less unincorporated state shared transportation revenues (Highway User Revenue Funds and Vehicle License Tax), if a community successfully incorporates, but would conversely no longer be responsible for managing and maintaining the newly incorporated roads. Pima County's state shared sales tax revenues would not change. Fee based services, such as building permits and other development services are funded by fees for those services, and therefore there should be impacted by incorporation.

Transportation impact fee benefit areas would be modified to eliminate newly incorporated areas, reducing future impact fee revenues in those benefit areas, but similarly eliminating future expenditure obligations. A problem may occur if there are expenditure obligations for outstanding debt for transportation improvements located in the new city or town that are being repaid with impact fees. In such instances, a reduction or elimination of future impact fees could result in elimination of the revenue source to repay the County debt. Similar to annexations, Pima County would negotiate with the new city or town to continue to receive impact fee revenue in an amount necessary to repay the debt.

Existing cities and towns in Pima County would see reductions in state shared revenues (HURF, VLT, State sales tax, and state income tax) because total state shared revenues stay the same but some of the revenues would now be allocated to the new city or town.

Overall, exercising the right to self-governance comes with pros and cons, but the exploration of such is often a beneficial learning experience for all involved. As such, the County Administrator's Office will provide requested information to the groups considering incorporation, and will not take a position on the incorporation itself. I will provide additional information specific to these two current incorporation efforts as they become available.

JKL/anc

c: The Honorable Gabriella Cázares-Kelly, Pima County Recorder
The Honorable Chris Nanos, Pima County Sheriff
Carmine DeBonis, Jr., Deputy County Administrator
Francisco Garcia, MD, MPH, Deputy County Administrator & Chief Medical Officer
Steve Holmes, Deputy County Administrator
Carla Blackwell, Director, Development Services Department
Constance Hargrove, Director, Elections Department
Victor Pereira, Director, Natural Resources Parks & Recreation Department
Kathryn Skinner, Director, Transportation Department
Nicole Fyffe, Senior Advisor, County Administrator's Office